

Jammu and Kashmir Legislative assembly

Abstract: The political changes in Kashmir have been enormous. Though the valley is in the lap of five mountains, yet it has been trampled up on many times by voluptuous and greedy invaders. Tatars, Huns, Cyhaks, Mongols, Pathans, Sikhs have often try to be the master of this beautiful place, and it still continuous, as is evident from the 1947, 1965, 1971 war type military attacks from Pakistan and the present trauma of 1989 to date by way of sending 'mujahids', and imparting insurgency training to the youths of the soil of Kashmir, famous for being Rishi-Wari an adobe of rishis. The political scene in the valley is facing hits and counter-hits, which has badly affected the tourism in Kashmir.

Ancient Kashmir has seen galaxy of kings both good and bad most generous and the most cruel as we study Rajtarannigini we find that Kashmir has witnessed muslim rulers with mixed reaction Sultan But-Shikan did not tolerate Hindus but his son Zain-ul-Abedin rehabilitated them. Such were the contrasting natures of father, the cruel and son the generous.

The Chak ruler in Kashmir commenced in 1554 A.D. And this dynasty ruled up to 1588 A.D. it lasted witnessing seven rulers. Wars and trifles were special feature of this period¹. During Moghuls, Kashmir witnessed peace and prosperity and the modern tourism is based mostly on the Mughal gardens of Kashmir. The rule lasted up to 1753 A.D.

The Pathan rule 1753 A.D. brought misery and destruction; it was the period of brutal tyranny and anarchy. The Kashmiris invited Maharaja Ranjit Singh of Punjab to give crushing defeat to the pathans in 1819. The pathans were routed, but Sikhs last Kashmir to the British as a result of the first Sikh war.

Key words: Dogra, accession, adequately, jurisdiction, vacancy, pathans, Wars and trifles.

Introduction:

The state of Jammu and Kashmir was governed by Dogra rulers till 1947 when Maharaja Hari Singh signed the instrument of accession in favour of the Indian union On 26 Oct, 1947. The 1st legislature of Jammu and Kashmir consisting of council of Ministers and an assembly, was established in 1934. The constitution of the state of Jammu and Kashmir framed by a separate constituent assembly came into force from 26, January 1957. Section 46 Of the Jammu and Kashmir constitution states that the legislature shall consist of the governor and the two houses known as the legislative council (upper house) and the legislative assembly (lower house).

The legislative assembly consists of one hundred members chosen by direct election from the territorial constituencies in the state. Subsequently under the under the constitution of Jammu and Kashmir (20th amendment) acts, 1988- this was raised to 111. However, as section 48 of the state constitution, 24 seats shall remain vacant in the legislative assembly for the area of the state presently under the occupation of Pakistan. The seats are not taken into account for reckoning the total membership of the assembly. Provision has also been made for the nomination of two women as members of the assembly by the Governor, if he is of the opinion that women are not adequately represented in the legislative assembly.

The legislature of Jammu and Kashmir is bi-cameral. The Jammu and Kashmir legislative assembly at present consists of 89 members out of which 87 are elected and two are nominated. The assembly has own rules of procedure and conduct of business to regulate the business of the house. These rules have been amended from time to time. The tenure of the assembly is 6 years unless sooner dissolved.

1. History:

The first legislature of the kingdom that is now the Indian state of Jammu and Kashmir was established by the government of the Maharaja of Kashmir Hari Singh in 1934. However, it was considered undemocratic and unrepresentative by a majority of population of the kingdom owing to the restrictions on the participation of political parties such as the Jammu and Kashmir national conference led by sheikh Abdullah. After the accession of the princely state of Jammu and Kashmir to Union of India in 1947, the maharaja's role was restricted to that of a Rajpramukh (head of the state). With free democratic elections held 1st time in the state's history, the national conference won a majority of seats in a new constituent assembly and Sheikh Abdullah became the head of Government. In 1957 a new constitution was adopted by the constituent assembly, which established a bicameral legislature.

2. Composition:

The legislative assembly was initially composed of hundred members later increased to 111 by constitution of Jammu and Kashmir (20th amendment) act of 1988. Of these, 24 seats are designated for the territorial constituencies of the state that were occupied by Pakistan in 1947. These seats remain officially vacant as per the section 48 of the state constitution. These seats are not taken into account for reckoning the total membership of the assembly, especially for deciding quorum and voting majorities for legislation and government formation. Hence, the total contestable and filled seats of assembly are presently 87. The Kashmir valley region has 46 seats, the Jammu region has 37 seats and Ladakh region has

4 seats. Two women may be nominated as members by the Governor of Jammu and Kashmir if he is of the opinion that women are not adequately represented.

