

GOVERNANCE AND CONFLICT POLITICS IN JAMMU AND KASHMIR: A CASE STUDY FROM ACCESSION TO INSURGENCY

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Abstract

The paper analyses the factors responsible for the governance deficit in the state of Jammu and Kashmir and how far the Kashmir conflict has affected the democratic governance in the state. An attempt has been made in the paper to answer the question, how insurgency has impacted the governance in the state? The paper also studies the importance of constitutional arrangements between the Centre Government and the State Government with special reference of Article 370 of the Indian Constitution under which more autonomy and special status has been given to this particular state. In addition, an attempt has been made to find out the democratic and governance deficit in the state of Jammu and Kashmir that has created by the process of amending the Article 370 of the Indian Constitution from the year of 1952.

Keywords: Constitution, Governance, Democracy, Conflict, Kashmir.

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Introduction:

Jammu and Kashmir is among the contemporary world's longest running and most catastrophic conflicts; its origin lies in the momentous events in the wake of the 1947 partition of the Indian subcontinent. The struggle for independence against the Britishers gave birth to partition between two independent nations i.e. India and Pakistan. The politics of subcontinent greatly affected the princely states and Kashmir was no more exceptional. The state of Jammu and Kashmir was ruled by Dogra rulers from 1846 till 1947. The oppressed nature of politics in the state gave a birth revolutionary party in 1932 under the pen name of All Jammu and Kashmir Muslim Conference.(Bazaz,p.183) The party sole objective was to achieve responsible government. However the party was labelled as acommunal organisation by the other religious organisation and finally, it was under the leadership of late Sheikh Mohammad Abdullah the organisation was renamed All Jammu and Kashmir National Conference in 1939 and party was open for non-Muslims. (Abdullah, p.176) The ideology of this party was closely linked with the Indian National Congress. (Lamb, p.13) The party's prime objective was secular in character which shaped the later political discourse in the state. As the state was under the autocratic rule of the Maharaja Hari Singh, the government witnessed people's movement to achieve the aim and objective of responsible government. Many constitutional measures were taken by the Maharaja Hari Singh during his regime to accommodate and fulfil the grievances of the people. The struggle against the Maharaja Hari Singh and the politics of the Indian Subcontinent greatly affected the state both internally as well as externally. Sheikh Abdullah and his party NC developed close relations with the Indian National Congress which gave birth to another organisation and old MC was revived in 1941. (Abdullah, p.175) The politics of the state from here is a direct confrontation between both these parties i.e. NC and MC. People associated with MC were closely linked with the ideology of Muslim League and its leaders especially Jinnah, on the other hand, NC under Abdullah was highly influenced by aperson like Gandhi and Nehru. The politics of protests and anti-Maharaja sentiment led to the strong involvement of both INC and Muslim League in the state, resulted in divided the public opinion, both the parties claimed to be the well-wishers of the people. (Khan Ishaq, pp.103-4)When Britishers left India in 1947 with many unresolved issues like the boundary between the two countries with that the birth of Kashmir dispute. The state under Maharaja acceded with India conditionally on certain subjects like defence, foreign affairs and communication. The state's accession with rest of India was

challenged from day one from both in Kashmir as well as from Pakistan. The tall leader like Abdullah too also lost his prestige as he was criticised by the parties who were either in favour of Independent or accession with Pakistan.

Jammu and Kashmir as many authors claimed is the only State of the Indian Union which negotiated the terms of its membership with the Union, right from its accede with the union the state entered into the politics of protests. However, at the same time, the leadership provided by Sheikh Mohammad Abdullah in the early years from 1948 when he was installed as the Prime Minister of the state tried to improve the governance in the state. But with the passage of time since partition, Jammu and Kashmir State has rarely witnessed good governance. The major factors responsible for this dilemma have been the political instability, overt and covert destabilisation of political institutions by the central governments and lack of steadfastness of the local political leadership. All state political stalwarts from Sheikh to present day remained obedient to their masters in Delhi and nurtured their interests for retaining or obtaining power. However, the relationship of state with India after the signing of the Instrument of Accession was determined by various provisions of the Constitution of India like article 370 (Ram, p.172) or in another name greater autonomy was provide to the state within the framework of Indian constitution.

