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M Amarjeet Singh

# CONFLICT IN JAMMU AND KASHMIR



NATIONAL INSTITUTE OF ADVANCED STUDIES

Bangalore, India

# BACKGROUNDERS ON CONFLICT RESOLUTION

Series editor: Narendar Pani

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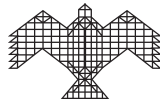
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Backgrounders on Conflict

# CONFLICT IN JAMMU AND KASHMIR

M Amarjeet Singh



NATIONAL INSTITUTE OF ADVANCED STUDIES  
Conflict Resolution Programme  
Bangalore, India

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# EXECUTIVE BRIEFING

The years of armed conflict in Jammu and Kashmir have claimed the lives of tens of thousands of people, and also wounded and displaced several thousands more. The pain of this violence was seen on the national stage through specific incidents such as the kidnapping of Rubia Syed, the daughter of then Union Home Minister in 1989, followed by the killing of H. L. Khera, general manager of Hindustan Machine Tools and Musheer-ul-Haq, vice-chancellor of University of Kashmir in 1990. The armed rebels did not even spare the religious places. The economic costs too have been devastating. Underlying this continuous upheaval is a number of issues.

## ISSUES

### 1. Accession to India

The most contentious issue and one that has been a subject of international attention is the accession of Jammu and Kashmir to India after Partition in 1947.

Pakistan has continued to maintain that it should have become its territory since it had a Muslim majority and also alleged that the then ruler was pressurised to accede to India. It also accused India of violating the commitment to hold a plebiscite on its future. On the other side, India insisted that the accession was completely valid and accused Pakistan of forcefully occupying parts of the state. India also maintained that since Jammu and Kashmir is an integral and inalienable part of the country there can be no question of negotiating on the question of its accession.

The dispute continues to be the key stumbling block in the relations between the two neighbours. For Pakistan it is the core issue in its relationship with India. New Delhi maintains that the matter has already been settled, and the more important issue is that of Pakistan of promoting insurgency and terrorism in India, especially in Jammu and Kashmir.

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- The Author is an Assistant Professor in the Conflict Resolution Programme at National Institute of Advanced Studies, Bangalore.
  - The paper has benefited from the comments by Dr. Arpita Anant and Dr. Yoginder Singh Sikand. It also had the benefit of discussions with seminar audiences in New Delhi on 21-22 March 2011, and a discussion in Bangalore on 26 August 2010. None of them are, of course, responsible for the views presented here.

## 2. Human rights issues

Since the beginning of the armed conflict violent incidents have become an everyday occurrence in the state. To tackle the situation special laws like the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 and the Public Safety Act, 1978 have been promulgated. But these Acts have been associated with allegations of human rights abuses. There have been regular protests demanding the removal of these laws and the withdrawal of the government's armed forces. There is however no consensus among the political parties whether to repeal or amend these special laws. And, some others also argue that the withdrawal of special laws would demoralize the armed forces.

## 3. Azadi, autonomy or self-rule

Azadi has different meanings for different people. At one extreme it is a demand for complete independence while for others it is a demand for greater autonomy. The mainstream political parties, like the National Conference and the Peoples Democratic Party advocate autonomy and self-rule. The National Conference demands the strengthening of the Article 370 of the Constitution of India. The party fears the abrogation of the Article would encourage separatism, while those favoring its abrogation argue that

it is creating psychological barriers thereby encouraging separatist tendencies. The Peoples Democratic Party advocates a step-by-step integration of Indian and Pakistani Kashmir in fields like trade, travel, institutions and legislature. It believes the resolution of the dispute requires a combination of intrastate, interstate and suprastate measures. It insists that self-rule is a "formulation that will integrate the region without disturbing the extant sovereign authority over delimited territorial space".

## 4. Division within

One of the visible impacts of the current conflict has been the gradual polarisation of state's population along regional lines. The people in Jammu as well as Ladakh often complain that both the Central and state governments are neglecting their regions and give undue importance to the Kashmir valley. The divide snowballed into a major controversy in 2008 when the state government decided to transfer 100 acres of forest land to the Shri Amaranth Shrine Board. The Board later gave up the claim on the forest land after the government gave an assurance to provide all necessary facilities to pilgrims going to the shrine. Following this impasse, several Jammu-based organisations intensified the demand for the reorganisation of the state.



The people of Ladakh too have demanded union territory status.

### 5. Migration of Kashmiri Pandits

Insecurity due to armed conflict in the 1990s compelled around 55,000 Kashmiri Pandit families to flee their homes and take shelter in Jammu, Delhi and elsewhere in the country. Despite being numerically small, the community was a “highly visible” group that was traditionally land owning, educated and elitist. They were able to convey their distress at being forced to live for two decades in temporary shelters with minimal basic facilities. Politicians and other leaders have spoken of their return, but none could guarantee their safety. It must be noted, however, that there were Pandit families who did not migrate in the 1990s, and some of the migrants later returned to the valley.

## CONFLICT AND INSTITUTIONS

The present crisis can be seen as a result of the inability to enforce a set of abstract rules leading to the emergence of new institutional practices. These could include the government and its various agencies, non-state armed groups and other socio-political organisations. All have come to be associated in different capacities in the course of the conflict. The initial reaction to the conflict has been

to treat it as a case of non-implementation of rules, that is, as a law and order problem. This helped the rebels tap the discontent that emerged from the alleged human rights violations by the government forces. The dissatisfaction on the ground was compounded by the inability of the successive governments to meet the growing aspirations of its people. In practice this widespread discontent and responses to it, have created non-state institutions of the armed and unarmed groups. *South Asia Terrorism Portal* listed as many as 35 active and not-so-active armed groups involved in the current conflict. The list included, among others, Lashkar-e-Taiba, Jaish-e-Mohammed, Harkat-ul-Mujahideen and Hizb-ul-Mujahideen.

Armed groups created para-statal organisations in the areas they operated in that lay down a set of rules and have the means and resources to enforce them. Thus, they not only monitored the government but also administered their own social welfare services to gain public support from their distribution of public goods. In this way, many of the functions which are within the domain of the state institutions have been encroached upon by the non-state institutions. They also boycott all Indian national events like Independence Day and Republic Day celebrations. The overall impact has been

the dilution of the legitimacy of state institutions. Further, one of the striking aspects of this long-running conflict has been the proliferation of a large number of socio-political organisations such as the All Party Hurriyat Conference which have been playing different roles in the course of the conflict.

## OPTIONS

We have not discovered any formulas for setting things right. Apart from the usual call for dialogue with all the disgruntled groups, the effort of the government has so far made very little success on the ground. The tendency to view the conflict as a law and order problem has contributed to the willingness to use force. Central assistance has increased considerably over the years to promoting faster economic development of the state. One of the major development initiatives undertaken was the Prime Minister's Reconstruction Plan initiated in 2004

that involved an outlay of approximately Rs. 28000 crores for various development projects. Further, there has been a special focus on "people to people" contact across two parts of the state through Cross LoC Travel and Cross LoC Trade. Very recently, the Central government initiated a comprehensive peace plan that included, among others, the appointment of interlocutors who are entrusted with the task of undertaking a sustained dialogue with the people of the state to understand their problems and chart a future course of action. Above all, India and Pakistan continue to engage in bilateral talks leading to a series of Kashmir-specific confidence building measures (CBMs). Among the other options that have not always received the attention they deserve, are the grant of autonomy, repeal of AFSPA/PSA, enhancement of the National Human Rights Commission's (NHRC) role in the state, third-party mediation, and reorganisation of the state.

# CONFLICT IN JAMMU AND KASHMIR

## FLASHPOINTS

### **Quit Kashmir movement**

In 1946, the Jammu and Kashmir National Conference (NC) spearheaded the “Quit Kashmir” movement against the alleged autocratic administration of the Dogra ruler and the annulment of the Treaty of Amritsar. Several NC leaders, including Sheikh Mohammad Abdullah, were arrested.

### **Accession of Jammu and Kashmir to India**

The erstwhile princely state of Jammu and Kashmir acceded to India on 26 October 1947 through an Instrument of Accession executed by Hari Singh, the then ruler. It was formally accepted by Lord Mountbatten, the Governor General of India, on 27 October 1947. Pakistan alleged that Hari Singh had no right to execute the accession when the Standstill Agreement was in force with it, while India maintained that it was legal.

### **Bifurcation of Jammu and Kashmir**

A Ceasefire Line came into being in

1949 following the Karachi Agreement by India, Pakistan and the United Nations in accordance with the United Nations resolution of 13 August 1948, and divided Jammu and Kashmir between India and Pakistan.

### **Delhi Agreement, 1952**

The agreement provided for Jammu and Kashmir’s autonomy within the Indian Union. Its main features include the vesting of the residuary powers of legislature in the state itself; the state would have its own flag in addition to the union flag; the Sadar-i-Riyasat would be elected by the state legislature and be a person acceptable to and appointed by the President of India; Articles 52 to 62 of the Constitution of India relating to the President and Vice President would be applicable to the state; and the Supreme Court of India would have only appellate jurisdiction.

### **Simla Agreement, 1972**

Through this agreement, both India and Pakistan agreed to settle their

differences over Jammu and Kashmir through peaceful bilateral negotiations. Pending the final settlement of any of the problems, neither side would unilaterally alter the situation. Both sides also decided to withdraw their respective forces to their side of the international border; and decided to respect the Line of Control (LoC) resulting from the cease-fire of December 1971.

