
South Tyrol as a Model for Conflict Resolution in Jammu & Kashmir: A Critical Assessment



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Introduction

The conflict over Kashmir is as intricate as much protracted it has been. Originating in the partition of the subcontinent in 1947, the dispute has become multi-dimensional over the years. The experience of special-status powers in the Indian-held Kashmir (IHK) under the Indian Constitution could at best be termed bitter and scary. Yet, the discourse on autonomy has been carried on widely within and outside the region in a vain attempt to find resolution of the problem within India's asymmetrical federal structure.

The reality that political unrest in the "State of Jammu and Kashmir"⁽¹⁾ has largely been a result of governmental ineptitude and political discontent leaves many in India to propose greater autonomy for the state to redress the sense of deprivation of the Kashmiris. Article 370 of the Indian Constitution confers "maximum autonomy" on the local organs of state power, while helping the state to discharge its "obligations" as a "unit of the [Indian] Union" (Delhi Agreement 1952). The exercise of Article 370 has, however, proved a complete failure as from the beginning to the present day, a number of amendments have been introduced to increase the powers of the centre in the state. This has led to a gradual decline of regional autonomy.

South Tyrol, a success story in de-escalation of conflict, through the establishment of a legal autonomy framework for the ethnic inhabitants of the region, has often been suggested as a model for conflict resolution in Kashmir. However, it is very much difficult to simply 'import' the South Tyrolean autonomy model in Jammu and Kashmir due to the complexities involved in the Kashmir conflict. Unlike South Tyrol, historical enmity between India and Pakistan, absence of international anchoring, divided political aspirations, and communalisation of conflict, to name a few, lead the tides of conflict in Jammu and Kashmir.

Nonetheless, the resolution of conflict in South Tyrol through complex power sharing at different political levels provides numerous lessons for conflict settlement in J&K. One of the most important factors for the sustained peace process in South Tyrol is the international legal standing of South Tyrolean autonomy, established under the Paris Peace Agreement (1946). This

substantiates the importance of international involvement in the case of J&K to buttress “any negotiated settlement of the long-standing dispute.”

The present study is chosen not to suggest a final resolution of the Kashmir dispute. It primarily seeks to investigate whether autonomy could be a desirable solution for all parties to the conflict in Jammu and Kashmir or else it would invite further fissures in the region. Appraising the past experiences of autonomous powers in IHK, the study dwells on a number of questions. What lessons does South Tyrol’s autonomy model provide for conflict resolution in J & K? Are there any similarities in these two case studies? Does any consensus exist within India or amongst the Kashmiris to make J & K an autonomous state in India? Finally, does the autonomy model entertain contesting positions of India and Pakistan?

Conceptualising autonomy

The modern notion of autonomy has been defined as self-government or diffusion of powers to one or more regional groups through the federal structure of the state. In the words of Lapidoth, “A territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity.”⁽²⁾ In the contemporary world, much attention has been given to the resolution of minority problems by giving them the autonomous or self-governing powers as a way of discouraging secessionist elements. Devolution or decentralisation of powers has thus increasingly been sought as a policy framework to preserve the territorial integrity of multi-ethnic states. The best known form of devolution of powers is “federalism” in which all the constituent elements of the state are designated with equal powers. In many federal states special autonomous arrangements have been made to grant particular individual powers to one or more regions in relation to the centre as well as other provinces in the state. In political science, this is known as asymmetrical federalism. Examples include Zanzibar in relation to Tanzania, two provinces in the Philippines (the Cordillera and Mindanao), Hong Kong in relation to China, Greenland in relation to Denmark, Puerto Rico in relation to the US, the Autonomous Communities in Spain and Aland in relation to Finland. An important distinction identified between autonomy and federalism is that “in federations the regions participate actively in national institutions and national policy-making in addition to controlling devolved subjects within the region. In autonomy, the emphasis is on the region’s power institutions.”⁽³⁾ Both federalist and asymmetrical federal arrangements aim at decentralisation of powers in order to find out solutions to internal conflicts that arise out of minority demands for structural changes in the government. In the present world, attempts have been made to substitute the right of self-determination with autonomous powers. The UN General Assembly resolved many years ago that autonomy is in fact a manifestation of self-determination.

“In recent practice, complex power sharing has been employed to circumvent the self-determination issue by distributing public power in a

complex way amongst the conflicting groups, often with international involvement. In this way, the territorial unity of threatened states can be retained, while the source of the dispute is, it is hoped, removed.”⁽⁴⁾ The autonomy arrangements lead to mutual accommodation of various ethnic groups, protection of minority interests, national integration and defusion of tensions between the centre and the regions on the one hand, whereas on the other hand, these might reinforce new ethnic identities leading to the disintegration of the state with increased demands for territorial independence. The autonomy arrangements cannot be analogous and vary from one political set-up to another, so are the factors of their successes. Some significant universal factors of success however include goodwill of parties involved, multi-level consultations, and legal mechanisms.

There are three recognised levels in a power sharing arrangement or for autonomy as a conflict resolution model:

1. Many a time, parties in a conflict employ international involvement to bring about a power sharing arrangement for the territory in question. Northern Ireland, Nicaragua, Philippines and Sri Lanka are some of the examples.
2. In other cases, international interventions have prevented secessionist revolts by imposing complex power sharing arrangements from outside. Examples are Bosnia, Kosovo, Georgia, Moldova and South Tyrol.
3. The third level deals only with power sharing negotiations between the parties in conflict.

The case of IHK’s special status within the Indian federation has been of asymmetrical federalism and not of autonomy as a means of devolution of powers. India, being the perfect example of an asymmetrical federation has granted special powers to some of its federal states. To deal with ethnic demands of the states, the Indian government has reorganised its federal structure along linguistic lines in 1956. However, like some other states of the world, the federal device failed to work in India in a few cases especially in the case of Jammu and Kashmir for a number of reasons. These include strong competition between the State and the Centre for control over the state apparatus, innate ethnic schism, minority-majority fissure at the country level, politics of religion at the country level and, most importantly the fact of the state being a disputed territory between India and Pakistan. India has thus been called a quasi-federation that empowers the centre to interfere in the affairs of states, dismantling state governments, and imposing president’s rule wherever it pleases so.

Autonomy as a conflict resolution mechanism in South Tyrol

“The South Tyrol autonomy has been hailed as one of the best examples of the protection of regional and cultural minorities in the world”, writes Alcock.⁽⁵⁾ Many other scholars including Thomas Kager, Jens Woelk, Michael Feiler and Rolf Steininger find the experiences of autonomy in South Tyrol as lessons for the resolution of other minority conflicts in the world. South Tyrol today as an autonomous province of Austria enjoys considerable degree of self-governance. Reviewing the history of South Tyrol conflict, the following section examines the legal autonomy framework of South Tyrol as well as its contemporary society in an attempt to assess the case-specific factors of conflict resolution.

Background

South Tyrol, an autonomous part of Italy, borders Austria. Situated in the North of Italy, it covers only 2.4 per cent of the Italian territory.⁽⁶⁾ The full name of the region is Trentino-South Tyrol, which consists of the area and population of the two autonomous provinces, Bozen and Trento. South Tyrol is inhabited by three major ethno-linguistic groups: the German, the Italian and the Ladin. According to the census of 2001, the total population of South Tyrol is estimated at 462,999, out of which the Germans proportional representation is 69.15 per cent; the Italians represent 26.47 per cent and the Ladins 4.37 per cent.⁽⁷⁾

The problem of South Tyrol has essentially been that of state versus minority in a long-drawn-out tussle within the power structure of Italy. The province achieved autonomous executive and legislative powers initially under the Paris Agreement of 1946 and later through the 1972 Autonomy Statute that provided a legal basis for power sharing between the state and the regional government. The Autonomy Statute also recognises the existence of three linguistic groups in South Tyrol by giving them proportional representation in public offices.

