

**ASYMMETRICAL FEDERALISM : A STUDY OF
JAMMU AND KASHMIR**

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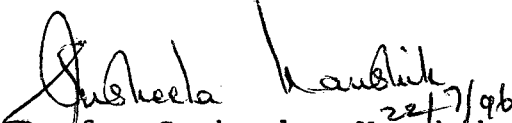
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CERTIFICATE

I have the pleasure to certify that Ms. Sunila Mahajan, an M.Phil. student of the Department of Political Science, University of Delhi, has pursued her research work and prepared the present dissertation titled "**Asymmetrical Federalism : A Study Of Jammu and Kashmir**". It is the result of her own research and to the best of my knowledge no part of it has earlier comprised any other monograph, dissertation or book. This is being submitted to the University of Delhi for the award of the degree of Master of Philosophy in Political Science in partial fulfilment of the requirements for the said degree.


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PREFACE

Twentieth century has been called the age of federalism. As we approach the twenty-first century, interest in federalism has further increased. At the same time, it has come to be combined with a more realistic approach towards it based on a better understanding of its working, practical difficulties involved as well as the possibilities of variations and innovations. In recent years, increasing attention has come to be given to the study of asymmetry within federations or what has come to be known as asymmetrical federalism.

This dissertation is a modest attempt to explore asymmetrical federalism in the Indian context, especially in relation to Jammu and Kashmir. Comparisons have also been made, where relevant, with Quebec in Canada and Sabah and Sarawak in Malaysia. Like Jammu and Kashmir, these three states enjoy either a formal or an informal asymmetrical position within their respective federations on the basis of being states where some national minorities are concentrated.

India can be called a pioneer in adopting asymmetrical innovations in its federal set-up. However, while practical constraints pull India towards asymmetry, fairly strong homogenizing forces have been pulling it in the opposite direction. The following chapters seek to study these dynamics of Indian federalism in terms of their conceptual basis and theoretical implications, a case study of Article 370, experiments with asymmetry below the state level, and party politics.

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CHAPTER 1

ASYMMETRICAL FEDERALISM : A THEORETICAL BACKGROUND

In simplest words, federalism can be defined as “self rule plus shared rule,”¹ and a political system based on it is one which has more than one level of government in such a way that none is able to abolish the others’ jurisdiction unilaterally or even fully impose its will on others. Traditionally, federalism has been defined in terms of a dualistic polity although there is nothing in the federal principle itself which restricts it to two levels of government only. Central to the concept of federalism is the question of territory since federalism basically involves constitutional recognition and institutionalization of territorially based diversity in a state or rather those such diversity which have been politically mobilized.

Different writers have approached the study of federalism with different perspectives. Many have emphasized institutional and legal criteria; others have attempted a sociological analysis. In recent years, there has been a shift towards a greater understanding of federalism as a normative and philosophical concept of human nature and social relations and not simply as an institutional arrangement of a particular type. As Michael Burgess points out, basic to federalism is the “presumption of the worth and validity of diversity. Human beings are not simple creatures; we are each complex bundles of identities pursuing different and sometimes conflicting goals.”² Moreover, the ambit of the study has been expanded to include many such arrangements in which federal elements had not been previously recognised or understood as well as other new innovations which do not always conform to the restrictive and rigid criteria which had earlier been used to classify political systems as “federal”, “quasi-federal” and “unitary”. The essence of federalism, says Daniel Elazar,

lies not in a particular set of institutions but in "institutionalization of particular relationships among the participants in political life".³ Minimally, a federal arrangement involves "some kind of contractual linkage of a presumably permanent character that (1) provides for power-sharing; (2) cuts around the issue of sovereignty; and (3) supplements but does not seek to replace or diminish prior organic ties where they exist."⁴

Many writers have also come to accept a conceptual distinction between federalism and federation. For greater analytical clarity, R.L. Watts uses three terms: "federalism", "federal political systems" and "federation".⁵ He describes "federalism" as a normative concept and "federal political system" as a descriptive term referring to a genus of political organizations encompassing a wide variety of species such as federation, confederation, federacy, associated statehood, unions, leagues, constitutional regionalization and constitutional home rule. "Federation" is a particular type of federal political system, "first invented by the founding fathers of the United States at Philadelphia in 1787, a form whose characteristics involve the following: two orders of government each acting directly on their citizens, a formal distribution of legislative and executive authority and allocation of revenue resources between the two orders of government, including some areas of autonomy for each other; provision for the representation of regional views within the federal policy-making institutions; a written supreme constitution not unilaterally amendable and requiring the consent of all or a majority of the constituent units; and umpire (courts or referendums) to rule on disputes between governments; processes to facilitate intergovernmental relations for those areas where responsibilities are shared or overlap".

Federalism, particularly since the Second World War, has been looked upon as a particularly appropriate solution for accommodating ethno-regional diversity in multi-ethnic

states within the wider framework of national unity. The experience of federalism in multi-cultural societies since then has not always been encouraging but there has emerged in recent years a renewed interest in federalism, especially in terms of providing the middle ground between global economic pressures for large political units, on one hand, and equally strong pressures for greater recognition to and more autonomy to regional and local units, on the other.⁶ The other important reason has been the search for genuinely federal solutions to ethnic conflicts in many parts of the world based on acceptance, to a large extent, of the phenomenon of ethnicity as enduring and even self-reinforcing. This is unlike earlier when it was believed to be transitory and there was hope in almost every post-colonial state of building a 'new nation' out of its diversities. Thus, federalism being advocated today, in most cases, is not a guise for centralization or a new nation-building project. It is rather a search for a technique which is flexible and adaptable to different situations, so that a number of communities may coexist harmoniously within a larger state and benefit from its advantages. Exploring asymmetrical innovations is a part of this search.

This chapter seeks to understand the concept of asymmetrical federalism and its theoretical and practical implications. Since asymmetrical federalism is basically an attempt to develop federal institutions which best accommodate different, even divergent, demands and aspirations of different ethno-regional groups, the basic problems arising out of using federal solutions to accommodate ethnic diversity are first examined, mainly in terms of the tension between the concepts of federalism and nationalism and the problem of minorities in territorial federations. The rest of the chapter is devoted to the concept of asymmetrical federalism : its meaning, dimensions, theoretical basis, its practical functioning, and, lastly, its implications for Indian federalism.

FEDERALISM AND NATIONALISM IN MULTI-ETHNIC STATES

“Nationalism”, says Ernest Gellner, “is primarily a political principle, which holds that the political and the national unit should be congruent”.⁷ However, single nation-state was rare to begin with as, in most cases, the formation of the state preceded the creation of the nation. With decolonization in the Third World, it became even more rare. In a survey of 161 states and three dependent territories conducted in 1981, it was found that only 45 were single-nation states⁸. This has necessitated devising a number of institutional arrangements in most states to accommodate ethnic diversity ranging from federations to cultural rights, all of which transcend the classic nation-state.

Modern federalism, according to Daniel Elazar, was “invented to provide either an alternative or a corrective to the classic nation-state model but one that would still be within the parameters of modern state-building”.⁹ It, unlike other devices, provides regionally based groups a constitutionally guaranteed share in governance in the form of establishment of central and regional governments, none of which is legally or politically subordinate to others. However, beyond creating an institutional arrangement, federalism also attempts to create a “public” or a civil society that transcends ethnic boundaries. It is here, says Elazar, that “federalism transcends pluralism. Pluralism involves the recognition of legitimate differences; federalism the structuring of relationships that permit the groups bearing those differences to function together within the same political system.”¹⁰

Thus, federalism provides an alternative to the nation-state in the form of a different political community, allegiance to which is based on reason. It, however, is unable in most cases to triumph over the dominant and hegemonic ideology of nationalism whose appeal

is more to emotions. It leaves unfulfilled the need for some kind of a legitimizing myth which could sustain federal states in the exactions they make on their citizens, especially those faced with ethnic groups demanding secession. Federalism, as Sawyer pointed out, is almost never defended for itself but only when associated with more compelling values. United States is one federal state where federalism is viewed as an end in itself and even there mainly because Americans have developed a concept of federalism based on liberal values, that is, liberty of the individual and market economy.¹¹ In multi-ethnic federations dealing with separatist challenges and not committed to American liberalism, the challenge is of conceptualising federalism in terms of a value that can rival the moral and emotional appeal of nationalism.

The problem is generally sought to be resolved by inventing nationalism at the federal level, basically through cultural or normative integration even though federalism was first adopted to permit diversity. As Ursula Hicks observes, "the successful federation is one which ... is able to build a nation. When this has been done it will be virtually secure against internal disruption because the members may well feel that in the long run this is more important to them than some of the details of their States Rights".¹² Thus, instead of providing an alternative to the nation-state, federalism itself becomes a victim of the nationalist ideology.

The Canadian leader, Pierre Trudeau, whose writings and political career best reflect the tension between federalism and nationalism, at first rejected nationalism as historically doomed and inferior to theoretical reason represented by the federalist principle.¹³ At the same time, he argued that, from practical motives, to ensure the triumph of federalism in multi-ethnic states, nationalism at the federal level could be promoted to create a more

compelling allegiance to the centre, although this is also likely to legitimize nationalism at regional levels. As Prime Minister, particularly after his re-election in 1980 and the Quebec referendum, realising that reason alone was not enough, he set about creating a new myth for the Canadian nation which could give Canadians same set of fundamental values and a sense of belonging to one Canada. This was achieved by the 1982 patriation of the Canadian constitution from London and especially the incorporation of Canadian Charter of Rights and Freedoms. Attacking the concept of Canada as a community of communities, the Charter sought to develop a pan-Canadian identity based on rights of individuals and groups on a non-territorial basis, which would override provincial senses of community and identity. While it has achieved considerable success in the case of English Canada, it has been vehemently opposed by the Quebec nationalists for its homogenizing and universalizing thrust and its emphasis on individual rights which fail to take into account the collective goals of French-Canadians. Its image of Canada as a multi-cultural mosaic is totally incompatible with the binational vision of Canada held by French-Canadians on the basis of which they seek a special status for Quebec.

Such a solution basically amounts to creating a "federal nation-state" in which federalism as a normative concept upholding diversity is marginalised and is accepted only as an institutional arrangement for governing a large territory. Nation-state is inherently committed to homogeneity and uniformity. To be a citizen is to be subject to exactly the same laws and to enjoy exactly the same rights as others. Since it sees itself as the highest moral community, it cannot tolerate other communities which have the potential of becoming "rival loci of allegiance and identity and thus detract from the majesty of the national community."¹⁴

In the Canadian context an alternative theorization of federalism has been attempted by Samuel V. LaSelva by basing it on "fraternity", which he says is implicit in the ideas of many Canadian statesmen. By understanding federalism in terms of fraternity, it becomes much more than just a political or economic expedient or even a political virtue; it becomes a moral ideal and "a way of life."¹⁵

THE THIRD WORLD CONTEXT

Nation-building efforts have been the hallmark of many of the Third World federations as well. In the 1950s and 1960s, under the influence of modernization theories, it was assumed that there was a single line of development through which all nations pass. 'Primordial' loyalties such as ethnic loyalties would be overcome as more modern and rational ways of thinking spread as a result of 'development', that is, industrialization, rural reform and building of modern infra-structures. For some time, the model appeared to work and even convinced diverse groups that their interests were being looked after by the state. In the 1970s, however, these states entered a period of prolonged structural crisis, which in many cases is still continuing. It seriously undermined their integrative capacity and capability to build a *new nation*, even as the old nationalist legitimacy due to anti-colonial movement was lost. Ethnic identities were revived and ethnic groups became critical of the state.¹⁶ At the same time, "national integration" itself especially in the case of backward regions and groups, came to be questioned on the basis of such theories as internal colonialism and hegemony.

Ethnonationalist movements in the Third World, argues Dawa Norbu, although dismissed by many as "primordialism", "regionalism", "particularism", "sub-nationalism", etc., are basically struggles against the greatly empowered and highly centralized post-colonial state

which is captured by the elites among dominant ethnic groups, who also constitute an overwhelming numerical majority. Minority ethnic groups are not only systematically excluded from the top decision-making processes, but even where federal principles are accepted, increasing attempts are made through gradualist methods to 'integrate' the non-dominant ethnic groups into the cultural fabric of the dominant ethnic group and promote state-nationalism so as to create the necessary myth of a nation-state in order to legitimize the state. Therefore, the basic contradiction which emerges is between the polyethnic society and the monoethnic character of the state (or central government) and the incessant state-nationalism that negates and denies ethnic identities.¹⁷

Federal solutions, as Cynthia Enloe points out, are sought by the Third World elites essentially to "quarantine issues without solving them" and "only so far as they believe they can use it to mollify groups without reducing their own statist resources."¹⁸ Thus, despite federal institutional arrangements, regional or ethnic communities may be reduced to being internal colonies with no real political power or control over the productive processes.

Federalism, in such situations, thus, basically provides no more than a *modus vivendi* between the ruling ethnic elite of the country and the subordinate elites of its constituent ethnic groups. Its longevity depends upon the ability of the central power to prevent the rise of elites that see their interest more in ethnic than in class terms.¹⁹ Here, however, democracy becomes the first casualty. Even otherwise too, it has been pointed out that federalism, being a complex form of government, favours the relatively privileged groups which have the resources to understand and manipulate its complexities.

There are also cases, however, where federalism is opposed by the numerically dominant

communal group as by many Africans in South Africa, who view it as a device to frustrate their majority rule and an obstacle to their being able to assert their culture and values nation-wide.²⁰ It may also be resented by the dominant group if it means accommodation of groups continually in need of subsidies.

At the same time, one needs to be cautious in assuming the inevitability of ethnic politics in Third World countries. As Frank Furedi argues, in many of these countries "class and nationalist identities had to be neutralised or defeated before the ethnic factor could assume major political significance" and the colonial policies played a major role in this.²¹ In the absence of a critical study of the history of decolonization, ethnic politics rather than being understood as a product of specific historical circumstances has come to be seen as something inherent in a heterogenous society. Further, there is a need for a better understanding of both nationalism and ethnicity as "vehicles of power" created by elites for more effectively pursuing their own interests which may or may not coincide with those of the groups they seek to mobilize and represent. Basically it is this problematic gap between *identity-as-vehicle* and *identity-for-itself* and identity as definite, invariable and discoverable and identity as malleable, porous and subject to diverse interpretations even within the communities themselves which most writers leave unbridged and even unacknowledged.

MINORITIES AND RIGHTS IN TERRITORIAL FEDERALISM

In most federations, ethnic groups are not neatly divided territorially with the result that territorial boundaries and ethnic boundaries do not completely overlap, leading to the problem of minorities in most units. In some cases, this non-overlapping may even prove beneficial by reducing the intensity of the primary conflict (generally communal)

by creating territorial or regional cleavages which cross-cut the primary cleavage.²² In others, it might lead to never-ending ethnic tensions and conflicts. One solution can be redrawing of boundaries with its attendant problems of large number of small and non-viable states. In this context, non-territorial federal arrangements have also been put forward. In Canada, it has been argued by some French-Canadians that federalism has perpetuated their dependency as French-Canadians outside Quebec are a permanent minority, leading to suggestions that Anglophones and Francophones should be politically organised as such wherever in Canada they live.²³

Perhaps it would be useful here to look at the Austrian Marxist, Otto Bauer's model of a non-territorial federation of nations based on national autonomy which he believed would allow for ethnic and national assertion within a democratised and hopefully socialist state. Bauer, writing in early twentieth century in the multi-ethnic Austro-Hungarian empire rejected the concept of territorial nation and instead defined nation as a "community of persons which does not enjoy exclusive sovereignty in any particular region". National autonomy, therefore, involves organizing members of a given nationality dispersed over various parts of the state into a single, general, inter-class national union which would have jurisdiction over all cultural issues relating to the nationality. Specifically political questions, however, were to be left to the Pan-Austrian parliament. Only such autonomous unions and not autonomous regions, he believed, would protect the cultural interests of all nationalities in a multinational state and end national discord.

In opposition to Bauer's views, Stalin, in his famous essay of 1913, gave a definition of nation which emphasized the attribute of territory.²⁴ He criticised national autonomy as "shutting up the nations in their old shells" and as leading to "infinite federalism" (in

party, Trade Unions, etc.,) and hence separatism on national lines, at a time when real events were increasingly dividing people on class lines. According to him, solution to the 'national problem' lay in regional autonomy to "crystallized units" defined as a "definite population inhabiting definite territory," combined with national equality in all forms (language, schools, etc.) to prevent minorities from being oppressed. Such a solution would not only lead to best utilisation of regional resources but also open the way for later divisions on class lines.

However, ignoring the question of territory as Bauer does or accepting it and trying to transcend it by focussing on class politics as Stalin does is not always helpful, especially where a minority or an economically subordinate ethno-linguistic group is capable of dominating the politics of a specific region. In that case, the issue of territory, and hence federalism becomes dominant.²⁵ It affects, moreover, the nature of federalism as well, especially the balance between individual and collective rights.

A national minority forming a majority in a region typically looks to the regional government for its survival and preservation of its culture. Most often, it leads to demands for greater autonomy or even special status and territory-based group rights. Pursuance of such collective goals or interests by the regional government means placing the value of community above individual rights and restricting such individual rights as the right of parents to choose the language in which their child is to be educated, the right of women to inherit immovable property if they marry outsiders as in Jammu and Kashmir, etc. Very often it also involves treating 'insiders' and 'outsiders' differently. Such a balance is accepted in many countries like India, Switzerland, Belgium, Spain, Germany, etc. On the other hand, the United States, which does not have regionally based ethnic groups, has adopted

a model of federalism which, in Ropert C. Vipond's words, "is built on a liberalism that emphasizes individual liberty, views the state as a means to protecting liberty, and typically looks to the national government for leadership."²⁶

Canada, in this context, is "confronting a relatively unique situation". The Canadian Charter of Rights and Freedoms which is based on the discourse of individual rights has become almost an article of faith with the English-speaking Canadians, while the minority French Canadians, who look to the Quebec Government for protecting its identity, have refused to accept it as it fails to recognise their collective aspirations.

As the above discussion shows, there cannot be a simple formula, "diversity, therefore federalism" to be applied uncritically in all cases. Where it is accepted, a general pre-conceived model will not be enough. Federal principles need to be creatively applied to a given situation, allowing for innovative adaptations from time to time so that the federal structure is able to approximate the underlying political reality as closely as possible and thus remain stable. In many cases, such adaptations would require some or the other variant of what has come to be called asymmetrical federalism.

ASYMMETRICAL FEDERALISM

Charles D. Tarlton, who first explored the theory of asymmetrical federalism, defines an ideal asymmetrical federal system as one in which "the diversities in the larger society find political expression through local governments possessed of varying degrees of autonomy and power."²⁷ In such a system, in other words, social diversity is also reflected in diversity in power-sharing arrangements between the centre and different member-units.

For Tarlton, a highly asymmetrical system is unlikely to be stable and harmonious.

The conflicts and tensions inherent in such a system as well as its high "secession-potential" would necessitate a greater coercive control by the centre so as to maintain the federal arrangement rather than a greater recognition of diversity and an increasing federalization. Such a tendency towards coercive centralization, he says, questions the very "feasibility of using federalism as a means of politically organizing local, regional, national, and international communities"²⁸ The functioning of federalism in the United States, he argues, has been harmonious or conflictual depending upon the strength of factors compelling to symmetry or asymmetry respectively.

However, in the last decade and a half, many political scientists, particularly in Canada, have increasingly come to reject the "older conventional wisdom of building federal states from the centre,"²⁹ on which Tarlton's analysis was based and have come to accept as legitimate the "politics of asymmetry". Asymmetrical federalism has come to be advocated as an experiment to refederalize federations being torn apart by conflicting nationalist aspirations of different groups within them by discarding rigidity in favour of innovative asymmetrical adaptations which best reflect the underlying cultural and ideological diversities.

