

**Azad Jammu & Kashmir (AJK): Prospects for Democratic Governance Amidst
Ambiguous Sovereignty, Absence of Self-determination and Enduring Conflict**

A Dissertation

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List of Abbreviations

J&K	Jammu & Kashmir
IAK	Indian-Administered Kashmir
AJK	Azad Jammu & Kashmir
PAK	Pakistani-Administered Kashmir
GB	Gilgit-Baltistan
GoP	Government of Pakistan
GoAJK	Government of Azad Jammu & Kashmir
MKA	Ministry of Kashmir Affairs
MKANA	Ministry of Kashmir Affairs and Northern Areas (Renamed)
MC	Muslim Conference
PPP	Pakistan People Party
JKPPP	Jammu Kashmir People Party
PML (n)	Pakistan Muslim League (Nawaz) AJK
JKLF	Jammu & Kashmir Liberation Front
KFM	Kashmir Freedom Movement
NAP	National Awami Party
AJKC	Azad Jammu Kashmir Council
CPDR	Center for Peace and Democratic Reforms
ARJK	Association for the Rights of the People of Jammu & Kashmir
UN	United Nations
UNSC	United Nations Security Council
UNCIP	United Nations Commission for India and Pakistan
UNMOG	United Nations Military Observer Group

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1 Chapter 1: Setting the Context

1.1 Introduction

The post-cold war era has witnessed a shift from inter-state to intra-state conflicts. Intra-state conflicts have originated from domestic issues, which mainly revolve around identity and power distribution. According to Lederach (1997, 8), 'Almost two thirds of the current armed conflicts can be defined as identity conflicts'. Reilly (1998) identified two powerful elements that are seen as important in deep rooted conflicts. The first element is identity, 'The mobilisation of people based on race, religion, culture, language', and the second is differences over 'the means of sharing the economic, social and political resources within a society'. Thus, when the distribution of resources is imbalanced and coincides with these forms of identity, the sense of political, social and economic injustice may fuel conflict (P.H. and B. Reilly 1998, 9).

The challenges that post-conflict or deeply divided societies face can vary from state construction to territorial integrity and from autonomy to addressing power-sharing imbalances; from building a democratic governance structure to dealing with the risk of conflict renewal. Despite the wave of democratisation around the world, traditional systems of representative democracy or what Dahl (1994) prefers to call 'assembly democracy' seem not to provide sufficient solutions for pressing matters of governance, especially in disputed territories where societies are driven by conflict and divided by ethnicity and other social cleavages (i.e. Chhotray & Stoker 2010; Lijphart 1968, 1977, 2004; Horowitz 1985, 2001, 2004).

Establishing democracy and building democratic and autonomous governance structures without sovereign statehood are pressing issues in societies of disputed territories, especially where democracy is relatively fresh and concerns over quality are often linked to its capacity to deliver public goods. Governance systems are fragile mainly due to ethnic, racial and religious fault-lines which in turn exacerbate pre-existing tensions, and the process of democratisation is seen as problematic. These territories are often also exposed to an apparent lack of sensitivity within democratic practices, and complex or imbalanced power-sharing mechanisms. Complex power-sharing and the existence of multiple modes of governance may not only create

democratic fragility, but may also disrupt the nature of these systems and the desire to participate in them. In this respect, deeply divided societies need certain types of institutional designs and options to deal with the challenges of establishing democratic governance and for the management of conflicts. Scholars offer many alternate options or institutional designs to address social cleavages and promote stable democracy, ranging from autonomy or territorial self-governance (TSG) to various power-sharing approaches for societies driven by ethnic and other social cleavages.

In the field of social sciences, power is recognised as exceedingly valuable, and the governmentalizing of the state is, arguably, the first and most fundamental question of power (Nohr 2012). Bertrand Russell (1938) said, 'The fundamental concept in social sciences is Power, in the same sense in which Energy is the fundamental concept of physics' (Russell Bertrand 1938, 10). Nohr has identified two juxtaposed questions, which this study also intends to examine, constituting the intellectual traditions concerning the concept of power: the traditional concern of '*who governs?*' and Foucault's '*how is power exercised?*' (Nohr 2012). In a similar manner, Stefan Wolff attempted to determine the degree of self-governance in any given regime by asking key questions: 'where does power rest in any self-governance regime?', 'how are different competences allocated to different layers of authority?', and 'are these their exclusive domain or do they have to be shared between different layers of authority?' (Wolff 2009). In addition to these questions and the issues raised by Nohr and Wolff, it is also essential to examine how complex or imbalanced power-sharing affects governance and democracy in terms of establishing democratic institutions and protecting the legitimate rights of people living in divided societies.

The disputed former princely state of Jammu and Kashmir (J&K) is mainly divided into two parts, which are currently under the administration of India and Pakistan. Indian-Administered Kashmir (IaK), formally known as Jammu & Kashmir (J&K), is comprised of the Kashmir valley, Jammu, and Ladakh. However, a small part of J&K is under the control of China, which was occupied during the China-India war in 1962. This region is called Aksai-Chin and China administers this as part of the Xinjiang Autonomous Region. However, India claims it as part of its portion of Jammu & Kashmir state. Conversely, Pakistani-Administered Kashmir (PaK) includes Azad Jammu & Kashmir

(AJK)¹ and Gilgit-Baltistan (GB). However, in 1963 Pakistan ceded some areas to China from the portion of the state it administered.

Much has been written on the various dimensions of the Kashmir conflict, but the main focus has been on the areas currently under the administration of India. Over the last six decades the discussions have mainly revolved around the issues of identity, self-determination, and conflict resolution in the larger context of the Kashmir conflict. However, comparatively very few authors have attempted to discuss issues such as democracy, governance and human rights in the areas currently under the administration of Pakistan, namely Azad Jammu & Kashmir (AJK) and Gilgit-Baltistan (GB).² Recently, the academic community has begun giving these areas attention. Some authors have highlighted democratic shortcomings and fragility of governance in the given political and constitutional system of AJK, questioning its status, legitimacy, and existing interim power-sharing governance framework with its controlling state viz. Pakistan (Schofield 2010; Behera 2007; Mahmud 2007; Snedden 2012; Mahapatra D. A and Shekhawat Seema 2008; Stobdan, Chandran 2008; Hussain 2005; Bushra 2006; Luv Puri 2012).

The politics and power distribution in Azad Jammu & Kashmir (AJK) are conditioned by three main factors. Firstly, it is driven by the Kashmir conflict at large, which resulted in AJK acquiring a disputed status that further led to interim constitutional arrangements and uncertainty. Secondly, becoming a *de facto* administrating unit of the state of Pakistan, it has been side-lined from the mainstream, which - in turn - created 'systematic' dependency in almost all spheres of political, economic and societal life in AJK. Thirdly, at the internal level, cross-cutting or segmental cleavages based on tribal identities (biradiris) and a regional divide (based on districts and divisions within Azad Kashmir) play a significant role in political shaping and reshaping.

¹ A detailed discussion on the historical background of AJK and its current legal, constitutional, administrative, and political framework is elaborated in subsequent chapters.

² It is worthwhile mentioning that India calls the area that Pakistan is administering 'Pakistan-Occupied Kashmir' (POK). In return, Pakistan calls the area that India is administering 'Indian-Occupied Kashmir' (IOK), or 'Indian-Held Kashmir' (IHK). However, global media and scholars from the West often use two terms; Indian-Administered Kashmir (IaK) and Pakistan-Administered Kashmir (PaK). Pakistan-administered Kashmir consists of two regions namely: Azad Jammu & Kashmir and Gilgit Baltistan. The focus of this study is on only one region called Azad Jammu & Kashmir (AJK). The official nomenclature is 'Azad (Free) Government of the State of Jammu & Kashmir'. Therefore, I use the term Azad Jammu & Kashmir (AJK) or simply Azad Kashmir or Azad Kashmir government (for short AJK) as it is also the region's official title throughout this research except where direct citation is required.

The political and constitutional power-sharing relationship, which was established in post-conflict settings decades ago between Azad Jammu & Kashmir (AJK) and the government of Pakistan, has now become a source of contention between the parties. Power-sharing is a leading factor in Azad Jammu & Kashmir's political and constitutional landscape, and a demand for more power devolution from the centre to the region is an emerging debate in AJK. The search for autonomy or self-rule as compared to regional or provincial equality in terms of rights and obligations is an unfolding debate in AJK, especially following the 18th constitutional amendment in Pakistan in which greater provincial autonomy, as it was envisaged in the Constitution of Pakistan 1973, was given to the provinces. However, nothing has changed in relation to the territories such as Azad Jammu & Kashmir and Gilgit-Baltistan, which are denied legitimate rights equal to the provinces of Pakistan. Arguably, many of the political, economic and social problems arising throughout AJK are due to two main reasons: firstly, legal ambiguity combined with a highly unequal power-sharing framework between AJK and Pakistan; and secondly, absence of ownership rights from natural resources and unfair distribution of capital from Pakistan's national exchequer. This situation has strengthened the voices for independence to some degree, as well as supported the call for self-rule or genuinely wide-reaching autonomy as a potential interim solution to the current predicament of AJK until the final disposition of the Kashmir problem is achieved. In the given context, it appears that the prospects of establishing an autonomous democratic governance structure in AJK are seriously undermined. Several authors who have written about this region's status and its peculiar governance structure currently based on Interim Constitution Act 1974 prefer to describe it either as an 'ambiguous constitutional status', a 'calculated ambiguity' or 'constitutional enigma'. They also stressed the need for further investigation of the status and legitimacy of this region and its governance structure under prevailing constitutional design (Behera 2006; Mahapatra and Shekhawat 2008; Riffat Hussain 2005; Schofield 2010; Stobdan and Chandran 2008; Snedden 2012; Rose 1992).

1.1.1 Problem Statements, Relevance and Research Questions

Much of the available literature on governance concerns the way power is exerted and shared among institutional structures of governance, and more pointedly the manner through which resources are allocated within a society. It has been revealed in several recent studies (Jackson, 1990; Risse, 2010; Krasner, 2004) that prospects for democratic governance in deeply divided war-torn societies or in areas of limited

statehood become extremely challenging. It is also observed by many contemporary scholars (Lijphart 1968; 1977, 2002, 2007; Horowitz 1985; Sisk 1996; Reilly 2001) that those societies which are driven by ethnic or other social cleavages demonstrate increasing political rifts, social deprivation and intensified conflict. Consequently, this results in a failure to establish democratic governance and to protect the legitimate rights of people.

However, Arend Lijphart in *The Politics of Accommodation* (1968) argued that political stability and stable democracy can be achieved through power-sharing democracy or consociationalism. Contemporary scholars offer many approaches and theories for addressing social, political and ethnic conflicts and for building political stability in deeply divided societies. In this respect, two main schools of thoughts have been identified: the consociational power-sharing approach and the integrationist approach. Consociational power-sharing is most closely associated with Arend Lijphart (1968, 1977, and 2004), John McGarry and Brendan O’Leary (1993, 2004). In contrast to this view, integrative power-sharing is associated with the work of Donald Horowitz (1985, 2001, 2004 and Benjamin Reilly 2001).

Much of the debate on power-sharing revolves around internal conflicts within a society and state, where ethnicity is a vital factor (Arend Lijphart, 2008). Therefore, these conflicts are often called as ‘ethnic conflicts’ given that what is at stake is group or community rights not just individual human rights. However, Mats Friberg prefers to call them ‘identity conflicts’ rather than ethnic conflicts. In his views, as Lederach said, ‘there is nothing innately ethnic about them. Rather it is often the failure of governing structures to address fundamental needs, provide space for participation in decisions, and ensure an equitable distribution of resources and benefits’. Lederach concluded, ‘Most current wars are intrastate affairs. The primary issues of contention concern governance and often involve the pursuit of autonomy or self-government for certain regions or groups’ (Lederach 1997, 8).

In any given situation in deeply divided ethnic societies, power-sharing is seen by a number of authors as a potential tool to address the governance fragilities and conflict management for sustainable democracy (Arend Lijphart 1968, 1977, and 2004; Donald Horowitz 1985, 2001, and 2004). Most scholars (Arend Lijphart 1968, 1975, 2007; John McGarry and Brendan O’Leary 1993, 2004; Donald Horowitz 1985, 2001, 2004) have

discussed power-sharing in the context of ethnically divided societies, and some scholars (Reilly Benjamin 2001 and Hartzell & Hoddie 2003; Jarstad & Sisk 2008) have discussed power-sharing in post-conflict settings in what they called 'negotiated settlement of civil war'. However, insufficient attention has been paid to how the power-sharing relationship between a disputed territory (non-state entity, whose sovereignty is contested)³ and the controlling nation-state (host state) functions and how it affects governance and democracy. The preceding question also raises issues of sovereignty and statehood, which in turn gives impulse to examination of the prospects of democracy and good governance amidst ambiguous sovereignty in a disputed territory.

Sovereignty and democracy are two of the most important concepts in contemporary political science discourse. The concept of sovereignty is closely associated with state and statehood, but the relationship between sovereignty and democracy and prospects of democracy without sovereignty or within a problematic sovereignty in non-state or disputed territories is under-explored (Tansey 2011, 1515). In this context, some questions are outstanding in relation to the functionality of democracy and governance in the presence and absence of sovereignty or statehood. Some scholars have asked whether governance without statehood exists, whether governance can work without a state, or whether a democracy needs sovereignty (Risse and Borzel 2010; Koehler 2011; Tansey 2010).

According to contemporary international relations theory, nation-states are the central actors in international politics. However, in addition to nation-states, there are non-state entities or disputed territories driven by conflict and tangibly controlled by external powers. In most cases, these entities are recognised by the United Nations as disputed, with a status yet to be decided. However, they still have a defined geography, population and quasi-autonomous status or are a by-product of the decolonisation process whereby they seek self-determination. Azad (Free) Jammu & Kashmir (AJK) is one such territory, currently under the administration of Pakistan. Due to their disputed status, the current state of knowledge and degree of academic

³ The term 'non-state entity' is itself confusing as it is also being used for international organizations such as the World Bank (WB) and the International Monetary Fund (IMF) etc. However, in the context of the Jammu & Kashmir conflict, I refer to non-state entity as a recognized disputed territory, whose sovereignty is contested between two or more parties whilst an undetermined number of its inhabitants seek self-determination. At certain junctures, both terms are being used in this study interchangeably.

investigation into such territories is scant, given the fact that the international system does not address these issues in the same manner as it does recognised nation-states.

The disputed and divided parts of J & K are being governed through different systems of governance based on power-sharing relationships and constitutional frameworks with their respective controlling-states: India and Pakistan. The territory of AJK does not have a permanent institutional governance structure; rather it is being governed under interim arrangements that pose difficulties for participation in building a democratic system and maintaining political stability whilst facing problematic sovereignty and issues of self-determination. It is also observed by many authors that the power-sharing relationship between AJK and Pakistan is highly uneven and unequal, which gives Pakistan exclusive authority over all administrative, economic, and legislative powers as well as control over natural resources. Consequently, this inevitably results in dependency and leaves insufficient space for self-governance or autonomy in AJK (i.e. Snedden 2012; Mahapatra and Shekhawat 2008; Stobdan and Chandran 2008; Singh 1999; Rose 1992).

Power can be shared at various levels, however in the context given above two aspects or levels of power-sharing are worth discussing. Firstly, internal power-sharing aims to prevent dominant groups from subjugating others. At the internal level, ethnicity and cross-cutting cleavages based on racial identities and regional division play a significant role in political shaping and reshaping. Simonsen (2005) has followed Diamond (1995, 43) in the latter's argument, acknowledging 'the presence and even generation of cross-cutting cleavages is one of the means by which democracies manage, soften, complicate, and contain conflict' (Simonsen 2005, 299). Secondly, external power-sharing defines the nature and types of centre-region relationships based on a specified agreement or a mutually agreed constitutional design between the parties. Thus, new modes of governance and power-sharing have emerged. In this respect, the question arises; in which way has power-sharing been institutionalised in disputed territories? The discussion also progresses to various interrelated questions such as: how are these territories sustained and legitimised in the contemporary world? Do these non-state entities need sovereignty and/or is international legal recognition a necessary condition for establishing democratic governance? What problems emerge and what types of governance and democracy challenges do they

face? Finally, which approaches and theories could provide better alternatives for political stability, democracy and good governance in non-state entities?

In the last decade, issues pertaining to the status of AJK, ownership of natural resources, and empowerment of the people under existing power-sharing framework (Interim Act 1974) have been discussed among political parties, civil society and the media. This has led to some academic interest, conferences and panel group discussions on AJK. They found the structure unjust and leaving insufficient space for self-governance in this region. In addition, this has failed to address the national question including sovereign rights and governance fragilities. Therefore, on the one hand, the challenges of governance and democracy are driven by the conflict and uncertainty, while on the other lies the question of distribution of powers between AJK and Pakistan. Arguably, controlling states systematically enshrine constitutional clauses in the power-sharing institutional framework that best favour their national interests, as opposed to empowering the local governance structure in disputed regions. Disillusionment amidst the public at large and political parties resulted from uneven power-sharing under Act 1974, leading to politico-legal conflict between Pakistan and AJK (Hayat 2012).

With this backdrop, the study argues that power-sharing, especially where one layer of authority retains exclusive power over others, inevitably causes friction and fragility of governance. Reilly and Harris argue that imbalances in distribution coincide with identity differences, and where one group is deprived of certain resources available to others, conflict is generated, in their words, by 'the potent identity-based factors with wider perceptions of economic and social injustice' (P.H. and B. Reilly 1998, 9). Meanwhile, Stefan Wolf notes, 'Central governments rarely volunteered the devolution of power to territories and/or the groups inhabiting them unless they found themselves under pressure from (potentially) violent insurgent movements or outside powers' (Wolff 2011b). Thus, this study contends that imbalanced power-sharing between a non-state entity and a host state appears to be not only a primary obstacle in establishing a genuinely autonomous governance structure, but it also paves the way for violent insurgent movements. Therefore, a research investigation to explore prospects for democratic governance amidst problematic sovereignty and lopsided power-sharing in disputed territories with a focus on AJK will certainly add valuable input into the existing literature.

The debate on power-sharing and governance in AJK revolves around four interdependent dimensions: conflict, constitution, politics and economy. The conflict dimension is very important because it not only puts AJK's status and legitimacy in a dilemma but also hinders the establishment of a permanent governance structure. The constitutional dimension is twofold. Firstly, it relates to the partition plan of June 1947, which dealt with British-India and the princely states under British suzerainty. Secondly, this dimension necessitates examining the historical and constitutional context of AJK including the existing interim constitutional framework under which powers are defined and distributed between AJK and Pakistan. The political dimension not only revolves around internal politics and political parties but also involves political manoeuvring from the ruling party and other mainstream political parties in Pakistan. The economic dimension examines control over resource allocation within society and the controlling state viz. Pakistan. These four dimensions are largely shaping politics and governance, and influencing democratic values and practices, especially the right to rule and ownership in AJK.

This study aims to investigate the following questions related to the themes and issues discussed earlier. The central analytical research question is: can democracy or democratic governance transpire in 'disputed territories' without self-determination, sovereignty and statehood? In order to address the central question, this study, which is based on a single case study – Azad Jammu & Kashmir (AJK) – sets out the several descriptive research sub-questions such as: What is the status and legitimacy of 'Azad' Jammu & Kashmir (AJK)? What type of power-sharing relationship does AJK maintain with its controlling state, Pakistan? How is power shared and exercised between different layers of authorities in AJK under the Interim Constitution Act of 1974? Does current power-sharing between AJK and Pakistan provide sufficient space for building an autonomous government and a democratic governance structure? What power-sharing approaches and options are more substantial than traditional voting democracy for democratic stability and establishing democratic governance in entities categorised as 'disputed territories'? What alternative approach/es or temporal option/s can effectively resolve AJK's predicament until the final resolution of the Kashmir conflict?

This study seeks to identify issues, dilemmas and practices of power-sharing in AJK, and subsequently seeks to explore the prospects of democratic governance by

analysing contemporary approaches and theories. Thus, the assumptions for this study are: (a) current power-sharing based on the Interim Constitution Act 1974 between AJK and Pakistan is highly imbalanced and has failed to establish an autonomous democratic governance structure, (b) domestic sovereignty or internal autonomy is a pre-requisite for establishing a democratic governance structure in disputed territories, (c) power-sharing approaches provide a better alternative for political stability and democratic governance as compared to majoritarian democracy in disputed territories.

In light of the given paradigms, the dissertation focuses on the challenges and prospects for democracy and governance amidst problematic sovereignty and statehood with a focus on AJK. This study intends to clarify the status and reflects on the legitimacy of the 'Azad State of Jammu & Kashmir' (AJK) from a historical and constitutional perspective. It intends to investigate subsequent political and constitutional evolution since 1947 and the power-sharing relationship with the Government of Pakistan under the existing Interim Constitution Act 1974. It analyses salient features of power-sharing approaches and options (consociational, integrationist and power-dividing) including territorial self-governance or autonomy and examines which of these approaches or options could meet the specific context of AJK's predicament, as a potential temporal solution, until the final resolution of the Kashmir conflict. The study is based on literature mainly from political science and more precisely from democracy, governance and conflict theories.

1.2 Research Methodology and Data Analysis

In social science inquiries, one question often asked is whether theory must be defined before data collection or whether it can be done after data collection. Gary King and others have argued, 'We need not have a complete theory before collecting data nor must theory remain fixed throughout. Theory and data interact. Some theory is always required before data collection and some data are required before any theorizing' (King et al. 1994, 46).

1.2.1 Research Methodology

This dissertation is case-study based research. In a more precise sense, it is an analytical (enhanced)⁴ case study. According to Lijphart, a single case study can be examined intensively even when resources at the investigator's disposal are limited. He argued that the case study method is somewhat ambiguous, but it is important to remember that 'science is a generalizing activity. A single case can constitute neither the basis for a valid generalization nor the ground for disproving an established generalization. Indirectly, however, case studies can make an important contribution to the establishment of general propositions and thus to theory-building in political science' (Lijphart 1971, 691). On the contrary, Eckstein (1975), suggests that 'a single crucial case may certainly score a clean knockout over a theory' (Eckstein 1975, 127).

A substantial amount of case study research is descriptive. It intends to unfold processes and events and subsequently document them for readers to know what happened at a particular period. In an enhanced case study the usual unit of analysis is one single case and mainly based on a qualitative analysis (both interpretive and analytical). It provides a detailed process analysis, but generality of findings is limited in scope. However, consequences of outcomes are long term (Druckman 2005, 163-170).

This study employs non-probability sampling, which provides greater control of the selection process. Probability sampling includes random sampling where the aim is to extrapolate a broader generalisation of the sample to a wider range of respondents in order to obtain a representative sample. However, non-probability sampling is useful when the aim is not to derive such generalisation or representative sample. Therefore, this study did not render a representative sample; rather it acquired the testimony of individuals who are most closely involved in the process itself. Thus, the most important issues that need to be taken into consideration are the inclusion of influential actors and taking testimony from key players involved (Tansey 2007, 1-23).

⁴ There are four types of methodological approach to case study research: analytical (enhanced case study), time-series case study, focused case comparisons, aggregate case comparisons. See, for example, Daniel Druckman (2005): *Doing Research: Methods of Inquiry for Conflict Analysis*, pp- 163-172.

1.2.2 Data Collection and Sources

The main sources of this study are public reports (such as media reports, publications from governmental and non-governmental organisations), opinions (letters to the editor, news, articles, speeches, columns, editorials and comments, audio, and videos interviews available on YouTube and shared on social media), library archives, journal articles, books, autobiographies, summaries and analysis from conferences and workshops, monographs and encyclopaedias. Secondly, sources are elite interviews and surveys based on specified questionnaires. Elite interviewing includes political leaders, journalists, academics, civil society activists, and legislators, and through panel group discussions. Elite interviewing is discussed by George and Bennett (2005) as one of various data collection techniques, though it was less emphasised as compared to other techniques such as use of archives, journals and books and transcription from interviews. In this respect Tansey (2007) argues, 'The importance of elite interviewing as means of collecting data to carry out process tracing studies has been neglected to date.' Elite interviewing is a means of collecting data which provides experiential testimony, enhances casual analysis and support to corroborate what is established from other data sources (Tansey 2007, pp. 01-23). In addition, a survey was conducted through questionnaires with the aim to identify the causes, factors and perceptions of people from different walks of life on issues specified in the proposed research, providing a deep insight into perception, opinion and the confidence level of respondents.

To enhance the reliability and validity of this research, a triangulation technique was adopted for data collection. Triangulation is an approach to research that uses a combination of more than one research strategy in a single investigation, for example mixing the use of survey data and interviews. Windy Olsen argues that, 'Triangulation is not aimed merely at validation but at deepening and widening one's understanding. As a research aim, this one can be achieved either by a person or by a research team or group' (Olsen 2004). There are three important types of triangulation: data triangulation, theory triangulation and methodological triangulation. Data triangulation simply refers to use of various data sources. Theory triangulation aims at using multiple perspectives to interpret a single set of data. Methodological triangulation refers to use of multiple qualitative and quantitative methods including results from surveys, interviews and focus groups (Guion et al. 2011).

This study mainly relied on desk analysis based on secondary resources and field research based on informal interviews and specified questionnaires to enhance reliability and deeper understanding of the different perspectives about the set research questions and assumptions. Therefore, data, methodological and theory triangulation techniques have been used.

1.2.3 Data Presentation and Analysis

It is worth noting here that for qualitative research analysis many scholars offer the pragmatic approach, which is a combination of both qualitative and quantitative methods. There is a consensus that every research study, more or less, is participatory. It might depend or vary from case to case, but participatory elements are manifestly involved in almost all types of research.

As mentioned earlier, most of the data was drawn from secondary sources and then primary sources such as elite interviews as direct testimony. In this respect, given that available literature about the case study was scant, interview and questionnaire techniques have been used as part of a participatory research strategy. Therefore, in this study, data analysis was based on three concurrent flows of activities, namely: data reduction based on a specified code scheme, data display, and conclusion drawing. These steps are acceptable methods of qualitative analysis. In this respect, I approached the data reduction process through building codes, and then put them into broader analytical categories/themes for further discussion. Finally, relevant data was summarised, paraphrased and subsumed under broader themes or narratives. This step by step process involved a rigorous procedure and interaction between contemporary theories and findings from the case study, which has provided a deeper insight for thesis writing. Henceforth, the theories of democracy and conflict were explored to understand the interplay between theory and empirical findings, after collecting and analysing data from field work. However, the aim was not to test an existing theory or to build a new theory but rather to theorize for building-bridge for forthcoming research.

Content analysis of relevant literature and careful examination of available data was also applied in this study. The initial step in qualitative analysis is the reading of interview transcriptions and taking observational notes out of it for identifying the

relationship between different categories. Prior to the transcription, listening was also part of the analysis process. According to Von Joseph Alex Maxwell (2005), 'There are three main groups of analysis: (1) memos (2) categorizing strategies (coding and thematic analysis) and (3) connecting strategies (such as narrative analysis)' (Maxwell 2005). Interview transcriptions are analysed in four steps: (1) open coding to understand ideas and themes leading to identification of broad categories and subcategories, (2) more specific thematic coding, (3) summarising of each interview using those categories with subheadings, and (4) correspondence and linking of categories within and between interviews (Robinson 1998).

The field research activity was conducted at two levels: Firstly, face to face interviews and online interviews through Skype and telephonic conversations. This activity was undertaken with open-ended questions in informal settings. Later, data collected through recorded interviews in Urdu and local languages were subsequently transcribed into English. I have used MAXQDA software for interview transcription and thematic analysis; secondly, a specified questionnaire was developed and distributed to 80 participants. Subsequently, the data collected by this questionnaire was further analyzed quantitatively and qualitatively and presented in this study.

1.3 Thesis Structure

This research is designed to help examine the situation in the region and to offer possible courses of action. To accomplish this goal, this study has attempted to establish historical, theoretical and constitutional frameworks of our case of investigation-Azad Jammu & Kashmir (AJK). Firstly, it briefly discusses the concept of statehood and sovereignty and subsequently reflected on the status and legitimacy of AJK. Then it elaborates a theoretical debate between sovereignty and democracy and identifies the essentiality of autonomy or autonomous government for establishing a democratic governance structure in disputed territories. Secondly, it discusses the genesis of the Kashmir conflict and its subsequent implications, including division alongside the Line of Control (LoC) which further gave birth to establishing *de facto* governance structures in different divided parts of Jammu & Kashmir including an interim constitutional power-sharing framework in the territories currently under the administration of Pakistan namely: AJK and Gilgit-Baltistan. Thirdly, this study examines contemporary power-sharing theories and options for establishing an

autonomous governance structure for stable democracy and conflict management in deeply divided societies with a particular focus on AJK. Fourthly, it presents available proposals for the political and constitutional empowerment of AJK and subsequently analyses their applicability through historical and constitutional lenses. Finally, this study attempts to sketch an alternative model to address the power-sharing dilemma in AJK and concentrate on one particular option that may work.

This thesis is divided into five chapters, each discussing different but interconnected issues within the overall topic of power-sharing in Azad Jammu & Kashmir (AJK). The flow of the chapters appears independent but is interrelated in their nature and scope. Every chapter starts with an introduction and ends with a conclusion.

Chapter 1 consists of a brief introduction to the dissertation, problem statements, objectives, hypothesis and research questions, and a description explaining methodology and data analysis. Then it provides an overview of the thesis's structure containing chapter-based details.

Chapter 2 consists of two sections. Section I talks about traditional statehood and sovereignty, based on the Westphalia concept of statehood. It also discusses forms of statehood in contemporary discourse. A brief discussion is presented about the legitimacy and status of disputed territories, quasi-states and de facto states, including how these territories are sustained and integrated in the contemporary world. Thereafter, it focuses on AJK and its defined status and legitimacy under United Nations resolutions. It also presents a comparative study from the Constitutions of Pakistan, India, Jammu & Kashmir (Indian-Administered Kashmir) and AJK. Section-II presents a theoretical debate regarding functionality and prospects of democracy amidst problematic sovereignty.

Chapter 3 is structured around four sections. Section I talks about historical and constitutional structures of the former princely state of Jammu & Kashmir under the Indian Independence Act 1947 through which two sovereign states, India and Pakistan, came into being in 1947. This section aims to build a historical and constitutional framework of the Kashmir conflict in order to understand its implications for AJK.

Section II aims to re-trace the constitutional history of AJK. This section briefly covers the time period between 1947 and 1970 as the reference points. It discusses significant political and constitutional developments in AJK since its inception. It also presents agreements and accords that have taken place between Pakistan and AJK including the Karachi agreement of 1949, rules of business, ordinance and Acts adopted and promulgated in AJK. It also presents a critical review of the role of Ministry of Kashmir Affairs (MKA) in the governance affairs of AJK.

Section III covers the post-1970 period as the departure point from where the current Interim Constitution Act of 1974 is examined. It describes institution building in AJK and discusses how powers are shared between different layers of authority under Interim Act 1974. It provides an overview of the party system and electoral process in AJK.

Section IV presents an analysis based on three-tier power-sharing governance structures under the Interim Act 1974 and examines the prospects for democracy and governance in AJK. It talks about factors and dynamics including identity, lack of representation in the national forums of Pakistan, role of state- and non-state actors (Military, intelligence agencies, political parties, media and civil society) that paralyze AJK's governance structure. It critically examines power-sharing between AJK and the Government of Pakistan under the Interim Act 1974.

Chapter 4 is structured around two sections. Section I presents a conceptual and theoretical reflection on democracy, conflict and governance. It also gives a brief description of the different terminologies which are used in this research. Secondly, it tackles the governance debate on key issues including concepts, practice, and dilemmas and the ways in which we understand the process of power-sharing for governance in academic discourse. Section II presents an in-depth understanding of consociational and integrative approaches of power-sharing. The debate revolves around the proponents and critiques in contemporary discourse. Then, it presents an analysis explaining relevance and applicability of power-sharing approaches to AJK and stresses one particular option which was found potentially relevant to address AJK's predicament.

Chapter 5 synthesises all discussions, debate and analysis presented in the preceding parts of this study based on theory and empirical findings. This chapter consists of two sections. Section I aims to examine proposals presented by civil society organisations for political and constitutional empowerment of AJK. Subsequently, it critically analyses these proposals based on discussion by proponents and opponents, who all discussed these proposals through the lenses of history, constitutions and UN resolutions. Section II attempts to offer an alternative design, which guarantees autonomy and self-government to AJK. It advocates a new power-sharing framework between AJK and Pakistan and presents ‘AJK Autonomy Model’ for the disputed territory of AJK as a potential temporal option until the final resolution of the Kashmir conflict. This chapter is ended with a conclusion and separate closing remarks explaining findings and assumptions set out in the first part of this study.

The final part of this dissertation includes references, annexes containing texts of several historical agreements, UNCIP resolutions on Kashmir, list of interviewees and a sample of field research questionnaire. Maps of the former princely state of Jammu & Kashmir and AJK are also included.

2 Chapter 2: Emergence, Status and Legitimacy of AJK: Does Democracy Need Sovereignty? A Debate

2.1 Introduction

This follows the introductory chapter of this study in which some issues and questions were raised, based on two interrelated questions. Firstly, can governance work without a state?; and secondly, does democracy need sovereignty? These two questions examine concepts of statehood and sovereignty including their essentiality in understanding the international state system. They also unravel a discussion on the regions and areas that are not - legally speaking - part of the nation-state system. Therefore, our discussion on prospects for democracy amidst problematic sovereignty is directly relevant to non-state entities and AJK in particular.

This chapter aims to develop an understanding of the concepts of statehood and sovereignty including several inter-related terms in academic discourse under the broader framework of international relations (IR). The field research was aimed at obtaining insight from stakeholders involved in the process itself as to the status and legitimacy of Azad Jammu & Kashmir (AJK). This revealed that the terms most often used to describe AJK were quasi-state, de facto state, protectorate and disputed territory. Hence, these four terms will be further explored in the context of AJK. Understanding these concepts and terms would not only help in obtaining a clearer answer about their applicability in contemporary discourse, but may also help define a suitable term for AJK, leading to a possible answer to one of the research questions of this study. As a result, this chapter consists of two concurrent sections.

Section 2.2 deals with the concept of statehood and sovereignty. The concept of statehood and sovereignty as applied in the modern world demands a comprehensive study that could take volumes. However, here the aim is to shed light on the varying dimensions on the need, importance and scope of these concepts and explore the way these concepts continue to mark international relations discourse. This section also provides a brief theoretical reflection on the use and applicability of various terminologies including quasi-states, de facto states, protectorates, and disputed

territories. The remaining part focuses on the emergence, status and legitimacy of the 'Azad (Free) State of Jammu & Kashmir' based on primary and secondary resources.

Section 2.3 deals with the conceptual relationship between democracy and sovereignty and presents a debate discussing prospects of democracy with or without sovereignty. There is a range of literature and scholarly research on this topic, discussing traditional concepts of state and sovereignty at length. However, scant attention has been paid to the democracy versus sovereignty debate, especially in the context of non-state entities' enduring problematic sovereignty. Therefore, it addresses the challenges and prospects of democracy in non-state entities as they confront problematic sovereignty.

2.2 State, Statehood and Sovereignty

Nation-states are recognised by the international community as sovereign according to the 'Westphalia sovereignty' concept through which they enjoy both internal and external sovereignty. According to the classical theory of sovereign statehood, there are two predominant paradigms: realism and rationalism. Realism or *raison d'état* is a familiar discourse of Machiavelli and other classical realists that postulates the state as a war machine that exists to produce national security. The other paradigm is rationalism, which postulates the state as subject to international law and describes it akin to a legal person or citizen of international society. This is related to Grotius, Vattel and other classical rationalists (Jackson, 1990, 39).

There are two competing theories that define statehood under international law: declarative and constitutive theory. The declarative theory, while considering the State as a person in international law, stresses certain structural criteria that include four essential elements by virtue of the consent of other states: (a) defined territory, (b) permanent population, (c) government, and (d) capacity to enter into relations with other states (William Worster 2010). These four elements are based on the Montevideo Convention Article 1 that has become customary international law, thus defining statehood in a contemporary context.⁵ According to the Montevideo Convention, the State is defined as a State of sovereignty, which can be classified into

⁵ See, Montevideo Convention on Rights and Duties of the States (1933) signed at Montevideo, December 26, 1933, Article 1. However, in recent practice newly emergent states, besides fulfilling four elements, are asked to accept obligations that their parent states made under certain treaties. See EC (1991) guidelines on the recognition of new states.

internal and external sovereignty. Both are referred to in Article 1(c) and (d) of the Montevideo Convention in which internal sovereignty refers to a government as the highest authority in the internal affairs within a state whilst external sovereignty provides an assurance that a State is independent in governing external affairs. However, the constitutive theory of statehood has defined the State as a person in international law only if other existing states recognise it as sovereign. In this sense, recognition from other states is a precondition to becoming a serving nation-state (William Worster 2010).

Contemporary scholars have approached the concept of statehood in a different manner. Following Max Weber's definition, Fukuyama defines a classical notion of modern statehood. He describes the essence of state-ness as the enforcement that a state retains such as a monopoly of the use of force, and the state is solely responsible to provide statehood (Fukuyama, 2005, 08). On the contrary, Christoph Zuercher argued that statehood should be best understood and identified by four different outputs: (a) domestic authority, (b) security, (c) a measure of material public goods and (d) institutions for non-violent conflict processing, which he called 'configuration of statehood'. Zuercher also believes that the State is not the only and sole provider of these outputs, rather and particularly in the context of post-conflict or low-income countries, non-state actors together with international organisations (IOs) provide statehood, which he described as 'statehood by outsourcing' (Zuercher 2007).⁶

Sorensen has moved this debate forward by stating that, 'The modern state may be defined as an institution that successfully claims and retains monopoly over the means of legitimate violence, exclusive control over a territory and population and is recognized by other states' (Sorensen 2001). According to Krause and Jutersonke (2007), contemporary statehood is based on various functions (regardless of whether these functions are carried out by the state or other non-state actors). These include security, representation and welfare. States are seen as sovereign, representing and acting on behalf of the common interests of a society, or in Migdal's words, 'the image of a coherent controlling organization in a territory, which is a representation of the people bounded by that territory, (Migdal, 2001: 15-16).

⁶ Zuercher has introduced selective and outsourced statehood. According to him, selective statehood refers to the strategic decision of state elite to only invest in certain core functions of statehood whereas others are consciously outsourced to external actors. See, Zuercher, C. 2007. pp. 11-28

Börzel (2012) has differentiated state from statehood while distinguishing governance as structure and process. She notes the hierarchical nature of the state with the use of force limited to state actors. While maintaining that 'statehood is a property', she contended that, 'The essence of statehood is the ability to enforce collectively binding decisions through coercive means'. Therefore, in the words of Börzel, 'Western governance literature draws an implicit link between hierarchy and the state'. This is closer to Max Weber's conceptualisation of the state in which he described the 'state as an institutionalized authority structure with the claim to steer hierarchically (Herrschaftsverband) and to legitimately control the means of violence (Gewaltmonopol)' (Börzel 2012, 7).

The concept of conventional sovereignty consists of three elements: (a) international legal sovereignty, (b) Westphalia sovereignty and (c) domestic sovereignty. Firstly, legal sovereignty is about the mutual recognition of independent territorial entities. Secondly, the basic rule that lies with the concept of Westphalia sovereignty is to refrain from intervening in the internal affairs of other member states. Westphalia sovereignty negates any external sources of authority and considers that a state has a monopoly over decision-making within its boundaries. However, in practice, this concept has been frequently violated in the past as well as in recent times.⁷ Thirdly, domestic sovereignty is about domestic authority in a clearly defined territory. Krasner argued that, 'domestic sovereignty does not involve a norm or a rule, but rather a description of the nature of domestic authority structures. These three elements of conventional sovereignty are mutually supportive in an ideal sovereign state system' (Krasner 2004, 87-88).

Sovereignty is one of the less understood and more contested concepts in international relations (IR) but it is a central principle for organising the system of states. According to Jackson (1990), 'Sovereignty in international relations signifies constitutional independence from other states. Sovereignty is a legal, absolute, and unitary condition'. He further defines these three characteristics of sovereignty: Firstly, legal in the sense that a sovereign state is not subordinate to any other state but equal by international law, not necessarily by international fact. The first characteristic also

⁷ Westphalian sovereignty is associated with the Treaty of Westphalia, which ended the Thirty Years War in 1648

indicates an aspect of sovereignty, which is referred to as external sovereignty. Secondly, absolute in the sense that sovereignty is either present or not - thus there is no intermediate condition - if a country is sovereign, it is independent. Thirdly, unitary in the sense that a sovereign state is a supreme authority within its jurisdiction (Jackson 1990, 32). The third characteristic indicates the second aspect of sovereignty, which is referred to as internal sovereignty. Therefore, in this sense, external sovereignty actually needs recognition from other states but in the case of internal sovereignty, recognition from other states is not necessary.

Christopher Clapham in his article 'Degrees of Statehood', which aimed to explore the relationship between statehood and the international system in the context of Sub-Saharan Africa, believes that statehood should be defined and measured in degrees of statehood. He argues that, 'Statehood should be regarded as a relative concept; and that rather than distinguish sharply between entities that are - and are not - states, we should regard different entities as meeting the criteria for international statehood to a greater or lesser degree' (Clapham 1998, 143). He further distinguishes between those entities that are regarded as states (at least for the purpose of studying them in international relations) and those entities which are not given regard as a state. For the former however, Clapham claimed that these entities sometimes fail to exercise responsibilities associated with state power. For the latter, he believed that entities that emerged as a result of insurgent movements or voluntary organisations may take on attributes associated with sovereign statehood (Clapham 1998, 143).

Since the decolonisation process (Pegg referred to the 1960s as the period when the bulk of the decolonisation process occurred)⁸, with few exceptions, a greater level of stability can be seen through which the political map of the world remained unchanged, which had never been seen before in the history of international relations (Pegg 1998, 1). Scott Pegg in his article, 'De Facto States in the International System' has further reinforced, 'Once acquired, sovereign statehood has become almost impossible to lose'. Similarly, in the words of Jackson, 'once sovereignty is acquired by virtue of independence from colonial rule, then extensive civil strife or breakdown of order or governmental immobility or any other failures are not considered to

⁸ President John F. Kennedy has described decolonisation as 'a worldwide declaration of independence'. Cited by Robert H. Jackson quoted E. Plischke in *Microstates in world Affairs* (1977), American Enterprise Institute, p. i

detract from it' (Jackson 1987, 531). Followed by Alan James' definition, Jackson has defined sovereign statehood as constitutional independence from other states. He further notes: 'sovereignty, like any other human convention, is something that can be acquired and lost, claimed or denied, respected or violated, celebrated or condemned, changed or abandoned, and so forth. It is a historical phenomenon' (Jackson 1987, 522).

Taking into account the forgoing debate and discussion on the concept of sovereignty, it should now be possible to understand sovereignty. It is recognised that sovereignty entails two important aspects: internal sovereignty and external sovereignty. The internal dimension of sovereignty is based on the state and its relationship with its citizens. Internal sovereignty is not absolute but exists in degrees that mainly depend on the ability of a state to provide political goods to its citizens. It should be noted that external sovereignty also consists of two elements: de jure recognition by the international community and de facto external independence, which means that no outsider can exercise control within a state's territory (Potter 2004, 11-12).

However, in the recent past, it has been seen that there is a paradigm shift in understanding the concept of sovereignty away from its traditional conception. In the words of Krasner (2001) 'sovereignty is being eroded by globalization' in the recent past (S D Krasner 2001, 231) and Nina Caspersen (2012) argues that 'recent research has increasingly taken issue with these approaches to sovereignty and statehood, arguing that sovereignty is multifaceted and statehood a matter of degree' (Caspersen 2012, 14). In this respect, a former Secretary General of the United Nations Kofi Annan also highlighted the fact that sovereignty does not simply mean authority, rather it implies responsibility.⁹

2.2.1 Forms of Statehood

In the preceding discussion, several points raised by various scholars on statehood and sovereignty were, in fact, stimulated to obtain a theoretical reflection on *quasi-states*, *de facto states* and disputed territories, which seemingly challenge established concepts of state and statehood. Some international theorists speak of these territories as 'nascent', 'quasi' or 'pseudo' states to draw attention to the fact that

⁹ In the 35th Ditchely Foundation Lecture, June 26, 1998, Cited by Donald W. Potter (2004).

these are states indebted to international 'courtesy'.¹⁰ However, the main focus of this section is to define four terms, namely: quasi-state, de facto state, protectorate, and disputed territory. Later, based on these definitions and theoretical framework, the prism of international law and the system of governance that has to deal with various issues related to the state vis-à-vis society will be used to clarify how one should define the status of Azad Jammu & Kashmir (AJK).

2.2.2 Quasi-States, de facto States and disputed territories

Robert H. Jackson (1990) in his influential book: *Quasi-States: Sovereignty, International Relations and the Third World*, has distinguished sovereignty into two types: negative and positive sovereignty. He argues, 'The normative framework that upholds sovereign statehood in developing nations is described as negative sovereignty'. By contrast, 'the older structure that emerged in Europe and other nation-states expressed by Western Imperialism and colonialism is described as positive sovereignty' (Jackson 1990, 1). Jackson believes that states in developing nations supported by the normative framework (negative sovereignty) should be called quasi-states because 'they lack many of the marks and merits of empirical statehood postulated by positive sovereignty' (Jackson 1990,1).

According to Jackson, quasi-states are internationally recognised but often lack empirical criteria of positive international law, or in Pegg's words, 'Which manifestly lack all but most rudimentary empirical capabilities' (Pegg 1998, 1 and Jackson 1990, 22). Jackson has further defined that, 'a quasi-state is independent in law but insubstantial in reality and materially dependent on other states for its welfare'. Most developing nations, according to Jackson's description, exemplify negative sovereignty; thus, these states should be considered as quasi-states (Jackson 1990, 43).

Meanwhile, Christopher Clapham has tried to clarify Jackson's definition of quasi-states. He believes that Jackson's definition of a quasi-state is limited to only those states which are recognised nation-states, though Jackson called them quasi-states because they lack credible statehood criteria defined in classical positive international law (Clapham 1998, 144). However, Kolsto (2006, 723) defines a quasi-state as one that has seceded from another state, but has not achieved international recognition.

¹⁰ See, for example, Bull and Watson, *International Society*, p.430, cited in Robert H. Jackson (1987)

Clapham (1998) considers that the kind of quasi-statehood discussed by Jackson is based upon the idea of negative sovereignty, which is a temporary device enabling new states' passage into the international order. Clapham, while giving examples from African states and South East Asia, claims that the concept of quasi-statehood has changed and the idea of quasi-statehood should be overthrown by now because 'the idea of negative sovereignty always rested on the contradiction that states could retain their independence from the international system while remaining dependent on the international system' (Clapham 1998, 146-7).

Taking the foregoing discussion on sovereignty and statehood into account, Jackson's description seems inappropriate, as it denies the classical theory of statehood and sovereignty. In this respect, Kolsto (2006) has objected in the following manner. He notes:

Jacksons' book triggered a wide debate on the nature of post-colonial states. He has been criticised for tarring all Third World countries with the same brush. There are vast differences in state capacity and state structure. Even so, Jackson alerted us to an important and serious problem in international relations. While his book was highly influential, his key terminology was unfortunate and failed to establish itself (Kolsto 2006, 725).

In contrast to both Pegg (1998) and Jackson (1990), Kolsto (2006) tried to clarify terminological confusion by describing two types of territorial-political entities which do not fulfil the basic criteria of nation-state. Firstly are those that lack internal sovereignty and secondly, those that lack international recognition. In Kolsto's opinion, 'both categories challenge basic assumptions of the international state system' (Kolsto 2006, 725). However, the denial of international recognition in the latter case is not based on any assessment of their internal sovereignty; rather it is mainly due to the issue of secession from a recognised nation-state that is unwilling to accept what it perceives as a loss of territory. Keeping in view terminological confusion, Kolsto in his article *The Sustainability and Future of Unrecognized Quasi-States*, suggests that recognized but ineffectual states (e.g. Jackson's description of quasi-states) should be referred to as 'failed states'; therefore, Kolsto would reserve the term 'quasi-state' for unrecognized de facto states (Kolsto 2006, 723-725).

On the other hand, Pegg sees a the definition as based on a state's capability. For Pegg, a quasi-state is recognized internationally, but lacks the ability to provide services to its people. On the other hand, despite effective governmental authority and control over any territory with defined borders, *de facto* states are not recognised by the international community. Thus, this 'facilitates the creation of something that is more or less the inverse of the quasi-state: the *de facto* state' (Pegg 1998, 1). According to Pegg (1998), in essence, a *de facto* state exists where;

- There is an organized political leadership which has arisen to power through some degree of indigenous capability;
- It receives popular support;
- It has achieved sufficient capacity to provide governmental services to a given population;
- It has a defined territorial area, over which control is maintained for an extended period of time (Pegg 1998, 1).

According to Pegg (1998), a *de facto* state is capable and willing to become part of the international community. It is only its inability to obtain recognition from others that is the source of its illegitimacy in international law (Pegg 1998b, 26).

The third term is disputed territory, which is also often used in the context of the Kashmir conflict. Generally speaking, 'a territorial dispute is a disagreement over the possession or control of land between two or more states'. Such disputes can be driven by identity or thirst for land and its resources. Territorial disputes are a major cause of wars and controlling states often try to assert their sovereignty over a territory through invasion (Pan Janwu 2009, 27-28). There is broad consensus on using the term 'disputed territory' in the context of the Kashmir conflict because it is recognised as disputed by the United Nations. However, a former Chief Justice of the High Court of AJK, Majeed Malik, argues that prior to talking about the status of AJK, it is crucial to understand what the status of Jammu & Kashmir was at the time of partition and under the partition plan of 1947, through which the nascent states of India and Pakistan came into being. On August 15, 1947, due to the lapse of British Paramountcy, it is clear that princely states had become independent and sovereign. Jammu & Kashmir (along with more than 500 princely states) maintained a separate and unique relationship with Britain, unlike British India. Therefore, the status of AJK should be seen in context of the broader Kashmir conflict.

Territories under the control of India and Pakistan are disputed in the sense that their status is contested, but Kashmir is not a territorial dispute because these territories were not separated or seceded from any sovereign state and neither were they part of India or Pakistan. Thus, it is not a dispute over territory, but rather essentially a struggle for freedom, which was started by the people of Kashmir much before the emergence of India and Pakistan. It is about self-determination as envisaged in UN resolutions on Kashmir. Therefore, the phrase ‘Kashmir is a territorial dispute’ was argued to be purposefully established to eliminate the people of Jammu & Kashmir from the sovereignty equation. Nonetheless, it appears that these can be described as occupied territories in the sense that both India and Pakistan do not have a *locus standi* over the territory of Kashmir because they illegally entered and occupied Jammu & Kashmir territory (Majeed Malik, 2011).¹¹

2.2.3 Emergence and Status of Azad Jammu & Kashmir

In the subsequent discussion, this study will further explore the terms ‘disputed territory’ and ‘protectorate’ within the context of the emergence and status of Azad Jammu & Kashmir (AJK). Azad (Free) Jammu & Kashmir (AJK) is the southern most political entity within the Pakistani administered part of the disputed princely state of Jammu and Kashmir. It is one of two disputed territories currently under the administration of Pakistan, namely: Azad Jammu & Kashmir and Gilgit-Baltistan.¹² The Azad State of Jammu & Kashmir was declared on October 24, 1947, which resulted in the establishment of a ‘provisional Azad government of the state of Jammu & Kashmir’.

The provisional setup formed on this date came into existence by virtue of a people’s resistance movement led by the ‘Poonch Rebellion’ that was arguably only partially indigenous or through, in Pegg’s words, ‘some degree of indigenous capability’ against the regime of Maharaja Hari Singh (then autocratic ruler of Jammu & Kashmir). The AJK provisional government was established one day before the Maharaja fled from the capital of Jammu & Kashmir and two days before the Instrument of Accession, which was allegedly signed on October 26, 1947. However, there is pointed disagreement on when exactly the provisional government of AJK was formed. Some commentators claim that the first provisional setup was formed on October 4, 1947,

¹¹ Interview, dated October 28, 2011 at Mirpur, Azad Kashmir

¹² More detailed discussion on the historical and constitutional context of the colonial legacy and status of Indian States under Indian Independence Act 1947 is presented in a subsequent chapter

whereas its reconstitution took place on October 24, 1947. Some interviewees and nationalist forces in AJK claim that in reality, the first declaration was made on October 4, 1947, when Ghulam Nabi Gilkar with the code name 'Anwar' announced a provisional government. Further, they claim that the establishment of the Azad Kashmir Government on October 24, 1947 was actually a reconstitution of the former. An announcement relating to the first declaration on October 4, 1947 was broadcast on Radio Pakistan and also mentioned in the Civil and Military Gazette. However, Shabir Choudhary raised doubts over the originality and validity of this declaration and stated that it was merely a political stunt.¹³

At the time of the formation of the Republic of Azad Kashmir on October 24, it ostensibly intended to invoke a transition from autocracy to democracy. It made a declaration thus:

- The provisional government, which the people of Jammu and Kashmir have set up a few weeks ago with the object of ending intolerable Dogra tyrannies and securing to the people of the State, including Muslims, Hindus and Sikhs, the right of free self-government has now established its rule over a major portion of the State territory and hopes to liberate the remaining pockets of Dogra rule very soon. In view of these circumstances it has been reconstituted with Mr. Ibrahim, Bar-at-Law, of Poonch as its provisional head, and its headquarters have been moved to Pallandri in Poonch.
- The provisional government which is assuming the administration of the State is most emphatically not a communal Government. It will include Muslims as well as non-Muslims in the provisional cabinet, which will serve the people, the temporary purpose of restoring law and order in the State and enable the people to elect by their free vote a popular legislature and a popular Government.
- The provisional government entertains sentiments of the utmost friendliness and goodwill towards its neighbouring dominions of India and Pakistan and hopes that both the dominions will sympathise with the people of Jammu and Kashmir in their efforts to exercise their birth right of political freedom. The provisional government is further anxious to safeguard the identity of Jammu and Kashmir as a political entity (M.H. Gilani 1998).¹⁴

The contents of the declaration presented above provide a reference to the previous provisional government formed or proclaimed on October 4, 1947. Thus, the provisional government formed on October 24, 1947 was a reconstitution of the former. It is apparent that there was an attempt to form a provisional government through a proclamation on October 4, 1947 but it couldn't be materialised on ground. In any case, there is considerable consensus amongst historians and the political elite

¹³ See, Shabir Choudhary, two articles: Provisional Government of Jammu and Kashmir, and 'Issues Related to Provisional Government of 4th October 1947', See his blog, <http://drshabirchoudhry.blogspot.de/2012/04/k4kashmir-has-become-popular-website.html>

¹⁴ Full text of the First Declaration of the provisional government of AJK on October 24, 1947 can be seen as Annex-C

in AJK to mark October 24, 1947 as the foundation day of the provisional government of Azad Jammu & Kashmir.

The 'Azad State of Jammu & Kashmir' in its first declaration claimed itself as legal heir and successor to the dethroned Maharaja Hari Singh. It was formed with the aim to represent the erstwhile state of Jammu & Kashmir and as a parallel and legitimate successor of the former Government of Jammu & Kashmir. However, neither India or Pakistan, nor the international community have ever recognised this government as representing a sovereign state or as a legitimate successor to the Maharaja's government. The question on the status of Azad Jammu & Kashmir's provisional Government has created incredible difficulty. Sardar Ibrahim Khan admitted this by stating,

This is a question which is not free from difficulty. The real constitutional position of Azad Jammu and Kashmir Government can easily be misunderstood. What I always understood, and I emphasized before the Government of Pakistan, was the position that Pakistan Government should recognize the Government of Azad Jammu and Kashmir as the only representative Government of Jammu and Kashmir State (Ibrahim 1990, 129).

