

**AUTONOMY DEMAND OF THE JAMMU & KASHMIR STATE :
A STUDY OF INTERFACE BETWEEN REGIONAL,
NATIONAL AND GLOBAL POLITICS**

*Dissertation submitted to the Jawaharlal Nehru University
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Master Of Philosophy

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CERTIFICATE

This is to certify that the dissertation entitled "**The Autonomy Demand of the Jammu & Kashmir State: A Study of Interface Between Regional, National and Global Politics**" submitted by **Pinki Maurya** in partial fulfilment of the requirement for the award of the degree of **Master of Philosophy** is her original work and has not been submitted for the award of any degree of this or any other university

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Dedicated to
The People of Jammu & Kashmir

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Date

Pinki Maurya

INTRODUCTION

The politics of Jammu and Kashmir in the period after its accession to the Indian federation in 1947 has continued to revolve around the assertion of Kashmir's identity. The political issues that have emerged as the most significant for the people are related to their personal and collective identity. The question of autonomy is linked to the issue of democracy.

It is in the last one decade that there has been an assertion of the separate ethno-religious identities in Muslim dominated valley, Hindu dominated Jammu and Buddhist dominated Ladakh region. This process of assertion of their identity has manifested itself in the upsurge of fundamentalism and militancy in the nineties.

With the resurrection of political processes in Kashmir, a discourse on autonomy is initiated. The autonomy issue resurfaced recently, sparked off a national debate, when the Jammu and Kashmir State Assembly passed a resolution urging upon the central as well as state government to restore the autonomy of the state. The ruling National Conference blamed the Centre to erode the autonomy demand over the years. In this discourse, a linkage is established between the alienation of the people and the erosion of autonomy in Kashmir.

A demand is made to restore the pre-1953 constitutional position so

that the autonomy as originally guaranteed by the Article 370 and as ensured by Delhi agreement of 1952 may be retrieved. Various arguments have been given for and against this 'autonomy' demand.

Through my dissertation I have tried to analyse the problem of Jammu and Kashmir in the discourse of its autonomy demand which is based on my first hand survey and research in Jammu. Interviews of various experts have been taken to analyse the situation.

Objectives of the research

1. To analyse the genesis of the autonomy of Jammu and Kashmir state in its historical background.
2. To examine the recommendations of the state autonomy committee, regional autonomy committee and Balraj Puri's autonomy committee reports.
3. The critical analysis of these recommendations and its significance in the centre-state relations.
4. To find out the people's views regarding the autonomy demand through field work at Jammu.
5. To enquire about the basic problems of the Jammu people and the significance of the reports in solving these problems.

6. To explore how deep the feeling of communalism is rooted in the society of Jammu.
7. Different concepts of autonomy as viewed by the diverse ethno-religious communities of Jammu.
8. Assessment of the expectations of the people to both Central as well as state governments and causes of the dissatisfaction with the performance of governments at both levels.
9. Finally, the argument on what measures can be taken and what recommendations can be implemented in solving the complex issue has been assessed.

In chapter one, I have discussed the genesis of autonomy demand rooted in the historical background of the Jammu Kashmir state. Starting from the instrument of accession when constitutional guarantees were given to the state and how they were eroded with successive amendments have been discussed in the chapter. Further the chapter focuses the weaknesses on the part of the central and the state governments which has led to the demand of autonomy in the state.

Chapter two, describes the recommendations of the state autonomy committee, regional autonomy committee and Balraj Puri's autonomy committee reports thoroughly.

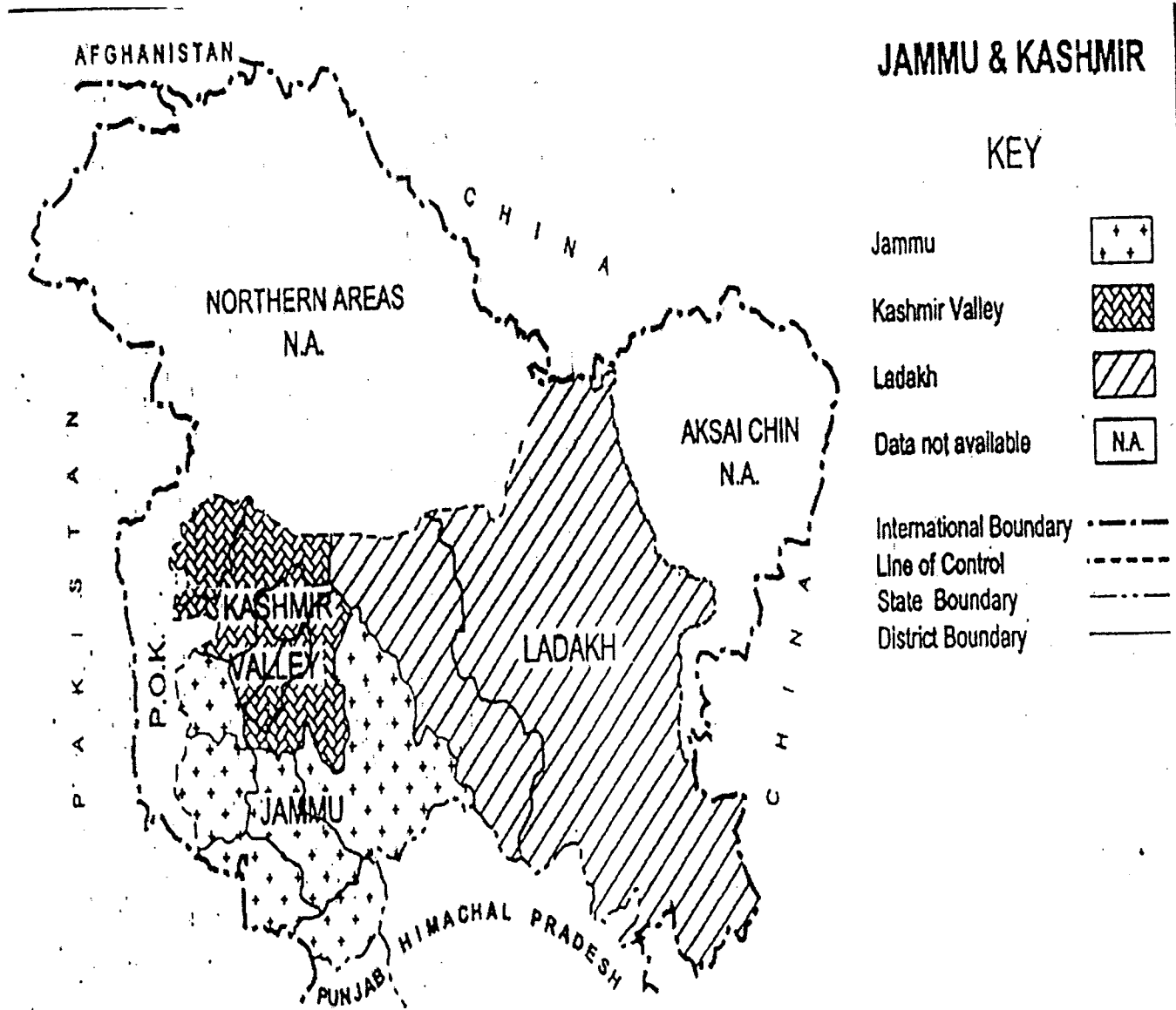
Chapter three, contains the critical evaluation of the recommendations of these reports. It has brought to light the views of different people in the implementation of these recommendations and its impact on state, its people and on centre-state relations as a whole. It has described the debate and various arguments for and against the 'Autonomy' demand. Opinions of various experts on this issue have been cited therein, which all point a finger precisely towards the contemporary situation prevailing in Kashmir.

Chapter four, marks the conclusion of my dissertation which incorporates my first hand survey at Jammu during my field work in July 2002. I have tried to converge the outlook of the people regarding the whole issue of autonomy. While scrutinizing this issue I have gone into the problems relating to the basic needs of the people and their concerns and attempted to find the answers to questions like :

1. Autonomy for whom and for what ?
2. Whether people understand the concept of autonomy and are they interested in getting it?
3. If implemented, how far these committee reports will be useful in solving the problems of the peoples and do we need a more appropriate package which will help in achieving strong national integration and self-reliance of the economy of the state to make the socio-political life of the people better?

Map No. 1

Regions: Jammu, Kashmir & Ladakh



International boundaries shown in this map are neither authentic nor correct

NOT TO SCALE

CHAPTER -I

GENESIS OF AUTONOMY IN THE HISTORICAL BACKGROUND OF THE STATE OF JAMMU & KASHMIR

In many of the new democracies the governance of societies divided by language, religion or ethnicity is a question of vital importance. They are seeking to create a multinational community so that nationalism can be contained. This is a response to World War II, which is seen by many as less a struggle between nation states than a war of faith in which the nations themselves were divided.

The literature on ethnic nationalism tends to divide various political demands into two broad categories: autonomist and secessionist. The first includes two types of demands. One affirmative discrimination which seeks redress of a certain type of inherent inequality in the existing socio-political structures for example, through reservations. Two, the movements associated with autonomy and home rule demands. Their goal is to resist further incorporation, subordination within the larger political system or to gain complete control over their political, economic and cultural affairs while remaining within the territorial boundary of the present state.¹

In many cases, these movements aim at constitutional reforms and governmental restructuring to establish regional autonomy. Secessionist movements, on the other hand, seek to break away completely from an existing state to establish a new state and describe themselves as distinct nations capable of assuming sovereignty over their homeland territory.

¹ Navnita Chadha Behera, "State identity and violence: Jammu, Kashmir and Ladakh" (Manohar 2000): pp. 15-17.

In a few instances, demands for autonomy may be satisfied only by the emergence of a new, independent state in which the dissatisfied segment can exercise “sovereign” authority. In others, successful autonomy may imply no more than protection from discrimination and preservation of cultural, linguistic, or other values from majority assault.² In many instances, adoption of a federal system or the devolution of meaningful power from the center to geographic, linguistic or ethnic-based regions is sought so that “internal self-determination”³ can be exercised as part of a state.

Problems of national unification and of religious and linguistic rights have been fundamental to modern Indian politics and history. India has experienced not only the partition of British India into India and Pakistan, but also insurgencies in Kashmir and North-east.

The demand for autonomy has been at the core of the post accession politics of the Jammu and Kashmir state. The political issues which emerged as the most important for the people were related to the politics of political dignity, independent political space and self rule. In the popular perception in rest of the India, autonomy demand has been viewed largely in the form of the political assertion of ethno-religious identity of the people of Kashmir and their decade old movement for what they call ‘Azadi’.

The major reason of discontent has been a divergence between the political aspirations of the political community on the one hand and the content of politics on the other. At the time of decolonisation as the suzerainty of the British crown lapsed over the princely states, most of

² Hurst Hannum, “Autonomy, Sovereignty and self-determination” University of Pennsylvania, (Press Philadelphia 1992): 48-49.

³ “There is a distinction between external and internal self determination. The former is the right of a unit to govern itself free from the dictates of some outside body. Internal self determination means the right of the people to choose its own form of government”. Bogdanor Vernon, “forms of autonomy and the protection of minorities”, *Daedalus* 126 (2) Spring 1997: 65-88.

these states voluntarily merged either with the dominion of India or with that of Pakistan. However the state of Jammu and Kashmir was the only state which negotiated the terms of its accession to the Union of India. The state signed the instrument of accession which was limited only to the area of defence, external affairs and communication.⁴

Furthermore the state didn't accept the constitutional provisions of the independent Indian republic and retained its own institutions and its autonomy.

Clause 5: of the instrument provided no variation in its terms without Ruler's Consent.

Clause 7: read thus: "Nothing in this instrument shall be deemed to commit me in any way to acceptance of any future Constitutions of India or better my discretion to enter into arrangements with the government of India under any such future constitutions". It further stated that-

"The Government of India couldn't force the state to accept the Constitution of India, for that would violate the agreed terms of the association of Kashmir with India... The state had voluntarily surrendered three matters only and the Government of India could not enlarge the sphere of its jurisdiction at its own discretion".

Clause 8: "Nothing in this instrument affects the continuance of my sovereignty in and over this state or the encroachment of any powers, authority and rights now enjoyed by me as ruler of this state".⁵

By a proclamation issued on March 5; 1948 the Maharaja decided to replace the emergency administration by a popular interim government for its powers, duties and functions. Sheikh Mohammed

⁴ K.K.Misra, Kashmir and India's Foreign Policy, Chugh Publications 1979: pp. 53-58.

⁵ Ibid

Abdullah was appointed Prime Minister. The Council of Ministers was to function on the principle of joint responsibility.

The Jammu and Kashmir was saved from the application of Part VII of the Constitution and was reserved the right to frame a separate Constitution for its government. No other provisions of the Constitution of India except Article-1 was made applicable to Jammu and Kashmir.

It was on October 16, 1949 that a final draft of Article 306-A (with modification it is now in the form of Article 370) was settled between the Constituent Assembly member N. Ayyangar and national Conference representatives M.A. Beg and Shahmiri.⁶

Final Draft Of Article 306-A (Jammu & Kashmir) As Settled Between The Hon'ble Shri N. Gopalswamy Ayyangar On The One Side And Messers Beg And Shahmiri On The Other On October 16, 1949.

1. 306-A (1) notwithstanding anything contained in this Constitution.
 - (a) The provisions of Article 211-A of this Constitution shall not apply in relation to the state of Jammu and Kashmir.
 - (b) The power of Parliament to make laws for the state shall be limited to,
 - i. Those matters in the Union list and the Concurrent list which in consultation with the government of 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.
 - ii. Such other matters in the said lists as with the concurrence of the Government of the state, the President may be order specify.

⁶ D.K.Joshi, A New Deal in Kashmir, Ankur Publishing House, 1978, pp. 99-106.

- (c) The provisions of Article-1 of this Constitution shall apply in relation to the state.
- (d) Such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the state as the President may by order specify,

Provided that no such order shall be issued except in consultation with the Government of state.

- 2. If the concurrence of the Government of the state referred to in sub-clause (b) (ii) or in the second proviso of sub-clause (d) of clause (i) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such assembly for such decision.
- 3. Notwithstanding anything in the preceding clauses 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 shall be necessary before the President issues such a notification.

On the day of commencement, that is January 26, 1950, the President of India made the First Constitution(application Jammu and Kashmir) Order, 1950 under Article 370 of the Constitution of India conforming strictly to the instrument of accession.

Kashmir's inclusion in the Indian state was necessary for fighting an older and larger battle of secular Indian nationalism vis-à-vis Pakistan's two nation theory. Nehru had argued :

“We have always regarded the Kashmir problem as symbolic for us..... as it illustrates that we are a secular state..... Kashmir has consequences both in India and Pakistan, because if we disposed of Kashmir on the basis of the two-nation theory, obviously millions of people in India millions in East Pakistan will be powerfully effected”.⁷

Sheikh Abdullah had affirmed unequivocally:

“ My organization and I never believed in the formula that Muslims and Hindus form separate nations. We didn't believe in the two-nation theory, in communalism.....we believed that religion had no place in politics”.⁸

Nehru realized that the accession of the Muslim-majority state would not only strengthen India's secular credentials, but was necessary for providing critical support in the continuing tussle vis-à-vis Pakistan.

He said:

“To force the pace and turn events in Kashmir in the right direction, we have definitely a great asset in the National Conference provided it is properly handled. It would be a pity to lose this. Sheikh Abdullah has repeatedly given assurances of wishing to cooperate and of being opposed to Pakistan; also to abide by my advice. I would again add, time is the essence of the business and things must be done in a way so as to bring about the accession of Kashmir to the Indian Union as rapidly as possible with the co-operation of Sheikh Abdullah”.⁹

⁷ Nehru's Speech in Parliament, 17, September 1953, as cited in Ashutosh Varshney, 'Three Compromised Nationalisms: Why has been a Problem', in *Perspectives on Kashmir: The Roots of Conflict in South Asia*, Raju.G.C. Thomas (ed.), Boulder, Col., West Press, 1992, p. 202.

⁸ *Ibid.*, p. 201.

⁹ As cited in Gautam Navlakha, 'Invoking Union: Kashmir and Official Nationalism of Bharat in Region, Religion, Caste, Gender and Culture' in *Contemporary India*, T.V. Sathyamurthy (ed.) Oxford University Press, 1996, p. 75.

Thus Nehru's keenness to secure Kashmir's accession was grounded in a larger political objective. Besides secular Indian nationalism it sought to contain Hindu nationalism¹⁰ as well.

Article -370

Article 370 has been at the core of the constitutional relationship between India and Jammu and Kashmir.

It exempted the state totally from the provisions of the Constitution of India providing for the governance of the states. It was allowed to have its own Constitution within the Indian union.¹¹

Second, Parliament's legislative power over the state was restricted to three subjects- defence, external affairs and communications. The President could extend to it other provisions of the Constitution if they are related to the matters specified in the instrument of accession. For all this, only "consultation" with the state Government was required since the state had already accepted them in 1947 by the instrument of accession.

Third, if other "constitutional" provisions and other union powers are to be extended to the state of Jammu and Kashmir the prior "concurrence" of the state Government was required.

The **fourth** feature is that even that concurrence alone didn't suffice. It had to be ratified by the State's Constituent Assembly.

The **fifth** feature is that the state Government's authority to give the "concurrence" lasts only till the State's Constituent Assembly is "convened" once the Constituent Assembly met, the state government

¹⁰ The Hindu Nationalist Faction represented by Jan Sangh and the Rastriya Swayamsevak Sangh (RSS) could not win the battle for state formation but had always lurked in the background waiting for the opportunity to take control of Indian state. Cited in Varshney in Thomas *ibid.* 7, p. 197.

¹¹ Mohan Krishan Teng, "Kashmir article 370", Anmol Publications 1990 (New Delhi): 76-80.

can't give its own "concurrence". Moreover, the President cannot exercise his power to extend the Indian Constitution to Jammu and Kashmir indefinitely. Once the State's Constituent Assembly has finalized the scheme and dispersed, the President's extending powers will end completely.

Sheikh Abdullah's observation in this regard was most instructive:

"The fact that Article 370 has been mentioned as temporary provision in the Constitution doesn't mean that it is capable of being abrogated, modified or replaced unilaterally. In actual fact, the temporary nature of this article arises merely from the fact that the power to finalise the constitutional relationship between the state and the union has been specifically vested in the Jammu and Kashmir Constituent Assembly".¹²

It was thus obvious that once the Constituent Assembly dispersed after framing the Constitution of Jammu and Kashmir, no amendments to the Constitution of India could be made in their application to the state.

During negotiations on Article 370 in 1951-52, the National Conference insisted that the state would not be brought within the territorial jurisdiction or constitutional organization of the Indian Union. No instruments, including the Constituent Assembly of Jammu and Kashmir state, would be vested with any powers to change and modify the existing Constitutional relationship. It persistently argued that the Constituent Assembly of the state was a sovereign body, independent of the Constitution of India. It exercised inherent powers derived from the people of the state who did not form a part of the people of India. This amounted to not only excluding Jammu & Kashmir state from the jurisdiction of the Union, but also making all federal instrumentalities in

¹² Quoted in, Balraj Puri "Jammu and Kashmir" Triumph and tragedy of Indian federalism. Sterling Publishers 1981: p. 139.

operative, as regarding the state. The Central government rejected this position and insisted that the provisions in the state Constitution must not be inconsistent with the basic structure of the Constitution of India.¹³

Delhi Agreement

Kashmir's special position was further cemented by the Delhi agreement is 1952 between Sheikh Mohammad Abdullah and Jawahar Lal Nehru. The State Assembly gave its approval to the following points of the Delhi agreement.¹⁴

1. It provided for the abolition of the hereditary rulership. The head of the state shall be recognised by the President of the Union on the recommendations of the legislature of the state.
2. Emergency declaration shall be limited to the case of external aggression only. So far as internal disturbances are concerned, emergency powers of the President shall be subject to the concurrence of the state government.
3. Union flag will occupy the supremely distinct place in the state (besides using its own flag).
4. The Supreme Court shall have original jurisdiction in respect of disputes between states and between the state and the centre, under Article 131 of the Constitution of India. Further, the Supreme Court shall have jurisdiction in regard to Fundamental Right which are agreed to by the state.

¹³ Teng describes the Sheikh's position as the doctrine of 'double charge' which had two serious implications: (a) the claim that the Constituent Assembly possessed the right to determine the finality of accession of the state, which virtually amounted to the repudiation of the accession of the state to India; and (b) the Constituent Assembly was independent of the Constitution of India and exercised inherent powers, reducing the latter to a secondary position. Mohan Krishan Teng, *Kashmir : Article 370*, New Delhi: Annual Publishers, 1990, p. 96.

¹⁴Prithvi Nath Tikoo, *Story of Kashmir*, Light and Life Publishers, 1979, pp. 123-129.

5. The State Assembly should decide whether the chapter on the Fundamental Rights should form a part of Indian or the State Constitution and with what modifications.
6. It was agreed that persons domiciled in Jammu and Kashmir shall be regarded as citizens of India, but the State Legislature was empowered to make laws for conferring special rights and privileges on the State's subjects.
7. The Sadar-i-Riyasat, equivalent to the Governor of other States, will be elected by the State Legislature itself instead of being nominated by the Union government and the President of India.
8. Both parties agreed that the application of Article 356, dealing with suspension of the State Constitution, and Article 360, dealing with financial emergency, was not necessary.
9. Powers to grant, reprieve and commute death sentences etc. shall belong to the President.

On a number of issues the delegation of the state and the government of India couldn't agree. Thus on the final form of Fundamental Rights, citizenship and financial integration, the State Assembly didn't commit itself.

Sheikh Abdullah described the Delhi agreement as a 'division of sovereignty whereby the state would retain complete internal sovereignty'.¹⁵

Nehru had clearly gone a long way in accommodating the Kashmiri sensitivities by adapting the Indian Constitution to suit their special requirements.

¹⁵ Satish Ganjoo, *Kashmir Politics*, Anmol Publications, 1990, pp. 9-10.

