

# **An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir**



**Centre for Peace, Development and Reforms (CPDR)  
Azad Jammu and Kashmir  
June 2011**

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## FOREWORD

The relationship between Pakistan and Azad Jammu and Kashmir (AJK) has remained fluid over the decades. Nothing concrete was laid out in the initial days of Independence to formalise the relationship. The present position has gradually evolved. The people of Azad Jammu and Kashmir, and their leadership, strived hard to get a proper constitution and governance setup. Consequently, a number of legal and constitutional arrangements were introduced during the nineteen sixties and seventies. All these Acts provided for a Presidential form of Government. The 1970 Act gave full legislative powers to the AJK Assembly, as well as executive powers to AJK Government which enabled it to take major decisions.

In 1974 a new Act was introduced, namely the Azad Jammu and Kashmir Interim Constitution Act 1974 which governs the affairs of AJK till today. The 1974 Act made drastic changes such as switching to a parliamentary form of government, and establishing of a new forum called the Azad Jammu and Kashmir Council, which was entrusted with significant legislative and executive powers. The formation of the AJK Council was perhaps intended to streamline the relationship between Islamabad and Muzaffarabad. However, the overwhelming feeling in Azad Jammu and Kashmir is that the Council has been unable to achieve the objectives for which it was established. The extent of its authority and performance remains debatable. It is widely believed that the Council's executive powers drastically hamper the elected government's ability to take key decisions related to finance, public policy and socio-economic development. In recent days, a new impetus for the reappraisal of the relationship has appeared in the backdrop of new constitutional amendments in Pakistan and the National Finance Commission Award which give provinces more say in their own affairs and a greater share in resources.

The existing arrangements, especially those relating to the AJK Council, have from time to time been criticized. Yet no attempt has ever been made to undertake a structured discussion on the subject, involving all stakeholders. No documented study is available at present to indicate what the aspirations of the people are; and what kind of constitutional relationship people of Azad Kashmir wish to maintain with Pakistan at this point in time.

The Centre for Peace, Development and Reforms (CPDR), whose charter includes promoting "Participatory Governance" and "Providing a forum for dialogue and conflict resolution", has taken the initiative to hold a series of debates on this fundamental issue.

A day-long Round Table entitled "An Appraisal of Constitutional, Financial and Administrative Arrangements between the Governments of Pakistan and Azad Jammu and Kashmir", was held on 29th January, 2011. The Round Table aimed at appraising the existing arrangements, and deliberated upon possible changes. It aimed to achieve a broad consensus for future constitutional amendments of the Interim Constitution Act 1974.

The participants of the Round Table were very carefully selected. They represent a cross section of AJK civil society – namely politicians, jurists, former and serving bureaucrats, academics, intellectuals, representatives of the private sector, and other opinion-makers. CPDR also wanted to provide opportunities to all shades of opinion on the subject. Therefore, while making the selection of the participants, their known affiliations with a particular viewpoint on the subject was considered.

During the Round Table Conference, participants agreed unanimously that the existing arrangements between the Governments of Pakistan and Azad Jammu and Kashmir are not satisfactory, and need to be revised. It was the sense of the house that Azad Jammu and Kashmir does not enjoy the status that it deserves. The house also believed that a stable and just relationship between Islamabad and Muzaffarabad on issues of governance will be in the larger and long-term interest of both the Pakistani and Kashmiri people.

However, the Conference considered it necessary to constitute a small representative committee to fine-tune the house's findings. A five member committee was constituted to formulate recommendations in light of the broad consensus that had emerged during the conference. The committee comprised Justice Basharat Ahmad Shaikh, a former Judge of the AJK Supreme Court; Chaudhary Latif Akbar, Secretary General of the Pakistan Peoples Party AJK; Abdur Rashid Abbasi, a Minister in the AJK Government; Ambassador Arif Kamal; and Muhammad Saleem Bismil, Secretary to the AJK Government, Tariq Masud, Zulfiqar Abbasi and Ershad Mahmud were ex-officio members.

The committee, after several detailed sessions, presented a report that was shared with participants of the Round Table Conference. The participants' views on the report were solicited. A large number of participants overwhelmingly endorsed the draft report. A few made dissenting comments, mostly repeating minority viewpoint that they had earlier expressed in the conference. These have duly been reproduced in the report. The contents of the Report were also shared with the top leaders of the Pakistan Muslim League PML (N) and Jamaat-e-Islami AJK, who had been invited to the Round Table but could not participate in it.

CPDR had made arrangements to record the proceedings of the roundtable. A transcript was prepared, from which salient points made by each participant were extracted. These have been included in this report.

The Centre for Peace, Development and Reforms gratefully acknowledges the financial support provided by the Friedrich-Naumann-Stiftung für die Freiheit (FNF) which enabled CPDR to hold a Round Table Conference and publish this Report.

**Tariq Masud**  
Chairman,  
Centre for Peace, Development & Reforms (CPDR)

June 2011

## ABOUT THE CENTER FOR PEACE, DEVELOPMENT AND REFORMS

The Centre for Peace, Development and Reforms (CPDR) is a nongovernmental, nonprofit, nonpartisan and indigenous civil society organization dedicated to promoting peace, development and reforms through dialogue and reconciliation. Founded in 2010, the CPDR is registered with the Government under the Societies Act 1860 (Act XXI of 1860), having specified Memorandum of Association.

### Objectives

- Empowering civil society; promoting peace, participatory governance, transparency and reforms through dialogue and reconciliation.
- Support democratic values, accountability, and human rights while striving for economic development and social justice.
- Promoting ethical values, civic culture, and tolerance and due attention to the marginalised and vulnerable sections of society.
- Providing an effective platform for conflict resolution with special reference to the State of Jammu and Kashmir.

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10. **Dr. Zafar Hussain Zafar,** Assistant Professor, Government Post Graduate College Girls Kharick Rawalakot.
11. **Dr. Z.U. Khan,** former advisor to the President.

# 1. THE REPORT

## 1.1 Structure of the Report

The report begins with an appraisal of the history of Azad Jammu and Kashmir's constitutional relationship with Pakistan. An in-depth analysis of the existing arrangements between the governments of Pakistan and Azad Jammu and Kashmir was made. This is followed by a set of recommendations for reforming that relationship, based on the findings of the Round Table Conference. There then follows a full account of the proceedings of the Conference.

## 1.2 Azad Jammu and Kashmir Government: Conceptual Nature

Jammu and Kashmir (J&K)'s present constitutional position is rooted in its particular history. Before 1947, it was an autonomous State under the suzerainty of the British Crown, with a Hindu Maharaja but a Muslim majority population. This suzerainty lapsed on 15th August 1947, when the British withdrew formal power from the subcontinent. Because the Maharaja prevaricated about whether to join India or Pakistan, tensions arose within and outside the State. A revolutionary Government was set up in October 1947, which declared that the Maharaja's Government had been overthrown and replaced by an Azad Jammu and Kashmir Government as the *de jure* government of the State. Muslim elements of the Maharaja's army rebelled and were joined by ex-army men and volunteers. Some parts of the State came under their *de facto* control. Subsequently, the official name adopted by this Government was the "Azad Government of the State of Jammu and Kashmir". Thus the Azad Government is successor to the late Government of Jammu and Kashmir. The United Nations Commission for India and Pakistan (UNCIP) laid down in its resolution of 13th August 1948 that the territory of AJK would be administered by the "Local Authorities" under the Commission's scrutiny. This seems to be the reference point in the administrative setup established in Azad Jammu and Kashmir. Due to its disputed status, this territory could not be declared part of Pakistan.

The Government of Pakistan is not authorized by the Constitution of Pakistan to administer AJK. It is laid down in Article 257 of the Pakistan Constitution that, after accession, the relationship

between Pakistan and J&K State shall be determined in accordance with the wishes of the people of the State. This suggests that AJK should have a government that is autonomous, at least internally.

### 1.3 Role of the Government of Pakistan

Ever since AJK came into being in 1947, the Government of Pakistan has always had a strong presence in AJK. It controls defence, security, currency, and foreign relations. Key officers of the AJK Government are nominated by the Government of Pakistan. These officers are the Chief Secretary, the Inspector General of Police, the Finance Secretary, the Home Secretary, the Health Secretary, the Accountant-General, and (usually) the Additional Chief Secretary (Development). They are known as "Lent Officers", and are not under the AJK Government's control in matters of discipline or posting. Thus they are a strong check on the exercise of powers by the President and Cabinet of AJK. The system of "Lent Officers" is a permanent feature, and has never been changed. The Government of Pakistan, therefore, always retained an extremely strong influence in AJK's affairs.