DIMENSIONS OF ASYMMETRY

Asymmetry among units in a federation exists basically in terms of their five aspects: natural differences (such as size, population, natural resources); level of development and share in federal fiscal arrangements and other programmes; representation at the centre; jurisdiction; and party systems.

Natural asymmetry exists in all federations and many seek to resolve these through equal representation of states in the federal second chamber and formal equality of status.

Disparity in levels of development are generally dealt with through special provisions for backward states and equalization payments. These asymmetries are accepted as legitimate and pose no conceptual problems for federalism. The implications of party asymmetry have been discussed in detail in Chapter 4.

Asymmetry in representation at the centre has been adopted by a number of federations but is often criticised as a violation of federal principles. Jurisdictional asymmetry is less common and is generally demanded on the basis of differences in social, cultural and ideological configurations or asymmetrical sharing in the overall national character. As Peter M. Leslie puts it, it is “essentially a concession to states that do not share in certain purposes common to the other members of the group”.³⁰ However, such an asymmetrical status especially where it is formally granted to a large unit would require asymmetry in representation or in powers of its representatives to the central legislature and other federal bodies in accordance with the division of powers in its case. Asymmetries in both these aspects, especially the latter, have been very controversial basically because they violate the principle of equality of provinces. Moreover, jurisdictional asymmetry, which in fact forms the core of the concept of asymmetrical federalism, further questions the inclusionary ideology of national unity dominant in many federations.

ASYMMETRY VS. EQUALITY

The principle of equality of states has been for many writers one of the defining characteristics of federalism. According to K.C. Wheare, however, it was preferable for effectiveness of federalism but was not its defining characteristic. Federations like Australia and the United States, which have enshrined this principle in their constitutions, are basically mono-cultural and adopted federalism for reasons other than the need to accommodate

ethnic diversity. There is, however, asymmetry among units in terms of representation in the federal second chamber in Switzerland, Canada, India and Germany and in terms of jurisdiction in Malaysia and India.

The concept of asymmetry does not so much as reject the principle of equality as interprets it differently. To quote Charles Taylor, "equality is a notoriously difficult concept to apply and depends on the respect one makes salient."³¹ If interpreted as "to each province according to its tasks", it can even justify jurisdictional asymmetry if some units feel that they have tasks and a vocation different from others. Moreover, the principle of equality was first accepted to prevent domination of smaller states by larger states. Asymmetry in jurisdiction leads to asymmetry among states in terms of their respective distance from the centre and not in terms of their clout over the central government.

Asymmetry is also not always incompatible with formal equality among states. Asymmetrical arrangements like "opting in" and "opting out" provisions, etc., can coexist with juridical equality among states since they apply equally to all, although only one or few states would regularly use these, giving them a *de facto* special status.

Formal equality itself can, in some cases, lead to feelings in some units of being treated unequally. For instance, denying Quebec a special status on the grounds of provincial equality is interpreted by Quebecers as denial of equality to *la nation canadienne - française*, accruing to it from its status as one of the two founding nations of Canada. In large units, it can also breed a feeling of being denied power commensurate with their size and population. Moreover, the feeling of being second class citizens generally found in peripheral states, populated mainly by minority ethnic groups as well as the feeling in more developed states of being made to subsidize development in backward states can result in some units

acquiring a sense of being unequal even when formal equality is maintained. Thus, perhaps more important than formal equality of units for the functioning of the federal system is the feeling in all units of being equal members of the federation.

ASYMMETRY AND NATIONAL UNITY : THE LIMITS OF ASYMMETRY

Asymmetry adopted in federations like Malaysia and India has been criticised by many as being antithetical to national unity. But asymmetry is not inherently opposed to unity since federal unity, unlike the consolidated unity of a unitary state, permits the expression of diversity. What it is opposed to is an understanding of unity in terms of uniformity and homogeneity, which ignores special circumstances, needs and aspirations of different regional groups. Asymmetrical federalism, thus, stands for negotiated unity rather than one sought to be imposed on regional groups through the promotion of a monolithic national ideology by a powerful, even coercive, centre.³²

However, recognition of asymmetry in a federation has its limits. There has to be a certain degree of symmetry or uniformity without which it cannot function effectively and would really have no meaning. Asymmetry in jurisdiction beyond this, in itself, is not incompatible with unity. It, however, becomes problematic if it also involves constitutional recognition of profound divisions over even a minimum definition of citizenship or a basic vision of the country or what Charles Taylor calls the “second level” or “deep” diversity.³³

One can say that the minimum consensus needed to build a federation is the common commitment to stay together and to the rules of the federation, clearly spelled out in a written constitution, by which to stay together. The states may have joined the union for different purposes and may be allowed to decide what aspects of the union to participate in. To survive as a country, however, people would need to have a sense of belonging to

the same polity. This would mean sharing at least some values and goals. A federation based simply on rational calculations and lacking emotional symbolism, as was also argued earlier, would be continuously threatened by nationalist yearnings among regional groups. A weak sense of unity would also mean that relations between the units themselves would be marked by calculation and not by a sense of mutual obligation and mutual self-help, which underlie special provisions for backward states in most federations.³⁴

ASYMMETRY : FORMAL AND INFORMAL

Asymmetrical federalism encompasses both constitutionally entrenched asymmetry and informal asymmetrical adaptations made from time to time to suit distinct needs of different units. The concept, unlike the old term 'special status' which it seeks to replace, is oriented more towards a process of negotiating or renegotiating relationships between communities and governments, of accommodation based on pragmatism, practicality and flexibility. Rather than emphasizing fundamental differences, asymmetry is based on "a high tolerance of anomalies, ambiguities and tacit understandings".³⁵ It rejects the attitude of "all or nothing" or even worse "all, by force of necessary". As David Milne says, "with asymmetry, neither side need yield to the values and aspirations of the other."³⁶

Asymmetrical federalism, thus, locates federalism in the context of 'problem solving', in politics and not only in law; institutions are understood as following from politics. In cases where there are differences between demands for greater autonomy in some regions than in others within a federation, asymmetry, formal or informal, may be the only way to keep the federation together.

In this context, R.L. Watts has outlined a number of asymmetrical arrangements which can be adopted.³⁷ One form of asymmetry is to adopt the model of a federation within a

federation, that is, one of the units within the federation is itself a federation. Examples include Russia within the USSR and Germany in the European Union. Another form of asymmetry is adoption of different schemes of division of powers between centre and different states, so that some states have more autonomy than others. India, Malaysia and Russia are experimenting with such asymmetry.

Asymmetry can also be adopted without disturbing juridical equality of states and representation at the centre through such devices as: (1) "opting out" clauses, which would allow units to "opt out" by passing their own legislation which would prevail over the federal law as also out of federal programmes with full compensation. Such provisions have been tried in Canada. For instance, Sections 38 and 40 of the Constitution Act, 1982, which allow the provinces to "opt out" of transfers of power to Ottawa reflect this approach; (2) "opting in" provisions which provide for some units to delegate powers back to the federal government, thus "opting into" a greater degree of centralisation; (3) provisions enabling the federal government to delegate powers "specifically and not necessarily uniformly" to different units and vice versa; (4) larger sphere of concurrent jurisdiction which would allow provincial variations within a broad framework of central legislation. German federation, says Watts, is the best example of this approach. According to David Milne, concurrency with provincial paramountcy (cpp) is the best option for resolving competing demands of Quebec and English Canada since it would involve "no immediate statutory discontinuity or administrative distress" and unlike some other options, "does not require that provinces take the uncharacteristic decision to cede power to Ottawa";³⁸ (5) more federal-provincial agreements in specific areas; and (6) greater use of interstate-agreements as would enable two or more states to engage in joint action, as is done in

the United States and Switzerland.

These devices, though leading to "*de facto* special status" if used by a state regularly, however, lack the emotional symbolism of "special status" or "distinct society" label. Therefore, these perhaps would not be sufficient in situations where the issue is not simply division of power or autonomy but the "politics of recognition".

ASYMMETRICAL FEDERALISM : IN PRACTICE

Federacies and associated state arrangements are perhaps the earliest examples of asymmetrical federal arrangements. In these arrangements, a smaller polity is linked to a larger power in a federal relationship but enjoys a greater autonomy than other units of the larger power as also a smaller role in its governance.³⁹ While a federacy arrangement can be dissolved only by mutual agreement, associated state arrangement can be unilaterally dissolved by either of the parties and therefore is more like a confederation. These arrangements are in most cases, not part of the original federal constitutional schemes but worked out later due to some special circumstances and are, therefore, never seen as integral parts of the federation.

One of the first federal constitutional schemes which envisaged an asymmetrical division of powers among units, according to R.L. Watts, was the Government of India Act of 1935,⁴⁰ whereby princely states were to accede to India with respect to only those subjects specifically mentioned in their Instruments of Accession. The proposed federation, however, could never come into being since the princely states, for whom it was optional to join the federation, did not give their consent. A similar kind of arrangement did come up in both India and Pakistan in 1947 with the accession of princely states to either of the two only with respect to defence, foreign affairs and communications. It was replaced in 1950

in India by a new federation, or rather a "union", of twenty-seven states divided basically into three categories-Parts A, B and C of the First Schedule, having different status and features. Differences in circumstances of different states, and consequently need for differential treatment, were recognised but all efforts were made to have as uniform an arrangement as possible. The state of Jammu and Kashmir, though included in Part B States, formed a category of its own, having been accorded much greater autonomy than any other state. In 1956, the categories were abolished, giving all states except Jammu and Kashmir, an equal jurisdiction. Special status in case of Jammu and Kashmir has continued, although with many modifications since then, because of its peculiar circumstances despite a strong opinion in the country favouring uniformity. With time, some other asymmetrical arrangements have come to be accepted in the federal set-up, which will be discussed later in the chapter.

Constitutional asymmetry on racial lines was attempted in the federation of Rhodesia and Nyasaland. European education and agriculture (except in Nyasaland) were made central responsibilities while African education and agriculture were handed over to the territorial governments. This meant that the central government had a greater visibility in southern Rhodesia where settlers were concentrated than in other regions. Also, since the quality of services provided by it for Europeans was higher than that provided by territorial governments for Africans, the latter especially in northern territories began feeling that the federation was for the benefit primarily of Southern Rhodesia, particularly its settlers.⁴¹

In the West Indian Federation, a proposal was put toward by its largest unit, Jamaica, for greater legislative autonomy for itself than the other islands. It was, however, rejected by the constitutional conference of 1961, which preferred instead increasing the general

level of territorial autonomy.

In 1963, Malaysian federation was formed as a result of merger of Singapore and Borneo states with the Malayan Federation. Each of the new states, Singapore, Sabah and Sarawak, joined the new federation on a different basis and with a different status from each other and from the Malayan states. While the Borneo states are still in Malaysian Federation, having to a large extent preserved their special status despite growing demands for uniformity, Singapore broke away from the federation after just two years. In case of Singapore, too many contentious issues emerged ranging from problems in economic coordination and financial arrangements with the centre to those related to social tensions, party politics, and even personal rivalry.⁴² The basic issue was the part that the overwhelmingly Chinese (76% of population in 1957) state of Singapore should play in the Federation. The ruling UMNO Alliance at the centre had wanted Singapore to remain, to some extent, politically isolated from the rest of the country. Therefore, Singapore was given a reduced representation at the centre and its citizens were given restricted federal franchise outside Singapore. However, its ruling party People's Action Party (PAP), soon began aggressive efforts to compete in elections in Malaya and to emerge as a national power, allegedly breaking an earlier understanding with the UMNO Alliance. Its emergence as the largest opposition party in Kuala Lumpur was viewed with alarm by Malaysians as the beginning of a Chinese bid for hegemony and fuelled racial tensions, finally leading to a divorce from Malaysia.⁴³ The Malaysian experience with asymmetry, as Watts points out, indicates both that such an arrangement is feasible and that there may be limits to how far such arrangements can go.⁴⁴ TH-16597

In recent years, asymmetrical federalism has been most forcefully advocated by a number



also the aboriginal Indians' demands for genuine self-government. While Quebec is seeking recognition of its 'distinct society' and of Canadian duality, in case of aboriginal Indians, their geographical dispersal coupled with their cultural and political diversity serves as a major impediment to a province-like status for Indian government. The other solution, in terms of a large number of states, would mean "provincial balkanisation" that would strain the viability of the present Canadian federal set-up with its relatively large provinces. The Canadian government's response so far to aboriginal Indian demands have been in terms of a legislation-based municipal type Indian government under its "community based negotiation process."⁴⁵ Such a response fits with the present institutional context of Canadian federalism, but which in the long run, according to Anthony Long, would not be able to satisfy aboriginal demands for greater autonomy. The way out which has been suggested is in terms of asymmetrical federalism, that is, a constitutionally entrenched status for the Indian government but which would be different from that of a province.

In Africa, too, faced with brutal ethnic conflicts and "neo-nationalist" movements, there is a growing realisation that the future lies, in Basil Davidson's words, "in the direction of some rational federalism. A hopeful future, a post-imperialist future, a post neo-colonialist future would have to be federalising future, a future of organic unities of sensible associations across wide regions within which national cultures, far from seeking to destroy or maim each other, would evolve their diversities and find in them a mutual blessing."⁴⁶

Radical proposals for restructuring the federation have been put forward by many groups in Nigeria seeking an end to the present political and economic inequalities.⁴⁷ The Yoruba,

frustrated by their failure to capture power at the centre and the oil producing minorities who have not been able to benefit from their natural resources due to political subordination, are the ones most vocal for reform. Most northern leaders, including from minorities, on the other hand, oppose reform and favour the existing distribution of power. The proposals include a scheme for a three-tier system of government consisting of a national 'Union' made up of a number of 'Federations,' each in turn made up of a cluster of 'Nationality-States' or ethnic states, put forward by Movement for National Reformation. Ethnic Minority Rights Organization of Africa (EMIROF) and Movement for the Survival of the Ogoni people (MOSOP) envisage a single loose ethnic federation made up of eleven states, with each ethnic group, however large, constituting one state. For other ethnic groups within these states, which are basically ethnic minorities by comparison, specific arrangements acceptable to them, including the right to secede would be made on a case by case basis.

Adoption of asymmetry has not always reduced tension. Rather the question of asymmetry itself, its legitimacy and desirability, has in some cases proved to be most contentious, as the controversy over Article 370 in India shows.⁴⁸ The basic problem in federations like India and Malaysia which have experimented with radical asymmetry has been that it was never seen as a permanent arrangement and any demand for its acceptance as permanent by the rest of the country clashes with the nationalist vision of a strong unified nation-state. The central government in both cases is preoccupied with nation-building policies meant to "integrate" diverse regional groups and communities into a fairly homogeneous society. This is resisted by national minority groups which dominate the politics of the Borneo states in Malaysia and Jammu and Kashmir in India. Unwillingness of these states to accept uniformity, however, is interpreted not as resulting from genuine

minority fears and apprehensions but as a refusal to join the national mainstream. Not only are attempts made to erode constitutional asymmetry but non-constitutional and unconstitutional means are also used to subvert the constitutional arrangement. The chief ministers demanding strict adherence to the terms of the arrangements have either been sacked or forced out by the centre by intervening in the politics of these states.⁴⁹ This has hampered the development of mutual trust and goodwill needed to work the system and for which it was first accepted.

Asymmetry has also been found to lead to a sense of alienation from the central government in states with greater autonomy because of its relative lack of responsibilities and hence visibility in these states as compared to others. As the political attention of the people focusses increasingly on their regional government, the central government becomes relatively irrelevant and potentially dispensable. The sense of alienation may also originate in a feeling of being second class citizens, of not being able to influence the centre. The less than proportionate representation of Singapore at the centre and other restrictions because of its greater autonomy combined with Malaysians' refusal to accept a greater role for PAP, and hence Singaporeans, at the central level to alienate the people of Singapore from Malaysia and led to its secession.

It does seem that the actual experience of asymmetry does not justify optimism about its future. But it should be kept in mind that asymmetrical arrangements have been too few and have generally come into being as compromise solutions which have not involved acceptance of the principle of asymmetry as legitimate and the most reasonable way to reconcile conflicting demands. For this reason, they are seen by the majority of people as aberrations to be tolerated only for some time. Therefore, requisite care and attention

has seldom been given to design central institutions and a machinery for intergovernmental cooperation to ensure that all regional groups irrespective of the asymmetries among them feel an equal stake in the smooth working of the federal system.

However according to Alan Cairns, asymmetrical models are inherently unstable. In the absence of "stabilizing influence of controlling models" any variant of asymmetrical federalism is likely to be unstable and "to appear contingent and arbitrary, for its justification does not come from a body of rules that apply to many actors."⁵⁰ The influence of the two powerful dominant models in its environment, provincehood and nationhood, would further add to instability by pulling it to one side or the other. Otherwise too, problems may come up since disputes "will not be resolvable by appeals to general rules but will be responded to in particularistic terms specific to one relationship only" which are likely to lead to "allegations of favouritism or unfairness, because of the relative absence of more general criteria to which appeals can be made"⁵¹

ASYMMETRY IN INDIAN FEDERALISM

There is a considerable degree of asymmetry among the twenty-five states of India, in terms of their size, population, area, development, representation in Parliament, party systems and politics, allocation of resources by the centre, and even where formal constitutional relationship with the centre is concerned.

In terms of size and population, the states range from Uttar Pradesh with a population of nearly 139 million and an area of 294,411 square kilometers to Sikkim which has a population of only .40 million and an area of only 7,096 square kilometres. In fact, the states can be divided into four groups according to their population, as attempted by Nirmal Mukarji⁵²: the seven Large States having population of above 50 million; eight

Medium States having population between 15 to 50 million; two Small States with population between 5 to 10 million; and eight Tiny States with population below 5 million. The Large and Medium States together constitute 96.2% of the country's population, while Small and Tiny States account for only 2.6% of its population. (See Table 1).

The representation of states in the Parliament depends largely on their population. This means that the 10 Tiny and Small States send only 23 MPs to Lok Sabha and 15 MPs to Rajya Sabha whereas Uttar Pradesh alone accounts for 85 MPs of Lok Sabha and 34 of Rajya Sabha.

In terms of development levels, the estimates of States Domestic Product (SDP) show that the disparity ratio between the richest state (Punjab) and the poorest state (Bihar) was 2.9 in 1980-81, which further increased to 3.2 in 1990-91. The disparity can also be gauged from the fact that in 1990-91 only four states, Punjab, Maharashtra, Haryana, and Gujarat, had per-capita net SDP above the national average.⁵³

These estimates are made use of by Planning Commission and Finance Commission in distributing resources among the states. Beginning with the Fourth Five-Year Plan when the Gadgil formula was accepted, states have been divided into two groups for distribution of central assistance to the states. According to the Gadgil formula, the requirements of the states of Assam, Jammu and Kashmir and Nagaland should be met through an *ad hoc* lumpsum assignment out of total central assistance and the balance should be then distributed according to the population (60%), per-capita income (10%), tax effort (10%), continuing major irrigation and power schemes (10%), and special problems of the states (10%). The grant-loan ratio of special category states was fixed at 90:10, while for others it was 30:70.

Table 1 : Some Asymmetrical Features of Indian States.

