

By AG Noorani

In Kashmir 'autonomy' has become synonymous with Art 370 and a subject of partisan debate

NO settlement of the Kashmir problem is possible unless the falsehoods about Article 370 are first laid to rest; such as that "self-rule is embedded in Art 370", whereas it has enabled the Centre, for over 50 years, to amass for itself powers which fall within the State List of subjects for legislation merely by securing the consent of the State government and without any constitutional amendment. This is impossible in regard to the other States.

This is the special status, which the husk of Art 370 confers on Kashmir today. In contrast, the prime minister spoke at his conference on February 25 of the "vast flexibilities provided by the Constitution" in order to give "real empowerment to the people". This is statesmanship.

Not surprisingly, in Kashmir "autonomy" has become synonymous with Art 370 and a subject of partisan debate. Pervez Musharraf himself treated the two concepts synonymously. So do authorities on law. Thomas Musgrave holds: "Autonomy involves self-government for a specific part of the population of a state, within which it may be established on either a territorial or personal basis. Autonomy appears to be able to satisfy the aspiration of particular ethnic groups while preserving the territorial integrity and sovereignty of the state, and is, therefore, often suggested as a means of resolving the conflict between demands for ethnic self-determination and the principle of the territorial integrity of states. Some jurists have argued that it should be considered as an alternative form of self-determination at international law" (Thomas D Musgrave; Self-Determination and National

A working paper on Ka

Minorities; OUP; pages 207-8).

A Finnish jurist, Professor Suksi Markku, wrote of "autonomy as self-government" because "autonomy culminates in the question of self-government". Its elements, as applied to "local self-government", can be adapted to larger entities - elected assemblies; meaningful powers for the unit concerned; safeguarded territorial boundaries and adequate financial resources derived from the power to tax. It must have a legal personality (as corporations do) and the independence of "elected decision-making bodies". The European Union's Charter for Regionalisation (1988) endorses these elements for regions. Real

while "self-rule appears to be aimed at finding a solution of the Kashmir problem without advocating the State's accession with Pakistan or diluting India's sovereignty as he (Musharraf) has himself stated that plebiscite and independence are not the options for the resolution of the Kashmir issue" (Greater Kashmir; February 2, 2006).

Mir Waiz Umar Farooq once advocated that "an autonomous region with the other side being a party to it, could address the issue" and satisfy all sides (The Statesman, October 10, 2002).

The issue really centres on the quantum of power granted to the state. Mountbatten pro-

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autonomy ensures self-governance which is why Melissa Magliani regards "the autonomous Province of South Tyrol" as a "model of self-governance".

However, Muzaffar Hussain Baig, Kashmir's deputy chief minister, himself an able lawyer, published ads in dailies to distinguish between the two concepts. Autonomy is what the Delhi Accord of 1952, by which the National Conference still swears, allows. Self-rule is Art 370 as adopted in 1949. Internal autonomy concerns "Delhi and Kashmir"

pounded a good test in his address to the princes on July 25, 1947: "My scheme [defence, foreign affairs and communications to the Centre] leaves you with all the practical independence that you can possibly use and makes you free of all those subjects which you cannot possibly manage on your own" (White Paper on Indian States, page 164). It gave them an Azadi which was realistic in the circumstances.

Self-rule or autonomy is defined according to

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the situation, whether of a people or tribe or a people within a territory. Panchayats get autonomy appropriate for a village; municipalities, for towns ('local self-government'), and corporations for metros. Why not take the Seventh Schedule to the Constitution of India and the Fourth Schedule to Pakistan's Constitution and settle the powers which, by common consent, would devolve equally on the Valley and Jammu and on Pakistan-administered Kashmir? The Northern Areas and Ladakh may be excluded.

Two caveats are in order. Musharraf's recent remarks on joint management are unrealistic. India

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and Pakistan cannot even run a municipality jointly. He said in Islamabad on January 25 that India and Pakistan have to see what "we cannot give to them [Kashmiris] and that residual powers would be left with the joint management mechanism which should have people from Pakistan, India and the Kashmiris". Such a "mechanism" exists nowhere and is inherently unworkable.

At Davos the next day, he spoke of "self-governance short of independence and beyond autonomy

with the three parties jointly managing the area on both sides of the LoC". He added: "It will address concerns of all three parties - it will not redraw borders, it will not make the LoC permanent and make the LoC irrelevant". He would do well to stick to this and forget joint management.

The other caveat concerns tripartite or triangular talks or "the round table". A recent variant is election of negotiators. Given the divides, the distrust, clash of egos and airing of unreal schemes by politicians in both parts of Kashmir, those pleas make no sense. Posturing for positions in a post-settlement set-up in Kashmir is already under way.

It is an unedifying spectacle. There is a vacuum in leadership. Not a single politician is in a position to deliver by himself or with his colleagues. Those who claim to be able to 'influence' the militants or to 'vouch' for them have been rebuffed repeatedly by Syed Salahuddin, head of the United Jihad Council, not least last June in Rawalpindi. Pitiably are 'leaders' who depend for their credentials on recognition by New Delhi or Islamabad. India and Pakistan took turns in wrecking the Hurriyat with the full cooperation of one faction or the other. India must talk to those who wield or control the gun.

The prime minister's conference on February 25 was a well-intentioned brain-storming session. He is for a "consensual solution" to be reached by "a process to start once the round table ends". These are pointed hints. Experience has amply demonstrated the futility of a New Delhi-Srinagar accord without a prior India-Pakistan accord. It must provide a basis which each side, or both together, would flesh out in dialogue with Kashmiris on both sides. COURTESY FRONTLINE

To be continued