

Status of AJK^{*} in Political Milieu

Ershad Mahmud^{}*

Abstract

[The constitution of Pakistan affirms that the political status of entire Jammu and Kashmir State shall be determined only after a plebiscite whereby the wishes of the people of the state shall rule supreme. There is a consensus that AJK does not belong to Pakistan geographically yet it is not an independent state either. Its historical nexus with Pakistan as well as internal administrative and constitutional evolution provides an intriguing study. This article aims at dissecting the dilemma the territory faces. India, on the other hand, has always been vociferous in maintaining AJK as 'Pakistani occupied Indian territory.' The successive United Nations resolutions contain the invariable mention of the territory. The study conclusively points out the legal and constitutional irritants between Islamabad and Muzaffarabad while it focuses on the current situation and suggests corrective measures and a plausible way forward. – *Editors*]

The Deliverance of the State

Azad Jammu & Kashmir (AJK) is a byproduct of the division of the Dogra principality of Jammu and Kashmir that took place due to the Indian intervention in 1947–48 and a mass uprising in the Poonch areas.¹ During

* The abbreviation used in the constitution of Azad Jammu & Kashmir is AJ&K but AJK is most commonly used.

* Ershad Mahmud is Research associate at the Institute of Policy Studies, and specializes in Kashmir and India-Pakistan relations.

¹ Before the British quit India in August 1947, the subcontinent consisted of two types of territories: British India, which was directly ruled by Great Britain, and 584 princely states including the State of Jammu and Kashmir. When the British government announced a plan on June 3rd 1947 for the end of British rule, transfer of power in the subcontinent and setting up two sovereign countries — Pakistan and India — the princely states were given two options: either they accede to Pakistan or India. The logic of British withdrawal from the subcontinent and the ideological basis of partition dictated that the Muslim majority states would join Pakistan and the Hindu majority ones would accede to India. This happened in all the cases except the states of Jammu and Kashmir, Hyderabad and Junagadh.

Sensing the aggressive designs of India, the Kashmiri people revolted against the ruler who asked India for help and subsequently got about 1/3 of the state of J&K 'freed' (Azad). Azad Kashmir declared self-government on October 24, 1947. Exploiting the situation by extorting the Instrument of Accession from the ruler on October 27, 1947, as the price for New Delhi's support, the Indian troops landed in Kashmir even prior to the claimed date of October 27, 1947. Lord Mountbatten as the governor-general of independent India accepted the accession but only as provisional. Indian Prime Minister Jawaharlal Nehru made a pledge to resolve the Kashmir dispute in accordance with the wishes of the people.

Pakistan reacted sharply to the so-called 'accession' and the revolt in Kashmir turned into a Pak-India war with Pakistan supporting the Kashmiris who were opposing the Kashmir's accession to India. Meanwhile, India referred the Kashmir question to the United Nations Security Council on January 1, 1948. The following year, on January 1, 1949, the UN helped enforce ceasefire between the two countries. The UNSC Resolution of April 21, 1948 — one of the principal UN resolutions on Kashmir — stated that, both India and Pakistan desire that the

this period, the local populace put up a resistance movement to the Maharaja's forces in August 1947 and subsequently also to the Indian invading forces in October 1947. As a result, the areas now forming AJK were liberated. On October 24, 1947, a provisional government was set up with its headquarters at Palandri, a small town of the area then known as Poonch; later, the seat of the government was moved to Muzaffarabad. The young barrister Sardar Mohammad Ibrahim Khan — the leader of the Muslim Conference which had led the resistance movement against Maharaja — was nominated President of the interim government.² Besides efforts for reforms and development of AJK, the Cabinet constituted under the President aimed to liberate the remaining areas of Jammu and Kashmir.³ It was also declared that as soon as peace was restored, a legislative assembly for the entire state would be elected.⁴

Defining the Nascent State

The UN resolutions on the future of the nascent State are clear but neither the government of AJK, nor the Pakistani government or the United Nations (UN) have ever tried to define the international legal status of the state in formal terms. The closest descriptions are to be found in various resolutions drafted by the UN Security Council (UNSC) and the UN Commission for India and Pakistan (UNCIP). For example, one can vaguely deduce the status of AJK from the statement that Azad Kashmir is neither a sovereign state nor a province of Pakistan but rather a 'local authority' with responsibility over the area assigned to it under the ceasefire agreement...⁵ As a UNSC resolution states: "Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission..."⁶

Subsequently, the UNCIP implicitly recognized the *de facto* position of the Azad Kashmir government. Expressing his views at a meeting with the representatives of the Government of Pakistan on September 2, 1948, Josef Korbel, a member of the United Nations Commission on India and Pakistan, said: "By 'local authority' we mean the Azad Kashmir people,

question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite. Subsequent UNSC Resolutions reiterated the same stand. *Kashmir Brief*, Institute of Policy Studies, Islamabad (1997)

² Sardar Mohammad Ibrahim Khan (1915-2003) was born in Rawalakot, Azad Kashmir. He was educated in the city of Poonch, in Lahore and finally in London. He became Founder-President of Azad Kashmir in October 1947 and served four terms in office — twice by appointment by the territory's oldest political party, the All Jammu and Kashmir Muslim Conference (AJKMC), and twice as elected president. His last term in office was from August 25, 1996, to August 24, 2001. He passed away in Islamabad on July 31, 2003.

³ *Kashmir Brief*, Institute of Policy Studies, Islamabad (1997).

⁴ Abdul Aziz Mir "Azad Kashmir government: A chronology." *The Muslim*, Aug. 13, 1996.

⁵ Rose, Leo. (1992). "The Politics of Azad Kashmir." *Perspectives on Kashmir: The Roots of Conflict in South Asia*. Edited by Raju G.C. Thomas. Boulder, Colorado: Westview Press. P.236-237

⁶ UNCIP resolution, Aug. 13, 1948, clause A-3.

though we cannot grant recognition to the Azad Kashmir government.”⁷ Besides these remarks, no other references could be found in the UNSC debate related to the status of the government of AJK.

Where does Pakistan Stand?

