

CHAPTER 7

Organising for Freedom: Reflections on the Kashmiri and Kurdish Struggles

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This chapter is a reflective essay on civil liberties and democratic freedom when oppressed nations like Kashmir and Kurdistan organise for self-determination. Rather than focus on scholarly analysis of conflict and coloniality the way other contributors to the book have done, I reflect on the questions that struggles for self-determination of nations such as the Kashmiri and Kurdish nations throw up for activists who stand in solidarity with their aspirations for freedom and justice. Civil liberties are fundamentally state-centric, being about relations between state and citizens. Where does that leave people like the Kashmiris and Kurds who are denied the opportunity to decide whether they wish to be citizens of the nation-state? This chapter draws on my work as campaigner within both movements, with Peace in Kurdistan and Freedom for Öcalan campaign in Europe, and with the Committee for Protection of Democratic Rights and my practice as civil liberties lawyer in India, to reflect on the meaning of civil liberties and democratic freedoms. My reflections below pose questions about prevailing conceptions of law and statehood, and the assumptions that social justice movements make about them. These reflections do not suggest answers. The Kashmiri struggle for self-determination, following classical ideas of self-determination, sees independent statehood as the pathway to freedom from

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oppression by India and Pakistan for the Kashmiri nation. The Kurdish struggle followed the same political programme for independent statehood vis-à-vis the Turkish state, but changed tack after Abdullah Öcalan, the leader of the Kurdish movement, reconceptualised self-determination as democratic-confederalism. While the older conception of self-determination saw the state as the locus of power, Öcalan's reformulation shifted the locus of power to the Kurdish communities. In this essay I reflect on whether these divergences in conceptions of state and community in both movements have altered, or improved, the political context for freedom from state oppression.

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Unlike other contributors to this volume, I am not an expert or a scholar on the Kashmir conflict or the Kurdish question. Indeed, I have never written a scholarly research article on either subject. I do not intend to.³⁶ I have, however, been associated with the Kashmiri struggles for freedom for over three and half decades, as a member of the democratic rights movement and civil liberties lawyer in India, and as a member of the Kurdish movements for over a decade and a half as an international solidarity activist and social justice campaigner in Europe. It is best that we do not carry the things that are priceless to us to the marketplace. Just in case, amidst the hustle and bustle of the place, we are tempted to put a price-tag on that which is priceless and put it up for sale – like human freedoms for example.

Academia posed new challenges. As a latecomer to academia and joining it, as I did, at the height of neoliberal reforms of higher education everywhere, I decided early on that I would not bring knowledge about human freedoms and justice into the global education marketplaces. Around me, activist scholarship, a new brand of academic scholarship, paralleled the rise of the neoliberalisation of higher education. Activist-scholars debated the relations between theory and practice even as they enthusiastically embraced research impact activities, and universities showcased socially engaged research by their employees in the hope of improving the universities' research incomes. How did socially engaged knowledge produced within the institutional constraints of the universities colour our knowledge of human freedoms? Did that

³⁶ Writing as an activist, I do not engage with the scholarly writings of other academics, with the relatively new sub-field called 'Social Movement Studies' literature, or with conventional questions about theories and methodologies in academic scholarship. I have, however, referred to a small selection of essays that I wrote for activists and social movements, not as an academic or scholar, but as their fellow-traveller. I do this more to orient my memory of the events and to point readers to non-academic sources if they are interested in getting a flavour of the debates that happen within social struggles.

knowledge channel the actions for freedom and justice in the real world? These are wider questions for another time (see D'Souza, 2009).

Coming to academia after decades of activism, the big questions that social theorists debated, such as the relationship of theory and practice, structure and agency, were confusing to say the least. What are the wellsprings for our actions? If it were in our capacity to reason, the world would already be a free and fair place, which clearly it is not. The sources of our actions must, surely, lie elsewhere? What happens to our desire for freedom when those springs dry up? I had to be selective, I decided, about what knowledge I brought to the education marketplaces and what I kept out of it.

