



## NAYA KASHMIR AND HUMAN DEVELOPMENT: FOUNDATIONS FOR STATE DEVELOPMENT POLICY

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### Introduction

Half a century before the concept of Human Development broadened the horizons of economics from a preoccupation with GDP growth to a rights- based approach, the 'Naya Kashmir' manifesto of the National Conference made these rights the central concern of government policy. Viewed from this perspective, it becomes a historical document of outstanding value not just in the context of India but globally. This chapter explores the development of the *Naya Kashmir* document, its central concerns, and its impact on state development policy in Jammu and Kashmir- in particular how it provided a firm foundation for State policy and defined a unique developmental journey for the state. To understand this one needs to understand the extremely stark social realities of the colonial period from which it evolved.

### Development Context in Jammu and Kashmir: Monarchical period

Till 1948 extreme levels of poverty and deprivation were deeply rooted in Jammu and Kashmir.<sup>1</sup> Taxation was high<sup>2</sup>, extracted in both cash and kind and the predominantly Muslim peasantry, had to pay 'much more than half the share of their crop in lieu of various taxes.'<sup>3</sup>As the state and its feudal intermediaries appropriated three- fourths of all rice yields, the people had no stores of grain to fall back on. Famines were widespread affecting the state three times between 1890 and 1910 alone. In the Great Famine of 1877-79, which was followed by a cholera epidemic the death rate was so enormous that local folklore grew around the notion that only eleven families had survived in the Kashmir valley. The actual figures showed the population of Srinagar decimated from 127 400 to 60 000 and the total number of survivors in the Kashmir valley to only two-fifths<sup>4</sup>. Even worse, the famine could have been prevented if the people were allowed to 'cut their crops and carry them'<sup>5</sup> but this was not allowed by feudal functionaries as they were made to wait till revenue assessment was over by which time the harvest was destroyed by continuous heavy rain.

Industrial development 'was almost negligible and the lack of infrastructure had 'crippled the economy and accentuated the poverty syndrome.'<sup>6</sup> Education levels were dismal with the first school being set up by the Maharaja only 1886<sup>7</sup>. Teachers were sent for training to Lahore till 1910 when the first training facility was opened for teachers in Srinagar. Access to education was only the preserve of the feudal elite with only five per cent literacy in the state till as late as 1941. These figures were even worse for females with the first school for girls being established in Srinagar in the 1890s being closed within a year due to local hostility against female education<sup>8</sup>. The first girls school was established by the government in 1911 and even then education remained the preserve mostly of upper caste Hindus<sup>9</sup>. By 1947 there were few schools in the whole state and out of these even fewer were in villages. Free education was offered only in girls schools where numbers were low. Only those who could pay school fees and for books, etc could afford to send their male children to school. This ruled out most of the tenant farmers, subsistence agriculturists with no cash income, the indebted (making up most of the Muslim population of the state), those belonging to the scheduled castes and scheduled tribes.

<sup>1</sup> Though Hari Singh, the last Maharaja of Kashmir, had a reformist outlook on the exclusionary system of governance put in place by his predecessors. He abolished forced labour (Begar); passed legislation to outlaw money-lending; to establish Panchayats; set up cooperative societies for disbursing (rather limited) agricultural credit, and doubled State expenditure on education.

<sup>2</sup> 'Maharaja Gulab Singh, determined to recover the 75 lakh he had paid to the British to purchase Kashmir (after the Treaty of Amritsar), and continued by his successors, had set the trend for exorbitant tax collection. Not only were tax levels very high, but virtually nothing was exempt from taxation: crops, fruit, grazing animals, handicrafts (shawls, carpets, etc), marriage ceremonials, and labour services- including grave-digging and even prostitution.'

Malik, Kashmir: Ethnic Conflict, International Dispute, 2005 (Karachi: Oxford University Press), p. 26.

<sup>3</sup> Zutshi, Languages of Belonging: Islam, Regional Identity and the making of Kashmir, 2003 (Delhi: Permanent Black), p. 64

<sup>4</sup> Lawrence, W. The Valley of Kashmir (Delhi: Kashmir Kitab Ghar) p.213

<sup>5</sup> Ibid, p. 214

<sup>6</sup> M.L Misri and Bhat M. S, Poverty, Planning and Economic Change in Jammu and Kashmir, 1994, (New Delhi: Vikas Publishing House), p. 28.

