

Process of constitutional integration of Jammu & Kashmir

By: Anshuman Swamy

This essay deals with the history of the state of Jammu and Kashmir and how the Indian constitution has been slowly integrated in the state. Various historical events have been mentioned that have helped in formulating the constitutional provisions for the state of J&K. The essay starts with the introduction of basic history of the state, such as, the origin of the state and the rulers who ruled the state and then it tells about the events that occur after India's independence and highlights the conflict between India and Pakistan regarding the state, the state's accession to India, application of the Indian constitution to the state, the autonomous position of the state and lastly the Kashmir accord (1974) which established the Indian governance over the state. The essay is roughly of 4200 words.





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INTRODUCTION

A brief history of Kashmir before 1947-:

Tradition says that Kashmir was originally a lake that was drained by the great saint of ancient India, saint Kashyap. It was included in the empire of the great emperor, AshokaMaurya who is credited with the foundation of the city of Srinagar around the year 250 BC. During this period Buddhism spread in Kashmir and gradually flourished. The 7th century AD witnessed the establishment of a dynasty called the Karkota. The most famous ruler of this dynasty was LalitadityaMuktapid who is known for building the world famous sun temple (Martand) in Kashmir.²

The last Hindu ruler of Kashmir was Udyan Dev. In 1339 the Hindu rule in Kashmir came to an end and Muslim rule was established under Sultan Shamas-ud-Dinwhose. In 1757, Kashmir came under the control of Ahmed Shah Durrani, the Afghan who invaded India many times.³ In 1819 Ranjit Singh annexed Kashmir and made it a part of the Sikh empire. The two Anglo-Sikh wars which were fought between the British East India trading company and the Sikhs resulted in complete extinction of Sikh sovereignty in Kashmir. The British sold away Kashmir to Raja

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² Kashmir: Behind the veil by M.J. Akbar

³ <http://www.britannica.com/EBchecked/topic/10162/Ahmad-Shah-Durrani>

Ghulab Singh for the sum of Rs 75 lacs under the treaty of Amritsar.⁴ Raja Ghulab Singh died in 1857 and was succeeded by three Kings consecutively., Rambir Singh , Pratab Singh and Hari Singh . Maharaja Hari Singh continued to govern the state till 1950.

In 1932 , pro-Congress Sheikh Abdullah, formed Kashmir's first political party, the "All Jammu & Kashmir Muslim Conference" with a demand for merger of Kashmir and Jammu with Hindu India. His party was renamed the "National Conference" in 1939 to emphasize the secular nature of Kashmiri culture. The All Jammu and Kashmir National Conference⁵, led by Sheikh Mohammed Abdullah, espoused a secular ideology and wished to create a secular, democratic but independent Kashmir with close ties to British India.

Major Events in the period after 1947:-

The Indian independence act 1947, which was formulated by the Parliament of the United Kingdom that partitioned British India into two new independent dominions of India and Pakistan received the royal assent on 18 July 1947, and the two new countries came into being on 15 August. This very act authorized the princely states, till then under the paramount power of the British, to accede to either of the two dominions. On August 14, 1947, the Governor General adapted the Government of India act 1935 as the interim constitution of India with the changes specified in the act. Section 6 of the act provided that "an Indian state shall be deemed to have acceded to the dominion if the Governor General has signified his acceptance of an instrument of accession executed by the ruler." No last date was mentioned in the act or the instrument of accession by which a ruler was supposed to sign the accession deed. Maharaja Hari Singh, the ruler of Jammu and Kashmir signed this instrument of accession which was accepted by the Governor General of India in October 1947. Under this instrument, only three subjects- external affairs defence and communications were surrendered by the state to the dominion. The two characteristic features of this signed instrument were⁶:-

- (1) The state had a much greater measure of autonomy and power than enjoyed by the other states.

⁴The first Anglo sikh war by AmarpalSidhu

⁵ Founded in October 1932

⁶Jain M. P., *Indian Constitutional Law*, 5th edition

(2) The centre's jurisdiction within the state was more limited than what it had with respect to the other states.

Soon after signing the Instrument of Accession, Maharaja Hari Singh issued a proclamation charging Sheikh Mohd. Abdullah to function as the Head of the administration with power to deal with the emergency arising out of Pakistani invasion. On 5th March 1948, the Maharaja issued another proclamation to replace the Emergency Administration by a „Popular“ Interim Government, pending the formation of a fully democratic Constitution. This proclamation further desired that Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions has been completed, to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of that area. The Constitution to be framed by the National Assembly was supposed to provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing for the freedom of conscience, freedom of speech and freedom of assembly.⁷

