



J&K Interlocutors, Indian Constitution and the Dustbin

22 Jun, 2012 [Dr Makkhan Lal, Distinguished Fellow, VIF](#) [View3360](#) [Comments 0](#)

Jammu and Kashmir is not a problem of the Kashmiris alone but of every ordinary citizen of this country. A closer look at the corr Jawaharlal Nehru, Sardar Patel, Maharaj Hari Singh and Sheikh Abdullah; file notings and government documents published in various *vc Power* for the period between 1946 and 1950 would reveal how the problem was created, where there none and then how it was muddie ended up in a mess. I do intend to take up this issue sometime soon.

However, the Subject matter of this article is certain remarks and suggestions made by the "Group of Interlocutors for J & K" h Padgaonkar in their report "*A New Compact With People of Jammu and Kashmir*" submitted to the Prime Minister.

Of the many issues discussed and recommendations made the Committee has talked about Article 370 of the Constitution and ma recommendations. It suggests "We recommend that a Constitutional Committee (CC) be set up to review all Central Acts and Articles of India extended to State...." Not just that it makes suggestion also what this CC should recommend: "Delete the word 'Temporary' for th 370 and from the title of Part XXI of the Constitution. Replace it with the word Special...."; Governor shall be appointed on the recommer Government; under Article 356 proviso should be added that "the Governor will keep the State Legislature under suspended anim elections within three months"; All India Service Officers (Article 312) should be reduced in favour of State civil service officers. And inde make no laws applicable to the State unless it relates to the country's internal and external security..." (pp.303-6).

In relation to Article 370 the Committee wants not just the word "Temporary" be replaced by word "Special" but also wants Clauses (: important now to see what the Article 370 says:

"Article 370 of the Indian Constitution

Temporary provisions with respect to the State of Jammu and Kashmir.

(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 l correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the mat 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 Presid of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation d: 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 th 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)

(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 issu 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 provis of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be

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 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's notification."

Origin of the Problem

Sheikh Mohammad Abdullah was a school teacher who left his job in 1930 and founded 'Muslim Conference' which was later named as 'National Conference'. On 10 May, 1946 Abdullah launched a movement against the Maharaja with the slogan against him 'Quit Kashmir'. In his inflammatory speech against the Maharaja and the Hindus he called for 'Jehad'. On 17 May, 1946, Abdullah exhorted his followers:

"It is time for action. You must fight slavery and enter the field of 'Jehad' as soldiers. Every man, woman and child will shout 'Quit Kashmir'. The nation has expressed its will. I will ask for plebiscite."

The slogan 'Quit Kashmir' should have meant for Maharaja to 'Quit Kashmir' and hand over the reins to Abdullah. Abdullah was arrested. Nehru demanded his immediate release. To demonstrate his support for Sheikh Abdullah Nehru decided to visit Kashmir in June. The Maharaja banned his entry. Nehru decided to enter Kashmir defying the ban. He gave the reason for entering the state as follows:

"I am going to Kashmir firstly, to arrange for the defence of Abdullah; secondly, to see things myself, although my visit to Srinagar will be thirdly, to do all I can to put an end to the complication arising from the policy of the State Government."¹

Nehru was advised by the Viceroy not to visit Jammu and Kashmir. But he ignored the advice of Viceroy, defied the order of the Stat and decided to visit Jammu and Kashmir. He entered Jammu and Kashmir on 20 June. Nehru was arrested and subsequently released and brought back to Delhi. "This event, besides causing a great public stir, permanently impaired the relation between Maharaja Hari Singh and the Government. Subsequent events showed, Nehru was never able to get over his hostility towards Maharaja and Sheikh Abdullah exploited it to the hilt."