I have never written academically about civil liberties, democratic rights, political prisoners, struggles for self-determination, issues that are not limited to reason, logic and theoretical analysis. My reflections in this essay raise more questions than provide a definitive scholarly analysis. It is my way of safeguarding the wellsprings of my own desire for human freedoms, my own self-constructed checks and balances to ensure that in my desire to find my place within academia, I do not lose my way in the real world. I do, however, write about these issues, about democratic freedoms, political prisoners, self-determination, and much else for activists, for my comrades and my fellow travellers in our common search for freedom and justice, people with whom I can commune openly about shared hopes and aspirations without fear of being disciplined by academic disciplines.

I am fortunate that I could make those choices. For myself as a South Asian, a long line of teachers in the *sant-kavi* [philosopher-poet] traditions from across the subcontinent and beyond, and for many, many centuries, have nurtured my soul. The educational infrastructures for 'natives' by latter-day Macaulays (colonial and neo-colonial administrators) and the training in theories and methodologies never quite silenced the warnings about scholarly knowledge from the line of philosopher-poets, warnings which continue to remain deeply entrenched. From time to time, philosopher-poets like Hazrat Jalal-ud-din Rumi surfaced from the depths of nowhere in the middle of research committee meetings with reminders like:

If in the world thou art the most learned scholar of the time, behold
The passing-away of this world and this time! [I: 2845, D'Souza, 2014b)]

This is a reflective essay, my reflections on my own work. Nothing more.

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A bus shuddered, stuttered, and stopped beside the pavement in Lal Chowk, the city centre in Srinagar, the capital of the state of Kashmir. Four Indians, the last remaining passengers in the bus, got off. No sooner had the last person stepped down than the empty bus sped off and disappeared into the darkness.

If the four Indians had hoped to glean local knowledge from the bus driver about hotels, directions, or other information, that hope dissipated quickly. Lal Chowk plunged into the depths of darkness. The sun had disappeared. No streetlights, shop lights, and hotel lights, not even home lights, had appeared to take the sun's place. It was nearly 6pm in the evening. It was the winter of 1991.

In the years that followed, when recounting the scene of the arrival of the first fact-finding team put together by democratic rights organisations from different states in India to report on the Indian Army's treatment of Kashmiris, I could stop my tale there. Heads would nod, sighs would follow, and often I could see disbelief in the eyes of the listeners. The early 1990s were a watershed moment in the Kashmiri nation's struggle for freedom and self-determination. It was the height of the first wave of insurgency in the valley. A new form of struggle for an old demand.

A shadow emerged from the depths of darkness.

'Quick. Quick. Follow me,' the shadow whispered with palpable urgency. What could the fact-finding team do?

'Stay close to the wall,' the shadow urged as it ushered the four people, one woman and three men, to follow, which of course they did obediently. There was something sinister in that darkness. The shadow led the team to a *shikara* – those small wooden boats that floated lazily on Dal Lake in posters published by India Tourism, uniquely Kashmiri boats that the team members from states at the other end of the subcontinent – Maharashtra, Karnataka, Andhra Pradesh, and West Bengal – had only seen in Bollywood films. On Bollywood screens Kashmir always looked like a paradise on earth with beautiful lakes, snowclad mountains, apple orchards, and fair-skinned women.

The shadow dissolved, and from it emerged a squat, broad-shouldered man, not at all fair-skinned. 'There are shoot-at-sight orders for the entire city – there is a curfew in place,' he told us with the same urgency. 'You could be shot.'

If he thought we were idiots to venture into Srinagar during such dark times, he held back from saying it. Although we had compiled a list of names and organisations of people to contact on our fact-finding mission, the team had decided to simply land up and get an unmediated impression of the situation in the state.

How did the shikara owner know four persons had arrived at the city-centre in that darkness? Why was he impelled to rescue them from being shot at by Indian soldiers who paced the streets to enforce the curfew? Did he know we were not Kashmiris? Yes, he told the team, when asked, because no Kashmiri would venture out at that time of the evening.

That night, in that dilapidated shikara, over a meal of leftover *rajma* [red kidney beans] and rice, freshly cooked by the woman of the house (boat), with bedraggled children fast asleep in a corner and cockroaches peeping in and out, the fact-finding team recorded their first witness testimony – a sweeping view of the military situation in the Kashmir Valley. The team was there to report back to the people of the subcontinent on life under the Indian Army for the

people of Kashmir, hoping to stir their conscience into action. India's motto under her constitution is *satyameva jayate* [truth alone prevails]. Truth, the team hoped, would prevail. The post-truth era had not arrived yet.

