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Kashmir: Creation of a Viable Political Structure

By Nyla Ali Khan

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The turbulence and turmoil that has haunted Kashmir for the past twenty-three years holds all of us, as a people, accountable for the degeneration of our politics and society. While it is important for us to condemn, question, and seek redressal for the human rights violations in Kashmir, it is also important for us to construct a politics that would enable the rebuilding of our pluralistic polity and society. The more we allow the depoliticization of our society, the more subservient we become to forces that do not pay heed to Kashmir's best interests. Any organization that protects and promotes vested interests while marginalizing the general populace is by no means democratic. The alternative is not the dismantling of our political structures and institutions of governance but the creation of a viable political structure, one in which "a popular politics of mass mobilization is merged with institutional politics of governance promoting demilitarization and democracy."

My understanding of pluralism is that we set our house in order by the creation of Responsible Government. . . . The first condition to achieve Responsible Government is the participation of all those people, not just the Muslims alone nor the Hindus and the Sikhs alone, nor the untouchables or Buddhists alone, but all those who live in this state. The demand for Responsible government should extend not just to the Muslims of J & K, but all state subjects. A representative government would enable the devolution of administrative responsibilities to districts and villages. Pluralism in J & K emphasized the necessity of abolishing exploitative landlordism without compensation, enfranchising tillers by granting them the lands they worked on, and establishing cooperatives. It also addressed issues of gender, and instituting educational

and social schemes for marginalized sections of society. A pluralistic government sought to create a more democratic and responsible form of government.

Women citizens were accorded equal rights with men in all fields of national life: economic, cultural, political and in the state services. These rights would be realized by affording women the right to work in every employment upon equal terms and for equal wages with men. Women would be ensured rest, social insurance and education equally with men. The law would give special protection to the interests of mother and child. This metamorphosis of the agrarian economy had groundbreaking political consequences.

The purportedly autonomous status of J & K under Abdullah's government provoked the ire of ultra right-wing nationalist parties, which sought the unequivocal integration of the state into the Indian union. The unitary concept of nationalism that such organizations subscribed to challenged the basic principle that the nation was founded on: democracy. In this nationalist project, one of the forms that the nullification of past and present histories takes is the subjection of religious minorities to a centralized and authoritarian state. The unequivocal aim of the supporters of the integration of J & K into the Indian union was to expunge the political autonomy endowed on the State by India's constitutional provisions. According to the unitary discourse of sovereignty disseminated by ultra right-wing nationalists, J & K wasn't entitled to the signifiers of statehood.

In October 1949, the Constituent Assembly of India reinforced the stipulation that New Delhi's jurisdiction in the state would remain limited to the categories of defense, foreign affairs, and communications, which had been underlined in the Instrument of Accession. Subsequent to India acquiring the status of a republic in 1950, this constitutional provision enabled the incorporation of Article 370 into the Indian constitution, which ratified the autonomous status of J & K within the Indian Union. Article 370 stipulates that New Delhi can legislate on the subjects of defense, foreign affairs, and communications only in just and equitable consultation with the Government of Jammu and Kashmir State, and can intervene on other subjects only with the consent of the Jammu and Kashmir Assembly.

The subsequent negotiations in June and July 1952 between a delegation of the J & K government led by Sheikh Mohammad Abdullah and Mirza Afzal Beg, and a delegation of the Indian government led by Nehru resulted in the Delhi Agreement, which maintained the status quo on the autonomous status of J & K. In his public speech made on 11 August, Abdullah declared that his aim had been to preserve "maximum autonomy for the local organs of state power, while discharging obligations as a unit of the [Indian] Union."

At the talks held between the representatives of the state government and the Indian government, the Kashmiri delegation relented on just one issue: it conceded the extension of the Indian supreme court's arbitrating jurisdiction to the state in case of disputes between the federal government and the state government or between J & K and another state of the Indian Union. But the Kashmiri delegation shrewdly disallowed an extension of the Indian Supreme Court's purview to the state as the ultimate arbitrator in all civil and criminal cases before J & K courts. The delegation was also careful to prevent the financial and fiscal integration of the state with the Indian Union. The representatives of the J & K government ruled out any modifications to their

land reform program, which had dispossessed the feudal class without any right to claim compensation. It was also agreed that as opposed to the other units in the Union, the residual powers of legislation would be vested in the state assembly instead of in the center. The political logic of autonomy was necessitated by the need to bring about socioeconomic transformations, and so needs to be retained in its original form.

The autonomy of the state within the Indian Union had been proclaimed in 1950 by a constitutional order formally issued in the name of the president of India. But in 1954, the former order was rescinded by the proclamation of another dictum that legalized the right of the central government to legislate in the state on various issues. First off, the state was financially and fiscally integrated into the Indian Union; the Indian Supreme Court was given the authority to be the undisputed arbiter in J & K; the fundamental rights that the Indian constitution guaranteed to its citizens were to apply to the populace of J & K as well, but with a stipulation: those civil liberties were discretionary and could be revoked in the interest of national security. In effect, the authorities had carte blanche for the operation of unaccountable police brutality in the state.