### **Commencement of organised violence**

The state has witnessed active armed conflict since the late 1980s. It was preceded by a state assembly election in 1987 that was widely-believed to be rigged, and an anti-India demonstration that broke out in the Kashmir Valley in 1988. The first major rebel attack took place with bomb explosions in the city of Srinagar in July 1988. The rebels stepped up violent activities including the kidnapping of Rubia Syed, the daughter of the then Union Home Minister, in December 1989. She was released in exchange for the release of five rebel leaders.

### **Kashmiri Pandits' displacement**

Insecurity caused by the early phase of the armed conflict led to the exodus of tens of thousands of Pandits from the Kashmir Valley. Some 55,000 families

were said to have been affected, and living in Jammu, Delhi and some other places.

### **Seize of Hazratbal shrine**

In 1993, security forces surrounded Hazratbal shrine in Srinagar following its occupation by armed rebels. The siege ended after 32 days and the rebels surrendered.

### **Seize of Charar-e-Sharief shrine**

In 1995, security forces launched an offensive to flush out armed rebels holed up at Charar-e-Sharief. The Charar-e-Sharief shrine and a portion of the town were damaged in the subsequent gun-battle. Several rebels were killed while others escaped.

### **Kargil war**

Soon after the signing the Lahore Declaration by Indian Prime Minister, A B Vajpayee and Pakistan Prime Minister Nawaz Sharif in February 1999, Pakistani soldiers were spotted in Kargil area of Jammu and Kashmir in the month of May, forcing India to launch military action to flush out the intruders. The Indian armed forces successfully evicted the intruders. Both sides ceased military operations in July.

### **Passing of autonomy resolution**

In 2000, the state assembly passed a resolution accepting the report of the State

Autonomy Committee (set up by the state government to examine the issue of greater autonomy). The report recommended greater autonomy including the restoration of the pre-1953 constitutional status of the state. The resolution was summarily rejected by the Central government.

### **Collapse of the ceasefire**

On 24 July 2000, the Hizb-ul Mujahideen, an active rebel group, offered a three-month long cease-fire to facilitate negotiations with the Central government. The government accepted the offer. During the first round of talks, Hizb-ul Mujahideen insisted the government must acknowledge Kashmir as a trilateral dispute necessitating tripartite talks between India, Pakistan and people of Jammu and Kashmir. On 8 August, it withdrew from the cease-fire citing non-inclusion of Pakistan.

### **Ceasefire during Ramadan**

The Central government offered to suspend combat operations by security forces against rebels during the holy month of Ramadan with effect from 27 November 2000, hours ahead of commencement of the holy month. The six-month ceasefire was revoked on 23 May 2001.

### **Attack on state Assembly**

On 1 October 2001, unidentified gunmen sneaked into the high-security Assembly complex located in Srinagar and engaged the security forces deployed there in a gun-battle, killing several people. The Jaish-e-Mohammad, a leading armed group, claimed responsibility for the attack.

### **Amarnath land controversy**

In 2008, trouble broke out in the Kashmir valley opposing the state authorities' decision to transfer 100 acres of forest land to Shri Amaranth Shrine Board for setting up temporary shelters for pilgrims. The Congress party-led state government plunged into a crisis after the People Democratic Party (PDP) pulled out of the coalition opposing the land transfer. When the state government revoked the land transfer order, violent protests broke out in Jammu region. The issue soon snowballed into a divide between Jammu region and Kashmir valley. The Central government intervened and called an all-political party meeting. The Board later gave up the claim on the forest land after the government gave an assurance to provide all necessary facilities to pilgrims going to the shrine.

### **Protests against alleged human rights violations**

Over 150 people were killed in 2010 when violent demonstrations broke out for over

three months in Srinagar and its surrounding areas. It was triggered by the alleged excesses committed by the security forces. Educational institutions were shut down for over three months due to the unrest. To defuse the situation, an all-political party delegation led by the Union Home Minister P. Chidambaram visited the state in September that year

and met representatives of political parties including separatist leaders. Following this visit, the Central government initiated a comprehensive peace plan, known as the Eight-point Peace Formula. This provides for the appointment of interlocutors to initiate dialogue and a review of the deployment of security forces.

# TERRAIN

Jammu and Kashmir, situated between 32° 17' 2" N and 36° 58' 2" N latitude, and 73° 26' 2" E and 80° 30' 2" E longitude, constitutes the northernmost state of India. The altitude varies from 1000 to 28250 feet above the sea level. It shares borders with Pakistan in the west, China in the north and east, and the Indian states of Punjab and Himachal Pradesh in the south.

It has a total area of 222,236 sq. km (78,114 sq. km under the occupation of Pakistan, 37,555 sq. km under China, and another 5,180 sq. km handed over to China by Pakistan). The erstwhile princely state was administratively divided into Jammu, Kashmir, Ladakh and Gilgit. In 1949 it was bifurcated. The Indian part consists of Jammu, Kashmir and Ladakh. The Muzaffarabad area and Northern Areas are under *de facto* Pakistan administration. In addition, China controls the trans-Karakoram Shaksgam valley and the adjacent region, which Pakistan unilaterally ceded to it in 1963 as part of

a boundary settlement, and also Aksaichin and a strip of Western Ladakh, into which it intruded and then militarily occupied in 1962.<sup>1</sup>

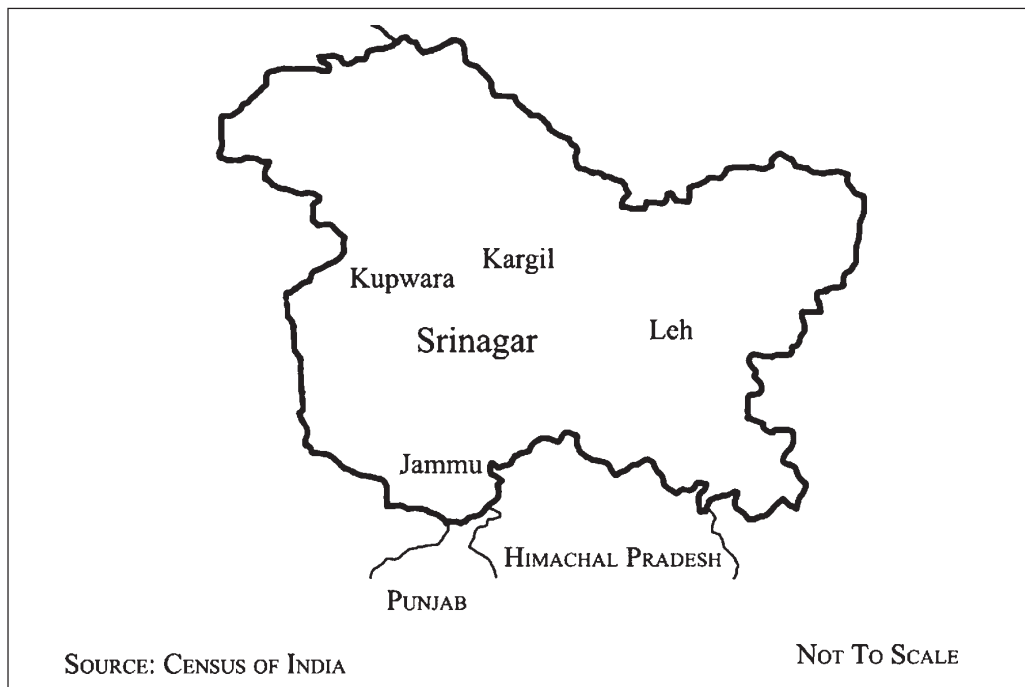
The state consisted of seven broad physiographic zones: plains, foothills, lesser Himalayas, greater Himalayas, Kashmir valley, upper Indus valley, and Karakoram.<sup>2</sup> The Jammu region comprises the plains, hills and mountains south and west of the Pir Panjal range. The Kashmir valley is situated at an average elevation of about 5,300 feet above sea level. Ladakh constitutes the easternmost part. The Jammu-Srinagar national highway is the only road link between Kashmir valley and rest of the country. The railway network has started making its presence felt in the state.

Except for Jammu and Kathua districts on the plains and the plateau of Ladakh, the state is a mountainous region. The water resources are abundant. The state is administratively divided into Kashmir and Jammu divisions which are

<sup>1</sup> Verghese B.G. (2007), A J&K Primer: from Myth to Reality, pp. 7-8.

<sup>2</sup> Government of India (2003), State Development Report Jammu & Kashmir 2003, pp. 11-12.

## Jammu and Kashmir



further subdivided into 22 districts. The Ladakh region comes under Kashmir division. Each division is headed by a Divisional Commissioner, each district by a Deputy Commissioner.

The climatic conditions vary from tropical in Jammu plains to semi-arctic cold in Ladakh with Kashmir and Jammu mountainous tracts having a temperate climate. The annual rainfall varies from about 92.6 mm in Leh, 650.5 mm in Srinagar and 1115.9 mm in Jammu. The state is blessed with riverine geography and is geologically constituted of rocks varying from the oldest period of the

earth's history to the youngest present day river and lake deposits.

The state has recorded a population of 1,25,48,926 persons as per the provisional estimates of the 2011 census, which is about one per cent of the country's population. The literacy rate was 68.74 per cent in the 2011 census as against the national average of 74 per cent. Agriculture and allied activities are the predominant sector of its economy, and it has a low level of industrial development.