Widening Fissures

Nehru's overture to Sheikh Abdullah and open dislike to Maharaja had made the Maharaja very skeptical. He saw no scope of being treated as what to say of Abdullah who has been vying for his blood. After the announcement of Mountbatten's plan of June 3, 1947, Mountbatten visited Kashmir the third week of June. He tried to persuade Maharaja Hari Singh to make-up his mind for joining one dominion or the other i.e. either India or Pakistan. Maharaja could not take decision even after the dead-line of August 14, 1947 passed and transfer of power took place with the clock hand pointing to 15, 1947. Maharaja could not decide primarily because of Nehru-Abdullah nexus on the one hand and the machinations of Jinnah on the other. He was also because of his own desire to be an independent kingdom with himself and his successors as the sole ruler.³

Nevertheless, Sardar Patel was trying to retrieve the lost ground due to Nehru's recklessness. On 3 July, 1947 he wrote directly to the Maharaja:

"I am sorry to find that there is considerable misapprehension in your mind about the Congress. Allow me to assure your Highness that the Congress is not your enemy, as you happen to believe, but there are in the Congress many strong supporters of your state... Pandit Jawaharlal Nehru is your friend. He is proud of it, and rest assured he can never be your enemy... as a sincere friend and well-wisher of the state, I wish to see that the interest of Kashmir lies in joining the Indian Union and its Constituent Assembly without any delay."⁴

Pakistan's Attack on J & K

Maharaja delayed signing the Instrument of Accession and by September 1947, due to joint Command held by the British Commander-in-Chief, Mountbatten almost certainly knew of Pakistan's plan to attack J & K which happened on 22 October. From here began another complicated history of Kashmir.

Nehru insisted that anything in Kashmir can be retrieved only if Sheikh Abdullah were appointed the Head of Administration which finally happened on 30 October, 1947. Once at the helm of affairs Sheikh started taking decisions without consulting the Maharaja. Gopalaswamy Ayyangar, Minister for External Affairs, started meddling in Kashmir affairs, and also poisoning Nehru against Patel. Thus, Nehru, Mountbatten, Sheikh Abdullah and Gopalaswamy combined started ignoring Patel, to whose domain Kashmir affairs belonged, and started taking independent decisions. The situation remained so when Gopalaswamy started giving orders to Kashmir Administration, Army Chief General Thimayya etc. Patel considered it inappropriate and wrote to Gopalaswamy:

"I feel that this matter should have been referred to and dealt with by the Ministry of States who would, if necessary, have utilised your good offices for the desired arrangements. I would, therefore, suggest that the related papers may now be transferred to the States Ministry and in the States Administration may be asked to deal with the Ministry direct."⁵

What Patel said in the above letter to Gopalaswamy was perfectly in order. After the Instrument of Accession was signed Kashmir had become a part of India. It was the job of the Ministry of States [now the Ministry of Home Affairs] to look into its administrative problems which may be dealt by no other person except Sardar Patel. This also meant that Mountbatten, Nehru, Gopalaswamy and Abdullah could not have any say in Kashmir affairs. Gopalaswamy poisoned Nehru on the issue to such an extent that Nehru wrote what can easily be termed as the most foolish letter to his cabinet colleague, to say nothing of the status of the recipient, Sardar Patel. Nehru, defending Gopalaswamy and his actions, wrote to Patel:

"Gopaldaswamy has sent me copies of correspondence which has passed between him and you... I do not appreciate the principle which the States Ministry has in view in regard to its work.... The present issue relates to Kashmir. This raises all manner of connected issues—internal and others—which are beyond the competence of the States Ministry as such... And that is why I have to take personal interest in this matter about co-ordination in our various activities... I really do not understand where the States Ministry comes into picture except that it should show steps taken." ⁶

Nehru did not stop just there. To add insult to injury, he further wrote in the same letter: "May I say that the manner of approach to me is hardly in keeping with the courtesy due to a colleague?"⁷

Any person of even a little self-respect would have done what Sardar did. He immediately, after receiving Nehru's letter, wrote on his left hand the following brief letter in reply:

"My dear Jawaharlal,

23 December, 1947

Your letter of today has been received just now at 7 p.m. and I am writing immediately to tell you this. It has caused me considerable pain. Before I received your letter I had already written to Gopaldaswamy a letter of which a copy is enclosed herewith...

In any case, your letter makes it clear to me that I must not or at least cannot continue as a member of Government and hence I am hereby resigning. I am grateful to you for the courtesy and kindness shown to me during the period of office which was a period of considerable length.

