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From Vision to Reality: Tracing the Formation and Working of the Jammu and Kashmir Constituent Assembly

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Abstract

The establishment of the Jammu and Kashmir Constituent Assembly marked a pivotal moment in the region's political history. This research paper offers a detailed examination of the assembly's formation, its operational dynamics, and the broader historical context. It investigates the driving forces behind its creation, the prominent figures who shaped its trajectory, and the obstacles faced during its functioning. Drawing on primary sources, historical records, and scholarly work, the study illuminates the intricate process of constitutional development in Jammu and Kashmir, emphasizing the challenges and complexities involved in transforming political aspirations into institutional reality.

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Introduction

By tracing the formation and working of Jammu and Kashmir Constituent Assembly, this research paper intends to provide a comprehensive understanding of the Constituent Assembly's role in shaping the constitutional landscape of Jammu and Kashmir. The history of Jammu and Kashmir entered in the new phase after the accession of the state with Indian Union. The popular movement of the National Conference led by Sheikh Mohammed Abdullah finally brought the fortunes to the people of Kashmir as their undisputed leader was now installed at the helm of the State affairs. Maharaja Hari Singh signed the Instrument of Accession with the government of India on 26 October, 1947. Immediately after the accession, the Emergency Administration was formed in the state headed by Sheikh Mohammed Abdullah. At the time, when Maharaja Hari Singh was advised to leave the State, the Constitution of India was in its final stage of completion. But neither the leaders of the State nor the Indian leaders took any decision about the position of the State of Jammu and Kashmir in the Indian Constitutional system. The leaders of the National Conference and the government of India had reiterated that Jammu and Kashmir State would be given a special position in the Indian Constitutional system, transitionally, until normalcy was

restored in the State. However, towards the closing of 1949, the State of Jammu and Kashmir nominated four of its representatives Mirza Afzal Beg, D.P Dhar, Moti Ram Baigra and Sheikh Mohammad Abdullah to the constituent assembly of India when it was undergoing through its last phase. The leaders of National Conference clarified their stand that the state of Jammu and Kashmir had acceded to the dominion of India only in respect of the subjects enumerated in the Instrument of Accession that was signed between the Maharaja of Jammu and Kashmir and the Government of India. The subjects specified were the Foreign Affairs, Defence and Communication. When the Constitution of India was implemented on 26 January 1950 by the Constituent Assembly of India, special provisions were incorporated in the draft for the State of Jammu and Kashmir. The State of Jammu and Kashmir reserved the right to constitute a Constituent Assembly and to frame a separate Constitution.

Formation of the Constituent Assembly

In May 1951, Yuvraj Karan Singh issued a proclamation invoking a Constituent Assembly for the State on the basis of free adult franchise and secret ballot. The Proclamation further envisaged that the State would be divided into electoral districts each covering forty thousand of population,

voting age was fixed at twenty-one. ^[1] The Praja Parishad (political party) decided to participate in the elections. The general elections to the Assembly were held in September 1951. The National Conference swept the polls by winning all the seventy-five seats. The seventy-three were uncontested and they were the nominees of the National Conference. They all were returned unopposed as the nomination of most of the candidates including the nominees of the Praja Parishad, the Jammu based rightist political party had been rejected during the process of the scrutiny on minor discrepancies. Out of the twenty-nine nominations of the Praja Parishad, sixteen were rejected and the remaining thirteen withdraw their nominations. In protest of rigging of electoral process, the Praja Parishad announced its decision to boycott the elections and thus, the remaining two seats were also annexed by the National Conference. ^[2] These elections were conducted by the Government of Jammu and Kashmir, as the election commission along with the entire staff of election was appointed by the government itself, therefore the suspicion on the fairness and transparency of election by the Praja Parishad was obvious.

On November 5, 1951, Sheikh Mohammed Abdullah inaugurated the Constituent Assembly of the State and gave his inaugural address by making many interesting observations. He declared that the Constituent Assembly is a sovereign body and draws its powers from the people of the State. He further announced that the people of the State are the sovereign authority in the state of Jammu and Kashmir. It was the event of immense significance in the political history of Jammu and Kashmir State. The Constituent assembly was invested with the authority of framing the Constitution for the State and Maulana Masoodi was elected its President. ^[3]