Pakistan’s principled stand is that the accession of the state of Jammu and Kashmir to India was neither final nor legal; the people of the state should decide through a plebiscite whether it should accede to India or Pakistan. Successive governments in Pakistan have consistently reiterated the following constitutional clause, which is also the only constitutional clause relevant to the state: “When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State.”⁸

The relationship between AJK and Pakistan is twofold: in 1947, the Federal Government of Pakistan struck a deal with Muzaffarabad, commonly known as the Karachi Agreement.⁹ Additionally, the AJK Constitution of 1974 gives Islamabad significant legal authority in the affairs of AJK but only through the Kashmir Council. The AJK Constitution also restricts the AJK Assembly and the Kashmir Council from making any laws regarding the following areas, which fall under the purview of the Federal Government of Pakistan:

- The responsibilities of the Government of Pakistan under the UNCIP Resolutions;
- The defense and security of AJK;
- The issue of any bills, notes or other paper currency; and
- The external affairs of Azad Jammu and Kashmir, including foreign trade and foreign aid.

In March 1949, Pakistan created the Ministry of Kashmir Affairs and Northern Areas (MKANA), which has been liaising between the Azad Kashmir and Pakistan governments, although local Kashmir authorities have always been critical of its role. (The relationship of AJK with Pakistan is discussed in more detail later in this article).

⁷ *Op.cit.* Sardar M. Ibrahim Khan, p. 127.

⁸ *The Constitution of Pakistan 1973*, Article 257.

⁹ In April 28, 1949, the Karachi Agreement was signed between Pakistan and the AJK governments and the Muslim Conference. The agreement handed over matters related to defence, foreign policy, negotiations with the then UN Commission for India and Pakistan (UNCIP) and co-ordination of all affairs relating to Gilgit and Baltistan areas to Pakistan.

The Indian Stance

Today, the Indian Government's position on Kashmir is:

- Jammu and Kashmir is an integral part of India since its accession;
- The uprising in the state is, thus, India's domestic affair;
- Pakistan should vacate the territory (i.e. Azad Kashmir, Gilgit and Baltistan) that it has illegally occupied;
- A discussion on the position of Kashmir can only be undertaken within the framework of the 'Indian constitution'; and
- A discussion on Kashmir with Pakistan can only be held under the terms of the Simla Agreement, which envisages a bilateral negotiation framework.¹⁰

Article 370 of the Indian Constitution gives special place to the relations of Jammu and Kashmir (J&K) with the Indian union and an accord called the Delhi Agreement provides the framework for Indian relationship with the state. The Indian Parliament passed a unanimous resolution on February 22, 1994, which defined the territories of J&K and made it binding on the Indian government to take back the "occupied territories" from Pakistan's control. The resolution says, "Pakistan must vacate the areas of the Indian State of Jammu and Kashmir, which they have occupied through aggression; and resolves that all attempts to interfere in the internal affairs of India will be met resolutely."¹¹

At times, Indian officials have also claimed that not only AJK but the Northern Areas too are a part of the Indian union and Islamabad has to vacate them sooner or later.

On May 2, 2004, Digvijay Singh, who was then India's Minister of State for External Affairs, appearing on BBC program "Question Time India" said "...New Delhi did not accept the Line of Control (LoC) and would not agree to turn it into international border..." He was of the opinion that the dispute also involved "Pakistan-Occupied Kashmir."¹² The former Indian Prime Minister Vajpayee also raised objections regarding democracy and the political system in AJK in October 2001.¹³

¹⁰ See Text of the Simla Agreement at: [www.stimson.org/southasia/?sn= sa20020-114291](http://www.stimson.org/southasia/?sn=sa20020-114291) - 12k; viewed on Feb. 20, 2006.

¹¹ Available at <http://www.ipcs.org/INDO-PAK-15-Docu.pdf>; viewed on April 28, 2005.

¹² Haider, Ejaz. "Is Azad Kashmir disputed?" *The Kashmir Telegraph*. June 1, 2003; at: www.kashmirtelegraph.com/0603/six.htm - 30k, viewed on May 2, 2005

¹³ *The Hindu*. Oct. 24, 2001. The Indian Prime Minister Atal Bihari Vajpayee referring to AJK elections in his speech on October 24, 2001, said: "... what is the condition of the area occupied by Pakistan? There is no democracy, no rights for the people living there. Recently there was an election, but the power was handed over to an army-general ..."

The Indian External Affairs Secretary Kanwal Sibal also maintained that all of Kashmir belonged to India and, therefore, there was no question of New Delhi accepting the LoC as an international border. He also said that India would raise the issue of "Pakistan-occupied Kashmir" during the forthcoming bilateral talks.¹⁴ Recently, the Indian Minister for External Affairs while responding to question said:

We would like to reaffirm that the region of Gilgit-Baltistan is a part of the State of Jammu and Kashmir, which on the basis of its accession in 1947 is an integral part of India.¹⁵

Moreover, Article 48 of the State Constitution of Indian-held Jammu and Kashmir mentions Azad Kashmir as an area under Pakistani control and reserves 25 assembly seats for the people of AJK and the Northern Areas (Gilgit-Baltistan).¹⁶ All of this shows that India considers AJK a part of its own territory. Nevertheless, at the diplomatic level, New Delhi has always shown a pragmatic attitude towards Pakistan's control over AJK and the Northern Areas.

Significant Political and Constitutional Developments

1947-60 – The Formative Phase: The provisional government of AJK was formed on October 24, 1947.¹⁷ It announced a balanced and non-communal declaration reaffirming the principle of the freedom struggle. In fact, the AJK government started from scratch with no experienced staff and administration available to run government affairs. It had no offices, no records; not even a typewriter to carry out the official work. But in order to liberate the entire state of J&K, the government raised an army of war veterans from the Poonch and Mirpur regions.¹⁸

There was neither a constitutional framework nor a legal setup to function within. The government defined itself as a "War Council" formed with the sole objective of liberating the parts of J&K that remained under Indian control. This government worked on an *ad hoc* basis until the ceasefire agreement was signed between India and Pakistan on January 1,

¹⁴ *Ibid.*

¹⁵ Iftikhar Gilani, 'Gilgit and Baltistan India's integral part', *The Daily Times*, March 10, 2006.

¹⁶ Section 48 of IJK Constitution says: "Notwithstanding anything contained in section 47, until the area of the State under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives (a) twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly; and the said area shall be excluded in delimiting the territorial Constituencies Under Section 47. 2005<http://www.kashmir-information.com/LegalDocs/140.html>, Viewed on May 2.

