

**SPECIAL STATUS IN INDIAN FEDERALISM
A CASE STUDY OF JAMMU AND KASHMIR**

by
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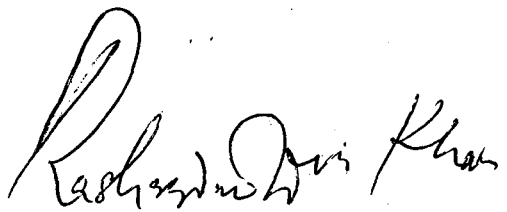
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DECLARATION

**Certified that the material presented in
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Chapter I

INTRODUCTION

In studies on Indian federalism there is still a paucity of studies about the differing positions of Indian States. Jammu and Kashmir is the only state in the Indian Union with Muslim majority and occupies an extremely strategic position on its frontiers. This is the only state which enjoys an explicit overall special status under Art.370 of the Indian Constitution. The demand for this special status was made by the majority community as a main prop of the federal bargain. Their demand was met by the Delhi Agreement and finally by the Constitutional Order of 1954.

The special status of this state poses certain serious problems, a few of which have already begun to emerge as sources of resentment, especially among the non-Muslim minorities of the State. These minorities constitute a little more than 34% of the total population of the state, but do not have the status of minorities. With none of the safeguards otherwise provided for minorities in Indian Constitution. As a result, they have never favoured the grant or continuance of special status to the state.

This study covers the period between 1947 (when the state joined the Indian Union), and 1977, when the Sheikh won the State Assembly elections, after making the special

status an electoral issue and seeking a mandate for his party on this specific issue. It may be added that the National Conference has its support base largely among the majority community.

The major issues investigated in the present study regarding the special status of the state are as under:

- i. factors leading to the origin of special status under the strain of special circumstances;
- ii. the nature and extent of this special status and its effect on the people of the state;
- iii. the functions served by this unique feature of the Indian federal system in the domain of Centre-state relations;
- iv. the future implications of this special status in the light of changed circumstances.

This study deliberately excludes Kashmir as a problem created by the imperialist powers dominating in UNO and as the bone of contention between India and Pakistan.

In a federation, there are a large number of regional, political, social and economic problems to be solved for its smooth and successful working. These problems are often met by giving special concessions to the federating units or particular areas or particular sections of the society going to be governed through such a dynamic federal system. Due to the multifarious problems of federalism, there are, therefore, many types of special status

in the theory and practice of federalism. These are illustrated in Chapter II with special reference to the Indian context.

The struggle for freedom in the State of Jammu and Kashmir, like many other states in India, was a pre-independence phase. In its early stages this struggle was purely against the autocratic ruler of the state. At the time of the transfer of power, the British left the Indian states in an explosive situation, with their rulers free to join either of the two new dominions of India and Pakistan or to remain independent. Pakistan wanted to grab this state on the pretext of the communal issue whereas India wanted to include it into her Union of States to prove her long cherished ideal of secularism. Due to the nature of the composition of the population of this state, its accession to India assumed a unique form. The circumstances of this accession and the detailed historical background have been dealt with in Chapter III.

The special status of the State of Jammu and Kashmir has affected the masses of the state, (especially the permanent residents), some favourably and others unfavourably. The fundamental rights and the constitutional remedies were considerably delayed and curtailed for this state. The main reason for such curtailment is the fact that this state enjoys maximum internal autonomy as com-

pared to other states of India. All these features of special status have been defined in Chapter IV.

The three different regions of this state have adopted different attitudes towards the accession of the state to India. The internal politics in the state have therefore, from the very start, been based on regionalism. The Kashmir Valley has always stood for and supported the special status of the state, barring the singular example of Sadiq's premiership, when the Congress became the ruling party in the state as well and the National Conference was amalgamated within its fold. Presently the Valley based leadership is treating the special status of this state as a principle of federal system rather than an outcome of certain peculiar circumstances.

The people of Jammu wanted complete accession of the state to the Indian Union. They wanted all the political power to be shifted to New Delhi if they were not allowed to share it at all. They have been neglected on purpose for this type of attitude by those who really count in the wielding of power in Kashmir politics. The Jammu people often follow the path of agitation and are constantly demanding provincial autonomy.

The Ladakhi's are the most neglected section of people in this state. They too wanted, in 1947, complete integration with India and never liked to be ruled by the Valley.

They wanted to become an integrated confederating unit of the Indian Union as they were not at all interested in the special status of Jammu and Kashmir. Due to their isolation, they have a perpetual grudge against the state government. Presently their demand is regional-autonomy. All these aspects of state politics have been described in Chapter V.

Quite recently three important issues came to the surface in the political life of the state. Firstly, in the process of integration of the state with India, the application of some useful Central laws had been extended to the state. The present ruling party under the leadership of Sheikh Abdullah, wants to revoke these laws. Secondly, the Public Safety Ordinance issued by the state government became the main instrument for the curtailment of fundamental rights and constitutional remedies. Thirdly, Governor's Rule in 1977, became a highly controversial issue and it was asked why President's Rule under Article 356 of the Indian Constitution could not be imposed in the state. All these issues have been discussed at length in Chapter VI.

Chapter VII contains the conclusions and suggestions wherein the future of the special status of Kashmir has also been evaluated.

During the course of this study, important official documents and Constituent Assembly Debates relating to the problem were tapped fully. In addition to books by eminent

authors, unpublished dissertations and theses by research scholars were also used. Opinions of various party leaders, from the state as well as from the Centre, regarding the problem were available on the eve of the State Assembly elections during 1977, as the National Conference had made Art. 370 a major electoral issue. There was hardly any political organisation, at that time, in the country which did not express its opinion in this respect providing thereby a wide range of views about the problem. All these sources utilized have been listed in the select bibliography, in addition to the various secondary sources, both books and articles, which proved useful.

Chapter II

SPECIAL STATUS IN FEDERAL THEORY AND PRACTICE

Federalism is so popular a system in modern times that in the mid-sixties well over half the land mass of the world came to be governed through federal institutions.¹ Friedrich rightly observes that, "the rise of modern constitutional government has been accompanied by the establishment of an increasing number of federal schemes."² Among these governments are some of the biggest states of the world like India, the United States, Canada, Australia and the Soviet Union, as well as some of the smallest states like Switzerland, Yugoslavia and Austria.

Especially after the second World War, federations have, according to Riker, become the main alternatives to empires as a technique of aggregating large units under one government.³ The reasons for the preference for federal systems of government under certain conditions, according to Shils, are:

Parochialism or particularism affecting societies which inherit a powerful kinship system, caste and communal loyalties, linguistic diversities,

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1. RIKER, W.H., Federalism: Origin, Operation Significance, Boston: Little Brown & Co., 1964, p.1.
 2. FRIEDRICH, C.J., Constitutional Government and Democracy, 4th ed., Calcutta: Oxford & IBH Publishing Co., 1974, p.188.
 3. RIKER, W.H., Op.cit., passim.

religious heterogeneity or ethnic dissimilarities, which resist national unity and can be rendered more or less compatible with a modern political regime only by well contrived federalism.⁴

A. COMPARATIVE FEDERAL THEORY

The factors governing the federalizing process may seem to be similar but can never be the same everywhere. On the American federalizing process, Holcomb observes: "What has come to be known as American federalism is not the product of a preconceived and approved principle. The federal union was the creature of expediency rather than principle."⁵ Therefore the view held by Bombwall seems to be quite tenable that:

Federalism as a form of political organisation has nowhere been adopted on theoretical grounds of its real or hypothetical virtues. On the contrary it has always emerged as a product of compromise and expediency and the driving forces behind it have invariably been the history, circumstances and problems of the country adopting it.⁶

It is also remarkable that with very few minor exceptions, a state which once adopts federalism never abandons it, for it is an application of the principle of utilita-

4. SHILS, Edward., Political Development in the New States, The Hague: Mouton & Co., 1968, p.33.

5. Cited in BOMBWALL, K.R., The Foundations of Indian Federalism, Bombay: Asia Publishing House, 1967, p.27. Cf also BEARD, Charles., ed., The Enduring Federalist, New York: Doubleday, 1948, p.13.

6. BOMBWALL, K.R., Op.cit., p.27.

rianism and accordingly it is a development towards decentralisation or towards centralisation as the case may be, in order to achieve the highest possible utility.⁷

Sobei Mogi says that the federal idea is "not confined to the political sphere of the State, but is the general basis of human organisation."⁸ The nature and meaning of federalism on these lines have been very aptly defined by Boehm:

Federalism is characterised by a tendency to substitute coordinating for subordinating relationships or at least to restrict the latter as much as possible, to replace compulsion from above with reciprocity, understanding and adjustment, command with persuasion and force with law. The basic aspect of federalism is pluralistic, its fundamental tendency is harmonization and its regulative principle is solidarity.⁹

Thus federalism is a term which can be used very broadly to describe the mode of political organization which unites separate polities and maintains their fundamental political integrity. This is done by distributing powers among general and the constituent governments enabling them all to share in the process of decision making and execution.¹⁰ One can, therefore, affirm that

7. SOBEI, Mogi., The Problem of Federalism: A Study in the History of Political Theory, Vol.2, London: George Allen & Unwin, 1931, p.1059.

8. Ibid., p.1111.

9. BOEHM, M.H., "Federalism" in Encyclopaedia of Social Sciences, Vol.6, New York: Macmillan & Co., 1948, p.169.

10. ELAZAR, Daniel, J., "Federalism" in International Encyclopaedia of Social Sciences. SILLS, David L., ed., Vol.5, USA: The Macmillan & Co, and the Free Press, 1968, p.353. Cf. PRITT, D.N., Federal Illusion? London: Frederick Muller, 1940, p.69.

federalism is in fact a developing idea. It is not a rigid conception confined to a particular pattern. Different countries have adopted this system to suit their needs and solve their problems. It is, therefore useless to allow a particular definition as a yardstick to judge the federal idea as applied to various countries, each having some special feature of its own, besides sharing some features with others.¹¹

1. Origins and Fundamental Characteristics of Federations

Before discussing the characteristic features of a federal state, it seems necessary to indicate the ways through which a federal state may come into being. Federations have been generally formed by bringing together several sovereign or autonomous states owing to economic, defence or other interests, as in the case of the United States. The units thus unite themselves in a way as not to completely submerge their identity. According to Dicey, "Federalism rests on the peculiar psychology of the peoples of the political units involved, of desiring union without desiring complete unity."¹² The federating units want to surrender, to the newly constituted federal government, powers over those affairs which are common to

11. Cf. WHEARE, K.C., Federal Government, 4th edn., London: Oxford University Press, 1971, passim.

12. DICEY, A.V., Introduction to the Study of the Laws of Constitutions, 9th edn., London: Macmillan & Co., 1948, p.602.

them all retaining at the same time powers over matters of purely local interests. Federations have also been formed, as in some countries of British Commonwealth, by breaking a unitary state into a number of federating units. This kind of federalism has been described as 'devolutional federalism',¹³ It has often been motivated by various factors like economic necessity, administrative convenience, desire for local autonomy and linguistic, racial and cultural aspirations of the people.¹⁴

In the period after the first world war, with the rapid spread of nationalist ideas, this type of federalism became very popular specially as a bulwark against the disintegrating forces.¹⁵ Maddox has described these processes accurately: "A federation may develop as a result either from a centrifugal political force - the breaking down of a unitary form of government, or from centripetal action, the building up of parts into a new entity."¹⁶

Whatever be the process of its formation, the two layers of governments - the central or federal government

13. SOBEL, Mugi., Op.cit., Vol.1, p.266.

14. The framers of the Indian Constitution favoured for India the 'devolutional' type of federation. See AMBEDKAR, B.R., C.A.D., Vol.18, p.43.

15. TIWARI, Unakant., The Making of the Indian Constitution, Allahabad: Central Book Depot, 1974, p.86.
Cf. LASKI, H.J., Grammar of Politics, London: George Allen & Unwin, 1970, Chapter III.

16. MADDOX, W.P., "The Political Basis of Federation" in American Political Science Review, Vol.35, Dec. 1941, p.1121.

and the regional governments - is a special feature of the federal systems wherein the two sets of governments work within their respective spheres. To quote Diecy: "The object for which a federal state is formed involves a division of authority between the national government and the separate states."¹⁷ But this authority too, must be considered as federal and coordinate.¹⁸

The most common idea of inescapable federal principle of distributing the subjects is that matters of a 'national' or common interests should be vested in the central government, while matters of a local or 'particular' interest should be left in the hands of the constituents of a federation.¹⁹

Ordinarily subjects of national importance may include defence, foreign affairs,²⁰ commerce, communications, currency and coinage for their efficient administration. All subjects which are not primarily of common interest remain ordinarily in the hands of the constituent units. Neither government exercises the totality of political power. The power at each level, is thus shared with certain restrictions.²¹

17. DIECY, A.V., Op.cit., 1948, p.151.

18. Cf. WHEARE, K.C., 1971, Op.cit., p.2.

19. DAVIS, Rufus, "The Federal Principle Reconsidered" in Aaron Wildavsky, ed., American Federalism in Perspective, Boston; Little Brown and Co., 1967, p.3.

20. In USSR, the Union Republics have a right to enter into direct relations with foreign powers. See USSR Constitution: Fundamental Law, Art.80, Moscow; Novosti Press Agency Publishing House, 1977, p.61.

21. VENKATARANGAIYA and SHIVIAH, Indian Federalism, New Delhi; Arnold Heineman Publishers, 1975, p.13.

As a general principle, no doubt with variations, if several sovereign states unite to form a federation, they want to restrict the powers of the centre, while in the case of break up of a large unitary state, the central government retains greater amount of powers. Generally distribution is done by two methods; either powers of one government may be specified and the remainder may be left to the other or the powers of both the central and the regional governments may be enumerated. It is important to record that, even with the greatest amount of precision, no scheme of distribution of powers can succeed in enumerating and assigning all the powers which a government may be called upon to exercise. It is for this reason that the necessity of locating the residuary powers in a federation becomes paramount in the framing of a federal constitution.²² According to Wheare, a constitution is more markedly federal if the residue is left to the units.²³ It is at the time of framing the constitution that the residuary powers are to be allocated to either of the governments.²⁴

22. RAY, Bharati., Evolution of Federalism in India, Calcutta: Progressive Publishers, 1967, p.10. Cf. SHARMA & CHOUDHRY, Federal Polity, Bombay: Asia Publishing House, 1967, p.228.

23. WHEARE, K.C., Op.cit., p.12.

24. In USA, residuary powers are assigned to the state governments, whereas in Canada and India, they are vested in the central government. As we shall see later only in the case of Jammu and Kashmir State these rest with the State.

In most of the federations there arose some difficulty in allotting certain powers exclusively to either of the governments. Consequently, both levels of governments are allowed to exercise some authority regarding those matters which are called concurrent subjects, as both the federal and the state governments enjoy some powers of control over these subjects.²⁵ The extent of these subjects may not be the same in all federations but their existence facilitates the smooth functioning of the federal system inasmuch as they provide uniform legislation in the national interest.²⁶ In no federation do the central and the regional authorities possess exactly equal powers regarding the concurrent subjects. In cases of conflict, the central government is always vested with overriding powers everywhere, regarding the concurrent subjects. It is important to note in this connection that the extent of the concurrent powers' domain has steadily increased in most modern federations.

Federal theorists further hold that the demarcation of powers between the centre and the federal units can best be secured by a written and rigid constitution, for autonomy of the units in a federation is as important as the

25. Cf. RAY, Bharati, Op.cit., p.11.

26. Ibid.

authority of the central government. A constitution in a federal system is the supreme document and the modern constitutionalism always goes well with a federal scheme. To quote Friedrich; "The parallel is so striking that federalism must be considered one of the most important aspects of constitutionalism."²⁷ From a strictly theoretical point of view, a constitution is to be termed rigid if the constitutional laws cannot be passed or altered through ordinary process of law-making, but through some special and difficult procedures. Livingston is of the opinion that these changes or amendments be done with the consent of the component units.²⁸ Very often, only a certain number of the units is required to give their consent in such amendments.²⁹

Whatever may be the degree of care with which the constitution is framed, sources of conflict between the two sets of authorities may not be totally eliminated since "Labels can be confusing. They can mean different things to different people at different times and in different places."³⁰ Therefore, there must be some important

27. FRIEDRICH, Carl J., Trends of Federalism in Theory and Practice, New York: Frederick A. Praeger, 1968, p.189.

28. LIVINGSTON, W.S., Federalism and Constitutional Change, London: Oxford University Press, 1956, p.298.

29. RAY, Bharati, Op.cit., p.12.

30. DONOVAN, Frank., Mr. Madison's Constitution, New York: Eodd, Mead & Co., 1965, p.41.

'umpire' or arbitrator independent of both sets of government.³¹ This necessity calls for a federal judiciary in every federal constitution as it is the most practicable method of providing relatively impartial arbitration.³² It is the impartial federal judiciary which safeguards the states of the constituent units and assures the supremacy of the central government in the fields of responsibility given to it by the Constitution.³³ It also rests in the domain of the judiciary to safeguard the guarantees that protect certain rights of individuals and certain minority groups.³⁴

2. Reasons for Adopting Federal Form of Government

After having discussed the common feature of a federal form of government, we may consider the conditions in which it is appropriate to adopt a federal form of government. Various theorists have advanced different conditions under which a federal government is formed. K.C. Wheare, for example, considers that most, if not all of the following six conditions must be satisfied:

- i. a sense of military insecurity and of the consequent need for common defence;
- ii. a desire to be independent of foreign powers, for which union is a necessity;

31. Cf. WHEARE, K.C., Op.cit., p.60.

32. MACMAHON, A.W., "Federation" in Encyclopaedia of the Social Sciences, Vol.6, New York: Macmillan & Co., 1931, p.175.

33. MACMAHON, A.W., Op.cit., 1972, p.17. Cf. DIKSHIT, R.D., The Political Geography of Federalism, Delhi: Macmillan & Co., 1975, p.1.

- iii. a hope of economic advantage from union;
- iv. some previous political association;
- v. geographical neighbourhood; and
- vi. similarity of political institutions.³⁵

K.W. Deutsch and his collaborators enumerate nine conditions to form the basis of a federal arrangement:

- i. mutual compatibility of main values;
- ii. a distinctive way of life;
- iii. expectations of stronger economic ties or gains;
- iv. a marked increase in political and administrative capabilities of at least some participating units;
- v. superior economic growth on the part of at least some participating units;
- vi. unbroken links of social communications, both geographically between territories and sociologically between different social strata;
- vii. a broadening of the political life;
- viii. mobility of persons at least among the politically relevant strata; and
- ix. a multiplicity of ranges of communications and transactions.³⁶

W.H. Riker regards the following two conditions as pre-eminent for the emergence of a federal government:

1. a desire on the part of the politicians who offer the bargain to expand their area of influence by peaceful means, usually either to meet an external military or diplomatic threat or to prepare for military or diplomatic aggression and aggrandizement; and

35. WHEARE, K.C., Op.cit., pp.37-38.

36. See DEUTSCH, K.W., et al., Political Community in the North Atlantic Area, Princeton; Princeton University Press, 1957, p.58.

- ii. a willingness on the part of the politicians who accept the bargain to give up some independence for the sake of union, either because they desire protection from a military or diplomatic threat or because they desire to participate in the political aggression of the federation.³⁷

All these factors contribute to the growth of a spirit of union in a federation if there is physical contiguity among the states concerned as Sharma has rightly observed: "From the most ancient times right upto the present day, political union of a federal character has been successful only between states whose boundaries touch each other."³⁸ One or two more conditions are also to be satisfied for the proper functioning of a federation. Firstly, to quote Mill; "There should not be any one State so much more powerful than the rest as to be capable of vying in strength with many of them combined."³⁹ The example of the failure of Pakistan's federation in the light of this observation should serve as a live example. Secondly, a good party system is of primary importance in the organisation of a federation.⁴⁰ It is more so because to meet the needs of a welfare state, the successful operation of democracy in

37. See RIKER, Op.cit., p.12.

38. SHARMA, B.M., Federalism in Theory and Practice, Vol.2 Chandauli; Bhargava Pub., 1953, p.52. Cf. DIKSHIT, Op.cit., p.124.

39. MILL, J.S. Utilitarianism, Liberty and Representative Government, London; Everyman's Library, 1964, pp.367- 68.

40. WHEARE, Op.cit., p.86.

a federation mostly depends upon the working of its party system. Cooperation between the different sets of government in a federation is absolutely imperative and this can be achieved through adjusting potentialities of the party system. It is always the national political party which is "the most responsive instrument of restraint upon federalism's centrifugal tendencies."⁴¹ In a federal state there may be parties formed on the basis of sectional interests - interests of a particular state only, or there may not be any national party in the true sense of the term.⁴² In either case it will be extremely difficult to work the governmental process. On the other hand if one of the two parties with view points totally different is in a majority in some of the states and the other in the Centre, it may impair smooth relations and coordination between the centre and the state.⁴³

It is to be noted that the central government is more and more gaining in strength in all federations. Wheare calls it "one general tendency in all federal governments."⁴⁴ The result seems to be that cooperation through various means

41. TRUMAN, David, B., "Federation and the Party System" in MACMAHON, A.W., ed., Federalism mature and emergent, Op.cit., p.133.

42. As there is the National Conference in Jammu and Kashmir State or the DMK in Tamil Nadu.

43. RAY, Bharati., Op.cit., pp.19-20.

44. WHEARE, K.C., Op.cit., p.253.

between the central and the state governments is sought to be strengthened in every federation. This is also due to the new conception regarding the nature of the state which is termed as 'welfare' one. Modern industrialism also requires a large amount of integration of economic life and periodic economic depressions require central control, all these factors lead to cooperative Centre-State relations.⁴⁵ Some authors have held that modern federalism has entered a new phase - the phase of cooperative federalism.⁴⁶ This phase includes bargaining, rivalry and even conflict, leading some scholars of federalism to prefer "interdependent federalism" to mere cooperative federalism.⁴⁷

3. The Problem of Special Status

Special status in federalism is a unique feature to meet unique situations or circumstances. Federalism is often considered a panacea for multifarious problems of organisation. It is devised to express multinationalism,⁴⁸ linguistic diversities, caste and communal loyalties,

45. Cf. RAY, Bharati, Op.cit., pp.20-23.

46. BIRCH, Anthony, H., Federalism, Finance and Social Legislation in Canada, Australia and the United States, Oxford University Press, 1955, p.305.

47. WATTS, Ronald L., Administration in Federal System, London: Hutchinson, 1970, p.70.

48. CARNELL, F.G., "Political Implications of Federalism" in U.K. Hicks, ed., Federalism and Economic Growth in Underdeveloped Countries, London: George Allen & Unwin, 1963, p.16. Cf. SHILLS, Edward, Op.cit., p.33.

ethnological dissimilarities, particularisms, religious heterogeneity and numerous other similar diversities.⁴⁹

On the bases of any or many of these a unit in a federation may bargain for constitutional autonomy, which the politicians who offer the bargain can provide internally in certain limited spheres to maintain that units' individual identity or separate existence.⁵⁰

If in a particular situation a unit contains a population which is a majority in that unit, but otherwise a minority in the entire federation, it may advance certain political claims either for equality with the majority or for a special status relying upon the recognition of these differences.⁵¹

One such example of special status in federations abroad may be considered here: that of Quebec in Canada. However, while Kashmir obtained its special status at the time of the federal bargain, Quebec is on its way to achieving it.⁵² It seeks larger powers to defend its traditional French-Canadian nationalism and constantly emphasizes cul-

49. Cf. DIKSHIT, Op.cit., pp.113-125.

50. Ibid., pp.3-4 and p.227.

51. See Encyclopaedia Britannica, Vol.15, Chicago: William Benton, Publishers, 1969, p.542.

52. If special status is denied to Quebec its Pe'quiste government plans to hold referendum in two to four years on whether Quebec's six million residents... want to secede from Canada. (MacDonald, D., "Canada: To Be or Not To Be", in Reader's Digest, Vol.III, November 1977, p.146.



