

**THE AUTONOMY ISSUE IN KASHMIR:  
CONTENTIONS AND REASONABLE OPTIONS**

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## **DECLARATION**

I declare that the dissertation entitled '**THE AUTONOMY ISSUE IN KASHMIR: CONTENTIONS AND REASONABLE OPTIONS**' submitted by me for the award of the degree of **MASTER OF PHILOSOPHY** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other University.

**(THEIMIPEI RALENG)**

## **CERTIFICATE**

We recommend that this dissertation be placed before the examiners for evaluation.

**Prof Pralay Kanungo**  
*(Chairperson)*

**Prof Valerian Rodrigues**  
*(Supervisor)*

*I hereby dedicate and owe this writing*

*to*

*my loving Parents*

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## **LIST OF ABBREVIATIONS**

<b>ADC-</b>	<b>Autonomous District Council</b>
<b>APHC-</b>	<b>All Party Hurriyat Conference</b>
<b>AJK-</b>	<b>Azad Jammu and Kashmir</b>
<b>AJF-</b>	<b>All Jihad Force</b>
<b>BJP-</b>	<b>Bharatiya Janata Party</b>
<b>HUM-</b>	<b>Hizbul Mujahideen</b>
<b>HKEI-</b>	<b>Harkat-e- Islami</b>
<b>HKMN-</b>	<b>Harkat- ul- Musalmeen</b>
<b>HKUM-</b>	<b>Harkat- ul- Mujahideen</b>
<b>HAJY-</b>	<b>Hamid Sheikh, Ashfaq Wani, Javed Mir and Yasin Malik</b>
<b>IJK-</b>	<b>Indian Jammu and Kashmir</b>
<b>INC-</b>	<b>Indian National Congress</b>
<b>ISI-</b>	<b>Inter-Services Intelligence</b>
<b>ISL-</b>	<b>International Student League</b>
<b>JEI-</b>	<b>Jamaat-e-Islami</b>
<b>JKLF-</b>	<b>Jammu and Kashmir Liberation Front</b>
<b>LET-</b>	<b>Lashkar-e- Toiba</b>
<b>MUF-</b>	<b>Muslim United Front</b>
<b>MC-</b>	<b>Muslim Conference</b>
<b>ML-</b>	<b>Muslim League</b>
<b>NC-</b>	<b>National Conference</b>
<b>NSCN (I-M) -</b>	<b>National Socialist Council of Nagaland (Isaac- Muivah)</b>
<b>NSCN (K) -</b>	<b>National Socialist Council of Nagaland (Khaplang)</b>
<b>POK-</b>	<b>Pakistan Occupied Kashmir</b>
<b>PDP-</b>	<b>People's Democratic Party</b>

# **INTRODUCTION**

The relationship of Jammu & Kashmir to Indian Union has been one of the most daunting issues that has confronted Indian polity after independence and has had major regional and global implications. The Kashmir Conflict is driven by a complex of multiple, intersecting factors, and is, consequently, caught in multiple, interlocking dimensions. Nonetheless, the ruptured relationship between the Muslim population of the Kashmir Valley and the Indian Union is the core of the contemporary problem. Deep democratic aspirations voiced from several ends of the spectrum confront a repressive reality in the state.

There is a growing interest on the issue of autonomy in many parts of the world, as a method to resolve ethnic and regional political conflicts. In few instances, demand for autonomy may be satisfied only by the emergence of a new, independent state in which the dissatisfied segment can exercise sovereign authority. In other instances, demand for autonomy may imply no more than protection from discrimination, and preservation of cultural, linguistic, or other values from majority assault. In many instances, adoption of a federal system or the devolution of meaningful power from the centre to geographic, linguistic or ethnic regions is sought. In all such attempts one of the intractable problem is to earn a broad consensus from all the concerned. There are no doubt that in majority of cases, resort to autonomy is voiced by ethnic groups but there are also other factors which might precipitate autonomy demand. Sometimes the reasons are economic<sup>1</sup>, or regimes of internationalization.<sup>2</sup>

Autonomy as concept and device to resolve inter-ethnic, inter-regional conflicts has multiple understanding and applicability. It is much more open-ended than self-determination. Opinions on autonomy vary considerably. While some consider it to be futile and unworkable, others have expressed the opinion that it 'remains a useful, if imprecise, concept within which flexible and unique political structures may be developed to respond to complexity'<sup>3</sup>

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<sup>1</sup> Ruth Lapidoth, 'Autonomy: Potentials and Limitations'. Hebrew University of Jerusalem, Faculties of Law and Social Sciences, Mount Scopus, Jerusalem, Israel . August, (1993)

<sup>2</sup> Ibid., p-8-9

<sup>3</sup> Robert A. Friedlander, "Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?" in Yoram Dinstein, ed., *Models of Autonomy*, supra note 43, (pp. 291-303) and at p. 302;



It is true that autonomy is often 'reluctantly offered and ungratefully received'. It is usually a compromise solution, and often does not correspond to the original wishes of any of the parties involved.<sup>4</sup>

In many cases the central government for various reasons hesitates to grant autonomy: fear that autonomy may lead to secession; the consideration that the granting of autonomy to a certain region or group would constitute discrimination against the other inhabitants; the concern that the granting of autonomy may lead to the violation of certain interests or values of the State at large, e.g. a behaviour that could harm the environment or the imposition of punishments that do not conform to the moral values of the majority of the population; the risk that autonomy might induce the intervention of a foreign State to which members of the autonomous group have an ethnic or other affiliation etc.

The members of the group for whom the autonomy is granted often view it as a lesser evil although; they would have preferred complete secession. Nevertheless, various countries have resorted to autonomy in order to accommodate diversity and heterogeneity. In some cases the scheme functions satisfactorily, in others it works to an extent. Sometimes autonomy does not meet the expectations, and does not lead to the hoped for peaceful co-existence.

Autonomy is not a panacea but only a tool or a framework that can help to find an adequate compromise where the parties are looking for a compromise. By definition, compromise involves mutual concessions, and therefore in most cases none of the parties is fully satisfied by the compromise. Autonomy cannot create the wish for compromise, but it can help shape its content. Like any tool, it has to be used in accordance with the special circumstances of each case.

Marc Weller and Stefan Wolff in *Autonomy, Self-Governance and Conflict Resolution; Innovative approaches to institutional designs in divided society* make the point that autonomy was rediscovered as a potential remedy to self-determination claims. It was no longer seen as a secessionists' stepping stone towards independence. Autonomy was according to them considered as a possible tool in accommodating

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<sup>4</sup> Hurst Hannum and Richard B. Lillich, 'The Concept of Autonomy in International Law', 74 *American Journal of International Law*, 858-889, at p. 889( 1980)

separatist movements without endangering the continued territorial integrity of an existing state. If autonomy was reconsidered as a potential remedy against demand for self-determination, then why there still exist cases where conflict and tension among states arise and continue to arise as long as the minority state were allowed to secede from the former state? Problem also arises since the very concept of autonomy is often taken as the synonym of self-determination by many scholars, writers, policy makers, practitioners etc.

### **The Research Question**

The kind of Autonomy issue that we will be looking at in this dissertation is quite unlike other forms of autonomy that are rigidly confined to a single set of demand. Rather it is a kind of autonomy demand that has a distinct contextual base. Furthermore, it is not just limited to the demands by minority rights, or issues concerned with Human Rights, or even demand for territorial autonomy and self-determination alone. In J&K there are several perspectives on autonomy that are jostling for exclusive attention.

Outside the ambit of these perspectives and expressed demands, there could be other options: We could profitably ask why the problem and its proposed solution have been circling around a limited set of options? What are the other possible and viable solutions? Can we not limit the issue to democracy in general and free and fair elections in particular, or for that matter within the conception of a federal structure or a decentralised government? On the other hand, should we stretch it to the conceptions of secession or separate nation-hood?

There are groups holding the opinion that since Pakistan was created on the basis of two nation theory, the same can be applied to Kashmir, and that Kashmir should become part of Pakistan. We cannot overlook that the issue of autonomy is not restricted to J&K alone, it is demanded by different constituent units of the region - Jammu, Ladakh and Kashmir. Needless to say, if in a region its various constituent units make a claim for autonomy for themselves, then how granting of autonomy to the region as a whole can be the best possible tool of accommodation? Moreover regional autonomy regime constituted way back in 1952, under the Agreement

between GOI and the state of J&K could not sustain or could not become a full fledged regime due to the different pulls and pressures. To what extent it is viable today? Further, if some perspectives cannot be accommodated within the conceptual ambit of autonomy, are there reasonable grounds to pursue any of them?

### **Mode of Investigation**

The whole dissertation is divided into 3 main chapters focussing on the demand for Autonomy for Kashmir with the defensible and indefensible arguments involved. In Chapter one, we take view of the major developments in Kashmir, on the basis of the major writings on the state: Much of this work is historical; but there are also biographical accounts and advocacy studies.

Discursive method is applied in the second chapter since it is a set of discussions on the versions of autonomy marked by their adherence to one or another perspective. It is helpful to examine a social phenomenon as achievements of active human interactions.

In the third chapter, the use of comparative method will be applied since a comparison of all the contending positions will be made and then at the same time their differences and similarities will be examined at the same time. It is comparative since one makes some kind of comparison with the other and vice-versa. Furthermore, comparative method has been seen as studying similarities and differences as the basis for developing a grounded theory, testing hypotheses, inferring causality, and finally producing reliable generalizations. So in this regard comparative method applied in chapter three cannot be simply taken as a comparative study alone, but with focus on differences rather than similarities.

Secondary sources like books, articles, journals, periodicals, editorials, reports or paper publications by government or any international organisations on the issue are applied and used in this dissertation. It has helped us to focus on the contextual base of the study. Moreover the demand for autonomy for Kashmir had indeed been a great source of debate and multiple contending positions for autonomy are also discussed.

## Chapterisation

It is interesting to know that demand for autonomy for the region started before partition, but it was rather different demand for autonomy since it demanded autonomy from the Dogra rule in the region. Chapter one titled as *The Development of Autonomy Demand in Kashmir* traces the rise of different types of autonomy demands in the region. We cite evidence of the overt and covert partisanship of Dogra rulers to cultivate a Hindu constituency in the state. This was one of the reasons why Muslims Conference was formed in the early 1930's in the region so as to address the grievances of the people against the Hindu Rule. These traces of communalisation of public life found a new lease of life when Mohammad Jinnah built up his campaign on the Two Nations' Theory.

In the later other two phases traced in this chapter, the target of the demand for autonomy shifted from the Dogra rulers to the Government of India. With the lapse of British paramouncy and the partition of India and creation of Pakistan, there emerged a shift in the demand for autonomy in the region. These two phases also witnessed the inter-play of other international actors like Pakistan, UN, etc on the scene, apart from the tension between GOI and J&K. These developments affected the decision making process with regard to the future of the region. Questions on self-determination and merger of the state with Pakistan were also contested, but detailed analysis has been examined in subsequent Chapters.

At specific conjunctural moments - 1965, 1971, 1989, 1998-99 - conflict in the region mushroom leading to multiple demands by the people. Noteworthy were the demands for self-determination and to make Kashmir part of Pakistan. These new demands intensified the tension in the region. They revolved around internal affairs and freedom to look after their own state of affairs. In the 1990s the call for *Azadi* gained momentum.

In 1990s and beyond, groups like Jammu and Kashmir Liberation Front (JKLF) and Jamaat-e-islami were two of the main actors within the region, the former wanted complete independence and the latter wanted merger with Pakistan. Chapter one is broadly divided into four phases starting from 1930s, when the movement for

resistance against the Dogra rulers found specific institutional expression: 1930-47 is the first phase, the second phase is from 1948-75, the third phase is from 1975-1989 and the fourth phase is from 1989-2011.

Chapter two is titled *Versions of Autonomy*. In this chapter the multiple contending positions regarding autonomy question are looked into. Broadly eight different and specific positions are taken into consideration even though there could be heterogeneous standpoints regarding the issue. Each and every position tries to advance its own justification. These positions have their distinct readings on issues like Mountbatten Plan or Indian Independence Act 1947, on Secularism enshrined in the Indian constitution, on two nation's theory, on secession or self-determination etc.

The final main chapter headed as *Towards a Reasonable Alternative in Jammu and Kashmir* attempts to develop the most defensible position among the eight alternatives discussed in Chapter two. Those which seem closest to such endorsement are Azadi, autonomy or regional autonomy to be more specific, and self-rule or self-determination. In the understanding and arguments of the Government of India and the Hindu Nationalists a set justifications and concerns are voiced suggesting 'full merger' or 'accession of the region' in the Union. These terminologies introduce their own distinct complexities.

There are political consequences implicit in the usage of these terms: Azadi, autonomy and self-determination are generally invoked by Pakistan, JKLF, and Jamait-e-Islami suggesting deep dissatisfaction with the existing state of affairs, while demands for regional autonomy, accession, full merger etc either endorse J&K as a unit of India or do so, suggesting a degree of reforms. We have argued for a position of radical autonomy, with such autonomy extended to the constitutive units, but enlivened with democratisation of public life.

Chapter three has critically reviewed all the perspectives and advanced what it considers as the most reasonable alternative to the Kashmir question. The early versions of autonomy demand are deeply caught in the circumstances of imperial Britain's withdrawal from the colony. While other versions cropped up due to a multitude of factors involving the intersections of internal conflict and international contest over legitimate sovereignty.

Two alternative responses have been thrown up throughout the world to cope with the necessity of power sharing between levels of governance of a given state: symmetrical federalism (with some asymmetrical exceptions depending on the political, cultural, and historical context) and political autonomy in different forms. Federalist states are usually symmetrical in the sense that the scheme of power-sharing affects all constituent units of the state. In asymmetrical federations, one or more regions (federated states) are vested with special powers not granted to other states or provinces that allow for the preservation of a specific culture, language, form of living.<sup>5</sup>

Sometimes federalism and autonomy come in combined way, as the federal states of Canada, India and Russia demonstrate. Being basically federal systems, these states also encompass some entities with special powers (asymmetrical federal system). Such entities could also be denominated as special territorial autonomies in the framework of a federal state. Thus, there is a variety of forms of territorial power-sharing, which are often not mutually exclusive, but flexible, depending on the political context. Our argument is in favour of combining the asymmetrical approach alongside autonomy.

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<sup>5</sup> Ibid.,p-8-9

## **CHAPTER-1**

### **DEVELOPMENT OF AUTONOMY DEMAND IN KASHMIR**

The State of J&K from 1846 until 1947 was a princely state under the British Empire. The State was created in 1846 with the treaty of Amritsar after the Anglo-Sikh war. By this treaty Kashmir was sold to Gulab Singh for cash payment of seventy-five lakhs of rupees by the British East India Company. The same treaty recognised Gulab Singh as the Maharaja of the Jammu and Kashmir State. The present state of J&K with its boundaries was founded by Gulab Singh.

He had initially secured in 1820 the principality of Jammu as *jagir* from Maharaja Ranjit Singh of Punjab in recognition of his loyal services and was authorised to rule over the territory as the Raja. The treaty of Amritsar started the Dogra rule in Kashmir under Maharaja Gulab Singh. It was exactly 100 years from 1846 until 1947 that the Dogra rule survived in J&K. The Dogra rule in J&K had its pros and cons within the region. The socio-political and economic system during the Dogra rule was based on a rigid feudal system. Most of the privileges were enjoyed by the Monarch.

Dogra autocracy affected not only the general masses who groaned under the unbearable load of taxes and crushing economic poverty, but even the upper classes resented who felt displeased with the foreign domination in every branches of administration. This resentment, however, simmered underground for years, and found an outward expression occasionally, but was never directed against the Ruler or his administration.<sup>6</sup>

Representation was made to the Government of India in a letter to the Kashmir Durbar, at the close of the 19<sup>th</sup> century, that in the matter of state employment, natives of Kashmir should be given preference over outsiders and that this principle should be strictly adhered to. This initiative enhanced the political consciousness among the educated youths and led to the formation of the Reading Room known as 'Patch Kadal', in spite of the ban on political activity during those times. This group was formed by a number of young men who graduated from Aligarh Muslim University.

In the reading room, people gathered and discussed about the State of affairs existing at that time, particularly the question of representation of Muslims in State services.

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<sup>6</sup> Satish Vashishth, Sheikh Abdullah Then and Now. New Delhi: Maulik Sahitya Prakashan Publication, 1968



This is of some interest because in these reading rooms men who were educated at Aligarh University started the political awakening in the real sense which was later taken over by sheikh Abdullah who just returned from Aligarh University with an M.Sc degree. The idea of freedom undergoes several distinct expressions in Kashmir overtime. We want to mark this trajectory in terms of four major phases: movement for the overthrow of the monarchy; struggle for autonomy and self-determination; disenchantment and loss of legitimacy; militancy and armed struggle.

### **FIRST PHASE:**

1930 – 1947

In 1930s Kashmiris started their liberation movement under the leadership of Sheikh Abdullah and his National Conference Party challenging the oppressive rule of the Dogra Monarch. This movement also aimed at the eradication of extreme inequalities and oppression through major reconstruction of land reforms. The most radical measure called for under the conditions was the abolition of landlordism and the distribution of land to the tiller, and this progressive agenda could be implemented only by overthrowing the feudal order.

Sheikh Abdulla mainly wanted to do away with the autocratic rule of the king, a demand assented to slowly by the majority of the population as well. Sheikh Abdullah with his masterly oratorical capacities in Kashmiri language and spell-binding recitation of the *Quran*, fired the imagination of the oppressed Muslims. Soon, he realised that the real fight was not between two religious groups, but between the ‘haves’ and the have-nots’, the oppressed and the oppressor.<sup>7</sup>

As early as July 1932, a few young Muslims leaders, including Sheikh Abdullah, began to think of re-orienting the Muslim politics on broader, healthier and non-communal lines. It was resolved that the Freedom Movement in Kashmir be conducted on secular, progressive and democratic lines. In October that year, an organization called the Jammu and Kashmir Muslim conference was formed by them. The idea was to put up a fight for the removal of disabilities suffered by the masses.

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<sup>7</sup> Ibid., p-2-3

The purpose of the Conference was formed to channel popular anger and discontent along more coherent, non-parochial and explicitly political lines, with Sheikh Abdullah, a Kashmiri as President and Ghulam Abbas from Jammu as General Secretary and well known Kashmiri Hindus as members. Muslim Conference also sought to define a distinct Kashmiri identity (Kashmiriyat) along with the mobilization of the masses against the feudal-cum-colonial rule in the region of J&K.

The nomenclature 'Muslim' Conference was communal in name only. The policy of the conference from its very inception continued to be secular in character. But it is to be noted that the Muslims were the oppressed group in J&K during this period. Members of Muslim Conference later appointed a 'dictator' to get the grievances of Muslims redressed by the Government. The 'Dictator' Ghulam Abbas, in consultation with Sheikh Abdullah prepared a memorandum which was mainly about increased representation of Muslims in the services. But not much came out of it since the Government did not pay heed to it. Consequently, it was decided to resort to civil disobedience movement.<sup>8</sup>

But within few years, there emerged religious polarization among the groups of the organization. Despite some sporadic efforts this divide continued to dominate the scene. Sheikh Abdullah proved too socialist and radical to many. This religious polarization among the members of Muslim Conference and their differences of ideology in the actual composition or what defines Muslim Conference led to an outgrowth of another fraction from Muslim Conference in 1936 headed by Sheikh Abdullah with an explicitly secular and socialist manifesto known as National Conference (NC). By the time of the formation of National Conference in 1939, close links had been established between the NC and the Indian National Congress. This in turn led many including Ghulam Abbas, who was the General Secretary of Muslim Conference when Sheikh Abdullah was its President, to break away from NC and revive Muslim Conference in 1941. Most of them who left like Ghulam Abbas were Muslims from South of the valley. They lived in a Hindu majority area and much more than the Muslims of the valley, who lived in the Muslim majority area, feared being politically swamped by the Indian National Congress, which they perceived as representing a Hindu India.