Initially, the Government of Pakistan had presented and referred to the Azad Kashmir Government as a legitimate successor of the dethroned Maharaja's government when dealing with the United Nations in 1947-8, which India objected to and the U.N never accepted. In due course, the issue of Kashmir was under discussion at the United Nations, which resulted in two important resolutions on August 13, 1948 and January 5, 1949. Meanwhile, in May 1948, Pakistan's government also entered its regular troops into the territories of AJK and Gilgit-Baltistan – arguably to support AJK's armed forces which consisted of mainly ex-British servicemen from the Poonch and Mirpur regions (currently two administrative divisions in AJK). However, later in 1948, Azad Army's militia opposing Indian forces merged and became part of Pakistan's army (Snedden 2012, 87).

Sardar Ibrahim as the first president of AJK wrote a letter to the United Nations Commission on India and Pakistan (UNCIP) for *de facto* recognition of the government of AJK. Later in July 1948, he asserted that as the AJK government controlled over

half of J&K, the Security Council's failure to hear any representative from the AJK government was a serious injustice to the people of J&K. He stated,

I must emphasize that Azad Kashmir Government will not accept any settlement to which they are not a party, and that Pakistan, though keenly interested in the future of Jammu and Kashmir, cannot bind the Azad Kashmir Government or commit them to course of action without their previous approval. (Hasan 1966, 177-180)

The Azad Kashmir government, in an attempt to assert its legality through the secretary-general of the UN, appealed to several heads of state to recognise the formation and legitimacy of the Azad Kashmir government. However, 'the status of Azad Kashmir has never been legally defined in international terms. It is neither a sovereign state nor a province of Pakistan' (Schofield 2010, 89).

Ershad Mahmud (2007) argued that AJK is a 'local authority' with responsibility over the area assigned to it under the ceasefire agreement. Referring to the UNCIP resolution of August 13, 1948, which states, 'Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the commission'. He further argued that, 'subsequently, the United Nations Commission for India and Pakistan (UNCIP) implicitly recognized the de facto position of the Azad Kashmir government' (Mahmud 2007,106). International Crises Group (ICG) notes:

Officially, Pakistan maintains that Azad Jammu and Kashmir is not intrinsically part of its territory and that its constitutional status is provisional, dependent upon a final settlement of the territorial dispute with India. Indeed, with its own constitution and elected government, AJK has the trappings of a sovereign state, but it is only nominally independent. The territory has no international legal status, leaving Pakistan a free hand in controlling its foreign affairs. (Group 2010)

Snedden argued, 'Despite Pakistan's insistence that *de facto* recognition be given to Azad Kashmir, UNCIP "wriggled out of this problem" by stating on August 13, 1948 that Azad Kashmir Government was (only) a "local authority"'. There are two reasons given by Snedden for why UNCIP did not recognize the status and legitimacy of the Azad Kashmir Government. Firstly, there was Indian pressure not to recognize AJK as the successor of the dethroned ruler of Jammu & Kashmir; and secondly UNCIP demoted Azad Kashmir because no nation, not even Pakistan, had formally recognised this

entity. UNCIP concluded that, 'having no international standing, the [Azad Kashmir Government] can have no international responsibility' (Snedden 2012, 88-89).

According to Snedden (2012), Pakistan's inability and reluctance to grant *de jure* recognition to the provisional government of Azad Kashmir had led to reducing the ability and position of the latter to present itself as a representative body of the people of J&K or, in other words, as a legitimate successor to the Maharaja's government. India also tried to side-line the provisional setup established through a people's resistance movement within J&K by declaring it as illegal and irrelevant. The unwillingness of both Pakistan and India to accept and recognise the status and legitimacy of AJK's government resulted in 'the Azad Kashmir Government recognized only as a "local authority": one with limited power, control and influence' by the UN (Snedden 2012, 78).

Josef Korbelt, in his role as a member of the United Nations Commission for India and Pakistan (UNCIP), held a meeting on September 2, 1948 with the representative of the Government of Pakistan, where he stated that 'by 'local authority' we mean the Azad Kashmir people, though we cannot grant recognition to the Azad Kashmir government' (Ibrahim 1990, 127). With regard to political authority of AJK, Ibrahim included Korbelt's interpretation in which he asserted that, 'subject to the Commission's surveillance, the local authorities will have full political and administrative control, and will be responsible for the maintenance of law and order'. However, UNCIP was reluctant to grant *de jure* status to the AJK government. In this respect, Ibrahim argued that, 'the commission through implicitly accepting the *de facto* position of Azad Kashmir Government, could not see their way to give it a *de jure* recognition' (Ibrahim 1990, 126-7). However, Ibrahim further asserted that Korbelt accommodated the Azad Kashmir's view points by saying,

We have gone as far as we could to meet the point of view of the Azad Kashmir people. We have tried to deal with the *de facto* situation. But we cannot lose sight of the fact that the State of Jammu and Kashmir still exists as a legal entity. We have to respect its sovereignty. (Ibrahim 1990, 127)

Rose argued local authority by the U.N meant the Azad Kashmir government, 'which would assume responsibility for administrating the territory of Jammu & Kashmir from which Pakistani troops were to be withdrawn under the 1949 ceasefire agreement'

(Rose 1992, 237). In a similar vein, Jurist Manzoor Gillani argues, ‘The government of AJK and Gilgit-Baltistan cannot be considered “local authorities” as such because they can attain that status only when Pakistani troops have evacuated the liberated territory under arrangement of holding a plebiscite’ (Gillani 2012, 14). Snedden summarised the debate on the status and legitimacy of AJK as:

Azad Kashmir’s lack of recognition enabled its status to be reduced internationally, regionally, and with Pakistan. UNCIP, whose primary relationships were with the Indian and Pakistan governments, refused to recognise the Azad Kashmir Government as the ruling and independent entity, free from Pakistani control, in Azad Kashmir. In 1948, it downgraded Azad Kashmir’s status to a ‘local authority’. (Snedden 2012, 88-89)

On the status of AJK, Jurist Manzoor Gillani notes,

Viewed from any perspective of international jurisprudence, the Azad Jammu and Kashmir emerged as a State from the very beginning and made itself a protectorate of the Government of Pakistan for its defence and foreign affairs, keeping with itself entire local sovereignty of legislation, administration and law. (Syed Manzoor H. Gillani 2008, 59)

In international relations and law, ‘Protectorates are dependent or not fully sovereign states. The territorial integrity of a protectorate state was guaranteed under a treaty negotiated with a protecting power’ (Erik Goldstein, Richard Langhorne 2002, 8). Further, a cursory look at dictionaries such as Oxford, Free Dictionary of Law, have further defined it as:

1. a state that is controlled and protected by another state
2. Relationship of protection and partial control assumed by a superior power over a dependent country or region. The protected country or region.
3. A form of international guardianship that arises under International Law when a weaker state surrenders by treaty the management of some or all of its international affairs to a stronger state.
4. Protectorate, in international law, a relationship in which one state surrenders part of its sovereignty to another. The subordinate state is called a protectorate. The term covers a great variety of relations, but typically the protected state gives up all or part of its control over foreign affairs while retaining a large measure of independence in internal matters.¹⁵
5. Besides losing some of its independence, the protectorate state still exists as a state in international law and may avail itself of some of the rights of a state. Its diplomatic representatives may still enjoy normal immunities within the

¹⁵ See definition of protectorate on Oxford English Dictionary, Free Dictionary and also <http://www.infoplease.com/encyclopedia/society/protectorate-international-law.html>

courts of other states, for instance, and a treaty concluded by the protecting state with a third state is not necessarily binding on the protected state.¹⁶

The definitions of the term 'protectorate state' have explained and shed light on the reciprocal relationship between a protectorate and protecting State. The rights and duties between both depend upon the terms of treaty and conditions under which they signed an agreement. Given these definitions, Manzoor Gillani's proposition calling AJK a 'protectorate' is partially correct in the light of first three definitions. However, I argue that there are several other aspects, which appeared in later definitions, reveal that it would be incorrect to call AJK a 'protectorate'. For example, firstly, the AJK, despite its official nomenclature as 'Azad State of Jammu & Kashmir' and titular positions such as President and Prime Minister, does not exist as a state in its entirety and in the eyes of international law. Secondly, it also does not maintain foreign relations directly with other nation states. Thirdly, its external capacity to maintain its relationship with other nation states is severely circumscribed. And finally, through the Karachi agreement between AJK and Pakistan and subsequently Interim Act 1974, the AJK, in practice, does not maintain domestic sovereignty over its administration, governance or legislation. Therefore, it would be legally incorrect to call AJK a protectorate state, especially given its *de jure* relationship with former State of Jammu & Kashmir, *de facto* link with State of Pakistan, and the United Nations resolutions passed from time to time on the Kashmir conflict, which implicitly regarded the AJK government as a local authority and the territory as disputed.

In the given context, therefore, it can be argued that the official nomenclature 'Azad Government of the State of Jammu & Kashmir' remains a paradox in the study of international relations. This is mainly because neither the government of AJK, nor the Pakistan government nor the United Nations (UN) has ever tried to clearly define the international legal status of the state in any formal or jurisdictional terms (Mahmud 2007, 106). Consequently, the Azad State of Jammu & Kashmir has become a puzzling legal anomaly which functions as a 'local authority', although overwhelming control and administration remains with the Government of Pakistan.

In a subsequent section, this study explores how the Indian and Pakistani constitutions state and define their legal relationship with the disputed state of Jammu & Kashmir

¹⁶ See [http://legal-dictionary.thefreedictionary.com/Protectorate+\(international+law\)](http://legal-dictionary.thefreedictionary.com/Protectorate+(international+law))

and AJK in particular. It also discusses briefly the constitutions of J&K in relation to AJK and the objectives of AJK's interim constitution which was subsequently adopted.

2.2.4 What does the Indian Constitution Say?

The Government of India maintains its relationship with the State of Jammu & Kashmir initially based on a temporary Instrument of Accession in 1947 and later the Delhi Agreement in 1952. The Constitution of India under Article 370 grants special autonomous status to Jammu & Kashmir except for defense, foreign affairs, finance and communication (matters specified in the instrument of accession).¹⁷ Article 370 of the Constitution of India contains a temporary provision with respect to the state of Jammu & Kashmir (J&K). Article 370 says:

1. notwithstanding anything in this Constitution:

- a. The provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir,
- b. The power of Parliament to make laws for the said State shall be limited to;
 - i. Those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
 - ii. Such other matters in the said Lists, as, with the concurrence of the Government of the State, the President may by order specify.¹⁸

The Indian government can legislate on matters related to defense, foreign affairs, finance and communication. On matters other than these four areas the Indian parliament requires concurrence from the state of Jammu & Kashmir. Thus, Jammu & Kashmir state has a uniquely special status, unlike other States of India where the Indian parliament can directly intervene and legislate on matters mentioned in the concurrent list of India's constitution. It is noteworthy that Jammu & Kashmir is the only state which is given a special status under Article 370 of the Indian Constitution, unlike other princely states which merged with the Union of India. Consequently, the State of J & K has been granted a special status and substantial autonomy under Article 370 of the Indian Constitution. In a recent statement, Omer Abdulla, current Chief Minister of the State of Jammu & Kashmir (Indian-Administered Kashmir) asserted that, 'Jammu & Kashmir had only acceded but didn't not merge with India. And accession of Jammu & Kashmir to Union of India was on four matters: currency,

¹⁷ For a detailed discussion on the Instrument of Accession see subsequent chapter-3 in section 3.2 of this study.

¹⁸ The Constitution of India Article 370, part XXI see <http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss%2827%29.pdf> accessed on May 15, 2013

communication, foreign affairs and defence'.¹⁹ It was, however, amended several times subsequently, and many of its provisions were violated by the Central government of India, which undermined governmental authority and autonomy in J & K that was initially granted under Article 370.

Regarding the territories currently under the administration of Pakistan, the Indian Parliament passed a unanimous resolution on 22 February 1994, asking the Indian Government to take appropriate steps to wrench away the territories currently under the control of Pakistan. The resolution says, 'Pakistan must vacate the areas of the Indian State of Jammu & Kashmir, which they have occupied through aggression; and resolves that all attempts to interfere in the internal affairs of India will be met resolutely'.²⁰ Moreover, India has repeatedly emphasised her claim that AJK and Gilgit-Baltistan (two distinct regions of Pakistani-Administered Kashmir) are an integral part of Jammu & Kashmir and based on the Instrument of Accession, thus part of the Union of India (Mustafa 2013).

2.2.5 What does the Constitution of Jammu & Kashmir Say?

Article 4 of the Constitution of the State of Jammu & Kashmir (Indian-administered Kashmir) defines territories of the State of Jammu & Kashmir as follows. It reads: 'The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State'. Additionally, Article 48 of the Constitution of the State of Jammu & Kashmir²¹ mentions the territories currently under the administration of Pakistan, namely Azad Jammu & Kashmir and Gilgit-Baltistan. Furthermore, it has reserved 25 seats for these areas in the Constitution of Jammu & Kashmir. It says:

48. Provision relating to Pakistan- occupied territory. Notwithstanding anything contained in section 47, until the area of the State under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives.

¹⁹ [JK did not merge with India: Omar tells EU delegation](http://www.risingkashmir.com/jk-did-not-merge-with-india-omar-tells-eu-delegation/), *Daily Rising Kashmir*, <http://www.risingkashmir.com/jk-did-not-merge-with-india-omar-tells-eu-delegation/> Accessed on September 25, 2013

²⁰ See, Parliament Resolution on Jammu and Kashmir http://www.satp.org/satporgtp/countries/india/document/papers/parliament_resolution_on_Jammu_and_Kashmir.htm Accessed on March 18, 2013

²¹ The Constitution of Jammu & Kashmir, see full text on <http://jkgad.nic.in/statutory/Rules-Costitution-of-J&K.pdf>

- (a) [Twenty-four seats]²² in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly; and
(b) The said area shall be excluded in delimiting the territorial constituencies under section 47.²³

In 1952 another agreement between the Government of Jammu & Kashmir and the Union of India was also signed, known as the ‘Delhi Agreement of 1952’. Through this agreement, the roles and responsibilities of both parties were defined and distributed.²⁴

2.2.6 What does the Interim Constitution Act 1974 of AJK say?

The Azad Jammu and Kashmir Interim Constitution Act 1974 in its preamble describes:

WHEREAS the future status of the State of Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time;

AND WHEREAS a part of the territories of the State of Jammu and Kashmir already liberated by the people are known for the time being as Azad Jammu and Kashmir;

AND WHEREAS it is necessary to provide for the better Government and administration of Azad Jammu and Kashmir until such time as the status of Jammu and Kashmir is determined as aforesaid and for that purpose to repeal and re-enact the Azad Jammu and Kashmir Government Act, 1970, with certain modifications;

AND WHEREAS in the discharge of its responsibilities under the UNCIP Resolutions, the Government of Pakistan has approved of the proposed repeal and re-enactment of the said Azad Jammu and Kashmir Government Act, 1970, and authorized the president of Azad Jammu and Kashmir to introduce the present Bill in the Legislative Assembly of Azad Jammu and Kashmir for consideration and passage;²⁵

Article 2 of the Interim Constitution Act 1974 of AJK defined AJK as, ‘Azad Jammu and Kashmir means the territories of the State of Jammu and Kashmir which have been liberated by the people of that State and for the time being under the administration of Government and such other territories as may hereafter come under its administration’ (Act 1974 of AJK). It appears that the prevailing constitutional framework in AJK is purely transitory and its constitutional relationship with Pakistan is for the purpose of governance and administration - that is - until the Kashmir conflict is resolved.

²² Substituted for ‘Twenty-five Seats’ by the Constitution of Jammu and Kashmir, (Twelfth Amendment) Act, 1975, S. 3.

²³ The Constitution of Jammu & Kashmir

²⁴ Delhi Agreement 1952, see main features of this agreement on http://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.htm

²⁵ See, The Azad Jammu and Kashmir Interim Constitution Act 1974. A detailed discussion on power-sharing under Act 1974 between AJK and Pakistan is presented in a subsequent chapter.

2.2.7 What does Pakistan's Constitution say?

The Constitution of Pakistan 1973 defines its relationship with the disputed State of Jammu & Kashmir in Article 257. It reads, 'When the people of the State of Jammu & Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State'.²⁶

The Constitution of Pakistan 1973, unlike other autonomous areas under the purview of Pakistan, does not mention AJK and Gilgit-Baltistan as part of the territories of Pakistan. Article 1(2) of the constitution of Pakistan 1973 defines the territories of Pakistan. It reads:

1. The Republic and its territories.—(1) Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

(2) The territories of Pakistan shall comprise—

(a) The Provinces of [Baluchistan], the [Khyber Pakhtunkhwa], the Punjab and [Sindh];

(b) The Islamabad Capital Territory hereinafter referred to as the Federal Capital;

(c) The Federally Administered Tribal Areas; and

(d) Such States and territories as are or may be included in Pakistan, whether by accession or otherwise.²⁷

However, jurist Manzoor Gillani argues that the territory of AJK can be considered as 'otherwise' included in the light of Article 1(2) (d) of Pakistan's constitution. On the contrary, Dr. Nazir Gillani argued, 'It is legally incorrect to state that under Article 1 (2) (d) of Constitution of Pakistan "territories otherwise included" in Pakistan are AJK & GB. Article 1 (2) (d) does not make any reference to article 257'. Therefore, 'Manzoor Gillani has misdirected himself in the understanding of territories otherwise included in Pakistan' (Nazir Gillani 2013). Additionally, unlike Manzoor Gillani's argument that AJK and GB fall under the definition of Article 1 (2) (d) of the Constitution of Pakistan, the Government of Pakistan issued a notification on May 11, 1971 stressing to the Ministries the need to deal with AJK at par with other provinces of Pakistan for practical purposes. However, the notification clearly denied Manzoor

²⁶ The Constitution of Pakistan (1973) Article 257

²⁷ Introductory Part- The Constitution of Pakistan (1973)

Gillani's interpretation, stating, 'Although Azad Kashmir is not part of Pakistan within the meaning of Article 1 (2) of the Constitution²⁸, it should for all practical purposes be treated like other province' (See notification's contents in section 3.5.4 of this study). Therefore, Manzoor Gillani's interpretation of territories of Pakistan in relation to AJK is seemingly misleading. Additionally, it can be argued that such notifications issued by the respective controlling states, namely India and Pakistan, cannot substitute for the resolutions passed on Kashmir by the United Nations recognising all parts as disputed territories and calling for a plebiscite through the free will of the people of the erstwhile state of Jammu and Kashmir.

Resulting from constitutional analysis and comparison, it appears that Azad Jammu and Kashmir is a puzzling legal anomaly. It is apparently a self-governing *de facto* state under Pakistani control but it is not constitutionally a part of Pakistan. It is neither a province nor an agency (such as agencies in Federally Administered Tribal Areas- FATA) of Pakistan but has a government of its own. However, it is protected, administratively controlled and economically dependent on Pakistan. Under the Azad Jammu and Kashmir Interim Constitution Act 1974, it has its own elected President, Prime Minister, Legislative Assembly, High Court, Supreme Court, official flag and national anthem. However, their outreach and scope are limited in practice. Therefore, it can be argued that AJK, due to its disputed nature and problematic sovereignty, empirically possesses symbolic statehood. It doesn't quite fit Jackson and Pegg's definition of quasi-states, but is closer to Kolsto's 2006 differentiation of quasi-states in which he distinguished between recognised and unrecognised quasi-states and suggested that quasi-states should be referred to as unrecognised *de facto* states.

As noted earlier, sovereignty is generally defined as recognition of the claim by a state to exercise supreme authority over a clearly defined territory and a declaration of recognition from the international community, which is not the case with the territory of AJK. However, it can be considered an unrecognised quasi-state, a *sui generis*, a territory with disputed and fragile statehood, a *de facto* and a splintered protectorate of two neighbouring powers, a demarked entity with multiple political and religious identities alongside the Line of Control (LoC).

²⁸ It refers to Article 1 (2) of the Constitution of Pakistan 1962, which defines territories of Pakistan. The Constitution of 1962 later replaced by the Constitution of Pakistan 1973, however, definition of territories of Pakistan was remaining same in both the Constitutions passed in 1962 and 1973. See Article 1 (2) of the Constitution of Pakistan 1962 and 1973

In summary, based on arguments by various authors (e.g. Pegg, Mahmood, Kolsto, Krasner, Gillani, and Schofield) it is clear that AJK is a *de jure* part of the disputed former princely state of Jammu & Kashmir, whose status is yet to be determined through a plebiscite under the auspices of the United Nations; that it is currently a disputed territory as defined under UN Resolutions²⁹ which maintains a *de facto* link with the State of Pakistan. Moreover, the criteria for a *de facto* state as defined by Pegg (1998) in an earlier part of this chapter, is closer to AJK. However, the third characteristic regarding the aspect of control and authority for an extended period of time is closely linked with statehood and sovereignty and in the case of AJK, which is persistently problematic and puzzling. Nevertheless, it can be argued that AJK has a *de facto* relationship with the State of Pakistan under a specified - though questionable in terms of democratic norms, practices and internal authority - and mutually agreed temporal framework. In a nutshell, all divided parts of the former princely State of Jammu & Kashmir - irrespective of which country controls or administers it - are disputed and until the final disposition of the Kashmir conflict, whether through a plebiscite or any other negotiated settlement. Additionally, sovereignty of the former state of Jammu & Kashmir was restored on August 15, 1947 and the state was remaining independent and sovereign from August 15, 1947 to October 27, 1947 (see 3.2.3). However, the sovereignty of the state was suspended due to interference and armed interventions by both India and Pakistan in 1947.

2.3 Democracy versus Sovereignty: Does democracy need sovereignty?

In the foregoing discussion, I have tried to underpin various concepts and terminologies that are increasingly used in International Relations (IR) and specifically in the context of AJK. Here, a theoretical reflection will be presented regarding functionality as we explore prospects for democracy and governance without sovereign statehood or in other words within 'problematic sovereignty'. Further, which aspects of sovereignty are necessary or a pre-requisite for establishing democratic rule in non-state entities or disputed territories are discussed.

²⁹ Under the UNCIP resolutions of August 13, 1948 and January 5th 1949 which were accepted by Pakistan and India, the people of Jammu and Kashmir (both Indian and Pakistani administered parts) have a mandate to decide which way they want their state to accede via a plebiscite.

As discussed earlier, under traditional legal theory based on the ‘Montevideo Convention on Rights and Duties of the States’, four factors or factual conditions are essential for eligibility in applying for sovereign statehood. These are: (a) defined territory, (b) permanent population, (c) government and (d) capacity to enter into relations with other states. However, Thomas Franck (1992) has pointed out the emergence in international law of a right to democratic governance. He argues, ‘Increasingly, the acceptance of a government by other States depends on whether the government governs with the consent of its people’ (Franck 1992,46).

Pointing towards two issues, democratic legitimacy and validation of governance, Franck argues that governments should increasingly recognise that their democratic legitimacy depends on meeting normative expectations of the community of states. In this way, democracy has become a global entitlement, or in Franck’s words *sine qua non* for providing legitimacy and validating governance, which later help non-state entities to justify their case for seeking recognition and independence from the community of states (Franck 1992, 46). In this sense, only democracy can provide legitimacy to any state in order to build normal diplomatic relations with the wider community of states. Consequently, a non-state entity requires democratic legitimacy as a pre-condition for aspiring sovereign statehood. However, it could be argued that non-state entities promote democratic culture not necessarily just to obtain democratic legitimacy for seeking independence, but also because of trickledown impacts of globalisation and the ‘third wave of democratization’ around the world.

Following Franck’s arguments, Oisin Tansey states, ‘non-state entities that aspire to statehood are increasingly developing democratic norms and practices, in part to enhance their claims for independence. However, the prospects for democracy in cases of “problematic sovereignty” are little understood’ (Tansey 2011, 1515). Tansey (2011) established his hypothesis on two arguments. Firstly, there is no clear-cut relationship between sovereignty and democracy. Secondly, legal recognition of statehood is of marginal importance; therefore, it should not be seen as a necessary condition for democratic rule (Tansey 2011, 1515). Thirdly, democratic rule is of great importance but it should not be seen as the only sufficient condition for independence or recognition of sovereign statehood.

In order to justify his first hypothesis, Tansey presented the example of Kosovo's independence, which sought to justify its independence claim not just on the basis of traditional factors but also on the basis of its commitment to human rights and its track record of democratic governance. In this way, Kosovo's independence was a severe breach of the traditional concept of statehood and Serbian sovereignty (Tansey 2011, 1515-1516). Tansey's second hypothesis is heavily influenced by the 'self-claimed' ideas of Franck (1992), claiming that in the future international rules and processes will legitimise the existence of governments and guarantee the democratic entitlements of citizens in all states (Franck 1992, 50).

In order to support his argument, Franck gave the example of the Haitian military coup in 1991. The military regime was not accepted by the international community, which refused to recognise the new military regime as legitimate mainly because it was not democratically elected. However, it can be asked, do such practices by the community of states, given the examples of Haiti and Kosovo's independence, support these propositions set forth by Franck (1992) and Tansey (2011)? Murphy responds with, 'Certainly, the first and most fundamental element in legal relations between States is whether a particular political community is "recognized" as a State, for only in this way can that community engage as a State in legal relations with other States' (Murphy 1999. 545).

It is difficult to say whether democracy needs sovereignty, or whether without sovereign statehood democracy can or cannot flourish. Nonetheless, Tansey asserts, 'The international recognition of sovereign statehood should not be viewed as a requisite for democracy, as it does not affect the political realities of authority relations at the domestic level - the forms of accountability and representation that are required for democratic rule can exist with or without legally recognized sovereignty'. Moreover, there are empirical variations in sovereignty, as non-state entities which exhibit problematic sovereignty do not qualify under the traditional conception of statehood, which in turn raises questions about conventional understandings of sovereign statehood (Tansey 2011, 1516).

In contrast to Tansey's arguments in which he claimed that sovereignty is not a prerequisite for democracy, Linz and Stepan stress sovereignty as a necessary and absolute condition for democratic rule. In their words, 'Democracy is a form of

governance of a modern state. Thus without a state, no modern democracy is possible'. Moreover, official statehood is a prerequisite for democracy, and governance and democracy cannot flourish without state recognition as sovereign and independent (Juan J. Linz 1996, 17-18). Linz and Stepan's arguments are closely associated with conventional understandings of sovereignty. However, Tansey's points indicate a shifting perspective in the understanding of sovereignty away from the conventional way of looking at these concepts. In the recent past, International Relations (IR) literature shows that there is a paradigm shift in understanding the concept of sovereignty. Like democracy, sovereignty is also a contested concept. The changes that occur in IR discourse have moved sovereignty from a fixed and absolute concept to defining it with varying degrees, such as Krasner's three elements of sovereignty, described as follows: (a) International legal sovereignty, (b) Westphalia sovereignty and (c) domestic sovereignty (Krasner 2004).

The preceding debate indicates that the mere absence of internal or legal sovereignty doesn't hinder democratic rule. Rather, different attributes of sovereignty actually determine prospects for democracy in a political entity. Therefore, democracy is not tied to official legal statehood. However, absence of domestic sovereignty (in other words, internal sovereignty or autonomy) in which an entity is unable to prevent external interference, leaves the prospects of democracy seriously undermined. In this sense, democratic rule is tied to domestic sovereignty and for this entities need autonomous authority over their internal governing affairs. Tansey argues, 'Democracy requires autonomous governments that have the authority to make binding decisions, and promote and protect human rights and political freedoms throughout the territory' (Tansey 2011, 1535). Therefore, it can be argued that absence of autonomy in non-state entities in their governing matters (or in Krasner's words that they lack domestic sovereignty) leads to disempowerment, which in turn can lead to not only inadequate or bad governance but also to various types of conflicts at the societal level (Krasner 2004; Brinkerhoff 2005).

Most scholars agree that governance and conflicts are intricately connected and power imbalances exacerbate underlying tensions and the fragility of governance and democracy. In this respect, Krasner argues, 'The consequences of failed and inadequate governance have not been limited to the societies directly affected. Poorly governed societies can generate conflicts that spill across international borders'

(Krasner 2004, 86). How can the societies of these entities transform into democracies? Krasner has replied, 'in the future, participatory democracy in badly failed and occupied polities will require the transcendence of accepted rules based on shared sovereignty in specific areas. In some cases, decent governance may require some new form of trusteeship, almost certainly *de facto* rather than *de jure*' (Krasner 2004, 85).

2.4 Conclusion

The preceding debate on democracy and sovereignty has in turn revealed two questions. The first is - importantly - what is the standard practice of the community of states in dealing with entities seeking independence/recognition or states which are not democratically elected? The examples of Kosovo or Haiti can be considered as exceptions not the rule. Therefore, it is important to see whether the international community considers democratic rule as a pre-condition for acceptance or recognition, or by contrast, does the international community ask for the meeting of certain criteria as described by the traditional concept of statehood? However, this fuels considerable debate with regards to AJK, an unrecognised entity whose status and legitimacy is not clearly defined and where challenges of governance and democracy have endured problematic sovereignty, which in turn resulted in interim constitutional and political arrangements with Pakistan.

It is hard to make a statement that democracy or sovereignty are essentially crucial to each other or that they necessarily go together. Nevertheless, there are two aspects of the debate on democracy versus sovereignty. Firstly, by stating that democracy does not need sovereignty, Tansey does not rule out the importance of sovereignty as it excludes external intervention, and the absence of sovereignty - sometimes - represents serious impediments to democratic rule. He argues, 'The closer a political entity resembles a fully sovereign state, the greater the prospects for democracy. But lack of international recognition alone is no barrier to democratic progress' (Tansey 2011, 1517). Secondly, it is important to consider attributes or conditions of sovereignty that determine the prospects of governance and democracy in non-state entities.

This debate can be summarised into two scenarios. In the first scenario, if a non-state entity lacks international legal recognition but holds domestic sovereignty (autonomous authority to implement its decisions to provide public goods to its citizens without external interference into governing affairs) democracy and governance can flourish. In the second scenario, if the non-state entity lacks domestic sovereignty, which according to its proponents' views is essential for democracy, then prospects of democratic rule are at stake. Therefore, this study concludes, domestic sovereignty (one of Krasner's three elements of sovereignty) provides sufficient space for flourishing democracy and good governance. Consequently, international legal recognition is of marginal importance for democracy building, especially in the presence of domestic sovereignty. However, it is also realized that legal recognition provides greater scope for democracy and effective governance and its role cannot be undermined keeping in view the reality that the world is consists of a nation-state system.

3 Chapter-3: Azad Jammu & Kashmir: Historical, Constitutional and Political Perspectives

3.1 Introduction

Field research conducted during 2010 and 2011 revealed how essential it was to understand the historical context of the Kashmir conflict. The interviewees - each in their own view - agreed that the historical context of the former princely State of Jammu & Kashmir and the partition of the sub-continent under the Indian independence Act of 1947 are important to understanding the political and constitutional evolution of Azad Jammu & Kashmir (AJK). Therefore, acknowledging that historically and legally AJK is part and parcel of the larger Jammu & Kashmir problem, this study underlines the colonial legacy and its associated de-colonisation process viz. the partition plan of 1947 through which the British decided to divide the Indian sub-continent into two sovereign States, namely Pakistan and India. However, this process of transfer of power characterised by a binary division triggered a constitutional dilemma concerning the status of princely States in the sub-continent with particular implications for the State of Jammu & Kashmir.

Following the preceding chapter in which scholarly debate on the prospects of governance and democracy in non-state entities has been discussed at length; this chapter deals with the colonial legacy, political and constitutional evolution in AJK and prospects for democracy under the prevailing power-sharing relationship between Azad Jammu & Kashmir (AJK) and the Government of Pakistan (GoP), based on primary and secondary resources. In consequence, this chapter comprises four sections.

Section 3.2 explores historical issues emanating from the emergence of the modern state of Jammu & Kashmir up to partition of the sub-continent. Then, it discusses the historical perspective of the de-colonisation process and the status of Princely States, which were maintaining an indirect and distinct relationship with the British Crown, unlike British India which was directly ruled by the British. It then follows how the issue of the 'Kashmir Dispute' arose at the United Nations (U.N), which resulted in various resolutions set out by the Security Council of the UN, that were then

institutionalised in the shape of the United Nations Commission for India and Pakistan (UNCIP).

Section 3.3 presents a bird's eye view of political and constitutional developments in AJK from 1947 to 1970. This time period provides an essential reference point by briefly covering the political and constitutional frameworks through which Pakistan used to govern the region of AJK. It examines the political and constitutional journey between AJK and the Government of Pakistan, focussing on the initial power-sharing framework known as the Karachi Agreement of 1949) before subsequent Rules of Business and Interim Acts, which have been promulgated from time to time in AJK.

Section 3.4 takes the foregoing discussion forward from 1970 to the Interim Constitution Act of 1974, which remains the de facto Act for governance in AJK. This section also critically reviews institutional structures and processes of power-sharing that emerged from political and constitutional evolution in AJK and under the Interim Act of 1974 in particular. It introduces institutions and their power to legislate from within a constitutional framework.

Section 3.5 defines the power-sharing relationship between AJK and Pakistan. It also addresses how AJK as a regional polity has been shaped over the decades, including what kind of implications and impact it has created for democracy and governance. It also presents an analysis of the three-tier power-sharing arrangement under the Interim Act 1974 between AJK and Pakistan before examining prospects for democracy and governance in AJK.

3.2 The State and Colonial Legacy

3.2.1 History at a Glance

The modern State of Jammu & Kashmir (J&K) came into being in 1846 as a result of the 'Treaty of Amritsar' between Maharaja Gulab Singh and the British Government. It is important to point out that there are competing narratives over the interpretation of this treaty. Some authors condemn it, including Saraf (1977, 187-90), who described it as an 'infamous sale deed', while others including Aftab (2011) and Asad (2012) assert that through this treaty the Raja of Jammu, namely Gulab Singh (who later adopted the title: 'Maharaja' of Kashmir under this treaty) paid indemnity money to

the East India Company as war expenses for the 1st Anglo-Sikh War which the defeated Lahore *Darbar* was unable to pay. As a consequence, the modern state of Jammu & Kashmir came into being.

According to a variation of the first narrative, Maharaja Gulab Singh had bought this area (demarcated in the treaty) along with its inhabitants for 7.5 million *Nanak Shahi* (the then ruling currency of Punjab) plus payment of other - relatively minor - annual tributes to the British Government as the price for cessation of hostilities. This view effectively summarises this area referred to as the former Princely State of Jammu & Kashmir as being sold by the East India Company to Maharaja Gulab Singh. The latter narrative refutes the claim that the State of Jammu & Kashmir was sold or purchased, rather that its sovereignty was regained by paying for reparations. It further argues that the former claim is misleading - in essence - promoted by Indian or Pakistani State intelligentsia for their vested interests or to demoralise the people of Kashmir (Asad 2012, Aftab 2011).

A closer look at the circumstances leading to the Treaty of Amritsar is perhaps in order. The treaty was preceded by the Treaty of Lahore a week earlier on March 9, 1846. This was signed and agreed between the Maharaja of Lahore Dileep Singh Bahadur (successor to Maharajah Ranjeet Singh - original ruler of the Sikh Empire preceding the Anglo-Sikh Wars, who had died in 1839) and the British East India Company.

The Treaty of Lahore arose out of the Anglo-Sikh war of 1845-1846 in which the Sikh Empire was defeated by the East India Company. Under this treaty, the Sikhs were forced to surrender and pay an indemnity of 15 million *Nanak Shahi* as war reparations to the East India Company. The defeated Sikh empire did not have the financial means to pay such a huge amount to the British. However, they were able to cede the areas of Kashmir and Hazara including forts, territories, rights and interests in the hilly regions situated between the River Beas and Indus to the British East India Company, in lieu of indemnity money. It is worthwhile to quote some articles from the Treaty of Lahore. They read:

Article 2: The Maharaja of Lahore renounces for himself, his heirs and successors all claims to or connection with the territories lying on the south of the River Sutlej, and engages never to have any concern with those territories or the inhabitants thereof.

Article 3: The Maharaja cedes to the Honourable Company in perpetual sovereignty, all his forts, territories, and rights in the Doab and country, hill and plain, situated between the Rivers Beas and Sutlej.

Article 4: The British Government having demanded from the Lahore State, as indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one and half crore of Rupees, and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment, the Maharajah cedes to the Honourable Company, in perpetual sovereignty, as equivalent for one crore of Rupees, all his forts, territories, rights and interests in the hill countries, which are situated between the Rivers Beas and Indus, including the Provinces of Cashmere and Hazara.

Article 12: In consideration of the services rendered by Rajah Gulab Sing of Jammu to the Lahore State, towards procuring the restoration of the relations of amity between the Lahore and British Governments, the Maharajah hereby agrees to recognize the Independent sovereignty of Rajah Gulab Sing in such territories and districts in the hills as may be made over to the said Rajah Gulab Sing, by separate Agreement between himself and the British Government, with the dependencies thereof, which may have been in the Rajah's possession since the time of the late Maharajah Kharak Singh: and the British Government, in consideration of the good conduct of Rajah Gulab Sing, also agrees to recognize his independence in such territories, and to admit him to the privileges of a separate Treaty with the British Government (Hasan 1966, 39-41).

At that time, Gulab Singh was a chief of the Hindu Dogra tribe and Raja of Jammu under the Sikh Empire. He came forward and offered 7.5 million *Nanak Shahi* to the British in return for independent and sovereign possession of certain areas, which were handed over to the British under the Treaty of Lahore on March 9, 1846. Under Article 12 of the Treaty of Lahore, subsequently a separate agreement known as the 'Treaty of Amritsar' was signed on March 16, 1846 between the Raja of Jammu Gulab Singh and the British, through which Gulab Singh became an independent autocratic ruler of Jammu & Kashmir. However, Gulab Singh acknowledged the supremacy of the British Government and in recognition of it agreed to pay annual tributes to the British.³⁰ As a result of this treaty, Jammu & Kashmir was given in the possession of Maharaja Gulab Singh and his heirs, which subsequently emerged as a Princely State ruled in succession by four autocratic rulers namely; Gulab Singh (1846-1857), Ranbir Singh (1857-1885), Pertab Singh (1885-1925) and Hari Singh (1925-1947).

The Treaty of Amritsar marked the beginning of the Maharaja's rule in Kashmir, which ended in 1947 after a series of events including the Poonch Rebellion, a popular uprising against him in one part of the State during that summer. Thereafter, intervention by Pathans (also referred to as Pashtun or Pakhtoon), tribal warriors from

³⁰ As annual tribute, the Maharaja agreed to present to the British Government one horse, twelve (shawl) goats of approved breed (six male and six female) and three pairs of Kashmiri shawls.

the northwest of Pakistan on October 22 - unofficially backed by the then government of Pakistan - paved the way for intervention by Indian troops into Kashmir on October 27, based on an Instrument of Accession (a contested document).

According to Article 1 of the Treaty of Amritsar, the British Government had transferred the mountainous country to the Maharaja, including its dependencies situated eastward of the River Indus and westward of the River Ravi. The descendants of the Maharaja continued as sovereign princes until British colonial power ended in the Indian subcontinent in August 1947.³¹ Therefore, in light of this treaty, the State of Jammu & Kashmir existed as an autonomous State under British suzerainty much before the emergence of India and Pakistan. Ruisheng confirms, 'Before Indian independence, Kashmir was a single political entity. In terms of history, geography, race, religion, etc., it had a specific character' (Cheng Ruisheng 2004, 278). A well-known Kashmiri political activist, Sardar Aftab Ahmed Khan, argued that Jammu and Kashmir was not sold; rather that sovereignty was regained by Maharaja Gulab Singh when he paid the East India Company what the defeated Lahore Darbar could not (Asad 2012, 140-146 and Khan 2011).³²

Additionally, the British had signed treaties with more than 500 Princely or Indian States, but unlike other States, the Treaty of Amritsar was unique in the sense that the British were obliged under Article 19 of this treaty to take action and provide military help to the Maharaja of Jammu & Kashmir in case of external threat to the State (Grover 1995, 94).

3.2.2 The Independence Act 1947 and Indian States

The State of Jammu & Kashmir, which later became and remains a source of conflict between India and Pakistan, was one amongst 565 Princely States in the Indian Sub-continent under British suzerainty. The Indian Independence Act 1947 had provided a constitutional framework for the division of colonized British India. The decolonization process carried out by the British resulted in two dominions emerging, in the shape of Pakistan and India. At the same time, it also triggered a crisis for some of the Princely Indian States, which were maintaining quite a distinct constitutional relationship with

³¹. See full text of Treaty of Amritsar (1846) as Annex-A

³² Interview of Aftab Khan in Rochdale, United Kingdom, Dated March 03, 2011

the British Crown unlike British India, which was directly ruled and governed by the British.

The British parliament framed the Indian Independence Act in 1947. Under its Section 7, it mentioned that when the Indian sub-continent obtained freedom on August 15, 1947, on the same day, all agreements and treaties made with rulers of all Princely States would lapse automatically. In this respect, the Indian Independence Act 1947 Section 7 (b) referred to the lapse of British suzerainty over the Indian States. It read as follows:

The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof. And all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise (Hasan 1966, 9-11).³³

Several commentators, historians and authors have attempted to explain the status of the Indian States (Princely States) through a legal and constitutional context. For example, Muhammad Ali Jinnah (the Founder of Pakistan) interpreted the Indian Independence Act thus:

Constitutionally and legally the Indian States will be independent sovereign states on the termination of Paramountcy and they will be free to decide for themselves and to adopt any course they like; it is open to them to join the Hindustan Constituent Assembly or the Pakistan Constituent Assembly, or decide to remain independent. In the last case they may enter into such agreement or relationship with Hindustan or Pakistan as they may choose (Behera 2006, 10-11).

Lamb argued that, 'At that time, there were also around 565 Princely States, large and small, which were under British suzerainty but were not directly ruled by the British Government'. According to the constitutional view, these Princely States or 'Indian states' were entirely distinct from 'British India'. Therefore, Princely States were a peculiar issue in the decolonisation process (Lamb 1991).

³³See Indian Independence Act 1947, full text available on The National Archives, United Kingdom at www.legislation.gov.uk

Britain's last viceroy Mountbatten had, during a press conference on June 4, 1947, in response to a question, clearly defined the status of Indian States and differentiated them from British India. He stated,

There is a vast difference between the legal status of British India and the Indian States. British India is territory over which His Majesty's Government has the complete right to negotiate on behalf of all, and the principle there is to do exactly what the leaders of the communities in those territories want. The Indian States have never been British territory. They have been independent States in treaty relations with the British (Hasan 1966, 5).

Therefore, as a result of the Indian Independence Act 1947, on the day of August 15, 1947 when two new dominions, namely Pakistan and India, came into being as semi-sovereign States respectively, this coincided with the lapse of British Paramountcy or suzerainty. In this respect, two connecting questions arose: firstly, what was the status of Jammu & Kashmir when British Paramountcy lapsed? Secondly, to whom was sovereign authority or right to rule vested with?³⁴ Many authors agree that the Princely States that were not specifically allocated to India or Pakistan were given the choice of accession to India or Pakistan or, in special cases, to remain independent (Hussain 1998; Bose 2003). Bose writes in *Kashmir: Roots of Conflict, Paths to Peace*, 'With the lapse of British "Paramountcy" princely states were technically free to accede to either Dominion or to become independent states' (Bose 2003, 30). Alastair Lamb writes in *Kashmir: A Disputed Legacy 1846-1990*, 'on 15 August 1947 the State of Jammu and Kashmir became to all intents and purposes an independent state. There is no other possible interpretation of the lapse of Paramountcy' (Lamb 1991, 154). Additionally, a retired Justice of the AJK High Court Majeed Malik responded to these questions thus, 'According to my opinion, on August 15, 1947 under Indian Independence Act through which Paramountcy lapsed, at the same time, right of Maharaja to rule the State of J & K also lapsed. After that he had no right to take a decision for accession of the State as he lost his right to rule, therefore, sovereign authority vested with the people of Jammu & Kashmir' (Malik 2011). In order to validate his arguments, Malik raised more questions. Let's assume that the Instrument of Accession was not fraudulent: contrary to Pakistan's official claim. Firstly, why did

³⁴ Mountbatten held a press conference on June 04, 1947 to explain the newly passed Independence Act. In response to a question about Indian States and after the lapse of Paramountcy, whether sovereignty remained vested with Princes of the States or transferred to the people of the States. Mountbatten replied that 'It is no question of parties in power. It is a question of, with whom treaties were made. This is a matter for lawyers. I must know exactly what the legal position is.' See, Hasan, K.S, 1966, pp.3-9 -.

the last Maharaja, Hari Singh, disappear and remain forever out of the picture after signing the Instrument of Accession with India? Secondly, when India took the Kashmir issue to the United Nations, no one mentioned the Maharaja, rather only Kashmir or the people of Jammu & Kashmir were referred to. No reference whatsoever was made to the Maharaja during deliberations. What does that mean? It means that according to India's official version, Hari Singh didn't exist after August 15, 1947 and only the people of Jammu & Kashmir existed and they were authorized to decide (Malik 2011).³⁵

The narrative by Majeed Malik can be further supported by the Indian official narrative stated by Nehru in a telegram sent to the Government of Pakistan. In his telegram addressed to the Prime Minister of Pakistan, the then Indian Prime Minister Pandit Jawaharlal Nehru said,

I should like to make it clear that the question of aiding Kashmir in this emergency is not designed in any way to influence the state to accede to India. Our view which we have repeatedly made public is that the question of accession in any disputed territory or state must be decided in accordance with the wishes of the people and we adhere to this view (Hasan 1966, 62-66).³⁶

According to the Indian Independence Act of 1947, under a subsection of section 7, a provision was given to the Indian States allowing them to sign a temporary Standstill Agreement until they decided which Dominion they wanted to accede to. According to this provision the Princely States were allowed temporarily, or as an interim arrangement if they wanted to do so, to maintain a relationship with either or both of the newly established Dominions of India and/or Pakistan. Under that provision, the last Maharaja of Kashmir - through a telegram - offered a Standstill Agreement to both India and Pakistan on August 12, 1947. India's response was unclear, whereby some sort of suggestion for further talks in Delhi was made but never materialised. Meanwhile, Pakistan immediately agreed to sign the proposed Standstill Agreement, albeit Pakistan didn't yet exist as a separate sovereign state at the time. Pakistan

³⁵ Interview of Majeed Malik, at his Residence in Mirpur, AJK, Dated October 28, 2011.

³⁶ (Telegram 402 Primin-2227 dated 27th October, 1947 to PM of Pakistan repeating telegram addressed to PM of UK on 25th October) See K. Sarwar Hasan, 1966, pp.62-66

came into being on August 14, 1947 and accepted the Standstill agreement on August 15, 1947 (Hasan 1966, 43).³⁷

As a consequence of the Standstill Agreement, Pakistan was involved with Jammu and Kashmir on the day it came into existence viz. August 15, 1947 (although India's involvement (interference) also existed, albeit clandestinely). The Standstill Agreement 'allowed various existing arrangements regarding economic activities and the provision of services between J&K and newly-created Pakistan, to continue until new ones superseded them'(Snedden 2012, 83). Sardar Ibrahim Khan in his book *Kashmir Saga* described it as:

The Maharaja approached both India and Pakistan for conclusion of a Standstill Agreement with two Dominions, as they then were. India demurred, while Pakistan accepted the offer and the Standstill Agreement with Pakistan came into force on the 15th of August 1947. Pakistan thus stepped into the shoes of the pre-partition government of India and acquires lawful control over the Defence, Foreign Affairs and Communications of the State (Ibrahim 1990, 48).

In this sense, one possible interpretation of this agreement can be that under the provision of the Standstill Agreement on August 15, 1947, Pakistan had replaced the role that the British Indian Government was performing regarding J&K State, namely that J&K was under the suzerainty of the British. However, by contrast, Schofield argues that, 'The objective of the Standstill Agreement was to ensure trade, travel and communication to the State of Jammu & Kashmir from India and future Pakistan in the same way as they had with British India' (Schofield 2010, 40). Meanwhile, during the armed struggle by the Poonch Rebels and tribal Pathans from North West Frontier Province (NWFP), the Maharaja's Government had repeatedly complained that the Government of Pakistan was violating the terms of the Standstill Agreement by cutting postal services and food supply amongst other essential items and by allowing tribal men to enter into the state of Jammu & Kashmir for the purpose of fighting.³⁸

³⁷ See also, Indian Independence Act 1947, full text available on The National Archives, United Kingdom at www.legislation.gov.uk p-5

³⁸ See, telegram correspondence which was exchanged regarding Standstill Agreement between Government of Jammu & Kashmir and Government of Pakistan in K. Sarwar Hasan 1966, pp. 43-54. See also in Korbel 1954, pp.65-66

3.2.3 The Sovereign and Independent Period: 10 Weeks Interregnum

The foregoing discussion revealed that the partition plan of June 1947 was about the division of British India essentially based on the 'Two-Nation Theory'³⁹ and that the Indian Princely States were free to join either the Dominion or remain independent. Moreover, on August 15, 1947 the State of Jammu & Kashmir, technically and legally, became a sovereign State in its own right. However, this independence lasted for only 73 days. This 73 days interregnum was highly critical in the history of Jammu & Kashmir as many significant historic events occurred, which either provided legitimacy or de-legitimacy regarding the role of India and Pakistan with regards to Kashmir. Tanveer Ahmed, writer, broadcaster and activist, regards this period as one full of intrigue committed in various shapes and forms by both India and Pakistan to lay claim to the state, and whereby Britain - at the very least - turned a blind eye to whatever happened, in effect dishonouring the spirit of the 3rd of June Indian Independence Act (Tanveer Ahmed 2011).⁴⁰ Another view, put forward by Sardar Aftab Khan, is that most people unfortunately re-collect this independent and sovereign period of J&K (August 15, to October 27, 1947) through either an Indian or Pakistani narrative. Consequently, a genuine Kashmiri national narrative about this crucial time period in our history is either absent or little-known (Khan 2011).⁴¹

In this process of deciding the future status of Princely States according to the Indian Independence Act of 1947, many a political and diplomatic intervention was made to convince the Maharaja to decide either to join India or Pakistan. Again, in the view of Tanveer Ahmed, this goes against the spirit of the Act, as Princely States - J & K being the largest, arguably (though relatively more politically evolved but certainly unique in the sense that it shared borders with both India and Pakistan as well as with Soviet Russia and China) - had the option of maintaining their independence. This is what the Maharaja wanted and it was never clear or apparent that the population of J & K was ever opposed to that. Nevertheless, in order to convince the Maharaja, Muhammad Ali

³⁹ The Two Nation Theory was the basis for partition of the Indian sub-continent in 1947. It states that Muslims and Hindus were two separate nations by every definition. The basic concept was loosely floated by Allama Iqbal, a poet and philosopher, and later promulgated by Muhammad Ali Jinnah, but secular Indians rejected it. See, Bowers, Paul, 2004. Kashmir, Research Paper 4/28, International Affairs and Defence, House of Commons Library, United Kingdom <http://www.parliament.uk/documents/commons/lib/research/rp2004/rp04-028.pdf>

⁴⁰ Interview, October 2011

⁴¹ Interview, Aftab Khan, in Rochdale, United Kingdom, Dated March 03, 2011

Jinnah, Nehru, Gandhi and Mountbatten all visited Kashmir at different intervals, as part of their political manoeuvring in Kashmir. Victoria Schofield notes:

In the weeks following independence, despite the signature of the standstill agreement with Pakistan, political manoeuvring was taking place on all sides. Both Pakistan and India were actively trying to determine events so that Kashmir would accede to their respective Dominions (Schofield 2010, 43).

Snedden also confirmed that,

Some or all of them were applying pressure to Hari Singh, either directly through consultations or visits (India, particularly, and the British) or subtly through activities such as economic blockade (Pakistan), cross-border military activity (Pakistan) and internal politicking (Muslim Conference and National Conference) (Snedden 2012, 12).

On July 25, 1947, Viceroy of India Lord Louis Mountbatten called a conference for the rulers of Princely States where he emphasised that before August 15, 1947, they all had to decide in their respective capacities as rulers, as to whether they wished to join either India or Pakistan. All did so promptly except the rulers of three Princely States: Junagarh, Hyderabad and Jammu & Kashmir.

As part of persistent political manoeuvring, Mountbatten felt compelled to visit Kashmir and he stayed there for three days. His mission was to convince Maharaja Hari Singh (the then ruler of J & K) to take a decision on accession before the given deadline, August 15, 1947. However, the Maharaja was intent on maintaining the independence of his state irrespective of any deadline to commit otherwise. Meanwhile, the instigators of the Poonch Rebellion, who were fighting intermittently against the Maharaja's forces since June, also gradually began to receive military assistance from covert sources coming from the area that became Pakistan, which by October 22, transformed into overt aggression in the shape of assistance from the tribal Pathans, who entered the state from various routes linking it to Pakistan. The armed struggle by Poonch Rebels and in particular tribesmen incursions, which was not only a violation of the Standstill Agreement between the Government of Jammu and Kashmir and the Government of Pakistan but also adversely impacted the indigenous nature of people's struggle in the form of the 'Poonch uprising', made the Maharaja feel compelled to seek help from the Viceroy cum Governor General of India. Mountbatten in response set a condition that the Government of India would only be able to provide military assistance subject to a legal agreement between the State of

Jammu & Kashmir and India. The Maharaja, with limited or no alternative and even less time, entered into an agreement which the Indian Government refers to as the 'Instrument of Accession'. This agreement was conditioned by a referral to the free will of the people once conditions were normalised. This implies that any agreement made was in essence provisional but most certainly influenced by circumstances, though nevertheless it implied that ultimate authority rested with the people of Jammu & Kashmir (Korbel 1954; Lamb 1991; Malik 2011).

3.2.4 Poonch Rebellion, Tribal Invasion and the Issue of Accession

At the time of partition in 1947, the Princely State of Jammu and Kashmir was ruled by a Hindu ruler with a majority of Muslim subjects. The instrument of accession by the Maharaja with the Union of India which (according to the Indian narrative) took place on October 26, 1947 has been contested by many historians (e.g Lamb 1991). Many studies (Bose 2003; Korbel 1954; Lamb 1991) also revealed that the Maharaja didn't want to join Dominion but rather wanted to maintain the independent status of Jammu & Kashmir, albeit he was open to negotiating a quantum of power transfer to his subjects. The reluctance (tacit or even outright refusal) of the Maharaja to take any decision led him to offer a standstill agreement with both India and Pakistan as an interim arrangement, to stall the advances of both countries or until he took a final decision.