Reviewing the history of conflict

The problem of South Tyrol first arose in the immediate aftermath of the First World War,⁽⁸⁾ when the Allies ceded South Tyrol, part of the Austro-Hungarian Empire, to Italy under the Peace Treaty of Saint Germain, 1919, for the latter's joining the war on the Allied side.⁽⁹⁾

With the fascists coming into power in Italy in 1922, the South Tyrolese were exposed to the most rabid form of political and Italian cultural nationalism.⁽¹⁰⁾ The Italianisation policies of Mussolini such as abolishing German/Ladin schools, introducing Italian as the only official language and setting up of Italian industries in South Tyrol to encourage Italian immigration from the South that changed the ratio of population between German and Italian speakers had an identity creating effect for the German community in South

Tyrol.⁽¹¹⁾ Having suffered more than two decades of Italian repression, the South Tyrolese started political struggle with claims for self-determination immediately after the end of World War II. The post-WW-II period is characterised by an increased international involvement to facilitate a political settlement of the conflict at two levels:

- a) Between Austria and Italy for their corresponding claims over South Tyrol.
- b) Between South Tyrolese and the Italian government for complex power sharing.

The most significant and noteworthy factor is the concurrent management of conflict at both the levels. Thus the period of negotiation and political settlement between Italy and Austria and between Italy and the South Tyroleans can be divided into three phases:

- From 1946 to 1960.
- From 1960 to 1972.
- From 1972 to 1992

Phase-I of conflict management (1946-60)

The Paris Agreement — also called as the Gruber-Degasperi Agreement — facilitated by the Allies between Austria and Italy at the Paris Peace Conference (1996), is known as the first model of autonomy for South Tyrol. The Paris Agreement assured equal rights for the South Tyroleans and the Italian population.⁽¹²⁾ Under the agreement, Austria was mandated with a protective function vis-à-vis Italy for the Austrian and Ladin minorities in South Tyrol. In 1948 the first Statute of Autonomy was granted to South Tyrol by the Italian Constitutional National Assembly. The framework of autonomy as implemented by the Italian government, by merging South Tyrol with the Province of Trentino (an Italian majority province) into one region — named Trentino-Alto-Adige — turned the German/Ladin community into a minority. Political protests erupted in South Tyrol, against the non-fulfilment of some of the provisions of the Paris treaty by Italy. Moreover, fearing suppression of their cultural, economic and social development in an Italian dominated region, the South Tyroleans began repeating their claims for self-determination and rejected this restricted form of autonomy.⁽¹³⁾

With the full restoration of its sovereignty in 1955, Austria began to increasingly support the South Tyrolese efforts to gain greater regional autonomy. In the aftermath of Italy's refusal to have official negotiations with Austria and the South Tyrolese People's Party (founded in 1945), the South Tyrolese started an armed movement with bomb attacks on symbols of Italian rule from 1956 onwards. Italy's reaction was an extended repression.⁽¹⁴⁾

Phase II: 1960-72

In an attempt to deescalate the crisis situation, the Austrian council of ministers presented the South Tyrol question to the UN General Assembly in 1960. This resulted in two UN resolutions calling upon Austria and Italy to engage in constructive negotiations. At the same time, the Council of Europe's political Committee established a sub-committee on South Tyrol in September 1961. Under international pressure the Italian government created a parliamentary commission (consisted of 11 Italians, seven South Tyroleans and one Ladin, it came to be known as the "commission of 19") to negotiate with the leaders of the South Tyrolean minority.⁽¹⁵⁾

A final compromise was reached in the form of a legal framework in 1969 after extensive negotiations. Known as the second Autonomy Statute, the Package provided comprehensive autonomy to the South Tyroleans by amending the first unsatisfactory autonomy statute. Under the new Autonomy Statute, South Tyrol and Trentino have been given the status of two autonomous provinces with all important powers embedded in their individual governments.⁽¹⁶⁾ Approved by a narrow majority of the South Tyrolese People's Party (SVP) at its Congress on 23 November 1969 and thereafter by the Italian and Austrian governments, the second Autonomy Statute came into force on 20 January 1972.

Phase-III (1972-92)

A slothful implementation of the Autonomy Statute resulted in deterioration of the political climate in the post-package period. Initially, it was planned to implement the full package within two years. However, considering this period very short for the complexity of the matters involved, the South Tyrolese agreed to extend the period of implementation.⁽¹⁷⁾ The Italian indolence, however, created concerns amongst the South Tyroleans "about a possible retreat by the Rome Government from full implementation of the autonomy measures."⁽¹⁸⁾ The 1980s thus witnessed a new wave of bombings by some German hardliners — known as the *Ein Tirol* group, who were in union with Austria.⁽¹⁹⁾

It was only in 1988 that the last implementation regulations were issued by the Italian government. Full implementation was achieved in 1992 with the SVP Convention and SVP members voting 82.8 per cent in favour of accepting Italy's fulfilment of the package and also with the Austrian government transmitting a declaration on the settlement of the dispute to the Secretary General of the UN in June 1992.⁽²⁰⁾

Under the Paris Agreement and the South Tyrol Package of 1969, Austria exercises a protective function vis-à-vis Italy for the Austrian and Ladin minorities in South Tyrol and in this capacity continues to keep an eye on the ongoing implementation of the autonomy agreement.

As an autonomous province of Italy

The Autonomy Statute establishes the principle of “territorial” and “cultural autonomy” for the South Tyrol region. The two provinces of South Tyrol and Trentino have been given autonomous executive and legislative powers in relation to the state and the region ‘Trentino- Alto Adige’, which is retained under the Autonomy Statute but only with modest powers.

A further reorganisation of the autonomous region Trentino-South Tyrol has been done under the two constitutional amendments: Constitutional Law No. 2 of 31 January 2001 (in force since 16 February 2001) and constitutional law No.3 of 18 October 2001.⁽²¹⁾ Under these constitutional amendments, the two provinces have now more powers than the Region. The reformed form of the second Autonomy Statute is known as the New Autonomy Statute (with nearly 2/3 legal provisions).

Powers defined under the Autonomy Statute

Executive powers

The province is governed by three organs: the Provincial Council, the Provincial Government and its President. The provincial government is elected by the council and its composition must be proportional to the ethnic groups in the council.⁽²²⁾ The presidency of the council rotates between members of the different groups (Art 49 Autonomy Statute). The Italian government is represented in the province by a commissioner, responsible for maintaining order and supervising provincial administration of duties delegated to it by the state.⁽²³⁾ The Constitutional Law No. 2/2001 and the Constitutional Law No. 3/2001 provided South Tyrol with more executive powers vis-à-vis the state. For example, under the Constitutional Law No. 2, “Provincial laws regarding the electoral law and the government form are not subjected to the endorsement of the government commissioner any more” (Constitutional Law No. 2 of 31 January 2001). Illuminating this further, the Constitutional Law No. 3 stipulates that with the disappearing of the government’s endorsement of provincial laws before their coming into force, the role of the government commissioner is devalued and “the state has to appeal against provincial laws, which are already in force in front of the constitutional court” (Constitutional Law No.3 of 18 October 2001).⁽²⁴⁾

Legislative powers

The legislative powers of South Tyrol are primarily concerned with economic and cultural matters,⁽²⁵⁾ defined as primary and secondary powers. The provincial council has primary competence over place names, local customs and usages, town and country planning powers, environment, mining, agriculture, tourism, communications and transport whereas secondary competence is over elementary and secondary education, commerce and public health.⁽²⁶⁾ Under the Constitutional Law No. 2/2001, “if the Parliament plans amendment of the Statute, the Province has to be listened to.” Moreover, “the

limits of the excluding and concurring legislative competencies have decreased, so does for example the limit of the principles regarding economic and social reforms of primary competencies not exist any more” (Constitutional Law No. 3/2001).