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tural survival.⁵³ The Quebecers are asserting their claim not only as a principle, "but more so to establish their assertion as a people".⁵⁴ While defining their would be special status Lesage observes:

It would be the result of an evolution during which Quebec would want to exert powers and responsibilities which the other provinces for reasons of their own might prefer to leave with the Federal Government.⁵⁵

Even at present Quebec has special property and civil rights provisions under a system of law based, in common with the countries of continental Europe, on the Roman Civil Law for French Canadians.⁵⁶ It also follows Roman Catholic Church and tight social traditional customs.⁵⁷ In reality Quebec's Premier Rene Levesque wants to create an independent French-speaking republic in Quebec to "escape from second class citizenship to the freedom of adult nationhood."⁵⁸

53. FOX, Paul., Politics, Canada: Culture & Process, Toronto: McGraw Hill Company of Canada, 1970, pp.25-28.

54. Ibid., p.26.

55. Cited in Fox, P., Op.cit., p.28.

56. MALLORY, J.R., The Structure of Canadian Government, Toronto: The Macmillan Company, 1971, p.394.

57. FOX, P., Op.cit., p.25.

58. MacDONALD, D., Op.cit., pp.146-50. Cf. MEHTA, R. Sampat, Minority - Rights and Obligations, Ottawa: Canada Research Bureau, Harpell's Press, 1973, p.89.

There seems to be a great historical similarity between Kashmir's and Quebec's assertion to their respective federations. Quebec had a fear of being absorbed in 1867 by the stronger United States.⁵⁹ Therefore, it joined Canada for its survival. Similarly Kashmir decided to join the Indian Union only when the military invasion from Pakistan forced its ruler to do so.⁶⁰

The French Canadians in Quebec are a religious and linguistic minority in Canada but a majority in Quebec.⁶¹ Similarly the Muslims of Kashmir had a language and cultural background of their own besides being a majority in their state.⁶² Both of these states also have similar economic divergencies which compell their respective central governments to treat them on a special footing.

Federal Capitals, Territories and Autonomous areas: A next category of special status is always enjoyed by federal capitals and federal territories as a factor of federal stability.⁶³ Federal capitals have always been located on a neutral or compromise sites, e.g., Canberra⁶⁴ or New Delhi.

59. MacDONALD, D.; Op.cit., p.147.

60. DIKSHIT, Op.cit., p.124.

61. See Encyclopaedia Britannica, Vol.15, Op.cit., p.552.
Cf. MSHTA, R. Sampat, Op.cit., p.105.

62. PARASURAM, T.V., "When US held secret talks with Abdullah", in Indian Express, 13 July 1978.

63. DIKSHIT, Op.cit., p.243.

64. Canberra in Australia was selected on a neutral ground between Sydney and Melbourn, the two leading partners in the federal bargain of 1900.

More than neutrality and administrative⁶⁵ convenience of the site, it is always the balancing role which gives a federal capital special status to serve the federation as a keystone.⁶⁶ These federal or union territories are mostly placed directly under the control of central government in the federal states.⁶⁷ This arrangement for federal capitals is made for reasons of their separate identity. Other union territories are also given this special status due to their backwardness, isolation from the main state or various other strategic reasons.

Sometimes autonomous areas or regions are created in a federation and placed within the states or units but under different special constitutional arrangements within the framework of the constitutional system of that federation. Russia, for example, has such autonomous regions.⁶⁸

Thus special status is provided to a state in a federation in order to maintain its identity and internal autonomy or to accommodate other peculiar features. It may also be

65. The shift from Petersburg to Moscow in Russia and Karachi to Islamabad was done for administrative reasons. (See DIKSHIT, Op.cit., pp.248-49).

66. ELAZAR, Daniel J., Op.cit., p.365.

67. JAIN, M.P., Indian Constitutional Law, Bombay: N.M. Tripathy, 1970, p.261.

68. These are: Adygei; Gorno-Altai; Jewish; Karachai; Circassian; Khakass; South Ossetian; Nagorno-Karabakh and Gorno-Badkashan.

provided to federal capitals for the sake of their stability and autonomy. Federal territories, autonomous regions/ areas in a federation also enjoy special status due to backwardness, strategic position for other similar reasons. Manifestations of these types of arrangements in the Indian federal system are examined in the section which follows.

B. SPECIAL STATUS IN INDIAN FEDERALISM

There are different types of federal constitutions in the modern world. The governmental organisations resulting therefrom are also elastic ones. Indian federalism has been the subject of considerable controversy as the political scientists have sharply differed among themselves as to whether the Indian constitution is really and truly 'federal', 'quasi-federal', or 'unitary with subsidiary features'.⁶⁹ The simplest test of the nature of a constitution, therefore seems to be that if a constitution partakes of some features of unitary type and some of federal type, the only alternative according to Basu is to analyse those features and to ascertain whether it is basically unitary or federal.⁷⁰ The question whether a state is federal or unitary is one of degree and the answer will depend upon "how many federal features it possesses."⁷¹ Livingston also recorded that federation is

69. HAQOI, S.A.H., 'Preface' Union-State Relations in India, Meerut, Meenakshi Prakashan, 1967, p.1.

70. BASU, D.D., Introduction to the Constitution of India, 7th edn., New Delhi: Prentice Hall of India, 1978, p.47.

71. WAGNER, W.J., Federal States and their Judiciary, The Hague: Mouton & Co., 1969, p.25.

more a 'functional' than an 'institutional' concept and that any theory aiming at creating or fixing certain inflexible characteristics without which a political system cannot be called federal ignores the fact "that institutions are not the same things in different social and cultural environments."⁷² These must suit the requirements of the situation concerned.

Thus events before and during the framing of the Indian Constitution indicated that India needed a centralized constitution to establish the stability and the unity necessary for its future social revolution.⁷³ Haqqi rightly observes that "the values that determined the constitutional framework of the Indian federation had historical, political and circumstantial contexts, and were almost invariably conducive to a centralized federation."⁷⁴ India at that time required stability and order, for there were hundreds of princely states to be roped into the folds of emerging Indian federation. It was a unique phenomenon, the parallel of which is nowhere to be found in history.⁷⁵ The "Steel-Man of India", Sardar Patel, rightly remarked that: "The first require-

72. LIVINGSTON, Op.cit., 1956, pp.6-7.

73. AUSTEN, Granville, Op.cit., 1972, p.45. Cf. CHANDA, Asok., Federalism in India: A Study of Union-State Relations, London: George Allen & Unwin, 1956, p.11.

74. HAQQI and SHARMA., "Centre-State Relations: A Study of Structural and Processual Determinants", in Indian Journal of Politics, Vol.7, No.2, July-Dec. 1973, p.212.

75. See also DIKSHIT, Op.cit., p.123.

ment of any progressive country is internal and external security. Therefore, I started planning on the integration of the country. It is impossible to make progress unless you first restore order in the country."⁷⁶ It seems that the Sardar was very close to the message of the Federalist.⁷⁷ This centre-oriented federation designed by the framers was the outcome of their deliberations to provide for the regional diversities without giving any encouragement to the factors which may have endangered the future fabric of national unity;⁷⁸ and the then prevailing "general awareness of nationality and national dignity."⁷⁹

1. Exceptions to the Federal Principle

In addition to the common characteristics of a federation, the Indian Constitution has the following peculiar features of its own:

(1) The position of states in India is quite different, since the units in India were not 'sovereign' entities,

76. Quoted by AUSTIN, Op.cit., p.45.

77. The message reads: "no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality - and none of these great goods without stability and order." See, HAMILTON, A., MEDISON, J. and JAY, J., The Federalist Papers, 5th edn., New York: The New American Library, 1961, p.XVI.

78. BOMBWALL, K.R., Op.cit., p.28.

79. SPEAR, Percival., India: A Modern History, Ann Arbor: University of Michigan Press, 1961, p.407.

there was no question of maintaining States' rights. It was only in the case of Jammu and Kashmir that these rights have been well protected.⁸⁰

(ii) The Constitution has simply followed the Canadian system investing residuary powers in the Union, excepting again the State of Jammu and Kashmir, where these are vested in the State,⁸¹ like the American and Australian federations.⁸²

(iii) The Constitution contains the framework of government for the national as well as the constituent states.⁸³ No state, save Jammu and Kashmir, has a right to determine its own (State) Constitution.⁸⁴

(iv) In the matter of amendments the framers of the Indian Constitution intended to make it a highly flexible one. They treated it as a progressive document, which was not static at all and its provisions were so construed as to meet the needs and challenge of changing times.⁸⁵ They tried to avoid both rigidity and legalism, which, according to Ambedkar, were "two weaknesses" of federalism.⁸⁶

80. India (Government of), Ministry of Law, Justice and Company Affairs, The Constitution of India, New Delhi: Govt. of India Press, 1977, Art.370, p.198 and passim.

81. Ibid., Entry 97 at p.271.

82. See, LEACH, Richard H., Inter-state Relations in Australia, Kentucky: University of Kentucky Press, 1965, p.1.

83. The Constitution of India, Op.cit., 1977, Part VI, pp. 72-110.

84. Ibid., Art. 152, p.72.

85. GAJENDRAGADKAR, P.B., in Introduction to TOPE, T.K., The Constitution of India, Bombay: Popular Book Depot, 1960, p. x.

86. C.A.D., Vol.8, p.35.

The flexibility seemed so vivid that Ambedkar rightly pointed out with pride: "I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution."⁸⁷ One can safely hope that the Indian Constitution is never going to suffer from the faults of rigidity and legalism. Even Wheare has praised this 'Wise Variety' of the amending process by commenting that it strikes a good balance "by protecting the rights of the States while leaving the remainder of the Constitution easy to amend."⁸⁸

(v) Though there is distribution of powers between the Union and the states, there are provisions in the Indian Constitution for the exercise of control by the Union both over the administration and legislation of the States.⁸⁹

(vi) The American federation has been described by its Supreme Court as "an indestructible Union composed of indestructible States."⁹⁰ The same is true about Australia which agreed "to unite in one indissoluble Federal Commonwealth."⁹¹ But the case of Indian federation is quite con-

87. C.A.D., Vol.11, p.976.

88. WHEARE, K.C., Modern Constitutions, 2nd edn., London: Oxford University Press, 1971, p.143. Cf. AUSTIN, Granville, Op.cit., 1972, p.255.

89. The Constitution of India, Op.cit., Art. 201, p.93.

90. Texas vs. White, quoted by BOMBWALL, K.R., Op.cit., footnote at p.6.

91. See, LEACH, Op.cit., p.1.

verse as the states of the Union are not 'indestructible units'.⁹² The Indian Parliament can alter the boundaries of the States or can create new States by a simple majority, since legislation in this regard is not to be treated as an amendment of the Constitution. Santhanam therefore observed that in incorporating Article 3 in its final form in the Indian Constitution, "the fundamental principle that a federation depends upon the territorial integrity of the States seem to have been forgotten."⁹³

It is a fact that in the United States, Switzerland, Australia and even in the Soviet Union, the boundaries of the component units cannot be altered unilaterally by the respective central governments. Concurrence of the units concerned is necessary. This principle is only applicable in the Indian Constitution in the case of Jammu and Kashmir State.⁹⁴ On this point Bombwall, very rightly observes that: "While India is like the United States, an indestructible Union, unlike the latter, it is not composed of indestructible States."⁹⁵ One can, however, observe that Art. 3 has so far been used for furthering the federal principle rather than for the enhancement of the power of

92. The Constitution of India, Op.cit., Art.3 read with Art. 4(2), pp.2-3.

93. SANTHANAM, K., Union-State Relations in India, Bombay: Asia Publishing House, 1959, p.7.

94. The Constitution of India, Op.cit., Art.3 as applicable to Jammu and Kashmir State (see footnote at p.3).

95. BOMBWALL, K.R., Op.cit., p.11.

the Union government. Sharma, thus, very wisely opines that "the changes have been carried out in accordance with the wishes of the inhabitants of the States concerned."⁹⁶

(vii) There is no theory of 'equality of state's rights' underlying the federal scheme in our Constitution since it is not the result of any agreement between the States. There is thus no equality of representation of the States in the Council of States. Uttar Pradesh has 34 seats whereas Tripura and Manipur have one seat each.⁹⁷ Basu rightly observes that: "The federal safeguard against the interests of the lesser States being overridden by the interests of the larger or more populated States is absent under our Constitution."⁹⁸

(viii) The Indian Constitution does not introduce, like American Constitution, any double citizenship. It introduces only one citizenship, viz., the citizenship of India.⁹⁹ By single citizenship, the Indian Constitution sought to emphasize the value of 'nation building'. Birth or residence in a particular State does not confer any separate status as a citizen of that State. The exception to this rule is again the State of Jammu and Kashmir.¹⁰⁰

96. SHARMA, S.R., The Indian Federal Structure: A Comparative Study, Allahabad: Central Book Depot, 1967, p.5.

97. See, the Constitution of India, Op.cit., 'Fourth Schedule', p.303.

98. BASU, D.D., Op.cit., 1978, p.53.

99. The Constitution of India, Op.cit., Art.5, p.4.

100. But, birth or residence in Jammu and Kashmir does confer separate status as a citizen of this State. And this is one of the special privileges enjoyed by the permanent residents of that State.

(ix) The machinery for elections, accounts and audit in Indian government is also integrated.¹⁰¹ Only the State of Jammu and Kashmir has its own separate Manual of Election Law,¹⁰² which, however on the whole, works within the ambit of Central Election Laws.

2. The Case of Union Territories

In India the Union Territories are a sort of sub-divisions of the central government.¹⁰³ Broadly speaking, the provisions relating to them are analogous to those which related to part 'C' States prior to the Seventh Amendment Act of 1956.¹⁰⁴ The special feature of the Part 'C' States was that they were administered by the President through a Chief Commissioner or a Lieutenant Governor, acting as his agent. The Government of Part 'C' States Act, 1951 provided for Council of Advisors or Ministers to advise the Chief Commissioner, under the overall control of the President, and also a Legislative Assembly to function as a Legislature of the State, without derogation to the plenary powers of Parliament.¹⁰⁵

101. The Constitution of India, Op.cit., Chap.V, pp.69-71.

102. See, Jammu and Kashmir (Government of), Department of Law, Manual of Jammu and Kashmir Election Law, 3rd edn., Jammu: R.G. Press, 1977. Only in this manual disqualification of a legislator for abuse or misuse of office of authority is provided for. The disqualification can be upto ten years. See, p.47.

103. These territories are; the Andaman and Nicobar Islands; Arunachal Pradesh; Chandigarh; Dadra and Nagar Haveli; Delhi; Goa, Daman and Diu; Mizoram; Pondicherry and Lakshadweep.

104. CHITALEY and RAO., Commentaries: The Constitution of India, Vol.4, 2nd edn., The All-India Reporter, Bombay, 1973, p.293, Cf. BASU, D.D., Constitutional Law of India, Op.cit., p.284.

Administration: Though all these Union Territories belong to one category, there are some differences in the actual system of administration between the several Union Territories, owing to the provisions of the Constitution as well as of Acts of Indian Parliament, which have been made in pursuance of the Constitutional Provisions.¹⁰⁶ Every Union Territory is, therefore, administered by the President acting through an Administrator. As regards the various designations of the Administrators, heterogeneous designations have been specified by the President in the case of the different Union Territories,¹⁰⁷

- (a) Chief Commissioner - Andaman and Nicobar Islands; Chandigarh,
- (b) Lieutenant Governor - Delhi; Goa, Daman and Diu; Pondicherry; Arunachal Pradesh; and Mizoram,
- (c) Administrator - Dadra and Nagar Haveli; and Lakshadweep.

Legislatures and Council of Ministers: In 1962, Art.239 was introduced in the Constitution by the Fourteenth Amendment Act to empower Parliament to create a Legislature or a Council of Ministers or both for the Union Territories of Goa, Daman and Diu; Pondicherry; Mizoram and Arunachal Pradesh.¹⁰⁸ By virtue of this power, Parliament enacted

105. BASU, D.D., Introduction to the Constitution of India, Op.cit., p.239.

106. Ibid., p.240.

107. Ibid., p.241.

108. Constitution of India, Op.cit., Art. 239 A(1)(a)(b), p.113.

the Government of Union Territories Act, 1973, providing for a Legislative Assembly as well as a Council of Ministers to advise the Administrator in each of these territories.¹⁰⁹ Similarly in July 1978 the Janata Government decided to convert the existing Metropolitan Council of Delhi into Union Territory's Legislative Assembly with 61 elected and 5 nominated members to continue till 1982, when a new Assembly will be elected without any nominated element in it. It will have its Chief Minister who will have his Council of Ministers as well. The present response is the result of a long standing political demand for full statehood for the federal capital.¹¹⁰

There is no limitation on Parliament under Art.339A in mentioning or defining the powers of the Legislative body for a Union Territory which the Parliament has created. Moreover, this article does not expressly or by necessary implication lay down that the body created to function as the Legislature of a Union Territory must necessarily be directly elected or nominated at the time of the creation. The manner of the Constitution of the body has been left entirely to the wisdom and discretion of the Parliament.¹¹¹ It may create the body by direct election or nominated or may declare and recognise an existing body elected or

109. Ibid., p.322. But it is interesting to note that the Union Territories of Andaman and Nicobar Islands, Lakshadweep and Delhi were not covered by this provision. See, Constitution of India, Op.cit., p.113.

110. Indian Express, 13 July 1978, p.1, cols. 4-5.

111. CHITALEY and RAO., Op.cit., p.296.

nominated as a legislature as has been recently done in the case of Delhi.¹¹²

Special features: The President, who is the executive head of a Union territory, does not function as the head of the Central government, but as the Head of the Union territory under Art.239, whereby he occupies a position analogous to that of a Governor in a State.¹¹³ It is interesting to record that the power to promulgate ordinance during the recess of Legislature of a Union territory referred to in clause (1) of Art.239A, is vested with the administrator of the respective Union territory which is exercised by him only after obtaining instructions from the President.¹¹⁴

Parliament has unfettered powers under Art.246(4) with respect to the Union territories. It is competent to make laws with respect to subjects included in the State list, to have application to Union territories. It means that the Legislature of a Union territory shall have no exclusive power with respect to list II as the Legislature of other States in India possess.¹¹⁵ The President of India can also make regulations for certain Union territories,¹¹⁶

112. Delhi has now been covered by the provisions of Art. 239A.

113. BASU, D.D., Commentary on the Constitution of India, Vol.4, 5th edn., Calcutta: S.C. Sarkar & Sons, 1968, p.47.

114. Constitution of India, Op.cit., Art.239 B(1), p.114.

115. BASU, D.D., Op.cit., Vol.4, p.48.

116. Constitution of India, Op.cit., Art.240 (1), p.113.

having the same force as Acts of Parliament.¹¹⁷

In so far as the Judicial system is concerned, Parliament may by law constitute a High Court for a Union territory or "declare any court in any such territory to be a High Court for all or any of the purposes of the Constitution of India."¹¹⁸ Until such legislation is made the existing High Court relating to such territories shall continue to exercise their jurisdiction.¹¹⁹ Parliament can also extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.¹²⁰

The provisions relating to Union territories also extend to acquired territories, simply by virtue of the definition of Union territory, as including "any other territory comprised within the territory of India but not specified in that schedule."¹²¹ Parliament has plenary powers of legislation regarding acquired territories as in the case of the

117. Ibid., Art.240 (2), p.116.

118. Constitution of India, Op.cit., Art.241, p.116.

119. Ibid., Art.241(3). The result is that Punjab and Haryana High Court acts as the High Court of Chandigarh; that of Kerala acts as the High Court of Lakshadweep; that of Madras acts as the High Court of Pondicherry; that of Bombay acts as the High Court of Dadra and Nagar Haveli; that of Gauhati acts as the High Court of Mizoram and Arunachal Pradesh; Goa, Daman and Diu, has a Judicial Commissioner who has the powers of a High Court for certain purposes. Delhi has a separate High Court of its own since 1966 (see, BASU, D.D., Introduction to the Constitution of India, Op.cit., p.241.).

120. Ibid., Art. 230(1), p.109.

121. Ibid., Art. 366(30), p.194.

Union territories,¹²² Thus the territories of Pondicherry, Karaikal, Mahe and Yanam were administered by the President of India through a Chief Commissioner before being made a Union territory on 16 August 1962.¹²³

The administration of the Union territories and acquired territories, therefore very clearly depict a picture of their being treated as special cases and thus enjoy a special status in the Indian federation.

3. Other Varieties of Special Status

In addition to the exceptions and special arrangements already discussed, the Indian Constitution provides further, certain categories of areas which are treated with special consideration.

Autonomous Districts: Some of the areas in India, which are inhabited by aboriginals, who are socially and economically rather backward, are treated as autonomous districts.¹²⁴ These are administered under the provisions of the Sixth Schedule of the Constitution and special efforts and care is needed for their uplift, for which the Central government has assumed somewhat greater responsibility.¹²⁵ These

122. Ibid., Art. 246(4), p.120.

123. Ibid., First Schedule, Entry 6, p.220.

124. These are: Part I (a) the North Cachar Hills District, (b) the Miker Hills District; Part II (a) Khasi Hills District, (b) Jaintia Hills District; and (c) the Garo Hills District; Part III (a) the Chakma District, (b) the Lakhur District, and (c) the Pawl District.

125. Art. 244(2), p.118 and pp.242-63.

areas are located in the States of Assam, Meghalaya and the Union territory of Mizoram. The Parliament of India is even authorised by law to form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of these areas.¹²⁶ It can also create a body elected or partly nominated and partly elected to function as legislature for the autonomous State thus created.¹²⁷ The reasons for such special arrangements are due to the fact that these areas are situated in a very sensitive region, right on the border of India with China, where the problem of security of India is involved and have, thus a strategic importance.

Scheduled Areas: Similarly there are scheduled areas, which have been provided a separate system of administration in order to protect the rights of the tribals in their land and to preserve their cultural life; to promote their economic, educational and social progress; to authorize the Governors of the States (where these areas are situated) to modify Central and State laws in their application to these areas for protective legislation; and to enable the Central government to provide additional funds to raise the standard of life of the tribal communities in these areas.¹²⁸ Tribes

126. This sort of autonomous state can only be formed out of areas from Part I as enlisted in supra-124. See, Constitution of India, Op.cit., footnote 5 at p.118.

127. Ibid., Art. 244(A).

128. India (Government of), Report of the Commission for Scheduled Castes and Scheduled Tribes: 1971-72 and 1972-73, Delhi; Controller of Publications, 1974, p.202. These areas have been declared in the States of Andhra Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and Himachal Pradesh.

Advisory Councils have also been set up in the States having Scheduled Areas, in each case consisting of not more than 20 members, of whom, as nearly as three-fourths are always the representatives of the Scheduled Tribes in the Legislative Assembly of the State. These Councils guide the respective Governors of the States.¹²⁹

Sub-regional autonomy: In the Indian Constitution, some "temporary, transitional or special provisions" have been made to meet special circumstances or peculiar requirements of certain areas. Thus, it has provisions to accommodate regional problems and demands in certain areas of States such as Kashmir, Nagaland, Assam, Manipur, Andhra Pradesh, Maharashtra, Gujarat and Sikkim.¹³⁰

Nagaland has been accorded a special status in the manner that no Act of Parliament can apply in that State in respect of religious practices, Naga customary law, civil and criminal justice, ownership and transfer of land, unless the legislature of that State so decides and gives its consent.¹³¹ This status in fact is partly due to the disturbed law and order situation in that State and partly to maintain their feeling regarding their customs and maintain their identity

129. Ibid., pp.202-03.

130. See, Constitution of India, Op.cit., Art.370-371 F, pp. 198-212. Special Status of Kashmir under Art.370 has been dealt fully in Chapter IV. Nagaland also includes Kohima, Mokok-Chung and Tuensang district. (Constitution of India, p.204).