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<sup>8</sup> Ibid., p. 22-23

This movement, although eventually came to be divided, had two far-reaching effects: It opened the eyes of the Kashmiri Muslims about the game of the British in the state. The Maharaja granted a constitution providing for the Praja Sabha (Legislative Assembly). The first session of the Assembly was held in Srinagar in the autumn of 1934, following the first election held that year. The Muslim Conference captured 19 out of 21 Muslim seats. The Assembly became a good platform for explaining the disabilities of the common masses.

During the early 1940s till the partition of India and Pakistan, conflicts and disputes multiplied not so much between the National Conference and the Muslim Conference, the former having a nationalist outlook and the latter ethnic, but with the issue of partition, new actors started to involve in the matter.

Sheikh Abdullah having close affinity with Nehru and the Indian National Congress had its repercussions within the Muslim Community. Situation aggravated when in 1944, under the influence of Pandit Nehru the NC adopted a programme of Socialist pattern of society. It was given the name 'New Kashmir' Manifesto. This major step gave a boost to the Muslim Conference with its ideal of working for the amelioration and betterment of the Muslims of the state.

Since the division of Muslim Conference into two, the members of the Muslim conference firmly embarked on the upliftment and betterment of the lives of the Muslims in the valley. They believed that Hindus and Muslims cannot form a nation together and so a separate state was the only solution. This idea got more credibility and attraction when Mohammad Iqbal embarked upon the idea of a separate independent state of the Muslim majority in the North Western and Eastern part of the subcontinent. Again in 1942, Mohammad Ali Jinnah gave his two-nation theory based on the same principle of Mohammad Iqbal. The Muslim Conference's demand for an independent Muslim state got more rigid and firm with the support and help of the Muslim League headed by Mohammad Ali Jinnah.

With partition and independence from the British Empire, Kashmir, a princely state with majority Muslims ruled by an autocratic Hindu ruler, Maharaja Hari Singh, confronted an entirely different kind of challenge. The State was given the option to join India or Pakistan. Most of the Kashmiri Hindus wanted the accession of Kashmir

to India since for them it best served the interest of the nation and the people. One of the most prominent Kashmiri Hindu organizations, the RSS, openly mooted the idea of accession of the state to India. RSS played a major role in convincing the Ruler of Kashmir to accede to India since that was the only resort in order to avoid further delay in his decision.

On the other hand, Sheikh Abdullah and his group wanted autonomy at certain level from the autocratic rule of the Ruler in Kashmir, for which they started the famous 'Quit Kashmir' movement by 1946. During this movement, Sheikh Abdullah stressed on two points: First, that the Treaty of Amritsar between the British Government and Raja Gulab Singh was a sale deed, unacceptable to the people of Kashmir and should be abrogated. Second, Maharaja Hari Singh should quit the valley and leave Kashmiris alone to decide the future by themselves. The slogan of the Movement 'Quit Kashmir' meant that the 'autocratic Dogra House' should surrender sovereignty to its 'real owners', the people.

Reactionaries among the Hindus in India who were not sympathetic to the nationalist aspirations of the Kashmir Muslims ever since the first upheaval broke out against the Dogra autocracy in 1932, condemned the Azad Kashmir movement as an adventure of marauders, looters and cut-throats. To them the National Conference was the genuine popular Party representing the will of the four million people of the state. With the coming of partition of India and the creation of Pakistan, Muslim Nationalists made their position more rigid and firm. For them if India could not accommodate the Muslims within their country which led to the creation of Pakistan then the same could be applied in the case of Kashmir as well.<sup>9</sup>

The Mountbatten Plan of 3<sup>rd</sup> June outlined the partition plan of British India and doing away the British paramountcy in India. Finding out that Punjab and Bengal had very narrow Muslim majority, Lord Mountbatten was able to make the Congress and the Muslim League agree to the breaking up these two states into Hindu and Muslim majority blocks, each consisting of districts geographically contiguous to each other. It was decided to hand over power to the Muslim League, so far as the Muslim majority provinces and the Muslim majority districts so constituted were concerned,

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<sup>9</sup> Prem Nath Bazaz, Azad Kashmir, Gulshan books, 2005.

and the rest of the country to Congress. This principle had its implications for the future of Kashmir as well.

Mohammad Ali Jinnah's 'Two Nation Theory', as forming the ideology of the Muslim League suggested that the Muslims in British India formed a separate nation and there were thus two nations in India, Hindus and Muslims. This idea of nation invoked the principle of religion, that Hindus and Muslims cannot form one nation because their beliefs and ways of life kept them apart. The Muslim League which expounded this theory was opposed by the All India National Congress. The Congress not only opposed the League thesis; it countered this by a positive enunciation of the theory of Indian nationhood, basing its argument mainly on the principle of secular nationalism. It argued that India's constitution must be based on independence, democracy and national unity and it repudiated attempts to divide India or to split up her nationhood. Even a spiritual oneness was ascribed to India.<sup>10</sup>

The first phase can be understood as a phase marked by the discontent of the population with their ruler Hari Singh for he could not handle communal conflict in and around J&K, which led to their demand for complete withdrawal of feudal rule in Kashmir. The Dogra rule which started in Kashmir from 1846 and ended in 1947 had multiple effects on the general masses. During the early 1930s when the first uprising took place led by the Muslim Conference against the autocratic rule, the liberation movement was not so successful since there emerged fractions within the leadership: one fought with a nationalist outlook, while the other had a pure communal outlook confined to the Muslims.

Furthermore, there arose new alignments among them. The National conference got the support and help from political groups like INC and RSS which persuaded the Ruler after the Partition to accede to India on 26<sup>th</sup> October 1947. On the other hand, Muslim Conference got the support from Muslim League. Formally, Kashmir being a princely state was given the option to decide the future by itself after the partition. Both India and Pakistan had their valid reasons to claim the territory for themselves.

One of the primary challenges that this phase witnessed was that National Conference as one of the oldest regional parties in the region could have handled the regional

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<sup>10</sup>Arif Hussain, Pakistan: Its Ideology and Foreign Policy. Frank Cass and CO-Ltd. London.1966.

discontent more prudently, and ensured that the situation would not aggravate itself as it did. No serious attempt was made to keep the unity of the masses intact. The princely state was clearly a culprit. The movement against the repressive Maharaja Hari Singh was brutally suppressed by the State forces. The predominantly Muslim population was not adequately represented in the State's services.<sup>11</sup>

The Glancy Commission appointed by the Maharaja published a report in April 1932, confirming the existence of grievances among the State's subjects making recommendations for adequate representation of Muslims in the State's services. The Maharaja accepted these recommendations but delayed their implementation, leading to another agitation in 1934. The Maharaja granted a Constitution providing a Legislative Assembly for the people, but the Assembly turned out to be powerless.<sup>12</sup>

There were other imponderables. In theory, rulers were allowed to accede their States to either Dominion, irrespective of the wishes of their people; but as a practical matter, they were encouraged to accede to the geographically contiguous Dominion, taking into account the wishes of their people and in cases where a dispute arose, it was decided to settle the question of accession by a plebiscite, a scheme initially proposed and accepted by India.<sup>13</sup>

In the first phase, the story of the autonomy issue is deeply caught in the larger story of the subcontinent. But some issues which did not seem significant at this stage were to become preponderant at a later stage of development, such as for instance the secular platform carved out by Sheikh Abdullah, and the distinction between the religious profiles of the regions such as Jammu and Kashmir. It is also important to point out that the Indian National Congress and particularly Jawaharlal Nehru had shown a great deal of interest in the development of the movement against the Dogra king in Kashmir.

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<sup>11</sup> Prem Nath Bazaz, *The history of Struggle for Freedom in Kashmir*. New Delhi:p.140-160( 1954)

<sup>12</sup> *Ibid.*, p-162-163

<sup>13</sup> Alastair Lamb, *Incomplete Partition; the genesis of the Kashmir dispute 1947-1948*, Oxford University Press,2002

## **SECOND PHASE:**

1948- 1975

Unlike the first phase, this phase witnessed the involvement of Pakistan more explicitly. Under the Mountbatten Plan, sovereign choice was given to Hari Singh to decide the future of Kashmir, either to accede to India or Pakistan or to remain independent. Most of the Princely states decided either to join India or Pakistan, but the region of J&K was territorially contiguous to both India and Pakistan, although its contiguity to two Pakistani provinces, (western) Punjab and the NWFP, was far more pronounced than its territorial link to Indian eastern Punjab.

With the increasing tension and attacks arising in Kashmir post-independence, Hari Singh signed the Accession Agreement to India on 26<sup>th</sup> October 1947. Sheikh Abdullah and his National Conference members supported the Accession on the hope that the Government of India will grant them autonomy and until then the Accession will remain as a Standstill Agreement between them. By 'standstill', it was understood that the final decision of Accession would be taken with a proper plebiscite following the procedure laid down by the constituent Assembly of Jammu and Kashmir.<sup>14</sup>

The two nation theory had mired Indo-Pakistan relationship into an intractable problem over Kashmir ever since the question on the issue of accession cropped up. The British Government at the time of division of India had not made the principle of two nation theory applicable to the Princely states. With the lapse of British paramountcy, the choice before the rulers of these states was to accede either to India or Pakistan, depending upon geographical compulsions and requirements of the subjects of these states. The instrument of accession signed by a ruler was the legal cover for the transfer of the sovereignty over the state to India or Pakistan, as the case might be.

The Government of India agreed to the demand for the final ratifications of the accession by the constituent Assembly of J&K. Therefore, some temporary provisions were given in the form of Article 370 which was inserted in the Indian

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<sup>14</sup> Victoria Schofield, Kashmir in Conflict; India , Pakistan and the unending war, New Delhi,St. Martin's Press, ,2003

Constitution, such as defence, communication and external affairs would remain with the centre. The parts that dealt with subjects other than those could be extended with the concurrence of the state Government. This is how Article 370 made the bulk of the Indian Constitution inapplicable to Jammu and Kashmir.

The politics of National Conference under the leadership of Sheikh Abdullah was a movement with the ideals of the Congress and the fight against oppression, discrimination and subversion of democratic rights. Before the accession of the State to India, both NC and the government of India were of the opinion that the decision on accession to India or Pakistan should be made on the basis of people's wishes and not the wish of Maharaja. Only then a decision on its relation to India and Pakistan has to be taken. In spite of such opinion, many influential leaders harbored the desire that accession to India was beneficial. Besides, Kashmir was more dependent on India for its markets. Politically too, popular mobilization in Kashmir was akin to that of the Indian National Congress. Hence Kashmir would have had better opportunities to shape its future with India. Furthermore, there was widespread inclination in Kashmir to join India since it was believed that India could safeguard the legitimate democratic rights of the people of Jammu and Kashmir. This belief and trust by Kashmir could be the reason behind the close association between NC and the Congress during those times. But because of this close affinity it could not be assumed that the accession of Kashmir to India was an accomplished fact.

The accession to India was agreed by Sheikh Abdullah on the hope that the goal of secular democracy based on justice, freedom and equality for all without distinction enshrined in Indian constitution will guarantee the relationship of the State with India. The identity of democratic and secular aspirations, will guide the people of India as well as the State of Jammu and Kashmir in their struggle for emancipation. It was believed that these considerations will prevail before which all constitutional safeguards like Article 370 of the constitution and the autonomy statute for JK Jammu and Kashmir will take a secondary position. In one of his speeches in Jammu and Kashmir Constituent Assembly Sheikh Abdulla issued a caution that any suggestions to arbitrarily altering the basis of their relationship with India would not only



constitute a breach of the spirit and letter of the constitution, but might invite serious consequences for harmonious association of the state with India.<sup>15</sup>

The year following the setting up of the Constituent Assembly in J&K and after the Constituent Assembly had taken important decisions regarding the Instrument of Accession and the future of the state, it was deemed necessary to get the concurrence of the union government. The representatives of the Kashmir government conferred with the representatives of the Indian government arrived at an agreement in 1952 known as the Delhi Agreement. Some of the main features of the agreement were that the J&K constituent Assembly had sovereign powers in all matters except those specified in the Instrument of Accession. The union government also agreed that the state government should have its own flag in addition to the union flag, but it was agreed by the state government that the state flag will not be a rival with the union flag. The union flag should have the same status and position in J&K as in the rest of India.

The position of the Sadar-i-Riyasat was agreed upon only in consultation with the President of the Union, though he will be elected by the state Legislature. In other Indian States the Head of the State was appointed by the President and was as such was his nominee. But with regard to J&K the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government could be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that Sadar-i-Riyasat will in the first place be elected by the State legislature itself instead of being a nominee of the Government and the President of India.<sup>16</sup>

With regard to the fundamental rights, some basic principles agreed between the parties were enunciated: It was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was placed,

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<sup>15</sup> Sheikh Abdullah touched upon multiple points in the J&K constituent Assembly meeting of 1951 and among them he stressed upon the relationship between Kashmir and India. As mentioned above, Kashmir accepted the accession to India on the hope that the goal of secular democracy based on justice, freedom and equality for all without distinction enshrined in the Indian constitution will guarantee the relation of the state with India.

<sup>16</sup> This has been elaborated and explained in 1952 Delhi Agreement between the centre and the state of Kashmir. It explains that the head of the state like any other states will be with consultation with the President of India but as regards the state of J&k it was deemed necessary to get the recommendation of the state Assembly first in order to stand for the position.

the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State. The question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution or the Constitution of India as applicable to the State. With regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction.

The constitutional tangle of the relationship between the centre and the state and the position of the state in the union was narrowed down under the Delhi Agreement. Special status of the state was maintained and complete internal autonomy was assured to Kashmir. The jurisdiction of the Supreme Court was limited. Sheikh Abdullah took prompt action on two provisions under the Delhi Agreement. He abolished the hereditary ruler. He was replaced by an elected Head of the state.

When speaking in this context then one can understand that it is in the faith and believe in India's democracy that has made association of Kashmir with India more effective than Pakistan. In the words of National Conference leaders and the Muslim United Front (MUF) of the valley; 'there was only one voice on the lips of the people, that in a democracy we would bring party of our choice to power, a party that will meet the aspiration of the people and heed their grievances'. The region of J&K since its creation by the 1846 Amritsar Treaty between the British Government and Gulab Singh had been mostly under autocratic and feudal domination. The larger rationale of the NC headed by Sheikh Abdullah was to overthrow the monarchy and institute a democratic rule.

In 1953 Sheikh Abdullah was arrested following the Delhi Agreement between the JK and the union. Sheikh Abdullah put forward issues on the plebiscite front and argued that Kashmir's accession to the Indian union was not final, and that it was temporary and provisional. Further for him the continuance of the situation along the ceasefire line could not be construed as a solution as it meant denial of self-determination. He

insisted on conducting the plebiscite under the auspices of the UN. His positioning on this issue was not acceptable to many and especially in Jammu and Ladakh.<sup>17</sup>

The earlier movement of 1946 was quite unlike the movement of 1953, as it had elicited widespread support across the regions. But his 'Kashmir first' line nonetheless struck a chord among a significant section of the population in IJK, particularly in the valley. His patriotic stance, combined with the successful delivery of land reforms in the rural sector, had invested the charismatic Sheikh with almost saintly status in the eyes of many ordinary people, especially in the valley, and gave his authoritarian, dispute-prone regime more than a critical mass of popular support. The post-1953 New Delhi approved successor governments in IJK would be at least as authoritarian and considerably more corrupt, and they would lack the significant popular base that Sheikh, despite all his flaws, enjoyed.<sup>18</sup>

To make matters more firm and sure, in 1954 the union made a new constitutional order. The new communiqué extended the central government's right to legislate in IJK to the majority of subjects on the union List. IJK's financial and fiscal relations with New Delhi were placed on the same footing as those of other, undisputed units of the Indian Union. The Supreme Court now had full jurisdiction in IJK. The fundamental rights of citizens guaranteed by India's constitution were to apply in IJK, with a crucial caveat: these civil liberties could be suspended at any time at the discretion of IJK authorities in the interest of security, and no judicial reviews of the suspension would be allowed. In effect, this was to become a *carte blanche* for the operation of a draconian police rule in IJK. The developments of 1954 were the beginning of the end of Article 370, which came to be effectively dead in letter and in spirit since that time.<sup>19</sup>

Developments at the international politics facilitated Indian government's emerging Kashmir strategy. In the mid-1950s and early 60s, in the aftermath of World War II and the rising ideological conflict between the two super powers, namely USSR and USA, Indian Government's political ideology of non-alignment and the strategy that

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<sup>17</sup> Sheikh Abdullah was first imprisoned in 1946 for leading 'Quit Kashmir' movement which was directed against the Maharaja and his autocratic rule. Even after being released and assuming office under the Maharaja, he did not reconcile to the situation for he wanted to do away with the Dogra Rule in Kashmir

<sup>18</sup> Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace*, New Delhi: Vistaar Publications, 2003

<sup>19</sup> *Ibid.*, p-68- 73

followed there from was made more rigid. It showed signs of partisanship between the Soviet Union and India. Furthermore, the Soviet Stance on Kashmir shifted accordingly and the shift was reinforced by Pakistan's gradual gravitation toward regional security alliances fostered across Asia by the US to contain the Soviet Union. Pakistan's alignment with the US encouraged the Soviet Union's emerging pro-India posture on Kashmir.

First elected as PM of NC in 1953 and following the year in 1957 elections, Bakshi Ghulam Mohammad was again, elected unopposed as head of the NC legislature party and hence as PM. His tenure enhanced the ties of friendship with the Soviet Union at the international politics as well as with the centre. But the next election of 1962 was marked by the intervention of China, and the emerging Sino-Indian conflict. Subsequently, China became integral to the Kashmir conflict. There were also changing ties of relationship between the countries due to the border dispute. The joint involvement of China and Pakistan into Kashmir conflict was seen more explicitly.

China's relation with India deteriorated precipitously after the Chinese annexation of Tibet in 1959. The rising tension flared into a military conflict in late 1962 at a number of disputed border flashpoints stretching in an east-west axis along the Himalayan ranges, including a desolate area called Aksai Chin on Ladakh's frontier with Tibet and China's Xinjiang province. Indian forces were routed in the fighting, and India immediately began a massive programme army deployment in the region.<sup>20</sup>

When Bakshi government was replaced by G.M Sadiq led government, right after 1962 elections, a tactical alliance between Sheikh Abdullah and Bakshi appeared in the offing, on the basis of their shared aim of bringing down the Sadiq government. Under attack from two fronts, Sadiq looked to New Delhi for survival. The Indian government used the opportunity of the internecine struggle among the NC leadership to tighten its hold over IJK. So in December 1964, Indian Home Minister announced in the Parliament that the Union government had decided to bring IJK under the purview of two provisions of the Indian constitution namely Article 356 and 357, which empowered the centre to dismiss elected governments of India's states in the

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<sup>20</sup>Ibid., p-76-88

event of breakdown of law and order and to assume their administration directly. Needless to say these provisions were highly centralising in their intent and practice.