Ethnic and cultural provisions

Ethnic proportionality is established as the basic standard of political representation, public service appointments and allocation of public funds under the Autonomy Statute.

- The bilingual administration is recognised as the principle of territoriality (Art. 99 Autonomy Statute), which prescribes the equal standing of both the German and the Italian languages for education, public administration, electorate and cultural development. For example, a fundamental principle of today’s autonomy is that elementary and secondary education be provided in the mother tongue of the child. Consequently, instruction in South Tyrol is given in separate German and Italian schools (Art. 19 Autonomy Statute) and language instruction in the second language of the province is mandatory.
- At the time of the census, every resident must make a formal declaration as to his or her language group, which is the basis for the right to stand for public office, to be employed in the public administration or as a teacher, and to be given social housing.⁽²⁷⁾
- The Autonomy Statute also provides the language groups the right to request separate voting in the Regional or Provincial Council, whenever a draft-law is judged to be in violation of the parity of rights or the cultural characteristics of one group.⁽²⁸⁾

Finances

The Autonomy Statute deals with the financial resources of the province through its provisions specified in Articles 69-86. The province is entitled to receive, from the state, a substantial portion of certain taxes levied in the province, including 90 per cent of property tax and income tax. However the province itself has limited powers to impose taxes.⁽²⁹⁾ The Autonomy Statute provides for the distribution and allocation of funds on the basis of ethnic census proportions.

Implementation of the Statute: Present state of autonomy in South Tyrol

The de-escalation of conflict in South Tyrol is the most remarkable feature of the Autonomy Statute. The Autonomy Statute set division of powers

between the minority and the state. There are only few provisions in the Autonomy Statute that deal with representation and participation of South Tyrol at the centre. South Tyrol is, however, represented by the province's President in meetings of the Italian cabinet, whenever questions of the province's interest are discussed. Moreover, the members of Parliament elected in South Tyrol often have great political influence, their support being potentially decisive for the survival of the Italian government.⁽³⁰⁾ Some important features of the present-day South Tyrolean society are as follows:

- South Tyrol represents a highly peaceful society today where tolerance is established by law that provides a high degree of autonomy to all the groups (Art. 2, Autonomy Statute).
- The system of proportional representation, established by the Autonomy Statute for the composition of the South Tyrolean government, public employment, allocation of funds for cultural activities of the groups, as well as for social welfare and services⁽³¹⁾ seeks to provide a cohabitation of all ethno-cultural groups living in South Tyrol. This has led to a decrease in ethnic tensions. Kager writes, "Unlike the generations of their grandparents and parents today's youth does not have the experience of discrimination."

A 1994 study of the attitudes of the youth toward other ethnic groups showed that the German- and the Ladin-speaking teenagers no longer perceive the Italians as a threat. Their attitude is less anti-Italian than that of their parents. Nevertheless, there is no full integration and because of the influence of parents, school and segregation, their collective identity still has its roots in ethnicity and tradition.⁽³²⁾ For example, both the German/Ladin and the Italian groups have built up their own organisational structures and societal subsystems: kindergartens, schools, political parties, trade unions, public libraries, youth clubs, sports clubs, media, and churches are mono-ethnic.⁽³³⁾

- The ethnic segregation is in part counterbalanced by the territoriality-principle, which offers the chance of a frequent exchange between majority and minority positions: a German-speaking resident of Bozen/Bolzano, for instance, is a member of a minority in Italy, at the same time a member of the majority on provincial level, and again part of a minority in the city of Bozen/Bolzano. This should also help to understand the positions of others. At local level not only a satisfactory standard of minority protection, but also a high level of self-government has been achieved which continues to develop and is sometimes even seen as a model case for further decentralisation or federalisation of the Italian State as a whole.⁽³⁴⁾

- The South Tyrolese People's Party is represented in both chambers of the Italian as well as the European Parliament and stands for the protection of the rights of German and Ladin minorities.
- The key features of South Tyrolean autonomy include: legislation and administration, proportional ethnic representation, and a commitment to bilinguality.⁽³⁵⁾

The J-K dispute & autonomy option for conflict resolution?

A number of writings and scholarly works exist suggesting the resolution of Kashmir issue on lines of self-governing powers being given to the disputed territory of Jammu and Kashmir within the Indian federal structure. The Jammu and Kashmir conflict dates back to the partition of the subcontinent in 1947. The first India-Pakistan war over Kashmir soon after their independence resulted in the division of the territory into Indian-held Jammu and Kashmir (comprises the regions of the Kashmir Valley, Jammu and Ladakh) and a smaller area with Pakistan (Azad Jammu and Kashmir or AJK) plus sparsely populated regions in the High Himalayas known as Pakistan's Northern Areas. The dividing line between AJK-Northern Areas and Indian-held Kashmir originated in a ceasefire line in 1949, was marginally altered during Indo-Pakistan wars of 1965 and 1971, and was renamed as the Line of Control (LoC) under the India-Pakistan agreement signed at Simla in July 1972.⁽³⁶⁾ Both India and Pakistan have contesting claims of sovereignty over the territory of Jammu and Kashmir.

Since late 1989, a new dimension has been added to the conflict with a guerilla movement launched by the young Kashmiri militants against the Indian government in Jammu and Kashmir. The stated objective of the armed Kashmiri groups is complete independence of Jammu and Kashmir from India's tyrannical rule. The Indian government's response of repression, through a number of draconian laws and deployment of thousands of Indian security forces, against the Kashmiri freedom movement has transformed the character of the Kashmir conflict from a mere dispute between two adversarial neighbours to a multi-dimensional conundrum.

With regard to the debate on South Tyrol as a possible model for the resolution of the Kashmir dispute, the present research study focuses on the State of Jammu and Kashmir. The Pakistani administered parts of Kashmir need a separate analysis under the autonomy discourse and are thus beyond the scope of this paper. The following section seeks to assess what solutions the South Tyrolean autonomy model offers for the settlement of the Kashmir dispute. Does it address the concerns of all the stakeholders to the conflict? And, most importantly, how sensitive is the proposal to the concerns of Kashmiris? This

assessment will be done by probing into the constitutional and political history of Jammu and Kashmir.

Special status under Indian Constitution

Under the Instrument of Accession, signed by the Maharaja of Kashmir with India, the central government of India gained control to three categories of subjects: defence, foreign affairs and communications for the State of Jammu and Kashmir (IHK).

In October 1949, India's Constitutional Assembly inserted Article 306A in the Constitution of India, affirming that New Delhi's jurisdiction over Jammu and Kashmir would remain limited to the three categories of subjects as specified in the Instrument of Accession. This was qualified at the time as a provisional measure, pending final settlement of the Kashmir dispute. After India became a republic in January 1950, Article 306A provided the basis for Article 370 of the Indian Constitution, which asserts Jammu and Kashmir's autonomy within the Indian Union.