131. Ibid., Art. 371 A. 1(a), p.201.

in various aspects of their culture.¹³²

The President of India is also empowered to constitute a committee with respect to the State of Assam, consisting of the members of the Legislative Assembly of that State, elected from the North Cachar Hills District and the Mikir Hills District to meet the local demands of these areas.¹³³ This is an alternative and an additional special provision to meet the requirements under Art. 244 A. A similar provision has been made for the Hill Areas in the State of Manipur.¹³⁴ The aim is to pay due attention and meet the interests of these Hill areas in that State.¹³⁵

For different parts of Andhra Pradesh, the President of India is empowered to provide for equitable opportunities and facilities for the people of those parts, in matters of public employment and education.¹³⁶ He can also appoint an Administrative Tribunal to decide various disputes regarding appointments, allotment or promotions in civil services of that State.¹³⁷ This tribunal is kept directly under the Supreme Court of India by-passing the High Court

132. JAIN, M.P., Op.cit., p.263.

133. Constitution of India, Art. 371 B, p.204.

134. Ibid., Art. 371 C, p.205.

135. BASU, D.D., Constitutional Law of India, 2nd edn., New Delhi: Prentice Hall of India, 1978, p.449.

136. Constitution of India, Op.cit., Art. 371 D, p.205.

137. Ibid., Art. 371 D(3), p.206.

of the State concerned,¹³⁸ The Parliament of India can also provide by law the establishment of a Central University in Andhra Pradesh to cope with the educational backwardness of that State.¹³⁹

The Governors of the States of Maharashtra and Gujarat may by order of the President be entrusted with the responsibility for establishing separate development boards for Vidarbha and Marathwada in Maharashtra and for Saurashtra and Kutch in Gujarat.¹⁴⁰ These special provisions are made keeping in view the necessities of these underdeveloped areas.

The State of Sikkim, which became the 22nd State of India by the Constitution 36th Amendment Act, 1975 (with effect from 26th April 1975), also enjoys in the field of its administration, a special position to meet its needs and circumstances. This State remained an Indian Protectorate of the Indian Union till 1974, thereafter it was given the status of an 'Associate State' by introducing some new innovations into the original scheme of the Constitution as there was no room for any such status in the existing Constitution of India.

We find that these arrangements have brought into being a new type of federalism to meet the challenge of peculiar

138. Ibid., Art. 371 D, p.208.

139. Ibid., Art. 371 E, p.209.

140. Ibid., Art. 371, p.200.

circumstances.¹⁴¹ It would also seem that the Indian federal system has amply proved the maxim advanced by Livingston that "federations rise in response to a definite set of stimuli."¹⁴²

* * *

Federalism is employed as a form of government for resolving multifarious problems of human organization. It can be devised to express multinationalism, linguistic diversities, communal loyalties, regionalism, religious heterogeneity and numerous other diversities resisting national unity. The individual identity or separate existence of a unit may thus be maintained and protected by some sort of special treatment which often provides internal autonomy to manage its own affairs within the framework of national constitutions. The special status may be granted to certain Union territories to maintain their neutrality. It may also be granted to certain areas due to their backwardness, strategic situation and administrative reasons.

Indian federal system also provides various categories of special provisions for states, regions and certain areas

141. AUSTIN, Granville., Op.cit., p.188.

142. LIVINGSTON, S.W., "A Note on the Nature of Federalism", in WILDAVSKY, Aaron., ed., American Federalism in Perspective, Boston: Little Brown & Co., 1967, p.36.

to meet the peculiar requirements of the inhabitants in these parts of the federation. By doing so India is trying to solve its political, linguistic, religious, historical, regional, cultural, communal and socio-economic problems pertaining to her minorities, backward classes, backward areas, scheduled tribes and scheduled castes in a democratic manner. These problems of Indian federalism are mammoth to the extent that no other federation of the world had ever braved such a huge range of heterogeneity.

The maximum flexibility of the Indian federal system in this behalf is to be seen in the special status enjoyed by Jammu and Kashmir State, which is constitutionally temporary but has almost assumed a permanence to the point of becoming one of the stable features of the Indian federal system.

Chapter III

THE ACCESSION OF JAMMU AND KASHMIR TO THE INDIAN UNION

The credit for strengthening and consolidating the State of Jammu and Kashmir goes to Maharaja Gulab Singh.¹ According to Sisir Gupta, it was he who "laid the foundation for a strong personal rule in a difficult area of the country".² He gave this State a "separate political entity" in the year 1846 by concluding the treaty of Amritsar with the British Government.³ Gajendragadkar opines that, "under Gulab Singh the condition of the people on the whole improved and they began to breathe an atmosphere of relative freedom and security."⁴ But culturally, the State presented three isolated peculiarities, since the population of Jammu was predominantly Hindu, that of the Kashmir valley predominantly Muslim and the Ladakhis were mainly Buddhist. Consequently mutual incongruencies and dissimilarities "had great potentiality for concussion and conflict."⁵ In addition to these internal conditions, externally the location of

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1. CHARAK, Sukhdev Singh., Maharaja Ranjit Dev and the Rise and Fall of Jammu Kingdom, Pathankot; The Dogra Pahari Itihas Kendra, 1971, p.1.
 2. GUPTA, Sisir., Kashmir: A Study of India Pakistan Relations, New Delhi; Asia Publishing House, 1976, p.22.
 3. RAO, H.S. Guru raj., Legal Aspects of the Kashmir Problem, New York; Asia Publishing House, 1967, p.1.
 4. GAJENDRAGADKAR, P.B., Kashmir: Retrospect and Prospect, Bombay; University of Bombay Press, 1967, p.12.
 5. TENG, Krishan Mohan and KAUL, Santosh, Kashmir's Special Status, Delhi; Orient Publishers and Distributors, 1975, p.19.

this State, in the words of Hayes, is "in a strategic position which makes it the centre of several intense international rivalries".⁶ Its area is 2,22,236 sq.km. including 78,932 sq.km. under the illegal occupation of Pakistan and 5,180 sq.km. illegally handed over by Pakistan to China. Also includes 37,555 sq.km. under illegal occupation by China.⁷ Its population in 1971 was 4,616,632 excluding the population of the areas held under the said illegal occupation.⁸ Out of the total population of this state 65.85 percent are Muslims.⁹ It is the only state in the Indian Union with a Muslim majority, which remained under the Dogra elite domination for full century (1846-1947). The Muslim majority was confined only to the Valley while in Ladakh and Jammu the non-Muslims were in majority.¹⁰

A. THE STRUGGLE FOR FREEDOM

With the dawning of modernism in Kashmir the Dogra rulers were considered alien in the Valley since they effectively excluded the Muslim majority from "significant administrative and military service".¹¹

6. HAYES, Louis D., Impact of US Policy on the Kashmir Conflict, Tucson: University of Arizona Press, 1971, p.11.

7. Jammu and Kashmir (Govt. of), Directorate of Census Operations, Census-1971 - Srinagar District, Srinagar: Government Press, 1973, p.v.

8. Ibid.

9. NARAIN, Iqbal., ed., State Politics in India, Meerut: Meenakshi Prakashan, 1976, p.147.

10. GUPTA, Sisir., Op.cit., p.326.

11. HAYES, Op.cit., p.12.

Maharaja Hari Singh, who was the ruler of the State in 1947, was not an exception to it. He was the supreme authority in the State and had assumed to himself all executive, legislative and judicial powers.¹² During the 1930s, the Muslims of the State began agitating for relief from the autocratic and oppressive rule. The Muslims in the State were prompted to do so by the "Lahore Muslim Press, which started a violent and venomous campaign against the Hindu Maharaja and his administration".¹³ The communal antagonism in adjoining British India was the main prop of the British policy of Divide and Rule in order to exploit the existing "cultural division within the native population in order to prevent unified resistance".¹⁴ The movement against the ruler in the Valley began developing into a mass movement from 13th July 1931 when ten Muslims were killed by police firing in Srinagar and the incident shook the whole administration of the State.¹⁵ It was here that the seeds of freedom movement were permanently sown, due to the widespread discontent among the Muslims, who were extremely backward - educationally, politically and economically.¹⁶

12. Jammu and Kashmir (Government of), The Jammu and Kashmir Constitution Act of 1996 - (XIV of 1996), Srinagar: Mercantile Press, 1999, p.2.

13. BAZAZ, P.N., History of Struggle for Freedom in Kashmir, New Delhi: Kashmir Publishing Company, 1954, p.151.

14. HAYES, Op.cit., p.13.

15. BAZAZ, P.N., Op.cit., 1954, pp.153-54. The valley attaches a deep sentimental attachment to this day and celebrates it as 'Martyrs Day' which is also a gazetted holiday throughout the State of Jammu and Kashmir.

16. HANDA, R.L., History of Freedom Struggle in Princely States, New Delhi: Central News Agency, 1968, p.248.

The Muslim conference began its career on 17th October 1932 and launched a movement for civic rights, services and political reforms. In 1934 the Muslim conference demanded from the ruler the immediate implementation of the recommendations of Glancy Commission.¹⁷ The Muslim Conference, under the leadership of Sheikh Abdullah, also demanded the proprietary rights of the land for peasants and abolition of 'Begar' (forced labour). Sheikh Abdullah, due to his nationalist outlook and his role in the fight for the freedom of the entire State, emerged as the popular leader of the Valley.¹⁸ He now decided to make the Muslim conference broad based and accordingly in 1935 he proclaimed his determination to fight for the emancipation of Kashmir. He said:

Let us all rise above petty communal bickerings and work jointly for the welfare of the masses. I appeal to my Hindu brethren not to entertain imaginary fears and doubts. Let us assure them that their rights shall not be jeopardised if they join hands with the Mussalmans.¹⁹

By the middle of 1939 the Muslim conference became "All Jammu and Kashmir National Conference", embracing all shades of people in its fold and refuting the two-nation theory, proving thereby that Muslims and Hindus could live

17. GAJENDRAGADKAR, Op.cit., pp.23-24.

18. HANDA, R.L., Op.cit., pp.249-51.

19. ABDULLAH, Sheikh., cited in GAJENDRAGADKAR, Op.cit., p.24.

together and "cooperate in a joint struggle for political emancipation".²⁰ By now, the Sheikh was greatly influenced by the politics of British India. Alastair Lamb observes that he "was much schooled in his thought by the Indian Congress leaders like Nehru".²¹ It seems that only the ruler of the State "showed less inclination to meet the challenge of the Indian National Movement, the influence of which had flowed from British India across the State boundaries".²² Against this background a 'National Demand' was presented to the British Cabinet Mission in the form of a memorandum stating clearly that, "today the National Demand of the people of Kashmir is not merely the demand of a responsible government but their right to absolute freedom from the autocratic rule of the Dogra House."²³ This was also the culminating point of the 'Quit Kashmir' movement, the aim of which was, according to Prem Nath Bazaz, "to coerce the Maharaja to recognise that the National Conference was the sole representative of the State people".²⁴ This was followed by the arrest on 20th May 1946 of Sheikh Abdullah,

20. BRECHER, Michael., The Struggle for Kashmir, New York: Oxford University Press, 1953, p.11.

21. LAMB, Alastair., Crisis in Kashmir, 1946-66, London: Routledge & Kegan Paul, 1966, p.31.

22. Ibid., p.27.

23. Cited in KAUL, G.L., Kashmir: Then and Now, Srinagar: Chronical Publishing House, 1972, p.105.

24. BAZAZ, P.N., Op.cit., 1954, p.265.

who was also the President of the All-India States People's Conference,²⁵ Nehru was much perturbed over the Sheikh's arrest and he forced his entry into the State against a ban. On 19th June 1946, he too was arrested and persuaded to go back to India. This action of the ruler of Kashmir virtually changed the course of the political history in the State.²⁶ The struggle for freedom in the State was at its highest point when the country was partitioned and two nations were carved out.

B. AGGRESSION AND ACCESSION

While transferring the power to these two newly born independent dominions the British followed the crude policy of 'cut and run',²⁷ with the result that under the terms of the Indian Independence Act of July 1947, the rulers of the five hundred and odd Indian states assumed full sovereignty and competence to accede to or federate with either Pakistan or India or to remain independent.²⁸ Sisir Gupta rightly emphasizes the "explosive character of the issue of Indian States".²⁹ Their transfer from a highly intricate system

25. GAJENDRAGADKAR, P.B., Op.cit., p.27.

26. KAUL, G.L., Op.cit., p.105.

27. BURKE, S.M., Main Springs of Indian and Pakistan Foreign Policies, Minnesota: University of Minnesota Press, 1974, p.69.

28. SHARMA, B.M. and CHOUDHARY, L.P., Federal Polity, New Delhi: Asia Publishing House, 1967, p.129.

29. GUPTA, Sisir., Op.cit., p.90.

of paramountcy to simplified political structures in India and Pakistan was sure to follow communal lines.³⁰ On the other hand, the rulers of these states were governed by the principle of accession, the instrument of which also recognised their sovereignty.³¹ But it was silent about the communal issues involved therein as is rightly highlighted by Alastair Lamb: "It can fairly be said that in deciding to accede to India the Maharaja of Kashmir was well within his rights according to the 1947 Act, which had nothing to say about communal issues in this respect."³² The ruler of Kashmir is often blamed for non-accession to either side before 15th August 1947.³³ A careful examination reveals that there were pertinent and potent centrifugal forces working against the Maharaja at that time.

Jinnah and his colleagues in the Muslim League had always considered that the State of Kashmir, at least, would form a part of Pakistan.³⁴ The Muslim Conference in Kashmir, a vital force from within, held the view that the best future of Kashmir lay in or in close association with Pakistan.

On account of its strategic location, Britain and United States wanted to turn Kashmir into an 'Imperialist' base and

30. HAYES, Op.cit., pp.12-15.

31. NOORANI, A.G., The Kashmir Question, Bombay: P.C. Manaktala and Sons, 1964, pp. 89-91.

32. LAMB, Alastair., Op.cit., p. 35.

33. GUPTA, Sisir., Op.cit., p. 90.

34. LAMB, Alastair, Op.cit., p. 38.

it would have fulfilled their purpose if Kashmir had gone to Pakistan, which they were sure was prone to toe the Western line.³⁵

On the Indian side, Sardar Patel wished Kashmir to join India on the basis of her past history, tradition and culture.³⁶ Mahajan was also advised by V.P. Menon to bring about the accession of the State to India.³⁷ The National Conference, opines Alastair Lamb "looked towards a liberal secular and independent Kashmir which could be associated with an independent Indian Union".³⁸ Nehru also realised the fact that the security of Kashmir was very vital to the security of India.³⁹

The circumstances under which the ruler was placed did not show him any safe course and it was not easy for him to come to a decision.⁴⁰ According to Walter Laqueur the cause of the ruler's indecision was that, "If he joined the Moslem State of Pakistan he would undoubtedly lose his throne, accession to India would provoke his Moslem subjects who resented his rule, while independence would leave him on

35. BURKE, S.M., Op.cit., p. 69.

36. DAS, Durga., ed., Sardar Patel's Correspondence, Vol.1, Ahmedabad: Navjiwan Publishing House, 1971, p. 32.

37. MAHAJAN, M.C., Looking Back, Bombay: Asia Publishing House, 1963, p. 128.

38. LAMB, Alastair., Op.cit., p.35.

39. INDIA (Government of), White Paper on Jammu and Kashmir, New Delhi, 1948, p.45.

40. MENON, V.P., The Story of the Integration of the Indian States, Bombay: Orient Longmans, 1956, pp. 394-95.

their mercy."⁴¹ On his own part Hari Singh wished to remain independent by not ruling out the possibility of keeping friendly and cordial relationship with India as well as with Pakistan, since his State had vital economic and cultural links with both.⁴²

Banzai observes that "Guided by communal considerations and prompted by internal conditions of the State, Pakistan was determined to coerce the ruler to accede to Pakistan."⁴³ It had therefore already applied economic blockade to the State and its entire border, right from Gurdaspur to Gilgit, was threatened with invasion. Thousands of soldiers in plain clothes but equipped with the most modern weapons were allowed to cross the borders and start wanton destruction of life and property of the Kashmiris. In the words of Sheikh Abdullah:

The invaders who came in the name of Pakistan to make us believe that they were true servants of Islam scorched our land, ruined our homes, despoiled the honour of our women and devastated hundreds of our villages. These lovers of Pakistan dishonoured our mosques which they turned into brothels to satisfy their animal lust with abducted women.⁴⁴

By 22nd October 1947, this loot and plunder changed into a full fledged invasion of Kashmir with far reaching

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41. LAQUEUR, Walter., ed., A Dictionary of Politics, London; Weidenfeld and Nicolson, 1971, p. 285.
 42. HARI SINGH to Mountbatten, letter dated 26th October 1947. Cited in LAKHANPAL, P.L., ed., Essential Documents and Notes on Kashmir Dispute, Delhi; International Books, 1968, p. 56.
 43. BAMZAI, Prithivi Nath K., A History of Kashmir, Delhi: Metropolitan Book Co., 1962, p. 736. Cf. SEN, L.P., Slender was the thread: Kashmir Confrontation, 1947-48, New Delhi: Orient Longmans, 1969, p. 15.
 44. Cited in SHARMA, B.L., Kashmir Awake, Delhi; Vikas Publications, 1971, p. 83.

consequences. The Maharaja could no longer delay the accession. The aggression compelled India to react favourably towards Kashmir and finally this invasion branded Pakistan as an aggressor for all times to come. Compelled by these adverse circumstances, the ruler made a desperate appeal for help to the Indian government, who in turn deputed V.P. Menon to make an on the spot investigation. On his arrival at Srinagar on 25th October 1947, he found the State on the brink of total collapse.⁴⁵

Menon alongwith Mahajan, the Prime Minister of the State, persuaded the ruler to get himself out of Srinagar lest he should fall into the hands of the enemy and be compelled to sign the instrument of accession to Pakistan under duress, and also to be readily available for further negotiations with the Indian government from Jammu.⁴⁶ The next day he flew to Delhi and, after conferring with the Central government, became instrumental in getting the Instrument of Accession signed by the ruler. The Sheikh, who happened to be at Delhi, also supported the accession on behalf of the National Conference,⁴⁷ and therefore on behalf of the people of the State.

Gururaj Rao maintains that the "accession of Kashmir became a legal fact" when the Maharaja signed the Instrument of Accession.⁴⁸ Since he was the only competent person

45. MENON, V.P., Op.cit., p. 398.

46. MAHAJAN, M.C., Op.cit., p. 151.

47. MENON, V.P., Op.cit., Op. 400.

48. RAO, Gururaj, Op.cit., pp. 33-34.

to do so "even assuming that he was not in de facto possession of the whole of the territory of the State."⁴⁹

The Indian acceptance of the accession took the shape of two documents, one of which was a formal statement by Mountbatten that "I hereby accept this Instrument of Accession",⁵⁰ as a consequence of which the Indian government became responsible for the defence of the State and quickly decided to mobilise the Indian army to repel the aggression.⁵¹

The second document was a personal letter from Mountbatten to Hari Singh which in part said: "In the case of any state where the issue of accession has been the subject of dispute the question of accession should be decided in accordance with the wishes of the people of the State."⁵² It is very clear, opines Lamb that the Instrument unlike the Governor-General's letter contains no mention of reference to the public will or reference to the people.⁵³ There was no dispute as well at that time between the people and the ruler regarding the accession to which the Sheikh, as a popular leader and the representative of the masses, was a party. He had already declared his aim to get "Freedom

49. Ibid., p. 35.

50. Cited in LAKHANPAL, Op.cit., p.57.

51. RAO, Gururaj, Op.cit., p. 64.

52. Cited in LAKHANPAL, Op.cit., p. 57.

53. LAMB, Alastair, Op.cit., p. 17.

before accession".⁵⁴ It seems clear that he took a cue from this "reference to the people" and demanded complete transfer of power to the people. He did not like the people of Kashmir to be bypassed and decided to opt for that dominion where the demand for freedom received support and recognition.⁵⁵

This demand set in motion a chain of political events which ultimately changed the political structure of the State.

C. SPECIAL PROBLEMS

The special problems were definitely created by those who, even after having understood the legality of the accession wanted it to be modified to suit their further designs. The Sheikh, for instance, declared just after the accession that "he did not feel that the Kashmir people could possibly be bound by the decision of the Maharaja to accede to India".⁵⁶

After having assumed power, the Sheikh dominated the National Conference and fully controlled the political strings of Jammu and Kashmir State on its Indian side. Politically he moved fast towards the establishment of self-rule and abolished monarchy in the State. In 1951,

54. Cited in BRECHER, M., Op.cit., p. 35.

55. INDIA (Government of), White Paper on Jammu and Kashmir, Op.cit., p. 14.

56. Cited in LAMB, Alastair, Op.cit., p. 58.

the Kashmir Assembly under his Prime Ministership affirmed internal autonomy over all matters except defence, foreign affairs and communications which according to the terms of accession were strictly the jurisdiction of central government.⁵⁷ According to Russel Brines, the Sheikh repeated his demand for internal autonomy in April 1952 and declared that "Constitution of India could not be applied to Kashmir".⁵⁸

* * *

At the time of the transfer of power, the British followed the policy of 'cut and run' thereby making the rulers of five hundred and odd states of India, fully sovereign, confronting India with an extremely explosive situation. The ruler of Kashmir in particular was placed under the stress and strain of extraordinary situation. Pakistan, instigated by 'Imperialist Powers' wanted to grab this State on the pretext of the communal issue. India wanted to include this state in her dominion to prove her secularism. The National Conference on the other hand, wanted Kashmir to be mostly independent and therefore had no better alternative than to side with the Indian Union.

57. For a fuller treatment of this issue, see next chapter on "Special Problems and Special Status".

58. BRINES, Russell., The Indo-Pakistani Conflict, London; Pall Mall Press, 1968, p. 94.

It was Pakistan's aggression against this State, after the partition of India, which compelled its ruler to accede to Indian Union. After his signing of the instrument of accession, the accession to India was never limited or incomplete in any respect. All other states acceding to the Indian Union had followed the same process which was legal, rightful and constitutional.

After accession, the Indian government became responsible for the defence of this State and saved it from the wanton brutality of Pakistan's aggression.

It is a notable point that there was no reference to the "will of the people" in the instrument of accession and there was no dispute about the accession between the leading and popular party of the State and the ruler. If there was any vigorous tussle it was for power and power alone.

One thing is certain that the circumstances leading to the accession were quite complex due to internal and external complications. The result was that the State leadership desired the issue of accession to remain open at least to enable them to acquire sufficient safeguards and greater amount of internal autonomy. The ultimate result was the Special Status of this State in the Indian Union.

There were many other special problems for this sort of special treatment for this State which are being enumerated in the Chapter which follows.

Chapter IV

SPECIAL PROBLEMS AND SPECIAL STATUS OF JAMMU AND KASHMIR

By 1947 Kashmir had been struggling against alien rulers for about 370 years.¹ Their struggle, according to Puri, had achieved "a genuine non-communal nationalism" which was not even accommodated in the mainstream of Muslim Politics of India before Independence".² This reasoning seems to be sound, for the Kashmiris have their well recorded historical past and rich culture, wherein they have shown least signs of losing their nationality and cultural identity. Lawrence had rightly observed that; "It is a matter of surprise that under rapid transitions of Governments, varying in race, religion and language, the people of the valley should have retained their peculiar nationality unimpaired".³ Lawrence refers to the times when they were under the yoke of alien rulers. After having seen centuries of servitude, the Kashmiris now saw a new hope only in some sort of special status which was to be the net result of the National Conference's demand for "freedom before accession". This demand when it acquired a place in the Indian Constitution,

1. PURI, Balraj., "Jammu and Kashmir" in WEINER, Myron., ed., State Politics in India, Princeton: Princeton University Press, 1968, p. 216.

2. Ibid., p. 217.

3. LAWRENCE, Walter., The Valley of Kashmir, London: Oxford University Press, 1895, p. 203.

became one of the most debated and controversial issues of the Indian federal system.

The origin of the problem seems to many scholars to lie in the partition of the sub-continent, in the aggression by Pakistan in Kashmir, and in the act of accession to India by its rightful ruler.⁴ This may in part be true, but there were causes other than these which need be highlighted to understand the depth of the problem.