### 1.4 Constitutional position, 1947–70

From October 1947 to 31st December 1948 a 'war of liberation' was fought against the Indian Army, initially by paramilitary groups from AJK and Pakistan, and subsequently also by the Pakistan Army. The question of defining the powers and functions of the government in AJK became secondary to the war. However, there was a government in place, which set up a general and a judicial administration. Without going into details, it can be said that the Government at Muzaffarabad was appointed and removed by – and acted under the control of – the Government of Pakistan. Few political rights were available to the people of AJK under this system. This form of government was presidential; while the Government Act 1960 provided a semblance of democracy, it did not include self-rule for Kashmiris. Even this was soon discarded.

### 1.5 Constitution of 1970

In 1970, AJK was given an elected Government and a Legislative Assembly directly elected by people. AJK was given powers which, in practice, had not existed in the preceding two decades. The AJK Government Act 1970 was promulgated to serve as the constitution of AJK. It provided that there would be a President, who would be elected directly by Kashmiris living in AJK and Pakistan. It empowered the AJK Assembly to amend the said Act. All executive powers were vested in the President, who was to be aided by a small cabinet of three ministers. Corresponding legislative powers were vested in the Assembly except in respect of defence and security, currency and the external affairs of Azad Jammu and Kashmir.

In 1971, the Assembly amended the Act (without having to seek prior permission of the Government of Pakistan) and gave fundamental rights to the people and writ jurisdiction to the High Court. An Apex Court was also created, in which appeals could be filed against the High Court's

judgments. The power to appoint judges to the superior courts lay with the President of AJK. Importantly, the subjects of foreign trade and foreign aid were included in the legislative and executive authority of the AJK Government which immensely raised internal autonomy to a new height.

### 1.6 Constitution of 1974

In 1974, the elected Legislative Assembly repealed the 1970 Act and enacted the AJK Interim Constitution Act 1974. , The Government of Pakistan, discharging its responsibilities under UNCIP resolutions, had approved the repeal of the 1970 Act and its replacement by this new Act.

The draft was prepared in the offices of the Government of Pakistan. The party in power, led by the elected AJK President and all other major parties, obliged. The AJ&K Assembly consequently passed the AJK Interim Constitution Act 1974. This introduced a parliamentary form of government, and the powers of the AJ&K Government were drastically reduced.

### 1.7 Formation of the AJK Council

The 1974 Act created a new body to perform legislative and as executive functions, which still exists today. It is known as the Azad Jammu and Kashmir Council, and is headed by the Prime Minister of Pakistan. Under the new scheme, powers in respect of 52 subjects, as well as some other important powers related to the appointments of High and Supreme Courts judges were taken away from the AJK Government and vested in the AJK Council. This body consists of elected members from AJK and nominated members from the Parliament of Pakistan.

The subjects falling under the AJK Council's remit include electricity & Hydro Power Generation, tourism, population planning, banking, insurance, stock exchange and future markets, trading corporations, telecommunication, planning for economic coordination, highways, miners, oil and gas, development of industries, newspapers etc. The major sources of income of the AJK Government, i.e. income tax and some other taxes, were transferred to the AJK Council, giving it greater control over AJK's finances. In addition, powers to appoint Judges of the Supreme Court and High Court, the Chief Election Commissioner, and the Auditor General were also taken away from AJK Government and now vested in Chairman of AJK Council.

According to section 21 of the 1974 Act, whoever is the Prime Minister or Chief Executive of Pakistan shall be Chairman of the AJK Council. All the executive powers of the Council are vested in the Chairman. Thus executive powers in respect of the 52 subjects, as well as powers to fill high offices, virtually stand transferred to the Government of Pakistan. AJK is therefore left with little autonomy or status.

### 1.8 Flawed Composition of the AJK Council

Some defects are inherent in the scheme of the AJK Council. The executive authority in respect of 52 subjects included in the third Schedule as well as appointment and removal of Judges of

Superior Courts, Chief Election Commissioner, Auditor General, etc, are vested in the Chairman, and the members of the AJK Council (elected or nominated) have no role to play in these matters.

The Chairman is not an elected official, and is not answerable to any AJK elected body about AJK affairs (even if, as an elected Prime Minister of Pakistan, he is answerable to the Pakistani electorate). As is obvious, the Chairman is not an elected representative of the people of AJK nor is he answerable to them. Thus, clearly democracy has little place in this system. It is an anomaly that in the setup at Muzaffarabad, executive authority (or whatever is left of it) is vested in an elected cabinet, which is answerable to the Assembly and the people of AJK, while in the AJK Council the opposite is true. This is inconsistent with the norms of a democratic polity in the present era. The political rights of the people of AJK therefore stand denied.

In the AJK Council, representation is separately given to Pakistan and AJK. On one side are the Prime Minister/Chief Executive of Pakistan and six Ministers/MPs who are nominated by the Chairman. On the AJK side, six members are elected by the AJK Assembly. This body legislates for AJK and also levies taxes. The composition of the Council is not representative, but is heavily tilted in favour of the Government of Pakistan. This is because the Chairman and the six Ministers /MPs all belong to one political party/group, and therefore are more capable of uniting within the Council, while the six elected members are from two or three different parties. In practice, the role of these elected members, in the presence of the high personages representing the Government of Pakistan, is insignificant. Thus the elected representatives have a very an insignificant role in legislating on the subjects vested in the AJK Council, and levying taxes.

## 1.9 Track Record of the AJK Council

The track record of the AJK Council shows that it has never been able to live up to the expectations of the people of AJK. The following points illustrate why:-

- a. Banking, trading corporations, planning for economic co-ordination, development of industries, hydro power generation, and insurance are Council subjects, but the Council has never attended to these matters. Consequently, growth in these vital sectors has remained stagnant.
- b. Tourism, electricity and telephones are subjects of the Council, but it has not actually taken over the relevant departments during the last thirty six years. This violates the Constitution.
- c. It is a constitutional requirement that the Council's budget be passed before 30th June every year. Usually, however, it is passed five to six months after this date. Thus illegal expenditure is incurred for months together, making a mockery of the Constitution.
- d. Posts of Judges of Supreme Court and High Court are not filled for long times, even for years, despite being the responsibility of the Council. Recently, the High Court remained virtually non-functional for fourteen months (from December 2009 to February 2011) because only the Chief Justice was holding office. No Judge was appointed during that period. Thus the

doors of justice virtually remained shut. Thousands of cases were pending, and more piling up. One out of two judges' posts in the Supreme Court has been vacant for the eight months.

- e. This situation is not new. In 1980, the Chief Justice of the Supreme Court was removed (without trial) and an Acting Chief Justice was appointed. No Judge, however, was appointed for two years. During this period the Supreme Court did not function. Justice Raja Muhammad Khurshid was kept as acting C.J. for seven years. Recently, Justice Muhammad Nawaz khan of the High Court was kept as acting C.J. for 4 years. Justice Sardar Muhammad Ashraf completed his three year term as Chief Election Commissioner, but the Council did not nominate his successor for more than two years, meaning that Justice Ashraf continued to hold office during that period.
- f. After its inception the Council took certain important steps, which amounted to a partial merger of AJK with Pakistan, as well as the alienation of State subjects. Some of the steps were as follows:-
  - i. Banking Courts and Banking Tribunals working in Punjab were empowered by the AJK Council to hear cases from AJK. Consequently, cases being tried inside AJK were transferred to Punjab.
  - ii. Similar actions were taken in respect of some other institutions. For instance, an officer of the Employees Old Age Benefit Institution stationed at Jhelum (Punjab) was authorized to deal with matters in Mirpur. He issued notices to commercial concerns in Mirpur.
  - iii. It is a constitutional requirement (section 21) that a Minister of the Government of Pakistan and (not more than three) Advisors from AJK shall be incharge of the Council Secretariat, but this provision has been consistently violated. Posts of Advisor are at times left vacant for months, even years, and AJK remains unrepresented. When appointed, Advisors are not given important portfolios. It is the Minister for Kashmir Affair and Gilgit-Baltistan who wields real authority. Thus AJK's own residents have no effective role in the AJK Council.
  - iv. The Council's Secretariat is located in Islamabad. The Council has not set up a regional office or even a rest house in AJK. The Secretary of the Kashmir Affairs Division is an ex-officio secretary of the Council. In its secretariat there is hardly any officer from AJK.
  - v. The Federal Public Service Commission of Pakistan serves as the Public Service Commission for the AJK Council.
  - vi. Officers from the Board of Revenue, Government of Pakistan are transferred to the AJK Income Tax Department, which was previously staffed by AJK officers. Junior grade officers are appointed to higher posts, over more senior officers from AJK.
  - vii. The Standing Counsel to conduct cases for the Council is from Lahore. Similarly, whenever the Council needs a lawyer he is not picked up from AJK, but is sent from outside AJK.
  - viii. The Council adopted Pakistani federal laws, in which it was laid down that whenever a law is amended in Pakistan the amendment would automatically apply to AJK. It was also laid down that whenever a rule is framed or amended by the Government of Pakistan, it would also automatically apply to AJK. This method of legislation amounted to a total alienation of the legal entity of AJK.