Since then, over three decades, many more fact-finding missions by democratic rights organisations, women's organisations, journalist associations, trade unions, film makers, academics, and many others have travelled to Kashmir and reported on the situation in Kashmir and the misdeeds of the Indian Army in the name of fighting an insurgency. Lawyers have challenged the impunity that the Armed Forces (Special Powers) Act gives to ordinary soldiers. Kashmiris have done their own fact-findings. Mass graves were discovered, rapes by soldiers uncovered, lists of disappearances of young men drawn up, names of men extrajudicially killed compiled with meticulous detail, police complaints filed about excesses by the army, court cases initiated, violations of press freedoms recorded, the doors of the United Nations (UN) knocked, appeals to international human rights organisations made, and much else. Yet Kashmiris and democratically minded Indians keep sending more fact-finding missions, each year, record more violence by armed forces, and write more petitions and reports for the world at large. Why do they do it? How many 'facts', how much 'information', 'evidence', and 'truth' are needed for reason to transform into actions?

In the decades that followed, when appearing in courts, writing reports about violations of civil liberties, or reading about conventions on civil and political rights, one incident from that first fact-finding mission invariably reappeared before my mind's eye. The team visited Srinagar hospital. We were informed that a few men who had been shot by the Indian Army had been brought to the hospital the night before. The team were in the middle of interviewing one such patient who lay there with a glucose bottle hanging on the iron stand by the bedside, legs and face bandaged, and obviously in pain. The resident doctor hovered over the man, describing to the team the condition of the patient when he was admitted to hospital the night before, referring to his medical casefile as he spoke. Three uniformed soldiers marched into the ward and without a word wheeled the bed away together with the injured man, the glucose bottle, stand, and all. The punishment for speaking to the fact-finding team. What happened to that man? I continue to wonder.

If the incident was shocking in late 1991, it is no longer so. That is the change that has occurred over the decades. What can people do when reason, truth, and justice fail? What should people do when freedom is on a dead-end road? What should people do who wish to stand in solidarity with people struggling against state oppression?

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Kashmir is in South Asia, however: a subcontinent that is home to a quarter of humanity, poor ones at that. In the complex web of states established by

colonial rulers, democracy was perhaps always an alien transplant in South Asia. What about modern Europe? As the homeland of modern democracy, its laws and its institutions are, after all, the new standards of civilisation.

Most Europeans at least will agree that the European Convention on Human Rights (ECHR), for example, is one such standard. The cornerstone of the new standard of civilisation is the ‘rule of law’, a rubric of legal standards that must exist for a state to be classed as ‘civilised’. Undergraduate law students around the world, including in my own university, are taught about its salient features: fair and impartial trials, access to justice, privacy of communication with lawyers, humane conditions of detention, family visits for prisoners, freedom from torture, an independent judiciary, personal responsibility for crimes, and proof beyond reasonable doubt in criminal offences being some of them. It is the standard by which states around the Third World continue to be assessed, evaluated, and judged. The journey from Srinagar in that winter of 1991 to Strasbourg in the summer of 2016 proved to be a long and confusing one.

Inside the stern official building of the European Commission’s secretariat, a group of people from diverse walks of life – Catholic priests, community workers, academics, lawyers, and others – sat around a table waiting in anticipation for the arrival of the secretary of the Committee for Prevention of Torture and Inhuman or Degrading Punishment (CPT), a subcommittee of the European Commission established to oversee the implementation of the ECHR by member states. The Imrali delegation, a team of so-called ‘citizens of conscience’ (aren’t all citizens supposed to have a conscience in a democracy?), had made several unsuccessful attempts to contact different government departments in Turkey to enquire about the most well-known political prisoner of our times in their custody: Abdullah Öcalan, the leader of the Kurdish nation, the sole prisoner on the isolated island of Imrali for under two decades at that time. The delegation was there to meet with the secretary of the CPT to ask if *he* would visit Öcalan instead. CPT officials had last visited Öcalan on Imrali island in 2013. Since then no lawyer, family member, or anyone else had seen Öcalan or spoken to him for three years. Would the CPT official kindly pay another visit to check if he was even alive? And, if so, if he was alive *and* well?