There is no doubt that the very foundation stone of Pakistan was laid upon the bed-rock of the two-nation theory, which was also the kingpin of aggression and therefore the accession to India itself was considered by the people of Pakistan as "an open invitation to bullet" by the ruler of the state.⁵ In extreme contrast the demand for making India a Hindu State was turned down in the Indian dominion. This enthused and inspired the National Conference leaders to side with the Indian National Congress as they saw a bright future with them.⁶ They demanded fullest autonomy so that the Muslim majority in the State may feel assured that Hindu dominated India was not going to interfere in their internal affairs.⁷

4. See for example, LAMB, Alastair., Op.cit., pp. 35-37; PHADNIS, Urmila., Towards the Integration of Indian States 1919-1947, Bombay: Asia Publishing House, 1968, p.204; BASU, D.D., Commentary on the Constitution of India, Vol.5, 5th edn., Calcutta: S.C. Sarkar & Sons, 1970, p. 512.

5. BEG, Aziz., Captive Kashmir, Lahore: Allied Business Corporation, 1957, p. 202.

6. BAZAZ, P.N., Kashmir in Crucible, New Delhi: Pamposh Publications, 1967, p. 152.

7. BAZAZ, P.N., Op.cit., 1954, p. 476.

A. SPECIAL PROBLEMS

At the time of accession, the State of Kashmir therefore was passing through a phase of grave crisis. The population of the State was predominantly Muslim and the Hindu ruler realised that his State was bound to have vital economic and cultural links with both India and Pakistan, due to the geographical contiguity.⁸ Before his accession to India, considerable territory of the State was either illegally held by tribal invaders, helped and piloted by the Pakistan army, or came directly under Pakistan's merciless rule, as in Gilgit.⁹ The defence of the State had totally collapsed. Whatever army the State had was quite insignificant and ineffective due to shortage of ammunitions and desertion of entire Muslim element in it.¹⁰

Pakistani leaders were fully confident that they would get Gurdaspur district in Panjab through the Radcliff Award.¹¹ Consequently the fate of this princely state would have been left to the wanton brutality of the 'Tribal Vultures'. After having failed in their efforts to convince

8. HARI SINGH to Mountbatten, in TENG, BHATT and KAUL, Kashmir: Constitutional History and Documents, New Delhi; Light and Life Publishers, 1977, p. 539.

9. MENON, V.P., Op.cit., p. 415. Gilgit comprised of (1) the Gilgit wazarat, (2) the State of Hunza and Nagir, (3) the Puniyal Jagir, (4) the Governorship of Yasin, Kuhgir and Iashkoman, and (5) Chilas. (MENON, Op.cit., p. 393).

10. Ibid., p. 414.

11. LAMB, Alastair., Op. cit., p. 42.

the ruler to side with them, the Pakistani authorities asserted that there was anarchy in Kashmir and this could be quelled only by Pakistani intervention.¹² An attempt had even been made by Pakistan to capture the ruler of the State dead or alive at Bimber before his accession to India.¹³

Insofar as the other areas of the State were concerned, the Buddhists in Ladakh were struggling very hard to drift away and join Indian Union.¹⁴ The Hindu population of Jammu simply looked towards the ruler and stood by him. There had been an armed revolt at Sudduti area of Poonch prior to the accession of the State to Indian Union.¹⁵

The Demand for Special Treatment: The National Conference, which in its earlier phases of struggle against the ruler had always demanded "some special safeguards in every sphere for Muslims,"¹⁶ had also a future vision and plan for Kashmir. Afzal Beg had opined in early 1952 that:

Jammu and Kashmir State will be an autonomous republic within the Indian Union. And so far as the Constitution of the State is concerned, we aim at

12. MAHAJAN, M.C., Op.cit., p. 154.

13. Ibid.

14. TENG, BHATT and KAUL, Op.cit., p. 574.

15. LAMB, Alastair., Op.cit., pp. 37-38.

16. PHADNIS, Urmila., Op.cit., p. 116.

making its framework such that the State will be an autonomous unit within the said Union.¹⁷

But after having emerged as a majority in the State, the National Conference demanded special treatment even from Pakistan and Sheikh Abdullah, after his release from jail in September 1947, had sent two of his emissaries to negotiate for the same.¹⁸ Since the one-nation theory held by the Conference leaders was not acceptable to the Pakistan leadership, the Sheikh's representatives got a flat refusal and came back utterly disappointed.¹⁹

The point of view of special position was accepted by Indian leaders and Kashmir was promised what was called a special status in the Union of India.²⁰ The Indian leadership did not compel the National Conference to decide details, which Puri feels "gave a much needed emotional satisfaction to the Muslims of the Valley".²¹ The Congress and the National Conference also had a certain similarity in their ideology of secularism and democracy. Indian

17. BAZAZ, P.N., Struggle for Freedom in Kashmir, Op.cit., p. 479; Cf. PURI, Balraj., Op.cit., p. 221; SHARMA, B.L., Kashmir Story, Bombay: Asia Publishing House, 1967, p. 129.

18. PURI, Op.cit., 1968, p. 218.

19. TENG and KAUL, Op.cit., p. 212.

20. PURI, Op.cit., 1968, p. 219.

21. Ibid.

leaders acted wisely, knowing fully well, according to Bazaz that: "Law written or unwritten has little value if the people affected by it oppose it and believe that it has been imposed on them against their will."²²

Pakistan on the other hand showed no interest in the National Conference's struggle for freedom in the State whereas the Congress leaders were very much behind the National Conference leaders. In the words of Bazaz, they had also "realised that the Constitutional and legal accession would be meaningless if it would not be followed by emotional integration of the Kashmiris to the mainstream of the Indian social and political life."²³

✓ The Indian Response: As a premium upon these promises and understandings, the Central Indian leadership became committed to supporting the State leadership. It was not only ideology and support but clear cut and to some extent wild commitments as well, which favoured the Muslim majority in the State. Mahatma Gandhi had already said in relation to Kashmir that: "It was not the Maharaja with his soldiery that would count, but the Muslims who were the vast majority there."²⁴ Gandhi, it seems, perhaps had come to the final conclusion and observed that: "the will of the Kashmiris was supreme law in Kashmir."²⁵ In addition, socialism was a

22. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 37.

23. Ibid., p. 39.

24. Times of India, 1st June 1947. Quoted by GUPTA, Sisir, Op.cit., p. 92.

25. Times of India, 7th June 1947.

common creed between the Socialist Wing of the Congress and the National Conference. Jayaprakash Narayan, the then leader of the Socialist wing of the Congress declared in unambiguous terms that "a referendum of the people should decide whether Kashmir would join India or Pakistan."²⁶ These leaders were not worried at all about the legal aspects and future implications of utterances of this type, which might land them in difficulties.

To cap it all Nehru, in a broadcast, forcefully declared to the world on 2nd November 1947: "We have decided that the fate of Kashmir is ultimately to be decided by the people. This pledge we have given...not only to the people of Kashmir but to the world. We will not and cannot back out of it."²⁷ Lord Mountbatten was the instigator behind this pledge for he feared that accession of Kashmir in the prevailing circumstances might result in a grave and explosive situation.²⁸ At that time even the Sheikh himself did not approve of this unilateral declaration,²⁹ as there was not the slightest need for making this pledge by Nehru.³⁰

26. Times of India, 30th October 1947.

27. INDIA (Government of), White Paper on Jammu and Kashmir, Op.cit., pp. 52-53.

28. CAMPBELL, Johnson Alan., Mission with Mountbatten, London: Robert Hale, 1951, p. 225.

29. GANJO, P.N., (compiled), Portrait of Sheikh Abdullah, Srinagar: Allied Printers, 1964, p. 33.

30. VASHISHTH, Satish., Sheikh Abdullah: Then and Now, Delhi: Maulik Sahitya Prakashan, 1968, p. 205.

All these promises further bound the Government of India, which declared, after all, that "it was the people of the State of Jammu and Kashmir acting through their Constituent Assembly, who were to finally determine the Constitution of the State and the jurisdiction of the Union of India over this State."³¹ The Sheikh was now lead to believe that the Constitution of India had provided for a federal Union and in the distribution of sovereign powers, Kashmir was treated differently from other constituent units of India.³² He, therefore, told the State Assembly that "Our struggle for power has now reached its successful climax."³³ On the basis of this sovereign power the Sheikh was inspired to ask the representatives of the Assembly to translate the vision of 'New Kashmir' in reality through self-determination.³⁴ As observed by Puri: "Having acquired a radical, economic content and an ideological rationale the movement of Kashmir nationalism tended to assume a self-righteous and militant tone."³⁵

The National Conference leadership, therefore, rightly began to think of self-determination and internal autonomy.³⁶

31. BASU, D.D., Introduction to the Constitution of India, Op.cit., pp. 228-29.

32. ABDULLAH, Sheikh., in his address to the State Assembly, cited in TENG and KAUL, Op.cit., p. 201.

33. Ibid., p. 198.

34. Ibid., pp. 198-99.

35. PURI, Op.cit., p. 218.

36. Ibid.

To quote Hayes, "Nehru had openly recognized the autonomous claims of Kashmir by then".³⁷ Thereafter the Constituent Assembly of Kashmir which was constituted by the force of Indian Constitution and drew its powers from the same source began to claim inherent and original powers.³⁸

Nehru was under constant pressure by the Indian people who demanded that the Kashmir Government should be subordinated to the Indian Constitution like all other States.³⁹ Thereupon Nehru declared: "Nothing should be done by the Constituent Assembly of the Jammu and Kashmir State, which does not fit in with our Constitution, which is in no sense contrary to it or conflicts with any part of it."⁴⁰ Thus we find that sufficient amount of divergent pulls came to the surface and the differences were reconciled in the shape of Delhi Agreement which was finalised on 14th July 1952. The State Assembly recommended this basis for the relationship between the two Governments and accordingly the Delhi Agreement took final shape as the Constitutional (Application to Jammu and Kashmir) Order 1954.⁴¹ This order actually forms the main prop of the special status of Jammu and Kashmir.

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37. HAYES, Op.cit., p. 20.

38. TENG and KAUL, Op.cit., p. 57.

39. HASAN, K. Sarwar., Pakistan and the United Nations, New York; Manhattan Publishing Company, 1960, p. 147.

40. TENG and KAUL, Op.cit., p. 61.

41. India (Government of), Ministry of Law, Gazette of India, Extraordinary, Part II, Section 3, Notification No. S.R.O., 1610 of 14th May 1954, p. 821.

The nature and extent of this status was bound to affect the people of Jammu and Kashmir, the State Government and the Union Government. All these features of the Special Status are assessed in the section which follows.

B. NATURE AND EXTENT OF SPECIAL STATUS

The nature of special status may primarily be defined in constitutional terms. It is a fact that the Instrument of Accession was similar to that executed by each one of the rulers of other Indian States, yet entirely separate provisions for Kashmir State were made through Art.370.⁴² The future State Assembly was given the right to spell out which provisions of the Indian Constitution would apply to this State and whether these would apply with or without modifications to suit the special circumstances prevailing in the State.⁴³ The abrogation or modification of Art.370 was also to be recommended by the State Assembly to the President of India in due course of time.⁴⁴ The President of India was otherwise not empowered to abrogate and amend any of the provisions enshrined in this Article.⁴⁵

42. BASU, D.D., Commentary on the Constitution of India, Vol.5, Op.cit., p. 512. This Article was adopted by the Constituent Assembly of India, on 17th October 1949, namely, "Temporary and Transitional Provisions". The word 'Special' was added by the Constitution (13th Amendment) Act, 1962 (with effect from 1st Dec, 1963). At present this stands as "Temporary Transitional and Special Provisions" (See Part XXI of Indian Constitution 1977, p.198.).

43. GUNDEVIA, Y.D., The Testament of Sheikh Abdullah, Dehra Dun: Palit & Palit, 1974, p. 144.

44. BASU, D.D., Op.cit., p. 513.

45. TENG and KAUL, Op.cit., p. 180.

The State leadership began to seek an honourable place for their State in Indian federal structure on the basis of a rigid "balance of power".⁴⁶ Their aim was to obtain special safeguards for the Muslims of Kashmir,⁴⁷ who "feared that they would be lost in the vastness of India,"⁴⁸ if special status was not given to this State. There is no doubt that the State leadership had a constant apprehension regarding the future. To quote Sheikh Abdullah, "Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardised."⁴⁹ To allay these fears, the Central government at that time was ready to allow the State leaders almost unfettered internal autonomy.⁵⁰ Gundevia very aptly opines that at time "India was prepared to leave even the most vital provisions of citizenship and very fundamental rights of the citizens to the Constituent Assembly of Jammu and Kashmir."⁵¹

Gradually, with the passage of time, small inroads were made into the provisions of Article 370,⁵² whereby the

46. TENG and KAUL, Op.cit., p. 169.

47. MULLIK, B.N., Kashmir: My Years with Nehru, New Delhi: Allied Publishers, 1971, p. 11.

48. ABDULLAH, Sheikh., cited in GUNDEVIA, Op.cit., p. 37.

49. ABDULLAH, Sheikh., Opening Address in Kashmir Assembly, cited in TENG and KAUL, Op.cit., p. 217.

50. The external reason was that Pakistan disputed the State's accession to India and the question of aggression by her was pending in the U.N.O. This position remains the same even today.

51. GUNDEVIA, Op.cit., p. 105.

52. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 82.

constitutional position of this State underwent considerable change.⁵³ But on the whole basic autonomy had been allowed to remain unimpaired.⁵⁴ Even at present the State enjoys a greater amount of autonomy and power as compared to other Indian States and the Centre's jurisdiction within the State is more limited.⁵⁵ These arrangements have various dimensions which are outlined below.

Special Status to State Boundaries: The State of Jammu and Kashmir forms a part of the territory of India - that is Bharat - a union of States.⁵⁶ The Central government from the very start only includes those territories in the Union which immediately before 26th November 1949, were comprised in the Indian State of Jammu and Kashmir.⁵⁷ The State Constitution on the other hand includes all territories including those illegally occupied by Pakistan in its fold, on the basis of the fact that these were on the fifteenth day of August 1947, under the sovereignty or suzerainty of the ruler of the State.⁵⁸ The State Constitution also makes these territories an integral part of the Union of India by its own force.⁵⁹

53. JAIN, M.P., Indian Constitutional Law, Op.cit., p. 456.

54. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 82.

55. JAIN, M.P., Op.cit., p. 456.

56. Constitution of India, 1977, Op.cit., Art.1(2), p.2.

57. Ibid., First Schedule, entry No.15, p. 223.

58. J & K Constitution, Jammu; R.G. Press, 1970, Vol.I, Art. 4, p.2. Thus the territory held by Pakistan as Azad Kashmir, handed over by her to China in Gilgit and directly held by China in Aksai-Chin sector (1958-62) of Ladakh, legally and constitutionally forms the territory of the State and therefore of the Indian Union.

59. Ibid., Art.3, p.2 (namely the State of J & K is and shall be an integral part of the Union of India).

The Parliament of India, by law and proper procedure can form new states and alter the areas, boundaries or names of existing States.⁶⁰ But no bill providing for increasing or diminishing the area of Jammu and Kashmir State or altering its name or boundary can be introduced in Parliament without the consent of the State Legislature.⁶¹ Basu observes that: "Herein the status of Jammu and Kashmir markedly differs from that of other States in the Indian Union."⁶² This is a unique status given to the boundaries of this State. The result is that even the central government is not authorised to delimit the boundaries of the State or alter the existing balance between the various communities of the State. Certain portions of the lower plains may not be combined with any of the adjoining territories of the Union in any future delimitation of the State boundaries.

It is quite interesting that some representatives from Ladakh suggested to the Gajendragadkar Commission that the word 'Ladakh' be included in the name of the State to meet the sentiments of the residents of that area to minimise their feeling of isolation and neglect, but this idea was not acceptable to the State government.⁶³ Another very

60. Constitution of India, Art. 3, p.2.

61. Ibid., Proviso to Art. 3, footnote I, p.3.

62. BASU, D.D., Vol.5, Op.cit., footnote 5, p.514.

63. Jammu and Kashmir (Government of) Report of the Jammu and Kashmir Commission of Inquiry, Jammu; R.G. Press, 1968, p. 91.

interesting feature of this special arrangement is that twentyfive seats have been left vacant in the State legislature for the people of "Azad Kashmir" who are not with us.⁶⁴ The so-called Azad Kashmir Government on the other hand holds that their territory cannot be included in the Kashmir State unless it is reconquered by Indian forces.⁶⁵ They also claim that part of the State on the basis of revolt and secession before the accession of the ruler to the Union of India.⁶⁶

On the basis of this Constitutional provision, the State leaders have always claimed the right to be consulted whenever the disposition of this State is involved in implementing a treaty, an agreement or convention with any other country. Here the State Government has decidedly a positive say about its own boundaries. This is undoubtedly a special concession given to the State under the Constitution.⁶⁷

Special Status to Permanent Residents: Citizenship of India was granted to the "Permanent Residents" of this State with effect from 26th January 1950,⁶⁸ thereby creating a citizenship within a citizenship. Teng and Kaul have

64. J & K Constitution, Op.cit., Vol.I, Art. 48, (a), p.11.

65. BEG, Aziz., Op.cit., p. 63.

66. Ibid.

67. See Proviso to Art. 253, Constitution of India, Op.cit., footnote 1, p.123.

68. Constitution of India, Op.cit., footnote 1, Art.7.

rightly observed that: "The redefinition of the citizens of the State into permanent residents purports to the creation of a class of citizens, vested with special rights and privileges which are guaranteed by the Constitution of the State."⁶⁹

The Central government entirely left the definition of the expression "Permanent Resident" to the State legislature, which is fully empowered to make laws defining the classes of persons who are or who shall be permanent residents.⁷⁰ The State Government is also entitled to revise or cancel the certificates (the genuineness of which is doubtful⁷¹) regarding the permanent residence of its subjects after having given their holders a reasonable opportunity to be heard,⁷² and not on the merit of law. In the case of unmarried girls, these certificates are valid till the time of marriage. In case any such girl marries a person who is not a permanent resident of the State, she is liable to lose all benefits accruing from such certificates.

69. TENG and KAUL, Op.cit., p. 86.

70. J & K Constitution, Part III, Sec.8, Op.cit., p.3.

71. Jammu and Kashmir (Government of), Grant of Permanent Resident Certificate, Srinagar: Government Press, 1969, Sec.4(2); 6(1), p.2.

72. Ibid., Sec.6(1) Proviso.

The State government further assumes to itself the power to make rules to carry out the grant of these certificates or to cancel those which were previously granted.⁷³ The State legislature is also empowered to make laws for resettlement in case of those permanent residents of the State who migrated after 1st March 1947 to the territory of the State now occupied by Pakistan. The State can issue them permits for their re-settlement in the State or for a permanent return to the State after which they automatically become the citizens of India as well.⁷⁴ By the fall of the year 1953 several thousands of such people had been resettled mostly in their original lands.⁷⁵ As recently reported by the Inspector General of Police (J & K), such people are migrating to Indian side of Kashmir and are allowed to settle in this part of the State and their infiltration for the sake of settling down on this side of the line of actual control had been going on for quite some time.⁷⁶ Many of them came, disposed off their immovable properties and drifted away.⁷⁷ Taking advantage of this provision, Pakistan has, according to Mullik, been sending back trained saboteurs to the detriment of the defence of Kashmir.⁷⁸

73. Ibid., Sec.9, 2(e).

74. Constitution of India, loc.cit., Proviso to Art.7, footnote 1, p.5.

75. MULLIK, B.N., Op.cit., p. 61.

76. Times of India, 1st November 1977.

77. Hind Samachar (Urdu), 20th February 1978.

78. MULLIK, B.N., Op.cit., p. 20.

Perhaps for the same reason no permanent provision has been made for the settlement of the Hindus and the Sikh refugees from the same territory occupied by Pakistan. They were given only temporary leases of evacuee property and their future remains quite uncertain in contrast to what was done in India to permanently rehabilitate the refugees from West Punjab.⁷⁹ Since a long time, Sheikh Abdullah has objected to their permanent settlement on the ground that this would change the composition of the population to the detriment of the Muslims.⁸⁰ This is quite a baseless stand since all of them are permanent residents of this State.⁸¹ This discrimination against these refugees in the opinion of Mullik, "was sought to be justified on the plea that the land which had belonged to the evacuee Muslims could not be treated as evacuee property - these persons were entitled to come back and get resettled in their former possessions."⁸² This provision has created serious uncertainty amongst the non-Muslim refugees and it has served as a standing invitation to those who have gone over to Pakistan, to come back at their sweet will and claim their land,⁸³ adversely affect-

79. Ibid.

80. SHARMA, B.L., Kashmir Awakes, p.191, footnote 14.

81. Ibid.

82. MULLIK, B.N., Op.cit., p.20.

83. Ibid.

ing about "thirty five thousand non-Muslim refugees families in the State whose future hangs in hapless oblivion."⁸⁴ Sharma very correctly observes that; "Since the definition of a hereditary State subject affects the Muslims nothing has happened so far to abridge these rights."⁸⁵

Thus this provision, so far has benefitted and safeguarded the interests of the majority community in this State at the cost of the interests of the minorities. The view held by Teng and Kaul on this point is that, "these provisions of the State Constitution operate to the exclusion of the other citizens of India from the right and privileges granted to them by the Constitution of India."⁸⁶

We can therefore safely conclude that by avoiding the use of the word "Citizenship of the State" the fact cannot be eliminated that permanent residents of this State enjoy double status, for every permanent resident of this State

84. Hind Samachar (Urdu), 20th February 1978.

85. SHARMA, B.L., Kashmir Awakes, Op.cit., p. 191.

86. TENG and KAUL, Op.cit., p. 87. But no existing or future law enacted by the State Legislature can take away or abridge any rights conferred on other citizens of India other than permanent residents by any provision of the Fundamental Rights. (Constitution of India, Art. 35 A, footnote 1, p.23). BRECHER has nicely commented on this issue that "the Kashmir Government will continue to enjoy the authority to regulate the acquisition and possession of immovable property, notably land, by non-Kashmiris." (Op.cit., p.164).

is a citizen of India but every citizen of India cannot be a permanent resident of the State. He is debarred from permanent settlement, right to immovable property and right to employment in this State.

Curtailed Fundamental Rights and Constitutional Remedies: The provisions of Fundamental Rights of Indian Constitution were applied to Jammu and Kashmir State with effect from 14th May 1954,⁸⁷ meaning thereby that no retrospective effect so as to affect the rights and liabilities accrued before that date.⁸⁸ This dent was made in the Indian Constitution to enable the Kashmir Government to escape awarding compensation to dispossessed landowners contrary to the Indian guarantee.⁸⁹ In the words of Brecher "this is a significant exemption" in Fundamental Rights "which cannot be rescinded as ultra vires of the Constitution."⁹⁰

Jammu and Kashmir, thus has had a unique distinction among other States of the Indian Union of having introduced Land Reforms of considerable magnitude including remission of land revenue on small holdings.⁹¹ A start

87. J & K Constitution, Op.cit., Vol.1, footnote 1, p.77.

88. BASU, D.D., Vol.5, Op.cit., footnote 7(1), p.515.

89. SINGH, Bhagwan., Political Conspiracies of Kashmir, Jammu: Light and Life Publishers, 1973, p.145. Cf. BRECHER, M., Op.cit., p. 165. Even the ruler of this State would not acquire land for public purposes from the landlords without compensation admissible under the rules. See, J & K (Govt. of), Ministry of Revenue, Jagirs, Muafis and Mukkarraries, Srinagar: Govt. Press, 1970, p.43.

