



# Empowering the People Kashmir Elections 2002

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**JKCHR United Kingdom**

## **Foreword**

I met Prime Minister Atal Behari Vajpayee in June 1993 at the UN World Conference on Human Rights in Vienna. Mr. Vajpayee was leader of the Indian delegation. I met him as part of the 'Diplomatic Committee' of UN-NGO Liaison Committee and as Secretary General of JKCHR on separate occasions.

JKCHR addressed the Plenary and the Main Committee of the UN Conference and addressed a press conference organised by the President of UN Correspondents Association in Vienna.

We also set up an exhibition on the violation of Human Rights by Indian security forces in Kashmir.

During our meeting when I invited Mr. Vajpayee's attention to the huge number of security forces and the use of violence by them, his reply was – "we are in opposition. If we come to power, things shall change".

I had no clue that he would be a poet Prime Minister and statesman of his time in Indian politics. And more so no clue that a lot in regards to Kashmir and Pakistan would happen during his term of office.

The fact that he at one time remained in office for only 13 days makes him a singular leader in the region – who has the strengths and charisma to free – the 'Hope' detained in the Pandora Box of Kashmir.

He has to do this in partnership with the people of Jammu and Kashmir, civil society of India and Kashmir and conjoin this with a partnership with Pakistan. It has to be a phased approach. The people and grievance of the people of Jammu and Kashmir come first on either side of

line of control. But a sense of urgency prevails on the Indian side of Kashmir.

The poet Prime Minister has lived up to his promise of a 'free and fair election' in Kashmir. The poet has a reason to celebrate. It would be importantly helpful if I quote from the UN General Assembly report A/46/609 and Corr.1 para 76, which reads as:

"Elections in and of themselves do not constitute democracy. They are not an end but a set up, albeit an important and often essential one, on the path towards the democratisation of societies and the realisation of the right to take part in the governance of one's country as enunciated in major international human rights instruments. It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country".

After the 1977 free and fair elections under the leadership of Mr. Morarji Desai this is second most important free and fair election in the history of Jammu and Kashmir. The Kashmir of Mr. Vajpayee is the Kashmir of 2002.

A distribution of mandate, a coalition government and a strong opposition, have taken shape for the first time on one side of the cease fire line. These elections have set a standard for future elections under the administrations of India and Pakistan, should we continue with the distribution of administrative controls of these two countries.

The political stalwarts in Azad Kashmir have an opportunity to compare the strength of their political nerves while haggling for the scales of power on their side with the strength of nerves shown by Mufti Mohammad Sayeed and the consideration of Mrs. Sonia Gandhi to seek a balance between the superiority of numbers of the Congress and the insistence on the sensitive psychology

involved in PDP as valley based. At least Congress or the Indian establishment did not err to disintegrate PDP through horse-trading.

For the sake of the people of Jammu and Kashmir politicians in Srinagar and in Muzaffarabad should have the courage for a 'conscientious objection'. People around the world, on the grounds of conscience, resist the authority of the state and refuse to serve in military.

People do so on personal religious or humanitarian grounds. We need 'conscientious objectors' in Kashmir politics – more on the side that has claims to advance the public and political interest of the people of Jammu and Kashmir under UNCIP under the Constitution Act 1974.

The new coalition in Srinagar is not just for 'tourism or development' – the distribution of a mandate is much more than that. The alliance leaders have to remain on the side of the people and adopt a phased work programme that embraces the elected forums [government and opposition] a non-elected but well recognised forum of APHC, militants, political organisations outside APHC, various schools of civil society, Kashmiri leadership living in Azad Kashmir and Pakistan [Kashmiri refugees], Kashmiri leadership and non party experts living in various parts of the world –to work out a way forward.

A reliable understanding of the jurisprudence of the grievances is key to any move forward. However, the leadership of Kashmir has to re-orient its priorities and in this the people of Kashmir come first.

We need a leadership that is transparent, accountable and ready to face a liability that accrues while holding a public trust in government or in politics. We have to wrap up the culture of a privatised politics and the culture where

people convince themselves of a 'silver spoon' in their mouth.

**Dr. Syed Nazir Gilani**  
**Secretary General-JKCHR**

# **Free and Fair Elections**

## **Dialogues and Contestations**

The civil society in Jammu and Kashmir over the last 12/13 years passed through the worst ruptural moments of its political biography.

Politics, in its broadest sense, is the activity through which people make, preserve and amend the general rules under which they live. It is inextricably linked to the phenomenon of conflict and co-operation.

Dialogues and Contestations of a society with the state are necessary to animate a people's well being. And the site at which these encounters take place is always a civil society.

Political schools have to construct alternative modes of politics and give a convincing message that the state dictated political discourse is not the final word on political arrangements.