The state is a multi-ethnic and multi-lingual entity. Ethnic groups on the Indian



side are mainly Dogras, Punjabis, Kashmiris, Gujars and Bakarwals, Ladakhis and Baltis while those living on the other side are Punjabi, Pathan, Balti,

Dardi, Shin, Yashkun, Mongol, Tadjik, Turkic and other Central Asian extractions.<sup>3</sup>

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<sup>3</sup> Vergheese B.G. (2007), p. 8.

# HISTORY

The erstwhile princely state of Jammu and Kashmir acceded to India through an Instrument of Accession executed by its ruler Hari Singh in October 1947, which Pakistan claimed was done under pressure from India. Pakistan even alleged that Hari Singh had no authority to do so when a Standstill Agreement—a temporary arrangements designed to maintain the *status quo ante* in respect of certain administrative matters of common concern, pending the accession of the princely state to either India or Pakistan—was in force with it. India, however, insisted that the accession was legal.

In 1947-48 a Pakistani aggression (which several Pakistani commentators referred to as an indigenous uprising supported by tribesmen) resulted in that country occupying several key areas including Muzaffrabad. India petitioned the United Nations Security Council in 1948, leading to four UN resolutions. This was followed by the Karachi Agreement of July 1949 authorizing the creation of the Cease Fire Line thereby formalizing the creation of Indian and Pakistan-controlled parts of Jammu and Kashmir. The Cease Fire Line

was later re-designated as the Line of Control as specified in the Simla Agreement.

The second India-Pakistan war over Kashmir took place in 1965 after Pakistan launched a covert offensive across the Cease Fire Line into the Indian part of Jammu and Kashmir. It lasted over a month and ended in a United Nations sponsored ceasefire. In January 1966, Prime Minister of India Lal Bahadur Shastri and President of Pakistan Mohammad Ayub Khan met at Tashkent and signed a declaration affirming their commitment to solve their disputes through peaceful means.

Following the Simla Agreement in 1972, signed after the 1971 India-Pakistan war that resulted in the formation of Bangladesh, both countries decided to end conflict and resolved to settle their differences through peaceful bilateral negotiations. Both sides also decided to withdraw their forces to their side of the international border; and in Jammu and Kashmir, the Line of Control resulting from the cease-fire of 17 December 1971 would be respected by both sides.

Following the demise of Sheikh Mohammad Abdullah in 1982, his son

Farooq Abdullah was sworn in as the Chief Minister of the state. He was dismissed from power in 1984, but returned in 1986 following a deal with the Congress party. The state Assembly election of 1987 was widely believed to be rigged to facilitate his return to power, thus the people felt that there was no democratic outlet left to vent their discontent.<sup>4</sup> Forging an alliance with the Congress party, a mere two years after his dismissal largely stripped Farooq Abdullah of the political mantle he had inherited from his father.<sup>5</sup> Many observers see the alleged rigging of these elections as a turning point in the growth of Kashmiri nationalism (Amnesty International 2011).

The armed conflict commenced between government and armed groups in the late 1980s in which the latter's objectives have been either to form an independent state of Jammu and Kashmir or its unification with Pakistan. The first rebel attacks were the bomb explosions in Srinagar in July 1988. Since then the state witnessed a campaign of organised violence with Jamaat-e-Islami and Jammu and Kashmir Liberation Front (JKLF) being the major players. The former advocated integration with Pakistan, the

latter favoured independence. The JKLF was reportedly formed in the 1960s and emerged as a significant political factor in the 1980s. Initially it maintained close ties with the Inter Services Intelligence (ISI), the Pakistan's intelligence agency. But, the two felt apart because of JKLF's pro-independence stance. ISI then turned towards Hizb-ul-Mujahideen, the armed wing of Jamaat-e-Islami. The Pakistani authorities' hostility towards JKLF was soon reflected on the ground where JKLF and Hizb-ul-Mujahideen started targeting each other.<sup>6</sup> Gradually, the JKLF lost its pre-eminent position to Hizb-ul-Mujahideen. Down the line, many more groups came into existence and the direct involvement of foreign nationals increased, particularly within armed groups like the Lashkar-e-Taiba. The armed conflict gradually changed from being primarily indigenous to being dominated by foreign or "guest" militants and jihadis by 1994. Many indigenous militant formations have dissolved, merged or surrendered and the JKLF proclaimed it had abandoned arms.<sup>7</sup>

Some of the significant incidents in the early days of the insurgency included the kidnapping of Rubia Syed, the daughter of the then Union Home Minister. She was

<sup>4</sup> Puri, Balraj (2006), *Kashmir's Journey: From insurgency to militancy to terrorism*, pp. 80-84.

<sup>5</sup> Ganguly, Sumit (1997), *The Crisis in Kashmir: Portents of War, Hopes of Peace*, p. 92.

<sup>6</sup> Jones O.B. (2002), *Pakistan eye of the storm*, p. 83.

<sup>7</sup> Verghese B.G. (2007), p. 37.

set free by her captors in exchange of the release of several jailed rebels. This was soon followed by the kidnapping and killing of H. L. Khera, general manager of Hindustan Machine Tools and Musheer-ul-Haq, vice-chancellor of University of Kashmir. There was also a large scale exodus of Kashmiri Pandits from the Kashmir valley. According to official sources, some 55,000 families were affected as they moved to Jammu, Delhi and other places (Government of India, Ministry of Home Affairs 2009). In the course of the conflict, religious places became the soft target of the rebels. In 1993, rebels who were holed up inside Hazratbal shrine in Srinagar were flush out by the security forces. In 1995, security forces again launched an operation against rebels in Charar-e-Sharief town. The Jama Masjid in Pulwama district was also attacked by unidentified terrorists in December 2000 wounding several worshippers. The shrine of Sheikh Nooruddin Noorani located inside the premises of Charar-e-Sharief shrine was attacked killing four worshippers and wounding 60 others in June 2001. The Raghunath temple in Jammu was attacked in March 2002 killing several worshippers. Some other high profile incidents include

the attack on the state Assembly complex located in Srinagar that killed 36 people in 2001; the killing of Minister of State for Power, Ghulam Hassan Bhat in a landmine explosion in 2000; and the killing of 36 persons in an attack on an Army cantonment at Kaluchak in Jammu in 2002.

In April 1990, Jamaat-e-Islami, Hizbul-Mujahideen, People's League, Islamic Jamat-i-Tulba, and Islamic Students League were banned. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 came into force with effect from July 1990 in the districts of Anangnag, Baramulla, Badgam, Kupwara, Pulwama and Srinagar; and areas falling within 20 km. of the LoC in the districts of Rajouri and Poonch. It was subsequently extended to Jammu region in August 2001. Amidst factional rivalry among armed groups, the anti-Indian politicians made some effort to present a united front<sup>8</sup> and founded the All-Parties Hurriyat Conference (APHC), a conglomerate of political, social and religious organisations, in 1993 as a political front to further the cause of Kashmiri separatism. These organisations espoused different ideologies and ambitions ranging from independence for Jammu and Kashmir to accession to

<sup>8</sup> Jones O. B. (2002), pp. 85-6.

Pakistan to varying degrees of partition and greater autonomy.<sup>9</sup> It suffered a split into two factions in 2003 led by Mirwaiz Omar Farooq and Syed Ali Shah Geelani respectively.

In 1999, Indian forces successfully evicted intruding Pakistani soldiers out of the Kargil area. This operation lasted over two months. In 2000, the state Assembly adopted a resolution accepting the report of the State Autonomy Committee that recommended greater autonomy. It was summarily rejected by the Central government. In 2000, the Hizb-ul Mujahideen offered a ceasefire to facilitate talks with the Central government. But it withdrew the ceasefire when Pakistan was not included in the talks. Later that year, the security forces suspended combat operation against rebels during the holy month of Ramadan. The ceasefire continued for six months till 23 May 2001.

Incidents of violence declined considerably from 2002 onwards. But the state again erupted into civil unrest after the state government decided to transfer 100 acres of forest land to Shri Amaranth Shrine Board in 2008. The significant political fallout was the fall of the Congress party-led state government after its

coalition partner, the People Democratic Party (PDP), pulled out opposing the land transfer. The Board also later gave up the claim on the forest land after the state government promised to provide all facilities to pilgrims going to the shrine. The civil unrest, marked by clashes between civilian protestors and security forces, broke out again in 2010 and lasted over three months (June to September) killing over 150 people, mostly civilians. The unrest was spearheaded by Syed Ali Shah Geelani-led faction of the All Parties Hurriyat Conference against the alleged excesses committed by security forces. When the state government failed to control the situation, the Central government sent an all political party delegation to the state in September 2010. The delegation met representatives of various political parties as well as separatist leaders. Following the visit, the Central government initiated a number of peace initiatives, popularly known as the Eight-point Peace Formula. This was followed by the appointment of three interlocutors to begin “sustained and uninterrupted dialogue” with “all shades of opinion” in the state towards a resolution of Kashmir problem.

<sup>9</sup> Verghese B.G. (2007), p. 55.