STATES	POPULATION	AREA (Km ²)	REPRESENTATION	
	1991 CENSUS		IN PARLIAMENT	
	(In millions approx.)		(RAJYA SABHA)	(LOK SABHA)
<u>LARGE STATES</u>				
Uttar Pradesh	138.76	294, 411	34	85
Bihar	85.34	173, 877	22	54
Maharashtra	78.70	303, 690	19	48
West Bengal	67.98	88, 752	16	42
Andhra Pradesh	66.30	275, 068	18	42
Madhya Pradesh	66.13	443, 446	16	40
Tamil Nadu	55.64	130, 058	18	39
<u>MEDIUM STATES</u>				
Karnataka	44.82	191, 791	12	28
Rajasthan	43.88	342, 239	10	25
Gujarat	41.17	196, 024	11	26
Orissa	31.51	155, 707	10	21
Kerala	29.01	38, 863	9	20
Assam	22.29	78, 529	7	14
Punjab	20.19	50, 362	7	13
Haryana	16.32	44, 212	5	10
<u>SMALL STATES</u>				
Jammu & Kashmir	7.72	222, 236	4	6
Himachal Pradesh	5.11	55, 673	3	4
<u>TINY STATES</u>				
Tripura	2.74	10, 486	1	2
Manipur	1.83	22, 327	1	2
Meghalaya	1.76	22, 429	1	2
Goa	1.17	3, 702	1	2
Nagaland	1.22	16, 579	1	1
Arunachal Pradesh	.86	83, 743	1	2
Mizoram	.69	21, 081	1	1
Sikkim	.40	7,096	1	1

At present there are ten states which are treated as special category states for distribution of central assistance. These are Arunachal Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura. All of these have largely hilly terrain, low population density and are situated along the national borders. They are also characterized by a weak resource base and significant non-plan capital gaps in relation to their resources. Moreover, most of these were elevated from a district or union territory status to statehood which necessitated creation of overheads and administrative infrastructure which was out of proportion to their resource base⁵⁴.

The share of these states in the total central plan after allocation to area programmes and externally aided projects is 30% as against their share of 5% in the population. In addition, the North Eastern Council also receives additional allocations. Moreover, till 1988 central budgetary support as part of the central plan was made available to the special category states not only to cover plan resource gap or plan funding, but also to cover their non-plan gap.

Finance Commission, too, allocates resources to special category states keeping in mind their special problems. Even otherwise too, it does not follow the principle of proportionate allocation. For instance, the criteria used by the Tenth Finance Commission for determining the shares of the states in the shareable proceeds of income tax and a substantial portion of Union Excise Duties assigned to the states is population (20%), distance of per-capita income from that of the highest per-capita income states (60%), 'area adjusted' (5%), social and economic infra-structure (5%), and tax effort (10%). The Constitution also provides for grants-in-aid to such states as Parliament may determine to be in need of assistance, particularly for the promotion of welfare of tribal areas including

special grants to Assam in this respect (Article 275).

CONSTITUTIONAL ASYMMETRY

Asymmetry in status and powers among states was reluctantly accepted by the founding fathers in the 1950 Constitution mainly because of problems arising out of integration of princely states. Except for Jammu and Kashmir's special status, other constitutional differences among states were abolished in 1956. But beginning with the Thirteenth Amendment, 1962, asymmetrical provisions were gradually added to the Constitution mainly as clauses to Article 371.

The Thirteenth Amendment amended the title of part XX1 of the Constitution which previously read " Temporary and Transitional Provisions" to include the term "Special". It also inserted Article 371 A which provides for special provisions for Nagaland allowing for non-applicability of Acts of Parliament to the state unless decided otherwise by the state Legislative Assembly in respect of religion or social practices of Nagas, Naga customary law and procedure and criminal justice involving decisions according to Naga customary law, and ownership and transfer of land and its resources. The Governor was also given special responsibilities with respect to law and order in the state and for the administration of Teunsang district.

The Fourteenth Amendment, 1962, enabled the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry to have Legislature and Council of Ministers on the same pattern as in some of the Part C States before 1956. In 1969, an autonomous state of Meghalaya was created within Assam comprising certain areas specified in the Sixth Schedule by the Twenty-Second Amendment by inserting Article 371 B, 244 A and 1(A) in Article 275. The experiment was, however, short-lived; Meghalaya

was made a full-fledged state in 1972. Another, even more short-lived, experiment began in 1974 when Sikkim was made an associate state by introducing a Tenth Schedule into the Constitution which detailed the terms and conditions of its association. In 1975, full statehood was granted to Sikkim by the Thirty-Sixth Amendment which also inserted certain special provisions for the state in the form of Article 371 F.

Special provisions have also been made for Manipur in the form of Article 371 C inserted by the Twenty-Seventh Amendment, 1971, which provides for a committee in the Legislative Assembly to look after the interests of the hill areas of that state. Article 371 G looks after the special circumstances of Mizoram and was added by the Fifty-Third Amendment when it attained statehood in 1986.

These provisions together can be said to constitute a special status for the North-Eastern states. However, in case of Andhra Pradesh also special provisions in the form of Articles 371 D and 371 E were introduced by the Thirty-Third Amendment, 1974, in order to solve the Andhra-Telangana issue. These provide for equitable distribution of education and employment opportunities between the two regions. Article 371 E provides for the establishment of a central university in Andhra Pradesh.

The Constitution also provides for asymmetry below the state level (between districts or regions) through such provision as the Sixth Schedule (for North-Eastern states) and the Fifth Schedule for other states. In the last ten years some states have experimented with autonomous regional councils for some regions within them but these have been created through state legislations and have not been given any constitutional status.⁵⁶

The functioning of federalism in a country like India makes development of many asymmetrical features inevitable inspite of strong pressures for centralization and

homogenization. This process of developing federalism to accommodate diversity through asymmetry has been relatively easy in India since the Indian Constitution is, as Balveer Arora puts it, "liberally endowed with such possibilities of accommodation"⁵⁷, although this potential is yet to be fully utilized. However, recognition of asymmetry in many cases is not without problems.

ASYMMETRICAL FEDERALISM IN INDIA: DEMANDS AND IMPLICATIONS

India is a multi-cultural, multi-ethnic, multi-religious, multi-lingual and multi-regional country. Its proverbial diversity left the founding fathers of the new Indian Republic no choice but to accept some sort of federal principle as a means of distributing power to the states. Federalism for them, was not the most logical system for a "federal society" like India or even a system best suited to preserve the liberty and rights of the individual as it was for the framers of the American Constitution. They were rather preoccupied with building a 'strong centre' which could preserve India's unity, spearhead its rapid economic development and modernization, and help it take its rightful place among nations as a great civilization. Such a perspective, reinforced by the traumatic events of partition, could not reconcile any political recognition to or even any assertion of subnational identities with national unity. As the Commission on Linguistic Reorganization put it, "nationalism and subnationalism are two emotional experiences which grow at the cost of each other," therefore "till nationalism has acquired sufficient strength to permit the formation of autonomous provinces, the true nature and functions of a province under our Constitution should be that of an administrative unit functioning under delegated authority from the centre and subject to the centre's overriding powers in regard to its territory, its existence and its functions."⁵⁸

It meant, in effect, according to Ashis Nandy, a triumph at the time of Independence, of a nation-state oriented nationalism based on the Western experience over the "coalitional ideology" of Gandhian nationalism which had in 1920s itself recognised *pradesh* as the basic territorial unit as well as over the traditional or popular concepts of public life in India.⁵⁹ The problem of subnationalism, alongwith the other recognized threat to national unity, communalism, it was believed, could be solved by constitutional provisions protecting religion, culture, language, and fundamental rights of the individual applying equally to all. Nehru predicted that once these were protected, the major problems that would come up will be economic ones. For this reason, any recognition to subnational identities in the form of linguistic states and constitutional protection of minorities in the form of proportional representation were not thought necessary; equal rights to all would be enough.⁶⁰

There were, however, problems arising mainly out of integration of princely states since it had to be voluntarily accepted by these states. Except for Jammu and Kashmir, all of them were persuaded, cajoled, or coerced into greater integration although some "temporary and transitional" provisions were still required for them. Thus, the largely unitarian design was balanced by flexibility and a pragmatic willingness to compromise. The other balancing factor was what has been called the "Congress system". Its federal nature not only legitimized the national enterprise in the eyes of diverse groups but it, at the same time, provided a framework within which their identities and interests could find a place.

Nevertheless, this nation-building project could not go unchallenged. The later agitations for linguistic reorganization of states, for greater autonomy, and the progressive

regionalization of the party system can be seen as reactions to the attempted imposition of a unitary, homogeneous nation-state which revolted against the indigenous concepts of national unity. In most cases, the challenges were met in terms of what Rajani Kothari describes as "a peculiar Indian dialectic of consolidating a unity through assertion and legitimization of the centre and of central authority and, as diverse identities and pluralities reacted or responded to this, negotiating with them in a framework of consensus of which they become part and parcel."⁶¹

From early 1980s, however, a qualitatively different type of demands emerged in three states, Assam, Punjab and Jammu and Kashmir, for which the earlier kind of accommodation could prove inadequate. These new demands, says Balveer Arora, "questioned the basic attitude towards states and their governments. They were not really asking for more effective participation in national policy-making, but sought to compel a fresh look at the terms of their participation in the Union. Each one of them sought a status commensurate with its perceived importances to the Union, on asymmetrical lines."⁶² While the Assam movement, in which the issue is mainly of control over resources within the state and its administration by those who consider themselves authentic Assamese and intrusion of "foreigners", is "not intrinsically disruptive of the nation,"⁶³ the same cannot be said about demands made by Punjab and Kashmir.

Indian nationalism, from the very beginning, has been compatible, rather intertwined with the development of regional identities. These were regarded as threatening national unity for some time due to an obsessive concern with unity and order following partition and under the influence of modernisation theories, but were soon rehabilitated within a broader conception of nation-building. That there is a fundamental unity underlying regional,

cultural and linguistic differences in India, moreover, is a part of Hindu consciousness and which one can even trace to classical Hindu literature.⁶⁴ Special provisions for tribals because of their special problems were part of the original design of the Constitution; therefore special status for the North-Eastern states could be easily accepted and raised no questions. Unlike these demands, ones based on religious identities, especially when combined with territorial claims, are completely unacceptable. Before 1947, communalism and nationalism were juxtaposed, with the Congress rejecting the view of religion-based communities as forming the fundamental units of Indian society and having different, even hostile, interests, which necessitated a balance of interests based on religious divisions. Since then, too, as Paul Brass points out, one among the few rules that central government has consistently followed in dealing with problems of national integration has been that no demand for political recognition of a religious group would be considered.⁶⁵

Special status for Jammu and Kashmir was accepted by the framers of Indian Constitution not because of its Muslim majority character but because of the peculiar situation arising out of Pakistan's invasion and internationalization of the issue. Moreover, it was never meant to be a permanent arrangement. Its acceptance as permanent and further extension to another state within which another national minority is largely concentrated can then be seen to amount to legitimizing partition and the communal ideology according to which different religious communities in India form different nations. It would mean rejecting the notion of India as a 'nation-in-the-making' and abandoning as a failed experiment the task of building a modern nation in perhaps the world's most culturally and religiously diverse country based on secularism, democracy, equality and fraternity.

The National Conference leaders in 1949 and also thereafter argued for a special

status for Jammu and Kashmir on the basis of its status as the only Muslim majority state in India and not *Kashmiriyat*,⁶⁶ special provisions for whose preservation would, in fact, have caused no conceptual problems. In the case of Punjab, although political rivalry between Congress and Akali Dal was largely responsible for the crisis, it is widely believed by the Sikhs, in and out of Punjab, that they are "a separate people, religion and nation with the ultimate right, as of any sovereign people to determine their own future and their relations with other peoples..... The Akali position is that as a sovereign people, the Sikhs chose to join with India in 1947 in the belief that their separate political status would be recognized but that they were instead betrayed, tricked, and manipulated so that they have had constantly to fight even to have their separate identity acknowledged."⁶⁷ Sikh perceptions of being discriminated against, however, have been disputed by many since Sikhs as a whole have done much better than most other groups in post-Independent India.

But are these demands totally unjustified? In India, while there is no dominant regional group or ethnic group oppressing others which could turn regional demands into 'national' demands,⁶⁸ there is an overwhelming Hindu majority, whose elites or upper castes dominate the top level decision-making processes in the country. As Dawa Norbu argues, the criteria for political discrimination in India is not race or language but "essentially Hindu identity which critically differentiates the dominant ethnic group from the minority ethnic groups, especially the Muslims".⁶⁹ Moreover, hardly anyone can ignore the "ability of Hindu discourse to appropriate for itself the language of the 'truly' national".⁷⁰ Therefore, for a state in which a national minority forms a majority, centre's attempts at centralization and national integration, supported strongly by Hindu nationalists, are not simply minor issues to be

negotiated within the centre-state framework, but to be resisted as threats to its religious and cultural identity. It is not a coincidence that all persisting secessionist movements in the country have religious overtones.

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CHAPTER 2

CONSTITUTIONAL ASYMMETRY IN INDIA : ARTICLE 370

As Chapter 1 shows, the Constitution of India accepts inequality among the states in their relationship with the centre in some respects. But no constitutional provision providing for asymmetry has been as controversial as Article 370 which grants a special status to the state of Jammu and Kashmir in the Indian federal set-up. This chapter seeks to study this article in terms of the circumstances in which it was accepted by the Constituent Assembly, subsequent moves to erode the state's autonomy and the various debates centred around it. In the end, a modest attempt has been made to compare Jammu and Kashmir's special status with that accorded to Sabah and Sarawak in Malaysian federalism and the whole issue of accepting constitutional asymmetry in Canada with respect to Quebec.

THE CONSTITUENT ASSEMBLY : IDEOLOGICAL PREFERENCES AND PRACTICAL CONSTRAINTS

The founding fathers accepted that all the constituent units of the new republic could not be given an equal status in all respects. Accordingly, the Constitution when it came into force recognized four categories of member-units. In the first category, called Part A States, were placed nine Governor's provinces, with their territories augmented by the merger of numerous states. The second category, called Part B States, consisted of three large states of Hyderabad, Jammu and Kashmir, and Mysore, and five Unions of Madhya Bharat, PEPSU, Rajasthan, Saurashtra and Travencore-Cochin. The third category of Part C States comprised three old Chief Commissioners' provinces of Ajmer, Coorg and Delhi,

and seven new ones of Bhopal, Bilaspur, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh. Andaman and Nicobar Islands formed the fourth category, to be directly administered by the centre and was not to be treated as a 'State' in the new Constitution.

This, however, did not mean that the founding fathers attached any positive value to the principle of asymmetry in federal accommodation of India's diversity. V.P. Menon, who was closely involved with the integration of the princely states, described the differences between Part A and Part B States as "minor and unimportant" and in the nature of "a few further adjustments and modifications" which were found necessary before the Part B States could be "welded" into the federal structure like other provinces.¹ Some of the differences related to designation of the Governor, salaries of Chief Justice and other Judges of the High Court, a Minister in charge of tribal welfare in Madhya Bharat, etc. The most important of special provisions for Part B States was Article 371 which put these states under the "general control" and supervision of Central Government. This was thought necessary due to their relative political and administrative backwardness. The other special provisions provided for financial adjustments between the centre and Part B States during the transitional period to tide over problems caused by federal financial integration. Jammu and Kashmir, though included in Part B States, in fact, was treated differently. Its relations with the centre were to be governed by a separate "temporary and transitional" Article 370 because of the state's special circumstances.

Thus, deviations from or exceptions to the general framework, though accepted at the time, were seen as temporary and which would not be required once the transitional period was over. Earlier in 1947, leaders like Nehru and Patel had assured the rulers of

princely states that in all matters other than the three mentioned in their Instruments of Accession, the Government would "scrupulously respect their autonomous existence".² But after accession, in no time, centre spread its jurisdiction over most aspects of these states' administration, at first indirectly and later blatantly. Some states were merged with the provinces while others were combined to form unions and made to sign supplementary instruments that replaced the earlier ones. As Mankekar puts it, "the new independent, democratic India was bent on achieving two objectives, come what may : (i) realize a long cherished dream of political unification of the entire country; and (ii) banish autocracy and democratize and modernize the princely territory". The earlier assurances on autonomy to princes can only be understood as part of the policy : "Rope them in, by hook or by crook"³. Sardar Patel, says V. Shankar, "strongly felt that once the Constitution was framed and the states had to be fitted into it, there should be as little deviation from the uniform pattern as was necessary."⁴ The whole process of integration of princely states was geared towards achieving uniformity, standardization and centralization so that India could "emerge as a well-knit unit, fully integrated in all spheres, political, constitutional and economic."⁵ Moreover, disparity, it was believed, "may even prove dangerous to the efficiency of the State", for as B.R. Ambedkar put it, "power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of critical powers in some areas may bring the whole life of the State in complete jeopardy."⁶

Apart from the founding fathers' preference for a modern centralized State which could usher in economic development, the conditions of instability following partition also pushed the Constituent Assembly towards "integrated nation-building", spearheaded by a strong

centre.⁷ One can hardly detect any marked States-Rights feelings in the Constituent Assembly debates. Since, before partition, only Muslims and their sympathizers had argued for a weak centre, anyone speaking from the states' point of view was suspected of lack of loyalty to the country. The "fissiparous tendencies of Indian society" were not completely ignored but it was felt that these would in time die out.⁸

THE SPECIAL CASE OF JAMMU AND KASHMIR

It was originally envisaged that princely states would adopt their own constitutions which would not form a part of the Constitution of India. It was also clearly understood that, unlike the provinces, the accession of these states to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. However, as a result of the Government of India's policy of integration and democratization of princely states, the position of these states, both in respect to their internal structure and their relationship with centre, was very soon brought to approximate that of the provinces. Therefore, the idea of a variety of constitutions was abandoned and it was decided that each state should ratify the Constitution of India of which the constitutions of these states would be made an integral part. The ratification should be by the Rajpramukh or the Ruler, as the case may be, on the basis of a resolution to be adopted by the Constituent Assembly or the Legislature of the state concerned, where such a body exists.

Following this procedure all the Part B States were integrated into the Union except Jammu and Kashmir. Jammu and Kashmir had escaped what C.M. Alexandrowicz has called "Patel's process of unionization" because of Nehru's personal handling of the Kashmir issue and India's commitment to a plebiscite in the state. The relations between centre

and the state had continued to be governed by the terms and conditions of the Instrument of Accession signed by Maharaja Hari Singh on October 26, 1947.

In 1949 when the question of state's constitutional status came up, National Conference leadership led by Sheikh Abdullah resisted further integration and insisted on Jammu and Kashmir's association with the new Union based only on the terms specified in its Instrument of Accession. The Instrument of Accession was not in any way different from that signed by other rulers. Its Clause (7) had practically placed a veto in the hands of these states if any arrangement unacceptable to them was sought to be imposed on them. Clause (7) reads:

“Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution”.

The Maharaja had zealously guarded the terms of the Instrument and even believed that he had a right to withdraw it. After his abdication in 1949, the state Prime Minister, Sheikh Abdullah, also treated these terms as sacrosanct. The Ministry of States “would have liked to treat this state like other (princely) states” but “the main difficulty in adopting this procedure” was that the state Premier “definitely expressed his inability to extend the content of the accession of the state till the Constituent Assembly of the state has taken a decision in the matter”.⁹ He, therefore, wanted the association to continue in respect of only the three subjects specified in the Instrument of Accession. Since, further integration had to be voluntarily accepted by the state, centre could not enlarge the sphere of its jurisdiction at its own discretion. Moreover, India had internationally committed herself to decide the future status of the state in accordance with the will of the people. Therefore, special provisions had to be made for the state in the form of Article

306A which later became Article 370 in the final Constitution.

The idea of special status for Jammu and Kashmir, however, faced considerable opposition before it could be accepted even as a provisional arrangement. Sardar Patel, says V. Shankar, cited to the Sheikh the manner in which princely states were to be integrated as Part B States with the difference between them and Part A States to be "kept to a minimum" but the latter "was not prepared to advance an inch beyond the three subjects- Defence, External affairs and Communications".¹⁰ Moreover, Nehru and Gopaldaswami Ayyangar also did not agree with the Sheikh but "they were not prepared to force matters" and Sheikh Abdullah, knowing this; was "prepared to fight it out". The "usual considerations" regarding the internationalization of the issue and Sheikh Abdullah's indispensability if India was to win the plebiscite prevailed so that "even a remote degree of uniformity with other states was given the go-by and the situation resolved itself into one of saving whatever could be salvaged from the wreckage." Still, Article 306A, when presented to the Congress Parliamentary Party, raised "a storm of angry protests from all sides".¹¹ In Nehru's absence, it was Sardar Patel who got the party's approval for it and paved the way for its presentation to the Constituent Assembly.