3. Tenure and functions:

Members of the legislative Assembly are elected for a six years term. The seats are filled by direct elections. The assembly is may dissolved before the completion of six year term by the Governor of up on the advice of Chief Minister of Jammu and Kashmir. The Governor may also convene special session of both houses of the state legislature.

4. Office Barriers:

The assembly is convened and administered by the speaker. The leader of the house is usually Chief Minister who is the leader of the party whose Members constitute amajority. The leader of the opposition represents the [party (or collation of parties) that has won the 2nd largest number of seats.²

- Speaker of the assembly : TBD
- Leader of the House : TBD

5. Legislature for the state: Section 46 of the constitution of the Jammu and Kashmir provides that there shall be a legislature for the state which shall consist of the Governor and two houses to be known respectively as the legislative council and legislative assembly.

6. Composition of legislative council:

Section 50 of the state constitution provides for composition of the legislative council. *It reads as under*

1. Legislative council shall consist of 36 members, chosen in the manner provided in this section.
2. Eleven members shall be elected by the members of the legislative assembly from amongst persons who are residents of the province of Kashmir and are not the members of the legislative Assembly: provided that of the members so elected, at least one shall be a resident of tehsil Ladakh and at least one shall be resident of tehsil Kargil.
3. Eleven members shall be elected by the members of the legislative Assembly from amongst persons who are resident of province of Jammu and are not the member of the legislative Assembly: provided that the members so elected, at least one shall be the resident of Doda district and at least on shall be a resident of Poonch District.
4. One member shall be elected by each of the following electorates, namely-

- a. The members of municipal council, town area committees and notified area committees in the province of Kashmir.
 - b. The members of municipal council, town area committees and notified area committees in the province of Jammu.
5. Two members shall be elected by each of the following electorates namely-
- a. The members of the panchayats and such other local bodies in the province of Kashmir as the Governor may order specify;
 - b. The members of the panchayats and such other local bodies in the province of Jammu as the Governor may be order specify;
6. Eight members shall be nominated by the Governor, not more than three of whom shall be persons belonging to any of the socially or economically backward classes in the state, and the others shall be persons having special knowledge or practical experience in respect of matter such as literature, science, art, co-operation movement and social service.
7. Elections under sub-section (2) and (3) shall be held in accordance with the system of proportional representation by means of the single transferable vote.

7. Qualifications for membership of the legislature:

Section 51 of the state constitution provides the qualifications which are required by a person for election or nomination as a member of the state legislature. It reads as under

A person shall not be qualified to be chosen to fill a seat in the legislature unless he:

- a. Is a permanent resident of the state, and makes and subscribes before some person authorized in that behalf by the election Commission of India an oath or affirmation according to the form set out for the purpose in the fifth Schedule;
- b. Is, in the case of a seat in the legislative Assembly, not less than 25 years of age, and in case of the legislative council, not less than 30 years of age, and
- c. Possesses such other qualifications as maybe prescribed in that behalf by or under any law made by legislature.

8. Form of oath or Affirmation by a candidate:

A person who stands as a candidate to fill a seat in the legislative council has to make and subscribe an oath or affirmation according to the following form set out in 5th Schedule of the state constitution:

'1 ,A. B., having been nominated as a candidate to fill a seat in the legislative council do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the constitution of the state as by the law established and that I will uphold the sovereignty and integrity of India.

9. Duration of legislative council:-

Legislative council is a permanent body of the state legislature and is not subjected to any dissolution. However 1/3 of its members retire on the expiration of every 2nd year. The term of each member of legislative council is 6 years unless a member is elected or nominated to fill a seat for the remainder of the term. In that case, the term of such a member is the left out period of the member whose seat has fallen vacant. Section 52(2) of the state constitution provides that the legislative council shall not be subjected to dissolution but nearly as possible 1/3 of the members thereof shall retire, as soon as may b, on the expiration of every 2nd year in accordance with the provision made in that behalf by legislature by law.

10. Session of the legislature and prorogation:

section 53 of the state constitution provided that the Governor shall from time to time summon each house of the legislature to meet at such time and place as he thinks fit, but 6 months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the nest session, sub-section (2) thereof provides that the Governor may from time to prorogue the house or either house.