Simple, softly spoken, the gentle Judge Essa Musa, head of the Imrali delegation, defence lawyer for Nelson Mandela, a former judge who tried to steer post-apartheid South Africa towards the ‘rule of law’, sat opposite the self-assured, elegant, emphatic secretary of the CPT across the table. Mr Secretary told the delegation decisively that he would not be able to visit Imrali prison’s sole occupant.

Why?

The CPT’s secretary became visibly annoyed at the delegation’s question (D’Souza, 2018).

The common adage ‘speaking truth to power’ becomes rather confusing when viewed from such close quarters. What does it *really* mean to ‘speak truth to power’? Those in power know the truth, indeed they know it far more

intimately than the less powerful. The secretary of the CPT talking to the Imrali delegation that day knew not only the truth about the conditions of Öcalan's imprisonment far better than any member of the delegation did, but equally the reasons for the silence of the European states for which he served as the CPT's secretary. What does it mean to 'speak truth to power' when truth is so closely guarded by power, and rendered opaque by it?

Perhaps, at the end of the day the CPT officials were bureaucrats, waged employees of European states that had signed on to the ECHR for whatever reasons. Members of the judiciary are different. Judges occupy an esteemed status in liberal societies.

In *Öcalan v Turkey*,³⁷ decided 11 years before the Imrali delegation met with the secretary of the CPT, the Grand Chamber of the European Court of Human Rights (ECtHR) determined that Öcalan's right to legal remedies were breached by Turkey, that his trial had not been fair, that he was not produced before a judge promptly after his arrest, and that the Turkish court that passed the death sentence on him was neither independent nor impartial.

The court dutifully recorded facts about the part played by the states of Kenya, Greece, the Netherlands, Italy, Russia, and Turkey in the abduction, arrest, and torture of Öcalan. In the court's opinion, as the states had consented to each other's actions and none complained about other states, their actions did not breach the ECHR. The media everywhere were buzzing with news about the CIA's involvement in the abduction and arrest of Öcalan.³⁸ The CIA was not even mentioned before the ECtHR. Who had the evidence? National security is typically outside the remit of courts, national and international, and as an independent statutory body, the CIA is not legally answerable even to US legislatures (D'Souza, 2019). But evidence is exactly the thing that courts say is needed to do justice, and is just the thing states say they cannot divulge in the interest of national security.

By a curious turn of fate, the findings by the ECtHR of unfair trial and breaches of the ECHR saved Öcalan's life. As the trial was unfair, the court ruled, Turkey could not impose the death penalty even if Turkish national law permitted the extreme penalty, a fact that the CPT secretary made a point to remind the Imrali delegation about (D'Souza, 2018). The court did award the lawyers their fees of €120,000, together with interest if Turkey delayed the payment.

³⁷ ÖCALAN V. TURKEY. App. No. 46221/99, <<http://www.echr.coe.int>>. European Court of Human Rights (Grand Chamber), 12 May 2005.

³⁸ E.g. Helena Smith (19 February 1999) 'Athens in crisis over CIA links to Öcalan capture' *The Guardian*, retrieved 24 February 2022 from <https://www.theguardian.com/world/1999/feb/19/kurds.helenasmith>

Helena Smith, Chris Morris (21 February 1999) 'Global plot that lured Kurds' hero into trap' *The Guardian*, retrieved 24 February 2022 from <https://www.theguardian.com/world/1999/feb/21/kurds1>

During the first ECHR court hearings in 2001, CPT officials had visited Imrali island prison to report on the conditions of his imprisonment. The CPT presented photographs of the prison, which had bookshelves, clean toilet, bed, and air-conditioning. They argued that indefinite solitary confinement could be considered a form of torture. The Grand Chamber was satisfied with the photographs and avoided ruling specifically on whether indefinite solitary confinement amounted to torture, and what periods of solitary confinement were legally permissible.

With the hearings completed, Turkey took away the bookshelves, denied access to books, access to lawyers and private communications with them, prison visits by family, and phone calls. In the room that day, the CPT secretary remained silent (or helpless, we will not know) on a standard the CPT had themselves advocated before the ECHR.