The following are some important clauses of Art. 370 with regard to the autonomous powers for the Indian-held Jammu and Kashmir:

1. *Sub-Clause (b) of Clause (1)* of Article 370 limits the power of Parliament to make laws for the State of J & K. Under this clause, the Indian federal government can only legislate on the three categories of subjects within its competence only "in consultation with the Government of J & K", and other subjects in the Union List only with the final concurrence of the Jammu and Kashmir Assembly.
2. *Clause 2* of Article 370 provides for the consultation of the state to be framed by a separate constituent assembly with the concurrence of the government of the state. Under this provision, the state constituent assembly convened on Oct 31, 1951 produced the constitution for the state of Jammu and Kashmir on Nov 17, 1956. The constitution (consisting of 158 sections and 13 parts) was finally promulgated on Jan 26, 1957.⁽³⁷⁾
 - The constitution of the state stipulates that no bill seeking to increase or diminish the area or altering the name or boundary of Jammu and Kashmir can be introduced in Parliament without the consent of the state legislature.⁽³⁸⁾
 - Part III of the state constitution provides the right of dual citizenship to its permanent residents as they enjoy both fundamental and non-fundamental rights under the Constitution of India. Only the permanent residents of the state are eligible to vote and contest elections for the state legislature as well as for appointments in the administrative

services. Section 8 of the state constitution makes it clear that no other citizen of India can claim such benefits or become a permanent resident of the state.

3. "In accordance with the special provisions embodied in Article 370 of the Constitution of India, the Jammu and Kashmir state was exempted from the application of the provisions of the Constitution of India dealing with the States in Part B of the First Schedule. In Part B of the First Schedule were listed the erstwhile princely states which had acceded to the Dominion of India but which had not merged with any province or had not been reorganised into Centrally Administered Areas. Hyderabad, Jammu and Kashmir, Mysore, Madhya Bharat, Patiala and East Punjab States Union, Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh were included in Part B of the First Schedule. A separate part, Part VII, was included in the Constitution, providing for the internal constitution of all these States."⁽³⁹⁾
4. The President of India is empowered under Article 370 to "extend to the State, the application of the provisions of the Constitution of India, which were not already made applicable to the State, with such modifications and exceptions as the President would by order specify." However, the application of all these presidential orders will be done only in consultation with the state government and the concurrence of the state government were to be placed before the Constituent Assembly "for such decisions as it might take."⁽⁴⁰⁾
5. With regard to the amendments of Article 370, Clause 3 of Article 370 states: "The President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in Clause (2) shall be necessary before the President issues such a notification."

The Jammu and Kashmir Constitution on this particular subject (Part XII, Section. 147) says: A Bill for the purpose may be initiated only by the introduction of a Bill in the Legislative Assembly, and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat now governor for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill...⁽⁴¹⁾

The special status of Jammu and Kashmir under Article 370 was further confirmed by the Delhi Agreement 1952 signed between prime minister Nehru of India and Sheikh Abdullah, prime minister of IJK, from March 1948 to

August 1953. The Delhi Agreement provided that the Maharaja would be replaced by the Constituent Assembly of the State to be recognised by the President of India. It was agreed upon that the State would have its own flag which the Constituent Assembly of the State will adopt. Moreover, all the residuary powers would continue to be vested with the State. The Agreement extended the jurisdiction of the Supreme Court of India to the State of Jammu & Kashmir.⁽⁴²⁾

Asymmetrical federalism of India & the exercise of Article 370

D. K. K. Wadhwa in his book *Constitutional Autonomy: A Case Study of J & K* maintains: “In a federal set-up State Autonomy does not mean the independence or sovereignty of the states. It indicates two aspects — negative and positive. Negative means non-interference of the Centre in the prescribed domain of the States. Positive means the rights of the State to work independently in the prescribed area...”⁽⁴³⁾

India, a Union of 28 states and 7 Union Territories, provides for the division of powers between the Union and the States under two categories. The first category includes States that have identical relationship with the Union. These include Bihar, Kerala, Madhya Pradesh, Tripura, Meghalaya, Jharkhand, Uttaranchal and Chattisgarh. The second category includes those States which have been given special status in certain matters of administration. These are Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh and Goa.⁽⁴⁴⁾

The Constitution of India contains special provisions regarding all these states:

1. Article 371: States of Maharashtra and Gujarat
2. Article 371 - A (1956 Act) State of Nagaland
3. Article 371 - B (1969 Act) State of Assam
4. Article 371 - C (1971 Act) State of Manipur
5. Article 371 - E & D (1973 Act) State of Andhra Pradesh
6. Article 371 - F (1975 Act) State of Sikkim
7. Article 371 - G (1986 Act) State of Mizoram
8. Article 371 – H (1986 Act) State of Arunachal Pradesh
9. Article 371 - I (1987 Act) State of Goa

Similarly, Article 290-A has special provisions regarding Kerala and Tamil Nadu. The Fifth and Sixth schedules prescribe a special dispensation for the tribal areas.⁽⁴⁵⁾

According to Zoya Hasan, “Regional autonomy from New Delhi in financial, administrative and political matters is the key issue in confrontations between Centre and States.”⁽⁴⁶⁾ What made centre-state relations worst in the Indian federal polity was the decline of regional autonomy in the country in the late 1960s — a trend continued till the early 1990s. The reverse policy of centralisation of powers was adopted by the Congress party after its defeat first in 1967 elections and later in 1977 elections. To wield more power, Indira Gandhi, the prime minister of India, embarked upon excessive concentration of powers at the Centre. Disgruntled with the heavily centralised economic and political powers, regional forces began to surface at all political levels from the early 1980s to demand greater autonomy in their exercise of powers. In certain cases such demands led to secessionist revolts as for example in the North-East, Punjab and the Indian-controlled Kashmir. Efforts were made by the government to revise the whole political set-up in order to control regional dissensions. The conclusion of high-level agreement such as the Assam and Punjab accords, the revitalisation of local self-government institutions through the devolution of powers to elected panchayats in 1991 and the creation of autonomous councils for Jharkhand and Gorkhaland in the 1990s, are some of the examples.⁽⁴⁷⁾

Zoya Hasan goes on to say: The operation of Indian federal politics over the last decades has basically given rise to three kinds of regional assertions with very different implications for adaptation in the polity. The first are militant movements in Kashmir, Punjab and Assam, directed against an overpowering centre and claiming varying degrees of autonomy and independence from the Indian state. The second type of regional assertions grounded in the distinctiveness and underdevelopment of regions — Uttarakhand, Chattisgarh and Jharkhand — demands autonomy within the Indian federal framework. The third are the regional assertions whose area of operation coincides with the federal territorial division of the union. In this category can be grouped centre-state and inter-state conflicts, that is, tensions in which the state government is the leading agent.⁽⁴⁸⁾

The State of Jammu and Kashmir is not included in any of the two categories and has been given special status in the Indian Constitution. Why did the territory of Jammu and Kashmir, granted special status in the domains of executive and legislative powers, come to be dominated by a strong internal movement for secession? The question needs a detailed historical insight into the constitutional and political history of both India and Jammu and Kashmir but which warrants a separate study.