These measures of the union government came to be reinforced, when in January 1965 the working committee of the National Conference (meaning its ruling Sadiq faction, Mir Qasim being party general secretary) announced that the NC would dissolve itself and merge into India's ruling Congress Party. It effectively meant, the name and identity of Kashmir's historic political movement would cease to exist altogether, and NC would be absorbed into India's Congress as a provincial branch.

Nothing could be further than the course of J&K politics when a faction of NC leadership against Sheikh Abdullah's ideology of an autonomous Kashmir, surrendered itself to the kind of centralization witnessed at this juncture. Sporadic unrest continued and the disturbed situation in IJK probably encouraged Pakistan's military regime to seize the moment to foment an uprising in IJK, which led to war between India and Pakistan in 1965. There is evidence to suggest that Pakistan military attack was planned since 1962 Sino-India war, when the defeat by China exposed India's military vulnerability. The ambitious operation of 1965 failed.<sup>21</sup>

Shortly after the war ended, the Kashmiri writer and activist Prem Nath Bazaz wrote that ' for a clear understanding and realistic appraisal of the Kashmir situation it is necessary to recognize the fact that by and large state(IJK) Muslims are not happy under the present political set-up, and desire to be done with it. But they are reluctant to bring about change through warfare and bloodshed'<sup>22</sup>

War broke out between India and Pakistan once again when conflict and tension arose between the East and West Pakistan in 1971. On 26<sup>th</sup> March 1971 army units directed by West Pakistan launched a military operation in East Pakistan against Bengali civilians, students, armed personnel and intelligentsia who were demanding separation of the East from West Pakistan. Bengali Liberation army with India's economic, military and diplomatic support defeated the West Pakistan forces deployed in the East.

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<sup>21</sup> Ibid., p-90-95

<sup>22</sup> Ibid., p-96-100

The politics of IJK took a different turn when Sheikh Abdullah abandoned his self-determination platform in 1975. This was made and agreed upon in return for his release and reinstatement as IJK's chief minister. His faithful associate, Mirza Afzal Beg, signed another 'Delhi accord' with the Government of India, its terms being verged on capitulation to New Delhi. The agreement reaffirmed, virtually without modification, the terms of IJK incorporation into India since 1953. The new accord accepted the state of J&K as a part of the union, which was to continue to be governed by Article 370 of the Indian Constitution and have residuary powers of legislation. The Indian government agreed to sympathetically consider amendment or repeal of some category of central laws extended to the State after 1953 on the basis of the recommendations of the state legislature to this effect.<sup>23</sup>

The second phase can be understood as a phase of incorporation of IJK into the Union as a federal unit without formally abrogating Article 370 in the Indian constitution. These changes led to a crippling of the actual provisions of the Article. The demand for plebiscite and self-determination mainly by the NC leadership within Kashmir were never taken into account seriously by the union. Matters came from bad to worse when NC leader Sheikh Abdullah was arrested in 1953 and released only after 10 years. Not only was the spirit and demand for an independent Kashmir started losing its hold in the politics of NC but no leadership could truly represent the spirit of Sheikh Abdullah. His successors like Bakshi Ghulam Mohammad and G.M Sadiq were indecisive and they agreed to whatever proposal was made in front of them. The 1953 Delhi Agreement and 1975 Delhi Accord between the NC leadership and the Union made the demand for self-determination of Kashmir more unreal.

International politics involving US and Soviet Union and then border disputes between China, India and Pakistan made India's stand and claim over IJK more rigid. As a result two wars broke out between India and Pakistan in 1965 and 1971. But in both the wars, India used its victory to make the Line of Control a stable border between India and Pakistan.

This phase starting from 1948 saw India taking the Kashmir problem to UN Security Council and in the following year a ceasefire between Indian and Pakistani forces left India in control of most of the valley, as well as Jammu and Ladakh, while Pakistan

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<sup>23</sup> Ibid., p-102-105

gained control of part of Kashmir including what Pakistan calls "Azad" Kashmir and Northern territories. Pakistan claims that it is merely supporting an indigenous rebellion in "Azad" Kashmir and Northern Territories against repression, while India terms the territory as Pakistan Occupied Kashmir (POK). With the ceasefire between India and Pakistan, there emerged the Plebiscite Front regarding the final accession of the region with the union which led to the insertion of Article 370 in the Indian constitution. The developments in the region, led to the arrest and long-drawn incarceration of Sheikh Abdullah and put on hold the political developments in the region but in particular affected the working of the NC. Pakistan entrenched itself into the region in its own distinct way during this phase, bringing in its domestic politics and strategic considerations.

### **THIRD PHASE:**

1975 - 89

The revived National Conference won sweeping victories in the Assembly elections of 1977 and 1983, widely recognised as the fairest in Kashmir. It further legitimised the Delhi Accord for it clearly established that loyalty to India did not mean loyalty to the ruling party at the centre. The Kashmir problem appeared resolved and for the first time it was no longer an agenda of disputes. However, it was kept alive by some Indian commentators who, as far as Kashmir was concerned, regarded anti-centre noises as a call for secession.<sup>24</sup>

The elections of 1983-84 started seeing traces of secessionist spirit in Kashmir politics. This was witnessed during G.M Shah's government. What was the legacy of his government? Apart from Sheikh Abdullah as NC leader, no other successors of him could represent the true spirit of the people in Kashmir and this feeling was acutely felt when later leaders of NC surrendered themselves to the whims and fancies of the leadership at the centre. Excessive Central intrusion in the politics of the state distorted even the most indigenous political institutions like the NC and distanced

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<sup>24</sup> Balraj Puri, Kashmir: Insurgency and After, Orient Longman Private limited, 2008

governance from the popular responses. There arose increased political discontent which started to manifest itself.

This political discontent were fed on the charges of the installation of repressive regimes by the union government in New Delhi through unpopular and undemocratic methods, erosion of autonomy granted over under Article 370 of the Indian Constitution, impact of communal violence both within and outside the state, and opportunistic alliances and accords between the National Conference (NC) and the Congress Party. Outside India, developments in Afghanistan, the Iranian revolution, the situation in Eastern Europe and the breakup of the Soviet Union also contributed in influencing Kashmiri Youths to look for an alternative road.

One of the major reasons for this discontent was the lack of any initiative in restoring the constitutional autonomy of the state, the major pre-condition of Sheikh for resuming power. However, due to the towering personality of the Sheikh, particularly his capacity to assert autonomy of his government vis-à-vis the intrusive politics of the Centre, the discontent was quite subdued. But the incapacity of his successor and son, Dr. Farooq Abdullah, to keep the Centre away from meddling into the politics of the state, resulted in intensifying the already existing feeling of discontent. The tension continued to grow after the dismissal, engineered by the Congress, the ruling party in the Centre, of Farooq Abdullah's government, which had obtained a massive popular mandate during the 1983 Assembly elections. In addition, the pressure built upon Farooq Abdullah and the National Conference to enter into an electoral alliance with the Congress party increased the dissatisfaction, since the Congress party was popularly held responsible for distorting local politics since early fifties.

The years from 1984-87 were the years of rapid concentration of power by the congress governments and growing intolerance of all opposition. Moreover, the 1987 election acted as a trigger that set IJK on a violent course. The NC won the election in the valley, Congress in Jammu, but the communal organizations arrived on the scene with the BJP securing two seats. Four among eight independents belonged to the Muslim United Front, a front of the Jamaat-i-islami under the leadership of Ali Shah Geelani and several other Islamic groups, secured two seats in the legislature. The controversial 1987 election proved to be the flashpoint to turn to an armed struggle.



There emerged a new wave of politics between the Valley Muslims and the Indian government over the issue of self-determination. It was in the wake of disillusionment with the internal politics that conflict came to be erupted in the Valley. What marked the beginning of this phase was the decision of some of the Kashmiri youth who had participated in the elections as contestants, election agents, campaigners and sympathizers of candidates to cross over to Pakistan-administered-Kashmir to take training in armed militancy. Moreover, apart from armed militancy, a spontaneous popular upsurge grew against the Indian State that eroded mainstream politics in the Valley of Kashmir. Thousands of young men crossed the border after the election to undergo training from Pakistan.

The third phase is characterised by a specific articulation of electoral politics which led to the emergence of militant politics in the region. It was a shift from autonomy to dependence. As the party became dependent on the centre for its political survival rather than on mass support at the ground level, it distanced itself from popular concerns. That the party, despite obtaining massive mandate was disconnected from popular responses became clear in 1989 when the Valley came under the grip of militancy and witnessed a massive upsurge. In the political crisis that ensued, not only NC was forced to withdraw from the political scene but had to face the maximum brunt of violence. Devoid of legitimacy, NC leadership went into hibernation.

Though the NC continued to dominate the political scene of the State for decades, its support base had gradually declined. In the background of the Kashmir's politics between 1953 and 1975 people were mobilized around the theme of contestation of the existing relationship of the state with India. But the return of Sheikh Abdullah to power did not bring about much change in the status quo. It threw up a simmering discontent in the Valley. So much was the sway of the separatist politics in the Kashmir Valley, that it completely eroded the mainstream politics from 1989. While Jammu and Ladakh regions remained more or less normal, there was no scope for mainstream politics in the Valley.

As the legitimacy of mainstream politics came to be openly questioned by the militants on the one hand, and the defiant masses on the streets of Kashmir on the other, the state was placed under the President's rule for a prolonged period of time. During this phase there was little scope to resurrect the autonomy demand or the

demand for self-determination because of the separatist and militant politics in IJK. A section of the separatist groups wanted to liberate IJK region and merge it with Pakistan along with Pakistan's Azad Kashmir region and transform it into an Islamic state. Another group or set of groups sought full independence from India. Pakistan on the other hand took advantage of the growing discontent in the valley and supported these groups to fight against the Indian forces deployed at IJK. This phase also witnessed the struggle for self-determination being commandeered by the Islamic elements, a demand initially formulated by the NC.

While in the earlier two phases the conflict was affected by international politics and vice versa, and particularly the relation between India and Pakistan, a distinct character of the third phase from mid-70's till late 80's is the involvement of other parties in the politics of the region. Such parties were both internal and external.

#### **FOURTH PHASE:**

1989 – 2011

The present phase can be divided into two sub-phases. The first phase has been divided from 1989-98 and the second phase from 1999-2011.

(A). 1989-1998:

The aftermath of 1987 election and 1989 developments in IJK were a new chapter in the politics of the state. Though there was autonomy demand by Sheikh Abdullah right after the Delhi Agreement between NC and the Union, but it was more concerning self-determination of Kashmir. But IJK was made of several autonomous units and peoples: comprise not only Kashmiri Muslims, Kashmiri Pandits and Buddhists, as well as Jammu, Kashmir, Leh and Ladakh.

Developments of 1989 took a different turn especially in the relations of India and Pakistan since border dispute between them became more explicit. And this restrain in relations coupled with 1987 election in IJK made the situation even more worst. This was one of the prime factors for the emergence of militant and separatist politics in IJK since then. In one of the writings on *India's Internal Security Challenges* Ved

Marwah explains how violence erupts when conflicting interests cannot be consensually reconciled. The hostile external forces, taking advantage of this situation, through subversive propaganda, further accentuated these conflicts. They gave material and ideological support to aggravate this sense of grievance to such an extent that a small minority was willing to become tools in their hands to subvert the security and stability of the country. He further added that the situation became even more critical, when the existing state government was unable to effectively deal with them, and instead of strengthening the state machinery, it rushed to the centre to hand over its responsibility at the first sign of any serious trouble.

Coupled with the militant politics by these groups along with the separatist politics, it made the situation in IJK even more difficult and complex. With all these developments in IJK right after 1989, the *Azaadi* movement in the valley became more divergent since some groups wanted freedom from IJK to be a part of Pakistan while some others wanted just an independent Kashmir. This divergent situation was felt in the early years of 1990s especially because of the impact of 1989 in the valley.

During the early days of JKLF, the *Azaadi* movement led by this group found spiritual inspiration in Kashmir valley's specific Islamic tradition, rooted in the mystical piety of its Sufi Saints. Its declared ideology was an independent Jammu and Kashmir separated from both India and Pakistan. The *Azaadi* movement during this time was led by Hamid Sheikh, Ashfaq Wani, Javed Mir and Yasin Malik, known as the HAJY group. These groups resisted all forms of progress and development in the valley. There were continuous uprisings and demonstrations in the streets of the Valley for freedom of IJK. It was an uprising mainly by the young militant groups waging a religious war to certain extent. The overall tone was not in favour or accession either to India or Pakistan, but clearly aimed at a state based on general Muslim majority rooted in the mystical piety of its Sufi Saints.

International events played a significant role in steeling insurrectionist resolve in late 1989 and early 1990. The young Kashmiri guerrillas, for their part, were inspired by the 1989 Soviet withdrawal from Afghanistan in the face of Afghan mujahideen resistance and by the success of Tamil Tiger guerrillas in Sri Lanka in stalemating a vastly superior Indian military force sent to suppress them in 1987-1990. Clashes between Indian forces and the militant groups led to different situation and magnitude

in the valley causing human rights crisis in the valley. In January 1990 Jagmohan was appointed as the Governor and Farooq Abdullah resigned.<sup>25</sup>

On 20 January, an estimated 100 people were killed when a large group of unarmed protesters were fired upon by the Indian troops at the Gawakadal Bridge. With this incident, it became an insurgency of the entire population. Therefore, between July and September 1990 the valley was brought under the purview of martial Law, as the Indian government invoked the Arms Forces Special Powers Act and a Disturbed Areas Act to back up the existing emergency regulations in the valley.

Two features of the Azaadi movement during the late 80s and early 90s were, first, the insurgent groups fighting Indian forces consisted overwhelmingly of local Kashmiri recruits, in sharp contrast to 1947 and 1965, when principally non-IJK elements like Pakistani nationals and volunteers from POK had taken on the Indians. Second, the insurgency was initially very largely specific to the valley.

The ideology of JKLF during its early formation was limited to the people of the valley. This was one of the primary reasons why there emerged a faction within the JKLF which had a different ideology all together. The latter group of JKLF still continued the armed struggle against the Indian forces but the support of the Pakistani military's Inter-Service Intelligence was a crucial component in it, and it was dogmatically committed to an independent IJK.<sup>26</sup>

The new JKLF adopted a twin-track strategy to mold the valley uprising to Pakistan's conception and interest. The first strategy aimed to divide and weaken the JKLF by encouraging its pliable elements to break away and form pro-Pakistan guerrilla group. Second, was to build up a pro-Pakistan guerrilla organization in the valley, the Hizbul Mujahideen (HM), as a force that could rival and then displace the JKLF. The new JKLF strategy affected the armed struggle for both the groups as each one of them wanted to be heard at the cost of the other.

Situation became even more complex when the separatist politics manifested both through the armed militancy as well as spontaneous political response took a more

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<sup>25</sup> Victoria Schofield, *Kashmir in Conflict*, New York, 2000

<sup>26</sup> For the split see Balraj Puri, *Kashmir: towards Insurgency*. New Delhi. 1993 . And the other one by Alexander Evans, *As bad as it gets: The Kashmir Insurgency* .April .2000

organized form with the establishment of the All Party Hurriyat Conference (APHC) in 1993. The establishment of APHC as an umbrella organization was necessitated by the proliferation of militant groups which were at times operating at cross purposes. The ideological differences between these organizations and their internal strife, especially the war declared by Hizbul Mujahideen on the JKLF, generated a need for a loose-knit organization that could give a sense of unity and common direction to those participating in the movement. The APHC as an umbrella coalition of the IJK parties was favouring self-determination for the region of IJK.

By mid-90 the internal situation in the valley concerning the Azaadi movement reach crossroads since there were underlying division in the movement. The existence of two competing definitions of 'freedom' and 'self-determination' by the JKLF young militants first, and then by APHC which was favouring self-determination for the valley. But the situation was topped by the rise of pro-Pakistan militants as the fighting force of a population that was still largely independentist.

In 1996, the electoral process was restored but the government that was formed after the Assembly election could not gain credence in the Valley of Kashmir. Since the elections were organized with the help of the security forces and the counter-insurgents, the government formed after the election was not seen to be representing the popular will. Though NC had given the slogan of 'autonomy' to regain its hold in the local politics, there were not many takers of this slogan. Farooq Abdullah was duly reinstalled as IJK chief minister at the head of the new government. But the members of the Hurriyat Conference boycotted what they termed as the Indian sponsored electoral process and demanded tripartite talks on the Kashmir question between India, Pakistan, and the representatives of the Azaadi movement. These were clear implications on how separatist and the militant politics were against the mainstream politics and moreover the people of the valley in particular had little hope in the leadership of NC at that point of time.

Not only was there internal conflict between the people of the valley and the Central government but the border dispute between India and Pakistan started mushrooming into further disputes and attacks since Pakistan's involvement in the internal situation through the HM militant groups further aggravated tension between them. All these factors added more to the internal and external security threats to India. In 1998, when

India tested five nuclear devices, Pakistan responded with six tests a few weeks later. Such nuclear deterrence appeared to some as capable of producing some benign side effects.

Amidst the growing tension in the region negotiations continued, without necessarily affecting mutual stances. On 21 February 1999, India and Pakistan signed the Lahore Declaration, agreeing to 'intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir.' Soon after his visit to Lahore, the Indian Prime Minister Vajpayee stated that 'Kashmir is an integral part of India and not a single area of Indian soil would be given away'.<sup>27</sup>

Cross border terrorism has been one of the primary resorts taken up by Pakistan since the Instrument of Accession was signed by Maharaja Hari Singh in 1947. One being the infiltration of Pathan Tribesman in Jammu part of Poonch, latter followed by 1965 and 1971 wars between India and Pakistan. But the infiltration on Kargil which was on the IJK's Ladakh in 1999, as Pakistan regular units supported by *jehadi* volunteers infiltrated the Indian side of LOC which was one of the major militant attacks on the Indian side of IJK. The border conflict in Kargil aroused a hue and cry throughout India and the public opinion in most areas ranged suddenly from indifference to being bitterly hostile. Despite the restoration of political process, in the Kashmir valley separatist sentiment continued to hold sway. Mainstream politics, therefore, continued to remain challenged.

This phase saw the rise of militant politics post 1987 elections in the region and also witnessed one of the first armed rebellions in the region, spearheaded by Jammu and Kashmir Liberation Front and other militant outfits. The region has faced not only insurgency problems but cross-border terrorism and the problem of refugees came to be intensified during this phase. This phase also saw the support and help from Pakistan for sustaining these insurgents groups more explicitly even though its involvement in the region was not insignificant earlier.

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<sup>27</sup> Ibid., p-202-08

(B). 1999-2011:

The post 1989 uprising in the valley has further deepened the militant and separatist politics in the valley. One militant group replacing the older one or a new group collaborating with an earlier one, making the armed struggle broader based, and the involvement of international actors has been a recurrent phenomenon during this phase. This rise of separatist or militant groups in the valley has much to do with the discontent with mainstream politics during that phase. The failure of NC's leadership in IJK further aggravated discontent among the people. It was the period of rising militancy when people rejected mainstream politics and even refused to participate in elections.

The outcome of refusal of electoral participation in the valley by the masses made the situation in IJK go from bad to worst. Pakistan, on the other hand, attempted to make the maximum use of this situation. It attempted to win away IJK to its side along with POK/AJK for which it deployed all possible resources, military and economic. There was much loss of trust between India and Pakistan during this period and their relation became more estranged. These estranged relations were often seen in terms of cross border terrorism in the following years. Pakistan took an active interest in the Amarnath agitation, Babri Masjid incident and attack on Indian Parliament.