Integration process:-

After the accession of the States to union of India, their integration into viable administrative units and the institution of their Constituent Assemblies proved more difficult a task than anticipated. In view of these difficulties, the whole question of constitution making in the States was considered in May 1949, at a Conference of the Premiers of the States and the Union of States. The Conference of the Premiers decided not to wait until the Constituent Assemblies in the States were convened and instead decided to leave the task of the framing of the Constitution of the States to the Constituent Assembly of India.⁸

However, by now the State of Jammu and Kashmir was under Pakistani invasion and influence. The situation in the state of Jammu and Kashmir under the administration of S.M. Abdullah was such as if a war was going on. Taking undue advantage of this situation several legal and constitutional steps were taken in favour of Sheikh Mohd. Abdullah. On 27th of May 1949, PARA 4-A was added to CONSTITUENT ASSEMBLY RULES saying, “Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the

⁷ <http://www.esamskriti.com>

⁸ <http://canvasfor-life.blogspot.in>

State of Kashmir otherwise as the State of Jammu and Kashmir may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.” This snatched the right to nominate members from the legal ruler and Sheikh Abdullah nominated all the four members from National Conference, three of them from Kashmir valley and an uneducated member from Jammu. On Thursday, the 16th June 1949, members from the state took the pledge and signed the Register in the Constituent Assembly. The members were Sheikh Mohd. Abdullah, MirzaMohd. Afzal Beg, MaulanaMohd. SyeedMasoodi and ShriMoti Ram Baigra. With this, began the politics of blackmail and intimidation that resulted in delayed and limited constitutional appliance to the state. The purpose was to exclude the state from constitutional arrangement evolving in the rest of country and ensure creation of a semi independent Sheikhdom.

Nevertheless, in spite of these efforts Jammu Kashmir continued to be part of constitutional mechanism of Union of India. On 17th October, 1949 Article 306 A which later became Article 370 was debated and added to the constitution of India. The motion read that with reference to Amendment No.379 of List XV (Second Week), after article 306, the following new article be inserted: -

(1) Notwithstanding anything in this Constitution,

(a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said lists as, with the concurrence of the Government of the State, the President may by order specify explanation For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharajas Proclamation dated the fifth day of March, 1948 ;

(c) the provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub clause (b) of clause (1) or in the second proviso to sub clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification

The Constituent Assembly formally approved the draft Constitution on November 26, 1949. On January 26, 1950, the Constitution took effect, a day now commemorated in India as Republic Day. On the same day the President of India ShriRajendra Prasad, issued The Constitution order, 1950 thereby applying the constitution of India to the state of Jammu and Kashmir.

While this was happening Sheikh Abdullah and the National Conference continued their tirade against Maharaja Hari Singh. Hari Singh continued to make way for the devolution of power to the people of state in a legal, constitutional and democratic manner. He was forced to leave the state. On 9th June, 1949 he issued his last proclamation entrust to the Yuvaraj Karan Singh powers and functions in regard to the Government of the State.As regent of Jammu & Kashmir, Karan Singh issued a proclamation on 25thNovember 1949 and accepted the new

constitution drafted by the Constitution Assembly for the whole of India replacing the Government of India Act, 1935.⁹

Constituent assembly:-

A clandestine plot was hatched in the Frontier Province of Pakistan by one Khurshid Anwar a retired Major of Indian Army with the consent of Chief Minister NWFO, Khan Abdul Qayoom Khan. On 20th October, 1947 the tribal war Lords of Frontier Province began to march for Kashmir. On 22nd October, 1947, Tribal Forces, comprising 2000 troops entered into Kashmir. Maharaja Hari Singh sent his Prime Minister, Mehar Chand Mahajan to Delhi with a request to Government of India for military help. On 27th October 329 Jawans of Sikh Regiment were airlifted to Srinagar. The invaders were pushed back by Indian Army to LalPul near Uri. A cease fire was declared through United National Security Council and the State got divided into two halves one administered by Pakistan known as “Azad Kashmir” and other administered by India known as Jammu & Kashmir State.¹⁰

Sir Owen Dixon was nominated as the UN representative to arbitrate between India and Pakistan who had had proposed to hold plebiscite under neutral administration. On the suggestion of Indian Prime Minister, Pandit Nehru on 27th October, 1950 a meeting of General Council of National Conference was held to reject the proposal of Dixon. The Council also decided to convene a Constituent Assembly in the State based on adult suffrage for determining the future of Jammu & Kashmir State. Nehru wanted to use it to counter the pressure of the Security Council for holding a plebiscite.

Karan Singh¹¹ issued an order dated 30th April, 1951 for formation of Constituent Assembly. A delimitation Committee was appointed who demarcated electoral constituencies and divided Jammu and Kashmir into 100 constituencies with 43 in Kashmir, 30 in Jammu and one each for Ladakh and Baltistan, 25 Constituencies were reserved for POK¹². On 31 March, 1951 Constituent Assembly was convened in Srinagar. On 5th November, 1951 Sheikh Abdullah made an impressive in-augural speech in the Constituent Assembly and stressed that the Constituent Assembly has the mandate of drafting the constitution of Jammu & Kashmir, to

⁹Demystifying Kashmir by Navnitachadha.