¹⁷ It declared that: The Provisional government which is assuming the administration of the State is most emphatically not a communal government. It will include Muslims as well as non-Muslims in the cabinet; it will serve the people, exist for the temporary purpose of restoring law and order in the State and enable the people to elect by their free vote a popular legislature and a popular government.

¹⁸ *ibid.* p.625

1949. This made it clear that the AJK government now had to devise a structural setup to improve the lives of its people.¹⁹ Subsequently, AJK government formalized the rules of business for running the administration. The executive as well as the legislative authority was vested in the President. In 1948, courts were created and law codes were introduced to run the judicial administration. Some laws of Punjab were adopted for the state while a good body of the former Jammu and Kashmir State Code was retained.²⁰

A factional rift: Constitutionally, the AJK President was responsible for all state affairs through the democratically elected government. However, when Chaudhary Ghulam Abbas (1904-67) migrated to Pakistan from Indian-held Kashmir 1949, he became the supreme head of the largest political party – the Muslim Conference (MC).²¹ On March 2, 1949, the Working Committee of the MC adopted a resolution that gave significant powers to the supreme head, which resulted in a paradigm shift in the power structure. The supreme head was given the power to appoint the president and other members of the council or ministers, who would be collectively responsible to him. The government of Pakistan recognized the supremacy of Chaudhary Abbas and his Working Committee.²² Unfortunately, a few political figures could not get along so well in the new setup, chiefly Sardar Ibrahim. Chaudhary Abbas was instrumental in the sacking of Sardar Ibrahim's government in May 1950, which ultimately led to a mass uprising against the non-democratic powers of the supreme head.²³

The Abbas-Ibrahim clash was a reflection of ideological and political beliefs as well as the future ambitions of the two factions. In fact, the two leaders held two very different sets of opinions on how to conduct the affairs of AJK. Chaudhary Abbas, a towering leader of the Muslim Conference from Jammu City, had enjoyed good relations with Quaid-i-Azam Muhammad Ali Jinnah (1876-1948) and the then ruling elite of

¹⁹ *Ibid.* Rose, Leo. (1992). P.237

²⁰ Interview Justice Mansoor Gilani, May 12, 2005, Islamabad

²¹ Muslim Conference (MC) was established in 1931 and after passing through various stages it became the ruling party of Azad Kashmir in 1947. After his return to Pakistan, Chaudhary Ghulam Abbas continued as its leader and patron till his death in 1967. Presently, the MC is headed by Sardar Attiq Ahmad Khan, while Shah Ghulam Qadir is the secretary general and Sardar Abdul Qayyum Khan the supreme head. The central secretariat of the MC is located in Rawalpindi.

²² The arrangement had catastrophic results: The government employees got immediately divided into pro-Ibrahim and pro-Abbas factions with the result that Azad Kashmir had two parallel administrations running at the same time. For details see Justice Saraf Yousaf, *Kashmiris Fight for Freedom*, Vol. 2, pp.1291 and 1367.

²³ The opponents of Abbas group raised the slogan 'democracy or death' and demanded the reorganization of the MC and Azad Kashmir government through constitutional and democratic methods. An adhoc committee was formed with Mir Waiz Yousaf Shah and Mir Abdul Aziz as its president and secretary, respectively. The committee launched a civil disobedience movement which soon developed into a violent agitation. At places like Rawalakot and Palandri, the home of demobilized World War II veterans, fight took place between 12th Division of Pakistan army and locals. See; Prem Nath Bazaz. pp. 634-635.

Pakistan. He was not in favor of establishing a democratic set-up as he thought that electoral politics would take leaders, parties and the people away from the cause of liberation. Above all, the AJK politics revolved around a clan system, and Chaudhary Abbas, being from the other side of the LoC, had no roots in the area. Critics maintain these were the reasons for Chaudhary Abbas' mindset. A large number of refugees from Jammu and a handful of ethnic Kashmiri political activists settled in various cities of Pakistan. With a bitter legacy, these people tried hard to succeed in the political arena at each other's expense. Those from the Kashmir Valley wholeheartedly backed Sardar Ibrahim, while those from Jammu stood by Chaudhary Abbas. The ethnic and linguistic divides also impacted negatively on the local polity, eventually pitching the local people and the refugees against each other.

Sardar Ibrahim had a huge support base and was a popular leader of his time. He was one of the few local people who were highly educated and articulate. His rich background and sudden rise to the top position made him a hard bargainer and unflinching in matters of principle. Summarily, the infighting and the petty politics of power lessened the two leaders' leverage and made them *personae non gratae* in the corridors of Pakistan's Ministry of Kashmir Affairs.

On the other hand, in Pakistan, the demise of the country's founding father derailed the country. The civil and military bureaucracy prevailed on the political horizon and, eventually, the military seized power in October 1958. The shift from democracy to dictatorship in Pakistani politics heavily impacted AJK politics, slowing the democratization process further. The military-led establishment appointed and sacked AJK's rulers on the basis of personal likes and dislikes. The Ayub government, in particular, had little tolerance for political opponents. The people of AJK, who had earlier experienced the tyrannical rule of the Maharaja, were not prepared to accept another dictator. Their urge for representative government was unprecedented and enjoyed widespread support. For a dispassionate study of the dynamics of the AJK political history and major constitutional developments, this political background framework must be borne in mind.