<sup>7</sup> Chohan, A. S. Development of education in the Jammu and Kashmir State 1846-1947, 1998 (New Delhi: Atlantic Publishers)

p. 11

<sup>8</sup> Ibid, p. 30

<sup>9</sup> Census of India 1921, Volume 22, Part 2 (Lahore: Mufid -i-Aam Press), p. 50



Public health was the most neglected sector apart from education under the Maharaja's rule- a fact illustrated by the Maharaja's last budget in 1948 that still classifies both health and education as 'Minor Departments'. From 1892 to 1920, seven outbreaks of Smallpox had devastated all parts of the state and the Maharaja's Health Department was too small to control it. In 1920 alone it caused 237 deaths<sup>10</sup>. From 1950 onwards mass vaccinations were carried out by the Interim Government in all parts of the state. These were so successful that the disease was eradicated by 1975. From 1892 to 1934 Cholera visited the state 15 times and plague had become endemic, particularly in Jammu, Samba and Akhnoor causing 2722 deaths in 1918 alone<sup>11</sup>. The Maharaja's little concern for health is shown by the fact that there was no government facility/department for dealing with epidemics till 1925. Whenever an epidemic broke out in the state 'the engagement of temporary Assistant Surgeons and Compounders from Punjab (was necessitated) at the eleventh hour.'<sup>12</sup> An Epidemic Establishment was set up in Jammu and Kashmir regions in 1925 and rules for containing epidemics were drawn up and enforced only as late as 1934<sup>13</sup>. The access to health facilities was dismal- there was no Medical Department in the state till 1890 when two Sadar hospitals were set up at Jammu and Srinagar cities and 12 dispensaries (under Hospital assistants) in populous towns. Villages had no healthcare facilities beyond visits by medical officers during epidemic outbreaks. By 1947, the situation wasn't much better with life expectancy being as low as 27 years.<sup>14</sup>

The condition of the scheduled castes and tribes was wretched, with the State acting as oblivious to them at best and exploitative at worst. Scheduled castes, who lived in the Jammu region, were not allowed to own land, even to construct a house and were routinely compelled to perform *begar* (forced labour). Even when they were employed in Government departments, they were not entitled to a pension.<sup>15</sup> The scheduled tribes were completely neglected by the State and lacked even basic opportunities of accessing health and education. The overall development scenario in the Jammu and Kashmir till 1948 was thus bleak.

This was by no means the picture of all princely states in India at the time. The princely state of Travancore, in what is now central and south Kerala, had built an effective education system (including midday meals for children as early as the 1940s) and a modest health system. The King Balarama Varma had also issued the famous Temple Proclamation in 1936 that allowed members of all Hindu castes to visit temples, a freedom denied to the lower castes till then. The princely state of Cochin was also forward-looking and had taken steps to encourage genuine local self government, with the establishment of town councils in Matanchery and Ernakulam in 1896 as well as the establishment of a thriving state legislature that included the first female legislator in India, Thottakattu Madhaviamma, in 1925. Significantly, only 10 of the 45 members of the Kochi Legislative Assembly were officially nominated, the rest being elected.

In both cases the beginnings of this development process by the government were spurred by the threat of annexation by British authorities on account of charges of misrule<sup>16</sup> but it was the rise of a sense of common identity in the 1900s that inspired the Malayali people to unite and demand better public services and a share in employment.<sup>17</sup> In Jammu and Kashmir the threat of annexation by the British was always imminent, particularly after the Great Famine of 1878 when the Officer on Special Duty F. Henvey wrote a series of letters to the Secretary to Government of India. In these reports he mentions that after the famine three-fourths of all peasants had either died or left the state for Punjab and in the cities, out of 40 000 shawl weavers only 4000 remained<sup>18</sup>. These reports and the discovery of letters written by the Maharaja to Russia and Afghanistan to ask the rulers for help against the British<sup>19</sup>, prompted the colonial administration to intervene directly in the state. A permanent Resident to the Maharaja court was appointed in February 1888. In February 1889 the Resident stripped Maharaja Pratap Singh of administrative powers and set up a four member Council of Regency to be headed by the Resident and including the Maharaja's half brother Amar Singh. The publication of Robert Thorpe's *Kashmir Misgovernment* followed by

<sup>10</sup> Annual Administration Report (General) of His Highness' Government, Medical Department, 1936-37, p. 86-89

<sup>11</sup> Annual Administration Report (General) of His Highness' Government, Medical Department, 1934, p. 88

<sup>12</sup> Chohan, A.S. *Health services in Jammu and Kashmir 1858-1947* (New Delhi: Atlantic Publishers) 1994, p.33

<sup>13</sup> *Ibid*, p. 34

<sup>14</sup> R. C. Bhargava "Economic Background" in Baghwan Sahay (ed.), *Jammu and Kashmir, 1969 Guide* (Srinagar: Universal publications, 1969), p. 119.

<sup>15</sup> Address of Mahasha Nahar Singh, *Jammu and Kashmir Legislative Assembly Debates, Budget session, May 6, 1952*, p. 25

<sup>16</sup> Tharakan, 1984, p. 196

<sup>17</sup> Singh, P. 'We-ness and Welfare: A longitudinal analysis of social development in Kerala, India', *World Development*, Vol. 39, No. 2, p. 285

<sup>18</sup> Henvey, F. *Condition and prospects of Kashmir on the 1st of June, 1880*, State Archives of Jammu and Kashmir at Jammu This and other correspondence from Henvey details how the Maharaja failed to provide food and relief works (food-for-work programs) to the stricken population despite the repeated directions from Shimla.