For the reanimation of civil society it is important that the men and women are able to take part in a freely expressed political choice. The endeavour to animate the civil society has to be gilded on the confidence that a self-conscious civil society necessarily involves democratisation. Civil society is accessed invariably through political activism, which ensures state accountability and responsiveness.

Civil society can, however, carry out this programme only when it itself is democratic. Logically civil society can hardly ask for a democratic state if it is itself undemocratic. A democratic state in effect requires a democratic civil society.

## **Notoriously Oppressed**

The constitutional history of the people of Jammu and Kashmir started with Jammu and Kashmir Constitution Act 1939.

Sine the independence of India and Pakistan the people of Jammu and Kashmir are distributed under the de facto controls of India and Pakistan.

The constitution of Jammu and Kashmir 1956 on the Indian side of Kashmir recognises the territory of the State as comprising all the territories which on the fifteenth day of August 1947, were under the sovereignty or suzerainty of the Ruler of the State.

Part III Article 6 (2) states that "Any person who, before the fourteenth day of May, 1954 was a State Subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory – now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State".

This constitutional guarantee exists for those Kashmiris who are living in the territorial jurisdiction of the State of Pakistan.

In contrast the constitution of Azad Kashmir on the Pakistani side of Kashmir enshrines the territorial belief in a reference to the future status of the State of Jammu and Kashmir in the preamble and in reference to the definition of High Court it is traced to 14<sup>th</sup> August 1947.

It does not take one many moments to find that far from being haven of democracy, peace and good will, the civil society in Kashmir has notoriously oppressed its own inhabitants. The public domain of expressed politics has remained restricted in Kashmir.

A fear psychosis in the last 12/13 years and a new brand of privatised politics has restricted the public sphere of expressed politics in Kashmir. People have been oppressed and marginalized and excluded from 'democratic' deliberations.

Even historically there has been an absence of internal democratisation in the civil society of Kashmir and over the years it has largely neutralised its potential for democratising the state. This is the reason that much could not be done to find the ways in which civil society and the state can be reappropriated in the interests of democracy and in finding a resolution to the Kashmir dispute.

### **The Public Interest**

Governments serve the enlarged interests of the people in an organised manner and politicians forming such governments act in the interests of the people. Every shade of political opinion claims that it works for the 'common good' or in the 'public interest'.

It is the notion of public interest, which gives a politician's views or actions a cloak of moral respectability. In a 'government for the people' a collective public interest takes precedence over the private interests of each citizen.

Broadly speaking the 'revealed interests' of Kashmir politics during the last 12/13 years do not add up to a fair face of 'collective public interest'. It should not surprise us at all because the representation is intimately tied up with elections, at first within a political party and thereafter with the competitive elections at the state level. There have been no elections of either kind – therefore the elected could not live by a link – the view of the electors.

It is on this basis that in his famous speech to the electors of Bristol in 1774 Edmund Burke [1729-97 a Dublin born



British Statesman and political theorist. Burke was the father of the Anglo-American conservative political tradition and a supporter of the American Revolution of 1776] informed his would be constituents that 'your representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion'.

In essence according to Burke the representation was to serve one's constituents by the exercise of 'mature judgement' and 'enlightened conscience'.

Unfortunately the politician in Kashmir would not dare to wander to stake his representative claim on this principle and accept that a 'Parliament or an Assembly – is a deliberative assembly of one nation, with one interest, that of the whole'. Kashmiri leaders have shown no regard to the fact that a civil society is a partnership between 'those who are living, those who are dead and those who are to be born'.

### **Elections in Kashmir**

Kashmiris are a slow moving society and take ages to graduate. It was 31 years after their sale in 1846 that they voiced their first formal grievance in 1877. They made a formal complaint against mal-administration and misgovernment. Again it took them another 55 years in 1932 and the people of Jammu and Kashmir demanded a '**responsible government**'.

The people of Kashmir, through their politicians, have submitted themselves to elections in 1951, 1957, 1962, 1972, 1983, 1987 and in 1996. The question of the '**transfer of the free will**' of the people and that '**the will of the people**' has not been the '**basis of the authority of government**' in the past continues to be raised in Indian civil society itself. Participation in the last elections 1951 – 1996 has not vitiated the right to self-determination and on the contrary a debate after 1987 elections has remained animating and engulfing.

Democracies make mistakes and at the same time have institutional arrangement to listen and act to rectify. It is evident that the Indian civil society today is much more involved in the tragedy of the people of Kashmir than it was in 1951 or 1987.

This change in the civil society of India and the political schools of India is reflected in the statement of the Prime Minister of India on 15 August 2001 when he acknowledged the '**pain and agony**' of the people of Jammu and Kashmir and promised that when the elections to the new State Assembly took place, "**we shall ensure free and fair elections**".