Flawed from the outset: In order to meet the popular demand for civil rights and a democratic set up, the AJK government revised its Rules of Business with the consent of the Ministry of Kashmir Affairs and Northern Areas (MKANA), thrice in a short span of eight years.²⁴ The purpose of these revisions was to devise a framework for smooth functioning of the state machinery. However, the government failed to devise a workable power-sharing formula between Chaudhary Ghulam Abbas and Sardar Ibrahim. For instance, in December 1950, the Ministry of Kashmir Affairs introduced new rules investing all executive and legislative powers in the supreme head of the Muslim Conference. Under the rules, the supreme head had extensive powers to nominate the president and the council of ministers. Thus, the entire government, including the president, was

²⁴ The Ministry assumed kingmaker role and called the shots till 1990 when uprising started in Indian-held Kashmir and army replaced its role.

responsible to the supreme head of the Muslim Conference, i.e., Chaudhary Abbas. In fact, all legislation required the Supreme Head's prior approval.²⁵

The Rules of Business were revised for the second time in 1952, purportedly to create a balance of power. However, instead of giving the vote to the people, these rules vested full powers in the MKA and weakened the grip of the Muslim Conference on state affairs. The appointment of president was the sole prerogative of the Muslim Conference and duly recognized by the MKA. Above all, the appointment of the heads of government departments, and the judiciary, was necessary to have MKANA's consent.²⁶ This arrangement created disturbance as well as ill-will against the federal government. These revisions reduced the status of AJK government to that of a municipality. The local political groups expressed their anger vociferously and organized several protests to demand democratic rule, but to no avail.²⁷

The third revision of the Rules took place in November 1958. Strangely enough, the Joint Secretary was replaced by the "Chief Adviser" through this revision. The new amendment could not contented public aspirations as the Chief Adviser was selected by the MKANA not the government of AJK. To add insult to injury, all functions of the government were exercised in the name of the president, while the real power was vested in the hands of powerful MKANA officials. The AJK government was not allowed to create a post that required a monthly salary of over Rs.150, and was not allowed to spend over Rs. 100,000 without the permission of MKA.²⁸

The AJK masses remained without adult franchise from 1947 to 1960; no election was held during this period, and persons who enjoyed the confidence of the Working Committee of the Muslim Conference were nominated as the President of Azad Jammu and Kashmir. In the meantime, as noted earlier, the Muslim Conference split into two factions, one headed by Chaudhary Ghulam Abbas and the other by Sardar Ibrahim Khan. In the

²⁵ Full text is published in Syed Manzoor. H. Gilani, *Constitutional Development in Azad Jammu & Kashmir* Lahore: National Book Depot, pp.46-65.

²⁶ *Ibid*, p.87. The rules say: The President of Azad Kashmir government shall hold office during the pleasure of the All Jammu and Kashmir Muslim Conference duly recognized as such by the government of Pakistan in the Ministry of Kashmir Affairs. It further says: In addition to general supervision over all departments of government the Joint Secretary Ministry of Kashmir Affairs shall pass final orders on appeals against orders passed by Secretaries and Heads of Departments in respect of government servants under their control in all matters of appointments, promotion and disciplinary action of all kinds.

²⁷ Prominent Kashmiri writer-turned political, Mir Abdul Aziz writes in booklet titled *Dictatorship in Azad Kashmir* that a single individual has assumed untrampled authority over all the affairs of the State. While he enjoys complete sovereignty over everything in the administration he himself is not open to question before any public body. There is no legislative assembly nor anything of that nature in Azad Kashmir. Mir Abdul Aziz, *Dictatorship in Azad Kashmir* (Rawalpindi:1952), p

²⁸ The rules clearly underline the role of MKANA as: The Ministry shall have general supervision over the Azad Kashmir government in matters of policy and general administration. Op.cit, Syed Manzoor. H. Gilani p.133.

early 1950s, the two leaders' differences made headlines. Analyzing this situation, the renowned Kashmiri historian Yousaf Saraf says, "Abbas group was straining every nerve to deprive the Azad government of as much power as possible. It also seemed to suit the convenience of the MKA. Mr. M.A. Gurmani, the minister without portfolio who was in charge of Kashmir affairs, had his permanent office in Rawalpindi. He was playing one group against the other. As a result of these intrigues and counter-intrigues, the Azad Kashmir government was deprived of important powers."²⁹

1961-70 – Crawling to a Democratic Era: In October 1958, General Muhammad Ayub Khan took over power and totally banned political activity in Pakistan and AJK. He dismissed the government of Sardar Ibrahim Khan (1957-59) in November 1959 and appointed K.H. Khurshid (1924-88) as the new president.³⁰ After establishing his writ over state affairs, Ayub Khan introduced the idea of "basic democracies" to legitimize his military regime. The "basic democracies" were extended to the AJK through the Basic Democracies Act of 1960, under which the President and the Azad Kashmir Council were to be elected indirectly by the members of various local bodies that were elected directly.³¹ Thus, the President of AJK was elected in 1961 through an electoral college of 1,200 "basic democrats" in AJK and another 1,200 who represented Kashmiri refugees in Pakistan. Interestingly, Chaudhary Ghulam Abbas and Sardar Ibrahim were disqualified from participating in the elections by a tribunal on the charges of corruption.

Mr. Khurshid became the first AJK president to be elected by these members. Although, he enjoyed a good relationship with the President of Pakistan, who off and on praised him, the bureaucracy did not like this situation and refused to abandon its old working style which, in due course, ended up in an intense rift between the top bureaucracy of MKA and the Khurshid-led administration.³² At times, officials simply declined to obey the President's orders. At the same time, Mr. Khurshid could not improve his relations with Chaudhary Abbas, who also encouraged the President's opponents to dislodge him from the top office. Eventually, this power struggle led to Mr. Khurshid's unceremonious resignation.³³ During his term

²⁹ Saraf, Yousaf, p.1290

³⁰ K. H. Khurshid was born in Srinagar in 1924. He got his early education in Jammu and received his bar-at-law degree from Lincoln's Inn London. He worked as private secretary of Qaid-e-Azam from 1944-1947. He served as AJK president from May 1959-August 1965.

³¹ Syed Manzoor. H. Gilani, *Constitutional development in Azad Jammu & Kashmir* (Lahore: National Book Depot) p.

³² Above all, in the early sixties, there was a move from K. H. Khurshid, for the recognition of the Azad Kashmir government as the parallel government for the whole State. Ayub Khan and his Minister for Foreign Affairs, for sometime, encouraged this move, but when it was understood by the Ayub regime that it could result in the ultimate separation of the Azad Kashmir areas and the Northern Areas from Pakistan, he discouraged it and Mr. Khurshid was thrown out of power unceremoniously. Mir Abdul Aziz, "The tussle in Azad Kashmir", *Weekly Insaaf* Rawalpindi, February 2-6, 1990.

³³ For details see Saraf op.cit. pp.1339-1340 and Mirza Shafiq Husain, *Azad Kashmir, Ek Siyasi Jaizah: 1947 Ta 1975* (Islamabad: Qaumi Idarah barae Tahqiq-i Tarikh o Saqafat), p. 222

a new act was introduced which did not bring any significant change in the legal framework save humiliation. According to it, the State Council could not undertake any legislation without the previous consent of the chief adviser and no law could take effect unless the chief adviser directed so by a notification. In fact, it undermined the already fragile civilian control over government and strengthened the all-powerful MKANA.