# ISSUES AND CONTENDERS

## Accession to India

When British India was partitioned into the independent states of India and Pakistan, the princely state of Jammu and Kashmir had the option of joining either of the two. Hari Singh who was unable to take a final decision on the matter signed a Standstill Agreement with Pakistan to ensure that trade, travel and communication continued. Before a similar agreement was signed with India the Pakistani authorities cut off essential supplies to the state and began an invasion. This compelled Hari Singh to seek India's assistance to repel the intruders and in return cede the princely state to India through an Instrument of Accession. Indian troops were immediately deployed there. However a large part of the state had been occupied by Pakistan before the Indian troops arrived. India raised the matter at the United Nations Security Council which passed several resolutions. The first resolution of January 1948 urged both parties to take measures to improve the situation and inform the Council of any

material change in the situation. The second resolution of April 1948 authorized the setting up of a UN Commission for mediation. The third resolution of August 1948 was the most significant one and contained three parts. Part I proposed a ceasefire order. Part II was related to persuading upon Pakistan to withdraw its forces, while India was required to reduce the strength of its forces. Part III stated that both governments reaffirm that the future status of Jammu and Kashmir shall be determined in accordance with the will of the people. India promised to fulfill Part III only after the provisions of Part I and Part II were implemented. The UN Commission also assured India that the plebiscite proposal would not be binding upon India if Pakistan did not implement Parts I and II.<sup>10</sup> However, Pakistan failed to fulfill the preconditions and instead consolidated its position in the territory it had already occupied. A few months later, in 1949, a Cease Fire Line came into being following the Karachi Agreement between India, Pakistan and the United Nations in accordance with the United

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<sup>10</sup> Jagmohan (1991), *My Frozen Turbulence in Kashmir*, pp. 35-110.

Nations resolution of 13 August 1948 and divided Jammu and Kashmir between India and Pakistan. Thus the issue has both internal and external aspects. The former concerns relations between the people of Jammu and Kashmir and Indian state, while the latter concerns Pakistan's aggressive role. It has been pointed out that the people of the state are obviously an interested party but not a third party.<sup>11</sup>

Pakistan argued that Jammu and Kashmir should have become its territory since the state has a Muslim majority. It alleged the then Hindu ruler of the state was pressurised to accede to India. Therefore, Pakistan maintained that the accession was a fraudulent one. It also accused India of violating the commitment to hold a plebiscite on the future of the state. Therefore, it maintained that India is forcefully occupying a large part of the state. It countered India's claim of Jammu and Kashmir being an integral part of India on the following grounds: a) The disputed character of Jammu and Kashmir has been recognized by the United Nations, accepted by both India and Pakistan and endorsed by the international community. b) The Line of Control in the disputed area of Jammu and Kashmir is not an international boundary

and recognized as such by India; c) There is complete alienation in the Indian occupied Kashmir (IoK) against the Indian rule; and d) Pakistan and India in the joint statement of 6 January 2004 are committed to seeking a final settlement of the dispute.<sup>12</sup>

India has maintained that accession was "completely valid" in terms of the Government of India Act 1935, Indian Independence Act 1947 and international laws; and was total and irrevocable. Therefore, the state is an integral part of India. It accused Pakistan of illegally occupying parts of the state and for promoting a "proxy war" and providing military support to armed groups. India wanted Pakistan to vacate the territory it illegally occupies.

The dispute continued to the key stumbling block in the relation between the two South Asian neighbours. Pakistan maintained that this dispute is the core issue in its relationship with India and peace and stability of the region. In Pakistan's official view, the dispute is the primary cause of its tensions with India and all other bilateral problems are secondary. Former Pakistan President Pervez Musharraf maintained that there was no other dispute between India and

<sup>11</sup> Verghese B.G. (2007), p. 5.

<sup>12</sup> Ministry of Foreign Affairs, Kashmir Dispute: Background, Government of Pakistan, available at <http://www.mofa.gov.pk/Pages/Brief.htm> (Accessed on 01 March 2011).

Pakistan, except Kashmir.<sup>13</sup> Furthermore, Pakistan usually condemned the alleged human rights violations committed by Indian troops in the state and urged the international community to stop being “silent spectators”. Pakistan has sought the intervention of the international community, particularly the United States of America. The International Crisis Group observed that Pakistan’s policy towards Kashmir is complex and multi-dimensional, shaped by both internal and external factors.<sup>14</sup> The issue is used for diverse purposes, “ranging from nation building to regime legitimacy”. It gains or loses prominence as a result of domestic and external factors. Talat Masood, a retired Pakistani army officer, observed:

Pakistan’s position has been that Jammu and Kashmir is disputed territory and India is in unlawful occupation of it and that the right of the people to determine their future on the basis of UN resolutions must be granted to them. Pakistan’s claim on Kashmir is based on the state’s Muslim majority population and its geographic contiguity, the same principle that was applied in the creation of India and Pakistan at the time of independence in 1947 ...

From a Pakistani perspective Kashmir is the core issue and the root cause of tension with India. Pakistan has made great sacrifices to pursue a proactive Kashmir policy and its defense and foreign policy is significantly influenced by this attitude.<sup>15</sup>

India maintained that the matter had already been settled, so there is no scope for third party intervention. It also argued that the UN resolutions envisaging the holding of a plebiscite on the future of the state have become obsolete with the passage of time when several elections were held in recent past to elect their representatives. Indian preferred to discuss the illegal occupation of part of the state by Pakistan. In Balraj Puri’s words:

The threat from Pakistan to Kashmiri self-respect and identity on the one hand and Gandhi’s high idealism and Nehru’s appreciation of Kashmiri aspirations on the other provided the moral, emotional and ideological basis of Kashmir’s association with the rest of India. There were, however, divergent perceptions in Srinagar and Delhi of the fateful decision of the Kashmiris to accede to the Indian Union. The

<sup>13</sup> International Crisis Group (2003), p. 1.

<sup>14</sup> International Crisis Group (2003), p. 1.

<sup>15</sup> Masood, Talat (2006), *Pakistan’s Kashmir Policy*, pp. 45-49.



rest of the nation regarded it just as another instance of the process of integration of the princely states. But for the Kashmiri Muslims it was an enabling- provision to seek the help of a powerful neighbour to protect their identity from an aggressor.<sup>16</sup>

### Human rights issues

Since the beginning of the armed conflict between the government and the armed groups organised violence has almost become an everyday occurrence in several parts of the state. The state is one of the world's most heavily militarized places where special laws are currently promulgated. The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 was promulgated since 1990 to combat the rebels in the erstwhile districts of Anangtnag, Baramulla, Badgam, Kupwara, Pulwama and Srinagar, and areas falling within 20 km of the Line of Control in the erstwhile districts of Rajouri and Poonch. It was then extended to Jammu region in August 2001. Under this Act (popularly known as AFSPA), the members of the armed forces are given special powers while operating in areas already designated as "disturbed areas". The special powers allow any commissioned officer or

equivalent rank in the armed forces to "if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances ... arrest, without warrant, any persons who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest; enter and search, without warrant, any premises to make any such arrest as aforesaid or to recover any person believed to be wrongful restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawful kept in such premises, and may for that purpose use such force as may be necessary, and seize any such property, arms, ammunition or explosive

<sup>16</sup> Puri, Balraj (1990), *The Challenge of Kashmir*, pp. 191-192.

substances (*The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990*).

But the Act has been contentious since its inception. Several observers have long argued that AFSPA is unconstitutional and violates international humanitarian law. There have been allegations of the special powers being misused by the members of the armed forces. Several civil society organizations have been demanding its removal and the withdrawal of troops. They claimed that AFSPA has contributed to the escalation of people's discontentment thus boosting the morale of the armed groups. The Act, according to them, is thus counterproductive and only accentuated a vicious cycle of violence. Lending support to the popular voices against AFSPA the local political leadership also favoured its removal or amendment so that armed forces involved in rights violations could be held accountable through the civilian legal process. However, there is no consensus among the political parties. The Bharatiya Janata Party (BJP) has been opposing any attempt to dilute the Act saying it would demoralise the armed forces. Those who advocated the necessity of AFSPA felt that the situation in the state is disturbing considering the activities of various armed

groups. The Indian armed forces also maintained that the removal would have disastrous consequences on the fight against the armed groups. The armed forces insist "legal protection" is a must for the troops to efficiently perform their tasks. The Indian Army Chief, General V. K. Singh even publicly stated that the demand for the removal of AFSPA was made for narrow political gains and emphasized that soldiers operating in a hostile environment need legal protection to ensure that they perform their tasks efficiently (*Indian Express* 26.6.2010). The Indian Air Chief P.V. Naik also advocated that "a soldier fighting anywhere at the request of the government and not voluntarily, must have legal protection otherwise he would be left inefficient to complete the job in which either the Central or the state government has interest in" (*Daily Excelsior* 5.10.2010).

Apart from AFSPA, the Jammu and Kashmir Public Safety Act, 1978 (PSA) is a preventive detention law where a person can be jailed without trial for two years to maintain public order. Estimates of the number of detainees under this Act in the last two decades could range from 8,000-20,000.<sup>17</sup> Once a detention order has been issued, the grounds of detention must be provided to the detainee within

<sup>17</sup> Amnesty International (2011), A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act, p. 4.

five to ten days of the detention, but without the necessity to disclose facts that the detaining authority “considers to be against the public interest to disclose.” Amnesty International has expressed serious concern at the alleged misuse of the Act and urged the state authorities to repeal it.