While a political school or schools set out to challenge the legitimacy of state power and belief that a state dictated political discourse is not the final word on political arrangements, it has to construct alternative modes of politics. It has to understand that politics is about the dialogues and contestations. Therefore a society needs to be animated and the site at which these encounters take place is civil society.

One sees that over the last 12/13 Kashmiri leadership could not construct any alternative modes and the only alternative constructed is a 'memorial of mistakes' and a huge grave yard standing on its own as a 'memorial of the loved ones lost'.

The rabid opposition to the 9<sup>th</sup>/10<sup>th</sup> election seen on its own is an anti-people act and a violation of human rights. APHC [and other political organisations outside the fold] staying put to 'make peaceful struggle to ensure for the people of the State of Jammu and Kashmir the exercise of the right of self-determination in accordance with the UN Charter and the resolutions adopted by the UN Security Council .." {Chapter II article 2 (i) of the APHC constitution}, do not bother to account for the use of violence against the common man and woman in the sphere of their freely expressed political opinions.

It is equally reprehensible that political schools in Jammu and Kashmir [more so in the valley] have failed to act according to a 'mature judgement' and an 'enlightened conscience' on the jurisprudence of 'self-determination' and the 'elections'.

### **Jurisprudence of Elections**

**Participation.** Elections on their own are a separate human right. Participation in the conduct of public affairs is a basic human right. It is prized by people throughout the world and it involves individuals in community decisions. Today, taking part in government is recognised as a basic human right in every region of the world.

Since the politicians on either side of Jammu and Kashmir, the militants and the Government of Pakistan base their case on UN Charter and UN Resolutions, it is correspondingly important to understand the jurisprudence of (a) General Assembly resolution 46/137 of 17 December 1991 on the importance of elections and (b) how elections in view of the United Nations impact the effective enjoyment of a wide range of other human rights and fundamental freedoms in any part of the world.

It would be a self-serving and at the same time repugnant to UN Charter wisdom, if the politicians, seriously genuine and self-important do not concede that the right to take part in government is proclaimed and guaranteed by Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and is recognised in many other treaties and declarations.

An intensified world-wide struggle of the people for free and fair elections – often at great risk – demonstrates the importance of this right to individuals around the world.

The General Assembly of the United Nations in para 3 of its resolution 46/137 of 17 December 1991 states that "periodic and genuine elections are necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter

of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wider range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights”.

**Non-participation.** The people of Kashmir not on account of threat to life and violence against person but out of a free and informed choice have a right – not to participate in elections for a variety of reasons supported by the United Nations jurisprudence on elections. In this regard election setting, effective administration of justice during an election, question of a balance between electoral security and maintenance of order on the one hand and on the other the importance of non-interference with the rights and the existence of an environment free of intimidation.

There is the question of ‘Duty to Fairness’. The UN Code of Conduct imposes a duty of service to the community upon all officers of law. It enshrines that all citizens benefit from elections that are administratively sound and free of any disruptive forces, which seek to undermine, the free expression of popular will.

There is a growing evidence that today the civil society of India and the political schools of India are keen to ensure a free expression of popular will in Kashmir elections as a first enduring step in any advance on Kashmir problem. The urgency and desire in this regard is reflected in the statement of the Prime Minister of India on 15 August 2001 when he acknowledged the **‘pain and agony’** of the people of Jammu and Kashmir and promised that when the elections to the new State Assembly took place, **“we shall ensure free and fair elections”**. It is in the fitness of argument to assume that as a member of UN and as a democracy, India should have more institutional reasons than many other member nations, to accord more meaning to the ‘Duty of Service’ and ‘Duty to Fairness’ that the UN General Assembly envisaged in 1979 in the Code of Conduct for Law Enforcement Officials.

## **Empowering the People**

The use of violence to prevent a man or a woman from the choice of an expressed politics has no place in a civil society. It constitutes a criminal offence and correspondingly lowers the numerical ceiling of your strength at the time of referendum.

Politicians have to construct credible alternative modes by argument and by contestation and keep up the endless efforts to promote the common welfare of the people.

There is no cogent reason available to advocate a non-participation in the elections and no reason that one should give up a basic human right for the sake of an engineered privatised politics. Since there is neither an alternative to elections that could empower the people, people should be allowed to make an informed choice.

They should be allowed to understand the jurisprudence of 'elections' and the jurisprudence of 'self-determination'. They should be allowed to live, 'a today', 'a tomorrow' and prepare for 'the day-after' which [the day-after] the politicians should handle in regard to 'self-determination'.

More over a simple application of common sense would reveal that bidding a person to keep off from the singular moment of casting a vote which enables him or her to instruct/mandate his representative in regard to a programme of action, would have no other result except perpetuating further a much dreaded and bemoaned status quo. It means facilitating the continuation of the present government without putting it through a free and fair assessment of the people.