Working of the Constituent Assembly

On November 7, 1951, the constituent assembly of Jammu and Kashmir state setup a Basic Principles Committee and an Advisory Committee on Fundamental Rights and Citizenship. The Basic Principles Committee was charged with the task of finalizing the principles on which the constitution of the State would be based. The advisory Committee on Fundamental Rights and Citizenship was asked to formulate the Criteria for Citizenship in the State. ^[4] Sheikh Mohammed Abdullah was elected as the chairman of these committees along with sixteen other members. In addition to these committees, the Constituent Assembly also constituted the Drafting Committee and Mirza afzal Beig was elected its chairman, while Girdhari Lal Dogra, Mir Qasim, Durga Prashad Dhar, Gulam Rasool Renzu and Harbans Singh Azad were others members of the committee. Earlier, when the efforts were made for enacting the constituent assembly of the State, Yuvraj Karan Singh enacted the first Amendment act of Jammu and Kashmir Constitution Act 1939 to incorporate the provision of the proclamation in pursuance of which the interim government was formed and the Constituent Assembly was constituted. The amendment was remarkable as it had converted the absolute monarchy into the constitutional monarchy. Now the council of ministers were to be collectively responsible to the legislature. This amendment was brought to cope with the changed situation in Jammu and Kashmir and to achieve the objective enunciated in the New Kashmir Plan which had called for a responsible ministry. This Constitution Amendment Act 1939, served as the Interim Constitution of Jammu and Kashmir till the enactment of a fully democratic constitution by State's Constituent Assembly. ^[5]

Meanwhile, the Basic Principles Committee submitted its interim report to the Constituent Assembly on 10 June, 1952. The committee recommended the institution of the chief executive to be elected by the people of the State and the Dogra rule to be terminated. The committee also recommended that the Maharaja of the State was to be replaced by an Executive Head, who would be elected to his office for a fixed term. ^[6] The committee recommended that the form of the future constitution of Jammu and Kashmir should be wholly democratic. Consequently, on June 12, 1952, the Constituent Assembly adopted the interim report of the Basic Principles Committee. Durga Prasad Dhar moved a resolution and called upon the Drafting Committee to prepare appropriate proposals for the implementation of the recommendations of the Basic Principles Committee. ^[7] When the Basic Principles Committee presented such recommendations to the Constituent Assembly, it brought to surface a number of political issues. The recommendation for the abolition of Dogra rule involved the dissolution of the powers and prerogatives enjoyed by the Maharaja of the State. Meanwhile, the differences between the Government of India and the leaders of National Conference had developed on various political issues such as regarding the plenary powers of the Constituent Assembly, the extension of more provisions of Indian Constitution to the State of Jammu and Kashmir and the placement of Jammu and Kashmir State in the federal structure of India. ^[8]

However, after the report of the Basic Principles Committee was presented to the Constituent Assembly in July 1952, the Government of India held a high power meeting with the leaders of Jammu and Kashmir. A unanimous agreement was reached between the leaders of Kashmir and the Government of India, popularly known as Delhi Agreement, a summary of which was read out by Pandit Jawahar Lal Nehru in the Indian Parliament on July 24, 1952, and by Sheikh Abdullah in the Kashmir Constituent Assembly on August 11, 1952. On August 19, 1952 the Drafting Committee of the Constituent Assembly presented its report to the Constituent Assembly.

The Committee Presented its Report Which Stipulated

1. That the Head of the State would be the person recognized so by the President of India on the recommendations of the Legislative Assembly of the State;
2. That the Head of the State would be designated Sadar-i-Riyasat of Jammu and Kashmir;
3. That the Sadar-i-Riyasat would hold office during the pleasure of the President;
4. That the Sadar-i-Riyasat would exercise the power and undertake functions that were exercised by the Maharaja of the State under the Constitution Act 1939 as amended by the Constitution Amendment Act of 1951 till the Constitution of the State was framed by the Constituent Assembly and the power of the Sadar-i-Riyasat were specified and defined therein.

In November 1952, the Constitutional Act of 1939 was amended to incorporate the provisions of the resolution passed by the Constituent Assembly. The amendment abolished the hereditary rule of the Dogra House. Section 4 of the Constitution Act of 1939, which vested the territories of the Jammu and Kashmir State and the rights, jurisdiction and authority of its government in Maharaja Hari Singh was repealed. ^[9] The Amendment Act laid down the procedure for the election of the Sadar-i-Riyasat by the members of the

Legislative Assembly. The Sadar-i-Riyasat was to be elected by the members of the Legislative Assembly by the secret ballot and with single transferable vote. The Prime Minister of the State was vested with the authority to communicate the decision of the Assembly to the President of India for his recognition. The Amendment Act incorporated the stipulation of the Drafting Committee according to which the person, elected by the Legislative Assembly, was to be recognized by the President of India as the Sadar-i-Riyasat of Jammu and Kashmir State. The Sadar-i-Riyasat before, he entered upon his office, was required to make and subscribe an oath of affirmation to devote himself to the "service and well-being of the people of the State" and to "preserve, protect and define the Constitution of the State.