11. Governors Address:

section55 of the state constitution provides at the commencement of the first session after each general elections to the legislative assembly and at the commencement of the 1st session of each year, the Governor shall address both houses of the legislature assembled together and in for the legislature of causes of its summons.

12. Chairman And Deputy Chairman:

section 61 of the state constitution provides that the legislative council shall, as soon as may be, choose two members of the council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

13. Vacation, resignation and removal of the Chairman and Deputy Chairman: in terms of section 61 read with section 58 of the state constitution, a member holding the office as Chairman or deputy Chairman of the legislative council:

- a. Shall vacate his office if he ceases to be a member of the Council;
- b. May at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office, and
- c. May be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council.

14. Powers of Deputy Chairman to Perform the Duties of Or to Act as Chairman:

Section 59 of the state constitution provides that when the office of chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or if the office of the Deputy chairman is also vacant, by such member of the council of the council as the Governor may appoint for the purpose. During the absence of the chairman from any sitting of the council, the deputy chairman or, if he is also absent, such person as may be determined by the rules of procedure of the council, are if no such person is present, such other person as may be determined by the council, shall act as chairman.

15. Oath or Affirmation by Members: section 64 of the state constitution provides that every member of the legislative council shall, before taking his seat, make and subscribe before the Governor or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the 5th Schedule.

16. Form of oath or affirmation by a member: before taking his seat in the legislative council, a member shall have to make and subscribe an oath or affirmation according to the following form set out in 5th schedule of the state constitution;

'I, A. B., having being been elected or (nominated) as a member of the legislative council do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the constitution of the state as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty up on which I am about enter.

17. Voting in the House: section 67 of the stateconstitution provides that all questions at any sitting of the House shall be determined by a majority of votes of the member present and voting. The Chairman,

or person acting as such, shall not vote in the 1st instance but shall have exercised a casting vote in the case of equality of the votes.

18. Disqualification for the Membership: section 69 of the state constitution:- enlists the grounds on which the person is disqualified for being chosen as, and for being a member of the state legislature. It reads as under '69.

1. A person shall be disqualified for being chosen as and for being a member of legislative assembly or legislative council.

- a. If he holds any office of profit under the government of India or the state government or any other state government within the Union of India, other than an office declared by the legislature by law not to disqualify its holder;
- b. If he of unsound mind and stands so declared by a competent court;
- c. If he an undischarged insolvent;
- d. If he not the permanent resident of state or has voluntarily acquired the citizen ship foreign state, or is under acknowledgement of allegiance or adherence to a foreign state;
- e. If he is so disqualified by or under any law made by legislature.

2. for the purpose of subsection(1) a person shall not be deemed to hold an office of profit under the government of India, the state government Or any other state government within the union of India, by reason only that he is minister, or a deputy minister.

3. A person shall be disqualified for being a member of either house legislature if he so disqualified under the 7th schedule.

19. Powers, privileges and immunities of state legislature and its members: The powers privileges and immunities enjoyed by the state legislature and its members and its committees are given in section 72 of the state constitution it reads as under;

1. "72 powers, privileges etc. of the houses of legislature and of the members and committees thereof (1) subject to the provisions of this constitution and to the rules and standing orders regulating the procedure of the legislature, there shall be freedom of speech in the legislature.
2. No member of the legislature shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the legislature or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of a house of the legislature of any report, paper, votes, or proceedings.

3. In other respect, the power, privileges and immunities of the house of the legislature and of the members and the committees of a house of the legislature shall be such as may from time to time be defined by legislature by law, and until so defined, shall be those of the parliament of India and its members and committees.
4. The provisions of sub-section(1), (2) and (3) shall apply in relation to person who virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the legislature or any committee thereof as they apply in relation to members of that legislature”.

20. Language to be used in legislature: Section 87 of the constitution of the Jammu and Kashmir provides that the language to be used in the legislature shall be Urdu or English. *It reads as under:* “

1. Business in the legislature shall be transacted in Urdu or in English; provides that the speaker of the legislative assembly or the chairman of the legislative council or person acting as such, as the case may be, may permit any member to address the house in Hindi or if he can't adequately express himself in any of the aforesaid language, to address the house in his mother tongue.
2. The official record of proceedings the legislature shall be kept in Urdu as well as in English.
3. The text of all bills and amendments thereof moved in and of all acts passed by the legislature which shall be treated as authoritative, shall be in English.