It is not only the common man and woman in the civil society of Kashmir that need a responsible government but the Kashmiri leadership stands out more in its need of a government.

The legal documents required for a car, the need for a passport to travel, admission in a hospital, need and level of a personal security cover, a judicial relief, the question of prisoners, of disappeared, violation of human rights and the provision of daily household stuff are the items of life that are firmly connected with the existence and acceptance of a government.

Ironically our Kashmiri leadership is destitute in its understanding of the jurisprudence of the Kashmir case. It may not have even remotely occurred to it that National Conference and Muslim Conference are the two parties fully referenced in the UN Resolutions and are deemed to have passed the test of Principality. APHC and other parties outside this fold, may prima facie appear to have the potential to pass the test of Principality but these parties have yet to sit for this qualification

### **Elections 2002**

The four phase elections - September 16, September 24, October 01 and October 08 are now over. US ambassador to India Mr. Robert Blackwill has certified these elections as "positive, credible, successful". German ambassador in India on behalf of European Union also certified these elections as free and fair.

These elections may have a question mark on being 'freer' but there is little doubt on their being 'fair'. The common Kashmiri was not free in the expressed choice of his politics. The voter was under the shadow of a gun and dared all threats in his walk to the Electronic Voting Machine at the polling station. One can say that these elections were freer than anytime in the past.

Kashmir was under the international gaze, there was a massive presence of national and international media, Delhi based foreign diplomats and a large number of NGOs were round the corner to see the voting in process.

The killing in May of Abdul Ghani Lone senior Kashmiri leader and a short, sharp and swift spell of murderous

violence, killing NC leader Mushtaq Ahmad Lone and nearly 800 others during the elections could not match the nascent ability of the common man and woman to assert their singular opportunity to effect a change.

### **How Did it All Happen**

The institutional strength, independence and determination of the Election Commission of India remains at the core of animating the interest and trust of the people of Jammu and Kashmir.

The lead role of the Chief Election Commissioner J. M. Lyngdoh radiated a high sense of 'Duty to Community', 'Duty to Fairness' and his superman-like tradition of impartiality and sensitivity have an engulfing say in the success of the process.

The Chief Election Commissioner had the guidance of the rule of law and the guidance of a great statesman of Indian politics of the day – the Prime Minister of India. The concept of an approach based on 'insaniyat' and the promise made during his Red Fort speech, where Prime Minister had admitted that 'mistakes have been made' morally emboldened the Chief Election Commissioner to start with a clean slate in Jammu and Kashmir. The civil society and its various shades of opinion, civil and governmental, in India that remain associated with the gregarious approach on Kashmir have an equal cause to celebrate a move forward.

### **Boycott Call and its Pitch**

APHC boycott, its hue and cry, merchants of private interests, Pakistan's refusal to accept the possibility of a free and fair elections and more so the General Musharraf calling it a farce, did not find an impartial audience.

The international community, by and large has endorsed the Indian claim that despite violence and threats by militants there was a turnout of 41 per cent. Incidentally the turnout in the national elections of Pakistan was also around 41 per cent.

### **Friendship of Blind and the Lame**

APHC and the Government of Pakistan seem to have ended up in a friendship of blind and the lame. 12 January and 27 May 2002 determination of General Musharraf to stop all cross-border terrorism and the related suspicion expressed by the US ambassador in India stating that – “ Our view is that these things should go in parallel. We and the others will continue to work very hard in Islamabad to promote the objective of no more terrorism emanating from Pakistan and Pakistan-occupied territory. But at the same time, India and Pakistan should resume a serious discussion about their differences”. [The Indian Express 19.10.2002].

Ambassador Blackwill also seconded New Delhi’s 8-point offer of composite dialogue, of which Kashmir is one part, indicating that Washington did not agree with Islamabad’s repetitive insistence on it being the “core issue”.

In equation to General Musharraf’s promises of 12<sup>th</sup> January and 27<sup>th</sup> May 2002, APHC after 12/13 years of a prized and a privatised politics, on 7<sup>th</sup> September 2002 in New Delhi signed a proud joint statement with Kashmir Committee of India.

According to this joint statement “...APHC has agreed that all concerned parties must rise above their traditional positions, abandon extreme stands and show the necessary flexibility and realism to reach an acceptable, honourable and durable solution”.

Kashmir Committee prima facie is composed of well-learned and well-meaning members of the civil society. There is no reason to doubt their sincerity in regard to the welfare of the peoples of Jammu and Kashmir, India and Pakistan.

However, for a constructive move on the road to cessation of violence and restoration of peace accompanied with all rights to the people of Jammu and



Kashmir there is a lot more than to look at the silver spoon in the mouth of APHC.