## 1.10 Conclusion

The vesting of powers in the AJK Council to legislate, levy taxes, and perform executive functions is by no means justified or warranted. The above discussion has shown that AJK is left with little autonomy or status. The political rights of the people stand denied because the way that the AJK Council controls subjects has marginalized the AJK Government's powers over the area's affairs.

## 1.11 Recommendations

There is a dire need to initiate a serious debate on AJK's constitutional status. This should include all sections of society, and aim to create a broad consensus so that the necessary change in governance can be made possible by introducing amendments in the AJK Constitution, in consonance with the aspirations of the people.

In this context, the following recommendations are made to improve governance and make the AJK government democratic, effective and autonomous.

### AZAD JAMMU AND KASHMIR COUNCIL

- 1.11.1 The Azad Jammu and Kashmir Council should be retained, and entrusted with co-ordinating between the Governments of Pakistan and AJK 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.
- 1.11.2. 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 (to be elected by the AJK Assembly).
- 1.11.3. All executive and legislative powers should revert to the AJK Government and the AJK Assembly. Since this can only be done with the approval of the Government of Pakistan (section 33 of the 1974 Act), the Government of Pakistan must agree to this in the interests of the political rights of the people of Azad Jammu and Kashmir.

### JUDICIAL REFORMS

- 1.11.4 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.

### ELECTION COMMISSION

- 1.11.5 An independent Election Commission needs to be constituted to ensure fair and impartial elections.

- 1.11.6 The Chief Election Commissioner should be appointed at the recommendation of a Parliamentary Committee comprising members from Treasury and Opposition Benches.

#### ALLIED MATTERS

The following important allied matters were also deliberated upon by the Committee.

- 1.11.7 Election on Refugees' seats in Pakistan

One of the most important issues pertains to the representation of Jammu and Kashmir refugees settled in Pakistan. The present system of holding elections throughout Pakistan to elect members of AJK Assembly is most cumbersome, and entails great effort and expense. The constituencies are large, unwieldy and unrealistic. Experience shows that these elections are usually subjected to underhand means. Non-State subjects, for example, can easily be enrolled in the electoral lists. The administration in the provinces of Pakistan cannot be controlled by the AJK Election Commission, so it cannot ensure free and impartial elections.

- 1.11.8 This system should be discarded, and representation to refugees from Indian-administered parts of Jammu and Kashmir may be given by elections through the Assembly members on the basis of proportional representation. This would follow the pattern of the system envisaged in article 51 of Constitution of Pakistan (in which a list of candidates is provided by political parties before elections). Candidature should be based on possession of a State subject certificate. The preparation of electoral rolls throughout Pakistan for this purpose should be discontinued. Public debate on this subject should however continue so that a broad consensus may emerge on a future dispensation to replace the present system. The proposed system may be introduced after the 2011 elections are held.

#### SIZE OF CABINET

- 1.11.9 There should be a provision in the AJK Constitution restricting the number of ministers. The number may not exceed a fixed percentage of the total number of members of the Legislative Assembly. Further, not more than two advisors with the rank of minister may be appointed.

#### POWERS OF THE PRESIDENT AND PRIME MINISTER

- 1.11.10 The President may be required to act on the advice of the Prime Minister/Cabinet within a period of fifteen days, failing which the advice shall be deemed to have been assented to.
- 1.11.11 The President may refer back any such advice to the Prime minister/cabinet for reconsideration. However when such advice is re-submitted to the President with or without changes, the provision stated in para 1.11.10 may apply.

## DEPUTATION POLICY

- 1.11.12 Officers from the Government of Pakistan posted to AJK and vice versa should be sent, "On deputation", on the basis of mutual consent, as envisaged by the "Deputation Policy" of the two Governments. An officer, when deputed, should be subject to the usual service rules of the borrowing Government.

## FOREIGN INVESTMENT, FINANCING AND ASSISTANCE

- 1.11.13 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.

## **2. PROCEEDING OF THE CONFERENCE AND SUMMARY OF INTERVENTIONS MADE BY PARTICIPANTS**

### **2.1 OPENING REMARKS BY TARIQ MASUD, CHAIRMAN CPDR**

I am extremely grateful to all of you for responding so warmly to our invitation. CPDR feels greatly honoured and encouraged by your presence in this conference.

Ladies and Gentlemen! A very distinguished gathering has assembled here this morning. Amongst them are some of the best brains of Jammu and Kashmir. In view of time constraint, it is not possible for me to introduce each one of the participants individually. Suffice to say that we have with us to-day very distinguished constitutional and legal experts, front line politicians affiliated with major political parties of Azad Jammu and Kashmir, prominent bureaucrats, retired as well as serving and we have civil society activists, intellectuals, and academicians also.



All of us here, with one exception, are nationals of the State of Jammu and Kashmir. The one exception we made was for the simple reason that to do justice to the subject under discussion, it is necessary to have the input of a former Chief Secretary. Mr. A. R. Siddiqui very kindly agreed to participate and make a contribution on the subject from the viewpoint of a Chief Secretary.

Ladies and gentlemen! This is a closed-door session, without television, press or any other form of publicity. Since it is the first meeting of its kind, we wanted it confined to State nationals only.

Please allow me to say a word or two about CPDR. Early in 2010, a few likeminded friends, associated with various walks of life in AJK, got together and shared with each other their deep concern

for the deteriorating state of governance, the continuing downward trend in ethical values and civic responsibilities, the growing menace of parochialism, regionalism and sectarianism, intolerance, and disregard for the law and merit system on one hand; and the absence of a long term planning process, coupled with the faulty implementation of development projects, on the other hand. The friends decided to pool their efforts to take the initiative of raising their own voices, as well as providing a much needed forum to the civil society of AJK. They decided to establish the "Centre for Peace, Development and Reforms", which has been registered under the Societies Act of 1860 in June 2010, with headquarters at Mirpur. It is a non-governmental, non profit, non-partisan, indigenous civil society organization.

Ladies and gentlemen! There are a couple of points I wish to emphasize: Firstly, that the topic for discussion to-day is "An appraisal of the Existing Relationship between the Government of Pakistan and AJK" and not the "Kashmir Issue". I will request all participants to confine their interventions to the subject.

Secondly, we believe in strengthening and promoting the method of peaceful dialogue to resolve differences. We do not support confrontation or bulldozing minority view point as a method for making decisions. With the spirit of this objective in mind, I request you to please patiently hear the others view point. To help this objective we have engaged a neutral moderator so that all view points are given equal opportunity of expression.

Lastly, I will emphasise that the major constraint to-day will be time. We will have only about five to six hours to wind up the discussion. It is therefore planned that in the morning session, we should have presentation by the four lead speakers, giving each of them 12to 15 minutes. The purpose of lead speakers is to set the trend and pace of discussion. Followed by the lead speakers, all participants here should turn by turn get the opportunity to present their own views/comments in 5-7 minutes. If more time is taken, it will either mean denying the opportunity to some participants, or else sitting very late. So I request you to please strictly follow the time limit.

I must also bring on record our deep appreciation for the financial support provided by Friedrich-Naumann Foundation (FNF), a German NGO working in Pakistan for many years in the fields of strengthening human rights and democracy. Without their financial support, we would not have been able to hold this Round Table.

## 2.2 SUMMARY OF PRESENTATIONS BY LEAD SPEAKERS

### Justice Basharat Ahmad Shaikh

(The speaker did not read a paper. Bullet points have been prepared from the transcript of his verbal presentation).

- The speaker lauded CPDR's initiative of organizing a Round Table on this important issue. AJK is a political novelty: it is the liberated part of the disputed state of J&K, and as stated in the Constitutions of 1970 and 1974, its future will be decided in accordance with the wishes of the people of the State. As such it has never been and cannot unilaterally be declared apart of Pakistan.
- However, Pakistan and the Government of Pakistan had a role to play in AJK right from its inception. This role is partly written and partly unwritten, but well known.
- In the early days of AJK, even demanding better treatment for its citizens or equal salaries for its officials, or asking a better physical infrastructure, was considered an anti-state activity. A pamphlet written on the subject, merely inviting the attention of concerned quarters, drew the wrath of the Pakistani authorities.
- The situation started improving in the late sixties/early seventies. AJK now has a constitution, an elected Government, an elected Assembly, fundamental rights and a Judiciary with powers to issue writs. The Government of Pakistan extended considerable financial and administrative support to AJK. Things moved and started becoming formal.
- The Government of Pakistan has an exclusive role in the defence and security of AJK, in external affairs, and foreign trade. Pakistani currency is the currency of AJK and the Government of AJK has no power in respect of these subjects. But never has any voice been raised against these provisions.
- Even before formal arrangements came into existence, Pakistan, though not legally obliged to do so, provided substantial financial aid to AJK, and allowed AJK nationals to join the services of Pakistan.
- Initially, there was no bifurcation in the legislative list or executive powers of AJK. The AJK government had full powers to control all the subjects in the Government, and the AJK Assembly had full powers to legislate on all AJK subjects.
- Today my main subject is the AJK Council. No doubt it has been established under the constitution and the 1974Act. No doubt it had the approval of the then top leadership of AJK. But the fact remains that "Council" has no place in the aspirations of the people of the State. The AJK Government is the successor to the Jammu and Kashmir Government. It is the suc-



cessor to a Government which was given the power to accede to one or the other dominion. The successor government has to be autonomous.