90. BRECHER, M., Op.cit., p.164.

91. J & K (Govt. of), Directorate of Information, J & K Economic Development in Figures, Srinagar, Govt. Press, 1976, p.4.

was made in this direction with the abolition of existing feudal institutions such as Jagirs, Muafidars and Mukharries in April 1948.⁹² As many as 396 Jagirs and Muafis involving a sum of about Rs.5,56,313 and 2,347; Mukharries involving a sum of about Rs.1,77,921 annually were liquidated. As a result of the abolition of these feudal institutions the public exchequer saved about Rs.7 lakhs per annum and the peasants were relieved of a great burden of payments in kind to the tune of over rupees 3 lakhs. As many as 4,250 acres of land granted as a privilege to Jagirdars for residential and other purposes were released and transferred to the cultivators of the land.⁹³

In October 1950, the Big Landed Estates (Abolition) Act was passed. A ceiling of 22.75 acres on all proprietary holdings was placed under the Act. The surplus land above the ceiling was transferred to the actual tillers who became the owners of the land. As many as 9,000 landowners were expropriated without compensation of "surplus land" aggregating to 4.5 lakh acres. Out of this, about 2.3 lakh acres were transferred to the cultivators in ownership right,

92. BRECHER, M., Op.cit., p. 156. Jagir holders were assigned certain villages from which they received land revenues. They were de facto rulers, judges and magistrates of their assigned lands; Muafidars paid no land revenue on their assigned lands; and Mukharari holders received pensions from the State. Cf. BRECHER, M., Op.cit., pp. 155-156.

93. J & K (Government of), Department of Information, J & K on road to Progress, Srinagar: Government Press, April 1971, p.5.

free from any encumbrances.⁹⁴ In the Valley, the landowners who thus lost their lands were mostly Hindus and the tenants exclusively Muslims.⁹⁵ Table No.1 shows the index of land reforms till 1954. A series of measures were initiated in 1949 in order to relieve the poverty stricken agriculturists, artisans, etc. of the burden of accumulated debts, as shown in Table No.2.

The mortgaged debts of the value of Rs.14.59 lakhs were also liquidated.⁹⁶ The legacies of the feudal system such as Zaildars, Safedposhas and Miwaza system were done away with by 1953.⁹⁷ Land revenue upto Rs.9/- on small holdings was remitted in the year 1967-68 and during the year 1970-71 consolidation work was done over 22,000 acres.⁹⁸ Pass Book system in respect of land holdings of peasants was also introduced.⁹⁹ As recommended by the Land Commission "the right to hold the land shall vest in the person who personally cultivate it."¹⁰⁰ for 75.7% of the workers of different industries in this State are involved as cultivators only.¹⁰¹

94. Ibid.

95. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p.47.

96. Jammu and Kashmir on Road to Progress, Op.cit., p.5.

97. Ibid.

98. Ibid., p.6.

99. Ibid.

100 J & K (Govt. of), Ministry of Revenue, Report of the Land Commission, Srinagar: Govt. Press, 1968, p.19.

101 Based on 1961 Census. Cited in SHARMA, B.L., Op.cit., 1971, p.273.

TABLE No. 1

LAND TRANSFERRED TO TILLERS IN JAMMU AND KASHMIR, 1952-54.

<u>Year</u>	<u>Land Transferred in Acres</u>	<u>Number of Tillers</u>	<u>Number of Beneficiaries</u>
1951-52	92,927	30,418	2,98,922
1952-53	66,755	50,189	1,70,165
1953-54	36,619	32,260	1,15,831
TOTAL	1,96,301	1,12,867	5,84,918

Source: Jammu and Kashmir: Economic Development in Figures, Srinagar: Government Press, 1976, pp. 4-5.

TABLE No. 2

DEBT CONCILIATION IN JAMMU AND KASHMIR,
1952-54.

(Amount in 000 Rs.)

Year	Cases Launched		Cases Disposed			Balance to be Paid by the Debtor
	No. of cases	Amount Involved	No. of cases	Original Debt **	Amount Scaled	
1951-52	35,030	6,296	8,903	1,424	967	457
1952-53	5,145	8,498	3,085	5,638	2,918	2,720
1953-54	16,697	6,007	13,454	1,633	957	676
TOTAL	56,872	20,801	25,442	8,691	4,842	3,849

Source: Jammu and Kashmir: Economic Development in Figures, Op.cit., pp. 4-5.

** Column 5 is corrected on the basis of the total of Columns 6 and 7.

Land reforms in the State are a continuing process, for 34.8 percent of the total cadastral area is annually cropped; 25 percent of the proprietary land is held on lease; of which half is held on share-cropping; the net sown area represents only 28.5 percent of the total area and 22.2 percent of the total area is either barren and uncultivable or under non-agriculture use. The inefficiency of land utilisation is too marked to be disputed.¹⁰² In the light of this background of land in Kashmir the social and economic implications of these reforms are revealed by the fact that approximately 7,00,000 cultivators including 2,50,000 Hindu untouchables in Jammu Province also acquired land.¹⁰³

All these reforms were done at the cost of 9,000 landowners, who suffered only because of the non-applicability of Fundamental Rights before 14th May 1954.¹⁰⁴ By then the Kashmir Government had gone too far ahead "without any prior reference to the Government of India and was a source of much concern and embarrassment to the latter".¹⁰⁵ The landowners in Jammu Province suffered doubly for the limit of the land to be retained by them remained the same but

102. Report of Land Commission, Op.cit., p.18.

103. BRECHER, M., Op.cit., p.161.

104. J & K on Road to Progress, Op.cit., p.6.

105. MULLIK, B.N., Op.cit., p.20.

their land in Jammu was much less fertile than the lands in the Valley. As noted by Mullik "this legislation was hurried through without consulting Centre".¹⁰⁶ Thus, these acts of violent expropriation which were considered to be 'Chori' (theft) or 'daka' (dacoity) by Sardar Patel, throughout India, became laws in Jammu and Kashmir.¹⁰⁷

These reforms were not entirely flawless for Ayyangar pointed out in 1967 that one of the area "in which improprieties have been committed" is proviso to section 20 of the Big Landed Estates (Abolition) Act 1950.¹⁰⁸ He has also pointed out how "the tiller-owner is replaced by a landlord which is against the policy of this Act."¹⁰⁹ Perhaps Ayyangar did not think it proper to note that under such circumstances the non-Muslim landlords of Jammu Province are replaced by those belonging to the majority community of the State in the Valley.

Further, the State Government is fully empowered to impose reasonable restrictions on freedom of assembly, association, movement, residence and property, on an additional ground of security of the State,¹¹⁰ which cannot be

106. Ibid., p. 21.

107. MENON, V.P., Op.cit., p.489.

108. J & K (Govt. of), Report of the Commission of Inquiry, Srinagar: Govt. Press, 1967, p.715. The said proviso is namely: "Interest of a proprietor or tiller not transferable and relinquishment by a proprietor or tiller ... etc." Cited from, J&K (Govt. of) Department of Law, The Laws of Jammu and Kashmir, Vol.4, 3rd edn., Jammu: R.G. Press, 1973, pp. 144-46.

109. Ibid., p.719.

110. Constitution of India, Art. 16(3), p.8.

put to judicial review.¹¹¹ This amounts to a serious curtailment of fundamental rights. These restrictions are imposed for a period of twenty five years from 14th May 1954.¹¹² But it should not be taken as deadline. There is every possibility of increasing the time limit for these restrictions. As noted by Basu, these curtailments in fundamental rights are there; "in view of the peculiar circumstances in which the State territory being in occupation of an alien power, which has aggressive intentions even as to the rest of the territory."¹¹³

The State legislature is fully empowered to legislate in respect of preventive detention to the detriment of fundamental rights. The Parliament of India is quite helpless in this matter.¹¹⁴ Even the President of India has no power to make an order in respect of persons under preventive detention in the State.¹¹⁵ The result is that the State Legislative Council hustled the much hated Public Safety Bill, on 6th April 1978,¹¹⁶ the provisions of which would surely jeopardise the fundamental rights of the people and totally muzzle the press.¹¹⁷ Thus, all walk-outs, bandhs

111. BASU, D.D., Vol.5, Op.cit., p. 515.

112. Constitution of India, footnote 1, p.10.

113. BASU, D.D., Vol.5, Loc. cit.

114. Constitution of India, Art.22(2), footnote 1, p.12.

115. Ibid., Art.373, footnote 2, p.214.

116. Times of India, 7th April 1978, col.4, p.5.

117. Ibid.

and strikes organised by the masses against the Bill, inside the State and outside, proved to be a cry in the wilderness since the Bill was passed in the Upper House "with indecent haste and without a free and frank discussion."¹¹⁸

This happened at a time when the Central Government bowed to public opinion and the preventive detention Bill was withdrawn.¹¹⁹ A similar ordinance was also allowed to lapse by the Madhya Pradesh government.¹²⁰

The State does not need the assent of the President for enacting laws relating to compulsory acquisition of property.¹²¹ Consequently such laws (existing and future ones) are well protected for imposing tax or penalty for prevention of danger to life or property.

The State also enjoys absolute freedom in enacting laws for declared evacuee property in the State.¹²² It is worthy of note that no court in the country has any jurisdiction to entertain any suit, proceeding or application or grant of stay or injunction in respect of anything done or proposed to be done in this State regarding the declared evacuee property.¹²³

A special and new definition of 'estate' which includes eight types of property, has been substituted for this State

118. Ibid.

119. Indian Express, 24th March 1978.

120. Times of India, 23rd February 1978.

121. BASU, D.D., Op.cit., Vol.5, p.515.

122. Constitution of India, Art.31, footnote 3, p.16.

123. J & K (Govt. of), Gazette, Vol.90, Part III, Srinagar: Government Press, 28th October 1977, p.3.

in the Indian Constitution.¹²⁴ Any State law which aims at acquiring these types of property, according to Basu, "shall not fail on the ground of contravention of any of the Fundamental Rights in the Indian Constitution."¹²⁵

The next important field is that of Constitutional Remedies wherein the Fundamental rights have also been curtailed. Teng and Kaul rightly note that: "There seems no justification and necessity for the restrictions placed on the Right to Constitutional Remedies in this State."¹²⁶ The High Court of this State has no power to issue writs for any purpose other than enforcement of Fundamental Rights (Curtailed ones) as applicable to this State.¹²⁷ Therefore, no law made by the State Legislature regarding preventive detention can be held ultra vires on the ground that it is inconsistent with any provision of the Fundamental Rights.¹²⁸

Consequently, persons holding views unpalatable to the Sheikh's Government during the period 1947-53 were detained without trial for varying periods extending to three years.¹²⁹ During the Bakshi regime (1953-64), Bazaz observes: "They could be detained in prison for five years at a stretch and

124. Constitution of India, Art. 31B, New sub-clause subs. for sub. cl. (a) of cl (2), Art. 31 A, pp. 17-18.

125. BASU, D.D., Op.cit., Vol.5, p.515.

126. TENG and KAUL, Op.cit., p. 183.

127. BASU, D.D., Op.cit., Vol.5, p.517.

128. Constitution of India, new added clause 'C' at footnote to Art. 35, p.22.

129. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p.64.

the Government was under no obligation to inform the detenu about the grounds of detention, the helpless victim could be rearrested after release and detained for another term of five years."¹³⁰

The constitutional remedies are further curtailed to the extent that the State Legislature is fully empowered to define the classes of persons who are or shall be permanent residents of the State. The State legislature is also fully competent to confer special rights or impose any restrictions in respect of employment in the State government, acquisition of immovable property, settlement and right to scholarship or state aid. The result is that "no existing law or no law hereafter enacted in this behalf 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 provisions of the Fundamental Rights of Indian Constitution."¹³¹

The Fundamental Duties enshrined in Part IV A of the Indian Constitution are not applicable to the State of Jammu and Kashmir.¹³² The result seems that the permanent residents of this State are free from the liabilities of these obligations.

Directive Principles of State Policy: Directive Principles of State Policy in Indian Constitution are not appli-

130. Ibid., p.69.

131. Constitution of India, Art. 35 A, p.23.

132. Ibid. See footnote 1, p.27.

cable to Jammu and Kashmir State.¹³³ The State Constitution includes its own "Directive Principles of State Policy",¹³⁴ the brightest aspect of these principles in this State is the right of free and compulsory education in certain cases. The State no doubt provides to every permanent resident the right to free education upto the university standard.¹³⁵ But mere free education cannot do any substantial good to socially and economically backward sections of the society, unless their material interests are well protected by the State. Due to the absence of such protection against social injustice, section 23 of these Directives of the State Constitution came under the purview of the Gajendragadkar Commission in 1968.¹³⁶ The inquiry of the Commission proved beyond doubt that:

The alleged imbalance in development programme and the policies pursued by the State Government in the matter of recruitment to service and the provision of educational facilities, are themselves some of the principal causes of irritations and tension in the State.¹³⁷

The Sheikh has held that the appointment of this Commission was to some extent "politically motivated".¹³⁸ The Commission's views are further supported by one finding of the High Court regarding the selection in State Medical College, Srinagar, in which the Court held, "The Selection appears to

133. Ibid., Part IV, footnote 1, p.24.

134. J & K Constitution, Op.cit., pp. 4-6.

135. J & K Constitution, Op.cit., Sec. 20, p.5.

136. J & K (Govt. of), Report of the Commission of Inquiry, Op.cit., p. 1.

137. Ibid., Sec. (Z-06), p.75.

138. Times of India, 13th October 1977.

us to be completely arbitrary, unfair and clearly violative of Articles 14 and 19 of the Constitution and does not pass tests laid down by the Supreme Court.¹³⁹ Finally, we can conclude that the Fundamental Rights as available to the people of the State are lopsided even after thirty years of freedom.

Curtailed Jurisdiction of Indian Parliament: The jurisdiction of Parliament in relation to Jammu and Kashmir is confined to the matters enumerated in the Union and the Concurrent list, subject to certain modifications. In the Concurrent list most of the matters are out of its jurisdiction.¹⁴⁰ The reason is again the special constitutional status granted to this State under the Indian Constitution. As regards the curtailed powers of the Indian Parliament, it has been observed:

In the case of Jammu and Kashmir the total legislative sphere has been divided between the Parliament and the State legislature, the former exercises only enumerated powers in regard to the State and the latter enjoys the residuum of powers.¹⁴¹

Another important feature of this arrangement is that in the case of all other States of India, the residuary powers of legislation belong to the Parliament,¹⁴² but in the case

139. The Hindustan Times, 8th December 1966, cited in BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 96.

140. Until the amendment of the order in 1963, the Concurrent list was altogether inapplicable to Jammu and Kashmir. Its application was extended in 1964 and exceptions were introduced in 1972. (BASU, D.D., Op.cit., 1978, p.236). The entries with respect to which Parliament can freely legislate for this State are namely: 4, 16, 17, 18, 19, 22, 23, 24, 26, 33, 34, 35, 36, 39, 43, 46 and 47 (i.e. seventeen only out of 47). Constitution of India, Op.cit., pp. 275-79.

141. SINGH, Balbir., The Working of the J & K Legislative Assembly, 1967-72, Jammu, University of Jammu, Doctoral thesis, 1973, p.38.

of Jammu and Kashmir State, these are vested in the State itself. The Jammu and Kashmir legislature is the only such legislature in India, which functions under its own constitution and does not enjoy merely enumerated powers like other States.¹⁴³

Clearly, therefore this State enjoys a considerable quantum of autonomy as compared with other States of the Indian Union. The executive and the legislative powers of the State extends to all matters except those with respect of which Indian Parliament has power to make laws for the State under the provision of the Constitution of India.¹⁴⁴ But the State must exercise its executive power so as to ensure complete compliance with the laws made by Parliament. It must not impede or prejudice the exercise of the executive power of the Union.¹⁴⁵ The important exceptions in the Union list are: (a) the Central Bureau of Intelligence and Investigation is not applicable to this State.¹⁴⁶ (b) The Parliament cannot legislate for preventive detention for the State even for reasons connected with Defence, Foreign Affairs or for the Security of Indian Union,¹⁴⁷ and (c) that any law passed by the Indian Parliament for "Courts of wards for the estates of the Rulers of Indian States" shall not apply to this State.¹⁴⁸

142. BASU, D.D., Introduction to the Constitution of India, Op.cit., p. 234.

143. SINGH, Balbir, Op.cit., p. 38.

144. J & K Constitution, 1970, Vol.1, Op.cit., Sec.5, p.3.

145. Constitution of India, Art. 256 and the new clause(2) added to it for J & K State, p. 124.

146. Constitution of India, footnote 3, p.264.

147. Ibid., footnote 3, p. 264.

148. Ibid., footnote 3, p.266. See also substituted Art.248 footnote 1, p. 121.

A very important power kept exclusively with the Parliament is the special entry 97 in the Union list, in terms of which the Union Parliament is fully authorised to legislate for this State, namely:

Prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession (or secession) of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India. 149

For the integrity of Indian Union this substitution was the result of a long felt need as fresh echoes of secessionist moves were reverberating in Kashmir. A seasoned leader and himself a signatory to the Constitution of India, Sheikh Abdullah gave a secession threat at the time of State Assembly Election in 1977.¹⁵⁰ It should not have come from a public leader of his stature since it involved an enormous infringement of the law of the land.¹⁵¹

Some of the more important entries in the Concurrent list which are kept out of the legislative sphere of the Central Parliament for Jammu and Kashmir State, are "relief

149. Constitution of India, Entry 97, footnote 1, p.271.

150. "Playing with Fire", Ed. Indian Express, 25th May 1977.

151. "Sheikh's threat to secede Shocking", Tribune, 16 June 1977. Only last year Sufi Mohammad Akbar, the senior Vice-President of the now dissolved Kashmir Plebiscite Front founded a new "Mehaz-i-Azadi" (Freedom Front) on 17th May 1977. (Indian Express, 17th May 1977). The aims before this front are a struggle for plebiscite. (Tribune, 1st July 1977), i.e. the freedom of Kashmir, on the basis of 'Self-Determination'. (Tribune, 1st June 1977).

and rehabilitation of persons displaced from their original place of residence" due to the partition of India,¹⁵² and "custody, management and disposal of property (including agricultural land) declared by law to be evacuee property."¹⁵³ The result is that nothing has been done during the last thirty years to permanently rehabilitate the non-Muslim refugees from Pakistan-occupied areas of the State.¹⁵⁴ About two lakh of these refugees are living in hopeless, miserable and sorry state of unsettled conditions without any means of livelihood. They are still living in some camps and the State Government is, according to some reports, thinking of urging the Centre to resume cash doles to them.¹⁵⁵ It is needless to say that each one of them is a permanent resident of the State and a citizen of India but without property rights or the right of permanent settlement, which have so far been denied to them.¹⁵⁶ Another entry thus excluded in this list is about "Charities and charitable institutions, charitable and religious institutions."¹⁵⁷

152. Constitution of India, Entry 27, p. 278.

153. Ibid., Entry 41, p. 279.

154. Times of India, 8th April 1978, col.3, p.4.

155. Ibid.

156. Indian Express, 6th February 1978. What to talk of these refugees the Parliament of India has no right to make any law in relation to this State requiring residence within its territory as a condition for any employment in this State. (Constitution of India, Art. 16(3), p.89).

157. Constitution of India, Entry 28, p.278.

The result has been that the State government passed the Jammu and Kashmir Awqaf Act 1959,¹⁵⁸ the enforcement of which is practically limited to certain areas of Jammu Province only.¹⁵⁹ The State government also intends to regularise the Iharan Arath Trust by invoking the same entry, it may find itself in trouble in future unless the Muslim Awqaf Act is properly and fully enforced throughout the State, notably in the Valley.

It seems that National Conference from the very inception of the Indian Constitution did not like even the idea of any intervention from the Centre in their charitable and religious institutions. By the same token, it is expected of the National Conference that it should not interfere in the charitable and religious institutions of any other minority in the State.

Special Status in Union-State Relations: The Parliament of India cannot legislate for the State of Jammu and Kashmir even in the national interest.¹⁶⁰ Parliament also cannot take a decision affecting the disposition of the State of Jammu and Kashmir without the consent of the State government.¹⁶¹ The result shall be that the Government of India

158. J & K (Govt. of), Ministry of Revenue, The Jammu and Kashmir Awqaf Act 1959 (in Urdu), Srinagar: Govt. Press, February 1970.

159. Ibid., p. 4.

160. Constitution of India, Art. 249, p. 121.

161. Constitution of India, Proviso to Art. 253, p.123. Cf. JAIN, M.P., Op.cit., p.458. Another wild commitment by Nehru was that: "It would be improper in every way for us not to consult him (Sheikh Abdullah) in any matter relating to Kashmir State". (White Paper on J&K), Op.cit., pp. 65-66.

shall have to consult the Kashmir Government while giving effect to international agreements. This is a unique privilege enjoyed by the State.

It is also worthy of note that the Government of India cannot deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in Jammu and Kashmir State.¹⁶² As already described the plenary power of the Indian Parliament is also curbed in certain other matters, with respect to which Parliament cannot make laws without the consent of the State Government.¹⁶³ Similar fetters have been imposed upon the executive power of the Union to safeguard the autonomy of the State: A unique privilege, which is only enjoyed by this State, is that a proclamation of emergency under Art. 352(1) cannot have any effect in the State (except in regard to distribution of revenues) unless it has been made at the request of or with the concurrence of the State Government.¹⁶⁴ Financial emergency also cannot be declared by the President in this State.¹⁶⁵

162. Constitution of India, Art.257 A, footnote 1, p.125.

163. BASU, D.D., Introduction to the Constitution of India, Op.cit., p. 235.

164. Constitution of India, Art. 352, new added clause footnote 1, p. 179. Cf. BASU, D.D., Introduction to the Constitution of India, Op.cit., p. 235.

165. Constitution of India, Art. 360, p.186. Cf. BASU, D.D., loc. cit., p. 235.

The Union cannot suspend the State Constitution on the ground of failure to comply with the direction given to the State Government by the Union Government of India under Art. 350.¹⁶⁶ In the case of failure of constitutional machinery in this State, it is the Governor of the State who shall, according to the Jammu and Kashmir Constitution, have the power, with the concurrence of the President of India, to assume to himself all or any of the powers of the Government of the State, except those of the High Court of the State.¹⁶⁷ The Parliament has no power under Art. 368 to amend the Constitution of this State.¹⁶⁸ An amendment made to the Constitution of India under this Article does not apply to this State unless applied by an order of the President under clause (1) of Art. 370.¹⁶⁹

While an Act of Parliament is required for the amendment of any of the provisions of the Constitution of India, the provisions of the State Constitution of Jammu and Kashmir are amended by an Act of its own legislature passed by a majority of not less than two thirds of its membership.¹⁷⁰ If such amendment seeks to affect the Governor or the Election Commission, it shall have no effect unless the law is reserved for the consideration of the President and

166. Constitution of India, footnote 1, p. 190. Cf. BASU, D.D., Loc. cit., p. 235.

167. Constitution of Jammu and Kashmir, pp. 27-28. See also Governor's Rule in J & K in Chapter VI at page ... of this study.

168. Constitution of India, footnote 2, Art. 368, p. 196.

169. *Ibid.*, Provision (a) to cl.2 of Art. 368, p. 196.

170. Constitution of Jammu and Kashmir, Sec. 147.

receives his assent.¹⁷¹

In addition to its own Constitution, the State has its own official flag¹⁷² and an official emblem. The Union Tricolour and the red State flag flutter side by side on Secretariat buildings. The Official language of the State is Urdu,¹⁷³ being mostly the language of the majority community of the State. No provision regarding minorities apply to this State except those for Scheduled Castes and Backward Classes. Regarding its internal autonomy, Basu rightly observes that: "the federal relationship between the Union and the State of Jammu and Kashmir respects 'State rights' more than in the case of the other States of the Union".¹⁷⁴

However, it is beyond the competence of the State legislature to alter the existing relationship between the State and the Union of India.¹⁷⁵ It cannot alter or change the mode of amending the State Constitution.¹⁷⁶ The State legislature has absolutely no right to entertain any Bill or amendment to make any change in the provisions of the Constitution of India as are applicable to the State.¹⁷⁷ The result is

171. Constitution of India, proviso (b) to cl (3) to Art. 368, pp. 196-97. Cf. BASU, D.D., Introduction to the Constitution of India, Op.cit., p. 236.

