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# Jammu And Kashmir: Democracy And Human Rights

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## Introduction

The Jammu and Kashmir ( J&K) state government has completed three years in the office and has entered its fourth year. The life of J&K state assembly, unlike the other states of India, is six years. In fact, the term of state assemblies was extended from five to six years in 1975 when Mrs. Indira Gandhi, the then Prime Minister of India, imposed emergency in the country. However, after her defeat in 1977 elections all the states of the country reverted back to the original term of five years term for the state assemblies except the J&K state. Thus, the J&K state assembly continues to enjoy the term of six years period although it has nothing to do with the special constitutional status which the J&K is enjoying under the Constitution of India.

## The Coalition Era

During the last one decade the political landscape of the state has undergone a perceptible transformation. This transformation is in tune with the national phenomenon of coalition governments. The coalition era in the J&K was introduced in the year 2002 when the assembly elections threw up a new regional political party, Peoples Democratic Party (PDP), which formed the coalition government in alliance with the All India Congress Party. This election projected the yearning of common people to move away from the political and electoral dominance of the traditional political party of the state, National Conference. The 2008 state assembly elections again produced a truncated mandate resulting in the formation of a coalition government in J&K state. This time the coalition partners are

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the National Conference and All India Congress Party. The special feature of this election was an increase in the voter participation which rose by 17%. According to observers this increase took place “despite calls from Kashmiri separatists and Pakistan to boycott the elections.”<sup>1</sup> The turn out in the election ranged between 52% to 69.02% and the total percentage remained 60.5 % of the electorate. The party position of the assembly is as follows :

National Conference	28
PDP	21
Indian National Congress	17
Bhartiya Janata Party	11
Jammu Kashmir National Panthers Party	3
Communist Party of India (Marxist)	1
Peoples’ Democratic Front	1
J&K Democratic Party	1
Nationalist	1
Independents	4
<b>Total</b>	<b>87<sup>2</sup></b>

The foregoing profile of the state assembly indicates the preferences of the people in the state and their perceptions relating to different political parties. It is interesting to

note that the parties with a single digit score project the faith of the people in that particular party or the individual to deliver. It is equally important to note that the composition of the state assembly provides a representative portrayal of diverse regions of the state in terms of regional, cultural and linguistic diversity.

### **The Panchayat Raj Elections**

The coalition politics in the state galvanized the common people and enhanced their urge for greater political participation. Thus, the highest point of urge for political participation was witnessed in the Panchayat (rural local bodies) Raj elections during the year 2011. These elections may be described as a watershed in the electoral history of J&K state. That the percentage of the participation was something between 80% to 90% provided an amazing spectacle for the political analysts and even the administrators. This huge public participation left the separatist elements in the state stunned. The other surprise of these elections was a large number of educated people, some holding post graduate degrees in Business Administration, Literature and Humanities contested for the posts of Panchs and Sarpanchas in the rural local bodies. A fairly large number

of women, some of them belonging to the minority Kashmiri Pandit community, contested and won the elections. These local bodies had remained dormant and immobilized for several decades.

### **THE NEW INSTITUTIONAL SUPPORT**

#### **The Right to Information**

The twin perceptions, which run parallel to each other, prevail at the national and the local levels pertaining to economic development of J&K state. The special economic packages worth millions of rupees are announced by the Union government from time to time to augment the economic development of the state which raise the national perception that the J&K state is accorded a special treatment and is being dealt with differentially than the other states of the country. On the other hand, the local perception prevails that the benefits of these special packages are hardly visible. The transparency and accountability of these initiatives have remained absent which has created a great deal of disenchantment and even alienation of the people from the system.

In this backdrop, the Chairperson

of the National Advisory Council, government of India, Mrs. Sonia Gandhi wrote to the then Chief Minister of J&K Government, Mufti Mohammad Saeed in August 2005 that "in order to reinforce transparency, accountability and efficiency in governance you may like to initiate the process of bringing in state legislation in respect of Right to Information Act, 2005".<sup>3</sup> It took a couple of years to launch the initiative and ultimately the J&K Right to Information Act was passed in the year 2009.

The J&K Right to Information Act, 2009 is gradually being recognized as a new and assertive institution to bring about transparency and accountability in the state in general and Kashmir in particular. The institution of Right to Information (RTI) has empowered the young and educated activists in monitoring the developmental projects being carried out by the government and identifying the flaws and deficiencies in these developmental activities. In fact, this process has already started and the activists are actively invoking the provisions of the RTI in seeking the information and demanding the ongoing status of these ventures. The young activists have described the RTI as "the way to healing"<sup>4</sup>. According to them "The RTI has given us hope. Its influence

has begun to permeate daily life in J&K.”<sup>5</sup>The optimism goes further as they perceive that “this revolution represents a peaceful alternative to the culture of violence and protests so often identified with Kashmir.”<sup>6</sup> The enthusiasm generated by the RTI indicates that the general feelings of helplessness and despair are giving way to a new and a positive change in the society.

The RTI commissioner has been organizing the campaigns and discourses to educate the common people on the use and efficacy of the RTI in ensuring transparency and improving the functioning of the governance. The J&K RTI Act is in line with the Central RTI Act, 2005 which includes provisions supporting the use of RTI with respect to alleged human rights violations. The activists have started taking recourse to these provisions which has further enhanced the confidence of the people in the institution. It may be pointed out that many a government functionary who are not comfortable with the transparency and accountability mechanisms perceive the TRI as an anathema. However, the rising levels of enthusiasm and growing awareness about the RTI is bound to bring about revolutionary changes in the governance and administrative performance in the state.