It was only after Bakshi Ghulam Mohammad became the chief minister of Jammu and Kashmir that the Delhi agreement (July 1952) began to be implemented and various legal and constitutional measures were taken to end the confusion and contradiction in the situation.¹⁶

Referring to inter-regional relations, Bakshi observed in a radio broadcast from Srinagar on 9 August 1953, that “the rights and privileges that we secure for the state as a whole have to be shared in equal measure by the people of its different parts”. He further added, “a genuinely democratic set up has to satisfy the demands of each one of the constituent units of the state with due regard to its basic unity and integrity”.¹⁷

Even Nehru also told a press conference in New Delhi on 24 July 1952 that “the state government was considering regional autonomies within the larger state”.¹⁸

In essence, the underlying principle of the Delhi agreement was autonomy of the state within India and autonomy of the regions within the state.

Kashmiri Domination

Constitutionally and politically, the state was without a system of checks and balances. The Sheikh had built a ‘monolith structure’ in a ‘one-party state’ apparently because the people of Kashmir wanted ‘one organization’ (the National Conference), one leader (Sheikh Abdullah) and one programme (Naya Kashmir).¹⁹

¹⁶ P.N.K. Bamzai, *Culture and Political History of Kashmir*, vol. II, New Delhi: MD Publications, 1994: p. 96.

¹⁷ As cited in Sisir Gupta, *Kashmir: A study in India-Pakistan Relations*, New Delhi, Asia Publishing House, 1966: p.73.

¹⁸ Ibid.

¹⁹ Balraj Puri, ‘Jammu and Kashmir’, in *State Politics in India*, Myron Weiner (ed.). Princeton University Press, 1968, p. 219. Korbelt remarked that ‘no dictator could do it better’, Joseph Korbelt, *Danger in Kashmir*, Princeton University Press 1966, p. 222.

Abdullah insisted that 'it was unrealistic to talk of parliamentary opposition in the Assembly when Kashmir itself was going through a critical phase.....the National Conference was the only political party which could deliver goods'. Sheikh Abdullah's five member cabinet reflected the new power equations, with only one representative from Jammu and none from Ladakh. Kashmiri dominance of the state structures denied space for articulating the political aspirations of non-Kashmiris.²⁰

In the first elections for the Constituent Assembly in 1951, there was rejection of 45 out of 49 opposition candidates of the Praja Parishad on flimsy technical grounds. This subverted the democratic process and denied Jammu a voice in shaping the future political system. The National Conference won 100 percent of the seats, including 73 uncontested seats in the house of 75. Wholesale rejection of the opposition candidates nomination papers and unopposed seats set an unhealthy Precedent in the state which would remain firmly established for a long time.²¹

Praja Parishad's Opposition

A popular agitation was launched in 1952. The Bharatiya Jan Sangh, the Hindu Mahasabha, the Ram Rajya Parishad, the Punjab Arya Samaj and some Akali leaders supported the Praja Parishad. The Parishad's eight-point programme demanded:²²

1. Abrogation of Article 370;
2. Full integration of the state into the Indian Union;
3. Full application of the Indian Constitution;

²⁰ Balbir Singh, *State Politics in India*, Macmillan Publishers: New Delhi, 1980, p. 63.

²¹ Reeta Chowdhary Temblay, 'Jammu: Autonomy within an Autonomous Kashmir?' in Thomas, *Ibid* 7, p. 156.

²² *Ibid* 7, p. 160.

4. Removal of the present distinction between 'state subjects' and Indian citizens;
5. Complete jurisdiction of the Supreme Court. ;
6. Removal of customs barriers between Kashmir and India;
7. Fresh elections of the Kashmir Constituent Assembly and
8. Investigation of corruption in the state administration by an impartial tribunal.
9. Stressing the unity of the Indian nation, Praja Parishad leaders Dr. Shyama Prasad Mookerjee accused the Sheikh:

“There can not be a republic within a republic.....consciously or unconsciously, you are creating a new sovereignty for Jammu and Kashmir..... India has been torn into by the two-nation theory. You are now developing a three-nation theory, the third being the Kashmir nation. These are dangerous symptoms”.

Nehru castigated the Praja Parishad movement. He was convinced that the 'narrow communal approach would bring disaster in train not only for Jammu and Kashmir state but also to the larger interests of India'.²³

The dramatic developments leading to removal from power and arrest of Abdullah on 9 August 1953 had dazzled the people and could never mobilise them for getting the assurances given by Governments of the state and India regarding Jammu's status implemented. The political developments at the regional, state and national level in 1953 marked

²³ Mookerjee's letter to Abdullah dated 13 February, 1953, as cited by Navneeta Chadha Behera in state, identity and violence: Jammu, Kashmir and Ladakh, Manohar 2000, p. 86.

the emotional and political break in the centre state relations and between Kashmir and rest of the India.

Weakening of the Special Status

Successive central governments, often with the complicity of regions in Srinagar, then systematically dismantled Article 370. The process started with the Constitution (application to Jammu and Kashmir) Order, 1954. The Order extended the jurisdiction of the union parliament from three subjects to almost all the subjects in the union list. Part II and III of the Indian Constitution now became applicable to the state and so were Part V and Part XI.²⁴

In all out of 395 articles of Indian Constitution, 260 Articles have been made applicable to the state. Out of 97 subjects mentioned in the union list in the Seventh Schedule of the Indian Constitution, 94 subjects are now applicable to the state. Out of 47 subjects in the concurrent list 26 subjects and out of 12 Schedules 7 Schedules are also applicable to the state now due to these Constitution Orders.

Besides the above, the Sixth Amendment Act of the Constitution of Jammu and Kashmir substituted the term 'Sadar-i-Riyasat' for Governor. The Constitution Order 1963 further enabled the Union Parliament to make laws for the state in respect of matters in the concurrent list. The subsequent Constitution Orders, numbering 42 in all, have resulted in curtailing the powers of the legislature of the state. For instance, the financial provisions of the Constitution of India have been made applicable to the state.²⁵

Likewise, Article 356 relating to state emergency, Article 316 relating to All Indian Services, Article 324 relating to the

²⁴ B.L. Panagariya, "Kashmir: Paradise in turmoil", National Publishing House 1994. Pp. 74-75.

²⁵ Ibid.

superintendence, direction and control of elections of the state legislature (though the elections continued to be held under the laws of the state), Article 249 empowering the union parliament to make laws on state subjects all have been made applicable to the state now.

Jana Sangh welcomed it for marking a “distinct advance in the existing position”. Though Presidential Order of 1974 didn’t radically alter the centre state constitutional relations as envisaged in Delhi Agreement, but it was a forerunner of the process of further constitutional integration of the state with the union.²⁶

Sheikh Abdullah condemned these measures as encroachments on the autonomy of the state. The debate on these measures evaluated them mainly in terms of their effect on integration or autonomy of the state. There were some measures that did increase central authority over the state. But some other measures provided safeguards for the freedom of the people against the authority of both centre and the state. The merger proposals not only provoked opposition from the followers of the Abdullah but even his successor Bakshi Ghulam Mohammed started resisting them.²⁷

Further, Section 51(a) of the State Constitution was substituted with a new clause making every member of the State legislature responsible to the Central Government in discharge of their functions. Section 95 was amended to bring the State High Court judges at par with judges in Other Indian States with regard to appointment and terms of office. A number of legislative entries relating to the welfare of labour, trade unions, social security and social insurance were applied extending various Central labour laws to the state.²⁸

²⁶ Jagmohan, “Bogey of Kashmir autonomy”, *New approach; Kashmir: violence in paradise*, 1999: 36-40.

²⁷ Vidya Bhusan, *State Politics and Government : Jammu & Kashmir*, Jay Kay Book House, 1985, pp. 21-23.

²⁸ *Ibid.* p. 124.

In a bid to bring about Kashmir's political integration, the ruling National Conference was dissolved and replaced by the Congress. The All-India National Congress amended its statute in January 1965 and established a state unit in Jammu and Kashmir. Besides, a substantial proportion of central aid for the state's economic development was misappropriated by the ruling elite in Srinagar. Denied political rights and deprived of a due share in centre-aided, state-sponsored economic development, the Kashmiri's were gradually alienated from the Indian state. Their disillusionment with the centre for constantly eroding Kashmir's autonomy lured them towards Abdullah's demand for self-determination and made the idea of an independent Kashmir as an attractive political option.²⁹

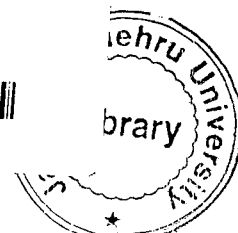
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After securing a landslide victory in 1977, Sheikh Abdullah sought territorial expansion of the Kashmiri identity's support base by encompassing all Muslim-majority areas of the state into 'Greater Kashmir' as depicted in Map-2. The Sheikh's decision to bifurcate Ladakh district in 1979. The only common factor binding the people of Kashmir valley with the people of Doda, Rajouri and Poonch districts of Jammu region under the umbrella of 'Greater Kashmir' was not Kashmiri culture or language but their religious affinity. The bottom line was that Abdullah politicized religion for political purposes.³⁰

Indira-Abdullah Accord

In 1975, there was an opportunity to resurrect Article 370, when negotiations between Indira Gandhi and Sheikh Abdullah led to an accord. The key element in the accord was that the state of Jammu and Kashmir, which is a constituent unit of the union of India, shall continue to be governed by Article 370 of the Constitution of India. Indian

²⁹ Ibid, p. 126-128.

³⁰ Ibid 18, p. 193.



activities directed towards disrupting or questioning the sovereignty of India. The 1975 accord had set seal on the accession of Jammu and Kashmir to India as final. It didn't change the constitutional relationship between the union and the state and accepted much of the constitutional changes that had taken place.³¹

More important than the accord, however was the unwritten understanding under which the state Congress Legislature Party (CLP) which had 45 members in the assembly having a total strength of 75 was made to elect Shiekh Abdullah as leader whose own supporters in the Assembly were just 3. The Chief Minister Syed Mir Quasim resigned and Sheikh Abdullah sworn in his place on February 25, 1975.

So, according to Mrs. Gandhi 'the accord provided scope for further application of the Indian Constitution to the state' while Sheikh Abdullah considered the accord as 'the first step towards restoration of the pre-1953 constitutional position of the state'.³²

The accord severely limits the powers of the State Assembly to review Constitution of the State and its Constitution relations with the centre. As far as the law making powers of the assembly are concerned it will continue to have jurisdiction over all subjects not include in the union list of the Indian Constitution.

The accord reassures the state that this position shall continue. But its authority to change past laws like on subjects included in the concurrent list has been subjected to the agreement the centre.

In the 1977 state elections, the national conference's main plank was restoration of Kashmir's autonomy. With Mrs. Gandhi's defeat in the national elections congress withdrew its support to the Abdullah

³¹ Colonal Ravi Nanda, AVSM, "Kashmir and Indo-Pak relations Lancer's Books 2001; pp. 170-172.

³² B.L. Panagariya, Kashmir: Paradise in turmoil, National Publishing House 1994, pp. 80-85.

government. Kashmiri's perceived it as 'stabbing Sheikh Abdullah in the back' and Abdullah accused the congress of betraying him.³³

The conflict of political interests between two political parties- National Conference and the Congress was like a clash between Kashmir and the central government or as Kashmir vs India. Political divergences at the centre-state level were accompanied by growing schisms between Jammu and Kashmir state and Jammu and Ladakh regions. The regional grievances of inadequate share in the state's development allocations persisted. The simmering discontent has been a consequence of asymmetrical relations between these regions.³⁴

Regional Grievances

The popular feeling of deprivation and discrimination in these regions especially in Jammu, has resulted in the periodic regional agitations dating back to early fifties.

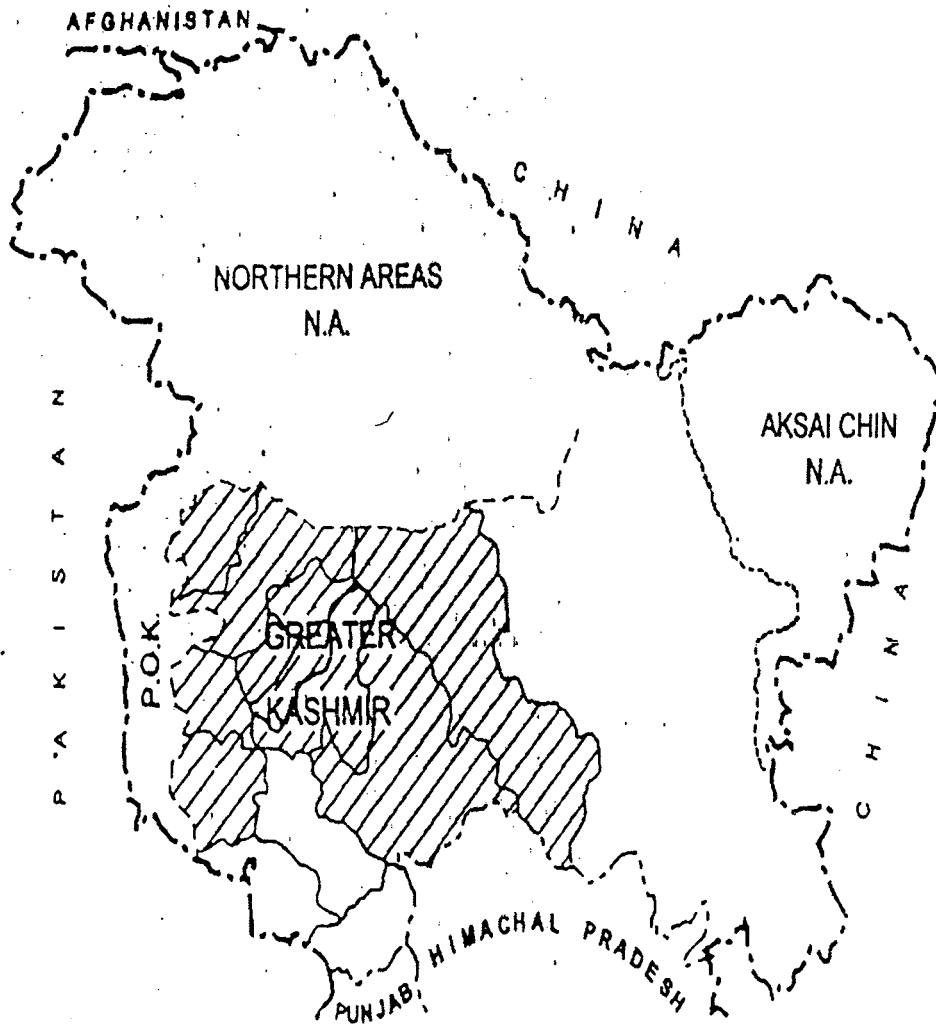
Kashmir's federal relationship with the centre and inter regional relations in Jammu and Kashmir narrowed down after Sheikh Abdullah's release in 1968. The Sheikh held two All-Kashmir state people's conventions in October 1968 and June 1970 to ascertain the views of the people and political parties. JayaPrakash Narayan suggested greater autonomy to satisfy Kashmir's desire for self government. He stated that no Indian leader would accept Kashmir outside India but admitted that 'in a vast country like ours, national unity can only be fostered in an atmosphere of wide understanding of regional sentiments and interests and spirit of mutual tolerance'.³⁵

³³ V.K. Zutshi, *Emergence of Political Awakening in Kashmir*, Manohar Publishing, 1986, pp. 19-20.

³⁴ Puri, Balraj, *Slammering Volcano: Study of Jammu's Relations with Kashmir*, New Delhi Sterling Publishers, 1983, pp. 30-31.







³⁵ *Ibid.*

Map No. -2
Greater Kashmir



JAMMU & KASHMIR

KEY

- Greater Kashmir 
- Data not available 
- International Boundary 
- Line of Control 
- State Boundary 
- District Boundary 

International boundaries shown
in this map are neither authentic
nor correct
NOT TO SCALE

Abdullah acknowledged that maximum autonomy to the three regions of the state was essential to give a sense of participation and belonging to the people of diverse cultures, languages and religion. Keeping in view 'the interests of all regions', the convention proposed to adopt a five tier internal constitutional set up of the state. It envisaged regional autonomy and further devolution of political power to districts, blocks and Panchayats.

Later on the state government dismissed demands for internal political autonomy. It argued that Jammu and Ladakh had been getting 'due' shares on the basis of their population.

It was in the above context that the state government in the past set up four commissions to analyse the contentions regional issue. These were the Gajendragadkar Commission (1967), the Qadri Commission (1972), the Sikri Commission (1979) and the Wazir Commission (1981).

Regional autonomy of Jammu and Kashmir has been debated at times after the establishment of popular government in the state in 1947. Jawahar Lal Nehru on 24th July, 1952, said at the press conference in New Delhi that "the state government was considering regional autonomies within the larger state". Later the Sheikh gave an assurance separately to the effect that "the Constitution of the state, when completed would give regional autonomy, particularly in cultural affairs to Jammu and Ladakh". A sub-committee of the State Constituent Assembly comprising Mr. D.P. Dhar, Syed Mir Quasim and G.L. Dogra, recommended "a substantial measure of autonomy for each region with power of taxation and legislation".³⁶

Later in a complete reversal of his earlier stand, Sheikh Abdullah refused to share state power with its constituent regions. He denounced the Regional Autonomy Movement as 'directed against Kashmiri's and

³⁶ Ibid.

spurned any dialogue on the question of 'regional imbalances'. The Government dismissed demands for internal political autonomy on the pretext that Gajendragadkar Commission had already rejected it. However, it ignored the same commission's recommendation that each region's population, area, specific needs and potential available should be taken into account in determining the share of resources. The state government argued that Central grants are given on the basis of area and not population.³⁷ Moreover it argued that Jammu and Ladakh had been getting more than their due share in development allocations during Sheikh Abdullah's regime as shown in Table 1.1.

³⁷ Balraj Puri, *Jammu: A Clue to Kashmir Tangle*, New Delhi: Author, 1966, p. 35.

Table 1.1

**DEVELOPMENT ALLOCATIONS TO JAMMU, THE VALLEY AND
LADAKH (1975-79)**

Financial year	Due outlay (Rs. lakhs)			Actual outlay (Rs.; lakhs)		
	Jammu	Kashmir	Ladakh	Jammu	Kashmir	Ladakh
1975-6	1,725.77	2,025.17	87.53	1,812.59	1,753.88	271.00
1976-7	2,256.78	2,648.30	114.45	2,217.06	2,308.47	360.00
1977-8	3,217.80	3,776.05	163.20	3,102.83	3,584.22	470.00
1978-9	4,107.99	4,820.66	208.30	4,431.84	4,012.99	692.14

Source : Ministry of Home. Website:<http://mha.nic.in>

Prem Nath Bazaz wrote, “the best way of satisfying different aspirations of the state is to reorganize it as a regional federation. The reorganised state will have three constitutional units and each of them can have equal status not subordinate to one another. A number of essential subjects of common interest would be assigned to the regional federation leaving the rest of the state functioning to the constituent units”.³⁸

The regional autonomy was also an unwritten part of Indira Gandhi – Sheikh Abdullah Accord which brought the later to power in the state. On the eve of his swearing in- ceremony as Chief Minister, on 24th July 1975. Sheikh Abdullah said:

“On my part, I will make a sincere effort to ensure that all the three regions not only have equal opportunity for full and speedy development but that the people in every part of the state have a full participation in the political affairs of the state”.³⁹

Reiterating the commitment of his father, Farooq Abdullah in early 1987, appointed a five member commission to work out the details of regional autonomy with Balraj Puri as its chairman. But the order for the formation of the commission could not be implemented.

Regional autonomy had an emotional appeal in the Ladakh region also. Central government promised a scheduled tribe states for the people of the region, but it didn't satisfy the political urges of the people. during Presidential rule union government conceded autonomy, which was however, in practice confined to Leh district only.

The Sikri Commission devised a new formula for financial allocations to the regions based on their population, area, backwardness and natural resources. Even the Gajendragadkar Commission recognised

³⁸ Prem Nath Bazaz, the history of struggle for freedom in Kashmir, Kashmir Publishing Co., 1954, p. 53.

³⁹ Ibid, p. 56.

the widely held feeling of regional discrimination in these two regions of the state. It stated that :

“Even if all the matters were equally settled there would still be a measure of discontent unless the political aspirations of the different regions of the state were satisfied. In fact we consider that the main cause of irritation and tension is the feeling of political neglect and discrimination, real or imagined, from which certain regions of the state suffer”.

The Commission recommended setting up of statutory regional development boards for the three regions. But the entire exercise of these commissions remained academic. In the course of time regional autonomy issue became the focal point of politics of these regions. Regional autonomy in the state has been linked with a five tier system which includes devolution of power from region to district, block and Panchayats. 73rd Amendment of the Constitution provides for direct elections of most of Panchayati Raj Institutions. In Jammu and Kashmir this Amendment is not fully implemented.

The basic feature of regional autonomy or a federal set up is sharing of power and functions between the central authority and its constituent parts. Jammu and Kashmir state people's convention presided over by Sheikh Abdullah in 1968 discussed inter-regional relations. It was attended by almost the entire spectrum of public opinion of Kashmir region, including political parties, socio-religious groups and prominent individuals.

The constitutional set up proposed by the convention envisaged elected regional councils with executive councillors. Its legislative powers were limited to the subjects transferred to the regions. The outline of the constitutional set up for the state included composition, powers and functions of institutions at regional district, block and Panchayat levels.

By the time the Assembly Elections of 1996 were contested, Regional Autonomy issue became very important. Two major contestant

political parties, the National Conference and the BJP which were hesitant about this issue came out openly to support and voice this demand.

The issue of State Autonomy had lain dormant until 1995, when the then Prime Minister P.V. Narsimha Rao issued a statement from Burkina Faso promising that “the sky was the limit” as far as the Autonomy was concerned, but within the constitution. Even during Deve Gowda’s tenure, he promised “maximum autonomy” to Jammu and Kashmir in 1996. He said it was a special state needing special treatment. It was in the above background that state government set up state and regional autonomy committees to review the situation.⁴⁰

⁴⁰ Narinder Singh, *Political Awakening in Kashmir*, New Delhi :H.K. Publishers, 1992, p. 18.