The Muslims of Jammu & Kashmir - on their part - had been struggling politically against the autocratic rule of the Maharaja for political and civil rights since the early 1930s.⁴² By June 1947, 'a no-tax' campaign was launched in Poonch, which rapidly developed into a Muslim armed uprising led by the Sudhan tribe⁴³ on August 8, 1947 against the regime of Maharaja Hari Singh. This uprising, known as the 'Poonch

⁴² Snedden described the autocratic practices of the Raja of Poonch and Maharaja of Jammu & Kashmir through which Muslims, not Hindu or Sikhs, were forced to pay a number of taxes. He states, 'There was a Tirni Tax - 1.4 rupees on every cow and rupees 1 on every buffalo; the Bakri tax of 10 annas per sheep and 4 annas per goat; the chula tax of 8 annas on every hearth; the Widow tax of 4 annas per widow, the Zaildari tax of one and half paise per rupee, import and export tax 75 per cent on toilet soap and silk; and horse tax - 50 per cent of total purchase price.' See Snedden (2012), p.30 and Korbel (1954), p.68

⁴³ The Sudhan clan is the second largest tribe after the *Gujjars* in AJK and they claim their roots from Afghanistan. Sardar Ibrahim wrote about Sudhans in *Kashmir Saga* (1990) that, 'In fact they were the first to challenge the Maharaja and his armies all over the State. All other tribes big or small joined them later', p. 87. Moreover, Lamb (1991) and Snedden (2012) also discussed and testified to the role of the Sudhan tribe in instigating the Poonch Rebellion.

rebellion',⁴⁴ was a people's resistance movement for social justice, political freedom and a representative government. Poonch had been historically administered as a fiefdom within the State of Jammu & Kashmir and there were a large number of local people from Poonch and Mirpur regions who were ex-British Indian army servicemen (Lamb 1991). Aftab Khan argued that the people's resistance movement in Poonch had two dimensions: one political and the other rebellious. At that time, the leaders of the movement had demonstrated political maturity by inviting the Maharaja to Rawalakot and made their right to political and democratic dissent clear to the Maharaja. He had been invited by Khan Mohammad Khan, a member of the *Prajha Sabha* (the then partially elected assembly), along with other leaders of the World War II veterans from Poonch, to remind him of the importance of taking into account the wishes of the local people before making any decision about the future status of J&K state after partition of the Indian sub-continent (Lamb 1991; Khan 2011).⁴⁵ However, when the Maharaja left Rawalakot, his forces started violating fundamental human rights, which resulted in an active people's resistance movement (Aftab Khan 2013)⁴⁶

By October 22, 1947, armed tribal Pathans from the North West Frontier of Pakistan intervened and entered into Kashmir, presumably to bolster the indigenous Poonch rebellion. Their involvement was a clear and further violation of the Standstill Agreement between the Government of Jammu & Kashmir and the Government of Pakistan, which also breached international law as asserted by Snedden, 'Hostile elements (Pakistani Pukhtoons) breached international law by invading J&K in October 1947' (Snedden 2012, 77).

However, the Indian narrative, which was heavily propagated in academic circles, asserted that tribesmen with the official support of the then Government of Pakistan invaded Jammu & Kashmir had actually triggered the conflict and forced the Maharaja to accede with India. In this respect, in most of the academic work written by Indian writers or according to India's official version, the Poonch Rebellion was totally ignored. Christopher Snedden in his recent seminal work *The Untold Story of The People of Azad Kashmir* (2012) revealed that rather than the tribal invasion, it was the

⁴⁴ See more on Poonch Rebellion vividly described in: B.S. Singh, *The Jammu Fox. A bibliography of Maharaja Gulab Singh of Kashmir 1792-1857*, Carbondale, Illinois, 1974, pp. 12-13 cited by Lamb (1991).

⁴⁵ Interview Aftab Khan, Rochdale, United Kingdom Dated March 03, 2011. Moreover, details of the Maharaja's visit to Rawalakot is also discussed in *Kashmir Fights for Freedom* (Vol.II) by Yusuf Saraf 1977, pp.783-804

⁴⁶ Ibid, Aftab Khan

Poonch Rebellion against the Maharaja's regime along with massacres of Muslims in Jammu, which initiated conflict and armed struggle, subsequently resulting in division of the state of Jammu & Kashmir. Snedden argues that, 'By focusing on the Pukhtoons' invasion, India deliberately neglected the highly significant role that the people of J&K played in Jammu Province in 1947' (Snedden 2012, 37-77). Tanveer Ahmed argues that, although Snedden rightly points to the need to historically acknowledge the Poonch Rebellion (significant, but one amongst a sequence of events that ultimately led to J & K's division), in my opinion he overstates the case, as Pakistan (just like India) would have done whatever they deemed necessary to take over Kashmir. For example, the anxiety of large Punjabi land-owners about the control of Kashmiri water flowing into the Punjab (particularly its implications for agricultural production) made them exert pressure over Liaquat Ali Khan to invade (Tanveer Ahmed, 2013).⁴⁷

As for the religious violence in Jammu, which resulted in the massacre of Muslims in Jammu, there are conflicting accounts as to whether they began before or as a consequence of the tribal raid which took the lives of many non-Muslims in Muzaffarabad (AJK).⁴⁸ However, Zafar Choudhary, a Jammu-based journalist, revealed that there was some religious violence in Jammu long before the tribal raid. He notes:

Contrary to the popular beliefs and post- 1947 national view on the making of Kashmir conflict, some of the violence in Jammu province was in eruption months before—as early as March-April—the tribal raid of October. The tribesmen did come to support of Poonch rebels but that was months later (Zafar Choudhary 2012, 34).

A recent article published in *Daily Kashmir Reader* by Abdul Majid Zargar, who quoted from *Looking back the autobiography of M.C. Mahajan*, a former Chief Justice of India, *Sardar Patal's Correspondence* by Durga Das, and Prem Shankar Jha's *Origin of a Dispute: Kashmir 1947*, revealed that Maharaja of Kashmir had already made his mind to join the Union of India by the end of August, but he was only waiting for an appropriate moment. Zargar notes:

There is now abundant evidence to suggest that following Gandhi's visit to Kashmir, Hari Singh had by the end of August 1947 decided to join India. All he was waiting for was an 'auspicious occasion' to do so. And to this point of time there was neither any plan nor indication of any tribal incursion into Kashmir (Zargar 2013).

⁴⁷ Interview Tanveer Ahmed

⁴⁸ For a more detailed account, see *Wounded Memories* by Saeed Asad and in particular Foreword written by Professor Dr. Sabir Affaqi pp-6-8

There have been several historical references to the uprising in Poonch. Several documents that do discuss the uprising against the Maharaja, known as the 'Poonch Rebellion', attribute the subsequent establishment of a provisional government of Azad Jammu & Kashmir on October 24, 1947 to it (for example, see Snedden 2012, Saraf 1977, 1978, Korbelt 1954, Ibrahim 1990, Schofield 2010, and Alastair Lamb 1991). Further, Josef Korbelt in his book *Danger in Kashmir*, which is widely cited by historians, claimed,

Whatever the validity of the mutual accusations, there is little doubt that Kashmir was brewing with revolt against the Maharaja long before the tribesmen invaded the country. The political opposition launched in 1930 was transformed into an open resistance in 1946. This was resumed in the spring of 1947, and it reached a critical climax in the summer when the news of the fratricidal struggle in Punjab echoed through Kashmir (Korbelt 1954, 66).

Lamb argues that the tribal intervention into Kashmir and the Indian intervention were conferred by invitation from the parties involved: the Poonch rebels sought help from tribesmen and Maharaja sought help from India (Lamb 1991, 154-155). Therefore, it should be remembered that resistance to Dogra rule only intensified and succeeded with the involvement of both neighbouring countries, India and Pakistan.

The Poonch Rebels also established a provisional Azad (Free) Government on October 24, 1947, denouncing the Maharaja's authority two days prior to the signing of the Instrument of Accession on October 26, 1947. Moreover, the Poonch Rebels aided securing control over a third of the total area of Jammu & Kashmir. The Maharaja felt resigned in turning to India for support in fighting the 'Poonch rebellion', considerably augmented by tribal invaders, consequently signing a controversial 'Instrument of Accession' in return for India's support to confront Pakistani backed forces. The Maharaja's eligibility or authority to sign the said document with India was refuted by Pakistan on the grounds that: firstly, according to the partition plan Muslim majority areas would go to Pakistan; secondly, the alleged instrument of accession was based on violence and fraud and signed in circumstances that were deliberately created with the object of finding an excuse for the State's accession to India; and thirdly, the Maharaja had fled the capital and was therefore no longer the ruler of Kashmir. Moreover, the famous writer Alastair Lamb and Ijaz Hussain have raised many

objections to the originality and validity of the Instrument of Accession.⁴⁹ Josef Korbel (one of the members of UNCIP) writes in *Danger in Kashmir* (1954), 'The Maharaja's last-minute decision was, as history would indicate, no decision at all. It was only a final manoeuvre - a last vacillation' (Korbel 1954, 64). In a similar vein, Alastair Lamb stated, 'the Maharaja by 26/October 27, 1947 was no longer competent to sign any Instrument of Accession because he had to all intents and purposes been overthrown by his own subjects' whereby the Poonch Rebels achieved effective control in the area of Poonch while Gilgit Scouts achieved likewise in Gilgit Agency. Therefore, the Maharaja's rule was replaced by the newly established Azad Kashmir Government on October the 24, 1947 (Lamb 1991, 150-151).

Some authors (e.g. Lavakare 1999, Mahaptra, D. Aurobinda and Shekhawat 2008, 15) claimed that the accession was unconditional, voluntary and absolute. However, Bose claimed (correctly) that India and Kashmir's last Maharaja had agreed only to temporary accession and that at the end of hostilities a referendum would determine the final status of Kashmir (Bose 1997, 27). It is also confirmed in many studies (Lamb 1991, Hussain 1998, Korbel 1954) that the Instrument of Accession was absolutely conditional subject to ratification by the people of Jammu & Kashmir, once the law and order situation had returned to normalcy. In this respect, evidence can be found in correspondence between Lord Mountbatten and the Maharaja of Kashmir. Mountbatten had replied to the Maharaja's letter on October 27, 1947. He states,

In the special circumstances mentioned by Your Highness my Government has decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any state, where issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State. It is my Government's wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people (Hasan 1966, 57).

A.G Noorani in his recent article, Kashmir's Accession to India is strictly 'conditional', argues, 'A hyper-technical stand has been consistently and dishonestly adopted by India in respect of the State of Jammu and Kashmir'. The letter by Mountbatten in

⁴⁹ See for exemple, Lamb, Alastair 1991, pp-121-157, Lamb (1997), and Hussain Ijaz 1998, pp.54-58

response to Maharaja clearly indicates that accession was a subject of ‘dispute’. Further, ‘Mountbatten’s letter was a collateral document which formed an integral part of the Instrument of Accession and rendered the accession conditional on the ascertainment of the “the wishes of the people” of Kashmir and the will of people on the question of final accession were ascertained when conditions allowed this to be done’ (Noorani 2013). Additionally, a study of the instrument of accession, which consists of nine articles, clearly indicates the state of Jammu & Kashmir did not merge with the Union of India, but rather it was a provincial accession with certain conditions.⁵⁰

Additionally, Lamb, Korbel and Schofield also raised concerns on the precise signature timing of the alleged instrument of accession.⁵¹ Taking into account concerns by these historians, it appears that the Instrument of Accession, if ever signed, was not done so on October 26, 1947. However, India cited this to justify her military intervention on October 27, 1947, which in India’s view, followed the Instrument of Accession when Indian paramilitary forces landed at Srinagar airport (Lamb 1991; Schofield 2010; Korbel 1954). In this respect, Lamb indicated that Patiala forces, which were subordinated to the Commander-in-Chief of the Indian army, were in Jammu & Kashmir state before the tribal advance to 22 October, 1947. He asserted,

The Indian troops arriving at Srinagar airport on 27th October 1947 found other Indian troops, in the shape of the Patiala men, already established there and elsewhere in the State. The Patiala forces had arrived, it seems, on about 17 October 1947, that is to say *before* the tribal crossing of the Bridge at Domel on 22 October (Lamb 1991, 154).

Nazir Gillani argued,

The 10 week interregnum between the creation of India and Pakistan on August the 15th 1947 and the Maharaja’s accession to India on October the 26th 1947, the people of Jammu and Kashmir lost their ability to deliver themselves in entirety to independence, accession to India or to Pakistan

⁵⁰ Full text of Instrument of Accession see as Annex-K

⁵¹ For example, Victoria Schofield author of *Kashmir in Conflict: India, Pakistan and the Unending* (2010) has indicated that Hari Singh did not reach Jammu until the evening of October 26, and that, due to poor flying conditions, V P Menon was unable to get to Jammu until the morning of October 27, by which time Indian troops were already arriving in Srinagar. See BBC Report, http://news.bbc.co.uk/2/hi/south_asia/1762146.stm. Also Lamb (1991) also raised serious concerns over the precise timing signature of Instrument of Accession

and same prevails in the context of current division of the former State of Jammu and Kashmir (Nazir Gilani 2013).

It appears that the authenticity of the Instrument of Accession has always been in question, there remains no scholarly consensus on this point and it continues to be a main bone of contention in the conflict.⁵² Moreover, at the time the British Paramountcy came to an end, the State of Jammu & Kashmir became independent on August 15, 1947.

3.2.5 Kashmir: United Nations' Resolutions and Self-Determination

Following the growing tension and armed struggle against the Maharaja within the state, India and Pakistan went to war over control of the territory in 1947. The Indian government decided to put the case to the UN Security Council and lodged a complaint on January 1, 1948. The Security Council passed a resolution on January 17, 1948, calling on India and Pakistan 'to refrain from making any statement and from doing or permitting any acts which might aggravate the situation'. In a fresh resolution passed on January 20, 1948, a five member UN Commission for India and Pakistan (UNCIP) was appointed to investigate the facts related to this question and perform a mediatory role (Hasan 1966).⁵³

On August 13, 1948, UNCIP passed its first resolution comprised of three parts. Part 1 dealt with the establishment of a cease-fire, Part 2 with the truce agreement, and Part 3 with the determination of 'the future status of Jammu & Kashmir in accordance with the free and impartial will of the people'. Part-1 and 2 stated:

1. The Government of Pakistan should undertake to use its best endeavors:
 - a. To secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purposes of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;
 - b. To make known to all concerned that the measures indicated in this and the following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste, or party, to express their views and to vote on the question of the

⁵² Since the publication of Alastair Lamb's work, *Kashmir: A Disputed Legacy 1846-1990* (1991) and *Kashmir, 1947: The Birth of a Tragedy* (1992), the Instrument of Accession has become a subject of controversy. Lamb, in his work, has raised serious objections on the precise timing of Kashmir's accession. In response to Lamb's objections, for an Indian rejoinder see, Prem Shankar Jha, *Kashmir, 1947: Rival Versions of History* (1996).

⁵³ See full text of a letter of the representative of India addressed to the president of the Security Council (SC) on January 01, 1948 (S/628) in K. Sarwar Hasan 1966, pp. 107-113. Resolution adopted by the Security Council on January 17, 1948 (S/651) and resolution adopted on January 20, 1948 (S/654), and draft resolution February 06, 1948 (resolution (S/667), resolution adopted by the SC April 21, 1948 (S/726), pp. 160-163. Also available on <http://www.un.org/en/sc/documents/resolutions/index.shtml>

- accession of the State, and that therefore they should co-operate in the maintenance of peace and order.
2. The Government of India should:
 - a. When it is established to the satisfaction of the Commission set up in accordance with the Council's Resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order (UNCIP Resolution August 13, 1948).⁵⁴

Chandran Suba argued that Pakistan was acknowledged as an aggressor in Kashmir under Indian complaints, thus the formation of subsequently adopted resolutions. He notes, 'A remarkable UNCIP decision on 13 August 1948 called for an immediate cease-fire and asked for withdrawal of Pakistani troops and tribal invaders from the disputed area' (Chandran 2001, pp.1-23). Notwithstanding that assertion, Ijaz Hussain points out, 'It is noteworthy that the Indian complaint was based on article 35 of Chapter VI of the UN Charter which relates to "specific settlement of disputes" and not Chapter VII, which deals with the act of aggression' (Hussain 1998, 11). However, the U.N resolutions called on the Government of Pakistan to withdraw all its forces and tribesmen that had entered into the territory of the State of J & K for the purpose of fighting, whereas the Government of India was asked to withdraw the bulk of forces and to retain minimum strength for the plebiscite. It neither recognised Pakistan as an aggressor as desired by India, nor did it clarify the legal aspect of Kashmir's accession to India.

The second (and final - to date) UNCIP resolution was passed on January 5, 1949 in which several operative terms for a plebiscite to gauge the free will of the people of Jammu & Kashmir were defined. It also mentioned in Article 3 (a) that with the consultation of the Commission (UNCIP), The Secretary General of the United Nations will nominate a plebiscite administrator. It stated,

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;
2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948, have been carried out and arrangements for the plebiscite have been completed;
3. (a) The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally

⁵⁴ Full text of resolution on August 13, 1948, See as Annex-D.

appointed to office by the Government of Jammu and Kashmir (UNCIP resolution 1949).⁵⁵

In 1950-51, UNCIP reported its failure to resolve the Kashmir issue to the Security Council. The Council in turn appointed Sir Owen Dixon and assigned him a mediatory role between both parties. After detailed study of the issue, he stated that a plebiscite as proposed by UNCIP could never be held in Kashmir and proposed the division of the state in three alternate ways. Both India and Pakistan rejected the Dixon Plan, though for different reasons. Later, the Security Council on April 30, 1951 appointed Dr. Frank Graham as UN representative for India and Pakistan. Graham visited India, Pakistan and the Kashmir region and held negotiations with all parties by presenting different options and a way out for a plebiscite to be held to know the 'free will of the people' of Kashmir. However, Dr. Frank Graham could not bring the conflicting parties to a mutually acceptable agreement.

In 1954, the Constituent Assembly of Jammu and Kashmir (Indian-Administered Kashmir) ratified the controversial accession to India. In 1956, it also passed a part of the constitution defining the State of Jammu and Kashmir as an integral part of the Union of India. India cites these as reasons for not needing to hold a plebiscite, arguing that the Constituent Assembly is representative of the people of Jammu and Kashmir. However, Sumantra Bose has argued,

The Security Council resolutions - notably those of March 1951 and January 1957 - are unequivocal that such participation and representation could not be regarded as a substitute for an internationally supervised plebiscite (Bose 2003, 166).⁵⁶

The U.N Security Council resolutions reinforced the need for a free and impartial plebiscite conducted under the auspices of the United Nations to settle the status of Jammu and Kashmir.

Legal interpretations of UN Resolutions on the Kashmir question invoke varying opinions on whether they restrict the Kashmiri people's choice to accession either with India or Pakistan, or indeed if their choice extends to the possibility of independence

⁵⁵ This resolution was based on the Commission's proposal of December 11, 1948. See full text of resolution on January 05, 1949, See as Annex-E

⁵⁶ In addition, the ratification of the accession by the constituted legislative assembly in Srinagar was duly rejected by UN Security Council Resolution No.91 (1951) Document No.S/2017/Rev.I Dated March 30, 1951 and Resolution No.122 (1957) adopted by U.N Security Council at its 765th Meeting on 24 Jan.1957.

(sometimes derisively referred to as the third option). The first resolution passed on August 13, 1948 provides a primary reference point in the UN Security Council's attempt to resolve the Kashmir question wherein it mentions the 'future status of Jammu & Kashmir'. The latter UNCIP resolution passed on January 5, 1949 stated, 'The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite'.

Comparing the two resolutions (drafted by the same conflict resolving mechanism viz. UNCIP) there is one difference that is worthy to note. In the first resolution passed on August 13, 1948, it states 'the future status of Jammu & Kashmir is subject to the free will of the people of the disputed state of Jammu & Kashmir', which indicates open-endedness and is thus interpreted as a possibility of independence for J&K. However, in the second resolution passed on January 5, 1949, it mentions 'the question of the accession of the State of Jammu and Kashmir to India or Pakistan', reflecting the limitation of the people's choice to between India and Pakistan. Further, it shows that these resolutions entail a singular notion of self-determination either to join Pakistan or India, if a plebiscite ever were to occur. In the case of Kashmir, a singular notion promulgated in the legal context of the Kashmir conflict raises a pertinent question. According to Nevenda Chada Behera, who wrote extensively on the Kashmir conflict, the second UNCIP resolution adopted on January 5, 1949 regarding holding a referendum limited the Kashmiri people's choice to joining either India or Pakistan, which entails a 'singular notion of the right to self-determination and ruled out independence, framed the Kashmir issue as an India-Pakistan conflict and played down the question of people's "political" rights' (Behera 2006, 104).

In the given context, it seems pertinent to approach the concept of self-determination defined by various scholars in a legal context. In general, the 'right of self-determination is the right of people to choose their own destiny'. Ijaz Hussain says, 'The right to self-determination is one of the most confused expressions in the lexicon of international relations' (Hussain 1998, 141). Professor Danspeckgruber, Founding Director of the Liechtenstein Institute on Self-Determination at Princeton University, has articulated the concept of the right to self-determination, 'No other concept is as powerful, visceral, emotional, unruly, and as steep in creating aspirations and hopes as self-determination' (Wolfgang F. Danspeckgruber 2002).

The right of self-determination of people is a fundamental principle in international law, and embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights; Common Article 1, paragraph 1 of these provides ‘All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.⁵⁷ More specifically, ‘the right to self-determination means the right of the people to determine their destiny without any external forcible interference in order to develop their economic, political and cultural systems’ (Robert T. Coulter 2010). Malcolm N. Shaw (Sir Robert Jennings) Professor of International Law, in his article ‘Peoples, Terrorism and Boundaries’, argues that,

Self-determination became the legal principle that fuelled the decolonization process, both obligating the colonial powers to grant independence (or other acceptable political status) and endowing the territory in question with a special status and, thus, international legitimation (Malcolm N. Shaw 1997).

In a more political sense, ‘the right to self-determination is the right of a nation to constitute itself as an independent state; or as a separate political entity; or freely determine its mode of association with an existing state’. Thus, ‘the concept of self-determination covers a wide range of options that a nation can choose from’ (Robert T. Coulter 2010). Salvatore Senese has divided the concept of self-determination into external and internal self-determination. On external self-determination, Senese argues,

This right embodies what is called external self-determination: that which concerns the international status of a people. It can be summarized as the recognition that each people has the right to constitute itself a nation-state or to integrate into, or federate with, an existing state (Salvatore Senese 1989, 19).

On the interpretation of internal self-determination, Senese argues,

This is the right of peoples to self-determination once they have achieved statehood (or state-like formation). The right to internal self-determination means only that other states should not, through appeals or pressure, seek to prevent a people from freely selecting its own political, economic, and social system (Salvatore Senese 1989, 19).

⁵⁷ See, the International Covenant on Civil and Political Rights, available at www.hrweb.org/legal/cpr.html and the International Covenant on Economic, Social and Cultural Rights, available at www.hrweb.org/legal/escr.html

Senese further reinforces his arguments by mentioning Article 7 of the 1976 Algiers Declaration, which affirms these two expressions of self-determination (external and internal) as inseparable aspects of the same principle: 'self-actualization of human being and of his or her freedom, within the organization of collectivises where they are found' (Salvatore Senese 1989, 19-20). Article 7 of the Universal Declaration of the Rights of Peoples states: 'All people have the right to a democratic regime representing all citizens without regard to race, sex, creed or color, capable of ensuring effective respect for human rights and fundamental liberties for all'.⁵⁸ The provision in this Article stipulates the fundamental rights of all people as equal and liberates men and women (Salvatore Senese 1989, 20).

Karen Parker, a San Franciscan based attorney who practices human rights and humanitarian law, has explained the notion of self-determination under the Decolonization-Colonization Mandate. She has categorised it into two different situations; first, perfect decolonization and second, imperfect decolonization. In the case of Kashmir, Parker considers it an 'imperfect' decolonization process in which the United Nations also became involved. Therefore, 'the disposition of Kashmir has not been legally decided. It is not part of any country and yet we have the failure today of the realisation of the expression of self-determination of the Kashmir people' (Parker 2000). Notwithstanding that clarification, Dr. Nazir Gilani concludes that,

There are opinions at variance in regard to the jurisprudence of UN Security Council and UNCIP resolutions. It is argued that the reference is limited to accession of either of the two [*India and Pakistan*]. Both countries along with the United Nations agreed to consult the people of Jammu and Kashmir to decide their future. There are others who argue that holding title to self-determination under the UN Charter involves 'equality of people' and includes the right to independence as well. In addition to this the equality of the people of Kashmir as being 'equal' to any other people and their unfettered choice is settled by the Union of India in its submissions to the UN Security Council. [*Therefore*], the people of Kashmir should follow the common principle of self-determination [*as envisaged in the UN Charter*] (Nazir, Gilani 2013).⁵⁹

⁵⁸ The Universal Declaration of the Rights of Peoples, which was formulated in 1976 at Algiers, was adopted by a group of non-governmental actors. See, http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm

⁵⁹ Emphasis is mine

3.3 The Territory and the Politics

The scope of this study is to examine the challenges and prospects for democracy and governance in disputed territories, with specific focus on AJK. However, I have tried to briefly unfold a discussion on the emergence of the modern state of Jammu & Kashmir, the constitutional position of Princely States under the Indian Independence Act of 1947, UNCIP's resolutions, and events that took place during the de-colonisation process. The objective was to develop a reasonably thorough and contextualised background for easing further understanding of the subsequent interconnected discussion: that of constitutional and political developments in Azad Jammu & Kashmir (AJK).

3.3.1 Azad Jammu & Kashmir: 1947-1970

This section deals briefly with political and constitutional developments that took place from October 24, 1947 (birth date of AJK) to 1970. The political and constitutional evolution during this period is very important to understand, as it provides a reference point for subsequent discussion.

At the time of the formation of the Provisional government of AJK on October 24, 1947, no constitutional apparatus was in existence. Initially, the Government of AJK established its capital at Junjaal Hill, Pallandri (District headquarters later renamed as Sudhnuti) in the Poonch region of AJK. Victoria Schofield notes, 'In the midst of the tribal invasion of 1947, on October 24, the rebel Kashmiries had set up a government in exile'. The Azad government was initially formed as a 'War Council' led by Sardar Ibrahim Khan and confirmed two objectives ahead: Firstly, to struggle for the liberation of those parts of the state of Jammu and Kashmir that were still not under their control; secondly, to provide administration to the territories which were under their control (Schofield 2010, 89). The working committee of the Muslim Conference (the oldest political party of J&K) unanimously appointed Sardar Muhammad Ibrahim Khan as the President of the Government of Azad Kashmir (Rose 1992, 237). This was a government established parallel to the Maharaja's government and claimed itself to be the rightful successor of a dethroned Maharaja Hari Singh.

According to retired jurist Manzoor Gilani, administration and governance of AJK including Gilgit-Baltistan (GB) was entrusted to Pakistan under the UNCIP resolutions and thus the Government of Pakistan is responsible for providing governance mechanisms and processes to the 'liberated' parts (AJK and GB), until the final resolution of the Kashmir conflict (Gilani 2010).⁶⁰ However, another retired jurist Majeed Malik (incidentally, more senior) rejected this proposition outright, arguing that the Government of Pakistan holds no liability for Kashmir, as it is written nowhere in UNCIP resolutions. In actual fact, Pakistan's responsibility under the UNCIP resolutions is to evacuate all its troops and other Pakistani citizens who entered Kashmir for the purpose of fighting after August 15, 1947. In fact, this is a condition and pre-requisite for a plebiscite. Thereafter the assigned plebiscite administrator will issue a certificate that all Pakistani troops have evacuated the State of Jammu and Kashmir. Following that, these evacuated areas will be administered by local authorities under the commission's surveillance (Malik 2011).⁶¹ Dr. Nazir Gilani maintains, 'Pakistan has assumed a duty under UNCIP Resolutions to oversee the areas on its side of LoC. It is a provisional duty to prepare the people of the area for a final consultation' (Nazir Gilani 2013). Pakistan's official position has been that until a plebiscite as promised by the United Nations, it will continue to administrate Azad Kashmir and Gilgit-Baltistan, since only a plebiscite can determine the will of the people of Jammu & Kashmir (Snedden 2012, 84).

3.3.2 Significant Political and Constitutional Developments

Here, this study will highlight some significant political and constitutional developments in AJK since its inception in 1947 and its evolving power-sharing relationship with the controlling nation-state Pakistan. The study of history indicates that volumes can be written on the issues mentioned above; nevertheless, this section aims to take a chronological overview of the period from October 24, 1947 to 1970 to gain insight for building a framework for further discussion.

3.3.3 1947-1960: The Formative Phase of Power-Sharing

The provisional Azad Kashmir government established on October 24, 1947 functioned without any legal or constitutional framework under the banner of the Working Committee of the Muslim Conference (MC) and with the support of the then Pakistani

⁶⁰Interview, Manzoor Gilani at his residence in Muzaffarabad, AJK, October 22, 2010

⁶¹Interview, Majeed Malik at his Residence in Mirpur, AJK, October 28, 2011

government, until April 1949. Initially, the provisional Government of AJK defined itself as a 'War Council' whose sole aim was declared to be to liberate the parts of the state remaining under Indian control. This government worked on an *ad hoc* basis until the ceasefire agreement was signed between India and Pakistan on January 1, 1949 (Mahmud 2007, 109; Rose 1992, 237). In March 1949 an important step was taken by the Government of Pakistan that resulted in the establishment of a separate Ministry of Kashmir Affairs. Its purported aim was to look after - initially - matters related to the Kashmir dispute and subsequently to take administrative control over affairs related to Azad Kashmir and Gilgit-Baltistan.⁶²

3.3.4 Karachi Agreement: An Initial Power-Sharing Framework

On April 28, 1949 an initial agreement was signed between the provisional government of AJK and the government of Pakistan, commonly known as the Karachi Agreement.⁶³ There were three parties to this agreement: Firstly, the Government of AJK, secondly, the Muslim Conference (MC) and thirdly, the Government of Pakistan. Sardar Ibrahim attended as President of the AJK Government, Choudhary Ghulam Abbas as Supreme Head of the AJK Government as well as President of the Muslim Conference and Mushtaq Gurmani, Minister without Portfolio represented the Government of Pakistan. The Karachi Agreement (1949) was the first power-sharing agreement through which roles and responsibilities of both the AJK government and Pakistan's government were defined and distributed. According to this agreement, matters related to defence, foreign policy, negotiations with UNICP and all affairs of Gilgit-Baltistan⁶⁴ were handed

⁶² The abbreviation MKA or MKANA stands for Ministry of Kashmir Affairs (short version) and Ministry of Kashmir Affairs and Northern Areas (MKANA). These different abbreviations are used for the same Ministry interchangeably. However, MKA has recently been renamed as the Ministry of Kashmir Affairs and Northern Areas (MKANA).

⁶³ Snedden (2012) indicated that the Karachi Agreement was either a secret or poorly reported document. However, it was reproduced in the High Court of Azad Jammu & Kashmir in 1993 when a petition was filed to determine the status of Gilgit-Baltistan (previously known as Northern Areas), p. 342 endnote. Retired Justice Majeed Malik disclosed to this author that no one was authorised to sign and hand over Gilgit-Baltistan to Pakistan. In this regard, when a petition was filed whilst he was serving as Chief Justice in the High Court of AJK, he made a legal decision ordering the Government of AJK to re-take control of Gilgit-Baltistan from Pakistan. See, *verdict on Gilgit and Baltistan (Northern Areas)*. This agreement appears to be signed and executed on April 28, 1949, pp. 138-139. It was also reproduced without any date or signature, Syed Manzoor H. Gilani (2008), *The Constitution of Azad Jammu & Kashmir (In the historical backdrop of corresponding Pakistani, Indian & Occupied Jammu and Kashmir's constitution)* as appendix XVIII, pp.674-5. See full text of Karachi Agreement through which roles, obligations and powers were distributed among three parties: Government of AJK, Muslim Conference (MC) and the Government of Pakistan as Annex-F.

⁶⁴ Gilgit-Baltistan is the other region of Pakistani-administered Kashmir directly controlled by Pakistan under the Karachi Agreement. At places, Gilgit-Baltistan and Northern Areas have been used interchangeably.

over to the Government of Pakistan.⁶⁵ This agreement presented a defined role for the Government of Pakistan in the governance and administration of Azad Kashmir and Gilgit-Baltistan. Since this agreement, Azad Kashmir has been indirectly governed under different Acts and Rules of Business promulgated from time to time. However, Gilgit-Baltistan was taken over directly by the Federal Government of Pakistan. The provisional government of AJK had surrendered certain powers to the Government of Pakistan (GoP) and all subsequent legislation conducted in AJK emanates from this agreement.

Many commentators provide differing interpretations of the Karachi Agreement. For example, Nationalist forces (pro-independence parties) believe that the signing of the Karachi Agreement with Pakistan was a clear failure of the political leadership of AJK because the people of AJK are still suffering from the negative repercussions of this agreement and subsequent legislation. In their view, the agreement adversely affected AJK in three ways: firstly, by signing this agreement the provisional government of AJK, which was purportedly established as a parallel government to the dethroned Maharaja's government - with the claim to represent the whole divided state of J&K - had surrendered its sovereignty. This in turn diluted its ability to act on foreign affairs and hence proved a barrier to entering into the international community of nations. Secondly, it also effectively surrendered its national cause of liberating the remaining parts of J&K. Finally, it handed over a large part of its territory, Gilgit-Baltistan, which came under the direct purview of the Government of Pakistan, whilst AJK, under indirect but effective Pakistani control, ultimately disabled itself not only from functioning as the representative government of the erstwhile State of Jammu & Kashmir, but also as a self-governing regime. It also hindered its own citizens from practicing freedom of speech, expression and association, key elements for any democratic style of governance (Liaqat and Sagheer

⁶⁵ The signatories of the Karachi Agreement were Mr. M.H. Gurmani, Minister without Portfolio, Government of Pakistan, Mr. Sardar Ibrahim Khan the then President of AJK and Mr. Ch. Ghulam Abbas, the then president of All Jammu & Kashmir Muslim Conference (MC). However, Ch. Ghulam Abbas made a note (disclaimer) as follows, 'I agree to this in so far as this concerns the sphere of activities of the MC.' Surprisingly, one of the signatories, Sardar Ibrahim Khan, in his book, *Kashmir Saga*, mentioned nothing about this agreement. However, Sardar Ibrahim in various public meetings rejected that he ever signed an agreement known as the Karachi agreement. Recently, in 2009 the government of Pakistan unilaterally introduced the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009. Critics say that this package for Gilgit-Baltistan is *old wine in a new bottle* whereby effective powers remain vested with the Government of Pakistan through its Ministry of Kashmir Affairs (MKA).

2011).⁶⁶ Therefore, it demonstrated the political leadership's failure to protect the sovereignty attained by virtue of a people's resistance movement on October 24, 1947, and earlier on the basis of the Indian Independence Act. In a similar vein, Hayat argues that, the political leadership of Azad Kashmir has a 'history of surrender' since the establishment of the so-called 'Azad State of Jammu & Kashmir' in 1947. After declarations of independence on October 4, 1947, and October 24, 1947 that established a 'revolutionary' provisional government, and claiming the authority of the dethroned Maharaja Hari Singh, it failed to enforce sovereignty through signing the Karachi agreement in 1949 (Hayat 2012).

However, unlike Liaqat and Sagheer, retired jurist Manzoor Gilani argues that the Karachi Agreement was not a legal instrument, has no legal binding and was in fact a political agreement for the smooth functioning of governing affairs at the local level between the concerned parties. Therefore, the claim that AJK's provisional government should be considered as the successor of Maharaja's government could be viewed as a mere political myth created by the political leadership of AJK because the U.N never recognized it as legal heir of Maharaja's government (Gilani 2010).⁶⁷

Sardar Khalid Ibrahim (son and political successor of Sardar Ibrahim Khan, one of the signatories of the Karachi Agreement) held the opinion that the Karachi Agreement is the only document signed between AJK and the Government of Pakistan which validates and provides legitimacy to AJK's claim on Gilgit-Baltistan.⁶⁸ However, despite deep differences of opinion over the interpretation of this agreement, the Karachi Agreement - by and large - is considered to be the first power-sharing mechanism between the newly established provisional government of AJK and the State of Pakistan. This to some extent laid a foundation stone for subsequent political and constitutional developments for the years ahead.

⁶⁶ Interviews with Liaqat Hayat Khan, President Jammu & Kashmir National Awami Party (NAP) and Sardar Sagheer Ahmed Khan, the then Chairman of Jammu Kashmir Liberation Front (JKLF), September, October 2011.

⁶⁷ Interview, Manzoor Gilani, October 22, 2010 at his residence in Muzaffarabad, AJK

⁶⁸ Interview, Khalid Ibrahim, October 2010 at his residence in Islamabad, Pakistan

3.3.5 Rules of Business

In the aftermath of war between India and Pakistan in 1947-8 and the subsequent ceasefire agreement in 1949,⁶⁹ it was realised that the territory of AJK would have to devise a political and administrative system to run day to day affairs of governance, irrespective of conflict. In this regard, an ordinance termed the ‘Rules of Business of the Azad Kashmir Government 1950’ was introduced and enacted on December 28, 1950.⁷⁰ This aimed to serve as a basic law for governance in Azad Kashmir. According to the 1950 ordinance, ‘full executive and legislative powers were vested in the “Supreme Head of State”, a position that was entrusted to the “Supreme Head of the Azad Kashmir Movement” i.e. The Muslim Conference Party’ (Rose 1992, 238). Consequently, the appointment of the President and other members of the council of ministers, judges of the High Court and other matters of legislation required prior approval of the Supreme Head.

In 1952 the ‘Rules of Business 1950’ were revised and replaced with ‘Rules of Business 1952’ in which powers were given to the Joint Secretary of MKA. Rose notes, ‘The basic facts of life in Azad Kashmir were clearly reflected in the new ‘Rules of Business’ promulgated in 1952 which vested full power in the Joint Secretary, MKA, rather than the ‘Supreme Head’ of the Muslim Conference’ (Rose 1992, 238). Symbolically, the Azad Kashmir Government was run by the President (who was appointed at the pleasure of the Supreme Head of the Muslim Conference); however, in actual fact, ultimate authority remained vested with the Joint Secretary of MKA. For instance, under the Rules of Business 1952 in its schedule 1 (4), it described the role of MKA as ‘In addition to the general supervision over all departments of Government, the Joint Secretary Ministry of Kashmir Affairs shall pass final orders on appeals against orders passed by Secretaries and Heads of Departments in respect of Government servants under their control, in all matters of appointments, promotion and disciplinary action of all kinds’.⁷¹ These revisions brought drastic changes to the governance and

⁶⁹ Manzoor Gillani argued that AJK and GB were given to Pakistani High Command under the ceasefire agreement 1949 mediated by the UNCIP. However, a look at the contents of the Ceasefire Agreement revealed that it is nowhere mentioned as such. This agreement was aimed to stop hostilities and to maintain the status quo of both militaries namely India and Pakistan beyond the demarked ceasefire line which later converted as Line of Control (LoC) until the plebiscite occurs. See full text of the Ceasefire Agreement at Karachi as Annex-H.

⁷⁰ Full text of ordinance termed as ‘Rules of Business 1950’ is reproduced in Syed Manzoor H. Gilani, *Constitutional Developments in Azad Jammu & Kashmir* (1988), as Appendix-III, pp.45-74

⁷¹ Additionally, the rules in Article 21 say: ‘The Ministry of Kashmir Affairs shall exercise general supervision over the services with a view to ensuring that Government employees discharge their duties

administration of AJK, which in effect 'reduced the status of AJK government to that of a municipality'. This led to the public anger within the AJK populace against these changes, demonstrated through protests and demand for democratic rule (Mahmud 2007, 112).

Yet another change occurred in 1958 when the 'Rules of Business 1952' were amended and replaced with the 'Rules of Business 1958', through which full executive and legislative powers were vested in a 'Chief Advisor' rather than the Joint Secretary. However, this Chief Advisor was answerable to the MKA; it was thus a change in form, not fact. Mahmud notes, 'The new amendment could not contend with public aspirations, as the Chief Advisor was selected by MKANA, not the government of AJK. To add insult to injury, all functions of the government were exercised in the name of the President, while real power was vested in the hands of powerful MKANA officials' (Mahmud 2007, 112).

Since the inception of Azad Jammu & Kashmir in 1947, the people of AJK remained without any democratic system until 1960; no elections were held during this period and only those individuals who enjoyed the pleasure and confidence of the Working Committee of the Muslim Conference were in a position to be nominated as the President of AJK. Additionally, MKA maintained tight control while adopting or amending the Rules of Business and officials of MKA were not answerable to any authority (Ershad Mahmud 2007, Rose 1992, and Saraf 1977).⁷² Moreover, during this formative phase of AJK's government there was a rift between Sardar Ibrahim Khan of Poonch and Chudhary Ghulam Abbas, who had migrated from Jammu.⁷³ This divide affected the nascent political structure in AJK immensely. It deepened factionalism

properly'. See Full text of ordinance termed as 'Rules of Business 1952', reproduced in Syed Manzoor H. Gilani, *Constitutional Developments in Azad Jammu & Kashmir* (1988), as Appendix-IV, pp.77-103

⁷² Mahmud notes that 'The AJK government was not allowed to create a post that required a monthly salary of over Rs.150 and was not allowed to spend over Rs. 100,000 without the permission of MKA'. See Mahmud, E. 2007, Status of AJK in Political Milieu, *Policy Perspectives Institute of Policy Studies, Islamabad*, 3(2), pp.105-123

⁷³ Chudhary Ghulam Abbas was a senior leader of the Muslim Conference, who migrated from Jammu & Kashmir to Azad Kashmir. Sardar Ibrahim Khan was the first President of the provisional government of AJK. Ibrahim belonged to the Sudhan tribe and Snedden has described him as the 'uncrowned king' of the military-capable Sudhan tribe. Ibrahim was overthrown by the Pakistan government in the early 1950s, leading to the Sudhan tribe revolting in the Poonch region. The revolt by Sudhans turned into an armed struggle in 1951 and later in 1955, which in turn was dealt with by the Pakistani government with iron hands using military measures. Very few authors have highlighted atrocities committed by the Punjab Constabulary and Army in the area of Poonch. However, Mir Abdul Aziz did write about events of the revolt as has Snedden (2012) who discussed the Poonch revolt and highlighted atrocities committed by the Pakistani Army. See Snedden (2012), pp. 121-122

and caused fragility in the governance affairs of AJK. The situation resulting from the power-rivalry between Ibrahim and Abbas provided a manoeuvring opportunity to the Pakistani government to manipulate authority in AJK according to their interests (Mahmud 2007; Snedden 2012; Saraf 1977).

3.3.6 A Journey towards a Democratic Phase: 1961-1970

The phase between 1961 until 1970 was driven by two factors. Firstly, there was growing demand from the people and political parties of AJK for introducing a political structure in the territory. Secondly, in October 1958, General Ayub Khan took power in Pakistan. As a military dictator, he completely banned political activities in Pakistan, including AJK. He also dismissed the Government of AJK headed by Sardar Ibrahim Khan and appointed K.H. Khursheed as the new president.⁷⁴ General Ayub Khan introduced the idea of 'Basic Democracies' (BD) in order to legitimise his regime in Pakistan. The idea of basic democracies was also extended to AJK and adopted as the 'Basic Democracies Act 1960' under which the president of AJK and the Azad Kashmir Council would be elected indirectly by members of local bodies, who were to be elected under this new BD system directly.

Through this process, the president of AJK was elected in 1961 through an electoral college of 1,200 'basic democrats' from AJK and a further 1,200 from amongst refugees settled in Pakistan. Interestingly, the two big political giants in AJK politics, Sardar Ibrahim Khan and Choudhary Ghulam Abbas, were disqualified from contesting elections by a tribunal on charges of corruption. Consequently, K.H. Khursheed was elected as the new president (Rose 1992, 239; Mahmud 2007, 113). K.H. Khursheed initially enjoyed cordial relations with General Ayub Khan, but the bureaucracy of MKA did not take to him and thus started making trouble for the Khursheed-led administration in AJK. Mahmud notes that MKA officials simply declined to obey the President's orders, resulting in Khursheed's unceremonious resignation. Amongst various bold steps taken by Khursheed that truly annoyed the Pakistan government was to publicly campaign for international recognition of the Azad Kashmir government as a parallel government for the whole state, as envisaged in the declaration of the provisional government formed on October 24, 1947. When the Pakistani government

⁷⁴ K. H. Khursheed served earlier as private Secretary to Muhammad Ali Jinnah (the founder of Pakistan) for many years. Because of this position he held with Jinnah, he was very well-known, respected and accepted not only in Kashmir but also in Pakistan.

realised that such a move by Khursheed would result in the separation of AJK and Gilgit-Baltistan from Pakistan, he was forced to resign (Mahmud 2007, 113).

Before K.H. Khursheed's resignation as President of AJK, another Act was introduced by the MKA, which was termed as 'Act 1964'. The new Act retained some basic features of the BD system but did not bring any significant changes to empower the local authority of AJK. However, unlike Act 1960 in which BDs from AJK and refugees collectively formed an Electoral College in order to elect the President of AJK, this new Act of 1964 confined the Electoral College to AJK BDs only. This evoked strong protests in AJK where demands for amendments to the newly installed Act were made. As a result, two main amendments were made in late 1964. They read as: (1) the Chief Advisor should be appointed by the Azad Kashmir government but on the advice of the Government of Pakistan (rather than MKA) and (2) the Chairman appointed by the Chief Advisor is to win a vote of confidence from the majority of local BD councils (Rose 1992, 239). Despite amendments to Act 1964, agitation by the public continued, asking for more political and constitutional powers from the Government of Pakistan. Four years later, the process of 'chop and change' hugely influenced by the Government of Pakistan through its Ministry of Kashmir Affairs (MKA) continued. 'Act 1964' was replaced with 'The Azad Jammu and Kashmir Act 1968' on September 17, 1968.

Mahmud contends, 'In fact, it undermined the already fragile civilian control over government and strengthened the all-powerful MKANA'. The people of AJK had struggled for political and democratic rights for decades during Dogra Rule and it seemed obvious that after establishment of the AJK government they would secure these rights as a given, but that is not what happened. Political leaders of AJK across the board were tired of MKA's insatiable desire for power in AJK. In this respect, the premature removal of K.H. Khursheed had changed the mind-set of the political leadership in AJK and they resented what they considered the unnecessary role of MKA in AJK politics (Mahmud 2007, 114).⁷⁵ In this context, various leading political figures

⁷⁵ Ershad Mahmud notes that Mir Abdul Aziz recalls the old days when the Joint Secretary was the 'Master' of the area. He writes: The Joint Secretary of Kashmir Affairs was the Governor of Azad Kashmir as he was also the chief advisor of the Government at Muzaffarabad. In those days, the deputy and joint secretaries of Kashmir Affairs were received by the President of Azad Kashmir at Kohalla or Muzaffarabad and greeted with a guard of honor. Once an AJK President, who was in a meeting with a Joint Secretary (JS) (poet Fazli), was suddenly asked to sit in the PA's room because the JS was to receive a call from Karachi from the Minister concerned and the AJK President was not supposed to know what was passing between the

in AJK including Sardar Ibrahim Khan, Sardar Muhammad Abdul Qayyum Khan (the political successor of Choudhary Ghulam Abbas) and K.H. Khursheed formed a three-party alliance against the unnecessary interference of MKA and its negative role in the governance of AJK.

Under the banner of three-party alliance, they launched huge protests, not only in AJK but also in prominent cities of Pakistan, demanding an elected and responsible government with full powers of legislation, including the powers to approve the state's budget (Mahmud 2007, 112).⁷⁶

Yusuf Saraf (1977) in his seminal work *Kashmiris Fight for Freedom* noted that the three-party alliance also demanded that 'the re-constituted Azad Kashmir Government be treated as full sovereign government, successor to the Government of Maharaja Hari Singh for the whole State' (Saraf 1979). Meanwhile, two important events took place in the political landscape of AJK as well as in Pakistan. Firstly, the military dictator Ayub Khan resigned due to mass protests in Pakistan and General Yahya Khan took charge as the new president of Pakistan. Secondly, there were mass protests and organised agitation in AJK and Pakistan. In AJK, the political leadership were demanding political rights including an elected government on the basis of adult franchise from the Government of Pakistan. In Pakistan, at the same time, there was also a serious public demand for democracy in the shape of free and transparent elections from the new military dictator Yahya Khan.

3.4 Constitution and Institution Building

3.4.1 The Process of Constitution-Making: 1970-1974

The preceding discussion provided a historical, political and constitutional overview of power-sharing between AJK and the Government of Pakistan. Historical events and constitutional evolution in AJK showed us types and layers of power-sharing which resulted in fragile and unstable governance processes. It also highlighted how AJK has been treated by the Government of Pakistan (GoP), despite the latter's initial insistence at the U.N (mentioned elsewhere) for the recognition of the AJK provisional

Minister and the Joint Secretary. Mir Abdul Aziz, 'The tussle in Azad Kashmir', Weekly Insaf, Rawalpindi, February 2-6, 1990 cited in Mahmud (2007), p.114, footnote.

⁷⁶ For details see Mirza Shafiq Hussain, *Azad Kashmir, Ek Siyasi Jaizah: 1947 Ta 1975 (Azad Kashmir: An Overview-from 1947 to 1975)*, p.408 Cited in Mahmud (2007).

government as the successor of the Maharaja's Government in Jammu & Kashmir. Undoubtedly, until 1970 Azad Kashmir was governed by MKA and thus successive AJK governments largely depended on powerful Pakistani bureaucrats headed by a Joint Secretary (JS), who during much of the period from 1949 to the early 1970s was the real head of the Azad Kashmir Government. This fact is highlighted by Mahmud: 'The bureaucracy would not let any head of the AJK government work independently and freely' (Mahmud 2007, 115).

In the wake of protests and political campaigning by the three-party alliance for political and constitutional empowerment from Pakistan, there was a paradigm shift away from the conventional way of dealing with AJK in the mind-set of Islamabad. This brought a major and far-reaching change in the constitutional framework of AJK. The newly drafted 'Azad Jammu and Kashmir Government Act 1970' was introduced in AJK, with the consultation of Kashmiris.⁷⁷ According to this Act, a full democratic structure was given to AJK under which a Legislative Assembly and President were elected on the basis of adult franchise by the people of AJK and (included) refugees of Jammu & Kashmir settled in Pakistan. Moreover, excluding defence and security, currency and responsibilities under UNCIP resolutions, which were subjects (forcibly), brought under the purview of Pakistan's Government, on all other matters the AJK Assembly was empowered to make laws as required for governance in the territory.

The State Subject Law of 1927, which barred non-Kashmiris from becoming citizens of the State of Jammu & Kashmir and also prohibited them from buying any property in the State, was also made part of the new Government Act 1970. This Act - for the first time ever - provided considerable internal autonomy to the Azad Kashmir government. Fundamental rights including the right to (writ) petition the High Court were guaranteed to the State Subjects of AJK, albeit via an amendment to the Act in 1971. Nevertheless, for the first time in 1970, the President and Legislative Assembly were elected directly (and jointly) by the people of AJK and refugees settled in Pakistan. Under Act 1970, the AJK government gained financial powers including the right to collect tax from the territory (Gilani 1988; Rose 1992; Saraf 1977; Mahmud 2007). It may seem ironic that AJK received a quantum of autonomy and comparatively a better

⁷⁷ See full text of 'Azad Jammu Kashmir Government Act 1970' in Syed Manzoor H. Gilani, *Constitutional Developments in Azad Jammu & Kashmir* (1988), as Appendix-VIII, pp.165-204

democratic framework, whilst Pakistan was being ruled by a military Dictator viz. Yahya Khan.

Alas, the change in Islamabad's approach which resulted in a better democratic system for the people of AJK was short-lived. When Zulfiqar Ali Bhutto became the elected leader of a truncated Pakistan (East Pakistan became Bangladesh after the 1971 war - which amongst other factors - transpired due to failure of power sharing between the two wings of the country), the elected parliament adopted a fresh new Constitution (of Pakistan) in 1973 whereby provincial autonomy was granted to the country's provinces and a parliamentary system of government was also introduced. This regime change in Pakistan also brought with it a reversal in mind-set in Islamabad's approach when dealing with AJK. Tanveer Ahmed considers this changed stance to be heavily influenced by Pakistan's vulnerable and compromised bargaining position viz a viz the Simla Accord with India in 1972.⁷⁸ Another explanation is that Bhutto's regime in Pakistan held ideological differences with the Muslim Conference (MC) the ruling party in AJK. In that respect, Bhutto had tried unsuccessfully to move a no-confidence motion against the MC. However, Bhutto was unrelenting in his attempts to cut the size and autonomous powers of AJK's government, hitherto enjoyed under Act 1970.

Consequently, the Government of Pakistan introduced a new Act termed 'The Azad Jammu & Kashmir Interim Constitution Act 1974' in AJK. The Legislative Assembly of AJK passed this new Act without as much as a discussion during the assembly session. Importantly, 'Act 1974' was prepared by the Government of Pakistan without seeking any consultation from the government or political leaders of AJK. When it was presented to AJK's Assembly for approval, it was reported to have been tabled for ten minutes without any constitutional deliberations on any aspect or clause of this Act whatsoever. The sole motive in introducing this new Act was to curtail the power of the AJK government and tighten Pakistan's control over the territory of AJK (Haider 2011).⁷⁹

⁷⁸ Interview, Tanveer Ahmed

⁷⁹ Interview with Farooq Haider at Kashmir House Islamabad in September 2011. In response to my question about how it was possible for an elected legislative assembly to pass a constitution (albeit interim) without discussing it thoroughly on the assembly floor, Raja Farooq Haider replied thus: That when the bill was presented in the assembly, there was a serving Brigadier from the Pakistani Army sitting in the visitor's gallery of the assembly and closely monitoring all assembly members. This fact was well known to every member and no one wanted to be mentioned in the *red book* of intelligence agencies.

Nevertheless, two points remained prominent in all these ‘Rules of Business’ from 1947 to 1960 and Acts from 1961 to 1974. Firstly, these were neither prepared nor drafted by the political parties of AJK, nor were the parties consulted (except Act 1970); rather, the Government of Pakistan presented them as written documents to be duly signed by the politicians of AJK, which they did without fail. That ‘Act 1970’ - which involved some degree of consultation with AJK leaders - provided a quantum of autonomy to AJK and was comparatively better than previous and existing constitutional frameworks. Secondly and importantly, all constitutional changes undertaken in AJK from 1947 to the prevailing Act of 1974 were actually in form, not fact. The fact was and remains that effective power remained vested with the Government of Pakistan. Gibran Peshimam describes it thus, ‘AJK has been governed by all sorts of strange and painfully euphemistic laws and Acts. For 63 years, the area has been in a political and constitutional void’ (Peshimam 2011).

3.4.2 Constitutional Design and Institutional Building in AJK

In the preceding debate, an attempt has been made to elaborate several aspects of this research including the status of AJK, given its historical background arising from the colonial legacy of Indian States - especially that of the erstwhile Princely State of Jammu & Kashmir, under the Indian Independence Act of 1947. It also aimed to allocate sufficient space to discuss the emergence and status of Azad Jammu & Kashmir (AJK), including evolution of constitutional and political frameworks adopted from time to time since its inception.

In the following discussion this study deals with challenges of governance and democracy under the aforementioned Act 1974 and critically analyses how powers are distributed between different layers of authority, between the disputed territory of AJK and its controlling nation state Pakistan. It addresses questions of where power is vested and whether it can be described as balanced power-sharing between different layers of authority, or whether one layer of authority holds absolute power at the expense of the other. Moreover, it debates whether or not the prevailing power-sharing mechanism provides sufficient political and constitutional space for building an

Consequently, they signed and passed this bill, which is now known as The Azad Jammu & Kashmir Interim Constitution Act 1974.

autonomous democratic framework. Following the questions and discussions earlier in this study's introductory section on two levels of power-sharing - internal and external - this study will now explore these levels under the existing constitutional framework in AJK.

The interim nature of AJK's constitution is based on two premises. Firstly, AJK is considered to be a disputed territory and despite its declaration of Independence on October 24, 1947, it is yet to be recognised as a sovereign state by the international community. Secondly, according to UNCIP resolutions, this region is disputed (as are the areas currently under the control of India) whose status and legitimacy is yet to be decided, and Pakistan does not want to 'harm' claim over the rest of Kashmir (under Indian Administration). Therefore, Pakistan, legally speaking, did not and cannot include this territory as a permanent part of the state of Pakistan, as India also claims that these areas are an integral part of the Union of India (through the Instrument of Accession). However, a majority of people spoken to in AJK consider that the current political and constitutional status and framework under Interim Act 1974 is a 'joke' or a 'mockery', while others prefer to call this situation a 'paradox'. In the words of Peshimam, 'Sixty-three years on, a UN-backed plebiscite is yet to take place, and AJK has stood in virtual limbo - as far from "Azad" as can be possible. It is a territory that has been forced into a comatose state of identity-less-ness' (Peshimam 2011).