It is a sad fact that the people of AJK had to struggle to achieve basic democratic rights for over two decades. When the Maharaja's autocratic rule came to an end, it had seemed obvious that a democratic rule would be established, but this could not happen for reasons outlined above. Leaders from across the political spectrum were tired of the MKANA's insatiable desire for power, and were now desperate to be done with this situation. The premature departure of the first elected president, K.H. Khurshid, had a tremendous psychological impact on local politics. It compelled thinking persons in AJK to resist the unnecessary interference of the MKA; and the desire for a workable representative system of governance and the willingness to forge unity for such a system, were strengthened.³⁴

In this context, the leading political parties headed by Sardar Ibrahim Khan, Sardar Muhammad Abdul Qayyum Khan (*b.* 1924), the political successor of Chaudhary Abbas, and Mr. Khurshid formed an alliance to throw off the MKANA hold in August 5, 1968. There was a wave of agitation, not only in AJK but also in major cities of Pakistan. The heads of this three-party alliance demanded an elected and responsible government, with an elected president, legislature and full powers of legislation, including the power to approve the state's budget.³⁵

In Karachi, an All-Parties Kashmir Committee organized a procession, while in Muzaffarabad a violent demonstration was staged outside the President office on Dec 27, 1968. The Pakistani media and political parties also demanded implementation of the same system of governance in AJK as in other parts of Pakistan. Meanwhile, various political parties of Pakistan launched a massive agitation campaign against the Ayub regime, which resulted in his resignation but also paved the way for another martial law, by General Agha Muhammad Yahya Khan in 1969.

1970-74 – The Process of Constitution-Making: The Ayub regime had tried to establish its particular brand of democracy in Muzaffarabad.

³⁴ Mir Abdul Aziz reckoned the old days when Joint Secretary was the 'master' of the area. It reads: The Joint Secretary of Kashmir Affairs was the Governor of Azad Kashmir as he was also the chief advisor of the Government at Muzaffarabad. In those days, the deputy and joint secretaries of Kashmir Affairs were received by the President of Azad Kashmir at Kohala or Muzaffarabad and greeted with guard of honor. One of the AK Presidents, who was in meeting with one Js (poet Fazli), was asked to sit in the PA's room because the JS was to receive a call from Karachi from the Minister concerned and the AK President was not supposed to know what was passing between the Minister and the Joint secretary. Mir Abdul Aziz, "The tussle in Azad Kashmir", Weekly *Insaf*, Rawalpindi, February 2-6, 1990.

³⁵ op.cit. Mirza Shahfiq, p.408

Likewise, the new martial law regime of General Yahya Khan had its own political agenda for AJK. The Yahya regime had already made some constitutional changes: it dissolved the 'one-unit system' and also held, for the first time in the country's history, free and fair elections. The military-led administrations had, quite often, showed a resolve that they were ready to tackle the most complex and sensitive problems of Pakistan.

The political leadership of AJK had been demanding elected government on the basis of adult franchise for a long time. Incidentally, at the same time, the people of Pakistan were vigorously demanding free and fair election in both East and West wings of Pakistan. The federal government appointed Abdul Hameed Khan, a soft-spoken retired army general, as the Minister for Kashmir Affairs in 1969. He met with the leaders of the three major parties and assured them that the federal government would soon introduce democratic rule in the area. Subsequently, he appraised the three-party alliance leaders about proposed constitutional changes and invited them to give their suggestions.³⁶ He also formed an interim government to draft a new constitution for AJK and hold fresh elections on the basis of adult franchise.³⁷

There is no denying the fact that, up to 1970, the fate of AJK governments largely depended on the all-powerful bureaucrats of the Ministry of Kashmir Affairs that were the kingmakers. The bureaucracy would not let any head of the AJK government work independently and freely. However, the ruling groups were, by and large, neither oppressive nor totalitarian. It is true, however, that, at times, political dissidents were victimized by various governments.³⁸ During these years, different groups and personalities had always raised their voices in support of democratic rule in the area.

The change of mindset bore results: Kashmiri leadership's unanimous demand for democratic rule and change in Islamabad's approach finally bore fruit in 1970. A democratic set-up was established in Azad Kashmir through the 1970 Act and presidential elections were held on "one person one vote" democratic formula. The state subject law of 1924, which bars non-Kashmiris to obtain state citizenship, was also made part of the constitution. The Presidential system worked for about four years; was subsequently replaced by the parliamentary system under the Azad Kashmir Interim Constitution Act, 1974 in August the same year.³⁹

For the first time in 1970, the Legislative Assembly and the President of Azad Jammu and Kashmir were elected by the people of Azad Kashmir and the refugees of Jammu and Kashmir settled in Pakistan.⁴⁰ The Assembly consisted of 24 elected members and one lady member elected indirectly by the fellow members. The Assembly, however, had limited

³⁶ *ibid*, p. 358-359

³⁷ *ibid*

³⁸ *op.cit.* Saraf, Yousaf, p.1368.

³⁹ *ibid*

⁴⁰ For details see, The Azad Jammu and Kashmir interim Constitution Act, 1974

legislative powers; particularly it had no role in matters related with defense, currency, UNCIP resolutions and foreign affairs. It had the powers to remove the elected president by two-third majority.

The 1974 onwards: The Parliamentary setup: With the introduction of a new constitution in Pakistan in 1973, which was parliamentary in structure, a wave of change also gripped people in Azad Kashmir who raised voice for a parliamentary form of government in the state. Meanwhile, the Pakistan Peoples Party's newly established branch in AJK demonstrated its eagerness to replicate federal parliamentary system in the area. Secondly, it is widely believed that Prime Minister Zulfikar Ali Bhutto (1924-77) had some sort of understanding with his Indian counterpart Indira Gandhi (1917-84), to settle the Kashmir issue on the basis of the status quo. In this backdrop, he strived to integrate the AJK with the rest of Pakistan. He even offered the people of the AJK to become the fifth province of Pakistan.⁴¹ At the same time, he also introduced many administrative changes in Gilgit and Baltistan for their territorial integration with the rest of the country.