CHAPTER 2

RECOMMENDATIONS OF THE THREE COMMITTEE REPORTS

THE STATE AUTONOMY COMMITTEE OF THE JAMMU AND KASHMIR STATE¹

Constitution of the State Autonomy Committee

The state government set up a Committee to examine the question of restoration of autonomy to the State of Jammu and Kashmir under Government Order Number 1164 - GAD of 1996 dated 29 - 11 - 1996 with the following composition :

- | | | |
|----|-------------------------------|----------|
| 1. | Dr. Karan Singh | Chairman |
| 2. | Sh Mohi-ud-din Shah | Member |
| 3. | Sh. Abdul Ahmad Vakil | -do- |
| 4. | Sh. Abdul Rahim Rather | -do- |
| 5. | Sh. Piyaray Lal Handoo | -do- |
| 6. | Sh. Bodh Raj Bali | -do- |
| 7. | Molvi Iftikhar Hussain Ansari | -do- |
| 8. | Kushok Thiksay | -do- |
| 9. | Shri Teja Singh | -do- |

Dr. Karan Singh resigned later as chairman in 1997 and by a government order no. 1303 - GAD of 1997, Sri Ghulam Mohi-ud-din

¹ State Autonomy Committee Report of the Jammu & Kashmir State, 1999.

Shah, PWD minister of Jammu and Kashmir government was appointed as Chairman.

Terms of reference

The terms of reference of the Committee are as follows -

- (i). To examine and recommend measures for the restoration of autonomy to the state of Jammu and Kashmir which will be consistent with the Instrument of Accession the Constitution Application Order, 1950 and the Delhi Agreement of 1952.
- (ii). To examine and recommend safeguards that can be regarded necessary for incorporation in the Union/State Constitution.
- (iii). To also examine and recommend measures to ensure a harmonious relationship for the future between the State and the Union.

Recommendations

1. Change in the Title of Part XXI and Heading of Article 370.

The word 'temporary' has been used in the title of part XXI and heading of Article 370 of the Constitution of India. It implies that this article could cease to be operative if the President issues a notification on the basis of a recommendation of the State Constituent Assembly.

Accordingly, it is recommended as under:-

- (a) The word 'temporary' be deleted from the title of part XXI of the Constitution of India, and
- (b) The word 'temporary' should be substituted by the word 'special'.

2. Legislative Relations Part XI

- (a) Matters in the Union list not connected with the three subjects of Defence, External Affairs and Communications which are made applicable should be excluded from their application to the State.
- (b) All modifications made in Article 246 in its application to the State according to 1950 order should be rescinded.
- (c) Articles 248, 249, 250 and 251 whether applied in the original or substituted form should be omitted in relation to the State.
- (d) As in 1950 and 1954, List II (state) and List III (concurrent) of the Seventh Schedule should not be applicable to the State.
- (e) Article 254 be restored to the position it had in its application to the State in 1954
- (f) Articles 262 and 263 which were not applicable under 1950 Order but were subsequently extended to the State should cease to apply.

3. Part XV

Elections (Article 324 to 329) before 1954 Order superintendence, direction and control of local elections was vested with state election commission.

Later with subsequent changes after 1954 order, central election commission took over these powers. So, it is recommended that article 324 should be made applicable to the state as it was before 1954.

4. Part XVIII

Emergency provisions (Articles 352 to 360)

These provisions should be added to Clause 6 of Article 352:

- (a) Article 352 shall be subject to whatever decision the State Assembly may take within two months of declaration of emergency. Further, if it fails, then the proclamation of emergency shall be deemed to have been revoked.
- (b) Sub clause (b) of clause (6) of this Article should be deleted.
- (c) Articles 355, 356, 357, 358, 359 and 360 should be made non-applicable to the state of Jammu and Kashmir as was the position in 1954.

So the Jammu and Kashmir Assembly will have a final say in case of external aggression or internal emergency.

5. Part III

Fundamental Rights (Articles 12 to 35)

This part of Fundamental Rights should be deleted. A separate chapter on these rights needs to be included in the Jammu and Kashmir Constitution.

6. Part V

The Union (Articles 52 to 151)

- (a) Articles 72 (1) (c), 72 (3), 133, 134, 135, 136, 138, 145 (1) (c) and 151 (2) should be made non-applicable to the State as was the position in 1950 order.

- (b) Articles 149, 150 and 151 should apply to the state in the form in which they were in 1954.

So there will be no jurisdiction of the Supreme Court in appeals from the High court in civil and criminal matters. With the abolition of Article 136, there will be no special leave to appeal by the Supreme Court.

7. Part VI (Articles 152 to 237)

Before the constitutional order of 1960, the removal of a Judge of the High court was possible with the support by a majority of the total membership of each House of Legislature of the state and by the majority of not less than two-thirds of the members present and voting. After the application order of 1960, the power to pass an address for such removal now vests with the Parliament in accordance with article 124 (4).

So, according to this committee deletion of the above provision regarding removal of a Judge of the High court is at duty, right and a obligation of State Legislature and not Parliament. So it had suggested that :

- (1) Article 218 should be omitted in its application to the state that would enable the state legislature to re enact the provisions as they existed before the enforcement of Jammu and Kashmir constitution (1st Amendment) Act of 1959.
- (2) Articles 220,222 and 226 should also be omitted in their application to Jammu and Kashmir state.

8. Part XII

Finance, Property, Contractors and Suits (Articles 264 to 300A)

According to this Committee the position that emerges from the application of various Constitutional Orders is that the provisions of the Constitution of India identical to the State Constitution and Section 115, 116, 117, 118, 119, 120, 121, 122 and 123 do not apply. For the rest, by and large, provision of Part XII of the Constitution of India apply to the state as to the rest of the states.

Committee feels, despite allocations available to the state at present, it needs more financial resources and assistance. During 1952 Delhi talks the discussions on financial arrangement between the Union and the State remained inconclusive. Therefore it is recommended that the matters should be discussed in depth between the State Representatives and the Union Government.

9. Part XIV

Services under the Union and the States (Articles 308 to 323)

These articles were not applicable to the state till 1954, but later made applicable. Committee says, since the application of these provisions of the Indian constitution to the state, the number of direct recruits from the State has been negligible. It made difficult for local youth to aspire to compete for key civil posts on competitive basis.

It is therefore, recommended that in Article 312, the brackets and words "(including the state of Jammu and Kashmir)" inserted by the constitution (application of Jammu and Kashmir) Order 1958 should be omitted. So, there will be no special room for all India Services in Jammu and Kashmir.

10. Part XVI

Special Provisions Relating to Certain Classes (Articles 330 to 342)

Article 339 regarding control of the Union over the administration of scheduled Areas and the Welfare of scheduled tribes was not applicable to the State till 1985. It was applied in a modified form to the State by Application Order of 1985.

Likewise Article 342 has been applied for the first time to the State in 1985. It is recommended that the powers in respect of aforesaid matters be restored to the state. Application of these articles to the State should be omitted. So, there will be no special provisions for scheduled castes/scheduled tribes and backward classes.

11. Part XX

Amendment of the Constitution (Article 368)

With the application of Article 368 by the second amendment order 1975 following changes took place -

Clause(4), of Article 368 - State Legislature can't make any change in any provision of the Constitution of Jammu and Kashmir relating to -

- (a) Appointment, powers, functions, duties, emoluments, allowances, privileges or immunities of the Governor.
- (b) Superintendence, direction and control of Elections by the Election Commission of India.

It is therefore recommended that -

- (i) Clause (4) of article 368 should be deleted.

3. To examine whether any change in the state institutional structure is required.

Recommendations

This Committee feels that there is dire urgency of defining the regions/provinces in the State to achieve the twin objectives of self governments and rapid social development. The Committee is of the view that prevailing classification of provinces/divisions are hampering the processes of social/human development.

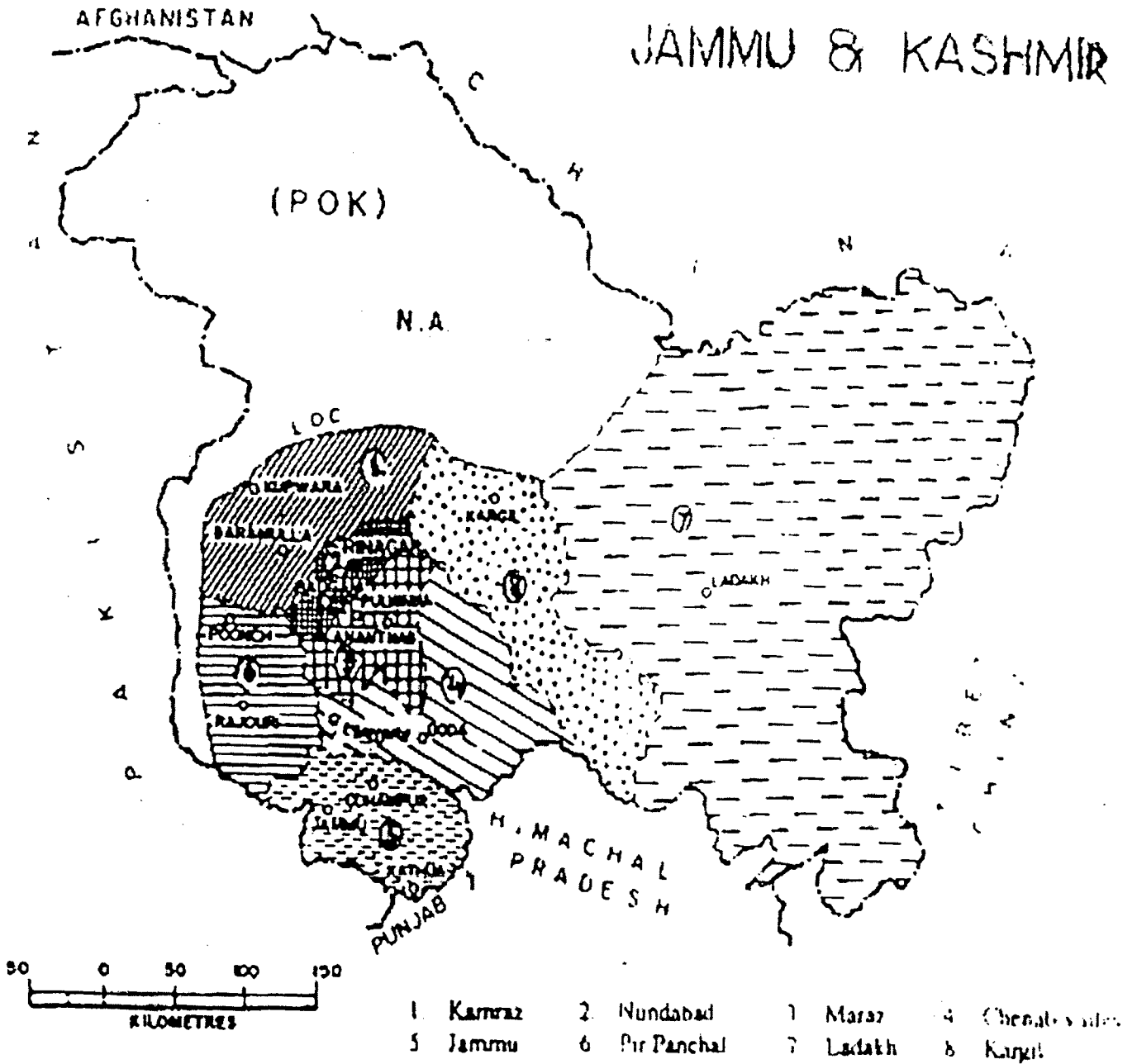
Thus, in view of historical, social, ethnic and development factors, it recommends that the existing two provinces/decisions of Jammu and Kashmir state should be classified into new regions/province as follows -

1. Kamraz (Baramullah and Kupwara Districts)
2. Nundabad (Budgam and Srinagar district)
3. Maraz (Anantnag and Pulwama district)
4. chenab Valley (Doda district and tehsil)
5. Jammu (Jammu, Kathua and Udhampur excluding Tehsil Mahore)
6. Pir Panchal (Poonch and Rajouri districts)
7. Ladakh (Leh District)
8. Kargil (Kargil District)

This is represented in Map No. 3

Map No. -3

Division of Jammu & Kashmir as Suggested in Regional
Autonomy Committee Report



Regional/Provincial classification

1. Kamraz region/province : This region/province may comprise two districts of Baramullah and Kupwara respectively. The region/province shall include the following Tehsils :

TEHSIL	BLOCKS
1. Bandipora	1. Baramullah
2. Sonawari	2. Pattan
3. Sopore	3. Tangmarg
4. Baramullah	4. Rohama
5. Gulmarg	5. Rafiabad
6. Uri	6. Wagoora
7. Tangmarg	7. Uri
8. Pattan	8. Sumbal
9. Handwara	9. Boniyar
10. Karnah	10. Sopore
11. Kupwara	11. Haji
	12. Bandipora
	13. Zainagar
	14. Guerez
	15. Danigwacha
	16. Kupwara
	17. Sogam
	18. Trehgam
	19. Langate
	20. Kralpora
	21. Tangdhar
	22. Ramhal
	23. Rajwar

2. Nundabad Region/Province : This region/province shall comprise two districts of Srinagar and Budgam respectively. The region/province shall include the following Tehsil.

TEHSIL	BLOCKS
1. Srinagar	1. Srinagar
2. Ganderbal	2. Ganderbal
3. Kangan	3. Lar
4. Chadoora	4. Kangan
5. Budgam	5. Nagam
6. Beerwah	6. Khag
	7. Chadoora
	8. Narbal
	9. B.K. Pora
	10. Khan Sahib
	11. Beerwah
	12. Budgam

3. Maraz Region/Province : This region/province shall comprise tow districts of Anantnag and Pulwama respectively. The region shall include the following Tehsils:

Tehsils	Blocks
1. Pahalgam	1. Achhabal
2. Anantnag	2. Shahabad
3. Dooru	3. Shangas
4. Kulgam	4. Kulgam
5. Biljbehara	5. D.H. Pora
6. Shopian	6. Brang
7. Pulwama	7. Qaz igund
8. Tral	8. Khovripora
9. Pampore	9. Khovripora
	10. Dachanpora
	11. Tral
	12. Kakapora
	13. Keller
	14. Pulwama
	15. Pampore
	16. Shopian

Estimated Population : 13,42, 732 Persons

4. Chenab Valley Region/Province: This region/province shall comprise the district of Doda including Tehsil Mahore (Gool Gulabgarh) which is geographically contiguous to District Doda. The region shall include the following Tehsils:

Tehsils	Blocks
1. Kishtwar	1. Banihal
2. Bhaderwah	2. Ukheral (Ramsoo)
3. Doda	3. Paddar
4. Ramban	4. Marwah
5. Banihal	5. Ramban
6. Thathri	6. Thathri
7. Gandoh	7. Wadwan
8. Mahore	8. Assar
	9. Bhagwah
	10. Inderwal
	11. Bhalesa
	12. Doda
	13. Kishtwar
	14. Bhaderwah
	15. Mahore
	16. Arnas
	17. Gool

Estimated Population : 647,459 Persons

5. Jammu Region/ Province : This region/province shall comprise three districts viz. Jammu, Udhampur (excluding Tehsil Mahore) and Kathua. The following Tehsils shall constitute this region:

Tehsils	Blocks
1. Jammu	1. Dansal
2. Samba	2. Bhalwal
3. R.S.Pora	3. Satwari
4. Akhnoor	4. Puramandal
5. Bishnah	5. Khour
6. Ramnagar	6. Akhnoor
7. Udhampur	7. Bishnah
8. Reasi	8. R.S.Pura
9. Chenani	9. Marh
10. Billawar	10. Vijaypur
11. Basohli	11. Samba
12. Kathua	12. Lohai-Malhar
13. Hiranagar	13. Bani
	14. Basohli
	15. Billawar
	16. Kathua
	17. Hirangar
	18. Barnoti
	19. Ghagwal
	20. Panchari
	21. Ramnagar
	22. Ghrodi
	23. Pouni
	24. Reasi
	25. Dudu Basantgarh
	26. Majalta
	27. Chenani

Estimated population : 21, 80, 958 Persons

6. Pir Panjal Region /Province: This region/province shall comprise two districts of Rajouri and Poonch respectively. The following Tehsils shall constitute this region.

Tehsils	Blocks
1. Budhal	1. Poonch
2. Kalakote	2. Mandi
3. Nowshera	3. Surankote
4. Rajouri	4. Mendhar
5. Sudnerbani	5. Balakote
6. Poonch(Haveli)	6. Darhal
7. Gandoh	7. Manjakote
8. Mahore	8. Sunderbani
	9. Budhal
	10. Rajouri
	11. Nowshera
	12. Kalakote

1. Regional/Provincial Councils (Model I)

- (a) This Committee recommends that establishment of regional/principle councils in the State to meet the requirement of the devolution of power to different regions/provinces in the State.
- (b) The Regional/Provincial councils should be elected. The delimitation of the Constitution should be carried out by the State Election Commission
- (c) The number of constituencies should be determined in a manner that at least two members from each block should be elected to the Council.
- (d) There should be a reservation of 25% seats for women in the Council.
- (e) The leader of majority party so elected in the Region/Provincial Council should be designated as Chief Executive Councillor.
- (f) He/She shall have the status of Minister of State. He/she shall not have more than four executive councillors to aid and assist him/her.
- (g) The establishment of Regional/Provincial Council shall, in no way effect the institution of the state, viz Governor or Chief Minister and his Cabinet, Legislative Assembly, Judiciary and State Cadre of Service. These institutions shall continue as they are.
- (h) The Regional/Provincial council shall enjoy the executive and taxation powers which should be limited to the subject be allocated keeping in view the specificities of J&K state.

- (i) There is a need to amend the State Constitution which would define the powers of the councils. There is also a need to evolve a mechanism to deal with the situation where this council has lost the majority or has failed to carry on its function within the provisions of the State Constitution.
- (j) The Committee is of the view that the basic objective of regional autonomy is to replace mechanisms and processes of centralized decision making in governance by decentralized process and mechanisms.
- (k) This Committee has option that an expert committee may be constituted to propose a model for financial autonomy for the Councils. A financial commission would recommend the methods and mechanisms of raising the funds and developing the funds to different organs.

2. District Councils (Model-II)

- (a) The Committee recommends that the government may consider setting up Districts Councils as alternative to the Regional/Provincial Councils. The district councils may be established in the existing district of the entire Jammu and Kashmir State.
- (b) The District Councils should be elected in the same manner in which the State Legislature is elected. Selection and powers of the members of District Councils will be same as member of Provincial/Regional Councils.
- (c) The Committee recommends the evolving of mechanism to deal with the transfer of subject from the state list to district list and vice versa.

(d) The Estimate Committee is of the view that the issue relating to the allocation of funds and the powers of taxation may be assigned to a Committee of experts. It needs to be recognized that the problems of development of different districts are not uniform.

3. Culture

- (a) The committee recognizes the aspiration of ethnic identities in seeking the avenues of flourishing their culture and languages. The multiple cultural identities located in different regions in the state should be provided the opportunities to thrive.
- (b) The academy of art, culture and the languages has been established in the state in terms of Article 146 of the constitution. According to this provision, the State has to provide opportunities for the development of art and culture of the State and for development of Hindi, Urdu and other regional languages of the State specified in the Sixth schedule. The Sixth Schedule specifies the following as regional language: Kashmiri, Balti (Pali), Dardi, Punjabi, Pahari, Ladakhi.
- (c) This Committee recommends that the Jammu and Kashmir Academy of art, culture and languages should establish its proposed regional/provincial or district cultural offices at regional/ provincial or district levels. The Academy should allocate specific funds to these cultural offices. These offices shall function under the supervision and administrative control of Regional/Provincial or District Councils.
- (d) The Committee also recommends constituting of an Inter Regional/Provincial or District Council to recommend the

measures to the Jammu and Kashmir academy of art, culture and languages. It further recommends that the recommendations of Inter Regional/Provincial or District Councils should be binding on the Academy.

- (e) The linguistic identities in the State are keen that they are represented in the electronic media. The delegations of different linguistic groups bring forth the urge of linguistic identities to the Committee. The Committee recommends that the State Government should approach the concerned authorities in the Central Government in ensuring that these languages are duly and effectively represented in the media.
- (f) The committee also recommends that the Academy of art, culture and languages should provide financial assistance to the cultural and linguistic organisations of different languages in the state in order to provide them opportunities to thrive and develop these cultures and languages.
- (g) The Gojari language has been recognised by the State Academy of Art, culture and languages. The Committee recommends that this language be included in the sixth schedule of the Constitution of the State.
- (h) The committee also feels that Urdu, being official language of the state, deserves a special attention. A Committee of well known Urdu writers, authors and poets should be formed to give a report on the present status of Urdu language in the State. It further recommends that the Academy of Art, culture and languages should evolve effective mechanisms in coordinating with the nodal agency which had been set up by the Union Ministry of Human Resources Development for the promotion of Urdu.

- (i) The State Government has introduced a scheme of language orientation for the school teachers in the State. Under this scheme, it is compulsory for Urdu knowing teachers to learn Hindi and vice-versa. The Committee further recommends that the scheme should be extended to the officials of the Government. To begin with a particular level of official may be identified which could be later extended to other levels vertically and horizontally.
- (j) The Committee also recommends the early setting up of municipal corporation in the capital cities of Srinagar and Jammu in view of the changing face of these to completely organised cities of the state. Further it says, a special consideration may be shown for the development of the comparatively most backward and hilly areas of the State, viz., Lohai Malhar, Bani, Dudu, Basantgarh, Panchari, Paddar, Marwah, Tangdar, Gurez and Uri.

**AN INDEPENDENT REPORT BY THE WORKING CHAIRMAN OF
THE REGIONAL AUTONOMY COMMITTEE OF THE JAMMU &
KASHMIR STATE**

**Balraj Puri's Report On the Regional Autonomy³ of the Jammu &
Kashmir State**

The Original report of the Regional Autonomy Committee which was constituted under Mr. Balraj Puri as working chairman was produced later on separately by him.

The extensive tour of the State by this Committee and its wide ranging discussions with people belonging to different ethnic and religious communities have given it feed back of ground realities and urges of the people.

³ Balraj Puri, Jammu & Kashmir: Regional Autonomy (A Report), Jammu : Jay Kay Book House, 1999.

Recommendations

1. Political Autonomy

The basic feature of regional autonomy or a federal setup is sharing of power and functions between the central authority and its constituent parts. In Jammu and Kashmir State, the Regional Autonomy Committee envisages a federal structure not only for the state but for the regions also.