Some hope of normalcy was reposed in the 2002 elections since the political parties had sought to restrict the scope of electoral politics to the issues related to 'governance' only. Recognizing the larger political realities of the state, these parties acknowledged the widely prevalent separatist sentiment and the need of addressing it. They did not claim that the extension of electoral space amounts to shrinking the separatist space. The enthusiasm for elections, despite the call by the separatists to boycott the polls reflected certain ground realities of Kashmir which while defined by the centrality of separatism pointed to some shifts that had taken place after the phase of military deployment and separatist insurgency. There was a change in the response of people towards violence and armed militancy. People were urging for peace

through the settlement of the problem. They therefore sought from the separatist leadership, political work which promised a forward move.<sup>28</sup>

Furthermore, there was a gradual expansion of mainstream politics boosted by certain democratic forces which had become very prominent in the more recent periods. But earlier it was the popular separatist sentiment that sustained separatist politics in Kashmir. The militant, separatist leadership and organizations like the All Party Hurriyat Conference and its factions drew their legitimacy from this sentiment only, although at times there existed a disjuncture between the popular separatist sentiments on the one hand and the separatist politics followed by the militant and separatist leaders on the other.

Although in the participation of people in the elections, one cannot read rejection of separatism, one can see the legitimization that electoral politics wrought and the deepening of the democratic space. The credibility of elections has increased since 2002 elections which have given a sense of confidence to the voters that there is a worth and a value accorded to their vote. And moreover the competitive nature of mainstream politics has increased the appeal for electoral politics. Unlike the earlier hegemony of a single party, there is competition between the two regional parties- NC and the People's Democratic Party.<sup>29</sup>

This has not only made the political space quite vibrant with people having a choice between the two parties. This has also changed the rules of the political game. Unlike the earlier times when remaining on the right side of the centre was seen as the only prerequisite for remaining in power (a condition acknowledged by the NC in the post-1984 period after being ousted from power through the manipulative politics of the centre), now a party needs to invest energy and work on the ground in Kashmir to compete for power.

In spite of the rise of other regional parties in the valley apart from NC and the legitimization of electoral politics, these factors cannot be read as a rejection of the demand for self-determination by a section of separatist organizations. The masses voted and supported electoral politics since it provided material succour to the

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<sup>28</sup> Rekha Chowdhary, 'Separatist Sentiments and Deepening of Democracy'. Economic & Political Weekly. 17 January. 2009

<sup>29</sup> Ibid., p-14-15



population which has suffered immensely for over two decades. Thus, people were wise enough to realize that Assembly polls may help them but it did not amount to disowning the right of self-determination. The point is that, elections to state legislatures in general and the J&K assembly in particular, offer narrow range of prospects and relate more to issues of employment, education, health, etc.<sup>30</sup>

People participate out of hope for immediate relief more than any reason. The separatists on the other hand instead of making their hold strong with their separatist politics and demand made some errors in understanding the politics and the masses. The call for boycott during the time of elections was a tactical mistake and gave the state a propaganda advantage. It is true that the separatist leaders obstructed the elections at every step. But it is equally true that in the period of heading towards elections, the separatist leadership erred in not propelling their movement forward through imaginative politics. They failed to mobilize the people around a programme of action.

When it comes to the two prominent regional parties of IJK, both parties were not devoid of differences among themselves. These two parties did not propose a credible plan to sort out the internal disturbances within the valley and NC did not make a serious attempt to reinforce its demand for self determination of Kashmir sustain and wean the masses to its stand. But since Kashmir remained the most important constituency, NC also indulged in pro-Kashmir politics. However, what distinguished the PDP's politics from that of the NC was that the former invoked 'region' as well as 'religion' in a more aggressive manner. NC's Kashmir-centric politics is more oriented towards the Centre, making demands upon it on behalf of the State (therefore, its emphasis on State Autonomy). The PDP's politics is more inward looking and therefore focuses on Kashmir region defined in antagonistic terms vis-à-vis Jammu region.

During this phase conflict in the region was fuelled by internal and ideological differences within the regional parties, differences of demand even among the militant groups, the border dispute between India and Pakistan, the Pakistan factor in sustaining militancy, Indian forces in IJK, and international events with or without the

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<sup>30</sup> Gautam Navlakha, 'Jammu and Kashmir Elections: A Shift in Equations'. Economic and Political Weekly. 17 January. 2009

involvement of Pakistan in the conflict. Pakistan saw in some of these issues an opportunity to sustain and support the armed struggle in IJK. Within Kashmir the presence of Radical Islamic groups who dreamt of making Pakistan an Islamic State and a homeland for India's Muslim in Kashmir kept the fire burning.

Getting support through training and supply of arms from Pakistan has made the militants in the Kashmir valley more rigid in their demand; this in turn has aggravated the situation in the region. On account of it the central government is faced with impromptu situation every now and then. Since the 2002 election in IJK and the resumption of a serious Indo-Pakistan dialogue in the following years, there has been a new quest for peace, interrupted now and then. In spite of several rounds of dialogue almost every year in order to settle down the long dispute, there still remains traces of doubt and distrust between them.

What I have understood from all these phases can be concluded in the following lines. The first phase in the early 30's is mostly an inter-play between the autocratic ruler and National Conference party under the leadership of Sheikh Abdullah. The wave of liberation and demand for autonomy started when his subjects were not confident of his leadership and when he wavered on the issue of accession. The partition of India and Pakistan, and the specificity of the region have sustained the movement in Kashmir till date. In the aftermath of independence there was a certain kind of shift in autonomy demand since some kind of regional autonomy was already implicit in the Instrument of Accession signed by Raja Hari Singh and inserted in the Indian Constitution as Article 370.

But Kashmir took it as a Standstill Agreement, while Pakistan clamoured for Kashmir, whereas India already considered Kashmir as part of the Union under the agreement. This factor had its impact followed by rising discontent between India and Kashmir indirectly supported by Pakistan. The failure of proper democratic representation led to the emergence of militant politics in the region. The Congress and NC, the two dominant parties in the region for long, did not strive to include new political forces emerging in the region.

In short, even though the popular uprising in the valley was prompted by the fact that democracy was simply not given a chance to work there, and the repeated violations

of the federal principle shorten regional autonomy, the secular origins of the uprising came to be completely obfuscated eventually. The overuse of the religious idioms facilitated the entry of armed groups in the name of Jihad.

The demand for autonomy in the region became more rigid and reinforced itself with the central government stationing Indian Army in the region in the name of avoiding further violence. The enforcement of Arms Force Special Powers Act and the Disturbed Area Act made the situation even worse. The direct and indirect support of Pakistan in the dispute had its implications as well.

Can it be simply a matter of communal discontent of certain section of the people in Kashmir which has its impact in recent times, or is a matter of the failure of democratic set up in the region? Or is it the very idea of Islamic state embodied in the idea of Pakistan that has prolonged the militant uprising in the valley, or the failure of NC in the region to pursue its project of self-determination?

**CHAPTER- 2**  
**VERSIONS OF AUTONOMY**

In J&K, later IJK, we not only hear a demand for autonomy. But there are several versions of this demand, most of them being irreconcilable with the others, or capable of enduring with others in an open-ended democratic space. In this Chapter we wish to highlight these major contentions in which Kashmir is caught up today. There could be multiple stand points and positions within and across these versions since Kashmir is a highly contested issue for many years, and each different position and argument could add yet another dimension in the understanding of the issue.

But out of the many understandings and positions, this chapter will be dealing with eight different versions considering them as crucial: They are, the argument of the Government of India following the Mountbatten Plan and the instrument of accession; the BJP position of full integration by doing away with Article 370 of the Constitution that confers certain special powers on Jammu and Kashmir; the stand of Pakistan that runs counter to that of the Government of India; the argument of self-determination and secession advanced by the Jammu and Kashmir Liberation Front; the argument of Jamaat-e-Islami and other Islamic outfits for the merger of J&K into Pakistan ; the demand for autonomy and self-determination as initially formulated by the NC and Sheikh Abdullah; linking the question of autonomy with democracy and regional devolution of power as upheld by thinkers such as Balraj Puri; and finally the Hindutva position invoking a strong identity of the nation and situating J&K issue accordingly.

## **1. Merger of J&K into the Indian Union**

The Indian case on the question of Kashmir rests on the Indian Independence Act, 1947 which in turn rests on the 3<sup>rd</sup> June Plan or Mountbatten Plan. The Mountbatten Plan gave a formal shape regarding the actual decisions on the Provinces.<sup>31</sup> With the nearing of the withdrawal of British paramouncy in India, from one of Britain's oldest colonies, Lord Mountbatten was sent as the Viceroy to India in order to sort out the

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<sup>31</sup> Unlike the Indian Independence Act, Mountbatten Plan gave a formal shape to the actual decisions of the Provinces and this can be looked through Durga Das Basu, Introduction to the Constitution of India( 19<sup>th</sup> ed.) Wadwa and Company Law Publications, New Delhi, 2007

partition question in India. The Indian Independence Act 1947 specified the following:<sup>32</sup>

- The British Rule in India should be over on the midnight of August 15, 1947.
- An independent dominion of India shall be created out of the United Provinces, Central Provinces, Bombay Presidency, Madras Presidency, Carnatic, East Punjab, West Bengal, Assam and the Northeast Frontier Agency. The territories of the Andaman and Nicobar Islands and the Lakshadweep Island were also turned over to the Indian Dominion.
- An independent dominion of Pakistan shall be created out of the Provinces of West Punjab, North West Frontier Province, Sindh and East Bengal.
- All Princely States that were officially related to the British Empire were made free from all the treaties and relationships and they could decide which dominion to join.
- Both the Indian Union and Pakistan Dominions would be members of the British Commonwealth and were allowed to leave whenever they pleased.
- Both Dominions of India and Pakistan were completely self-governing in their internal affairs, foreign affairs and the national security but the British Monarch will continue to be the head of the state, represented by the Governor- General of India and a new Governor-General of Pakistan. Both Dominions shall convene their Constituent Assemblies and write their respective constitutions.
- The British Monarch shall be permitted to remove the title of Emperor of India for the Royal Style and Titles.

Given these provisions, the case for the merger of J&K in the Indian union is based on the following arguments: Even with regard to the unique situation of a Hindu autocrat who ruled a Muslim majority population, there was no ambiguity with regard to the legal authority to decide the issue of accession. Looking at the contextual situation of

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<sup>32</sup> This specification of the Indian Independence Act, 1947 was taken from IndianetZone, [http://www.indianetzone.com/14/indian\\_independence\\_act\\_1947.htm](http://www.indianetzone.com/14/indian_independence_act_1947.htm). Updated on 16/01/2012.

Kashmir, then it is to be understood that the question of accession of Kashmir as one of the princely states cannot be questioned, since the Dogra King had the sovereign power and freedom of accession either to join India or Pakistan. Further, Mountbatten exerted his maximum influence to prevent the Maharaja from making up his mind about accession without ascertaining the will of his people in the first instance, either by a plebiscite, referendum, or election, and if these be considered impracticable, by representative public meetings.<sup>33</sup>

On the other hand, India with the full consent of Sardar Patel put no pressure on the Maharaja to accede to India. Indeed, India went so far as to assure the Maharaja that if he decided to accede to Pakistan, his action would not be considered an unfriendly act. In fairness to Maharaja Hari Singh, it must be said that, situated as he was, it was not easy for him to come to a decision, and when he did so, it was after considerable reflection.<sup>34</sup>

On 26<sup>th</sup> October 1947, Maharaja Hari Singh signed the accession agreement to India and the state acceded to India on matters related with defense, external affairs and communication. Hari Singh acceded to India not by force or persuasion, although his indecisive and delayed action led to encouraging elements not favorably disposed to India. Maharaja Hari Singh had full power to freely decide the accession of his state. The initial delay and indecision cannot be visited on the final decision.

On the request of Sheikh Abdullah it was decided that the state Assembly will take the final decision on the accession and it was done to take into confidence all communities including Muslims in Kashmir with regard to the merger. The question arose as to what should be done till the Assembly took the final decision? For the purpose Article 370 was incorporated in the Constitution as a temporary measure and a special status was granted to J&K.

Two very different kinds of cultures have grown in Pakistan and India post partition, and these developments demonstrate that J&K made the right decision to merge itself into India. Political culture in India promoted democracy, federalism, secularism and tolerance, a welfare state with enforceable fundamental rights, decentralization of

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<sup>33</sup> The detailed understanding of this can be looked through V.P Menon's work, The Story of Integration of Indian States, New York: Orient Longman , p.271( 1956)

<sup>34</sup> Ibid., p-271-272

power, free media and judiciary, individualism, attempts at distributive justice etc. On the other hand, Pakistan lives under a vastly different set of traditions, with minorities and women treated less than full and equal citizens with others; power is essentially in the hands of those who wield a gun; overt control over free exercise of religion, speech and scientific enquiry; and thrives on forms of government lacking in democratic character. Muslims in Jammu and Kashmir have stood to gain enormously by acceding to India.<sup>35</sup>

It is Pakistan which is unable to come to terms of peace with India. It has interpreted the division of India and Pakistan as the relation between the Hindus and Muslims continuously. Wrongly, its leadership still believes that Indians want to annul Pakistan. It therefore looks for parity and balance of power with India, not realizing that the balance of power will be governed by geographical realities of the sub-continent. Its military doctrine is largely shaped by its concern about India. Its nuclear weapon policy is India-specific. On account of its two-nation-theory, Pakistan made itself, for quite some time, the guardian of the assumed interest of the large number of Muslims who had stayed back in India and interceded on their behalf with the government of India to score propaganda points. In subsequent years, it tried to exploit this segment and some others to weaken the Indian state. It has never resisted from fishing in the troubled waters of J&K. In recent years the Jihadi militants have found a safe haven in Pakistan. India has repeated these arguments both within the domestic context and the international form.<sup>36</sup>

## **2. J&K as an Integral part of Pakistan**

The Pakistan demand for J&K rests on the following arguments: The Sub-continent came to be divided based on Jinnah's 'two nation theory' which led to the creation of Pakistan and India. Religion became one of the primary factors along with territorial affinity for this division. The Mountbatten Plan carved out explicitly the ground on which India were to be partitioned. It is to be noted that Mohammad Jinnah's role and persuasion in the creation of Pakistan was one of the primary reasons why India had

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<sup>35</sup> Anand K. Verma, Reassessing Pakistan, The role of Two Nation Theory, New Delhi: Lancer Publications and Distributors, 2001

<sup>36</sup>Ibid., p-16-21



to be partitioned into two separate nations. For Jinnah India's West Punjab and North West Frontier Province, Sindh and East Bengal being comprised of Muslim majority could not be a part of India. Differences of religion and faith were the main ideology behind Jinnah's two nation theory, and his demand for the creation of Pakistan was fulfilled by Indian Independence Act of 1947. Kashmir clearly came under the idea of Pakistan in the process. Therefore, accession to India was agreed only on the basis of Standstill Agreement between India and Kashmir until a plebiscite took place. India has converted the Standstill Agreement effectively into a merger.

When the question for the accession of the Princely states cropped up, Kashmir being no exception, Pakistan headed by Jinnah started making its claim for their accession on the same principle that was employed for the emergence of Pakistan, particularly given the territorial link with Kashmir. This demand and claim for Kashmir by Pakistan further aggravated with the success of Jinnah's two nation's theory and the charting out of the Mountbatten Plan. Regarding the criteria for deciding which of the two dominions a state should join, Lord Mountbatten said, normally geographical situation and communal interest and so forth will be the factors to be considered.

India cannot have it both ways: It cannot rest its claim on the Mountbatten Plan, while at the same making its claim on Kashmir on the plea that the ruler of Kashmir at the time of Partition was given the sovereign power to accede to either of the Dominions. Pakistan clearly mounted its claim on the basis of the Mountbatten Plan that geography and communal interest were the primary considerations when the actual transfer of power and partition takes place. Pakistan's claim therefore is justified.

While religious sentiment may have been exploited by the Muslim League to secure Pakistan, Pakistan was not intended to be a theocratic state in the imagination of its founder Mohammad Ali Jinnah. He had emphasized this point both before and after Pakistan was formed. For Jinnah religion was not unimportant, but social and economic development of the people, a state with sound political institutions, accountability and a just society were values of equal significance. Bred on the concept of Western Liberalism, Jinnah wanted the new state to be guided by secular idealism, not narrow-minded religious orthodoxy:<sup>37</sup>

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<sup>37</sup> Ibid., p-59-60

Jinnah in one of the inaugural address of the constituent Assembly said;

*We are starting with the fundamental principle that we are citizens of one state. We should keep that in front of us as our ideal. And you will find that in course of time that Hindus will cease to be Hindus and Muslims will cease to be Muslims, not in the religious sense because that is the personal faith of the individual, but in the political sense as the citizens of one nation.*

This perspective laid down by Jinnah suggests that a secular and democratic J&K could have been an integral part of Pakistan, and the reason advanced to join India are not justified.

The estranged relation between the Indian union and the people of Kashmir is a clear statement that J&K cannot be part of the India. Given this trend there is nothing wrong if Pakistan had been eagerly looking for an opportunity to exercise its influence over Kashmir. Post-1989, there is growing evidence that the confidence and capabilities derived from the ‘successful’ Afghanistan *jihad* can be used to capture J&K. Pakistan has repeated these arguments endlessly and has used the uprising in Kashmir Valley and the mobilization of the armed forces in the State to strengthen them further.<sup>38</sup>

### **1. Kashmir is a Sovereign & Distinct Entity entitled to Secession**

One of the major popular revolts that India has confronted, since 1965 and 1971 was between India and Pakistan, is the uprising in the Indian Administered Kashmir. The separatist argument is quite unlike the Indian and the Pakistani case. The groups mounting this case are not in favor of joining either India or Pakistan, rather they demand an independent Kashmir delinked from both of them. Support to the Azadi groups is extended by Jamaat-e-Islami (JI). However, there is a basic difference: JI wants to make Indian Administered Kashmir a part of Pakistan while the others want

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<sup>38</sup> See the edited book by K. Santhanam, Sreedhar, Sudhir Saxena, Manish, *Jihadis in Jammu and Kashmir*, New Delhi: Sage Publications, 2003

an independent Kashmir. The arguments of these groups can be succinctly put as follows:

The uprising in Kashmir demonstrates conclusively that the popular masses are not with India and have rallied behind the youth demanding a separate Kashmir. A strong feeling of Kashmiri identity becomes the driving force for this group of youths. Jammu and Kashmir Liberation Front (JKLF) spearheads this struggle with the agenda of creating a secular, democratic, federal, independent state of Jammu and Kashmir. Moreover developments within and outside the state of Jammu and Kashmir had tremendous impact on the psyche of the Kashmiri Youths and have resulted in their complete alienation from the rest of India. The fight for self-determination by these secular nationalist groups of Kashmiri Youths for a separate independent state are imbued with a strong feeling of Kashmir nationality within them. The demand for an independent Kashmir rests on a distinct nationalist identity. Kashmir has distinct and continuous traditions of its own, fusing diverse people into one encompassing fold. This spirit of nationalism manifested from early on.