- The Council has executive authority over 52 subjects but it has not taken over several of the relevant departments during the last 36 years. Besides Executive authority over 52 subjects, it also has the power to appoint the Chief Election commissioner, and judges of Supreme Court and the High Court. In fact executive authority of the Council vests in its Chairman who alone makes these decisions. Thus the Prime Minister of Pakistan, who is the Chairman of the Council, who is not elected by the people of AJK, has sole authority in respect of these important subjects.
- The Council functions in Islamabad, its secretariat is located in Islamabad, its incharge is a federal minister, and it has no representation of AJK officers. Council recruiting is done by the Federal Public Service Commission and not the AJK Commission.
- I have been actively associated with the Pakistan movement since I was 11 years old. I still hold the same views and look up to Pakistan with the same reverence, but this does not change the fact that the Prime Minister of Pakistan is not the representative of the people of AJK; nor is he answerable to them: he is not even responsible to the "Council"
- The AJK Council should be abolished and all its powers should go back to AJK Government.



**Ambassador Arif Kamal**

(Summary written by author himself)

The reappraisal of governance issues vis-à-vis AJK is taking place in tandem with the interplay of a number of factors. There is a resurgence of Kashmiri identity across the divide, while the contemporary South Asian leadership continues to show signs of inadequate familiarity with the human dynamics and cultural ethos of Kashmir situation. Concurrently, a sense of 'aggrandizement' or 'desperation', as it may be, is leading to calls to Pakistani decision-makers to "internalize" AJK or give the territory provisional representation in the Pakistani Parliament, thus conveying a negative signal to the other part of the state that is still engaged in freedom struggle.

At this stage, we must keep it in view that regardless of the legal niceties of defining the territory, the identity of AJK should be viewed in a two-fold light: firstly, the territory has an affiliate status with the state of Pakistan (not its constituent unit); and secondly, it remains an organic part of the state of Jammu and Kashmir. Keeping this in view, it is important that until the exercise of self-determination by the Kashmiri people, the relationship between Islamabad and Muzaffarabad should be based on a stable footing. This should be Kashmiri commitment to the idea of Pakistan, in tandem with the full respect for and accommodation of Kashmiri identity. AJK is not a province of the Pakistani federation. Its status as part of the disputed state of Jammu and Kashmir ought

to be viewed in the light of Article 256 of the Pakistani constitution, which explicitly states that the terms and conditions of accession (when it comes) will be determined by the Kashmiri people themselves. Any treatment contrary to this is likely to carry negative psychological and political fallout.

Today, there is a genuine case of massive reforms in the domain of governance of AJK and its relationship with Islamabad. In this context, the consideration of the following parameters holds the key to a forward move:

- First, the preamble of the AJK constitution must reaffirm the unity of the erstwhile state of Jammu and Kashmir, the Kashmiri people's right to self-determination, and (regardless of the legal definition of AJK) uphold the right of its people to control its resources and govern themselves.
- Second, we need to recognize, at the very outset, the authority of the elected assembly in AJK to govern the territory and to legislate on the entire legislative list, baring the responsibilities of defence and foreign affairs. These come under the remit of the government of Pakistan under the terms of UNCIP resolutions.
- Third, the AJK Council may continue as a point of contact between Muzaffarabad and Islamabad, but with a limited role to coordinate on areas of responsibility that are reserved for Islamabad, or to deal with transient issues assigned by the Assembly on a need-to-give basis.
- Fourth, the authority to generate and collect revenue within AJK should rest with the AJK assembly, and the executive authority born of it alone.
- Fifth, the secretariat of the Council should be correctly-sized and shifted to Muzaffarabad. The bureaucratic apparatus should be two-thirds from the erstwhile state of Jammu and Kashmir, selected by AJK Public Service Commission.
- Sixth, an elected member of the Council, appointed Minister without portfolio in the AJK Cabinet, may act as Secretary to the Council (rather than Minister for Kashmir Affairs).



## Muhammad Akram Sohail

(Summary written by author himself)

- 1) The Government of Azad Kashmir was declared a 'local authority' under UNCIP Resolutions, and the Government of Pakistan was made responsible for running its day to day affairs. The responsibilities of the Government of Pakistan are listed under the AJK Interim Constitution Act 1974. But this Act cannot bind the Government of Pakistan in its working, and actions taken by it are not subject to judicial review in the courts of law in Pakistan. All responsibilities of the Government of Pakistan under UNCIP Resolutions and other constitutional and administrative jurisdiction, and responsibilities of the Government of Pakistan with regard to Azad Kashmir, should be incorporated in the Constitution of Pakistan. Only such replication and addition in the Constitution of Pakistan will validate the powers and responsibilities of the Government of Pakistan, resulting in smooth and transparent working between the Federation and the AJK government.
- 2) Azad Kashmir should be brought into the main stream of Pakistan, and for all practical purposes should be given equal rights and parity with the provinces of Pakistan. The issues of Net Hydel Profit and proprietorship of water resources by the Government of Azad Kashmir should be accepted by the Government of Pakistan, on the same basis as for the provinces of Pakistan. Under the 18th amendment, proprietorship of natural resources including minerals and water has been delegated to the provinces. Rights admitted with an open heart and mind will increase the trust of Kashmiri people in the Islamic Republic of Pakistan and will send a vibrant message to the other side of the line of control.
- 3) The Azad Kashmir Council does not truly represent Azad Kashmir, as it is not answerable to the people of Azad Kashmir. The Prime Minister of Pakistan, with six federal ministers, eclipse the Council as a democratic body of Azad Kashmir. This body carries the legislative as well as executive authorities simultaneously, which is a mockery of the Constitution and alien to modern democratic concepts. The Prime Minister of Pakistan is the Chief Executive of Azad Kashmir for the 51 subjects given in the legislative list, in addition to the 4 subjects under Section 31(3) of the AJK Constitution. The AJK Council practically plays no role in managing the subjects entrusted to it by the Interim Constitution of Azad Kashmir. Instead of working for the interests of the people of Azad Kashmir, the Council is working as a facilitator and subordinate to the Federal Government. It has assumed the charge of the development of water resources for hydel generation in Azad Kashmir without any jurisdiction, and entrusted its processing to the federal departments. This violates the decisions of the Supreme Court of Azad Kashmir. But it never touched so many departments, including the electricity department, which is clearly in its mandate under the Interim Constitution. The reasons for this are best known to the Council itself. All executive powers, and the subjects managed by the Kashmir Council should be handed over to the Azad Kashmir Government, in parity with the provinces (which are given to the provinces in the light of the 18th amendment to the Constitution of Pakistan). The legislative list of the AJK Council should also be reviewed, given that many matters included in the Council Legislative List are related to the Government of Pakistan.

Such matters should be handed over to the Government of Pakistan, as the AJK council has no jurisdiction over them.

**Zulfiqar Abbasi**  
(Summary written by author himself)

While appraising the impact of the present political, administrative and financial arrangements for the economic development of AJK, I have no hesitation in saying that the existing arrangements have miserably failed to develop, serve and safeguard the socio-economic interests of the people of AJK.

The development of the private sector in particular has totally been neglected, with the result that the most promising areas and resources of AJK, e.g. harnessing foreign remittances, investment in industrial development, exploration of natural resources, creation of employment opportunities and exploitation of water resources, have remained stagnant if not regressive. Thus the generation of taxes and revenues to run State affairs, thereby laying the economic foundations of the government, have been totally ignored by the AJK Council since its inception. This has led AJK to be dependent on Islamabad and other provinces of Pakistan.



Under the AJK Interim Constitution Act 1974, the socio-economic development of Azad Kashmir has been divided between AJ&K govt. and AJ&K Council. Subjects pertaining to health, education, provision of drinking water, rural and inter-district road communication, electrification, and population welfare, was handed over to the Government of AJK. It is matter of record that the performance in these sectors has remained much better than that in provinces of Pakistan, with the literacy rate around 70%, education enrolment at 96%, a roads network of 12000 km, better primary health care, and the electrification of more than 90% of AJK.