## **Human Rights**

The J&K Human Rights Commission was established under the J&K Protection of Human Rights Act, 1997. The Commission has come a long way and of late has been asserting its authority in addressing the issues of human rights violations in the state. The Commission has taken up the alleged human rights violation cases which are more than decade old and which the human rights groups have been raising from time to time. The state Human Rights Commission has been provided a wide range of jurisdiction to investigate the cases of human rights violations in the state. In the initial phase the Commission lacked the operational facilities in terms of infrastructure and other administrative wherewithal to which it is entitled under Section 11 of the Act. However, the same have been provided to the Commission now to make it a vibrant institution of human rights protection. According to the Commission reports it received 5699 complaints since 1997 until 2011 out of which 4578 cases have been disposed off up to August 2011.<sup>7</sup>

## **International Monitoring**

The Government of India invited the UN Council on Human Rights Special Rapporteur on Extrajudicial,

Summary or Arbitrary Executions, Christof Heyns to visit India. He visited Kashmir also and met with NGOs and Human Rights activists there. He concluded his visit on 30<sup>th</sup> March, 2012. On the conclusion of his visit he said that India should repeal the Armed Forces (Special Powers) Act as it had no role to play in democracy. He acknowledged that (in India) deadly violence had been used by Maoists, insurgents and terrorists. He said that the state has a right to defend itself against such aggression, provided it abides by the international standards.<sup>8</sup>

It was the second visit of an UN Council on Human Rights expert to J&K. The Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya visited India from 10-21 January, 2011 to assess the current situation of human rights defenders in India. She presented her report to the 19<sup>th</sup> Session of UN Council on human Rights (Document A/HRC/19/55/Add.1). The Special Rapporteur, during her visit to India, met with senior officials at the central and State levels and Human Rights defenders. She travelled to different states including Jammu and Kashmir (Srinagar and Jammu) state where she met with the Chairperson and members of J&K Human Rights commission as well as human rights defenders.

According to her report, the Special Rapporteur noted with satisfaction the comprehensive and progressive legal framework that guarantees human rights and fundamental freedoms in India, and welcomed the commitment expressed by officials she met, at both central and State levels to uphold human rights. However, according to her report, the first hand information she gathered throughout her mission indicated that the cause of the challenges faced by human rights defenders lay mainly in the under implementation of a number of the aforementioned legal instruments, at both central and State levels. The reasons frequently cited according to her report included lack of capacity, owing to the sheer size of the country, as well as heavy bureaucracy and political interference. She further mentioned that problems of overlap and coordination within and among authorities may also explain such deficiencies.<sup>9</sup>

The Special Rapporteur met with the Chair of J&K Human Rights Commission who informed her that during his time the state commission has not received many cases of defenders and such cases are generally minor with few complaints of killings or arrests. She wrote that she is encouraged by the announcement made by the Indian

Kashmir Chief Minister in October, 2011 stating that the gradual improvement in the security scenario and restoration of peace has paved the way for revocation of Armed Forces Special Powers Act (AFSPA) in the state.<sup>10</sup>

It may be mentioned that in September, 2011 the government of India extended a standing invitation to all UN Council of Human Rights Special Procedure Mandate Holders to visit India who placed on record their appreciation for this gesture on the part of government of India. It may be noted that the two members of Amnesty International visited Kashmir for 12 days in April, 2012. They met a cross section of people, families, lawyers and human rights groups. They concluded their visit on 4<sup>th</sup> May, 2012 and in a press statement pleaded for the abrogation of AFSPA and Public Safety Act from the state. They pointed out that the legal process in the state was slow.<sup>11</sup>

### **Conclusion**

The objective of the foregoing appraisal is not to carry out an audit of the governance in the state of J&K. However, the chief objective of the brief study is to highlight the process of revival of democratic institutions in the state and the opportunities they offer toward the

democratic participation and protection of human rights. The J&K state was pushed to turmoil due to militant violence. The violence had laid an adverse impact on the democratic and social institutions in the state. Ironically, the violations of human rights at the hands of armed groups have not been documented. The then UN Commission on Human Rights and the then sub-Commission on Human Rights took the initiative of commissioning studies on 'Human Rights and Terrorism' which included the mandate to provide some normative basis to deal with the violations of human rights at the hands of 'non-state actors'. However, the initiatives did not go beyond some academic reports which have now been consigned to the archives of the Council. The Special Rapporteur on Human Rights defenders, Ms. Sekaggya has underlined in her report that some instances of serious human rights abuses by armed groups against human Rights defenders were reported. The impunity for such violations was reported as a chronic problem. The Special Rapporteur acknowledges the security challenges faced by the country, including in parts of India which has witnessed violent Maoist insurgency for nearly a decade. According to her report, between 2001-2011 Maoists killed 5,465 civilians and destroyed

infrastructure worth millions of dollars.<sup>12</sup>

The Special Rapporteur has mentioned some cases of serious human rights violations in J&K state which according to her were brought to her notice. However, most of these cases are pending before the courts in the state and law is taking its course to deal with them. It may also be mentioned here that some exaggerations have been documented in her report. For instance, a ban on student activism in Kashmir has been mentioned. The report mentions that the students were not allowed to protest a hike in the fee. The Special Rapporteur seems to be unaware that the education from the primary up to university level in the

J&K state is free and no fee is charged from the students. However, the students have to meet the expenses for their hostels etc. which still is subsidized by the state.

In conclusion, it may be mentioned that post 1990, especially after the Vienna Conference in 1993, in which a new thrust was brought on the protection of human rights, the new phenomenon of sponsored insurgencies and terrorism was unleashed in different parts of the world. This phenomenon, with its own dynamics of international relations and diplomatic objectives played havoc with the human rights. The challenge deserves serious consideration of human rights regime. ■

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