While moving the Article in the Constituent Assembly, Ayyangar hoped that "in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other states". The hope was that continued association with India would before long put to rest all fears and apprehensions of Kashmiri Muslims and they would then voluntarily accept greater integration.

THE NATIONAL CONFERENCE LEADERSHIP'S STAND ON SPECIAL STATUS

The National Conference ruled out complete integration as, to quote Sheikh Abdullah,

“our special circumstances and the objectives of our movement could not allow it.”¹² The Conference leaders’ stand on special status or a separate political identity for the state was based on the Muslim majority character of the state’s population. These leaders, had before the partition, committed themselves to a united India, which they had presumed would be based on the principle of communal balances and loose integration.¹³ The partition, however, destroyed the *raison d’etre* of such a set-up and, in fact, made national integration an issue of highest priority. But the Conference continued to insist that Kashmiri Muslims’ fear complex could be dispelled only by ensuring complete internal autonomy as embodied in the Instrument of Accession. The Conference leaders also did not accept the accession of the state as it was perceived by the State Department and the Maharaja. The Instrument of Accession signed by the Maharaja, for them was only a “formal act” or “Paper Accession”.¹⁴ The actual accession of the state to India had been accomplished by their party which they claimed represented the people.

It was in a Memorandum to Patel dated January 3, 1949, and signed by all the members of the Interim Government that the Conference leaders first formally put forward their views on the state’s constitutional status.¹⁵ According to this Memorandum, since Pakistan had offered the state complete internal autonomy even with regard to state army and communications and freedom to frame a constitution for the state without any interference, the Government of India should also issue a declaration containing similar assurances so as to neutralize the effect of Pakistani offer. This demand was rejected by Sardar Patel.

The special status, once conceded by the central leadership, was not for the Conference leaders a “transitional arrangement” till the state could be brought to the level of

other states. According to Sheikh Abdullah, the temporary nature of Article 370 arose “merely from the fact that the powers to finalize the constitutional relationship between the state and the Union of India has been specifically vested in the Jammu and Kashmir Constituent Assembly.”¹⁶ Later in 1952, he described arguments in favour of full application of the Indian Constitution to the state as “unrealistic, childish and savouring of lunacy” since Kashmiri Muslims could not “join India without any kind of mental reservations” as long as they are not convinced about “the complete elimination of communalism in India.”¹⁷

Sheikh Abdullah’s critics have, however, charged him of demanding special status mainly to further his personal ambition of carving out a ‘Sheikhdom’ for himself. Others have held the communists’ influence on him responsible for his insistence on maximum autonomy as they wanted “to make Kashmir the Yenan of India.”¹⁸

ARTICLE 370 AND EROSION OF AUTONOMY

Article 370 reads as follows:

“Temporary provisions with respect to the State of Jammu and Kashmir -

(1) Notwithstanding anything in this Constitution,

(a) the provisions of Article 238 shall not apply in relation to the State of
Jammu and Kashmir;

(b) The power of Parliament to make laws for the said State shall be limited

to -

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists, as, with the concurrence of the Government of the State, the President may by order specify.

Explanation - For the purposes of this Article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948;

(c) the provisions of Article 1 and of this Article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument to Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is concerned, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this Article, 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 scheme embodied in the Draft Constitution envisaged that all states in Part III would accept List I and List II and also all the provisions relating to citizenship, Fundamental Rights, High Courts and Supreme Court. It was also realized that if the quantum

of accession was not extended, difficulties would arise regarding these provisions. Though the demands of Conference leaders were accepted, the arrangement was found to be unsatisfactory on a number of counts.¹⁹

Since the provisions of the Constitution of India pertaining to the jurisdiction of the Supreme Court were not made applicable to the state, there did not exist any arbitral or judicial machinery to settle any disputes that would arise between the centre and the state. Thus, the autonomy given to the state was left without safeguards. Regarding the provisions relating to Fundamental Rights, Directive Principles and citizenship, it had been agreed in the first discussions between the state and central leaders in May 1949 that these provisions would apply to the state. Later, however, the Conference leaders began opposing it on the grounds that these provisions would affect the State-Subjects laws (prohibiting the acquisition of property in the state by other citizens of India) and the Abdullah Government's land reforms programme. At the same time, no interim system of rights and remedies was devised which could have served the people till the framing of the state Constitution. The state continued to be governed by the Act of 1939 which did not even provide for an independent judiciary or freedom of press and which was exploited by the Sheikh to crush his political opponents.²⁰ Also the state's complete economic isolation behind tariff barriers and refusal to be part of the fiscal structure of the Union and secure the support of the allocations from national sources put the state at a disadvantage in terms of possibilities of economic development.

Moreover, since the centre lacked the power to give directions to the state government (under Article 257), it felt itself to be inadequately armed to meet the needs of the situation arising out of India's reverses in the Security Council and Pakistan's psycho-

logical warfare in the state.

DELHI AGREEMENT

With the coming into existence of the Constituent Assembly of the state in November 1951, greater need was felt to define in more precise terms the area of autonomy so that the state Constitution would in no sense be contrary to or in conflict with the Constitution of India.²¹ In the negotiations that followed, it was emphasized by the central leaders that the application of the constitutional provisions regarding such matters as citizenship, Fundamental Rights, residuary powers, elections to Parliament, President's powers, etc. to all states was the inevitable and necessary concomitant of federalism and, therefore, these should apply to Jammu and Kashmir as well. But the state government continued to hold on to its position that the Jammu and Kashmir Constituent Assembly had inherited the sovereign powers of Maharaja and, therefore, had the constitutional right to refuse to cede more than the three subjects mentioned in the Instrument of Accession.²²

An agreement was nevertheless finalized between the two Governments on July 14, 1952, which came to be called the Delhi Agreement. It included agreement with regard to the following :

- (1) extension of provisions of Constitution of India to the state relating to citizenship allowing state legislature to confer special rights on State-Subjects; Fundamental Rights, subject to suitable modifications and exceptions to protect land reforms and to deal with cases of infiltration, espionage and sabotage; original jurisdiction of the Supreme Court; and powers of the President to grant reprieve and commutation of punishments;
- (2) some sort of financial arrangement between the centre and the state;
- (3) the state was allowed its own flag, but not as a rival to the national flag, which would be supreme. Urdu was recognized as the official language of the state;

(4) Sadar-i-Riyasat, though elected by the state legislature rather than nominated by the centre, will not assume office without the consent of the President of India.

The Central Government also offered that Internal Emergency be applied to the state only with the concurrence of the state legislature, but the state refused to accept the application of Article 352. The discussions remained inconclusive with regard to certain other subjects as well. In spite of it, the Agreement succeeded in establishing the precedence of the Constitution of India and also brought the powers of the two Governments into "a more coordinated and integrated adjustment".

All the provisions of the Agreement were, however, not implemented by the state government. With the beginning of the Praja Parishad agitation in Jammu, the question of integration or centre-state relations came to be confused with accession both by the Praja Parishad and the Kashmiri leadership. An impression was sought to be created by the Conference leaders that the state's special status in Indian Constitution constituted a condition for the state's accession to India.²³ This was denied by the central leaders including Nehru.

After Sheikh Abdullah's dismissal in 1953, the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship of the state Constituent Assembly were reconstituted. The provisions of Delhi Agreement were approved and finalized and the recommendations of the Constituent Assembly were then conveyed to the President. On May 14, 1954, the President proclaimed the Constitution (Application to Jammu and Kashmir) Order, 1954, incorporating these recommendations and amending the special provisions to that effect.

SHIFT IN INDIA'S KASHMIR POLICY

Beginning with 1954 and till 1972, a series of twenty constitution orders were issued by the President, considerably eroding the state's autonomy and its asymmetrical position in the federal structure. This process was an expression of a marked shift in Nehru Government's Kashmir policy. On March 29, 1956, Nehru in a famous speech in the Parliament, withdrew the offer of plebiscite on three grounds : (1) that for a plebiscite to take place under the U.N. terms, Pakistan had to first withdraw its forces from Pakistan Occupied Kashmir; (2) that Jammu and Kashmir's Constituent Assembly had approved the state's accession to India and accepted India's Constitution; and (3) that the drawing of the subcontinent into the Cold War's security alliances had changed the objective situation drastically, for it reflected Pakistan's desire to seek military solutions which, according to Nehru, could not be tolerated.²⁴ The second point marks the most important shift as Nehru had in the early 1950s rejected Sheikh Abdullah's proposal that the state Constituent Assembly be taken as representing popular wishes and its decision on the state's accession be deemed a legitimate substitute.

This change in India's stand from moral and political plane to a purely legalistic one, based on Maharaja's signature on the Instrument of Accession and the resolution of the state Constituent Assembly, can, at least, partly also be attributed to the pressure that Jana Sangh was able to build in the country to that end.²⁵

The application of more constitutional provisions to the state, according to S.P. Sathe, is "consistent with the spirit of Article 370."²⁶ However, the way the 'concurrence' of the state government has been obtained in many cases can be questioned. The fact that the state government gave consent to such provisions as Article 356 shows that it has

not been entirely free in matters of decision-making. Moreover, in 1986 Article 249 was extended to the state with state government's 'concurrence' when the state was under Governor's rule. Governor Jagmohan himself admitted "that if the present set-up had not been there, much noise would have been made."²⁷

While these measures were welcomed in Jammu, they provided adverse reactions in the Valley. Sheikh Abdullah and the Plebiscite Front condemned them as encroachments on the state's autonomy being brought about by a government which did not truly represent the people. On the other hand, Praja Socialist Party and the Democratic National Conference (formed in 1957 by a leftist dissident group of National Conference led by Sadiq) supported the application of those constitutional provisions which safeguarded the rights of the people.

KASHMIR ACCORD 1975

Soon after the formation of Bangladesh and the Shimla Agreement, the Government initiated a dialogue with Sheikh Abdullah with a view to finally resolve the Kashmir problem. In the Accord that followed in 1975, it was agreed that "the State of Jammu and Kashmir, which is a constituent unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution of India". It was a commitment to maintain Article 370 which had been described as a "temporary" measure in the original Constitution. It, thus, brought to a halt the process of constitutional integration of the state that had begun in 1954.

At the same time, it did not mean that the "clock could be put back". Mrs. Gandhi rejected Sheikh Abdullah's demands for pre-1953 constitutional relationship of the state with the centre. It was, however, agreed that provisions, applied with modifications or

adaptations could be altered or repealed by a Presidential Order under Article 370, "each individual proposal in this behalf being considered on its merits".

In 1977, Sheikh Abdullah as the Chief Minister of the state constituted a three-member cabinet sub-committee called Central Law Review Committee to go into the whole gamut of central laws extended to the state between August 9, 1953 and February 1975, and recommend withdrawal of those deemed harmful to the state's interests and rights. It was chaired by Mirza Afzal Beg and had G.M. Shah and Ghulam Nabi Kochak as other members. In 1978, because of falling out between Beg and Abdullah, Beg was replaced by D.D. Thakur as the chairman. The committee submitted two completely contradictory reports with Thakur holding that none of the central laws impinged on the state's special status or eroded Kashmir's identity in any manner. Shah and Kochak, on the other hand, recommended wholesale withdrawal of central laws, Sheikh Abdullah accepted Thakur's recommendations in their entirety.²⁸

JAMMU AND KASHMIR'S SPECIAL STATUS

Despite considerable erosion of autonomy since 1957, the state still enjoys substantially greater autonomy than other states. Regarding legislative relations, Parliament's jurisdiction in relation to the state is confined to the matters enumerated in the Union List and the Concurrent List, subject to certain modifications. Residuary powers belong to the state legislature except for certain matters, specified in 1969, for which Parliament has exclusive power, e.g., prevention of activities relating to secession or disrupting the sovereignty and integrity of India. But power to make laws on preventive detention under Article 22(7) belongs to the state legislature and no Union law on it extends to the state. Parliament can, however, since 1986, extend its jurisdiction in the national

interest under Article 249 if Rajya Sabha passes a resolution to this effect.²⁹

Regarding executive relations with the state, the Union has no powers to suspend the Constitution of the state on the ground of failure to comply with directions given by the Union under Article 365, or declare financial emergency under Article 360. Emergency on the ground of internal disturbance under Article 352 can be proclaimed only with the consent of the state government. In the event of a breakdown of the constitutional machinery in the state, the Governor, with the concurrence of the President, has the power to assume to himself all or any of the functions of the state government, except those of the High Court.

The Directive Principles of State Policy do not apply to the state. Article 19 applies to the state, subject to special restrictions for a period of twenty-five years. Special rights as regards employment, acquisition of property and settlement have been conferred on 'permanent residents' of the state by inserting a new Article 35 A. Since Articles 19(1) (f) and 31(2) have not been omitted, fundamental right to property is still guaranteed in the state. No amendment of the Constitution extends to the state unless it is so extended by an Order of the President under Article 370(1).

Federal financial integration which had taken place in 1950 in the case of other Part B States was almost fully achieved in Jammu and Kashmir by the Constitution Order, 1954. By amendments of the Constitution Order, the jurisdictions of Comptroller and Auditor General (1958), provisions relating to recruitment to the IAS and IPS under Article 312 (1958), appellate jurisdiction of the Supreme Court including special leave, appointments and conditions of service of the High Court judges (1960), its power to issue writs, and Election Commission (1960) have been extended to the state. The titles Sadar-i-Riyasat

and Prime Minister were changed in 1965 to Governor and Chief Minister respectively. In 1966, direct elections of the members of Lok Sabha from the state were provided for.

While the constitution of other states is laid down in Part VI of the Constitution, Jammu and Kashmir has its own constitution which can be amended only by the state Legislative Assembly. Any amendment seeking to alter the position of the Governor or the Election Commission, however, has to be reserved for the consideration of the President and his assent.³⁰

ARTICLE 370 : DIFFERENT PERSPECTIVES

Right from its inception, Article 370 has been surrounded with controversies. One can identify broadly three categories of views regarding this article: (1) that it is antagonistic to the national interest and should be abrogated; (2) that it should be retained for the time being to reassure Kashmiri Muslims but should be gradually eroded over time with the people's consent leading to its complete elimination; and (3) that it should not only be retained but, in fact, should also be seen as a part of a new federal restructuring.

The first view is mainly but not exclusively propagated by the Right Wing Hindu nationalists who see the Article as creating a psychological barrier between Kashmiris and the rest of Indians and thus, breeding separatism. Article 370, as Jagmohan puts it, "suffocates the very idea of India and fogs the very vision of a great social and cultural crucible from Kashmir to Kanyakumari."³¹

Hindu nationalism advocates a single homogeneous national identity and political culture for the whole country and rejects the idea of India as a multinational state. Till the 1980s, before the Bharatiya Janata Party came to power in important North-Indian states, the party (then Bharatiya Jana Sangh) was committed to a unitary Indian State with a strong

and powerful centre to preserve the unity and integrity of *Akhand Bharat*.³² Hindu nationalists not only refuse to recognize subnational aspirations of Kashmiris, but fear of being dominated by the Hindu majority felt by them is also “just a phantom propped up by interested politicians and religious fanatics to maintain their separatist grip upon the faithful”.³³ Combined with this is a deep distrust of the Muslim as intolerant and a fanatic and whose loyalty to India is suspect because of his role in dividing this holy land.³⁴

Article 370 has also been criticized by many because of its abuse by the ruling political elites and other vested interests in the state. They use it to deny to the people civil liberties and other democratic rights enjoyed by other Indians and then when their vested interests are threatened, they use it “as a stick with which they browbeat the Central Government.”³⁵ They have also found it a convenient tool to escape healthy financial legislations like health tax, urban land ceiling tax, gift tax etc., which have not been applied to the state. The State-Subjects laws regarding property and allotment of commercial sites has resulted in the emergence of a new class of intermediaries having connection with politicians and bureaucrats leading to corruption and loss of income to the government.³⁶

On the other side of the spectrum are the communist parties and many other commentators who stand for preservation of the Article. According to this group, its removal would aggravate rather than help the cause of integration of the state with India. No clause, argues Harkishan Singh Surjeet, comes in the way of the integration of the people of Jammu and Kashmir with India.³⁷ Rather it is just one among many such provisions as Article 371, the Fifth Schedule, the Sixth Schedule, etc., devised to meet the special needs of different areas. Moreover, it needs to be seen in the context of demands being made by many states for restructuring of centre-state relations with more powers to the states,

both in economic and political matters. This perspective is based on the idea that Kashmir and other "peripheries" do have a legitimate case, victims as they are of a repressive, centralized notion of *nationhood* and an inequitable and exploitative strategy of development.³⁸ The solution lies in real political democracy complemented by cultural democracy as well as socio-economic equality.

According to S.P. Sathe, the centre and Jammu and Kashmir are treated as equals in many respects by Article 370. It is this principle of equality and mutuality on which the future centre-state relationship would have to be based. Article 370, in a modified form, thus, could form the basis for future federal restructuring.³⁹ Karan Singh has called for recognizing Kashmir's special position and the need to adopt "a flexible and imaginative approach" rather than seeking "to steamroll all constituent units into a single, rigid pattern."⁴⁰

In between the above two positions is a huge body of opinion including within the centrist parties like Congress who would like the Article to be retained so as to reassure Kashmiri Muslims but regard it, as Gulzari Lal Nanda did, as a tunnel and not a wall.⁴¹ A good deal of traffic has already passed and more can pass. Though the centrist parties do not regard Hinduism as the sole criteria of Indian nationalism, they too, like BJP, are committed to the idea of a centralized nation-state based upon the European version of nationalism. Territorial integrity is sacrosanct and has to be maintained even by using state power to suppress insurgencies waged by religious or ethnic minorities. A democratic polity, with an open and free society, is only an instrument to achieve national glory.⁴²

POWER TO REPEAL ARTICLE 370

Diverse views are also held regarding the legal process of abrogation of the Article.

One view is that Article 370 does provide for its own extinction but "within a time limit which is long past", as it could only be done on the recommendation of the state Constituent Assembly.⁴³ For some, since the state Constituent Assembly is no longer there, the President's power appears to be unfettered now."⁴⁴ S.P. Sathe argues that the only way to repeal Article 370 is to issue an order under Article 370 making constitutional amendment under Art. 368 *ipso facto* applicable to Jammu and Kashmir. Such an order can be made only with the concurrence of the state government. After making such an order, Parliament may pass a bill to amend the Constitution containing a provision for the repeal of Article 370. Thus, the President cannot unilaterally repeal Article 370.⁴⁵

WHAT FOLLOWS THE REPEAL?

If it is legally ever abrogated, the constitutional position of the state, according to many commentators, would then come to be based on the Instrument of Accession. Article 370, according to this view, enables greater integration of the state with India rather than thwarting it and its abrogation would be a regressive step in terms of the state's integration.⁴⁶ Also, since according to the clause (1) (c) of Article 370, "the provisions of Article 1 and of this Article shall apply in relation to that state", inference is often drawn that the inclusion of Jammu and Kashmir in the territories of India (Article 1) is accomplished by Article 370. Therefore, if Article 370 is ever abrogated, Article 1 will no longer apply to the state and it would no longer remain a part of India. Contesting this view, Teng and Kaul argue that the "significance of Article 1 is more sacrosanct than any other provision of the Constitution", more so than Article 370 which is a "transitional and temporary instrument of jurisdiction created by Article 1". Moreover, since Article 1 applies to the state independently, it would remain applicable to it even when Article

370 is abrogated. Rather the state will immediately become like other states. It is also argued that the state became an integral part of India following its accession by virtue of the Instrument of Accession. The State of India was prior to the constitution of India, which "is not constitutive of the State of India or the sovereignty of India". Even if Article 1 ceases to apply to the state, its accession would remain unaffected.