Protests against alleged human rights abuses have been a regular feature in Kashmir valley since the commencement of the armed conflict. In many of these cases, the protesters’ demanded the removal of security force camps and check posts, punishment of the securitymen allegedly involved in rape/murder to the broader demands for the repeal of AFSPA, demilitarization and azadi. The 2010 public uprisings were also against the alleged excesses committed by the armed forces particularly the alleged fake encounter at Kupwara in May 2009 and the subsequent killing of a teenager in police firing in Srinagar on June that year. These incidents were sufficient to kick-start a fresh uprising. According to the Indian army’s own estimates, a total of 104 army men were found guilty of human rights violations between 1990 and 2010. It did not reveal the nature of the complaints and the kind of punishment given to the guilty. At least 1,514

complaints of human rights violations were filed during the period and 1,508 complaints were investigated (six cases still being investigated). According to their own admission, about 97 per cent of the complaints were false (*Times of India & Zee News* 16.10.2010).

The Central government has also acknowledged some human rights violations. In June 2010, Prime Minister Manmohan Singh also promised to act to ensure that security forces respect the rights of civilians while tackling terrorism. He said “I am aware of some complaints related to human rights. On this issue, the government policy is to protect the human rights of the people even when dealing with terrorism. The security forces in Jammu and Kashmir have been strictly instructed to respect the rights of the civilians. We will act to remove any deficiency in the implementation of these instructions” (*The Hindu* 8.6.2010 & *NDTV* 7.6.2010).

### **Azadi, autonomy or self-rule**

Azadi is the Urdu translation of two concepts in English, viz. independence and freedom.<sup>18</sup> Hence, it has different meanings for different people. For some, it could mean greater autonomy; and for others, independence either from India or Pakistan, or both. Yet it could also mean

<sup>18</sup> Puri, Balraj (2009), *Azadi, Autonomy and Self-Rule vs. Freedom*, p. 34.

freedom from the fear of rebels and security forces, self-respect and dignity. Whatever the interpretations, azadi signifies freedom from Indian rule. Syed Ali Shah Geelani sees azadi as freedom from Indian rule and occupation.<sup>19</sup> Geelani on 25 September 2010 publicly stressed his preferred choice as accession to Pakistan. He, however, stressed that he would ultimately go by the consensus. Geelani defended his “first option” of accession on three main counts: a) the option of independent Jammu and Kashmir was not viable as India, Pakistan and China are not in favour of the idea and without their collective support this proposition was neither feasible nor sustainable; b) that the UN resolution limiting the choice of accession between India and Pakistan continued to remain in force; and c) that their “bitter experience of Indian occupation” left them the only other course of accession with Pakistan (*Kashmir Times* 25.9.2010). Mohammad Yasin Malik who pleaded for complete independence wanted the involvement of the people of the state in a dialogue process between India and Pakistan on the dispute. He maintained that both countries were trying to impose a solution on the people whereas according to him

the people must decide about their destiny by themselves. Yet Mirwaiz Umar Farooq maintained that Jammu and Kashmir is a disputed land and not part of India. He stressed that the core issue of the dispute is neither development nor economic packages but the “strong sentiments of freedom.” By contrast, the mainstream political parties like National Conference and Peoples Democratic Party advocated autonomy and self-rule as against azadi.

Autonomy is a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests.<sup>20</sup> The state has been accorded special status under Article 370 of the Constitution of India that provides substantial autonomy since October 1949. Down the line, it has altered to a greater extent. Further, there are different views for and against its abrogation. The National Conference wanted it to strengthen because the party maintained the Article 370 had eroded in the past. The party feared that its abrogation would encourage separatists. On the other hand, the Bharatiya Janata Party wanted to scrap it so as to ensure implementation of the “one nation, one flag, one constitution.”

<sup>19</sup> For more detail see, Sikand, Yoginder (2010) *Jihad, Islam and Kashmir: Syed Ali Shah Geelani's Political Project*, pp. 125-134.

<sup>20</sup> Ghai, Yash (2000), *Ethnicity and Autonomy: A Framework for Analysis*, p. 8.

Those favoring its abrogation argued that it is creating “psychological barriers” thereby encouraging separatist tendencies. They maintained that since being a temporary arrangement it should be allowed to “erode gradually”.

The National Conference has been advocating the restoration of autonomy which it believes will be crucial to the resolution of the current dispute. The party reiterated that under the Instrument of Accession, the division between Centre and state was clearly demarcated with all the powers of the legislation resting with the state other than those concerning defence, external affairs and communication. It alleged that over the years the autonomy had “evaporated unconstitutionally” which it claimed is the reason for the discontent of the people. In 1996, the National Conference government appointed the State Autonomy Committee and the Regional Autonomy Committee to examine the issue of autonomy. The former was entrusted with the inter-state aspect, i.e., the relationship between the Central government and Jammu and Kashmir; the other was responsible for intra-state aspect, particularly the relationship between the state’s three regions of Jammu, Kashmir and Ladakh. In 2000, the state assembly passed a resolution accepting the report of the State Autonomy Committee that recommended

greater autonomy including the restoration of the pre-1953 constitutional status of the state. The main recommendations are:

- 1) That the word “temporary” be deleted from the title of Part XXI and the heading of Article 370 of the Constitution of India.
- 2) Matters in the Union List not connected with the three subjects of Defence, External Affairs and Communications and/or Ancillary thereto but made applicable should be excluded from their application of the state.
- 3) Since elections to the state legislature are held under laws made by the state legislature, Article 324 should continue to apply in the manner and way it was applicable in 1950/1954.
- 4) The imposition of a state of Emergency shall be subject to the state government’s concurrence “provided that this request for concurrence of the Government of the State shall be subject to whatever decision the State Assembly shall take within two months ... (failing which) the proclamation of Emergency shall be deemed to have been revoked.
- 5) Article 218 be omitted in its application to the State ... (and) the State Legislature re-enact the provisions as they existed ... before the

enforcement of the J&K Constitution (First Amendment) Act of 1959.

- 6) A separate chapter on Fundamental Rights needs to be included in the Jammu and Kashmir Constitution ... (for a) situation where Directive Principles do not apply and Fundamental Rights apply is not a happy one.<sup>21</sup>

The resolution was summarily rejected by the Central government essentially because it was a plea for the restoration of the pre-1953 status to the state. This is evident in this excerpt of the Union Cabinet's response to the autonomy resolution:

The government is committed to the promotion of federal harmony by ensuring a partnership of the Centre and the states ... The government reaffirms its commitment to continuing its endeavour to evolve a broad consensus on the implementation of steps for wide-ranging devolution of powers to the state that leads to efficiency in administration, acceleration in development and the fullest realisation of the creative potential of all sections of our people.

... In the above context, the Cabinet finds the resolution passed by the State Assembly of Jammu and Kashmir endorsing the report of the State Autonomy Committee unacceptable. The Cabinet feels that the acceptance of this resolution would set the clock back and reverse the natural process of harmonising the aspiration of the people of Jammu and Kashmir with the integrity of the nation. Most of the recommendations contained in the report of the State Autonomy Committee seek to reverse the application of constitutional provisions to the state of Jammu and Kashmir which may not only adversely affect the interests of the people of the state but would also tantamount to removal of some of the essential safeguards enshrined in our constitution.<sup>22</sup>

The Regional Autonomy Committee report advocated the reorganisation of the state into eight new provinces, each with an elected provincial council whose boundaries are to be defined on ethno-linguistic lines, framing it more in terms of a grant of autonomy rather than

<sup>21</sup> Frontline (2000), From the State Autonomy Committee Report, *Frontline* 17(14).

<sup>22</sup> *South Asia Terrorism Portal*, New Delhi.

<sup>23</sup> Chaturvedi, Sanjay (2005), *The Ethno and the Geo: A New Look into the Issue of Kashmir's Autonomy*, pp. 139-72.

demands for autonomy.<sup>23</sup> The Committee recommended the bifurcation of Kashmir into three new provinces, Ladakh into two, and Jammu into three respectively. However, the report has been kept well hidden from public view. It has been said that it holds out more fundamental threats to the prospect of a secular and democratic Jammu and Kashmir than any number of terrorists do.<sup>24</sup>

In its 2008 election manifesto the National Conference reiterated that “the restoration of state’s autonomy continues to be the bedrock of our policy and agenda. Our party will continue to strive for the complete restoration of the special status that formed the basis of Srinagar-Delhi relationship after prolonged deliberations between the leadership of India and Jammu and Kashmir”. In the wake of the public protests in 2010, the Congress party-led Central government had even indicated its willingness to consider autonomy within the constitution if there was a consensus among the political parties. Opposing any move to grant greater autonomy the Bharatiya Janata Party stressed that if autonomy is granted other states would also seek the same. Thus it feared the prospect of balkanisation of the country.

Some other parties even suggested some kind of political and economic packages including broadening of the framework of autonomy within the constitution. These parties, however, did not elaborate.