2. State

The state level institutions like Governor, Chief Minister and his cabinet, legislative assembly, judiciary and state cadre of services should continue as they are. They shall continue to deal with all subjects except those delegated to the regions.

The basic criteria for division of subjects is that all subjects that need a uniform policy for the whole state can be handled more efficiently at the state level. Inter regional problems shall be allocated to the states. Likewise, in preparing the list of regional subjects it should include the 29 subjects allocated to districts in other parts of the country. It should also include the subjects of inter district importance and subjects within the financial reach of the regions.

Article 249 of the Indian Constitution may be added in the Constitution of the State. With the consent of regional legislatures, this would make possible transfer of subjects from one list to another. So, a regional list of subjects can be drawn and the residuary parts should remain with the State.

For an interim period the State Constitution may also include a provision similar to Article 356 of the Indian Constitution. This would empower the State Government to recommend to the Governor to take

the functions of a Regional Government if it can't be carried on in accordance with the provisions of the State Constitutions.

Moreover, there should be a statutory provision for fresh election within six months in case a Regional Council is dissolved. The Governor should also be empowered to adjudicate on difference of opinion regarding jurisdiction between the State and Regional Governments.

Among institutions at the state level, a change is suggested in the constitution of the Legislative Council by Committee. In the case of the State of Jammu and Kashmir it has equal representation in the Legislative Council except that two seats are reserved for Laddakh out of Kashmir's share. This is unfair to Kashmir region. It is therefore suggested that regional legislature of Jammu and Kashmir should elect equal number of members, namely 11 each, to the State Legislative Council. The internal distribution of Jammu region should remain as it is. Laddakh should also be entitled to the same number of seats.

Through this the objective of the equity may be served if it is triplicated with fair representation to its geographical and communal diversity.

Committee observes that there should be a separate Divisional Commissioner and IGP to administer the region. If the work of these divisional heads is inadequate, any senior deputy commissioner and DIG may be appointed.

The Government may also consider the recommendation of Gajendragadkar Commission to change the full name of Jammu , Kashmir and Ladakh state.

3. Regions

Regional government should be elected in the same manner in which the state or national government is elected.

A regional legislature which may be called Regional Council should be elected from twice the number of constituencies as are for state assembly.

The leader of the majority party shall be called by the Governor to form his/her cabinet. To differentiate the state and regional set up, the members of the regional Cabinet may be called Executive Council and their head as Chief Executive Councillor. The head of the Regional Council should have a status of Cabinet Minister of State. The legislative, executive and taxation powers of the Regional Council shall be limited to the subjects allocated to the regions.

4. Panchayati Raj Institutions

The entire debate of regional autonomy in the state has been linked with a five tier system which includes devolution of power from region to district, block and panchayats. Jammu and Kashmir Panchayati Raj Act of 1989, defines the powers and functions of three tier institutions. Panchayati Raj Acts of all the states of India provides for direct elections of most of Panchayati Raj institutions. In Jammu and Kashmir this provision doesn't exist. Even the chairman of the board is nominated by the Government.

Leh pattern of district autonomy should be extended to all the districts. Leh pattern does not exceed the powers and functions of the districts under the Panchayati Raj Law. There is a need for change of the nomenclature of the Executive Councils and Chief Executive councillor of Leh, without reducing their power. The district councils should have the same supervisory and coordinating power over block

committee and Panchayat as Regional Councils have over district council or the state government has over regional councils. Each District Councils should have the right to send one representative to the regional council.

5. Block committees and Halqa Panchayats

In the present Act, there is no direct election at this level. It is proposed that at least 1/3 of its member including the President should be directly elected. The rest should comprise of representatives of the sarpanches of halqa panchayats.

At the level of Hulqa Panchayat the present act rightly provides for direct elections of all its members. But there is no provision for Gram Sabhas, which is the basis of the entire edifice of the Panchayati Raj. There is no Halqa Panchayat in any state of the country .

The present Act empowers the government to supersede Panchayats for incompetence or defaults. This power should rest with the Gram Sabha under some abnormal circumstances where panchayats are found guilty of gross incompetence. The Regional Council should have this power. MLAs , MLCc and members of the Regional Councils should be ex-officio members of the Panchayati Raj institutions at district, block and panchayat levels. But they should not have any right to vote. The senior leaders should not get the right to dominate the Panchayati Raj institutions so that there will be no hindrance in the process of emergence of new and local leadership. Another serious flaw in the present act is the provision for nomination for Scheduled Castes, Scheduled Tribes, women and other classes. There should be absolutely no scope for nomination by the government at any level. Instead there should be reservations for these categories. The seats for Scheduled Castes and Scheduled

Tribes should be in proportion to their population in an area. Moreover other classes is a very vague term. It should be specified and include only OBC.

According to this report, the provision for restricting the representation of women in panchayati raj institution through nomination to 33% is unconstitutional. In fact there is certainly a need for fixing a minimum representation for women at 33%. A minimum limit should be provided for all categories of reservations, say SC, ST, OBC. The present law deprives the displaced persons who migrated from Pakistan in 1947 to Jammu of voting. The State could afford to take a more humanitarian view of the matter and restore the elementary right of these persons.

6. Safeguards for dissent

The institution of Panchayati Adalats provided in the Act is a safeguard against elite domination or of majoritarianism. This provision is flawed as state government is empowered to nominate members of the Panchayati Adalat or remove its Chairman or any other member. So this power to nominate or remove members should rest with an appropriate judicial authority. Any violation of Fundamental Rights of individual by the majority in any Panchayati Raj Institution should be strictly prevented.

7. Urban areas

As far as an urban area is concerned, the municipalities and corporations should also be brought within the frame work of the proposed decentralised set up. The municipalities should function under the supervision and control of regional Councils. They may include MLAs, MLCs representing the constituencies which comprise wholly or partly municipal or corporation areas but without a right to vote.

The corporation or a municipalities should be divided into wards. There should be reservation and not nomination for the SC, ST and OBC in proportion to their population in the area. There should be minimum reservation of 33 % for women.

The power to suspend or dissolve municipalities, corporations shall lie with the Regional Council. Fresh elections should be mandatory before the date expiry of six months after the dissolution.

The provisions of the 74th amendment should be incorporated in functions and powers of the municipalities. There should always be scope for sharing of functions and powers between various tiers of government.

8. Cultural Autonomy

A rational and well thought cultural policy has a special importance for a multi ethnic state. The political structure of regional autonomy and its devolution mainly meets the needs of territory based identities. Ethnic communities cannot find full expression through political institution alone. Institutions of cultural autonomy and development, therefore assume special significance. An independent Ministry of Culture to deal with diversity and complexity of the cultural problems of the state should be set up. Similarly Cultural Academy should be trifurcated on the national pattern to deal with language and literature, theatre and music and fine arts respectively (Sahitya Academy, Sangeet Natak Academy and Lalit Kala Academy). Each needs a specialised treatment and no single person and an institution can command over all branches of culture.

9. Autonomous Academies

Cultural academies need full time attention and full autonomy. They should be headed by a non-government whole-time and a competent personality in his/her respective field.

At present, under section 5 of the SRO number 340 of 1963, the Chief Minister is the President of the Cultural Academy. So Committee suggests that the present Academy should be headed by a whole time non official person. Even the Vice-president can be a whole timer to whom maximum powers should be delegated.

The Academy should work according to its existing statue. Some of its work should be transferred to its regional offices

10. Translation department

A full-fledged department of translation needs to be set up either in the Universities or separately. Its tasks should be to translate selected literatures of various languages of the state into one another. Some languages of the state have been written in two scripts. Kashmiri written in old script and Kashmiri being written out side the state in Devnagri script should be transliterated into the official script i.e. Persian script with some modifications. Bodhi and Ladakhi is another language which is being written in two scripts one in Tibetan script and the other in modified Persian script. That creates an artificial and communal divide between an ethnic community which speaks the same language. Arrangement for transformation of Bodhi literature from one script to the other be made so that they contribute to unity among Buddhists and Muslims of Ladakh region. The Institute of Music and Fine Arts should be affiliated with the University like other degree colleges and post graduate departments. Two art galleries at Srinagar and Jammu should be set up and proper

arrangements should be made to preserve art pieces commissioned by the Academy.

The fees paid to the writers and artists for participation in various functions is very low, which should be revised. The North Zone Cultural Centre NZCC to which J&K state also contributes financially is headed by a person from Punjab. So Jammu and Kashmir state has no say in planning its programmes.

Committee suggests that its headship should rotate and the State Cultural Academy or the Ministry of Culture should take the matter with NZCC for proper coverage of the state. In case of central media and TV, the state should recommend to the centre for formation of Programme Advisory Committee for different languages. The Information and Broadcasting Ministry should also be requested that the name of Radio Kashmir Jammu should be changed to Jammu and Kashmir Radio Jammu.

11. Language Policy

The RAC recommends a four language formula unlike the rest of the country which has adopted three language formula. The four languages include mother tongue, Urdu, Hindi and English to be taught at different levels. It would not put any extra burden on the students. Firstly no extra effort is needed to teach mother tongue to the students as they have already learnt it in their homes excepting supply of textbooks. Even learning of script would not be a problem as most of the languages spoken in the state have adopted Persian or Devanagri scripts which they have to learn in any case.

Urdu as the official language must be compulsory and learnt by all students. Hindi is an official link language of the country and is therefore equally important. So is English as most of the books particularly on science subjects are available through this language. The present policy is almost dividing the state between Urdu knowing and Hind knowing students broadly on communal lines. Wherever a

student opts for one language, the other language should be made what is called compulsory optional. Representation has been made to us for making mother-tongues as medium of instruction. After its trial at some selected places it should be extended. Mother tongue should be taught as a subject in primary and other levels in the schools. The problems and roles of each language are now separately discussed as under :-

(a) **Urdu:** Urdu as an official language of the state has been accorded the status that official languages in other states have done. Much of the work that could have been done in Urdu still being done in English. It has to be provided the space which is now occupied by English. As far as other languages are concerned, they would grow further with the growth of Urdu as it is the only link language between various languages spoken in the state. Some of the best literature in regional languages cannot be appreciated by other linguistic communities.

Urdu writers of Jammu protested that Urdu wing of Cultural Academy is permanently located in Srinagar and its journal is also permanently published from there. Jammu's identity is incomplete without Urdu and it is the only link between its past and present. The history of Jammu, archives, accounts of political and cultural activities and administrative records are preserved in the Urdu language. Without Urdu the new generation will become completely ignorant of their entire heritage.. It is, therefore, suggested that knowledge of Urdu be made compulsory for not only the students but also all government officers serving in the state. All offices and ministries of the government should have Urdu knowing Staff to receive and reply to complaints of the people in Urdu.

Though a very large number of newspapers are published in Urdu in the state, they lack elementary facilities like trained Katibs, Computer printings, Urdu typewriter and advertisement support by

the government. Special attention should be paid to the small scale Urdu papers.

(b) **Hindi:** The role of Hindi language is as an official language of the government of India hardly needs to be stressed. Some of the Central grants for promotion of Hindi lapse on account of their non-utilisation. A minimum knowledge of Hindi should also be made compulsory in schools. There used to be a compulsory paper of Urdu for Hindi students and in Post Graduate degree of Urdu and compulsory paper of Urdu for Hindi students. That practice should be revived.

Special attention needs to be given to encourage regional languages and mother tongues. For they are the natural medium of expression of creative thinking.

(c) **Kashmiri:** Out of regional languages of the state, Kashmiri is the only language recognised by the constitution of India and the state and is spoken by largest number of its people. But it has not been given its due place which other constitutionally recognised language of the country have got.

One of the serious problems that is being currently faced by the premier language of the state is that Kashmiri writers and the literature produced by them within the valley and outside do not have an easy access to one another. A strong urge was expressed in the two meetings that the RAC had convened of Kashmiri writers at Jammu and Srinagar, to remove the artificial barriers that were created between the writers in the two regions.

Apart from more frequent literary get together, government should provide a common forum to writers wherever they may be stationed.

A useful suggestion was made to get a computer for Kashmiri language developed with the help of Indian Institute of Communication Technology which has already programmed Kashmiri language. Similar facility should be tried for other languages as and when they reach a comparable standard of development.

RAC also support the demand of Kashmiri writers that the constitution of India should be translated into Kashmiri as it has been done in the case of other regional languages.

(d) **Dogri:** RAC fully support the demand of inclusion of Dogri in the 8th schedule of the Indian Constitution. This has become a unanimous demand of the entire Dogri speaking community; supported by writers of other languages also.

There is a rich heritage of folk literature in Dogri which is languishing. Modern techniques like documentation and music notation should be used to preserve the Dogri folklore. Similarly measures should be taken for reviving world famous Basohli art reproduction and reprinting of classical miniature paintings. There is need for upgrading Radio and TV station of Jammu, so that they should be able to cover the Dogri speaking people not only of Jammu region but also across the border where such population exists.

(e) **Gojri:** Gojri as a spoken language, with rich folk literature has a long history but in recent decades it has made sufficient progress as a written literary language also. The committee strongly recommends that it should be included in the 6th schedule of the State Constitution and efforts should be made to get it recognised by the Sahitya Academy. It is therefore, necessary that special measures be taken through the Gojri Welfare Board, Cultural Academy and electronic media for its promotion.

(f) **Pahari:** Pahari language like Gojri also cuts across district and regional boundaries. There is a substantial part of Pahari community which lives in Kashmir region while much larger part of Mirpuris, Poonchis and Muzaffarabadis, all belonging to Pahari speaking community, live in Jammu district after their displacement from Pakistan occupied Kashmir. As bulk of the community lives along the Line of Actual Control the language assumes importance for political reasons also. Preparation and publication of good literature and its adequate use on TV and radio should become a source of cultural inspiration for the people living on the other side of the line instead of being vice-versa. Though it is an old language, as a written language it has made a great progress in recent years and is, therefore, entitled to be recommended for recognition by the Sahitya Academy.

(g) **Punjabi:** Punjabi's role as a common bond between three major religious communities not only within the state but between the most populous state of Pakistan and Indian Punjab need hardly be emphasised. Special care should be taken to encourage local writers who add local flavour to the literature. Colourful Punjabi folk culture and festivals like Baishakhi, which were an integral part of Jammu's composite personality have declined in recent years due to onslaught of modern culture. Official and non-official measures should be taken to revive them.

(h) **Bodhi:** As suggested earlier the division of Bodhi or Ladakhi literature on account of use of two scripts should be undone by transliteration of one script to another so that an ethnic community with common language and Heritage does not get divided. Arrangement should also be made for printing of the local literature. A printing press should be set up in Leh and Kargil either by some department of the government or by subsidised private agency. Old and rare manuscript need to be preserved with modern techniques.

(i) **Other Languages:** The Committee is in favour of preservation and encouragement to all languages and cultures, even of small ethnic communities. For the Indian model of unity in diversity is "most suitable to a multilingual and multicultural society. The concept of national integration presents a multilevel unity and identity of the people belonging to varied linguistic and cultural streams".

In this context the Committee would recommend special research on a very old language like "Sheena" spoken in Gurez area and much larger number of people on the other side of LoC. The study of its history and literature would not only bring to light centuries old culture of a distinct community but also would open a cultural window for the people across the line.

12. Financial Autonomy

Political autonomy can hardly work if financial allocations are arbitrary and if power of fund-raising and spending and policy decisions regarding priorities remain centralised. Financial autonomy can also neither be achieved nor maintained without political empowerment of decentralisation institutions.

Economic backwardness is arguably an important cause of popular unrest. But more than absolute backwardness, it is relative deprivation that causes heart burning. The development outlays in different regions and within regions should, therefore, be basically governed by two criteria viz. equity and objectivity and not governed by political, subjective and arbitrary considerations.

While drawing on various approaches to the problem, RAC takes a special note of the latest one used by the United Nations Human Development Programme.

"It is much more than a low income. It also reflects poor health and communication, inability to exercise human and political rights and the absence of dignity, confidence and self respect. There is also environmental impoverishment..... Behind these faces of poverty lies the grim reality of disparate lives without choices and, often governments that lack capacity to cope. It is in the deprivation of the lives people lead that poverty manifests itself..... It also means the denial of opportunities and choices most basic to human development..... for policy-makers, the poverty of choices and opportunities is often more relevant than the poverty of income, for it focuses on causes of poverty and leads directly to strategies of empowerment and other actions to enhance opportunities for everyone".

The report specifically lays emphasis on "political empowerment of the poor" and "promotion of broader political participation".

As a political authority is decentralised and decentralised institutions are empowered to decide priorities of investment of funds allocated to them the element of buyers in the imbalances would be minimised.

There is a need for eliminating favouritism, nepotism and corruption in the recruitment to the state, regional or district cadres and admissions to the technical institutions.

Apart from equity, the second criterion of a financial policy of the state should be objectivity. For this purpose RAC lays down an objectively determinable and the verifiable formula for sharing the finances of the state. A decision made objectively by policy makers, cannot inspire confidence. Aside from objective criteria for determining such a formula, its application should also not be left to the discretion of political leaders. An autonomous State Finance Commission should

determine the share of politically autonomous regions and of other intra-regional levels

This is mandated by 73rd amendment of the Indian Constitution and accepted by most of the states for determining share of local bodies. As under Article 370 of the Constitution, this amended constitutional provision should incorporate in the Constitution of the State with further amendment that the State Finance Commission will determine the sharing of resources between the state and of regions on the basis of a prescribed formula. After working it for five years, it can be re-examined by another Finance Commission with similar term; with a view to diverting allocations to those fields where deprivation gap has increased from where it has decreased. The same formula should apply to intra-regional devolutions of funds. If and when requisite data are available, the respective shares at each level can be precisely determined. Meanwhile outlines of the proposed formula of sharing of resources, keeping in view of the realities of the state, is given below:

13. Outlines for Criteria of Sharing of Funds between State and Regions

As the state government has been unable to provide us full data about receipts of the revenue and expenditure under different heads, theoretical formula is being suggested on the basis of which the state or the State Finance Commission may take decisions regarding sharing of resources between state government and the regional government.

(I) Total state receipts

(A) Receipts of the state: internal revenue

(i) Revenue account :

(a) Taxes

(b) Non-tax revenue: Power Development Board, Road Transport Corporations, Public-Sector Undertakings, Mining and Forests .

ii) Capital Account:

(a) Unfunded debt

(b) Recovery of loans

(B) Transfers from the Centre:

(1) Statutory grants

(2) Share in central taxes

(3) Non-plan Grants

(4) Central schemes

(5) Centrally sponsored schemes transferred to the state with funds

(6) Earmarked schemes

(7) Loans from the Centre

(C) Negotiated loans and market borrowings.

(II) Receipts of the Regions:

A. Grants:

Total receipts of the state be shared with the regions in 50: 50 ratio. Out of the share of the state 5% be allocated to the regions on the discretion of the state government to meet contingencies, natural

calamities and special needs of some areas in addition to the regional share of revenue.

State share of grants :- The states like Kerala have allocated 40 % of the state's total resources to the Panchayati Raj Institutions. As regional tier is proposed to be added the allocation to regions, including the Panchayati Raj institutions has been raised to 55 % out of which 5% would be at the discretion of the state government.

The share of each region to be determined on a formula based on the following indicators -

- (i) Population.
- (ii) Area.
- (iii) Road mileage, surface road divided by area.
- (iv) Share in government jobs as percentage of population in the relevant age group.
- (v) Average annual admission in last five years to technical institutions as percentage of population in the relevant age group.
- (vi) Female literacy.
- (vii) Infant mortality.
- viii) Some performance incentive criteria like contribution to the state revenue in proportion to region's income.

While population, area and item (viii) would be positive criteria, the rest would be negative.

Formula for allocation of Grants

Allocation to a region should be sum total of ranking of these eight indices divided by the sum of indices for the three regions, multiplied by resources available for distribution.

Similarly share of district x1 within a region will be equal to

$$\frac{I_x}{I_1+I_2+\dots\dots\dots I_n} \times R$$

I_x (Index for district x) = $x_1+x_2+\dots\dots\dots+x_8$

X_1 to x_8 are ranks for a district in terms of variables 1 to 8 and R denotes total resources available to the state for distribution as grants while n represents no. of districts. $I_1+I_2+\dots\dots\dots I_n$ are indices for the districts within a region.

Variables

- | | | |
|----|----------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1. | Female illiteracy | Rank in ascending order 1 for least illiteracy and n for highest illiteracy |
| 2. | Infant mortality | Rank in ascending order 1 for lowest and n for highest |
| 3. | Road mileage divided by area | Rank in descending order 1 for highest mileage and n for lowest mileage. |
| 4. | Share in government and services divided by population in the age group 18 to 50 | Rank for descending order 1 for highest and n for lowest. |
| 5. | Share in admissions to technical institutions: | -do- |

(a)Medical, (b)Engineering,

(c)MBA and agriculture

divided by population in age group

of 17-25 years.

- | | | |
|----|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| 6. | Population | In ascending order. 1 for least populated district and n for the highest population |
| 7. | Area | In ascending order 1for a smallest area and n for the highest |
| 8. | Contribution to the state exchequer as percentage of income of the district | -do- |

Subsequent State Finance Commissions may use further sophistications to measure or deprivation gaps in various fields between regions and add different weights to the indices or even increase the number of Indices as relevant data are available by that time. They may, in particular, draw upon the methodology in a study sponsored by the Madhya Pradesh Government – which is the only state of India to do so.

B. Taxes:

(i) Professional, entertainment, land revenue, cess on horticulture, minor irrigation, domestic power taxes, property, scavenging, environmental protection taxes, cottage and small scale industries, handicrafts, potable water tax, tourism, octroi etc.

In general, share in the receipt of taxes would be on the basis of subjects that are divided between states and regions. Out of the regional share a definite part should be reserved for the sub-regional authorities like district, blocks and panchayat.

(ii) Shared taxes :- Collection by the state minus cost of collection. Toll tax, sales tax and excise should be shared (18 % for the region and 20% for the state). As these taxes are collected from individuals, these should be according to the collection from that region but 20% has been reserved for the state to meet the demands of equity.

