



**Indian Parliamentary Elections 2004
and the Question of Boycott
in Jammu and Kashmir**

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JKCHR
Jammu and Kashmir Council for Human Rights

Elections 2004 and the Question of Boycott

The socialist, Secular and Democratic Republic of India is going to polls, a 14th time, in April-May 2004. India will hold the largest elections in human history in four phases – April 20 and 26 and May 5 and 10. It will involve some 675 million eligible voters, the largest electorate in human history. The counting of votes will be carried out on May 13 and the entire election process will be completed by May 25.

Elections to the 6 Parliamentary Constituencies of Baramulla, Jammu, Srinagar, Anantnag, Ladakh and Udhampur in Jammu and Kashmir will be held over four days, on 3 April, 10 April, 19 April and 26 April.

If the electorate gives a credit to Vajpayee lead Government for triggering a feel good factor, an economic shine, confidence surge seen in India Pakistan relations and the start of a dialogue between India and a section of Kashmiri leadership, Vajpayee is destined to be the first Indian prime minister to serve four terms. Indias first Prime Minister, Jawaharlal Nehru and his daughter, Indira Gandhi, each were elected three times.

The people of India remain at the core of the Republic of India. They assert their authority through periodic elections at which they choose their representatives who make laws and enforce them on their behalf. A whole part of the Constitution is devoted to elections. Article 325 to 328 in Part XV are of particular interest. Article 325 envisages one general electoral roll and prohibits discrimination between citizens "on grounds only of religion, race, cast, sex or any of them".

The hierarchy in elections in a descending order therefore starts from "We the People", the Constitution, the Central Acts, and the State laws.

Elections to the 6 Parliamentary Constituencies in Jammu and Kashmir are taking place at a time when India and Pakistan have agreed to have a composite dialogue on all issues including the issue of Kashmir, when the main alliance of various political, social and religious organizations formed as APHC (All Parties Hurriet (Freedom) Conference in July 1993 is divided in two factions, when APHC lead by Maulana Abbas Ansari has had two rounds of talks with the Government of India and the third round to discuss 'substantive' issues is set for June and when JKLF a constituent of APHC has moved out of the Alliance.

There is an on going debate whether the people of Jammu and Kashmir should or should not boycott the 2004 Parliamentary Elections. The most important consideration that a leader has to face is that he should remain on the side of the people. Common welfare of the people should be his or her overriding interest.

If a boycott of elections is in the larger interests of the people of Jammu and Kashmir, one should remain on the side of the 'peoples interest'. In that case, the decision should be left to the free choice of the people.

It is important to point out that the Kashmiri alliance APHC which submitted itself to a constitutional discipline on 31.7.93 in fact participated in 1987 elections and in all the other five elections before that.

The people of Jammu and Kashmir have been through elections in 1951, 1957, 1962, 1972, 1983, 1987, 1996 and 2002. They have voted for parliamentary candidates in the 6 constituencies in the past as well. It is a misleading and a self-serving argument that elections have or could vitiate the Rights Movement of the People.

Multiple Violence (State and non State) has been used during the last 13 years to force participation or ensure a boycott in elections. The politicians and their associate militant semblances campaigned for a boycott not out of conviction but out of a 'forced interest'. The poll boycott calls in the past have neither been in reference nor in the best interests of the people of Jammu and Kashmir.

Former Hurriet Chairman Prof. Abdul Gani Bhat has let the cat out of the bag after meeting a delegation of Pakistan Peoples Party legislators in Delhi. He said that Pakistan was using the separatist conglomerate for advancing its 'own narrow interests. Pakistan is not bothered about Kashmiris. It just wants to use us for gaining points with India".

It is understandable that Pakistan played an important role in proposing and disposing the political process in Jammu and Kashmir. One such area which was closely supervised by Pakistan were the elections. Pakistan has lost its previous foothold in administering its agenda in Jammu and Kashmir.

Now the political climate seems to have encouraged people to dare a dissent. Things are seen through the prism of public interest as opposed to selling an earlier political rhetoric. Earlier on Pakistan forced the leadership to make an error on the question of elections and self-determination.

Elections on their own are a separate human right. Participation in the conduct of public affairs is a basic human right. The General Assembly of the United Nations in para 3 of its resolution 46/137 of 17 December 1991 states that "periodic and genuine elections are necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wider range of other human

rights and fundamental freedoms, embracing political, economic, social and cultural rights”.