Currently, the Azad (Free) State of Jammu & Kashmir is being governed under an amended version of the Interim Constitution Act of 1974. This Act provides for a parliamentary form of government in which the Prime Minister is head of the Government and President is Head of the State. It also has its own judicial system equipped with a Supreme Court and High Court. The jurisdiction of Pakistan's Supreme Court does not extend to these areas. Nevertheless, the State of Pakistan maintains a *de facto* link with AJK based initially on the 'Karachi agreement of 1949', UNCIP resolutions and currently the Interim Act of 1974.

3.4.3 The Assembly and the Council

The Interim Act of 1974 introduced an unusual bicameral feature to AJK, comprising the AJK Assembly on the one hand and the 'Azad Jammu & Kashmir Council' commonly known as the AJK Council, on the other. The idea behind establishing two institutions

was ostensibly to provide AJK ‘parity’ with Pakistan’s constitution of 1973, modelled on two houses: The National Assembly (Lower House) and the Senate (Upper House). However, Pakistan’s AJK Council (Upper House in a sense) was and remains unique in that it is a collective body comprising members from AJK as well as members from Pakistan, the latter nominated by the Prime Minister of Pakistan. It regulated relations between AJK and Pakistan in order to avoid the day-to-day friction that had existed since 1948. It is argued that through the AJK Council, Azad Kashmir obtained a relatively higher level of representation at the federal level in Pakistan. Nevertheless, by contrast, it is also argued that the Council and the associated powers it enjoys through the Interim Act of 1974, have severely reduced Azad Jammu Kashmir’s autonomy (Snedden 2012, 103). The composition of AJK’s Legislative Assembly is as follows:

Composition of AJK Legislative Assembly under Interim Act 1974	
Members Elected Directly	41
Distribution & Allocation	
AJK region	29
Refugees Settled in Pakistan	12
Reserved Seats (Indirectly elected)	08
Distribution & Allocation of Reserved Seats	
Women	05
Religious Scholars	01
Technocrat	01
Overseas Kashmiri (Diaspora)	01
Total	49

The AJK Legislative Assembly consists of a total of 49 members, out of which 29 are directly elected from the territory of AJK, whilst 12 members are elected from amongst refugees settled in Pakistan. The 12 refugees’ seats play a decisive role in government formation in AJK and it is often claimed that the electoral process and results on the outcome of these seats are manipulated by the Government of Pakistan. In this way, the Government of Pakistan retains control over the electoral process in AJK. However, in recent times there have been proposals to give proportional representation to these refugees in AJK’s Legislative Assembly. The indirectly elected reserved seats are divided on the basis of the number of directly elected members of each political party in the Assembly.

The AJK Council comprises 6 members indirectly elected by members of AJK's Legislative Assembly, based on political party position or number of seats secured in the Assembly, and 5 members (Federal Ministers of Pakistan) nominated by the Chairman of AJK Council, who 'by default' is the Prime Minister of Pakistan. The composition of AJK Council is as follows:

Composition of AJK Council under Interim Act 1974				
Position	Composition	Numbers	Nationality	Elected, By Default or Nominated
Chairman of Council	Prime Minister of Pakistan	01	Pakistani	By default
Vice Chairman	President of AJK	01	State Subject	By default
Members	From AJK	06	State Subject	Elected
Members	Members of Parliament of Pakistan	05	Pakistani	Nominated by PM Pakistan
Total		13		

The Prime Minister of Pakistan is elected in Pakistan, but does not need to go through any such process to become the Chairman of AJK Council. He/she holds this position by default under the Interim Act of 1974. He is neither answerable to the people nor the judiciary of AJK. His actions and orders related to AJK as Chairman also cannot be challenged in the Supreme Court of Pakistan. The President of Azad Jammu & Kashmir serves as vice Chairman of the AJK Council and he/she is elected by a majority vote in the joint session of the AJK Assembly and AJK Council. Interestingly, the AJK Council's secretariat is located in Islamabad, not in the territory of AJK.

3.4.4 Legislative and Executive Powers of the Council and AJK Assembly

One of the main functions of the AJK Council is to collect income tax from the territory of Azad Kashmir. To do so, the AJK Council has established offices in all ten districts of AJK. 80% of revenue collected from the territory of AJK is released back to the Government of Azad Jammu & Kashmir, whilst the remaining 20% is retained by

the Council in the name of service charges that go towards the Council's consolidated fund.

The executive authority under Section 21(7) of the AJ&K Interim Constitution Act 1974 is exercised in the name of the Council by the Chairman who may either act directly or by nominating a Federal Minister of Pakistan. The AJK Council and AJK Assembly under section 31 (1) have powers to legislate:

- (a) For the territories of Azad Jammu and Kashmir,
- (b) For all State Subjects wherever they may be; and
- (c) For all the officers of the Council or as the case may be, the Government, wherever they may be.

In the same section 31 of the Interim Constitution Act 1974, under its sub-Section (2) the legislative and executive powers of both institutions are defined; i.e. the AJK Assembly and the Council. It reads,

- (a) the Council shall have exclusive power to make laws with respect to any matter in the Council Legislative List set out in the Third Schedule, and,
- (b) the Assembly shall, and the Council shall not, have power to make laws with respect to any matter not enumerated in the Council Legislative list.

However, section 31(2) is subject to sub-section (3), which restricts both the Council and the Assembly from making any laws related to the responsibilities of the Government of Pakistan. The third schedule in the Interim Act 1974 of AJK comprises a total of 52 items on which only the AJK Council is authorized to make laws. It clearly confirms that the AJK government has even less powers than those associated with any local administration or what a municipal corporation may enjoy in a federal set up.⁸⁰

Zulfiqar Abbasi notes,

There is no denying the fact that the government's hands are tied under the constitutional arrangements between Azad Kashmir and Pakistan. A brief look at the territory's Interim Constitution Act, 1974, reveals that all major areas of economic potential fall under the jurisdiction of the Azad Jammu and Kashmir Council, which is headed by the Prime Minister of Pakistan. These include hydropower generation, banking and finance, stock exchanges, telecommunication, oil and gas, tourism, mines and mineral exploration, aviation and air travel, state property, leasing and insurance and levy of tax on all incomes. In these areas the Azad Kashmir government has no say in policymaking (Abbasi 2011).

The following are some significant powers that the AJK Council enjoys. It also illustrates the magnitude of influence that the Council holds over the elected AJK government.

⁸⁰ See full list of items/subjects under Interim Act 1974 of AJK in Third Schedule of Azad Jammu and Kashmir Interim Constitution Act 1974. It can be accessed via the internet at: http://www.ajkassembly.gov.pk/AJK_Interim_Constitution_Act_1974.pdf

**Council Legislative List specified in Third Schedule under Interim Act
1974**

Total of 52 Subject/Topics are under purview of the Council
(Some significant topics are mentioned below)

<ol style="list-style-type: none"> 1. Subject to the responsibilities of Pakistan under the UNCIP resolutions, nationality and citizenship 2. Minerals 3. Navigation 4. Copyright 5. Banking 6. Insurance 7. Stock Exchanges 8. Corporations 9. Highways 10. Geological Surveys 11. Property 12. Census 13. Weights and Measures 14. Extensions of powers of police forces 15. Electricity 	<ol style="list-style-type: none"> 16. Railways 17. Natural Resources 18. Industries 19. Movement of prisoners 20. Issues related to infectious and contagious diseases 21. Population and welfare 22. Newspapers and printing press 23. Curriculum 24. Cinema 25. Tourism 26. Customs 27. Taxes on income (other than agriculture) 28. Taxes on corporations 29. Taxes on capital value of assets 30. Jurisdiction and powers of courts 31. Offences against Laws 32. Refugees 33. State property based in Pakistan
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The aforementioned Council Legislative List⁸¹ reflects the legislative and executive authority of the Council. The AJK Government or Assembly cannot interfere with these topics, which address AJK and its governance issues. All powers and responsibilities that should usually lie with an elected government concerning economic prosperity, transparency and other inevitable challenges regarding governance - virtually everything of any importance - are controlled by the AJK Council. The Minister for Kashmir Affairs in Pakistan also works as in charge Minister of the AJK Council, whilst Secretary Kashmir Affairs also assumes responsibility as in charge Secretary of the AJK Council. Therefore, the Government of Pakistan totally dominates the hierarchy of power-sharing.

⁸¹ See, AJK Council Legislative list as Annex -G

3.4.5 What both the AJK Government and AJK Council cannot do

According to the amended version of Act 1974, an amendment can only be made in a joint session of AJK's Assembly and Council by securing a majority vote. Sub-section (3) of Section 31 in Act 1974 reads: 'Neither the Council nor the Assembly shall have the power to make any law concerning;

- (a) The responsibilities of the Government of Pakistan under the UNCIP resolutions;
- (b) The defence and security of Azad Jammu & Kashmir
- (c) The current coin or the issue of any bills, notes or other paper currency; or
- (d) The external affairs of Azad Jammu & Kashmir including foreign trade and foreign aid.'

Additionally, the Interim Act of 1974 - arguably imposed on AJK - restricts both the AJK Government and the AJK Council from making any law concerning the responsibilities of the Government of Pakistan specified in Section 31, without prior approval of the Government of Pakistan. Section 56 of the 'Act' ensures both the AJK Government and the Council do not impinge on the powers of Pakistan. It reads as: 'Nothing in this Act shall derogate from the responsibilities of the Government of Pakistan in relation to the matters specified or prevent the Government of Pakistan from taking such action as it may consider necessary or expedient for the effective discharge of those responsibilities' (Act 1974).

Section 56 effectively gave leverage to the federal government of Pakistan to dictate its own terms, or do whatever it wanted in Azad Jammu & Kashmir. Sardar Ibrahim's Government was dismissed in 1978 by General Zia-ul-Haq, who invoked Section 56 of the Interim Constitution Act of 1974. Mumtaz Rathore's Government in AJK was also dismissed in 1991 by Nawaz Sharif (then Prime Minister of Pakistan).⁸²

3.4.6 Rules of Business 1985

The Interim Act 1974 of AJK under Section 58 entitled the President of AJK to make rules for carrying out the purpose of this Act and for transaction of the business of the Government. On June 1, 1985, the President of AJK approved the Rules of Business 1985, which was subsequently notified by the Services and General Administration Department of AJK. These Rules of Business 1985 define functions and powers of

⁸² Under Section 56 of the Interim Constitution Act 1974, the Government of Pakistan has authority to dismiss the AJK Government at will. The most recent example was the dismissal of a former Prime Minister of AJK Mumtaz Rathore whose Government was dismissed in 1991 by the Government in Pakistan led by Nawaz Sharif. See, more details in Rose, pp. 242-243, and also Snedden (2012), pp. 105-6

cabinet, ministries, departments and other institutions that emerged through the Interim Act 1974 in AJK. It consists of eight parts, which are as under:

Part	Definitions , Functions and Powers
Part-A	Title of Commencement: The Azad Government of the State of Jammu and Kashmir Rules of Business 1985, Definitions of Act, Assembly, Department, Business, Cabinet, Gazette, Government, Minister, President, Council of Islamic Ideology, Prime Minister, Public Service Commission, Schedule, Secretariat etc
Part-B	Reference to the President
Part-C	Departmental Procedure: Consultation with various departments
Part-D	Services: Public Service Commission, Selection Board, Appointment, Posting, Promotion and transfers
Part-E	Cabinet Procedure
Part-F	Legislation: Official and non-official bills and amendments
Part-G	Relations with the Assembly: Rules of Assembly, Summoning of Assembly, Resolutions and motions, Budget
Part-H	Miscellaneous Provisions: Protection of Communication of official Information, Financial Powers, Channel of Correspondence, Transaction of Business

The governance mechanism and processes within AJK functions under these Rules of Business 1985 and this provides a guided procedural mechanism for inter-departmental and inter-ministerial hierarchy.⁸³

3.4.7 Role of Ministry of Kashmir Affairs and Northern Areas (MKANA)

In the foregoing discussion, this study elaborated the role of MKANA in the affairs of political formation and governance of AJK. It is worth noting that MKANA is not a product of the Interim Act of 1974, rather it is a product of the Constitution of Pakistan (1973) and functions under the Federal Government of Pakistan. Many commentators whom I interviewed consider the role of MKA in AJK affairs is *ultra vires*. It has been observed that since the Karachi Agreement between AJK and the Government of Pakistan, this Ministry had always played a dominant role in

⁸³ Later in 2003, through another notification, the Rules of Business 1985 substituted Schedule-1 of the Rules of Business, 1985 as forming annexure to the previous notification. See, Ameerullah Khan Mughal, The Interim Constitution of Azad Jammu & Kashmir (2007), pp-110-141. See also full text of Rules of Business 1985 of AJK on Azad Jammu & Kashmir Government Website http://www.ajk.gov.pk/index.php?option=com_content&view=article&id=428&Itemid=184

‘overseeing’ AJK’s governance structure through a ‘divide and rule’ approach which it seemingly inherited from the British colonisers. This negative role characterised by a ‘make and break’ approach by MKANA has often resulted in resentment amongst the masses of AJK towards Pakistan. In 1950, Sardar Ibrahim Khan was dismissed by MKA from the seat of President of AJK. Sardar Ibrahim belonged to the *Sudhan* tribe which had earlier led the 1947 Poonch Rebellion against the last Maharaja’s forces. In reaction to Ibrahim’s dismissal, the *Sudhans* raised an armed revolt against Pakistan. The Government of Pakistan imposed martial law and deployed the army to control this revolt. The Pakistani army crushed the *Sudhans*’ revolt by killing, beating, harassing and humiliating them in the streets of Poonch (Dewan 2011, 88-89).

The apparent purpose of the Ministry (MKA) was to bridge the gap between the AJK authorities and the Government of Pakistan, for better coordination and smooth functioning of political and administrative affairs of AJK. This Ministry also deals with the Maharaja’s property located in different cities of Pakistan. However, Saraf notes: ‘Brigadier Bashir Malik Secretary M.K.A. in 1977 frankly admitted in a conversation that the Ministry was based on a concept of mistrust’ (Saraf 1979). Many writers, commentators, politicians, media and civil society activists have serially and overwhelmingly criticised the unfair, unnecessary and unhealthy interference of MKANA in the affairs of AJK. For example, Sardar Khalid Ibrahim Khan, leader of the pro-Pakistan Jammu Kashmir Peoples Party (JKPP) argued that, ‘All problems in AJK, in the past, were created by the MKANA. It worked on the basis of “divide and rule” and it is responsible for half the problems of AJK and for remaining half AJK leadership is responsible’ (Khalid 2012).⁸⁴

Additionally, the original power-struggle and tussle between Sardar Ibrahim and Choudhary Ghulam Abbas provided an opportunity to the MKA, which always conveniently intervened to arbitrate between these political giants of AJK, thereby increasing its role and control in the affairs of AJK. It is worth quoting Pervez Dewan, who meaningfully summarises MKA’s role. He notes: ‘Two monkeys once squabbled over a cake that they had found. A cat was brought in to arbitrate and each time she gave them their share she kept a piece of the cake for herself. This is what the Ministry of Kashmir Affairs did each time’ (Dewan 2011, 111). Complaints and criticism by the people of Azad Jammu & Kashmir over the role of MKANA started in the early

⁸⁴ Interview, Khalid Ibrahim, October 2012 at Islamabad

1950s and continue to date. Khalid Ibrahim was of the opinion that, at the time of the formation of the AJK Council through an amendment in the Interim Act of 1974, it was said by the Government of Pakistan that the Ministry of Kashmir Affairs will be dissolved and replaced with the Council; however, this did not happen. Therefore, the existence of two parallel institutions (AJK Council and MKA) is evidently self-contradictory and this ambiguity must be resolved (Khalid Ibrahim 2010).⁸⁵

Beside the ‘constitutional’ role which the Pakistani government holds over the affairs of AJK, the role of the military establishment is another channel of influence and control that cannot be overlooked. Lal Khan, a well-known Marxist in Pakistan, notes, ‘There is hardly any aspect of life in Pakistani-controlled Kashmir where there is no interference of the army, whether overt or covert’ (Lal Khan 2005). The presence and interference of intelligence agencies is based on two reasons. Firstly, Pakistan’s military is deployed on this side of the LoC (Line of Control dividing J & K), apparently to protect AJK from Indian aggression, because on the other side the number of Indian military and paramilitary forces exceeds half a million, hence the phrase ‘World’s most militarized zone’. Secondly, it is to protect Pakistan’s national and security interests in the polity of Azad Jammu & Kashmir as part of coercive measures. The overwhelming majority of political forces in AJK saw MKA (recently renamed KANA) as ‘pursuing a policy of colonialism in AJK’ and emphasise the need to eliminate unnecessary interference of the military and MKA in internal AJK affairs, which are considered substantial obstacles to AJK’s empowerment (Korbel 1954, 201).

3.5 An Analysis of Three-Tier Power-Sharing Governance Structure

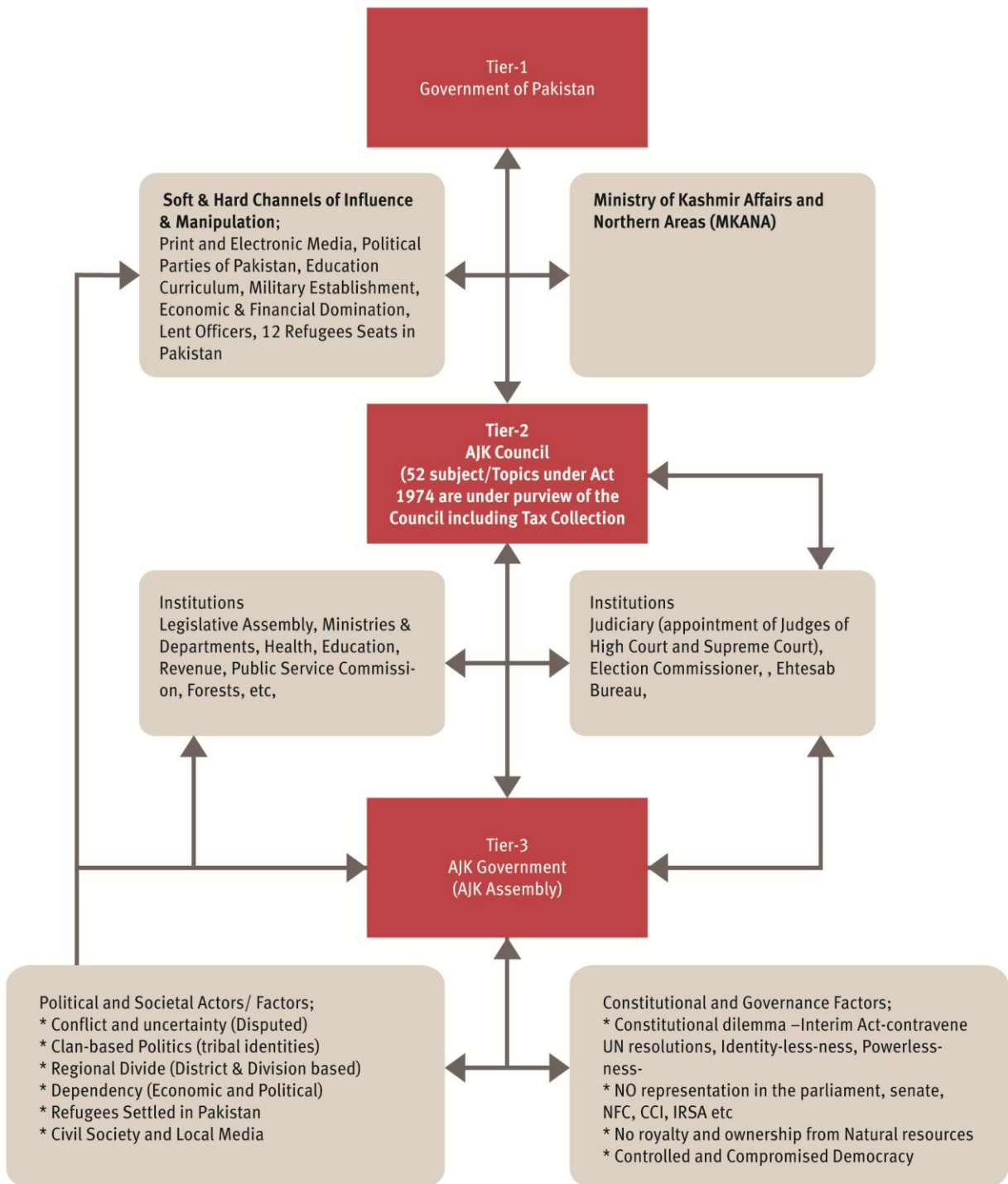
The subsequent discussion will outline and analyse important issues discussed in the preceding part of this study, based on primary and secondary resources. The primary resources findings are extracted from the transcription of interviews and questionnaires distributed and collected during field research. What are the conflicting issues between AJK and Pakistan that negatively affect governance and democracy in AJK? Many interviewees saw three major conflicting issues: firstly the ambiguous and uneven constitutional power-sharing with Pakistan; secondly tax and revenue collection, which is under the Kashmir Council jurisdiction headed by the Prime Minister of Pakistan; and thirdly ownership and royalty of AJK’s natural

⁸⁵Ibid

resources. These three conflicting issues are considered the major hurdles in the smooth functioning of governance in AJK and barriers to self-governance.

In the context of AJK's Interim Act of 1974, which many now explicitly consider a document of slavery, ostensibly a self-governance structure exists; however (and crucially), effective power rests with the Government of Pakistan through its Kashmir Council, which in turn is being operated by its Ministry of Kashmir Affairs and Northern Areas (MKANA), which in turn is monitored and steered by Pakistan's military and agencies. Rose argues, 'The 1974 Act has generally been interpreted as designed to provide Prime Minister Bhutto and his Pakistan People's Party (PPP) with a more suitable instrument for exercising a dominant influence in Azad Kashmir'. Another neglected fact - though cited earlier in this study - generally not noted is that this Act was introduced and adopted after the 1972 Simla Agreement when the Kashmir Dispute (between India and Pakistan) was converted into a bilateral issue and the ceasefire line was re-named as the Line of Control (LoC). This confirmed that Pakistan accepted Kashmir's division and thus the Act 1974 was created by the Pakistani Government to act 'presumably as a first step in the actual accession of Azad Kashmir into Pakistan, in form as well as fact' (Rose 1992, 240-1). Besides constitutional ambiguity, there are several other channels of influence and manipulation by Islamabad when dealing with AJK. In summary, the territory of AJK and its governance functions under a three-tier power-sharing mechanism. Some of the actors and factors are already discussed in the earlier part of this chapter and the remaining will be discussed under the three-tier structure. How the three-tier structure functions is described below.

THREE-TIER POWER-SHARING STRUCTURE IN AJK UNDER INTERIM ACT 1974



The aforementioned graphic description reveals the power-sharing mechanism between AJK and the Government of Pakistan. In the following discussion this study will critically analyse this structure and several related factors.

It is generally said that Azad Jammu & Kashmir enjoys autonomy or self-governance under the Interim Constitution Act of 1974 through which there is a President, Prime Minister, Cabinet and Supreme Court etc. However, these are notional positions and in the words of Sumit Ganguly, 'This autonomy is more a matter of symbol than substance, however: decisions that truly matter are still made in Islamabad' (Sumit Ganguly, Jonah Blank 2003, 13). Hayat raised a pertinent question on how a government can be considered to function as a self-government that lacks even permission to collect taxes from its own territory and thus is unable to willingly pass laws regarding its peoples' welfare (Hayat 2012). In a similar vein, a former Prime Minister of AJK says, 'AJK government is by the Pakistanis and for Pakistan' (Human Rights Watch 2006, 28). Bushra Asif notes, 'Islamabad's relationship with Muzaffarabad is one based on control rather than autonomy, with negative consequences for AJK's political and economic development' (Bushra 2006, 34). In summary, the word 'Azad' denotes free in the Urdu language; however, in the real sense of the word 'Azad' is missing from almost every aspect from 'Azad' Jammu & Kashmir.

An analytical study of the Interim Constitution Act of 1974 indicates many weaknesses that appear systematically enshrined, causing fragility in governance on one hand and allowing the Council to function as a parallel government on the other. The AJK Council, headed by the Prime Minister of Pakistan as chairman alongside five other non-state subject residents, holds exclusive authority over 52 subjects of governance. Consequently, this leaves behind minimal executive power for the AJK Government, thus limiting it to running minimal day to day affairs within its territory. Moreover, the AJK government has no authority to make the Council accountable before any judiciary or accountability bureau in AJK or elsewhere. Succinctly put, 'It is akin to giving responsibility of protecting assets to a thief by making him the gatekeeper', a well-known journalist from AJK added.⁸⁶

In short, the Government of Pakistan maintains its control over all administrative, legislative and economic affairs of AJK through the Council. The decisions by the

⁸⁶Interview, Javed Hashmi, Editor, *Daily Jammu & Kashmir*, at Islamabad, October 2011

Council are not subject to judicial review, neither by the judiciary of Pakistan nor of Azad Kashmir. Mahmood notes, 'When the Kashmir Council was created around three decades ago, it was considered as an attempt to elevate the status of AJK. But no tangible step was taken to enhance AJK's autonomous status further' (Mahmud 2007, 118).

A closer look at the Interim Act of 1974 shows that there are also discriminatory clauses aimed at restricting the right of association and political freedom. The 'Act' itself entails contradiction in different clauses. For example, the preamble of this Act reads: 'the future status of the State of Jammu and Kashmir is yet to be determined in accordance with the freely expressed will of the people of the State through the democratic method of free and fair plebiscite under the auspices of the United Nations as envisaged in the UNCIP Resolutions adopted from time to time'. On the contrary, in section 7(2) of the Interim Constitution it reads: 'No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of State's accession to Pakistan' (Azad Jammu and Kashmir Interim Constitution Act 1974).

The Clause, locally referred to as 'The *Shik*', must be signed by candidates before contesting elections and for taking oath as Members of the Legislative Assembly (MLAs). This Clause is an *a priori* demand for their allegiance to Pakistan. Candidates must declare that they believe in the Ideology of Pakistan. The clause reads as: 'I solemnly declare that I believe in the Ideology of Pakistan, the Ideology of State's Accession to Pakistan and the integrity and sovereignty of Pakistan'. In the past, many political parties and candidates who did not sign and agree with this clause have been debarred and banned from contesting elections.⁸⁷

The first schedule of the AJK Constitution 1974 deals with the oath of offices of the President, Prime Minister, ministers, members of the Council, members of the Legislative Assembly, judges of the Supreme Court and High Court. It is mandatory to take an oath for these positions except for judges of the judiciary. They read: 'I will

⁸⁷ In 2001, more than 30 political activists belonging to different pro-independence parties were arrested and barred from contesting elections because they refused to sign the declaration that they believe in state accession to Pakistan. See Amnesty International report available at: <http://www.amnesty.org/en/library/asset/ASA33/018/2001/en/d752b54b-fb2b-11dd-9486-a1064e51935d/asa330182001en.pdf>

remain loyal to the country and the cause of accession of the State of Jammu & Kashmir to Pakistan'.⁸⁸ Moreover, current Interim constitutional arrangements under Act 1974 also contravene UNCIP resolutions. Essentially, the spirit of choice is clearly undermined by these clauses and they contravene U.N resolutions on Kashmir. Several politicians, jurists, journalists and civil society activists echo the same suggestion of contravention of UN resolutions as well as its basic charter and The Universal Declaration of Human Rights of 1948. For example, Dr. Nazir Gilani indicated that Article 7(2), 19 (2), 21, 31 (3) and 56 in AJK Act 1974 violate the Government of Pakistan's duties under UNCIP Resolutions (Nazir Gilani, 2013).

3.5.1 Factors, Dynamics and Channels of Control

The role, responsibilities, executive and administrative jurisdiction of different institutions which emerged from the Interim Act of 1974 in AJK have already been discussed. However, there are yet several other political and social factors, dynamics and channels of influence in AJK through which the territories' people and political system is passing through and shaping political discourse. In the subsequent discussion, this study approaches these aforementioned factors in detail.

3.5.2 Identity Dilemma and Ambiguous Citizenship

The people of Azad Jammu & Kashmir (Here I refer to them as Azad Kashmiris) are facing a dilemma of identity and citizenship. It is worth mentioning that 'The State Subject Rule' was adopted and enacted in 1927 by the Government of Jammu & Kashmir. It provided a definition and characterised different categories of citizenship for the people of Jammu & Kashmir as Class-I, II, III, and IV.⁸⁹ The State Subject Rule is also mentioned in the Interim Constitution Act of 1974, which declares that Azad Kashmiris are citizens of the former princely State of Jammu & Kashmir. The definition of a State Subject as given in Act 1974 reads as follows:

State Subject means a person for the time being residing in Azad Jammu and Kashmir or Pakistan who is a 'State Subject' as defined in the late Government of the State of Jammu and Kashmir Notification 20th April,

⁸⁸ The Azad Jammu and Kashmir Interim Constitution Act 1974, oath for members of the Legislative Assembly

⁸⁹ See the text of State Subject Definition in the Notification dated the April 20, 1927, and subsequent notification issued in 1932 by the then Government of J&K as Annex-B

1927, as amended from time to time (AJK Interim Constitution Act 1974, Section 2(1)).⁹⁰

Interestingly, in all constitutional mechanisms promulgated and adopted in different and divided parts of the disputed State of Jammu & Kashmir - currently under the control of India and Pakistan - the State Subject Rule is adopted and enacted by the respective Governments. However, reportedly, the State Subject Rule was revoked in Gilgit-Baltistan in the 1970s, and in Indian Administered Kashmir it was altered to 'permanent resident'. In the context of AJK, many consider that the State Subject Rule provides *de jure* legitimacy and citizenship to the people of the former Princely State of Jammu and Kashmir. It secures the collective identity and unification of the former state as a single entity through prohibiting any foreign state from changing the state's demography. Nationality as a subject is dealt with by the AJK Council under Act 1974; therefore, as a result of the aforementioned 'State Subject Rule', Azad Kashmiris obtain their State Subject Resident Certificate from the District Magistrate (Deputy Commissioner), who is assigned this responsibility to issue said certificates on behalf of the AJK Council.

The Pakistan Citizenship Act of 1951 for its part, provides two articles with reference to people who are 'State Subjects' of the State of Jammu & Kashmir;

Rights of citizenship of certain persons resident abroad

A subject of the State of Jammu and Kashmir who, being under the protection of a Pakistani Passport, is resident in the United Kingdom or such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf, shall, without prejudice to his rights and status as a subject of that State, be deemed to be, and to have been, a citizen of Pakistan (Pakistan Citizenship Act, 1951, 13 April 1951, Article 8 (2)).

14-B. Certain persons to be citizens of Pakistan

A person who being a subject of the State of Jammu and Kashmir, has migrated to Pakistan with the intention of residing therein until such time as the relationship between Pakistan and that State is finally determined, shall, without prejudice to his

⁹⁰ Azad Jammu & Kashmir Interim Constitution Act 1974

status as such a subject, be a citizen of Pakistan (Pakistan Citizenship Act, 1951, 13 April 1951, Article 14-B).⁹¹

In contradiction, Pakistan's High Commission in Ottawa, Canada, provided information in response to a query from the Immigration and Refugee Board of Canada (IRB) on the citizenship of Kashmiris:

Pakistan considers Kashmiries living in Indian and Pakistani controlled areas to be neither Pakistani nor Indian. Pakistan and the international community recognize Kashmiries living in these areas to be citizens of the former state of Jammu and Kashmir. However, Pakistan maintains that Kashmiries can opt for Indian or Pakistani citizenship if they wish to do so. Pakistan has no special citizenship programme for Kashmiries wanting to acquire Pakistani citizenship. Being born in Kashmir does not automatically entitle Kashmiries to Pakistani citizenship. Kashmiri applicants for Pakistani citizenship are treated like other applicants (IRB, 1 August 1994).⁹²

Consequently, Azad Kashmiris are in a condition of identity-lessness. They have Pakistani (National) Identity Cards (NICs) and Pakistani Passports. The NICs and Passports are issued to Azad Kashmiris by the National Database and Registration Authority (NADRA) which works under the Interior Ministry of Pakistan. It is noteworthy that unlike Pakistanis (proper), on every NIC issued to State Subjects or Azad Kashmiris, a distinction is made in red ink which reads as follows, 'Native of former State of Jammu & Kashmir', and currently as 'Azad Government of the State of Jammu & Kashmir'. This distinction indicates clearly that Azad Kashmiris are not, legally speaking, Pakistani. However, they use Pakistani Passports as travel documents reportedly (though questionably) allowed by Bhutto, former Prime Minister of Pakistan, during the 1960s. Gibran Peshimam, a prominent Pakistani journalist, notes:

They have Pakistani identity cards and passports - but are not quite Pakistani. Their homeland is autonomous, but not quite so. It has a Constitution - but one that is perpetually interim. They have a government and an assembly, but both of which are effectively powerless. It is a land and a people with a past, and perhaps a future-but with no present (Peshimam 2011).

⁹¹ The text of the Pakistan Citizenship Act, 1951 can be accessed via the following link: Pakistan Citizenship Act, 1951 [Act No. II of 1951], 13 April 1951 (available at Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht http://www.mpil.de/shared/data/pdf/pakistan_citizenship_act_1951.pdf)

⁹² IRB - Immigration and Refugee Board of Canada: India/Pakistan: Information on whether a person born in Kashmir of Indian (Kashmiri) parents is considered to be Indian or Pakistani, whether Pakistani citizenship is acquired by birth in Kashmir, and whether India and Pakistan recognize dual citizenship with each other [ZZZ18171.E], 1 August 1994 <http://www.unhcr.org/refworld/docid/3ae6ac465c.html>

In this respect, the Supreme Court of AJK, in an appeal against the High Court of AJK's orders, observed the following:⁹³

- The person does not lose his status (State Subject) mere because he or she has obtained a passport either from Pakistan or India; it was opined that the State Subjects living in either parts of the State had no means of travelling around the world, except through passports of India and Pakistan. Thus, the passport issued to a State subject would not determine his nationality, it would only legalise his international travel.
- That a State subject could not be deprived of his status as such merely because he had obtained the passport from India or Pakistan;
- That the High Court had the jurisdiction to issue a writ against the Government of Pakistan, if it acts in connection with the affairs of Azad Jammu and Kashmir;
- That the mode of travelling on passports could not place embargo on the vested rights of the State Subjects to reside permanently in Azad Kashmir, especially so when the Azad Kashmir Government also supported their stand.

However, it is noteworthy that refugees who migrated and settled in Pakistan are Pakistani by nationality and under the Citizenship Act of Pakistan. They enjoy equal rights to other citizens of Pakistan and, unlike Azad Kashmiris; no distinction is made on their NICs and Passports. In connection with the State Subject Rule of 1927, on June 27, 1932 the Government of Jammu and Kashmir issued another notification defining status of state subjects living in foreign countries. According to clause 1 of said notification, 'all emigrants from the Jammu and Kashmir state to foreign territories shall be considered State Subject and also the descendants of these emigrants born aboard for two generations'.⁹⁴ However, it is yet unclear whether the third generation of state-subjects, whose ancestors migrated and settled in Pakistan or expatriates, are still eligible to obtain state-subject certificates under abovementioned notification issued on 27 June 1932, which apparently restricts descendants of emigrants to only second generation.

⁹³In an appeal from the order of High Court dated 29.4.1997 in Writ Petition No.5 of 1996, the Supreme Court of AJK (PLJ 1998 SC (AJK) 56 in the case of AJK Council through Secretary, New Secretariat, Islamabad, Pakistan -Appellant versus Jamal Basharat & 6 others. The Supreme Court of AJK observed in the case: The appeal of the Government of Pakistan through AJK Council seeking the deportation of State Subjects from Azad Kashmir was dismissed by the SC of AJK. The Case was heard by CJ Sardar Said Muhammad Khan and Justice Basharat Ahmad Shaikh. See full decision of Supreme Court of AJK The Ghulam Hussian vs Federal Government of Pakistan (PLD 1993 Azad J & K 153) The Ghulam Hussian vs Federal Government of Pakistan (PLD 1993 Azad J & K 153). See full decision on <http://www.pljlawsite.com/html/PLJ1998SA56.htm>

⁹⁴ See, State Subject Rule 1927 and subsequent notification issued on June 27th 1932 as Annex-B

3.5.3 Representation in National Institutions of Pakistan

Despite its legal ambiguity and recognised disputed nature, the Government of Pakistan ‘assumed’ temporary responsibilities of Azad Jammu & Kashmir and Gilgit-Baltistan under UNCIP resolutions. In this respect, the Cabinet division of Pakistan issued a notification to all its relevant Ministries to deal with AJK on par with other Pakistani provinces in terms of rights and obligations. This notification was issued on May 11, 1971 whereby the following instructions pertaining to the Affairs of Azad Kashmir were conveyed for observance by all Ministries and departments of the Central Government. The extract of said notification is as below:

- (i) Although Azad Kashmir is not a part of Pakistan within the meaning of Article 1(2) of the Constitution, it should for all practical purposes be treated like any other province....
- (ii) Azad Kashmir should be brought into the main stream of the general administration (of the country). For this purpose the leaders and officials of that Government should be invited at appropriate level to attend inter-ministerial meetings in which the problems of that area are coming up for discussion.⁹⁵

Notwithstanding, despite this notification, in practice AJK is viewed as an exclusive responsibility of the Ministry of Kashmir Affairs. According to Justice (R) Manzoor Gilani, the administration of AJK and Gilgit Baltistan (GB) was ‘entrusted’ to Pakistan under UN resolutions. They have since been treated in many respects as administrative units of Pakistan and are subject to most of the liabilities and obligations of a province under the Pakistani constitution. But they do not have any of the constitutional rights and powers enjoyed by the provinces in Pakistan (Gilani 2011).

Another layer of ambiguity concerns the lack of representation in the national institutions of Pakistan. Pakistan is a federation in which all four provinces and federally administrated areas contribute to the national exchequer. They also enjoy representation in federal forums such as the Senate, National Assembly, National Finance Commission (NFC), Council of Common Interests (CCI) and Indus River System Authority (IRSA). However, AJK is denied any representation or given a member status in such forums.

⁹⁵ Reproduced in Ameerullah Khan Mughal (2007), *The Interim Constitution: Azad Jammu & Kashmir*, Kashmir Law House Mirpur, Azad Kashmir, pp.1-2. Moreover, Snedden (2012) noted that this notification, which insists on dealing with AJK at par with other provinces of Pakistan, was issued in June 1970 by the Cabinet Division Secretary of Pakistan, however, surprisingly, it wasn't conveyed to the AJK government until May 1971, an eleven-month delay without citation of reason. See Snedden (2012), p. 100

AJK is equally contributing its share to Pakistan's national exchequer including through taxes, electricity production, foreign remittances, water and natural resources. Raza Rumi notes: 'If it were not for foreign remittance from Kashmiris abroad, absolute poverty would have been the fate of AJK' (Rumi 2010). Due to this absence of representation, they are deprived of a voice to protect their rights and are unable to demand a share from the national resources of Pakistan. Many analysts consider that this discriminatory treatment by the Government of Pakistan when dealing with AJK is a systematic one. It appears to be a calculated policy of the Government of Pakistan not to give genuine autonomy to AJK, rather to deal with it as a subservient entity, less than the provinces of Pakistan.

3.5.4 Controlled Governance and Democracy

The history of AJK indicates that the right to vote and the prevailing basic governance structure was not easily obtained. Indeed, there is a suggestion that political parties in AJK put up an incredible political struggle even for attaining these rights, which form only a modicum of what the United Nations' Charter envisioned. However, what little was attained was subsequently further diluted, at the cost of strengthening self-government and promoting democratic governance in the region. Some analysts believe that the mere holding of elections is a sufficient condition for the existence of democracy. In this respect, the sole rationale given by the traditional AJK political elite is that democracy has been sustained by virtue of elections being held uninterrupted since 1985, thus providing testimony of continuity of 'democracy'. That may be partially correct in the sense that elections are considered the paradigm of enforceable accountability. Indeed, there is no other form of participation and accountability as direct as 'free and fair elections', a pre-condition for democracy no doubt. However - there is always a risk - proved by studying the history of politics, elections and government formation in AJK that certain groups or parties having more resources, strong ties to and support from the prevailing ruling party in Pakistan, have always won elections held in AJK.

It also should be observed that some essential elements required for democratic governance are lacking in AJK's current 'democratic' structure, including an independent judiciary, independent election commission, transparent and genuine electoral rolls, and independent accountability commission. Additionally, it requires well-functioning political parties that represent ideologies/policies rather than tribes

or regions, and an accessible, free and impartial media, not one controlled by the state or corporate sector. Further, it needs a vibrant civil society, able to play a watchdog function and provide an alternative form of political participation. Therefore, democracy is far more substantial than just holding voting rights and voting or elections should not solely be considered as democracy.

Freedom House, an independent watchdog organisation dedicated to the expansion of freedom around the world, rated the status of Pakistani Kashmir (it includes both AJK and GB), and political and civil rights in its annual reports. Findings for recent years are presented as follows;⁹⁶

Year	Status	Civil Liberties	Political Rights	Freedom Rating
2012	Not Free	5	6	5.5
2011	Not Free	5	6	5.5
2010	Not Free	5	6	5.5
2009	Not Free	5	6	5.5
2008	Not Free	5	7	6.0
2007	Not Free	5	7	6.0

Freedom House also indicated the dominant role of the Government of Pakistan over elections and democracy in AJK. One such report reveals:

Pakistan exercises considerable control over the structures of government and electoral politics. Islamabad’s approval is required to pass legislation, and the federal minister for Kashmir affairs handles daily administration and controls the budget. Islamabad’s influence over the voting and governance in general remained strong, and few observers considered the region’s election to be free and fair. The Pakistani military retains a guiding role on issues of politics and governance (Freedom House, 2012).⁹⁷

Tanveer Ahmed cites a number of factors that contradict the view of AJK as a democracy. These include a lack of free independent media, without which no country

⁹⁶ According to Freedom House, a rating of 1 indicates the highest degree of freedom and 7 the lowest level of freedom

⁹⁷ Freedom House, <http://www.freedomhouse.org/report/freedom-world/2012/pakistani-kashmir>

can be considered democratic. 'In AJK, we have the prevalence of a blind following (band wagon) environment where there is no space for creativity and innovation. Another reason we cannot call it a democracy is due to its blatant cronyism. The political elites here are actually political cronies and assist Pakistan in treating AJK as a colony. This is the only description I can give' (Ahmed 2011).⁹⁸

Yet another layer of control by the Government of Pakistan over the administrative structure of Azad Jammu & Kashmir is the deployment of top civil officers from Pakistan, or what are locally referred to as 'Lent Officers'. These include roles such as the Chief Secretary, Inspector General of Police, Finance Secretary, Auditor General and Secretary Health. In all these positions, only Pakistani nationals are employed, whereby no Azad Kashmiri (or State subject) can ever be promoted to these top positions (unless they emerge through Pakistan's own civil service, however, those cases are extremely rare). This in turn creates resentment and despondency towards MKANA and the federation of Pakistan. Mahmud notes 'The appointment of four high-ranking officials to run the AJK affairs and, at times, they act as overlords and not as public servants' became and remains a bone of contention between Muzaffarabad and Islamabad (Mahmud 2007, 121).

In the context of politics in Azad Kashmir, Rose argues that, 'Perhaps the most contentious issue in Azad Kashmir-Pakistan relations is the utter dependence of the Azad Kashmir Government upon Islamabad for financial support' (Rose 1992, 247). There is a general understanding among the Pakistanis that there is no possibility that Azad Kashmir could continue to function without Pakistani support. However, many interviewees were of the opinion that if only due royalties from natural resources and power generated from Mangla Dam, which amounts to approximately 2 billion (PKR), were to be given to AJK, most of Azad Kashmir's financial problems would be solved. Another 'deprived' source of income for the Government of AJK is income lost from properties of the late Maharaja's Government that are located in Pakistan, which are currently being controlled and governed by MKANA. As for the AJK government, it was systematically sidelined through an ordinance by the Government of Pakistan when it assumed control. From 1947 to 1955 these properties were taken care of by the AJK government, but subsequently the Government of Pakistan issued an 'Administrating

⁹⁸ Interview, October 2011.

of Kashmir Property Ordinance 1961', through which the Ministry of Kashmir Affairs took control of these properties located in the territory of Pakistan.

According to the Interim Act of 1974, these properties fell under the jurisdiction of the AJK Council as mentioned in the Third Schedule item 37 with the title 'State property'.⁹⁹ However, when the Ministry of Kashmir Affairs assumed control of this subject, details of all income generated from these properties were not even shared with the AJK Government. Rose elaborated this point as,

The Azad Kashmir government also insists that income from property in Pakistan that was owned by the Jammu & Kashmir government before 1947 should go into its treasuries rather than to Pakistan, but with no success, proving once again the reluctance of any government to give up a source of income for mere principles (Rose 1992, 247).

Another aspect of dependency and control by Pakistan is the 12 refugees' seats allocated in AJK's Legislative Assembly for those located in various parts of Pakistani territory.¹⁰⁰ These Kashmiris are considered full Pakistani citizens with a right to vote in Pakistan as well as being able to contest elections for AJK's Assembly. Critics argue that ordinary people are merely voters, who are allowed to cast their vote in a given controlled mechanism whereby 'electoral engineering' authorities sitting in Islamabad actually decide the outcome of elections in AJK. Therefore, it is often found that the 12 refugee seats (out of 41 contested) based on voters living in Pakistan, form a bargaining-chip to manipulate the political process before each new government formation in AJK. Consequently, in AJK people have the right to vote but not the right to rule, which exemplifies the characteristics and type of 'democratic fabric' this region entails (Hayat 2012). There is general consensus among Azad Kashmiris that these seats are designed to control government formation in AJK by the government of Pakistan (invariably in favour of the prevailing ruling party in Pakistan). Additionally, appointments of judges for the High Court and Supreme Court of AJK are made at the advice of the Council with the approval of its Chairman, the Prime Minister of Pakistan, re-iterating another layer of control and hence dominance by Pakistan over AJK.

⁹⁹ In a recent investigative report (in Urdu), Athar Masood Wani, a free-lance journalist and columnist, has provided details of the Maharaja's properties in Pakistan. The report also revealed that the AJK government has no details of these properties, which are worth billions of rupees in the form of land (rural and urban) and buildings.

¹⁰⁰ The term 'Refugees' stands for those State Subjects, who migrated from Indian-controlled Kashmir in 1947, 1965 and during the recent armed struggle that began in 1989. They are settled in different parts of Pakistan and their representation is in the shape of 12 allocated seats in AJK's Legislative Assembly.

Despite the powerlessness of AJK and in view of the Azad Kashmiris who feel political discontent towards Islamabad, the territory remains relatively conflict-free. This is unlike the Valley of Kashmir, whose residents have their own set of grievances living under the control of India, where large scale human rights violations have been reported by International media and other organisations. Nevertheless, under-reportage (for various reasons) is also emerging as a factor on this side of the divide where constitutional and institutional discrimination towards certain ideological groups in AJK puts a huge question mark on the fundamental legitimate rights of the people and their civil liberties.

Baroness Emma Nicholson, member of the European Parliament from the UK, prepared a report on Jammu & Kashmir after visiting various regions currently under the administration of India and Pakistan. The report was passed and adopted by the European Parliament at Strasbourg in 2007 with an overwhelming majority. Some points the report raised are important to quote, as these are relevant to governance, democracy and human rights in Azad Jammu & Kashmir (AJK). The situation as discussed and described by the rapporteur, who visited these areas and held meetings with relevant stakeholders, led to the Government of Pakistan being asked to take immediate action with regard to the poor democratic conditions in AJK. It read:

14. Regrets, however, that Pakistan has consistently failed to fulfil its obligations to introduce meaningful and representative democratic structures in AJK; notes in particular the continuing absence of Kashmiri representation in the Pakistan National Assembly, the fact that AJK is governed through the Ministry of Kashmir Affairs in Islamabad, that Pakistan officials dominate the Kashmir Council and that the Chief Secretary, the Inspector-General of Police, the Accountant-General and the Finance Secretary are all from Pakistan; disapproves of the provision in the 1974 Interim Constitution which forbids any political activity that is not in accordance with the doctrine of Jammu and Kashmir as part of Pakistan and obliges any candidate for a parliamentary seat in AJK to sign a declaration of loyalty to that effect; is concerned that the Gilgit-Baltistan region enjoys no form of democratic representation whatsoever;
16. Urges Pakistan to revisit its concept of democratic accountability and minority and women's rights in AJK, which, as elsewhere, are key to improving conditions for the people and tackling the menace of terrorism;
17. Expresses concern regarding the lack of freedom of expression in AJK and reports of torture and mistreatment, of discrimination against refugees from Indian-administered Jammu and Kashmir and of corruption amongst government officials, and calls on the Pakistani Government to ensure that

the people of AJK can exercise their fundamental civil and political rights in an environment free from coercion and fear;

18. Further calls on Pakistan to ensure free and fair elections in AJK, considering that the general elections of July 11, 2006 were characterised by fraud and vote rigging on a massive scale, and that any candidate who refused to uphold the position of the accession of Kashmir to Pakistan was barred from running; also calls on Pakistan to hold elections for the first time in Gilgit and Baltistan;¹⁰¹

This resolution has been highly appreciated and received attention from pro-independence forces in AJK. However, pro-Pakistani forces criticised it not so much for what was written, but what remained un-addressed in their view. In other words, they lamented (correctly) that mass human rights violations in Indian-administered Kashmir were not appropriately addressed in the report.

Against this backdrop, the significant control of Pakistan over AJK affairs has unquestionably reduced the status of AJK and negatively affected empowerment of the local governance structure. The international legal status of AJK is yet to be resolved, though it is part of the larger Jammu & Kashmir equation and remains collectively declared disputed by the United Nations. Snedden argues:

Pakistan has totally manipulated a pliant Azad Kashmir population and denied them meaningful power... Pakistan's dominance of Azad Kashmir's electoral process, politics and leadership is not a new phenomenon, nor will it end soon. Pakistan wants a pliant Azad Kashmir regime until J&K's international status is finally resolved. Azad Kashmir's political system is a constrained, controlled and compromised 'democracy' (Snedden 2012, 215).

The dominant role of Pakistan over AJK has in effect reduced the status of AJK, which has subsequently resulted in three significant negative repercussions: Firstly, it has diluted the unresolved international status of AJK. Secondly, it has negated Azad Kashmir's standing as a rival government to that in place in Indian J&K. Finally, it has also negated Azad Kashmir's standing as a successor and an alternative government of the dethroned Maharaja for all Jammu & Kashmir state (Snedden 2012, 84-5).

¹⁰¹ European Parliament resolution of May 24, 2007 on Kashmir: present situation and future prospects. Full text can be accessed via the internet at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0214&format=XML&language=EN>

3.5.5 Ethnicity and Politics

There is no constitutionally defined internal power-sharing framework based on ethnicity or regions under the Interim Act of 1974. However, jobs in the civil service are distributed based on a district quota system. The cross-cutting or segmental cleavages (tribal identities) existing at the political level are actually factors that determine political and government formation in pre- and post- electoral processes in AJK.

At the internal level of power-sharing in AJK, politics revolves around the local power-struggle among concerned political parties. This power-struggle can be defined from the perspective of cross-cutting or segmental cleavages which can be subsequently categorized into two levels of analysis. Firstly, it revolves around, broadly speaking, ethnicity and more precisely tribal identities (clans or racial identities that are locally referred to as *Biradri* or *Baradari*). Rehman argues that,

Generally, baradarism can be defined as the politicisation of biradari affiliations, relations and sentiments. In Azad Kashmir, the traces of popular political baradarism can possibly be derived from the early 1930s when the popular uprising won people of the state their modern elections in 1934 (Shams Rehman 2013, 23).

Secondly, regional belonging within AJK is loosely based on districts, which further creates division at the political and social level. It appears that these two factors play a decisive role in shaping and reshaping political discourse within AJK.

However, it is important to see whether biradri affiliation/identity or regional affiliation/identity plays a more dominant role at the time of elections or government formation, a question requiring thorough examination. There is difference of opinion on the role of biradris in AJK in internal power-sharing that includes party affiliation, electoral processes and government formation. Many recognise biradri as playing a crucial role, while others consider its role marginal at best.

Some prominent *biradris* are *Gujjars, Sudhans, Rajputs, Jatts and Syeds* in AJK. Amongst them, Sudhans and Rajputs are considered to have been most influential since the beginning of the political process in AJK. However, Jatts (mainly residing in Mirpur Division and Diasporas living in the United Kingdom) have gradually gained a significant political role and have become leading players due to their acquired economic prosperity through migration to the UK in the 1960s.

According to Saraf (1979, 1377), 'The politics in Azad Kashmir is largely tribal'. Human Rights Watch, in its 2006 report "*With Friends Like These...*" *Human Rights Violations in Azad Kashmir*, highlighted the dominant role of biradri. It says, 'The *Biradri* is the overriding determinant of identity and power relationship within the Azad Kashmiri socio-political landscape' (Human Rights Watch 2006, 12). Similarly, Alexander Evans, a former British diplomat and scholar, considers *biradri* as very important in Azad Jammu & Kashmir. According to Evans, Azad Kashmiris are most keenly tied to their clan/biradri, which continue to play the leading role in social organisation in Pakistani-administered Kashmir. Moreover, many politicians acknowledge that they continue to exercise greater influence on electoral process politics than political parties.¹⁰²

On the contrary, Sardar Aftab Ahmed Khan, who has been politically involved for two decades in AJK, identifies *Sudhans, Jats, Rajputs, Gujjars, Syed*, etc. as racial groups that have primary influence over family and community issues. However, these identities have been made official because they are listed in the revenue and criminal justice systems. He states that these racial identities are simply part of a heterogeneous society, and their official existence is evidence of racism and discrimination. Further, he argues that these identities are not a dominant factor in political discourse and political parties play a more important role in the larger political framework (Aftab 2012).¹⁰³

However, results taken from the questionnaire show evidence that biradri do shape political discourse and social cohesion or division at the internal level in AJK. For example, out of 80 respondents 51 agreed that *biradiris* are a vital factor and play a decisive role in AJK. Therefore, it is argued that biradri affiliation/identity plays a far more influential role than regional affiliation/identity in the politics of AJK, particularly in pre-election scenarios and at the time of casting votes. Snedden also acknowledges that, 'there is a clear link between voters, Biradri and votes' (Snedden 2012, 129). Press for Peace (PFP), a non-governmental organization, conducted election monitoring in recent elections held in 2011 in AJK. In its report, PFP acknowledges clan (biradri) loyalties as a dominant factor. It says,

The dominant factor behind any political change in the State always remains the same; who is backed by whom and which candidate is of what tribe?

¹⁰² Alexander Evans, 'Kashmiri Exceptionalism', in T.N Madan and Aparna Rao, (eds.), *The Valley of Kashmir: The Making and Unmaking of a Composite Culture*, New Delhi, Manohar, 2008, pp.729-33, Cited in Snedden (2012), pp. 128-9.

¹⁰³ Interview in Rochdale, United Kingdom, Dated March 03, 2011

Tribal & family ties and clan politics dominate all other considerations for a democratic transformation. Thus, in absence of any democratic ideal, major portion of voters have a shared characteristic of sticking to clan loyalties. A very few political parties and groups have shown some respect to true democratic objectives. But their performance during the elections always remained highly pathetic (Press for Peace 2011).