Considerable confusion also prevails concerning "conditions" of accession of the state to India. A widespread belief is that Kashmir's accession as well as conditions of accession were different from the accession and conditions of accession of other states. Malini Parthasarthy talks of an "implicit social contract that the people of Kashmir had with India", that the state's accession was "contingent on a constitutionally enshrined recognition of its distinct political identity."⁴⁸ Article 370, is thus the basis of state's conditional accession and in case of its repeal, accession would stand nullified.

Against such an understanding one can quote Nehru's speech in Rajya Sabha on February 16, 1953 :

"The accession of Jammu and Kashmir state was identical with that of any other state in India, although it was thought at that time that there might be a variation in the degree to which the states could be integrated with India in the future. We certainly did not think it possible that all the states could be integrated with India to the same degree. I am talking of 1947 or perhaps early 1948; when Jammu and Kashmir state acceded, it did so as fully as any other state, so that the question of partial accession does not arise..... The accession is complete. Accession must however, be distinguished from integration. Jammu and Kashmir acceded first and then integrated as the other states had done and in the same degree."⁴⁹

CONSTITUTIONAL ASYMMETRY IN MALAYSIAN FEDERALISM

The special status of Jammu and Kashmir in Indian federalism can in many respects be compared with that granted to Sabah and Sarawak by the Malaysian Federal Constitution.

The Malaysian Constitution is basically the 1957 Constitution of Federation of Malaysia with modifications to meet the special requirements and safeguards demanded by the two Borneo states of Sabah and Sarawak when they joined it in 1963. In early 1960s, for the Borneo states, faced with British withdrawal targeted to be by 1972, the choice was really between autonomy within Malaysia or continuation as British colonies since complete independence was not a viable option. Singapore, too, had joined the federation along with these states but later separated on August 9, 1965.

The admission of three new states in the Federation necessitated new constitutional arrangements for these states. Owing to differences in the bargaining processes, non-similar federal-state relationships were established in the case of each of these new states. These were also very different from that existing between the Federal Government and the original eleven states based on the 1957 Constitution. The representatives of Sabah and Sarawak in the negotiations to work out the constitutional provisions made it clear that though they wished to join Malaysia, they would do so only if their special interests and powers were secured. It has been said that paradoxically the weakness of the Borneo states gave them a better edge in the bargain.⁵⁰

Sabah and Sarawak, like Jammu and Kashmir in India, enjoy considerably more legislative, executive, and financial powers, as compared to other states in the Federation.

The States List and Concurrent List, in their case, are more extensive. They have their own separate High Court. The functions and powers of various federal-state consultative bodies are not the same in their case, thus subjecting them to less federal control. The Borneo states have been provided with additional sources of revenue and also receive additional grants from the Federal Government. Because of the fear of domination and exploitation of the natives of these states by the more progressive Malaysians, special safeguards regarding citizenship, immigration, religion, national language, special position of the natives, the High Court in Borneo and representation in Federal Parliament have been incorporated in the Constitution. According to Article 161E, any constitutional amendment altering these subjects cannot come into effect without the concurrence of the Governor (Yang di-Pertua Negeri) of the Borneo state or each of the states concerned, as the case may be.

Article 161E can thus be compared to Article 370 of the Indian Constitution since without Article 161E, the special position of Borneo states would be untenable. However, it has been argued that this article does not provide sufficient safeguards against amendment as the representatives from Peninsular Malaysia in the Federal Parliament are sufficient to secure a two-thirds majority required for constitutional amendment and the required concurrence of the Governor (of Executive and not the Legislature) also does not tantamount to the consensus of the people of the state.⁵¹

SPECIAL STATUS AND NATIONAL INTEGRATION

The 1957 Constitution envisaged a federation with a strong centre. The 1963 merger with Sabah and Sarawak did not mark a substantial shift in that policy. The constitutional provisions for greater autonomy to these states were meant to be temporary measures

before a suitable degree of assimilation is achieved. Accordingly, since then a number of measures have been taken to bring these states in line with others within the framework of a centralized federation. A number of constitutional amendments (dealing with Article 161A, Article 161C and Article 161D) have been made with this end in view. Over the years, a substantial uniformity has been achieved in relation to laws dealing with federal subjects like customs laws, excise laws, courts laws, police laws, etc.

The insistence of the two Borneo states to be treated differently, though accepted in the initial years, has increasingly come to be denounced as parochialism and as repugnant to the nation-building efforts.⁵² The conviction has grown that Malaysia should be based on the concept of a partnership of states of equal status and that there is a need to further strengthen the feeling of unity among all the peoples of Malaysia through greater integration and uniformity.⁵³

CONSTITUTIONAL ASYMMETRY IN CANADIAN FEDERALISM: THE CASE OF QUEBEC

Two factors played a major role in the formation of Canadian Confederation in 1867. One was the threat of an American invasion and the other was the fundamental political conflict between Canada West (Ontario) and Canada East (Quebec), especially over representation in the legislative assembly, which necessitated a constitutional arrangement that could separate the two and yet unite them in a larger polity. The British North America Act, which laid the foundation of the Confederation, however, unlike the American Constitution, created a strong federal government endowed with all important powers, paramountcy in areas of concurrent jurisdiction, residuary powers and also the power to disallow provincial legislation even when such legislation was wholly within provincial ju-

risdiction. The founding fathers, other than French-Canadian, preferred an even more centralized and powerful government but the fact of cultural dualism and the need to address French-Canadian concerns served as a limit, to the extent that it did, to centralization.

The BNA Act hoped to resolve sectional conflict in the new Confederation by, on the one hand, allowing representation by population at the federal level which would mean control by the English majority and, on the other hand, assigning important matters of French-Canadian concern to the provinces. Thus, education, property and civil rights were put under provincial jurisdiction. Quebec was also allowed to keep its own system of civil law based on French, rather than British judicial practice, though a common criminal law prevailed. Constitutional protection was given to the use of French language in the legislature and courts of Quebec and in Parliament and the federal courts. The federal bargain further included a third of the Senate seats, proportional representation in the House of Commons and an informal assurance of cabinet representation.⁵⁴

The Confederation marked the official abandonment of the policy of assimilation of conquered peoples proposed by Lord Durham in 1839. It assured the French-Catholic population, to a large extent, the power to maintain its own institutions in all the respects then considered essential to the preservation of a distinctive society and culture.⁵⁵ Moreover, unlike the American Constitution, the Act did not seek to create a new Canadian nation that could absorb the sociological nationalism of the French-Canadians. At the same time, nothing in the text of the Act gave Quebec special treatment or a veto that other provinces did not have.

Until 1930s, the relations between Quebec and Ottawa, with some exceptions, were largely harmonious as the same party exercised power in both capitals. Also many repre-

sentatives, such as Georges-Etienne Cartier, were permitted to sit simultaneously in the Quebec legislature and the House of Commons. Other factors responsible for harmonious relations were Quebec's financial dependence on Ottawa and the recognition of federal government's role in protecting French minorities outside Quebec.⁵⁶ The Union Nationale government of Duplessis which came to power in 1936, opposed Ottawa on a number of issues, most particularly regarding the Second World War and the post-War federal economic and social programmes.

In the first half of the twentieth century, the Canadian federal government became increasingly powerful. Economic boom, immigration, the Great Depression and the two World Wars, all contributed to it. During the war, federal government had assumed many of the normal provincial powers which it showed no inclination of returning after the War. Through a series of highly centralist programmes, it began expanding its activities in areas such as housing, advanced and technical education, health care, etc., "Using the fiscal powers and resources that had accrued to it during the War", federal government, thus, repeatedly intruded into provincial jurisdiction, "imposing national standards and priorities on provincial governments as it did so".⁵⁷

These federal programmes were vehemently opposed by the Duplessis government in Quebec which rejected many of them. It is estimated that Quebec lost \$83 million in the federal funds in 1959-60 alone. Later premiers were able to convince Ottawa to "opt out" of conditional grants programmes with full compensation. This way, Quebec was able to develop its own programmes in such areas as hospital insurance, old age assistance, unemployment insurance, and family allowance. Although this option was open to all provinces and also the usual federal terms and conditions attached to the programmes contin-

ued to apply to Quebec, “it was significant, since the political attention of Quebecers shifted increasingly to their own provincial capital for these services. In that respect, a *de facto* special status appeared, while federal visibility and power were gradually reduced”.⁵⁸

The Quiet Revolution of the 1960, however, marked a radical change in the attitude of Quebecers towards their provincial government. Quebec government came to be viewed as the primary vehicle for socio-economic and political development of the province. The new middle class which still found opportunities in the English-dominated private sector limited also saw their “personal and collective mobility closely linked to the expansion of Quebec state”. Quebecers became less concerned with influencing the federal government and turned increasingly to an autonomist position. In 1976, the separatist Parti Québécois (PQ) came to power but lost the 1980 sovereignty-association referendum.

This encouraged the then Prime Minister, Pierre Trudeau, to move forward in his attempt to “constitutionalize Canadians” beyond their provincial identities through repatriation of the Canadian Constitution and more particularly the constitutional entrenchment of the Canadian Charter of Rights and Freedoms⁵⁹.

It was opposed by the Quebec government, which then opted out of all sections of the Charter where it could do so, both to limit its impact on Quebec and to symbolise the government’s opposition to the 1982 settlement. The result was a *de facto* “asymmetrical charter regime”.⁶⁰ To bring about a reconciliation with Quebec, a compromise constitutional package called Meech Lake Accord was put forward which went some way in meeting Quebec’s demands. It recognized Quebec as a “distinct society”, but most other “concessions” to Quebec were also given to all other provinces. The Accord failed as it could not be ratified by all provinces in time. The 1992 Charlottetown Accord, too, met

more or less the same fate. The accord recognized Quebec's 'distinct' society" but defined it, according to Quebecers, "in a restrictive fashion", so that its 'juridical and practical potential seem completely neutralized."⁶¹ Once again, constitutional asymmetry was rejected.

OPPOSITION TO CONSTITUTIONAL ASYMMETRY IN CANADA

In Canada, one finds today a contradiction between a significant *de facto* asymmetry and severe opposition to formal recognition of this asymmetry. This opposition is based on the principle of formal equality of provinces and what Alan Cairns has called the "Charter culture".

The principle of provincial equality, first popularized during the nineteenth-century struggle over provincial rights, has steadily grown over time into a powerful idea, particularly in Canada-outside-Quebec. The Charter culture, based on the discourse of individual rights, also generates hostility to special status or even designation of Quebec as "distinct society" if it means "uneven availability of what has come to be seen as attributes of Canadian citizenship",⁶² namely, rights enshrined in the Charter. The philosophy of individual rights runs against that of collective goals such as the survival and promotion of *la nation canadienne-française* for which Quebec is demanding a special status. It is feared in English-Canada that pursuit of such collective goals may require limitations on individual rights.

For Quebecers, on the other hand, living as a distinct French-speaking minority in an overwhelmingly English-speaking Canada and faced with powerful assimilationist pressures, "the way of being a Canadian (for those who still want to be) is by their belonging to a constituent element of Canada, *la nation québécoise* or *canadienne-française*", whose

survival and flourishing must be seen as one of the main purposes of Canadian Confederation.⁶³ They regard Canada as a compact between two founding nations and demand recognition of this duality underlying the Confederation in terms of equality between the two national groups. Quebec, therefore, cannot be treated as just one of the ten equal provinces and should be granted a special status. This binational understanding of Canada, however, clashes with the image of Canada a multicultural mosaic comprising many peoples held by most English-Canadians and which informs the Charter. The Charter, according to Quebec nationalists, utilizes the discourse of diversity but demands in practice a policy of national uniformity.⁶⁴

Moreover, by giving precedence to individual rights defined in a non-territorial basis over collective goals would limit the ability of the French-Canadians to preserve their distinct culture and encourage assimilation into the dominant culture.

Following the defeat of the Quebec sovereignty referendum in October, 1995, a government resolution recognizing Quebec's "distinct society" has been adopted by the House of Commons. A constitutional recognition, however, would require approval by Quebec as well as other provinces. The text of the resolution reads:

"Whereas the People of Quebec have expressed the desire for recognition of Quebec's distinct society;

1. The House recognizes that Quebec is a distinct society within Canada;
2. The House recognizes that Quebec's distinct society includes its French-speaking majority, unique culture and civil law tradition;
3. The House undertakes to be guided by this reality;
4. The House encourages all components of the legislative and executive branches of government to take note of this recognition and be guided in their conduct accordingly."⁶⁵

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CHAPTER 3

SUBREGIONALISM AND FEDERAL ADAPTATIONS : ASYMMETRY BELOW THE STATE LEVEL

It has been observed that in none of the polyethnic federations in the world do the territorial boundaries of constituent units coincide fully with their ethnic boundaries. Even a successful federation like Switzerland is divided not into three ethnic (German, French and Italian) cantons but twenty-six cantons. In most federations, not only are constituent units pluralistic in their ethnic diversity but also some groups tend to be closer to the locus of power than others. In countries like India, this has led to the emergence of sub-regional identities which, reinforced by a sense of cumulative deprivations, have been demanding regional autonomy and even separate statehood. This raises important conceptual questions regarding federalism. Some political scientists see federalism as an important institutional arrangement for power-sharing by and among all ethnic groups and, therefore, solution to subregionalism for them lies in redrawing of state-boundaries to coincide with ethnic boundaries or, in other words, creation of more units. Others criticise this view point since it lumps all expressions of grievances against the state, regime or the ruling elite as basically ethnic. Moreover, there is the danger of these territorial units starting to imagine themselves as nations.¹

In India a significant breakthrough is being made in accommodating resurgent identities at the sub-state level without compromising the territorial integrity of the states. Instead of increasing the number of states or Union Territories, the solution has been found in increasing "levels of autonomy" in terms of elected autonomous regional councils. One can describe it as introducing asymmetry between districts or regions within the states.

Much would depend on how these new structures work out; nevertheless, they mark a clear shift in orientation in "the direction of an increased willingness to rediscover and explore flexible federalism."² This chapter seeks to study the regional autonomy movements in Jammu and Ladakh, to compare the Ladakh Autonomous Hill Development Council with other such regional councils and to assess their working.

Although Jammu and Kashmir has been a single political entity for over a hundred years, geographically, ethnically, culturally and historically it is composed of three separate homogenous regions, namely, Jammu, Kashmir and Ladakh. Kashmir covers only 11% of the total area of the state but has 52.7% of its population which is overwhelmingly Muslim. Jammu forms 19% of the area and 45% of the population of which 62% are Hindus, 34% Muslims and 6% Sikhs. Ladakh makes up 70% of the State's territory and 2.28% of its population. Its population is almost evenly divided between Buddhists and Muslims. The relationship between the three regions has been a major issue in the state politics and has been mainly determined by four factors - historical factors, overlapping religious and regional identities, differential attitudes towards accession and integration of the state and the political dominance of the Kashmir leaders in state politics which has bred a feeling of political neglect and discrimination in Jammu and Ladakh.

DEMAND FOR REGIONAL AUTONOMOUS IN JAMMU

Before accession, Jammu was the centre of power in the state. The Valley had come under the Dogra rule in 1846 by virtue of the Treaty of Amritsar signed by Raja Gulab Singh and the British Government and it was against this 'alien' rule that the Kashmiri nationalism first emerged. Due to its anti-Dogra character, the freedom movement in the Valley could not enlist the support of the Jammu people and the Muslim leadership from

Jammu, in fact, was the first to leave the National Conference.³ Therefore, accession to India and beginning of democratic rule meant for Jammu transfer of power from a Jammu-based ruler to a Kashmir-based leadership. Moreover, according to Balraj Puri, while the Kashmiri nationalist leadership symbolized by Sheikh Abdullah supported accession to India, the ruler backed by the dominant leadership of Jammu consisting of Muslim Conference and Hindu Sabha delayed taking a decision and toyed with the option of an independent state which not only resulted in communal bloodshed but also in Jammu leadership losing all initiative in the internal politics of the state thereafter.⁴

After the accession, Muslim Conference leadership migrated or were deported to Pakistan while the Hindu Sabha was dissolved. A political vacuum emerged in Jammu as the National Conference failed to extend its base in the region and the national parties showed reluctance in entering the state. The National Conference failed mainly because of its leaders' lack of contact with and trust in the Jammu workers of the party. Top leadership remained Kashmir and repeated changes were made in party committees in Jammu so that none could stay long enough to strike roots. More importantly, Sheikh Abdullah "did not seem to have mentally accepted" his new role as a leader of the entire state and not just that of Kashmir.⁵ Loose talk by some Kashmiri leaders in terms of reversal of hundred years of Dogra Raj as well as the composition of the first government with four out of five cabinet ministers belonging to the Valley further increased the insecurities and apprehensions felt by the Jammu people in the new set-up. The Hindu majority of Jammu was further uncertain of their fate in the event of the Muslim majority voting against India in a plebiscite to which India was then categorically committed. The end of monarchy and the land reforms had also affected the interests of feudal leadership of Jammu and

deepened their feeling of deprivation.

In this context of absence of a unified and composite leadership of the entire state and uncertainty over the state's future, the dominant urges of the two regions began diverging. In Jammu, two groups emerged to fill the political vacuum which have been called the Pro-Integrationists and the Devolutionists.⁶ The demands of the Pro-Integrationists have communal overtones and include "complete accession" or full integration, abrogation of Article 370, equal representation in civil service and legislature, equitable distribution of educational and economic institutions and even separate statehood. The Devolutionists, on the other hand, led by Balraj Puri, approve of the state's special status and socialistic agenda of 'Naya Kashmir' and demand regional autonomy for Jammu and Ladakh, preferably under a five-tier set-up involving devolution of power at district, block and panchayat levels. They also accuse pro-Integrationists of communalising the Jammu problem and confusing the issue of accession with integration.

It was, however, during the Praja Parishad agitation of 1952-53 that the idea of autonomy for Jammu spread in the region and even came to be supported by Shyama Prasad Mookerjee through the agitation itself was for "full accession". The agitation was withdrawn in July, 1953 on the express assurance of Nehru and the Abdullah Government to grant regional autonomy, but later the Parishad changed its stand and started opposing the idea of regional autonomy allegedly because of an RSS directive. The ruling party in the state, in fact, found it in its interest thereafter to have the Sangh or BJP as the main opposition party which would, besides "opposing regional autonomy, divert Jammu's discontent into impotent militancy and restrict it within two or three assembly constituencies which were under Sangh control."⁷ Moreover, with the Parishad agitation a mutually reinforcing

relationship had emerged between pro-Integrationists in Jammu and pro-Secessionists in Kashmir. In fact, according to Balraj Puri, the pattern of arrests and releases of Parishad leaders which built up the agitation was almost as if planned.⁸ Any opposition other than Praja Parishad and secular in character could have easily won over large numbers of Kashmiri Muslims who had been "pitiable victims of a regimented set-up, corrupt and inefficient administrative machinery and general repression as also of deteriorating economic conditions."⁹

In November, 1965, Governor Dr. Karan Singh put forward a proposal for reorganisation of the state on linguistic basis. He proposed that Jammu be amalgamated with Himachal Pradesh, Ladakh be made a Union Territory, enabling Kashmir valley to acquire an autonomous status. The Congress condemned the idea as amounting to communal partition of the state and acceptance of the two nation theory. The Jana Sangha opposed the idea and favoured instead the formation of a bigger border state comprising of Jammu And Kashmir and Himachal Pradesh. It was also pointed out that Muslims of Doda and Poonch would prefer to stay with Muslims of the Valley rather than join Himachal Pradesh.

The demand for regional autonomy was raised in a big way for the first time in 1967, resulting in the appointment by the state government of Gajendragadkar Commission. The three leading parties of the state, Congress, Jana Sangh, and Plebiscite Front, all of which had opposed the demand, did not appear before the Commission. Balraj Puri's Jammu Autonomy Forum, which had spearheaded the campaign, in its memorandum demanded a division of the State List in two parts, one of which would be delegated to elected Regional Councils headed by a team of Executive Councillors. The Commission rejected the demand for lack of support in the region and for its possible adverse impact in the Valley and

recommended instead statutory Regional Development Boards for the three regions, establishment of conventions of Chief Minister and Deputy Chief Minister belonging to different regions, equal number of Cabinet Ministers from two regions, more equitable recruitment and educational policies, etc. Except for the establishment of Jammu University and a Medical College, none of the Commission's recommendations were implemented. In 1970, Regional Development Boards were appointed but they were neither statutory nor representative and also never became functional.