The federal government, too, encouraged aspirants of parliamentary system. Following an accord with the local political parties, on June 10, 1974, ministry of Kashmir affairs announced a new legislative arrangement for AJK. The act of 1970 was modified and reenacted as the Azad Jammu and Kashmir Interim Constitution Act of 1974. This included 42 members (including two women to be elected by the legislative assembly members) elected directly on the basis of adult franchise for a five-year term.⁴² Furthermore, Islamabad institutionalized its relationship with Muzaffarabad by establishing a new body called Azad Jammu and Kashmir Council headed by the Prime Minister of Pakistan.

The Institutionalization of relationship with Pakistan

Under the new Constitution the 11-member Council is headed by the Pakistan prime minister as its Chairman while the AJK president is its vice-Chairman. This largely reduced the role Ministry for Kashmir Affairs' but minister in charge of MKANA is still ex-officio member of the council. Therefore, the ministry officials lost direct control of Azad Kashmir's internal affairs but still maintain indirect role (that will be discussed subsequently). Under this arrangement, Pakistan's prime minister nominates five members of Pakistan Assembly to the council while the AJK Assembly elects six members on a proportional representation [of political parties] basis from amongst its members.⁴³

The basic idea of forming the council was to reduce direct powers of the ministry and establish the writ of the elected body and also to raise the level of interaction between Islamabad and Muzaffarabad by making the prime minister of Pakistan chairman of the council. Despite these measures, the 1974 act failed to evolve a balance and consensus formula to

⁴¹ *op.cit.* Mirza Shafique Hussain, pp.390-393

⁴² *op.cit.* Mansoor Gilani, pp.171-172

⁴³ The Azad Jammu and Kashmir Interim Constitution Act, 1974, pp.16-17

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sharing of powers between AJK government and the council. Now the balance is heavily tilted in Kashmir council's favor often rendering the AJK assembly helpless. The constitution places 52 subjects under the jurisdiction of the council. Following are some of the significant powers which council enjoys, which illustrates its magnitude and influence over AJK legislative body as well as government.

- a) Subject to the responsibilities of the Government of Pakistan under the UNCIP Resolution, nationality, citizenship and migration from or into Azad Jammu and Kashmir, and admission into, and emigration and expulsion from, Azad Jammu and Kashmir, including in relation thereto the regulation of the movements in Azad Jammu and Kashmir of persons not domiciled in Azad Jammu and Kashmir.
- b) Mineral resources necessary for the generation of nuclear energy.
- c) Banking, that is to say, the co-ordination with the Government of Pakistan of the conduct of banking business.
- d) The law of insurance and the regulation of the conduct of insurance business.
- e) Stock exchange and future markets with object and business not confined to Azad Jammu and Kashmir.
- f) Corporation, that is to say, the incorporation, regulation and winding up of trading corporations including banking insurance and financial corporations, but not including corporations owned or controlled by Azad Jammu and Kashmir and carrying on business only within Azad Jammu and Kashmir or, co-operative societies, and of corporations, whether trading or not, with object not confined to Azad Jammu and Kashmir, but not including universities.
- g) Newspapers, books and printing presses.
- h) State property.
- i) Curriculum, syllabus, planning, policy, centers of excellence and standards of education.
- j) Sanctioning of cinematograph films for exhibition.
- k) Tourism.
- l) Duties of customs, including export duties
- m) Taxes on income other than agricultural income
- n) Taxes on corporations

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- o) Taxes on the capital value of the assets, not including taxes on capital gains on immovable property.
- p) Taxes and duties on the production capacity of any plant, machinery, under taking, establishment or installation in lieu of the taxes and duties specified in entries 42 and 43 or in lieu of either or both of them.
- q) Terminal taxes on goods or passengers carried by railway or air; taxes on their fares and freights.⁴⁴

The state constitution states that executive authority of the council shall extend to all matters with respect to which the council has power to make laws and shall be exercised, in the name of the council, by the chairman who may act either directly or through the secretariat of the council.⁴⁵

The abovementioned list shows that Islamabad maintains control over almost all AJK affairs through the Kashmir Council. The chairmanship, along with five federal nominees and ex-officio Kashmir affair minister, gives the government of Pakistan a majority in the council. The council has powers over all development funds, while the AJK government's powers are limited to utilization of local revenues generated within the territory itself. The council's decisions are final and not subject to judicial review, either by the judiciary of Pakistan or by that of AJK.⁴⁶ Thus power still rests with the officials of Pakistan, and the Ministry of Kashmir Affairs in Islamabad with regard to all legislation and appointments, questions of general policy, budget, internal security and matters relating to civil supplies. On many of the important decisions such as appointment of judges and the election commissioner, the prime minister of Azad Kashmir cannot act without the consent of the chairperson of the council. It also illustrates that government of Pakistan maintains control over all natural and financial resources and the decisions on their use. In short, when the Kashmir council was created around three decades ago, it was considered an attempt to elevate AJK status. But no tangible step was taken to enhance AJK autonomous status further. Nevertheless, it stirred up heated debate and also generated aspirations among masses that AJK needs further autonomy and upgraded political status. It is, however, strange that not a single amendment bill was introduced by the ruling party or opposition benches in the assembly to revise the existing constitutional arrangement. The setup introduced in 1974, in essence, continues to persist without any major change.

⁴⁴ *Ibid.* p. 57-59

⁴⁵ Quite often Kashmiri leaders term Council an unproductive institution. Even, Sikandar Hayat, prime Minister criticized the role of Council "AJK council was deducting 20 per cent of taxes collected from the territory for its administrative expenses. Maintaining that the rate was too high and he had requested Aziz to reduce it to five per cent." PoK PM Questions Hurriyat's Role in Kashmir; *The Indian Express*, 25 June 2005.

⁴⁶ India-Pakistan Relations and Kashmir issue, International Crisis Group Report, available at www.crisisgroup.org/home/index.cfm?id=2825&l=1 - 28k - viewed on Feb 20, 2006.

The inconsistencies

Besides the abovementioned issues, there are some significant legal inconsistencies which need to be addressed. In fact, there are some inherent contradictions in the constitution itself, which is contrary to Pakistan's traditional stand on Kashmir as well as against the spirit of the UNSC resolutions. For instance, Part 2 of Section 7 of the constitution says, "No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against or take part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan."⁴⁷

Under Section 5 (2) (vii) of the AJK Legislative Assembly Election Ordinance 1970, a person would be disqualified for propagating any opinion or action in any manner prejudicial to the ideology of Pakistan, the ideology of State's accession to Pakistan or the sovereignty and integrity of Pakistan.