<sup>19</sup> Lamb, A. *A Disputed Legacy : 1846 to 1990* (Karachi: Oxford University Press) 1991, p.29



his mysterious death in Srinagar (allegedly through poisoning on the Maharaja's orders) also hastened the process. But the increased British presence and interference in the Maharaja's administration did not have the same effect as in Jammu and Kashmir as in Travancore and Cochin.

The reason for this was the British perspective of Jammu and Kashmir's importance as a buffer state between British India on one hand and Afghanistan and Russia on the other. 'The British Resident concerned himself more with the reorganisation of the army, construction of roads to border areas like Gilgit and Ladakh and the supply of a huge contingent of 50 000 soldiers for the imperial war effort in the First World War. The British ignored Settlement Commissioner A.A. Wingate's recommendation that proprietary rights be granted to the tenants instead of the tenants-at-will status that they had'<sup>20</sup>, also demonstrated that their focus was on defence and not development. Token work was initiated in education and health including the setting up of two schools by the government and two hospitals by Christian missionaries in Jammu and Srinagar but this wasn't the government's priority.

Till it was dissolved in 1905, the Regency Council 'recruited educated Punjabis from outside the state to serve in high positions in the state administration prompting Dogras and Kashmiri Pandits (till then the administrative elite) to launch a campaign against the appointment of these *ghairmulkis*<sup>21</sup>(foreigners).'<sup>22</sup> The lack of educational opportunities for the Muslim majority meant that it wasn't till the 1920s (till there was a critical mass of educated Muslims) that they 'joined the chorus against *ghairmulkis*, prompting Pratap Singh's successor Hari Singh to pass a law providing state's preference for hiring educated *mulkis* in 1927.'<sup>23</sup> The sense of a common *mulki* (native) identity did lead the people of the state to demand better services in health and education, culminating in the presentation of the *Naya Kashmir* agendato the Maharaja by Sheikh Abdullah in 1944. As a result of this, the Maharaja's government took measures to increase expenditure on health and education post 1944 but this process was interrupted by the tribal invasion in 1948. The development trajectory of the princely state of Jammu and Kashmir was thus late in starting and interrupted by external geo-political factors, more so than in Travancore and Cochin.<sup>24</sup>

## 2.2 The Sense of Common Identity and *Naya Kashmir*

'The history of (monarchical) oppression was bound to create in the minds of the people of the state an intense desire for self-government and independence.'<sup>25</sup> Since its formation in 1932, the Muslim Conference -renamed the All Jammu and Kashmir National Conference in 1939- had battled to end monarchical rule in the state through a popular agitation. The strong Socialist moorings of the National Conference gave them support from the impoverished masses in all regions of the state, particularly in the valley. The emergence of the National Conference as a secular political platform followed the culmination of the *Mulki* movement Hence it was very conscious of the need for consolidating the prevailing sense of a common identity and building on it politically. It did this systematically during the Quit Kashmir Movement of 1931, and more so after 1947 as; 'selected cultural fragments from an imagined past were collected to construct a Kashmiriyat that would draw in both Pandits and Muslims. This was evident, for instance, in the periodisation adopted by Sheikh Abdullah and his associates in their recounting of the history of the valley. Their reconstruction of the "biography" of Kashmir moved not from periods of Hindu to Muslim to Sikh rulers but from an age of Kashmir rule, through a long interregnum of "foreign" dominance beginning with the Mughals in 1586 before the end of Dogra hegemony marked a triumphant return to rule by Kashmiris.'<sup>26</sup>

Ironically, the articulation of a common identity was unwittingly facilitated by the Dogra state in two ways. One was the introduction of Urdu as the state language by the Maharaja in 1889. Urdu was subsequently used by the National Conference for dissemination of pamphlets advocating common identity and common responsibility to rise up against imperial rule. Because of the language these messages were understood, in some measure, in all regions of the state. The excessive use of force, especially the killings of unarmed protestors by Dogra soldiers in 1931, also gave the people something to stand united against.

<sup>20</sup> Ashiq Hussain Bhat, 'Pratap Singh's British Rule', *Kashmir Life*, March 3, 2014

<sup>21</sup> Bazaz, P. N. *The History of Struggle for Freedom in Kashmir* (New Delhi: National Book Foundation) 1954 p.129

<sup>22</sup> Ashiq Hussain Bhat, 'Pratap Singh's British Rule', *Kashmir Life*, March 3, 2014

<sup>23</sup> *Ibid*

<sup>24</sup> For a detailed discussion on the development of a Kashmiri identity see Arakotaram, K. 'The rise of Kashmiriyat: People building in 20th century Kashmir' in *The Colombia Undergraduate Journal of South Asian studies*, Fall 2009

<sup>25</sup> Wani, G.M. 'Political assertion of Kashmiri Identity' in Khan, N.A. (ed) *The Parchment of Kashmir*, 2010 (New York: Palgrave Macmillan) p.127

<sup>26</sup> Rai, M. *Hindu Rulers, Muslim Subjects: Islam, Rights and the History of Kashmir* (New Delhi: Permanent Black, 2004), 282. Inder Malhotra, "The Separatists," *Seminar*, no. 58, 1964, 30.