However, important productive sectors such as hydro power generation, the exploration of minerals, tourism, banking and finance and stock exchange, and telecommunication, which were entrusted to the AJK Council, have remained totally stagnant. The development of these sectors could easily have brought foreign assistance and investment.

The Council has neither developed these areas nor let the Government of AJK do it. This has resulted in widespread unemployment, poverty, deprivation, and lower living standards. The situation with regard to the creation of job opportunities is most critical. 65% of our population are youths who will need about 300,000 jobs during the next ten years. But we do not have the capacity to create even five thousand jobs because the private sector is not developed.

The AJK Council is charging an unprecedented 20% collection charge on tax collection from AJK. It should in no case be more than 0.5%. Furthermore the Council has failed to broaden the tax base, deliberately exempting the largest-earning corporations such as the Water and Power De-

velopment Authority (WAPDA), who are evading Sales Tax running into multi-millions of rupees annually from the Mangla Power house located in AJK. Whereas net hydel profits of more than 120 billion rupees are also outstanding against WAPADA.

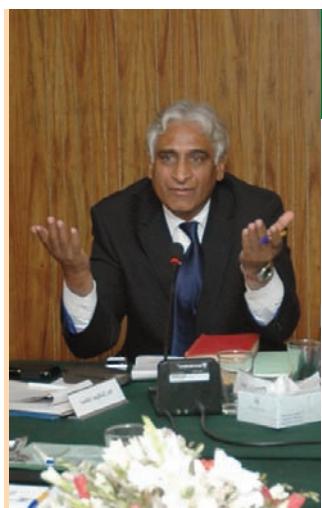
About one million Kashmiris settled abroad own liquid assets worth billions of dollars that could have been brought into AJK. Similarly, the Kashmiri community maintains bank deposits of around two trillion rupees in Pakistani banks working in AJK, but in return these banks have not advanced even 1% of their deposits collected from AJK for the socio-economic development of the area.

Though the people of Mirpur made great sacrifices for the construction of the Mangla Dam, the downstream lands owned by Mangla Dam affectees are still barren and uncultivated due to the non-availability of promised irrigation water. Even the supply of drinking water from the dam is being denied by WAPDA to the people of Mirpur.

I vehemently state that the present arrangements need to be reviewed and redefined, drastically cutting the powers of the AJK Council, and restoring them to the AJK Government.

## 2.3 SUMMARY OF INTERVENTIONS BY THE OTHER PARTICIPANTS

(Prepared from transcripts)



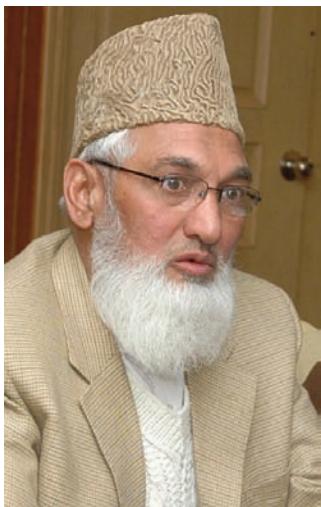
**Chaudhary Latif Akbar**

- There is a conflict of views in the presentations made by the previous speakers. On the one hand we placed sole responsibility on the Government of Pakistan to help AJK financially, politically and socially. On the other hand we say that AJK should have absolute executive authority.
- The people of Azad Kashmir have made great sacrifices.
- There was no constitution until 1973, even in Pakistan. The arrangements made by the Government of Pakistan until the 1960s were totally arbitrary. The AJK President was nominated by the Ministry of Kashmir Affairs. The Basic Democracies system was introduced in AJK in 1960, and KH. Khurshid was the first person to give rights to the people of AJK. The right to vote was given to the people who elected Basic Democracies members. A parliamentary form of government was introduced in AJK under the 1974 Act, which is more participatory. This Act was not thrust on AJK.
- AJK is not part of Pakistan; however we can sit together and take the input of all stakeholders regarding the AJK Council.

## Maj. Gen. (R) Muhammad Anwar Khan

- It is necessary that we clearly understand the perspective in which the status of Azad Kashmir should be determined. It flows from the UNCIP resolutions. These resolutions recognize only one authority, namely the AJK Government, which was termed the "Local Authority". Justice Majeed Malik is not right in saying that it was a sovereign authority.
- 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.
- Sovereignty is dependent on financial viability. Countries that are no longer financially viable start losing their sovereignty. Let us take stock of the existing and potential financial resources of AJK. If these are adequate we can talk of full-fledged sovereignty, otherwise not.
- We must revisit the institution and powers of the AJK Council. I think that the powers of the Council need to be drastically cut.
- The powers of an institution should correspond to its responsibility. If the AJK President and government are to manage the dispensation of justice in AJK, then they must have a say in the matters of judicial appointments.
- I am thankful to Justice Bashart Shaikh for bringing up a basic point: that that Prime Minister of Pakistan is neither elected by the people of AJK, nor accountable to them. But under the present arrangements, it is he who makes all major decisions regarding AJK.
- The AJK Council takes for itself a major chunk of the taxes collected from AJK. It spends these on political patronage and on the whims of the Federal Minister of the AJK Council.





## Abdur Rashid Abbasi

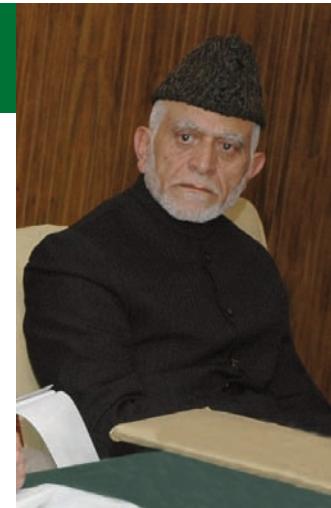
• Mr Abbasi rejected the solution advanced by Akram Sohail, stating that: We must first determine whether we wish to take the struggle for the liberation of the state of Jammu and Kashmir to its logical conclusion or not.

• The AJK government is not merely a local government or authority. The correct position is that the AJK Government holds full authority in AJK. This has been accepted by the Government of Pakistan, as well as by UNCIP.

- If you look at the declarations of 4th and 24th October 1947, they claim that the AJK Government is a sovereign government. This position has never been contradicted by the Government of Pakistan.
- The Government of Pakistan never imposed anything on AJK. We voluntarily surrendered some of our own powers from time to time. The decision to hand over the administration of Gilgit-Baltistan to the Government of Pakistan was made by AJK leaders, including the Supreme Head of the Muslim Conference Chaudhary Ghulam Abbas, and the then-President of AJK, Sardar Muhammad Ibrahim Khan.
- Good governance in any state, country or area is not possible unless the legitimate rights of the people are recognised by the governing authority.
- The Constitution of Pakistan clearly defines the territories that form Pakistan. Article 257 of the Constitution of Pakistan makes the position absolutely clear that no territory of the State of J&K/AJK is a part of Pakistan. The same article also makes it clear that the State's future will be determined in accordance with the wishes of its people.
- Legislative powers under the Constitution of Pakistan are categorized in three lists: namely federal, provincial and concurrent. Under the 18th and 19th amendments, subjects on the concurrent list are being transferred to the provinces. We must also revisit the legislative list of the AJK Council's subjects.
- I fully endorse the remarks made by Gen. Anwar regarding the mode of appointments in AJK's superior judiciary. The Council Chairman, whose advice is binding on the President, is neither elected nor on oath under the Constitution of Azad Kashmir. We should also follow the procedure of making appointments on the recommendation of Judicial Commission. The current system of Lent Officers in the administration should also be reviewed.
- We should see whether the existing setup in AJK is in line with the UNCIP resolutions, and other constitutional and legal documents.

## Justice Manzoor Hussain Gilani

- All are unanimous that there should be change. Opinion differs about the nature of the change.
- We are passing through an evolutionary process and have progressed from 1950 Rules of Business to the Act of 1974. So we are moving ahead and not going backwards.
- The Government of AJK was formed on 24th October 1947, while the Maharaja acceded to India on 27th October. The Government of AJK entered into an administrative agreement with the Government of Pakistan on 4th April 1949, accepting the sovereignty of the Pakistan government and surrendering the Northern Areas to it. So the declaration of the 24th October, constituting the Government of AJK, was superseded on this date. UN Security Council Resolutions ratified the authority of the government of Pakistan to hold on to the territory liberated from the Maharaja's and Indian forces in J&K. India accepted the de facto position through the Ceasefire Agreement of 1949. Both India and Pakistan have entered into several bilateral agreements thereafter, resolving to respect the line of actual control. The Indian Constitution does not include the liberated territories of the State, i.e. AJK, in the definition of the State of Jammu and Kashmir.
- The Government of Pakistan has been controlling, administering and regulating these territories through a series of essentially interim or ad hoc arrangements. Even the most honourable arrangement, i.e. the Act of 1970, vested over-riding authority in the Government of Pakistan. Later, the 1974 Act gave the Government of Pakistan control of all subjects of Federal nature in the name of the Azad Kashmir Council. The Prime Minister of Pakistan, who does not have any electoral college in AJK and Gilgit-Baltistan, exercises unfettered authority in respect of all matters in the Council legislative list, besides all other matters specifically excluded from the purview of Azad Kashmir Government and Council under section 31 (3) of the Azad Kashmir Constitution.
- All the controlling bodies of the Government of Pakistan operate in AJK and Gilgit-Baltistan, as in the full provinces of Pakistan.
- All responsibilities relating to Kashmir are assigned to the Ministry of Kashmir Affairs, under the rules of business of the Government of Pakistan.
- Cabinet Division notifications dated 11th May 1971 and 6th June 1988 direct all the Ministries of the Government of Pakistan to bring Azad Jammu and Kashmir into the mainstream. They direct that it should, for all practical purposes, be treated like any other province.