Outside the European Commission building, groups of Kurdish and democratically minded, truth-seeking protesters gathered daily as they had done for weeks, months, years, demanding – at the least – Öcalan be allowed to communicate with lawyers, family members, and his well-wishers. Öcalan remains in solitary confinement as the years pass by, without access to lawyers or family members. What can we say about standards of civilisation, about the ECHR?

What was Öcalan's crime, however? What did he do that so frightened Turkey and silenced the European Commission's CPT?

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Öcalan v Turkey (2005) notes that Abdullah Öcalan was indeed the leader of the Kurdish nation. That from 1973 to 1978 there were democratic campaigns for the recognition of the Kurdish nation, their language and culture, but with no effect on the Turkish state. By 1984 Öcalan came to believe that the failure of democratic politics left the Kurdish nation with no alternatives except an armed struggle for an independent Kurdish state. However, by 1991, (about the time the democratic rights organisations in India sent their first fact-finding mission to Kashmir), Öcalan and the organisation he had established, the Kurdistan Workers' Party, or the PKK, had ended their armed conflict and withdrawn their demands for an independent Kurdish state. The Turkish state had made significant concessions on the rights to the culture and language of the Kurdish nation. Instead, Öcalan proposed a plan for viable and lasting peace for the Kurdish nation within a unified Turkish state.

Öcalan's lawyers, at the initial court hearings in Turkey, had asked the Turkish court to allow them to examine the government officials who had engaged in peace negotiations as defence witnesses. The Turkish courts declined this request. What transpired between Öcalan and the Turkish state in those negotiations? We will never know. Courts are expected to decide disputes based on evidence. In criminal cases, *mens rea* or intention is a pivotal element to decide the guilt of the accused. What is to be done when courts do not permit evidence

on pivotal questions – in Öcalan’s case, evidence that he had called for a cease-fire and there were real negotiations with the Turkish government to find a just and peaceful settlement, and therefore no intention to engage in the criminal acts that he was accused of?

After the *Öcalan v Turkey* (2005) decision, and Öcalan’s solitary confinement in Imrali prison, once again, in 2011, Turkey initiated peace talks with him. What did they talk about? We will not know either from Öcalan (no one can visit him or speak with him) or Turkey (as it is a national security matter, and therefore confidential). If the Turkish state was willing to restart peace negotiations, why the refusal of family and lawyer visits?

Regardless, Öcalan’s peace plan in 1991 generated a sense of optimism in the Kurdish and democratically minded non-Kurdish people in Turkey and Europe. A train of parliamentarians, lawyers, democratic organisations, and others trekked to meet Öcalan, then living in Syria in exile. Hopes surged for a peaceful settlement of the status of the Kurdish nation within a Turkish constitution. Even in faraway India, democratic rights movements became curious about the peace process to resolve another nationality question, in a different context and a different region.

Beginning with national liberation struggles against colonial rule everywhere, freedom from national oppression was articulated as a demand for independence and statehood. The right of nations to self-determination is enshrined in the UN Charter. Öcalan posed a question to the Kurdish nation that had been self-evident until then for most oppressed nations: why do we want statehood? On becoming independent, most of the states that were born from national liberation struggles for self-determination against colonial rule, became as oppressive, if not more, as their colonial masters had been. They used the same armies and institutions of the colonial state and colonial laws to put down diverse nationalities and ethnic, religious, and linguistic groups within their states in the same manner as the colonial rulers had done. Öcalan took this argument a little further, arguing that tyranny is inherent in the very nature of the state as an institution (D’Souza, 2020). Besides, in the Kurdish regions there were many other oppressed nationalities and religious denominations: the Azeris, Assyrians, Alavis, Yezidis, and Shias. What is the guarantee that a Kurdish state would not become as oppressive towards them as the Turkish state was to the Kurds, after they won their statehood?