However the Dogra state actively worked against this fledgling common identity, supporting religious leaders from all communities against the National Conference and giving a sympathetic ear to the breakaway faction of the National Conference (that retained the old name Muslim Conference) under Ghulam Abbas-. Amongst the Sunni Muslims, Mirwaiz Yusuf Shah, arguably the most important religious leader in the valley, stood in public opposition to Sheikh Abdullah with the support of the Dogra state<sup>27</sup>. The confrontation of the Mirwaiz's and Sheikh Abdullah's supporters was divisive and violent but crucially was limited to Srinagar city itself.

This opposition did not reach the National Conference's main support base-the rural hinterland. The peasantry in all regions of the state supported the National Conference because of the party's ideological commitment to end exploitative feudal systems of resource ownership and social control. The end of the *Jagirdari* system gave the exploited peasantry a common goal to rally behind. Though this agenda was not unique to state-based political parties of pre-independence India, the National Conference was unique in drafting these concerns into a composite socialist agenda, *Naya Kashmir*. This document was used thereafter as a main tool of the anti-monarchical struggle, and as a future constitution for a democratic state.

### 2.3 Drafting *Naya Kashmir*: A Collaborative Effort

The idea of drafting a constitution based on socialist principles came from Dr. Kanwar Ashraf after a visit to the Soviet Union in 1940. The idea became popular within the Muslim Conference<sup>28</sup>, the largest political party in Jammu and Kashmir at the time.<sup>29</sup> Sheikh Abdullah, with the support of other socialists like Sat Pal Sawhney, G. M. Sadiq, Miss Masooda Rajpuri, etc asked his friend Baba Pyare Lal Singh Bedi of Lahore to draft the same. Bedi and his wife Freda, were committed socialists and authors. The Delhi Hotel, Lahore, became their base where intellectuals, artists and politicians including Dr. Kanwar Ashraf, Danyal Lateefi (advocate), Pandit Jia Lal Kilam (landlord), Mohammed Din Taseer and the poet Ihsan Danish.<sup>30</sup> came to contribute their ideas for the document. Through discussion and debate with this group Bedi came up with the actual text of New Kashmir. It is not clear which sections were specifically authored by Bedi and which by others but it is generally agreed that Freda Bedi typed the document and authored the section on rights of women. It was translated from English into Urdu by Maulvi Mohammed Sayeed Masoodi and publicly distributed to gather support for the party's ideals. In 1944, Sheikh Abdullah presented the *Naya Kashmir* document to Maharaja Hari Singh, the ruler of Jammu and Kashmir, on his return from the Imperial War Cabinet in England. This was an important public expression of a common identity of the people of the state and their common aspirations. Further, its other objective was to showcase the National Conference as the true representative of this common identity and put forward Sheikh Abdullah as its undisputed advocate.

On August 3, 1945 the National Conference formally adopted *Naya Kashmir* in its Annual Session at Sopore, Baramulla<sup>31</sup>. The Conference now set about disseminating the new Constitution. A Working Committee of 21 members was nominated by Sheikh Mohammad Abdullah which included Pandit Kashyap Bandhu, Sardar Budh Singh, Pandit Jia Lal Kilam, Lala Girdharilal Dogra, and Pandit Prem Nath Bazaz. Within a short time *Naya Kashmir* became a rallying point for the anti-monarchical movement in the state. Though *Naya Kashmir* drew support from all sections of society- the intelligentsia and the peasantry, Kashmiri Muslims, Kashmiri Pandits, Hindus from Jammu, scheduled castes and tribes, and Buddhists,<sup>32</sup> a few right-wing elements including the Muslim Conference, Mirwaiz Yousuf Shah and some members of the Kashmiri Pandit - dominated *Yuvak Sabha* opposed it. But since the opponents did not have a significant grassroots presence across the majority of the state, their reaction didn't amount to much.

### 2.3 Contents

The main aims of *Naya Kashmir* were, 'To raise the standard of living of our people, enhance the wealth of the community, and to eradicate all invidious social divisions.'<sup>33</sup>

<sup>27</sup> Wani op cit, p.143

<sup>28</sup> On June 11, 1939, the Muslim Conference was renamed the National Conference in a special session held at Patthar Masjid, Srinagar,; a remarkable display of secular commitment in a religious place.