Likewise, without signing an affidavit of allegiance to Kashmir's accession to Pakistan, nobody is allowed to take part in the State elections. The issue remained in low profile as the nationalist parties, who do not believe in ideology of accession to Pakistan, did not even attempt to participate in the elections until 1996. It, however, surfaced in the two latest elections. Their nominees could not contest elections as their nomination papers were rejected by the election commission, because they refused to sign the requisite affidavit. Interestingly, it is also a prerequisite to show loyalty to the ideology of Kashmir's accession to Pakistan to get government jobs.⁴⁸ Although, a number of nationalists are serving in various government departments, the law continues to be on the statute book. This is in a way also contrary to Pakistan's own Constitution whose article 257 holds that 'people of Kashmir will define their relationship with Pakistan after obtaining freedom.' It is also contradictory to Islamabad's commitment to the right of self-determination and its demand to implement the UNSC resolutions on Kashmir, which do not bind the people of Kashmir to join any particular country.

The nationalist parties have long been critical to these constitutional clauses and have been demanding their repeal. Impartial intellectuals as well as pro-Indian lobby make use of these contradictions at international forums. Above all, when Islamabad demands right of self-determination or self-rule for Kashmiris, it has to face criticism since its own record with reference to AJK and Gilgit Baltistan comes under discussion.

The AJK constitution (Article 53) also gives the federal government the power to dismiss elected government in AJK. This power has only been

⁴⁷ The issue however has never been raised by mainstream politicians in legislative assembly even though the constitution can be amended by the legislative assembly. Incumbent Prime Minister Sardar Sikandar Hayyat Khan promised that he would amend this clause to offer level-playing field to all political aspirants but he did not stand by his words. Likewise, not a single amendment bill was tabled to revoke this constitutional clause from the members of assembly during last three decades. Interview Justice Mansoor Gilani on May 30, 2006.

⁴⁸ Human Rights Commission of Pakistan report on 'State of Human Rights in Azad Jammu & Kashmir' July 2004, p. 9.

used twice since 1974. But it gives the federal government a leverage to dictate its terms to the ruling elite of the AJK. They have often been demanding the repeal of this article. They are of the opinion that this power should be given to the elected lawmakers.

In accordance with the AJK constitution, 12 seats have been reserved for displaced persons of the Valley and Jammu region to symbolize relationship with them and to give them a sense of participation in the government affairs. The reality is that these seats have become, simply, a tool of manipulation in the hands of the ruling government in Islamabad, and particularly Punjab government as almost eight and a half seats fall in its territorial jurisdiction. There is no doubt that successive federal governments have been gifting these seats to their allies. The ruling parties always use their leverage to ensure their allies' victory. Additionally, as part of corrupt practices by the candidates, parties and the election machinery, a huge number of non-Kashmiris are registered as voters.⁴⁹ It is a persistent demand from various circles that refugee voters' lists should be drastically revised. Islamabad should ensure free and fair election on refugee seats or it should devise alternatives to ensure genuine refugee representation in the assembly.

Another significant issue that always stirs up in local politics is the Northern Areas' (Gilgit and Baltistan) relationship with Azad Kashmir and Pakistan. It is a historical fact that federal government assumed the charge of these areas from the AJK government on the pretext that Muzaffarabad was unable to govern it directly for its lack of financial resources and communication system. Secondly, at that time, the AJK leadership presumed that the dawn of freedom was around the corner and eventually the entire state would join Pakistan through plebiscite held under the UNSC resolutions. In this context, the AJK leadership regarded the transfer of control to Pakistan as a temporary arrangement.⁵⁰ Unpredictably, the

⁴⁹ The electoral lists of these seats are a matter of concern. Prepared in 1980, nobody knows exactly the whereabouts of the voters as influential people have managed to list the names of their supporters in them wholesomely. The record of last five elections shows that municipal corporation workers cast proxy votes and even prominent refugee leaders were the victim of this smartness. Some historical facts also corroborate that elections on these seats are highly rigged and bogus. For instance, fresh elections were held on a seat in Rawalpindi in 1998 when it was established in the court that the winner of 1996 elections on this seat Razaq Iqbal Butt of Peoples Party was not a Kashmiri by origin and had illegally got registered his name in the electoral list. Interestingly, he had not only got elected but also became a minister of the state. If a non-Kashmiri can get elected on a refugee seat and then become a minister, how much bogus voting and forgery takes place is open to guess. Ershad Mahmud, *Refugee seats vital in AJK political setting*, *The News*, Islamabad, June 11, 2006, page 19, also see: Ershad Mahmud, *Azad Kashmir's struggle for fair polls*, *The News, Islamabad*, May 15, 2005.

⁵⁰ Azad Kashmir High Court gave a verdict on Gilgit and Baltistan on March 8, 1993. It holds " that the administrative arrangement made immediately at the time of liberation of the areas from Dorgra forces, was only an ad hoc and temporary arrangement. Such arrangement was to be substituted and replaced subsequently in the light of the scheme of law enforced in the rest of the liberated areas of the State, presently known as Azad Jammu and Kashmir. See, Azad Kashmir High Court

promise of plebiscite turned out to be elusive and Islamabad not only continued managing the affairs of Northern Areas (NA) but strengthened its hold gradually. Now, NAs are considered a part of formerly united State of J&K but not of the Azad Kashmir.⁵¹ The AJK assembly has unanimously declared that Northern Areas were part of Kashmir and in 1993 the AJK High Court ordered the state government to take over the control of Gilgit and Baltistan. The issue of Northern Areas' future is a potential flashpoint where both governments and people have divergent perceptions and interests.⁵² Strangely, the AJK constitution does not mention even the existence of NAs on the state map.