The kind of 'Kashmiriyat' identity promoted by leaders of National Conference headed by Sheikh Abdullah was somehow different with that of JKLF since the former was more accommodating than the latter. To the contrary, the national 'self' in the conceptualization of self-determination of JKLF includes all people who live in the area that was geographically the erstwhile princely state of Jammu and Kashmir. For the JKLF, Kashmiriyat is a collective identity of the people of Jammu and Kashmir belonging to different religious, regional and linguistic affinities. Outside rule has been hostile to this cohesive cultural identity.<sup>39</sup>

The advocates of Kashmiri nationalism divide the history of Kashmir between the periods of Kashmiri rulers and outsiders, and not between Muslim and non-Muslim rule. As such Mughal (1586-1757), Afghan (1757-1819), Sikh (1819-46), Dogra (1846- 1947) rule is considered foreign, and Indian rule is included in this list. It is the sense of belonging and common aspirations to be an independent nation that fuels the

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<sup>39</sup> Khalid Wasim Hassan, 'Migration of Kashmir Pandits: Kashmiriyat Challenged?' Bangalore, Institute of social and Economic Change, 2010

movement. In an interview to a foreign journalist in early 1992, Gulam Abass Beig, then secretary-general of JKLF said;<sup>40</sup>

*The azadi movement is a reaction to a history of centuries of subjugation and deceit. Our Kashmiriyat culture is unique, our customs and way of life are unique - we feel Kashmir is our own country. Now, the Indian authorities are a threat to this culture. We want to build our own country, in our own way, according to our own culture.*

The demand and understanding of these youths equate their claim with sovereign independence, where the self-determining entity claims a right of non-intervention, non-interference and even a quest for an institutional context of non-domination. As per this interpretation, self-determination means people of J&K have a right to their own governance institutions through which they would decide their goals and interpret their way of life. Other people ought not to constrain, dominate, or interfere with those decisions and interpretations but leave them to their counsel, or according to their judgement of what way of life is the best suited to them as a 'national' unit. A self-determining people cannot do whatever they want without the end of the interference of others. Their territorial, economic or communicative relationship with others will generate common issues and concerns which they would like to respond to as a sovereign entity.<sup>41</sup>

Furthermore, a demand for self-determination by these sections of youth has aggravated and become more intense since autonomy in some form was already given and military help from the outside world especially Pakistan has sustained this durable disorder in the region. This can be better explained by the writings of Erin Jenne on *National Self-determination, a Deadly Mobilizing device* where Erin explains that a history of autonomy and external military support are the strongest predictors of minority claims to self-determination, and second, that wars over national self-determination are both bloodier and more protracted than other internal wars. This suggests that minorities use national self-determination as a device for mobilizing

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<sup>40</sup>Ibid., p-6

<sup>41</sup> Marion Young, "Two concepts of Self-determination", in Stephen May, Tariq Madood and Judith Squires, eds., *Ethnicity, Nationalism and Minority Rights*, Cambridge University Press. 2004

challenges against the centre once they enjoy significant leverage vis-a-vis the central government. However, sometimes, claims to self-determination serve mainly as a tool for extracting political and economic concessions from the state centre.<sup>42</sup>

The demand for self-determination or Azaadi however is caught in deep contestation within: What should be the territorial boundary of the independent state, given the weak support from Jammu and Ladakh? What should be the relation between such an entity and Pakistan on one hand and India on the other? What should be the mode of struggle? How should it respond to other versions of autonomy galore in the state?

## **2. Kashmir as the Land of Islam**

JKLF has a secular approach in its understanding of the concept of autonomy and the collective identity of the people of Jammu and Kashmir. But the most sectarian understanding of the term comes from the JI. It conceptualizes and understands the term exclusively on the basis of Islamic identity which it employs as the basis of Islamization of Kashmir. One of the line developments of the politics of two nation theory was the evolution of the politics of Islamic militancy and Jihad, especially after the death of Mohammad Jinnah. The initiative for the evolution of this politics was taken up by those who were not in favor of the ideology behind Muslim League.

The most important of this party was *Jamaat-e-Islami* (JI) led by Maulana Moudoodi, as it's Amir. Ironically Moudoodi had stubbornly opposed the Muslim League's Plan for the creation of Pakistan on the grounds that such a demand went against the spirit of universalism of Islam. For him Jinnah and his colleagues were not good Muslims as they were trying to split the Muslim Ummah and the agitation they were spearheading was un-Islamic. In his interpretation of Islamic political thought, there was neither room for democracy nor nationalism in an Islamic polity.<sup>43</sup>

After the creation of the new state, Moudoodi accepted it and focused his activities towards justifying its birth. His efforts were given to transform the new state towards a new ideology i.e. the ideology of Islam. The 'unIslamic' movement for Pakistan was

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<sup>42</sup> Erin Jenne, "National Self-determination, a deadly mobilizing device", in Hurst Hannum and Eileen F.Babbit, eds., *Negotiating Self-determination*, Lexington books, 2006

<sup>43</sup> Husain Haqqani, *Pakistan: Between Mosque and Military*, Lahore: Vanguard books, (pages- 397)

now declared by him to have been a religious movement, which would enable the real Muslims to lead the country in the glorious ways of Islam. There remained however a deep rooted reservation: Western style democratic values were an anathema, within his prescription.

The Objective Resolution adopted by the Constituent Assembly of Pakistan on March 7, 1949, moved the ethos of Pakistan away from the dreams of Jinnah and relocated its ideological centre of gravity in Islam. Later in the year 1951 the phrase 'ideology of Pakistan' was used for the first time in the manifesto of JI. At the same time it clarified that any efforts to include secularism or any other foreign ideology as the basis of Pakistani polity was tantamount to hitting at the roots of Pakistan. Recognition of the phrase 'ideology of Pakistan' was not merely an index of the influence of JI with the establishment; it also signified to what extent Islam was considered essential for the preservation of the prevailing state order.

The ideological orientation of Jinnah and that of Moudoodi, the leader of JI, is at opposite poles. Jinnah did emphasize the importance of religion in the merger of a new state but combined it with democratic principles. The ideology of JI on the other hand can be termed as upholding religious fundamentals in the making of a new state or one can say as Islamization of Pakistan. One can understand its nationalist ideology from the angle of Islamic nationalism. For it Islam is to be enforced in its entirety; it is necessary for Muslims to struggle for the establishment of an Islamic state or states, and ruled by Islamic law. Democracy or the rule of the people is seen as un-islamic, for it said to go against the Islamic understanding of God as the sovereign authority and law maker. For the same reason western style Secularism, the separation of religion and politics is condemned although JI itself was transformed and developed within the boundaries of a modern pluralistic society.

This movement upholds the principle that the unity of God implies that the Muslim is one who deems or recognizes none except Allah, as a ruler, patron, fulfiller of desires, provider of needs, protector and helper, and accepts no one (else) as the Lord of the world, the supreme authority, the most powerful. Post-partition saw all kinds of religious fanatics and movements in and around Pakistan which were ultimately spreading to Kashmir region as well. Much of the unfinished work according to the leaders of JI were carried on by them with the hope that if the leaders of Pakistan

could uphold the principle of two nation theory and create Pakistan then Kashmir question cannot be sidelined. JI argues for the 'Islamization of Kashmir'. It involves a total transformation of the region according to the Islamic way of life. For JI its demand of Islamization of Kashmir is integrally bound with its demand of Islamization of Pakistan, and it thinks that both these demands are intimately intertwined.<sup>44</sup>

### **3. Autonomy within the Indian Union**

The autonomy that J&K seeks is a specific kind of self-determination: When Sheikh Abdullah initiated this demand of autonomy; his longing for self-determination was over-ridden by the demand for regional autonomy or some kind of territorial autonomy for the region. Unlike the JKLF group whose demand was for an independent state, the demand made by National Conference headed by Sheikh Abdullah was more accommodating. He thought that regional autonomy was the best possible option and resorting to it will lessen the conflict in the region. When India granted autonomy to the Indian Administered Kashmir, it was more like granting autonomy to a state within a state since the emerging conflict at the time of partition necessitated a resort to this solution.

This version further argues that differences of regional urges would not have been irreconcilable if BJP and its predecessors, mostly Jana Sangh, had not rejected the offer of Nehru and Abdullah for regional autonomy. Instead they opted for a solution to the regional problem by raising a seemingly nationalist slogan of a full merger of the state with India. In fact, the serious erosion of the autonomy of the state that happened over the years did nothing to alleviate Jammu's regional discontent, while it did increase alienation in Kashmir. Situation and things are different in recent years and the idea of autonomy for the state and for the region within the state no longer remain an anathema to political parties and public opinion in the country.<sup>45</sup>

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<sup>44</sup> Yoyinder Sikand, *The Emergence and Development of the Jama'at of Jammu and Kashmir (1940's and 1990's)*. Cambridge University Press, 2002

<sup>45</sup> *Ibid.*, p-112-113

The autonomy clause formally remains in India's constitution. Between 1950's and 1990's successive Congress government in New Delhi rejected demands by opposition Hindu nationalists for the formal removal of Article 370 from the constitution since they regard the existence of Article 370 as implying favoritism and special treatment for India's sole Muslim majority state. However, When Hindu nationalists assumed power in India in the late 1990s; their government continued the practice of paying lip services to Article 370, repudiating calls from their own extreme right wing for its elimination. Article 370 still can be unpacked and its possibilities explored seriously.

#### **4. Democracy and Regional Autonomy**

Balraj Puri's argument on the Kashmir question was unlike the NC where the demand for autonomy centres on J&K as a single unit. Balraj Puri interestingly draws attention to regional autonomy not only limited to J&K but the region of Jammu and Kashmir as a whole, which comprises of Jammu, Ladakh and Kashmir. Jammu which was a Muslim majority area before 1947 now has a strong section of moderate Muslims and a decent number of Kashmiri Pandits most of whom have migrated to the region post-1989 after the rise of militancy in Kashmir. The RSS and BJP (with its earlier versions such as the Bharatiya Jan Sangh) have been active in the region and these groups have been highlighting the Jammu identity for quite some time. The Hindu leadership has been nourished in the region since the time of Dogra rule. This leadership opposed the autonomy for the state within India, which were granted to it under the Instrument of Accession and started an agitation for the abrogation of Article 370 of the Indian Constitution that guaranteed special status to the state.

The Hindu protagonists who insist on the distinct identity of Jammu stress that they wish to get rid of what is called 'Kashmiri Raj', thus provoking an angry reaction in the Kashmir region. The former however argue that the vicious circle of demands for 'full accession' and 'limited accession' made the fact of accession itself controversial. And this was the genesis of the movement for de-accession and *azadi* in Kashmir. This irreconcilable tension between the people of Kashmir indentifying mostly as



Muslims and people of Jammu as Hindu majority since post-partition, dwells on differences of regional urges between them.<sup>46</sup>

Ladakh on the other side, being divided into Leh and Kargil region by the state government in 1978 also represents a dual identity, Leh, having Buddhist majority while there is a Muslim majority in Kargil. This region has its own internal tensions cropping up since the division of the region into smaller regions based on religious differences and beliefs. The two districts have drifted in divergent directions in recent years. So the problem arises whether granting of the demand for regional autonomy will be confined to the two divergent units or whether it has to be for the larger region of Ladakh. Furthermore, will these regions be satisfied with some palliatives granted to them, or the best way is through developmental work and employment opportunities? The latter approach might replace the urge for regional identity, like that of the people of Jammu region, and the demand for a share in political set up. The region of Kashmir which is considered as one of the most conflict ridden in the J&K state is no exception. When it comes to regional urges since the region harbours very strong sub-regional sentiments. There has been prolonged internal conflicts and tension in the region stretching it to recent times. It is because of this strong sub-regional sentiment that the region got divided into 3 parts namely Azad Kashmir, Pakistan occupied Kashmir and Indian Administered J&K. In spite of such division internal cleavages still persist on the Indian side of Kashmir.

Each region's claims and justifications for the same have reinforced the tensions among the people of the region extending it to all the regions of J&K state. Further it will not be wrong to point out that regional urges and identities of each region of J&K have enhanced the chasm among the people of the region. Each region is trying to sustain its own regional identity, and in doing so creates and multiplies tensions and misunderstanding in the region.

Balraj Puri in one of his writings on *Kashmir, Insurgency and after* charts a set of different reasons for the rise of Insurgency in Kashmir. He argues that the varied regional urges have sustained the internal conflict in the state, sometimes in collusion with Pakistan and the Indian Union. According to him, the Jammu region was not

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<sup>46</sup> Balraj Puri, *Kashmir's Insurgency and After*, New Delhi: Published by the Orient Longman Private Limited, (1993, 1995, 2008)

much in favour of seeking regional autonomy although it was keen in doing away with Kashmiri Raj in the region. It was the Hindu leadership which was dominant in the region that wanted full merger of the State within the Indian Union. This feeling of regional identity created doubts among the people of the other regions. But post partition the situation was different. Much attention and concern was shown for the people of other regions mostly Kashmir. It created and developed insecurity among the people of the Jammu region. Moreover the rise of divergent understandings of the conception of 'Kashmiriyat' further made demand of regional autonomy by the people of Jammu more vocal.

The demand for regional autonomy in Ladakh was not so critical and complex as compared to the other two regions. After the division of the region into Buddhist majority Leh and Muslim majority Kargil, and in the absence of a common autonomous structure, the common regional identity has further been eroded. Differences in religious beliefs and of the ways of practising their religion have affected their coming together for a common feeling of regional identity.

Therefore, Balraj Puri suggests constitutional recognition to different regions of the present IJK, including to Jammu, Kashmir and Ladakh, and then granting of sub regional autonomy with adequate devolution of power to the two districts in Ladakh, at least as much as elected boards in the other parts of India enjoy. Whether called autonomous councils or by some other appellation, what is absolutely necessary is to restore the secular identity of the region as a whole and empower its people. His argument is not limited to just granting regional autonomy for the different units of J&K. He suggests both internal federalism and decentralization to hold together a state of such vast diversities as Jammu and Kashmir. According to him inter-regional relations and devolution of power within each region would somehow reduce inter-regional tension over the issue of status of the state and facilitate dialogue. He further argues that the outgrowth and the rise of Insurgency in J&K cannot be narrowly understood simply as a failure of democratic or a federal set up in the region. He thinks it involves failure to recognise the rise of regional urges be it on issues of identity, ethnicity, religion or even geography.

## **5. Merger of J&K as a Unit into Indian Federal Union**

It has been a persistent argument of Hindu groups led by the RSS that Article 370 of the constitution which gives special status to the state of J&K delinks the state from rest of the country. Those who subscribe to this argument assert that it won't be an exaggeration if it is called constitutionally recognised separatism. On the basis of this "special status" people of Kashmir, Pakistani rulers and diplomats and intellectuals in the world raise a volley of questions with regard to the future of Kashmir. Is accession of Jammu and Kashmir complete like other states? If the accession is complete, why then there is a need of special appeasement? Is it so because there is Muslim majority? Had there been Hindu majority in the Kashmir valley, would there have been this clause in the Constitution? These are some of their favourite queries.

The Bharatiya Janata Party of India (BJP) is very critical about the provisions of Article 370 of the Constitution. It has launched campaigns to scrap article 370 and ensure the implementation of the policy of 'one nation, one flag and one constitution'. It has held Article 370 responsible for many ills afflicting the state including militancy and unemployment. According to it this article has only bred terror, fundamentalism, and under-development, rampant unemployment in the state, besides failing to attract private and corporate investment to the Valley. Further, the BJP has demanded that the special provisions for Jammu and Kashmir, be scrapped to bring the border state on par with other states. It also blames this Article for the inability of the Government of India to enforce any law connected with Jammu and Kashmir without the approval or concurrence of the State Government.

According to it if India wants to sustain and uphold the principle of secularism within the country then the provision of Article 370 in the Indian constitution has to be scrapped. It sees the lingering of Article 370 in the Indian Constitution as the continuation of the two nation theory which led to the partition of India. According to it ever since the insertion of this Article in our Constitution, the Centre has been paralyzed in many areas of its working and a reckoning of this issue has become the need of the hour.

From the perspective of Hindu Nationalists, this article in the constitution of India is a mockery of secularism and nationalism. The exposure of its dangerous consequences

will bring to the open the web of pro-Muslim policies. One of its dangerous consequences in recent years has been the law prohibiting misuse of religious places could not be extended to Jammu and Kashmir. It demonstrates that the State did not fall within the ambit of secularism. The State Government did not accept the anti-defection law in the country and instead made several amendments. Eventually the issue was resolved by leaving the decision on the issue of defection not to the speaker of the Assembly but the leader of the political party concerned. It is because of Article 370 that political groupism receives encouragement, and nationalist party can sustain a government only by know-towing to anti-national elements.

For the Hindu Nationalist Article 370 revives the two-nation theory and puts the security of the region into jeopardy. On one side India proclaims to the world that there is no discrimination in the land on the basis on religion, community or sect. On the other hand special facilities are given to Kashmir because there the Muslims are the majority. If these special privileges are being given on the plea that Kashmir is a backward area, are there no other places in India where backwardness and poverty are equally pressing issues? The Hindu nationalist refers to Ambedkar, to argue that Article 370 of our Constitution has not integrated Jammu and Kashmir with India but has delinked it from it. It has opened the floodgates for the rise of the feeling of communalism, regionalism and separatism in the minds of the people. Hindu partisans point out that on April 7, 1958, the Plebiscite Front of Sheikh Abdullah adopted a resolution and the wordings of the resolution clearly indicate how Kashmir leaders have been working for making the Muslim society anti-India and pro-Pakistan by taking refuge under Article 370. The resolution had made a mention of this article and said:

*Jammu and Kashmir has not acceded to any of the two dominions, India and Pakistan. Therefore, it will not be right to call Pakistani invasion in Jammu and Kashmir as an attack on India.*

Article 370 has indeed made a mockery of our constitution since it puts forward the whole question on 'Secularism'. Difficulties lie in the way when one comprehends the Indian version of Secularism, should one foist on the expectations that the State should keep its distance from religion or should encourage secular values. As some leaders including Nehru did attempt to do just that there are clauses in the constitution

which seek to limit the intervention of the state in religious institutions but there is clearly room for confusion. In one of the writings of Donald Eugene Smith, probably gave a good description of Indian Secularism, his observation can be quoted as:

*To most Indians Secular means non-communal or non-sectarian, but it does not mean non-religious. For most, the basis of the Secular State is not a ‘wall of separation’ between state and religion, but rather the ‘non-preference doctrine’ which requires only that no special privileges be granted to any one religion.*

## **8. Strong Hindutva Position**

Hinduism and Hindutva are two words, which are being used interchangeably but the meanings of these words have different connotations. The evolution of Hindu nationalism in India has gone through three phases -Hindu, Hinduism, and Hindutva, as historian *Sumit Sarkar* has established. The word Hindu referred to people living in a particular geographical area, ie beyond the Indus River. Hinduism is a word popularised by Swami *Vivekananda*, who gave a unified, theological explanation for the religious and cultural practices of Hindus, during the late 19th century. Hindutva was a term coined initially by V.D. Savarkar to propose the idea of a Hindu nation.

Sometimes the position of parties such as the BJP for the full integration of J&K into the Indian Union is mistaken as the full expression of the hard-line Hindutva position. However, it is important to take note of it as an independent version. It is important to understand what comprises a Hindu or what are the implications of being a ‘Hindu’ in this perspective? There are many advocates of this idea but V.D Savarkar’s on *Hindutva, Who is a Hindu?* is one of the earliest and most comprehensive statements in this regard. Savarkar’s idea of Hindutva is based on the political view that India must be an exclusively Hindu nation-state (Hindurashtra) in which all citizens must demonstrate obedience and allegiance to Hindutva. Hindutva, for him, was an identity based on ‘race’ and ‘blood’ (which he called ‘the most important ingredient’ of Hindutva), a sanskrit-based, upper-caste idea of culture, and a sacred territory.