APHC has followed a constitutional discipline since 31<sup>st</sup> July 1993. Although some of its activities have remained extraneous to the constitution yet it has not off loaded this discipline as an excess baggage on its way to Islamabad.

The new statement constitutes either an amendment to the constitution or a privileged departure at the cost of a generation of beautiful young men and women in the heavenly abode, where even the angel of death objected to kill on the question of 'conscience'.

Out of a 'national prejudice' one would like this assembly of Kashmir politics to fare well and win the gold. Unfortunately, it has failed to position itself on the basis of priorities, vis a vis, the 'question of the people of Jammu and Kashmir', the India-Pakistan claims and the respective list of grievances against India and Pakistan.

### **High Priests of self-determination & Pakistan**

The **High Priests of self-determination** – sitting put in APHC are not clear in regard to their priorities and representation. The rights of the people of Jammu and Kashmir should have come first and a consideration of an accession to Pakistan should have remained a secondary consideration. Unfortunately these **High Priests of self-determination** seem to have remained in touch with Pakistan through its High Commission in Delhi and through other direct and indirect means more than the people of Jammu and Kashmir.

I do not want to propose any prejudice to their choice to join Pakistan but in view of the jurisprudence of the issues involved and article 257 of the constitution of Pakistan, it is all premature and self-defeating. Politicians on either side of the cease fire line are using India-Pakistan enemy image to advance their 'private interests'.

APHC has no position on Jammu, Ladakh, Azad Kashmir and Gilgit and Baltistan. It has no position on the areas distributed under the control of China. It has no understanding of the jurisprudence of UNCIP, the two constitutions of Jammu and Kashmir distributed under Indian and Pakistani control, the accords of the two governments of India and Pakistan with the respective people of Jammu and Kashmir, the legitimacy of some of these accords manipulated behind the backs of the people, the jurisprudence of the bilateral accords between India and Pakistan, over 2 million Kashmiri refugees in Azad Kashmir and Pakistan, the question of peoples aspirations under these administrative controls and the on going rights movements in Azad Kashmir and Northern Areas and so on.

National 'pride and prejudice' causes me to wish the APHC strength and vision to marshal an animating programme of action and beat India and Pakistan in the finals for gold. However, the political biography of last 12/13 years points to a height that this amalgam was taken to but could not keep for long. The other part of the wise script is carried in a despatch by Seema Mustafa a senior journalist of India in her article titled "A Garden of Eden' – Asian Age 12 October 2002 and she writes:

"Several separatist leaders have won the polls and will carry more credibility than those in the Hurriyat who have little or no support even in their own mohallas. All in all the pre-election authority that the Hurriyat had acquired has been eroded and now it will depend on the new government and the position it takes for this to be curtailed further".

It does not however, mean that the constituents of APHC have no role in Kashmir politics. They continue to remain the Class I State Subjects and if they succeed to reappropriate a collective wisdom in reference to the people of Jammu and Kashmir, there is always, a surge for a 'national pride and prejudice'.

They need to have courage and recount the lost opportunities and refrain from the frivolous moves, like 'cease-fire' and 'election commission', which exposed their wisdom to the bottom of the marrow. They even failed to exploit the gains of a 'cease-fire' and the rewards of an 'election commission', which knocked at their door. A wise political amalgam, although reduced in all spheres, of size and substance, has time to match the strengths of their 'cease-fire' with the 'cease-fire' announced by the Prime Minister of India and the strengths of their 'election commission' with the 'election commission of India'.

APHC in extreme travesty of wisdom plunged for Justice Khurshid Kiani based in Muzaffarabad and Justice Sajjad Ali Shah based in Karachi in the same way as our elders during the days gone by conspired against their own local ruler and travelled to Kabul to get for themselves a ruler – and were lumbered with one notoriously known as 'Charag-Beig'. The amalgam suffers from mistrust of each other and doubts even its own shadow. The death of Abdul Ghani Lone, Mushtaq Ahmad Lone and 800 others does not make it any richer.

Pakistan on her part has not "been keen/eager to see genuine Kashmiri leadership develop or to see genuine dialogue between the Kashmiris and the government of Delhi, fearing that Pakistan could be marginalised in the process [a view by Ambassador Teresita C Schaffer Director Centre for Strategic and International Studies Washington].

### **A New Mandate**

The people of Jammu and Kashmir made a valiant effort to vote and mandate their representatives. Although uncertain and unsure all along, the ones who decided to make it to the polling station have decisively voted to disturb the status quo.

The common man and woman is now convinced that if there is a free and fair vote, they have an ability to

validate a representative or in-validate if he has remained on the wrong side of the people.