Baradarism is also seen as a source of discrimination in the civil administration and more importantly - political parties while selecting candidates for contesting elections - biradri affiliation becomes the most important determining factor. Farooq Haider, a former Prime Minister of AJK, acknowledged that, 'One of the big problems or curse in AJK is Baradarism; it killed merit and destroyed political culture' (Haider 2011).¹⁰⁴ Meanwhile, Aslam Mir, a local journalist, argues 'voters are not electing candidates on merit rather they follow tribal (Biradri) and regional affiliation. They don't think an elected assembly member would work for the nation rather they think that only a person will secure and protect their rights if he/she belongs to their particular biradri' (Mir 2010).¹⁰⁵

Generally, AJK society is divided by segmental or cross-cutting cleavages. However, at times these cleavages do overlap. It is found that the cleavages arising out of biradris or regional divides are often less cross-cutting than mutually reinforcing, which results in the continuity of the seemingly intractable political system. To be more precise, political parties at the time of selecting candidates, and the public while casting votes, do not seem to escape the dominance of biradaris, especially in a pre-election context (to the extent that most if not all candidates/parties design their election campaign strategy according to their estimation of the population of each key biradri in any given constituency. Perhaps the most telling factor is that they assume the voter to be a block voter, whereby the block is the biradri).

At the time a new government is formed, there are two factors that become most important. The first is political allegiances and alliances and the second is the interest factor dominating decision-making for any political formation, irrespective of whether in a pre-poll or post-poll context. Additionally, it is also found that traditional politicians also encourage such division for their own vested interests. Snedden argues that, 'The overall significance of *biradari* in Azad Kashmir politics is that it is an inherent social construction which, used politically, has empowered Azad Kashmir

¹⁰⁴ Interview at Kashmir House, Islamabad, Dated September 2011

¹⁰⁵ Interview in Muzaffarabad, Dated September 2010

politicians' (Snedden 2012, 131). To summarize, racial identities appear to be an increasingly growing phenomenon concerning power-struggles and political allegiances, especially for the purpose of internal power-sharing of AJK, at least for the near future.

At the level of political and ideological affiliation in AJK, there is another trend or division amongst mainstream political parties. Broadly, this can be divided into two ideological camps: firstly, the pro-Pakistan or pro-accession parties or politics, and secondly the pro-independent or independence political fraternity. However, Rehman indicated a further division amongst the mainstream pro-Pakistani political parties. He notes:

The latest developments in AJK show that the pro-accession to Pakistan politics here has been polarized on Baradari lines into the two main political parties of Pakistan, Muslim League (N) and Pakistan People's Party. The former has become predominately the Raja party and the latter the Jatt Party (Shams Rehman 2013, 46).

The pro-independence political scene is perceived to be beyond regional or biradri affiliations and revolves around identity, self-determination and independence, whereby both India and Pakistan are regarded as foreign occupiers. In AJK, the pro-independent political parties have long been victimized through constitutional restrictions (mentioned earlier) in the Interim Act of 1974. Consequently, they never took part in the electoral process and protested against this constitutional discrimination which side-lined them from entering mainstream political discourse. However, in the most recent general election, held in June 2011, most pro-independence parties (except Jammu Kashmir Liberation Front - JKLF) after forming a political alliance amongst like-minded politicians that they named the National Democratic Alliance (NDA), accepted the constitutional restrictions and participated in the election. However, they could not usher in any significant change.

According to a survey carried out by the British think-tank Chatham House, 44% of people in Azad Kashmir support the idea of an independent state.¹⁰⁶ Nevertheless, pro-independence parties have failed to translate support for independence into electoral politics. Rehman notes, 'One main feature of pro-independence politics in Azad Kashmir as well as in the Diaspora is that they are not constructed around any one

¹⁰⁶ Robert W. Bradnock, 2010, Kashmir: Paths to Peace, Chatham House. See full report on <http://www.chathamhouse.org/publications/papers/view/109338>

Baradari' (Shams Rehman 2013, 49). Therefore, it is argued that one of the reasons - amongst many - of pro-independence parties' failure in electoral politics is their lack of affiliation with any specific biradri.

JKLF was of the view that participating in the election by prior acceptance of an oath of allegiance to Pakistan is in contradiction of independence ideology. Other pro-independence parties hold similar views, but argue simultaneously that not taking part in the elections will result in further marginalization from the mainstream political landscape. However, all pro-independence parties have agreed on the point that the current status and governance system under Interim Act 1974 has failed to protect identity, sovereignty and empowerment of the people of AJK. They suggest that a constituent assembly should be formed as envisaged in the first declaration of rebellion against the Maharaja on October 4, 1947.

Despite differences on the basis of ethnicity and region, and a clear divide on ideological lines - by and large - the political culture in AJK is fairly tolerant and harmonious at the societal level; in the sense that conflict doesn't necessarily lead to violence. However, when it comes to political stakes and political formation then a clear division can be seen amongst the various stakeholders within AJK.

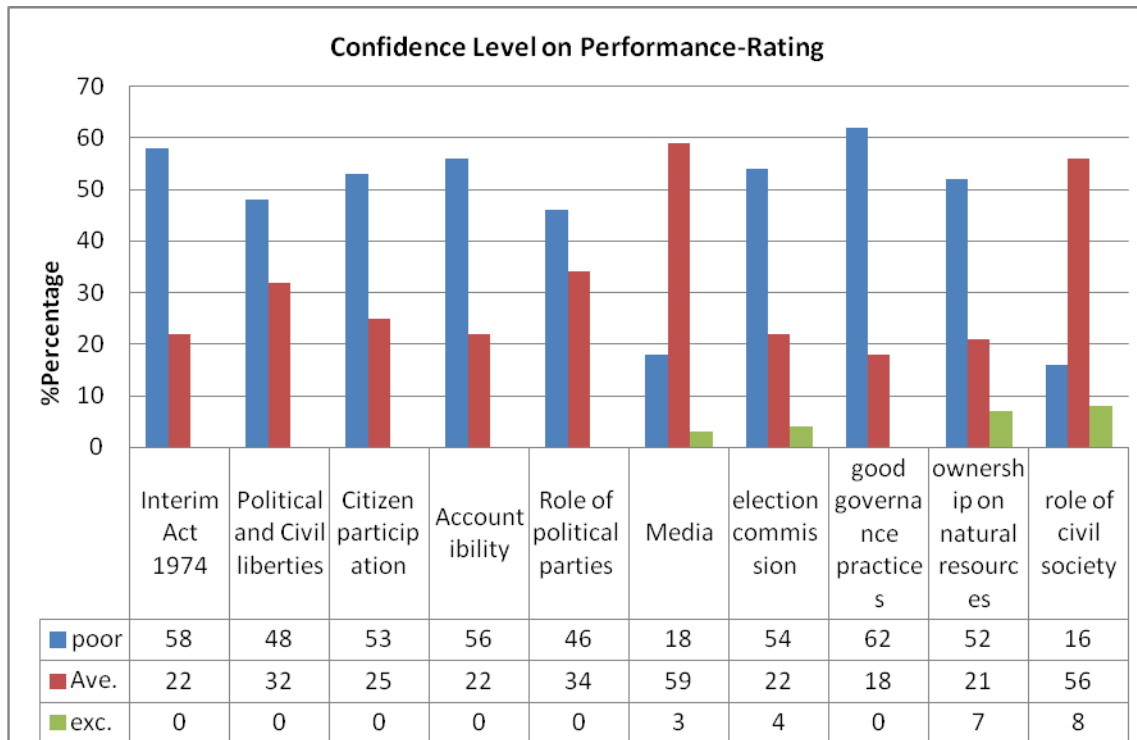
3.5.6 Findings from Field Research

Earlier this study discussed at length governance and power-sharing in AJK, based on a 3-tier governance structure including associated political and social factors and dynamics. In the following section, findings from surveys collected through a specific questionnaire based on judgmental or purposive sampling (non-probability sampling) will be presented.¹⁰⁷

The chart is self-explanatory and most of the findings extracted from the interviewer's transcriptions have been discussed above. However, the aim here is to present quantitative findings in order to obtain an insider's testimony or confidence level of respondents about AJK and its peculiar power-sharing governance structure and societal and political issues. The chart describes general opinion on the effectiveness and performance of the government in AJK. It delved into various questions related to

¹⁰⁷ The questionnaire was not designed with a Likert-type scale, which is typically aimed to rate any particular issue. Rather, it was designed to obtain an insider's testimony and confidence level as part of non-probability sampling.

AJK's governance and democracy. It aimed to observe confidence levels on accountability, citizen participation, good governance practices, civil and political liberties, and the role of civil society and media. The participants in the questionnaire had three choices: poor, average and excellent. The results extracted from this questionnaire show corresponding confidence levels in a column chart and as a percentage.



(Table 1.1)

3.5.7 Civil Society, Media and Political Parties

The respondents had to rate their confidence level on the multiple choice questionnaire. Total respondents were 80 and results taken through this questionnaire are discussed below.

The ratio-chart (table 1.1) shows a high level of dissatisfaction by respondents on the performance of state and non-state actors in AJK. However, the role of media and civil society was reflected as average. This is attributed to the recent increase in the role of local media and civil society.¹⁰⁸

¹⁰⁸ At a broader level, usually the term 'non-governmental organization' includes media, civil society and political parties. However, in the context of AJK these terms are being used and understood differently. Consequently, instead of grouping them altogether, I presented them separately. However, analysis based on findings on their role is presented at one place.

On the role of media in raising people's voice for legitimate rights in AJK, respondents rated as: excellent 3%, average (satisfactory) 59% and poor 18%. Basically, there are two types of media: the local media of AJK, and Pakistani mainstream media. The local media has only just emerged in the past decade, prior to which Pakistani mainstream media - mainly newspapers (Urdu and English) - thinly covered events and issues about AJK. Raza Rumi describes this situation thus, 'Silence on Azad Jammu & Kashmir in the Pakistani mainstream, other than juicy breaking news, is a tacit acceptance of the marginalization of this area' (Rumi 2010). Several local dailies are now being published, although most of them are based in Islamabad or Rawalpindi and not in AJK, though they do provide somehow a platform to the audience of AJK. It may be argued that the space previously taken by mainstream Pakistani media is being replaced by the local print media of AJK. Nevertheless, people do continue to watch and read mainstream Pakistani media as their curiosity to know happenings on the wider political landscape remains highly important. Importantly, any aspirant wishing to launch a newspaper in AJK, needs approval from the AJK Council, whilst local authorities in AJK are required to authorize, verify and recommend prior to approval by the Council. A similar exercise is required for the registration of any community based non-governmental organisation seeking to work as civil society. Notwithstanding, local media are playing a vital role in raising awareness among the masses of AJK about their legitimate rights and the markedly uneven power-sharing relationship under Interim Act 1974 in particular.

The role of civil society in any given society has proved to be very crucial for better governance practices including rule of law, transparency, participation and accountability. The major causes of bad governance in AJK are: firstly, corruption and incompetency; secondly, political, economic and constitutional dependence on Pakistan and lopsided power-sharing relationship; thirdly, undue interference of Ministry of Kashmir Affairs in the local affairs of AJK; fourthly, lack of accountability; fifthly, weak role of civil society and citizen participation in decision-making; and sixthly, AJK is a male-dominated society, which keeps the system narrowly on a single dimension. The marginalisation of women, who make up more than 50 % of the population, is also one of the reasons for a fragile and ineffective governance system in AJK.¹⁰⁹

¹⁰⁹ Panel group discussion, in which representatives of media and civil society participated, held at Press Club Muzaffarabad, AJK in September 2011.

The proven role of civil society for democracy and empowering governance for social development is unfortunately lacking in AJK. It is observed that civil society in AJK has failed to play its required role to raise public rights issues. The respondents show their confidence level on the role of civil society as: excellent 08%, average 56% and poor 16%. However, of late and due in part to awareness raised by the local media, political parties and civil society have slowly (but surely) come forward and taken a lead in demanding political and constitutional empowerment of AJK.

At the internal level in AJK, another big issue is bad governance practices and incompetency, which has resulted in corruption, unemployment and poor economic development. A recent survey conducted by Chatham House (2010) showed people's opinions on what they perceive to be the main problems faced in AJK. The answers were: unemployment 66%, government corruption 22%, and poor economic development 42% and human rights abuses 19%.¹¹⁰

Regarding the question on good governance practices, the answers were: poor 62%, average 18% and excellent 0%. On accountability in governance processes, the answers were: poor 56%, average 22% and excellent 0%. On the Interim Act 1974 effectively protecting legitimate rights of people and providing sufficient space for building democracy the respondents rated as: poor 58%, average 22% and excellent 0%. Regarding the question on citizen participation into decision-making in AJK, out of 80 total respondents 53% rated as poor, 25% as an average and 0% as excellent. According to Tanveer Ahmed, a civil society activist, 'AJK is a legal anomaly and the current governance structure in AJK under Interim Act 1974 is most certainly not a structure which accommodates accountability and transparency of any kind' (Ahmed 2012).¹¹¹

Democratic norms and practices are argued to be pre-requisites for peace building and good governance. After qualitative and quantitative discussion, it is clear that the AJK Council retains exclusive financial and legislative authority in the current 'controlled democratic governance' structure in Azad Jammu & Kashmir under Act 1974, whereas it ties the hands of AJK's Assembly, resigning it to exercising limited powers. It appears that problems mainly lie at the external (AJK vs Pakistan) level, power-sharing under

¹¹⁰ Robert W. Bradnock, 2010, Kashmir: Paths to Peace, Chatham House. See full report on <http://www.chathamhouse.org/publications/papers/view/109338>

¹¹¹ Interview dated October 15, 2011 in Mirpur, Azad Kashmir

prevalent Interim Act 1974. Therefore, AJK needs an alternative model of power-sharing that could guarantee considerable autonomy or self-rule to the government of AJK, which is deemed necessary for building genuine democracy.

3.6 Conclusion

The discussion on colonial legacy and status of Indian States under the Indian Independence Act 1947 has unfolded some historical facts, which are seemingly 'deliberately' ignored by the respective state's intelligentsia of India and Pakistan. For example, firstly, under the 'Treaty of Amritsar of 1846', the narrative that the former State of Jammu & Kashmir was sold or bought can be one possible interpretation of this treaty. However, the other narrative that J&K was not sold or bought but rather its sovereignty was regained and transferred to Maharaja Gulab Singh, should not be ignored and should be given equal importance when interpreting this treaty. Secondly, through this treaty the state of Jammu & Kashmir was able to maintain 'domestic sovereignty' while remaining under the suzerainty of the British crown. It was similar to more than five hundred other princely states in British India. Thirdly, the Indian Independence Act of 1947, which laid-down a constitutional framework for the division of the Indian sub-continent, was about the division of British India, not British States or Indian States. Indian States had maintained a distinct relationship with the British, unlike British India and under the Indian Independence Act of 1947 they were free to join India, Pakistan, or remain independent. Fourthly, on August 15, 1947 when Pakistan and India became semi-sovereign states (Dominions of the Commonwealth), the suzerainty of the British crown also lapsed and those Indian States which hadn't yet decided to accede to either dominion automatically became sovereign. Fifthly, on the issue of accession, the controversial 'Instrument of Accession' signed on October 26, 1947 by the Maharaja, was provisionally accepted by Lord Mountbatten and subject to ratification by the people of Jammu & Kashmir once the state returned to normalcy.

Additionally, the authority of the Maharaja and the precise timing of the signing of the accession document has also been questioned by various historians and scholars (Korbel 1954; Snedden 2012; Lamb 1991). Moreover, the people in some areas of Jammu & Kashmir had revolted against the Maharaja's regime and were fighting against his forces; they had established a parallel government on October 24, 1947,

effectively denouncing the Maharaja's authority two days prior to the alleged Instrument of Accession. To conclude, there is a general agreement amongst scholars that the history of conflict is usually written in favour of the winner and/or occupier. The Kashmir conflict is no exception, as considerably more is written from an Indian or Pakistani perspective (dominant discourse) and much less from a Kashmiri perspective (marginalised discourse).

The provisional government of Azad Jammu & Kashmir, which arose by virtue of a (partially) indigenous struggle and declared as the legitimate successor or representative of the erstwhile Princely State of Jammu & Kashmir, was not recognised as sovereign by the international community of nations. Since its inception, AJK became or was made to become systematically dependent on the State of Pakistan, which with the passage of time gradually took control of almost everything of importance, barring the nominal titles of President and Prime Minister supervising a powerless Assembly. The study of political constitutional evolution in AJK indicates that by establishing a separate Ministry to 'oversee' AJK, by enshrining constitutional clauses and creating institutions such as the AJK Council which best suited its own interests, the Government of Pakistan systematically not only nullified the status of AJK but also tightened its control over AJK's politics and economy.

It is revealed that external power-sharing (centre-region), is highly uneven resulting in a dilemma of governance in AJK, consequently making its government totally subservient to the Government of Pakistan. The negation of legitimate political and constitutional rights, including limited shares from natural resources is increasing political rifts, social deprivation and marginalising AJK. Consequently, current power-sharing under the prevailing interim constitutional framework appears to be a substantial obstacle in deepening democracy or establishing a genuinely autonomous governance structure.

In the context of AJK, power distribution between AJK and Pakistan is highly unjust and unequal. Furthermore, the Government of Pakistan exercises exclusive powers over the administration and governance of AJK. As a result of this uneven power-sharing framework - through which AJK lacks domestic sovereignty - the risk of conflict between the concerned parties increases and the chance of establishing democratic governance decreases. As Stefan Wolff testifies,

Where such an unambiguous allocation of powers is missing in the sense that one layer of authority automatically retains all powers not explicitly allocated elsewhere, renewed conflict over the distribution of power between different layers of authority is more likely, even though there is no automatism in this (Wolff 2011b) .

The stringent control of the AJK Council over the last four decades has resulted in poor governmental authority, poor economic development, institutional fragility and lack of accountability, which subsequently undermined the prospects for genuine democratic governance in the disputed territory of AJK. It is revealed that the current political system, though described as ‘democratic’, is merely a form of ‘cosmetic democracy’ in which issues of governmental authority, citizen participation in terms of rights and decision-making voice, accountability of public institutions and a faulty electoral system have become a serious concern for policy-makers and researchers alike.

Following Tansey's arguments and Krasner's concept of ‘domestic sovereignty’ (discussed in the preceding chapter) and after detailed discussion on AJK's power-sharing with Pakistan, it is strongly advocated that democracy requires autonomous governments that have the authority to take binding decisions free from external control and influence to ensure they protect the legitimate rights and political freedoms of citizens in any given territory. In other words, domestic sovereignty is essential for building a genuine democratic governance structure in AJK.

Against this backdrop, some questions are pertinent. For example, what are possible options or even modus operandi to deal with AJK's predicament? More specifically, given the fact that Azad Jammu & Kashmir is passing through ‘problematic sovereignty’, what alternative model of power-sharing or constitutional framework could help to resolve the political and constitutional conflict between AJK and the State of Pakistan until the final disposition of the Kashmir conflict? Importantly, what theories and approaches are available in contemporary discourse to address societal division and power-imbalances for building democracy in AJK? These questions will be discussed thoroughly in subsequent parts of this study.

4 Chapter-4: Power-Sharing: A Conceptual and Theoretical Reflection

4.1 Introduction

This chapter is result of questions raised in the concluding part of the preceding chapter. The detailed discussion and understanding of the power-sharing relationship between AJK and Pakistan has encouraged further exploration of contemporary power-sharing approaches and theorization of their relevance and applicability within AJK. It should be noted that the aim is, strictly speaking, not to test contemporary power-sharing theories.

In the last two decades, power-sharing has received tremendous attention from analysts and policy-makers alike. Development in the concept of power-sharing can be traced back to the 1960s and 1970s when it was assumed that political stability and conflict management could not be achieved in multi-ethnic societies. The theory of power-sharing challenged this assumption and argued that it could in fact facilitate democratic stability in plural and divided societies (Lijphart 2002, 37). By contrast, Donald Horowitz (1985) highlighted many weaknesses in the consociational approach and alternatively presented Centripetalism or an integrative approach for ethnic accommodation. Stefan Wolff (2011) has further developed an analytical framework for addressing ethno-national conflicts through institutional designs, to account for success and conditions under which conflict settlement lead to peace. In this respect, Wolff (2010, 2011) discussed three dominant approaches: Consociationalism (Lijphart 1968), Centripetalism or integrative (Horowitz 1985) and power-dividing (Roeder and Rothschild 2005) in the context of ethno-political conflict. He also presented territorial self-governance (TSG), adding it to conflict management literature. Understandably, these are not the only approaches for political stability and conflict management in deeply divided societies. However, scholarly interventions have generated a vast amount of debate in their own right at academic and policy-formation levels on these approaches. Thus, examining and analysing further the main tenets of these approaches is a core aspect of this chapter. The introductory part also briefly discusses the use of terminologies for this study.

This chapter is divided into two sections. Section 4.2 aims to shed light on conceptual understanding, definitions and interrelationships, namely governance, conflict and democracy. Then, it discusses several interconnected concepts such as governance without government, the interplay between society and state in governance, and the concept and terminology of democratic governance and good governance.

Section 4.3 aims to develop a deeper understanding of institutional design approaches based on the debate by proponents and opponents in contemporary discourse, namely consociational, integrative, and power-dividing and autonomy or territorial self-governance approaches for stable democracy and conflict management. It further examines these approaches at two levels: Firstly, how power-sharing approaches provide a better alternative to the Westminster-type majoritarian or power concentrating regimes in divided societies; and secondly, how these approaches address political instability and conflict emerging from segmental or cross-cutting cleavages or imbalanced power-sharing relationship in divided societies. It explores the constitutional, political and electoral system designs and challenges in building a democratic structure in a divided society based on a debate between consociational and integrative approaches. Thereafter, it also focuses on the concept of autonomy or territorial self-governance (TSG) as a remedy for dispute resolution and promoting good governance in disputed territories. At the end of this section, it provides a comparative analysis explaining the relevance and applicability of salient features of these approaches to the disputed territory of AJK.

4.1.1 Use of Terminologies

It is imperative to define various terminologies prior to the next section. The terms or concepts that have been cited and /or will be used in subsequent discussions need to be defined for the purpose of understanding them in given contexts. These are as follows:

4.1.1.1 Power-sharing

According to Jarstad (2006), most discussion on power-sharing stems from one of the two discourses: conflict management theory and democratic theory. Jarstad maintains that power sharing in conflict management discourse differs from power sharing with democratic theory and there is an overlap between these two on characteristics, cases and the mechanisms related to these two concepts of power-sharing (Jarstad 2006, 3).

However, several other scholars maintain that power-sharing approaches address multiple issues including political instability and conflict arising from deep social cleavages in ethnically divided societies (Lijphart 1968, 1977; Horowitz 1985; Nordlinger 1972). Thus, unlike Jarstad's arguments, I argue that the purpose of power-sharing theories and approaches is twofold: to address political instability and to manage conflict.

On defining the term power-sharing, Timothy D. Sisk asserts, 'Power-sharing refers to the act of providing every significant identity group or segment in a society representation and decision-making abilities on common issues and a degree of autonomy over issues of importance to the group' (T. Sisk 1996, 5). In this sense power-sharing can be used to describe the nature of power-sharing arrangements, institutes, policies and practices (Rothchild, D. and Roeder 2005, 20). However, acknowledging variant interpretations on the definitions and the concept of power-sharing and following the arguments discussed earlier, I am referring to power-sharing with two aspects or levels of analysis linking them with the proposed case study. The first level is to analyse how powers are shared between AJK and Pakistan, which I refer as external or centre-region power-sharing. The second level is to explore two concurrent aspects viz. the interplay between state and society in governance and the government versus governance debate, which I refer as internal power-sharing.

4.1.1.2 Democracy and Stable Democracy

In his assessment of democracy Lijphart has defined democracy as 'simply a system of government in which the people have the opportunity to select their own leaders', and a stable democracy as 'one in which the capabilities of the system are sufficient to meet the demands placed upon it' (Lijphart 1968, 71). Later, in his book: *Democracy in Plural Societies: A Comparative Exploration* (1977), Lijphart further defined different concepts in a more comprehensive manner. For example, some basic concepts are as follows: *Plural societies* are societies divided by segmental cleavages of various kinds including religious, ethnic and so forth; *stability* is used as a 'multidimensional concept', which embraces 'system maintenance, civil order, legitimacy and effectiveness' and *democratic stability* is also characterized by these four dimensions (Lijphart 1977, 3-5). However, democracy does not simply mean a system of government where people have an opportunity to elect their leaders; rather it involves a certain level of transparency in electoral processes, accountability in

governance and citizen participation in decision-making. Therefore, I refer to Daniel Webster's definition of democracy, in which he describes democracy as 'people's government, made for the people, made by the people, and answerable to the people'. In addition to Webster's definition, I also follow the description by The Institute for Democracy and Electoral Assistance (IDEA) in which democracy has asserted as, 'democracy is about the use of power and the management of conflict' (IDEA 2005).

4.1.1.3 Political Stability, Deeply Divided Societies and Cross-Cutting Cleavages

Three further terms or concepts are: stability or political stability, plural or deeply divided societies and cross-cutting cleavages. For the purpose of this research, stability or political stability (Lijphart prefer to term it democratic stability) will draw upon the definition by Ian Lustick (1979). Lustick refers to the 'continued operation of specific patterns of political behaviour, apart from the illegal use of violence, accompanied by a general expectation among the attentive public that such patterns are likely to remain intact in the foreseeable future' (Lustick 1979, 325). For political stability, Lustick (1979) has proposed the control model as an alternative for explaining stability in plural societies.¹¹² He argues that a 'control model is appropriate to the extent that stability in a vertically segmented society is the result of the sustained manipulation of subordinate segment (s) by a superordinate segment' (Lustick 1979, 330). Lustick maintains that stability of divided societies is more dependent on the 'effective exertion of the superior power of the dominant group than on the "cooperative efforts of rival elites' (Lustick 1979, 333).

The term 'deeply divided' is used by Eric Nordlinger (1972), which Lustick has considered as a synonym for 'plural', 'vertically segmented', 'communally divided', and so forth. Lustick also asked for certain conditions for a society to be considered as deeply divided and at a minimum, for there to be a boundary between rival groups must be clearly distinguished (Lustick 1979, 325). Sujit Choudhry notes, 'As a category of political and constitutional analysis, a divided society is not merely as society which is ethnically, linguistically, religiously, or culturally diverse' (Choudhry 2008, 4-5). Following Lustick and Choudhry's description, for the purpose of

¹¹² Lustick has argued that a consociational model can be effectively deployed only if an alternative typology of control is available. See, for a more detailed discussion on seven areas discussed by Lustick, Ian (1979): Stability in Deeply Divided Societies: Consociationalism versus Control, World Politics, Vol. 31, No. 03, pp. 330-332

this study for political and constitutional analysis, the term ‘deeply divided society’ does not refer to just those societies which are ethnically, linguistically, religiously or culturally divided. I refer to a society or territory established in post-conflict settings, still driven by conflict, and whose status is contested and yet seeks self-determination, which for this study is ‘Azad’ Jammu & Kashmir (AJK).

4.1.1.4 Cross-Cutting Cleavages

The term cross-cutting cleavages often used in a political sense, referring to multiple factors that cause division i.e. political, racial, caste, religious etc. The term initially was used in 1967 by Stein Rokkan, who suggested cross-cutting cleavages as a mechanism for political stability.¹¹³ Lijphart argues that, ‘in deeply divided societies, cleavages are mutually reinforcing, not cross-cutting. The result is a system of “segmental cleavages”, where political divisions map onto “lines of objective social differentiation”, such as race, language, culture and ethnicity. If cross-cutting cleavages produce moderation, segmental cleavages produce immoderation’ (Choudhry 2008, 17).

Following the given perspective, I refer to cross-cutting cleavages or segmental cleavages as factors which cause social and political division broadly. To be more precise: racial, cast and regional identities or belongings, which play a decisive role in shaping political discourse and matters of governance.

4.1.1.5 Conflict

It is important to describe what conflict means in this study. Generally, the concept of conflict is defined as clash or disagreement on certain issues between two or more parties. From a theoretical perspective, Johan Galtung defined conflict as ‘two or more individuals or groups pursuing mutually competing goals with opposing interests and needs’. He further emphasised ‘the linkage between structural, behavioural and attitudinal aspects of conflict’ (Galtung 1996). There are many types of conflicts, namely interstate or intrastate and social or identity-based intractable conflict, and at levels such as interpersonal to intrapersonal levels etc. Thereafter, the evaluation that took place in conflict studies subsequently developed several approaches including conflict management, conflict resolution, conflict prevention and conflict transformation by scholars and practitioners (e.g. Lederach 1998; Galtung 1996). However, here the purpose is not to discuss all these theories and approaches, as a

¹¹³ See, Stein Rokkan (1967): *Geography, Religion and Social Class: Cross-cutting Cleavages in Norwegian Politics* in Seymour Martin Lipset and Stein Rokkan: *Party Systems and Voter Alignments*

wide range of literature is available on these theories or terminologies in contemporary discourse.¹¹⁴ For the purpose of this study, I refer to conflict at two levels or aspects: firstly, the Kashmir conflict, which this study does not intend to explore in its entirety. However, in discussing the Kashmir conflict, this study aims to understand the historical, constitutional and decolonial context for further understanding political and constitutional evolution in AJK. Secondly, in this conflict the former state of Jammu and Kashmir was divided into three parts, which are currently under three different governance structures under the administration of India and Pakistan. The region officially known as 'Azad' Jammu & Kashmir (AJK) emerged as a separate political entity through an indigenous rebel movement, which later came under the *de facto* administration of Pakistan. Therefore, I refer to this conflict as an existing and emerging political-legal conflict between AJK and the government of Pakistan arising from the disputed status of AJK and imbalanced power-sharing under Interim Constitution Act 1974.

4.2 Democracy, Governance and Conflict

The agenda of this section combines some important concepts that include: democracy, governance and conflict. A huge amount of literature exists on the causes, consequences and typologies of conflict, function and prospects of democratic and authoritarian regimes and types of governance in academic discourse. However, the purpose is to obtain conceptual understating about these interrelated concepts which are important for this study.

It is recognised that conflict is not always violent or negative; however, there is general agreement amongst scholars and practitioners that conflict is inevitable and can be a catalyst for positive transformation and change in society. Theorists and practitioners agree democracy and conflict go hand in hand. They also maintain that democracy retains characteristics that provide a framework to manage conflict. In this respect, Timothy D. Sisk argues that democracy is in many ways a system of managing social conflicts. Nevertheless, it could be argued that the emphasis is on managing, rather than resolving conflict. He elaborates, 'democracy operates as a conflict management system without recourse to violence' (Sisk 2001, 72). The most famous definition of democracy was described by the former president of the United States

¹¹⁴ See, for example, Berghof Glossary on Conflict Transformation: 20 notions for theory and practice (2012)

Abraham Lincoln in his Gettysburg address in (1863) as, ‘democracy means government of the people, by the people and for the people’.¹¹⁵

Political institutions (formal and informal) are integral to democratisation because institutions form and sustain democracies. They could be considered most important, particularly in countries which are in transition from dictatorship to democracy. In the process of democratisation, institutions give shape to public choice and create space for political actors to take part in governing affairs. Scholars from comparative politics have arrived at a consensus on the merit of democratic governance as opposed to authoritarian regimes. Further, ‘democracy offered by far the best prospects for managing deep societal divisions’ (Ben & Reynolds 2000, 421-422).

From a developmental perspective, democracy is not a prerequisite for good governance, economic growth and development, as these goals can be achieved in an authoritarian regime as well. The operative term is legitimacy, where authoritarianism struggles to convince. Francis Fukuyama stated that, ‘while there have historically been many forms of legitimacy, in today’s world the only serious source of legitimacy is democracy’ (Fukuyama 2005, 35). O’Flynn & Russell (2005) argues,

Democracy is not a single formula, but a complex set of political institutions and underlying principles that must be continually shaped and renegotiated by the members of a divided society as their relationships with each other grow and necessarily transform (O’Flynn & Russell 2005, 3).

In 2005, Institute for Democracy and Electoral Assistance (IDEA) in their ten-year retrospective publication ‘*Ten Years of Supporting Democracy Worldwide*’ articulated that, ‘democracy goes beyond the rule of law and protection of human rights; it means more than good governance and the effective management of public resources’ (IDEA 2005). Meanwhile, Joseph Schumpeter in his influential work *Capitalism, Socialism and Democracy* (1943) defined democracy as ‘a political method, that is to

¹¹⁵ Lijphart (1999) pointed out that Daniel Webster gave an address in 1830, thirty years before Lincoln’s address, in which he described democracy as ‘people’s government, made for the people, made by the people, and answerable to the people’, therefore credit should go to Daniel Webster instead of Lincoln.

say, a certain type of institutional arrangement for arriving at political, legislative and administrative decisions' (Pateman 1970, 3).

4.2.1 Understanding and Conceptualizing Governance

The usage of the term 'governance' has been increased in the past two decades. Peters (2010) describes it as a 'scarce commodity' transformed into a fashionable and challenging discourse in various research programmes'. This rise in governance logistically reflects changes and realisations of the implications of governance in our society. Academicians and practitioners are attempting to get to grips with new phenomena and practices of governance in the contemporary world. These recent changes are considered to be courtesy of worldwide waves of globalisation and democratisation. Stoker argues that, 'governance has become a focus of academic and practical discourse because traditional literatures and ways of explaining were inadequate to the task' (Chhotray & Stoker 2010, 2). It appears from published literature that much of the current debate on governance revolves around three connected dimensions, namely politics, polity and policy. More precisely, the debate revolves around two core concepts, 'governance' and 'modes of governance', which further examines the role of political institutions and power-mechanisms in governance within any given state or society (Treib, Bähr & Falkner 2007, 4-5).

A diversified understanding of the term 'governance' and its applications in current debate demands cross-disciplinary study. The presence of governance can be seen in almost every sphere of life including governance in public administration and political science, international relations, the environment, legal studies, development studies, economics, and new but fast-growing participatory governance (Chhotray & Stoker 2010). It can be further isolated into just three main categories of governance. Firstly, political or public governance, whose authority is the state, government and public sector, and relates to the process by which a society organises its affairs and manages itself. Secondly, economic governance, whose authority lies in the private sector and relates to policies, processes and organisational mechanisms. Thirdly and finally, social governance, whose authority is the civil society whereby it relates to the systems of values and beliefs that are necessary for social behaviour (M G Mimicopoulos and L Kyj 2007, 02).

The concept of governance is defined - in a developmental perspective - specifically by the World Bank and United Nations Development Program (UNDP), as 'these international organizations have attempted to create "good governance" in less-governed societies' (Kaufmann 2004). A substantial body of literature has been developed in conceptualising this term by the different authors but diversified interpretations of this concept has proven to be rather difficult. For example, The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) refers to 'the process of decision-making and the process by which decisions are implemented (or not implemented)' (ESCAP 2004). According to a report by the World Bank (1992) governance is defined in the manner in which power is exercised in the management of a country's economic and social resources for development. The World Bank (1992, 1994) has identified three important aspects of governance: (a) the form of political regime, (b) the process by which authority is exercised in the management of a country's economic and social resources, and (c) the capacity of governments to design, formulate, and implement policies and discharge functions (Gobyn 2006).

John Graham, Bruce Amos and Tim Plumptre have defined governance as the 'interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken, and how citizens or other stakeholders have their say'. Fundamentally, it is about power, relationships and accountability: who has influence, who decides, and how decision-makers are held accountable. It is also a process that can be undertaken by any number of actors and is not solely tied to the government (Graham et al. 2003). Therefore, it appears that the concept of governance has been subject of definitions and interpretations. Some more definitions are below:

- The World Bank (2000) views governance as economic policy-making and implementation, service delivery and accountable use of public resources and of regulatory power.
- USAID considers governance to 'Pertain to the ability of government to develop an efficient, effective, and accountable public management process'.
- DFID describes it as 'How institutions, rules and systems of the state - executive, legislature, judiciary, and military - operate at central and local level'.
- UNDP (1997) sees governance as 'The exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences' (Brinkerhoff 2005, 3-14).

- Kaufmann, Kraay, and Zoido-Lobaton define governance as, 'The traditions and institutions by which authority in a country is exercised, this includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies' (Kaufmann & Zoido-lobatón 1999, 1).
- Vasudha Chhotray and Gerry Stoker give a more comprehensive definition. They say, 'Governance is about the rules and collective decision-making in a setting where there are a plurality of actors or organisations and where no formal control system can dictate the terms of the relationship between these actors and organisations' (Chhotray & Stoker 2010, 3).

The differing interpretations indicate the most common features among all different definitions and interpretations on governance: firstly, the state's capability to operate under rule of law; and secondly, a strong emphasis on government accountability to citizens (Kaufmann & Kraay 2007, 4).

The foregoing discussion highlights concepts and dimensions of governance. The noted variables in definitions and interpretations of governance have in turn revealed that there are many forms of governance such as good governance, democratic governance, autocratic governance and many more. A comparative study of governance in public administration and political science discourses has identified two competing models or approaches of governance, the elitist approach and pluralist approach. A wide range of literature is available on these two approaches. However, they are discussed briefly to gain conceptual understanding. The elitist approach (also known as democratic elitism or elite theory) seeks to explain the power relationship between state and society. According to elite theory a small minority (economic elite and policy and planning networks) has authority to use most powers because power is independent of a state's democratic election process. The proponents of this approach believe that the 'elite is able to exert influence over policy and decision-making through the position they hold in a society as these key positions are reserved for elites only'. The pluralist approach (also known as pluralism or political theory) is primarily an antithesis of the elitist approach. Pluralists believe that governance is a collective process through which decision-making and authority is exercised by various interest groups or stakeholders. In this respect, the discussions on pluralism revolve around the central question of how power and influence is distributed among different

actors within a political process (Dahl 1958; Peter 1967; Mills 2000).¹¹⁶ In a nutshell, elitists believe that power is monopolized and pluralists believe that power is distributed to all relevant stakeholders in governance. Additionally, there are several styles of governance such as authoritarian, hierarchical, dysfunctional, competitive, collaborative, self-serving and abusive. Recent scholarship shows that another term increasingly being used is hybrid governance, albeit there is no agreed definition. Generally, the concept of hybrid governance stands for collaboration between state and non-state actors. In hybrid governance structures, roles, responsibilities and decision-making is distributed between parent and subordinate organizational structures. The concept of hybrid governance has subsequently given rise to various interrelated concepts explaining processes and structures such as hybrid institutions, hybrid governance structures (formal and informal) or hybrid organizational arrangements (Treib et al. 2007).¹¹⁷

The aforementioned literature may give the term ‘governance’ different meanings. However, Van Kersbergen & Van Waarden believes that the concept could function as a bridge between disciplines, and might stimulate comparisons between rather than different phenomena. Nevertheless, they don’t believe that the concept of governance can become a common ‘theory’ shared between disciplines (Van Kersbergen & Van Waarden 2004).¹¹⁸

4.2.2 Democratic Governance versus Good Governance

The discussion and research on the concept of governance and its application in different contexts gave rise to various related concepts such as good governance, democratic governance and participatory governance by academic and donor communities. These two traditions, however, have a dissimilar approach to governance and good governance. Academicians focus mainly on different ways in which relations between power and authority are structured in a society, whereas

¹¹⁶ For more explanation and critique on elite and pluralist approaches, See, Robert A. Dahl (1958): A Critique of the Ruling Elite Model, *The American Political Science Review*, Vol. 52, No. 2, pp.463-469, Robert A. Dahl (1957): The Concept of Power, *Behavioral Sciences*, 2:3, p. 201. And seminal work by C. Wright Mills’s *The Power Elite* (2000), Oxford University Press, Bachrach P. *Theory of Democratic Elitism: A Critique*, 1967, Boston: Little Brown

¹¹⁷ More on hybrid governance structure and modes, see Oliver Treib, Holger Bahr and Gerda Falkner (2005): Modes of Governance: A Note towards Conceptual Clarification, *European Governance Papers* (EUROGOV)

¹¹⁸ See for a comprehensive literature review on meanings and usage of the term ‘governance’, Van Kersbergen, K. & Van Waarden, F., 2004. ‘Governance’ as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy, *European Journal of Political Research*, 43(2), pp.143-171.

donor communities concentrate on how state structures play a role in ensuring social, economic policy and accountability through processes. In this context, this study does not purport a clear-cut definition of 'democratic governance' or 'good governance'. Rather, it attempts to capture some of the key elements or characteristics of democratic governance, which is often seen as a synonym of good governance. However, another view is that 'Democratic governance, in whichever terms it comes to be defined, need not be taken as a synonym for good governance' as the former is a necessary but not sufficient condition of the latter (Anon 2006, 10).¹¹⁹

The theory or definition of democratic governance alongside its applicability in different contexts poses a large number of challenges. It might be derived from theories of democracy or from international standards including developmental perspectives. Generally, democratic governance maintains that every citizen, regardless of which community or ethnicity he/she belongs to, has equal rights in all aspects, including the right to participate in the decision-making process. Thus, inclusiveness is a core value of democratic governance and all governance institutions and their actions are accountable to the people they are made for (Clarence Dias and R. Sudarshan 2007, 01). The General Assembly adopted its first explicit resolution on 'Promoting and Consolidating Democracy', which emphasised promoting democracy and strengthening good governance in member states. Later, this has become a core component of post-conflict peace building initiatives by United Nations agencies.¹²⁰

The concept of good governance is normative and complex, having emerged primarily due to bad governance practices: corruption, lack of respect for human rights and unaccountable governments. In contrast to Westminster-type democracies - which are comprised of multi-party elections, a judiciary and parliament - good governance proceeds to several other central issues. In its report 'Governance for Sustainable Development' UNDP (1997) acknowledges the characteristics of good governance that include participation, transparency, rule of law, responsiveness, consensus

¹¹⁹ For example, USAID views democracy and good governance as mutually reinforcing yet distinct in nature. For instance, 'Democracy as reflected in free, fair, and competitive elections is not strictly necessary for good governance. And it is quite possible to have bad governance under the formal structures of democracy...' (USAID, 'Promoting Democratic Governance'.)

¹²⁰ UN Resolution adopted by the General Assembly A/RES/55/96 on *Promoting and Consolidating Democracy*.

orientation, equity, effectiveness and efficiency, accountability and strategic vision (UNDP 1997).

The concept of good governance has recently gained attention and become an important element of the political and economic agenda. Former Secretary General of the United Nations, Kofi Annan, reflected that, 'Good governance is perhaps the single most important factor in eradicating poverty and promoting development' (Abdellatif 2003). Further, 'The normative judgment that a state is "strong" is no longer exclusively tied to its military might or economic power, but to standards of good governance' (Krause & Jutersonke 2007, 5). UNDP (1997) define it as,

Good governance addresses the allocation and management of resources to respond to collective problems; it is characterised by participation, transparency, accountability, rule of law, effectiveness and equity (United Nations Development Programme (UNDP) 1997).

The term democratic governance is thus clearly highly contested, meaning different things to different people depending upon cultural and political contexts. However, there are various indicators and data that measure governance and democracy such as Freedom House, Polity IV and Polyarchy 2. Robert A. Dahl in his classical work *A Preface to Democratic Theory* (1956) has described different forms and principles of democratic governance which are still widely used to measure governance. Dahl also asserts that, 'there is no democratic theory - there are only democratic theories' (Peterman 1970, 8). According to Dahl there are key attributes that a democratic government must comprise: contestation or competition, participation or inclusion, civil liberties and political rights. However, when defining good governance, it is often linked with involvement of civil society, decentralization, peaceful conflict management and accountability; all of which are core attributes of effective democratic governance. Not surprisingly, emphasis on good governance is often equated with promoting democratic government, of which one key objective is prevention of conflicts. Larry Diamond says, 'the building of democratic institutions would be one of the greatest conflict prevention measures that could be taken, especially if one thinks in terms of both political and economic democratic structures' (Diamond 1996).

UNDP further defines the concept of democratic governance in its Human Development Report (2002), describing 'governance which promotes human development'.

According to Abdellatif (2003), ‘Democratic governance incorporates into the notion of good governance for development, democratic processes and institutions, and a concern with the securing of political and civil rights and freedoms as human rights’ (Abdellatif 2003, 10). Abdellatif has further explained democratic governance from a human development perspective, shown in the box below.¹²¹

Democratic governance: Good governance from a human development perspective
At its core, democratic governance means: <ul style="list-style-type: none">• People’s human rights and fundamental freedoms are respected, allowing them to live with dignity.• People have a say in decisions that affect their lives. People can hold decision-makers accountable.• Inclusive and fair rules, institutions and practices govern social interactions.• Women are equal partners with men in private and public spheres of life and decision-making.• People are free from discrimination based on race, ethnicity, class, gender or any other attribute.• The needs of future generations are reflected in current policies.• Economic and social policies are responsive to people’s needs and aspirations.

Based on the previous discussions and above-mentioned box, it can be argued that there are four major pillars against which governance can be judged: (a) participation, (b) accountability, (c) rule of law and (d) transparency. These pillars are interconnected in the sense that their impact is mutually reinforcing to make governance work and deliver public goods to the citizens.

The literature in political science and public administration indicates that scholars ‘worry about whether governance can be made accountable’ (Chhotray & Stoker 2010, 50). Pierre and Peters (2005) acknowledge that there is no model developed for political accountability. However, they admitted that ‘those actors delivering governance to society to be accountable’ (Pierre & Peters 2005, 127). Rhodes (1997) argues that, recent changes in forms of governance have ‘led to a chorus of complaints about the loss of democratic accountability’. Consequently, new forms of governance

¹²¹ Reproduced and adopted from, Abdellatif, A.M. 2003, 10

may be challenging for existing practices of accountability, but they still must be accountable, as it is a fundamental principle of democratic society. In order to achieve accountability, substantive policy and multiple institutions are needed (R A W Rhodes 1997, 21, 59). On the contrary, Pierre and Peters (2005) argue that accountability demands a focus mainly on state institutions. They think that in governance the 'state is guarantor of public interest and key legitimate democratic institutions. Therefore, the institutions through which the state operates must be accountable' (Pierre & Peters 2005, 133). The debate on accountability in governance in turn reveals that it also depends on how accountability applies in complex steering and in what governance structures, whether in network form or directed by the central state. Pierre and Peters asserted that, 'There is a fundamental underlying tension between state steering and the form of engagement that could guarantee democratic accountability' (Pierre & Peters 2005, 51).

Another related concept in the broader democratic context, which received great attention by scholars and policy-makers, is participation. In the past decade, the word 'participation' became a prominent feature in recent theories of democracy. Scholars maintain that, 'the idea of participation is as old as democracy and therefore central to thinking within the politics discipline' (Chhotray & Stoker 2010, 167). From a Western conception of 'pluralism', the idea of participation was discussed by Robert Dahl, who calls this 'polyarchy' or 'rule by the many' in the context of pluralist representative democracy. It was subsequently endorsed by the vast majority of the world and further influenced the idea of electoral participation for functioning of government (Chhotray & Stoker 2010, 168).

Some scholars have talked about participation in the context of system effectiveness. System effectiveness is considered to be a measure through which a system is expected to achieve its objectives within a given environment with a particular focus on system availability, capability and dependability. In this context, Dahl, R.A (1994) noted a contradiction between system effectiveness and citizen participation. He argued that the 'democratic dilemma reflects the governability in modern societies and "system effectiveness" can be achieved either at the cost of abandoning democracy in the sense of "citizen participation" altogether, or by dramatically reducing it' (Dahl 1994, 23-34). Notwithstanding, Grote and Gbikpi (2002) in contrast with Dahl's view argued that,

The relationship between ‘system effectiveness’ and ‘citizen participation’ is not a contradictory one in modern societies, partly because abandoning democracy is not tantamount to abandoning citizen participation. Rather, in reality, it relates to the opposition between governance and related forms of participation and democratic government through election (Grote & Gbikpi 2002).

Charles Lindblom, in *The Intelligence of Democracy* (1965), endorsed Grote and Gbikpi’s statement by saying that ‘effective governance is in fact generated by participation’. Participation should not, therefore, be contrasted with ‘system effectiveness. It is actually one of its conditions’ (Heinelt, 2002). Mark Bevir argues that, ‘democracy is, of course, as much about participation as legitimacy. Indeed, participation may be essential to legitimacy and even accountability’ (Bevir 2011, 12). Therefore, it can be argued that legitimacy lies with the people, who with active participation shape the structures and processes for building democratic governance, which in turn could guarantee that their voice will be heard and they will be part of an accountability and decision-making process.

The discussion on participation or citizen participation in governance gives rise to participatory governance. The term ‘participatory governance’ was initially used in community-based participatory development, and later brought into governance discourse. Chhotray & Stoker describe it ‘as a practical response to “new” context of governing’. According to them, ‘formal state apparatus has proved inadequate to deal with growing social complexities’ and provided a space to non-state actors to be involved in governance processes, which subsequently gave birth to the concept of participatory governance. Participatory governance is therefore key to governance theory, which is grounded in actual problems and issues, seeking viable solutions (Chhotray & Stoker 2010, 165-167). Thus, participatory democracy is a process emphasising broad participation of the public in decision-making processes, whereas traditional forms of democracy that refer to voting democracy or representative democracy imply that people are in power and thus all democracies are participatory. However, participatory democracy tends to advocate more involvement through citizen participation and ensuring governing authorities are made accountable to the public, in contrast to traditional representative democracy. Arguably, absence of participatory democracy cause fragility in governance processes and may intensify conflict among different communities and stakeholders.

This study has explored different concepts that are being used in different contexts based on rationales presented by various scholars. The intention is to focus mainly on the concept and terminology of 'democratic governance'.

4.2.3 Governance without Government

There are number of debates over the implications of governance in political science and public administration literature. One particular theme is 'governance without government' which captures huge attention from scholars - both proponents and opponents - which further deepens our theoretical understanding. The concept behind this theme stems from International Relations Theory and refers to the possibility of governing without government (Rosenau & Czempiel 1992). The words 'government' and 'governance' are often used to mean the same thing. However, despite deriving from the same root, they should not be taken as such. The role of a government in governance can change, and often does (Jon Pierre & B Guy Peters 2000, 29). As indicated earlier, governance is not synonymous with government. More emphatically, 'governance is a system of rule that works only if it is accepted by the majority (or, at least, by the most powerful of those it affects), whereas governments can function even in the face of widespread opposition to their policies' (Rosenau & Czempiel 1992, 4).

Available literature on governance shows the gap between 'government and governance' but at the same time describes the intertwined nature of both concepts. Some authors (e.g. Philippe Schmitter and Jan Kooiman 2006, Renate Mayntz 1999) have distinguished the concept of governance from government. As Renate Mayntz (1999) has put it, 'Governance is not government and acknowledging problems of accountability in governance arrangements is not tantamount to introducing democratic inputs within such schemes' (Mayntz 1993, 9-20). Philippe Schmitter and Jan Kooiman (2006) have defined 'governance as a mode or mechanism for addressing a broad range of problems or conflicts, in which multiple actors backed by a government hierarchic authority of the state regularly arrive at mutually agreed decisions by consulting, negotiating, cooperating and finally implementing these decisions' (Kooiman 2002). Renate Mayntz while discussing governing and governance argued that, 'Governing is an action whereas governance is a mode of social coordination and order for explaining how to overcome the conceptual haziness resulting from the mixture of different meanings?' In this sense, arguably, governance

is linked more with structural and process-related activities. However, ‘a participatory or inclusive conception of governance reiterates the shift from state-centred activities to participation of non-governmental organisations for citizen participation into decision-making and improving accountability’ (Mayntz 1993, 9-20).

Klaus-Dieter Wolf has made a distinction between government and governance by demonstrating the need for an alternative model of democracy. He emphasised how ideal elements for democratic governance can be identified beyond the state. In the wake of this statement, Wolf has argued for three demands appropriate to any model of democratisation. These are the (a) principle of differentiation (territorial vs functional), (b) the political style (horizontal vs hierarchical) and (c) the mode of legitimating (participation vs effectiveness) (Wolf 2002, 35-50).

A short review of governance literature indicates that there are several analysts who support the governance without government perspective. These include Sorensen and Torfing 2007, Philippe Schmitter and Jan Kooiman 2006, Renate Mayntz 1999, Rhodes, 1997 and Rosenau & Czempiel 1992. Meanwhile, there is difference of opinion between those that view governance through the eyes of government steering and those who see it in a less structured way. Some scholars maintain, ‘These two perspectives can be seen as opposite sides of the coin rather than in conflict with one another’ (J Pierre & B G Peters 2005; Chhotray & Stoker 2010, 47-48). Rhodes (1997, 46), and Soernsen and Torging (2007) have further discussed the perspective of ‘governance without government’ and emphasised that it refers to changes in process and practices of governing whereby governing relies on actors from both within but also beyond the state. These authors still give credence to a governmental role in governance processes. Stoker and Chhotray note, ‘In many respects the phrase “governing without government” is used for rhetorical purposes by these authors in order to emphasise the changed conditions of governing’ (Chhotray & Stoker 2010, 46-47). A more common understanding of the various shades of meaning attached to the concept is that,

A focus on ‘governance without government’ does not require the exclusion of national and sub-national governments from the analysis, it does necessitate inquiry that presumes the absence of some overarching governmental authority at the international level (Rosenau & Czempiel 1992, 7).

Some scholars (e.g. Pierre & Peters 2010, Jessop 2001, and Chhotray & Stoker 2010) consider that effective governance needs both social networks and a strong state. However, some scholars (e.g. Rosenau & Czempiel 1992 and Rhodes 1997) do not completely ruled out the role of the state in governance but consider that changes in the international environment have reduced government capacity to control policy outcomes.

In summary, there is substantial interest in providing 'governance without government' throughout academic circles. It appears that government must retain not an exclusive but a central position because 'eliminating government from governing will not only reduce the coherence of governing but also reduce its democratic contents' (Pierre & Peters 2005, 5). Hence, governance is primarily thought to mean government. However, the concept of governance is a broader concept than government and an important distinction between the two is the inclusion of civil society into governance processes. Scholars maintain that government is one actor in governance, but acknowledge the essential role of government in governance.

It is worth noting here that in some cultural and social contexts - generally - people do not take these two concepts differently, rather these two different but interrelated concepts are understood to have the same meaning. For example, in the context of AJK, these two concepts are understood as synonymous to each other. In AJK, at the most general level, when people talk about governance, they actually mean government or vice versa.

4.2.4 State and Society in Governance

How governance can occur through the interplay of social and governmental actions is a crucial topic. The journey of governance from state-centric to increasingly involve social and political actors significantly changed the relationship between state and society. Although the state remains in the centre, it is no longer a central actor. Rather, it acts like other actors within an organisation. In addition, current scholarship shows that 'state and international organisations increasingly share the activity of governing with societal actors that affect governance and its mode of governing at national and local levels' (Bevir 2011, 2).

Pierre and Peters have described governance as a product of four combined classical activities which are components of governance. These four important components are: (a) articulating a common set of priorities of society (b) coherence (c) steering and (d) accountability (Pierre & Peters 2005, 1-6).

State and society interact and are both involved in governance in a variety of ways. According to Pierre & Peters, 'understanding governance is basically a matter of understanding the political nature of governance and the nature of state-society relationships in the pursuit of collective interests' (Pierre & Peters 2005, 6). However, Migdal holds a slightly different viewpoint. He notes that 'states are in general successful in penetrating society but fail in effectively changing the population's behaviour and regulating social relations, though state and society have an impact on each other'. He concludes that within a society, 'the state is just one organisation amongst many and it cannot be considered as one monolithic unit' (Migdal 2001). Therefore, for realising effective governance, interaction between state and non-state actors is essential for political stability and conflict resolution, especially where society exists in a conflict zone.

4.3 Institutional Design for Divided Societies: Approaches and Options

The forthcoming discussion is based on different power-sharing approaches and options in order to address the issues of political stability and conflict arising out of ethnicity or imbalanced power-sharing relationships in deeply divided societies. There are various options and approaches to design a democratic structure and to cope with the challenges a divided society poses. In this regard, some options and approaches will be explored, examined and outlined from the contemporary discourse. The study of contemporary discourse on power-sharing approaches is important to understand power-sharing in AJK and subsequently to develop an alternative temporal model for AJK.