However, in October 1969, the Jammu and Kashmir State Peoples Convention, convened and presided over by Sheikh Abdullah and attended by almost all important leaders of the State, unanimously accepted a five-tier constitutional set-up proposed by Balraj Puri, which aimed at "widest possible decentralisation of power at regional, district, block and panchayat levels, without jeopardising the integrity of the state."¹⁰ Acceptance of the idea also underlay the 1975 Kashmir Accord. After he became Chief Minister of the state in February, 1975, Sheikh Abdullah repeatedly declared his intention to appoint a Commission of experts to work out the details of the five-tier Constitution, but never did so. In the meantime, an incident of police firing on student demonstrations against alleged irregularities in recruitment of teachers in Poonch on December 2, 1978, escalated into a mass agitation for regional autonomy. Eventually, a Commission of Enquiry, headed by retired Chief Justice of Supreme Court, S.M. Sikri, was appointed to look into the question of regional imbalances but the issue of internal autonomy was kept out of its terms of reference on the ground that it had already been rejected by the Gajendragadkar Commission. The Sikri Commission's recommendations met more or less the same fate as those of Gajendragadkar Commission.

As majority of legislators supporting G.M. Shah in 1984 had been from Jammu and Ladakh, Farooq Abdullah after returning to power in 1986, announced the appointment of a five-member Commission headed by Balraj Puri to work out the details of regional autonomy. He, however, failed to follow it up after the elections. In 1989, a Panchayati Raj Act was enacted, but it did not include the regional principle.

With the emergence of a violent secessionist movement in Kashmir, the debate on Jammu region's future has resurfaced. On one side, there is Jammu Mukti Morcha (JMM) which is demanding separate statehood. Opposed to it is the recently formed Association for Regional Council (ARC) which believes that a regional council would be a better substitute for separate statehood, a demand which is also now supported by the BJP. JMM holds that the regional council would be "in the hands of the State Government and legislature" and cannot be a permanent solution.¹¹ Differences would surface as soon as President's Rule is over and power is transferred to the Valley leaders. There is also a growing demand that the talks concerning Jammu and Kashmir between the centre and the Kashmiri leaders including militants should include representatives of Jammu and Ladakh as well.¹²

JAMMU'S GRIEVANCES

There is a pervasive feeling in Jammu that the region has consistently been discriminated against by the state government in favour of Kashmir. This feeling is not entirely unjustified regarding political representation, recruitment to the state government, industries and development programmes and educational and technical institutions.

Although Jammu contains almost half the state's population and a larger land area than Kashmir, in the legislative assembly formed after 1987 elections, it had only 32 seats as opposed to 44 for the Kashmir region. Thus, while Kashmir returned one member for

every 73,000 inhabitants, Jammu returned one for every 90,000. In 1992, the Delimitation Commission raised the number of Constituencies to 87 and gave to Kashmir a dominant share of 46 seats, while Jammu was given 37. According to experts, if seats are allotted strictly according to the provisions of the state's Constitution and Representation of Peoples Act, which call for certain correlation between the ratio of the population of each constituency and the number of seats allotted, as well as geographical compactness, Jammu would get 42 seats, Kashmir 41 and Ladakh 4.¹³

Where development is concerned, studies have shown that Jammu region lags behind the Valley in terms of agriculture, socio-economic and infrastructural level of development.¹⁴ All major industrial plants are located in Kashmir. According to a 1988 study, while in five out of six districts of Kashmir, at least 95.5% of villages were electrified, the corresponding figure for Jammu districts was 70.4%.¹⁵ Almost all professional and technical institutions are located in the Valley and Jammu's share in these Valley based institutions is approximately 30%. Most of the central aid to the state has been utilized for Kashmir's development.

Another major grievance relates to discrimination in recruitment to state government service. In the state, there are three types of identities which compete for recognition in this respect - those based on religion, region, and backwardness. The state has experimented with all three and found each one of them deficient in some respect or other. While majority of the gazetted officers in 1987 belonged to the Hindu community (Hindus 51.2%, Muslims 41.2%, Sikhs 5.8%), Muslim population of the state accounted for most of the non-gazetted officers (Muslims 56.24%, Hindus 37.89% and Sikhs 4.23%) and inferior ranks (Muslims 56.24%, Hindus 29.42% and Sikhs 2.06%).¹⁶ While two-thirds of the State Secretaries

come from Jammu region, majority of Hindus in the state government are Kashmiri Pandits, leaving only 10% of all state employees to represent the Jammu population.¹⁷ To redress this imbalance, establishment of a regional cadre to deal with subjects of regional and local interest has been suggested.

DEMAND FOR REGIONAL AUTONOMY IN LADAKH

Ladakh is very different from the rest of the state in almost all respects - topography, soil, climate, rainfall, language, racial stock, religion and social customs. It is also the most backward region of the state. The politics of Ladakh and the demand for autonomy has been made complex and conflictual by the fact that the population is almost evenly divided between Buddhists and Muslims (52.48%). The Muslims, belonging mostly to the Shia Sect, are concentrated in the town of Kargil where they constitute 93% of the total population.

The demand for self-rule in Ladakh is almost as old as Indian Independence. The people of Ladakh have always argued that with the transfer of power from the descendants of Raja Gulab Singh (during whose rule Ladakh was conquered in 1834) to the National Conference of Kashmir, the constitutional link which tied the region to the state was broken and from that time the region was free to go its own way. They further demanded recognition from Central Government as a separate nation on the basis of all tests of race, language, religion and culture.¹⁸

Having failed to convince the central leadership to allow their separation from the state, the Ladakhi leadership began demanding special status within the state. The Ladakhi religious and political leader, Kushak Bakula, had requested the Sheikh Government as early as 1952 to make necessary statutory provision in the future constitution of the State

so that Ladakh could enjoy the "same relationship to Jammu and Kashmir State as the latter does to India, with the local legislature as the only authority competent to make laws for the Province (of Ladakh) and to control administration."¹⁹ This demand was also ignored. However, Sadar-i-Riyasat Karan Singh's visit to Leh had the effect of drawing attention to the neglect of the region by the state government as a result of which Sheikh Abdullah Government persuaded the Head Lama, Kushak Bakula, to join National Conference. He was then made a Minister of State and put in charge of Ladakh affairs. Under the successor regime of Bakshi Ghulam Mohammad, several measures were undertaken for developing the region but the discontentment among the people remained. Ladakhi leaders further accused the Kashmiri leadership of dividing the people in the region on communal lines.²⁰

The year 1962 was a watershed in Ladakhi modern history. The Chinese aggression made the Central Government realise the strategic significance of this long neglected area. The attitude of the Kashmiri leadership, however, did not change much and according to Kushak Bakula, they "expected the Indian Army alone to bring about economic and social transformation in the land of the Lamas."²¹ The result was that soon after the Hazratbal agitation in the Valley, in early 1964, the Ladakhis launched their first organised struggle against "Kashmiri domination" and demanded a NEFA-type central administration. Similar agitations seeking autonomy were launched again in 1974 and 1982.

The Ladakhi Buddhists accuse the state government of being totally apathetic, indifferent and discriminatory towards the development of Ladakh. The few development projects that were launched have been lingering for years. Its tourism potential was ignored by the government which wholly focussed on the Valley. It was deprived of Plan funds and

centrally sponsored schemes, which were diverted to the Valley.²² Further, Kashmiri officers allegedly established a nexus with *Agoras*, a tiny community of Kashmiri Sunni Muslim elite traders settled in Ladakh, and misappropriated the Plan funds, thus depriving the region of whatever development that could have taken place.²³ Ladakh has also been discriminated against in terms of political representation and recruitment to government service. Although it occupies an area of 96,701 sq. km. with a population of 683,000 (1991 Census), it has only two MLAs and a lone Cabinet Minister. Out of 2,50,000 Jammu and Kashmir Government employees only about 3000 (1.2%) are Ladakhis. The Gajendragadkar Commission had recommended that the government should consider the request of Ladakhis for giving Ladakh its due place in the formal name of the state, opening of two colleges (at Leh and Kargil) and various other measures for development of roads, irrigation facilities, supply of electricity, increased supply of food grains, etc. These were never implemented.

The Ladakhi agitations against this systematic discrimination and political neglect were met by the state government with a mixture of force, palliatives and attempts to co-opt ambitious leaders into the Kashmir 'durbar'.²⁴ When they failed in this, they gradually communalised the Ladakhi politics by pitting Ladakhi Muslims against Ladakhi Buddhists. It is alleged that in a bid to Islamicise Ladakh on the pattern of the Valley, Sheikh Abdullah divided Ladakh district in 1978 into two districts, Buddhist majority Leh and Muslim majority Kargil, and also took steps to increase the Muslim population in Leh in order to create 'Greater Kashmir'.²⁵ Ever since, the two districts have shown a dichotomy of interests despite having identical problems of geography and development.

The state government managed to contain the agitation of 1982 organized by

T.Cheemang and P. Namgyal. But accumulation of grievances, developments in Darjeeling hills and appearance of militancy in the Valley finally led to Ladakhi Buddhist Association (LBA), launching a violent agitation to “free Ladakh from Kashmir” and to demand Union Territory status. The Muslim Association led by Akbar Ladakhi also took part in the struggle. The Ladakhis later gave up the demand for Union Territory and agreed to settle for an Autonomous Hill Council (AHC) after the then Home Minister Buta Singh rushed to Ladakh. On October 9, 1993, the centre finally conceded an AHC for Leh and for Kargil district as well, should it desire it. Kargil’s leaders, however, had dissociated themselves from the demand, holding it “inopportune” in view of the unrest in the Valley. In their view, the interests of Kargil, because of its “geographical position” were linked to that of the Valley.²⁶

The Ladakh Council proposal had faced opposition from Kashmiri leaders, irrespective of party affiliations. All Parties Hurriyat Conference even called for a ‘bandh’ in protest. According to P. Stobdan, although Valley leaders do not have a “jagir concept” towards Ladakh, they have always found the region useful to claim maximum allocation of funds from the centre, which would then be spent in the Valley.²⁷

THE CONCEPT OF AUTONOMOUS REGIONAL COUNCIL

The Constitution of India combines a “strong centre” framework with a remarkable tolerance of diversity in the form of provisions for exceptions and modifications to the general regime to accommodate diverse needs and aspirations. This acceptance of asymmetrical and unique arrangements have helped India to evolve sub-state structures in order to meet sub-regional demands for greater autonomy and political recognition.

The founding fathers recognised the need for special provisions for the administration

of certain backward or long neglected areas especially tribal areas situated within states. Accordingly, there is provision for Article 244 which inserts two Schedules, Fifth and Sixth, the latter for tribal areas of North-East India and the other for the specified areas elsewhere (the Fifth Schedule), to bring these areas on par with the others. The Fifth Schedule, while providing for special treatment of the scheduled areas, does not provide for self-government and has been criticized as representing a "paternalistic" attitude towards these peripheral areas.²⁸ The Sixth Schedule, on the other hand, provides for administration of tribal areas as autonomous districts by establishing District Councils and Regional Councils. These Councils are primarily representative bodies having legislative powers in certain specified fields such as management of a forest other than a reserved forest, inheritance of property, marriage and social customs. They also have limited powers of taxation and judicial powers, civil and criminal, subject to the jurisdiction of the High Court as the Governor may from time to time specify. While these autonomous districts "formally constitute a veritable third tier of Government", in practice limited powers, inadequate resources and interference of state governments have meant that these councils have been unable to realise their potential. A case in point is the struggle of hill areas of Karbi Anglong and North Cachar Hills in Assam for greater autonomy in the form of an autonomous state within Assam under Article 244A. In April, 1995, a tripartite agreement was signed by which Autonomous District Council for these areas was upgraded to Autonomous Council having "a body whether elected or partly elected and partly nominated to function as a legislature" of the Council and an Executive Committee instead of a Council of Ministers.²⁹ But in all other respects, the Council will enjoy the powers conferred by Article 244A, which had been inserted by the Constitution (Twenty Second Amendment)

Act, 1969 to constitute an autonomous state within Assam (Meghalaya) comprising certain areas specified in the Sixth Schedule. The Hill Councils will have powers over thirty departments including power, industry, roads, education, agriculture, minor irrigation and flood control and also to prepare and pass their own budgets within the total allocations indicated by the state government at the beginning of the financial year. The Council's representatives will also attend the annual plan discussions with the Planning Commission along with the delegation of the state government. At the same time, more Autonomous District Councils have been established by the Assam Government which has adopted the policy of granting autonomy to various ethnic groups in order to overcome their sense of alienation and neglect.

Apart from these provisions, the governmental response to sub-regional demands has assumed three principal forms. The region might be given separate development boards such as those constituted for Marathwada, Vidarbha, Saurashtra and Kutch. These boards have mainly coordinational responsibilities in specified matters for the region concerned. Such boards have had little significance because of the reluctance of state leaders to relinquish control over important responsibilities and functions. There could also be a political structure in the form of "a sub-legislature clothed with a measure of financial authority".³⁰ Andhra Pradesh Regional Committee (for Telengana) and Hindi and Punjabi Regional Committee which functioned in Punjab before its bifurcation between 1957 and 1966 are examples of this form of response. These regional committees consist of Members of Assembly who represent constituencies in the specified region and are empowered to discuss, pass resolutions or recommend to the state government any legislative or executive action with respect to certain specified subjects, provided the proposed action relates to

general questions of policy and is in conformity with the overall financial arrangements contemplated in the budget. The Committees formula in Punjab never “worked in letter and spirit and circumscribed as it was by the various interpretations given to it, it failed to satisfy the expectations of the people for whose benefit it was evolved.”³¹

More recently, the response has taken the form of new single-district or multi-district structures at the sub-state level, beginning with the creation of Darjeeling Gorkha Hill Council (DGHC) through an Act of the West Bengal State Legislature in 1988. Since then such Councils have been constituted for Bodoland, Jharkhand and Leh. While the regional committees described in the last paragraph were established by Presidential Orders, the primary responsibility for creating an autonomous council lies with the state assembly. With its provisions for elections and a separate budget, it is also qualitatively different from the earlier concept. At the same time, it has to function under certain limitations.

The autonomous council has no legislative powers over the subjects that fall within its purview. It can make regulations or by-laws provided they are not repugnant to any provision of a law made by the state legislature. Secondly, important subjects like law and order, police and judiciary are not assigned to it. Thirdly, it exists at the pleasure of the Governor. Fourthly, it has been given very limited fiscal powers of levying and collecting taxes mainly in sectors which have low revenue earning potential. Fifthly, although a number of subjects like rural development, agriculture, minor irrigation, forests (excluding reserve and protected forests) etc., have been assigned to such councils, they have not been endowed with the power to recruit and control their staff for the performance of these functions. The state services, says Nirmal Mukarji, constitute a “vertical intrusion” in “an otherwise horizontal stratification of governments.”³²

LADAKH AUTONOMOUS HILL DEVELOPMENT COUNCILS ACT, 1995 ≡

An autonomous council was created for Ladakh on May 9, 1995. The essential provisions of LAHDC Act are the following:

- (1) Districts of Leh and Kargil will get an autonomous council each.
- (2) Each Council will have 26 elected members and not more than four nominated members from amongst the principal religious minorities and women. The Council will meet once in every six months.
- (3) The Council will elect a Chairman who will also be the ex-officio Chief Executive Councillor. The Executive Council will consist of four other Councillors nominated by the Chairman with at least one member belonging to the principal minority in the district. The Executive Council is to function on the principle of collective responsibility.
- (4) The Deputy Commissioner of the district will be the Chief Executive Officer of the Council and can participate in the proceedings but will not have the right to vote.
- (5) The Council will have executive powers in respect of twenty-eight subjects such as formulation of development programmes and their periodical review, guidelines for implementation of schemes at grassroots level, special measures for employment generation and alleviation of poverty, periodic and annual plans, notified area committees, land use, promotion of local languages and culture, un-demarcated forests, canals, desert development, public health and sanitation, tourism, vocational training, education, livestock, roads other than highways, management of burials and burial grounds, environment and ecology, fisheries, small scale and cottage industries, non-conventional energy and any other matter within the executive power of the state which may be given to the Council. (Section 23).

(6) The Council will function as the district planning and development board with powers to prepare plan and non-plan budget and also to re-appropriate from one head to another. The annual plan and budget will, however, have to be sent to the State Government for its approval within a specific time frame and differences, if any, are to be solved through mutual discussions.

(7) The Council will collect taxes payable under the law in the district, levy tolls on certain local services and also impose taxes upto specified limits on any trade, places of entertainment, animals, vehicles, boats, pilgrim tax, rice-husking mills, brick kilns and such other taxes as may be approved by the Government.

(8) The accounts of the Council will be audited by the Comptroller and Auditor General and the Report will be placed on the table of the State Legislature.

(9) The Government has the power to issue directions to the Council and will also periodically review the utilization of the Plan and Non-Plan Funds allocated and the physical targets achieved. The Governor can dissolve the Council in which case, fresh elections would have to be held within six months.

While Ladakhis in general are satisfied with the provisions of the Act, some leaders have expressed opposition to the inclusion of the word 'development' which they feel has been introduced by the bureaucracy to weaken the notion of autonomy as well as to appease the minority Sunni Muslims.³³ Though it is too early to assess the functioning of the Leh Council, some issues have nonetheless cropped up. Instead of promoting genuine grassroots democracy, elections to the Leh Council have seemed only to perpetuate the state's dismal electoral record of unopposed elections. Congress won twenty-two of the twenty-six elected

seats unopposed as the Ladakh Buddhist Association and Ladakh Muslim Association merged with it, while the other parties refused to contest. The selection of Executive Councillors also created a controversy with the Councillors elected from rural and remote areas complaining that they had been ignored.³⁴

Also, the people of Zaskar in Kargil district have started demanding a separate “sub-hill” or “sub-autonomous council” on the basis that it has a distinct culture and identity.³⁵ This seems to confirm the fears expressed by some that creation of the regional council would open a Pandora’s box of similar kind of demands by other sub-regions.

Comparing LAHDC with Darjeeling Gorkha Hill Council (DGHC), Bodoland Autonomous Council (BAC) and Jharkhand Area Autonomous Council (JAAC), one finds that these are all conceived in the same vein with provision for elections and limited powers of spending on certain subjects, which are also identical with minor variations necessitated mainly by geographical and demographic considerations.

Though much smaller, LAHDC has been given wider powers of taxation, but unlike JAAC, no fixed percentage of the Plan Budget has been spelt out and also no powers of recruitment have been given. The powers of LAHDC are definitely less than those of BAC and DGHC. BAC has powers to levy fees and taxes on the subjects assigned to it, regulate trade and commerce (within the existing law) including issue of permits and licenses to individuals within its area, guide customs and traditions and social justice of the Bodos according to their traditional law and organize special recruitment drive into Army, Para-Military Forces and Police Units in consultation with the Central Government. BAC will also, within the laws of the land, take steps to protect the demographic complexion of the Council area and has to be consulted by the Government before any law is made and

implemented on the religious and social practices of the Bodos, Bodo customary procedures and ownership and transfer of land within the Council area.

The DGHC Act, 1988, was amended in 1993 after year-long consultations between the West Bengal Government and DGHC Chairman Subhas Ghising.³⁶ The amendments transferred to DGHC more direct responsibility for development activities, reduced the Government's power of nominating members by inducting the local MP and three MLAs and Chairmen of three municipalities of Darjeeling, Kalimpong and Kurseong into the Council as nominated members and assigned a Principal Secretary to the Council. The number of Executive Councillors were also increased to give the semblance of a miniaturized cabinet and the Chairman's status has been upgraded to a full-fledged Cabinet Minister to be sworn in by the Governor and who will submit his resignation to the Chief Minister.