A Hindu, according to him, was someone who shared the blood of ‘Vedic-Aryan’ ancestors, embraced only ‘sanskritik’ culture and who viewed India as his fatherland and holy land. Golwalkar, the head of the Rashtriya Swayam Seval Sangh (RSS), who elaborated this notion further was influenced by Nazi Germany and Fascist Italy and made many statements in their support. He compared Muslims in India to Jews in Germany, supported Hitler’s military invasion and occupation of Czechoslovakia and other sovereign states, and attacked Nehru for criticising Nazism and Fascism. Under the Hindutva conception, the nation is a corporatist entity, and Kashmir is an integral part of the same.

Concessions or privileges of any kind should not be given in the name of being a minority within a state or in the name of religion and this is exactly what Article 370 of our constitution stands for, since no other state in India has this privilege. If Kashmir acceded to India then why concession or provisions of any kind was given in return when she was willing to accede to India? Article 370 should be scrapped alongside other privileges extended to the minorities. Provision in the form of this article in return for the merger, and moreover when it is just a temporary provision until a formal plebiscite took place, makes the situation even more complicated to comprehend.

Hindutva protagonists also argue that there should not have been any exception for Kashmir, such as extending to it the privilege of having its own Constituent Assembly. It was almost treating it as a state within a state. According to them one of the drawbacks in the principles of the Instrument of Accession was that India was not given any authority or power to make or amend policies for the state of J&K without the consent of the Constituent Assembly of the state and this has been one of the main reasons why nothing could be done to ease the tension between communities there, particularly the tension between the Muslims and Hindus. They also argue that India is a nation where Hindus are in majority and Muslims are one of the minorities like the Sikhs, Christians, and Buddhists in India, and the constitution of the country professes itself as a Secular State.

Needless to add that there is much overlapping between the BJP’s stance of full integration of J&K into the Indian Union and the position taken up by hard-line Hindutva. These eight versions that we have discussed on the demand for autonomy

in Kashmir have spawned their own distinct politics. They have also carved out their own constituencies of support and opposition in India, Pakistan and elsewhere. In the next chapter we will argue out the most defensible version among the eight and the reasons for the same.

**CHAPTER- 3**

**TOWARDS A REASONABLE ALTERNATIVE IN JAMMU  
AND KASHMIR**



In the preceding chapters we have given a descriptive and a discursive account of the Kashmir question, and highlighted the contending positions on the issue and also its justifications offered for the same. Needless to say, the different contending standpoints and opinions that we have highlighted in the second chapter seem to have their respective arguments. In this chapter we will evaluate these arguments and justifications, try to bring out the advantages and disadvantages among these positions and highlight what we consider as the most reasonable and defensible position under conditions of democracy. A reliable and feasible solution to the Kashmir question cannot be brought about by merely toying around with several heterogeneous positions internally non-negotiable. At the same time, coming up with a substantial and the only solution for the Kashmir question is not easy and if that has been the case then the Kashmir problem would not have lasted this far.

There can never be the best and the only solution for a problem which has lasted since post-independence and in spite of several rounds of talks and dialogue, not much has come out in easing the tension till date. But nevertheless the situation has not aggravated to the extent that no viable solution is possible. Within the region itself one has witnessed the rise of three to four demands regarding the Kashmir question and this internal tension in certain way has enhanced the already existing tension in the region. If any possible solution has to be taken up then communal interest, regional identities like language, ethnicity, food habits etc need to be taken into consideration.

The Kashmir question cannot be simply a matter of the region of Kashmir alone but Jammu and Ladakh's interests too should also be a matter of concern for policy makers. Furthermore, if self-rule and self-determination were ever granted then will it be for the whole of three regions or exclusively for Kashmir alone? It is important to note that the whole Kashmir question centers around three regions and not to forget every region has their own distinct culture, religion, language, food habits etc, and if these issues are not taken into consideration then communal tension among the regions will always be a part of the greater Kashmir question. Balraj Puri was right in arguing and bring out the issue that the interlocutors and task forces or any initiative

taken by the Government of India can serve a useful purpose only if the ground realities are kept in view.<sup>47</sup>

In the rhetoric of proposing a solution for the Kashmir question we see the usages of multiple terms and concepts. Among the many such usages the most common and indeed the most important ones are Azadi, autonomy or regional autonomy to be more specific, and self-rule or self-determination. In the understanding and arguments of the Government of India and the Hindu Nationalists a set justifications and concerns are voiced such as ‘full merger’ or ‘accession of the region’ in the Union. These terminologies introduce their own distinct complexities. There are political consequences implicit in the usage of these terms: Azadi, autonomy and self-determination are generally invoked by Pakistan, JKLF, and Jamait-e-Islami suggesting deep dissatisfaction with the existing state of affairs, while demands for regional autonomy, accession, full merger etc. either endorse J&K as a unit of India or do so, suggesting a degree of reforms.

Outside the ambit of these perspectives and expressed demands, there could be other options: We could profitably ask why the problem and its proposed solution have been circling around these issues only? What are the other possible and viable solutions? Can we not limit the issue to democracy in general and free and fair elections in particular, or for that matter within the conception of a federal structure or a decentralised government? On the other hand, should we stretch it to the conceptions of secession or separate nation-hood?

### **A Critical Engagement on the Perspectives in Question:**

What exact choices do the people of the region have then? Demands for democracy was censored as anti-national, demands for autonomy with special reference to Article 370 of the Indian constitution is yet another dilemma in the chapter of Kashmir question, and again when the demand for self-determination arises in the region mostly by the youth in the late 1980s then it was seen as ostensibly tilted towards religious fundamentalism, especially after the split in JKLF in the early 1990s. So the

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<sup>47</sup> Balraj Puri, ‘ Interlocutors, Task Forces and the Ground Realities in J&K’. Economic and Political weekly, Vol, XLV N0.49, December 4, (2010)

question arises as to what is the best and the most viable solution or even the best way of understanding and responding to the Kashmir question? On the other hand, while being sympathetic to concerns of autonomy, will it be feasible to come to terms with Pakistan's demand through the voice of Jamait-e-Islami and to an extent the JKLF?

### **i. The Indian Federal Approach**

Union Home Minister P.Chidambaram offered to have a quiet dialogue with all the parties in Kashmir including those demanding Azadi, autonomy and self-rule, the three main demands in which the oppositional politics of the valley is divided. But none has spelled out the broad outlines of the constitutional order within the state which would ensure the rights of the people if they succeed in their objectives. Balraj Puri is not wrong in arguing that if the leaders and rulers of the region are demanding azadi, self-rule or autonomy then do they have clarity with regard to the constitutional guarantees for the people of the region: Will their demands enhance freedom to the people, or will it even enhance rights for the people? He argues that mere Azadi, autonomy or self-rule from an external power does not ensure freedom to the people.<sup>48</sup>

In fact local tyranny can be far worse than that of an outsider power. Since the time of the Plebiscite Front, it has always been argued that the final decision will be taken by the people of the region and until that decision the region in general and the people in particular were given special constitutional provisions. Moreover, they would not like, for instance, to be deprived of the fundamental rights guaranteed in the Constitution of India and the safeguards that autonomous federal institutions like the Supreme Court, Election Commission and the Auditor and Comptroller provide against interference by the Centre.

A federal decentralized set up alone can ensure emotional and political unity of the state. When the question of federalism comes up in these matters and in understanding the regional tension, then A.H Birch has rightly observed that:

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<sup>48</sup> Balraj Puri , ' Azadi, Autonomy and Self-Rule vs Freedom'. Mainstream, Vol XL 7, NO. 52, December 12, (2009)

*Federalism is a concept which has no fixed meaning. Generally speaking, federalism presupposes the exercise of two sets of governances, common and regional and they operate independently but with a certain bit of coordination. One set of governance (i.e. common) looks after the general interests of the nation while the other (i.e. regional governments) cater to the local needs and problems*

Therefore, while the federal approach has much to commend for it, it is important to perceive it as an approach rather than a substantive package. As demonstrated in the earlier sections of this study, the existing approach to the J&K issue has little to commend for it even though it is named as a federal approach.

## **ii. Autonomy within Indian Union**

Even today the state has more autonomy than other states in India on paper. But the paradox is its people have fewer rights than those in other states. Again, Balraj Puri points out that while in the rest of India, for instance, district authorities are required to report to the National Human Rights Commission any incident of custodial death within 24 hours, people of the Kashmir state have been denied this right. The State Women's Commission is defunct for the last many years since the terms of its members expired. Under Article 370 of the Constitution, 73<sup>rd</sup> and the 74<sup>th</sup> Amendment did not apply to the state with the result that Panchayati Raj does not exist in the state.

Puri argues that in the context of theoretical perspectives, the region has the maximum rights and freedom unlike the other states in India but ironically in the theoretical application of these basic fundamental rights and freedoms, the region is faced with many challenges in everyday life. He cites the Delhi Agreement of 1952 between Sheikh Abdullah and Nehru when India agreed and reiterated its solemn pledge to give to the state of Jammu and Kashmir a special status in its constitution, guaranteeing complete internal autonomy to the state ; the hereditary ruler to be replaced by an elected head of the state, with a five year term of office; the Fundamental rights to be incorporated in the Indian constitution were to be applied to

the state, subject to the provision that they would not disturb the programme of land reforms; etc.<sup>49</sup>

But this euphoria soon subsided and the Jammu agitation was launched because the government delayed implementing the clauses relating to Jammu and Ladakh. In spite of all the provisions guaranteed by the Centre for the state, many people in Jammu and Ladakh protested because of the polarization of politics on communal lines. This agitated the Sheikh and his attitude grew intolerant and he openly advocated among his colleagues a review of the state's accession to India.<sup>50</sup>

In a memorandum presented to the Prime Minister of the state, three members of his cabinet, led by Bakshi Ghulam Mohammad, accused Sheikh Abdullah of taking arbitrary decisions, of being responsible for deterioration in the administration, for nepotism, inefficiency, and wanton wastage of public resources. Although Sheikh Abdullah had, on many occasions, ruled out the idea of independence for the Kashmir valley, he appeared to waver from his own convictions.<sup>51</sup>

For Balraj Puri granting of autonomy just for the region of Kashmir will only aggravate regional and communal tension in the other regions of the state. For him, what the three regions really want at this juncture of the situation is not simply yet another addition of constitutional provisions and an enhancement fundamental rights and freedom for the people of the region, since the previous constitutional provisions and its theoretical application in the region has already been a great deal of debate. Understanding and considering every regions regional identities and urges, which can also be stated as understanding the ground realities of every region and then sorting out a solution according is what matters the most for the region. As stated above, granting of autonomy to these regions should not be just limited to the very understanding and idea of minorities' rights and tensions, but atleast it should ensure basic rights and freedom to the people of the region and a democratic rights and freedom seem to be only viable justification for the region.<sup>52</sup>

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<sup>49</sup> R N Kaul, Sheikh Mohammad Abdullah: A Political Phoenix, New Delhi: Published by the Sterling Publishers Pvt. Ltd., 1985

<sup>50</sup> Ibid., p 63-64

<sup>51</sup> Ibid., p 66-70

<sup>52</sup> Balraj Puri, Regional Polarization, it is actually a report by Justice Sagheer but was reviewed by Balraj Puri on the Radical Humanist article .

### iii. Pro-Pakistan Stances

The region of J&K witnessed the rise of militancy for the first time with the demand and the question of self-determination by the JKLF in the late 1980's. But it could only last for about seven to eight years in the region as the differences of ideology split the militants apart. Needless to say, the support given by Pakistan during the early formation of JKLF needs no further explanation. What really affected the working of these groups in the region was mainly because of an unavoidable split between them.

Gradually, Pakistan government tried to sideline the JKLF and replaced it with organised pro-Pakistan and pro-fundamentalist groups. The leadership of the latter was controlled by the ISI, the intelligence agency of Pakistan. Some of the leading personnel were also non-Kashmiris. The Pakistan based Kashmir movement was far more fanatic and ruthless than the indigenous one. Mass killings of Hindus, innocents and pro-India Muslims were its main objectives. It aimed not only at annexing Kashmir with Pakistan but also threatened to destroy 'Hindu' India.<sup>53</sup>

At the height of militancy, the security forces had to battle at least a dozen major insurgent groups of varying size and ideological orientation, as well as dozens more minor operations. The more prominent of the insurgent groups included the nominally secular; pro-independence Jammu and Kashmir Liberation Front (JKLF) and the radical Islamic and pro-Pakistani groups Hizbul Mujahideen (HUM), Hizbollah, Harkat-ul-Ansar, and Ikhwanul Muslimeen. At least 15,000 to 20,000 insurgents, police, paramilitary personnel, and civilians had lost their lives, by 1996, since the onset of the insurgency. These developments had embroiled India and Pakistan into a brink of confrontation.<sup>54</sup>

The way Pakistan shaped the outburst of militant autonomy demand in J&K is not defensible on the following count: It would have led the imposition of retrogressive religious dictate in the state in the name of Islam that would have gone against the

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<sup>53</sup> Balraj Puri, 'After Terror: Pakistan, and Kashmir, on Indian sight'. This is an article written on the Open Democracy.

<sup>54</sup> Sumit Ganguly, 'Explaining Kashmir Insurgency: Political Mobilization and Institutional Decay'. International Security, Vol.21, No.2, (Fall 1996).

very notion of freedom of the people voiced for a century; it would have led to the strengthening of hard-line Islamist tendencies in Pakistan itself that thrived on war-mongering on India externally, and Islamization of Pakistani society internally; further, it would have led to further mobilisation of armed forces in the state by India and ruthless suppression of voices of protest. The insurgency in Kashmir has already had pernicious effects on the Indian polity. To aid the armed forces in their efforts to contain the insurgency, the Indian government had passed draconian legislation that severely curbed personal freedoms and civil liberties in Kashmir.

The legislation also enabled members of the security forces to use force with virtual impunity. The demand for self-determination for the region with its multiple implications does not seem feasible. The involvement and support of Pakistan has destabilised the overall fight for self-determination in the region. Further the demand for self-determination for the region of Kashmir alone will not be possible since Kashmir question is not limited to Kashmir alone but intimately bears on the other two regions, Jammu and Ladakh, and their concerns and demands are of equal importance.<sup>55</sup>

#### **a. The Azadi Consideration**

What explains the abrupt rise of violent ethno-religious fervour in 1989 in India's only Muslim majority state? Apologists for the Indian position have contended that the insurgency is the result of Pakistani propaganda and logistical support and training for the insurgents. Pakistani apologists, in turn, argue that the insurgency represents the spontaneous rise of ethno-religious sentiment amongst the oppressed Muslim community of Jammu and Kashmir.<sup>56</sup>

Sumit Ganguly rightly points out that the rise of insurgency in Kashmir post-1987 election in the region arose out of the process of political developments, ethno-religious mobilization that was juxtaposed with steady institutional decay. The ethno-religious mobilisation was a larger process that was occurring in the whole of the sub-

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<sup>55</sup> See Asia Watch and Physicians for Human Rights, *Kashmir: A Pattern of Impunity* (New York: Asia Watch and Physicians for Human Rights, (1993).

<sup>56</sup> *Ibid.*, p- 2-3

continent, but picked up momentum in J&K in 1970s. Institutional decay in Kashmir began as early as the 1950s, much earlier than the rest of India.<sup>57</sup>

While the case for the greater expansion of freedom for the region as a whole is undeniable, should it be merely in response to the specific mobilisation that Kashmir has witnessed in recent years, and the institutional decay that it has witnessed over the years? Can the ethno-religious mobilisation, in which Pakistan is deeply embroiled, be allowed to trump other expressions of collective will manifest in the region for nearly a century?

#### **b. Islamization of Kashmir**

It is quite obvious and well understood that the whole of J&K region dwells on heterogeneous ethnicity in general and religious belonging in particular and so the urge and drive for making Kashmir purely rest on religious fundamentalism is really not one of the options before the region. The understanding of the Jamaat-e-Islami (JI) on the Kashmir question therefore remains flawed. Its mission of making Kashmir part of Pakistan and help in the Islamization of Pakistan is not a realistic option, and this is not merely on account of its ideology. Even within the region of Kashmir there exist contending positions and stand points with regard to Islam and the Sharia. Even if we hypothetically concede to the Jamaat's position there is no guarantee that any durable political stability can be restored to the region.

Till the attainment of freedom and the partition of the country, the Jamaat's activities were confined to propagation of ideas mainly literature and publications in Urdu. Not surprisingly, the circumstances did not allow the organisation to win the Muslim society over to its way of thinking, since it had been divided between the national movement and the Muslim communal politics. Even so, the unique approach of this new organisation made a deep impression on a substantial section of the educated intellectuals, particularly of the middle class. They were enthused to recognise in Islam a complete, divinely ordained way of living that can replace the many man-

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<sup>57</sup> Ibid.,p-9-10



made materialistic systems. At the same time, the Jamaat faced stiff opposition from populist Muslim practices, and the nationalistic and communalistic sections.

Furthermore, it insisted that every aspect of human life has to be governed by divine principles of Islam. In a similar vein, Moudoodi also rejected ideas of nationalism and democracy as they defy the divine project and lay much emphasis on human will. He argued that such ideologies, bereft of any divinity and morality, would only spell doom for humanity. These manmade ideologies, according to him, are incapable of guiding human beings towards an ethical life. It could be pointed out that the principles on which JI rested is somehow purely idealist and this approach in the state formation rejecting the principles of democracy and nationalism which are in fact the two most important pillars in the state formation brings its own destruction.<sup>58</sup>

With a series of attacks in and around Kashmir since its emergence as a militant force in the region in the early 1990's, mainly after the split in JKLF, the JI affiliated groups pose danger to human security and stability in the region. The ability of these groups to incite Islamic favour against India and the West in the name of Kashmir has left a bloody trail, and their ability to cleave sectarian rifts in Pakistan has taken a massive toll on the country's society and national identity. Their availability as a cheap and able proxy against India has helped keep the Pakistani military a state within a state. These groups are entrenched as obstacles to security and state-building in Pakistan.<sup>59</sup>

The role of Pakistan especially in the rise of these groups in early 1990s in the region of Kashmir needs reconsideration since it can be of help in examining why these groups could establish a strong hold within the Muslims in the region. The rise of religio-political groups and their militant offshoots in Pakistan has roots in the country's shift away from a position of official Islam toward one of Islamism, beginning in the 1970s. In other words, Islam in many ways became a movement. These groups are of 'association, solidarity and belief' and transcend traditional

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<sup>58</sup> R, Santosh, 'Secularisation of Jamaat-e-Islami and the Ghost of Abdul Ala Moudoodi'. <http://indianmuslims.in/secularisation-of-jamaat-e-islami-and-the-ghost-of-abul-ala-maududi/>, July 6, 2010

<sup>59</sup> Nicholas Howenstein, *The Jihadi Terrain in Pakistan: An Introduction to the Sunni Jihadi Groups in Pakistan and Kashmir*. psru@bradford.ac.uk, 5 February, (2008)

boundaries of ethnicity, also playing on the ideological and cultural ties of their members.<sup>60</sup>

It might be important to dwell a little on Muslim League and Jinnah's idea of two nation theory to underscore the role that invocation of Islam plays out in Pakistan's state ideology. In order to address the grievances of the Muslims in British India, All India Muslim League was formed. Mohammad Jinnah who initiated the idea that the Muslims in British India cannot form a nation together with the Hindus drew his justifications on communal grounds. While seeking recognition of a separate Muslim nation, Jinnah had managed to pull together various elements of Muslim leadership in India, creating communal unity through ambiguity about the final goal.<sup>61</sup>

He was using the demand for Pakistan to negotiate a new constitutional arrangement in which Muslims would have an equal share of power once the British left the subcontinent. This means that equal power sharing in the constitutional arrangements after independence and in order to achieve this communal unity among the Muslims in British was important. However such a stance is often mistaken for purely religious grounds and the differences of Hindu and Muslims laws and ways of life, which means that the two separate religions cannot form a nation. However the Muslim League had to forge religious sentiments among the Muslims in British India for the reinforcement of the idea of Pakistan

What may have been an effort to seek recognition for Muslims as a nation in minority moved millions of Indian Muslims into expecting a separate country, the running of which Muslim leaders had made no preparations for, but the Muslim League responded by rolling out its own theologians. The result was the almost total identification of Pakistan with Islam in the course of the campaign. The rural Muslim masses were encouraged to develop a vague feeling that they would all become better Muslims once a Muslim state was established.