(iii) Matching grants:- The state should contribute 50 % for which regional authorities raise the rest of the resources. The projects would be jointly owned by the state and the regional governments. If the contribution of regions or lower authorities is in the form of Shramdan of the people and voluntary non-government efforts, the state share should be 70 percent and regional share should be 30%. In Andhra, the state contributes 70% capital for the schemes in which capital is raised by voluntary labour of local bodies. For certain categories the state contribution is 100%.

(iv) Loans from the state government and market :- Some of the Centrally-sponsored schemes which have been transferred to states and earmarked schemes may be further transferred to regions depending upon principles of efficiency and equity. Those project benefits of which spill over across regions and are of large scale may be retained by the state but where they are of local benefit and can efficiently be handled by the regional authorities may be transferred to regions.

(III) Local bodies

The share of local bodies out of the total regional revenue would be broadly on the basis of the same criteria as are being used for

calculating regional share. Some of the taxes included in the regional list will be collected and retained by the local bodies. The list of such taxes would correspond to the subjects that had been allocated to the districts, blocks and panchayat. The formula for grants and shared taxes should be the same as used for calculating the share of regional authorities. Elaborate provisions have been made in the 73rd and 74th amendments to the Constitution of India on financing rural and urban local bodies.

Broadly speaking grant should be based on equitable and objective criteria, local bodies should be entrusted with more powers to raise funds and share revenues with higher authorities. Urban local bodies must also tap a share in rapidly rising prices of real estate. The proposed State Finance Commission can be entrusted with the task of examining all such proposals.

14. General

RAC received 5 memoranda on the problem of Kashmiri Pandits, 2 from Muslims of 3 Muslim minority districts of Jammu, Muslims of Leh and Buddhists of Kargil. The total Hindu population of Kashmir Division according to the census of 1981 was 1,24,078 which amounts to 3.96% of the valley and 2.07% of the State; though some of the memoranda put this figure at 7 lacs. Even then it is a very small minority of the state but for a variety of reasons they're a very vital community and numbers do not reflect their importance. Arguably they are most educated, vocal and articulate community of the state. They are a valuable part of Kashmiri identity better equipped to provide intellectual content and historical continuity to the 5000 year old civilisation. They were the worst sufferers of the insurgency in Kashmir as bulk of them migrated out of valley. Excepting some influential, affluent and enterprising families, the rest are living in sub human condition in the refugee camps. What haunts

the community most is the fear that it may become rootless and lose its identity.

On the whole RAC has the opinion that the problems of religious minorities should be considered within the provisions of the Constitution of the State and India. While no reservation can be made according to them in recruitments, there are specific safeguards for minority institutions and against discrimination. The Minority Commission also looks after the interests of the religious minorities of India.

The representatives of Kashmiri Pandits complained that in the revised delimitation of the constituencies in Srinagar city they have been deprived of an opportunity to get two of its members elected to the State Assembly from two constituencies namely Habakadal and Rainawari where they used to be in sufficient members. Next Delimitation Commission should consider restoration of earlier position.

The Minority Commission either of the State or of the Centre, with the extension of jurisdiction of the later to the State, can serve its purpose if the definition of minorities decided on the basis of their numerical strength in each region or district.

For more than the constitutional and institutional safeguards the solution to the problems of minorities essentially lies in the political field. Strength of genuine secular parties and the polity are the best guarantees for the interests of the minorities. The state should also take measures to effectively curb propagation of communalism.

The most important problem of Kashmiri Pandits is of their return to the valley and being able to live there in security and with dignity. Basically, it is for the members of the community to decide

how and when the conditions become conducive to such a situation. In order to inspire such a confidence, what is needed is not merely an official effort but non official initiatives also to start people to people contacts and dialogue between Kashmiri Pandit leaders and Muslim leaders of the valley including the separatists.

An opportunity should be provided for them to meet its social, cultural and academic levels.

15. Other Internally Displaced Persons

The case of final rehabilitation of refugees from Pakistan-occupied Kashmir in 1947 is yet not settled. The difference in their case and that of KP migrants is that the former have hardly any hope to return to the place of their origin not even as visitors. The Petitions Committee of Parliament also studied their problems and submitted its recommendations. What is needed is implementation of categorical assurance given to them from time to time by various government departments. Though case is still believed to be under consideration of the State and Central Government, it was delayed, on the ground that any compensation to them might compromise India's constitutional and legal claim over Pakistan occupied Kashmir. It is, therefore, a moral and legal responsibility of the government to compensate the displaced persons for the property left by them in Pakistan occupied Kashmir. It is of course too late to verify their claims but as decided earlier lumpsum relief can be granted to them in lieu of the property left behind and other sufferings which they have undergone.

However, the largest minority, which cuts across all administrative and natural boundaries, is that of women. With spread of education it is becoming more and more assertive. We, therefore, deem it necessary to invite women activists of Jammu and Kashmir at

two different meetings at Srinagar and Jammu to understand their problems.

The basic remedy for all problems of women is their empowerment. RAC has therefore, strongly opposed the decision of the government to prescribe a maximum limit of 33 % seats in panchayat and local bodies. They should have a right to elect a minimum of 33 % members in these bodies. This reservation should be carried to other levels including the State Assembly.

In order to prevent atrocities on women, woman cell should be created in police stations. At least one station in every district should be exclusively run by women police. A women Superintendent of Police should be incharge of all crimes against women to coordinate with women cells in various police stations. A district-level consultative committee of women should be constituted to oversee the work of women police. No women should be arrested, however serious be the crime except by the women police and she should be detained in a separate women lockup exclusively managed by a women police. All these recommendations would require much large number of recruitment of women police than his having now.

Even though government has set up a Women Development Corporation but RAC was told that response of woman beneficiaries was very low. This was attributed to lack of awareness about this facility and cumbersome procedure to get loans. A special inquiry may be conducted to find out the reasons for ineffective working of the Corporation.

In the meetings of the women representatives held in Jammu and Srinagar, they raised the issue of discrimination in issuing state subject to women. They pointed out that while the state subject of women was issued only till marriage there was no restriction for men.

Moreover a non-state subject women married to a state subject to entitled to get a state subject but a woman married to a non-state subject ceases to be a state subject.

The problems of physically handicapped persons or mentally handicapped persons in militancy affected areas as also in the rest of the state also deserves attention. RAC suggests that there should be 5% reservation in recruitment to government jobs for handicapped and disabled persons. Similar reservations should be provided in institutions of technical, professional and higher education. The pension for disabled persons should be raised to Rs. 500 per month and they should be allotted housing plots and shops at subsidised rates. They should also be given loans at low interest for starting business. The working of the blind homes and orphanages should be reviewed. There is a need not only for increasing their number but also improving their quality. They should be trained in skills which are specially suited to them and provided work accordingly.

16. Scheduled Castes and Scheduled Tribes

RAC recommended the appointment of a Scheduled Castes and Scheduled Tribes Commissioner to monitor various facilities being provided by the government for the welfare of these communities. Its report should be tabled in the Assembly every year.

The Government has fixed reservation for the SC at 8% in government service. But as they are mainly concentrated in Jammu so they don't get any benefit in Kashmir valley. RAC recommended that it should be in proportion to their population at regional and district level and not state as a whole.

Government should also see that benefits meant for SC were not pocketed by rich and influential persons. The Supreme Court decision regarding exclusion of creamy layers for such benefits should be

strictly followed. Further the right of tenancy for landless labourers who are mostly SC should be safeguarded.

Similarly statutory benefits for ST should be implemented and monitored. The welfare board for SC and ST need to be made more effective and their functions and powers should be specifically defined.

CHAPTER -III

THE AUTONOMY DEBATE

Autonomy representing the aspiration of the people of Kashmir is a specific demand. Its specificity is located in the history of the freedom movement of Kashmir. The federal context of India is basic to the issues of autonomy. It is the asymmetrical nature of the federal structure of India in which a differential status is guaranteed to this state.

The state's relationship with the union is a negotiated relationship. The state joined the union on voluntary basis and negotiated the terms of its relationship. While other states gave up their right to Separate Constitution, the government of this state did not accept the Constitution of India as an instrument for the governance of the state.¹

It is with reference to this presumption that the report privileges the pre 1953 constitutional relationship between the centre and the state. This period is defined both, by the limited applicability of the Constitution of India as well as a continuous process of negotiation between the centre and the state. Landmarks of the period that are highlighted in the report are-

- (a) Article 370 of the Indian Constitution;
- (b) Constitution (Apply to Jammu and Kashmir) order of 1952
- (c) Delhi agreement of 1952.²

¹ M.K. Teng, *Kashmir: myth of autonomy*, Anmol Publications Pvt. Ltd., 1998, pp. 156-157.

² S.K. Chaube, *The Concept of Autonomy and the Federal Context of India' in Politics of Autonomy in Jammu & Kashmir*, Hari Om (ed.), and others, Vinod Publishers, Jammu, 1999, pp. 120-124.

(c) Delhi agreement of 1952.²

PRE-1953 Position and Negotiability of the Report

As Rekha Chowdhary says, that the striking feature of the report of the SAC (State Autonomy Committee) is that, it situates the issue of 'autonomy' for Jammu and Kashmir in its historical context. The desired structure of autonomy is defined not as much by its principles as by its location in the pre-1953 period. The various recommendations contained in the report do not provide any logic other than the historical one.³

Anything not consistent with the instrument of accession, the constitution agreement of 1952 is understood to be in contravention of the idea of autonomy. The concept of autonomy in the pre-1953 period was, in no way defined by rigid and invariable principles.⁴

The recommendations of the report of the SAC are much more fixed in the specific time framework in contrast to Delhi agreements, which went much beyond the instrument of accession.

In terms of the time framework, the SAC does not see the period until mid 1960s which was the actual period of erosion of autonomy. It is in the post-1965 era that the 'maximum assault' is considered to launch upon Kashmir's special status. This was the

² S.K. Chaube, 'The Concept of Autonomy and the Federal Context of India' in *Politics of Autonomy in Jammu & Kashmir*, Hari Om (ed.), and others, Vinod Publishers, Jammu, 1999, pp. 120-124.

³ Rekha Chowdhary, 'Autonomy demand; Kashmir at Crossroads', *Economic and Political Weekly*, July 22, 2000, pp. 2601-2602.

⁴ Ibid.

Despite the elasticity in the context of the report, the leaders of the National Conference maintained a deliberate ambiguity about its negotiability.⁶

An analysis of the National Conference approach towards the issue of state autonomy shows that, the idea of internal devolution of power did not logically flow from pre-1953 status. The SAC acknowledged the duty of the state to protect minorities and regional interests, but it did not go into the intricacies of the question on diversities.⁷

The failure of the National Conference to incorporate the issue of internal autonomy in its discourse on state autonomy impacted the political response in Jammu region. This was read as indifference towards the political aspirations of the people belonging to Jammu and Ladakh.⁸

The discourse on 'state autonomy as pursued by the National Conference did not include the local sensibilities of Jammu & Ladakh. This discourse was perceived to be 'Kashmir Centric'. A popular view in Jammu saw the issue of state autonomy, as a response of the people of Kashmir, which is unconnected with the political aspirations of the people of Jammu. This view dominated the public mind in Jammu. National Conference located the issue of state autonomy in the historical context of the assertion of the political identity of Kashmir. It was rooted in the freedom movement of Kashmir and centered around the basic issue of the

⁶ Ibid.

⁷ Surendra Mohan, 'The Autonomy Debate', *Mainstream*, July 22, 2000, pp. 25-26.

⁸ Ibid.

commitment made by the Indian leadership to the political elite of Kashmir at the time of accession.⁹

The Response from the Centre

Political India appears to be divided sharply on a crucial national issue. The Hindu-right, regards it as something bordering on separatism, while some other parties are sympathetic to the demands. Rashtriya Swayamsavek Sangh (RSS) has publicly denounced the state assembly's resolution as "a step short of actual recession" and demanded that the Vajpayee government should keep all its options open, including dismissal of the state government. An RSS spokesman has publicly criticized the Vajpayee Government for "compromising" on the issue of abrogating Article 370 of the constitution for the sake of staying in power.¹⁰

The former President of the ruling BJP Kushabhu Thakre had declared his party to be "totally against" the Jammu and Kashmir autonomy demand, which needed to be "rejected outright". He had warned that any return to a pre-1957 status would lead to instability and disintegration. In addition to Jammu and Kashmir other states would also start to seek autonomy.¹¹

The Shiv Sena's Supremo, Bal Thackary has characterized Dr. Abdullah's advocacy of autonomy as 'traitorous' which is in fact a move towards "another partition" of India.¹²

⁹ Sukumar Muralidharan, 'For a New Paradigm', *Frontline*, August 4, 2000, pp. 27-28.

¹⁰ Ashok K. Behuria, 'The lasting appeal of autonomy', *Journal of Peace Studies*, Vol. 7, Issue 4, July-August, 2000, pp. 27-28.

¹¹ N.Ram, 'Autonomy for Jammu and Kashmir', editorial, *Frontline*, July 21, 2000, p.8.

¹² Ibid

The Congress (I) had also announced its opposition to the Jammu and Kashmir autonomy resolution. It is only the Left Parties and some of the constituents of the former United Front who are showing sympathy with the autonomy demand. However, they differentiate themselves soberly from Mr. Abdullah's Party, with respect to the scope and extent of autonomy¹³.

The democratic debate that needs to be conducted in response to Dr. Abdullah's demand, has a general as well as specific aspect. The general aspect relates to the question :-What kind of nation India is and whether it should be developed along federal or unitary lines? The specific aspect concerns the troubled recent history of Jammu and Kashmir and more vitally, the question of its future within the Indian Union.¹⁴

Dr. Farooq Abdullah, in an interview says, "We have raised an issue for debate. When we passed the motion, we never thought that constitutional changes would come about immediately. It is not as if we are taking an inflexible stand. All this must be decided through debate. This debate is necessary if we want to win the hearts and minds of the people of Jammu and Kashmir."¹⁵

Some BJP leaders in New Delhi, notably M. Venkaiah Naidu proclaimed that while their party supported the demands for greater autonomy in all states, the Jammu and Kashmir proposals would fail, because all major parties were against them".¹⁶

¹³ Ibid

¹⁴ Badri Raina, 'Dealing with the Autonomy Demand' *Hindu*, July 6, 2000, p. 10.

¹⁵ Farooq Abdullah in an Interview with Praveen Swami as cited in *Frontline*, July 21, 2000, pp. 10-11.

¹⁶ Sudhanshu Ranade, 'Kashmir: Illusion and Reality', *Hindu*, September 2000, p. 10.

There was no explanation about why the party would hold negotiations with secessionists but not with an elected government.

Political implications

After the installation of popular government in the state, Chief Minister Farooq Abdullah has been consistently demanding the pre-1953 status for the state. This was also the main election slogan of National Conference and the report is more reflection of the party demand. However the report is silent about the 1975 Sheikh-India accord under which Sheikh himself had endorsed the rationale behind the extension of central laws.¹⁷

The consequent formation of a three member sub committee under the chairmanship of DD Thakur in 1977¹⁸ and its demand for the rightful extension of the Central laws was accepted by Sheikh Abdullah at that time. The pre-1953 status is not only the view upheld by the panel but most of the scholarly works have also found in this the only silver lining. Now the question arises will the grant of pre-1953 status bring the expected results? Will it bring peace and help establish democratic process in the state? What does pre-1953 status actually mean?¹⁹

First of all if the proposed status was granted to the state it would mean reverting to the constitutional position before the arrest of Sheikh Abdullah on August 9, 1953. This would halt the

¹⁷ Gull Mohammad Wani, *Kashmir from Autonomy to Azadi*, Valley Book House, Srinagar, 1996, pp. 146-147.

¹⁸ "Three member sub-committee was constituted under the chairmanship of D.D. Thakur in 1977. Its report was controversial on account of the differences between the members of the committee. Mr. D.D. Thakur upheld the rightful extension of the central laws while other two members Mr. Gul Shah together with Mr. Gulam Nabi Kochak advocated the withdrawal of all the central legislations to the state. Sheikh Abdullah accepted the view of Mr. D.D. Thakur with Prof. Hari Om by Pinki Maurya.

¹⁹ Harish K. Thakur, *Alienation and Integration in Jammu & Kashmir*, Aalekh Publishers, Jaipur 2000, pp. 142-143.

consequent enactments on behalf of centre such as, the role of Supreme Court, Election Commission, CAG and replacement of nomenclatures like Chief Minister and Governor by Prime Minister and Sadar in Riyasat.²⁰

Now, the question arises; will it bring complete peace in the valley? The answer is no. if it could be so then what about the pre-1953 days when the Sheikh had started talking of an independent Kashmir. If we overlook these negative factors even then as Harish K Thakur asks, Is there any guarantee that those who burn the flag of India today will honour it ? Will the national anthem and the national song be part of the State Assembly and State Functions? Will they welcome the Indian tourists or officials in the valley especially when the centre will have no legal authority to give protection to the Indians and the Kashmiri Hindus?²¹ Will the other two regions of the state be given an equal hand in deal? Again, the answer is No. The absence of jurisdiction of Supreme Court, Election Commission and Comptroller and Auditor General will give the state authorities a free hand and the chances of their becoming absolute and dictatorship to increase²²

Expressing deep concern Professor Hari Om rightfully observes, the adoption of a political system as the SAC envisages will at once mean:²³

- (a) Withdrawal of fundamental rights;
- (b) Virtual displacement of the J& K Constitution of 1957 by the highly anti people and the dictatorial J & K Constitutional Act of 1999.

²⁰ Ibid.

²¹ Ibid.

²² Ibid

²³ An Interview with Prof. Hari Om by Pinky Maurya in Jammu.

- (c) Revival of the visa system
- (d) Inability of the Parliament of India to curb the anti-national activities going on effectively in the state, as also intervention through president's rule, if there is a breakdown of the constitutional machinery in the state;
- (e) A committed judiciary and judges of the high court shall be the highest court of justice in the state who will be appointed by the state government and will retain their office so long as they enjoy its confidence;
- (f) Committed Sadar-I-Riyasat who will be elected by the state legislature shall remain responsible to it; and
- (g) Replacement of the parliamentary form of government by a local oligarchy, with the centre having no power whatsoever to legislate upon matters other than those concerning defence, external affairs and communications. But more than that, it would mean a grave threat to the country's unity, integrity, sovereignty and secular ethos"

While these recommendations offered a sound and viable political strategy to fulfill the popular urge for self-governance, the sincerity not only of New Delhi but Srinagar itself was in doubt. Its deliberations were neither inclusive nor participatory. No critic of the state's autonomy or leaders of the opposition parties were included in the committee and no formal talks were held with active or former militants or their political representatives.²⁴

Even after the submission of the Committee's report in April 1999, there has been little public debate either at the state or at

²⁴ Asghar Ali Engineer 'Can Autonomy be a solution ?' *Economic and Political Weekly*, July 1, 2000, pp. 2369-2360.

national level. Nor have formal negotiations, between the state and the central government representatives, begun.²⁵

The National Conference's support to the BJP led government at the centre has not helped its credibility on the issue. Farooq's critics have argued that he revived the agenda of autonomy only to cover up his non-performance in office and to bargain with the centre for more funds. It was the autonomy plank that won Farooq 1996 election. That year he managed to drown the slogan of 'azadi' with the cry for 'autonomy'. By playing the autonomy card, Farooq, in fact, is only admitting his vulnerability.²⁶

The track record of the party, since 1996 when it came back to power has been very poor. There is hardly any development in Kashmir. Unemployment continues and there are common complaints of corruption and inefficient administration. The popular resentment against the party has been very alert due to its inability to restrain the security forces from violating the rights of the people. The sense of resentment has been augmented more recently due to increasing incidents of the killing of innocent people.²⁷

The paradox that exists in the situation of Kashmir becomes clear from the fact that the day legislative assembly of the state passed the autonomy resolution the valley had observed a bandh called by Dukhtaran -e-milat and the Kashmir Bar to protest against the custodial killings.²⁸A.C Bose says,²⁹ "Farooq Addullah has visibly lost much of the popular support with which he was elected a few years ago. He has failed to ensure good governance and to restrain security forces. Even in the valley he is no longer

²⁵ Ibid.

²⁶ Ibid.

²⁷ <http://kashmir.org/miscellaneous/autonomy.html>

²⁸ Ibid.

²⁹ A.C. Bose, 'Autonomy Resolution : Hasty Rejection' Column, *Kashmir Times*, Thursday, July 6, 2000.

the hero. So, he had to do something to catch the imagination of Kashmiris. He diverted their attention from their day-to-day problems towards a confrontation with the centre. It might help him to re-establish his lost leadership. So SAC demands are outcome of his present political weakness, which left him with few alternatives.

Bhim Singh asks, 'where was this demand when Dr. Farooq Abdullah resigned and ran away in 1990 from the valley? In 1975, Sheikh Abdullah signed an agreement with Mrs. Indira Gandhi and ruled the state for five years with no demand for the so-called autonomy. So far as the internal autonomy is concerned, aspirations of the people of three regions cannot be met by introducing the concept of Regional Autonomy. The two commissions set-up by the government in this regard are nothing short of National Conference Commissions. In the name of autonomy, the present government is trying to change the demography of both the regions. It intends to subjugate the people of the three regions and deny them their due share of political power and economic development.

Those who are talking about the autonomy, they have to answer the first question regarding their discriminatory and biased attitude towards the people of Jammu and Ladakh regions:-

- (a) Why recommendations of the two former Chief Justices of India namely Gajendragadkar and Sikri were not honoured by the state government when both these commissions were appointed by the government itself?
- (b) Why the recommendations of Wazir Commission were not implemented to increase three districts in Jammu region when the commission itself was appointed by the state government?

- (c) Why three districts were increased in the valley without the recommendations of any commission whatsoever?
- (d) Who leased out land and property worth billions of rupees to the outsiders from Kathua to Kupwara including forests, marble mines, sapphire mines?
- (e) Who sold the property of the state in Calcutta, Delhi and Bombay which was preserved by the Maharaja in throw-away prices?
- (f) Who introduced the Central laws in Jammu and Kashmir?
- (g) Who has denied equality to the Muslims, Gujjars and Bakarwals of Jammu?
- (h) Who has demanded equitable representation in the legislature?

These questions should be taken up in order to seek answers from those who are advocating the cause of the so-called Autonomy. He further says, the main problem before the state of Jammu and Kashmir is restoration of peace, democracy and rule of law. Autonomy is not the solution of these problems. The people of all the three regions need justice, equity and equal share in power and economic development.