¹⁰ <http://www.jammu-kashmir.com/documents/jkunresolution.html>

¹¹The crisis in Kashmir protests for hope and peace by SumitGanguly

¹²Wikipedia on Kashmir conflict.

decide the future of royal dynasty, to make final decision of accession of Kashmir and to decide on the question of compensation to the landlords. On the matter of accession he talked in detail about the pros and cons of the various options available. According to him there were three options available which comprised, either to remain independent or accede to Pakistan or India. The independent option, he out rightly rejected as Jammu & Kashmir was not in a position to guard its long borders and maintain its independence. As far as Pakistan is concerned, he said, to quote “the only powerful argument which can be advanced in favour of Pakistan is that it is a Muslim State and Jammu & Kashmir is having big majority of Muslim population. The claim of being a Muslim State is of course camouflage and it is a screen to dupe the common man, as he cannot see clearly that Pakistan is a Feudal State, where Feudal landlords are trying these methods to maintain itself in power. The appeal to religion constitutes a sentimental and wrong approach to the question. Sentiment has its own place in life but often it leads to irritational action.”

Thus Sheikh Abdullah ruled out the possibility of accession with Pakistan also. Regarding the accession with India, he had all praises for its secular democracy which is based on justice, freedom and equality for all without distinction. He also reminded the house that Indian National Congress has constantly supported the cause of state people’s freedom. He quoted “Naturally if we accede to India, there is no danger of revival of feudalism and democracy.”

On 20 August 1952, the state Constituent Assembly under the leadership of Sheikh Abdullah unanimously adopted a resolution piloted by Mr. D.P. Dhar terminating the monarchy in the State. With the abolition of monarchy, all or any conditions attached by the monarch for himself stood discharged, resulting in the constitutional merger of the State the same day. The status of Raj Pramukh (Regent) was switched over to an elected Sadar-e-Riyasat. The Accession was ratified by the Constituent Assembly.

Application of the constitution to the state:-

Sheikh Abdullah and National Conference continued to make several justified demands and through negotiations with JawaharLal Nehru an agreement was made on July 24, 1952 between NC headed by Sheikh Abdullah and JawaharLal Nehru, the Prime Minister of India which provided:-

- a) 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 Notification“ 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
- b) As the President of India commands the same respect in the State as he does in other Units of India, Article 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieve, pardons and remissions of sentences etc.; would also be vested in the President of India
- c) 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 recognized that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India.
- d) 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 , Supreme Court should have only appellate jurisdiction.
- e) There was a great deal of discussion with regard to the “Emergence 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, 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.

In order to meet the viewpoint of the State’s delegation, the Government of India agreed to the modification of Article 352 in its application to Kashmir.

Sheikh Abdullah’s arrest in 1953-:

While the Constituent Assembly was still engaged in drafting the Constitution, there was stiff resistance from the various political leaders of Delhi who strongly and publically objected to the autonomous structure of the constitution for Jammu & Kashmir. PrajaParishad of Jammu raised the slogan of EK Pradhan, EK Nishan, EK Vidhan. Dr. S.PrasadMookerji, President of All India Hindu Mahasabha, while opposing the autonomy of Kashmir made a statement, "If the Muslims of Kashmir do not want to remain with us let them go away but Kashmir must and will be ours. This is a vital matter for security of India". Mr. Mokerji decided to enter Kashmir without permit on 11th May, he was arrested while crossing border and was detained in a Bungalow near NishatBagh. On 23rd June Mookerji died under mysterious circumstances. Sheikh was held responsible and it evoked a lot of anger against him. Nehru was embraced before the nation. He was already unhappy with Sheikh for perusing autonomous constitution.

Sheikh Abdullah started demonstrating arrogance and began to defy Union of India. Situation turned out of control and Prime Minister JawaharLalNehru, the close friend of Sheikh was forced to arrest Sheikh Mohd. Abdullah in August 1953. A case, known as Kashmir conspiracy case was registered against Sheikh Abdullah.

The National Conference continued to remain in power in the state with BakshiGhulamMohamad as the Prime Minister of the state. Thus, the agreement between Sheikh Abdullah and Pt. Nehru was broken due to the dismissal and arrest of its architect.

Formal inauguration of J&K constitution:-

The J&K constitution was launched formally on 26 January 1957. Section 3 unequivocally states that "J&K is integral part and shall remain integral part of India". This provision clearly provides in the First Schedule, item no.15 of Article 1 of the Constitution of India, which includes J&K as one of the States of the Union of India under Part XXI of the Constitution of India, which deals with "Temporary, Transitional and Special provisions". The State of Jammu and Kashmir was included in 1st Schedule as 15th state.