Unfortunately Pakistan has made a meal of UN Charter and UN Resolutions in Azad Kashmir and Northern Areas. It succeeded to exploit the popular sentiment in Jammu and Kashmir around the question of implementation of UN Resolutions in Jammu and Kashmir. It introduced and encouraged the use of gun as a resistance measure in Jammu and Kashmir and decided to stay put when after a while the gun was turned upon common people during the ordinary course of their normal life.

The people of Kashmir not on account of a threat to life and violence against their person but out of a free and informed choice have a right – not to participate in elections for a variety of reasons supported by the United Nations jurisprudence on elections.

They can make out a case for the absence of an effective administration of justice during an election and ask for a balance between electoral security and maintenance of order on the one hand and on the other the importance of non-interference with the rights and the existence of an environment free of intimidation.

They could seek a reference to the fact that India is a founding member of the International Institute for Democracy and Electoral Assistance (IDEA). The people could express their concern on ‘Duty to Fairness’ and conjoin it with the UN Code of Conduct which imposes a duty of service to the community upon all officers of law. It enshrines that all citizens benefit from elections that are administratively sound and free of any disruptive forces, which seek to undermine, the free expression of popular will.

It is in the fitness of argument to assume that as a member of UN and as a democracy, India should have more

institutional reasons than many other member nations, to accord more meaning to the 'Duty of Service' and 'Duty to Fairness' that the UN General Assembly envisaged in 1979 in the Code of Conduct for Law Enforcement Officials.

Advocates for a poll boycott fail to understand that for the reanimation of civil society it is important that the men and women are able to take part in a freely expressed political choice. The endeavour to animate the civil society has to be gilded on the confidence that a self-conscious civil society necessarily involves democratisation. Civil society can, however, carry out this programme only when it itself is democratic.

The two factions of APHC, other political parties outside this alliance and JKLF which has formally distanced itself from the two factions of APHC have to take a decision in the interests of the people and as a continuum of their expressed politics. The decision has to be based upon their avowed politics of the last 13 years, their present and past views on militancy and on their stated positions on the meeting of India –Pakistan leaders in January 2004 in Islamabad.

The Ansari lead faction of Hurriet has had two rounds of talks with the Government of India and a third round is set in the month of June. It would therefore not be in keeping with the principles of a dialogue, if it decides to cause a prejudice to a party which is partner in these dialogues. More so the Ansari group has distanced itself from putting up any buntings on behalf of the Government of Pakistan. The group seems to have been aggrieved and as such wishes to wear a 'Kashmiri cap', from this point onwards.

The alliance faction lead by Syed Ali Shah Gilani would of course take a position at variance with the one taken by the Ansari faction. Gilani has expressed his disinterest in the parliamentary elections and has given a boycott call as well.

It is a tit for tat positioning and does not relate to the jurisprudence of elections and self-determination as two separate issues. A boycott call by Gilani lead Hurriet does not even reconcile with the interview given by Prime Minister Jamali of Pakistan to Sahara Samay Television in which he said that “we are very comfortable” with Prime Minister Atal Bihari Vajpayee and find his views, stature and thinking “very positive”.

DFP and other political parties outside the alliance too have oscillated in the past and have taken a position, based not on a mature judgement and a reliable understanding of the jurisprudence of three administrations of Jammu and Kashmir but to defend their own political turf.

JKLF seemingly a secular and a nationalist school of politics suffered a personality disorder in late 1980 and decided to offer its shoulders to a militant movement designed by Pakistan. JKLF nudge passed the fact that Pakistan controlled two administrations of Jammu and Kashmir and had a long history of persecution of secular and nationalist leadership of Plebiscite Front and JKLF.

The nationalist leadership was in a better position to notice that, on the one hand Pakistan laid all blame on India for the non implementation of UN Resolutions and on the other violated the same Resolutions and continued to deny the people of Jammu and Kashmir the freedom of travel across the cease-fire- line.

JKLF post 1990 leadership, started as a managed gun-carrying coolie until it qualified to cohabit with pro Pakistan and pro India schools of politics for 13 years since July 1993. It has its share in sending a generation of Kashmiri youth to death and killing many others. It is sad to say that an ideology pioneered and paid for by colossal sacrifices by many sons of the soil since early 60s and 70s took to a commercial interest.

An ideology set out to secure the people from the three administrations of India and Pakistan and establish an independent Jammu and Kashmir, gave way to a reckless killing of its own people. Like many other supplanted political propositions in the Valley, JKLF too submitted itself to 'probation' to prove its weather worthiness.