Yours sincerely,

Vallabhbhai Patel." ⁸

This letter was marked 'Draft'. Before the letter could be typed and dispatched the news reached out to some, including Nehru and Patel to pursue the matter any further. But this 'Draft' letter remained in file of Sardar Patel.

In the matter of Kashmir Sardar Patel was completely marginalised. Nehru was taking decision on his own and decided to refer the matter to UNO rather than treating it simply as an act of aggression and dealing with it accordingly. ⁹

Sheikh Abdullah and His Duplicity

The real face of Sheikh Abdullah started coming out of the mask once the Maharaja was out of the way, Sardar was side-lined, and Nehru was confused, after having messed up everything. The Maharaja had washed his hands off, virtually, due to the attitude of Nehru. In a letter to Sardar Patel he expressed his anguish in following words:

"Sheikh Abdullah and Bakshi are virtual dictators and they have complete power. I wonder what we are expected to do and what the consequences when Mr. Mahajan and I have stepped aside are we to be blamed and coerced?" ¹⁰

On 31 December, 1947 Ram Chandra Kak had written to Mahatma Gandhi explaining the whole situation in Kashmir. ¹¹

Once Sheikh Abdullah succeeded in taking over control of the State Government, he started to implement his design to take the control of the State. With each passing day Abdullah's conduct became increasingly unbecoming of a Head of a Government of a State. He became more and more authoritarian and aggressive.

On 29 September 1948 Abdullah gave an interview to the foreign correspondents which not only revealed his mind but also his long term design. In the interview he virtually declared independence of Jammu and Kashmir. Sardar Patel very well knew the dubious character of Sheikh Abdullah and just could not allow Abdullah to get away with the interview. Patel not only took note of it but also communicated to Nehru in most unambiguous terms on September 30, 1948:

"I am surprised to read this morning an account of the Press Conference which Sheikh Mohammad Abdullah is reported to have held here in Delhi... It is undignified and constitutionally improper for a Prime Minister [Sheikh Abdullah] to attack the Constitutional Head of his Administration... It is well that the latter is not in a position to defend himself or to retaliate...."

"Sheikh Sahib has also referred to certain people in India who believe in surrendering Kashmir to Pakistan. I should like to be enlightened as far as my information goes, there are many more of such people in Jammu and Kashmir State than in the whole India put together...."

"I hope Sheikh Sahib realises that nobody has been more accommodating to him than the Government of India and none has extended more understanding and sympathy in his struggle than the people of India... I think it would be difficult to find a parallel in constitutional history to the attack, which he has made on Maharaja. I hope you will succeed in impressing upon him the mistake he has made." ¹³

Patel never minced words while dealing with the issues. He wrote to Sheikh on the same day, he wrote to Nehru. Patel advised Abdullah to desist from such gimmickry and also desist from speaking to the press in the interest of Kashmir and the country. His unhappiness over the conduct of Abdullah was understood by the fact that he sent this letter to Abdullah "c/o The Prime Minister of India." ¹⁴

Sardar Patel wrote also to Gopaldaswamy Iyyengar, who was put in-charge of Kashmir affairs by Nehru, highlighting several points in Abdullah's letter. It is interesting to note what Gopaldaswamy wrote to Patel:

"Before I saw the account of it in the newspapers, I had been told that orally by a person who had been present there of a good deal that had not appeared in the Newspapers. What was not reported in the papers, I gathered, was even more unjustifiable than what did appear. Despite all this, both Nehru and Gopaldaswamy Ayyangar got on the business of covering-up. They tried to show that Abdullah was what Jawaharlal wrote to Sardar Patel:

"I entirely agree with you that some of the statements that Sheikh Abdullah made in regard to Maharaja were very indiscreet and should have been made.... He is not a very clear thinker and he goes astray in his speech as many of our politicians do." ¹⁶

Call for Independent Kashmir

Sheikh Abdullah started showing his true colours sooner than many may have expected. He now started clamouring for an 'Independent Kashmir' giving calls to the landlords, who has gone to Pakistan, to come back. Abdullah declared in an interview to a foreign correspondent Michael Davidson of *Scotsman*, dated 14 April, 1949):