172. Constitution of Jammu and Kashmir, Sec. 144, p. 43.

173. Ibid., Sec. 145.

174. BASU, D.D., Introduction to the Constitution of India, Op.cit., p. 235.

175. Constitution of Jammu and Kashmir, Sec. 147(b), p.43. Cf. SINGH, Balbir, Op.cit., p. 40.

176. Constitution of Jammu and Kashmir, Sec. 147(a), Cf. SINGH, Balbir, Op.cit., p. 40.

177. Constitution of Jammu and Kashmir, Sec. 147(c), p.40.

that the process of integration with the Union is simply irrevocable and unalterable. It is noteworthy that this provision is in the State Constitution and not as a result of any provision of the Constitution of India.

* * *

Peculiar circumstances and extraordinary problems compelled the Kashmir leadership to desire a special status for Kashmir on the grounds of its politico-historical background. The Muslim majority of this State had rejected the two nation theory and accepted secularism and democracy. Before joining the Indian Union, the Valley based leadership desired a special status for Kashmiris with maximum internal autonomy to allay their fears in a Hindu-dominated India. Their special status was agreed to by the Indian leaders who also made certain wild commitments in addition to win over the Muslim majority to their side. The Delhi Agreement was the initial fulfilment of this federal bargain which initiated the constitutional special status for this State.

The State Constituent Assembly, when constituted began to claim inherent and original powers, as a result of which the Central leadership at Delhi was put to constant strain by Indian public opinion to subordinate Kashmir to Indian

Constitution, which created the deadlock of 1953. Later on the special status ultimately took shape in the Constitutional (Application to Jammu and Kashmir) Order of 1954, which is even today the main prop of the special provisions made for Kashmir in the Indian federal system.

The nature and extent of this special status are such that they lead to almost separate provisions made available for the State under Art. 370. Although by a gradual process of integration some inroads have been made into these special provisions, yet the State enjoys unimpaired internal autonomy. For example, the State boundaries are not subject to modification under Art. 3 of the Indian Constitution, the permanent residents of the State enjoy a sort of double citizenship, the evacuee property in the State is not considered as such adversely affecting thousands of non-Muslim refugees from Pakistan held Kashmir, the fundamental rights and constitutional remedies have also been curtailed and the State is fully empowered to legislate for preventive detention.

The Indian Parliament has limited jurisdiction in the State since it can legislate only on enumerated subjects, it cannot legislate for relief and rehabilitation of the displaced persons from Pakistan held areas and it cannot also legislate for the State in national interest. The State has internal autonomy in other spheres also since financial emergency cannot be declared in the State, the

State Constitution cannot be suspended under Art. 350; it cannot be amended under Art. 368 either. No provisions of minorities apply to the State except those for Scheduled Castes and Backward Classes.

Thus, we can conclude that the Indian federal system respects the 'State Rights' more than in the case of any other State of the Union. But, the legislature of this State is not empowered to change the relationship between the State and the Centre and cannot reverse the process of integration, with the Union, which is irrevocable and unalterable.

Chapter V

REGIONAL VARIATIONS IN SPECIAL STATUS

By all norms of Constitutional law the accession of the State of Jammu and Kashmir may be valid final and irrevocable, but as Puri observes, "the internal politics of the State, marked by inter-regional tensions, has influenced the attitude of the people on the question of their external affiliations."¹ In each of the three regions of the State - Jammu, Kashmir Valley (more simply known as the Valley) and Ladakh - a different attitude on the issue of accession was to be clearly noticed from the very day of the State's accession to India. A sort of local nationalism had developed in all these three regions of the State. Bhatt very rightly observes that: "In fact, regionalism was the very basis of the freedom struggle in the Kashmir Valley where struggle was launched against the alien Dogra rule."² In the other two regions, regionalism developed as a reaction to the politics of the Valley where the Special Status propped the accession of this State to India. Jammu and Ladakh took special status to Kashmir as a special favour to the Valley and therefore to the majority community of the State at the cost of the minorities. Jammu and Ladakh favoured greater integration with India whereas the Valley always favoured a limited accession.

1. PURI, Balraj, Op.cit., 1968, p. 215.

2. BHATT, R.K., "Kashmir" in Iqbal Narain, ed., State Politics in India, Meerut: Meenakshi Prakashan, 1976, p. 150.

Therefore the entire fabric of politics in the State has been mainly based on two issues; the relationship between the Valley and the Centre on the one hand, and the relationship between the Valley and Jammu and Ladakh on the other.³ Let us examine how this has actually worked and influenced the political attitudes and behaviour of the people in these three regions of the State.

A. THE VALLEY: POLITICS OF PRIVILEGE

After accession the ruling group of leaders in this Muslim majority State wielded maximum political power and were in a position to dictate terms to the Central Government. It was not only in the Valley, but everywhere in India that strange strains developed in the political system after the freedom experience. These claims were now made not in the name of nation, but of region, religion, language, caste or tribe. In the case of the Valley, two more external potent factors may be added; (i) the fear of plebiscite going in favour of Pakistan, and (ii) the attitude of U.N.O. where the aggressor and the aggrieved were treated on the same footing.

National Conference and Special Status

The National Conference leaders hungered for power,⁴ and the Central leaders favoured them as they saw Kashmir

3. Ibid., p. 149.

4. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. IX.

as a living symbol of their 'secularism'. Therefore, they were only worried to keep the State leaders in good humour at any cost for they supported the accession and opposed Pakistan, refuting strongly her two-nation theory.⁵ So much so that they ruled the State without any checks from 1947 to 1951 when there was no legislature at all.⁶ To quote Bhatt: "Following the transfer of power, the Kashmiri speaking Valley-based leaders of the National Conference had become the real rulers of the State."⁷ In addition to this, when the constitutional monarchy was abolished in 1952, it appeared clearly that a "shift of power had taken place from Jammu to the Valley".⁸

The attitude of Jammu and Ladakh was taken to be a "communal and reactionary revolt" against the Valley and the means the ruling group adopted to suppress opponents were not always fair; they included even the wholesale rejection of their nomination papers for the Constituent Assembly elections in 1951.⁹ In 1952 when the Central Government thought of extending the jurisdiction of the Comptroller and Auditor General to the State, the Sheikh as Prime

5. BHATT, R.K., Op.cit., 1976, p. 149.

6. PURI, Balraj., Op.cit., 1968, p. 219.

7. BHATT, R.K., Op.cit., 1976, p. 150.

8. PURI, Balraj., Op.cit., 1968, p. 220.

9. Ibid., p. 221. Cf. BAZAZ, 1967, p. 63.

Minister accused the "Centre of wanting him to sign a promissory note in their favour,"¹⁰ and later on he expressed his view thus: "Kashmir's accession to India will have to be of a restricted nature."¹¹ And he described the full application of Indian Constitution to Kashmir as "unrealistic, childish and savouring of lunacy."¹² He asserted his determination to defend limited accession on the basis of Art. 370 whereby he meant that the power to finalise the Constitutional relationship between the State and the Union of India had been specifically vested in the Jammu and Kashmir Constituent Assembly.¹³ He therefore stressed in the Assembly, right from its inception, the need to preserve with care the autonomy of the State with regard to all other subjects except those enumerated in the instrument of accession.¹⁴ While speaking on the Delhi agreement in the Assembly on the 11th of August 1952, he warned:

Any suggestion of altering arbitrarily this basis of our relationship with India would not only constitute a breach of the spirit and letter of the constitution but it may invite serious consequences for a harmonious association of our state with India.¹⁵

10. Cited in MULLIK, Op.cit., p. 24.

11. Ibid.

12. Ibid.

13. Cited in TENG and KAUL, p. 232.

14. Ibid.

15. Ibid., p. 233.

He pleaded the urgency of such a constitutional arrangement in the context of the 'extraordinary circumstances' through which the State was then passing and assumed these circumstances to be requiring drastic administrative and economic changes.¹⁶ While the Delhi Agreement was hailed in the Valley it was rejected in Jammu and Ladakh. The majority community did see their safety and survival in special status and the rejection of it by two other regions of the State caused misgivings in the Valley. The people there began to feel that their entity which they had defended against the invaders from Pakistan seemed again in danger and their leader Sheikh Abdullah came under a double attack from Jammu as well as from the Valley,¹⁷ where a group headed by G.M. Karra advocated the merger of at least the Valley with Pakistan.¹⁸

The feelings of insecurity were further aggravated by the considerations of appointment of a plebiscite administrator and fixation of a date for plebiscite which gave further impetus to the valley to reconsider its future affiliations.¹⁹ Although as early as October 1948 the National Conference had unanimously passed the resolution affirming the

16. Ibid.

17. PURI, Balraj., Op.cit., 1968, p. 222.

18. BRINES, Russel, Op.cit., p. 64.

19. PURI, Balraj., Op.cit., 1968, p. 222.

State's final accession to India and India alone,²⁰ yet in the emerging circumstances the National Conference under the guidance of Sheikh Abdullah equated India and Pakistan in his "honourable possible solutions" wherein there was no reference to accession to India or Special Status, these proposals also included a scheme of Balkanisation of the State on the grounds of religion.²¹ He was invited by Nehru to discuss the implications of the new proposals advanced by the National Conference, but did not deliberately respond to the invitation. Misunderstandings were brewing on both sides and ultimately the Sheikh was arrested and deposed in August 1953.²² The charges against him were those of corruption, malpractices, disruptionism and dangerous foreign contacts,²³ which could never be proved,²⁴ for reasons best known to those who were at the helm of affairs.

Bakshi and Irrevocable Accession

It was only after the exit of Sheikh Abdullah that a new chapter of gradual integration of the State beyond the terms of Instrument of Accession, was started. His successor, Bakshi Ghulam Mohammad, through his often repeated slogan of

20. MULLIK, B.N., Op.cit., footnote, p. 7. Cf. BAZAZ, P.N. 1954, p. 409.

21.

21. PURI, Balraj., Op.cit., 1968, p. 222. The proposals were (a) Overall plebiscite (including choice for Independence; (b) Independence of the whole State; (c) Independence of the whole State with joint control by India and Pakistan of foreign affairs, and Dixon plan with independence for the plebiscite area. (See, PURI, Balraj., Op.cit., p.222)

22. Ibid., p. 224.

23. GUPTA, Sisir., Op.cit., p. 264.

24. GONDEVIA, Op.cit., p. 121.

"irrevocable accession", created a sufficient patriotic halo in India.²⁵ He became instrumental in confirming the legality of the accession through the Constituent Assembly in February 1954, but not without adhering to the Special Status of the State.²⁶ It was during his Prime Ministership that some of the important provisions of the Indian Constitution to the State of Jammu and Kashmir, were applied.²⁷ The financial integration of Kashmir with the Centre which the Sheikh had resisted and which was gladly accepted by Bakshi brought great financial aid to the State,²⁸ which got substantial assistance in the form of grants and loans for financing the State plans. The quantum of assistance for the first four plans is shown in Table 3, which was the highest percentage of assistance received by any State of the Indian Union. Shama has rightly

25. PURI, Balraj., Op.cit., p. 227.

26. LAMB, Alastair, Op.cit., p. 72. He remained Prime Minister for about ten years, i.e. between August 1953 and October 1963. When he was 'Kemarajed' by Nehru. (See, GUADA, K.L., Passive Voices, New Delhi: Sterling Publishers, 1973, p. 212).

27. For example, application of fundamental rights; jurisdiction of the Supreme Court, the authority of the Auditor General, Transfer of Services to the Union List, Approval of the Union Planning Commission of the State's development programmes; Abolition of the customs barrier, association of the State with Northern Zonal Council, etc. etc. (See, BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 71).

28. PURI, Balraj., Op.cit., 1968, p. 225. Cf. Jammu and Kashmir (Government of), Department of Information, Jammu and Kashmir on Road to Progress, Srinagar: Government Press, 1971, p. 3.

Table No. 3

CENTRAL ASSISTANCE TO JAMMU AND KASHMIR

<u>Plan</u>	<u>Total Plan Expenditure (in lakhs of Rupees)</u>	<u>Central assistance</u>	<u>Percentage of Central assistance to Plan expenditure</u>
First Plan	1,151.71	1,000.00	87
Second Plan	3,120.20	2,000.00	64
Third Plan	6,409.34	6,200.00	97
Fourth Plan	15,840.00	14,500.00	92
Total	26,521.25	23,700.00	89

Source: For the first three Plans, see Report of the Commission of Inquiry, Jammu: R.G. Press, 1968, p. 24.

For the Fourth Plan, see Government of India, Planning Commission, Fourth Five Year Plan, Government of India Press, Faridabad, 1970, p. 14.

observed that "No other State in Indian Union has been treated with greater consideration since it has been extended aid and assistance out of all proportions to its size, population and economic needs."²⁹ (See Tables 4 and 5). As regards per capita financial assistance to Kashmir for the Second Plan (1956-61), it was for instance Rs.50 against the average of 37 for other States. In the Third Plan beginning in 1961 the figures were Rs.117 and Rs.52 respectively.³⁰ Kashmir also remained the least taxed State of India in 1958-59, when per capita taxes in Kashmir amounted to Rs.4.23 in contrast to average of all States in India of Rs.9.17.³¹

This was the time when the members of the Parliament found an allround prosperity in Kashmir,³² and Pant opined thus: "Those who try to drive a wedge between India and Kashmir have no place within or without the State."³³ It must not, however, be overlooked that Bakshi, while advocating "irrevocable accession" to India, remained constantly a champion of Kashmir's special status.³⁴ He did not wholly forget that he was a Kashmiri first, pledged to the interests of Kashmir. Guaba rightly observes:

Bakshi Ghulam Mohammed while steadfastly reiterating that Kashmir was an integral part of the Indian Union, equally steadfastly declined to

29. SHARMA, B.L., Kashmir Awakes, Op.cit., p. 181.

30. PURI, Balraj., Op.cit., p. 225.

31. Ibid. Even at present there are taxes like Central Wealth Tax and Gift Tax, which have not been extended to the State, though being actual "taxes de jure vide entry 86 of the Union List". (See, The Tribune, 26th May 1977).

32. PANT, G.B., cited in Kashmir as Others See it, J & K (Govt. of), Deptt of Information, Jammu; R.C. Press, 1961, p.19.

33. Ibid.

Table No. 4.

PLAN OUTLAY AND CENTRAL ASSISTANCE-STATEWISE

(in Crores of Rupees)

State	First Plan 1951 - '52 - 1955-56			Second plan 1956 - '57 - 1960-61			Third Plan 1961-62 - 1965-1966		
	Plan Outlay	Central assistance	Col.3 (as % of col.2	Plan Outlay	Central assistance	Col.6 as % of col.5	Plan Outlay	Central assistance	Col.9 as % of col.8
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	107	61	57.0	181	96	53.0	349	220	63.0
2. Assam	28	22	78.6	63	31	49.2	132	100	75.8
3. Bihar	102	55	53.9	177	84	47.5	332	216	65.1
4. Gujarat	99	32	32.3	147	50	34.0	240	112	46.7
5. Jammu & Kashmir	11.52	10	86.8	31.2	20	64.1	64.09	62	96.7
6. Kerala	44	24	54.5	79	38	48.1	182	122	67.0
7. Madhya Pradesh	94	61	64.9	145	96	66.2	287	219	76.3
8. Madras	85	42	49.4	187	95	50.8	342	187	54.7
9. Maharashtra	125	48	38.4	214	74	34.6	435	167	38.4
10. Mysore	94	47	50.0	139	67	48.2	264	156	59.1
11. Nagaland	11	11	100.0
12. Orissa	85	77	90.0	89	66	74.2	224	137	61.2
13. Punjab	163	141	86.5	151	88	58.3	252	134	53.2
14. Rajasthan	66	60	90.9	100	59	59.0	213	161	75.6
15. Uttar Pradesh	166	87	52.4	228	121	53.1	557	356	63.9
16. West Bengal	154	113	73.4	156	73	46.8	305	155	50.8

Note: The figures of Plan Outlay shown for Jammu and Kashmir have been furnished by the State Government. The figures for the other States are those furnished by the Union Ministry of Finance.

Source: Report of the J & K Commission of Inquiry, Jammu; R. Government Press, 1968, p. 116.

Table No.5

FOURTH PLAN OUTLAY AND CENTRAL ASSISTANCE - STATE-
WISE (1969-74)

(in Crores of Rupees)

State	Total Plan	Central Assistance	Col.2 as % of col.1
	1	2	3
1. Andhra Pradesh	420.50	240.00	57
2. Assam	261.75	220.00	84
3. Bihar	531.28	338.00	63.5
4. Gujarat	455.00	158.00	34.7
5. Haryana	225.00	78.00	34.6
6. Jammu and Kashmir	158.40	145.00	92
7. Kerala	258.35	175.00	67.7
8. Madhya Pradesh	383.00	262.00	68
9. Maharashtra	898.12	245.00	27.2
10. Mysore (Karnataka)	350.00	173.00	49.4
11. Nagaland	40.00	35.00	87.5
12. Orissa	222.60	160.00	72
13. Punjab	293.56	101.00	34.4
14. Rajasthan	302.00	220.00	72.7
15. Tamil Nadu	519.36	202.00	38
16. Uttar Pradesh	965.00	526.00	54
17. West Bengal	322.50	221.00	68

Source: Government of India, Planning Commission, Fourth Five Year Plan, Government of India Press, Faridabad, 1970, p. 14.

countenance or surrender any of the powers and privileges of the State of Kashmir guaranteed under Article 370 of the Constitution.³⁵

He won two General Elections of 1957 and 1962 by various methods, not all above board, and got his hand-picked men declared elected. Only four seats in the first and three seats in the second one were allowed to be captured by the Praja Parishad in Jammu, so that the Indian public opinion was not antagonised.³⁶ The number of seats won uncontested by the National Conference was 41 out of 45 in the 1957 and 40 out of 45 in the 1962 election.³⁷

While introducing IAS and IPS - all-India services - to the State, all the initial recruitment had been from the promoted officers of the State without any system, order or tradition.³⁸ To quote Guaba, "Bakshi served Kashmir well, served India better and served himself, perhaps best," during his Prime Ministership.³⁹ His was the first case of a fulfilled enquiry into charges of misconduct and abuse of official position against a Chief Minister of a State in India, wherein the Chairman of the Commission remarked: "Political Offices have been turned into sources for making private fortunes for those in office and their friends and relatives."⁴⁰

35. GUABA, Op.cit., p. 213.

36. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 71.

37. Ibid., p. 87.

38. RAI, Mangat, E.N., Commitment My Style, Delhi: Vikas Publishing House, 1973, p. 246.

39. GUABA, K.L., Op.cit., p. 213.

40. AYYANGAR, N. Rajagopalan., Op.cit., p. 719.
(Report of the Commission of Inquiry, 1968).

Sadiq's Policy of Greater Integration

His successor, G.M. Sadiq believed in the policy of greater integration with India.⁴¹ In his policy statement of March 1964, Sadiq summed up the primary task before his Government as follows: "break down barriers that stood in the way of fuller participation of the people of the State in the broader currents of national life in India."⁴² The aim before him was to achieve emotional integration with India through a dynamic process of Parliamentary practice and usages.⁴³

The pro-India lobby demanded the abrogation of Article 370.⁴⁴ and the top-leaders of the National-Conference accepted the same. A Bill was discussed in the Lok Sabha in March 1964 to do away with Article 370 in the interest of complete integration of the State with India.⁴⁵ There was no opposition, but the Centre at the same time became aware of the feelings of Kashmir - Muslims regarding the merger of the State with India. Therefore, the Union Cabinet decided not to abrogate the Article but to further apply certain provisions of the Indian Constitution to satisfy Indian public opinion.⁴⁶ Consequently, G.L. Nanda announced

41. Jammu and Kashmir on Road to Progress, Op.cit., p. 4.

42. Ibid.

43. Ibid.

44. BAZAZ, P.N., Op.cit., 1967, p. 82.

45. Ibid., p. 82.

46. Ibid., p. 83.

on December 1964, the Central Government's decision to apply Articles 356 and 357 to the State as a first step towards further integration.⁴⁷

The change of designation of Sadar-i-Riyasat to Governor and that of Prime Minister to Chief Minister was effected as part of Sadiq's policy of greater integration with India.⁴⁸ He also agreed to the proposal that in successive stages Article 370 may be eroded.⁴⁹

During the closing days of Bakshi's regime, there had been a strong move to amalgamate the National Conference into the Indian National Congress as they stood for identical ideals.⁵⁰ Being a true defender of the cause of special status of Kashmir, Bakshi never gave in to such pressures. In addition to the similarity of ideals between the two the real cause was the fact that the political strength of the National Conference in the State had been a constant source of difficulty for the Central government.⁵¹ Most probably it could not put up with the Conference's virtual control of the party and the Government, which tended to act arbitrarily.⁵²

47. Ibid., p. 84.

48. RAI, Mangat, B.N., Op.cit., p. 252. Constitutionally this was effected by the Constitution of J & K, 6th Amendment Act, 1965, S.2, See, Constitution of J & K, Op.cit., p.62.

49. BAZAZ, P.N., Op.cit., 1967, p.83.

50. Ibid., p. 81.

51. HAYES, Op.cit., p. 20.

52. CHANDRA, Prakash., Factional Politics in Jammu & Kashmir: A Case Study of Factional Behaviour in the Ruling Parties of the State, Jawaharlal Nehru University, (CPS), Unpublished M.Phil. dissertation, 1977, p. 48.

It was Sadiq, a 'progressive', who yielded to the inexorable pressure from the Centre, and the National Conference was merged into the Congress, whereafter he contested the 1967 elections on a Congress ticket.⁵³ He won the election and the Congress got 60 seats and the Jana Sangh, the main opposition, secured only three seats.⁵⁴ There were many rejections of the nomination of the opposition candidates and the Hindustan Times remarked: "There is no answer to the question why all rejections should have been on the side of the opposition and why all the benefits should have been to the ruling party."⁵⁵ In this way the newly formed Congress came to power in Jammu and Kashmir, while at the same time it was losing power in eight States of the Union. Guaba rightly notes "such are the vagaries of Kashmir politics and the Kashmiri mind."⁵⁶

Whatever be the criticisms, Sadiq's government continued the process of integration. The mineral resources of the State developed and the Central government was bound by the

53. GUABA, Op.cit., p. 216.

54. SHARMA, M.P., Op.cit., p. 375.

55. The Hindustan Times, 3rd February 1967.

56. GUABA, K.L., Op.cit., p. 216.

International Labour Organisation conventions to apply the Central Labour laws there,⁵⁷ consequently thirteen* such laws were extended to the State for the first time, to widen the scope of the legal rights provided to labour and to make available to them the rights and facilities being enjoyed by labourers in other parts of the Indian Union.⁵⁸ A Committee was constituted to go into the recommendations of the Gajendragadkar Commission regarding regionalisation of cadres and the setting up of Regional and District Recruitment Boards to ensure the rationalization of the recruitment procedures.⁵⁹ Sadiq's government also accepted the reservation of 42 per cent of the posts in the State Services and Institutions of higher and professional education for Backward classes and 8 per cent for Scheduled Castes as recommended by the Wazir Committee.⁶⁰

Sadiq was the first to agree to bring young direct recruits to the IAS and IPS into Jammu and Kashmir for the first time.⁶¹ To quote Rai, "Sadiq Government directed its aims and intentions to normalising the political situation, to

57. SHARMA, B.L., Kashmir Awakes, Op.cit., p. 184.

58. J & K (Govt. of), Department of Information, Labour in Jammu and Kashmir, Srinagar: Government Press, 1971, pp. 1-7.

59. J & K (Govt. of), Director of Information, Administrative Report of Jammu & Kashmir, 1969-70, Part I, Srinagar, Government Press, 1970, p. 3.