4.3.1 Consociational approach

The concept of power sharing was first introduced to the academic world in the work of Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968) and later was further elaborated in his book *Democracy in Plural Societies* (1977). Moreover, Eric Nordlinger in his monograph *Conflict Regulation in Divided Societies* (1972) developed it further and has made the case for power-sharing

in deeply divided societies. Majoritarian democracy has been seen as a potential source of heightened inter-ethnic conflict and it does not protect minorities sufficiently to maintain sustainable peace in ethnically divided societies (Philip G. Roeder & Donald Rothchild 2005, 5-7). Given the failure of majoritarian democracy to establish sustainable peace and democracy in deeply divided plural societies, practitioners and academics have presented various institutional arrangements that they have labelled as ‘power-sharing’ in contrast to majoritarian democracy. In this respect, Lijphart (2004) further endorsed his claims based on the argument by Larry Diamond (1999) ‘If any generalization about institutional design is sustainable ...it is that majoritarian systems are ill-devised for countries with deep ethnic, regional, religious, or other emotional and polarizing division’ (Lijphart 2004, 100). Therefore, power-sharing theory assumes that it can provide better alternatives for conflict management and building democratic system than the latter in divided societies.

Arend Lijphart contends that, ‘deep societal divisions pose a grave problem for democracy, and that it is therefore generally more difficult to establish and maintain democratic governance in divided than in homogeneous countries’. As a strong proponent of power sharing theory or consociational democracy¹²², Lijphart believes that ‘it is not only the optimal form of democracy but also the only feasible solution for deeply divided countries’ (Lijphart 2007, 75). Prominent features or criteria of Lijphart’s power-sharing theory as institutional arrangements for democratic stability are: a grand coalition government (between parties from all segments of society), segmental autonomy (Pippa Norris 2008 defined it as self-governing autonomy for territorial communities), proportionality in political representations, and minority veto rights (Lijphart 1977, 2007).¹²³ Lijphart in his later work (Lijphart 2004) simplified these four features into two primary elements: power-sharing and group autonomy. He further declared, ‘proportionality and the minority veto are now secondary characteristics that reinforce the first two’ (Choudhry 2008, 4-5).

The concept of Consociationalism has been further developed in its use as a mechanism of interethnic accommodation in Lijphart’s later work (Lijphart, 1995, 275-

¹²² Lijphart often uses the term ‘power-sharing’ as a synonym of ‘consociational democracy’ and as a rough synonym of ‘consensus democracy’. See Lijphart (2007).

¹²³ Lijphart argued that these four features predominantly are exhibited by all classic examples of Consociationalism: Lebanon, Cyprus, Switzerland, Austria, the Netherlands, Belgium, Fiji and Malaysia. See, for example, Lijphart 1977 and (O’Flynn & Russell 2005: 60)

287,) and more especially by John McGarry and Brendan O’Leary (McGarry & O’Leary, 2006, McGarry, J & O’Leary 2009b, McGarry, J & O’Leary 2009c, O’Leary 2005a, O’Leary 2005b). However, O’Leary modified Lijphart’s original contention on ‘grand coalition’ and argued it is not a necessary criterion, laying emphasis on a ‘meaningful cross-community executive power sharing in which each segment is represented in the government with at least plurality level of support within its segments’ (O’Leary 2005a, 13).

In the context of Lijphart’s theory of Consociationalism, which primarily addresses ethnic conflicts, political parties are key. Furthermore, Lijphart explains, ‘Consociational democracy means governments by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy. Pre-requisites for the success of consociational democracy are: (1) that the elite have the ability to accommodate divergent interests of groups and subculture (2) ability to transcend cleavages and join in common efforts (3) ability and commitment to the maintenance and improvement in cohesion and stability and (4) above all the assumption that elites understand the perils of political fragmentation’ (Lijphart 1969, 216). In the aforementioned context, the key assumption of the consociational approach is to take division seriously in order ‘to make plural societies more thoroughly plural’. Consociational democracy doesn’t intend to remove or weaken segmental cleavages, but rather to recognise them explicitly and make them more constructive for stability and democracy (O’Flynn & Russell 2005, 04; Lijphart 1977, 42).¹²⁴ Sujit Choudhry argues that, ‘The basic impulse behind the consociational model is to *share, diffuse, separate, divide, decentralize, and limit power*’ (Choudhry 2008, 18).

According to Lijphart, Consociationalism is thus an empirical theory that tries to explain democratic stability in plural European societies. He regarded ‘Consociationalism as the most promising and workable means for peace and political stability for the rest of the world’. In his first work: *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968), which laid down the theory of power-sharing democracy as an alternative to ‘Westminster-type majoritarian or power concentrating regimes, Lijphart theorized that the Netherlands nevertheless developed a stable democracy despite social segmentation, mainly due to power

¹²⁴ Lijphart has further explained: what are the criteria for a society to be considered whether it is plural or non-plural in his later work (Lijphart 1981).

sharing structures or arrangements encouraging elite cooperation. In another classic work, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, Lijphart suggested many benefits of power sharing regimes over majority rule and used the term consensus democracy. Lijphart has summarized his argument:

Power-sharing democracy generating 'kinder, gentler' governance with more inclusive process of decision-making, more egalitarian policy outcomes, and better economic performance and as compared to majoritarian democracy power-sharing democracy not only more peaceful, but also democratic in its design and effects (Lijphart 1999).

According to the normative claims of Consociationalism, the patterns observed by Lijphart in Europe may also contribute to stability elsewhere in the world. This claim is contested by many scholars such as Barry (1975) and Steiner (1981), who have indicated that 'European societies, especially Switzerland, are not good examples of 'Consociationalism' or consociational democracy, as there is a strong possibility that such experiences may not be equally applicable to other plural societies'. More criticism came from Horowitz (Horowitz 1985, 571-572), who highlighted the fact that Consociationalism might not be appropriate for the deeply divided societies in the developing world and there is strong possibility it would increase inter-group conflicts. Lijphart has responded to these criticisms by listing nine conditions¹²⁵ for consociational theory, though he added they are 'helpful but neither indispensable nor sufficient in themselves to account for the success of consociational democracy' (Lijphart, 1977, 54). This hedging makes the condition unfavourable and allows Lijphart 'to recommend Consociationalism whether the conditions are favourable or not' (Andeweg 2000, 529).

McGarry and O'Leary (2006) have also indicated the shortcomings and weaknesses of Consociationalism theory in the case of Northern Ireland as they argued that 'classical consociational prescriptions gave insufficient attention to what is required to resolve self-determination, as opposed to ethnic or religious disputes'. Their criticism extended to arguing that Consociationalists mainly concentrate on design of legislative and executive powers and pay insufficient attention to matters of transitions from war to peace, particularly military and political reforms (McGarry & O'Leary 2006, 249). Pippa Norris says that, 'Donald Horowitz articulated perhaps the most influential

¹²⁵ These conditions include (1) Multiple balance of power, (2) multiparty system, (3) small population, (4) degree of pluralism, (5) cross-cutting cleavages, (6) segmental isolation and federalism, (7) tradition of elite accommodation, (8) representative party system, (9) overarching loyalties.

critique by arguing that power-sharing regimes may in fact serve to institutionalize ethnic cleavages, deepening rather than ameliorating social identities' (Norris 2008, 28).

Besides Lijphart's work on the development of power-sharing theory, various authors including Gerhard Lehmbruch (1967), Jorge Steiner (1974) and Hans Daalder (1974) have conceptualised this concept as either 'consociational democracy', 'consensus democracy', 'proportional democracy' or 'negotiation democracy'.¹²⁶ Despite being presented differently by many authors, the shared idea is that in divided societies, different ethnic groups can be accommodated in the political process through power-sharing institutions and procedures, which will turn them into cooperative partners. By contrast, in power concentrating regimes power elites plays a zero-sum game 'in which losers have fewer incentives to work within traditional power rules' (Norris 2008, 4).

Contemporary debates along with many case studies on Consociationalism leave some questions outstanding. For example, Pippa Norris (2008) has asked two important questions in relation to power-sharing theory and its application in deeply divided ethnic societies. The first and most important question she raised is: 'do power-sharing regimes serve to end an armed conflict, which could further produce a durable peace settlement, political stability and conditions to help democracy flourish? Or by contrast, does it freeze group boundaries, highlighting latent ethnic identities and hinder rebuilding the state and thereby fail to facilitate sustainable multi-ethnic democracies' (Norris 2008, 04).

This ongoing yet unresolved debate raises critical issues for researchers and policy-makers alike seeking to understand underlying drivers of democratisation and causes of civil conflict. The claims made by Consociationalism scholars prove controversial, generating heated debates on the core concept, consequences and classification of cases. Criticism and debate on the conceptual and theoretical understanding of the Consociationalism theory and its applications has given rise to the emergence of the integrationist approach of power-sharing.

¹²⁶ For a detailed account, see Hans Daalder (1974): The Consociational Democracy Theme. *World Politics*, 26, pp 604-621. In this piece, Daalder has made a review and understanding from different authors' writings including Lijphart on the development of Consociationalism.

4.3.2 Integrationist approach or Centripetalism

The integrationist approach is fundamentally based on Donald Horowitz's (1985) book *Ethnic Groups in Conflict*. Later, Timothy Sisk (1996) and Benjamin Reilly (2001) analysed and developed it further. Horowitz argued that Consociationalism failed to highlight incentives for elite cooperation and inter-group accommodation. By contrast to the consociational approach, Horowitz, (1985, 1991) and Reilly (2001) have instead stressed political integration between conflicting communities. O'Flynn & Russell distinguished two approaches and argued the consociational power-sharing approach assumes that separate groups of people act as blocs which in turn are components of an overall society, whereas the integrationist approach assumes that the most effective form of government is an integrative or more pluralist one that addresses the overarching interests of citizens beyond their bloc identification (O'Flynn & Russell 2005, 3-5).

This approach is also labelled as 'Centripetalism' by Timothy Sisk because it tries to construct a centre-oriented process to political dynamics; however the goal is not consensus but accommodation.¹²⁷ By contrast to the consociational approach, it doesn't allow ethnically based minority veto or segmental autonomy. The integrative approach seeks for such an electoral system design that could encourage multi-ethnic political parties based on ideology rather than descriptive communal lines. It assumes that ethnic identities are salient but there is potential for the growth of cross-cutting cleavages (Horowitz 1985, 1991, Reilly 2001 and Wolff 2009, 2010). In the context of South Africa Horowitz argues,

Perhaps the most important is that the consociational model contains no mechanism and the notion described by Lijphart as "cartel of elites" provides no reason to assume that politicians will behave in accordance with its rules and form such a cartel across descriptive lines (Horowitz 1991, 139).

Donald Horowitz (1985) proposed the use of an alternative mechanism that encourages 'moderate' behaviour by both elites and their followers. Benjamin Reilly (2001) also discussed Centripetalism and explained how a political system, more importantly an electoral system, can be designed that could avoid conflicts and promote inter-ethnic accommodation in multi-ethnic societies. According to Reilly, the theory of

¹²⁷ Many authors used the term 'Centripetalism' also known as the theory of Centripetalism as a synonym of the Integrative approach. See, for example, Benjamin Reilly (2001) pp 7-8

Centripetalism 'envisages democracy as a continual process of conflict management in which all contentious issues must be resolved through negotiation and reciprocal cooperation, rather than simple majority rule' (Reilly Benjamin 2001, 7). The most important aspect of this approach to regulate ethnic conflict is to change the conditions that encourage institutional design. Following the work of Horowitz (1985), Reilly initially stressed the need to create more incentives for accommodation between competing interests. Secondly, he gave significant importance (as also advocated by Donald Horowitz 1985, 1991) to electoral engineering through crafting electoral rules that could make politicians reciprocally dependent on the votes of members of groups other than their own. In this way, political actors from different groups come together and negotiate and bargain for an acceptable political system. Consequently, minorities groups would enjoy the electoral incentives offered by the Centripetalism approach and as a result it will promote broader change in political behaviour (Reilly 2001, 7-10).

Lijphart emphasises cooperation among 'elite cartels' for the success of Consociationalism, whereas Horowitz argued that elites should commit themselves to an agreement for consociational arrangements, even though centrifugal forces and political opponents may easily undermine the durability of the agreement. Therefore, Horowitz believes that for the success of Consociationalism it is essential to create incentives for sustainable elite cooperation and inter-group accommodation. And for creating incentives for elite cooperation, there is need to design an electoral system which could guarantee moderation, accommodation and inclusiveness (Horowitz 1991, 139-141).

From the study of Centripetalism and Consociationalism, it appears that electoral system design, electoral rules and political parties are at the core of these approaches. Since some scholars (e.g. Timothy Sisk 1993, Reilly 2001) also describe electoral engineering as Centripetalism, it seems pertinent to discuss electoral system design for divided societies through the lenses of both approaches.

4.3.2.1 Electoral System Designs for Divided Societies: Integrative VS Consociation

Some of the most difficult issues divided societies are facing, especially those in transition from war to peace or in the process of consolidating institutional structures, are constitutional and electoral system design, and political party engineering.

Constitutional design includes fundamental political institutions, regulation of political parties and devolution as matters are embraced formally in the constitution. In the following matter, this study intends to sketch these three key elements in institutional design approaches that purposefully lead to ethnic conflict management, democracy and political stability.

Norris argued that constitutional systems are characterized by institutions that aim to maximize the number of winners through cooperation and compromise among the different communities within the borders of a nation-state (Norris 2002, 207). It is generally perceived that establishing democracy and maintaining democratic government is more difficult in divided societies than in homogeneous countries. Lijphart notes that ‘power-sharing has proven to be the only democratic model that appears most acceptable in divided societies, which in turn asks constitution writers to contemplate alternatives to it’ (Lijphart 2004, 96; Lijphart 1969). He also argues that, ‘the relative success of a power-sharing system is contingent upon the specific mechanisms devised to yield the broad representation that constitutes its core’ (Lijphart 2004, 99). On the contrary, (Horowitz 2002, 25) challenges Lijphart’s consociation approach, saying ‘consociation is certainly easier to understand: one size fits all’. Lijphart has responded that Horowitz’s ‘one size fits all’ charge should serve as an inspiration to try to specify the optimal form of power sharing that should be adopted according to the unique needs of each country (Lijphart 2004, 99). In this respect, Lijphart has outlined nine areas of constitutional choice and recommendations, which in his view, constitute a power-sharing model best fit for most divided societies regardless of their individual circumstances and characteristics.¹²⁸

According to Norris, electoral systems not only define and structure the rules of the political game, but also the role of political parties, election campaigns and most

¹²⁸ Nine areas of constitutional choice are: The legislative electoral system, Guidelines within PR, Parliamentary or presidential government, power sharing in the executive, selecting the head of state, federalism and decentralization, non-territorial autonomy, and power sharing beyond the cabinet and parliament. See for more details, Lijphart, 2004, Constitutional Design for Divided Societies, *Journal of Democracy*, 15(2), pp.96-109.

importantly who governs. They are also argued to encourage cooperation and accommodation in a divided society. Further they address the role of ethnicity in the pattern of voting in elections where support for parties or candidates closely follows ethnic lines. Pippa Norris contends, 'Electoral systems represent perhaps the most powerful instrument available for institutional engineering, with far-reaching consequences for party systems, the composition of legislatures, and durability of democratic arrangements' (Norris 2002, 207).

The integrative approach varies from the consociational approach fundamentally with respect to the design of electoral systems. In this respect, both consociational and integrative power-sharing approaches concentrate on electoral system design, which many scholars consider to be a key mechanism in the broader institutional design approach for conflict resolution and stable democracy in multi-ethnic societies. Consociational approaches suggest that proportional representation (PR), one of four important characteristics of Consociationalism, is more likely to facilitate accommodation and ensure representation of a wide range of political parties with different interests and opinions. Meanwhile, integrationists such as Horowitz also advocate PR but tend to favour preferential systems (Wolff 2005, 60-61, Norris 2002, 207). Thus, in the context of societies underpinned by power-sharing, both approaches 'actually "match" in the sense that electoral systems generate outcomes that enable democratic institutions to function'. Wolff indicates that electoral processes are mechanisms that utilise moderation and inclusiveness as key factors to generate political stability in multi-ethnic societies (Wolff 2005, 60-61).

Following the alternative proposals presented by Horowitz (2001) and Reilly (2001), O'Flynn & Russell (2005) stress the need for greater political integration between conflicting groups or communities. Moreover, they emphasise the use of electoral incentives to encourage political parties and leaders to compromise, which results in a functioning democracy (O'Flynn & Russell, 2005: 05).

The discussion on electoral system design from the perspectives of Consociationalism and Centripetalism remains unresolved, although these approaches offer potential remedies to address the social, ethnic, cultural and political complexities in deeply divided societies. Both advocates of consociational and integrative approaches of power-sharing defined it in a slightly different manner, albeit a point of convergence

exists on the issues of electoral system and institutional design. For example, the consociational approach considers that post-election institutional design is a more important component, while integrative power-sharing stresses that 'post-election cooperation among the political leaders of different ethnic groups is more likely if such cooperation begins before elections actually take place' (Wolff 2005, 60). Therefore, arguably, as Wolff asserts, 'hybrid systems combining elements of both consociational and integrative may be best equipped to achieve sustainable democratic power sharing' (Wolff 2005, 59-74).

The roles of political parties, especially where democracies are fragile and institutions are often unable to face challenges and demands of the public, are vital for functioning of democracies. Scholars have asked whether or not democracy can work without political parties. In this respect, several scholars have commented on the importance of political parties. For example, Robert Dix writes that 'institutionalization of parties and party systems is crucial in the maintenance of the tenuous new democracies' (Dix 1992, 490). Political parties provide legitimacy to institutions and help voters to identify the right candidates and issues that could affect them. According to Martin Lipset,

Democracy in a complex society may be defined as a political system which supplies regular constitutional opportunities for changing the governing officials, and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office - that is, through political parties (Lipset 2000, 48).

Randall and Svasand (2002) summarize the role and importance of political parties. They note, 'the argument to be made in favour of political parties is that they are roots, not only for representing the electorate, but also a way for the electorate to hold parties accountable for their action and promises' (Randall & Svasand 2002, 6). Martin Lipset has emphasized that 'political parties are indispensable in democracies', recalling E.E. Schattschneider's statements that 'modern democracy is unthinkable save in terms of parties' (Lipset 2000, 48-55). Nevertheless, Reilly (2006) cautioned that in conflict-prone societies, party politics along with polarization of identity issues has become more problematic for democracy. For instance, politicians try to attract voters by playing the ethnic card rather than focusing on ideology and genuine issues of people, which in turn can lead to an increase in ethnic tension or outbreak of ethnic conflict (Reilly Benjamin 2006, 812).

Another factor used by politicians in conflict-prone or disputed societies is social cleavages and regional belongings, which are often used to attract voters. Scholars and policy-makers alike have emphasized broad-based, aggregative and multi-ethnic party systems in order to maintain democratic politics in fragile democracies. Horowitz, for example, consistently advocates broad coalitions among ethnic groups as a key mechanism to manage ethnic conflict (Horowitz 1991).

The discussion presented in preceding parts of this study (See Chapter 3) on the role of political parties and ethnicity in the context of AJK have testified to the arguments given by the Reilly 2006 and Horowitz 1991. We have seen that the electoral process in AJK is fragile, weak and powerless. It was observed that the election commission in AJK is manipulated and controlled by the MKA and the sitting Government in Pakistan. Moreover, the confidence level of people towards the electoral process showed high levels of dissatisfaction (see section 3.5.7). In addition to this, the role of political parties in AJK is fragile given the fact that politics and political culture revolves around the biradri identities and regional affiliations, and additionally the politics in AJK are greatly influenced by the changing political process in Pakistan.

The foregoing discussion has in turn revealed that there are several factors that are essentially crucial for designing an electoral system design in deeply divided societies. These include: (a) ethnicity and degree of its impact on political shaping, (b) role of state and non-state actors, (c) independence of election commission, (d) genuine electoral rolls. However, relating these into our case of investigation, it is understood that an electoral system arrangement should be made according to the particular given context. In this respect, according to Pippa Norris, there is no perfect electoral system which fits every democracy. 'Instead arrangements have to be tailored to each particular context; and choices involve trade-offs' (Norris 2002, 209).

4.3.3 Power-Dividing Approach

In the context of conflict management theory, Philip G. Roeder & Donald Rothchild (2005) have presented the theory of power-dividing (also known as multiple majorities' theory) in their co-edited volume *Sustainable Peace: Power and Democracy after Civil Wars*. The theory of power-dividing has been put forward as an alternative institutional option to both majoritarian democracy and power-sharing democracy.

This theory sharply contrasts with both majoritarian and power-sharing models and favours separation of powers at all governmental levels, including all independent branches of the government such as the judiciary and specialised agencies that represent different majorities or civil society (Philip G. Roeder & Donald Rothchild 2005, 6). This separation of power, in Roeder & Rothschild's view, gives three advantages: greater efficiency, greater democracy and multiple majorities. They argue that,

Governments make thousands of decisions that affect individual welfare but citizens have only one instrument to control these decisions: the vote. One cannot control a thousand targets with one instrument (Philip G. Roeder & Donald Rothchild 2005, 15-17).

Roeder and Rothchild (2005) also highlighted shortcomings in the theory of power-sharing or Consociationalism. According to them, 'the success of power-sharing regimes depends on elite cooperation among various ethnic groups. Consequently, it seeks a continuing commitment from the ethnic elite to moderate their demands. Such moderation is likely to be in short supply especially after a civil war' (Philip G. Roeder & Donald Rothchild 2005, 6-8).

This approach aims to divide power-sharing arrangements into two phases: initiation and consolidation. They argue that power-sharing arrangements positively provide sufficient solutions to the emerging challenges from war to peace transition in what they describe as an initiation phase. However, these arrangements are inadequate to address the issues that emerge in the consolidation phase, in what they describe as the 'dilemma of power-sharing', hence proposing the power-dividing approach. According to them, the initiation phase of the transition to democracy starts with establishing a government elected through an election and accepted by political parties. The consolidation phase of the transition to democracy focuses on building procedures and institutions for bureaucracy, elected officials and also for conducting regular free and fair elections (Philip G. Roeder & Donald Rothchild 2005, 12). They assert that, 'Power-sharing institutions frequently facilitate a transition from civil war; but they thwart the consolidation of peace and democracy' (Philip G. Roeder & Donald Rothchild 2005, 12).

In contrast to the power-sharing theory, which in Roeder & Rothschild's view escalates conflict, Philip G. Roeder maintains that power-dividing arrangements deter conflict

escalation to ethno-national crisis. There are three important strategies which are central to the power-dividing theory: civil liberties, multiple majorities and checks and balances. This theory at the outset, guarantees civil rights to empower all citizens and groups equally whereby it divides decision-making between civil society and the government. Therefore, power-dividing arrangements do not assign a veto to ethnic minorities; rather they assist in creating a common-state (Roeder 2005, 52).

This theory stresses separation of powers rather than empowering a single majority as in the majoritarian model. It encourages multiple majorities, ensures ethnic rights and simultaneously maintains checks and balances to ensure public interest (Roeder 2005, 51-52). Thus, they propose power-dividing solutions through which checks and balances are effectively implemented - and more importantly - they create conditions for greater stability in any given constitutional arrangement.

4.3.4 Autonomy: Territorial Autonomy or Territorial Self-Governance (TSG)

The debate on autonomy gained momentum through the ground-breaking work of (Hannum 1990) *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*. In addition, the Organization on Security and Cooperation in Europe (OSCE), in its *Lund Recommendations* acknowledged autonomy as a means of good governance and state construction.¹²⁹ The concept of ‘autonomy’ has been presented often ‘as a solution to conflict management or means of state-building’ (Yash Pal Ghai 2002, 2008). There is no agreed definition of autonomy. However, generally, autonomy means self-rule or self-government. Meanwhile, Yash Ghai attempted to offer a useful definition:

Autonomy is a device to allow an ethnic group or other groups claiming a distinct identity to exercise direct control over important affairs of concern to them while allowing the larger entity to exercise those powers which are the common interests of both sections (Yash Pal Ghai 2000,8).

Ghai also described two forms of autonomy including symmetrical devolution in which all units enjoy similar powers, and asymmetrical devolution, which might provide enhanced powers. Other concepts that Ghai has used in his separate writing are

¹²⁹ See, OSCE 1999, The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, <http://www.osce.org/hcnm/32240?download=true>

cultural autonomy and territorial autonomy (Yash Pal Ghai 2002).¹³⁰ Territorial autonomy means that 'parts of the state's territory are authorized to govern themselves in certain matters by enacting laws and statutes, but without constituting a state of their own' (Suso 2010, 11). Following Wolff and Weller (2005), Wolff (2011) has defined territorial self-governance as,

the legally entrenched power of territorially delimited entities, within the internationally recognized boundaries of existing states to exercise public policy functions independently of other sources of authority in this state, but subject to its overall legal order (Wolff 2011, 1).

In a more simplistic way, autonomy is a type of transfer or devolution of certain powers from a central government to an autonomous entity (Wolff and Weller 2005, 12 and Ghai 2000). Territorial autonomy is seen a controversial method to resolve conflict despite its proven success in many cases. Yash Ghai contends that 'many conflicts themselves are about the demand for autonomy or resistance to them' (Yash Pal Ghai 2002, 155-156). Moreover, Ted Robert Gurr in *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (1993), by contrast to power-sharing theory, concludes that the interests and demands of competing groups can usually be accommodated 'by some combination of the policies and institutions of autonomy and power-sharing' (Gurr 1993, 292).

The concept of autonomy has been perceived as a dangerous tool of state construction and a threat to territorial integrity that can lead to secession of a territory from a nation-state. This perception has changed since the end of the Cold War and the concept of 'autonomy was rediscovered as a potential remedy to self-determination claims and territorial integrity' (Marc Weller and Stefan Wolff 2005, 1-3). Meanwhile, Yash Ghai argued that 'autonomy has become the most sought-after and resisted device for conflict management' (Yash Pal Ghai 2002, 2008). In this context, there are two different approaches to autonomy. Some believe (i.e. Hale 2000) that autonomy will ultimately lead to secessionism. In a similar vein, Cornell (2002, 252) also argues that, establishing institutions of an autonomous region is 'conducive to secessionism'. These scholars are highly sceptical towards territorial approaches, arguing that rather

¹³⁰ For a more comprehensive understanding of cultural and territorial autonomy, see, Yash Pal Ghai, 2002, *Constitutional Asymmetries: Communal Representation, Federalism, Cultural Autonomy*. In A. Reynolds, ed. *The Architecture of Democracy: Constitutional Design Conflict Management, and Democracy*, Oxford University Press, pp. 141-170

than a cure, territorial approaches induce conflict. On the contrary, Gurr (1993) believes, 'autonomy arrangements can be an effective means for managing regional conflicts'. Wolff (2009) favours territorial approaches to conflict management. Proponents of territorial approaches believe that the assumed danger of autonomy for state construction is secessionism, which can be minimized by adopting certain structural techniques and preferential policies (e.g. Horowitz 1985, 628). Additionally, there are two approaches to deal with identity-based intrastate armed conflict: firstly, creating new sovereign states or secondly, negotiating settlements within existing states. The latter approach is most commonly used through some form of power-sharing or decentralization of powers from the centre to the territory (Suso 2010, 11; Lapidoth 1997). Stefan Wolff, when acknowledging power-sharing as the key dimension of institutional design, argues that,

liberal Consociationalism, in its contemporary form, is a theory of power-sharing and self-governance and especially territorial self-governance has emerged as the second defining characteristic of liberal Consociationalism (Wolff 2011, 7).

Proponents of this argument include Wolff (2011) and McGarry (2007), who further contends that, 'the self-governing entity should define itself from the bottom up, rather than be prescribed top-down' (McGarry 2007, 175-6).¹³¹

4.3.4.1 Autonomy Arrangements for Diffusion of Power

Stefan Wolff (2010) has extended his analysis beyond the narrower focus on federation, autonomy and territorial approaches to temporal or interim frameworks for territories, which are on the way towards a final settlement. For example, following a referendum in the disputed territory (Wolff 2010, 1-5), territorial self-governance (TSG) or autonomy within a federal system is a means of conflict management in deeply divided societies and for addressing issues of minorities (Wolff 2005). Weller and Wolff argue 'Autonomy was re-discovered as a potential remedy to self-determination claims and it was no longer seen as the secessionists' stepping stone towards independence' (Marc Weller and Stefan Wolff 2005, 2-3). Wolff discusses five forms of territorial self-governance (TSG): confederation, federation, autonomy, devolution and decentralisation (Wolff 2009). This study does not intend to discuss all these forms at length. However, it focuses mainly on autonomy, which is considered to be a useful and potential remedy for resolving conflicts that emerge

¹³¹ For details, see McGarry 2007 which is about Kirkuk in the context of Iraq's changing constitutional backdrop in recent decades.

from a complex power-sharing arrangement, especially in territories seeking self-determination and governed under temporal or interim arrangements.

Ruth Lapidoth (1997) has discussed several manifestations of autonomy, including the relationship between autonomy and sovereignty. She further discussed five types of territorial arrangements for diffusion of powers: autonomy and federalism, autonomy and decentralization, autonomy and self-government, autonomy and associated statehood, and autonomy and self-administration.¹³² However, here I will discuss briefly the relationship between sovereignty and autonomy and mainly further explore the relationship between autonomy and self-government in conformity with its relevance and noticeable usage in the context of AJK.

4.3.4.2 Autonomy and Sovereignty

In order to understand autonomy, it seems important to understand the concept of sovereignty. In preceding parts of this study, it was observed that sovereignty is the most controversial notion in International law, political science and international relations and it is also subject to many interpretations. The concept of sovereignty was also discussed in the studies by Jackson (1990), Potter (2004) and Krasner (2004) into internal and external sovereignty and positive and negative sovereignty (see Chapter-2). Here, the purpose is to obtain understanding of the relationship between sovereignty and autonomy. Lapidoth (1997) has quoted Jacob Robinson, who examined autonomy by comparing it with sovereignty. In his opinion,

Internal sovereignty assumes the supreme and unrestricted authority of the state, subject only to restrictions that are expressly specified. On the other hand, autonomy exists only in respect to those powers that have expressly been granted (Lapidoth Ruth 1997, 30).

A cursory look at the published literature shows that there is a confused relationship between sovereignty and autonomy. According to Lapidoth Ruth (1997), sovereignty, generally, means an absolute governing authority (internal and external) and control without outside interference, whereas, autonomy means the right to self-government. In the context of autonomy, a territory can be autonomous over its internal governing affairs in a defined geographical area, but subject to ultimate rule and sovereignty of a nation-state. Unlike the claims that sovereignty is indivisible, opponents argued that

¹³² See, a detailed discussion on different autonomy arrangements for diffusion of power in Lapidoth Ruth 1997, pp. 41-58.

this conception is drastically reduced by modern economic developments and certain principles inserted in constitutional and international law. Therefore, 'sovereignty may be in abeyance'. In this respect, some scholars (e.g. Leon Duguit, H. Hugo Krabee, and Harold J. Laski) developed the notion of 'pluralistic sovereignty' and challenged the indivisible conception of sovereignty. A further distinction and explanation can be seen in the context of residual or *de jure* sovereignty and *de facto* sovereignty. The *de jure* sovereignty stands that right to sovereignty may be subject to certain limitations and *de facto* sovereignty refers to the actual exercise of power over a territory (Lapidoth Ruth 1997, 41-47).

In the light of given conceptions of sovereignty, 'autonomy and sovereignty have very little in common, if anything at all'. However, developments in theories have significantly reduced the distance between these two concepts (Lapidoth Ruth 1997, 44). Lapidoth concludes 'the term sovereignty can be used in a flexible manner'. For example, she suggested 'in a case of diffusion of power, sovereignty can be shared between the central government and regional authorities through mutual understanding without disturbing the territorial integrity of a state' (Lapidoth Ruth 1997, 47).

4.3.4.3 Autonomy and self-government

A brief look at the published literature has shown that these two concepts are closely associated with each other. However, it was also observed that at the same time they differed to each other mainly because of variant interpretations by scholars. Some scholars (Dinstein 1981; Sohn 1981) believe that, 'autonomy denotes self-government' or 'full measures of self-government to be equivalent to full autonomy' (Louis B. Sohn 1981; Yoram Dinstein 1981). Lapidoth argued that, 'the concept of self-government or self-rule closely resembles autonomy'. And it is generally accepted that under self-government a territorial community manages its own internal affairs by itself, without external intervention' (Lapidoth Ruth 1997, 52-53). Sohn argued,

The concept of self-government implies that for important political or economic reasons a particular area will remain within the territorial jurisdiction of another political entity but will possess political freedom to regulate certain of its own affairs without any interference by the entity. Granting autonomy to an area allows the people inhabiting it to exercise direct control over important affairs of special concern to them, while allowing the larger entity, which retains certain powers over that

area, to exercise those powers which are in the common interest of both entities (Louis B. Sohn 1981, 5).

The meaning of self-government was discussed by the United Nations under Article 73 of the Chapter XI of the UN Charter, which states ‘members states administrating “territories whose people have not yet attained a full measure of self-government” have, *inter alia*, a duty “to develop self-government” and “to transmit regularly to the Secretary-General...statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories’ (Louis B. Sohn 1981).¹³³ Later in 1952, certain factors of internal self-government were further suggested and defined by a subcommittee and approved by the General Assembly of the United Nations. Some salient features from that report perhaps provide some inspiration on the concept of autonomy below:

1. *Territorial government*: Freedom from control or interference by the government of another State in respect of the internal government (legislature, executive, judiciary) and administration of the territory.
2. *Participation of the population*: Effective participation of the population in the government of the territory by means of an adequate electoral and representative system.
3. *Economic and social jurisdiction*: Complete autonomy in respect of economic and social affairs (Lapidoth Ruth 1997, 53).¹³⁴

A comparative study indicates many similarities between autonomy and self-government. However, there is also a point of disagreement between these two concepts. For example, Lapidoth has quoted Augusto Willemsen Diaz, an expert on the subject of autonomy, who defined these concepts and their relationship as: ‘If autonomy were a house, then self-government would be one room in that house’. On the contrary, Lapidoth believes that the term self-government can be defined ‘as a considerable degree of self-rule’. Nevertheless, ‘autonomy is a flexible concept ranging from limited powers to very broad one. In addition, self-government usually

¹³³ This was discussed in the context of Chapter XI: Declaration Regarding Non-Self-Governing Territories <http://www.un.org/en/documents/charter/chapter11.shtml>

¹³⁴ UN General Assembly Res. 56 7 (VI), on January 18, 1952 (Factors Indicative of the Attainment of Independence or other Separate System of Self-Government). Full text is available on [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/567\(VI\)&Lang=E&Area=RESOLUTION](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/567(VI)&Lang=E&Area=RESOLUTION)

applies to a specific region, whereas autonomy can be personal' (Lapidoth Ruth 1997, 53-54).

4.4 Relevance to AJK: An Analysis and Concluding Remarks

After having discussed salient features of various approaches of power-sharing, it is pertinent to outline similarities and differences. In addition, it is also important to mention such salient features of these approaches, which are found relevant and can be replicated in AJK.

From the comparative analysis on institutional design approaches, a certain level of complexity can be seen alongside similarities and differences in the context of societies divided by ethnicity or other cleavages. There are some prominent features that clearly distinguish both approaches. The first is that the consociational approach stresses post-election elite cooperation while the integrative approach seeks pre-election elite cooperation or coalitions. Following this, the consociational approach focuses on elite level politics while the integrative approach lays emphasis on both the elite and masses. Next, the consociational approach advocates a parliamentary form of power-sharing democracy, whereas the integrative approach advocates a presidential form of democracy. Both approaches mainly focus on the dimension of executive power-sharing and have paid little attention to unattended dilemmas in a power-sharing regime. Stefan Wolff, who prefers to use complex power-sharing in the context of territorial regimes and self-determination conflicts argues that, 'Complex power-sharing regimes are distinguished in that they no longer depend solely on consociational theory or solely upon integrative theory but also involve international actors' (Wolff 2011b).

In contrast, the power-dividing approach emphasises the separation of power at various levels of governance. The proponents of this approach believe that power separation provides more efficient mechanisms and better democratic processes to deliver to the public. This approach also discussed unattended dilemmas in the power-sharing approach amidst claims that it failed to establish procedures and institutions for conducting free and fair elections. Moreover, this approach maintains that power-sharing escalates conflicts whereas power-dividing is argued to reduce conflicts. However, the theory of power-dividing highlighted many shortcomings in power-

sharing theories and also criticised the majoritarian type of democratic system, yet failed to provide any contemporary example thus far.

The option of autonomy or self-government has been understood in different manners by the proponents and opponents of this approach. The proponents indicate its viability and applicability as a conflict management tool and for effective governance through constitutional and political empowerment to a region, whilst opponents cautioned towards an assumed danger that autonomy would ultimately lead to secession. In order to address risks of secession, Donald L. Horowitz (1985) while recognising federalism and autonomy as possible remedies for ethnic conflict argues that, 'The most potent way to assure that federalism or autonomy will not become just a step to secession is to reinforce those specific interests that groups have in the divided state' (Horowitz 1985, 628).

It is also important to mention that autonomy is a multi-faceted concept and there is no precise meaning and scope of autonomy. Neither is there an agreement about the process or conditions through which autonomy is gained, maintained or lost. However, generally, it can be argued that autonomy is self-governance with an authority of use of force over a defined territory and population without external influence and interference except specified between the parties involved. Further, levels of autonomy can be determined through a mutually agreed power-sharing agreement. After having discussed the concepts of autonomy and self-government and acknowledging the similarities and difference between the two notions from a theoretical perspective, this study follows the descriptions of Dinstein (1981), Sohn (1981), Lapidoth (1997), who all shared that 'autonomy' denotes self-government. Therefore, for the purpose of this study, these two concepts are used interchangeably, maintaining that autonomy means self-government. In addition, I share and equate the concept of autonomy with Krasner's conception of domestic or internal sovereignty (See section 2.2).

The preceding overview indicates that power-sharing approaches (Consociationalism, Integrative or Centripetalism, Power-Dividing and Autonomy) have proven helpful in contemporary societies, especially those driven by ethnic conflict and deep social cleavages. However, it seems hard to apply these approaches fully into the context of AJK because: firstly, in AJK, ethnic cleavages are mutually reinforcing rather than

cross-cutting and do not necessarily lead to violence or conflict; secondly, I have discussed power-sharing at two levels: the internal and external levels of power-sharing, where this study observed that problems mainly exist at the external level power-sharing relationship (between AJK and Pakistan). Nevertheless, for internal level power-sharing in AJK, some features of power-sharing approaches such as proportional representation and segmental autonomy from Lijphart's consociational approach, accommodation through moderate behaviour, and electoral system designs from Horowitz's Centripetalism and addressing the unattended dilemmas in 'consolidation phases' of democracy and institutional building by Roeder & Rothschild (2005), are most conspicuous and relevant to AJK. In particular, the power-dividing approach insists on separation of powers between different branches of governance such as executive, legislative and judiciary for greater efficiency and to keep checks and balances. These can be extended further with contextual modifications to address AJK's predicament.

For the external level of power-sharing, I argue that the option of autonomy or self-government seems most relevant to AJK and has potential to address conflict arising from power imbalances and authority deficits that exists under Interim Act 1974. In this respect, I follow Suso (2010), who argued that, 'autonomy might be necessary to secure peace in conflict-torn societies in the short-term, and to foster democracy in the long-run because it overcomes two problems: one, the partition bias by offering territorial sharing, and two, the perception of a democratic deficit by permitting self-government and administration' (Suso 2010, 11). Therefore, autonomy has become the most appealing option in many respects for divided societies. It protects identity and a gives sense of ownership. In the context of a disputed territory awaiting the right to self-determination while being simultaneously controlled by another nation-state, different forms of territorial self-governance, especially autonomy, could be argued to not only manage centre-region conflict over identity or resource distribution, but could also be a potential temporal options for establishing a genuine democratic governance structure. Following Suso (2010) and Tansey (2011), this study maintains that for building democratic governance in AJK, it seems essential to grant autonomous status to the disputed territory of AJK.

Having discussed the nature and type of power-sharing relationship between AJK and Pakistan using in-depth analysis through historical and constitutional lenses, it appears

that the autonomy option can provide better solutions than other institutional design approaches. However, it is pertinent to present some relevant examples of autonomy arrangements. In the context of Europe, there are many autonomous regions that are granted autonomy as a solution to conflict management between regions and the centre. Conflict resolution, in most cases, resulted in a territorial or regional autonomy solution mainly based on distinct ethnicity or separate identity, or resources located in these regions. These autonomous regions are part of a nation-state that still retains sovereignty over them. For example, The Ålands Islands attained the most complete and far-reaching autonomy under Finland's Act of Self-government in 1991. It enjoys legislative and executive powers related to all political sectors for the people of this island. However, ultimate sovereignty belongs to Finland. In the case of the United Kingdom, Scotland, Wales and Northern Ireland are examples of a high degree of self-governance. The Nordic islands, South Tyrol, and Spain's autonomous communities of Catalonia and the Basque Country can be regarded as the most advanced forms of autonomy (Thomas Benedikter 2008).

In the context of AJK, unlike the autonomous regions of Europe discussed above, the territory of AJK is not constitutionally a part of Pakistan, therefore its sovereignty - legally speaking - does not lie with Pakistan. The factual position is that AJK is a recognised disputed territory awaiting self-determination and its sovereignty is contested but currently administered by the Government of Pakistan. However, Pakistan's position to administer this region is provisional and subject to the Kashmir conflict and UN resolutions. In the light of the given paradigm, I argue that given the conflict-centric approach and the Kashmir conflict, whose destiny is yet to be decided, only a wide-reaching autonomy could help to address the legitimate rights of the people of AJK and empower its governance structure.

In this chapter, the study developed a conceptual understanding of democracy and conflict. It has also discussed concepts, dilemmas and practices of governance in contemporary discourse. The perspective of governance without government has explained the role of state and non-state actors and how state and society interact and strengthen governance processes. The discussion on the relationship between state and society revealed that the state is still a central actor but not the sole or exclusive actor in governance, rather that state and society interact to make functional governance work. The discussion on democratic and good governance

indicated their reciprocal relationship and highlighted the importance of four essential characteristics through which governance can be gauged, namely participation, accountability, rule of law and transparency.

The discussion on power-sharing revealed that success or failure of these approaches depends on the background of any given case, because every case has its own historical and constitutional context which should be taken into account when presenting or measuring any power-sharing model. Thus, case-specific modifications are suggested for developing a new power-sharing model. For example, in the context of AJK, the analysis of power-sharing approaches and their relevance and applicability revealed that there are some prominent features of these approaches to address the existing weaknesses of the internal power-sharing in AJK. However, it was also observed that power-sharing dilemmas in AJK mainly exist at the external level, for which options of autonomy or self-government are suggested to address the highly unequal power-sharing between AJK and Pakistan.

5 Chapter-5: Building Democratic Governance in Disputed Territories: An Alternative for AJK

5.1 Introduction

In preceding parts of this study, several key themes and interrelated research questions have been discussed in detail. The discussions revolved around the prospects for democracy and good governance in disputed territories amidst problematic sovereignty. Subsequently, this study dealt with some interconnected questions such as: what is the status and legitimacy of AJK? In the context of disputed territories, does democracy require sovereignty? What type of power-sharing relationship does AJK maintain with Pakistan under Interim Act 1974 and does it provide sufficient space for building an autonomous and a democratic governance structure? What approaches, theories and options in contemporary academic discourse have proven helpful for societies and territories divided by cross-cutting or segmental cleavages and driven by ethnic conflict?

This chapter deals with the question: which model or option can resolve the dilemma of power-sharing in AJK and help to build an autonomous government and democratic governance structure? This chapter intends to synthesise the all preceding discussions based on theoretical frameworks and empirical analysis presented. Thereafter, it offers a sketch of an alternative model for AJK.

It appears that the role of civil society has always been crucial for strengthening democracy and empowering governance for social development, which unfortunately AJK lacked from its inception. However, some significant interventions have been made by AJK civil society. This has also given courage and hope to the political parties of AJK, who have long been neglecting and appear afraid to take any concrete step towards protecting the legitimate rights of the people of AJK vis-à-vis Pakistan. The discussion whereby different opinions and interpretations of power-sharing in AJK - whilst keeping in view the disputed nature of this region and UN resolutions - has resulted in some meaningful proposals on the part of civil society. This chapter takes this debate forward and attempts to present a way forward to address the dilemma of power-sharing in AJK. Hence, this chapter comprises two sections.

Section 5.2 examines the *pros* and *cons* of the alternative proposals (available political options and constitutional design) advanced by civil society and the political elite to resolve prevalent issues and dilemmas of power-sharing in AJK.

Section 5.3 aims to develop an alternate framework, which could address the prevailing lop-sided or asymmetrical power-sharing relationship between AJK and Pakistan. The alternate formula suggests a democratic power-sharing design through which autonomy or domestic sovereignty can be granted to AJK for addressing democratic shortcomings and for building an autonomous democratic governance structure.

5.1.1 The Voice for Rights and Empowerment

Talking about the legitimate political and constitutional rights of the people of AJK is not a new phenomenon. Rather, during the last decades these issues have persistently been raised by nationalist forces in AJK. The debate gained momentum when a former prime minister of AJK, Raja Farooq Haider, whose political posture and leaning adheres to the ideology of the state's accession with Pakistan, spoke up and demanded redefining the political and constitutional relationship between Muzaffarabad and Islamabad. Besides many voices amongst nationalist parties of the state, the outspoken Raja Farooq Haider, President of Pakistan Muslim League (PML-N) in AJK and Sardar Khalid Ibrahim, President of Jammu Kashmir Peoples Party (JKPP) have always criticised the negative and unnecessary role played by the Centre (viz. Pakistan's Federation), their Ministry of Kashmir Affairs and other associated agencies. In particular, they objected to the customary make-or-break approach towards local (state) politicians by Pakistan in order to possess their own friendly 'driven puppets' for running the territory of Azad Jammu & Kashmir. During his nine-month premiership, Raja Farooq Haider opened a Pandora's Box while addressing media and in other public proceedings, regarding the rights of the people of AJK, particularly in reference to the political and constitutional empowerment of AJK including ownership and royalty rights over natural resources situated in AJK. As a result of Haider's vociferous campaign for constitutional empowerment in AJK, his government was overthrown through a no-trust motion, allegedly supported by the Ministry of Kashmir Affairs (MKA).

Later in 2012, considering resentment among the people of AJK and political parties arising out of powerlessness and lack of autonomy, a former Minister of Kashmir Affairs, Mian Manzoor Wattoo held a meeting with both the ruling and opposition political leadership of AJK. As a result, a Constitutional Committee consisting of members from AJK's Assembly was formed under the chairmanship of Matloob Inqalabi, a sitting minister of the AJK Government. The Committee invited suggestions and proposals from political parties as well as civil society organisations in order to prepare recommendations for the political and constitutional empowerment of AJK. However, despite a year passing since the Committee's formation, no written recommendations have yet emerged in public discourse.

Findings from field research and my personal encounters with many political leaders, civil society activists, legislators, academics, bureaucrats and journalists revealed that there is growing political resentment and a sense of deprivation among the people of AJK. Many indicated that the reasons for powerlessness and lack of autonomy of AJK are firstly, the on-going conflict of Kashmir spanning several decades; secondly, a lack of political will and vision of the leadership in Azad Jammu & Kashmir; thirdly reluctance of Government of Pakistan to grant genuine autonomy to AJK; and fourthly, the MKA and the Council, since their inception, apparently failed to play a positive bridging role between AJK and Pakistan.

5.2 Available Proposals for Power-Sharing in AJK

The study of political and constitutional history of AJK and its existing temporal constitutional design proved that it is a highly uneven and unjust power-sharing mechanism giving the Government of Pakistan absolute leverage to control and manipulate the governing affairs of AJK. The overwhelming majority of political forces in AJK have agreed and admitted though less in public discourse but more in what might be called 'corridor conversations', the need to revisit and redefine the current unequal and uneven relationships under Interim Act 1974. They admitted that the Government of Pakistan retains exclusive financial, administrative and legislative powers through its AJK Council. Conversely, it leaves behind only nominal and limited powers for the AJK government. With this backdrop, it seems obvious that the status quo in AJK is not a workable option anymore and thus a new political and legal contract is required. In essence, the current political, administrative and judicial

structure in AJK based on interim Act 1974 is unworkable, non-progressive and unaccountable.

In the last years, some proposals for the empowerment of AJK have been advanced, mainly by civil society organizations vis-à-vis the power-sharing relationship with Pakistan. The proposal offered by civil society organizations triggered a debate amongst the political forces. However, there is a distinct difference of opinion on what exactly AJK should seek for. This can be summarised into three main categories:

1. Empowerment through Constitutional Reforms at the Internal Level
2. Empowerment through Mainstreaming and Integration
3. Independence through Re-establishing Constituent Assembly

Firstly, there are those wanting reforms through constitutional amendments at the internal level in the Interim Act 1974. They propose that the highly imbalanced power-sharing mechanism between the AJK government and AJK Council should be streamlined by taking legislative, financial and executive powers back from the AJK Council and delegating these powers to the AJK government. In this respect, a non-governmental organisation called Centre for Peace and Development Reforms (CPDR) has taken the lead and presented an appraisal for the empowerment of AJK. Secondly are those seeking reforms through constitutional amendments at two levels: in the Interim Act 1974 of AJK and in the Constitution of Pakistan 1973. In particular, a former Chief Justice of the Supreme Court of AJK Manzoor Hussain Gilani, who heads The Association for the Rights of People of Jammu and Kashmir (ARJK), has been vocal for streamlining - in Gilani's words - the 'confused' relationship of Azad Kashmir with the Government of Pakistan. The basic idea revolves around giving AJK something close to a 'provincial' status but without declaring it a province of Pakistan. Thirdly, those who want the re-establishment of a Constituent Assembly according to the basic spirit of the proclamation of October 4, 1947 and the first declaration by the provisional government of Azad Jammu & Kashmir established on 24th b. In this respect, almost all pro-independence political forces are in favour of such a proposal.

It is worthy to note that the political parties of AJK demand more legislative, administrative, and financial powers, but only by issuing press statements, and never coming up with a concrete proposal. They have not taken their party positions on these proposals offered by the civil society of AJK, neither have they reached a consensus stage mainly because of their divergent political agendas and ideologies.

However, a common understanding and a general agreement amongst the political forces is that the governance structure of AJK must be empowered, but the ‘how and on what basis’ drags them into conflicting and competing positions. Therefore, it is hard to gauge trends of political parties on given proposals. However, the forthcoming discussion sheds light on the opinion of political forces and important individuals at various stages of analysis, which reflect their positions on given proposals.

In the following discussion, proposals summarised earlier under three main categories will be presented and analysed for their suitability, applicability and objections in the given context of AJK.

5.2.1 Empowerment through Constitutional Reforms at Internal Level

The Center for Peace and Development Reforms (CPDR) has conducted several round-tables on the growing resentment among the people of AJK and increasing politico-legal conflict originating from an imbalanced power-sharing relationship between the Centre and region in question, thereby undermining the governmental authority of AJK. As a result of several consultative meetings and workshops with relevant stakeholders, CPDR has proposed an appraisal on how to improve the existing power-sharing relationship with Pakistan in order to prevent emerging conflict between the two governments and for addressing democratic shortcomings in AJK. The appraisal aims to build a constructive relationship between the two governments and to make the system more transparent, acceptable and reliable. A study of CPDR’s appraisal indicates that it aims to maintain the prevailing status-quo. Nevertheless, it suggested constitutional reforms/amendments in AJK’s Interim Act 1974 for administrative, financial and legislative empowerment of AJK’s government. In this respect, CPDR proposed amendments mainly revolve around the concept of empowering the AJK government by regaining legislative and financial powers from the AJK Council. They suggested that if it is not possible to abolish the Council then its role should be minimised to merely function as a bridging body between the region and the Centre. Ershad Mahmood, Executive Director of CPDR, was of the view that,

Absolutely, Act 1974 is unequal and it needs to be changed. In Act 1970 there was no AJK Council. I don’t oppose the institution of AJK Council but there is need to take two steps importantly: first, Council’s headquarters should be moved from Islamabad to Muzaffarabad to make it a localised body; second, the powers should be decentralised to district level and its executive powers should be given to the AJK Assembly and the AJK government. The Council

should work like a safety valve to keep checks and balances as same Senate of Pakistan (Mahmood 2011).¹³⁵ CPDR presented several recommendations to improve the governance structure of AJK and to make AJK government democratic, effective and autonomous. They proposed constitutional reforms, which relate to the Kashmir Council, the judiciary, election commission, size of cabinet and foreign investment and trade. Some salient features from the recommendations are stated below.

AZAD JAMMU AND KASHMIR COUNCIL: CPDR proposes to keep this intact but confined to act as a coordinating body and as an institutional link between AJK and Pakistan in respect of the subjects mentioned in section 31(3) of Act 1974. These include responsibilities under the UNCIP resolutions, defence and security, currency, foreign affairs and foreign trade. However, except for those subjects vested with the Government of Pakistan (GoP), all other legislative and executive powers should revert back to the AJK Government and the AJK Assembly. Doing so requires prior approval from the Government of Pakistan under section 33 of Act 1974; CPDR urges that GoP must agree to this in the interests of the political rights of the people of AJK.

COUNCIL'S COMPOSITION: The Council should consist of the Prime Minister of Pakistan, the leader of the Pakistani opposition, and three ministers of the Government of Pakistan. AJK should be represented by the Prime Minister of AJK, the leader of the AJK opposition and three members of the Council should also be elected by the AJK Assembly.

JUDICIAL REFORMS: CPDR also suggested reforms in the judiciary, which mainly relate to the appointments of Judges of the Supreme Court and High Court of AJK. According to the current power-sharing mechanism, the authority to appoint judges for higher courts of AJK vests with the Prime Minister of Pakistan as being Chairman of the AJK Council. CPDR suggested that, 'While reverting power to AJK Government regarding appointing of Judges of Supreme Court and High Court, an appropriate institutional mechanism should be provided. For this purpose, a judicial commission may be set up, as has been done through the 18th and 19th Amendments to the Constitution of Pakistan'.

¹³⁵ Interview dated September 2011

ELECTION COMMISSION: An independent Election Commission needs to be constituted to ensure fair and impartial elections. The Chief Election Commissioner should be appointed at the recommendation of a Parliamentary Committee comprising members from the Government and Opposition Benches.

FOREIGN INVESTMENT, FINANCING AND ASSISTANCE: The subject of foreign investment, financing and assistance should be brought under the concurrent jurisdiction of the Governments of Pakistan and AJK. Together, they can explore and exploit natural resources for the socio-economic development of AJK, especially in the fields of hydropower generation, water resource management, mineral resources and infrastructure development (CPDR 2011, 6-8).

CPDR doesn't propose or seek to amend the Constitution of Pakistan. The proposal contains recommendations which seek to amend the Interim Act 1974. Ershad Mahmood was of the view that giving AJK a *de jure* status in the constitution of Pakistan would seriously damage the 'Kashmir Cause' and would be in contravention of UN SC and UNCIP resolutions on Kashmir. It would also damage Pakistan's stand on Kashmir and contravene its promises and the commitment Pakistan had made at the United Nations (Mahmood 2013). Considering this view, CPDR has only proposed amendments in the Interim Act 1974, which mainly focus on reducing executive, legislative and financial powers of the AJK Council and giving these powers to the AJK Government for an effective and empowered governance structures in AJK.