On February 15, 1954 the Constituent Assembly adopted the following resolution unanimously:

- (a) having adopted the report of the drafting committee on this day, the 15th of February, 1954
and

(b) having thus given its concurrence to the application of the provisions for the Constitution of India in the manner indicated in the Annexure to the aforesaid report this Assembly authorizes the Government of the State to forward a copy of the said Annexure to the Government of India for appropriate action".

By the 1954 Order, the Parliament could thereafter make laws in respect of all matters specified in the Union list. With the passage of time, The Constitution (Application to Jammu and Kashmir) Order, 1954 was promulgated by the President of India in consultation with the Government of J&K, regulating the constitutional status of the State, and apart from it, several Central laws got extended to the J&K State and even the nomenclature of Sadar-i-Riyasat and Prime Minister were changed to Governor and Chief Minister on March 30, 1965. First elections to the J&K Legislative Assembly under new constitution were held in March 1957.

In 1959 State Assembly unanimously decided to seek amendment of the State constitution to provide for the extension of the jurisdiction of the Election Commission of India and the Supreme Court over the J&K State. On 21st December 1964 Article 356 was applied to ensure that President's Rule can be imposed in the event of the failure of State constitution.

The Kashmir Accord (1974)-:

In 1971 there emerged another war between India and Pakistan which gave birth to Bangladesh. Pakistan had to face humiliating defeat by surrender of 93000 forces in East Pakistan. It had demoralizing affect on all political ambitions of people and its leaders in Kashmir as they were backing upon the support of Pakistan to achieve the goal of plebiscite. The war ended with the Simla agreement signed on 2nd July, 1972 between Pakistani Prime Minister Z.A.Bhutto and Indian Prime Minister Mrs. Indira Gandhi where among other things, it was agreed that all the outstanding issues including that of Jammu & Kashmir shall be resolved henceforth bilaterally. These developments in sub-continent changed the political outlook of "plebiscite front leaders". Sheikh Abdullah demonstrated his willingness to join mainstream. There was a bilateral dialogue between Indira Gandhi and Sheikh through their representatives G. Parthasarthi and MirzaAfzalBeig respectively which started on June, 12 1972. Sheikh insisted for restoration of 1953 position with respect to constitutional relationship between Jammu and Kashmir and India but Mrs. Gandhi was empathetically clear that hands of clock cannot be

turned back. “An Agreement was signed on 13th November, 1974 between G.Parthasarthi and M.AfzalBeig the agreement famously known as “Kashmir Accord “ which reads that “the state of Jammu & Kashmir which is a constituent Unit of Union of India, shall in its relation with the Union, shall continue to be governed by Article 370 of Constitution of India”. Sheikh Abdullah with the support of Congress legislature was sworn as Chief Minister on 25th February, 1975.

Section 4 of the accord stated that, “With a view to assuring freedom to the State of Jammu and Kashmir to have its own legislation on matters like welfare measures cultural matters, social security, personal law and procedural laws, in a manner suited to the special conditions in the State, it is agreed that the State Government can review the laws made by Parliament or extended to the State after 1953 on any matter relatable to the Concurrent List and may decide which of them, in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Article 254 of the Constitution of India. The grant of President's assent to such legislation would be sympathetically considered. The same approach would be adopted in regard to laws to be made by Parliament in future under the Proviso to clause 2 of the Article. The State Government shall be consulted regarding the application of any such law to the State and the views of the State Government shall receive the fullest consideration.”¹³

Section 5 made a significant point. It says, “As an arrangement reciprocal to what has been provided under Article 368, a suitable modification of that Article as applied to the State should be made by Presidential order to the effect that no law made by the Legislature of the State of Jammu and Kashmir, seeking to make any change in or in the effect of any provision of Constitution of the State of Jammu and Kashmir relating to any of the under mentioned matters, shall take effect unless the Bill, having been reserved for the consideration of the President, receives his assent; the matters are:

- (a) the appointment, powers, functions, duties, privileges and immunities of the Governor, and
- (b) the following matters relating to Elections namely, the superintendence, direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the legislative Council, being matters specified in sections 138, 139 140 and 50 of the Constitution of the State of Jammu and Kashmir.

Conclusion-:

¹³ <http://kashmiroobserver.net/news/opinion/sheikh-abdullah-political-sufferer-ii>

Thus, we can see that the state of Jammu and Kashmir has continued a process of constitutional integration with the union of India. This process has been very slow and long drawn as compared to other states but the process is irreversible.

This process needs to be accelerated so that ultimate objective of complete integration is achieved. The unnecessary delay is creating avoidable confusion and doubts in the minds of vulnerable sections of the state population.