In the case of Jammu and Kashmir, this has been the blatant and incessant interference of the centre in the internal politics of the state that eventually consolidated the ethno-nationalistic aspirations of the Kashmiris. As Bose writes,

The political history of Jammu & Kashmir clearly does not fulfil even the procedural minima of democratic governance. With the partial

exception of 1947-1953 and 1977-1984, New Delhi elites have ruled the territory through a combination of direct control and intrusive intervention, and through sponsorship of intermediary IJK (J&K) governments unrepresentative of and hence unaccountable to the population... The strategy has had the effect of severely retarding democratic institutional development and rights of franchise, participation, and representation in J&K. This aggravated by systematic elimination of Jammu and Kashmir's autonomous regimes — coercive “integration” effected via compliance of client IJK governments — has in time turned Indian elites' fear of separatism into a self-fulfilling prophecy.⁽⁴⁹⁾

The following section will briefly look into the intrusions in the exercise of Article 370 in IJK in order to evaluate future prospects for autonomy in the disputed territory.

1. The first major blow to the constitutional autonomy of Jammu and Kashmir came with the February 1954 presidential order, which extended the Centre's powers to the Union and Concurrent Lists with certain reservations.⁽⁵⁰⁾ The presidential order of 1954 set off gradual integration of the occupied state with the Union of India.
 - With respect to the administrative obligations on the states, the provisions of the Constitution of India were extended to the IJK. However, the state reserved the right to determine the manner in which and the constitutional provisions under which the acts, records and the proceedings of the Union would be proved.
 - The powers of the president of India were extended to proclaim a state of emergency due to war and external aggression in the State of Jammu and Kashmir.
2. In 1957, provisions of the Constitution of India regarding the removal of the High Court judges, embodied in Art. 218 of the Indian Constitution and the provisions regarding the restrictions the Constitution of India placed upon the judges of the High Courts in the states, to plead before any Court or Tribunal, except the Supreme Court of India, were also extended to the state of Jammu and Kashmir.⁽⁵¹⁾
3. The provisions of the Constitution of India with regard to the financial integration of the states were extended to the state of J&K in January 1958.
4. The Presidential Order of 15 February 1958 extended the provisions of the Constitution of India with respect to audits and accounts to the state.

5. In 1958, an amendment to Art. 312 of the Constitution of India saw Jammu and Kashmir coming under the purview of the All-India Services from which it had been specifically excluded as a gesture to its special status in the Union.⁽⁵²⁾
6. In 1959, the provisions of the Constitution of India in respect of powers and functions of the Election Commission of India were also extended to the state.⁽⁵³⁾
7. In December 1964, a constitutional order was promulgated to bring Jammu and Kashmir under the provisions of Articles (most controversial) 356 and 357 of the Indian Constitution, which respectively empower the Centre to dismiss elected governments of Indian states in the event of a breakdown of law and order and to assume their legislative mandate.⁽⁵⁴⁾
8. Centre's powers of intervention in the State were further strengthened with the introduction of a number of amendments in 1965. The offices of Sadar-i-Riyasat⁽⁵⁵⁾ and Wazir-i-Azam⁽⁵⁶⁾ were respectively changed to the positions of governor and chief minister as per the normal practice in other Union territories of India. The president of India was empowered to make arrangements for the discharge of the functions of the governor, in contingencies which were not provided for in the Constitution of the State. Moreover, the amendment provided for a council of ministers in the state, which was headed by the chief minister and not the prime minister, like the council of ministers in the other Indian states.⁽⁵⁷⁾

The self-fulfilling claims for Jammu and Kashmir's autonomous status came to an end with the 24 February 1975 Indira-Abdullah Accord also known as the "Kashmir Accord." The six-point accord reaffirmed the status of Jammu and Kashmir under Art. 370 of the Indian Constitution and termed the state "a constituent unit of the Union of India." "The Indian government was able to make laws relating to the prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or causing insult to the Indian national flag, the Indian national anthem and the Indian Constitution."⁽⁵⁸⁾

Between 1954 and the mid-1970s, 28 constitutional orders "integrating" Jammu and Kashmir with India had been issued from New Delhi, and 262 Union laws had been made applicable to Jammu and Kashmir.⁽⁵⁹⁾ To review the centre-state relations, the government of India appointed a commission, known as Sarkaria Commission, on 24 March 1983. Headed by R.S. Sarkaria, a retired judge of the Supreme Court of India, the commission submitted the "Autonomy Report for the State of Jammu and Kashmir" to the Assembly in June 2000. The Union cabinet in its meeting held on 4 July 2000 outrightly rejected the Autonomy Report. The central theme of the report was to

restore the 1953 position to the State of Jammu and Kashmir, which was the basis of the Delhi Agreement of 24 July 1952. One of the most important recommendations of the report related to deleting the word “temporary” from the heading of Art. 370, and substituting it with the word “special” on the plea that Art. 370 came into being at a time when the Constituent Assembly of the state had yet to be convened.

Referring to the Kashmir Autonomy Report, Justice R.S. Sarkaria said in a television interview: “The solution lies within the present Constitution and the Centre can easily delegate more powers under the Concurrent List to the States without needing to go in for a Constitutional amendment, not just for Jammu and Kashmir but for every Indian State...” He said, “the Article in any case had been ‘watered down’ over the years and Jammu and Kashmir did not have many powers under this Article today.”⁽⁶⁰⁾

The South Tyrolean autonomy model: Conflict resolution in J&K?

The conflict resolution in South Tyrol was achieved through an autonomy-based settlement mutually accepted by all parties involved. A major source of objection to the autonomy proposal lies within Jammu and Kashmir. The Hindus of Jammu and the Buddhists of Ladakh feel that any increase in Srinagar’s powers would hurt them.⁽⁶¹⁾ Apart from this chief difference between the two case studies, i.e. South Tyrol and Jammu and Kashmir, there are a number of other parallel and divergent factors that the following section will look into.

Similarities

The South Tyrol conflict bears resemblance to that of Kashmir in many ways.

1. *International dimension*: Like India and Pakistan, both Austria and Italy had contesting claims of sovereignty over South Tyrol. The nature of sovereignty claims, however, differs in the two case studies. Tyrol as a part of the Austro-Hungarian Empire was consisted of the present-day Austrian province North Tyrol and the Italian provinces South Tyrol and Trentino. With the Allies ceding the territory of South Tyrol to Italy after the First World War, arose the conflict of sovereignty between Austria and Italy over South Tyrol. The origin of the Kashmir dispute, however, lies in the partitioning of the subcontinent between India and Pakistan and the subsequent British withdrawal. Nevertheless, international dimension of both the conflicts accounts for an important similarity.
2. *Internal political divisions and politicisation of ethno-cultural differences*: Both the societies in South Tyrol and Jammu and Kashmir represent an ethnic interplay of group identities. The Italian population of the province wanted to be part of a unified Italian kingdom whereas

the Germans were united in an aggressive counter movement. The linguistic barrier between the Italians and the Germans became a dominant ethnic cleavage. The era of fascism sharpened the ethnic divide in South Tyrol. In Kashmir, the problem is, however, more complex. The State of Jammu and Kashmir represents an ethnic and political mosaic of contested identities. The state is divided into three main parts: the Muslim-dominated Kashmir Valley, the Hindu-dominated Province of Jammu and the distant territory of Ladakh inhabited mostly by the Buddhists. Due to asymmetrical power relations between Jammu and Kashmir, the idea of conferring special status on the state failed to find broad support within the Jammu region. With regard to the autonomy debate in the state, there exists a strong perception in Jammu that the region is discriminated against in matters related to the allocation of developmental funds, provision of educational facilities and employment in government services.⁽⁶²⁾

3. *Complex power sharing*: The Autonomy Statute establishes the power structure in South Tyrol at three levels: a) between the German-speaking group (minority) and its kin-state, Austria; b) between all three ethno-linguistic groups inhabiting the province, and c) between Italy and Austria — latter exercising the protective function for South Tyrol. A similar power sharing arrangement in the State of Jammu and Kashmir will also involve three structural levels: a) Jammu and Kashmir government and Central government, and b) India and Pakistan, and c) distinct Kashmiri ethnic groups. However, the complex power sharing will be much more intricate in the case of Jammu and Kashmir as has been experienced in the past. Pakistan cannot play the role of Austria as the core of the dispute is the “contested sovereignty” of Jammu and Kashmir between India and Pakistan.
4. *Incompatible notions of self-determination* in both the cases arose from different national identities and varying state allegiances.