New Delhi asserts, time and again, that a revitalized Indian federalism will accommodate Kashmiri demands for an autonomous existence. But, historically, federalism hasn't always adequately redressed the grievances of disaffected ethnic minorities. Here, I concur with Robert G. Wirsing's observation that, "while autonomy seems to imply less self-rule than does the term *confederalism*, for instance, it is generally understood to imply greater self-rule than *federalism*, which as in the American case, need not cater to ethnic group minorities at all" (2003: 199).

Given Kashmir's treacherous political climate and the rampant political factionalism in that region, the appeal of an ambiguous "autonomy" remains intact for some groups but for others, it is a wrong narrative to establish in the case of J & K. Although the radical "Naya Kashmir" Manifesto launched by the Sheikh Mohammad Abdullah-led NC and the radical land reforms initiated by the Sheikh consolidated the NC and gave it an unshakeable foundation, the Kashmir of the 2000s requires a much greater and *autonomous* "healing touch." The innocence of this generation was cruelly ripped by the forces of armed insurgency and counter insurgency; the romanticized image of Kashmir fails to hold a lasting appeal for these children of an internally destructive war; the sense of peace and security historically provided by a democratically elected government has eluded these inhabitants of a paranoid State; it has been bereft of a nationalist and political discourse within which it could blossom; this generation's scarred psyche is yet to be healed.

The people in J & K clamor for democratic rights, efficient governance, a stable infrastructure, and a much less fractious polity, which would restore pluralism in this state. The electoral principal is discussion, not autocratic decisions. It is essential to create either conceptual frameworks or political and sociocultural discourses in which the young people of today would be energized and persuaded to actively participate.

Rest assured, an ideal ruler isn't going to drop down from the skies. She or he is among you and may well be the person sitting next to you. Democracy is not a panacea, but promises rule of law, a return to the process of internal political dialogue, negotiations, and, in this day and age, political accommodation. I would like to emphasize that insisting on the rigidity of one's stance

which doesn't allow political accommodation encourages political paralysis and helps the nation-states of India and Pakistan to maintain the status quo, which works in the interests of some of the actors, state as well as nonstate, on both sides of the Line of Control. Some civil and military officials—Indian, Pakistani, and Kashmiri—have been beneficiaries of the militarization of Kashmir and the business of the “war on terror.” Also, some militants, armed and unarmed, have cashed in on the political instability in the state to establish lucrative careers. For such individuals and groups self-determination and autonomy work well as hollow slogans stripped of any substantive content.

We, as a people, need to consider the revival and reinvigoration of civil society institutions that could initiate collective action around shared interests, values, and interests. In the Indian subcontinent, however, civil society activism has its limitations. The translation of a political and social vision into reality requires an efficacious administrative set-up and vibrant educational institutions, which produce dynamic citizens while remaining aware of the exigencies of the present. Stalwart politicians who were unable to understand that the changing nature of a struggle required a new vision and pioneering spirit ended up becoming marginalized. A political movement that pays insufficient attention to the welfare of the populace, good governance, and rebuilding democratic institutions ends up leaving irreparable destruction in its wake. An insurgency or militant nationalist movement that lacks such a vision is bound to falter. The electoral process and establishment of a government are not ultimate goals or ends in themselves but are means to nation-building and societal reconstruction. Even religious and political rhetoric remains simply rhetorical without a stable and representative government. It is important to understand powers are vested in ministers are by the people who elect them to legislative assemblies, unlike the bureaucrat. It is ironic though that India is a country that is run by bureaucrats, because ministers get claustrophobic within the four walls of their offices.

A dozen or more summit conferences have been held between the government heads of India and Pakistan toward the resolution of the Kashmir problem, from Nehru-Liaquat to Vajpayee-Musharraf meetings, laced in between with Soviet-American interventions, and a series of meetings between foreign ministers Swaran Singh and Zulfikar Ali Bhutto, but nothing worth reporting was ever achieved, primarily because the people of J & K were never made a part of these parleys. The only silver lining to this huge cloud of failures was the signing of the 1952 Delhi Agreement, signed between two elected prime ministers, Nehru and Abdullah. As a viable beginning to a lasting resolution, it is high time that 1952 Delhi Agreement is returned to in letter and spirit. The political logic of autonomy was necessitated by the need to bring about socioeconomic transformations, and so needs to be retained in its original form. Until then, opening up of trade across the LOC, which still has a lot of loopholes, and enabling limited travel would be cosmetic confidence building measures. Until the restoration of autonomy as a beginning, even the people oriented approach adopted by the then Vajpayee-led NDA government and Musharraf's four-point formula would remain merely notional. A strong and prosperous India is a guarantee to peace in our region, but a strong and prosperous Pakistan would strengthen that guarantee. The goal should be to find a practical solution to the deadlock that would enable preservation of peace in the Indian subcontinent, while maintaining the honor of everyone concerned.

Ideally, politics should be governed by conviction and the ability to sway public opinion in one's favor by one's moral, legal, and constitutional authority, but in this day and age, politics is the art of pragmatism. It is important for state as well as non-state actors to forge connections between their agendas and strategies for consensus building and reconstruction of society with the strategies and agendas of other sections of the populace impacted by the conflict. We are well-aware that the lack of consensus in New Delhi and Islamabad has been damaging to Kashmir. It is imperative that civil society actors and political actors work in collaboration with one another to focus on the rebuilding of a greatly polarized and fragmented social fabric to ensure the redress of inadequate political participation, insistence on accountability for human rights violations through transitional justice mechanisms, and resumption of access to basic social services.