The Indian civil society and establishment has realised after practising a 'proxy politics' for over 50/52 years that one proxy leads to the other. And that unless the common man and women is not empowered in Kashmir, their prized political class would be matched with another privatised political class from Islamabad.

The present mandate is classed as 'fractured'. But it would be inappropriate to class a distribution of political choice as 'fractured'. The people of Jammu and Kashmir have unseated the National Conference but have decided to keep it as a political choice. At the same time the voter has for the first time created a space for a competitive politics.

New J & K Assembly has been constituted with the Election Commission on Sunday 13 October 2002 formally notifying the names of all members elected to the 87 member Assembly. These elections were held in pursuance of notifications issued by the Governor under the various sections of Representation of People Act 1957.

NC [28] has emerged as the large single political party. It has suffered a set back in elected numbers but has gained in votes. The use of a negative vote has been an advantage to other political opinions but NC has equally benefited from the APHC's local boycott in and around Srinagar. If one goes by the proverb - "all is well that ends well", then APHC boycott in Srinagar has been well for NC.

The return of Congress [20] as the second large party, PDP [16] as the third, Independents [13], JKNPP [4], BJP [1] CPI (M) - [1], BSP [1] and LAHDC - Ladakh Autonomous Hill Development Council [2] does augur well for a 'corporate' political culture in Jammu and Kashmir.

On the one hand the voters have economically distributed their expressed choice and on the other have set a new challenge for the political parties to co-exist and cohabit on a basic minimum programme.

It may be argued that Congress and PDP could not keep the warmth of their first hug [Azad-Baig] and wasted no time to come to blows, yet one can see that the stalemate too has its advantages.

Although the State has come under Governors rule but there is no doubt that Peoples pressure, Indian establishment, civil society in India and international community [including well wishers of the people of Kashmir in Pakistan and Kashmiris working on the issue in various parts of the world] would be impacting to see that Kashmir returns to the initial benefits of a 'popular government'.

### **Verdict for a Change**

The delay in cobbling together a coalition government – a first of its kind in Kashmir and the public pronouncements of anger on the haggling for scales of power further confirm that people have participated if not 'freely' [presence of threat and violence] but fairly in the elections.

It is a verdict for breaking from the past and moving forward in the right direction of a service to the people and to resolve the basic political problem. A numerical superiority favours Congress as a choice for the office of Chief Minister and a psychological environment remains poised in favour of PDP's insistence. PDP has the experience of Mufti Mohammad Sayeed and inspirational strengths of Muzaffar Hussain Baig and Mehbooba Mufti. PDP should however not forget that it is also a 3-year-old rag-tag group, which has benefited from a negative vote and the Congress's accommodating generosity.

Congress leaders Mrs. Sonia Gandhi and Ghulam Nabi Azad withdrew 6 candidates in South Kashmir and

bolstered the PDP's chances. Azad is no more a 'rootless wonder' but a well-rooted ambassador of the rich traditions of the university of Kashmir. Baig [from Baramulla] and Azad [from Doda] are two distinguished semblances of the talent and character of Jammu and Kashmir.

People's verdict at least given the general disarray has created a possibility of a coalition government and of a strong opposition. However, these elections do not as an exclusive settle the question of who can speak for the Kashmiris in negotiating their future with India and Pakistan. While celebrating a mandate the new formation has to bear in mind and live up to a gap left over by a 'low-poll' and 'no-poll' segment scenario.

These elected people in Srinagar and the elected people in Muzaffarabad shall have to create a basic minimum as a 'first priority' in the interests of the people of Jammu and Kashmir, as reasonably as their respective restraints allow them.

But starting a successful peace process will require more than the elected people in Srinagar and Muzaffarabad and the non elected APHC and other groups outside this amalgam on either side cease fire line. This would include members of civil society in India and Pakistan who have continued to express an over all concern of the people in the sub continent and the militants who ascribe their faith in the grievances of the people.

Non party experts of Kashmiri origin and Kashmiri leadership [individual and organisational] active at the international level shall have to play a leading role. Their non-attachment to the wide spread party interests, durable commitment pre dating 1990 and a high level of understanding of Kashmir complex is a lead advantage, which has to come into action.

## **Beyond Tourism and Employment**

Kashmir is an exceptional case and the primary rights of the people of Jammu and Kashmir along with the respective positions taken by India and Pakistan make a full circle.

The people would need a clean and corruption free administration. A healing touch is required and there needs to be an immediate end to any kind of repression, state and non state. It will pave a way for a solution of the Kashmir problem through a process of dialogue.

India and Pakistan have to re-orient their priorities and preferences. India has an 8 point agenda and General Pervez Musharraf has a 4 point claim.