- All policies and administrative matters relating to Azad Jammu and Kashmir and Gilgit-Baltistan at Federal level are formulated and implemented without these territories' participation. Yet the profits earned by hydel power generation are denied to Azad Kashmir on the grounds that it is not a province of Pakistan.
- I would like to state here that our territory may be disputed, but our rights are not. These cannot be made hostage to the dispute, pending its final settlement.
- The time has come that the people of AJK and Gilgit-Baltistan be empowered politically, constitutionally, legally and financially. How can we empower them? This can only be achieved when Kashmiris accede to Pakistan. We further seek that subjects of a Federal nature, which are introduced in the 18th Amendment to the Constitution of Pakistan, may with suitable modifications remain vested in the Federal Government vis-à-vis the liberated territory.



Tanveer Latif

- First of all I will pose a question to everybody present: was the territory of Kashmir and Gilgit-Baltistan included in the map of Pakistan provided to the UN? If not, under what authority did they lease out Siachin?
- Secondly, I have come to know that a new province with the name of Islamabad Province is "in the making". Will that include AJK, the Federally-Administered Tribal Areas, and the Federally-Administered Northern Areas? A huge burden is going to fall on the shoulders of the major political parties of AJK.
- I endorse Justice Malik's statement that we have been our own enemies. We have reached this point after repeatedly surrendering our rights. Much will depend on what we decide to do now. The first drop of rain was the issue raised by Basharat sahib this morning, and since then there have been very encouraging responses. If we follow this up with practical steps, only then can we achieve some objectives. Otherwise we will have no option but to bank on the Survey of Pakistan.

## Gulzar Fatima

- I extend the warmest felicitations to the organizers, who have dared to provide a great opportunity to debate this important and sensitive issue. Previously, if anyone discussed this topic, he was immediately branded a "Mulak Dushman"
- We Kashmiris have a distinct identity, which we would like all to recognize. At the same time, love and affection for Pakistan is part of our faith.
- I have a deep appreciation for the courage and candour shown by Bismal sahib. It compelled me to ask him during the break how many more years of service he is left with. I had raised a similar question in the Assembly during Musharraf's regime, when the rights of the people were badly violated but I thrown out of the assembly.
- It has been customary for most of us to remain silent during dictatorships, and all our sleeping woes awaken during democratic intervals. We must not forget that we have had plenty of time since the imposition of the 1974 Act to bring about healthy changes. But we failed to do anything constructive. A lot of favouritism, nepotism, disregard for merit and gender inequality exists in AJK.
- The role of our leaders has been pathetic. They run to the Ministry Kashmir Affairs whenever there is a threat to their government. When I raised my voice, I was thrown out of the lobby. The intelligence agencies were after my blood and so on. Had a voice as strong as today's raised been in the past, we would have achieved a lot.
- There are no two opinions about the "AJK Council". One is that it is the biggest impediment in the way of good governance in AJK and should be done away with. The other view is that we should have an organ like the "Senate" of Pakistan, which can be controlled by the people of AJK.



## Prof. Habib-ur Rehman

- We are passing through the implementation stage of the Simla Agreement. The Kashmir issue was settled in Simla: that's why India, China and Pakistan agreed to the establishment of Gilgit-Baltistan. Discussions being held at different forums have only the objective of putting a seal to that settlement. We should refrain from doing anything that has the effect of endorsing that settlement.
- Improvements in our affairs are possible only after the "AJK Council" is demolished, and powers restored to the AJK Government. Improvements can only be made at a level where power rests.





### Khalil Ahmad Qureshi

- Very important issues have come up today. The status of AJK has not fundamentally been determined so far. Even the 1974 Act is "Interim"
- AJK has seen many constitutions - namely Acts of 1960, 1964, 1968, and now the 1974 Act. The question remains whether the current dispensation is a de jure or a de facto constitution.
- We have been subjected to ad-hocism. People are not happy with this state of affairs. Even the terms and conditions of the AJK President and Prime Minister are not decided by the people of AJK.
- Most of the important issues have already been discussed earlier today. What I want to emphasize is that a change in the present set-up is undoubtedly the need of the hour. Pakistan and AJK must in the first instance enter into a financial settlement, whereby what AJK gets should be a matter of right and not a matter of grace. All provinces have control over natural resources located in the province, but AJK does not have this control. I think that this is what AJK wants more than anything else.
- The denial of opportunities to AJK officers for appointments to senior positions such as Chief Secretary, Finance Secretary, and Inspector General of Police is also causing lot of frustration.
- Our leadership is divided. We have all the apparatus of a full-fledged government. The change should be from the position of de facto government to de jure.



### A.R. Siddiqi

- Thank you CPDR for inviting me, the only non-Kashmiri in this conference - though on account of my long association with AJK and Gilgit-Baltistan, I have never considered myself a non-Kashmiri
- I want to bring a new perspective to the issue, based on my personal experiences as Political Agent and Resident Commissioner Gilgit-Baltistan, and later as the head of a non-governmental organization (NGO operating in both Pakistan and AJK).
- From the days of the 1949 "Karachi Agreement" between the Governments of Pakistan and AJK, and onwards during the nineteen fifties, sixties and seventies, the Political Agent and the Resident Commissioner exercised total authority in the area. In

the beginning, whosoever was the Joint Secretary in the Ministry of Kashmir Affairs at Islamabad was the Resident Commissioner. Then from 1976 onwards, a Commissioner-level officer of Pakistan was designated as Resident Commissioner, and was stationed at Gilgit. While I was Resident Commissioner, two people convicted of murder and sentenced to death submitted mercy petitions to me. I forwarded these to the Government of Pakistan. After examination by the law division, the case was returned, stating that the Government of Pakistan had no jurisdiction in the matter. However, the Resident invested with the powers of provincial government could pass appropriate orders himself. Such legal fictions were created from time to time.

- More recently, when I was trying to get the NGO I head registered with the Economic and Social Council of the United Nations (U.N.), a query was made as to the area where my NGO was functioning. In response to my answer that it functioned partly in Pakistan and partly in Azad Jammu Kashmir, an objection was raised that there is no area recognised as AJK. As far as the U.N. is concerned it is either Indian administered or Pakistan administered Jammu and Kashmir.
- 84000 square miles of the State of Jammu and Kashmir is split across Indian administered Kashmir, AJK, and Gilgit-Baltistan. Before Independence the Maharaja was the ruler of J&K, but the British Indian Government controlled defence, foreign relations, and one or two more subjects. A British Resident also used to be there.
- The very act of the creation of a Ministry of Kashmir Affairs was wrong, as a Ministry of States & Frontier Regions already existed.
- The constitutional position of AJK and Gilgit-Baltistan has never been determined. Sometimes UNCIP resolutions are described as its basis and sometimes it is something else. Whenever this basic question was raised by the people of AJK or Gilgit-Baltistan, some concession was given to them instead of determining their constitutional status.
- AJK was given a President, but the real powers remained with the Joint Secretary of Ministry of Kashmir Affairs. The Joint Secretary was called "Chief Advisor". Now there is a full apparatus for governance in AJK (i.e. a President, a Prime Minister, and a Supreme Court), but the difficulties continue because AJK's constitutional status is still confused. Administrative and financial measures alone cannot solve the problem unless a constitutional status is clearly defined.



### Abdul Hameed Khan, advocate

- Our elected representatives have been more concerned about personal and party interests and have not been attending to national issues such as good governance and holding fair elections.
- Most major issues stem from the lack of fair and free elections. Therefore, the appointment of an independent Chief Election Commissioner is a matter of top priority.
- The 1974 Act took away from Azad Kashmir those powers which, if properly used, could have given financial stability to Azad Kashmir. These powers must be restored to AJK.
- The AJK Council should only be a ceremonial institution, for maintaining links and liaising between the Government of Pakistan and Azad Kashmir.
- A common forum should be formed between Gilgit-Baltistan and Azad Kashmir to re-establish "Wahdat" (unity) of the J&K state.
- The Prime Minister of Pakistan, with due respect, is not a representative of the people of AJK, yet he exclusively exercises all major powers in respect of AJK. This is undemocratic.
- Our main focus therefore should be re-structuring the AJK Council. Its authority should be limited to the coordination of the four subjects which under, UNCIP Resolutions, are the exclusive jurisdiction of the Government of Pakistan. All the remaining powers with regard to AJK should be exercised by the AJK government and assembly.