On the other hand, had the Turkish state been genuinely democratic, it could potentially at least accommodate all nationalities, religions, cultures, races, and languages. Besides, there were many Turkish people who were also oppressed, even when they were governed by a Turkish state. From this Öcalan concluded that the Kurdish nation could be free only when all other nations and peoples of Turkey, Syria, Iraq, and Iran were free. The Kurdish nation in Turkey should work to democratise the Turkish state, and they should work for freedom, not only for the Kurdish nation but for all the nations of Turkey and all sections of society who are oppressed by the state. Instead of demanding statehood, the

Kurdish movement for freedom should build a confederal structure comprising all nations and communities, and insisted that the new confederal structure should put women and ecology front and centre of their programmes for bottom-up change. Stronger, confederated communities were better placed to withstand state oppression and build freer societies, Öcalan argued. A confederal structure could, potentially at least, be accommodated within new constitutional arrangements in Turkey. Claims to ‘my freedom’ gave way to claims for ‘your freedom *and* mine’ within the Kurdish movements (D’Souza, 2018) (see Tekdemir in this volume).

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In India too, multiple languages, religions, denominations within each religion, castes, ethnicities, cultures, and nationalities criss-cross to form intricately woven cultural webs that sparkle and look beautiful when the political sun shines, but are fragile and easily broken by political storms. As in Turkey, the misdeeds of the Indian army are not limited to Kashmir. There are similar stories of the Nagas, Mizos, Manipuris, Assamese, and Punjabis, who also faced the wrath of the Indian Army, and were subjected to the arbitrariness of the Armed Forces (Special Powers) Act. And then there were the *Adivasis* [First Nations] against whom armed forces conducted military operations from time to time under different laws. There were the Tamils, Muslims, and Dalits who experienced state oppression in different ways, all dutifully recorded by the umpteen fact-finding reports of various democratic rights organisations across India over four decades. What does self-determination, that neat phrase in the UN charter, mean in a state where people in a third of its territory have been under army rule of one type or another for decades, and the army is deployed in the name of constitutional democracy?

Often, when listening to Kurdish campaigners speaking about Öcalan’s political reasoning that prompted him to conclude that a viable and lasting peace within new Turkish constitutional arrangements, and not statehood, was the only pathway for freedom of the Kurdish nation, my mind would drift to Kashmir. What if?

What if South Asia’s own Abdullah Öcalan were to appear miraculously in Kashmir? What if the Kashmiri Abdullah were to say: ‘Too many Kashmiris have died fighting the Indian state, too many nations of India live under the tyranny of the armed forces, the tyranny of anti-terrorism laws, too many people in the subcontinent live in fear?’ What if the Kashmiri Abdullah were to say: ‘Your freedom *and* my freedom’, that freedom for Kashmiris was contingent on freedom for Nagas, Mizos, Manipuris, Assamese, Punjabis, Tripuris, Tamils, Adivasis, Dalits, Muslims, Christians, and a host of peoples of the subcontinent?

Minds that refuse to be disciplined by academic disciplines have a propensity to wander, but the realities of their world enforce the discipline that the academia fails to do. The Kurdish Abdullah was in prison for proposing the

democratisation of Turkish society as a condition for a just peace for Kurdish people. And his proposals terrorised the Turkish state. Why should the Kashmiri Abdullah's fate be any different, or the Indian government's response for that matter? Are we to understand, then, that real and substantive democracy terrorises states?

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Öcalan's idea of democratic confederalism as the pathway to building democratic societies that so inspired Kurdish activists stunned me when I first heard about it. In South Asia, at the turn of the 20th century, the Ghadar movement, one of the most significant movements for freedom from colonial rule after the First War of Independence in 1857,³⁹ proposed a confederation of *quoms* [nationalities] of the subcontinent, arguing as Öcalan did, that the nation-state model was simply not a workable framework for *azad Hindustan* [free India]. There were too many criss-crossing identities, and no South Asian could reduce herself to any single identity. Ubaidullah Sindhi, one of the prominent leaders of the movement and member of the first government-in-exile in Kabul, proposed a constitution for *azad Hindustan* founded on a confederation of nationalities within four broad linguistic regions. The Ghadarites were brutally killed and tortured, and the movement forcibly suppressed (D'Souza, 2014a). It added a new phrase to political vocabulary: *the Troubles*, the 'Punjab Troubles' as it came to be called by Great Britain. A hundred years later, Öcalan proposed something similar to what the Ghadarites had done at the turn of the century: a confederation of nationalities. How do comparable ideas re-emerge in very different contexts when confronted with similar questions? (Sinayiç and Kansoy, 21 February 2020). What might Kashmir be today had Sindhi's constitution prevailed?