60. Ibid., pp. 2-3.

61. RAI, Mangat, E.M., Op.cit., p. 247.

* Six Central Labour laws had been in force already. Total became 19 to which B.L. Sharma has made reference. (Op.cit., p. 184 footnote). In addition to these laws, the Contract Labour Act, 1970 has also been extended to the State from February 1971 (Labour in J & K, Op.cit., pp. 2-3).

getting Kashmir to the routine political life of a free State and to institutionalizing the administrative structure."⁶² Therefore, Sadiq had decided that he would seek an amendment of Art. 370 of the Indian Constitution so as to end the special status of Jammu and Kashmir and place it on the same footing as other States of the Union so that fundamental rights and other benefits may be equally available for the people of Jammu and Kashmir.⁶³ Indian Home Minister too had declared in the Parliament that Art. 370 was not a wall. "It was a tunnel. A good deal of traffic had already passed, more will pass now."⁶⁴

Similar observations were made by the then Union Education Minister M.C. Chagla, who said that through Article 370 the whole of the Indian Constitution could be applied to Jammu and Kashmir State. He was of the legal and Constitutional opinion that the Constitution of Jammu and Kashmir ought to be scrapped and the Indian Constitution applied in its entirety to that State.⁶⁵

This may seem to be an extreme view of the politics of integration, but it is based on the reality that Kashmir has served as a potent factor in stabilising the position of Muslims in Indian society who feel that if a minority is not prepared to live and integrate with a majority how could

62. Ibid.

63. SHARMA, M.P., Op.cit., p. 115.

64. Cited in BAZAZ, P.N., Op.cit., 1967, p. 84.

65. Ibid.

the majority be expected to tolerate the minority.⁶⁶

But the real mind of the Valley was portrayed by Mir Gasm who advanced a thesis that India has not yet achieved the secularism of Gandhi or Nehru, therefore no Muslim could feel he 'belonged' to India.⁶⁷ To quote him, "the result was that a man like Abdullah found an audience for a separatist platform."⁶⁸ Bazaaz opines that "it is only the majority of the Valley who are wavering in their loyalty, towards India."⁶⁹

The Sheikh's Return and Indira-Abdullah Accord

While Sadiq was labouring hard for greater integration, Abdullah was propagating the view that the accession of the State to India was a temporary one.⁷⁰ He, therefore, convened the State People's Convention in October 1968 to thrash out a generally acceptable solution to the problem of the State's relationship with India.⁷¹ Jayaprakash Narain, while inaugurating the Convention, was unequivocal in his stand that after the 1965 war with Pakistan any solution of these relations could only be found "within the framework of the Indian Union". He reiterated that no Central

66. See Memorandum, by fourteen Muslim Leaders of India to F.P. Graham, Rep. in SHARMA, B.L., Kashmir Story, Op.cit., p. 258.

67. Cited in RAI, Mangat., Op.cit., p. 244.

68. Ibid.

69. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. XII.

70. GUNDEVIA, Op.cit., p. 51.

71. BHATT, Op.cit., 1976, p. 175.

government, present or future, could allow any part of the country to break away from the Union. This view of his was badly received by the Srinagar audience. It annoyed the Sheikh as well who wanted to keep all options open.⁷²

The convention ended by adopting a resolution affirming that any solution to be acceptable to the people of the State must keep in mind the interests of all three regions of the State. Only such a solution could restore normalcy and tranquility.⁷³ The proceedings of this convention dragged on but no final solution of the accession issue was recommended upto 1970.⁷⁴ Shortly afterwards, Sheikh Abdullah got involved again in the anti-Indian activities of the Plebiscite front, a pro-Pakistani party which had been formed with the avowed object of secession from India.⁷⁵ This party continued its agitation for holding of a plebiscite initiating violent incidents in the Valley. The Sheikh was eventually externed from the State in 1971.⁷⁶

This event was followed by a period of blowing hot and cold, leading to a series of negotiations between the representatives from the Centre and the Plebiscite Front. An

72. GUNDEVIA, Op.cit., p. 138.

73. Ibid.

74. BHATT, Op.cit., 1976, p. 176.

75. BASU, D.D., Op.cit., 1975, p. 234.

76. Ibid.

Agreement called Indira-Abdullah Accord was eventually reached to avoid an era of confrontation.⁷⁷ The Accord was announced on 24th February 1975.⁷⁸ The net political result of the accord in Basu's opinion was that:

The demand for plebiscite was abandoned by Abdullah and his followers and on the other hand, it was agreed that the special status of the State of Jammu and Kashmir would continue to remain under the provisions of Art. 370 of the Constitution of India, which was described as a temporary measure in the original Constitution. A halt was thus, cried to the progress of integration of this State with the Union of India.⁷⁹

But an order under Art. 370 to make the special status permanent could not be issued owing to differences over matters arising out of the accord,⁸⁰ and the Sheikh's reversion to his threat of secession and violence, to which his followers resorted on the eve of the State elections in June 1977. There the main casualty had been secularism and the pro-India element.⁸¹

The 1977 Electoral Victory

One of the most important factors in the politics of the Valley was the re-emergence of the National Conference headed by the Chief Minister, Sheikh Abdullah at the time

77. SHANKAR, V., "Euphoria over Kashmir Accord", The Tribune, 18th March 1975.

78. See The Statesman, Calcutta, 25th February 1975.

79. BASU, D.D., Op.cit., 1978, pp. 233-34.

80. Ibid., p. 234.

81. "How the Janata Helped the Sheikh Win" in Sunday, Calcutta: Ananda Offset, 24th July 1977, p.33, col.3. The outbreak of hooliganism started in various places in the Valley soon after the speeches of top National Conference leaders at Mujahid Manzil. See The Tribune, 26th May 1977.

of Lok Sabha elections in Jammu and Kashmir, early in 1977. In the State Assembly elections, the National Conference decided to contest all the 76 seats in the State, without an electoral alliance with any other party.⁸² The most important feature of this election was that the special status of Kashmir was used as a device to mobilise public opinion, at least in Kashmir division, by almost all political parties.⁸³ The Sheikh maintained that his party would consider no sacrifice too great for the attainment of its goal of achieving a place of honour and dignity for the people of the State in the Indian Union through Art.370.⁸⁴ It is noteworthy that in the earlier stages of the election campaign, the Sheikh himself had re-opened this sore spot of the Indian Constitution.⁸⁵ He appealed to the masses in the Valley, from his sick-bed to vote in "large numbers for the National Conference candidates and thus defeat the designs of unworthy politicians out to belittle Kashmir nationalism for the sake of capturing power."⁸⁶ It is noteworthy that over the years Kashmir sub-nationalism has been asserting itself and its biggest votary has been the

82. The Tribune, 20th May 1977. Cf. Blitz, 2nd July 1977, p.6, col.1.

83. The Tribune, 20th May 1977.

84. DHAR, M.K., "Deceptive Calm in Kashmir Valley after Roll Violence" in Hindustan Times, 27th June 1977.

85. See, Blitz, 2nd July 1977, p.6, col.5.

86. Sheikh Abdullah's sick-bed taped appeal to his voters, cited in Times of India, 2nd July 1977.

Sheikh himself.⁸⁷ He appealed to the voters in the following terms: "by casting your vote for National Conference, you have to prove that Kashmir Nationalism cannot be undermined by conspiracy. Only the people of Kashmir can decide about its future. There can be no compromise on the internal autonomy of Kashmir."⁸⁸

Thus the landslide victory of the National Conference in the Jammu and Kashmir Assembly elections, when it got 49 seats out of 76,⁸⁹ was seen by political observers in the Valley as a clear mandate for preservation of the State's special status.⁹⁰ In a very real sense, the Sheikh was himself the candidate in the 42 constituencies of the Valley. Those who voted for the National Conference, decidedly voted for Sheikh Abdullah and the special status of Kashmir.⁹¹ It was categorically held by the Conference leaders that this election was equal to "self-determination"⁹² and "plebiscite".⁹³ Beg went to the extent of alleging that the Janata Party wanted to enter the State Assembly in order to do away with the special status of Kashmir. "But", he warned, "they can do so only on our dead bodies".⁹⁴ The Sheikh went a step

87. DHAR, M.K., Op.cit., Hindustan Times, 27th June 1977.

88. Sheikh Abdullah's sick-bed appeal, op.cit.

89. The Statesman, 17th October 1977.

90. See, "Mandate for Special Status", in The Statesman, 6th July 1977.

91. See the Tribune, 27th June 1977.

92. The Tribune, 12th June 1977.

93. BEG, Mirza Afzal, cited in Indian Express, 18th May 1977.

94. Ibid.

further and described the poll of 1977 as an extraordinary device to preserve the identity of Kashmiris. He also warned: "Kashmir was a part of India and Kashmiris were Indians, but they wanted to live in India with dignity and honour. If they were not assured this, they would not hesitate to separate from the Indian Union."⁹⁵ The Indian Express noted that this attitude of Abdullah "amounts to a declaration that unless the National Conference wins the election, he will raise the banner of secession".⁹⁶ It appears strange that the National Conference and its leaders politicalised this Article 370 inspite of the standing assurance in the Kashmir Accord as under: "The State of Jammu and Kashmir, which is a Constituent Unit of the Union of India, shall in its relations with the Union, continue to be governed by Article 370 of the Constitution."⁹⁷ After having emerged victorious in the first ever free elections in the State,⁹⁸ held under Governor's rule, the Sheikh has become a champion of States' rights, demanding more and more powers for other States.⁹⁹ In this he has found an ally in the CPI(M) Chief Minister of West Bengal, Jyoti Basu, who has already strongly supported special status of

95. Indian Express, 24th May 1977.

96. "Playing with Fire", in the Indian Express, 25th May 1977. Cf. "Congress M.P. demands arrest of Abdullah" (Indian Express, 15th June 1977) "on the grounds that Sheikh declared that "If article 370 of the Constitution was scrapped he would launch an agitation for separation of Jammu and Kashmir from India".

97. PURI, Balraj., "Wasted Years Over Article 370", Indian Express, 16th June 1977.

98. "It is for the first time that after Independence people of Jammu and Kashmir have elected a government of their choice, through a democratic ballot, and in a manner which has been acclaimed all over." Sheikh M. Abdullah, "Dawn of a New Era" in Kashmir Today, Srinagar, Govt. Press, January 1978, p.1.

Kashmir thus:

The Special Status of Kashmir within the Indian Union as laid down in Article 370 of the Constitution should be retained. The way this Article had been worked by the Congress government at the Centre had raised grave doubts and suspicion among the people of the State. These must be removed now, particularly in view of the fact that the leaders of the State government have underlined the Instrument of Accession to India.¹⁰⁰

As far as the present is concerned there are no secessionist sentiments in the politics of the Valley.¹⁰¹ But the Sheikh has taken the fresh stand that he was never opposed to accession of Kashmir to India as such but only to the quantum of accession.¹⁰² He is pleading now for more powers to the States. He asked forcefully, "Why not have Article 370 in respect of other States also?"¹⁰³ The result seems that whatever attempts had been made to erode the internal authority of Jammu and Kashmir State from time to time, the Sheikh now thinks "it would be proper to set them right."¹⁰⁴

99. The Hindustan Times, 12th February 1978.

100. BENGAL (Government of West), Department of Information and Public Relations, A Memorandum on Centre-State Relations, Calcutta: Sree Sankar Press, December 1977, pp. 7-8. Cf. "Residual Powers for Federal Units", in Economic Times, Vol.4, No. 240, 2nd December 1977.

101. PURI, Balraj., "End of Secessionist Move in Jammu and Kashmir", The Tribune, 21st February 1978.

102. The Hindustan Times, 12th February 1978. In an interview with the London Times, the Sheikh said that his "quarrel with India was not on the issue of accession but on the quantum of autonomy of the State within India". See also PURI, Balraj., "Wasted Years over Article 370", Indian Express, 16th June 1977.

103. The Statesman, 30th January 1978, p. 1, col.2.

104. Ibid., p.9, col.3.

B. JAMMU; POLITICS OF INTEGRATION

As already noted, Dogra rule was condemned as alien in the Valley during the freedom struggle of the National Conference.¹⁰⁵ It was obvious that the Dogras of Jammu region, would strongly oppose this slant given to politics by the National Conference in the Valley.¹⁰⁶ The clash between the two regions has been communal and ideological, for they are different not only in language and culture but also in their predominant religions.¹⁰⁷ The people of the Valley have always wanted and still want to be masters of their own destiny,¹⁰⁸ and Sheikh Abdullah realised that power to the people would mean power for Muslims,¹⁰⁹ perhaps for this reason, he, therefore, from the very beginning, began to insist that he be allowed by the Maharaja to form his own national government.¹¹⁰ This 'inner impulse' led him to behave as if he were a full fledged democratic Head of the State, brought to power by the will

105. Though the ruler was a son of the soil and was in line of those Dogras who pushed India's frontiers to verge on Central Asia - an achievement of national pride.

106. CHANDRA, Prakash, Op.cit., 1977, p.4.

107. PURI, Balraj., "Kashmir" in Myron Weiner, ed., State Politics in India, Op.cit., p. 220.

108. BRINES, Russell, Op.cit., p. 64. In three districts of the valley, namely, Anantnag, Baramulla and Srinagar, there are 91% Muslims and 65-85% Muslims are there in the entire State. (Census 1971, See Bhatt, Op.cit. p.147).

109. MADHOK, Balraj., Kashmir: Centre of New Alignments, New Delhi: Deepak Prakashan, 1963, p. 33.

110. BAZAZ, P.N., Struggle for Freedom in Kashmir, Op.cit., p. 405.

of the people.¹¹¹ Early in 1948 he declared: "Dogra rule is dead and the Maharaja has ceased to have any authority."¹¹² He, along with his party, asserted that they were absolutely free from the alien domination and went to the extent of celebrating an Independence Week from 7th May to 14th May 1948, after having 'assumed power'.¹¹³

Due to its anti-Dogra character, the Sheikh's freedom movement could not enlist the support of the Jammu people and the Muslim leadership from Jammu was the first to leave the National Conference.¹¹⁴ This in turn was due to the fact that the leaders of the Valley could not restrain their local chauvinism,¹¹⁵ which was doubly strengthened by another factor; while the Valley always continued to expose the fallacy of the two-nation theory,¹¹⁶ its leaders (wielded at that time maximum political power without any external control¹¹⁷) never thought it prudent to share this power with the Jammu region. They looked to Delhi for more and more power, being quite aware of the

111. Ibid., p. 407.

112. Ibid.

113. Ibid.

114. PURI, Balraj., Jammu: A Clue to Kashmir's Tangle, New Delhi: Photo Flash Press, 1966, p.14.

115. Ibid., p. 9.

116. Sheikh Abdullah, from the Times of India, 21st Feb.1948.

117. BRINES, Russell, Op.cit., p. 94. Cf. PURI, Balraj, Op.cit., 1968, p. 219.

fact that the Valley was the nucleus of India's secularist conception of the State.¹¹⁸ One solid and sound reason to safely shunt off Jammu from sharing any political power at that time was the National Conference's revolutionary programme of distributing thousands of acres of land seized from the Dogra Hindu absentee-landlords, which was to be given free to the landless tenants in the Valley who were exclusively Muslims.¹¹⁹ This annoyed the affected landowners (in thousands) of Jammu Province. As Carras has observed in his study of another Indian State: "antagonistic political behaviour has, to begin with, strong economic roots."¹²⁰ Thus the causes of Jammu's being alienated from the politics of the Valley are deep rooted, with the result that both the regions adopted a definite political line of action divergent to each other.

From Integration to Autonomy

Initially, at a very crucial stage in 1947, Jammu was neglected not only politically but militarily as well. The height of the tragedy in Jammu was that most of its area fell into enemy hands and according to many accounts, massacre, loot and plunder, raping and abduction of women took place on a large scale by the invaders when Indian

118. BRECHER, M., Op.cit., p. 53.

119. BAZAZ, P.N., Kashmir in Crucible, Op.cit., p. 47.

120. CARRAS, Mary C., "Congress Factionalism at the State and District Level in Maharashtra: Some Theories", Economic and Political Weekly, Annual Number, January 1971, p. 325.

troops were incharge of the defence of the State, but were totally diverted to the defence of the Valley alone.¹²¹ The people of Jammu were thus made to realise that the Sheikh and his National Conference were only interested in saving the Valley and not any other part of the State.¹²²

This sense of deliberate and serious neglect in defence went a long way in tilting feeling in Jammu region in favour of the idea of full accession and complete integration with India, while the leadership of the National Conference was jealous guarding Kashmir's autonomy and resisted its infringement at any rate by any outside influence.¹²³ They simply ruled out at that stage that anybody outside the State had any jurisdiction within the State.¹²⁴ This idea of supreme sovereignty of the people of the State was declared by the Sheikh in the second session of the Constituent Assembly in March 1952, in the following terms:

Telling us that supreme sovereignty rests with Indian Parliament is to challenge the very basis of the principle of our sovereign body with undisputed power to decide...even a hundred year old royal dynasty, not to speak of a few big Zamindars.¹²⁵

121. MADHOK, Balraj., Op.cit., pp. 64-75. The number of Hindu men and women killed and abducted in Jammu area was at least three times that of the Muslim casualties, but not even a word of sympathy about them was said by anybody. The Town of Rajauri fell on the 10th Nov. 1947. Next fell 'Kotli' and next to fall was Mirpur on 25 Nov. The Valley having been cleared of the enemy by 10th Nov. the Indian troops could have been conveniently saved this strategic area of Jammu Province as well. See MADHOK, Balraj., Op.cit., pp.71-75.

122. Ibid. p. 64.

123. BAZAZ, P.N., Op.cit., 1967, p.70. Cf. BRINES, Russell, Op.cit., p. 94.

124. BAZAZ, P.N. Struggle for Freedom in Kashmir, Op.cit., p. 477.

The reality which seems to have hit Jammu very hard was the fact that the National Conference was claiming as sovereign a body wherein no opposition was allowed and the Praja Parishad, a major political force from Jammu, was made to boycott the elections by wholesale cancellation of their nomination papers in September 1951 elections.¹²⁶ This rendered the Assembly unrepresentative of Jammu people.¹²⁷ Further, these elections were not free from illegal practices for as many as a total of 75 candidates of the National Conference were returned unopposed¹²⁸ - a unique feature of the politics of the Valley as compared to Indian elections of the same year. Thus as Sisir Gupta rightly observed, this rapacious attitude of a ruling party enhanced "the inherent suspicion among the people of Jammu, who stood by and large for the State's total integration with India."¹²⁹ Thus the people of Jammu then had every reason to doubt "Abdullah's attempt to preserve the autonomy of the State."¹³⁰ It was at this point that they started their historic satyagraha for complete accession to India.

125. From the Hindu, "Abolition of Zemindari", 31st March 1952. See also, "The future Constitutional set up... could only rest on the active will of the people of the State, conferring on the Head of the State the titular authority drawn from the true and abiding source of sovereignty, that is the people." (Sheikh, cited in TENG and KAUL, Op.cit., p. 206).

126. GUPTA, Sisir., Op.cit., p. 378. Cf. BRINES, Russell., Op.cit., p. 94.

127. BRECHER, M., Op.cit., p. 166. Praja Parishad was formed in November 1947.

128. MADHOK, Balraj., Op.cit., p. 123.

129. GUPTA, Sisir., Op.cit., p. 378.

130. Ibid.

The Jammu Satyagraha

When totally left out and ignored by the Government of the State, the Praja Parishad, a party primarily backed by Dogras of Jammu¹³¹ and supported by the Bharatiya Jana Sangh,¹³² started a prolonged Satyagraha during 1952-53 with the main aim of getting Article 370 of the Indian Constitution deleted. It was a direct attack on the special status of Kashmir, deeply cherished by the Valley.¹³³ The Constituent Assembly which was supposed to ratify the accession of the State to India and adopt the Indian Constitution kept the question of ratification of accession pending on purpose.¹³⁴ The Jammu satyagraha was mainly against the Delhi Agreement wherein the Jammu people were not taken into confidence and their misgivings were not allayed.¹³⁵ It was Shyama Prasad Mookerji who took up the battle on behalf of the Jammu people inside and outside the Indian Parliament. In this respect, Madhok observes:

Having failed to persuade Pt. Nehru to sit round a table with the representatives of the people of Jammu and Ladakh and meet their genuine and patriotic objections to the separatist policies of Sheikh Abdullah, he decided to extend the Satyagraha started by the Praja Parishad in Jammu to the rest of India.¹³⁶

131. Ibid., p. 377.

132. PURI, Balraj., "Jammu & Kashmir: An Old Solution", The Tribune, 29th June 1977.

133. GUPTA, Sisir., Op.cit., pp. 378-79.

134. It was only in February 1954 that the accession was ratified but not without the special status to Kashmir and not without Sheikh being in the prison.

135. PURI, Balraj., Op.cit., 1966, p.44.

136. MADHOK, Balraj., Op.cit., p. 125.

Therefore, Praja Parishad launched a massive agitation for "One Constitution", "One flag" and "One President", for Kashmir State and the rest of India.¹³⁷ As there was much discontent against discriminatory economic and administrative policies of the State Government with regard to Jammu. The people of Jammu felt that the application of the Indian Constitution would resolve all these problems. The Praja Parishad held the view that:

As a corollary to the rejection of the demand of one Constitution, i.e. of the Indian Constitution for the whole State, Jammu and Ladakh shall be forced to cry for self-determination and their claim that the will of the people of Kashmir Valley cannot be forced on the people living outside it appears tenable.¹³⁸

The result was that the agitation spread to every nook and corner of the province,¹³⁹ thousands of agitators were imprisoned and about two score persons were shot dead by the police for hoisting the Indian tricolour on the State buildings in Jammu Province.¹⁴⁰ Puri rightly observes that: "If the people of Jammu demand that accession should on the same lines as is the case of other states, they are guided by Patriotic and National motives."¹⁴¹ But the reward they

137. PURI, Balraj., Op.cit., 1968, p. 221. Cf. MADHOK, Balraj., Op.cit., p. 124.

138. Publicity Secretary, All-Jammu and Kashmir Praja Parishad, Jammu Rejects a Separate Constitution, Jammu, 1952, pp. 12-14.

139. The view held by Brecher that agitation was confined to the Jammu City only seems to be quite miscalculated. See, BRECHER, Op.cit., p. 166.

140. MADHOK, Balraj., Op.cit., p. 124.

141. PURI, Balraj., Op.cit., 1966, p. 90.

got for their national motives were the constant abuses and attacks on Dogras as a class by Sheikh and his colleagues. This created an atmosphere of constant distrust and bitterness between the two regions.¹⁴² There was a sharp reaction to this agitation which in turn influenced the Central leadership who came out to defend Article 370 and Kashmir's special status granted through it. Nehru commented in the Parliament: "The Parishad is trying to exploit the sentiments of the people and instigating them to indulge in subversive activities. We are not going to tolerate this state of affairs."¹⁴³ Maulana Abul Kalam Azad assured the Sheikh that the Government of India was willing to "declare that the special status of Kashmir will be made permanent and that the Government of India will be bound by it without any conditions."¹⁴⁴

It seems that Sheikh was not satisfied even with this political blank cheque and in his reply to Azad wrote that he felt that: "the declaration would not suffice to dispel the fears that have arisen in the minds of the people of Kashmir Valley."¹⁴⁵

He gave public vent to his feelings in a National Conference rally at Srinagar: "the confidence in the people here (for association with India) has been shaken by the hostile attitude of the Jana Sangh and other communal organisations in India."¹⁴⁶ It was here that the Sheikh, in consultation

142. Ibid.

143. Cited in PURI, Balraj., "Wasted Years over Article 370", Indian Express, 16th June 1977.

144. Ibid.

145. Ibid.

146. Ibid.

with his eight-man Committee, conveyed to New Delhi alternatives other than accession to India, and bluntly wrote, "It is now upto you and your colleagues to seriously examine them and decide if they lead to a fair solution of the problem."¹⁴⁷ Thus we find that confidence and mutual trust on both sides was shaken to the foundations which ultimately led to the crisis of 9th August 1953. Mullik rightly observes:

If anything accelerated the final break between Sheikh Abdullah and India it was the Praja Parishad agitation...in Jammu Province over the demand for the full integration of Jammu and Kashmir with India.¹⁴⁸

Right upto this time, the people of Jammu were sullen because they felt neglected. Their problems did not receive sympathy and consideration.¹⁴⁹

It was during this agitation that the idea of autonomy for Jammu spread, though without any concrete results.