On 29 March JKLF launched a poll boycott campaign through a press conference at Srinagar. JKLF has a right to position itself for or against in an election in the best interests of the people of Jammu and Kashmir. In fact it has urged the Election Commission of India "to allow them to carry out an anti-election campaign in the state". This understanding of JKLF leadership, leaves one in no doubt that mimicking Gandhi in attire does not make one a Gandhi in mind.

It speaks volumes about their lack of understanding of the jurisprudence of the Kashmir case and of the institution of EC of India. Election Commission is to facilitate a free and fair electoral process. It does not have an authority to facilitate a boycott campaign. EC of India is there to ensure a 'transfer of free will' and surely would not escort JKLF leader/s from Maisuma to various parts of the Valley at least, if not through all the six Parliamentary Constituencies of Jammu and Kashmir.

Only until yesterday it accepted APHC Constitutional discipline for 13 years and ran alongside with pro Pakistan and pro India political groups. It off loaded the last remnants of its ideology and took upon to run with the hare and hunt with the hound during this partnership.

JKLF has supported the meeting of the leaders of the two countries in Islamabad. It even made a public statement that the group would not give a 'hartal' call for the first time. Its leader has renounced militancy and taken upon to

advocate the case of Jammu and Kashmir, in a Gandhian way.

Incidentally he worked hard to convince the Conference on "Next Step in Jammu and Kashmir: Give Peace A Chance", 25-26 November 2000 organized by International Centre for Peace Initiatives Mumbai, India and Institute of Regional Studies, Islamabad, Pakistan, in Gurgaon, Haryana, India, of his newly claimed Gandhian credentials.

It is unfortunate that a burden of higher responsibility has landed on shoulders not made to carry the ideology of a nationalist movement. April-May 2004 parliamentary elections are not the first and last elections for the people of Jammu and Kashmir. These elections have a new and added significance because, its results would decide the future course of a 'composite' dialogue between India and Pakistan and between the people of Jammu and Kashmir and the Government of India.

Elections in the past could not and elections in the present would not vitiate the jurisprudence of 126-year-old Rights Movement of the people of Jammu and Kashmir. India and Pakistan have caused a position for themselves only in 1948/49. It is exactly in the same manner in which travel of APHC and JKLF leadership on Indian and Pakistani passports would not strip them of their title as a State Subject, under State Subject Notification of 20 April 1927.

Participation in an election to elect representatives to conduct the public trust is an important process to protect the full regime of human rights and advance a people's grievance.

Unfortunately Kashmiri leadership in particular the nationalist one, wearing the hat of JKLF or a like of it, does not have the ability to spearhead a difference between the Rights Movement of the People of Jammu and Kashmir on

the one hand and a conflict between India and Pakistan on the other. Since the nationalist leadership failed to put the 'people first', the conflict between India and Pakistan overrode the 'people's cause'.

Jammu and Kashmir has moved in the last 13 years of violence from ignorance to knowledge, from compliance to a daring dissent, from slogans to a desire for action and people have started seeking a political culture, which is transparent, accountable and democratic. APHC is no more a darling and the other nymphs seemingly latching on to a nationalist slogan can no more hide the 'dulcimer'.

It is important that the people of Jammu and Kashmir use the institutional spaces available in the parliaments of India and Pakistan and animate themselves alongside the forthcoming composite dialogue between the two Governments. The State of Jammu and Kashmir needs to elect 6 best knowledgeable and well meaning people to represent their aggregate interests, including the question of distribution under three administrations on either side of cease fire line.

Use of institutional spaces available in the Indian parliament is important to seek visibility for the people. On the other hand the non-use of the freedom of an expressed politics in elections would be a misdirection of wisdom. A poll boycott call in the past was accompanied by a threat of violence. But now things have moved from misery to fortitude. People are not averse to a participation in elections and are prepared to endure consequences.

However, there is no such space available in the Parliament of Pakistan. The jurisprudence of Pakistan's control of the administrations at Muzaffarabad and Gilgit, under UNCIP and Karachi Agreement is at variance to the jurisprudence created by the Instrument of Accession with India.

Even then the people of Jammu and Kashmir could use the institutional space in the Parliament of Pakistan. The 2.5 million refugees living in Pakistan and Azad Kashmir have a dual vote in Pakistan. This quantitative authority in the electoral process of Pakistan could be converted to conserve spaces in the Parliament. The Azad Jammu and Kashmir Council is another mechanism, which could be used to access the institutional support in Pakistan. Therefore, a full and robust participation in elections, on either side of the cease-fire-line is in the best interests of the people.

