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AUTOCRATIZATION IN KASHMIR

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This chapter will discuss the process of autocratization that has taken place in the Indian-controlled portion of the disputed state of Jammu and Kashmir since the early 1950s to the present day. The central argument of this chapter is that such an evolution has transpired largely because the Indian state, regardless of the government in office, has entertained deep misgivings about the irrevocable integration of the state into the Indian Union. As a consequence of these widely shared doubts a range of governments in New Delhi regardless of ideological disposition have tolerated political chicanery in the state, have given leeway to the use of undemocratic procedures and have, on occasion, resorted to questionable means to oust legitimate governments in the state. They have also passed draconian legislation that has substantially curtailed civil rights and personal liberties. Most recently, on August 5, 2019, the right-wing, Hindu nationalist Bharatiya Janata Party (BJP) abrogated the special status that the state had long enjoyed under the aegis of Article 370 of the Indian constitution. The writ of the Indian Central (national) government had been limited to defence, foreign affairs and communications. Furthermore, the state had its own constitution and its own flag. It had also enjoyed the right to forbid permanent settlement of non-residents in the state.

Background

Jammu and Kashmir had enjoyed these privileges owing to the particular circumstances of its integration into India. A brief discussion of the conditions under which it joined the Indian Union is in order. When the British Empire in India ended in 1947 it was divided into the two sovereign states of India and Pakistan. During colonial rule two classes of states had existed in the Indian Union. The states of British India were ruled directly from New Delhi, the capital of the Indian empire. Additionally, there were the “princely states” which were nominally independent but recognized the paramount status of the British. Under the terms of this arrangement the rulers of these states enjoyed a degree of autonomy but ceded control over defence, communications, and foreign affairs to the British (Ramusack, 2007).

As Independence approached, Lord Louis Mountbatten, the last Viceroy, decreed that these states had a choice: they could either join India or Pakistan but could not declare their independence when the British withdrew from their empire in India. Predominantly Muslim states that were contiguous would become parts of Pakistan while Hindu-majority states would

accede to India. Furthermore, he had argued that certain “geographic compulsions” would have to be taken into account as the monarchs chose to cast their lot with either India or Pakistan. A kingdom well within the borders of one of the two nascent states could not opt to join the other.

A unique situation confronted the state of Jammu and Kashmir. It was a princely state with a Hindu monarch, Maharaja Hari Singh, but with a Muslim-majority population. It also abutted the two emergent states. To complicate matters further, Maharaja Hari Singh had little interest in joining either India or Pakistan. As a Hindu monarch who was not especially well liked by his subjects, he had no desire to join a Muslim-majority state, Pakistan. By the same token, he was unwilling to join India because he feared that India’s socialist-minded leader, Jawaharlal Nehru, would seize his vast estates.

Yet both countries were keen on merging the state into their respective domains. For India, which was founded on the principles of secular nationalism, integrating Kashmir was key to demonstrating that a predominantly Muslim region could thrive under the aegis of a secular state. Pakistan, in turn, was equally keen on acquiring the state because it saw an adjoining state with a mostly Muslim population as critical to the completion of its identity as the homeland for the Muslims of South Asia.

With the maharaja unwilling to accede to either country and in the wake of a tribal rebellion in the southwestern portion of the state, Pakistan’s political leadership in connivance with the military launched a clandestine attack on the state. Maharaja Hari Singh, now in a state of complete panic, turned to India for military assistance as his forces proved to be completely powerless to stop the Pakistani onslaught (Whitehead, 2008). India agreed to provide assistance as long as two conditions were met: first, he would have to accede to India and second, the accession would need the imprimatur of Sheikh Mohammed Abdullah, the leader of the largest, secular and popular political organization in the state, the Jammu and Kashmir National Conference, which had played a vital role in opposing the rule of the Maharaja Hari Singh (Sisson and Rose, 1990). In the event, he agreed to both conditions and Indian forces were inducted into the state but not before the Pakistani intruders had seized as much as a third of the state.