The National Conference’s arch rival the Peoples Democratic Party maintained that autonomy was not the solution because the dispute had international ramifications. Instead, the party advocated step by step integration of the Indian and Pakistani Kashmir in various fields like trade, travel, institutions and legislature. The party stressed that the dispute could not be resolved on the basis of exclusively intrastate level initiatives and hence requires a combination of intrastate measures with interstate and suprastate measures. It insisted that self-rule was a “formulation that would integrate the region without disturbing the extant sovereign authority over delimited territorial space”. The PDP argued that self-rule is a way of “sharing sovereignty”, without need or commitment to political merging. The governance structure under this formula is the cross-border institution of “Regional Council” of “Greater Jammu and Kashmir”. According to this scheme the Council will replace the existing Upper House of state assembly and its members

<sup>24</sup> Swami, Praveen (1999), Jammu and Kashmir: A communal divide.

will be from all parts of the state. The formulation of self-rule has three subcomponents:

- a) A new political superstructure that integrates the region and empowers sub-regions;
- b) A phased economic integration that transcends borders; and
- c) Constitutional restructuring that ensures sharing of sovereignty without comprising political sovereignty of either nation state.<sup>25</sup>

### Division within

The state of Jammu and Kashmir is multi-lingual, multi-cultural and multi-religious consisting of three geographical regions: Jammu, Kashmir and Ladakh. One of the visible impacts of the current conflict has been the gradual polarisation of its people along regional lines. It would not be out of context to note that the people of Jammu and Ladakh often accused both the Central and state governments of neglecting their regions and for giving undue importance to the Kashmir valley. Several organisations maintained that the government has been neglecting their regions to appease the separatists. The divide snowballed into a major controversy in 2008 when the state

government decided to transfer 100 acres of forest land to the Shri Amaranth Shrine Board. The impasse had a religious dimension when people living in the Kashmir valley denounced the land transfer. Following intense pressure the state government revoked the land transfer order, but violent agitations broke out in Jammu. The impasse was finally resolved with the intervention of the Central government. Following this impasse, several Jammu-based organisations re-intensified the demand for the bifurcation of the state to facilitate the creation of separate Jammu state. Chaturvedi listed the following factors driving the demand for its bifurcation:

- a) Historically, the present conglomeration of three heterogeneous regions of Jammu, Kashmir and Ladakh was never an organic political entity;
- b) There are inherent inter-regional contradictions in terms of history, physiography, ethnicity, language and culture;
- c) This sharp inter-regional contradiction has a “spillover” in the political perception of the three dominant communities of the respective regions and integration is absent;

<sup>25</sup> Jammu and Kashmir Peoples Democratic Party (2008), *Jammu & Kashmir: The Self-Rule Framework for Resolution*.



- d) Political domination of Kashmiri Muslims and their discrimination against Jammu and Ladakh kept the latter feeling neglected. Ladakh has persistently raised the issue of Islamic domination; and
- e) The Hindus and Buddhists of the state are apprehensive of the likely demographic change in their respective regions due to large-scale Muslim influx from the Kashmir Valley.<sup>26</sup>

On the other hand, the Ladakh Union Territory Front has been demanding union territory for Ladakh citing their cultural, linguistic and geographical uniqueness. In 2000, the Ladakh Autonomous Hill Development Council also passed an official resolution in favour of the union territory. Supporters of new state and union territory argued that reorganisation would not only result in better governance, greater economic opportunities and a large share of political power, but Jammu and Ladakh will also be able to distance themselves from militancy.<sup>27</sup> However, the demand is most likely to be opposed by the people of the valley.

### Migration of Kashmiri Pandits

Insecurity due to armed conflict in the 1990s<sup>28</sup> compelled around 55,000 Kashmiri Pandit families to flee their homes and took shelter in Jammu, Delhi and elsewhere in the country.<sup>29</sup> Despite being numerically small, the community was a “highly visible” group<sup>30</sup>, who were traditionally land owning, educated and elitist. They were able to convey their distress at being forced to live for two decades in temporary shelters with minimal basic facilities. Politicians and other leaders talked of their return, but none could guarantee their safety. It must be noted, however, that there were Pandit families who did not migrate in the 1990s, and some of the migrants later returned to the valley.<sup>31</sup>

This incident dented the image of the majority Muslim population of the valley, since most of them recognized the Pandits to be an integral part of the state. While Kashmiri Muslims and Pandits follow different religions, they share many cultural practices that are a fusion of the elements of their respective religious practices as well as the uniquely Kashmiri devotional and philosophical norms.<sup>32</sup>

<sup>26</sup> Chaturvedi (2005), p. 159.

<sup>27</sup> Chaturvedi (2005), p. 158.

<sup>28</sup> Hassan, H. W. (2010), Migration of Kashmiri Pandits: Kashmiriyat Challenged?

<sup>29</sup> Government of India (2009), Annual Report 2008-2009, New Delhi: Ministry of Home Affairs.

<sup>30</sup> Seema Sh. (2009), Conflict induced displacement: the Pandits of Kashmir, pp. 31-37.

<sup>31</sup> Hassan, H. W. (2010), p. 7.

<sup>32</sup> Punjabi, R. 1992, Kashmir: The Bruised Identity, pp. 131-53.

The government has claimed to have made several measures to facilitate their return. But, these efforts have met with very little success. This has led to governmental efforts focusing on providing housing facilities to the displaced families by constructing dwelling units in places such as Jammu, Budgam, Kupwara, and so on. In 2008, Prime Minister Manmohan Singh initiated a special economic package amounting to Rs. 1,618 crore to facilitate their return. Under this package some 6000 youths are supposed to be given government jobs, monetary support is also to be provided for the construction

of new houses, and compensation for the property lost. As a part of this package, the state government had also reportedly created 3000 supernumerary posts in 2009, and issued appointment orders to several candidates. As on 29 December 2010, as many as 4621 families reportedly showed their willingness to return to the valley. But, the Central government admitted that till December 2010 “no family has returned”, but maintained that “providing employment is expected to be the beginning of return of Kashmiri migrants to valley as it is presumed that their families shall follow them subsequently”.<sup>33</sup>

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<sup>33</sup> Government of India, 2010, Status report – PM’s package for return and rehabilitation of Kashmiri migrants, (Status on 29.12.2010) New Delhi: Ministry of Home Affairs.

# INSTITUTIONS

In this series of backgrounders, an institution is taken to be a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violation occur. Thus an institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realisation in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules.<sup>34</sup>

The picture of conflict in Jammu and Kashmir has place for institutions in both the senses that John Rawls has suggested. The present crisis can be seen as a result of the inability to enforce a set of abstract rules leading to the emergence of new institutional practices. These could include the government and its various agencies, armed groups and other socio-political organisations. All have come to be associated in different capacities in the

course of the conflict. The initial reaction to the conflict has been to treat it as a case of non-implementation of rules, that is, as a law and order problem. This helped the rebels tap the discontent that emerged from the alleged human rights violations by the government forces. The dissatisfaction on the ground was compounded by the inability of the successive governments to meet the growing aspirations of its people. In practice this widespread discontent and responses to it, have created non-state institutions of the armed and unarmed groups.

*South Asia Terrorism Portal* listed as many as 35 active and not-so-active armed groups involved in the current conflict. The list included, among others, Lashkar-e-Taiba, Jaish-e-Mohammed, Harkat-ul-Mujahideen and Hizb-ul-Mujahideen. The Hizb-ul-Mujahideen is one of the oldest and active groups. It started its operations around 1989 with the stated aim of integrating Jammu and Kashmir to Pakistan. Other groups also advocated similar objective and challenge India's

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<sup>34</sup> Rawls, John (1999), *A Theory of Justice*, pp. 47-101.

control over the state. Most of them were raised outside Indian part of Jammu and Kashmir with active support of Pakistani government, and then extended operations into Indian side. Most of them have been banned by the Indian government under the Prevention of Terrorism Act, 2002.


Armed groups created para-statal organisations in the areas they operated in that lay down a set of rules and have the means and resources to enforce them. Thus, they not only monitored the government but also administered their own social welfare services to gain public support from their distribution of public goods. In this way, many of the functions which are within the domain of the state institutions have been encroached upon by the rebel institutions. They also boycott all Indian national events like

Independence Day and Republic Day celebrations. The overall impact has been the dilution of the legitimacy of state institutions.

A striking aspect of the long-running conflict has been the proliferation of a large number of socio-political groups like the All Party Hurriyat Conference (APHC) and the Jammu and Kashmir Liberation Front (JKLF). They all have played significant role in the course of this conflict. The APHC, formed around 1993, is an alliance of several social, political and religious groups to further the cause of Kashmiri nationalism. Around the same time, the JKLF transformed itself from a violent to non-violent group. Both have considerable influence and been spearheading almost all the anti-government agitations in the state.

# OPTIONS

## ATTEMPTED OPTIONS

 part from the usual call for meaningful dialogue with all the disgruntled groups of the state, the effort of the Centre and the state governments have so far made very little success on the ground. As a result the state continues to be affected by organised violence and political agitation with significant support from across the border. In addition to death and injuries, normal development works have been affected. Several development projects have failed to complete in time leading to the escalation of the costs. And, educational institutions have virtually forced to shut down. In the last two decades, over 13,500 civilians and 4,500 securitymen have lost their lives in the state due to the conflict (*Annual Report 2008-09*, Ministry of Home Affairs, Government of India). It is thus worthwhile to know the government policies and counter-insurgency strategies that have military, political and socio-economic dimensions.