Delhi Agreement 1952 between Nehru and Sheikh Abdullah:

The first erosion of the state autonomy was started none other than the tallest leader Sheikh Mohammad Abdullah by signed Nehru-Abdullah Agreement in July 1952 known as (“the Delhi Agreement”). The accord confirmed that “the residuary powers of legislation” (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir. The union flag was given primacy, fundamental rights were made applicable to Jammu and Kashmir and the jurisdiction of the Supreme Court was extended to the state. (Noorani, p.10) Discontent within the state was simmering as the Centre of power shifted from the Jammu-based ruler to Kashmiri leadership. The NC under Abdullah became a monolithic party with a three-pronged program: one leader (Abdullah); one party (NC) and one programmes (New Kashmir). Powerful and charismatic Abdullah became the

supreme leader of the valley as the distinctions between party and administration got blurred. (Puri, pp.188-9)

On 23rd. November 1952 the Praja Parishad launched a powerful protests and campaign in Jammu Province and demanded complete accession of the State of Jammu and Kashmir to the Indian Union, the agitation opposed the special status given to the State of Jammu and Kashmir by the Central government with the slogan “EK Pradhan, EK Vidhan, EK Nishaan (one President, one Constitution, one Flag) (Ram, p.172).However,Delhi Agreement certainly paved the way for more Orders-all with “the concurrence of the State Government”, each elected moreover in a rigged poll. Ninety-four of the 97 Entries in the Union List and 26 of the 47 in the Concurrent List were extended to Kashmir as were 260 of the 395 Articles of the Constitution. On 14th May 1954 the Constitution (Application to Jammu and Kashmir) Order 1954 was issued by the President of India with the concurrence of the Government of Jammu and Kashmir. This Order implements the Delhi Agreement as ratified by the Constituent Assembly and also supersedes the Order of 1950. (Basu, p.5)The State's Constitution was overridden by the Centre's orders. Its basic structure was altered. The head of State elected by the State legislature was replaced by a Governor nominated by the Centre. Article 356 (imposition of President's Rule) was s applied despite aprovision in the State's Constitution for Governor's rule (Section 92). This was done on November 21, 1964. On November 24, 1966, the Governor replaced the Sadar-i-Riyasat and state’s Prime Minister was replaced by Chief Minister after the State's Constitution had been amended on April 10, 1965, by the 6th Amendment.The second question to be analysed is whether article 370 has retained its original position. The answer to this question is big No, as 47 orders have been made applicable to the state of Jammu and Kashmir from 1956 to 1994. Similarly out of the 97 union subjects 94 have been made applicable to the state of Jammu and Kashmir. (Noorani, p.)This clearly shows that article 370 has been eroded from time and made a hollow provision. Thus the autonomy as envisaged by article 370 has been eroded substantially.

The state saw one of its dark days of August 1953, when Abdullah government was dismissed and Sheikh Abdullah was put under detention for an indefinite period. The arrest of Abdullah later changed the further discourse of state politics as he was replaced by weakadministrator Ghulam Mohammad Bakshi, Sadiq and others under them state lost the ethos of democratic

culture whatever was present during Abdullah's tenure. (Teng, p.203). Under Article 370 of the Indian Constitution, the Indian Constitution granted special status to the State of Jammu and Kashmir but the Central Government's policies since 1953 have totally undermined its autonomy. To quote Nehru:

"I say with all respect to our Constitution that it just does not matter what your Constitution says; if the people of Kashmir do not want it, it will not go there. Because what is the alternative? The alternative is compulsion and coercion..."