The Delhi Agreement and after

Given the special circumstances of its accession to the Indian Union, Sheikh Mohammed Abdullah sought to forge a special relationship with the Indian state. This came to be codified in the agreement that he reached with Prime Minister Nehru in 1952. Under the terms of this agreement the state was allowed to have its own flag, draft its separate constitution, and also have a nominal head of state, known as the *Sadar-i-Riyasat*. Furthermore, the fundamental rights guaranteed under the Indian Constitution were abridged at the insistence of Sheikh Abdullah because their wholesale extension to the state would require it to compensate landowners whose properties had been subjected to land reform legislation (Das Gupta, 1968).

The autonomy that Abdullah had so zealously carved out would not prove to be long-lasting. In 1953, when Indian intelligence sources concluded that he was toying with the idea of declaring independence, he was deposed from office and incarcerated (Korbel, 2016). The same year a new constitution for Kashmir was adopted and under its terms Kashmir became an integral part of India. By 1960 the Indian Supreme Court assumed jurisdiction over the state (Brines, 1968).

Apart from these legal changes New Delhi had already chosen to overlook the questionable internal dynamics of Kashmir’s politics. Despite Abdullah’s extraordinary popularity, once

in office he proved to be utterly high-handed in his ways and had displayed a strong streak of authoritarianism. As Jyoti Bhushan Das Gupta, a noted and early scholar of Kashmir's domestic politics, had astutely observed:

Time has now come to pass judgment on Abdullah's government. Internally, it was hardly democratic. Opposition was suppressed, and civil liberties existed only in name and for those who shared his views. His economic views were radical but he combined them with a contempt for democratic practices in such a way as to invite comparison with the working of the like-minded totalitarian Governments elsewhere. He enjoyed tremendous popularity, yet resorted to questionable means to gain an electoral majority.

(Das Gupta, 1968, 209)

It is evident from this description that the process of autocratization had started early in Kashmir and with the imprimatur of its principal leader. With this early resort to non-democratic practices and attendant norms it is hardly surprising that the National Conference would continue these measures even after Abdullah's removal from office. The formal reasons for his dismissal, however, were that he had lost the support of his Cabinet, that he had failed to mend differences within his Cabinet and that his policies had led to economic hardship in the state (Das Gupta, 1968, 208). His deputy, Bakshi Ghulam Mohammed, replaced him as the Prime Minister. Shortly after assuming office, Bakshi declared Kashmir's complete fealty to the Indian Union. Bakshi, who enjoyed the complete support of the government in New Delhi, proved to be equally disrespectful of democratic norms and principles. New Delhi, in turn, allowed him to act with impunity as long as he and his supporters did not raise the issue of secession.

Crucial choices and their consequences

For well over two decades, the Central (national) government in New Delhi had long overlooked the malfeasances of the National Conference governments in Srinagar. Electoral malfeasances in the state were rampant and the NC maintained a stranglehold on the politics of the state (Bhattacharjea, 1994). Political opposition in the state was anaemic and made little or no headway against the dominance of the NC. The NC steered clear of secessionist sentiment and all Central governments proved willing to overlook any and all electoral shortcomings in the state. Furthermore, New Delhi, in turn, provided substantial amounts of economic assistance to the state to ensure political quiescence.

In 1975, after over a decade in political exile, one of Sheikh Mohammed Abdullah's key political acolytes, Mirza Afzal Beg, reached an accord with one of Prime Minister Indira Gandhi's principal political lieutenants, G. Parthasarathy. Under the terms of the Beg-Parthasarathy Accord the Sheikh was allowed to return to normal politics in the state with the understanding that he would not raise the secessionist bogey again. Shortly thereafter, Prime Minister Gandhi lost a national election and a coalition government under the banner of the Janata Dal assumed power with a former Congress leader, Morarji Desai, as the prime minister. In 1977 Desai committed himself to a free and fair election in Kashmir. Accordingly, the first election free of any electoral shortcomings since the 1950s took place in the state (Ganguly, 1997). Even though Sheikh Abdullah had suffered a heart attack three weeks before the election and was thereby unable to campaign, his party nevertheless won 47 out of a possible 76 seats in the state legislature.