Firstly, the tendency to view the conflict as a law and order problem and rebels as criminals, misguided youth or terrorists has contributed to the

willingness to use force. The security-related measures initiated over the years included the enforcement of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 since 1990 in several areas of the state. Under this Act, the members of the armed forces were given special powers while operating in areas officially designated as “disturbed areas”. It has been contentious one since the inception with the allegations of the special powers being misused by the members of government forces. The continued implementation of AFSPA has resulted an unprecedented people’s uprising demanding its repeal. The overall security arrangement is supervised by the Unified Headquarters, chaired by the Chief Minister of the state, with senior government officials, Army, Central paramilitary forces and other security agencies has been functioning with the aim of ensuring proper coordination among all the agencies and to regularly monitor security situation. The Central ministries of home and defence also monitored the situation in tandem with the state authorities and the Central ministry of external affairs. While the Army and other

Central security forces are assisting the local police, the Central government also reimbursed the expenditure incurred by the state government on a variety of security-related measures. Jammu and Kashmir is the only state in the country where a separate department—the Department of Jammu and Kashmir Affairs in the Union Ministry of Home Affairs—deals with the constitutional provisions of the state and all other matters relating to it, excluding those with which the Union Ministry of External Affairs is concerned. The government deployed a large number of troops along the Line of Control to prevent the infiltration of foreign terrorists and to other areas of the state to help restore normalcy.

Secondly, the Central assistance to the state government has increased considerably over the years for promoting faster economic development and more so to wean the public away from the armed groups. It is also one of the special category states in the country where the Centre funds up to 90 per cent of its capital budget requirements. One of the major economic development initiatives undertaken was the Prime Minister's Reconstruction Plan initiated in 2004 that involved an outlay of approximately Rs. 28000 crores for various projects aimed at expanding economic infrastructure and

provision of basic services, imparting a thrust to employment and income generation activities, and providing rehabilitation for people affected by armed conflict. This plan is being implemented by several Central ministries in consultation with state authorities. The whole project is jointly monitored by the Union Ministry of Home Affairs and the Planning Commission of India. Besides, several Central ministries have been providing funds through their respective budgets for the development of their respective sectors. The state government itself is also implementing its own development programmes. In 2010, the Centre set up an expert group in the context of enhancing the employment opportunities and to formulate a jobs plan involving both the public and private sectors, especially for the youth. Key recommendations of their report, submitted in March 2011, are:

- a) A scheme to provide placement-linked, market driven skill training to 50,000 to 100,000 youth in 3 to 5 years.
- b) To identify 10 to 20 companies across industry sectors to partner with an educational institution and run special training programs to enhance employability of 8000 youth per annum in the state over a five-year period.
- c) 5000 scholarships per annum to be awarded for the next 5 years. Out of

the total, 4500 scholarships (90 per cent) could be for general degree courses, 250 for engineering (5 per cent) and 250 for medical studies (5 per cent). This will benefit 25,000 students.

- d) Sectoral initiatives to agriculture and animal husbandry; horticulture; tourism; handicrafts; micro, small and medium enterprises and IT&ITES/BPO.<sup>35</sup>

Also in 2010, the Centre constituted two Special Task Forces to examine the infrastructure needs of Jammu and Ladakh regions and make recommendations to overcome the deficiencies. According to media reports, the Special Task Forces have recommended projects amounting about Rs.913 crore.

Thirdly, the political response to the conflict primarily focuses on constant engagement with dissenting groups including Government of Pakistan to “people to people” contact across two parts of the state. One of the significant steps was the suspension of combat operation by security forces against armed groups for six months starting from the holy month of Ramadan, i.e., 27.11.2000 to 23.5.2001. The state government had also devised rehabilitation schemes so as to encourage the rebels back to normal life.

Under these schemes, each surrenderee is eligible for certain benefits. The most recent rehabilitation scheme intended to facilitate the return of former rebels who had crossed over to PoK/Pakistan for arm training but had given up insurgent activities and are willing to return back. In order to enhance “people to people” contact across LoC the government initiated Cross LoC Travel and Cross LoC Trade. The fortnightly Srinagar-Muzaffarabad bus service started in April 2005, followed by Poonch-Rawalakote bus service in June 2006 have been made weekly from September 2008 onwards in view of the encouraging response. The Cross LoC Trade on Srinagar-Muzaffarabad axis commenced from October 2008 onwards.

In September 2010, an all-political party delegation comprising 34 members of various political parties visited the state and met representatives of several political parties and interest groups. Following this visit, the Centre initiated a comprehensive peace plan, popularly known as the Eight-point Peace Formula. This includes among others appointment of peace interlocutors, review of the deployment of security forces, release of those detained for stone pelting and review of the cases of all Public Safety Act detenues. Accordingly, the Centre have

<sup>35</sup> For more detail see, Report of the Expert Group to formulate a jobs plan for the state of Jammu and Kashmir, New Delhi: Office of the Prime Minister of India, 2011.

released Rs. 100 crore as Special Plan Assistance and appointed three interlocutors. The interlocutors are Dilip Padgaonkar, M. M. Ansari and Radha Kumar. All of them represent different walks of life as journalist, economist and political scientist respectively. They are entrusted with the task of undertaking a sustained dialogue with the people of the state to understand their problems and chart a future course of action.

Although interrupted on different occasions, India and Pakistan continue to engage in bilateral talks to normalize their relationship. In 1999, the bus service between Delhi and Lahore was started with Prime Minister A. B. Vajpayee going by bus to Lahore and holding a summit with his Pakistani counterpart Nawaz Sharif leading to the signing of the Lahore Declaration in which the two governments agreed to intensify their efforts to resolve all issues, including the issue of Jammu and Kashmir. In July 2000, President of Pakistan General Pervez Musharraf and A. B. Vajpayee met at Agra. But the talks failed.

In 2003, both sides agreed to a formal ceasefire along the International Border, the Line of Control and the Actual Ground Position Line in Jammu and Kashmir. The ceasefire entered its ninth year in 2011 despite apprehensions of ceasefire violation by the Pakistani troops. In

January 2004, the two sides resumed the reconciliation process, described officially as the composite dialogue, including Jammu and Kashmir as one of the issues to be discussed and resolved. This was followed by several rounds of official meeting on several issues including Jammu and Kashmir. In the same year, air links between the two countries as well the passenger and freight rail service between Attari and Lahore were resumed. From 2008 onwards, both sides agreed to a series of Kashmir-specific confidence building measures (CBMs), including that of LoC Trade.

Above all, since the 1980s, the two sides started “cricket diplomacy” to help improve ties. In March 2011, Prime Minister Manmohan Singh invited Pakistani leaders to watch the World Cup semi-final match between Pakistan and India at Mohali in Punjab. Pakistan Prime Minister Yusuf Raza Gilani accepted the invitation and came to watch the match.

## OTHER OPTIONS

Noted scholar Asghar Ali Engineer suggested among others the creation of more employment opportunities, grant of complete autonomy and repeal of Armed Forces (Jammu and Kashmir) Special Powers Act as the appropriate measures to resolve the Kashmir dispute (*The Hindu* 26.9.2010). Centre’s peace



interlocutor Radha Kumar suggested the involvement of Pakistan in resolving the dispute (*The Hindu*, & *NDTV*, 14.11.2010). Justice K. G. Balakrishnan, the chairman of National Human Rights Commission (NHRC) asserted enhancing the NHRC's role in the state which presently has limited jurisdiction over human rights issues. He believed that the extension of commission's jurisdiction would be beneficial to the common people who could have recourse to better redressal of grievances (*Deccan Herald & The Hindu*, 25.7.2010). Leading Kashmiri separatist Syed Ali Shah Geelani wanted declaration of Jammu and Kashmir as disputed territory, demilitarisation, end to human rights violations, revocation of draconian laws, and release of Kashmiri prisoners. He maintained that only tripartite talks can facilitate the granting of right to self-determination. Another separatist Yasin Malik strongly favoured the formation of

core groups in India and Pakistan for talks with Kashmiri leaders. Mirwaiz Umar Farooq also suggested the formation of a Kashmir Committee in the Indian and Pakistani parliaments that would exclusively discuss the dispute. Self-rule is suggested by People Democratic Party while the National Conference favours restoration of autonomy. The current Chief Minister Omar Abdullah stressed that Jammu and Kashmir is a political issue which cannot be addressed through development, employment or good governance only. He stressed that it is an issue between India and Pakistan in which Jammu and Kashmir is getting smashed in between. He also stressed the need for an external dialogue process (*India Today & Daily Excelsior* 6.10.2010). Yet others have advocated third-party mediation/intervention particularly the United States of America playing a key role, and the reorganisation of the state.

## Treaty of Amritsar

March 16, 1846

(Courtesy: Department of Law, Justice & Parliamentary Affairs,  
Government of Jammu and Kashmir)

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

### Article 1

The British Government transfers and makes over for ever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

### Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

### Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

### Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

### Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

### Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

### Article 7

Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

**Article 8**

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

**Article 9**

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

**Article 10**

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to

the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brever-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General.

Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubeel-ul-Awal (1262 Hijri).

Sd/-  
H. Hardinge (Seal)

Sd/-  
F. Currie

Sd/-  
H. M. Lawrence

## Instrument of Accession of Jammu and Kashmir State

(Courtesy: Department of Law, Justice & Parliamentary Affairs,  
Government of Jammu and Kashmir)

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, Therefore

I, Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935,

as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.
6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to

acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.
8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.
9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as

including a reference to my heirs and successors.

Given under my hand this 26<sup>th</sup> day of October, nineteen hundred and forty seven.

Sd/-  
Hari Singh  
Maharaja Dhiraj of Jammu and  
Kashmir State.

**(Acceptance of Instrument of Accession)**

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, Nineteen hundred and forty seven.