"We have fought the good fight about Kashmir on the field of battle... (And) ...in many a chancellery of the world and in the UNO, but, above all, we have fought this fight in the hearts and minds of men and women of that State of J&K. Because ultimately - I say this with all deference to this Parliament - the decision will be made in the hearts and minds of the men and women of Kashmir; neither in this Parliament, nor in the United Nations nor by anybody else," Jawaharlal Nehru said in the Lok Sabha on June 26 and August 7, 1952. (Nehru, pp.295-6)

Governance remains one of the major challenges in Jammu and Kashmir. Due to the fact that the state got embroiled in conflict situation quite early, not much attention was given on the structure of governance. The arrest of Sheikh Abdullah and his subsequent demand for plebiscite; central intrusion in the politics of the state, especially the imposition of unpopular leadership with the support of the Central government, created a crisis of legitimacy both for the national as well as the local government. All this generated a political environment in which governance was not the immediate priority of the powers that be. Throughout the decades of the fifties and sixties, the government was neither responsive to people's aspirations, nor run on the principles of accountability. B.K Nehru has rightly observed that "From 1953 to 1975, Chief Ministers of that State had been nominees of Delhi. Their appointment to that post was legitimised by the holding of farcical and totally rigged elections in which the Congress party led by Delhi's nominee was elected by huge majorities." (Nehru, BK, pp.614-5) The policy of the central government to install a weak administrator's further created a democratic deficit and poor governance in the state.

Indira-Abdullah Accord 1975:

The return of Abdullah from separatist tendency to mainstream politics in 1975 by signing the infamous Kashmir Accord with the late prime minister of India Indira Gandhi was yet another setback to Kashmir autonomy. The Sheikh who claimed to be the tallest leader surrendered the plebiscite front for which he was in jail. The message was clear from the centre that the clock cannot be turned back. The central government from time to time made interference in the affairs of the state. The manipulation of internal affairs became worse when the Congress and Indira Gandhi returned to office after the brief interlude of Janata rule in 1977-79. (Puri, pp.188-9). The return of Abdullah could not provide good government during his second spell of his term as Chief Minister, because of some mysterious compulsions and the centre's machinations. Sheikh Abdullah died in 1982 and Farooq Abdullah, his son, had assumed the party's leadership. What followed was shameful.

Insurgency and Governance:

The death of Sheikh created a leadership vacuum both within the ranks of NC as well as in the state. The Central government now finds it easy to replace one administrator with another weak and incompetent leader. The Farooq led government was not able to deliver after 1982 which led to the change of guards and he was dismissed. In the run-up to the 1984 elections, Indira Gandhi openly appealed to Hindu sentiments to mobilise pro-Congress votes in Jammu; the NC leader, Farooq Abdullah, resorted to similar tactics to mobilise Kashmiri Muslims. In June 1984, the Congress, now allied with the NC in a coalition government in the state, engineered a split and replaced Farooq with G.M. Shah. The Shah government lasted for just under two years and was dismissed in March 1986. These were the years of rapid concentration of power in the hands of central governments and growing intolerance toward all opposition. Rajiv-Farooq accord and the worst rigged 1987 election which further led to the collapse of administrative institutions, the emergence of militancy and the direct central rule of the state under the most communal governor, Shri Jagmohan.

The ruling Congress forced the NC to forge an electoral alliance that destroyed whatever claims the NC had to be an independent force in Kashmir. The election itself was rigged and fraudulent. New Delhi's tactics triggered a wave of popular anger in sentiment and Azadi movement was reborn with violent means this time, exacerbated by poor governance, widespread corruption and lack of jobs. The fraudulent elections acted as a trigger that set Kashmir on a militant course. The process further worsened between 1987 and 2002 the democratic process broke down altogether. Kashmir witnessed instead a genuinely popular revolt against Indian control. (Schofield, pp.233-5)The words of Abdul Ghani Lone a Kashmiri opposition leader-encapsulated the roots of popular anger against 'democracy' in Kashmir, "It was this [subversion of democracy] that motivated the young generation to say 'to hell with the democratic process and all that this is about' and they said, 'let's go for the armed struggle.'" (Widmalm, p.80)The aggressive period of militancy in the early 1990s when the National Conference formed the government in 1996, it was faced with the most intricate situation. Apart from dealing with violence, it had to re-assert the political authority of the government (that had been eroded soon after the onset of militancy) and widen the public space for democratic processes. During this period Government offices have become gossip sites. This authorised lethargy leads to accumulation of public grievances. In short, the hopeless governments have been causing unwarranted agonies to the people. As a result protests, roadblocks and stone pelting have become the order of the day. Employees are often on strike for service benefits, daily wagers protest for regularisation of their service and unemployed youth for jobs. The state is economically backwards; day-to-day protests and shutdowns further deteriorate the economy of the state, affect the education of children and add to the agonies of the people. The period of Farooq Abdullah from 1996-2002 of NC's rule was only on papers rest the breakdown of administration and institutions in the state was a major problem created by the armed struggle, the government hardly cares about the rampant corruption and nonperformance. Since 1990, Kashmir has been subject to a range of legislative provisions. Among them, three are germane to this discussion, namely, the Jammu and Kashmir Armed Forces Special Power's Act (AFSPA), the Disturbed Areas Act (DSA), and the Public Safety Act (PSA). All three pieces of legislation are the outcome of the privileging executive and military authority over the legal and judicial process in Kashmir; their selective application in Kashmir underscores the great chasm in law and legal process between Kashmir and India. The imposition of black laws, raise grave concerns regarding the legal basis of legislation and