<sup>29</sup> Taseer, R. *Tehreek-i-Hurriyat-i-Kashmir: 1931 to 1939, Vol 1*, 1968, (Srinagar: Muha'afiz Publications), p.29

<sup>30</sup> Though Sheikh Abdullah doesn't acknowledge the contribution of Kilam in his memoir, it is acknowledged by many other popular sources, including Taseer.

<sup>31</sup> The researcher's grandfather, an idealistic, curly-haired fifteen- year- old was one of the many people who had gathered to witness this special session. In an interview he described the atmosphere as 'electric'.

<sup>32</sup> Though the Dogras and Kashmiri Pandits were the main beneficiaries of the colonial dispensation- constituting the biggest number of landlords, government officials and soldiers.

<sup>33</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, 1945, p.2*



The document was divided into two parts- the Constitution and the National Economic Plan. The Constitution laid out the basic rights and obligations of citizenship and the structure of the legislative, executive and judicial organs of government, as well as the process of amendments to the Constitution. The National Economic Plan included the aims of planning and the outlines of a planned economy model. Notably it included charters for the rights of peasants, labourers and women and had clear provisions for the economic and social upliftment of scheduled castes and tribes.

As Kashmir was primarily a feudal, agrarian economy; agriculture was viewed as the starting point for change. The backwardness of the state was attributed mainly to the 'common peasant suffering in the clutches of landlordism'. *Naya Kashmir* sought to change the social relations of production in the agrarian sector by giving ownership rights to tenant farmers through state-wide land reforms.

This was to be supplemented by 'economic remedies like improvements in the production technique and agricultural equipment of all kinds, better marketing facilities and consolidation of holdings.'<sup>34</sup> Accordingly, mechanising agriculture and introducing high yielding varieties of seeds which in turn required the import and use of pesticides, insecticides, etc was defined as a developmental priority.

In manufacturing *Naya Kashmir* advocated rapid industrialisation, seeking not only to industrialise as fast as possible but also to diversify from traditional small scale industries like handicrafts to medium and heavy industries like cement. Again, industrialisation was envisaged as developing from the products of a 'take off' in agriculture, brought about by changing the traditional agrarian structure (primarily land reform).

From the land must come more food to feed the people as well as the goods by the exchange of which machines can be bought to industrialise the country and mechanise agriculture itself<sup>35</sup>.

On the political front it had initially demanded '*Responsible government*,' by the Maharaja (a limited democracy with the Maharaja as Head of State), but later its demands became more radical: a complete overthrow of the monarchical system and the establishment of '*Awami Raj*' (popular rule) and democratic institutions.

On this basis it can safely be said that *Naya Kashmir* made change the key aim, indeed the *basis*, of state development policy.

#### 2.4 Influence on State Development Policy

In 1948, with the backdrop of a tribal invasion from Pakistan, an interim government under Sheikh Abdullah was established in Jammu and Kashmir. To give legal sanctity to *Naya Kashmir* the government tasked the existing *Praja Sabha* (State Assembly convened by the Maharaja) with adopting the *Naya Kashmir* Constitution. *The Jammu and Kashmir Constitution Act of 1939* was then subjected to a process of repeated modifications through the passing of a number of amendment acts<sup>36</sup> that did away with the powers of the monarch and delegated them to the Constituent Assembly. The Dogra dynasty was formally abolished by The Jammu and Kashmir Constitution Amendment Act of 1952.

From 1948 to 1956, when the Constitution of Jammu and Kashmir was ratified by the Constituent Assembly, the Jammu and Kashmir Constitution Act of 1939 was in force as an 'interim' constitution. But in fact *Naya Kashmir* functioned as the **de-facto Constitution** as the government was guided chiefly by its social, political and developmental objectives. It lost no time in implementing redistributive provisions including land reforms and the dissolution of debt.<sup>37</sup> The centrality of *Naya Kashmir* to public opinion and political legitimacy can be gauged from the fact that even the governments that followed the interim government, including the undemocratic regime of Bakshi Ghulam Mohammed made repeated public declarations that their policies were in line with *Naya Kashmir*.

In 1956 *Naya Kashmir* became part of the Directive Principles of State Policy in the new Constitution of Jammu and Kashmir, thus remaining continually relevant to the development context in the state. The Directive Principles of State Policy are an important illustration of the developmental priorities of the state, a public, legal representation of the aims of governance. Though they are not enforceable, for instance by a court of law, it is the legal duty of the government to keep

<sup>34</sup> *Speech by Mirza Afzal Beg in the State Legislative Assembly, 1951, Jammu and Kashmir State Archives at Jammu*

<sup>35</sup> *Banerji in Bakshi ed. History of Economic Development in Jammu and Kashmir, 2002 (Srinagar: Gulshan Publishers), p.227*

<sup>36</sup> *Justice A.S. Anand, The Constitution of Jammu and Kashmir: Its Development and Comments, Seventh Edition (Delhi: Universal Publications) 2017, p.116*



them in mind when making government policy. The prime objective of the Directive Principles of state policy in Jammu and Kashmir comes straight out of *Naya Kashmir*, emphasising ‘the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished, and society wherein justice- social, economic and political - shall inform all the institutions of national life.’ Article 38 Section 1, of the Constitution of India that contains the Directive Principles of State Policy declares ‘The State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all institutions of the national life.’ Only in 1978 did the 44th Amendment to the Constitution of India add, ‘The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals, but also amongst groups of people residing in different areas or engaged in different vocations’.