Sd/-  
Mountabatten of Burma  
Governor General of India

27<sup>th</sup> October 1947

## The Delhi Agreement, 1952

(Courtesy: Department of Law, Justice & Parliamentary Affairs,  
Government of Jammu and Kashmir)

The main features of this agreement were:

- (i) in view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter they vested in the State itself;
- (ii) it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'state subjects' in view of the 'State Subject Notifications of 1927 and 1932: the State legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;
- (iii) as the President of India commands the same respect in the State as he does in other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc; would also vest in the President of India;
- (iv) the Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;
- (v) there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but 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 can 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. With regard to the powers and functions of the Sadar-i-Riyasat the following argument was mutually agreed upon:
  - "a. the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;
  - b. he shall hold office during the pleasure of the President;

- c. he may, by writing under his hand addressed to the President, resign his office;
  - d. subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;
  - e. provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.”
- (vi) 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 the view of the peculiar position in which the State was placed, 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 of the
- Constitution of India as applicable to the State;
- (vii) 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;
  - (viii) there was a great deal of discussion with regard to the “Emergency Powers”; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in the exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.

## 6-point Indira-Shiekh pact of 1975

(Courtesy: Department of Law, Justice & Parliamentary Affairs,  
Government of Jammu and Kashmir)

Highlights of the “agreed conclusions”:

Jammu and Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union continue to be governed by Article 370 of the Indian Constitution.

The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the prevention of activities against the sovereignty and territorial integrity of India.

Any provision of the Indian Constitution which had been applied to the State with modifications will be altered or repealed by presidential order; but provisions already applied without modification are unalterable.

The State will be free to have its own legislation on matters like welfare measures cultural matters, personal law and procedural laws. The State government can review the laws

made by Parliament or extended to the State after 1953 on any matter relatable to the concurrent list and may be decided which of them needs amendment or repeal. In future the State Government shall be consulted regarding the application of any such law to the State.

Any law made by the State Legislature seeking to change any provision of the State Constitution relating to: a) the appointment, powers and immunities of the Governor; and b) the control of elections by the Indian Election Commission, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the Legislative Council will need the President’s assent.

No agreement was possible on the question of nomenclature of the Governor and the Chief Minister. (Sheikh Abdullah wanted the titles to be Sadar-e-Riyasat (Head of State) and Wazir-e-Azam (Prime Minister).



## BIBLIOGRAPHY

- Anjum, A. and Varma, S. 2010. Curfewed in Kashmir: Voices from the Valley, *Economic & Political Weekly* xlv (35), pp. 10-14.
- Abdullah, Farooq. 1985. *My Dismissal - As Told to Sati Sahni*, New Delhi: Vikas Publishing House.
- Amnesty International, 2011. *A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act*, London.
- Bose, Sumantra. 1999. Kashmir: Sources of Conflict, Dimensions of Peace, *Economic and Political Weekly*, 34(13), pp. 762-768.
- Chaturvedi, Sanjay. 2005. The Ethno and the Geo: A New Look into the Issue of Kashmir's Autonomy, in Ranabir Samaddar (eds.) *The Politics of Autonomy: Indian Experience*, New Delhi: Sage Publications.
- Dasgupta, C. 2002. *War and Diplomacy in Kashmir*, New Delhi: Sage Publications.
- Dole, N.Y. 1990. Kashmir: A Deep-Rooted Alienation, *Economic and Political Weekly*, 25(18/19), pp. 978-979.
- Engineer, Asghar Ali. 1995. Kashmir: Autonomy Only Solution, *Economic and Political Weekly*, 30(35), pp. 2167-2168.
- Farooqi, M.B. 1995. *Kashmir Cries for Justice*, Srinagar: Institute for Kashmir Studies.
- Frontline, 2000. From the State Autonomy Committee Report, *Frontline* 17(14).
- Giyas-u-Din, P. 1992. *Understanding the Kashmiri Insurgency*, Jammu: JayKay Bookhouse.
- Government of India. 2003. *State Development Report Jammu & Kashmir*. New Delhi: Planning Commission of India.
- Government of India. 2006. Report of the Task Force on Development of Jammu and Kashmir, New Delhi.
- Habibullah, Wajahat. 2004. *The Political Economy of the Kashmir Conflict: Opportunities for Economic Peacebuilding and for U.S. Policy*. Washington DC: United States Institute of Peace.
- International Crisis Group. 2003. *Kashmir: The View from Islamabad*, (Asia Report No. 68). Islamabad/Brussels.
- Jagmohan, 1991. *My Frozen Turbulence in Kashmir*. New Delhi: Allied Publishers Limited.
- Jammu and Kashmir National Conference. 2008. *Vision Document for Jammu and Kashmir*. Srinagar.
- Jammu and Kashmir Peoples Democratic Party. 2008. *Jammu & Kashmir: The Self-Rule Framework for Resolution*. Srinagar.
- Ganguly, Sumit. 1997. *The Crisis in Kashmir: Portents of War, Hopes of Peace*, Cambridge: Cambridge University Press.
- Ghai, Yash, 2000. Ethnicity and Autonomy: A Framework for Analysis, in Ghai, Yash (eds.). *Autonomy and Ethnicity: Negotiating competing claims in multi-ethnic states*, Cambridge: Cambridge University Press.
- Gupta, N.S. and Prabhakar, N.C. 1988. *Socio-Economic Development in Jammu and Kashmir*, Jammu: Jay Kay Bookhouse.

- Government of India. 2004. *Kashmir: The True Story*, New Delhi: Ministry of External Affairs.
- Government of India. 2009. *Annual Report 2008-09*, New Delhi: Ministry of Home Affairs.
- Government of India. 2010. Status report – PM’s package for return and rehabilitation of Kashmiri migrants, (Status on 29.12.2010) New Delhi: Ministry of Home Affairs.
- Hassan, H. W. 2010. Migration of Kashmiri Pandits: Kashmiriyat Challenged?, (Working Paper 237), Bangalore: The Institute for Social and Economic Change.
- Jha, Prem Shankar. 1996. *Kashmir 1947: Rival Versions of History*, Delhi: Oxford University Press.
- Lamb, C. 1966. *Crisis in Kashmir*, London: Routledge.
- Masood, Talat. 2006. Pakistan’s Kashmir Policy, *China and Eurasia Forum Quarterly* 4(4): pp. 45-49.
- Office of the Prime Minister of India, 2011. *Report of the Expert Group to formulate a jobs plan for the state of Jammu and Kashmir*, New Delhi.
- Navlakha, Gautam. 1995. Caught between the Army and ‘Guest’ Militants. *Economic and Political Weekly*, 30(34), pp. 2105-2107.
- Noorani, A.G. 2002. Human Rights in Kashmir. *Economic and Political Weekly*, 37(12), pp. 1081-1082.
- Owen, Bennett Jones. 2002. *Pakistan eye of the storm*, New Haven and London: Yale University Press.
- Prakash, Siddhartha. 2000. Political Economy of Kashmir since 1947. *Economic and Political Weekly*, 35(24), pp. 2051-2060.
- Punjabi, R. 1992, Kashmir: The Bruised Identity’. In Raju G.C. Thomas (Ed), *Perspectives on Kashmir: Kashmir: The Roots of Conflict in South Asia*, Boulder, CO: Westview Press Inc.
- Puri, Balraj. 1990. The Challenge of Kashmir, *Economic and Political Weekly*, 25(4), pp. 191-192.
- Puri, Balraj. 2006. Kashmir’s Journey: From insurgency to militancy to terrorism, *Asian Affairs*, No. 27, pp. 80-84.
- Puri, Balraj. 2009. Azadi, Autonomy and Self-Rule vs. Freedom, *Mainstream*, XLVII (52).
- Rawls, John. 1999. *A Theory of Justice*, Oxford: Oxford University Press.
- Ranjit, Sau. 2001. On the Kashmir Question: Liberation, Jihad or What? *Economic and Political Weekly*, 36(17), pp. 1473-1479.
- Robert, C. Mayfield. 1995. A Geographic Study of the Kashmir Issue, *Geographical Review*, 45(2), pp. 181-196.
- Seema Sh. Conflict induced displacement: the Pandits of Kashmir, *Conflict Trends*, 4, 2009, pp. 31-37.
- Sikand, Yoginder. 2010. Jihad, Islam and Kashmir: Syed Ali Shah Geelani’s Political Project, *Economic & Political Weekly*, xlv (40): pp. 125-134.
- Singh, Tavleen. 1995. *Kashmir: A Tragedy of Errors*, New Delhi: VIKING.

South Asia Terrorism Portal, New Delhi,  
www.satp.org

Stephen, Philip Cohen. 2004. *The Idea of Pakistan*,  
Washington, D.C: Brookings Institution Press.

Swami, Praveen. 1999. Jammu and Kashmir:  
A communal divide, *Frontline* 16(15).

Thomar, Alice. 1949. The Kashmir Conflict,  
*Middle East Journal*, 3(1), pp. 17-30.

Verghese, B.G. 2007. *A J&K Primer: From Myth  
to Reality*, New Delhi: Indian Research Press &  
Centre for Policy Research.

Verma, P.S. 1992. *Jammu and Kashmir at the  
Political Crossroads*, New Delhi: Seema  
Publications.

Widmalm, Sten. 1997. The Rise and Fall of  
Democracy in Jammu and Kashmir. *Asian  
Survey*, 37(11), pp. 1005-1030.