Even as normal politics returned to the state, the process of autocratization that had long dogged the state continued apace. Even after Abdullah's return to power the state passed the Jammu and Kashmir Public Safety Act in 1978. It is ironic that the legislation did not originally have an explicit political intent. It was, instead, designed to curb timber smuggling, a rampant problem in the state (Ramachandran, 2019). Its underlying motivations had significant implications for civil liberties as it allowed detention without trial for up to a period of two years. With the onset of the 1989 insurgency, it has been used quite extensively to incarcerate political leaders (Duschinski and Ghosh, 2017). Most recently, in the wake of the abrogation of Article 370, it was also used to detain Farooq Abdullah.

In due course Abdullah anointed his son, Farooq Abdullah, as his chosen successor in 1981. In 1982, following his father's death, he became the Chief Minister of the State. In 1983, state-level elections were held and were also considered to be mostly free and fair. Within a year, however, factionalism within the National Congress led to the fall of the government. However, within two years, Farooq with the support of a Congress government in New Delhi was returned to office as the Chief Minister. Farooq's reliance on the Congress to return to office proved to be most consequential for his political fortunes. Many in the state and especially in the Kashmir Valley now saw him as an errand-boy of New Delhi.

Worse still, when the state went to the polls in 1987 the National Conference resorted to widespread electoral fraud. Earlier generations of Kashmiris may well have grudgingly accepted the outcome of the election. However, the generation of the 1980s who were far better educated, more politically conscious and better informed found the results to be unacceptable. Lacking a viable, alternative model of protest, substantial numbers of disaffected youth especially in the Kashmir Valley resorted to political violence.

The onset of the insurgency

The turning point, of course, came in December 1989 with the kidnapping of Rubiya Sayeed, the daughter of the Home Minister of the State, Mufti Mohammed Sayeed. To obtain her release the government caved in to the demands of the kidnappers. In its wake a full-scale insurgency erupted in the Valley.

Initially, a local, professedly-secular organization, the Jammu and Kashmir Liberation Front (JKLF) spearheaded the uprising. However, within months Pakistan quickly entered the fray, transforming a regional issue into an externally supported, religiously inspired extortion racket.

Fearing that it might lose effective control over significant parts of the state the central government in New Delhi unleashed a harsh, unyielding, and crude counter-insurgency strategy. It involved widespread cordon-and-search operations, the use of coercive interrogations of suspected insurgents and virtually unrestrained use of force. In considerable part this regime of repression took place under the governorship of a former civil servant and previous governor of the state, Jagmohan Malhotra. While he had proven to be a reasonably able administrator during his initial stint, in his second innings he proved utterly unsuited to the task.

Much of this approach was legally permissible because of the passage of suitable legislation. To begin with the Indian state was already armed with the sweeping powers embedded in the Terrorist and Disruptive Activities (Prevention) Act of 1987. This legislation had been passed largely to cope with the rise of terrorist activity in the adjoining state of Punjab. However, its provisions were extended to all of India. Under the terms of this act designated anti-terrorist courts could hold *in camera* proceedings, and the act protected the Central and state governments from any form of legal proceeding for actions taken in "good faith", permitted the use of the death penalty for terrorist acts and limited the rights of habeas corpus. Despite the existence of

this legislation the government deemed it necessary to expand its legal writ. As a consequence, it resorted to more draconian measures especially designed to assuage the misgivings of the Indian Army about conducting counterinsurgency operations in the absence of a suitable legal shield (Ramchandran, 2015).

Among other matters it passed the Armed Forces Special Powers Act (Jammu and Kashmir) of 1990. Some of the provisions embedded in this act granted sweeping powers to the Indian Army as well as the paramilitary forces in the conduct of their operations in Kashmir. Once a region is declared to be a “disturbed area” the provisions of the act drastically limit civil liberties and personal rights.

It is important to underscore that this legislation which has been in effect in Jammu and Kashmir since shortly after the onset of the insurgency has its roots in India’s colonial experience. It is based upon the Armed Forces (Special Powers) ordinance that the British colonial government had invoked in 1942 to crush the nationalist Quit India movement. And long before the AFSPA was applied to Kashmir it had first been promulgated in 1958 in India’s northeast against the Naga rebels (Mathur, 2012).