AUTONOMOUS COUNCILS IN PRACTICE

The autonomous councils have, undoubtedly, been an important step forward in evolving a more responsive federal system. But though they have assuaged the regional sentiments of the people to some extent, demands for separate statehood have not entirely died down. In fact, many Gorkha leaders in Darjeeling see it as a first step towards statehood and eventually sovereignty.³⁷ The DGHC Chairman, Subhas Ghising, has described it as "a puppet in the hands of the State Government" and has been advising Uttarakhand leaders to simply rule out the Hill Council proposal and settle only for separate statehood.³⁸ He himself has announced his decision to "bid farewell" to the Hill Council and relaunch the Gorkhaland Agitation.³⁹

In Jharkhand, too, many leaders have described JAAC as lacking in "administrative context" and "a fraud on the tribal people".⁴⁰ The Jharkhand Accord, unlike accords on

Bodoland and Darjeeling Councils, was a bipartite agreement between the State Government and Centre and was concluded without attendance of Jharkhandi representatives. It has been criticised for failing to meet the people's genuine needs, since JAAC has no jurisdiction over mining and industry sectors which have displaced lakhs of people in the region and has devastated its ecology. No additional resources have been diverted to the region as 25% of the State Plan was already being allocated to the region under a tribal sub-plan.⁴¹ Moreover, JAAC is also not empowered to meet the threat to the identity of the region from influx of outsiders and to develop social and cultural features of the region.⁴²

The BAC was formally inaugurated on July 3, 1993 but elections to the Council have had to be repeatedly postponed. In the absence of elections, BAC has remained a nominated body and now has only a fraction of the executive powers that were supposed to have been transferred to it by the Government.⁴³ Its geographical jurisdiction remains largely undefined and is matter of dispute between the Bodo leaders and the Assam Government. Bodoland, in fact, has been described as a "demographic fiction whose demands rested more on emotions than on the realities on the ground."⁴⁴ Bodos grievances are undoubtedly genuine and serious but Bodos themselves are in a minority in many areas sought by them for inclusion in the Council area. The 1.2 million non-Bodos out of 1.8 million total population of the area were not taken into confidence by the Government at the time of signing of the Bodo Accord. While the non-Bodos have been feeling marginalised, the main signatory to the Accord, S.K. Bwismitary has been threatening to launch an agitation for separate statehood. The Bodoland Army (formerly Bodoland Security Force) whose goal is an independent sovereign Bodo nation is not just still active but has emerged as the most worrisome extremist outfit in Assam - in 1995 it killed more people than the

United Liberation Front of Asom (ULFA) and the NSCN taken together.

It cannot be denied, however, that demands for greater autonomy or statehood are in most cases, politically motivated. In many ways, the state-council relations suffer from the same problems as centre-state relations in the absence of unified party control. The state governments have been accused of following a policy of divide and rule and the regional leaders have been demanding greater autonomy and threatening to relaunch agitations to put pressure on the state government and to upstage political rivals. In recent years, the issue of whether the powers of DGHC overlap with those of the panchayats has been the bone of contention between the West Bengal Government and the GNLFF leadership, which had opposed the panchayat elections. The DGHC Chairman, Subhas Ghising, has also been demanding equal share in the panchayat funds under various centrally sponsored schemes.⁴⁵ His opposition to panchayats, it is alleged, stems from fears of threats to his leadership and personal clout from elected panchayats with generous funds at their disposal. For this reason he has also objected to huge amounts of money being spent from the quota of Lok Sabha Member, Inderjit of the Congress, and CPI-M's Rajya Sabha Member, R.B.Rai, without any reference to the DGHC⁴⁶. His increasing belligerence towards the State Government has also been attributed to the emergence of the All India Gorkha League led by his one-time lieutenant Chiten Sherpa which is demanding a probe into the financial irregularities of the DGHC and holding of Panchayat Samiti elections.⁴⁷ The Bodo and Jharkhandi leaders, too, seem to have vested interests in keeping the autonomy issue alive.

In case of the Leh Council, its real test would come after an elected Government takes over in Srinagar, since most Kashmiri leaders have opposed its creation. Its working will depend largely on the kind of state-local relations that would then develop as the

State Government has been given considerable powers to interfere in its working. Nevertheless, as Balveer Arora, says, it is “the transition to designating self-government as the basic objective which characterizes” these recent experiments and not mere functional decentralization.⁴⁸ It could well be the principle on the basis of which distinct ethnic and geographical units across the country seek autonomy and recognition. There is already talk of such autonomous councils for Uttarakhand, Chattisgarh and also Jammu.

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CHAPTER 4

PARTY ASYMMETRY: JAMMU AND KASHMIR IN INDIAN PARTY SYSTEM

As Riker suggested, once a federal bargain is concluded, the form in which it is sustained is shaped to a large extent by political parties.¹ An important variable in this respect is the existence of party symmetry or asymmetry. If the party system is asymmetrical with same parties as major competitors in all states and at the national level, there are important influences towards integration. On the other hand, party asymmetry or the existence of different parties in different states or parties competing mainly at one level rather than both, results in a system which is loosely integrated or, in Donald V Smiley's terms, "confederal".² The degree of party asymmetry in a federation depends on the extent of regionalization of party system as well as the manner of its formation.

Party asymmetry has important implications for the functioning of federal systems. It can, according to Smiley, encourage people "to believe that they live in two relatively discrete political systems rather than in an integrated system". Moreover, parties which compete essentially for power at the state level and have no chances of capturing power at the centre can sometimes "evolve towards ideological sectarianism and sometimes become little more than groups of those interested more in patronage than electoral activity."³ In states where the regional sentiment is strong and there is a regional party to mobilize such a sentiment, integrated or centralized parties may find it difficult to present themselves as credible defenders of state interests. Party asymmetry can lead to a situation where the two wings of the same party develop different, even opposing, interests since their main competitors may be different. It can also encourage central leaders to try and

reach out to individual citizens wherever they live by nationalizing issues and by creating cleavages which do not coincide with the state boundaries.

This chapter is an attempt to explore asymmetry in the Indian party system with respect to party politics in Jammu and Kashmir basically in terms of central interference, political corruption, the question of religion and ethnonationalism including Article 370, and the role of the Congress party in the state. In the end, I have attempted a comparison between Kashmir politics and Quebec politics since there is so much similarity between their circumstances and demands.

ASYMMETRY IN INDIAN PARTY SYSTEM

Even a casual survey of party systems in various states and at the centre will show that there exists a very high level of party asymmetry in India. As the Table 2 shows, in the 1996 Lok Sabha elections, except for a few states, the major competitors in most states were different.

One can understand this asymmetry using the "core-periphery" model as suggested by Ashis Banerjee.⁴ According to this model, states can be divided into two groups: a "core" group of states which have historically responded to national politics and are less prone to regional dynamics; and those which are relatively more inward-looking and are less influenced by national issues and politics. Bihar, Uttar Pradesh, Rajasthan, Himachal Pradesh, Haryana, Gujarat, Maharashtra, Orissa, Madhya Pradesh, Andhra Pradesh and Karnataka form the first group, while the "periphery" consists of Tamil Nadu, Kerala, West Bengal, Assam and other North-Eastern states, Punjab, and Jammu and Kashmir. In most of the peripheral states, regional parties (explicitly so or *de facto*) dominate state politics. Even in many "core" states, regional parties have become dominant, mainly as a re-

Table 2: First and Second-Placed Parties, By States, In 1996 Lok Sabha Elections.

States	Parties			Total- Seats
Andhra Pradesh	Congress	(22)	TDN(N) (16)	42
Assam	AGP	(5)	Congress (5)	14
Bihar	BJP-Samata	(22)	JD (21)	54*
Gujarat	BJP	(16)	Congress (10)	26
Haryana	BJP-HVP	(7)	Congress (2)	10
Himachal Pradesh	Congress	(4)	BJP (0)	4
Jammu & Kashmir**	Congress	(4)	BJP (1) JD (1)	6
Karnataka	JD	(15)	BJP (6)	28
Kerala	CPM-CPI-RSP	(8)	Congress (7)	20
Madhya Pradesh	BJP	(27)	Congress (8)	40
Maharashtra	BJP-Shiv Sena	(33)	Congress (15)	48
Orissa	Congress	(16)	JD (4)	21
Punjab	Akali-BSP	(11)	Congress (2)	13
Rajasthan	BJP	(12)	Congress (12)	25
Tamil Nadu	DMK-TMC	(37)	CPI (2) AIADMK-Congress (0)	39
Uttar Pradesh	BJP	(52)	Samajwadi (16)	85
West Bengal	CPM-RSP-CPI-AIFB	(33)	Congress (9)	42

* Declared 53

** National Conference did not participate in the elections. (States which send only one or two representatives to Lok Sabha have not been included).

Source : **The Hindustan Times**, New Delhi, May 14, 1996.

action to over-centralization.

Party asymmetry in India can in some respects be compared to the situation in Canada. In both the countries, parliamentary federal constitution was introduced by a nationalist political elite, organized in a 'nationalized' competitive two-party system in Canada and a one-party dominant system in case of India.⁵ With time, in the wake of class and ethnic differentiation, the party system in both these countries began to disintegrate and to get regionalized. There emerged a number of regional parties and other parties with no realistic chance of success at the federal level. This may be contrasted with the United States where party system began with state-based, localised parties right from the beginning and therefore, today, despite great differences in the circumstances of party competition among the fifty states, in no state are the serious competitors other than Republicans and Democrats in national, state and local elections.⁶

However, unlike in India, parties are of decreasing importance in the Canadian federal system. In Canada, regionalization of the party system after the Second World War was also accompanied by bureaucratization and depoliticization of government at both levels, especially the federal government, which has reduced parties to merely electoral functions. There developed first, what has been called "cooperative federalism" or the administrative approach and later, since the late 1960s, "executive federalism" in which intergovernmental issues have come to be resolved in federal-provincial First Ministers Conferences which tend to exclude legislators and parties from the picture. Since India is also a parliamentary federation, factors do exist which tend towards executive federalism.⁷ But because of the drive towards centralization from late 1960s onwards and worsening of government-opposition relations since mid-1970s, these tendencies could not

develop much.⁸

Other factor responsible for declining importance of political parties in Canadian federalism is the separation of federal and provincial wings of parties because of election expense legislations and independent sources of finances at both levels, lack of voter identification, increasing federal-provincial conflict and a greater reliance on mass media which has reduced the need for an organization at the other level.⁹ In India, on the contrary, the Congress party after Independence evolved into a "highly graded party with Nehru occupying the centre of authority."¹⁰ The unitary bias of the Constitution and centralized planning reinforced the supremacy of the party high command over the Pradesh Congress Committees, though examination of specific policy areas reveals a more federalized party structure. In the 1960s, the party underwent a marked process of decentralization with the Chief Ministers emerging as powerful figures within the party. But after 1967, centre increasingly intruded into both state and local politics even to the point of establishing direct links with district-level leaders, making it impossible for state Congress leaders to function at all without central support. This was facilitated by the enhanced importance of charismatic national leaders and their attempts to counterpose national issues, especially that of unity and integrity of India to federal and regional issues.¹¹ The state party units have also been prevented from breaking away by an "interest factor". As the party centre also formed the Central Government, it had "in its armoury such penalties and rewards to distribute as would make a would-be dissident pause awhile before pressing towards a break."¹² It is also significant that while the quasi-unitary provisions have fallen into disuse in Canada, they are still used quite regularly in India.

Since 1991, however, state level units of Congress have been functioning with a sig-

nificant degree of independence. Even the highly centralized Bharatiya Janata Party (BJP) has had to, in recent years, allow its state leaders greater autonomy, especially in those states where it has come to power and in those where it is trying to extend its influence.¹³

Thus, while in Canada party asymmetry does not affect the federal system much, as whatever parties are in power provincially press provincial interests and federal politicians also have no urgent interest in ensuring that their parties come to power in the provinces, the situation is very different in India. Many a time, party asymmetry has exacerbated centre-state conflicts especially in states where a regional party has been dominant as in Jammu and Kashmir.

PARTY POLITICS IN JAMMU & KASHMIR : WHY ASYMMETRY ?

ELECTORAL POLITICS IN JAMMU AND KASHMIR : 1952 TO 1975

Perhaps in no other state in India have the discrepancies between the party systems and the national and state levels and between one state and others been so great as in the case of Jammu and Kashmir. The circumstances surrounding the accession of the state and the internationalization of the issue resulted in state politics diverging from that in the rest of the country right from the beginning. Except for Praja Socialist Party (PSP), no other national party extended its activities to the state. Even more striking was the total absence of opposition in the Assembly till 1953 and thereafter, till 1975, only a "highly fragmented and numerically weak" opposition emerging mainly from the Jammu region.¹⁴ The opposition in the state, unlike in other states, was deliberately weakened through manipulation of election results, rejection of nomination papers on flimsy grounds, misuse of official machinery during elections as well as open repression. Thrice fairly strong

opposition emerged due to splits in the ruling party-Social Democratic Front of Afzal Beg in 1953, Democratic National Conference of G.M. Sadiq in 1957 and National Conference of Bakshi Ghulam Mohammad in mid-1960s; each time it soon disappeared as a result of repression or mergers at the instance of central leaders.

Such a state of affairs was tolerated and even encouraged by the central government and leaders including those in the opposition. The reasons, according to Balraj Puri, were basically three.¹⁵ Firstly, since India's case in Kashmir had increasingly come to depend in the international forums, particularly after 1957, on the endorsement of accession by the election results, it was therefore considered "less than patriotic to challenge the fairness of the elections or insist on their fairness." Secondly, it was feared that the opposition in the state was likely to go astray. Therefore, all secular and so-called pro-India forces had to be always united in one party which could then form a strong government capable of dealing with secessionist threats. Last, but not least, was the perception that politics in Kashmir, and therefore, also India's case in Kashmir revolved around personalities. The policy, therefore, was to support leaders, be it Sheikh Abdullah or Bakshi or Sadiq, whatever their shortcomings be.

This asymmetry, till mid-1960s, was further fostered by different electoral laws, indirect elections to the Parliament and a separate Election Commission. In 1966, the Assembly brought the political system of the state in line with that in the rest of the country in all these respects. Politically also, there were moves towards symmetry. In 1963, Praja Parishad formally declared itself a unit of the Jana Sangh. In 1965, National Conference merged with the Congress, while Bakshi Ghulam Mohammad decided to revive the National Conference. The elections that followed in 1967 were contested by all these

parties as well as a rebel section of the Plebiscite Front, PSP and the Communist Party. But the elections could hardly be called free and fair. In the 1972 elections, in addition to all-India parties, several local parties like the Jamait-i-Islami, Awami Action Committee and even sympathizers of the pro-Pakistan Political Conference also participated. For the first time since 1953, Sheikh Abdullah, too, decided to take part in the election but was not allowed to do so.

Till 1975, thus, while there was little opposition within the Assembly, a considerably strong opposition existed outside it. It was led by Plebiscite Front and Awami Action Committee, both of which were banned and carried their political activities in a clandestine manner. In a survey conducted in the valley in 1972, Z.M. Quraishi found that more than half the respondents in his sample identified with either of these two organizations and only 19.9% with the ruling Congress Party.¹⁶ These two organizations, in fact, represented the traditional cleavage of Kashmir politics dating back to the days of 'sher-bakra' rivalry between the Mirwaiz Yusuf Shah and Sheikh Abdullah, who was successfully able to challenge the traditional leadership of the former. After the 1953 crisis, when Sheikh Abdullah was removed from Prime Ministership and arrested, the political legacy of National Conference was inherited by the Plebiscite Front, while its name was appropriated by Bakshi Ghulam Mohammad and his supporters. At around the same time, supporters of the Mirwaiz reorganized themselves into Awami Action Committee to press for plebiscite.

Another party which did not contest any elections till 1968 was Jamait-i-Islami Jammu and Kashmir. Formed in 1947, it stands for "Islam in its entirety and pristine purity as enunciated in Quran and practised by Prophet Mohammad."¹⁷ Although it, to some ex-

tent, filled the political vacuum left by the banned parties, it was unable to entrench itself for lack of "ideological flexibility and political pragmatism." Its purist ideology was also opposed to the religious traditions of Kashmiri Muslims. Uptill late 1970s, when Zia-ul-Haq and his politics of Islamization began changing the political culture of Pakistan, the Jamait was under constant persecution in Pakistan and hence, not very "enthusiastic about self-determination movement in Kashmir."¹⁸ In the late 1970s, however, prompted also by the growing Pan-Islamic consciousness, it stepped into the ground vacated by the leaders of the self-determination movement after the 1975 Kashmir Accord.

ELECTIONS IN JAMMU AND KASHMIR : 1977 TO 1987

The 1977 elections, the first in which Sheikh Abdullah participated since 1953, are widely acknowledged to be the first free and fair elections in the state. The main opponent of Sheikh Abdullah's newly formed National Conference was Janata Party, a party hastily constituted of a number of disparate groups and parties, united only by either their anti-Abdullah feelings or plain opportunism. Initially, Sheikh Abdullah had himself sought the support of Janata leaders at the centre but because of the opposition of local Janata leaders, an alliance could not materialize. Later, using the conflicting statements made by Janata leaders on Article 370, he was able to characterize the elections as a 'referendum' on Kashmiri self-respect and emerge victorious.

The 1983 state elections were bitterly contested by National Conference under Farooq Abdullah and the Congress, for which Mrs. Gandhi herself campaigned extensively. Farooq Abdullah entered into an alliance with national opposition parties, seeking to defeat Congress not only in the state but at the centre as well. Both the parties resorted to communal appeals with the result that there was a total polarization of votes on regional and communal lines. These elections launched Farooq as a symbol of Kashmiri aspirations and, at

the same time, by bringing opposition leaders to the state, he was able to create in Kashmir, a feeling of shared concerns with the rest of the country. But the dismissal of his government in 1984 once again put the clock back. Farooq instead of continuing to fight on principle with the support of other opposition parties, gave up his role as an opposition leader to sign the Rajiv-Farooq Accord. The accord led to the formation of National Conference-Congress coalition government in 1986. The result was that in 1987 elections, regional sentiments were mobilized by a coalition of fourteen Islamic groups, known as the Muslim United Front (MUF). Moreover, fearing MUF's growing popularity, the National Conference went back to its old tricks of winning elections through hooliganism and rigging. As Balraj Puri puts it, "if the accord had blocked secular and nationalist outlets of discontent, the elections blocked constitutional and democratic ones as well."¹⁹

POLITICAL CORRUPTION

Indian political parties are, as Paul Brass has noted, "a strange sort of hybrid"—"neither ideological nor pragmatic, neither extreme nor moderate, but ideological in principle, opportunistic in practice."²⁰ He explained it in terms of discontinuities between cultures and levels in Indian politics, between the ideologies of socialism, planning, national integration and rapid industrialization promoted by most central leaders since Independence and the actual concerns of politicians in states and localities "which tend to centre around issues of land control, inter-caste and inter-communal relations and access to local resources".

Politics in Jammu and Kashmir, in this fundamental respect, is no different from the rest of the country. However, absence of democratic checks and massive subsidization of the economy by the centre has meant that "personal and family aggrandizement has been

the name of the game."²¹

Following accession, Sheikh Abdullah, who headed the emergency administration, rejected the principle of separation of party from the government, preferring instead 'the Soviet model' in which the party controlled every branch of the administration.²² National Conference workers were appointed to government posts and many government officials held party positions. The result was corruption, high-handedness, repression and rule by a coterie centered around Sheikh Abdullah. In fact, mounting public resentment against his authoritarianism by late 1952 is said to be one of the reasons for his equivocation on the question of accession.