Differences

1. *Complex heterogeneous structure*: The state of Jammu and Kashmir is a complex mix of ethno-linguistic and religious groups: the Hindus, the Muslims and the Buddhists inhabit the state with their subdivided regional identities. The five million residents of the Kashmir Valley are overwhelmingly Muslim (primarily Sunni with a sizeable Shia minority) and mostly Kashmiri-speaking. The valley constitutes one of the three regions of Jammu and Kashmir. To the south of the Valley, Jammu is inhabited by about 4.5 million people with a mosaic of religious, ethnic, linguistic and caste groups. Muslims make up one-third of its population overall, but they are a majority in the three most mountainous of its districts; Hindus plus a noticeable sprinkling of Sikhs dominate the less mountainous and hence more populated areas. Most Muslims in the Jammu region belong to other ethnic and

linguistic categories: Gujjars and Bakerwals, traditionally mountain pastoralists and herdsmen and speaking Gojri and Pahadi, are a sizeable component; Rajputs (high-caste Hindu converts to Islam) are another. Jammu's overall Hindu majority is also differentiated along lines of ethnicity, language, caste and locality. Ladakh, the third Jammu and Kashmir region, has two districts — one is dominated by the Tibetan ethnic stock of Buddhists while the other is dominated by a strong Shia Muslim majority.⁽⁶³⁾

In the case of South Tyrol, there were only three major linguistic identities and the reorganisation of the region along those ethno-linguistic lines was not that much difficult as it would be in the case of Jammu and Kashmir, which is acutely divided into innate religious, linguistic and ethnic identities.

2. *Absence of consensus in India on the issue of autonomy:* As compared to a united Italian stand for South Tyrol's autonomous status, there is a lack of national consensus in India on autonomy arrangement as a solution to the Kashmir dispute. Over the years varied political organisations like the Bharatiya Janata Party, Bharatiya Jan Sangh and Shiv Sena have vociferously opposed the idea of autonomy for the state of Jammu & Kashmir. There have been demands from India's far right such as the partition of the valley to create a 'Pandits-only area' and the division of Jammu between the Hindu-majority and Muslim-majority areas. Even those who support autonomy solution have different opinions concerning the degree of autonomy for Jammu and Kashmir. In June 2000, the Jammu and Kashmir assembly passed an autonomy resolution on the lines of the Delhi Agreement of July 1952. The resolution, however, failed to find significant support in India's Parliament.
3. *Widely divergent political parties in J&K:* There are serious political differences within Jammu and Kashmir for a final solution of the dispute. The Jammu and Kashmir Liberation Front (JKLF), out of more than 20 political groupings in Jammu and Kashmir, is considered to be the largest organised political party in Jammu and Kashmir. The JKLF calls for a secular and sovereign state with equal citizenship rights for all Kashmiris, irrespective of religion. Its mission statement calls to "*reunify all parts of the forcibly divided State and offer full sovereignty and independence with a right to become a member of the United Nations.*"

On the whole, political stands in Jammu and Kashmir can be divided into three major groups: pro-independence, pro-Pakistan and pro-India. Within these groupings there are numerous sub-divisions. For example, within pro-independence group there are a number of fundamentalist parties that aspire to establish an Islamic state in close alliance or a confederal arrangement with Pakistan. The main pro-

Indian political parties in Jammu and Kashmir are Jammu and Kashmir National Conference, Jammu and Kashmir National Panthers Party, Jammu and Kashmir People's Democratic Party and All Jammu & Kashmir Patriotic People's Front.

Among other Kashmiri organisations, some of whom had previously contested elections under the Indian constitutional suzerainty but now demand implementation of UN resolutions on Kashmir, formed an alliance named All Parties Hurriyet Conference (APHC) in March 1993 to further the cause of Kashmiri separatism. The JKLF is one of the main constituent units of the APHC.

In addition, there are sharp inter-regional contradictions in terms of political aspirations in Jammu and Kashmir, as for example, while the Kashmiri speaking Muslims of the Valley by and large have been votaries of greater autonomy, the Hindus of Jammu want union with the mainstream political set-up in India. The Ladakh Autonomous Hill Development Council (LAHDC), established in 1995, have a preference for Union Territory status for Ladakh in India.

In contrast, there was only one major political party of the German population in South Tyrol. The political and, to some extent, the civic dominance of the South Tyrolese Peoples' Party (SVP) and its policy of seeking a settlement in Italy made the negotiation process from the beginning smooth and sturdy to achieve the desired results. Therefore, unless a political consensus is achieved in Jammu and Kashmir, representing the political aspirations of all groups and the three regions involved, it is difficult to suggest or implement any model of autonomy in the state.

4. *Communalisation of conflict:* Unlike South Tyrol that represented a linguistic identity conflict, Jammu and Kashmir is dominated by religious confrontation between the Hindu, Muslim and Buddhist inhabitants of the state. The symbols of mosque and temple have become the tools of Hindu right-wing parties from Jammu and northern India. This saffron politics communalised the whole issue, especially during the eighties. A significant number of political groupings in Jammu and Kashmir raise the slogan of "Islam in danger" as a basis for their right of self-determination. Analysing the Kashmiri territorial nationalism, Maya Chadda writes: 'Religious identities are particularly significant in the competing discourses about Kashmiri identity... The Kashmiri Hindus seek to unify the Pandit community in the Valley and Jammu around the themes of Hindu identity and Indian nationalism. The communal perception in Kashmir reflects an interesting paradox. The Hindus are a minority in Kashmir but the Kashmiri Muslims see them as the extension of the Hindu majority in India; the Kashmiri Muslims are a majority in J&K, but see themselves as an oppressed

minority that must protect its identity by maintaining a distance from New Delhi.”⁽⁶⁴⁾