To that end, certain features of this legislation, in particular, deserve discussion. As any number of activists and analysts have argued, the legislation grants considerable leeway to military and paramilitary personnel in the conduct of their operations. One or two features, in particular, deserve some discussion. First, as the following paragraph shows it virtually indemnifies any member of the armed forces from prosecution in the conduct of operations:

If he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition of explosive substances.

(The Armed Forces Special Powers Act [Jammu and Kashmir] 1990)

The act also permits members of the armed forces to arrest:

Without warrant, any person who has committed a cognizable offence *or against whom a reasonable suspicion exists* [italics added] that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest.

(The Armed Forces Special Powers Act [Jammu and Kashmir] 1990)

Senior officials have defended these provisions on the grounds that they protect the armed forces from possible frivolous legal action in the routine conduct of their duties. However, in practical terms, the latitude that this act granted the armed forces led to extra-judicial killings, custodial deaths and fostered a culture of impunity in their ranks. Designed to cow the insurgents into submission this strategy proved to be almost entirely counterproductive. It successfully alienated segments of the population and especially Kashmiri youth who bore the brunt of these brutal tactics. If anything, the overall strategy only widened the scope of the insurgency as hapless individuals were caught in the counterinsurgency dragnet.

It was not until 1992, faced with a hardening and deepening of the insurgency, that the Indian state changed its strategy. The use of force remained under the legal aegis of the Armed Forces Special Powers Act (Jammu and Kashmir). However, the tactics that the armed forces adopted became far more calibrated and focused. Among other matters, the Indian Army created the

Rashtriya Rifles (RR), a dedicated counterinsurgency force which could be deployed without a long logistical tail. Furthermore, intelligence collection improved and better efforts were made to prevent infiltration from Pakistan. All these measures enabled the Indian state to restore a degree of order if not law in the state.

The evolution of the insurgency and beyond

Most importantly, the Indian state made arrangements to restore a semblance of political normalcy in the state through the conduct of reasonably free and fair elections. The first such election was held in 1996 and brought Farooq Abdullah of the NC back to power (Jones, 2008). Subsequently, a spate of other state level elections were held with the last one in 2014. All of these, for the most part, were deemed to be free of electoral taint. Despite the return of electoral democracy to the state the repressive machinery that had steadily been put in place over the years, and especially after the onset of the insurgency, remained largely intact. Accordingly, it is entirely possible to agree with the assessment of Paul Staniland that the situation in the state reflects the “paradox of normalcy”. As he writes:

The Indian state articulates a goal of normalcy that it does not allow to come to fruition. The official aspiration is a Kashmir where free elections, non-violent protest, and free speech replace the grim militarization of the 1990s. Yet, precisely as Kashmiris pushed forward such processes in the past half-decade, the Indian state cracked down on advocates because they articulated opposition to India’s current relationship with Kashmir.

(Staniland, 2013)

Of course, one of the most egregious strategies that elements of the Indian security forces have pursued even as legitimate governments have been in office is the practice of “fake encounters”. This has involved the staging of incidents where suspected insurgents and terrorists have been killed with impunity. Segments of India’s security forces have resorted to this egregious tactic largely because of the difficulties that they may have encountered in actually prosecuting these possible insurgents. Those capable of providing evidence against likely insurgents and terrorists may well have proven reluctant to serve as witnesses for fear of retaliation against themselves or their families. Under these circumstances, members of the security forces, on occasion, have resorted to this stratagem as a useful expedient. Despite the blatant illegality of this mechanism no member of the security forces has faced prosecution for these actions. Anthropologist Haley Duschinski has aptly referred to these extra-judicial killings as “regimes of impunity” (Duschinski, 2010).

Personnel drawn mostly from the paramilitary forces, most notably the Border Security Force (BSF) and the Central Reserve Police Force (CRPF) who constituted a Special Task Force (STF) and the Special Operations Group (SOG), have largely been responsible for these extra-judicial actions. In addition to these questionable methods various units of a range of paramilitary forces have been involved in “saturation tactics” that include the running of “checkpoints surveillance, cordon and search operations, human shields, prison detention, and torture” (Duschinski, 2009). These routine procedures have contributed to a widespread culture of repression and a significant constriction of civil liberties despite the persistence of electoral democracy in the state.