### Justice Abdul Majeed Malik

- Distances are increasing between Islamabad and Muzaffarabad, and contacts decreasing. The decision of one person sitting in Islamabad affects the whole State of Jammu and Kashmir. Not only the authority and jurisdiction of the Council, but its composition also needs revision. When six Federal Ministers under the Chairmanship of the Prime Minister of Pakistan have all the power, then perhaps the six elected Council members have no say in legislation pertaining to AJK.
- Taxation is another contentious issue. The saying goes, "No taxation without representation". We Kashmiris have no direct representation in the Council, and as such the tax collecting apparatus of the Council also needs to be revised.

- It is an acknowledged principle that the proprietorship of natural resources rests with the government of the province or area in which they are found. If those resources are exploited by the federal government, then the province or area must receive royalties. Azad Kashmir is the only area where this principle is not followed. Giving such royalties is the only way to improve the finances of the AJK government.
- There is a need to revisit the Council's legislative list and executive authority. The Government of Pakistan has all along been financing Azad Jammu and Kashmir, sometimes even generously, but it will be more honourable if it is given to us as a due, not as dole.

### Muhammad Saleem Bismil



- All participants are unanimous that a change in the existing arrangement is absolutely essential.
- We must not think or act in isolation, but give due consideration to the baggage of history, our geo-political situation and our links in the region.
- It has been said by Justice Gilani that we have moved forward since 1947, as a result of a process of evolution. As a civil servant with more than 25 years of service, I should refute this assertion with confidence and say that there has been no improvement whatsoever.
- I must first reiterate that Pakistan is my jind jaan, (heart and soul) and comes to me before anything else. But allow me to say that the elected representatives of AJK were seldom allowed to play a decisive role in their own affairs.
- Our leadership kept on making compromise after compromise in the hope that something better would happen. But "interim" was the only prescription that was always given. When will this "interim" medicine end?
- Kashmir seems to have been adopted as a liability, not as an asset.
- Several Presidents of AJK were nominated from time to time, without any consultation with representatives of AJK.
- At times, even the AJK Chief Election Commissioner was not allowed to work independently. The decision as to who would be the candidate for a particular constituency and who should be elected was also not taken by the people or the political parties of AJK.
- Even Chief Justices were summarily removed without lawful authority.
- We are a UN-mandated local authority under the guardianship of Pakistan. Pakistan should be our guardian, not a colonial master.

- I may be excused for being emotional, but what I have said is true. It has been a tradition to brand anyone pointing out to these facts as a "security risk". No Kashmiri is a security risk; each one of them is loyal to Pakistan to the core of their hearts. But please allow me to reiterate that we do not want a colonial master, we need an elder brother.
- Every clause of the 1974 Act should be placed before the people of AJK, and ratified or reviewed by them. Authority should vest in the people of AJK, not in six ministers from Pakistan and the Chairman of the AJK Council.



### Ershad Mahmud

- Azad Kashmir is being run under a peculiar political system, controlled by local politicians and the federal establishment simultaneously. Prevailing ground realities in Azad Kashmir cannot be overlooked while thinking of, or planning to introduce, something new. We have witnessed that in the last two elections: governments were installed, and democratic process or the will of the people was largely overruled.
  - Several good proposals have come out during the discussion. Only if we narrow down our focus and just think about what is achievable or doable in the existing system, only then we would be able to reach a productive end.
- I would suggest that we adopt an incremental approach, as we may not be able to achieve everything in one go. On the other hand, if we come up with some concrete proposals then not only AJK's political leadership but Islamabad too will be obliged to pay attention. Keeping this in mind, it would be a prolonged struggle to work out an ideal working relationship between Islamabad and Muzaffarabad.
- One of the objectives of today's meeting was to provide a platform to Kashmiri civil society and stakeholders to formulate their demands in a structured manner. This is intended to help the Government of Pakistan understand what sort of change in the existing arrangements the people of Azad Jammu and Kashmir really want.
- Political discourse in AJK has so far been monopolized by political actors whose positions have consistently been inconsistent, depending on the treatment they receive from Islamabad. Today's discussion represents the first time, civil society has joined this debate, and articulated its viewpoint without mincing words. This certainly would help all stakeholders to gauge the mood of the people and make policies by taking their aspirations into account.

## Masood Shaikh

- I have only one proposal to submit: in the 3rd schedule of the Act 1974, under section 31, should be given the status of the concurrent list. Both the Government of AJK and the AJK Council may thereafter legislate on those subjects.



## Dr. Shaheen Akhtar

- I learnt a lot from today's passionate debate. All the problems are basically emerging from the ambiguity in the constitutional relationship that we have had between the Governments of Pakistan and Azad Kashmir. Local authorities, UNCIP, the 1949 agreement and then the Interim Act - all have gradually led to this development. But we need to really re-define it, because the ambiguity continues to dominate the relationship.
- The Government of Pakistan might fear that if more autonomy is given to AJK it will be much more assertive.
- The other thing to remember is that Pakistan respected the disputed status of the State while India did not. India went on with the integration process without caring about the consequences. On the other hand we are waiting for the implementation of the UN Resolutions. We have to come out of the paradox and dilemma very boldly.
- We cannot afford to delay the pace of socio-economic development of Azad Kashmir. How long can Azad Kashmir be denied the benefit of their own resources?
- Deriving from the important step of enacting the 18th Amendment, Pakistan should devolve due powers and authority to the Government of AJK, and do away with the AJK Council.
- 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.





### Justice Sharif Hussain Bokhari

- First of all I wish to congratulate the organisers for holding this conference, especially for the topic which they have selected. Previously this topic was treated as a forbidden tree. I agree with some friends who cautioned that we must not ignore the ground realities. Most of the ground realities, however, have no constitutional or legal backing. Every functionary of the state has to discharge his duties, which have legal backing. So this should be the overriding consideration for what we decide. I was born in Sopur in Indian administered Kashmir. I would like to see a constitutional setup in Azad Kashmir that would attract the people who live on the other side of Line of Control.
- Neither the present setup, both de facto and de jure, nor the ground realities meet the above criteria. They are therefore not acceptable to me. This view of mine is shared by the people of Jammu and Kashmir, particularly those in the Kashmir Valley. Many of the friends sitting here have probably visited the other side of the line of Control. I have also visited Indian administered Kashmir three or four times. The overwhelming thinking there, especially among the youth, is that they do not approve of the constitutional arrangements for AJK. What Justice Gilani has said is a step towards integration of AJK into Pakistan. The majority of the people of Kashmir on the other side do not favour such a course of action.
- Now the first fundamental question we have to answer is whether we want to be a part of the struggle for the liberation of Kashmir or not?
- The second important question would arise if tomorrow the people of Jammu and Kashmir(including Gilgit-Baltistan) were asked to give their verdict on the State's future, and the decision of the majority on the other side is not the same which people on this side give. In this case, would AJK still wish to be a part of Jammu and Kashmir?
- In advance of today's conference I did some in-depth study of the existing constitutional and administrative arrangements vis-à-vis the Government of Pakistan and AJK. I was surprised to find that every main road leads to the AJK Council and to the Prime Minister of Pakistan. I have come to know through the experience of my friend Chaudhary Latif Akbar that, even for trivial matters, AJK has to approach the federal government.
- I have also looked into the UNCIP Resolutions. They do not 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. The Commission does not exist today.

- 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 have only those powers which, during Maharajah Hari Singh's rule, were vested in the British Empire. I recollect that excepting defence, foreign affairs, and currency, no other subject was with the Government of British India.

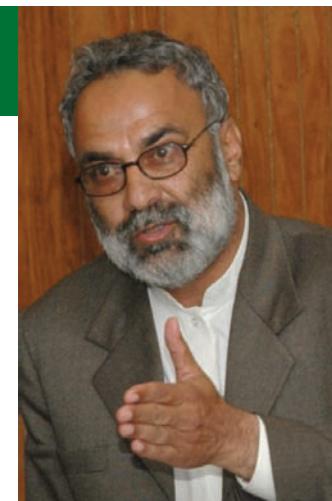
### Awais bin Wasi

- I want to say there is a consensus regarding what should be the financial and administrative arrangements between the Government of Pakistan and AJK. This question should, though, not be confused with the Kashmir issue, because then the Kashmir issue will be diluted.
- The Kashmir issue has its own dynamics, and the commitment of our people to this cause is unflinching. This should not be diluted.
- The 18th amendment to the Constitution of Pakistan is an unprecedented step, as the President and federal government have shed some of their powers. Now is the right time for the major political parties of Azad Kashmir, two of whom are present here to assert their position for the devolution of powers to Azad Kashmir. If they do it vehemently it can be achieved.
- A simmering resentment against Government of Pakistan has been noticed in AJK, if the level of this resentment is allowed to increase, as has been the case in Baluchistan, there may come to a point of no return. Therefore, timely decisions should be taken by the people at the helm of affairs. And there should be no favouritism by the Government of Pakistan.