But it was Bakshi Ghulam Mohammad who institutionalized corruption in Kashmiri public life. Supported by generous central funds, he bought the support of political workers including his opponents, press and religious leaders through huge sums of money, government jobs, licences and contracts and even admissions to technical and higher educational institutions. His party mobilized voters through influential persons in every village and mohalla by allowing the latter "a kind of power of patronage in the political system."²³ Later, when the Sadiq government began its policy of liberalization and many opposition leaders were freed, this kind of a limited power of patronage was extended even to the Plebiscite Front leaders under "a sort of gentleman's agreement", according to which the latter had to keep away from the electoral process in return.

When Sheikh Abdullah returned to power in 1975, he promised to clean up the administration. But he, according to his critics, "succeeded (only) in accentuating the evils that had been corroding the body-politic of the state".²⁴ After 1975, says Jagmohan, "a new political power structure" came into being which "tended to make the administra-

tion more insular and more subservient to its narrow ends". The "power circle grew closer" so that "increasing reliance came to be placed upon money power and exploitation of parochial emotions rather than on solid, sound and honest work". According to Jagmohan, while Sheikh Abdullah was still able to retain his hold over the various "cliques" in politics and administration, Farooq and G.M Shah, lost even that.²⁵

ETHNONATIONALISM AND RELIGION IN KASHMIR POLITICS

Jammu and Kashmir, as was stated earlier, is one of the "peripheral" states, which have historically been less subject to the influence of national events and issues. Its politics, since 1947, has basically revolved around three issues : religion, ethnonationalism including the whole question of autonomy or Article 370, and the troubled relationship between the three regions of the states.

Kashmiri Muslims were "one of the first Muslim communities of the subcontinent to get what may be called regionalized".²⁶ Geographical, historical and cultural factors as well as a modern political movement since 1930s have all contributed to this regional consciousness. The political movement of Kashmiri Muslims began initially on the question of government jobs for Muslims but with time, led by the National Conference under the leadership of Sheikh Abdullah, developed a secular, socialist and nationalist orientation. By 1945, Sheikh Abdullah had begun demanding the right to self-determination for Kashmiris although with the condition that exercise of this right could not be done, according to him, "in opposition to the rest of the people of the country".²⁷ While the Congress supported the movement, Muslim League, in which the feudal interests dominated, could not make common cause with either its anti-feudal orientation or its ethnonationalism. Because of this ideological affinity with the Indian National Movement,

Sheikh Abdullah's opposition to the two-nation theory and Pakistan's attempt to forcibly take over Kashmir, there was genuine popular support for accession to India in the Valley in 1947.

'*Kashmiriyat*' or the ethno-local identity predominates in Kashmiri Muslim consciousness, though the term itself, says T.N.Madan, "is of recent coinage".²⁸ But the appeal of Muslim solidarity also has always been present. This is because Kashmiri Muslims see themselves not only as a distinct ethnic group but also, especially since 1947, a Muslim minority in a predominantly Hindu India. These diverse urges and pulls, for almost half a century, were "balanced" by Sheikh Abdullah, who in his own person embodied these contradictions of Kashmir politics.

Despite his wholehearted acceptance of India's founding principles, Sheikh Abdullah's original aim was to retain maximum possible autonomy within the Indian Federation "so that at no time they (Kashmiri Muslims) would be haunted by the possibility of being swamped by a recrudescence of communal forces in India" and "to safeguard their economic programme".²⁹ For him, Kashmir's accession to India was linked to India's secularism and his fears regarding the future of secularism in India was the most important reason, though perhaps not the only one, for his vacillations on the question of accession in early 1950s.³⁰ He himself underwent a change of attitude following further constitutional integration of the state with India in mid-1960s. The photos of Gandhi, Nehru, Azad and Abdul Ghaffar Khan were removed from his headquarters, Mujahid Manzil, and replaced by those of Jinnah. The socialist red banner of the movement was substituted by a green one symbolizing Islam. But the slogan of Hindu-Muslim-Sikh unity was not given up and although none of the dissident leaders condemned Pakistani action under Operation Gibraltar,

the infiltrators found no support among the population. The break-up of Pakistan in 1971 and the emergence of Bangladesh, however, resulted in popular disillusionment with Pakistan and once again "encouraged resurgence of regional patriotism against the appeal of Muslim solidarity".³¹ This was a major factor leading to the 1975 Kashmir Accord.

In the 1977 elections, though Article 370 emerged as the main issue, it was alleged that National Conference workers in many places administered oaths to the people on the holy Quran that they would vote for their party. According to Girilal Jain, since the main challenge to Sheikh Abdullah in the elections had come not from people known for their pro-India sympathies but from "those who in the past had been highly critical of New Delhi, it was only to be expected that he and the National Conference would appeal to communal sentiments".³² However, they were not alone in doing so. Janata Party sought and received "unconditional support" of Mirwaiz Farooq and also managed "an understanding" with Jamait-i-Islam.³²

After Sheikh Abdullah's death, the focus shifted to his son and heir, Farooq Abdullah, as a defender of Kashmiri Muslim identity. But he lacked his father's charisma and stature and was unable to provide a balance between diverse pulls to which the Kashmiri society was subjected. He failed at a time when Islamization in Pakistan under Zia-ul Haq and the mood of Islamic reassertion in the Muslim world had begun to have a tangible impact on the Kashmiri political culture. Moreover, from the late 1970s onwards, new *madrasas* began springing up in Kashmir, which were run by '*maulvis*' from Bihar and Uttar Pradesh. Indigenous Sufi-traditions of Kashmir had no meaning for these *maulvis*, who taught of pride in militant Islam and branded Muslim children going to secular schools as *kafirs*.³⁴ The decline of National Conference, mainly because of its own political excesses,

alliance with Congress and Farooq's failure as a leader, and growing Islamic consciousness in Kashmir were further complemented by "erosion of secularism as a state ideology" in India and the rise of Hindu militancy. All these developments together, at a time of increasing social differentiation and political consciousness, have resulted in, according to Ghulam Mustapha Pasha, "a religious vocabulary" beginning to "replace the 'neutral' secular language of mainstream politics".³⁵ However, it has still not become dominant. The largest group among the militants today, Jammu and Kashmir Liberation Front (JKLF), still claims to adhere to a vision of a secular independent Kashmir.

While '*azadi*' or independence has become the battle-cry since 1990, till then, the most emotional issue in Kashmiri politics was autonomy or Article 370. Almost all Kashmiri leaders have opposed and resisted erosion of Jammu and Kashmir's autonomy. Even Bakshi Ghulam Mohammad, whose corrupt and repressive administration depended so much on central support, was a staunch supporter of the state's autonomy. In 1954 and 1958, some dilution of Article 370 did take place but the changes were more symbolic than substantial. He also resisted moves to merge National Conference with the Congress. According to Balraj Puri, his championship of the state's autonomy "must have been a major cause" of the acceptance of his resignation in 1963 under the Kamraj Plan.³⁶

G.M.Sadiq, possibly influenced by his ideological belief in centralization, allowed a considerable erosion of Article 370 in mid 1960s. But later he, too, became a champion of the state's autonomy. However, the merger of the National Conference and Congress in 1965 resulted in the Central Government getting an additional leverage over the state government, as well as an additional reason to interfere in its politics.

THE CONGRESS PARTY IN JAMMU AND KASHMIR

Because of past connections and ideological affinity, National Conference till 1965 functioned as a sister organization of the Congress. Jawaharlal Nehru, says M.J. Akbar, understood the sensitive role that national conference had always played in the delicate balance of the state and therefore, as long as he was alive, he never allowed Congress to even exist in Kashmir.³⁷ The transformation of National Conference into the state unit of Congress in 1965 was described by P.N. Bazaz as a "blunder" since, for Kashmiris, it was more than just a political party; rather it was "a symbol of their political achievements, cultural advance and national existence",³⁸ which the Congress could never be. The Congress, moreover, lacked traditional bases of support in the Valley nor could it develop an extensive membership organization. It, therefore, depended on central intervention and manipulation to come to power. Another effect of the merger was that the state's politics got directly affected by what Stanley Kochanek has called the "new political process" initiated by Mrs. Gandhi in the late 1960s.³⁹

As Mir Qasim put it, "instead of becoming a source of strength for us, the Congress became a conduit for the flow of all the country's political dirt into Kashmir".⁴⁰ To begin with, the central leadership played Sadiq and Mir Qasim against each other, reducing both the leaders to travelling to New Delhi to establish their respective claims.

After the 1975 Kashmir Accord, the Congress leadership had expected the Sheikh to join it but he decided to form a new party. Tensions between the parties often resulted in the Congress leaders accusing Sheikh Abdullah of violating the Kashmir Accord "by not remaining fair to their party which put him to power".⁴¹ Relations between Abdullah and Mrs. Gandhi, however, remained cordial, with the former even supporting emergency as "a painful necessity". During the emergency, since "Kashmir did not impinge upon her

power structure", Abdullah was allowed to function without interference. But after the Congress defeat in 1977 general elections, local Congressmen put forward the idea of forming a Congress government in the state as it had a majority in the Assembly, which could then help relaunch Mrs. Gandhi by getting her elected to Lok Sabha from the state. Support to Abdullah government was withdrawn, but he recommended dissolution of the Assembly to which the Governor agreed.

In the 1983 elections, Mrs. Gandhi wanted an alliance with the National Conference and put pressure on Farooq Abdullah for it. Farooq, who had succeeded his father with Mrs. Gandhi's personal support, refused believing that his party should "retain its identity".⁴² More importantly, he also joined the growing anti-Congress coalition across the country, which Mrs. Gandhi could not tolerate. It was also something unprecedented, since Sheikh Abdullah had always maintained that the Congress was as necessary for the rest of the country as National Conference for Kashmir.⁴³ He had not only supported Mrs. Gandhi during the Emergency but had also sent Farooq to campaign for her return in 1980. The result of this change in policy was a hostile campaign by both parties and a number of ugly incidents. The Congress lost but Farooq Abdullah was also not allowed to stay in power for long. On July 2, 1984, his government was toppled by encouraging defections from his party.

Farooq government was one of the many non-Congress governments that Mrs. Gandhi had sought to undermine during that period. It was the time when opposition parties, especially regional parties, were portrayed as "anti-national" in an effort to present Congress as the only bulwark against the disintegration of India. The most pernicious aspect of this strategy was the attempt to appeal to Hindu chauvinism by projecting the minori-

ties as constituting the biggest threat to India's unity. Massive propaganda was launched to paint Farooq Abdullah as "anti-national", as being soft on secessionists in the Valley and even as supporting Sikh terrorists. Because of the state's peculiar circumstances, perhaps, there were other reasons as well. A disturbed Kashmir, according to George Fernandes, suited the Prime Minister as it served two purposes.⁴⁴ One, "the sabre-rattling with Pakistan could be kept up interminably," "the intensity being varied" to suit her political convenience; and secondly, to "blackmail" the Indian Muslims into supporting the Congress. After Mrs. Gandhi's death, there was a change in policy towards non-Congress governments. Farooq could return but as a *quid pro quo*, the Congress leadership once again demanded a Congress-National Conference coalition. This time, Farooq gave in, reasoning that "anyone who wants to form a government in Kashmir cannot do so without sharing power with New Delhi".⁴⁵

Except during the Janata period, the experience of different parties exercising power in Srinagar and New Delhi has been that tensions between the parties often translated into tensions between the state and centre. In Kashmiri popular perception, Congress party is equated with the centre, which, in turn, is not seen as different from the Indian nation. Same party rule, on the other hand, has meant subversion of constitutional autonomy and has also failed to satisfy Kashmiri symbolic needs.

POLITICS IN KASHMIR AND QUEBEC : A COMPARISON

Politics in Kashmir can, in many ways, be compared to that in Quebec. In Quebec politics too, a consciousness of being a "distinct society" faced with threats (real or perceived) of assimilation has resulted in predominance of ethnonationalism and the issue of autonomy or special status. Like in Kashmir, as a likely consequence of the importance

of nationalism, Quebec politics has been characterized by dominant leaders. There is a strong 'regional' party, Parti Quebecois (PQ), which mainly mobilizes the separatist sentiment. Moreover, even when Quebecers have appeared less inclined to support separation, they have not developed a strong sense of "Canadianness".⁴⁶

However, there are important differences as well. The Quebec 'national' movement, as Ramsay Cook argues, is "an exceedingly cautious one", bearing little or no real similarity to the national movements in the Third World.⁴⁷ Its cautiousness stems from the tension between "the desire to preserve and desire to liberate, between nationalism and liberalism", both of which are freely and democratically mobilized in Quebec politics. The forces of modernization, secularization and urbanization, since the Quiet Revolution, have not only transformed the province into one of the most advanced provinces in Canada, but also blurred cultural distinctions between Quebec and the rest of Canada, so that "linguistic insecurity" has emerged as the basic issue.⁴⁸ Therefore, despite a weaker degree of attachment to their country than most Canadians, the majority support for separatism remains fragile and reversible.

The Kashmiri freedom movement, on the other hand, emerged as a "composite, anti-federal liberatory movement"⁴⁹ having great affinity with Indian nationalism represented at the time by Indian National Congress. But the failure of both Indian nationalism to subsequently accommodate Kashmiri aspirations and that of Kashmir movement itself to fulfill its promise of "Naya Kashmir" have added a sense of betrayal to the already existing "structural fears" of the Kashmiri Muslims and fuelled separatism.

As Z.M.Quraishi points out, Kashmir politics is set after the national politics in at least one sense in that Muslim aspirations in Kashmir are similar to that of underprivi-

leged castes elsewhere.⁵⁰ But the traditional elite against whom the movement was directed comprised Kashmiri Pundits, Dogra rulers and Punjabi Muslim traders which gave it communal and ethnic overtones and thus made it different. After 1947, when power shifted to Kashmiri Muslim leaders of the movement, preservation of Kashmiri religious and ethno-cultural identity in a Hindu majority India became the central issue. But shift in power did not lead to democratization; authoritarian rule of the Maharaja was replaced by authoritarian rule of Sheikh Abdullah led National Conference, which tolerated no dissent. The centre, for its part, was more concerned with having a pro-India government in the state rather than a genuinely democratic one. After 1953, as the centre began to pump in massive development aid, a highly cynical and acquisitive middle class consisting of politicians, bureaucrats and businessmen emerged and thrived, while the majority of the people remained as they were. This class had so entrenched itself in the state that the return of a popular government in 1975 could make no difference. If anything, the things got worse. At a time when discontentment and disenchantment were increasingly becoming evident due to growing political consciousness, Congress leadership's cynical manoeuvres for power in total disregard of Kashmiri sentiments had the effect of channelising all discontent against the centre or India.

It is in this context that some observers have pointed out that greater autonomy or constitutional asymmetry alone would not be enough to resolve the Kashmir problem. It would need to be translated into real autonomy for a state government, elected in free and fair elections, which is accountable to the people and responsive to their needs.

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CONCLUSION

Federalism, especially when employed to accommodate ethnic diversity, has to be understood as a process which is continuously adapting itself to political realities so as to better serve its purpose. This process of adjustment, at times, might involve recognizing asymmetry between member-units, particularly in terms of their status and powers. Asymmetrical federalism accepts such innovations as well as demands on which they are based as legitimate and not incompatible with either federal principles or national unity. Rather than imposing a standard federal model on a society and trying to make political reality conform to it, the idea is to develop federal structures so as to conform to this reality.

The question of asymmetry has, however, become a matter of bitter controversy in many federations. It involves basically two issues. Firstly, asymmetry itself, since it challenges the principle of equality of states, has yet to be accepted as legitimate and 'normal' in a federal set-up by majority of the people. It still stands out as a "temporary and transitional" exception to an allegedly 'normal' state of affairs. The other issue, although very much related to the first, is of a conceptual vision of the country or federation promoted by the state and accepted by a sizeable majority. This vision has, in many cases, stood in the way of a formal recognition of asymmetry.

In the case of India, an understanding of it as a 'nation' or a 'nation-state' or a 'nation-in-the making' has meant reluctance, even today, in defining India, especially officially, as a federation. Therefore, while many foreign observers describe India as a "multi-national state" or even as increasingly becoming a "true federation", for many Indians, India is still a "Union of States" and at best, a "federal-democratic nation" or a nation having "a federal aspect to its character".¹ Although a considerable amount of asymme-

try, both constitutional and otherwise, has been accepted as a political compromise, a more explicit recognition of India's diversity has yet to be written into its self-definition. Until this is done, demands for asymmetry which question the official inclusionary ideology of nationalism or by groups defining themselves as 'nations' would be resisted as "anti-national" and as "security threats" and not resolved through political processes. In this context, many commentators have suggested alternative terms in place of 'nation-state' and 'multi-national state' to characterize India's distinct reality. These include "civilization state" (Dr. Ravinder Kumar), "civil state" (D.L. Sheth) and even "multi-national nation-state" (Ashis Banerjee).² Such terms, it is hoped, would not only restrain the centre from behaving as a monolithic nation-state in defiance of India's diversity and encourage a balance between centre and the states, but also liberate India from concepts based on Western experience and unsuited to its needs. These would relocate the Indian state in indigenous systems of cooperation, coexistence and tolerance. Once this narrow concept of 'nation-state' is given up, asymmetry, both formal and informal, becomes much more acceptable.

Demands based explicitly on religious identities would, however, still be problematic. An alternative self-definition of India would minimize minority fears but would not alter the majority-minority equation in power-sharing, especially at the centre. Secularism, in terms of 'equal treatment' of all religions, equal rights and certain cultural rights for minorities, as has been adopted in the country has not always proved to be adequate, even when combined with some consociational considerations in practical politics. In states where majority-minority relations get entangled with centre-state relations, *de facto* asymmetry which would provide them greater autonomy than other states in certain matters could perhaps be a viable solution.

In Canada, too, many political scientists agree that instead of holding on to a uniform model of citizenship based on Trudeau's vision of a Canadian nation which is unable to accommodate Quebec's conception of itself as a "distinct society", the need is to build and legitimize models which would allow for "second-level" or "deep" diversity. The classical Western liberal nation-state based on uniform citizenship and equal individual rights, according to Charles Taylor, has become a "straitjacket for many political societies. The world needs other models to be legitimized in order to allow for more humane and less constraining modes of political cohabitation To those who believe in according people the freedom to be themselves, this would be counted as a gain."³

Informal asymmetry between provinces already exists in Canada and the basic issue there is of its constitutional recognition. In India, constitutional asymmetry was part of the original design. Since 1950, it has been eroded in some cases and, at the same time, extended to some other states, most notably the North-Eastern states. Asymmetry below the state level has also been introduced in regions other than those covered by the Fifth and Sixth Schedules in the form of autonomous regional councils. These councils, however, have not been accorded a constitutional status for fear of encouraging too many such demands. As was discussed in chapter 2, this has often led to complaints that these councils are no more than puppets in the hands of state leaders. At the same time, non-constitutional status of such councils has meant greater variety in their size, powers and administrative set-up.

No discussion of federalism can be complete without a reference to political parties. Three inter-related variables are important in this respect : (1) party symmetry or asymmetry, including the extent of regionalization of the party system; (2) unified or divided

party rule; and (3) the internal organization of 'national' parties or the degree of centralization or decentralization within these parties. Although Jammu and Kashmir was granted greater autonomy than other states, autonomy in real terms depended on the state government's stand on accession to India. Support for accession meant a free hand in the state even to deny democratic rights to the people; vacillation meant dismissal through political intervention as in 1953 when Article 356 was still not applicable to the state. Since 1965, following the merger of National Conference with Congress, central leadership could directly intervene in the state politics. The experience of divided party rule in the state from 1975 to 1986 has been marked by acrimonious relations between parties in the state being translated into disturbed centre-state relations. More importantly, the experience has been one of Congress blatantly misusing central powers and resources to manipulate its way into power in the state. Asymmetry, to be able to serve its purpose, requires much more than just constitutional guarantees. Constitutional provisions need to be complemented by healthy political conventions, democratic political organizations, genuine grass-roots democracy, and, moreover, a strategy of development which has distributive justice as an integral part of it.

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