And it also needs to be highlighted that nationwide legislation, such as the Prevention of Terrorism Act (POTA) of 2002 passed in the aftermath of the terrorist attack on the Indian

Parliament in December 2001, which imposed severe penalties for involvement with terror, became applicable to Kashmir. Some of its key features underscore its anti-democratic ethos. It had an overly broad definition of what constituted terrorism, it allowed for detention without trial for 180 days and it allowed bail petitions to be postponed for an entire year. Faced with considerable opposition this act, however, was repealed in 2004. Nevertheless, a raft of other legislation which curtailed civil liberties both in Kashmir and elsewhere in India remained on the books (Roy and Singh, 2015; Ganguly, 2017).

The existence of this vast corpus of legislation aside, the military when frustrated with demonstrations that harried its routine operations but fell short of terror, again resorted to harsh (and potentially quite counter-productive) measures that showed scant regard for human rights. Specifically, in 2017, in the wake of a surge of popular protest including widespread stone pelting, the Indian Army picked up a Kashmiri man, Farooq Ahmed Dar, tied him to the bonnet of a jeep and paraded him through the locality as a warning to the protesters. By all accounts Dar had not participated in the protests and instead had been on his way to cast a vote in a national election. Not only was he subjected to this outrageous act but, worse still, the then Chief of Staff of the Indian Army, General Bipin Rawat, defended the action of the major who was responsible for using Dar as a human shield. To compound matters, he suggested that using Dar as a human shield amounted to an “innovation” and awarded him a medal (Rowlatt, 2017).

This culture of impunity, to some degree, has also been sustained because with rare and honourable exceptions the Indian press has not vigorously sought to expose and question the use of extra-legal tactics in pursuit of counterinsurgency operations in Kashmir. This failure to dispassionately probe the actions of Indian security forces in the state is an anomaly given that other lapses of policing in other parts of India are, for the most part, highlighted and commented upon at length. In this context, a careful quantitative examination of three major Indian metropolitan newspapers which enjoy a nationwide standing, *The Hindu*, *The Indian Express* and *The Times of India*, about the coverage of human rights in Kashmir arrived at some very revealing conclusions. Questioning official accounts of incidents in the state was deemed to be “anti-national” and the extent of civilian casualties was mostly overlooked. Worse still aspersions were cast about the reporting of human rights abuses on the part of global human rights organizations. Reports about the excessive or inappropriate use of force on the part of Indian security forces were treated as hostile propaganda. Most disturbingly, even an otherwise respected organization, the Press Council of India, appeared willing to accept the version of the armed forces when investigating allegations of a mass rape that apparently took place in 1991. In sum, it appears that much reportage of the state of human rights in Kashmir in the mainstream media has proven to be mostly state-centric in its orientation (Joseph, 2000). This willingness of a significant swathe of the Indian press to tacitly support the stance of the government in office has also enabled authorities to foster the culture of impunity that has long existed in Kashmir.

The end of Article 370 and its aftermath

On August 5, 2019, the Narendra Modi government passed legislation that formally abrogated Article 370 of the Indian Constitution (Ganguly, 2021). This move, of course, has been a long-standing demand of the BJP. Previous BJP governments had raised the prospect of its abrogation and had even included it in their election manifestos. However, in the end they had decided not to act. In considerable part, they had been inhibited from doing so because of the exigencies of coalitional politics as well as personal predilections of the Prime Minister. Modi, who had enjoyed a slender parliamentary majority in his first term (2014–2019) and had come to power on a mostly developmental platform, had also initially held off crossing the Rubicon.

However, within months of assuming office for a second term using his parliamentary majority he decided to revoke the special status of the state.

Doing so involved a legislative sleight of hand as he failed to follow through on a constitutional provision that required him to consult the state legislature before passing the legislation. Apologists for the government argued that it could not do so because the state legislature had been dissolved. That said, there is little or no question that the government was acutely aware that this move would be widely unpopular across much of the state and especially in the Kashmir Valley. It is reasonable to make this inference because prior to the revocation of its status the Central government had asked tourists to leave the region, it had blanketed the area with additional troops and issued a security alert claiming that militants were about to attack its troops (Jenkins, 2019).