In 1953 the popular leader of the National Conference was dismissed from power and Bakshi Gulam Mohammed, the deputy prime minister in the disbanded ministry was appointed as the prime minister of Jammu and Kashmir State. After the dismissal of Sheikh Mohammed Abdullah, the Constituent Assembly of the State through the resolution on October 20, 1953 reconstituted the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights. Sheikh Mohammed Abdullah was removed from the chairmanship of the two committees and Syed Mir Qasim was elected in his place. The Constituent assembly also reconstituted the Drafting Committee and Mirza Afzal Beig was removed from the chairmanship of the committee and Girdhari Lal Dogra was elected as the chairman of the Committee.^[10] On January 4, 1953, a joint committee of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental rights was constituted to consider the Delhi Agreement and make proposal for its implementation. The sub-committee presented its recommendations to a joint session of the two Committees on January 22, 1954. Syed Mir Qasim, the chairman of the two committees presented the report of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights to the Constituent Assembly of the State of Jammu and Kashmir. The Basic Principles Committee enunciated the broad principles on which the constitution of the state would be framed. The committee postulated;

1. That the state constitution would be based on sovereignty of the people, democracy, equality and social and economic justice;
2. That the provisions would be incorporated in the constitution to enable the people to develop their various cultures, languages and scripts and promote closer understanding among them;
3. That the government of the state would be based on the principle of executive responsibility;
4. That the judiciary of the state would be independent;
5. That the legislative assembly would be elected on the basis of universal adult franchise;
6. That the official language of the state would be Urdu, and English would continue to be used for official purposes;
7. That the constitution would provide for the establishment of an independent Public Service commission.^[11]

The Basic Principles Committee made specific recommendations regarding further extension of the provisions of the Constitution of India to the state of Jammu and Kashmir. The committee recommended the application of such other provisions of the Constitution of India, as were agreed to be applied to the state by virtue of the Delhi Agreement. The Committee observed that the State's

accession to the Union of India entails certain responsibilities on the centre for protecting the interests of the State and for its social and economic development. While preserving the internal autonomy of the State, all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement should find an appropriate place in the Constitution of Jammu and Kashmir. When Constituent Assembly met in Jammu in February 1954, it unanimously passed a vote of confidence in Bakshi Gulam Mohammed and his Cabinet. On 6 February, 1954, the Constituent assembly ratified the State's accession to the Indian Union.^[12]

Meanwhile, The Drafting Committee presented its report on February 12, 1954 and the report was adopted on 15 February 1954. The adoption of this report embodied the ratification of the state's accession to India.^[13] An annexure, which defined the jurisdiction of the Union was appended to the report. The annexure embodied the provisions of Delhi Agreement with the modifications that were introduced in it after the Advisory Committee on Citizenship and Fundamental Rights was reconstituted, and the approval of the union Government was secured. The report, along with the annexure was presented to the President of India after it was approved by the Constituent Assembly of the state. Thus, on May 14, 1954, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order 1954.^[14]

On April 8, 1955, the Jammu and Kashmir Constitutional Act of 1939, was again amended to incorporate in it the changes brought about by the President's Order of 1954. The amendment act was given retrospective effect and was deemed to have come into effect from May 14, 1954, the day Presidential Order was promulgated.^[15] The President's proclamation fell short of expectations of the Hindus and other minorities as it envisaged only partial application of the Constitution of India to the State of Jammu and Kashmir.^[16] The task of Constitution making entered a decisive phase when Drafting Committee presented the draft of Jammu and Kashmir Constitution to the Constituent Assembly on 10 October 1956. After through deliberation, the Constitution was officially approved and adopted on November 17, 1956. It incorporated key principles such as parliamentary democracy, an executive accountable to the legislature, collective cabinet responsibility, a clear separation of powers among the executive, legislative and judicial branches and the rule of law.^[17] Finally, the Constitution of Jammu and Kashmir was enforced on 26 January 1957. Thus it was a landmark day in the history of Jammu and Kashmir State. With this the old despotic and autocratic rule ended in the State and the polity was democratized under which the power of the Government was transferred to the people of the State.^[18] After the adoption of the new Constitution, the work of the Constituent assembly was completed, so the Constituent Assembly was dissolved and fresh elections were held in order to constitute a new Legislative assembly of the State.

Conclusion

Thus the formation and working of the Jammu and Kashmir Constituent Assembly can be regarded as a remarkable journey that transformed a vision into reality. This Assembly played a pivotal role in shaping the constitutional framework of the State and ensuring the aspirations and interests of the people are represented. The Assembly's commitment to democratic principles and social justice was evident in the Constitutional provisions it formulated. It sought to safeguard the rights of individual, ensure equality before law and

promote socio-economic development. Additionally, the Constituent Assembly recognized the diverse cultural and religious identities of the people, providing for the preservation of their distinct heritage and traditions. The Jammu and Kashmir Constituent Assembly's efforts culminated in the adoption of the Constitution of Jammu and Kashmir on 17th November 1956. This momentous event marked the realization of the Assembly's vision and the establishment of democratic and representative system of governance in the State. The Constitution outlined the powers and functions of various government institutions, fostering a system of checks and balances and upholding the principles of justice, equality and rule of law.

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