5. *International facilitation for conflict de-escalation in South Tyrol:* The Paris Peace Agreement 1946 that constituted the first autonomy statute for the South Tyroleans and the subsequent negotiations between Austria and Italy and between Italy and South Tyroleans was facilitated by the Allies. The de-escalation of conflict in the case of South Tyrol largely became possible with the international involvement. In the case of Jammu and Kashmir, India is adamant on rejecting any international facilitation for resolving the conflict.
6. *European integration:* The process of constitutional reforms in Italy received an impetus with the progress of European integration that was underway at that time. Similarly, Austria settled the conflict in 1992 and joined the European Union (EU) in 1995. European integration is also a source of strength for South Tyrol’s autonomy framework. For example, dealing with the questions of language rights and the obligation of bilingualism, the European Court of Justice declared their conformity with the EC-Law by extending their scope of application (by including EU citizens). European integration also provides for new opportunities for cross-border cooperation. The Schengen Treaty of 1997 transformed the border between Italy and Austria, formerly a strict line of division separating cultures, languages and peoples, into a mere administrative boundary. Thus, the three Alpine neighbours — North Tyrol, South Tyrol and Trentino — do not only have high-level cross-border cooperation but the three entities are also represented jointly at European level by a Bureau in Brussels.⁽⁶⁵⁾ In the case of Jammu and Kashmir, no near-future possibility exists for a common South Asian entity on the model of EU. In addition, the resolution of political conflicts is beyond the scope of the charter of the South Asian Association for Regional Cooperation (SAARC), the only regional organisation.
7. *Conflict over resources:* The State of Jammu and Kashmir extending from extreme Himalayas to the plains of Jammu region is divided into three major river basins: a) Indus River and its tributaries, b) Jhelum River and its tributaries, c) Chenab River and its tributaries. These river waters are shared by both India and Pakistan. The vital irrigation needs of Pakistan especially depend upon the rivers that flow from Jammu and Kashmir into the Pakistani territory. This dimension of sharing vital resources thus has an important bearing on the conflict that was not there in the case of South Tyrol for Austria and Italy.
8. *Early experiences of autonomy in J&K:* Unlike South Tyrol, the State of Jammu and Kashmir has experienced some form of autonomy under the Indian Constitution. Besides inter-regional discontent for a discriminatory exercise of autonomy, there exists a strong perception

and substantive evidence about the progressive erosion of autonomy in Jammu and Kashmir. The growing central interference in Kashmir's internal affairs, fraudulent electoral politics, and economic discrimination, to name a few, are some of the bitter experiences of Jammu and Kashmir with the so-called autonomous powers.

9. *Historical enmity between India and Pakistan:* Since the partition of the subcontinent, India and Pakistan have been engaged in a relentless rivalry on issues further than Kashmir and that have their roots in religion and history being escalated into a dangerous arms race in the region. The two countries have fought three major wars (1948, 1965, and 1971). Both India and Pakistan are rival nuclear powers and unlike Austria and Italy, the two countries have been engaged in a regional power competition. The big territorial size of India with a growing economy and corresponding military capabilities press her ambitions further to emerge as a regional power in South Asia. To weigh against South Tyrol, this Indo-Pakistan regional enmity is one of the major hindrances in finding a mutually accepted solution of the Kashmir dispute.
10. *Armed resistance in J&K:* The armed resistance of South Tyroleans to Italian fascism lasted only a short span of time. In contrast, the armed resistance in Jammu and Kashmir against the Indian government is not only mature (started in 1989) and widespread but much more violent in nature.
11. *Economic conditions:* Good economic conditions in South Tyrol contributed to the smooth achievement of autonomous powers. The state of Jammu and Kashmir lacks economic stability and therefore it would be difficult to sustain its status as an autonomous state without any international economic support.

Lessons for Jammu & Kashmir

Replicating the model of South Tyrol in Jammu and Kashmir is not as easy as suggested by some scholars and experts. Conditions are different here and the problem is much more complex. However, there are a number of lessons that one can draw from the de-escalation of conflict in South Tyrol:

- Flexibility and openness in the interpretation and application of legal framework principles.
- Tolerance and goodwill on all sides.
- Renunciation of incompatible positions by both sides.
- Conflict resolution in South Tyrol offers rich lessons about the cultural powers and independence for the inhabitants of the territory. This establishes the fact that the religio-cultural aspirations of the Kashmiris

are a decisive factor in the final resolution of the conflict – irrespective of what settlement is achieved.

- The balance of institutional principles of segregation and integration under international guarantee in South Tyrol provides the State of Jammu and Kashmir an important lesson to create a framework of institutions and procedures for negotiations to achieve settlement of issues. An international patronage of all-parties' negotiations will usher in the methodical and unperturbed resolution of the conflict in Jammu and Kashmir.
- Although ethnic cleavages exist in today's South Tyrolean society due to divided economic structure, the Autonomy Statute establishes the principle of peaceful coexistence "as a basis for the cohabitation of the groups by paying particular attention to security and to other sensitive interests of the groups..."⁽⁶⁶⁾ Interests and ethnic sensitivities need to be safeguarded through a political and legal framework in any conflict resolution arrangement for the State of Jammu and Kashmir.
- Learning from South Tyrol, multi-level parleys in conjunction with India-Pakistan inter-governmental consultations shall involve all political groups from Jammu and Kashmir including pro-independence, pro-Pakistan and pro-India representatives to address multilateral dimensions of the Kashmir problem. This will help sustain the peace process until a final settlement of the conflict is achieved.

Conclusion

"Autonomy, successful in some cases and failed in others, has increasingly been suggested as a method for resolving ethnic conflicts and it is not even uncommon for groups or regions to demand it."⁽⁶⁷⁾ The settlement of conflict in South Tyrol through the creation of an autonomous regime has increasingly been referred to as a conflict resolution model for other protracted conflict areas. However, this should not be forgotten that each case differs and is influenced by a number of factors such as history, geography, ethnic identities, economic and political conditions. One cannot simply import the "models" as the degree of success for each case of conflict resolution depends upon the variety of available means and possible instruments of implementation.

Like South Tyrol, the conflict in Jammu and Kashmir involves multidimensional problems including the protection of the rights of linguistic, ethnic and religious minorities, forms of sharing of political power between the different regions of Jammu and Kashmir and the contesting claims of sovereignty between India and Pakistan over the territory of Jammu and Kashmir. However, a number of complexities are specific to the Jammu and Kashmir region that shackle its course towards achieving comprehensive autonomy as for example, the failure of special powers for Jammu and Kashmir under Article 370 of the Indian Constitution led to the emergence of a number of

militant factions amongst the Kashmiris who demand a complete departure from the Indian federal structure to establish an independent state of their own. Within India, various central political parties have been opposing autonomy as a conflict resolution arrangement for the State of Jammu and Kashmir.

Therefore, rather than replicating the entire South Tyrol's autonomy model in the State of Jammu and Kashmir, there are possibilities to draw a number of lessons such as multilateral negotiations to achieve the final settlement, institutional arrangements, and international guarantees to the peace bargain – for the successful resolution of the conflict in Jammu and Kashmir.

The Kashmiris are highly discontented with the tyrannical rule of the Indian government in the State of Jammu and Kashmir. Peace cannot be achieved without resolving the political grievances of Kashmiri people. Having sacrificed thousands of lives, the Kashmiris do not believe in an ephemeral arrangement in the name of autonomy.