Notice the emphasis on ending exploitation in *Naya Kashmir* that has legally become a central concern for government policy in Jammu and Kashmir by being part of the Directive Principles. This is not to say that all state policy in Jammu and Kashmir was enacted to end exploitation or that it wasn't so in the rest of India. But this legal conception of itself as a force to defeat exploitation showcases Jammu and Kashmir's greater commitment to the principles of human development. The Constitution of India is much more modest in its Directive Principles vowing to secure and protect ‘as effectively as it may’, a social order based on justice.

#### 2.4 Comparison with the Indian Constitution

To understand how far ahead of its time *Naya Kashmir* was as a document, a comparison with the Constitution of India (arguably the oldest and most liberal one in the sub-continent) is most useful. This isn't a comparison between the Constitution of Jammu and Kashmir and that of India but does help to establish the legal context of the development experience of Jammu and Kashmir, particularly from 1948 to 1956, when *Naya Kashmir* was the de-facto Constitution. It explains how Jammu and Kashmir was able to legally implement radical land reforms and debt conciliation in 1948 and 1950 and why this didn't happen in the rest of India- simply because *Naya Kashmir* was a more radically redistributive Constitution. Though all provisions of *Naya Kashmir* were not implemented during this time, land reforms, debt conciliation and universal free education were implemented.

Right from its first draft, *Naya Kashmir* guaranteed fundamental rights to all citizens including the right to employment, right to leisure time, right to provision of basic living requirements, right to education, etc. It also detailed the fundamental duties of citizens including universal military service. In comparison, fundamental rights were included into the working draft of the Constitution of India, in December 1948- eight months after after the submission of the Kripalani sub-committee report on Fundamental Rights. Fundamental duties of citizens were added even later- by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year. Further the right to education was guaranteed under *Naya Kashmir* more than fifty years earlier but it was only in 2002 after the 86th Amendment to the Indian Constitution that the right to education was converted into a Fundamental Right in India. Unlike the Constitution of India, *Naya Kashmir* guaranteed citizens the right to property with reservations, notably that any person who did not contribute to the economy of the state by doing productive work would forfeit his/her right to property. This made redistribution of feudal properties a main aim of government policy in Jammu and Kashmir.

Article 12 of *Naya Kashmir* guaranteed equal wages for women and men. It declared that ‘In all spheres of national activities whether economic, cultural, political or any other aspects of national service there would be equality between men and women. To guarantee this right, women would have the same conditions of service and get the same wages as men in every job. Women would have equal rights with men, regarding right to leisure, right of association and right to education.’<sup>38</sup> Importantly, the Women's Charter of *Naya Kashmir* advocated universally paid parental leave, an unprecedented provision at the time. However it was not till the enactment of the Equal Remuneration Act in 1976 that equal remuneration to men and women workers and prevention of discrimination on the ground of sex was conferred upon women by the Constitution of India.

*Naya Kashmir* declared that ‘All citizens will have the right to work that is, the right to receive guaranteed work with payment for their labour in accordance with its quantity and quality, subject to a minimum and maximum wage as prescribed by law.’<sup>39</sup> The Constitution of India still does not guarantee this right though it has taken a step in this direction through the enactment of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in 2005. This Act provides a

<sup>38</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, 1945, p.43*

<sup>39</sup> *Ibid, p.14*



hundred days of labour at minimum wage for rural workers and helps engage them to create much-needed local infrastructure. Sadly the MGNREGA scheme has recently suffered from an appalling lack of financial support from the Central government.

Similarly *Naya Kashmir* was far ahead of the Constitution of India in terms of providing a separate charter for the rights of peasants, labourers and women and providing special legal safeguards against the exploitation of children and the elderly. Through its emphasis on broadening human freedoms and reducing social divisions, it can be said to be a precursor to the Human capabilities approach in Development Economics that was developed half a century after.

## 2.5 Naya Kashmir and Human Capabilities

The Human Capabilities approach developed within Development Economics in the last decade of the twentieth century primarily through the work of noted economist Amartya Sen and philosopher Martha Nussbaum. It uses basic human freedoms and opportunities available to the citizens of a country, in addition to economic measurements, in the assessments of a country's well-being. It has emerged as a valuable alternative to indices that use GDP growth alone as a measure of a country's economic development, giving as it does, a comprehensive picture of a people's standard of living and access to the means of improving the same.