### Dr. Zafar Hussain Zafar

- I read somewhere that the Maharaja of Jammu and Kashmir used to get rupees 17 lakhs as a royalty on the upper Jhelum Canal. This royalty payment, which was our due right, was stopped. This remains unexplained.
- The second major issue in AJK's political system is the allocation of 12 Assembly seats to refugees living in Pakistan. These 12 seats have always been used to blackmail AJK. This must go.
- Refugees settled in Pakistan are given a 25 percent quota in AJK services. The refugees are also getting concessions from federal and provincial governments. This should also go.





### Adnan Rahman

- To summarize what has already emerged in the Round Table Conference so far, it is unanimously agreed that we should redefine the relationship between Governments of Pakistan and AJK.
- To what extent, in what manner and in which modus operandi should this relationship be redefined? This is a moot point. We are all aware that there are political forces as non-political forces in power dynamics of AJK. I do not want to dilate on the role of non-political forces because all of us know how they contribute, and how they play their role in making and breaking of the Governments of Azad Kashmir.
- As far as political forces are concerned, there is diarchy in AJK - i.e. we have an assembly elected by the people, but then we have the Council also. The latter has no representative character. The role of the Council has always remained despotic, if not tyrannical. The powers exercised by the Council are not really exercised by the 13 members but by a single person, who is the Chairman of the Council. We must therefore change the character of the AJK Council. It should act only as symbolic link between the Governments of Pakistan and AJK. And we need to drastically reduce the 52 items on the Council's legislative list.



### Waqas Ali Kausar

- Our leadership in AJK has always sought authority, not governance rights.
- If the governments in Pakistan had their say, they would have by now declared AJK to be the 5th province of Pakistan. This could not be done because Kashmir is the subject of an international dispute.
- Pakistan and India do not want a state in their neighbourhood that could pose a challenge to their authority. We had therefore to create a space for ourselves within existing power structures: space for development and socio-economic uplift.
- The people of Gilgit-Baltistan were separated from us. As a consequence of geographical separation they have, over the years, developed a strong grudge against Kashmiris.
- There is a growing sense in AJK, of detachment from Pakistan, witnessed in the minds of Kashmiri youth as well. Injustice, lack of employment opportunities, the brain drain, and inadequate developmental efforts are adding to the resentment of the youth.

- The civil society of AJK should continue exerting pressure on the government to improve governance and other basic requirements. Kashmiri youth should be encouraged adequately.

### Zahid Amin

I think it is essential to thank the organizers for initiating an important debate on one of the very sensitive issues. AJK civil society, universities, media and opinion-makers will have to play a role to highlight national issues and also they should come up with solid suggestions to resolve them. One should not expect much from political parties as they have little time to discuss real people-specific issues. It is better that we move this process forward and put pressure on government to take them up at the official level.



In today's setting, a consensus has emerged that Muzaffarabad-Islamabad relationship should be revisited and the Assembly of Azad Jammu and Kashmir should have more legislative and executive powers. In my view only the politicians can't resolve all these contentious issues. Keep in mind that we do not want to cause any harm to Pakistan's interests but want to develop more harmonious relationship between the two. The unity of the State Jammu and Kashmir has been eroded and we have been divided into Jammu, Valley, Gilgit-Baltistan and Azad Kashmir. We should collectively think how we can bridge this gulf.

## 2.4 Conclusion of Roundtable Conference

The overwhelming majority of the participants agreed to recommend a drastic reduction in the legislative and executive powers of the AJK Council, along with the restoration of these powers to the AJK government and Legislative Assembly. They recommended that steps should be taken to ensure the appointment of an independent Chief Election Commissioner, the holding of free and fair elections in AJK, and revising the system of Lent Officers.

However, the house decided to form a five member committee to fine-tune these conclusions and formulate recommendation for the approval of the Round Table Conference.

The committee comprised Justice Basharat Ahmad Shaikh, a former Judge of the AJK Supreme Court; Chaudhary Latif Akbar, Secretary General of the Pakistan Peoples Party AJK; Abdur Rashid Abbasi, a Minister in the AJK Government; Ambassador Arif Kamal; and Muhammad Saleem Bismil, Secretary to the AJK Government. Tariq Masud, Zulfiqar Abbasi and Ershad Mahmud were ex-officio members.

It was also decided that the draft report of the committee would be sent to each participant by e-mail or courier, and their comments invited. These would be expected to reach CDPR within fifteen days. If the overwhelming majority of Round Table participants concur with the report, another meeting of the Round Table will not be necessary.

### **3. LIST OF THE PARTICIPANTS**

1. Abbasi, Abdur Rashid, Minister AJK Government, All Jammu and Kashmir Muslim Conference.
2. Abbasi, Zulfiqar, President CPDR, former President AJK Chamber of Commerce and Industries.
3. Akhtar, Shaheen Dr, Senior Research Fellow, Institute of Regional Studies, Islamabad.
4. Bismil, Muhammad Saleem, Secretary, AJK Government.
5. Bokhari, Sharif Hussain, Former Judge, Punjab High Court.
6. Chaudhary, Latif Akbar, Secretary General Pakistan Peoples Party, Azad Jammu Kashmir.
7. Fatima, Gulzar Ms, Former Member, AJK Legislative Assembly, Pakistan Peoples Party, Azad Jammu Kashmir.
8. Gilani, Manzoor Hussain, Former Chief Justice, AJK Supreme Court
9. Habib ur Rehman, Professor, Vice Chancellor, University of Azad Kashmir.
10. Khan, Abdul Hameed, Advocate, Jammu and Kashmir Peoples Party.
11. Khan, Muhammad Anwar, Maj. Gen (R), Former President Azad Jammu and Kashmir.
12. Khan, Muhammad Nawaz, Former Chief Justice, AJK High Court.
13. Kausar, Waqas Ali, Research Scholar, National University of Modern Languages, Islamabad.
14. Kamal, Arif, Former Ambassador of Pakistan.
15. Latif, Tanvir, Former Director Education, AJK Government.
16. Mahmud, Ershad, FNF Consultant and member BOD, CPDR.
17. Malik, Abdul Majeed, Former Chief Justice, AJK High Court, President AJK Liberation League.
18. Masud, Tariq, Chairman CPDR, Chairman AJK Red Crescent Society ,
19. Qureshi, Khalil Ahmad, Former Vice Chancellor, University of AJK.
20. Rahman, Adnan, Lecturer Law Department, University of AJK.
21. Sardar, Khalid Ibrahim, President Jammu and Kashmir Peoples Party.

22. Shaikh, Basharat Ahmad, Former Judge, AJK Supreme Court.
23. Shaikh, Masood, Lawyer, Mirpur.
24. Siddiqui, A.R, Former Chief Secretary AJK Government.
25. Sohail, Mohammad Akram, D.G, Disaster Management Authority, AJK Government.
26. Wasi, Awais Bin, Research Scholar, Institute of Policy Studies (IPS), Islamabad.
27. Yaseen, Raja Muhammad, Former Minister, AJK Government, Muslim Conference.
28. Zafar, Zafar Husain, Dr. Associate Professor, Government Post-Graduate College for Girls, Rawalakot.

## 4. Photographs



Left to right: Maj. Gen (R) Muhammad Anwar Khan, Moeed Pirzada, Tariq Masud, Justice Basharat Ahmad Shaikh, Abdul Majeed Malik, A Guest, Abdur Rashid Abbasi, Chaudhary Latif Akbar, Khalil Ahmad Qureshi, Justice Hussain Gilani, (second row) Tanvir Latif, Gulzar Fatima, Dr Shaheen Akhtar, Arif Kamal, Prof. Habib ur Rehman, Mohammad Akram Sohail, Zahid Amin, Muhammad Saleem Bismil, Adnan Rahman, (third row) Awais bin Wasi, Dr. Zafar Husain Zafar, Ershad Mahmud, Zulfiqar Abbasi, Shaikh Masood, Waqas Ali Kausar.



L to R Zulfiqar Abbasi, Dr. Pirzada, Tariq Masud and Ershad Mahmud



An overview of the Round Table



A view of the Round table



A view of the Round table



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