21. Restrictions on discussion in the legislature:

Section 88 of the constitution provides that the no discussion shall take place in the legislature with respect to the conduct of any Judge of Supreme court or of the High Court in the discharge of his duties.

Court not enquires in to proceedings of legislature: section 89 of the state constitution provides that the validity of any proceedings in the legislature shall not be called in the question on the ground of any alleged irregularity of the procedure.

It further provides on officer or member of legislature in who power are vested by or under this constitution for regulating procedure or the conduct of business or maintaining order, in the legislature shall be subjected to the jurisdiction of any court in respect of the exercise by him of those powers.

22. Composition of the state legislature:

In most of the states, the legislature consists of Governor and the legislative assembly (Vidhan Sabha). This means that the state have unicameral legislature.ion a few states there are two houses of

legislature name legislative assembly (Vidhan Sabha) and legislative council(Vidhan prashad) besides the Governor. Where there are two houses, the legislature is known as bi-cameral.

Five states have the bi-cameral legislature. The assembly is known lower house or popular house. The legislative council is known as upper house. Just as lok Sabha has been made powerful at the Union level, the legislative assembly has been made powerful in the state.

23. Legislative Assembly (Vidhan Sabha):- there is a legislative assembly (Vidhan Sabha):

In every state, it represents the people of state. The members of Vidhan Sabha are directly elected by the people on the base of universal adult franchise. They are directly elected by all adult citizens registered as voters in state. All the men's and women's who are eighteen years of age and above eligible to be included in the voters list. They vote to the elected member of state assembly. Members are elected from territorial constituencies. Every state is divided into as many (single member) constituencies as the member of members to be elected. As in case of Lok Sabha, certain number of seats is reserved for scheduled castes and in some states for scheduled tribes also. This depends on the population of these weaker sections of the state. In order to become a member of Vidan Sabha a person must;

- Be a citizen of India';
- have attained the age of 25 years;
- his/her name, must be in voter list;
- must not hold any office of prophet;
- Should not be a government servant.

The number of Vidhan Sabha members cannot more than 500 and not less than 60. However, very small states have been allowed to have lesser number of members. The Goa has only 40 members in its Assembly. Utter Pradesh (is a big state even after the creation of Uttaranchal from the 2002) has 403 seats in the Assembly.

The Governor of the state has the power to nominate one member of the Anglo-Indian community if this community is not adequately represented in the House. As in case of the Lok Sabha, some seats are reserved for the members of scheduled castes and scheduled tribes. The tenure of Vidhan Sabha is five years, but the Governor can dissolve it before the completion of its term on the advice of Chief Minister. It may be dissolved by the President in case of Constitutional emergency proclaimed under the Article 356 of the Constitution. In case of proclamation of national emergency (under Article 352) the Parliament can extend the term of the legislative Assemblies for a period not exceeding one year at a time.

24. Presiding Officer (The Speaker):

The members of Vidhan Sabha elect their presiding officer. The presiding officer is known as the Speaker. The Speaker presides over the meetings of the house and conducts its proceedings. He maintains order in the House, allow the members to ask questions and speak. He puts bills and other measures to vote and announces the results of voting. The speaker does not ordinarily vote at the time of voting. However, he may exercise casting vote in case of a tie. The Deputy Speaker Presides over the meetings during the absence of the Speaker. He is also elected by the Assembly from amongst its members.

25. Legislative Council (Vidhan Parishad):

Vidhan Parishad is the upper House of the state Legislature. it is not in existence in very states. Very few States have bicameral legislature that means having two Houses. At present five states viz. Uttar Pradesh, Bihar, Karnataka, Maharashtra and Jammu and Kashmir have Vidhan Parishad while remaining 23 States have one House, i.e. Vidhan Sabha. Legislative Council are legacy of the British period.

The parliament can create Vidhan Parishad in the state where it does not exist. If the Legislative Assembly of the state passes a resolution to this effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting, sends the resolution to the parliament. Similarly, if the state has a Council and the Assembly wants it to be abolished. If may adopted a resolution by similar majority and send it to the Parliament. In the situation Parliament resolves to abolish the concerned Legislative Council. Accordingly, Councils of Punjab, Andhra Pradesh, Timal-Nadu and West Bengal were abolished.

According to the constitution the total number of members in the Vidhan Parishad of the State should not exceed one –third of the total number of members of Vidhan Sabha but this number should not be less than 40. The Jammu and Kashmir is an exception where Vidhan Parishad has 36 members.