M.K. Dhar ³⁰ says, " The Indian government is under tremendous pressure from the United States to negotiate with the people of Kashmir and arrive at a satisfactory solution to silence international concern over this issue".

³⁰ Bhim Singh is the President of Jammu and Kashmir Panthers Party . Bhim Singh , *The Issue of Autonomy for Jammu and Kashmir: A Critique' in Politics of Autonomy in Jammu & Kashmir*, Hari Om (ed.), and others, Vinod Publishers, Jammu, 1999, pp. 106-108

American position is that the root cause of the trouble lies in local factors. So India must therefore enter into a dialogue with the Kashmiri people and address their political, economic and social grievances.

Ironically autonomy debate which is born of an inclusive Kashmiriyat has sharpened the communal chauvinism. The most serious impact has been in Ladakh. The Ladakh Autonomous Hill Development Council (LAHDC) adopted a resolution demanding that Ladakh should be separated from Jammu and Kashmir and should be made a Union Territory. The LAC described the autonomy motion as “mischievous and aimed at gradual secession of the state from the Union of India”.³¹ Gey Lobzang Nuyantak, President of the right-wing Ladakh Buddhist Association’s youth wing threatened armed struggle.³²

The ‘Autonomy’ factor in the emerging scenario

The spirit that underlines the autonomy proposals has touched many within and outside Jammu and Kashmir. In Ashok K. Behuria’s view, the popular response to autonomy dragged the militants to the peace process. It is another thing that the militant outfits don’t accept the autonomy formula but they have shown the eagerness to set the peace process through talk. The massacres at Pahalgan and other places during the ceasefire period proclaimed loudly the frustrations of the non-Kashmir militant factions. They

³¹ M.K. Dhar, “Farooq Abdulla’s Desperate Gable, OP-ED page 5, *Kashmir Times*, July 5, 2000.

³² [http://www.sat.org/India/J &K/.html](http://www.sat.org/India/J%20&K/.html).

saw in the Hizb offer the beginning of a peace process that will bypass them.³³

Both these events, the Jammu and Kashmir assembly's adoption of the autonomy resolution and a time-bound cease-fire by the Hirzbul Mujahideen seem unrelated. But it is a deep sense of apathy towards both the ruling National Conference and the militants that have compelled these forces to resort to these tactics as Harkishan Singh Surjeet says.³⁴

However, the result of the whole drama is the Kashmiris, militants and otherwise, have realized the necessity of a peace process. Farooq did a right thing by limiting the Hizb-ul-Mujahideen to participate in the democratic process.

Autonomy for All Round Development

The Jammu and Kashmir constituent assembly had named its head of state as Sadr-e-riyasat at a time when in the other princely states in India the heads of state were called Raj Pramukhs. As Baren Ray says, the real points of issue are not whether the head of the state be called Sadr-e-Riyasat and the head of the government Wazir-e-azam. What they are really demanding and have every right to demand is the entire programme of economic, social, educational, cultural, infrastructural and all round development of the state which should be completely in the hands of the freely elected representatives of the people of the state.³⁵

³³ Ibid. 10. P. 29.

³⁴ Harkishan Singh Surjeet, 'Kashmir : A Major Development' *Hindu*, August 1st 2000, p. -10.

³⁵ Baren Ray, 'Autonomy Question', *Journal of Peace Studies*, Vol. 7, Issue 4, July-Aug., 2000, pp. 9-15.

That is the meaning of the term 'Autonomy' which is the fundamental basis of Article 370.

However the demand for the autonomy has come at a time when the demand for the restoration of the federal character of India as a whole is very much on the agenda. It is a result of two factors, firstly, the very slow economic and all round progress at the grass root level in all the states.

Secondly, the authoritarian and dictatorial manner in which the central government has been treating the state governments. Baren Ray asks, "Has there ever been any basic principle thrown up by national movement for independence that would grant maximum autonomy to its diverse units?"³⁶

For him the concept of the right to autonomy of the status alone can meet the demands for a truly democratic polity and economic and all round development of the people.

Ashutosh Kumar finds some relevance in the autonomy debate of J & K in the political discourse. The relevance lies in the fact that for the first time since the inception of militancy in the state the autonomy issue has replaced the demand for 'azadi' in the political circles of Kashmir.³⁷

The people suffering for a decade from the violence unleashed both by the security agencies as well as militants have increasingly moved towards a solution to the 'problem' even if that is somewhat short of azadi.

³⁶ Ibid

³⁷ Ashutosh Kumar 'Some Thoughts on the Debate on Autonomy in the Jammu & Kashmir', *Mainstream Annual*, 2000, December 23, pp. 72-74.

It follows that even now the talks on greater autonomy can be revived with the NC government as well as other forces including the militants in the valley.

From internal autonomy to division of state

Beyond the valley of Kashmir, the demand of 'Greater autonomy' has evoked emotions of different kind. In the regions of Jammu and Ladakh, there has been strong opposition to the pre-1953 status. The strong wave of resentment against the report has been the result of the Kashmir central approach of the report. It not only ignores the plural realities of the state but also undermines the regional aspirations.

The most important reason for resistance to the report relates to its failure to incorporate the logic of internal devolution of power. This is a serious flaw in the report because these areas suffer from an acute feeling of regional deprivation.³⁸

These regions have complaints related to disproportionate share of political power, developmental grants, bureaucratic positions and employment opportunities among the three regions of the state. Kashmir, it is felt, generally gets a bigger piece of cake, leaving the other two regions perpetually deprived. Since no mechanism of internal devolution is suggested in the report, it is felt that the autonomy for the state may actually come to mean Autonomy for Kashmir only.³⁹

The state is known for its centralized structure of power and despite regional discontent, the successive state governments have resisted all demands for devolution of powers.

³⁸ Ibid.

³⁹ Ibid.

There has been no Panchayat election in this state in the last 22 years. The state has still to bring its Panchayat Raj act of 1989 at par with the 73rd amendment of the constitution of India.

The report of the RAC that was made public simultaneously with the report of SAC has not succeeded in removing the grievances of people of Jammu and Ladakh regions. Rather than going into the question of autonomy at the regional levels, it has recommended an altogether new classification of regions.

In accordance with this classification, Jammu gets divided into three regions and Ladakh into two regions. The suggested division is more or less communal in nature. In Ladakh for instance, the division takes place between the Buddhists of Leh and the Muslims of Kargil.

In Jammu similarly the Hindu dominated district are separated from the Muslim dominated area of Doda and Poonch-Rajouri. In fact a part of the Muslim-dominated area (Mahore tehsil) is carved out of the rest of the Hindu dominated districts to fit in the Muslim dominated area of Doda.

This kind of division, according to many critics of the report, is meant to scuttle the demand of regional autonomy within the state. By challenging the regional status of Jammu and Ladakh, the committee seeks to negate the very basis of regional autonomy.

The failure of National Conference to evolve a consensus in Jammu and Ladakh has led to many apprehensions in these regions. It has reinforced the demand for division of the state. Not only the RSS but Jamat-I-Islam also appears to be quite in favour of the division. The Ex-Chairman of the All Party Hurriyat

Conference, Syed Ali Shah Gilani, has suggested the possibility of trifurcation of the state.⁴⁰

The communal polarization within the state is being further accentuated through this discourse. Such communal response may not only endanger the plural reality of the state but may have serious implications for the regions of the Jammu and Ladakh.

Ladakh has already fallen prey to this kind of politics. Here, any kind of demand is politicized as the demand of the Buddhists of Leh or of the Muslims of Kargil. The demand for the Union Territory is also the demand of the Buddhists only. The Muslims of Kargil, who prefer to follow the politics of Kashmir do not identify themselves with this demand.⁴¹

The demand for a separate state for Jammu is raised mainly by those who claim to represent the Dogra Hindus, which will lead to a feeling of resoluteness among the Muslims of the region.

The RAC Committee came to the conclusion that there is an urgency in demarcating the regions in the state for the purpose of political and economic decentralization of power. Seen from this perspective RAC report exists in a political vacuum. By problematising the claims of Jammu and Ladakh to their regional status it takes the task of redefining the 'Region' and 'mapping' the regions of the state. Hence instead of existing classification of the state into three regions, the report suggests eight regions.⁴²

⁴⁰ Praveen Swami, 'The Autonomy Demand', *Frontline*, July 21, 2000, pp. 6-8.

⁴¹ The Times of India, Front Page, 12th May, 1992.

⁴² Ashutosh Kumar and Rekha Chowdhary, 'Regional Autonomy Committee Report for Jammu & Kashmir :A Critique', *Mainstream*, August 12, 2000, pp. 7-11.

Rather than suggesting the method of devolution of power within the state at the regional level, it starts deliberating on fundamental questions of definitions. A very deliberate confusion is created as regards the usage of the term 'Region' and 'Regional autonomy'.

What is interesting in the whole process as Ashutosh says is that the report while negating the existing definition of region, many a times uses the same definition. It is not only the case of redefining the region that makes RAC problematic but also the fact that it aims at totally demolishing the claims of Jammu and Ladakh for regional status.⁴³

The focus of the report, in fact, is mainly on the Jammu region. Although the arguments are ultimately extended to Kashmir and Ladakh, yet a major portion of the report deals with the premises that Jammu cannot and should not be treated as a region. Five different kinds of arguments are put forth against Jammu being considered as a region:⁴⁴

Firstly, the commission rejected the demand of regional autonomy as raised by the Jammu autonomy forum for establishing the regional committee of the state legislature. Reference has been made of Justice A.S. Andand committee report which argued that the hilly regions of the Jammu 'province' were 'ethnically and even agro-climatically different from each other. They face different problems due to their specific geographical locations.

⁴³ Ibid.

⁴⁴ Ibid.

The **second** argument is about the heterogeneity of the Jammu region. The committee notes that Jammu is heterogeneous culturally, linguistically ethnically and geographically.

Third, a historical argument is offered to contend that the modern day Jammu has no claim of being a region. Jammu did not exist as one region, but was regegrated into diverse regions as RAC says. So these regions were not historically part of Jammu but have existed either as small kingdom independently or as part of the Kashmir kingdom.

Fourth, the existence of divergent aspirations in different parts of the region is put forth to make a case against the cohesiveness of the Jammu region.

The **fifth** argument is based upon the situation of underdevelopment and backwardness of the hilly areas of the region. Referring to these disparities within the regions of the state it is argued that they make a strong case for redefining the region.

Hence, it follows that the report does make an attempt to provide an ethno-cultural and economic basis for suggesting the division of Jammu into three regions. No similar ground ironically has been built for division of either Kashmir or Ladakh region.

Moreover it is important to argue that to which are different ethnic groups in the valley and what are their historical ethno-cultural and territorial claims for being considered as regions etc. Strangely, such line of argument is totally missing.

Such reorganization of Jammu is perceived by many as placing the sub-regional claims within the Jammu region against its regional claims. It is pertinent to note that plurality being the

hallmark of Jammu region, there is no necessary antagonism between regional and sub regional identities and aspirations.

It is obvious that inadequacy of social and human development in the state cannot be explained in terms of the prevailing classification of provinces. Lack of political participation and the people as a whole can be one of the reason for lack of development. In this context the RAC recommendations about the establishment of Regional/provincial councils constituted on the basis of elected representation and having 25 percent of seats reserved for the women, is a welcome measure.

The two issues of the state autonomy and the regional autonomy are logically interconnected. It is not possible to achieve one without aiming at the other. The politics of autonomy of the regional or of the state level has failed to carry this logic forward.

Those who demand regional autonomy oppose the demand of autonomy for the state and those who demand state's autonomy hesitate to talk about the regional autonomy. ⁴⁵

⁴⁵ Praveen Swami, 'Towards Greater Autonomy', *Frontline*, 30 July, 1999, p. 39.

CHAPTER -IV

CONCLUSION

The issue of autonomy in the state is complex in nature. It not only involves the question of evolving the fair principles of centre state relations but also the questions of internal devolution of power and inter-regional relations.

In the specific context of autonomy, at least two dimensions of the state politics need to be analyzed-¹

- (i) The dimension of identity politics and
- (ii) The context of democracy

It is in these dimensions that the inter-linkage between autonomy and alienation gets established. From the perspective of identity politics, the issue of autonomy may be perceived as a quest for maintaining the distinct political identity of Kashmir. Kashmir's identity, though deeply rooted in ethno-cultural traditions has acquired a political form. In the post-1947 phase, there was theoretically, an expanded space left for the assertion of Kashmir's political identity. Yet, political processes of the state were intervened and distorted in the process. Such intervention in the state politics had a definite effect on the psyche of Kashmir. 1953, for instance, is one such moment which is registered in psyche of Kashmir as a period when identity of Kashmir was seriously compromised. Similar is the case of 1984, when Farooq's government was toppled.

In the political psyche of Kashmir, identity has assumed an important form. Alienation is directly linked to perceived 'dignity' and

¹ Rekha Chowdhary, "Alienation and Discourse on Autonomy of Jammu and Kashmir: Some theses", in *Politics of Autonomy in Jammu and Kashmir*, Hari Om (ed.) and Others, Vinod Publishers, Jammu, 1999, pp. 73-77.

'identity'. It is in this context the issue of Autonomy is being invoked. The political psyche of Kashmir which has come to reflect the discontent vis-à-vis centre-state relations need to be understood in the context of structuring of democracy in the state. Democracy could not be properly rooted in the state Rekha says, 'Devoid of opposition and dissent, the politics of Kashmir could never acquire an open and competitive character. The structure of competitive politics, in fact, was systematically damaged through various mechanisms available with political elite.'²

The issue of autonomy is linked with the socio-economic and other political dimensions of alienation. Problem of alienation cannot be reduced to the problem of autonomy only. Autonomy cannot be guaranteed by mere constitutional arrangements. The erosion of autonomy has taken place, notwithstanding the constitutional guarantees of Autonomy- i.e., Article 370 etc. Hence, Autonomy can best be operated in the structure of democracy.³

As the political situation of Kashmir reveals, the erosion of autonomy is basically a process of erosion of democratic structures. Hence the issue of autonomy has to be placed along with the issue of democratisation of politics. The responsiveness and openness of the political institutions needs to be ensured. The accountability and transparency needs to be maintained. The most important of all is to initiate a process of interactive politics with sufficient space for articulation and channelisation of discontent. It is the failure of politics of Kashmir to assume an interactive and competitive character that the problems of alienation as well as erosion of autonomy have taken place.⁴

² An interview with Prof. Rekha Chowdhary by Pinki Maurya in Jammu.

³ Ibid, 1

⁴ Ibid. 1

In the absence of strong traditions of democracy or institutionalization of democratic processes, autonomy might become counter-productive. The experience of the state has clearly revealed that autonomy operating in a situation of stifled democratic structures is bound to produce a pattern of politics which will be arbitrary and authoritarian.⁵

The ethical basis of politics requires that any political demand that is politically articulated must relate it to the concerns of people. The discourse on autonomy suffers from the same limitations from which all politics in Kashmir suffers—that it is mobilizing the community without any ideological content.

Balraj Puri says, “The transfer of power from the centre to states, to regions, districts, blocks and Panchayats is only a uni-dimensional form of federalism. In itself, it would not ensure pluralism, democracy, freedom and popular participation. A true federal system should be as much federal vertically as horizontally. Horizontal federalism means power is shared through a system of checks and balances at every stage, right from the central to Panchayat level. It should not be concentrated in a single institution, but should have a plurality of institutions at every level to check the proper use of power. While making constitutional provisions of all sorts of identities, two things have to be ensured: ⁶

Firstly, no single identity dominates any other identity and becomes an exclusive identity. For in present times no single identity can satisfy all human urges. Secondly, every identity must respect the identity of an individual who should be able to survive the onslaught of the rest of the community”.

⁵ Ibid. 1

⁶ An Interview with Mr. Balraj Puri by Pinki Maurya in Jammu.

The autonomy discourse that holds the centre responsible for betraying the Kashmiris has substantial appeal in the valley. It has always stirred the emotions of the people of Kashmir. Despite the scepticism, there was a feeling that the debate had led to some movement. After years of crisis, the central government has been forced to think and respond to a concrete proposal regarding Kashmir.⁷

The movement for autonomy suffers from the lack of a concrete agenda. The brusque rejection of the 'Autonomy resolution' by the centre has serious implications. The mistrust of the centre, that underlies the feeling of alienation among the people of Kashmir has certainly increased. The feeling that the successive governments at the centre, have abandoned the people of Kashmir has been intensified.⁸

Alienation in Kashmir, is a deep-rooted political response that has taken place in the last 50 years. Central intervention in the politics of state started, with the dismissal of Sheikh from power in 1953.

Successive central governments were directly or indirectly responsible for encouraging political vandalism. As Asghar Ali Engineer says, "The original sin was committed by the Congress government at the centre and at the time of Jawarharlal Nehru itself. After the arrest of Sheikh Abdullah, in August 1953 the Centre was more than anxious to water down Kashmir's autonomy. It wanted the state under its grip."⁹

By the time Sheikh Abdullah was released, all autonomy measures had been surrendered by Kashmir 'voluntarily'. Even Article

⁷ Sumanta Banerjee, "Beyond the autonomy debate", *Economic and Political Weekly*, July 22, 2000, pp. 2605-2606.

⁸ Nida-I-Mashiriq, "Autonomy Rejected Again" *Kashmir Trends*, Vol. X. Issue 444, May 27, 2002, pp. 5828.

⁹ Asghar Ali Engineer, "Can Autonomy be a Solution", *Economic and Political Weekly*, July 1st, 2000, pp. 2359-2360.

370 has been made an election issue since late 1980s. It became a part of the Hindutva agenda itself. It had an aversive impact on the minds of the people of Kashmir.

Successive elections were rigged in Kashmir to make sure that only pliable governments were formed. The fact is that Central government never allowed Kashmir to function like any other state.¹⁰

Autonomy is the best option both for the Kashmiris and for the central government as according to Asghar. Besides this the Indian state should respect the human rights of the Kashmiris and work for the economic development of the state.¹¹

The political reality of the state of Jammu and Kashmir is marked by heterogeneity and divergent political aspirations. It calls for a politics that should devise suitable political mechanisms for handling such plurality.

Both the issues of regional and sub-regional deprivation are sought to be addressed through solutions based on communal consideration. Division of state and region has a circular relationship with one reinforcing the other. However without addressing the discontent at the root, this divisive politics will be difficult.

For taming these political emotions, 'autonomy' could have been a useful political mechanism. It could have removed the basis of inter-regional tensions. It could also have also build a consensus in favour of the state. However, the National Conference failed to appreciate the complex political realities of the state. Its politics of autonomy has proved to be counter-productive at the regional and sub-regional levels. Rather than inspiring confidence among the

¹⁰ Ibid

¹¹ Ibid

various regions and identities, it has only increased the gulf between them.¹²

N.Ram, editor of the Frontline says “The politics of the National Conference and Dr. Abdullah can justly be criticized for its opportunism, but there is absolutely nothing secessionist or extremist about it. No reasonable person can go along with the SAC’s recommendation that all areas of constitutional authority other than defence, external affairs and communication should be restored to the state. Nor can it be held that autonomy as demanded by the National Conference is the natural antidote to extremist and secessionist activities in the state. So there should be reinstatement and expansion of autonomy within the framework of Article 370 and without bringing back the pre-1953 status”.¹³

Despite the constant bloodshed and growing disillusionment among the people of Kashmir there is still a hope to win their hearts and minds. People are generally averse to violence and communalism. A first hand survey conducted in Jammu clearly revealed that there is no such feeling of communalism among people. They have close friends from different religions and celebrate each other’s festivals together.¹⁴

The problem of ordinary people is not security or communication but economic hardships more than anything else. As I have shown in the table No. 1.4 through survey, many educated and unemployed people are looking for jobs. I met with a rude shock when I enquired about the performance of the state government from the people. This I have shown in table No. 1.3. The response is not only

¹² Sukumar Muralidharan., “From Demand to Dialogue” Frontline Aug. 4, 2000, pp. 23-26.

¹³ N.Ram, “Autonomy for J &K”, Frontline Editorial July 21, 2000, p.8.

¹⁴ A First Hand Sample Survey Of 100 People Was Conducted in Jammu During My Research from 3rd July 2002-6th July 2002.

negative but devoid of any hope too. How pathetic, the rate of development in the state is, can be assessed from the fact that the man who xeroxed my questionnaire, I found was actually a professionally qualified Electronic Engineer. The state government is far away from the welfare government it poses to be. Another person, who has been associated with computers for as long as twenty years now, barely manages to make his two ends meet and on learning that I was from Delhi, he pleaded if I could help him out in some way. Avenues of employment are limited in state. Unemployment is a combustible material which can or rather which has incited them to go across the border for training and getting arms.

Ramesh Vinayak blames the Chief Minister who promised employment and reconstruction for the ravaged state, but failed to deliver it half. He says, even the programme of rehabilitation of families was hit by the militants which evoked tremendous response and all hope fell short of the expectations. The state government has not provided any money for this scheme for the past two years. The centre too has stopped its matching grant.¹⁵

In the past two years four years, Farooq's government has done little to rebuild schools, hospitals and bridges. Of the total number of damaged bridges -157 major and 244 minor only 130 have been repaired. Similarly, of the 828 schools that were gutted only 489 have been rebuilt. Against Rs. 14.44 crore needed to repair school buildings, only Rs. 30 lakh were provided in the year 1999-2000.¹⁶

"Farooq has frittered away the chance of turning the tide", says former Union Home Minister Mufti Mohammed Sayeed. Medical superintendent Dr. M.A. Attar says, "things have really deteriorated in the last two years. Each bed has two to three patients, most of whom

¹⁵ Ramesh Vinayak "Bridges Damaged.....", India Today Feb. 7, 2000, pp. 21-23/

¹⁶ Ramesh Vinayak & Harinder Baweja, 'Faltering Farooq', India Today, 7 February, 2000, p. 25

cannot be given adequate medication. As compared to Rs. 90, 000 provided for life saving drugs last year only Rs. 10,000 was sanctioned this year”.