"Accession to either side cannot bring peace. We want to live in friendship with both Dominions... an Independent Kashmir must be guaranteed by India and Pakistan but also by Britain, the United States and other members of the United Nations... Yes independence – guaranteed by – may be the only solution." ¹⁷

Everyone was horrified at this statement of Abdullah. Even Gopaldaswamy, normally so sympathetic and accommodative to Abdullah, wrote

"My attention was drawn to the content of his interview earlier in the day. It is most astonishing performance... I condemn the Sheikh's statement that what he has told Michael Davidson and what the latter has published will have the most serious and mischievous consequences abroad... reading between the lines, I suspect a plan, the first step of which is this blessing by the Premier of Kashmir of the idea of an Independent Kashmir...and the final step of which may well be perhaps one of the greatest betrayals in history." ¹⁸

Still we do not see any reaction coming from Nehru!

Reopening the Matter in the Constituent Assembly

The framing of the Constitution of India was virtually in the final stages when the above interview of Sheikh Abdullah was published, made in-charge of framing the Article/Clauses dealing with Kashmir. A draft was finally agreed upon among Jawaharlal Nehru, Sardar Patel, Dr. Ambedkar, the Maharaja of Jammu and Kashmir, Sheikh Abdullah and three of his colleagues – Mirza Mohd. Afsal Beg, Maulana Muzaffar Ahmad and Moti Ram Baigra. It was also approved by the Congress Party and the Constituent Assembly. The Article dealing with Kashmir is now known as Article 306A. But after Abdullah and party went back to Srinagar, they started raising objections to this draft. Abdullah argued that the Indian Constitution applicable on all other states should not be applicable on Jammu and Kashmir. He just would not listen to any reason. It transpires that this move of his had the blessings of Jawaharlal Nehru. It was perhaps Nehru who advised Abdullah to seek the he securing the Special Provisions for Jammu and Kashmir. After giving a patient hearing Ambedkar said to Abdullah:

"India should provide all the money for the governance and development of your state. India should undertake to defend your state against other aggressors. Indians should die to defend your state. You will have a separate constitution, separate head of state, separate sets of flag. Your people can buy and own land anywhere in rest of India but none who was not born in Jammu and Kashmir could acquire property in Jammu and Kashmir. Indians should be taxed to develop your land, to defend it from all aggressions and you have no obligations to the Indian Union. I can never agree to such treatment to any state." ¹⁹

It is very difficult to guess whether Gopaldaswamy was honest in writing in what he wrote to Patel after Abdullah's interview with Davidson playing games. Nevertheless, he lamented that it was unimaginable and hurtful that:

"after having agreed to the substance of our draft both at your [Sardar Patel's] house and at the party meeting, they [Abdullah and company] laid down Panditji in the manner they were attempting to do." ²⁰

But the story gets murkier as we proceed. Though Gopaldaswamy and Nehru were blaming Abdullah for the impasse and trying to impress upon him that he was unhappy with Abdullah's behaviour, somewhere behind Patel's back game was still on. Gopaldaswamy, on 15 October 1949 sent for consideration a draft of the article to be incorporated in the Constitution, replacing Article 306A dealing with Kashmir. Gopaldaswamy mentioned in his covering letter that he had prepared this new draft, in place of the one agreed upon by all:

"Without giving up the essential stands we have taken in our original draft, read just it in minor particulars in a way which I am hoping you would agree to." ²¹

"

Patel was aghast at the draft. What Gopaldaswamy was calling 'minor' adjustments and in all essentials the original draft, was seen by Sardar Patel in reply to Gopaldaswamy:

"I find there are some substantial changes over the original draft, particularly in regard to the applicability of fundamental rights and state policy. You can yourself realise the anomaly of the state becoming part of India and at the same time not recognising any of these p

"I do not at all like any change after our party has approved of the whole arrangement in the presence of Sheikh Sahib himself. When he wishes to back out, he always confronts us with his duty to the people. Of course, he owes no duty to India or to the Indian Government on a personal basis to you and the Prime Minister who have gone all out to accommodate him.