The 1945–1946 elections enabled the Muslim League to claim that it was the sole representative of the Muslims. Jinnah interpreted the vote as a mandate for him to negotiate on behalf of Muslims, a position the British had no choice but to accept. The

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<sup>60</sup> Ibid.,p-9

<sup>61</sup> Ibid.,p-9-12

election campaign generated religious fervour, and its result seemed to indicate that the Muslims were unhappy at the prospect of being dominated by Hindus; but the election results did not settle the question of what India's Muslims really wanted. Needless to say, the limited Muslim vote had not ratified a specific programme because no programme had actually been specified. No one was clear about the real meaning of 'Pakistan' let alone its precise geographical boundaries. The Muslim League still did not form the government in most of the Muslim-majority provinces, making it impossible to divide India neatly into Muslim-majority and minority provinces and then allowing two parties, the Muslim League and the Congress, to negotiate a future constitutional arrangement as equals.

The Pakistan that was created was communally more homogenous but economically and administratively a backwater. Communal riots involving Muslims, Hindus, and Sikhs resulted

In massive migrations from Pakistan to India and vice versa, although no such shifts of population had been envisaged by Pakistan's founders.<sup>62</sup>

The circumstances of the Muslim League's apparent success in the 1946 elections foreshadowed the difficulties confronting Pakistan's leaders once the new country was created. The campaign for Pakistan had, in its final stages, become a religious movement even though its leaders initiated it as a formula for resolving post-independence constitutional problem. This created confusion about Pakistan's *raison d'être*, which Pakistan's leadership attempted to resolve through a state ideology. The Muslim League did not enjoy mass support in the areas that became Pakistan. The state ideology therefore came to tilt towards Islam. The abstract notion of a Pakistan that would be Muslim but not necessarily Islamic in a strict religious sense gave rise to alternative imaginations.

To add more to the confusion that existed already after the creation of the new state, Jinnah died within a year of independence, leaving his successors divided, or confused, about whether to take their cue from his independence eve call to keep religion out of politics or to build on the religious sentiment generated during the

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<sup>62</sup> Ibid.,p-10-12

political bargaining for Pakistan. On the ground political realities determined their direction.

One of the earliest Western scholars of Pakistani politics, Keith Callard, observed that Pakistanis seemed to believe in the essential unity of purpose and outlook in the Muslim world:

*Pakistan was founded to advance the cause of Muslims. Other Muslims might have been expected to be sympathetic, even enthusiastic. But this assumed that other Muslim states would take the same view of the relation between religion and nationality. In fact, the political upsurge elsewhere was based largely on territorial and racial nationalism, anti-Western, anti-white. Religion played a part in this, but it was a lesser part than colour, language, and a political theory of violent opposition to colonialism and exploitation. If a choice had to be made by other Muslim states between friendship with India or Pakistan, India, as the more powerful, more stable and more influential, was likely to have the advantage.*

The strongest objections to the Islamic ideological paradigm being imposed on the new state came from Pakistan's eastern wing. Bengali speaking Muslims from what is now Bangladesh, hoping their more numerous population would guarantee them at least an equal say in running a new country's affairs, had supported the idea of Pakistan, but West Pakistani soldiers, politicians, and civil servants dominated Pakistan's government. Within a year of independence, Bengalis in East Pakistan were rioting in the streets, demanding recognition of their language, Bengali, as a national language. Soon thereafter, in the western wing of the country, ethnic Sindhis, Pashtuns (also known as Pathans), and Balochis also complained about the domination of the civil services and the military's officer corps by ethnic Punjabis and Urdu-speaking migrants from northern India.<sup>63</sup>

It is a sad commentary on United Pakistan's history that the power elites who incidentally always belonged to the West Wing never tried sincerely to preserve the unity and solidarity of Pakistan, although they had always loudly talked about

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<sup>63</sup> Ibid.,p-19-20

national unity, integrity and islamic ideology. Furthermore, the first spark of Bengali-regionalism was found in 1948 when the central ruling elites declared their intension to make Urdu the state language of Pakistan.<sup>64</sup>

This not only struck at the cultural pride of Bengalis but it had strong socio-economic and political overtones. It was one of the fatal mistakes the central elites committed as they sought unity by ignoring diversity. This understanding may be summed up by S.M Burke's observation that:<sup>65</sup>

*In truth if West Pakistanis really wished their union with East Pakistan to endure, they should have woken up to realities much earlier and pursued utterly different political and economic policies from the very inception of Pakistan.*

This historical backdrop suggests that the Islamic route to J&K is full of pitfalls. J&K is far too caught in historical, ethnic, religious and cultural diversities to be wielded into a homogenous bloc based on a single version of Islam. While there would always be a small stratum of Muslims in the region to whom such an ideology might be attractive, its capacity to encompass diverse ways of life is far too little.

#### **iv. The Hindutva Position**

The claims made by the Hindu Nationalists on the Kashmir question cannot be simply justified on the question of the provision of Article 370 of the Indian Constitution for J&K state, and again their justifications that India being a Secular state cannot allot special status to any religion within the country. But the matter of concern at this point is what exactly are the compositions of secularism or a Secular state according to the Hindu Nationalists. Criticism crops in when the Hindu Nationalists understand secular state or secularism as 'non-preference doctrine' which requires that no special privileges be granted to any one religion. And moreover their strong feeling of identity or Hindu Nationality within them questions the very legitimacy of other minority religions existing within the country.

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<sup>64</sup> Syed Humayun, Sheikh Mujib's six point Formula: an analytical study of the breakup of Pakistan, Karachi: Published by Royal Book co.,1995

<sup>65</sup> Ibid.,p-400-07

An important question that gets frequently asked about Hindu nationalism in India is why the secular and civic nationalism of Jawaharlal Nehru degenerated into the ethnic nationalism of the Hindutva ideologues? An answer to this question is typically articulated by looking at crucial transformations in Indian politics. For instance, the decline of the Indian National Congress in the late 1980s, and the gradual erosion of democratic structures are the two most common reasons given to explain the rise of the Hindu nationalist party, Bharatiya Janata Party, to power. However, these explanations do not probe into why religious identity was particularly prone to politicization in India. To that end, the prevailing explanations for the rise of Hindu nationalism leave some fundamental questions unanswered.<sup>66</sup>

Originally conceptualized as a social and religious movement, Hindu Nationalists soon set out to transform their movement into a political force in opposition to the Congress party and Muslim League. The result was the institutionalization of Hindu Nationalism with the establishment of the Rashtriya Swayamsevak Sangh (RSS) and the Bharatiya Janata Party (BJP).<sup>67</sup>

While looking at the context of how secular and civic nationalism got degenerated into ethnic nationalism especially with special reference to Hindu nationalism, it is important to critically analyse the workings of Indian secularism. Pierre Van Den Berghe presents a strong critique of policies that seek to recognize ethnic communities through the conferral of group rights and special privileges. In an article titled *Multicultural Democracy: Can it work?*, he uses India as a primary example of a functioning multicultural democracy, which has become a vast cacophony of groups clamouring for state recognition, and organizing for the achievement of special rights and the defence of collective interests.

He argues that such a predicament has generated a spiral of escalating stridency and frequently, violence. India has become the country where caste and communal violence are the most routine, institutionalized order of the day.<sup>68</sup>

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<sup>66</sup> Anuja Bose, 'Hindutva and the Politicization of Religious Identity in India', *Journal of Peace, Conflict and Development*, Issue 13, .[www.peacestudiesjournal.org.uk](http://www.peacestudiesjournal.org.uk),(2009)

<sup>67</sup> Stuart Corbridge and John Harriss, *Reinventing India*, Cambridge: Polity Press, p 179-180.(2000)

<sup>68</sup> Pierre L. Van Den Berghe, *Multicultural Democracy: Can it work?* *Nations and Nationalism*, 8(4), p-438.(2002)

It is important to note that Van Den Berghe is making an indirect critique of the interventionist practices of secularism in India. He draws a link between the Indian secular practice of recognizing religious identity on the basis of group rights and the escalating levels of religious violence, since ethnic consciousness is increased and social cleavages deepened by such policies. He would advocate a policy of non-interference rather than the Indian practice of equal intervention which results in the recognition of collective rights for various religious groups. In that sense, this line of critique would see the policies and practices of secularism as responsible for the increasing politicization of religious identity in India.

Even Ashis Nandy directs his critique towards the consequences of Secularization on Indian society. Nandy's critique of secularization can be more aptly characterized as a critique of the effects of modernization on traditional societies. He insists,

*Many Indians see the society around them and often their own children- as leaving no scope for a compromise between the old and the new, and have to opt for a way of life which fundamentally negates the traditional concepts of a good life. These Indians have now come to sense that it is modernity which rules the world and that religion-as-faith is being pushed to the corner.*

Secularization is thus characterized as a process that purges modern life of traditional and religious ways of conceptualizing the world, resulting in the alienation of large parts of the population. Nandy argues that this sense of alienation from modern, secular life is a fertile mindset for intolerance and aggression. He contends much of the fanaticism and violence associated with religion comes today from the sense of defeat of the believers, from their feelings of impotence, and from their free-floating anger and self-hatred while facing a world which is increasingly secular and de-sacralised. Thus, the crux of Nandy's argument is that secularization, as a part of the larger processes of modernization, fuels resentment and anger that then gets channelled into an aggressive politicization of religious identity.<sup>69</sup>

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<sup>69</sup> Ashis Nandy, "The Politics of Secularism and the Recovery of Religious Tolerance" in Veena Das, eds., *Mirrors of Violence: Communities, Riots and Survivors in South Asia*, New Delhi: Oxford University Press, p- 79,( 1990)

Secularism, the idea that was supposed to secure social integration and reflect the universal character of human enlightenment is dead in India and elsewhere. Not because religion has run rampant in the world, but prescriptive and explanatory value that secularism was believed to possess is no longer tenable. No single trajectory is visible for how public and private spheres were differentiated, nor is there a uniform understanding of what this meant.<sup>70</sup>

In this context, we could mention of a position which masquerades itself as secular but in effect is nothing but a Hindutva position. It calls for the abrogation of Article 370 of the Indian constitution which will enhance the powers of the Union Parliament towards the state of J&K but also make rigid policies and laws for the state invoking full sovereign authority. Apart from other arguments that we have deployed in this study, there are certain complexities involved in this proposal since to withdraw the Article means to go back to the Instrument of Accession Act signed by Hari Singh although this very Accession Act has its own loopholes since it has heterogeneous understanding involved into it.

### **Analogues**

The issue of autonomy is raised in other regions of India too, and may help us to throw some light on the issue under study in J&K. One of the best instances in this regard is the question of Nagalim, or Naga self-determination.

The Naga national movement (active since the 1950s) is one of the oldest unresolved armed conflicts in the world. The Naga insurgency has drawn attention to two central issues: 'sovereignty' and a 'Greater-Nagalim'. The Nagas and many other tribes of north-east India claim that their territories did not form part of the lawful territory of India at the time of the transfer of power from the British crown. Indeed, at that time the region had disjointed and ambiguous geopolitical and administrative divisions of the Brahmaputra and Surma valley (districts) under the control of the Assam government; the excluded and partially excluded areas (the hills areas, also mostly under the

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<sup>70</sup> Shabnum Tejani, *Indian Secularism Indian Secularism: A social and Intellectual history, 1890-1950*, Indiana: Indiana University Press, 2008



control of the Assam government); and the princely states of Manipur, Tripura and the Khasi Syiemships.<sup>71</sup>

The Naga National movement claims that the Nagas were never part of the British Crown or part of the Indian culture. Such a claim makes the Naga movement for self-determination unique, with few comparisons with that of J&K. The state of Kashmir has been under external domination by rulers such as Sikhs, Mughal, the British etc and then eventually under Dogra Rule. Since then their fight has always been to overthrow foreign domination and this was carried out first by one of the oldest regional parties in the region namely the National Conference headed by Sheikh Abdullah. What Sheikh Abdullah really had in his mind for the region was hard to single out since demand for autonomy seemed to be the only viable solution for the region during his time. He might have implicitly dreamt of an independent Kashmir but it did not materialise, or for that matter found much support during his life-time.

The origin of Naga dissent, traceable to explicit colonial patronage, may be seen in the British backing of a rudimentary 'club' in 1918 called the 'Naga Club' and consisting informally of some Naga government officials it submitted a memorandum to the Simon Commission on 10 January 1929. The Naga Club induced the birth of several Naga councils (Lotha council 1923, Ao council 1928) and others by the mid-1940s. British officials persuaded the Nagas to change the name of the Naga Club into 'Naga Hills District Tribal Council' in 1945. This Council acquired a new name, 'Naga National Council' (NNC) in 1946. The NNC initially advocated a simple approach of protest though it matured as a viable political organisation representing the genuine grievances of the Nagas.<sup>72</sup>

Needless to say, the existence of draconian laws prevailing in these states made the fight for self-determination less effective and hugely cumbersome but differences of ideology even among the liberation movement groups have tended to question the survivability of these groups as well. In these respects there is much in common between the Naga movement and the movement in the Valley.

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<sup>71</sup> N.K Das, 'Naga Peace Parleys: Sociological Reflections and a Plea for Pragmatism'. Economic and Political weekly, Vol.XLV1, NO.5.June 18, (2011)

<sup>72</sup> Ibid.,p-73-74

In J&K it is a well known fact that since the occurrence of a split in JKLF in the mid 90s, the new fraction dominated in fire-power and even in ideology and in turn has tended to weaken the very sustainability of the older one which is more indigenous based. The support by Pakistan to the new fraction has been one of the primary factors why it has weakened the older fraction. Moreover the differences of ideology, the inclination of one fraction to join Pakistan and the other to remain independent without joining either of the Dominions has also resulted in the weakening the old JKLF.

Even the Naga Movement is no exception; literally there occurred multiple fractions in the movement, beginning with the leaders of NNC (Naga National Council). The NNC was a pro-government moderate body intending to improve the economic condition of the Nagas through constitutional means.<sup>73</sup>

By June 1946 Phizo had returned to the Naga Hills after his release in Rangoon. Gradually he came to occupy the centre-stage of the movement. As confusion prevailed over divergent views of both sides about the 'future status of the Nagas' and as no consensus was accomplished, on 14 August, on the eve of the independence of India, some members of the NNC under the direction of Phizo, declared their own independence.<sup>74</sup>

The year 1968 witnessed a division of the Naga underground – the 'federal government' on the one side and 'revolutionary government of Nagaland' formed by the dissidents, on the other. The 'revolutionary' extremists tried to capture the entire underground bloc and wanted a dialogue for a peaceful settlement of the Naga problem.<sup>75</sup>

By the end of 1968, an anti-communist faction calling itself the 'Revolutionary Government of Nagaland' came into being, and then followed a series of splits within the NNC and NFG, largely along 'tribal' lines. The government realised the futility of peace talks and blocked the extension of ceasefire. Eventually these talks resulted in the 'Shillong Accord' signed on 11 November 1975. The Nagas who signed

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<sup>73</sup> Ibid., p- 75-78

<sup>74</sup> Murkot Ramunny, *The World of Nagas*, New Delhi: Northern Book Centre, 1998

<sup>75</sup> Prakash Singh, *Nagaland*, New Delhi: National Book Trust of India, 1972

represented the NFG (Naga Federal Government) and NNC (Naga National Council) and they surrendered arms and personnel.<sup>76</sup>

Dissatisfied, rebellious leaders like Isak Chishi Swu, Thuingaleng Muivah and others who were camping in Myanmar formed the 'National Socialist Council of Nagaland'(NSCN) on 31 January 1980 in the Eastern Naga Hills (Upper Myanmar) to establish a 'People's Republic of Nagaland' based on Mao's communist ideology. The manifesto of the NSCN was based on the principle of 'socialism' for economic solution backed by a spiritual outlook of 'Nagaland for Christ'. Further factionalism developed within the NSCN and thus two factions – NSCN (I-M) and NSCN (Khaplang) emerged by April 1988.<sup>77</sup>

The differences between them regarding their approach and their ideology and even the time period of their struggle have been an important factor in qualifying the autonomy movement in Nagaland. This is not to ignore the AFSPA (Armed Forces Special Powers Act) in general and questions on Human Rights that it rises in particular. The AFSPA has repeatedly been misused and thus should either be revoked, or equipped with stronger grievance redress mechanism to tackle its abuse. When the question of withdrawal of AFSPA both in J&K and Northeast India is talked about, ironically its defenders point out that AFSPA is the means in countering insurgency problem in these states. This draconian Act is justified on the ground that the security forces are in favour of retention of law, so it would be 'highly impudent' to argue for its withdrawal on political consideration. Arguments of this kind demonstrate the precariousness of any sense of normalcy in these regions, and the possibility of a slip further into the lap of militancy, as the only way for freedom.<sup>78</sup>

The loopholes in the structure of the organization of militancy together with counter-insurgency measures make it difficult for the involved groups not only to push ahead with their ideology but even retain the unity of their organization. While there is no one solution to every autonomy demand since every regional assertion has its own ideology, methods and history of armed struggle we can really make a distinction between the reasonable and the adventurous. At this point of time resorting to

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<sup>76</sup> M Horam, Naga Insurgency, *New Delhi: Cosmo Publication*, 1988

<sup>77</sup> *Ibid.*,p-253-54

<sup>78</sup> *Assam Tribune*.2011. BJP against lifting of AFSPA, *Assam Tribune*, 18 October

autonomy of some kind seems to be the only viable way in understanding the whole question of self-rule and self-determination. Further understanding and definition of autonomy in this context cannot continue to be imprisoned by categories of religion, ethnicity, caste, colour, creed and gender alone.

But rather atleast it ought to be, integral to democratization process, enabling people to make as well as realize choices of their own, without compromising their legitimate moral and political claims to human dignity and diverse socio-cultural identifications, as citizens practising without fear or favour the norms of reciprocal civility.<sup>79</sup>

### **Historical Legacies**

The story of India's partition deeply informs the Kashmir question, and much of the justifications of the different actors involved in this issue are drawn from it. The creation and the factors for the creation of Pakistan can be looked through and analysed through the lens of the Indian Independence Act, 1947, with its prelude in the 3<sup>rd</sup> June Plan or the Mountbatten Plan after the name of Lord Mountbatten, the then Viceroy to India. The Plan carved out explicitly two dominions namely; the dominion of India and the dominion of Pakistan and it was on the basis of this particular Plan that the Government of India made its justifications regarding the state of J&K. The Plan placed the burden of the future of an enormous number of Princely States under the British paramouncy in the hands of the rulers of the state.