Another bone of contention is Islamabad's appointment of four high-ranking officials to run the AJK affairs and, at times, they act as overlords and not as public servants. The chief secretary heads the entire administration while the finance secretary manages budgetary matter, inspector general of police (I.G.P.) takes care of law and order situation and the accountant general keeps an eye on all kinds of expenditures. They mostly live in Islamabad and receive huge sums of money from the public exchequer. It is alleged that the local political leaders bribe these officials to get them around.⁵³ Thanks to this practice, none of local officers can be promoted to these top slots. The local bureaucrats always feel frustrated, deprived and find no motivation for cooperating with these 'lent officers'.⁵⁴

Last but not least, the important area that needs attention is ultra-constitutional interference by the army in the local administrative matters as well as in the political management. There is no doubt that on the pretext of uprising in the held Kashmir the army emerged as an equal stakeholder in the local affairs. Now, it plays a major, albeit an informal role in all decision-making forums. Even in the selection of ministers and other key officers, they have a big say.⁵⁵ This type of interference creates a lot of resentment among local political forces and also tarnishes the image of AJK's symbolic self-rule. Furthermore, it promotes ethnicity and paves the way for financially sound individuals to bribe the bigwigs and easily obtain slots in the government. It does not offer level-playing field to contenders, which is necessary for a healthy political culture. This trend fosters negative sentiments towards the army and to a great extent

made a landmark verdict on Gilgit and Baltistan, Published by Kashmir Human Rights Forum, Mirpur, Azad Kashmir.

⁵¹ See Supreme Court verdict on the areas on May 28, 1999; <http://www.jang.com.pk/thenews/sep2005-daily/27-09-2005/oped/o2.htm>

⁵² The people of Northern Areas, equally disappointed with the prevailing uncertainties often demand defining constitutional status of the areas. As to their choice of joining AJK or becoming part of Pakistan as a separate province their opinions are divided. For details see; Khalid Rahman, Ershad Mahmud, *Northern Areas of Pakistan - Facts, Problems and Recommendations*, Policy Perspective, (Journal of Institute of Policy Studies, Islamabad) April 2004.

⁵³ Interview, Tariq Masood, former principle secretary prime minister of AJK (1990-1996) on March 5, 2006

⁵⁴ In fact, lent officer has negative connotation and this term is commonly used to describe federal government's appointed officers in the area.

⁵⁵ Writer's interview with Prime Minister of AJK on September 11, 2005 and January 6, 2006 in Islamabad.

towards Pakistan itself.

Issues for consideration

Way back in 1947-48, there used to be consensus at the level of political and security establishment to develop AJK as a successor entity of the former Jammu and Kashmir state and government. On this rationale, AJK government's structure was formed by the local and federal authorities. Keeping this context in view, Islamabad tried hard to project that AJK has the status of a quasi independent state and a role model for Indian held Kashmir. The instability stemmed out of perpetual military coups in Pakistan, power politics and the lack of initiative on the part of mainstream Kashmiri leadership, however, did not facilitate AJK in attaining its desired objectives.

Until the start of uprising in the Valley in 1989, Azad Kashmir was largely considered a remote place on Pakistan's map. Due to uprising in held Kashmir, it shot into prominence. Now it is expected to play a significant role in the years ahead. Recently, the Pakistan government propounded the idea of self-governance for all regions of the formerly united state of Jammu and Kashmir. It generated enthusiasm as well as skepticism. Kashmiri discourse has certainly focused on its dynamics, raising hopes in some corners that it may play 'an instrumental role to shape the future line of action.' However, the fundamental distinction between self-governance and internal autonomy is yet to be made clear. In fact, no clear definition of self-governance is available. By and large, it suggests that without altering the current territorial status, both parts of the J&K state will enjoy self-rule. While it is difficult to predict whether such an agreement will finally take place, in such an eventuality, there will be no territorial trade-off and Indian and Pakistani sovereignty over their respective areas will remain intact. Finally, if this kind of compromising solution is going to appear then Islamabad needs to do some urgent work to put its house in order. The following points should be kept in mind while dealing with the AJK in future.

The role of Kashmir Council should be reduced to enable the AJK government function effectively if not independently. Apart from foreign affairs, defense and currency, the AJK should be given complete self-rule. It must have the power to make administrative and financial decisions without Islamabad's assent. Islamabad's constitutional right to sack elected government should also be revoked. Finally, Azad Kashmir must be given autonomy in letter and spirit and Islamabad's interference in Azad Kashmir's politics should come to an end.

The issue of restrictions on pro-independence parties also needs to be addressed. Everyone should have a fair chance to exercise his or her representative charter. This, combined with the above-suggested measures, will gradually alter the current perception of Islamabad in Azad Kashmir. One point should be clear: the fundamental component of Pakistan's approach must be to arrive at an arrangement that make Kashmiris feel comfortable with Islamabad. This is a serious concern and ignoring it may have serious repercussions both for Kashmiris as well as

Islamabad.

Finally, the people of Azad Kashmir have many complaints against Islamabad and its bureaucracy but there is no deep-seated ill will against the state or people of Pakistan. It is a common perception that the people of Pakistan, too, could not get democratic and just rule and a vested class has been exploiting their resources and damaging their prestige. Above all, they are well aware of the weaknesses of their own leadership and its character. Barring a few exceptions, they witnessed failure of their leadership to rise to the occasion at opportune times, petty politics and vested interests. The AJK opposition leaders readily offer their services to invisible hands to dislodge sitting governments. All the time the zero sum game goes on. Despite discontent, AJK has neither turned against Pakistan nor challenged the writ of state by resorting to violence. The discontented elements always found peaceful ways to vent out their feelings, thanks to available political space and access to media and links with civil society and political outlets of the country.

The role of the civil society and the love of common man with Kashmir and Kashmiris were so much evident in the wake of the last year's earthquake when the entire nation came to help Kashmiri people. Doubtlessly, thousands of trucks laden with food items, blankets, and tents went across the damaged roads of AJK. The NGOs, religious parties, traders and political workers, setting aside their differences, worked together for victims and surpassed the government efforts to a large extent. The way public and government responded to this tragic event created lasting bonds with the people of Pakistan. The people of AJK are, by all means, obliged and feel part of larger community of the country. However, when it comes to political and constitutional issues, there appears a consensus that the relationship between Muazaffarabad and Islamabad certainly needs to be redefined without delay. It should be reestablished on the basis of mutual interests, dignity and honor. The policy makers of Islamabad and the political leadership in AJK have to contend with these challenges, alter the status quo in the interest of people and to create harmonious relationship with the state of AJK.