It is self evident that Kashmir is not the only bone of contention for Pakistan. Pakistan has already Azad Kashmir and Northern Areas under its effective administrative and political control. Its interest in the affairs of the Valley is incremental and falls low below a genuine concern for the rights and the fundamental freedoms of the people on the Indian side of the Kashmir.

India in re-orienting its preference has to accord first preference to the grievances [dispute] of the people of Kashmir against it and separate these from her other unresolved issues with Pakistan. The grievances of the people of Kashmir against India are not the same as the unresolved issues with Pakistan.

The genuine urges and the aspiration of the people of Jammu and Kashmir are way apart from the 8 and 4 points of India and Pakistan.

There is a need to involve the largest numbers in a democratic process, end violence, eliminate excesses of the state machinery and non state private groups, remove fear from the minds and hearts, scrap anti-people laws which lead to grave violation of human rights and deprive the people of their civil liberties.

It should remain accompanied by a state-wise spread of a colossal and composite long-term plan of rehabilitation of the victims on the one hand and civil society as a whole on the other. Daily lives have to be made more natural and comfortable. Solving the under-development and unemployment need vision, statesmanship and commitment.

The state needs to be transformed from a disabled and traumatised civil society into a society, which is free to achieve a better present and a more optimistic future. The governance has to be good, sensitive and responsible. The state has to accelerate economic development, provide employment, ensure accountability and a transparency in governance and has to institutionalise the administration.

More important than all are the wishes of the people, reduction of the levels of alienation, removing all causes of inter-regional tension by ensuring a system of equitable share and sense of participation by people in all regions and areas.

The new government has to reverse the policy of repression, eliminate violation of human rights, scrap draconian laws which deprive the citizens of their freedom and civil liberties, release all political prisoners languishing in jails and restore the rule of law. The present state of affairs has reduced the people to statistics. People have voted for an alternative government and for a strong opposition for the first time in Kashmir.

### **3 Guiding Principles of Reference**

The present government has three guiding references to charter a schedule of activities to change for better in Kashmir. Prime Minister P V Narasimha Rao has promised 'sky is the limit' and Prime Minister A B Vajpayee a constitution of 'insaniyat'. Mrs Sonia Gandhi guided by Nehruvian connection has promised an unconditional dialogue with all, including those who did not take part in the elections. This is an all embracing fresh approach and could be translated to ameliorate the suffering of the



people and to advance a resolution of the dispute. Kashmir needs a special attention and a fresh policy.

### **A Golden Opportunity**

The poet Prime Minister and the leading statesman of his time in Indian politics today lived up to his promise of a 'free and fair elections'. This is the second free and fair election after Morarji Desai in 1977 when he avoided the temptation to rig the poll as was suggested to him by many.

Sonia Gandhi has successfully revived the position of the Congress in the state. She reaffirmed the tradition of the emotional and political involvement of the Congress, especially Nehruvian leadership, in J and K.

The elections have introduced a distribution of mandate and the alliance partners in the Government are a new change from 'sher-bakra' politics to a corporate leadership and a strong opposition.

The alliance leaders Muzaffar Hussain Baig, Bhim Singh and Mohammad Yusuf Tarigami have a long history of a nationalist politics. They may differ in the substance of the slogan 'Kashmir' for Kashmiris and the notion of a pluralistic civil society but they have an equal share in a sound political character.

We have now an elected forum, a strong opposition, a non-elected well recognised forum of APHC, militants, political organisations outside APHC, various schools of civil society, Kashmiri leadership living in Azad Kashmir and Pakistan [Kashmiri refugees], Kashmiri leadership and non party experts living in various parts of the world – and all have to cruise in to find a way out.

It is important to point out that this is an arrangement in relation to Valley, Jammu and Ladakh. In this part consideration the people have a grievance against India

and the priority needs to be positioned vis a vis India accordingly.

Azad Kashmir and Gilgit and Baltistan which are under the administrative control of Pakistan, shall have to be brought in at a later stage. The first phase has to be bilateral between the people of Kashmir and Delhi. However, in a final and full settlement of the issue of the entire state the leadership from Azad Kashmir and Northern Areas and Pakistan has to come in as another component.

### **Important Steps**

Indian establishment has found a new courage after 1977 to administer the affairs of Jammu and Kashmir. Its machinery has used brute force and the security forces and the militants have used death, coercion and violation of human rights.

The militant has offended against the norms of a civil society and has indulged in self-immolation by failing to respect the right to life of a common man and woman. They are liable for their acts of violence against the civil society and other non-combatants.

On the other hand killing of civilians and even of captured militants, violation of human rights by members of security forces fall under a higher control and discipline of the constitution. Their behaviour falls under international stipulations in regard to Kashmir. The burden of responsibility is far higher in the case of security forces.