A boycott call during present Indian Parliament elections is not only against a democratic character but it accompanies some other dangers too. Valley based politicians have a very limited reach and their anti poll campaign may not even make a dent in many streets and villages in the valley itself. There may be a partial or a limited scope for a response from Baramulla, Srinagar and Anantnag constituencies.

But a poll boycott call would have no takers in Jammu, Ladakh and Udhampur constituencies. This valley and non-valley division in political behaviour may not be so worrying for pro Pakistan or pro India politicians but it could aggrieve any nationalist leader. It would distance Valley from rest of the State and cause a further fracture in the social commonality.

If the people of Jammu and Kashmir have a substantive role in the process of seeking a just resolution of the conflict, then it is the right time that the people start energizing themselves in all directions of political and social habitat in India and Pakistan.

If the two countries have recognized the principle of bilateralism between themselves, it is correspondingly important that the principle of bilateralism is endorsed between the people living under Indian administration and the Government of India and between the people living

under Pakistani administration and the Government of Pakistan.

The principle of non-interference and a peaceful resolution of disputes, restrains the parties from the use of violence. On the one hand there is no juridical basis of a militant struggle any more and on the other after 9/11 the use of violence has passed its sell by date. One has to understand that it is never too late to make a war. But it is too late if peace is not made in time.

A poll boycott of course has its own jurisprudence. But it has to be examined on a case-by-case basis in full regard of 'people's interest'. In Jammu and Kashmir we need to assist the civil society to be able to exercise the freedom of that single day – which enables it to choose its politicians and elect its representatives in the Government. The civil society has to find courage of that single day to be able to affect a change and pursue a composite of all other human rights.

A Rights Movement that kept the people of Jammu and Kashmir intact and uniform since 1877 has split them right from the middle as a result of post 1987 election protest. On the one hand freedom of choice became the casualty and on the other APHC alliance endorsed a jurisprudence of killing each other.

A nationalist movement that could have steered ahead and convinced all the three opinions in the valley and all the regions of the State of its overwhelming and non-discriminatory agenda fell for 'jeans', 'cars' and unprecedented comforts seen for the first time in the history of their families. In the process the pseudo nationalists supplanted by interested forces and dogged by their incapacity, killed more than they ever dared to save.

The people of Jammu and Kashmir seem to be in the middle of nowhere. One has to wait and see what the Kashmiri

leadership is going to offer after failing to discharge an obligation under an earlier constitution adopted on 31 July 1993.

A common thread of relationship that keeps the communities and regions in Jammu and Kashmir together is the State Subject Notification of 20 April 1927. India and Pakistan have continued to honour this 'Kashmir specific' in all the three administrations under their control. It is high time that the people of Jammu and Kashmir start examining the ability of their leaders to lead and the reliability of their understanding of the jurisprudence of Kashmir case.

A poll boycott could only enhance and strengthen the culture of a privatised and commercialised politics. The post 1990 windfall of Kashmiri leaders, would not endure for long. We have to seek institutional support and build alternatives to live the affairs of a daily life and to advance the ultimate case of Rights Movement in all the three administrations of Jammu and Kashmir.

It is therefore important that the people of Jammu and Kashmir should fill the institutional spaces available in the Indian parliament and use the floor to reach out to Indian civil society. Elections in the past did not and elections now would not dislodge the jurisprudence of Rights Movement, in particular self-determination.

Leaders from the Valley, have travelled abroad on Indian passports as Indian citizens. They decided to reconcile with Indian nationality for reasons of treatment and many other personal reasons. It is important that the people of Jammu and Kashmir as a whole take part in elections and raise their visibility, if at all they have to play an assertive role in the India Pakistan dialogue on Kashmir.

Participation in the State and Parliament elections at the local level is as important as the advocacy of the Kashmir

case at the international level. It would be a tragedy if the people of Jammu and Kashmir remain 'frozen' in time as lifeless creatures. They have to use not only the available institutional avenues but need to build new alternatives as well.

Unfortunately the Kashmiri leadership has assigned to its people, a minimal mechanical role of nuts and bolts to negotiate a private quid pro quo with India and Pakistan. It is time that we re-orient our priorities and focus more on the People of Jammu and Kashmir, rather than continue to overemphasise the 'question' and the 'conflict'.

The people of Jammu and Kashmir living under five administrations need friends and institutional spaces are the right places where we can find friends. The six places in the Indian Parliament provide a strong institutional base, to take the case of Jammu and Kashmir, to the Civil Society of India.





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