The state is spending more on administration than on development. For implementing a plan of Rs. 1,000 crore, it spends Rs. 675 crore on salaries. It spends Rs. 675 crore on the purchase of power but is able to collect tariff worth Rs. 100 crore.¹⁷

No doubt, the situation prevailing in the Jammu and Kashmir, is a result of the reluctance on the part of both the centre and the state governments to take any considerable step in gaining the confidence of the people. People blame the central government more than the state government for not fulfilling their expectations. This is shown in the pie diagram No.2.¹⁸

It is actually important not to let the people down. Lack of faith in the political mechanism will push them once again into the hands of violence preaching people. The National Conference government urgently needs to streamline the institutional mechanisms for redressing the people's grievances. It should activate its cadres to rejuvenate the political channels at the grassroots level.

The proposed internal restructuring of the state into eight provinces will complicate the situation even further. Both National Conference and Central Government have failed to recognize that it would not only strengthen the divisive forces within the state but will also help Pakistan to justify its claim on Kashmir on the grounds of the two-nation theory.¹⁹

¹⁷ Nasir. A. Naquash, "Kashmir from Crisis to Crisis", APH Publishing House, 1997, pp. 151-152.

¹⁸ Ibid. 14

¹⁹ Balraj Puri., "How not to Debate Issue of Autonomy", Economic and Political Weekly, Aug. 19, 2000, pp. 2997-2998.

There is a need to satisfy the popular urges of self-governance through restructuring the state's relationship with the Indian state. It is also required that to create a new federal relationship be created within Jammu and Kashmir, which will allow a healthy social, cultural and political space for people.

Apparently, people seem to be indifferent to the whole debate of autonomy. One of the reason for such indifference can be the lack of credibility of the National Conference in the valley. There are many who question the sincerity of the National Conference in pursuing the goal of autonomy, when the party has shown insensitivity towards the common concerns of the people.

My enquiries were met with very vague responses about the 'concept of autonomy' from the people of Kashmir. For most of them it meant the freedom of their state from Central government, while for the people who have migrated from Kashmir meant the 'complete freedom' or 'azadi' of the valley. This I have represented in the pie diagram no. 1.²⁰

Moreover people are not fully aware of these all the three; SAC, RAC and Balraj Puri's committee reports. As I mentioned in the last chapter the day legislative assembly of the state had passed the autonomy resolution, the valley had observed a bandh to protest against the custodial killings. The indifference of people on this issue has been shown through table No.-1.2.

Notwithstanding the limitations of the reports, their significance lies in the fact that, they have revived once again the opportunity for debate on the autonomy issue. There is already so much distrust in the state, that a hasty decision of centre to reject outrightly the demand of autonomy would add fuel to the problem. It is necessary

²⁰ Ibid. 14

that the union cabinet discuss 'devolution' which it has referred to while rejecting the autonomy resolution. The best forum for it will be the inter-state council and an all party meeting. Neither of them have been mentioned by the spokespersons of the government.²¹

The objection that the jurisdiction of the Supreme Court, the Election Commission of India and the Comptroller and Auditor General must not be eliminated, is correct. But the question is; what has been the role of the first two in guaranteeing human rights or free and fair elections? However, this is also true that if Central government gives a free hand to the state government for the working of these institutions again there is no guarantee of proper functioning of these institutions.²²

So, the need of the hour is to find a way common to these two extremes. There has to be a wider forum for discussing autonomy in the context of centre-state relations and within the framework of Article 370. This has to be reassured that these institutions will not act as the Custodian of what is perceived as 'Indian' interests and their impartiality will be beyond suspicion.

Likewise, while rejecting the ongoing demand for the trifurcation of the state on the command lines, the government of India should direct the state government to hold the Panchayati Raj elections at the earliest after amending the existing Panchayati Raj Act. Municipal bodies should be introduced and upgraded in the cities as has been demanded for long. Elections should be held in a free and fair manner.

The heads of the district boards should not be the ministers but the local representatives. Non-governmental organizations should

²¹ Surendra Mohan, "Autonomy Debate", Janata, Aug. 13, 2000, pp. 2-5.

²² Ibid., 3

be involved in the promotion of culture, language and art in the state. The existing Leh Autonomous Development Council should be financially and administratively empowered.²³

A few suggestions have been made in this regard. Firstly, the Sangh Pariwar should give up its insistence on removing Article 370 from the constitution. The centre should restore all those measures which were taken away from the state. Autonomy of the sub-regions of Jammu and Ladakh should be left to the people of the state to decide for which eminent people of the state like Balraj Puri and others are striving.²⁴

Secondly, the union government should take urgent measures to stop military and paramilitary forces. This should be given top priority to win over the hearts of the people.

Thirdly, the autonomy issue of the state is interlinked with the wishes of the people of the state. Any step in this direction, therefore should involve the people of the other two regions also. The reports SAC and RAC represent the view of only few people especially of the ruling National Conference and not of the majority. Even if it earns the backing of the majority, any step in this direction would affect the manifestoes of the other regional parties in India. A mid-way formula can be devised in which some of the less important extensions to the state could be withdrawn.

Saif-ud-din-soz says, "To my mind, the latest scenario in the valley offers to the union of India yet another chance for a negotiated settlement on democratic lines and within the ambit of the constitution of India. A positive political response from government of India would be to offer to the people of the state a settlement by

²³ Rekha Chaudhary, "Alienation and Discourse on Autonomy of J& K" in "Politics of Autonomy in J&K" ed. Hari Om and others, 74-78.

²⁴ Ibid,9.

restoration of autonomy within the frame of the Delhi agreement. My perception on this question is clear. The restoration of autonomy within the frame of Delhi agreement of 1952 would give a sense of achievement to the people of Kashmir. While I plead for settlement within the frame of Delhi agreement, I do not suggest that it will be acceptable to present day militants and their above ground leaders. But, the populace seems to be in a mood for a settlement that gives to it a sense of achievement.”²⁵

All the three regions will be woven into the texture of a broader political structure. It would in no case be a situation of one region dominating the other. Economic package too is very important, particularly for people who have suffered a great deal of deprivation during the years of strife.

Ved Bhasin mentions, “there is no use of granting more powers to the state because it is not going to solve the crisis of Kashmir. Farooq Abdullah has come with the autonomy plank to blackmail people. autonomy is flowing from top to bottom, but it should flow from bottom to the top’.²⁶

The main problem before the state of Jammu and Kashmir lies not in the unbridled autonomy but in the devolution of powers. Suggestions can be made on the line of Balraj Puri that an elected regional authority can be created with executive, legislative and taxation powers at the regional level. For economic autonomy, he has proposed power to the decentralized institutions to realize resources and to decide priorities and equitable formula for the devolution of funds and to, preserve cultural autonomy of various ethnic identities for safeguarding and promoting their languages and cultures.

²⁵ Saif-ud-din-soz, “Delhi Agreement, 1952- The Way Out !” in, Why Autonomy to Kashmir? J.K. Offset Press, 1995, p. 29.

²⁶ An interview with Mr. Ved Bhasin by Pinki Maurya in Jammu.

In the same vein it can be suggested that the regional autonomy is best achieved by amending the old Jammu and Kashmir Panchayat Act and to bring it in line with 72nd and 73rd amendment acts of our constitution.

The state needs a multi-layered package of autonomy that extends beyond the state to the regional and sub-regional levels, unless there is a surety of power flowing to the grass roots. There is every possibility that dangerous divisive tendencies will flow. In fact, free elections, democratic decentralization and wider autonomy of Jammu and Kashmir within India can prove fruitful.

To conclude, any meaningful realization of autonomy would not only mean working out the fair and just principles of relationship between the state and the union but also the internal devolution of power and inter-regional harmony.

Table 1.2
“Awareness About The Autonomy Reports”

	State autonomy committee	Balraj Puri regional autonomy committee	Regional autonomy committee
Yes	30	20	25
No	10	65	30
Partially	67	15	45
Total	100		

Source : Sample Survey of 100 people conducted in Jammu during 3-7-2002 to 6-7-2002.

Table 1.3

“Are you happy with the performance of the government”

	Jammu	Kashmir	Ladakh	Total
Yes	80	15	5	
No	0	0	0	100

Source : Sample Survey of 100 people conducted in Jammu during 3-7-2002 to 6-7-2002.

Table 1.4
“Expectations from the Government”

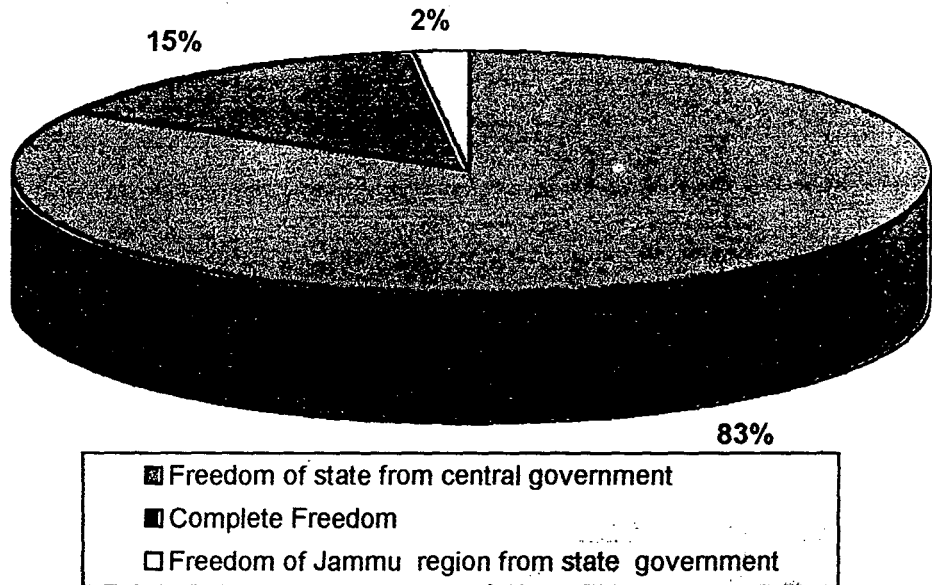
	Jobs	Security	Good governance	All
Jammu	65	10	10	80
Kashmir*	7	3	4	15
Ladakh•	3	1	0	5
Total				100

* People who have migrated from Kashmir

• People who have migrated from Ladakh

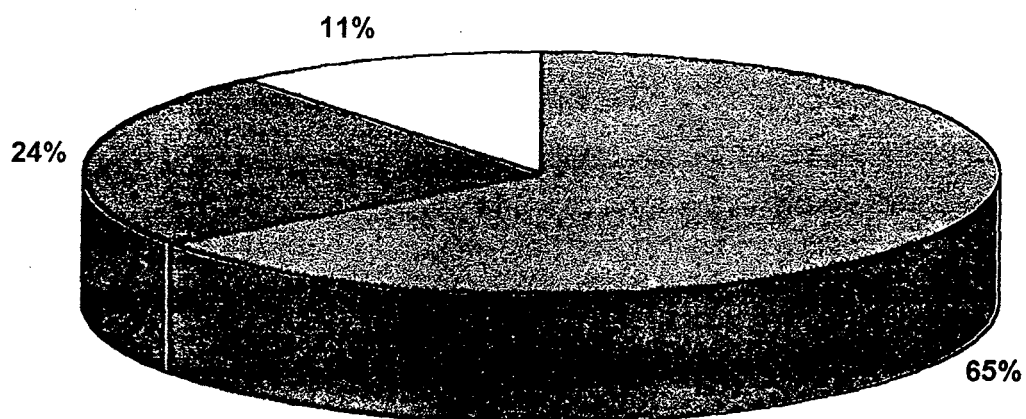
Pie Diagram No. 1

People's Understanding of "Autonomy" Concept



Pie Diagram No. 2

“Whom Do You Blame for the Discontent Prevailing in the State of Jammu and Kashmir ?”



■ Central Government ■ State Government □ Terrorists

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APPENDIX

When you hear a
wounded valley cry...

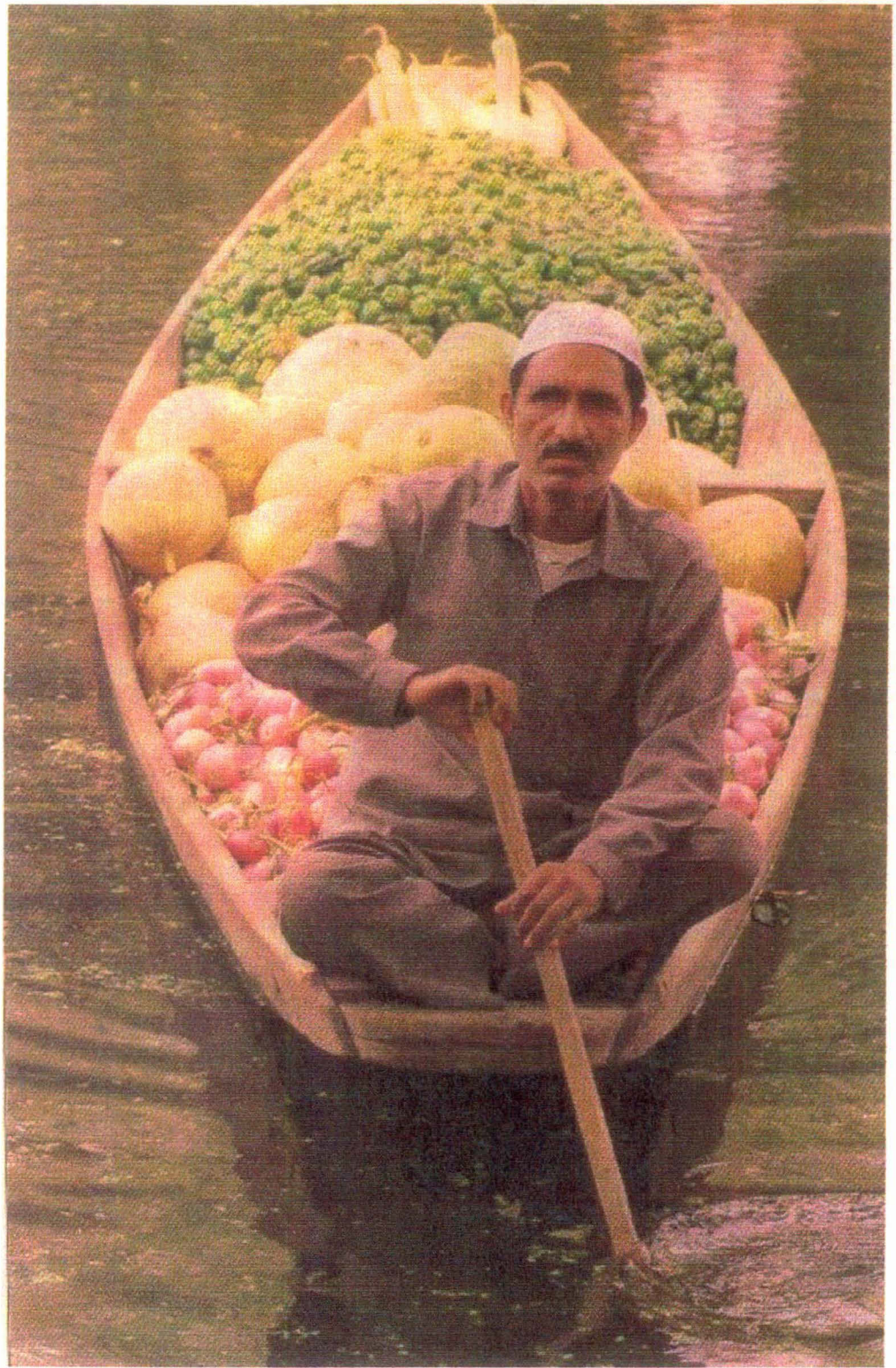


Do you turn and walk away ?

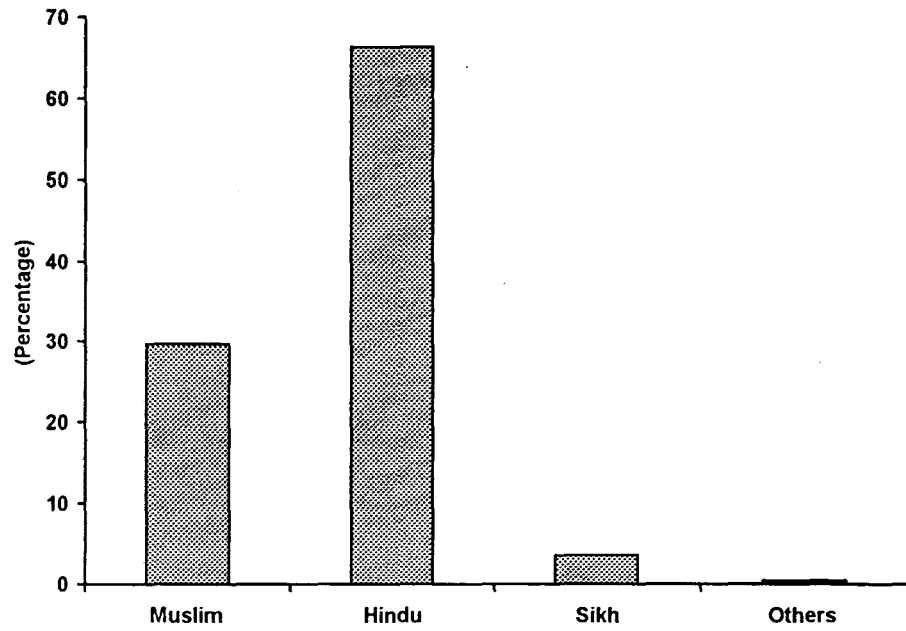
Save Kashmir

THE PARTIES' QUIET CONFERENCE, I.C.

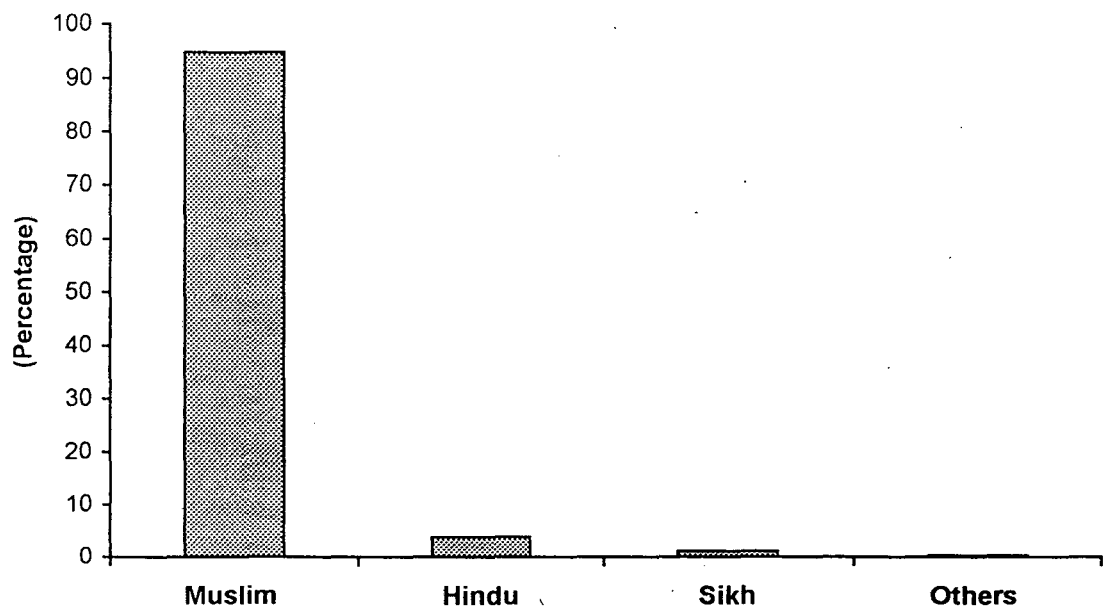




Jammu Region

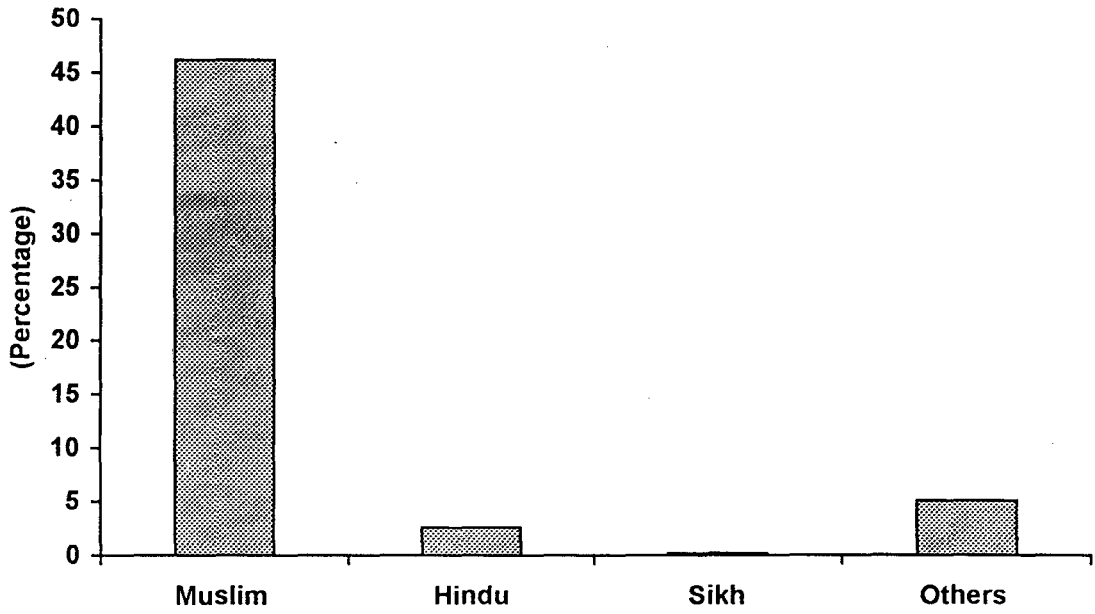


Kashmir Region

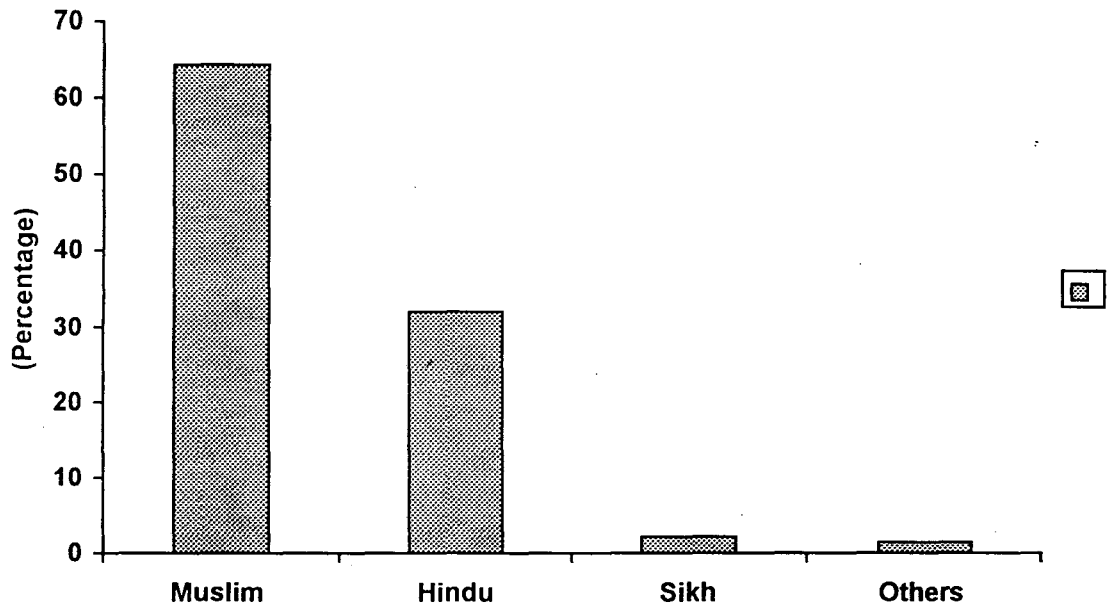


Estimated population : 7,09, 540 Persons

Ladakh Region



Jammu & Kashmir



Total Population 5.98 million

C. IDENTITY CONSCIOUSNESS / CONCEPT OF AUTONOMY

Q1. What is your religion?