The legislation bifurcated the state and created a legislature for the Kashmir Valley and Jammu but offered no such provision to the region of Ladakh. The two segments of the former state were now also made Union Territories under the control of the Central (federal) government. With this provision, along with Article 35 A, Kashmir will no longer have a separate constitution, its own flag, and all laws that Parliament passes will be applicable to the state and non-Kashmiris will now be able to purchase land in the state. The last issue is especially fraught because it raises the prospect of significant demographic changes. Even though this decision suborned constitutional norms and proprieties it was not entirely bereft of strategic logic. Having more firmly integrated the disputed areas into the Indian Union the government has undermined Pakistan's irredentist claim to the state. Quite predictably, Pakistan has lodged protests but the global community has paid scant heed to them (Ganguly and Tarapore, 2019).

Along with the abrogation of the article the government in New Delhi decided to incarcerate significant segments of the political leadership in the state under existing preventive detention laws. Only some of them were released in late December 2019 (Press Trust of India, 2019). Despite their release political activity in the state, for all practical purposes, remains at a standstill. While elections have been promised for the local legislature in Jammu and Kashmir the new constituencies have yet to be delineated and so the elections remain in abeyance.

The only elections that have been held thus are those for District Development Councils (DDCs). Organized and announced at very short notice they were conducted in late December 2020 against the backdrop of the Covid-19 pandemic. Non-BJP leaders vigorously argued that they had been given inadequate notice and thereby their ability to campaign had been severely hobbled. Their misgivings aside, the People's Alliance for Gupkar Declaration (PAGD), a conglomeration of six political parties including the two major local political parties, the People's Democratic Party (PDP) and the National Conference (NC), won a majority of the seats. The BJP, however, as a single party won the most seats. The Alliance performed best in the Valley and the BJP did well in Jammu. This outcome was hardly surprising given that Jammu is predominantly Hindu while the Valley is Muslim-dominated. Despite the success of the PAGD in the Valley and its hopes of restoring the statehood of Jammu and Kashmir, the likelihood of the BJP government resiling on its decision is all but slender to non-existent.

Conclusion

The exceptional terms under which the state of Jammu and Kashmir acceded to India explains a great deal about the Indian state's dealings with it. Virtually from the outset it tolerated a large degree of political chicanery in the state, granted leeway to a range of anti-democratic procedures and, over time, allowed the passage of legislation that curbed personal rights and

civil liberties. It also tolerated a host of electoral malfeasances as long as local politicians did not raise the prospect of secession. All of these choices contributed to the erosion of democratic norms and procedures in the state.

Worse still, following the onset of the insurgency in 1989 and Pakistan's subsequent role in it, the Indian state contributed to the steady militarization of the state. It needs to be underscored that the Indian military presence in the state far exceeded previous deployments of its security forces to protect its borders from perceived threats from both the People's Republic of China and Pakistan. This process, in turn, led to a further denuding of civil rights and liberties even as the state saw the conducting of reasonably free and fair elections.

At this particular juncture it is hard to visualize a less autocratic dispensation for the bifurcated state in the foreseeable future. The National Democratic Alliance (NDA) government, which the BJP spearheads, has shown scant regard for the protection of personal rights and civil liberties within India (Ganguly, 2020). Given its propensity to shrink the scope of civil liberties across the country it is entirely reasonable to conclude that it will continue the repressive policies that have long been in place in the Indian-controlled portion of the disputed state.

Worse still, as long as Pakistan maintains its support for a range of terrorist organizations and they carry out random acts of terror, the BJP-led government will use them as a justification of maintaining the vast web of existing repressive legislation that curtails civil liberties. Furthermore, the present government recognizes that beyond the occasional criticism no foreign government is likely to sanction India in any meaningful fashion for its human rights record in the state. Given that most great powers are clearly willing to overlook far more egregious violations of human rights on a global basis the inference that the BJP-led government has made is hardly unreasonable. Consequently, the repressive apparatus that has existed in Kashmir for decades is likely to remain undisturbed.

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