Around me today, defenders of democratic freedoms in the subcontinent and around the world are frustrated that the special status of Kashmir under Article 370 of the Indian constitution, inserted when the constitution was adopted over seven decades ago, was unilaterally and arbitrarily repealed. Wave upon wave of anger and resentment swell up in Kashmir day after day, month after month. Article 370 of the Indian constitution established *temporary* arrangements for the governance of Kashmir to accommodate the Instrument of Accession. Why temporary? Because Kashmiris were promised a plebiscite to decide their future, a promise formalised by the UN Security Council in UN Resolution 47/1948. The Kurdish people too were promised a plebiscite by the League of Nations.

Kurdistan had been a colony of the Ottoman Empire before the First World War. During that war, the British and the French agreed under the Sykes-Picot agreement that the Ottoman colonies would be divided between them after the war ended. Under the League of Nations, Kurdistan was divided between French and British mandates, with a promise that a plebiscite would be held after the

³⁹ Known as 'the Indian Sepoy Mutiny' in British history.

war to determine the views of the Kurdish people on their status. Instead of a plebiscite, promised under the Treaty of Sèvres in 1920, Kurdistan was divided between Iran, Iraq, Syria, and Turkey after the First World War ended.

In that winter of 1991, when members of the citizens' fact-finding team dashed frantically from one place to another during the small curfew-free windows of the day, they frequently went past the building that housed the UN mission for Kashmir, a physical reminder of the promised plebiscite. If Kenya, Greece, the Netherlands, Russia, Italy, and Turkey had colluded in Öcalan's arrest and detention, India and Pakistan had already, between them, decided to exclude the Kashmiris from talks to settle their dispute over Kashmir. The Shimla Agreement in 1972 formalised the agreement giving the UN Security Council an exit route from the promised plebiscite that the Kashmiris have waited for for over seventy years. The UN mission continues, and its building remains in Srinagar. What is its mission now?

Are we to conclude then that when states collude, neither individuals nor nations have a say in their fates? Where does that leave democracy?

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My reflections in the foregoing sections have raised more questions than answers. Indeed, this essay has been a string of questions with no attempt to answer them. I sit in my office and stare at the books on my bookshelf: volumes by the *Supreme Court Cases* reporter in their ink-blue jackets, issues of the journal *Public Law*, stacked year-wise, international law commentaries by Antonio Cassese, Malcolm Shaw, Jan Klabbers. I know they do not hold the answers to my questions.

To me at least, their purpose appears to be to establish the assumptions that we must make about democracy, civil liberties, rule of law, constitutionalism, and the so-called 'international community', a club of states. In 1947 when a part of Kashmir was 'temporarily' joined with India giving it a special status, the meaning of freedom for Kashmiris meant safeguarding *self-governance*, their abilities to govern according to the wishes of their people, their customs, and their histories. Today, to most Kashmiris, freedom means freedom *from* India. That is the change that has come about in seventy years of constitutional democracy. In 1991 when the peace process began, freedom for the Kurdish people meant the space for all nations to govern themselves and safeguard their distinctive cultures, languages, and ways of life within the larger Turkish state. Today, freedom for many Kurdish people means freedom from *all* states. Meanings change. Meanings shrink or expand.

Around me, calls for *azadi* [freedom] ring louder than ever from Kurdish and Kashmiri peoples. Two different nations, two different states, two different continents, two different histories share the same word *azadi*, *azadi*, and astonishingly, even the evolution of its meaning has followed a similar trajectory: from *azadi* to govern ourselves to *azadi* from states.

I do not bother to dust the volumes on my bookshelf, I do not search for the meaning of *azadi* in those volumes. Freedom is not solely a matter for the mind, freedom is a matter for the heart. For my part, I try to safeguard the well-springs of *azadi* within me, hoping that the desire for freedom keeps bubbling away. I recall Rumi again:

If in the world thou art the most learned scholar of the time, behold
The passing-away of this world and this time! (I: 2845, D'Souza, 2014b)
This time too shall pass.

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