If questions are raised on the legitimacy of the partition plan of 1947 then multiple targets becomes inevitable. Lord Mountbatten and the leaders during the time of partition carved out the two dominions explicitly on the basis of communal lines, and even on the question of majority and minority and even in the context of religion the measure adopted did not speak volumes about it. Therefore, looking at this context, the leaders during the time of partition failed to set the basic criteria for the Princely states to join either of the Dominion. It cannot be simply justified on the basis that the ruler had full sovereign power and authority to join either of the dominion. If so, then

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<sup>79</sup> Sanjoy Chaturvedi and Sanjoy Barbora, *Autonomies in the North and the Northeast, More Freedom or the Politics of Frontier Management*, Kolkata: Published by the Mahanirban Calcutta Research Group, 2005

why the provision of Article 370 was even thought about when it is believed that the ruler acceded to India in his full consciousness and deliberations? Why a provision of special status has to be granted if the ruler of the state acceded freely taking decision as a sovereign power?

These questions might not come as something never heard, but logically if Government of India claims that the sovereignty of the Accession cannot be contested than why special treatment is shown to Kashmir only if it had the full sovereign power to accede either of the two dominions. Those who cavil at Article 370 of the Indian Constitution and the special statuses of Kashmir constitutionally ought to remember the 'special' treatment meted out to it politically. Which other State has been subjected to such debasement and humiliation? And, why was this done? It was because New Delhi had second thoughts on Article 370. It could not be abrogated legally.<sup>80</sup>

The claims that GOI put forward about the sovereignty of the Rulers of the Princely states post-partition and their decision to join either of the Dominion can be argued since Pakistan was created on communal ground and therefore the question of religion being an important criteria had an effect in one way or the other in the decision making of the Rulers. It is also because of this very factor both the Dominions wanted the Princely states to join either of the dominions on this basis. When we go back to the Cabinet Mission Plan of 1946, Mountbatten appeared to be open-minded regarding the fundamental issue of partition. He was personally in favour of a united India and he had been instructed to try once more to gain acceptance of the Cabinet Mission plan which would preserve a unified if highly decentralized governmental system. According to Attlee's directive, he had until October 1, 1947 to outline the steps that should be taken if a unified government could not be achieved.<sup>81</sup>

Nonetheless, after only three weeks Mountbatten was reporting that partition may prove to be the only possible alternative. Why did he reach this all-important conclusion so rapidly? According to his own appreciation of the situation, a unified India was becoming impossible because Mohammed Ali Jinnah and the Muslim

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<sup>80</sup> See Article 370: Law and Politics, Frontline, Vol. 17, Issue.19, September 16-29, (2000)

<sup>81</sup>See Dividing the Jewel: Mountbatten and the Transfer of Power to India and Pakistan. Pacific Affairs, Vol. 58, No. 4 , pp. 653-662Published by: Pacific Affairs, University of British Columbia Stable, URL: <http://www.jstor.org/stable/2758474>.(1986)

League had the ability to make it unworkable. Second, he was convinced that British administrators and the army could no longer forestall civil war in North India, especially the Punjab. And third, the Congress leadership, Gandhi accepted, was reconciled to the 'contracting out' of Muslim-majority areas from an independent India. Moreover, Mountbatten's strategy for dealing with the princes came late, and it failed in a few important cases where the princes vacillated (Kashmir) or refused to buckle (Hyderabad). Perhaps an earlier, more straightforward approach might have avoided the bloodshed that accompanied their "integration" but Mountbatten had been preoccupied with determining the status of British India.

The haste in which partition was carried out and needless to say the role of the Muslim League headed by Mohammad Jinnah on one hand and Congress leadership with an ambitious Viceroy during the time of partition on the other hand affected the decision of the Rulers of the Princely states. If partition were to be taken up then issues were many and needed not only concentrated attention but essentially a lot more time that was finally made available. The Princely States posed yet another sensitive issue that demanded careful handling, which unfortunately they did not receive and opened up a new chapter of tension and turmoil in South Asian history. Kashmir stands even to the present day as a bitter legacy of mishandling the partition.<sup>82</sup>

Mountbatten's role holds verdict to not only hasty and flawed planning of one of the greatest events of history but also to the farce of impartiality that he conveniently and boastfully adhered to but could not honour in the entire partition proceedings. The division of India was one such case that put to test the abilities of those who had once ruled over an extensive empire but unfortunately could not live up to the tradition of that 'glorious' past in working out a smooth transfer of power to two successor states. The issues were varied and each demanded separate and individual attention for which not only expertise but time was required. It was a commodity the importance of which was neglected altogether leading to a speedy and scuttled transfer with extraordinary misfortune attending upon the populace caught in the turmoil.<sup>83</sup>

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<sup>82</sup> Shreen Ilahi, 'The Radcliffe Boundary Commission and the Fate of Kashmir', in *India Review*, Vol.2, No.1, p.87,(2003)

<sup>83</sup> Rabia Umar Ali, 'Planning for the Partition of India 1947: A Scuttled Affair'. *Pakistan's Journal of History and Culture*, Vol.XXX, No.1, (2009)

The decision regarding the fate of Princely States was no small issue when preparations for implementing the Partition Plan actually began. Junagardh, Kashmir and Hyderabad had not come to any agreement with regard to their future course of action at the time of independence in August 1947. Had the British conduct been more impartial and had the Congress adhered to the generally accepted and jointly agreed upon principles of geographical contiguity and national representation as laid down in the Partition Plan, Indo-Pakistan history might have not been blemished by so much strife and turmoil as in the early years of freedom.

Nehru's passionate attachment to Kashmir swayed the balance in favour of India and the last act of the drama saw the Maharaja signing the Instrument of Accession for India resulting in the speedy landing of Indian troops to forcibly occupy the state. Among the scars of partition it is the one still profusely bleeding. The amicable structures that the two states are now struggling to build could have been established decades ago, only if the last Viceroyalty in its connivance with the Congress had not failed so miserably in this respect.

Not only were the claims by GOI on the Kashmir question being contested on certain grounds in the above statement, needless to say making claims purely on the sovereignty of the Ruler post-partition and even in the context of the Mountbatten Plan do not seem viable since different complex understanding are involved in it.

### **In Defence of a Repackaged Autonomy Demand**

Is it so that granting of regional autonomy will be the best possible ways to resort and ease the tension in the conflict ridden regions of J&K? In the way the proposals in this regard are advanced, it is doubtful since allotting of autonomy of any kind, be it regional, territorial etc has its own advantages and disadvantages in the long run. There may be many advantages to autonomy as a solution to ethnic conflicts, but differences on the issue of autonomy, and the extent of it, may vary from context to context. Moreover allotment of autonomy also depends on the needs and socio-political and territorial set-up of the region as well. Thus the highest degree of autonomy accorded by China to Hong Kong includes the retention by Hong Kong of a

wide range of political, judicial and economic powers, from a separate Legislature and judiciary to full independent financial authority.<sup>84</sup>

Autonomy may also be a means responding successfully to concerns about minority rights, particularly when minorities are territorially concentrated in significant numbers. It is believed that in spite of the allotting of autonomy to any particular region or territory, it still maintains the territorial integrity of the states. And however powerful the autonomous units may be, they are not sovereign on the international level and remain ultimately subject in varying degrees to the jurisdiction of the state in which they were found.

One of the advantages can also be such that if conflicts and tensions among the regions of the state especially when conflicts arise by the demands of the minority groups, in such a situation autonomy seem to be the best way to alleviate the tension so that there is no need to develop criteria for secession, since secession (except by mutual consent) is simply not available as an internationally sanctioned outcome. It also can be understood that autonomy is far better in terms of granting or it is to be assumed that it will be better for the larger state in allotting them since they remain as part of the larger state in spite of the autonomous status.

Moreover the demand for self-determination or secession is rather a complete withdrawal from the former state and then forming a new separate state which means the fight and conflict based on these demands will not just be limited with agreement to certain concessions and autonomous status but it will probably be based on complete non-domination, non-interference and non-intervention in the internal workings of the new state. The fight for secession or self-determination has not been very successful when compared to the demand for a just autonomous status.

In this context it is important to critically look at the arguments advanced by Balraj Puri. He has forcefully put forward the argument that autonomy or assigning of autonomy should not only be confined to a unique region, rather autonomy needs to be spelled out along democratization process enabling the people of the region to make and realize their choices. At the same time, autonomous areas continue to be

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<sup>84</sup>Hurst Hannum, "Territorial Autonomy: Permanent Solution or Step towards Secession?" in Andreas Wimmer, Richard J Goldstone, Donald L Horowitz, Ulrike Joras and Conrad Schetter, eds., *Facing Ethnic Conflicts: towards a New Realism*, Rowman and Littlefield Publishers, inc. 2004



regions of a state, usually possessing some ethnic or cultural distinctiveness with separate powers of internal administration, without being detached from the state of which they are a part.

The observations of Balraj Puri on autonomy question are directly or indirectly related to the democratization process. He thinks that there need to be certain political conditions to enable this process to flourish. Such political conditions might encompass revamping institutions radically. They may call for the removal or reduction of outside authority in the state like the jurisdiction of federal autonomous institutions like the Supreme Court, Comptroller and Auditor General and Election Commission. Without corresponding autonomous state institutions, there would be an authoritarian regime in the name of minimizing the Union government's interference in the state's affairs.<sup>85</sup>

Often, democracy in Kashmir is projected as an impossible option, and demands for democracy have been censored as anti-national. This denial of democratic rights has deepened the alienation of the Kashmir people. Terrorist and secessionist forces have played on this sense of alienation. The implications of Puri's analysis are clear. Continued state repression will only widen the popular support for militant groups. Unless democratic processes are reintroduced and democratic groups have a space to operate, terrorism cannot be marginalized and contained. There is a need to understand the democratic aspirations of the people and open our minds to the possibility of regional autonomy within the federal structure.

Balraj Puri does mention about autonomy and if we read and understood him more closely then he outlines the whole Kashmir question on the very autonomy principle in general and regional autonomy in particular. His idea of regional autonomy is not just limited to the level of Jammu & Kashmir state but extends to the diverse constituent units of the state - Jammu, Kashmir and Ladakh. This very idea of Puri is unlike many who center their attention on Kashmir alone in the process of responding to the Kashmir question. There is no denying fact that it is the people of the region of Kashmir who showed the maximum form of dissent and has borne the cost of it. But it is important to note the fact that discontent in many forms could also be witnessed

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<sup>85</sup> Balraj Puri, ' Kashmir: Back to the Future'. It was written under the aegis of Islam and Politics on 3<sup>rd</sup> November. (URL: <http://www.newageislam.com>). (2009)

starting from the Dogra rule. Besides the Kashmir question cannot be merely reduced to the perspective and the context of the Kashmir region alone. For Puri every region has its set of discontents, and issues faced by them have to be taken seriously. Until and unless every region is granted regional autonomy the Kashmir problem is likely to be caught in a durable disorder.

The specific contours that a policy of regional autonomy encompassed by autonomy for J&K as a whole will assume cannot be pursued in substantial details in this study. However, such an endeavour is integrally bound with the process of democratisation, and acknowledgement of the distinctive identity of the region, including its recent history. We have argued that a solution to the Kashmir question that tilts it to Pakistan or makes its Islamic identity primary is not a realistic solution in context. To counter such unreasonable options a strong state in Kashmir is a necessity. But unlike in the present such a state power has to be directed against the enemies of the people of J&K rather than against the people themselves. This demands a reinforcement of transparency and strengthening of the rule of law rather than the rule of the gun.

## **CONCLUSION**

*Autonomy, in the framework of a modern democratic state, was first established in 1921 in Finland's Aland Islands. Later such concepts of power sharing have been implemented in all continents, and, in 2009, operate in at least 60 regions in 20 states. Particularly after World War II, the idea of autonomy for the protection of ethnic or national minorities and the resolution of self-determination conflicts became a political reality in various European states as well as in India. In most cases, regional autonomy provided the legal-political framework for the "internal self-determination" of a smaller or indigenous people or of an ethnic minority, preserving a specific ethnic-cultural identity while maintaining the sovereignty of the state in which they live. Not only could autonomy bring about peace and stability in conflict-ridden societies, but it could also enhance new partnerships between the central state and the regional community.*

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Thus, autonomy can be defined as a means of internal power-sharing aimed at preserving cultural and ethnic variety, while respecting the unity of a state. In case of Kashmir state this was enshrined in Article 370 of the constitution, later elaborated in the 1952 Delhi Agreement. In this perspective, autonomy consisted in solemnly acknowledging a certain degree of power suitable for particular purposes to a certain territory, giving its population the possibility of self-government, and leaving only residual responsibilities to the central government.<sup>86</sup>

In South Asia, India has experimented with regional autonomy with remarkable success, although there have been aberrations. Further there has been a great deal of insensitivity to implement in practice different kinds of differences, in terms of asymmetric federalism. One of India's success stories has been the concept of 'Autonomous District Councils'. This form of autonomy was allotted mainly to some

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<sup>86</sup> Thomas Benedikter, 'Solving Ethnic Conflict through Self-Government; A short guide to Autonomy in South Asia and Europe'. It was published under the aegis of EURAC, June (2009)

tribal areas of the states and these autonomous councils have acted as counter measure against the outgrowth of secessionist movements in these areas. These councils have also been granted extensive administrative powers to maintain their own state of affairs.<sup>87</sup>

In the constitutional order of Bhutan, Nepal, Sri Lanka or Bangladesh is little developed. These states, at least so far, are to be considered unitary states, with at best some limited degree of administrative decentralization. In Nepal the ongoing constitutional reform will certainly embrace some forms of territorial power sharing including powers to be vested in sub-state units, which will probably cover the whole state in a symmetrical form.<sup>88</sup>

Since the beginning of Nepal's existence as an independent state, any arrangement of autonomy for the regions, ethnic groups (janajati) or nationalities was absent in the Constitution, which was in force until 2006. Nepal shows considerable ethnic diversity, as there are 92 distinct ethnic groups or minority nationalities, and Nepali is the first language (in terms of resident population speaking it as a mother tongue) in only 54 of its 75 districts. The Communist Party (Maoist) which fought an armed struggle from 1996 to 2006 was driven not only by a social revolt of discriminated and downtrodden peasant groups, but also by the deep frustration of many janajati-groups who were excluded from the privileges of the upper castes of the Hindu-dominated Nepali society.

Under the previous constitutions these minority nationalities or ethnic groups enjoyed limited cultural and educational rights and suffered under the State's strategy to impose Nepali as the State's only official language and Hinduism as the prevailing State religion. Whether the framers of Nepal's new constitution will adopt territorial autonomy in a regional symmetrical form or full-fledged federalism remains to be seen.<sup>89</sup>

Apart from federalism, India remains the only South Asian state that has enshrined some forms of regional territorial autonomy in its Constitution, which provides

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<sup>87</sup> Ibid., p-66-67

<sup>88</sup> The new constitution of Nepal promises to be an imaginatively federal one. But it has not been ratified so far.

<sup>89</sup> Ibid., p-68-69

special status for certain states such as Jammu and Kashmir, Nagaland, Sikkim, Assam, Manipur, Arunachal Pradesh among others in Articles 370 and 371 of the Indian constitution. Some of these provisions of speciality are no longer applied, as it is the case with article 370 with respect to Jammu and Kashmir; others are an expression of Indian asymmetrical federalism. Territorial autonomy as existing in 11 European states has been established in India since the 1950s by the 6th schedule (an annex) of her Constitution. The 6<sup>th</sup> schedule contains detailed provisions for ‘Autonomous District Councils’ (ADC) in districts dominated by so-called tribal peoples.<sup>90</sup>

The main purposes of these provisions are to preserve the distinct cultures of tribal peoples, to prevent economic exploitation by non-tribal peoples, and to allow them to develop and administer themselves. This scheme departed from a mere concept of ‘ethnic reservation’ as listed in the 5th schedule; rather it establishes autonomous territories with mixed populations and requires full democratic institutions. Although limited in its scope, the ADC’s, which are based on very elaborate legislation and safeguarded by the Union government, were tasked with granting sufficient autonomy to prevent radical secessionist claims and movements and thus the further splitting up of the States.

India is the only South Asian country with working regional autonomies, but her working regional autonomies reveal major shortcomings. The institution of the ‘Autonomous District Councils’, based on the 6th Schedule of the Constitution, was originally conceived as a solution for tribal peoples and ethnic conflicts in the Northeast during the initial period of nation building. Established by the fathers of the Constitution to avoid splitting up the multiethnic Northeast, which was faced with a variety of self-determination claims by tribal peoples, the ADCs in their current form cannot meet the political requirements on the ground. They worked as a temporary painkiller, but the pain was to remain.<sup>91</sup>

But Kashmir case was different and unique because since independence Kashmir was given special rights guaranteed in the constitution of India as Article 370 rights which not given to any other states of India. Needless to say, it is also one of the most

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<sup>90</sup> Ibid., p-70-75

<sup>91</sup> Ibid., p-132-135

conflict and tension ridden states in India, but its uniqueness can be taken into account when it comes to the question of Autonomous District Councils enshrined in the 6<sup>th</sup> schedule of the Indian constitution. There is historical legacy involved: When the Instrument of Accession was signed by Maharaja Hari Singh, Kashmir merged and acceded to the Union only in matters of defence, communications and foreign affairs and the other powers were entrusted to the state of J&K as its own internal affairs. However historical legacies and contemporary justifications need not be collapsed. The kind of cautions enshrined in the 6<sup>th</sup> schedule in matters of disturbed areas and conflict prone areas have their relevance in J&K too. Probably autonomous district councils in relation to states could hold out a mirror to what should be the constitutional and legal relations of J&K with Indian Union.

What would such regional autonomy be? Regional autonomy can also be seen as an arrangement aimed at granting the population of a sub-state unit a means by which it can express its distinct identity and run its own affairs in certain spheres. I would imply autonomy to the different constituent units of J&K, in response to their alienation from the existing mode of governance, in the model of the provisions of Schedule 6, appropriately readjusted to the context. At the same giving teeth to the provisions of the special status to J&K, for it ensures protection of regional identity of Kashmir and the spirit of Kashmiriyat. Without recognition of the distinct identity and autonomy of the regions, the valuable composite heritage of the region as a whole would be swamped by the rising tide of communalism and fundamentalism.

Regional autonomy is often considered a mechanism of conflict resolution, a compromise between a minority aiming at self-determination and a state protecting its territorial integrity. While being a solution to conflicts, there is reason to suspect that autonomy can under certain circumstances can act as a catalyst of conflict. In this context we need to ask whether autonomy played any role in the escalation to armed conflict in Kashmir. Was autonomy a factor generating conflict, or did conflict emerge in these specific regions due to other reasons?<sup>92</sup>

The agreement between the Government of India and the Kashmir Government known as the Delhi Agreement 1952 enhances the scope for greater regional

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<sup>92</sup> Cornell Svante E, 'Autonomy and Conflict: Ethno territoriality and Separatism in the South Caucasus', Cases in Georgia. Department of Peace and Conflict Research, Report No. 61. 258 pp.

autonomy to the region even though constitutionally such powers have been allotted by Article 370. No other states in India were conceded these rights and privileges such as sovereignty in all matters other than those specified in the Instrument of Accession, a separate flag and its own constitution etc. Furthermore, both the state government and the Government of India agreed that the application of Article 356 dealing with suspension of the state Constitution and Article 360, dealing with financial emergency, were not binding on the state. Further the chapter relating to 'fundamental rights' in the Indian Constitution could not be made applicable to the state. But looking at the issue through the prism of Autonomous District Councils in some of the tribal states in India, provisions of sub-state autonomy have not prevented demands of secession or demand for separate statehood. Given such recurrence of demands, we have argued that reinforcing democracy with regional autonomy offers the best of the solutions in the given context.



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