Sen received the Nobel Prize for Economics for his work on human capabilities in 2000. However, Nussbaum's work is equally notable as it provides the philosophical foundation of the HDI approach. She has defined ten basic human capabilities that should be supported by all democracies, namely life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason, affiliation, concern for other species and control over one's environment as central to any conception of development.<sup>40</sup> A close study of the document reveals how *Naya Kashmir* embodies nearly each one of these capabilities and makes the State responsible for supporting and implementing them.

1. *Life*: Nussbaum's definition of this is a person's right of 'being able to live to the end of a human life of normal length'<sup>41</sup> and not dying prematurely. *Naya Kashmir* dedicates itself to eliminating all barriers to this including death by disease, death during childbirth, death due to starvation and death due to lack of medical facilities.
2. *Bodily Health*: To Nussbaum, being 'able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter'<sup>42</sup> is essential. *Naya Kashmir* pledges that 'The safeguarding of the health of citizens of the State is the primary duty of the State.' It includes a National Health Charter that makes extensive provisions for providing healthcare and health education to all citizens. especially noteworthy is the guarantee that 'all women, whether in town or village, in Frontier areas, among nomad tribes or living in boats shall be afforded the greatest help and protection in fulfilling their labour of motherhood including: ante-natal treatment, medical arrangements for childbirth, adequate nursing arrangements for the lie-in period, and extension of the district nursing system.'<sup>43</sup> It also places 'special emphasis to be laid on recruitment and training of woman doctors.'<sup>44</sup>

The National Economic Plan further promises 'a reasonable standard of living' including:

- a) **Better Nutrition**: A balanced diet; necessary vitamins and protective foods. A total of 2400 units of calorific value for a full-grown worker,
- b) **More clothing per head annually**: an increase to at least thirty yards per head, with guaranteed provision of woollen garments for the winter,
- c) **Adequate housing**: Weatherproof accommodation of at least 100 square feet per person in town and country,
- d) **Water supply**: adequate and accessible, allowing the use of twenty-five gallons per person daily,
- e) **Lighting arrangements**: According to local needs,
- f) **Education for all**: According to the basic National Plan,
- g) **Provision of food stores and cooked food shops under hygienic conditions**: at least one for every thousand inhabitants,

<sup>40</sup> For a full discussion see Nussbaum, M. *Beyond the Social Contract: Capabilities and Global Justice*, Oxford Development Studies, Vol. 32, No.1, March 2004, Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press)

<sup>41</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.78

<sup>42</sup> *Ibid*

<sup>43</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p.43*

<sup>44</sup> *Ibid p.38*



- h) **A postal service:** Well-regulated and supplemented by a network of telephone exchanges all over the State, aiming at the closer linking up of remote areas, Frontier districts, and isolated populations, with the Capitals,
  - i) **Insurance:** A universal system against all disabilities and calamities,
  - j) **Banking facilities:** The recognition of banking as a necessary concomitant of national life. One bank office for 25, 000 people,
  - k) Medical Arrangements and nursing facilities free for all.<sup>45</sup>
3. *Bodily Integrity:* Nussbaum conceptualizes this as ‘being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.’<sup>46</sup> Not only does *Naya Kashmir* include this but its Women’s Charter assures women ‘freedom from assault and molestation’ and also from ‘protection from trafficking’ and ‘unduly heavy work during pregnancy’<sup>47</sup>.
4. *Senses, Imagination, and Thought:* ‘Being able to use one’s mind (where that mind has been developed by an adequate education, including, but by no means limited to,...’<sup>48</sup> literacy and basic mathematical and scientific training) freely and to express one’s thoughts freely is to Nussbaum an essential human capability. This is embodied in *Naya Kashmir*’s commitment to provide education not ‘limited to the three Rs’<sup>49</sup> and its promotion of ‘freedom of speech, freedom of the Press, freedom of assembly and meetings and freedom of street processions and demonstrations.’<sup>50</sup>
5. *Emotions:* To Nussbaum, supporting this capability means that the State should support ‘forms of human association that can be shown to be crucial in the emotional development of (its citizens).’<sup>51</sup> *Naya Kashmir* pays special attention to the family as it supports the emotional and social development of its citizens and recognizes it as ‘the basic social unit.’<sup>52</sup>
6. *Practical Reason:* According to Nussbaum, this means being able to ‘form a conception of the good and to engage in critical reflection about the planning of one’s life.’<sup>53</sup> The state’s duty is to ensure the protection of the liberty of conscience and religious observance. *Naya Kashmir* deals with this quite directly in Article 2 where it says that ‘Freedom of conscience and of worship shall be guaranteed for all citizens.’<sup>54</sup>
7. *Affiliation:* Nussbaum sees affiliation as a duality,
1. ‘Being able to live with and toward others, to recognise and show concern for other humans, to engage in various forms of social interaction; to be able to imagine the situation of another. Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.
  2. Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin and species.’<sup>55</sup>

*Naya Kashmir* recognises affiliation in both these forms. Article 4 provides a legal foundation for promotion of public institutions based on affiliation. ‘In conformity with the interests of the people and for the purpose of developing self expression... all citizens shall be ensured the right of combining in public organisations..., women’s and youth organisations,... political parties, and cultural, scientific and technical societies.’<sup>56</sup> Article 1 establishes equality before the law and non-discrimination ‘on account of nationality, religion, race or birth.’<sup>57</sup> Here birth is intended to cover sex, class, caste and disability. The propagation of religious, racial or national exceptionalism or hatred is declared punishable by law.