5.2.2 Empowerment through Mainstreaming and Integration

The ARJK's proposal for the political and constitutional empowerment of AJK and Gilgit-Baltistan (GB) is titled 'Azad Jammu and Kashmir: Proposal for enhanced autonomy and empowerment'.¹³⁶ ARJK has proposed constitutional amendments at two levels: at the internal level in the Interim Act 1974 to address governance issues within AJK and at the external level in the Constitution of Pakistan. The aim is to streamline the current ambiguous relationship between AJK and the State of Pakistan and to give representation into national forums of Pakistan.

¹³⁶The proposal from jurist Manzoor Gilani was at its initial stage when this author met him in October 2010. Later in June 2012, he presented his proposal in the form of a compiled book, under the banner of the association he heads called Association for the Rights of the People of Jammu and Kashmir (ARJK).

The ARJK proposal takes reference from two Articles of the Constitution of Pakistan: Firstly, Article 257, which says, 'When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State'. ARJK suggested that 'these constitutional amendments would be of purely interim nature and would be reviewed in accordance with Article 257'. Secondly, Article 1 (2) (d), which defines the territories of Pakistan (ARJK 2012, 20) and according to Manzoor Gillani's interpretation AJK and GB are 'otherwise' included territories (see section 2.2.7). In addition to this, Manzoor Gilani defined and elaborated the following to support his arguments:

- (a) AJK and GB are 'liberated territories';
- (b) The UNCIP resolutions and Ceasefire Agreement between India and Pakistan on January 1st 1949 at Karachi had authorized the Government of Pakistan to administer these territories under its High Command. The government of Pakistan has responsibility to provide 'better government and administration' in AJK and GB;
- (c) It was notified by the Government of Pakistan (GoP) in 1971 that AJK will be treated at par with the provinces of Pakistan.
- (d) AJK and GB are being treated for all practical purposes like a province in terms of obligations but not in terms of rights and voice in the national institutions of Pakistan (ARJK 2013).

ARJK's proposal to amend the Constitution of Pakistan revolves around the following themes;

- Until the final settlement of the Jammu & Kashmir conflict in accordance with the UN resolutions, the status of AJK and GB should remain unchanged and these two territories should not be made provinces of Pakistan.
- Pending the implementation of the UN resolutions, AJK and GB should be given representation in the parliament of Pakistan (National Assembly and the Senate) and subsequently representation in the Council of Common Interest, NEC [National Economic Council], NFC [National Finance Commission] and all rights over water and hydro-electric power. AJK and GB should also be given the same quantum of autonomy as given to the provinces of Pakistan, especially after the 18th amendment in the Constitution of Pakistan.
- An amendment should be made in the Constitution of Pakistan to enshrine Pakistan's commitment to respect and implement UN Security Council

Resolutions, including Security Council Resolutions of 30 March 1951 and 24 January 1957 which declared that ‘the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations’ (ARJK 2012, 21-22).

At the internal Level, ARJK proposed amendments in the Interim Constitution Act 1974, in order to empower the internal governance structure of AJK. Some salient features are:

- The current three-tier constitutional structure consisting of the Government of Pakistan, the AJK Council and AJK Government/ Legislative Assembly should be replaced with a two-tier federal structure comprising of the federal government of Pakistan/Parliament and the National Assembly and Governments of AJK and Gilgit-Baltistan.
- The Federation should have powers over the subjects contained in the Federal Legislative List as amended by the Eighteenth Amendment, while other powers would belong to the two territories [AJK and Gilgit-Baltistan].
- With the abolition of the Council [AJK Council], the President of Azad Jammu and Kashmir will be elected by members of the Assembly.
- The directly elected members of the Assembly will elect the refugee State Subjects [settled in Pakistan] for their reserved seats in the Assembly.
- A caretaker Government should be appointed before each election to the Assembly.
- All judicial appointments at the high level should be made through a Judicial Commission.
- The acquisition of immovable property for purposes of the Federal Government should have effect subject to final determination of the Kashmir issue
- Two new fundamental rights (right to information and right to education) should be added in the list of fundamental rights (ARJK 2012, 23-25).

ARJK’s proposal aims to give AJK rights and a voice in the decision-making and resources distribution forum/institutions of Pakistan at par with the provinces of Pakistan. It clearly says that AJK and GB should not be declared as provinces but should be treated like provinces of Pakistan in lieu of the 18th amendment through which considerable autonomy has been granted to the provinces, except the Federal Legislative List. Following the salient features of ARJK’s proposal, it subsequently

recommended constitutional amendments in the Interim Act 1974 of AJK and in the Constitution of Pakistan.¹³⁷

According to the Jurist Manzoor Gilani, all subjects and powers that the parliament of Pakistan delegated to its provinces after the 18th and 19th amendments need to be given to the AJK Assembly and the AJK Government by amending the Constitution of Pakistan. He argues that this must not negatively affect Pakistan's stance on the Kashmir conflict and AJK must be treated like all other provinces of Pakistan in terms of giving rights and a voice in the decision-making forums of Pakistan but it should not be declared as a province (M.H. Gilani 2011).¹³⁸

In AJK, Gilani's proposal has aroused a debate between proponents and opponents. Proponents say that for the empowerment of AJK it is essential to give AJK a constitutional status until the final settlement of the Kashmir conflict. For this purpose, the status and relationship of AJK with Pakistan should be defined in the Constitution of Pakistan. For example, Akram Sohail, a senior government official in AJK argues that, 'The existing ambiguous relationship between AJK and Pakistan is like a "live-in relationship", which should be a legal wedlock. The world knows that here in AJK sovereignty of Pakistan (though de facto) works, therefore, it must be written and guaranteed in the Constitution of Pakistan' (Akram Sohail 2011). In a similar vein, an Australian analyst, Christopher Snedden, even earlier than ARJK's proposal, proposed that, 'AJK's *de facto* link should be made *de jure* with Pakistan' (Snedden 2012, 139).

On the contrary, many political heads in AJK don't share this view, arguing that such would be harmful for the Kashmir case at the international level and it is in contravention of the UN promised plebiscite and its subsequent resolution. Opponents of this proposal say jurist Gilani's proposal is an attempt to make AJK a *de jure* part of Pakistan. They also believe that ARJK's proposal is essentially rebranding and repackaging all the old practices whereby different Acts and Rules of Business were authored and promulgated from time to time in AJK by the Government of Pakistan

¹³⁷ The proposed Constitutional Amendments in the Constitution of Pakistan (1973) can be seen in *Azad Jammu and Kashmir: Proposal for enhanced autonomy and empowerment* (2012) pp. 83-87 as Attachment-A and proposed constitutional amendment in the Interim Act 1974 of AJK, as Attachment-B

¹³⁸ Interview, Manzoor Gilani 2010

(Aftab 2013).¹³⁹ Other commentators were of the opinion that recognising AJK and Gilgit-Baltistan as provinces can dilute Pakistan's stand vis-à-vis the UN resolutions (Mahmood 2013; Shafqat Raja 2012).¹⁴⁰

5.2.3 Analysis of ARJK and CPDR's Proposals: Critique and Alternate Views

ARJK's proposal and subsequent publicity campaign gained attention from the public in Azad Kashmir as well as the Kashmiri Diaspora. It opened a Pandora's Box by evoking heated debate amongst Kashmiri nationalists in particular who have historically been critical of Interim Act 1974. Dr. Nazir Gilani believes that, 'The campaign is flawed in its wisdom at core'. He raised serious questions and objections about ARJK's proposal from the jurisprudence and historical context of the Jammu & Kashmir conflict. Some of the salient features of Nazir Gilani's contribution are as follow:¹⁴¹

1. Act 1974 has been authored by the Government of Pakistan who has authorised the President of PaK (Pakistani-administered Kashmir which is another description of AJK) to introduce the Bill in the PaK Assembly for consideration and passage. UNCIP Resolutions as claimed in the Preamble of Act 1974 don't provide any authority to the Government of Pakistan to author a Constitution for the People of PaK [Pakistani-administered Kashmir].
2. Act 1974 is an instruction and a direction from the Government of Pakistan which has assumed Trust Duties in the area. Assumed powers don't allow the Government of Pakistan to give any instruction or direction, which violates the jurisprudence of UNCIP Resolutions.
3. The first and most important step in seeking the Empowerment of PaK People is to question the merits of Act 1974 and examine if the Government of Pakistan has any power under UNCIP Resolutions to author Act 1974 in the present manner and again if the Government of Pakistan has any power to designate the President of PaK as a subordinate officer to carry out their instructions.
4. UNCIP Resolutions in AJK have the same force as Article 19 of the constitution of Pakistan. Government of Pakistan does not have any authority under UNCIP Resolutions to author Interim Constitution Act 1974 and designate President of AJK as a sub-ordinate of the Government of Pakistan for presenting and passage of the Act 1974.

¹³⁹ Online conversation, in response to my questions to Aftab A Khan about ARJK's proposal, dated July 2013

¹⁴⁰ Conversation with Ershad Mahmood during a conference in Nicosia, Cyprus dated July 03/08/2013. Shafqat Raja wrote an Urdu language report in response to ARJK's Proposal with the title 'Aayni Tramim: Tajziati Tajaweez (Constitutional Amendments: Analysis and Suggestions)' published by Kashmir Writers Forum (UK)

¹⁴¹ Except citation, all other points, objections and comments raised in this discussion are articulated by Nazir Gilani. These are summarised here based on a Facebook discussion and a recent online conversation this author had with him.

5. The Act is *Ultra Vires* and has no merit in Law. It should be scrapped. Seeking any amendments in the Act is surrendering the Sovereignty that inheres in State Subjects in respect of Self Determination.
6. It is a serious matter. Under the Principle of 'Equality' and Title to 'Self-Determination', a State Subject as an aggrieved person could revert back to the UN to find out whether the Government of Pakistan has any authority under UNCIP Resolutions to conduct itself in the manner of Act 1974. One can't seek amendments to an Act if it is Ultra Vires and extraneous to the principles of jurisprudence. Act 1974 has no merit in Law, in particular under UNCIP Resolutions. It is a Colonial dictate (Gilani 2013).
7. Seeking amendment to find a representation in the Federation would be considered a violation of UN SC resolution of 30 March 1951.¹⁴² The caution given to National Conference with regard to Jammu and Kashmir in this resolution is equally binding on the Assemblies of Muzaffarabad and Gilgit. None of the three Assemblies are elected by the people of the State living in all territories as defined in Article 4 of the J&K Constitution.
8. The recommendations of ARJK are phase two of a subterranean effort to disable the Government of AJK of all its vestiges of authority, rooted in the Provisional Declarations of the 4th of October 1947, the 24th of October 1947 and the protection available under UNCIP Resolutions, under which the Government of Pakistan has 'Trust Obligations' in the area. It is an effort to accommodate individuals at the cost of a collective choice for all people under article 257 of the Constitution of Pakistan.
9. Under UNCIP Resolutions the territories named as AJK are to be administered by the local authorities under the surveillance of the UN. Therefore, the introduction of Act 1974 in AJK is at variance with its responsibilities under UNCIP Resolutions.
10. Seeking any amendments in the Act is surrendering the Sovereignty that inheres in State Subjects in respect of Self Determination. For a Kashmiri, the Interim Constitution Act of 1974 is an unlawful document and colonial in spirit.
11. The Government of Pakistan and a 'better Government and Administration' in AJK are recognized by UNCIP resolutions. AJK does not only need a Government and administration but it has to be 'a better Government and administration'. Therefore, the Government of Pakistan has no authority on its own to cause any change that does not embed in the wisdom of its responsibilities under UNCIP Resolutions.
12. GoP notification 1971 does not override the authority of (UNCIP) which permit's Government of Pakistan to be in AJK. Granting sanctity to 'GoP Notification 1971' does not have any merit because it is an action outside the scope of UNCIP Resolutions. In the same manner, the leadership of AJK cannot outsource the question of right to govern to anyone outside the scope of UNCIP resolutions. If our poise towards UNCIP jurisprudence is incorrect or out of character, it would be acting without authority.

¹⁴² UN Security Council Resolution number 91 dated March 30, 1951 see, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/91%281951%29 Accessed on July 15, 2013

Dr. Nazir Gilani has discussed constitutional and historical aspects of the Kashmir conflict and raised fundamental questions with regard to ARJK's proposal, which to him seems to be an exercise in integrating AJK into Pakistan in the name of mainstreaming. He also clearly articulated that Act 1974 entails fundamental flaws as it was prepared by a foreign country and by non-state subjects. Moreover, it is also in contradiction to UN and UNCIP's resolutions through which Pakistan 'assumed' duties to administer AJK as part of 'trust obligations'. Referring to Interim Act 1974 Nazir Gilani asked, Whether the 'legislative sub-ordination' imposed on elected representatives of AJK is in accordance with the UNCIP Resolutions and general principles of 'legislative equality' of people? (Nazir Gilani 2013).

It is worth mentioning that on June 20, 2013 the High Court of Azad Jammu & Kashmir gave a verdict against an advertisement published in a national daily inviting application for various posts in the Kashmir Council, from state-subjects as well as citizens of Pakistan. According to media reports, the High Court declared that Pakistanis are ineligible and only state-subjects are eligible to apply and to be recruited to the AJK Council.¹⁴³ This decision of the High Court of AJK and news that followed in the local media, triggered immense debate on social media networks, especially Facebook. The people of Azad Kashmir including expatriates had keenly taken interest in this issue and started commenting and spreading their opinion across the board. However, the debate on state-subjects with regard to the verdict by the High Court of AJK turned towards the power-sharing relationship between AJK and Pakistan under Interim Act 1974 of AJK, and about the historical and constitutional context of the Kashmir conflict and Pakistan's role and responsibilities under UN SC and UNCIP resolutions in particular.¹⁴⁴ For example, Professor Nazir Nazish suggested that seeking any amendment would be a futile exercise, instead it is important to 'reclaim the usurped sovereignty for the State Subject, by calling a political

¹⁴³ The full bench of the High Court of AJK headed by Chief Justice Mustafa Mughal also directed the AJK Council to amend the qualification that allows Pakistani citizens entry into the Council and restrict it for state-subjects only. Furthermore, being a state-subject should be incorporated as a pre-requisite for all job advertisements in future. See, Daily *Sade-e-Chinar* dated June 21, 2013. Media also reported that officials of the AJK Council have announced that the High Court of AJK has no jurisdiction to give such orders and the AJK Council shall challenge the former's decision in the Supreme Court of AJK.

¹⁴⁴ The news report was published in Daily *Sade-e-Chinar* on June 21, 2013 and shared by a Kashmiri expatriate, Dr. Aftab Hussain on his timeline. The debate remained open for two weeks and it was shared 200 times. Approximately, 100 contributors of Azad Kashmir and the Diaspora in the UK, USA and Europe contributed to this debate with total number of comments numbering around 500. It is worthy to mention that this was the first-ever debate with such huge participation by Azad Kashmiries and expatriates alike on social media; about the political and constitutional relationship of AJK with Pakistan.

convention of only the indigenous parties, from all parts of the divided State in order to draw up a constitution with authority to establish a Constituent Assembly exercising its full sovereignty over the aforementioned territories’ (Nazish 2013). Nazir Nazish further made important points with regards to merits and demerits of Interim Act 1974 and the proposal presented by ARJK. Nazish’s arguments revolve around the following premises:

Act 1974 fails the criteria of a constitution because a ‘Constitution is a legal document designed and framed by a “Sovereign People”, defining various institutions, outlining the principles and setting out the guidelines for governance in a bounded territory, known as a “State”. By virtue of its creation, only through this process can a constitution and all the institutions and mechanisms stemming from it, then acquire its legitimacy’. A constitution must derive from the ‘General Will’ of a sovereign people, which is not the case with Interim Act 1974. In other words, it is the expression and exercise of the right to ‘Self-Determination’ by a people without any obstacles, hindrances, or limitations imposed on them, which entitles them as ‘Sovereign’. Only their endorsement can legitimise a legal authority. Therefore, Act 74 fails the criteria of a constitution in the aforementioned considerations on the following grounds:

- The status of Act 74, as an instrument of control/oppression, framed and imposed by an outside authority on 'State subjects' without participation of the people, or a priori consent of the 'General Will', particularly in its design and construction.
- Act 1974 was not framed by 'State Subjects' but rather by ‘Non-State Subjects’.
- It disenfranchises sections of ‘State Subjects’ by virtue of restrictive and conditional clauses, violating the international norms and conventions on democratic rights of a free people.
- All the institutions, bodies and mechanisms of governance, under this Act, fail the test of democratic choice of ‘Free People’, by virtue of all executive powers residing external to these institutions.
- The introduction of the Act in 1974 not only violated the spirit and letter of UNCIP resolutions, it also disenfranchised a body of political opinion striving for the restoration of the usurped sovereignty of the State Subjects.
- The State Subjects had liberated an area of the State from the Ruler and declared the establishment of an independent government, which was removed by the Pakistani establishment (Nazish 2013).

Beside Nazir Gilani and Nazir Nazish, many other commentators rejected ARJK’s proposal outright, which they claim to be based on the idea of ‘mainstreaming AJK

into Pakistan'. In CPDR's report titled, 'An Appraisal of Constitutional, Financial and Administrative Arrangements between the Government of Pakistan and Azad Jammu and Kashmir' Shaheen Akhter opines that, 'The option of integrating AJK into Pakistan would give a very clear message to India and to the rest of world that Pakistan has given up its long-stated position' (CPDR 2011, 27). In a similar vein, Sardar Muhammad Anwar Khan, a former president of AJK, argued that, 'If anybody wants to unilaterally take the decision to merge AJK with Pakistan in the name of mainstreaming, it will be exactly what India has done with Indian-occupied Kashmir and the Kashmir dispute will die a natural death' (CPDR 2011, 17). Retired justice Sharif Bokhari also echoes the sentiment that ARJK's proposal is a step towards integration of AJK into Pakistan (CPDR 2011, 28).

Based on the arguments from proponents as well as opponents of ARJK's proposal, it appears that Manzoor Gilani failed to satisfactorily determine whether or not such a move would have negative repercussions on Pakistan's stand on Kashmir and violate the UNCIP resolutions. It appears that it will also be in contradiction to Pakistan's obligations and duties with regard to the territories currently under its administration, namely AJK and GB. Additionally, Manzoor Gilani has also ignored (seemingly deliberately) the historical and constitutional context of the Kashmir conflict (see chapter-3) when presenting this proposal that seems intent on integrating AJK and GB into Pakistan.

Similarly, Snedden (2012) has suggested that AJK's legal status be converted to *de jure* with Pakistan. Snedden seems to ignore the disputed nature of the Jammu & Kashmir conflict and international commitments that both India and Pakistan made at the UN decades ago. Apparently, Snedden's opinion is based on two observations: firstly, the region of AJK has been subsumed and acts as a subordinate to Pakistan, which provides evidence that its citizens are inclined towards Pakistan; secondly, there's an absence of strong opposition from the people of AJK against Pakistan's dominance and control, which shows that they 'willy-nilly' have accepted Pakistan's control over them. However, Snedden has ignored the historical and constitutional context of the Kashmir conflict and failed to satisfactorily explain how a territory recognised by the UN as disputed, is part and parcel of the larger Kashmir conflict and whose final resolution is yet to be determined, could be unilaterally made *de jure* part

of Pakistan. Furthermore, what would be the negative repercussions of such action on the Kashmir conflict?

A comparative analysis of proposals reveals that on the one hand, both CPDR and ARJK's proposals talk about rights and civil liberties, political and constitutional empowerment, and democracy in AJK, but on the other hand, both the proposals, most surprisingly, preferred to maintain silence about discriminatory clauses, such as a *priori* demand of oath of allegiance of state accession to Pakistan, which restricts pro-independence political forces from taking part in elections. These discriminatory clauses are evidently against the spirit of UNICP resolutions on Kashmir and violate democratic norms and practices including civil liberties and free choice and association. Additionally, there is another perception - especially amongst nationalist forces of AJK - that ARJK's proposal robustly advocated by Manzoor Gilani is clandestinely supported by some quarters of the establishment of Pakistan. Nevertheless, this allegation is not supported by any evidence and there is no official stance reported thus far from the government of Pakistan on the proposals given by the ARJK and CPDR. In fact, both the Government of Pakistan and its Ministry of Kashmir Affairs (MKA or KANA) maintain silence over these proposals advocated by CPDR and ARJK. However, the CPDR's proposal, which supports to maintain the status quo but seeks legislative and financial empowerment through constitutional reforms, is receiving support from many segments of political forces of AJK except pro-independence parties at the internal level. ARJK's proposal has become controversial and consequently received considerably quite less acceptance so far.

Keeping in view the arguments by Snedden (2012) and Manzoor Gilani (2012), it appears worthwhile to reflect back on some facts brought into consideration in foregoing parts of this study. Firstly, all divided parts of the former princely state of Jammu & Kashmir (Azad Jammu & Kashmir, Gilgit-Baltistan and areas under the Indian control) are recognised as disputed territories and subsequently governments and governance structures in all these disputed regions are transitory and these are essentially *de facto*. Therefore, a permanent constitutional governance structure cannot be introduced, as governments in these disputed parts are not qualified to take such decisions. Moreover, elections in these parts cannot be substituted for the UN promised plebiscite because the right to participate in elections and the right to self-determination are two different rights and elections do not substitute for the right to

self-determination.¹⁴⁵ Consequently, these regions, legally speaking, cannot be made *de jure* with their respective controlling states, namely India and Pakistan. Secondly, any proposal for political and constitutional empowerment for AJK must be in accordance with the UN and UNCIP's resolutions, not in contravention to them. Thirdly and also subsequently, AJK cannot be made *de jure* with Pakistan. In light of these facts, it appears that an interim or temporal formula needs to be devised for AJK that could conform to the historical and constitutional context of the Jammu & Kashmir conflict and UN Resolutions.

The historical and jurisprudence perspectives presented by the two eminent scholars, Dr. Nazir Gilani and Nazir Nazish, have unfolded their impacts on the status, legitimacy, and politics of AJK. The points they raise are closer to what is often derisively termed as pro-independence ideology. Hence, in subsequent discussion I will try to include views and alternatives from pro-independence individuals and political parties.

5.2.4 Pro-Independence Views and Alternatives

Pro-Independence or nationalist forces in AJK, which are constitutionally (and socio-economically) side-lined from mainstream politics, consider the government structure under Interim Act 1974 to be downright fraudulent, farcical even. They believe that it was introduced to protect the rights and interests of the occupier rather than the local population. They also believe that making changes or reforms in the interim constitution of AJK wouldn't genuinely resolve prevalent issues of Azad Kashmiris. Therefore, the only way to escape the dilemma of identity-less-ness and powerless governance in AJK is to re-establish a Constituent Assembly conforming to the letter and spirit of the proclamation of October 4, 1947 and the declaration of the provisional government of AJK on October 24, 1947. For example, Jurist Majeed Malik, who heads the Jammu Kashmir Liberation League and is a political successor of K. H. Khursheed, contended 'As we are not part of Pakistan, we should hold elections to form a Constituent Assembly and this Assembly will be responsible for framing a constitution, which must be framed in the historical and legal perspective of the disputed nature of the State of Jammu & Kashmir' (Majeed Malik).¹⁴⁶

¹⁴⁵ See, for example, UN SC Resolution 91 March, 1951 and UN SC resolutions 122 of 1957.

¹⁴⁶ Interview, dated October 28, 2011

Tanveer Ahmed, who heads Civil Society Forum - AJK and Kashmir - One Secretariat, in a similar vein, asserts that, 'For developing a genuine political system and strategy to resolve the ambiguity that prevails, an elementary task for the public is to democratically lobby for a Constituent Assembly in AJK. The governing structure imposed by Pakistan through a mixture of intrigue, incitement and aggression - from its very inception beginning from the 4th of October 1947 announcement - empirically represents Pakistan's interests' (Tanveer Ahmed).¹⁴⁷ Sardar Sagheer (the then Chairman of Jammu & Kashmir Liberation Front-JKLF), Toqeer Gilani (then Secretary Information JKLF) and Khalid Pervaiz Butt (President Kashmir Freedom Movement - KFM) were of the view that making amendments in the prevailing Interim Act or restoring Act 70, would neither resolve the status of AJK nor accommodate democratic institution building in the territory. We believe that the current governance system under Act 1974 has failed to deliver and protect people's rights as it doesn't guarantee economic and political freedom. What we demand is not reforms but rather that this system must be overthrown. Therefore, the right of a provisional revolutionary government, which Kashmiries themselves obtained in 1947 must be returned back to them (Toqeer Gilani 2011; Butt 2011; Sagheer 2011).¹⁴⁸

Sardar Aftab A. Khan has summarised this discussion by highlighting some crucial points¹⁴⁹. According to him, the sovereignty of the state was restored by Maharaja Gulab Singh on 16 March 1846 when he reclaimed sovereignty for the State of Jammu & Kashmir from the East India Company/British Raj, who had previously taken it over from the Lahore *Darbar* - that had represented the empire of Ranjeet Singh - in lieu of indemnity money signed by mutual agreement a week earlier (ref. Treaty of Lahore March 9, 1846). It should be noted though that the sovereignty of the citizens of Jammu Kashmir was (forcefully) withheld under the suzerainty of the Maharaja of Jammu and Kashmir, henceforth they came to be referred to as State Subjects (ref. 1927 State subject rules) whereby they had limited citizenship rights.

The status and legitimacy of the AJK Government and the territories under its control have a direct and indirect relationship with the governance structures and

¹⁴⁷ Interview dated October 28, 2011

¹⁴⁸ Interview September-October 2011 at the JKLF office in Rawalpindi, Pakistan and Khalid Pervaiz Butt, Bhimber AJK

¹⁴⁹ Interview, Aftab A. Khan Dated March 2011 in the United Kingdom. The points raised by Sardar Aftab A. Khan in this discussion emerged through an on-going conversation with this author during the course of research.

arrangements in other regions of Jammu & Kashmir, controlled by neighbours China, India and Pakistan. Therefore, in order to address the democratic deficit and governance dilemma in AJK so that a genuinely autonomous government may emerge which could take binding decisions on the affairs of governing in AJK, it is important to revisit the essence of the establishment of a provisional government in AJK in 1947. A people's government with genuine democratic credentials to restore law and order in the state and 'enable the people to elect by their free vote a popular legislature (Constituent Assembly) and a popular Government'.

In this respect, there are two important points worthy of recognition: Firstly, in 1947 the members of the *Prajha Sabha* (J&K People's Assembly) as well as the people of the state rebelled against the autocratic rule of the Maharaja of Jammu and Kashmir and his system of governance. It means that they were not satisfied with governance reforms introduced by the Maharaja whereby they exercised limited powers as members of the *Prajha Sabha*, and they rebelled in force (predominantly within the areas of current AJK and Gilgit Baltistan) against the Maharaja to establish a more democratic system of governance so that a peoples' representative government could emerge. However, after coming under the influence and subsequent administration of Pakistan, combined with the apathy of world powers amidst a cold war era and its legacy, the unfortunate people of Azad Jammu Kashmir still yearn to achieve a genuine democratic milestone. Their historical people-led resistance movements in various shapes and forms throughout the Dogra to the Modern Era are yet to bear fruit.

The current system of governance in AJK under Interim Act 74 is neither democratic nor empowering, and is contrary to the spirit of the first declaration of the AJK Government. Today, the key questions are: how can AJK's Government regain its powers from Pakistan to fulfil the apparent fundamental basis of its formation and purpose of its existence? What course of action should current members of the AJK Assembly and the people of AJK take, in order to reach that elusive yet key milestone in their struggle for re-unification of their country?

Furthermore, the political leadership within a country - while in transition to become a fully sovereign state - has to negotiate and navigate the balance of power in its favour with a range of domestic and foreign policy manoeuvres. Governance arrangements and systems in such countries never remain static. They always evolve with changes throughout the world or in the regional balance of power. Therefore, in

the quest for a more equal, democratic and empowered system of governance in AJK, one must have a reference or starting point. In the opinion of Sardar Aftab, this could be the declaration of the provisional government on October 24, 1947, followed by envisioning a destination point i.e. an open society within all regions of a re-unified state of Jammu and Kashmir.

In the given paradigm, it appears that the political classes of AJK have lost their reference point. As a result, a number of people within civil society and across the political spectrum in AJK are trying to engage and negotiate power-sharing mechanisms with Pakistan by proposing amendments in the AJK Interim Act 1974 and trying to make it their reference point. This is a misguided approach and it reinforces Pakistan's control over governance in AJK under the guise of what amounts to a placebo feeling of empowerment. This could lead AJK to a situation no different than the Federally Administered Tribal Areas (FATA) of Pakistan (Aftab 2011, 2013).

5.2.5 Independence through re-establishing a Constituent Assembly

Proponents of establishing a Constituent Assembly in AJK mainly belong to the pro-independence ideology camp. They believe that sovereignty is vested with the people of Jammu and Kashmir with many amongst them citing AJK's provisional government as being established through a people's resistance movement which declared its independence on October 24, 1947. However, thereafter in 1949 the leadership of AJK surrendered this sovereignty by signing the Karachi Agreement, hence defeating the objective envisaged in the initial proclamation of October 4 and later declaration of independence. It is important to note that the Government of Pakistan had canvassed for the recognition of the AJK Government as an independent government parallel to the dethroned Maharaja's government, when dealing with the UN in 1947-8. However, this independence was not recognised by the international community and subsequent UNCIP resolutions declared the State of Jammu and Kashmir as a disputed territory, including AJK which was described as a local authority (see section 2.2.3). Pro-independence forces argue that through establishing a Constituent Assembly a sovereign government should be formed, which will further develop its own constitutional design and power-sharing mechanism until the final disposition of the Kashmir conflict.

In this respect, Nazir Nazish has presented an alternative. According to him, any attempt to reform Act 1974, with the intended aim of addressing the legitimate rights of the ‘state-subjects’ as ‘sovereign’ people, needs to persuade the Pakistani government to change its status from an occupying power to a facilitator one, in the spirit of UN obligations. This would require Pakistan to:

1. Abrogate Act 1974; empower the AJK Assembly with full authority to call a Constituent Convention, represented by delegates from all the indigenous political parties representative of all the territories (including GB), to frame a constitution, restoring the ‘Sovereignty’ of the ‘State Subject’, in these parts of the State.
2. A new Constituent Assembly should, then be elected under the new Constitution with a Legislature, Executive and Judiciary, with all the additional mechanisms of self-governance defined and stipulated by the Constitution;
3. Recognise the newly established Constituent Assembly, under the new constitution framed by the ‘State Subjects’, and negotiate a mutual relationship and arrangements as two Sovereign Authorities;
4. Support this New AJK (including GB) government’s candidature at the UN as an equal member of this Club and assist the AJK government in mobilising world opinion to force the Indian establishment to do the same (Nazish 2013).

However, when presenting a way forward, Nazish remains pessimistic, stating that, ‘Pakistani rulers would not accept the above option. History supports my hunch. Therefore, true alternative lies in the “State Subjects” taking up the aforementioned options, and lobbying the five permanent members of the Security Council themselves to achieve the above outlined objectives’ (Nazish 2013).

The proposal by Nazish and other proponents of re-establishing a Constituent Assembly in AJK raises some pertinent questions. For example, will people living across the LoC accept a sovereign government emanating from a Constituent Assembly as their representative government? What would be the *modus-operandi* of this government in seeking international recognition from the international community? How and to what extent, will it undermine UN and UNCIP resolutions passed from time to time on Kashmir? Specifically with regards to AJK, will Pakistan, who is currently controlling and administrating this region, accept and recognise the proposed sovereign

government emerging through a Constituent Assembly? Will the international community recognise the independent government of AJK, which at inception was initially denied legitimacy and recognition as a legitimate successor of the Maharaja's Government, as discussed in preceding parts of this study? These questions remain unanswered by the proponents of this proposal. However, arguably, it appears that the idea of sovereign government through establishing a constituent assembly in AJK will not be acceptable to the parties involved, namely India and Pakistan. It also seems not possible that people living other divided parts of disputed state of Jammu & Kashmir belonging to their distinct identities will accept such unilateral action on part of the people of AJK.

5.3 Building Democratic Governance: An Alternative

In the preceding chapter, we studied contemporary power-sharing approaches and theories, and then subsequently theorized their relevance and applicability with power-sharing mechanism in AJK. The study of power-sharing approaches showed that these are potentially important in societies divided by deep ethnic cleavages. Particularly, the idea of autonomy or self-government was found as potentially viable for addressing the power-imbalance and democratic deficit in AJK. However, it was also observed that autonomy model for AJK demands a context-based and locally tailored power-sharing mechanism to meet its own historical, conflict and constitutional needs.

The dilemma of power-sharing mainly exists at the external level between region and centre - between a disputed territory (AJK) and its controlling nation-state (Pakistan) - which concretised with time based on the twin undercurrent of the Kashmir conflict and AJK as a disputed territory. It was also observed that the undefined status and legitimacy of AJK is connected with the problematic sovereignty, absence of self-determination and conflict this territory is exposed to. Thus, this study maintains that democracy and good governance can transpire in the disputed territory of AJK if genuine and far-reaching autonomy (i.e internal autonomy or domestic sovereignty) is granted to the government of AJK.

Earlier, this study examined available proposals and options, which appear to have failed to find distinct consensus among jurists, authors, politicians and civil society

activists of AJK for empowering AJK's prevailing political and constitutional framework. Before proceeding further, it is deemed essential to reflect back on the facts that emerged in the preceding parts of this study. These are as follows:

- The Government of Azad Jammu & Kashmir (Republic of Kashmir) was established through a people's resistance movement in 1947 and claimed to be sovereign and a successor of the Maharaja's Government. However, this government was not recognised as sovereign representing the erstwhile state of Jammu & Kashmir. The Government of AJK was categorised by the UN as a local authority and the territory as disputed. It maintains a de facto link with State of Pakistan (See Chapter- 2 and Chapter-3);
- The UNCIP Resolutions do not explicitly give any administrative control over AJK to the Government of Pakistan. I quote: 'Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under surveillance of the Commission...' not Pakistan. However, the Commission does not exist today (CPDR 2011, 28);
- The Government of Pakistan has 'assumed' temporal responsibilities under 'trust obligations' of UNCIP resolutions of August 13, 1948 and January 05, 1949 to administer these regions, namely Azad Jammu & Kashmir and Gilgit-Baltistan until a UN promised plebiscite is held (See chapter-3);
- Unlike Manzoor Gilani's interpretation in which he argued that the territories of AJK and GB fall under Article 1 (2) (d) of the Constitution of Pakistan, this study, following the Nazir Gillani's arguments, maintains that it has nothing to do with Article 257, which talks about a prospective relationship between the State of Jammu and Pakistan. Therefore, Manzoor Gilani's interpretation is misleading, as Article 257 - apparently - does not give any specific reference to the disputed territories of AJK and GB (Nazir Gilani 2013) (See chapter-2).
- The existing constitutional power-sharing arrangement under Interim Act 1974 in AJK has proved highly imbalanced, undermines the governmental authority and does not guarantee an autonomous government to AJK (See chapter-3).

Against this backdrop, it is quite evident that all divided parts of the former princely state of Jammu & Kashmir including AJK and GB are disputed. However, it can be argued that the legitimate fundamental rights of the people (state-subjects) living in these regions are not disputed and these rights (including the right to vote, the right to rule, the right of free speech and association, and the right of ownership over natural resources) cannot be held hostage because of the Kashmir conflict.

Against the given background, it seems essential that any alternate formula for AJK's empowerment must entail some essential characteristics and features in the light of given parameters. Thus, this section attempts to offer an alternate formula for the political, constitutional and economic empowerment of AJK with the following

objectives: to grant complete internal autonomy or domestic sovereignty to AJK and to address the power-imbalance, democratic shortcomings and reforming the electoral process. In order to achieve the first objective, it is essential to introduce self-rule or autonomy by establishing an autonomous government - a pre-condition for democracy to flourish in non-state entities (see section 2.3). For the second objective, it is essential to build a democratic governance structure in which transparency, participation, accountability and rule of law (four essential attributes of democratic governance) effectively function in governance processes/mechanisms, institutions and structures of AJK. Additionally, this study maintains that any proposed alternative formula or model must entail four characteristics: (a) be in accordance with the spirit of UNCIP Resolutions (b) be in accordance to the constitutional and historical context of the disputed state of Jammu and Kashmir; (c) be in accordance with the free will of the people and able to address the legitimate rights of the Azad Kashmiris as state-subjects; (d) be practicable, honourable, feasible and democratic equipped to address the prevailing lopsided power-sharing structure between Pakistan and AJK by guaranteeing an autonomous and self-governance structure to AJK.

5.3.1 Way forward or Alternative Model: Autonomy or Self-Government

Forgoing discussions and a comparative analysis revealed that the autonomy or self-government model is comparatively better than other approaches or models for dealing with AJK's governance and power-sharing dilemma (see section 4.3.4, section 4.3.5, and section 4.5). Thus, this study outlines what I prefer to call the 'AJK autonomy model' containing suggestions and recommendations through which a temporal political and constitutional framework can be established. It is understood that political empowerment stems from the constitution. Therefore, for any improvement in governance, AJK needs constitutional empowerment, which could guarantee autonomous governance structure free from external interference except specified or agreed between the parties.

5.3.1.1 Salient Features of Proposed Constitutional Design

The constitutional design that this study advocates for building a new power-sharing framework is based on theoretical perspectives and empirical findings discussed in the earlier parts of this study to address the democratic shortcomings and power imbalances in AJK. In this respect, this study suggests constitutional amendments at two levels: firstly, in Article 257 of the Constitution of Pakistan and secondly in the Interim Act of 1974, to frame a new constitution for AJK for internal governance and a power-sharing relationship with Pakistan. It is noteworthy that proposing some amendments in the Constitution of Pakistan seems normative and apparently an effort to establish an ideal standard. However, as I argued earlier, for the success and sustainability of any power-sharing model, it is essentially important to consider the historical and constitutional context of the case itself. Article 257 doesn't specifically talk about AJK and GB. However, it is the only article in the Constitution of Pakistan which provides a reference and entails a provision related to the former State of Jammu and Kashmir. Thus, this study suggests an amendment and insertions in Article 257 of the Constitution of Pakistan keeping in view the autonomy discussions and analysis through which powers distribution between the center and the regions were defined (see section 4.3.4 and 4.4). The proposed amendments in the Constitution of Pakistan aim to clarify the existing constitutional ambiguity and streamline its relationship with AJK according to the UNCIP resolutions on Kashmir.

5.3.2 External Level: Proposed Amendments in Constitution of Pakistan 1973

Article: 257 Provision relating to the State of Jammu and Kashmir

257. When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and that State shall be determined in accordance with the wishes of the people of that State (Constitution of Pakistan 1973).

Replacement of Article 257 Provision relating to the State of Jammu and Kashmir

Article 257 should be substituted by the following:

The final disposition of the disputed State of Jammu and Kashmir shall be made in accordance with UN Security Council resolutions calling for a free and impartial plebiscite.

In addition, this study proposes insertion of some further articles in connection with Article 257 of the Constitution of Pakistan. These are as follows:

Provision relating to the Territories currently under the administration of Pakistan namely Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB)¹⁵⁰

It should be expressly stated that the Government of Pakistan has assumed control of AJK and GB under trust obligations of the UN and UNCIP Resolutions to administer these territories. The responsibilities that the Government of Pakistan has assumed are provisional until the final disposition of the Kashmir conflict, in accordance with UN Resolutions and it shall not prejudice the will of the people of the State of Jammu and Kashmir at the time of plebiscite.

Special Status and Self-Government to AJK

It should be expressly stated that in its discharge of responsibilities by the Government of Pakistan under UNCIP Resolutions, there shall be a special status conferred to AJK and Gilgit-Baltistan. Complete autonomy or self-government shall be granted to AJK and Gilgit-Baltistan. The Government of Pakistan shall retain only foreign affairs, security, currency and communications with the concurrence of the elected assemblies of AJK and GB. All remaining internal matters or subjects, which are

¹⁵⁰ The study acknowledges that its scope covers only Azad Jammu and Kashmir and doesn't include Gilgit-Baltistan (GB). However, GB is also part and parcel of the disputed state of Jammu and Kashmir and currently under the direct administration of Pakistan. Therefore, the proposed amendments may also be extended to GB to grant a similar quantum of autonomy or right of self-governance as suggested for AJK, with the consent of the people of GB and its elected Legislative Assembly.

currently vested with the AJK Council headed by the Prime Minister of Pakistan, shall be returned to the Government of AJK.

Representation in the National Institutions of Pakistan

The representation of AJK in the national institutions of Pakistan such as NFC, NEC etc. should be given in lieu of the 18th amendment through which provincial autonomy is granted to the provinces except the Federal Legislative List. In terms of rights and voice, Azad Kashmir should be treated equal to other provinces of Pakistan, keeping in view its disputed status and proposed special status in the Constitution of Pakistan as described in the notification issued by the Cabinet Division of Pakistan in 1971.

Unlike Manzoor Gilani's proposal, which advocates that representation in the national institutions of Pakistan can only be given through an amendment in the Constitution of Pakistan, Ershad Mahmood argues that, 'A *de facto* and provisional representation of AJK in the national forums of Pakistan such as NFC, NEC and IRSA can be given through an executive order by the Prime Minister of Pakistan. Amending the Constitution of Pakistan merely for obtaining representation in the National Assembly and the Senate of Pakistan at the expense of the Kashmir conflict will be a great loss and it will damage the Kashmir cause at the international level' (Mahmood 2013). It is important to note that to get representation in the national assembly and senate of Pakistan, one must be a citizen of Pakistan to be represented in its Parliament. Azad Kashmiris are not, legally speaking, Pakistani by nationality and having Pakistani passport doesn't necessarily mean that they are Pakistani (See section 3.5.2).

Income from Kashmir Property in Pakistan and Natural Resources of AJK
Administering of Kashmir Property Ordinance of 1961 should be abolished. The ownership and income from these properties of the erstwhile Maharaja of Jammu and Kashmir's Government should be taken back from the Ministry of Kashmir Affairs and the Kashmir Council and returned to the AJK government. It will resolve many financial problems of AJK and will make it financially less dependent on the Government of Pakistan. Additionally, income, net-profit and royalties from natural resources situated in the territory of AJK should be given to AJK at par with other provinces of Pakistan under the 18th amendment of the Constitution of Pakistan.

5.3.3 Internal Level: Repealing Interim Act 1974

As a result of the given proposal and suggestions for streamlining the constitutional ambiguity between AJK and Pakistan, AJK would function as an autonomous territory except for defence, currency, foreign affairs and communications. Additionally, all subjects and powers, which are currently under the jurisdiction of the Kashmir Council, would fall under the jurisdiction of the AJK Government and elected Legislative Assembly. Consequently, it would be possible to establish an autonomous government with ‘domestic sovereignty’ in AJK (here I refer to ‘domestic sovereignty’, free from external intervention into its internal governing affairs and authority).¹⁵¹ In order to establish a regime of autonomy, it is essential to look at how powers will be divided between the autonomous territory and the concerning central government. In this regard, Lapidoth has defined four different areas for any power-sharing mechanism. These are: ‘(a) powers reserved for the central authorities, (b) those fully transferred to the autonomous entity, (c) parallel powers and (d) powers that can only be exercised jointly’ (Lapidoth Ruth 1997, 33-34). Putting it into the specific context of AJK, the first area described by Lapidoth has already been discussed and defined that the powers of defence, currency, communications and foreign affairs are reserved for the Government of Pakistan. In respect of the second area, this study proposed that all powers that the Government of Pakistan enjoys through the Kashmir Council except those specified above must be returned back to the AJK government. As for the third area, this study amended it and referred to it as establishing a joint mechanism or institution, which in the case of AJK is already present in the form of the Kashmir Council. However, it should be reformed and reconstituted under a new contract in light of proposed autonomy model. Regarding the fourth area, this study refers to powers and affairs related to foreign affairs and international trade. This should be jointly exercised by the autonomous territory (AJK) and central government (the government of Pakistan as controlling nation-state).

The study of the three-tier power-sharing governance structure (see section 3.5) in AJK includes several factors, which directly or indirectly influence governance processes, the electoral process and other legitimate rights of Azad Kashmiris, indicating that there are several democratic shortcomings in the constitutional design

¹⁵¹ On territorial political autonomy, see, for example, Ruth Lapidoth 1997, pp. 28-33, on domestic sovereignty, which Krasner defined as domestic authority in a clearly defined territory or Jackson’s interpretation of internal sovereignty or Potter’s arguments, see Krasner (2004), Jackson (1990) and Potter (2004) and Jacob Robinson’s examination between sovereignty and autonomy in Lapidoth 1997, 30.

of AJK. These include: twelve refugee's seats (in Pakistan) and their election process, which are being used as a bargaining-chip by the Government of Pakistan, discriminatory clauses such as the oath of allegiance, which was found in contradiction to UNCIP resolutions and the free will of the people, genuine electoral rolls, an independent election commission, independent judiciary and an accountability commission. Regarding the issue of judicial reforms, this study endorsed the procedure laid down in the CPDR proposal (see section 5.2.1). Here, I tried to sketch the main features of proposed recommendations for a constitutional design in order to grant the right of self-governance to AJK. These are as below:

5.3.4 Introducing an Act of Self-Government

This study previously indicated that Interim Act 1970 was the only Act promulgated in AJK after consulting the political leadership of AJK. The field research also revealed that there is considerable degree of consensus among the political elite of AJK that Act 1970 could provide internal sovereignty to AJK. The proposed 'AJK autonomy model' through promulgating 'Act of Self-Government' takes reference from four important documents: firstly, declaration of provisional government of AJK formed on October 24, 1947, which must be made part as a preamble of the proposed act; secondly, UNSC and especially UNCIP resolutions of August 13, 1948 and its subsequent interpretation, which emphasises 'better governance and administration'; thirdly, Act 1970 of AJK, which provided considerable internal autonomy to AJK except defence, currency, communications and foreign affairs, and thus captures the spirit of the UNICP resolutions 1948-9; and finally, 18th amendment in the Constitution of Pakistan through which a wide-reaching provincial autonomy is granted to the provinces of Pakistan. In addition to this, I follow the consociational (power-sharing) approach (See section 4.3.1) and Sujit Choudhry's affirmation that a 'power-sharing model is to *share, diffuse, separate, divide, decentralize and limit power*' (Choudhry 2008, 18) when presenting an alternative for AJK.

In this respect, Section 33 (1) (2) and (3) of Interim Act 1974 laid down the procedure for amending this act, which stated that any amendment requires a joint-sitting of the AJK Legislative Assembly and the AJK Council. However, any amendment regarding section 31 and section 56 needs prior approval by the Government of Pakistan. Therefore, through a joint-sitting of the AJK Assembly and the Council, prevailing Interim Act 1974 should be replaced with a new act, namely Act of Self-Government of

Azad Jammu and Kashmir. Through this proposed act, AJK government will take all powers back from the Kashmir Council except as specified, leaving them under the purview of the Government of Pakistan. The proposed act will empower AJK's governmental structure and authority, transforming it into an autonomous government regarding all internal governing affairs in the territory of AJK. The issue of 'lent officers', who are deputed by the government of Pakistan apparently to monitor and keep checks and balances (or in other words to control the administrative structure in AJK), will be resolved under the proposed act. Under this act and subsequent power-distribution this study suggests, the AJK government would have authority to appoint its own citizens to high-ranking positions such as Auditor General, Secretary Finance, Chief Secretary and Inspector General of Police (IGP).

5.3.4.1 Fundamental Rights, freedom of Association

Section 7(2) of the Interim Act 1974 restricts freedom of association. It should be revoked under the proposed Act of Self-Government. There is also a need to remove discriminatory clauses including the loathed oath of allegiance, which bars pro-independence political forces from contesting elections. Under proposed Act of Self-Government two new clauses, namely Right to Information (RTI) and Right to Public Service (RPS) should be included. The right of people to know and the guarantee to public services are considered an essential part of good governance practices including transparency, accountability and for strengthening democracy.

5.3.4.2 Reconstitution of the Kashmir Council

Lapidoth (1997) asserts that, 'In fact, there is usually a need for cooperation, coordination and consultation between the central authorities and the autonomous entity. This is crucial because there is likely to be a close link between their respective powers'. Following Lapidoth's assertion, this study does not suggest abolishing the Kashmir Council as it acts as an institutional link between AJK and Government of Pakistan (GoP). Moreover, there are certain powers that a central government usually transfers to an autonomous entity including: legislation, adjudication and administration. In some cases, central government adjudication remains fully with the central government (Lapidoth Ruth 1997, 34-35). However, in the context of AJK, the power of adjudication of Pakistan in AJK seems inappropriate given the fact that it is not legally a part of Pakistan. Therefore, similar to CPDR's proposal, this study suggests that the role and powers of the Council should be limited

to checks and balances and acting as a co-ordinating body between centre and region. Nevertheless, the Council should not work as a parallel governance mechanism to the AJK Government. Rather, it should function as a joint body between AJK and Pakistan and work as a facilitator to AJK's government and to the powers that GoP would retain such as defence, currency, foreign affairs and communications. In this respect, retired jurist Sharif Bokhari suggests,

I tend to favour the existence of the AJK Council for the purpose of providing a link between the Government of Pakistan and AJK but on the condition that the AJK Council is given only limited authority. The AJK Council should only have those powers which - during Maharajah Hari Singh's rule - were vested in the British Empire. I recollect that except defence, foreign affairs and currency, no other subject was with the Government of British India (Justice Sharif Bokhari 2012, 28).

The composition of the Kashmir Council is an issue which demands a debate for developing a consensus among the relevant stakeholders. However, in the meantime, this study supports the procedure laid down in the CPDR proposal (see section 5.2.1) with a condition that the numerical strength of the AJK council should be in favour of State-Subjects of Azad Kashmir. Moreover, for any prospective re-formation and re-composition of AJK Council State-Subject Certificate should be a priori condition for becoming member of AJK Council. In this respect, a reference can be taken from the Section 50 of the Constitution of Jammu & Kashmir (Indian-Administered Kashmir) through which a legislative council is formed and for becoming a member of this Council, one must be a State-Subject.

5.3.4.3 Citizen Participation in Decision-Making

It is proved by many studies that decentralization of powers from top to bottom is essential for any functioning democracy. Delegating powers from a national or regional level to a local level means more participation in decision-making and promotion of transparency in governance processes. Consequently, it strengthens the democratic voice and gives ownership to the local people (Dutta 2009; UNDP 1999). Dutta further argues that, 'Decentralization is often linked to concepts of participation in decision-making, democracy, equality and liberty from higher authority' (Dutta 2009, 5-9). According to the UNDP report, 'Decentralization, or decentralizing governance, refers to the restructuring or reorganization of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels'. 'It also contributes towards good governance such as increasing people's

participation in decision-making, developing people's capacities and enhancing transparency and accountability' (UNDP 1999, 2)¹⁵² In the context of AJK, there have been no local body elections since 1994, which resulted in poor citizen participation and fragility of governance processes. The political, administrative and economic responsibilities should be decentralised from the centre to the region or local areas by conducting local body elections at the internal level in AJK. This will help to establish a local governance structure, which will ultimately empower people of AJK.

5.3.4.4 Reforms in Electoral System

Powell asserts that, 'Elections are not only an instrument of democracy but they are a defining feature. They build connections between wishes of citizens and behaviour of policymakers' (Powell 2000, 14). However, elections must be free, fair and transparent and provide equal opportunities to all contestants. The findings of this research study indicated that the electoral system in AJK is controlled by the 'power-corridors of Pakistan', which manipulate the electoral process to obtain their desired outcomes. Additionally, the confidence level of the people of AJK on the performance and credibility of the election commission has proven fragile with weak institutional capacity.

Therefore, there should be an independent Election Commission in AJK free from any interference by the MKA or GoP. It should be an autonomous body by law and its composition should be derived through a constitutional committee comprised of the members of the Legislative Assembly of AJK from both ruling and opposition parties. According to Article 50 of the Interim Constitution 1974 of AJK, there is an election commissioner appointed by the President of AJK on the advice of the Council. In the proposed autonomous government, the advisory (though mandatory) role of the Council will be abolished and the powers to appoint an election commissioner will be vested with the AJK Legislative Assembly. In this respect, this study suggests establishing an autonomous body of the election commission, not merely an election commissioner. The proposed independent election commission should consist of three members, one from each division of AJK nominated by a parliamentary committee from ruling and opposition parties in the Legislative Assembly of AJK.

¹⁵² A quick review of literature shows that there is no agreed definition of 'decentralisation'. However, a range of literature suggests its applications in different contexts and at different levels: i.e. administrative, political, legislative, fiscal, environmental and so on. See, for example, [Decentralization: A Sampling of Definitions](#) (UNDP 1999).

5.3.4.5 Proportional Representation on Refugee Seats

The study indicated that twelve refugee seats located in Pakistan have traditionally been used as a bargaining-chip by the ruling party of Pakistan at the time of formation of government in AJK. There is considerable consensus among the political elite of AJK on giving proportional representation to refugees in the Legislative Assembly. These refugees enjoy equal rights as other citizens of Pakistan under the Citizenship Act of Pakistan and they are, legally speaking, Pakistani by nationality. However, they maintain their status as ‘state-subjects’ simultaneously under the state-subject definition as per notification of April 20, 1927. Hence their representation with twelve seats in the AJK Legislative Assembly as well as a 25% quota for government jobs in AJK. History has repeatedly proved that elections for refugee seats based in Pakistan are manipulated by respective provincial and central governments in Pakistan. Therefore, following the Lijphart’s proportional representation (PR), one of the four prominent features of Consociationalism, this study suggests using the PR system for refugee’s seats instead of conducting elections in Pakistani territory where the Election Commission of AJK has no jurisdiction. It suggests reducing refugees’ seats up to 50% and a reduction in their jobs quota in AJK by 50% is also suggested. The argument is that firstly, refugees settled in Pakistan also receive their share in Pakistan under respective provincial governments as well as the federal government of Pakistan; and secondly, they don’t pay taxes in AJK, rather being citizen of Pakistan they fall under tax obligations of the provincial and federal government of Pakistan, and thirdly, the unemployment ratio among the educated youth of AJK is high, and given the lesser job availability in the private sector, AJK youth deserves more jobs quota allocation in the public sector.

5.3.4.6 Establishing an Accountability Commission

Contemporary research on democracy and governance shows that accountability and transparency are essential components, which ensure effectiveness of governance processes and mechanisms. They also assist in promoting good governance practices and reduce financial corruption by government officials by making them accountable for their actions. Democracy Web, which conducts comparative studies on freedom and democracy, confirms that,

Transparency requires that the decisions and actions of those in government are open to public scrutiny and that the public has a right to access such information. Both concepts are central to the very idea of democratic governance. Without accountability and transparency, democracy is

impossible. In their absence, elections and the notion of the will of the people have no meaning.¹⁵³

The current accountability bureau (Ehtesab Bureau) of AJK was established through an ordinance by the President of AJK viz. Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 (Act I of 2001), which was adopted by the AJK assembly and further amended in 2010.¹⁵⁴ Research findings declare that the overwhelming majority of Azad Kashmiris are not satisfied with the performance of the Accountability Bureau of AJK (See section 3.5.6 and 3.5.7). Therefore, establishing an independent accountability commission will promote transparency and ensure accountability in governance processes in AJK.

The above mentioned salient features of alternative design for AJK aimed to address power-imbalances in AJK's governance structure. Following the power-dividing approach (see section 4.3.3 and 4.5) all institutions suggested in alternative formula at the internal level of AJK such as judiciary, election commission, accountability commission, public service commission must have financial autonomy under the proposed Act of Self-Government. It will help to empower public institutions and grant wide-reaching autonomy to AJK government, which in turn lead to building democratic governance in this disputed territory.