- a) Hindu
- b) Muslim
- c) Sikh
- d) Others (specify)

Q2. Which region you belong to ?

- a) Jammu
- b) Kashmir
- c) Ladakh

Q3. Which Language do you speak?

- a) Kashmiri
- b) Dogri
- c) Ladakhi
- d) Punjabi
- e) Gojri
- f) Others (specify)

Q4. Do you have problems mixing with people belonging to other religion?

- a) Yes
- b) No
- c) Not much

Q5. Do you have friends from other religion?

- a) Yes
- b) No
- c) Very Few

Q6. Do you celebrate festivals of other religious groups?

- a) Yes
- b) No
- c) Not at all

Q7. Do you want separate educational institutions or other culturally autonomous institutions?

- a) Yes
- b) No
- c) Can't say

Q8. What does "Autonomy" mean to you?

- a) Freedom of your region from State Govt.
- b) Freedom of your State from Central Govt.
- c) Complete freedom.

Q9. Do you find your community politically neglected?

- a) Yes
- b) No
- c) Can't say

Q10. Do you know about state autonomy committee report presented in J&K Assembly?

- a) Yes
- b) No

Q11. Are you aware of its recommendations?

a) Yes

b) No

c) Partially

D. POLITICAL / CONSTITUTIONAL ISSUES

Q1. Do you know about Article 370?

a) Yes

b) No

c) Partially

Q2. Do you think “temporary” word in Article 370 should be substituted by “special”?

a) Yes

b) No

c) Can't say

Q3. Do you want your own election commission?

a) Yes

b) No

c) Can't say

Q4. Do you want your own Supreme Court?

a) Yes

b) No

c) Can't say

Q5. Do you have any problems with already existing constitutional institutions like Supreme Court, Election Commission etc.?

a) Yes

b) No

c) Can't say

Q6. Do you want to call your Governor as “Sadar-e-Riyasat”?

a) Yes

b) No

c) Doesn't matter

Q7. What changes you want in your constitution or laws?

Q8. What do you expect from your Government?

Q9. What facilities it should provide for your welfare?

¹ The Constitution (Application to Jammu and Kashmir) Order, 1954

C.O.48

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to make the following Order:-

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order 1954.
- (2) It shall come into force on the fourteenth day of May 1954, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1950.

2. The provisions of the Constitution which in addition to article 1 and article 370, shall apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:-

1. The preamble.
2. Part I: To article 3, there shall be added the following further proviso namely:-

“Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.”

3. Part II: (a) This part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

- (b) To article 7, there shall be added the following further proviso namely:-

“Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who after having so migrated to the territory now included in the Pakistan, returns to the territory of that State under a permit for resettlement in that State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India”.

¹ Published in the Gazette of India, Extraordinary, Part II, Section 3 dated 14th May, 1954.

4. Part III:- (a) In article 13, references to the commencement of the Constitution shall be construed as reference to the commencement of this Order.

(b) In clause (4) of article 15, the reference to Schedule Tribes shall be omitted.

(c) In clause (3) of article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(d) In article 19, for a period of five years from the commencement of this order:-

(i) in clause (3) and (4), after the words "in the interest of" the words "the security of the State or" shall be inserted;

(ii) in clause (5) for the words "or for the protection of the interests of any Scheduled Tribes" the words "or in the interests of the security of the State" shall be substituted; and

(iii) the following new clause shall be added, namely:-

'(7) The words "reasonable restrictions" occurring in clause (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable'.

(e) In clauses (4) and (7) of article 22, for the word "Parliament", the words "the Legislature of the State" shall be substituted.

(f) In article 31, clauses (3), (4) and (6) shall be omitted; and for clause (5) there shall be substituted the following clause, namely:-

"5 Nothing in clause (2) shall effect--

(a) the provisions of any existing law; or

(b) the provisions of any law which the State may hereafter make--

(i) for the purpose of imposing or levying any tax or penalty; or

(ii) for the promotion of public health or the prevention of danger to life or property; or

(iii) with respect to property declared by law to be evacuee property".

(g) In article 31-A, the proviso to clause (1), shall be omitted; and for sub-clause (a) of clause (2), the following sub-clause shall be substituted, namely:-

“(a) “estate” shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes-

- (i) sites of buildings and other structures on such land;
- (ii) trees standing on such land;
- (iii) forest land and wooded waste;
- (iv) area covered by or fields floating over water;
- (v) sites of jandars and gharats;
- (vi) any jagir, inam, muafi or mukarrari or other similar grant; but does not include-
 - (i) the site of any building in any town, or town area or village abadi or any land appurtenant to any such building or site;
 - (ii) any land which is occupied as the site of a town or village; or
 - (iii) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area which a town planning scheme is sanctioned”.

(h) In article 32, clause (3) shall be omitted; and after clause (2) the following new clause shall be inserted, namely:-

“(2-A) Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part”.

(i) In article 35--

- (i) references to the commencement of the Constitution shall be construed as reference to the commencement of this Order;
- (ii) in clause (a) (i), the words, figures and brackets “clause (3) of article 16, clause (3) of article 32” shall be omitted; and
- (iii) after clause (b), the following clause shall be added namely:-

“(c) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before or after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this part, but any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof”.

(j) After article 35, the following new article shall be added namely:-

“35-A. Saving of laws with respect to permanent residents and their right: Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,-

(a) defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) conferring on such permanent residents any special right and privileges or imposing upon other persons any restrictions as respects-

(i) employment under the State Government;

(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

(iv) right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part”.

5. Part V:- (a) In article 54 and 55, references to the elected members of the House of the people and to each such member shall include references to the representatives of the State of Jammu and Kashmir in that House; and the population of the State shall be deemed to be forty-four lakhs and ten thousand.

(b) In the proviso to clause (1) of article 73, the words “or in any law made by Parliament” shall be omitted.

(c) Article 81 shall apply subject to the modification that the representatives of the State in the House of the people shall be appointed by the President on the recommendation of the Legislature of the State.

(d) In article 134, clause (2), after the words “Parliament may”, the words “on the request of the Legislature of the State” shall be inserted.

(c) Articles 135, 136 and 139 shall be omitted.

(f) In articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.

(g) In article 151, clause (2) shall be omitted.

6. Part XI:-(a) In article 246, the words, brackets and figures "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1) and clauses (2), (3) and (4) shall be omitted.

(b) Articles 248 and 249 shall be omitted.

(c) In article 250, for the words "to any of the matters enumerated in the State List", the words "also to matters not enumerated in the Union List" shall be substituted.

(d) In article 251, for the words and figures, "articles 249 and 250", the word and figures "article 250" shall be substituted, and the words "under this Constitution" shall be omitted; and for the words "under either of the said articles", the words "under the said article" shall be substituted.

(e) To article 253, the following proviso shall be added, namely:-

"Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State".

(f) In article 254, the words, brackets and figure "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2)" and the words "or as the case may be, the existing law", occurring in clause (1), and the whole of clause (2) shall be omitted.

(g) Article 255 shall be omitted.

(h) Article 256 shall be renumbered as clause (1) of that article, and the following new clause shall be added thereto, namely:-

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State; and in particular, the said State shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India".

(i) Article 259 shall be omitted.

(j) In clause (2) of Article 261, the words "made by Parliament" shall be omitted.

7. Part XII:-(a) Clause (2) of article 267, article 273, clause 2 of article 283, articles 290 and 291 shall be omitted.

(b) In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

(c) In articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

8. Part XIII:-(a) In clause (1) of article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in Seventh Schedule" shall be omitted.

(b) In article 306, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

9. Part XIV:- In article 308, after the words "First Schedule", the words "other than the State of Jammu and Kashmir" shall be added.

10. Part XV:-(a) Article 324 shall apply only in so far as it relates to elections to Parliament and to the offices of President and Vice President.

(b) Articles 235, 326, 327, 328 and 329 shall be omitted.

11. Part XVI:-(a) In article 330, references to the "Scheduled Tribes" shall be omitted.

(b) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.

(c) In articles 334 and 335 references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

12. Part XVII:- The provisions of this Part shall apply only in so far as they relate to-

(i) the official language of the Union;

(ii) the official language for communication between one State and another, or between a State and the Union; and

(iii) the language of the proceedings in the Supreme Court.

13. Part XVIII:-(a) To article 352, the following new clause shall be added, namely:-

"(4) No proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) unless it is made at the request or with the concurrence of Government of that State."

(b) Articles 356, 357 and 360 shall be omitted.

14. Part XIX:-(a) In article 361, after clause (4), the following shall be added, namely:-

"(5) The provisions of this article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State".

(b) Articles 362 and 365 shall be omitted.

(c) In article 366, clause (21) shall be omitted.

(d) To article 367, there shall be added, the following clause, namely:-

(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir.

(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers;

(c) references to a High Court shall include references to the High Court of Jammu and Kashmir;

(d) references to the Legislature or the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State;

(e) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the law in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State; and

(f) references to the Rajpramukh shall be construed as references to the persons for the time being recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person for the time being recognised by the President as being competent to exercise the powers of the Sadar-i-Riyasat".

15. Part XX: To article 368, the following proviso shall be added, namely:-

“Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Article 370”.

16. Part XXI:- (a) Articles 369, 371, 373, clauses (1), (2), (3) and (5) of article 374 and articles 376 to 392 shall be omitted.

(b) In article 372-

(i) clauses (2) and (3) shall be omitted.

(ii) references to the laws in force in the territory of India shall include references, to Hidayats, Ailans, Ishtihars, circulars, Robkars, Irshads, Yadashts, State, Council Resolutions, Resolutions of the Constitution Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir; and

(iii) references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(c) In clause (4) of article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, 1996, and references to the commencements of the Constitution shall be construed as references to the commencement of this Order.

17. Part XXII: Articles 394 and 395 shall be omitted.

18. First Schedule.

19. Second Schedule : Paragraph 6 shall be omitted.

20. Third Schedule: Forms V, VI, VII & VIII shall be omitted.

21. Fourth Schedule.

22. Seventh Schedule:- (a) In the Union List-

(i) for entry 3, the entry “3: Administration of cantonments” shall be substituted;

(ii) entries 8, 9, 33 and 34, the words “trading corporations including” in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words “inter-State migration” in entry 81, and entry 97 shall be omitted;

(iii) for entry 53, the entry "53 Petroleum and Petroleum products, but excluding the regulation and development of oil-fields and mineral oil resources; other liquids and substances declared by Parliament by law to be dangerously inflammable" shall be substituted; and

(iv) in entries 72 and 76, the reference to the States shall be construed as not including reference to the State of Jammu and Kashmir.

(b) The State list and the Concurrent list shall be omitted.

23. Eighth Schedule.

24. Ninth Schedule : After entry 13, the following entries shall be added, namely:-

14. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII of 2007).

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006).

16. The Jammu and Kashmir Tenancy Act (No. II of 1980).

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006).

18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995).

19. Order No. 6 H of 1951 dated : 10th March, 1951 regarding resumption of Jagirs and other assignments of Land Revenue etc.

20. The Jammu and Kashmir State Kuth Act (No. I of 1978)".

(Sd.) RAJENDRA PRASHAD,
President.

Dr. Rajendra Prasad's note to Shri Jawahar Lal Nehru dated
September 6, 1952.

Rashtrapati Niwas

Simla

6th September 1952

My dear Prime Minister,

When you last saw me, I promised to send you a note on the legal and Constitutional aspect of the proposal to substitute a system of elected head for the Jammu and Kashmir State in place of the existing Rajpramukh. I now enclose a note for your consideration. In view of the complexity and importance of the issues, involved, I have no doubt that the Attorney General and the Law Minister will be consulted.

I have received a memorial from the Maharaja, a copy of which, I understand, has also been received by you. Presumably, the Minister for States has also received a copy. I shall be glad in due course to have the comments of yourself and the Minister for States on this memorial.

I am leaving Simla on the morning of Sunday, the 7th September for places in the interior of Himachal Pradesh, but will be back by the evening of Tuesday, the 9th September.

I am sending copies of this letter with enclosure to the Ministers for Education, Defence and States.

Yours sincerely,

Rajendra Prasad

Shri Jawaharlal Nehru,
Prime Minister

**THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR)
ORDER, 1950**

C.O. 10

In exercise of the powers conferred by clause (1) of article 370 of the Constitution of India, the President, in consultation with the Government of the State of Jammu and Kashmir, is pleased to make the following Order, namely:-

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 1950.

(2) It shall come into force at once.

2. For the purposes of sub-clause (b) (i) of clause (1) of article 370 of the Constitution, the matters specified in the First Schedule to this Order, being matters in the Union List, are hereby declared to correspond to matters specified in the Instrument of accession governing the accession of the State of Jammu and Kashmir to the Dominion of India as the matter with regard to which the Dominion Legislature may make laws for that State; and accordingly, the Power of Parliament to make laws for that State shall be limited to the matters specified in the said First Schedule.

3. In addition to the provisions of article 1 and article 370 of the Constitution, the only other provisions of the Constitution which shall apply in relation to the State of Jammu and Kashmir shall be those specified in the Second Schedule to this Order, and shall so apply subject to the exceptions and modifications specified in the said Schedule² and to the modification that all references in the said provisions to the Rajpramukh shall be construed as references to the Sadar-i-Riyasat of Jammu and Kashmir.

Published with the Ministry of Law Notification No. C.O. 10, dated the 26th January, 1950, Gazette of India, Extraordinary, 1950, Part II, Section 3(i), page 673, superseded by C.O. 48.

Added by C.O.43 dated 15th November, 1952.

THE FIRST SCHEDULE

(See paragraph 2)

[Note-- The number of each entry in this Schedule is the number of the corresponding entry in the Union List.]

1. Defence of India and every part thereof including preparation for defence.
2. Naval, military and air forces; and other armed forces of the Union.
3. Delimitation of cantonment areas, local self-government in such areas the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy for the purpose of defence and mineral resources necessary for its production.
9. Preventive detention for reasons connected with Defence, Foreign Affairs or the security of India.
10. Foreign Affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries, and implementing of treaties, agreements and conventions with foreign countries.
15. War and peace.
16. Foreign jurisdiction.
17. Naturalisation and aliens.
18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air, offences against the law of nations committed on land or on the high seas or in the air.
22. Railways, but as respects any railway owned by the State of Jammu and Kashmir, and either operated by that State or operated on its behalf otherwise than in accordance with a contract with the State by the Government of India, limited to a regulation thereof in respect of safety, maximum and minimum rates and fares, station and service terminal charges, inter-change of traffic and the responsibility of the railway administration as carriers of goods and passengers, and as respects any railway which is wholly situate within the State and does not form a continuous line of communication with a railway owned by the Government of India, whether of the same gauge or not, limited to the regulation thereof in respect of safety and the responsibility of the railway administration as carriers of goods and passengers.
25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by states and other agencies.
26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of ports authorities therein.
28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
30. Carriage of passengers and goods by railway, sea or air.
31. Posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication.
41. Trade and commerce with foreign countries.
72. Elections to Parliament, and the offices of President and Vice President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House; enforcement of attendance of persons for giving evidence of producing documents before committees of Parliament or commissions appointed by Parliament.

75. Salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the account of the Union.

77. Constitution and organisation of the Supreme Court, and the fees taken therein; persons entitled to practise before the Supreme Court.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

93. Offences against laws with respect to any of the matters aforesaid.

94. Inquiries and statistics for the purpose of any of the matters aforesaid.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters aforesaid, but, except with the consent of the State Government, not so as to confer any jurisdiction or powers upon any courts other than courts ordinarily exercising jurisdiction in, or in relation to, the State; admiralty jurisdiction.

96. Fees in respect of any of the matters aforesaid, but not including fees taken in any court.

THE SECOND SCHEDULE

(See paragraph 3)

Provisions of the Constitution applicable	Exceptions	Modifications
Part-V	Articles 72(1)(c), 72(3), 133, 134, 135, 136, 138, 145(1)(c) and 151(2).	<p>1) Articles 80 & 81 shall apply subject to the modification that the representatives of the State in the Council of States and the House of the People respectively, shall be chosen by the President in consultation with the Government of the State.</p> <p>¹(1A) Articles 54 & 55 shall apply subject to the modifications:-</p> <p>(a) that the references therein to the elected members of both Houses of Parliament and to each elected member of either House of Parliament shall be deemed to include, respectively, a reference to the representatives of the State in those Houses and to each such representative.</p> <p>(b) that the references to the elected members of the Legislative Assemblies of the States and to each such elected member shall be deemed to include, respectively, a reference to the members of the Constituent Assembly of the State and to each such member,</p>

¹ Ins. by C.O.39, dated 20th March, 1952.

and

- (c) that the population of the State shall be deemed to be forty-four Lakhs and ten thousands.

.....
Provisions of the Con-
stitution applicable
.....

Exception

Modifications

		(2)	Articles 149 and 150 shall apply subject to the modification that the references therein to the State shall be construed as not including the State of Jammu and Kashmir.
Part XI	Articles 247 to 252, clauses (3) and (4) of article 257 and articles 260, 262 and 263.	(1)	Clause (1) of article 246 shall apply subject to the provisions of paragraph (2) of this Order and clauses (2) and (3) of article 246 shall not apply in relation to the State.
		(2)	Clause (1) of article 259 shall apply subject to the modification that after the words "until Parliament by law otherwise provides", the words "and the concurrence of the State to such law has been obtained" shall be deemed to be inserted.
Part XII	Articles 264 and 265, clause (2) of article 267, articles 268 to 281, clause (2) of article 283, articles 286 to 291, 293, 295, 296 and 297.	1)	Articles 266 shall apply only in so far as it relates to the Consolidated Fund of India and the public account of India.
		(2)	Articles 282 and 284 shall apply only in so far as they relate to the

Union or the public account of India..

- (3) Articles 298, 299 and 300 shall apply only in so far as they relate to the Union or the Government of India.

Part XV. Articles 325 to 329

Article 324 shall apply only in so far as it relates to elections to Parliament and to the offices of the President and Vice President.

Part XVI Articles 332, 333 and 337 to 342.

- 1) Article 330 shall apply only in so far as it relates to seats reserved for Scheduled Castes.

- 2) Article 334 shall apply only in so far as it relates to the House of the People.

- (3) Article 335 shall apply only in so far as it relates to the Union.

Part XVII Nil

The provisions of this Part shall Apply only in so far as they relate to the official language of the Union and to proceedings in the Supreme Court.

Part XIX. Articles 362, 363 and 365¹ and clause (21) of article 366].

- (1) Article 361 shall apply only in so far as it relates to the President.

- (2) Article 364 shall apply only in so far as it relates to the Laws made by Parliament.

Part XX Nil

Article 368 shall apply subject to the additional proviso:

“Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by

¹ Inserted by C.O.43 infra.

order of the President under clause (1) of article 370."

Part XXI Articles 369, 371 and 373, clause (4) of article 374, articles¹ 376, 378 and 386]and clause (2) of article 388.

(1) In clause (3) of article 379 after the words "Minister for any such State", the words "other than the State of Jammu and Kashmir" shall be deemed to be inserted.

(2) Article 389 shall apply only in so far it relates to Bills pending in the the Dominion Legislature.

(3) Article 390 shall apply only in so far as it relates to the Consolidated Fund of India.

Part XXII	Nil	Nil
First Schedule	Nil	Nil
Second Schedule	Paragraph 6	Nil
Third Schedule	Forms V, VI, VII and VIII	Nil
Fourth Schedule	Nil	Nil
Eighth Schedule	Nil	Nil

¹ Substituted *ibid* for "376 and 378".

B

Instrument of Accession of Jammu and Kashmir State

Whereas, the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof;

Now, therefore, I Shriman Indar Mahandar Rajrajeshwar Maharajadhiraj shri Hari Singhji Jammu Kashmir Naresh Tatha Tibbet adi Deshadhipathi Ruler of JAMMU AND KASHMIR State in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and--

1. I hereby declare that I accede to the Dominion of India with the intend that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as thematters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this state whereby any functions in relation to the administration in this state of any law of the Dominion Legislature shall be

exercised by the ruler of this State. then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applied in this state deem it necessary to acquire any land, I will at their requisite acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or in default of agreement, determined by an arbitrator to be appointed by the chief Justice of India.

7. 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.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise or any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October Nineteen Hundred and Forty-Seven.

(Sd.) HARI SINGH
Maharajadhiraj of Jammu and Kashmir state.