Notes and References

1. "The State of Jammu & Kashmir comprises the regions of the Kashmir valley, Jammu and Ladakh with approximately 10 million people. The dividing line between IJK and AJK (Pakistani part of Kashmir) came with a ceasefire line (marginally altered during India-Pakistan wars in 1965 and 1971 and renamed as LoC in 1972) between India and Pakistan in 1949." Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* (New Delhi: Vistaar Publications, 2003).
2. Ruth Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts*, (Washington D.C: United States Institute of Peace Press, 1996) p.33.
3. Peter Harris and Ben Reilly, *Democracy and Deep-Rooted Conflict: Options for Negotiators*, (International Institute for Democracy and Electoral Assistance: Stockholm, 1998). This handbook available online, was accessed on 10-8-04. <http://www.idea.int/publications/democracy_and_deep_rooted_conflict/ebook_chapter4_2.html#423>.
4. *Resolving Self-determination Disputes Through Complex Power-sharing Arrangements*, Workshop I Report (Germany: European Centre for Minority Issues, 2001). <<http://www.ecmi.de/rubrik/27/2001/#feb>>.
5. Antony Evelyn Alcock, 'South Tyrol' in Hugh Miall (ed.) *Minority Rights in Europe: Prospects for a Transnational Regime*. (London: Council on Foreign Relations Press, 1994) pp.46-55.
6. Jens Woelk, "The Case of South Tyrol: Lessons for Conflict Resolution?" Paper for fifth Annual Convention of the Association for the Study of Nationalities on Identity and the State: Nationalism and Sovereignty in a Changing World, Columbia University, NYC, 13 April 2000. <<http://www.eurac.edu/Events/SummerAcademy/2000/Aufsatz-ASN+2000.htm>> (accessed on 10-8-04).
7. "Census Results: South Tyrol in figures 2004," <http://www.provincia.bz.it/astat/downloads/Siz_2004-eng.pdf> (Provincial Statistics Institute: 2004).
8. Italy wanted Trentino to be part of a unified Italy. From the 1860s onwards, the area was in dispute and geographers and historians were "fighting" in academic journals over whether the land south of the mid-alpine line was or was not geographically or historically Italian. Thomas Kager, "South Tyrol: Mitigated but not Resolved", *Online*

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- Journal of Peace and Conflict Resolution* 1.3 – August, 1998. <http://www.trinstitute.org/ojpcr/1_3kag.htm>.
9. Thomas Kager, *ibid.* (accessed on 9-8-04)
 10. Antony Evelyn Alcock, “The Social Causes of Nationalism: The Case of South Tyrol”, paper presented at the European Consortium for Political Research Joint Session, Paris. 10-15 April 1989.
 11. Michael Feiler, “South Tyrol: Model for the Resolution of Minority Conflicts”, *Review of International Affairs*, Vol. XLVIII, No.1053/1054, 1997. pp.10-35.
 12. Rolf Steininger, “75 Years After The South Tyrol Conflict Resolved: A Contribution to European Stability and a Model for Solving Minority Conflicts”, in Gunter Bischof (ed.), *Austria in the Nineteen Fifties* (New Brunswick: Transaction Publishers, 1995), p.206.
 13. Antony Evelyn Alcock, “South Tyrol” in Hugh Miall (ed.), *ref.5*.
 14. Antony Evelyn Alcock, “Trentino and Tyrol: From Austrian Crown land to European Region” in Seamus Dunn (eds.), *Europe and Ethnicity: The First World War and Contemporary Ethnic Conflicts* (London: Routledge, 1996).
 15. Michael Feiler, *ref.11*.
 16. Jens Woelk, “The Case of South Tyrol...” *ref.6*.
 17. As quoted in Thomas Kager, *ref.8*.
 18. Antony Evelyn Alcock, “Ethnic Proportions in Employment on Provincial and National Level Government in South Tyrol”, *Employment in Divided Societies, 1981*, University of Ulster, Coleraine. <<http://www.cain.ulst.ac.uk/csc/reports/employ.htm#tyrol>> (accessed on 10-8-04).
 19. Thomas Kager, *ref.8*.
 20. Michael Feiler, *ref.11*.
 21. “Region Trentino - South Tyrol”, information available on the official site of South Tyrol, <http://www.provinz.bz.it/english/overview/region_trent_tyrol.htm> Also see Modified text of the Constitution of the “Trentino - Alto Adige” Region and the Provinces of Trento and Bolzano, <http://www.provinz.bz.it/lpa/autonomy/autonomy_statute_eng.pdf>.
 22. Thomas Kager, *ref.8*.
 23. Hurst Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*, (Philadelphia: University of Pennsylvania Press, 1996), p. 435.
 24. “Region Trentino - South Tyrol”, *ref.21*.
 25. Antony Evelyn Alcock, “*Trentino and Tyrol...*”, *ref.14*, p.77.
 26. Hurst Hannum, *ref.23*, p. 436.
 27. Jens Woelk, “Reconciliation impossible or (only) undesirable?” Paper presented at a conference on Ethnic Diversity, 1-2 March 2002, Trento University. <<http://www.alexanderlanger.org/index.php?r=50&k=178&id=936>> (accessed on 10-8-04)
 28. *Ibid.*
 29. Jens Woelk, “The Case of South Tyrol...”, *ref.6*.

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30. Ibid.
 31. Ibid.
 32. As quoted in Thomas Kager, ref.8.
 33. Jens Woelk, "Reconciliation impossible or (only) undesirable?", ref.27.
 34. Ibid.
 35. Michael Feiler, ref.11, p.35.
 36. Sumantra Bose, ref.1, p.2.
 37. Dr. K.K. Wadhwa, *Constitutional Autonomy: A Case Study of J&K* (New Delhi: Bhavana Books & Prints, 2001), pp. 32-33.
 38. Ibid., p. 34.
 39. Mohan Krishen Teng, *Kashmir Article 370* (New Delhi: Anmol Publications, 1990), pp. 75-76.
 40. Ibid., p. 77.
 41. Dr. K.K. Wadhwa, ref.37, p. 24.
 42. Mohan Krishen Teng, ref.39, pp. 110-112.
 43. Dr. K. K. Wadhwa, ref.37, p. 50.
 44. Ibid., p. 1.
 45. Ibid., pp. 19-31.
 46. Zoya Hasan, "Region and Nation in India's Political Transition", in Ian Copland, and John Rickard (ed.), *Federalism: Comparative Perspectives from India and Australia* (New Delhi: Manohar Publications, 2001), p. 168.
 47. Ibid., pp. 168-171.
 48. Ibid., pp. 168-169.
 49. Sumantra Bose, ref.1, pp. 97-98.
 50. Mohan Krishen Teng, ref.39, pp. 126-128.
 51. Ibid., p. 129.
 52. Ayesha Jalal, *Democracy and Authoritarianism in South Asia*, (Great Britain: Cambridge University Press, 1995), p. 178.
 53. Mohan Krishen Teng, ref.39, pp. 129-130.
 54. Sumantra Bose, ref.1, p. 81.
 55. The sadar-i-riyasat was the head of the State with the executive powers vested in him. He was elected to his office for a term of five years by the legislative assembly of the State and confirmed into his office by the President of India. Mohan Krishen Teng, ref.39, p. 130.
 56. The Constitution of the State provided for a Council of Ministers, headed by the prime Minister, to aid and advise the Sadar-i-Riyasat. Ibid.
 57. Mohan Krishen Teng, ref.39, p. 130.

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58. Victoria Schofield, *Kashmir in Conflict* (London: I.B. Tauris Publishers, 2000), p. 123.
 59. Sumantra Bose, ref.1, p. 88.
 60. Dr. K. K. Wadhwa, ref.37, pp. 57-73.
 61. Verghese Koithara, *Crafting Peace in Kashmir: Through a Realist Lens* (Delhi: Sage Publications, 2004), p. 289.
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 63. Sumantra Bose, ref.1, pp. 9-10.
 64. Maya Chaddha, *Ethnicity and Separatism in India* (New York: Columbia University Press, 1997), p. 70.
 65. Jens Woelk, "The Case of South Tyrol...", ref.6.
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- Ibid.