governance in Kashmir. If the principle of legality derives from clearly defined laws and legal procedures, then the PSA and AFSPA fall well short of this principle. Both pieces of legislation violate the inalienable right to life. People got ruthlessly killed by the state apparatus and institutions which lead to the people's movement and anger in the valley. The serious human rights violations and disappearance also created alienation and rift between the people and the institutions of the state.

It was only after 2002 that the issue of governance assumed sufficient importance. As democratic space was extended, a clear distinction was made in Kashmir between the separatist politics that was linked with the context of conflict and its 'ultimate resolution' and the mainstream politics. This politics, also generally referred to as the 'politics of governance', was expected to address various day-to-day issues faced by the people. Of the various issues that confronted the people at that point in time, the most important related to the context of militarization and the violation of Human Rights. 'Governance' therefore came to be judged, in the post-2002 period by the status of human rights and the level of relief provided to the common people who were pressurised by the presence of security forces since 1989. As PDP emerged as the major coalition partner in 2002, it sought to focus on these issues by emphasising on its slogan of 'healing touch' (Choudary, p.456) The functioning of state governments has always been pitiable. With every change in government, there have been frequent reshuffles in administration, and that too based on likes and dislikes of alliance partners. This official indifference demoralises the honest and competent employees and breeds inefficiency. Diversion of funds on political considerations, delay in the release of funds by the central government and consequent delay in completion of development works result in lapsing of funds and cost escalation. The state continued the poor status of human rights; the conflict situation has generated a number of other issues related to governance. Unlike various other states of India where sufficient focus has been placed on accountability and transparency and decentralised structures and processes, the state of J&K has lagged far behind. The political elite has used not only the context of conflict but also the special constitutional status of the state to stall the institutionalisation of some of these structures and processes. That is the reason that the state lags much behind other states in institutionalising the Panchayati Raj; in bringing about an effective movement for the Right to Information; institutionalising the Accountability/ombudsman commission. The story of RTI, which having

avery late entry in the state is still to be properly institutionalised. State Accountability Commission, similarly, has remained mired in various controversies and therefore almost non-existent. The fate of other autonomous bodies remains almost similar. The State Commission for Women was headless throughout the six years of the Congress-PDP government. The State Commission of Human Rights is a toothless body.

Conclusion:

The politics of conflict had greatly affected the governance of the state and therefore unless measures will not be taken to restore the system by deepening and consolidating democratic institutions the state will not come out from the mess called miss-governance. The governance of the state is closely linked with the nature of the state dispute from the beginning of accession. The breakdown of institutions by both central as well as the state governments from time to time have created governance deficit in the state. The arrest of Abdullah in 1953 had created a sense of alienation among people, and further manoeuvring on part of the central government with democratic institutions of the state from time to time has created a credibility crisis for these institutions in the valley. Apart from it, erosion of article 370 as a result of Indian government's efforts to consolidate the basis of unitarian nationalism in J&K has reduced the scope for liberal politics in Kashmir. In the mid-1990s the state entered the new stage where all its institutions were destroyed by the wave of the insurgency, which led to the breakdown of all institutions of the democratic process in the state.

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