5.4 Conclusion

After detailed debate on proposed constitutional reforms and a critical analysis based on proponents and opponents of ARJK's proposal, it appears that it is missing the historical and conflict context of the larger Kashmir problem and UN resolutions passed from time to time, hence failing to address possible negative repercussions. The objections and propositions by Nazir Gilani and Nazir Nazish on the prevalent constitutional framework in AJK and ARJK's proposal have raised serious question marks over the legitimacy of Interim Act 1974 and authority of Pakistan's government to author a Constitution for the territories under its control, namely AJK and GB. Moreover, the proposal by ARJK hasn't received considerable support from political forces or the general masses of AJK so far. There are several reasons for its lack of

¹⁵³ Democracy Web, <http://www.democracyweb.org/accountability/principles.php>

¹⁵⁴ See, the website of Ministry of Law, Justice and Parliamentary Affairs of AJK http://law.ajk.gov.pk/index.php?option=com_content&view=article&id=67&catid=11&Itemid=101

support - discussed earlier - but mainly because: firstly, Azad Kashmiris are strongly and emotionally connected with the ongoing struggle for self-determination on the other side of the LoC; secondly, they are conscious of their separate identity being Kashmiri¹⁵⁵ and thus part of the conflict; thirdly, due to the uncertainty and disputed nature arising out of the Kashmir conflict and subsequent UNCIP resolutions and their implications; fourthly, a common perception is that Azad Kashmiris should not take any unilateral decision in the name of mainstreaming or integrating AJK into Pakistan until the Kashmir conflict is resolved according to the spirit of the UN resolutions.

Pro-independence ideology views presented by Majeed Malik, Tanveer Ahmed, Sardar Aftab A. Khan, Nazir Gilani, Nazir Nazish and others highlighted the constitutional position and historical background of the Kashmir conflict and its implications for AJK. However, on the surface they don't appear to have developed a broader consensus among the general masses of AJK. Other mainstream political forces that mainly belong to the pro-Pakistan ideology camp do not support this idea. Although support for pro-independence politics is increasing with respect to the Kashmir conflict at large, it hasn't yet made any significant impact towards democracy and governance through the electoral politics in AJK. One of the reasons, among others, is that they are not only institutionally (and structurally) marginalised but also ill-equipped with any pragmatic political strategy. Consequently, demands from pro-independence parties to deal with the dilemma of AJK and its governance structure by establishing a Constituent Assembly hasn't been acknowledged by formal academics and policy-makers alike. Moreover, proposals advanced by pro-independence parties have failed to present a workable *modus-operandi* to re-establish a revolutionary government in accordance with the proclamation of October 4, or its re-constituted declaration on October 24, 1947 and also UNCIP resolutions.

It is important to mention that the politics and bilateral relations between India and Pakistan revolve around well-established security and national interest mantras. They have their own conflicting interests, diverging agendas, and competing interpretations to deal with J & K. Given that fact, it seems impossible to establish a Constituent

¹⁵⁵ It is noteworthy that the terms 'Kashmiri' or 'Kashmiri people' are difficult to define due to division and fragmentation imposed on them. I also acknowledge that ethnically 'Kashmiri' is a separate identity referring to Kashmiri speaking people mainly living in Valley of Jammu & Kashmir or elsewhere. Here, I refer to the people, who belong to the former princely State of Jammu and Kashmir when it existed as a single entity before the partition of the Indian sub-continent in 1947 and entitled to the state subject resident certificate of 1927.

Assembly in AJK as the ground realities are widely mismatched with this idea. Arguably, this remains an ideal scenario but perhaps not practicable in the current circumstances and the hard fact remains that ‘the road to ruling Azad Kashmir passes through Islamabad’.

The suggested ‘AJK Autonomy Model’ has been advanced keeping in view the complexity through which the territory and people of AJK are going. Additionally, it is understood that there is no ‘one-size-fits all’ formula, as every territory has its own historical and constitutional context. Therefore, the proposed model containing recommendations for establishing a temporal political and constitutional framework is in accordance to the given context of AJK. The given proposal can be implemented with the consent of the parties involved, namely AJK and the Government of Pakistan.

The local political leadership of AJK need to understand that in the given three-tier power-sharing governance structure under Act 1974 legitimate rights cannot be protected as it has consistently failed to establish strong institutions, which are crucial for delivering public goods to the people of AJK. They also need to understand especially pro-independence political forces that it is too easy to point to the Center (Government of Pakistan) as being the origin of all evils in AJK instead of identifying their own weaknesses. The leadership of AJK should have the courage and the honesty to recognize the uneven power-sharing and democratic shortcomings in the Interim Act 1974 and weak institutional capacity (mainly due to corruption, incompetency, nepotisms and political involvement) in their own system within AJK in order to take necessary steps to redress the situation. The blame game will not help to build a constructive relationship between AJK and Pakistan.

The people of AJK need to learn that merely demanding legitimate democratic rights is not enough. They need to realize that being a state-subject of the former princely state of Jammu & Kashmir, ultimate legitimacy and sovereignty vests with the people. Therefore, if they decide to struggle democratically for their legitimate rights, they cannot be deprived of their fundamental rights. However, it requires a people’s rights and civil resistance movement equipped with political strategy and a pragmatic approach. They need to learn from the histories of conflict, which revealed that power and right is never given, it is always taken.

The Government of Pakistan needs to understand that legitimate rights of the people of AJK cannot be held hostage because of the Kashmir conflict. When the Kashmir conflict will be resolved is not certain and has no time-bound answer. Thus, neglecting legitimate democratic rights of the people of AJK seems not a wise decision. Therefore, in the light of the disputed status of AJK, a temporal representation must be given to AJK in the national institutions of Pakistan. The Government of Pakistan also needs to change its 'carrot and stick' policy, which it has adopted from the outset when dealing with AJK. Following Senese's interpretation of self-determination (external and internal aspects) and Dr. Nazir Gillani's arguments (see section 3.2.5), it is suggested that until external self-determination is given to the Kashmiri people as promised by the UN and agreed by both India and Pakistan, AJK should be given an opportunity to recognise their right of internal self-determination through which they can freely determine about their own political, social and legal system in the territory of AJK. Additionally, while advocating for the right to self-determination for the people living in Indian-Administered Kashmir at the international level, the Government of Pakistan first needs to provide free and fair opportunities for internal self-determination to the people of AJK through which they can freely determine what kind of temporal power-sharing relationship they want to maintain with the state of Pakistan, until the final disposition of the Kashmir conflict. I conclude with Paulo Freire's assertion: 'sooner or later being less human leads the oppressed to struggle against those who made them so' (Freire 1970, 44).

5.5 Closing Remarks

As noted in the introductory chapter of this study, the objective of this research was not to develop a formal theory or strictly speaking, to test contemporary power-sharing theories with our case of investigation, namely 'Azad' Jammu & Kashmir (AJK). Rather, this study attempted to theorize by presenting, discussing, and analysing current academic discourse on power-sharing and subsequently relating them to the specific context of power-sharing in AJK under its interim constitutional framework and its *de facto* relationship with its controlling nation-state Pakistan. The purpose was twofold: firstly, to get a deeper understanding of these theories and approaches and prevalent lopsided power-sharing framework in AJK, and subsequently analyse their applicability for building an autonomous democratic governance structure in AJK; and secondly, to sketch an alternate model in order to address dilemmas of power-sharing in AJK while keeping in view its disputed status and ambiguous sovereignty. It is suggested that a comparative study based on several similar cases is required to enhance theoretical rigor and generalization. Therefore, the results of the research should not be generalized and this research should be seen as building bridge towards further theorization.

The three assumptions of this research study were: (a) current power-sharing based on Interim Constitution Act 1974 between AJK and Pakistan is highly imbalanced and failed to establish an autonomous democratic governance structure, (b) domestic sovereignty or internal autonomy is pre-requisite for establishing a democratic governance structure in disputed territories, (c) power-sharing approaches provide a better alternative for political stability and democratic governance as compared to majoritarian democracy in disputed territories. In order to explore these assumptions, I have taken Azad Jammu & Kashmir (AJK - a disputed territory) as a case study and subsequently developed several research questions to study current power-sharing governance structure in AJK. This research has in turn revealed some insights, which could be helpful for further academic interventions.

Firstly, this study proved that the current power-sharing under its interim constitutional framework is highly imbalanced and failed to establish an autonomous and a democratic governance structure. For building a democratic governance structure, it is essential to have domestic sovereignty or autonomy. Secondly, it is

evident from this study that the prospects of democratic governance in the disputed regions are linked with the capacity and authority of respective governments. Thirdly, from the perspective of comparative analysis, the relevance of power-sharing approaches is seen as more direct and applicable in the societies driven by deep ethnic and segmental cleavages.

In the case of Jammu & Kashmir, these approaches are seemingly more relevant to the divided State of Jammu and Kashmir (J&K) provided one takes J &K in its entirety. The reason is that disputed State of Jammu and Kashmir consists of multiple religious, ethnic identities across the Line of Control (LoC) and segmental or ethnical cleavages are prominent features of societies of different divided regions of J &K. However, as for as the territory of AJK is concerned, at the internal level, the society of AJK is not - strictly speaking - deeply divided on ethnic lines, rather driven by conflict and its disputed status (essentially external claims) and awaits self-determination. Therefore, a separate and independent research study is recommended to study the power-sharing relationship between different divided parts of Jammu & Kashmir with their respective controlling states, namely India and Pakistan to examine relevance of power-sharing approaches to former state of J&K in a collective manner. I outline some findings of this research further, which are as follows:

- The study of the power-sharing approaches indicated that no approach guarantees success single-handedly for democracy and conflict resolution in societies driven by conflict and other cleavages. Rather, by and large, depending on context and content, success or failure can be gauged and achieved. In addition, not all societies consist of similar characteristics; rather differences can be seen from one region to another as every case has its own dynamics and context. Therefore, a context-based modification is required to meet with the needs of any particular case.
- It was observed through this research that the prevalent power-sharing framework under Interim Constitution Act 1974 not only undermines governmental authority but it also lacks democratic merits.
- It was also found that the disputed territory of AJK lacks domestic or internal sovereignty, which is essentially crucial for building democratic governance in the disputed regions.

- The power-sharing dilemma in AJK mainly exists at the external level between AJK and Government of Pakistan, for which autonomy or self-government is found most viable option to manage conflict between the center and region.
- Democracy can be transpired in the disputed territories only if the governments of these territories are autonomous - free from external interference except on the matters specified and agreed between the parties.
- A new social contract or power-sharing framework is required between AJK and Pakistan in order to achieve an autonomous governmental authority, which was found essential for addressing power-imbalances, democratic deficit, and for building a democratic governance structure.
- The presented 'AJK Autonomy Model' has been advanced considering the disputed status of AJK, absence of self-determination and enduring conflict this territory is exposed to. It is an interim model to build a constructive relationship between AJK and Pakistan for building an autonomous and democratic governance structure until the final resolution of the Kashmir conflict.

6 References

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7 List of Annexes

7.1 Annex-A: Text of Treaty of Amritsar 1846

March 16, 1846

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor-General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

Article 1

The British Government transfers and makes over for ever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the River Indus and the westward of the River Ravi including Chamba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

Article 7

Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

Article 8

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

Article 9

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

Article 10

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General. (Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubeel-ul-Awal (1262 Hijree).

(Signed) H. Hardinge (Seal)

(Signed) F. Currie

(Signed) H.M. Lawrence

Source: <http://www.kashmir-information.com/LegalDocs/TreatyofAmritsar.html>

Text of Copy of the: Final Receipt for the purchase of Kashmir, dated Lahore, the 30th March 1850, Signed by the Board of Administration.

The Honorable the East India Company having received from His Highness the Maharaja Gulab Singh the sum of Rupees 75,00,000 (seventy five Lakhs) in payment of the amount guaranteed by the III Article of the Treaty between the Hon'ble Company and His Highness, dated Amritsar, the 16th March 1846. The single acknowledgement of the receipt of the whole amount is granted by the Board of Administration for the affairs of the Punjab, at the request of Diwan Jawala Sahai, in addition to the receipt already given to His Highness' agents by the receiving officers, for the installments received by them from time to time between the date of the Treaty and the 14th of March 1850, the day on which the last installment was paid into the Lahore Treasury. (Punjab Government Record Office Museum)

Source: <http://www.kashmiralight.com/images/treatyOfamritsar.pdf>

7.2 Annex-B: Text of State Subject Definition (1927)

Notification dated the 20th April, 1927

Legal Document No 44

No. I-L/84. - The following definition of the term "State Subject" has been sanctioned by his Highness the Maharaja Bahadur (vice Private Secretary's letter No. 2354, dated the 31st January, 1927 to the Revenue Member of Council) and is hereby promulgated for general information.

The term State Subject means and includes -

Class I. - All persons born and residing within the State before the commencement of the reign of His Highness the late Maharaja Ghulab Singh Sahib Bahadur, and also persons who settled the rein before the commencement of samvat year 1942, and have since been permanently residing therein.

Class II. - All persons other than those belonging to Class I who settled within the State before the close of samvat year 1968, and have since permanently resided and acquired immovable property therein.

Class III. - All persons, other than those belonging to Classes I and II permanently residing within the State, who have acquired under a rayatnama any immovable property therein or WIZO may hereafter acquire such property under an ijazatnama and may execute a rayatnama after ten years continuous residence therein.

Class IV. - Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of His Highness been declared to be State subjects.

Note I. - In matters of grants of the State scholarships State lands for agricultural and house building purposes and recruitment to State service, State subjects of Class 1 should receive preference over other classes and those of Class 11, over Class III, subject, however, to the order dated 31st January, 1927 of his Highness the Maharaja Bahadur regarding employment of hereditary State Subjects in Government service.

Note II. - The descendants of the persons who have secured the status of any class of the State Subjects will be entitled to. become the State Subject of the same class.

For example, if A is declared a State Subject of Class II his sons and grand sons. will ipso facto acquire the status of the same Class (II) and not of Class I.

Note III. - The wife or a widow of a State Subject of any class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence out-side the State.

Note IV. - For the purpose of the interpretation of the term 'State Subject' either with reference to any law for the time being in force or otherwise, the definition given in this Notificacitn as . mended up to date shall be read as if such amended definition existed in this Notification as originally issued.

NOTIFICATION

(Issued by order of His Highness the Maharaja Bahadur dated Srinagar, the 27th June 1932, (14th Har, 1989, published In Government Gazette dated 24th Har, 1989).

No.13L/1989. - -Whereas it is necessary to determine the status of Jammu and Kashmir State Subjects in foreign territories and to inform the Government of Foreign States as to the position of their nationals in this state, it is hereby commanded and notified for public information, as follows:

That all emigrants from the Jammu and Kashmir State to foreign territories shall be considered State Subjects and also the descendants of these emigrants born aboard for two generations. Provided that, these nationals of the Jammu and Kashmir State shall not be entitled to claim the internal rights granted to subjects of this State by the laws, unless they fulfill the conditions laid down by those laws and rules for the

specific purposes mentioned therein.

The foreign nationals residing in the State of Jammu and Kashmir shall not acquire the nationality of the Jammu and Kashmir State until after the age of 18 on purchasing immovable property under permission of an *ijazatnama* and on obtaining a *rayatnama* after ten years continuous residence in the Jammu and Kashmir State as laid down in Notification No.-I-L. of 1984, dated 20th April, 1927.

Certificates of nationality of the Jammu and Kashmir State may, on application, be granted by the Minister-in Charge of the Political Department in accordance with the provision of section I of this Notification.

Source: <http://www.kashmir-information.com/LegalDocs/44.html>

A note on History of State Subject

First issued under the command of Maharaja Hari Singh vide orders dated January 31, 1927. The circular order was signed by the Maharaja's Private Secretary Shri. P.K. Wattal. Such certificates were titled: Certificate of Hereditary State Subject. This term meant to mean and include all persons born and residing within the state before the commencement of Maharaja Gulab Singh's reign in 1846.

Later an amendment was incorporated on April 20, 1927 to define Class I, II and Class III 'State Subjects'. Class I meant persons born, residing and settled in the state since the time of commencement of Gulab Singh's rule. Classes II were those persons who were permanent residents and possessed immovable property in the state at the commencement of Maharaja Partab Singh rule in 1885. Classes III were permanent residents of the state on account of having received grants by way of immovable property from the Maharaja under a *Rayatnama* (*Letter/certificate of Relaxation*). To begin with such rights were granted as *Ijazatnama* (*letter/certificate of Permission*). On expiry of ten years *Ijazatnama* was converted into *Rayatnama*.

The descendents of the persons who acquired the status of any class of the State Subject were entitled to become the State Subject of the same class. Also Class I State Subjects were preferred over other classes and those of Class II over Class III subjects.

7.3 Annex-C: Text of Declaration of Independence October 24th 1947

Declaration of Independence by Provisional Government of Azad Jammu & Kashmir (AJK)
October 24th 1947

The provisional government, which the people of Jammu and Kashmir have set up a few weeks ago with the object of ending intolerable Dogra tyrannies and securing to the people of the State, including Muslims, Hindus and Sikhs, the right of free self-government has now established its rule over a major portion of the State territory and hopes to liberate the remaining pockets of Dogra rule very soon. In view of these circumstances it has been reconstituted with Mr. Ibrahim, Bar-at-Law, of Poonch as its provisional head, and its headquarters have been moved to Pallandri in Poonch.

The New Government represents the united will of the Jammu and Kashmir State to be free from the rule of the Dogra dynasty which has long suppressed and oppressed the people.

The movement of liberty which has culminate in the formation of the present Provisional Government has a long history dating from 1929. Thousands of Jammu and Kashmir people, including members of all communities, have suffered death and imprisonment in the cause of this movement. One of it forms was the Quite Kashmir Movement launched in the Kashmir valley last year.

It will be recalled that *Pandit Jawaharlal Nehru* as a friend of the suffering people of Indian States went to help this movement at the time but was not allowed to enter the State territory under the orders of the ex-Ruler *Hari Singh*. The tyrannies perpetrated by the Raja and his official and his troops on the people increased with the increase in the desire of the people for freedom and self-Government.

Recently a prominent Hindu patriot, who wanted to proceed to Karachi and New Delhi to represent the intolerable conditions in the State to our neighbouring Dominion of Pakistan and India, was arrested by the ex-Ruler's officials.

The united will of the people have, however, overcome the organized violence of the Ruler's armies. He and his so-called Prime Minister have fled from Kashmir and will perhaps soon flee from Jammu as well.

The provisional government, which is assuming the administration of the State, is most emphatically not a communal Government. It will include Muslims as well as non-Muslims in the provisional cabinet, which will serve the people, the temporary purpose of restoring law and order in the State and enable the people to elect by their free vote a popular legislature and a popular Government.

The provisional government entertains sentiments of the utmost friendliness and goodwill towards its neighbouring dominions of India and Pakistan and hopes that both the dominions will sympathise with the people of Jammu and Kashmir in their efforts to exercise their birth right of political freedom. The provisional government is further anxious to safeguard the identity of Jammu and Kashmir as a political entity.

The question of accession of Jammu and Kashmir to either Dominion can only be decided by the free vote of the people in the form of a referendum. The Provisional Government will make prompt arrangements for this and hopes to invite independent observers to see that the question is decided by the free will of the people.

Source: M.H. Gillani 1988, Constitutional Developments in Azad Jammu & Kashmir, see as Appendix-A, pp. 3-4. It is also described in *The Kashmir Saga* by Sardar Ibrahim Khan, pp-117-119

7.4 Annex-D: Text of UNCIP Resolution 1948

Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948. (Document No.1100, Para. 75, dated the 9th November, 1948)

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN

Having given careful consideration to the points of view expressed by the Representatives, of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and Being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation, Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

PART I CEASE-FIRE ORDER

[A] The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

[B] The High Commands of Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir. (For the purpose of these proposals '-forces under their control" shall be considered to include all forces, organised and unorganised, fighting or participating in hostilities on their respective sides).

[C] The Commanders-in-Chief of the Forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

[D] In its discretion, and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.

[E] The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

PART II TRUCE AGREEMENT

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

A.

(1) As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

(2) The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

(3) Pending a final solution the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

B.

(1) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission.

(2) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

(3) The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

C.

(1) Upon signature, the full text of the Truce Agreement or communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

The UNCIP unanimously adopted this Resolution on 13-8-1948.

Members of the Commission: Argentina, Belgium, Colombia, Czechoslovakia and U.S.A.

Source: <https://www.mtholyoke.edu/acad/intrel/uncom1.htm>

7.5 Annex-E: Text of UNCIP Resolution 1949

Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on 5 January, 1949. (Document No. 5/1196 para. 15, dated the 10th January, 1949)

THE UNITED NATIONS COMMISSION FOR INDIA AND PAKISTAN

Having received from the Governments of India and Pakistan in Communications, dated December 23 and December 25, 1948, respectively their acceptance of the following principles which are supplementary to the Commission's Resolution of August 13, 1948;

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;

2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of 13 August 1948, have been carried out and arrangements for the plebiscite have been completed;

3.

(a) The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.

(b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organising and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

(c) The Plebiscite Administrator shall have authority to appoint such staff or assistants and observers as he may require.

4.

(a) After implementation of Parts I and II of the Commission's resolution of 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite.

(b) As regards the territory referred to in A 2 of Part II of the resolution of 13 August, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

5. All civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

6.

(a) All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan.

The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision to effect.

(b) All persons (other than citizens of the State) who on or since 15 August 1947, have entered it for other than lawful purpose, shall be required to leave the State.

7. All authorities within the State of Jammu and Kashmir will undertake to ensure in collaboration with the Plebiscite Administrator that:

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in plebiscite;

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) All political prisoners are released;

(d) Minorities in all parts of the State are accorded adequate protection; and

(e) There is no victimisation.

8. The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance, and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted;

9. At the conclusion of the plebiscite., the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the Plebiscite has or has not been free and impartial;

10. Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultation envisaged in Part III of the Commission's resolution of 13 August 1948. The Plebiscite Administrator will be fully associated in these consultations;

Commends the Governments of India and Pakistan for their prompt action in ordering a cease-fire to take effect from one minute before midnight of first January 1949, pursuant to the agreement arrived at as provided for by the Commission's resolution of 13 August 1948; and Resolves to return in the immediate future to the sub-continent to discharge the responsibilities imposed upon it by the resolution of 13 August 1948, and by the foregoing principles.

The UNCIP unanimously adopted this Resolution on 5-1-1949. Members of the Commission: Argentina, Belgium, Colombia, Czechoslovakia and U.S.A.

Source: <https://www.mtholyoke.edu/acad/intrel/uncom2.htm>

7.6 Annex-F: Karachi Agreement 1949 between AJK and Pakistan

A. Matters within the purview of the Government of Pakistan.

1. Defence (as modified under....).
2. Foreign policy of Azad Kashmir.
3. Negotiations with the United Nations Commission for India and Pakistan.
4. Publicity in foreign countries and in Pakistan.
5. Co - ordination and arrangement of relief and rehabilitation of refugees.
6. Co - ordination of publicity in connection with plebiscite.
7. All activities within Pakistan regarding Kashmir such as procurement of food, civil supplies running of refugee camps and medical aid.
8. All affairs of Gilgit - Ladakh under the control of Political Agent.

B. Matters within the purview of Azad Kashmir Government.

1. Policy with regard to administration of AK territory.
2. General supervision of administration in AK territory.
3. Publicity with regard to the activities of the Azad Kashmir Government and administration.
4. Advice to the honourable Minister without Portfolio with regard to negotiations with United Nations Commission for India and Pakistan.
5. Development of economic resources of AK territory.

C. Matters within the purview of the Muslim Conference.

1. Publicity with regard to plebiscite in the AK territory.
2. Field work and publicity in the Indian occupied area of the State.
3. Organisation of political activities in the AK territory and the Indian occupied area of the State.
4. Preliminary arrangements in connection with the plebiscite.
5. Organisation for contesting the plebiscite.
6. Political work and publicity among the Kashmiri refugees in Pakistan.
7. Advise the honourable minister without Portfolio with regard to the negotiations with the United Nations Commission for India and Pakistan.

The agreement signed between Pakistan and Azad Kashmir Governments in March 1949. The Agreement was signed by the following:

1. Honourable Mushtaque Ahmed Gurmani, Minister without Portfolio, Government of Pakistan.
2. Sardar Mohammed Ibrahim Khan, the president of Azad Kashmir.
3. Choudhary Ghulam Abbas, Head of All Jammu and Kashmir Muslim Conference

Disclaimer: Ch. Ghulam Abbas made a note as follows, "*I agree to this in so far as this concerns the sphere of activities of the MC.*"

Source: Text is reproduced from verdict of High Court of Azad Jammu & Kashmir known as "Verdict on Gilgit and Baltistan (Northern Areas), see pp. 138-139 and Syed Manzoor Gillani (2008), *The Constitution of Azad Jammu & Kashmir (In the historical backdrop of corresponding Pakistani, Indian & Occupied Jammu and Kashmir's constitution)* as appendix XVIII, pp.674-5.

7.7 Annex-G: AJK Council Legislative list

Third Schedule

[see section 31 (2)]

1. Subject to the responsibilities of the Government of Pakistan under the UNCIP Resolutions, nationality, citizenship and ¹ [Nationalization;] migration from or into Azad Jammu and Kashmir, and admission into, and emigration and expulsion from, Azad Jammu and Kashmir, including in relation thereto the regulation of the movements in Azad Jammu and Kashmir of persons not domiciled in Azad Jammu and Kashmir.
2. Post and Telegraphs, including Telephones, Wireless, Broad- Casting and other like forms of communications; post office saving Bank.
3. Public debt of the Council, including the borrowing of money on the security of the Council consolidated Fund.
4. Council public services and Council Public Service commission.
5. Council pensions, that is to say, pensions payable by the Council or out of the Council consolidated Fund.
6. Administrative courts for Council subjects.
7. Council agencies and institutions for the following purpose, that is to say, for research , for professional or technical training, or for the promotion of special studies.
8. Nuclear energy, including.-
 - (a) mineral resources necessary for the generation of nuclear energy;
 - (b) the production of nuclear fuels and the generation and use of nuclear energy; and
 - (c) ionising radiation.
9. Aircraft and air navigation; the provision of aerodromes; regulation and organization of air traffic and of aerodrome.
10. Beacons and other provisions for safety of aircraft.
11. Carriage of passengers and goods by air.
12. Copyright, inventions, designs, trade marks and merchandise marks.
13. Opium so far as regards sale for export.
14. Banking, that is to say, the co-ordination with the Government of Pakistan of the conduct of banking business.
15. The law of insurance and the regulation of the conduct of insurance business.
16. Stock-exchange and future markets with object and business not confined to Azad Jammu and Kashmir.
17. Corporations, that is to say, the incorporation regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including corporations owned or controlled by Azad Jammu and Kashmir and carrying on business only within Azad Jammu and Kashmir or, co-operative societies, and of corporations, whether trading or not, with
18. Planning for economic coordination including planning and coordination of scientific and technological research.
19. Highways, continuing beyond the territory of Azad Jammu and Kashmir excluding roads declared by the Government of Pakistan to be strategic importance.
20. Council surveys including geological surveys and council meteorological organizations.
21. Works, lands and buildings vested in, or in the possession of, the council for the purpose of the council (not being Military, Navel or air force works), but as regards property situate in Azad Jammu and Kashmir, subject always to law made by the Legislative Assembly, save in so far as law made by the council otherwise provides.
22. Census.
23. Establishment of standards of weights and measures.
24. Extension of the powers and jurisdiction of members of a police force belonging to Azad Jammu and Kashmir or any province of Pakistan to any area in such province of Azad Jammu and Kashmir, but not so as to enable the police of Azad Jammu and Kashmir or such province to exercise powers and jurisdiction in such province or Azad Jammu and Kashmir without the

- consent of the Government of that province or Azad Jammu and Kashmir; extension of the powers jurisdiction of members of a police force belonging the Azad Jammu and Kashmir or a province of Pakistan to railway areas outside Azad Jammu and Kashmir or that province.
25. Election to the council.
 26. The salaries, allowance and privileges of the members of the council and ¹ [Advisors.]
 27. Railways.
 28. Mineral oil natural gas; liquids substances declared by law made by the Council to be dangerously inflammable.
 29. Development of industries, where development under council control is declared by law made by council to be expedient in the public interest.
 30. Removal of prisoners and accused persons from Azad Jammu and Kashmir to Pakistan or from Pakistan to Azad Jammu and Kashmir.
 31. Measures to combat certain offences committed in connection with matters concerning the council and the Government and the establishment of police force for that purpose ² [or the extension to Azad Jammu and Kashmir of the jurisdiction of a police force establish in Pakistan for the investigation of offences committed
 32. Prevention of the extension from Azad Jammu and Kashmir to Pakistan or from Pakistan to Azad Jammu and Kashmir of infections of contagious diseases or pests affecting men; animals or plants.
 33. Population planning and social welfare.
 34. Boilers.
 35. Electricity.
 36. Newspapers, books and printing presses.
 37. State property.
 38. Curriculum , syllabus, planning, policy, centers of excellence and standards of education.
 39. Sanctioning of cinematograph films for exhibition.
 40. Tourism.
 41. Duties of customs, including export duties.
 42. Taxes on income other than agricultural income.
 43. Taxes on corporations.
 44. Taxes on the capital value of the assets, not including taxes on capital gains on immovable property.
 45. Taxes and duties on the production capacity of any plant, machinery, under taking, establishment or installation in lieu of the taxes and duties specified in entries 42 and 43 or in lieu of either or both of them.
 46. Terminal taxes on goods or passengers carried by railway or air, taxes on their fares and freights.
 47. Fees in respect of any of the matters enumerated in this list, but not including fees taken in any court.
 48. Jurisdiction and powers of all courts with respect to any of the matters enumerated in this list.
 49. Offences against laws with respect to any of the matters enumerated in the list.
 50. Inquiries and statistics for the purpose of any of the matters enumerated in this list.
 51. Matters which under the Act are within the Legislative competence of the Council or relates to the Council.
 52. Matters incidental or ancillary to any of the matters enumerated in this list.

Source: (Reproduced from AJK's Council Website

<http://www.ajkcouncil.com/AJKCounciLegislativeAuthority.asp>

7.8 Annex-H: Text of Ceasefire Agreement 1949

AGREEMENT BETWEEN MILITARY REPRESENTATIVES OF INDIA AND PAKISTAN REGARDING THE ESTABLISHMENT OF CEASE-FIRE LINE IN THE STATE OF JAMMU AND KASHMIR

Karachi, 27 July 1949

I

INTRODUCTION

A. The military representatives of India and Pakistan met together in Karachi from 18 July to 27 JULY 1949 under the auspices of the Truce Sub-committee of the United Nations Commission for India and Pakistan.

B. The members of the Indian Delegation were:

Lt.-Gen. S.M. Shrinagesh

Maj.-Gen. K.S. Thimaya

Brig. S.H.F.J. Manekshaw

As observers:

Mr. H.M. Patel

Mr. V. Sahay C.

The members of the Pakistan Delegation were:

Maj.-Gen. W.J. Cawthorn

Maj.-Gen. Nazir Ahmad

Brig. M. Sher Khan

As observers:

Mr. M. Ayub

Mr. A. A. Khan.

D. The members of the Truce Sub-committee of the United Nations Commission for India and Pakistan were:

Chairman, Mr. Hernando Samper (Colombia)

Mr. William L.S. Williams (United States)

Lt.-Gen. Maurice Delvoie (Military Adviser)

Mr. Miguel A. Marin (Legal Adviser).

II

AGREEMENT

A. Considering:

1. That the United Nations Commission for India and Pakistan, in its letter dated 2 July 1949, invited the Governments of India and Pakistan to send fully authorised military representatives to meet jointly in Karachi under the auspices of the Commission's Truce Sub-committee to establish a cease-fire line in the State of Jammu and Kashmir, mutually agreed upon by the Governments of India and Pakistan;

2. That the United Nations Commission for India and Pakistan in its letter stated that "The meetings will be for military purposes; political issues will not be considered", and that "They will be conducted without prejudice to negotiations concerning the Truce Agreement"

3. That in the same letter the United Nations Commission for India and Pakistan further stated that: "The cease-fire line is a complement of the suspension of hostilities, which falls within the provisions of Part I of the Resolution of 13 August 1948, and can be considered separately from the questions relating to Part II of the same Resolution";

4. That the Governments of India and Pakistan, in their letters dated 7 July 1949 to the Chairman of the Commission, accepted the Commission's invitation to the military conference in Karachi;

B. The Delegations of India and Pakistan, duly authorized, have reached the following agreement:

1. Under the provisions of Part I of the Resolution of 13 August 1948, and as a complement of the suspension of hostilities in the State of Jammu and Kashmir on 1 January 1949, a cease-fire line is established.

2. The cease-fire line runs from MANAWAR in the south, north to KERAN and from KE RAN east to the glacier area, as follows:

(a) The line from MANAWAR to the south bank of the JHELUM River at URUSA (inclusive to India) is the line now defined by the factual positions about which there is agreement between both parties. Where there has hitherto not been agreement, the line shall be as follows:

(i) In PATRANA area: KOEL (inclusive to Pakistan) north along the KHUWALA KAS Nullah up to point 2276 (inclusive to India), thence to KIRNI (inclusive to India).

(ii) KHAMBHA, PIR SATWAN, point 3150 and Point 3606 are inclusive to India, thence the line runs to the factual position at BAGLA GALA, thence to the factual position at Point 3300.

(iii) In the area south of URI the positions of PIR KANTHI and LED! GAL! are inclusive to Pakistan.

(b) From the north bank of the JHEMUM River the line runs from a point opposite the village of URUSA (NL 972109), thence north following the BALLASETH DA NAR Nullah (inclusive to Pakistan), up to NL 973140, thence northeast to CHOTA KAZINAG (Point 10657, inclusive to India), thence to NM 010180, thence to NM 037210, thence to Point 11825 (NM 025354, inclusive to Pakistan), thence to TUTUMARI GALI (to be shared by both sides, posts to be established 500 yds. on either side of the GALI), thence to the northwest through the first "R" of BURST NAR to north of GABDORI, thence straight west to just north of Point 9870, thence along the black line north of BIJILDHAR to north of BATARASI, thence to just south of SUDPURA, thence due north to the KATHAKAZINAG Nullah, thence along the Nullah to its junction with the GRANGNAR Nullah, thence along the latter Nullah to KAJNWALA PATHRA (inclusive to India), thence across the DHANNA ridge (following the factual positions) to RICHMAR GALI (inclusive to India), thence north to THANDA KATHA Nullah, thence north to the KISHANGANGA River. The line then follows the KISHANGANGA River up to a point situated between JARGT and TARBAN, thence (all inclusive to Pakistan) to BANKORAN, thence northeast to KHORI, thence to the hill feature 8930 (in Square 9053), thence straight north to Point 10164 (in Square 9057), thence to Point 10323 (in Square 9161), thence northeast straight to GUTHUR, thence to BHUTPATHRA, thence to NL 980707, thence following the BUGINA Nullah to the junction with the KISHANGANGA River at Point 4739. Thereafter the line follows the KISHANGANGA to KERAN and onwards to Point 4996 (NL 975818).

(c) From Point 4996 the line follows (all inclusive to Pakistan) the JAMGAR Nullah eastward to Point 12124, to KATWARE, to Point 6678, thence to the northeast to SARIAN (Point 11279), to Point 11837, to Point 13090, to Point 12641, thence east again to Point 11142, thence to DHAKKI, thence to Point 11415, thence to Point 10301, thence to Point 7507, thence to Point 10685, thence to Point 8388, thence southeast to Point 11812. Thence the line runs (all inclusive to India) to Point 13220, thence across the River to the east to Point 13449 (DURMAT), thence to Point 14586 (ANZBARI), thence to Point 13554, thence to Milestone 45 on the BURZIL Nullah, thence to the east to ZIANKAL (Point 12909), thence to the southeast to Point 11114, thence to Point 12216, thence to Point 12867, thence to the east to Point 11264, thence to KARO (Point 14985), thence to Point 14014, thence to Point 12089, thence following the track to Point 12879. From there the line runs to Point 13647 (KAROBAL GALI, to be shared by both sides). The cease-fire line runs thence through RETAGAH CHHISH (Point 15316), thence through Point 15889, thence through Point 17392, thence through Point 16458, thence to MARIOLA (to be shared by both sides), thence through Point 17561, thence through Point 17352, thence through Point 18400, thence through Point 16760, thence to (inclusive to India), DALUNANG

(d) From DALUNANG eastwards the cease-fire line will follow the general line Point 15495, ISHMAN, MANUS, GANGAM, GUNDERMAN, Point 13620, JUNKAR (Point 17628), MARMAK, NATSARA, SHANGRUTH (Point 17531), CHORBAT LA (Point 15700), CHALUNKA (on the SHYOK River), KHOR, thence north to the glaciers. This portion of the cease-fire line shall be demarcated in detail on the basis of the factual position as of 27 July 1949 by the local commanders, assisted by United Nations Military Observers.

C. The cease-fire line described above shall be drawn on a one inch map (where available) and then be verified mutually on the ground by local commanders on each side with the assistance of the United Nations Military Observers, so as to eliminate any no-man's land. In the event that the local commanders are unable to reach agreement, the matter shall be referred to the Commission's Military Adviser, whose decision shall be final. After this verification, the Military Adviser will issue to each High Command a map on which will be marked the definitive cease-fire line.

D. No troops shall be stationed or operate in the area of the BURZIL Nullah from south of MINIMARG to the cease-fire line. This area is bounded on the west by the Ridge leading northeast from DUDGAI KAL to Point 13071, to Point 9447, to Point 13466, to Point 13463, and on the east by the Ridge running from Point 12470, to Point 11608, to Point 13004, to Point 13976, to Point 13450. Pakistan may, however, post troops on the western of the above ridges to cover the approaches to KHAMBRI Baipass.

E. In any dispositions that may be adopted in consequence of the present agreement troops will remain, at least 500 yards from the cease-fire line except where the KISHANGANGA River constitutes the line. Points which have been shown as inclusive to one party may be occupied by that party, but the troops of the other party shall remain at a distance of 500 yards.

F. Both sides shall be free to adjust their defensive positions behind the cease-fire line as determined

in paragraphs A to E inclusive above, subject to no wire or mines being used when new bunkers and defences are constructed. There shall be no increase of forces or strengthening of defences in areas where no major adjustments are involved by the determination of the cease-fire line.

G. The action permitted by paragraph F above shall not be accompanied or accomplished by the introduction of additional military potential by either side into the State of Jammu and Kashmir.

H. Except as modified by Paragraphs II-A to II-G, inclusive, above, the military agreements between the two High Commands relating to the cease-fire of 1 January 1949 shall continue to remain operative. I. The United Nations Commission for India and Pakistan will station Observers where it deems necessary.

J. The Delegations shall refer this Agreement to their respective Governments for ratification. The documents of ratification shall be deposited with the United Nations Commission for India and Pakistan not later than 31 July 1949.

K. A period of 30 days from the date of ratification shall be allowed to each side to vacate the areas at present occupied by them beyond the cease-fire line as now determined. Before the expiration of this 30-day period there shall be no forward movement into areas to be taken over by either side pursuant to this agreement, except by mutual agreement between local commanders.

IN FAITH WHEREOF the undersigned sign this document in three original copies.

DONE in Karachi on 27 July 1949

For the Government of India:

(Signed) S.M. SHRINAGESH

For the Government of Pakistan:

(Signed) W.J. CAWTHORN

For the United Nations Commission for India and Pakistan:

(Signed) HERNANDO SAMPER

(Signed) MAURICE DELVOIE.

Source: <http://www.commonlii.org/in/other/treaties/INTSer/1949/13.html>

7.9 Annex-I: List of Interviewees

S.no	Name	Designation/Profession	Mode of Interview	Place of Interview	Date/Year of Interview
1	Majeed Malik	Retired Chief Justice High Court AJK	Direct/Interpersonal	Mirpur, AJK	2011
2	Manzoor Gillani	Retired Chief Justice Supreme Court AJK	Direct/Interpersonal Telephonic Conversation	Muzaffarabad, AJK	2010,2012
3	Tanveer Ahmed	Civil Society Activist	Direct/Interpersonal/ Online via Skype	Mirpur, AJK	2011
4	Aftab Khan	Political Strategist	Direct/Interpersonal/ Online via Skype	UK	2010,2011
5	Dr. Nazir Gillani	Human Rights Activist	Online via Skype/and Through social Media Interaction	UK	2012,2013
6	Sardar Rahim	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2011
7	Saleem Bismil	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2011
8	Naseer Mughal	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2011
9	Asim Masood	Lawyer	Direct/Interpersonal	Muzaffarabad, AJK	2011
10	Afsar Shahid	Politician	Direct/Interpersonal	Dadyal, AJK	2010
11	Khurseed Khashir	Lawyer	Direct/Interpersonal	Rawalakot, AJK	2010
12	Ershad Mahmood	Columnist	Direct/Interpersonal	Islamabad, Pakistan Cyprus	2010,2013
13	Mir Abdul Rehman	Academician	Direct/Interpersonal	Muzaffarabad, AJK	2010,2011
14	Rasheed Malik	Journalist	Direct/Interpersonal	Muzaffarabad, AJK	2011
15	Javed Ayub	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2010
16	Waqas Ali	Academician	Direct/Interpersonal	Islamabad, Pakistan	2011
17	Liaqat Hayat	Politician	Direct/Interpersonal	Rawalakot, AJK	2010
18	Sardar Sagheer	Politician	Direct/Interpersonal	Islamabad, Pakistan	2010
19	Toqeer Gillani	Politician	Direct/Interpersonal	Islamabad, Pakistan	2010
20	Jamil Maqsood	Politician	Online via Skype		2011

21	Naqi Ashraf	Journalist	Online via Skype		2011
22	Khalid Pervez	Politician	Direct/Interpersonal	Bhimber, AJK	2011
23	Aslim Mir	Journalist	Direct/Interpersonal	AJK	2010
24	Javed Hashmi	Journalist	Direct/Interpersonal	Islamabad, Pakistan	2010
25	Masood Rehman	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2011
26	Awais Wasi	Researcher	Direct/Interpersonal	Islamabad, Pakistan	2011
27	Sata Ul Qamar	Political- Social Activist	Direct/Interpersonal	Islamabad, Pakistan	2010,2011
28	Nabeela Arshad	Lawyer	Online via Skype		2011
29	Ejaz Abbassi	Journalist	Direct/Interpersonal	Islamabad, Pakistan	2010, 2011
30	Abrar Haider	Journalist	Direct/Interpersonal	AJK	2011
31	Zafar Iqbal	Political- Social Activist	Direct/Interpersonal	Bhimber, AJK	2011
32	Israr Abbassi	Political- Social Activist	Direct/Interpersonal	AJK	2011
33	Khalid Hussain	Journalist/Lawyer	Direct/Interpersonal	Bhimber, AJK	2011
34	Saeed Asad	Writer/Author	Online via Skype		2012
35	Zahoor Rashid	Political- Social Activist	Direct/Interpersonal	AJK	2010
36	Farooq Haider	Politician	Direct/Interpersonal	Islamabad, Pakistan	2010
37	Khalid Ibrahim	Politician	Direct/Interpersonal	Islamabad, Pakistan	2010
38	Khaliq Hussain	Lawyer	Direct/Interpersonal	Bhimber, AJK	2011
39	Shouket Majeed	Civil Servant	Direct/Interpersonal	Muzaffarabad, AJK	2011
40	Kamran Saeed	Social Activist	Direct/Interpersonal	Rawalpindi, Pakistan	2011
41	Khalid Hussain	Politician	Direct?Interpersonal	bhimber	2011

7.10 Annex-J: Field Research Questionnaire (Sample)

Name (Optional).....Age.....Male/Female-----
Current residence (District, city) -----

Current occupation..... (Please Tick or Circle)

Bureaucrat Political Leader Academics Legislator
Journalist Civil Society (activist) Others -----

Email.....

Section 1

I am going to name some government institutions, their activities, and some more specific questions regarding their capacity to execute certain tasks in this territory. This section shall consist of some questions related to four important dimensions of governance; (a) accountability (b) Transparency (c) Participation (d) rule of law. In addition, some question are relate to the status and legitimacy of AJK and some aims to know an alternate way out for making AJK governance more autonomous and democratic. Please Circle or Tick the option that you think is correct.

1. How do you rate current Interim constitution and administrative Structure?

(a) Poor (b) Average (C) Excellent

2. How would you rate Act 1974 in providing political and civil liberties, social and economic development to the people of AJK?

(a) Poor (b) Average (C) Excellent

2.1 Citizen Participation into Decision-Making

(a) Poor (b) Average (C) Excellent

2.2 Accountability

(a) Poor (b) Average (C) Excellent

2.3 Transparency

(a) Poor (b) Average (C) Excellent

2.4 Rule of Law

(b) Poor (b) Average (C) Excellent

3. How would you rate the role of civil society in AJK?

Poor (b) Average (C) Excellent

4. How would you rate role of political parties in AJK?

Poor (b) Average (C) Excellent

5. How would you rate role of Media in reporting and influencing policy-making in AJK?

Poor (b) Average (C) Excellent

6. How would you rate the independence of election commission in AJK especially on electoral system design and its jurisdiction?

(a) Poor (b) Average (C) Excellent

7. How would you rate government will to promote good governance practices including fighting against corruption?

(a) Poor (b) Average (C) Excellent

8. How would you rate government's capacity to deal with ownership and royalty rights with Government of Pakistan?

(a) Poor (b) Average (C) Excellent

9. How would you rate authority of Legislative Assembly of AJK and the way it is conducting political affairs and legislation?

(a) Poor (b) Average (C) Excellent

10. How would you rate freedom of expression, association and other civil liberties?

(a) Poor (b) Average (C) Excellent

Section 2: for the following questions/statements, select the option you think is correct by ticking the right box. You may also leave your comments here in case you are uncertain about the issue.

1. The existing power-sharing structure under Interim Act 1974 between AJK and Pakistan is highly imbalanced.

- (a) Agree (b) Uncertain (c) Disagree
2. The overwhelming role of Ministry of Kashmir Affairs (MKA or KANA) in political discourse of AJK is an obstacle towards political and constitutional empowerment of AJK, which need to be eliminated?
- (a) Agree (b) Uncertain (c) Disagree
3. The current governance structure in AJK is not effective to build an autonomous and democratic governance structure.
- (a) Agree (b) Uncertain (c) Disagree
4. Current mode of governance in AJK has weak institutional structure with top-down steering, which negatively affecting its capability to provide good governance in the territory.
- (a) Agree (b) Uncertain (c) Disagree
5. Given the fact that current AJK's Interim Constitution is failed to provide democratic values and norms to the people of AJK, it must be revisited and powers should be taken back from the AJK council.
- (a) Agree (b) Uncertain (c) Disagree
6. AJK needs an autonomous or Self-government status for building for building a democratic governance structure
- (a) Agree (b) Uncertain (c) Disagree

Section 3: Here you will find some mix-questions; please circle category that you consider is correct. You may choose more than one, if required

1. The State of Azad Jammu & Kashmir is a
- (a) Disputed Territory
 - (b) Quasi-State
 - (c) Unrecognized de-facto state
 - (d) An autonomous State
 - (e) Legal anomaly
 - (f) Other.....
2. The existing form of democracy in AJK is
- (a) Representative
 - (b) Controlled

- (c) Participatory
 - (d) Semi-participatory
 - (e) Other
3. The mode of Governance in AJK is
- (a) Self-governance
 - (b) Hierarchical Governance
 - (c) Mix mode Governance (Hybrid)
 - (d) Other.....
4. The governing authority in AJK under Interim Act 1974 lies with
- (a) AJK legislative Assembly headed by Prime Minister of AJK
 - (b) AJK council headed by Prime Minister of Pakistan
 - (c) Mixed based on Power-sharing
 - (d) Other.....
5. The Government of AJK is not empowered(politically and Constitutionally) because
- (a) Interim Act 1974 is imbalanced
 - (b) Lack of political will
 - (c) Government of Pakistan don't want to empower it
 - (d) Kashmir Council holds exclusive legislative powers
 - (e) Overwhelming role of Ministry of Kashmir Affairs
 - (f) Other.....
6. How do you think that the territory of AJK, Government and its governance structure can be empowered and autonomous?
- (a) By including it with Federation of Pakistan like a province
 - (b) By giving it an independent Status as it claimed at its inception in 1947
 - (c) By introducing New Act, which could guarantee full autonomy or self-government
 - (d) By maintaining Status quo
 - (e) Other.....

7.11 Annex-K: Text of Instrument of Accession October 26, 1947

Instrument of Accession executed by Maharajah Hari Singh on October 26, 1947

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act 1935, shall with such omissions, additions, adaptations and modifications as the Governor General may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of Jammu & Kashmir State, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, nineteen hundred and forty seven.

Hari Singh

Maharajadhiraj of Jammu and Kashmir State.

ACCEPTANCE OF ACCESSION BY THE GOVERNOR GENERAL OF INDIA

I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.

Mountbatten of Burma

Governor General of India.

SCHEDULE OF INSTRUMENT OF ACCESSION

THE MATTERS WITH RESPECT TO WHICH THE DOMINION

LEGISLATURE MAY MAKE LAWS FOR THIS STATE

A. Defence

1. The naval, military and air forces of the Dominion and any other armed forces raised or maintained by the Dominion; any armed forces, including forces raised or maintained by an acceding State, which are attached to, or operating with, any of the armed forces of the Dominion.

2. Naval, military and air force works, administration of cantonment areas.

3. Arms, fire-arms, ammunition.

4. Explosives.

B. External Affairs

1. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminals and accused persons to parts of His Majesty's Dominions outside India.

2. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India or subjects of any acceding State; pilgrimages to places beyond India.

3. Naturalisation.

C. Communications

1. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication.

2. Federal railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and services terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

3. Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction.

4. Port quarantine.

5. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.

6. Aircraft and air navigation; the provision of aerodromes; regulation and organisation of air traffic and of aerodromes.

7. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

8. Carriage of passengers and goods by sea or by air.

9. Extension of the powers and jurisdiction of members of the police force belonging to any unit to railway area outside that unit.

D. Ancillary

1. Election to the Dominion Legislature, subject to the provisions of the Act and of any Order made thereunder.

2. Offences against laws with respect to any of the aforesaid matters.

3. Inquiries and statistics for the purposes of any of the aforesaid matters.

4. Jurisdiction and powers of all courts with respect to any of the aforesaid matters but, except with the consent of the Ruler of the acceding State, not so as to confer any jurisdiction

or powers upon any courts other than courts ordinarily exercising jurisdiction in or in relation to that State.

Source: http://www.jammu-kashmir.com/documents/instrument_of_accession.html

An image copy of original Instrument of Accession in JPG format available on Wikipedia

INSTRUMENT OF ACCESSION OF JAMMU AND KASHMIR STATE

WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modification as the Governor-General may by order specify be applicable to the Dominion of India;

AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof:

NOW THEREFORE

I, Sheikhan Jindal Bahadur Rajwara, Mahantalla Raj Shekhar Singh
Ruler of JAMMU AND KASHMIR STATE Jammu Kashmir
in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and Kashmir State
Desherajit

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of JAMMU AND KASHMIR (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.
6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.
7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of OCTOBER Nineteen hundred and forty seven.

Harinder Singh
Harinder Singh of Jammu and Kashmir State
Ruler

I do hereby accept this Instrument of Accession.
Dated this 27th day of August, Nineteen hundred and forty seven.

Frank P. Sargent
(Governor-General of India)

Source: [http://en.wikipedia.org/wiki/Instrument_of_Accession_\(Jammu_and_Kashmir\)](http://en.wikipedia.org/wiki/Instrument_of_Accession_(Jammu_and_Kashmir))

8 Maps

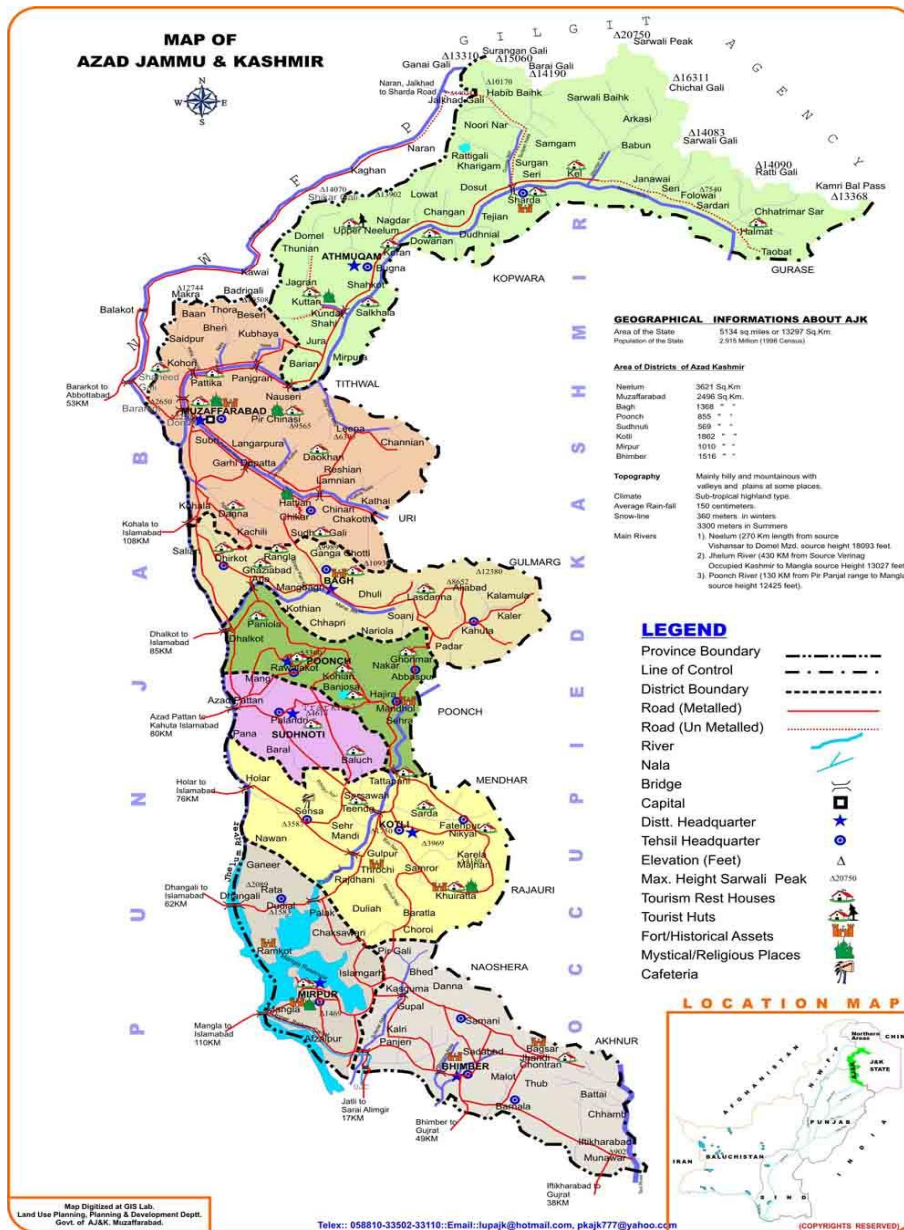
8.1 Annex-L: Map of former Princely State of Jammu and Kashmir



Source: <http://www.lawisgreek.com/wp-content/uploads/2010/06/official-Kashmir-Map-lawisgreek.jpg>

Explanation: The green area in the map is consisting of two regions: Gilgit-Baltistan (Northern Areas) and Azad Jammu & Kashmir and these two regions are currently under the control/Administration/occupation of Pakistan. The areas currently under the control/Administration/occupation of China is clearly indicated such as Aksai Chin and territory ceded by Pakistan to China. The orange area is under the control/Administration/occupation of India. The borders of former princely state of Jammu & Kashmir touch with India, Pakistan, China and a small strip with Afghanistan also.

8.2 Annex-M: Map of Azad Jammu and Kashmir



Source: Azad Jammu & Kashmir Government Website

http://www.ajk.gov.pk/images/stories/ajk_map.jpg

and

http://www.ajk.gov.pk/index.php?option=com_content&view=article&id=22&Itemid=25