In order to be a member of legislative council the person concerned should:-

- *be a citizen of India:*
- *he have attained the age of 30 years*
- *be a registered voter in the state*
- *Not hold any office of profit.*

The Vidhan Parishad is partly elected partly nominated. Most of the members are indirectly elected in accordance with the principles of proportional representation by the means of single transferable vote system. Different categories of members represented different interests.

The composition of the legislative council is as follows:

- One-third members of the council are elected by the members of the Vidhan Sabha.
- One-third of the members of the Vidhan Parishad are elected by the electorates consisting of members of Municipalities, Districts Boards and other bodies in the state;
- One-twelfth members are elected by the electorate consisting of graduates in the state with a standing of three years;
- One-twelfth members are not elected by the electorates consisting of teachers of educational institutions within a state nor lower in standard than a secondary school who have teaching experience of at least three year.
- The remaining that is about 1/6th is nominated by the Governor from amongst the persons having special knowledge in the sphere of literature, science, art, cooperative movement and social service.

The Vidhan Parishad, like Rajya-Sabha is a permanent house. It is never dissolved. The tenure of its members is six years. One-third of its members retire after every two years. The retiring members are eligible for re-election. In case of vacancy arising out of resignation or death by-election is held for the remaining period of such tenure.

Conclusion:

Virtually, the present political system dates back to the 16th march 1846. When the territory of Kashmir (including the currently Pakistan occupied Kashmir) was transferred and handed over the Maharaja Gulab Singh under the treaty of Amritsar against the Rs. 75 lakh and thus the Dogra rule was established.

During the 100 years of the Dogra rule, Kashmir did not witness any invader except in 1947. Maharaja Gulab Singh was the first maharaja who founded the modern state of Jammu and Kashmir. His successors Ranber Singh and then the Maharaja Pratab Singh did not see any foreign aggression. No doubt, the condition of people was helpless, poverty was everywhere except for some landlords, jagirdars and some bureaucrats, who were living the best of life. All others were exploited by the bureaucracy.

Maharaja Hari Singh ascended the throne in 1925. Due to spread of education to the privileged few, some sort of political awakening and self-consciousness was touching the hearts. Oppression over the peasants and great poverty were the disturbing factors of peace during the reign of this maharaja. Sheikh Mohammad Abdulla, a product of Lahore College under the influence of Iqbal the poet philosopher of Urdu literature, thought it better to oppose the Maharajas regime. Hence revolted on 13th July 1931 was

witnessed by the Kashmiris. The seeds of hatred against the maharaja as being a Dogra by birth, grew among the Muslims³.

After the riots of 1931 a commission under the presidency of B.J.Galcy was instituted by the Maharajas. Thus a hope of betterment did occur in the people, as all the recommendations were accepted by the His Highness's Government. Besides the establishment of a legislative Assembly, the implementation of (i) full religious liberty, (ii) non-interference in the law of Inheritance, (iii) restoration of religious places, (iv) educational development, (v) adequate representation of different communities in services, (vi) proprietary rights in respect of land, (vii) protection of agricultural rights, (viii) suppression of corruption, (ix) amendment of press regulation etc, were ordered.

Sheikh Mohd. Abdullah played the dynamics role in the political activities of the state. He was a potential threat to the throne and the same was actually proved. After the Pakistan aggression in October 1947 the Maharaja appointed Sheikh Mohd. Abdullah as the Head of the Administration on Oct. 30, 1947. The National Conference had already become the main political party of the state. The Maharaja in a proclamation dated March 5, 1948 announcing responsible Government in the state, invited Sheikh Abdullah to form the Interim Government and he became the Prime-Minister.

References

1. Maharaja Gulab Singh, thesis by Dr. Z. L. Jalla, 1986, Kashmir University.
2. A.K Raina, Tourism Industry in Kashmir, Shipra Publication New Delhi, p.22
3. Maharaja Gulab Singh, thesis by Dr. Z. L. Jalla, 1986, Kashmir University.
4. Dr. V. Bhushan, Jammu and Kashmir State Politics and Government, Black Prints India New Delhi, 2017, p.142.
5. Dr. V. Bhushan, Jammu and Kashmir State Politics and Government, Black Prints India New Delhi, 2017, p.14.
6. Dr. V. Bhushan, Jammu and Kashmir State Politics and Government, Black Prints India New Delhi, 2017, p.150.