<sup>45</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p. 24*

<sup>46</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.78

<sup>47</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p.43*

<sup>48</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.78-79

<sup>49</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p. 34*

<sup>50</sup> *Ibid p. 13*

<sup>51</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.79

<sup>52</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p.13*

<sup>53</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.79

<sup>54</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p.13*

<sup>55</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.79

<sup>56</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p. 13*

<sup>57</sup> *Ibid*





8. Other Species: 'Being able to live with concern for and in relation to animals, plants, and the world of nature'<sup>58</sup> is the only human capability that does not find an equivalent in the Naya Kashmir document.
9. Play: Nussbaum says that 'being able to laugh, to play, to enjoy recreational activities'<sup>59</sup> is an essential part of human capabilities. Article 1 of Naya Kashmir guarantees every citizen the right to rest and the National Economic Plan envisages the 'establishment of centres of recreation for the organised use of leisure.'<sup>60</sup>
10. Control over one's Environment: Again Nussbaum expresses this as a duality;-
  - 'Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
  - Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.'<sup>61</sup>

Articles 3 and 4 of *Naya Kashmir* guarantee the right to association and Article 15 right to property as basic rights of citizens and crucially make the State responsible for the protection of these rights. The spirit of all ten capabilities defined by Nussbaum is most succinctly expressed in *Naya Kashmir's* commitment 'All children born in the State shall be ensured equality of opportunity irrespective of accidents of birth and parentage.'<sup>62</sup>

### Conclusion

*Naya Kashmir* was a unique policy document. It was in equal parts, a charter of rights as well as an economic, social and political plan for the state. No other contemporary document including the Fundamental Rights Resolution of the Karachi Session of the Indian National Congress came close to being as comprehensive.

It derived some of its ideas from dominant ideologies popular at the time like Socialism (particularly its emphasis on redistributive measures in agriculture and ending private debt) and Modernisation theory (its stress on changing the traditional society of Jammu and Kashmir on the pattern of 'modern' societies in the West by bringing about industrialisation, urbanisation and economic growth through technology transfer). However, *Naya Kashmir* went above and beyond these ideologies to guarantee the masses fulfilment of basic needs like food and education as rights backed by law. Some rights like the right to work, that it pledged to citizens more than half a century ago, have yet to find equivalents in the Constitution of India even today. *Naya Kashmir* made these rights the central concern of government policy. It made the extension of human capabilities, as we understand it today, the basis of state legislation.

*Naya Kashmir* enabled the rapid and total dismantling of the feudal system and put in place redistributive measures like land reforms and abolition of private debt. This is in stark contrast to other princely states like Rajasthan, Gujarat and Andhra Pradesh where the landed aristocracy lobbied successfully to keep their land, thus defeating state government initiated land reforms. Its success in enforcing these changes may be attributed to many factors. Perhaps the most influential were the *Naya Kashmir's* ideological commitment to Socialist reforms, the popular widespread support it was able to garner in large numbers from the Kashmiri intelligentsia and largely landless working classes combined with the united political leadership which, due to the declaration of an emergency, enabled them to act in ways unhindered by electoral concerns between 1948-1950.

In the absence of a constitution from 1948-1952 *Naya Kashmir* gained quasi-constitutional status and was the document that determined the policy thinking of the emergency era administration and those that followed. Viewed from this perspective, *Naya Kashmir* firmly set Jammu and Kashmir onto a distinctive developmental path by providing a strong Constitutional basis for recognising the human being as the main subject of development and redistribution as a major policy objective. After 1953 the real influence of *Naya Kashmir* declined as various unrepresentative governments, propped up by the Centre, worked to demolish the legal and financial independence of Jammu and Kashmir. But to claim public legitimacy even these governments claimed that their policies were in line with the ideals of *Naya Kashmir*.

<sup>58</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.80

<sup>59</sup> *Ibid*

<sup>60</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945 p. 40*

<sup>61</sup> Nussbaum, M. C. *Women and Human Development: The Capabilities Approach*, 1999 (New York: Cambridge University Press), p.80.

<sup>62</sup> *Naya Kashmir manifesto published by the All Jammu and Kashmir National Conference, Lahore: 1945, p. 15.*