The much spoken 'healing touch' relates to the liabilities accruing out of the behaviour of the above two actors. However as a start and to cash on the reanimated interest of the civil society in the expressed politics it is essential that we take the following steps:

- (i) It is important that the state encourages NGOs and other government institutions to animate the

sensitivity around the right to life and respect the full regime of human rights.

- (ii) A compensation fund needs to be set up and relief and rehabilitation work needs to be co-ordinated in partnership with Non governmental organisations. The Human Rights Commission of Jammu and Kashmir needs to be re-organised, well resourced and made independent to play a lead role as a watchdog on the question of human rights.
- (iii) NGOs should be encouraged in their independent work and their role recognised. They are the true semblance of a civil society. In the words of Kofi Annan "NGOs are our best defence against complacency, our bravest campaigners for honesty and our boldest crusaders for change".
- (iv) India and Pakistan through the three governments of Jammu and Kashmir distributed under their control, should set up a joint compensation fund [JCF] for the victims of last 12/13 years in particular and refugees in general. It should be an arrangement around the principle of 'Holocaust Payout' and 'World War II Payments', made to Jews and others by various governments of Europe and Japan etc. Germany has paid compensation to Jews and Japan to British. Women used as 'comfort women' during WWII have also been compensated. America and Britain made a voluntary contribution to Holocaust Fund to raise the global sensitivity and today we have an Austrian Fund, Swiss Fund, Swiss Banks Fund for the survivors and the fund is seeking out other groups for compensation like Gypsies, Jehovah's Witnesses, Homosexuals and the disabled affected during that period.
- (v) In addition to quick payments the funds should be used on projects of rehabilitation and development within the community. United Nations continues to undertake huge budgets for UNMOGIP. It could be asked to take part in the rehabilitation in particular donations shall be due from countries that have sold personnel-land-mines to India and Pakistan used to

restrict the travel of the people across the line of control.

- (vi) The borders should be made porous for the divided families in particular and for a common travel of the citizens of Jammu and Kashmir in general. It should be on the basis of an arrangement tested by East-West Germany for their divided families and along the lines proposed by Ambassador Blakwill for the 'resumption of sporting and people-to-people contact between India and Pakistan. According to him "These are not high politics. People getting on trains going back and forth; meeting their relatives, on the other side of the line...these will be useful steps". Former Prime Minister Benazir Bhutto, Air Marshal (R) Asghar Khan himself a Kashmiri, General (R) Faiz Ali Chisti former Minister for Kashmir Affairs and many others subscribed to the idea that the inhumane division of Kashmiri families should be ended by a just and humane arrangement of travel facilities. Unfortunately, some leaders in Azad Kashmir, to serve their private political ends succeeded to fool the establishment in Pakistan that it would not be in the interests of Pakistan to consider a common travel between the divided families. A lot has changed since then. Muzaffarabad and Srinagar as two capitals are no more a 'Pandora Box'. The ills of Pandora Box are already on our streets and it is high time that we need to set the Hope free from this box. India and Pakistan need to reorient their priorities to use the Kashmiri Pandora's powers for a worthy cause. It is high time that the elected government in Srinagar takes a lead and consolidates this thinking with others who would sympathise with the idea in Delhi.
- (vii) India and Pakistan should benefit from the experience of US and Soviet Union and China and Soviet Union in the settlement of disputes. The history of these nations in conflict should be followed as a guidance. The record of US-Soviet Union decade long confrontation shows that the refusal of one country or the other to talk without a precondition was a mistake in the ultimate. It is important that

India and Pakistan open official and private channels to discuss, take part, analyse and eliminate the differences.

- (viii) All the political prisoners should be released to take part in the new dispensation. The rights of the prisoners should be respected and imprisonment should be for non-compliance of law and not a revenge. Until that a release takes its lawful course, prisoners should be brought to their respective areas so that family access becomes easier. The state and NGOs should undertake to provide legal assistance to those detainees and prisoners who have no financial means to defend themselves. Their family meets should also be arranged by the state and the NGOs.
- (ix) There should be a purposive approach to evolve a political formula responsive to the aspirations of the people of the state and a flexibility in reviving the dialogue with Pakistan.
- (x) The two governments at Srinagar and Delhi and the two governments at Muzaffarabad and Islamabad shall have to commit themselves to allow the return of normalcy to the people's lives and democracy to the polity. The bloodletting enterprise has to come to an end and freely expressed opinions of the people shall have to be respected.
- (xi) India has a golden opportunity to sit with the people of Jammu and Kashmir through a number of forums identified in this report and resolve the most immediate grievances on her side of Kashmir pending a final settlement as an exclusive including Azad Kashmir and the Northern Areas [Gilgit and Baltistan] by involving Pakistan at that point.

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“Politicians have to construct credible alternative modes by argument and by contestations and keep up the endless efforts to promote the common welfare of the people.”

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