"In these circumstances, any question of my approval does not arise. If you feel it is the right thing to do, you can go ahead with it." ²²

Things became more and more complicated due to the reopening of the Final Constitution Draft, already unanimously approved by the Constituent Assembly, and that too without anybody raising any note of criticism. Abdullah and three of his colleagues were present when this deal dealing with Kashmir was approved by the Assembly. They also did not raise any objection or move any amendment to it. Still, Gopal Krishna Gandhi thought it prudent to open the chapter and start drafting the whole thing afresh (which came to be known as Article 370) as per the wish of Sheikh Abdullah and his cronies.

Article 370 was inserted in the Constitution, purely as a temporary arrangement, to deal with Kashmir. We must not forget that this Article granted special status to the Jammu and Kashmir, not enjoyed by any other state (altogether 563) who signed the Instrument of Accession. However, the deal is still being played. Sardar Patel's death on 15 December 1950 removed whatever restraint there was there in the path of Nehru and his friends. No longer were there any friends or colleagues within the party or in the Cabinet who could apply the brakes on Nehru's recklessness. As a result, Nehru was able to grant even the most unreasonable demands and under the Nehru-Abdullah Pact. He virtually agreed to all of Abdullah's demands. The special status was granted and now with the Nehru-Abdullah Pact, Article 370 which was merely provisional and very transitory became permanent.

Jittery Nehru, Frankenstein Abdullah

History proved that Nehru's faith and good will towards Sheikh Abdullah was misplaced. Sheikh Mohammad Abdullah had to be dethroned by none other than Nehru himself.

Let us recall the discussions between Nehru and Gopalaswamy on the one hand and Sardar Patel on the other. On the insistence of Sheikh Abdullah, with the blessings of Nehru, Article 306A was replaced by Article 370, despite Sardar Patel's flat 'No'. When Article 370 was adopted by the Constituent Assembly even though purely as "transitional and temporary" Patel, in conversations with members, said, '*Jawahrlal royega.*' Nehru's fits and tantrums Sardar stopped arguing or interfering in the departments looked after by Nehru. Like-wise, he ignored Nehru's demands. It came to the affairs of the Ministry of States to the extent that he did not bother to tell Nehru and Rajagopalachari his exact plans about Kashmir. He came to know about it only after the army had already entered in Hyderabad and preparations were being made for Nizam's surrender. He persuaded the Cabinet to overrule Mountbatten and entrust the Indian army with the operations against Nawab of Junagadh.

Kashmir was drifting towards despotic anarchy. Patel was well aware of it. Nehru's handling was making it messier. Even Bakshi Chaudhary became so perturbed that he met Patel and requested him:

"Why do you not take over the problem and finish it like Hyderabad."

Patel replied cryptically:

"You go to your friend [Pandit Nehru] and tell him to keep his hands off Kashmir problem for two months and I will undertake to solve it."

Conclusions

Let us visit back to pp.1-2 of this article and see the provisions of Clauses 1 and 3 of Article 370. Once we remove it then in what way will the State of Union of India and what will be the validity of signing of Instrument of Accession? The Clause 2 of Article 370 itself flows from Clause 1 and has already outlived its purpose. If Clauses 1 and 3 are deleted; the death of Clause 2 will be a by-product.

The Interlocutors have recommended a review of all the Central Acts and Articles of the Constitution of India extended to the State of Jammu and Kashmir. The 1975 Accord between Mrs. Indira Gandhi (Government of India) and Sheikh Abdullah (signed on their behalf by G. Parthasarathi and Afzal Beg on 13 Nov. 1974) should also be reviewed and discarded. Clauses 1 and 2 of this Accord say:

The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by the Constitution of India.

The residuary powers of legislation shall remain with the State; however, Parliament will continue to have power to make laws relating to the provisions directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India.

It seems that group of interlocutors have hardly applied their mind on the historical and the constitutional legacy of the Jammu and Kashmir and whether the unwritten mandate of the Interlocutors was to recommend the secession of J & K from India. Should the Constitution of India be amended?

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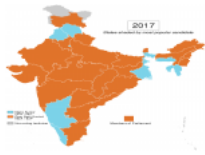
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