The Demand for Autonomy for Jammu:

The demand for Jammu's autonomy or regional autonomy was repeated following the Jammu satyagraha for the abrogation of Article 370. Shyama Prasad Mukerjee, the then leader of the Bharatiya Jana Sangh, eventually veered round

147. Ibid.

148. MULLIK, Op.cit., p. 29. On 23rd June 1953, the widely respected leader Shyama Prasad passed away in sub-jail at Srinagar and his death in detention had serious repercussion on opinion in India about the State Government and there was indignation in many circles about this incident. (GUPTA, Sisir., Op.cit., p. 382).

149. J & K (Government of), Department of Information, Kashmir as Others See It, Jammu: R.G. Press, 1961, p. 7.

to this idea.¹⁵⁰ He wrote to Nehru his offer to withdraw the agitation and to support Article 370 on the condition that "the principle of autonomy will apply to the Province of Jammu as a whole and of course also to Ladakh and Kashmir Valley."¹⁵¹ The Jammu satyagraha was actually withdrawn on an assurance from the State Government and the Government of India conceding the demand for regional autonomy.¹⁵² The Sheikh, in a broadcast from Radio Kashmir on 16th April 1953, said: "We have decided to give autonomy to the various cultural units of the State so that any fear of domination by one unit over the other may be eliminated once for all."¹⁵³ As was soon to become clear, this was a half-hearted statement which proved to be an "eye-wash". Nehru issued a statement on 2nd July 1953, appealing to the people of Jammu to withdraw their satyagraha as "the State Government was considering grant of autonomy to its regions. Particularly to Jammu while framing the Constitution of the State."¹⁵⁴ This statement was understandable as an indirect promise based on some ideals. But achievements of ideals are dependent on a political will to translate them into practice and usually both of these never go together with most political leaders. Next day, the then Deputy Prime Minister of the

150. PURI, Balraj., "Jammu and Kashmir: An Old Solution", The Tribune, 29th June 1977.

151. Ibid. (A letter dated 17th February 1958 entitled 'Mukerjee to Nehru').

152. Ibid.

153. From the Indian Express, 18th April 1953.

154. Cited in PURI, Balraj., "J & K: An Old Solution," Op.cit.

State, Bakshi Ghulam Mohammad, commented on Nehru's announcement, that it reflected the policy of the State Government and added that, "Sheikh Abdullah has consented to the proposed scheme of autonomy for the constituent units of the State to ensure its unity."¹⁵⁵ The Constituent Assembly of the State accordingly appointed a Sub-committee to recommend a substantial measure of autonomy for each region, including the power of taxation and legislation.¹⁵⁶ But nothing substantial came out of it and consequently, the Jammu Autonomy Forum was set up to get the scheme of regional autonomy implemented to remove the regional tension in the State.¹⁵⁷ Later on, while discussing its memorandum the Gajendragadkar Commission conceded in its report that regional autonomy "may lead to greater consolidation of the (Jammu) region with the rest of the State."¹⁵⁸ But the Commission refused to accept this demand for autonomy of Jammu for two reasons: (i) there was no popular support and (ii) it may finally lead to the 'disintegration of the State'.¹⁵⁹

The Sheikh's Attitude:

The commitments of political leaders are different when they are out of power and when they are holding office.

155. Ibid.

156. Ibid.

157. Ibid.

158. Report of the J & K Commission of Inquiry, 1968, Op.cit., p. 83.

159. Ibid., pp. 83-84.

The Sheikh has not been an exception to this general tendency. A serious dialogue, for the first time in the political history of the State, was started by him at the Jammu and Kashmir State People's Convention (October 1968).¹⁶⁰ After two years of deliberations, its Steering Committee submitted a draft Constitutional set up,¹⁶¹ on which the Sheikh said: "Discussion on external status of the State without deciding inter-regional relations of the State was like putting the cart before the horse."¹⁶² He fully understood that maximum autonomy to the three regions of the State was essential to give a sense of participation and a sense of belonging to the people of diverse cultures, languages and religions and to ensure their emotional integration.¹⁶³

It seems that he was enlisting support from two neglected regions of Jammu and Ladakh in order to regain his lost political footing and was trying to reconcile the diverse aspirations of people therefrom. After having fully revived his National Conference in 1975, his stand was that it "proposes to reorganise the internal set up of the State which would provide regional autonomy."¹⁶⁴ It was really a matter of concern that nothing was heard about this regional autonomy from the Sheikh after he assumed office, and he was only

160. BHATT, Op.cit., 1976, p. 175.

161. PURI, Balraj., "J & K: An Old Solution", Op.cit.

162. Ibid.

163. Ibid.

164. Ibid.

heard asking the people of Jammu, Kashmir and Ladakh not to entertain any mutual distrust or lack of confidence in one another.¹⁶⁵ He seemed to be more worried about the people of Azad Kashmir (which many powers consider to be an integral part of Pakistan) than any other region.¹⁶⁶

The Sheikh's demand of full and unlimited autonomy to establish his independence from New Delhi,¹⁶⁷ his draconian preventive laws without any regard to public opinion,¹⁶⁸ his regrettable utterances about secession of the State before the elections,¹⁶⁹ the violence committed by the rival groups at Anantnag and Tral,¹⁷⁰ the neglect of outstanding problems of refugees from non-liberated areas,¹⁷¹ the aspiration shown through the respective electoral results in the three regions of the State,¹⁷² and last of all the State Government's inveterate prejudice against Jammu,¹⁷³ all these events have convinced many people that the Sheikh has set the political clock back at least by 25 years in the State. If the National Conference Leadership in the Valley believes fully

165. ABDULLAH, Sheikh, M. Meeting the Challenge, Jammu: R.G. Press, February 1975, p. 6. (The text of the Radio Broadcast by the Chief Minister on 26th February 1975).

166. Ibid., pp. 11-13.

167. From the Hindustan Times, "How Much Autonomy", 26th January 1978. Cf. from The Tribune, "Towards Greater Autonomy", 26th October 1977.

168. ABRAHAM, "Pursuit of Public Safety", Indian Express, 24th November 1977.

169. "Sheikh's Threat to Secede Shocking", Tribune, 10th June 1977, Cf. Tribune, 27th May 1977.

170. "Election in Kashmir", Hindustan Times, 25th June 1977.

171. J & K Commission of Inquiry, 1968, Op.cit., p. 102.

172. The Statesman, 15th July 1977.

in a separate "Kashmir Nationalism",¹⁷⁴ which is confined only to the Kashmir Province, it is bound to produce repercussions in the other two regions of the State. There already persists a strong feeling in Jammu Province about its sad neglect ever since the dawn of independence. It is an established fact that every Government remained partial towards the Valley,¹⁷⁵ which has taken the lion's share out of the liberal grants-in-aid and concessional loans to the detriment of the vital interests of Jammu and Ladakh regions.¹⁷⁶

Thus the considered opinion held by some scholars about this malicious attitude of the Government towards Jammu is summarised in a Seminar as under:

It is therefore, unnatural to bind together the provinces promiscuously on the exterior, while favour be shown to the privileged province in the main. The contrast has grown so vast that it is well nigh impossible for the government to hoodwink the silent patient, tolerant and betrayed inhabitants of Jammu any more.¹⁷⁷

Ladakh is the second region which has also felt the pangs of deplorable neglect at the hands of the State as well as the Central government.

173. MADHOK, Balraj., 'Demand for Internal Autonomy' in The Pressager Weekly, Vol.8, No.7, Jammu, 22nd February 1978, p.1.

174. A criminal complaint was filed by an advocate of Jammu, by Mr G.D. Sharma, against Sheikh and Beg in the High Court for propagating 'the Kashmiri Nationalism' as being opposed to Indian nationalism. The Indian Constitution, holds the advocate, lays down only one nationalism for every citizen of India and the use of the expression 'Kashmir nationalism' amounts to showing disrespect or contempt to the Indian Constitution. The case was a tape recorded appeal by Sheikh Abdullah to the electorate of Kashmir "to vote the National Conference to power to save Kashmiri nationalism from being belittled" which was played at a public meeting in Srinagar addressed by Mirza Afzal Beg. Hence the complaint. See The Statesman, 13th July 1977, "Plea against Abdullah".

C. LADAKH - POLITICS OF ISOLATION

Ladakh is the northern-most and the largest district of India with an area of 95,876 sq.kms.¹⁷⁸ It falls in what is known as the Indus Valley region. Its topography, soil, climate, rainfall, language and social customs are all very different from other districts of the State. It experiences almost arctic cold during winter when the temperature is as low as 23°C.¹⁷⁹ It is one of the least populated areas of the country with a population of 105,291 souls constituting 2.27 per cent of the total population (4,616,632) of the State.¹⁸⁰

It is also the only place in India where Lamaism still flourishes with its richest cultural heritage.¹⁸¹ So much so that every monastery (or Gampa) in Ladakh is like a museum with its treasures lying unguarded.¹⁸² Ladakhis

175. J & K Commission of Inquiry, 1968, Op.cit., p. 5.

176. The Presager Weekly, Op.cit., p. 1.

177. Ibid., p. 4.

178. J & K (Govt. of), Directorate of Census Operations, Census 1971, Ladakh District, Srinagar: Govt. Press, 1974, p. 111. It also includes 37,555 sq.kms. under illegal occupation of China.

179. J & K (Govt. of) Report of the Backward Class Committee, Srinagar: Govt. Press, 1969, p. 43.

180. KAUL, S., Syed Mir Qasim in Ladakh, Srinagar: Government Press, 1974, p. 17.

181. SUMI, OKI and HASSNAIN, Ladakh the Moonland, New Delhi: Light and Life Publishers, 1975, pp. 30-36.

182. "A Witness of looting of Ladakh" from the Statesman, 20th September 1977. Ladakh is particularly vulnerable because it is an ancient civilisation with the historical records going back to 400 B.C. It has for centuries had no contact with aggressive modern civilisations. Some of its monasteries (or Gampas) are: Hemis, Honle, She, Thikes, Phyang, Lama Yarry and Alahi; now mostly in shambles. See SUMI, OKI and HASSNAIN, Op.cit., p.5. Cf. Niyogi's statement in The Statesman, 20th September 1977. Cf. SARIN, Ashwani "Growing Western Impact on Ladakh" in Indian Express, 10th March 1978.

regard themselves as 'Children of India' and heirs of its once rich Buddhist culture.¹⁸³ Presently it is the most 'backward' area of the State.¹⁸⁴

The district is mostly inaccessible, a barren but strategic mountainous desert which lies on the State's frontier with both China and Pakistan. It has been often termed as the 'roof of the world', where people live at an elevation of 12,000 to 18,000 feet above the sea level. These areas are the loftiest areas of the world,¹⁸⁵ and their economic, religious, educational and political problems result from centuries of neglect.¹⁸⁶

Longstanding Neglect:

The neglect of Ladakh seems to be proverbial even during the Dogra rule. It was only in 1943 that the idea of its economic rehabilitation struck the ruler.¹⁸⁷ Yet Ladakh did not have an inch of road before 1947 and it could see

183. SUMI, OKI, & HASSNAIN, Op.cit., p. 44.

184. Report of the Backward Classes Committee, Op.cit., p. 42.

185. SUMI, OKI & HASSNAIN, Op.cit., p. 12.

186. QASIM, S.M., cited in KAUL, S., Op.cit., p.30. Cf. Hemari Manzil, Hemara Rasta (Urdu) by QASIM, S.M., Jammu: R.G. Press, 1972, p. 18.

187. TENG, BHATT and KAUL, Op.cit., p. 150. Prior to 1947 there was no political organisation in Ladakh. The ruler of the State used to nominate two members - one Muslim and one Buddhist, from Ladakh to the Praja Sabha. After 1947, in their own interest, the Kashmir Nationalist created a few leaders among the people of Ladakh to toe their line. See, BAZAZ, P.N., 1954, Op.cit., p. 552.

its first electric lamp only after that. The general poverty in Ladakh at that time, to quote Sharma, "was indescribable, most people living not far above the level of animals, unwashed and going about in filthy tatters."¹⁸⁸ When the ruler of the State was being deprived of the powers by the Valley - based National Conference leaders, the Buddhists of Ladakh wanted either to be amalgamated with Jammu (if not with Tibet), with adequate safeguards for their interests or they begged the ruler to allow them to join East Punjab, both Hindu majority areas, on the plea that for the last century and a quarter they had been misruled to their utter ruin.¹⁸⁹

Historically as well, they wanted to side with the people of Jammu for one singular historical and constitutional reason, as observed by Cheewang Rigzin, "it was the Dogras who conquered Ladakh for Maharaja Gulab Singh in 1834, while Kashmir (Valley) came into his possession in 1846, twelve years later."¹⁹⁰ It seems that they did not like the idea of following the Valley leaders who held the view that they were entitled to rule entire Kashmir on the basis of the nullity of the Treaty of Amritsar. The Ladakhis

188. SHARMA, B.L., Kashmir Awakes, Op.cit., p. 196.

189. RIGZIN, Cheewang., in "Memorandum of Buddhist Association of Ladakh" to P.M. of India. Cited in TENG, BHATT and KAUL, Op.cit., pp. 570-571. They also demanded their recognition from Indian government as a separate nation on the basis of all tests of race, language, religion and culture. Ibid., p. 572.

190. Ibid., p. 571.

held rightly, the view that nullity of that treaty should not affect them at all. The President of the Buddhist Association therefore wrote to Nehru, that Kashmiris,

have not the power to appropriate against their will, a people, a separate nation, when a separate treaty the result of the war of 1834 - twelve years anterior to the treaty of Amritsar - bound to the ruler in a special relationship, in which the people of Kashmir (Valley), who came into the picture later, naturally, did not figure at all.¹⁹¹

They also did not see any future for them in Kashmir if it went over to Pakistan.¹⁹² Thus they decided to cut themselves off from the State and throw their lot with India for their future hopes. Therefore, they prayed to Nehru to grant them this integration as they had the "desire to find swift deliverance from the misery, squalor and stagnation", in which they had been sunk for the past so many generations.¹⁹³ Nothing came out of these pathetic overtures and the leaders of Ladakh could not be satisfied with the overlordship of the Srinagar dominated administration.¹⁹⁴ Kaushak Bakula, the religious and the secular head of Ladakh expressed these views publicly in a press statement in 1953 that

on the transfer of power from the present descendant of Raja Gulab Singh (the founder of the State) to the National Conference of Kashmir, the Constitu-

191. Ibid., p. 572.

192. Ibid.

193. Ibid., p. 573.

194. PURI, Balraj, Op.cit., 1968, p. 220. It was in 1952 that cloth and kerosene oil sent from Srinagar by the government was sold in the black market and a bottle of oil could be had for not less than Rs.10/-. See BAZAZ, P.N., Op.cit., 1954, p. 490.

tional link, which tied us down to this State, was shattered and from that time we were morally and juridically free to choose our own course independent of the rest of the State.¹⁹⁵

The Quest for Special Status Within Kashmir:

Guided by such considerations, and having failed to convince the Indian leaders to allow their amalgamation into Indian territories, the Ladakhi leadership started its demand for special status and Kaushak Bakula requested the Sheikh government as early as 1952 to make necessary statutory provisions in the future Constitution of the State to treat Ladakh as a federating unit of Kashmir State as long as its accession to India endures.¹⁹⁶ He defined in very clear terms that

Ladakh would largely bear the same relationship to Jammu and Kashmir State as the latter does to India with the local Legislature as the only authority competent to make laws for the Province (of Ladakh) and to control administration.¹⁹⁷

He also claimed very earnestly that this plan would be the best guarantee for the stability of connections between Ladakh and the Valley.¹⁹⁸ Nothing came out of this plea and like Jammu, Ladakh was also totally ignored at the time of the Delhi Agreement. Kaushak Bakula was denied

195. Cited in PURI, Balraj., Loc. cit.

196. BAZAZ, P.N., Op.cit., 1954, p. 553.

197. Ibid. Was it not the height of a purposeful neglect that not a single rupee was provided in the budget for that year by the then Finance Minister of the State Government for the betterment of Ladakh having an area 1½ times of the combined area of Jammu and Srinagar Districts put together. (See, BAZAZ, P.N. Op.cit., p. 554). There was no separate plan of development for Ladakh till 1961.

198. Ibid.

his rightful place in the then political set up of the State. Sadar-i-Riyasat Karan Singh was the first ever State dignitary to visit Leh, the Capital town of Ladakh and to record the deep-seated disappointments of the Ladakhs. He reported their total neglect by the State Government to the Prime Minister of India.¹⁹⁹ This drew the attention of the Central as well as the State governments towards Ladakh and the Sheikh government persuaded the Head Lama, Kaushak Bakula to join his National Conference, whereafter he was put in charge of Ladakh affairs as a Minister of State in the State Government.²⁰⁰

It is not only politically and financially that Ladakh has been neglected, it was neglected militarily too. Round about 1958, China encroached upon a certain area of Ladakh and constructed roads in Aksai Chin sector, the extreme northern part of Ladakh, and entered the Chang-Chemmo Valley in 1959, resulting in a battle between the armies of the two countries. China attacked this sector in 1962,²⁰¹ "exposing the fatal weakness of the Indian defence system" in general and neglect of this strategic area in particular.²⁰² This sector of Ladakh was considered by the Indian Government only as an outlay of Kashmir Valley more an "arid land in Ladakh with no strategic importance" at all.²⁰³ This goes to prove

199. MULLIK, Op.cit., p. 28.

200. MADHOK, Balraj., Op.cit., 1963, p. 39.

201. SUMI, OKI and HASENAIN, Op.cit., p. 36.

202. SHARMA, B.L., Kashmir Awakes, Op.cit., p. 138.

203. KRISHNAMACHARI, T.T., Finance Minister of India (1964) cited in GANJO, P.N., Op.cit., p. 88.

the height of disregard of this important region by the Indian leadership. It is noteworthy that Sheikh Abdullah never condemned this Chinese aggression.²⁰⁴ Further, Pakistan challenged India's right to settle the boundaries between Ladakh and China.²⁰⁵ As observed by Bhutto, "China had occupied large parts of Ladakh, and Pakistan, as much as India had obligation to defend that part of Kashmir."²⁰⁶ The President of Pakistan held the view that Pakistan would not recognise any arrangement between India and China in Ladakh as the area was disputed territory between Pakistan and India.²⁰⁷ An agreement was signed between China and Pakistan (2nd March 1963) to delimit and demarcate the boundary between the two usurpers.²⁰⁸ The Indian government headed by Nehru simply lodged protests against the two and protested in the Security Council as well.²⁰⁹ The result was that Pakistan surrendered 13,000 sq.miles of Ladakh territory to China on a platter out of her own illegal possessions.²¹⁰ Thus Chhabra observes lucidly that

204. SHARMA, B.L., Op.cit., 1967, p. 125. Abdullah influenced by Dixon's suggestion of partition-cum-plebiscite had in mind the absorption of Jammu and Ladakh in Union territory and the conversion of the Valley into an independent State. He himself had suggested the same as one of the alternatives other than accession of J & K State to India, before his arrest in 1953. (See PURI, Op.cit., 1968, p. 222).

205. GUPTA, Sisir., Op.cit., p. 427.

206. Cited in GUPTA, Sisir., p. 427.

207. Ibid.

208. MADHOK, Balraj., Op.cit., 1963, p. 186.

209. Ibid., p. 191.

210. Ibid., p. 193. This is how China exploited the situation for its own expansionist policy and the northern borders of India once consolidated and protected by the Dogras were allowed to disintegrate as a prelude to further disintegration of this State. And this is how Bhutto defended Ladakh against Chinese aggression in Kashmir.

"1962 marks the watershed in Ladakh's modern history. Since then there has been no doubt whatsoever of its strategic significance."²¹¹ This aggression also went a long way in serving as an eye opener to the Central government. The Gajendragadkar Commission, which was of the opinion that the cause of irritation and tension in certain regions of the State, was "the feeling of political neglect and discrimination" wrote about Ladakh that, "By all accounts ...the conditions in the district are difficult and its people have a feeling of isolation and neglect."²¹² Keeping these remarks in view the Chief Minister of the State, Mir Qasim visited Ladakh on 9th September 1973, he was the first Chief Minister to do so. The meeting of the Ladakh Development Committee, of which the Chief Minister is the Chairman, was held for the first time at Leh, to have a first hand knowledge of the problems of Ladakh district. The setting up of this Committee was a major step in the direction of associating people from Ladakh in solving their problems. Mir Qasim, the Chairman of the Committee asserted that "It is the avowed policy of both the Central and the State Governments that special measures be taken for speedier growth of all backward areas in the State especially Ladakh."²¹³

211. CHHABRA, Rami., "Ladakh Today", The Statesman, 17th August 1977. The loss of Ladakh would pose a serious Chinese threat to the Kashmir Valley, to Himachal Pradesh and other vital parts of northern India." SHARMA, B.L., Kashmir Story, Op.cit., p. 193.

212. Report of the Commission of Inquiry, 1968, p. 89.

213. Other members of the Committee were; (1) Munshi Habib Ullah, (2) Shri Kishak Tugdan, (3) Shri Sonam Cirgin (Member), and Shri Namgyal (a former-MLC) (Member). The first two were Vice-Chairmen from Ladakh. See SHARMA, S.P., Op.cit., p. 25.

It was he, who for the first time after 1947 considered the question of rehabilitating the displaced persons of Kargil. He issued instructions that the cases of these refugees from Pakistan-held areas be prepared on the same pattern as those of Chamb Jourian.²¹⁴

After decades some provisions were now going to be made for the rehabilitation of these unfortunate refugees but without the ownership of the land, because^{of} the 'special status' of Kashmir which won't allow any non-Muslim refugee to settle permanently in any part of the State. This is one of the reasons for their being opposed to the special status of Kashmir.

It is noteworthy that successive administrations have been trying to divide the Ladakhi population in order to weaken their determination for total integration with Indian Union²¹⁵ and the Congress administration had sought to set another Lama against Kaushak Bakula to reduce his popularity as he had been consistently campaigning against the discrimination of Ladakhis by the State Government.²¹⁶

214. KAUL, S., Op.cit., p. 34. Kaushak Bakula complained as early as 1952 that no provision whatsoever had been made for the rehabilitation of these refugees who were then wandering as homeless beggars in Kulu Valley and many of whom had perished in their wanderings. (See BAZAZ, P.N., Op.cit., 1954, p. 554). This also shows how blindly this 'liberal' Chief Minister adhered to the core of the principles of special status of Kashmir.

215. DHAR, M.K., "Election Issues in Ladakh mainly Economic", Hindustan Times, 1st July 1977.

216. Ibid. The State is proud of imparting free education upto post-graduate level but so far there is no degree college in Ladakh and building built for one is being converted into a hotel. (SARIN, Ashwani, Op.cit., Indian Express, 10th March 1978).

Finally one may note that not much change has taken place in the standards of living of Ladakhi's over the decades and for them the controversy over Article 370 is meaningless. Ladakhis have always remained unaffected by the fierce controversy raging in the Valley over the quantum of Kashmir's internal autonomy within the Indian Union. Therefore, they have since long, given no quarter to the National Conference ideology of limited accession or preservation of Article 370 of the Indian Constitution which gives special status to this State.²¹⁷

Ladakhis want regional autonomy under the State and Central Constitution. To quote Lama Lobzang: "This autonomy should be kept above the knife of Article 370 so that it is not kept under the mercy of the State Government."²¹⁸ It seems that this has resulted from Ladakhi Voters' traditional apathy towards politicians who have always failed to keep their promises. Earlier the Action Committee for Regional Autonomy and Development of Ladakh was for the creation of a Union Territory but since the Muslim population of Kargil, which is pro-Valley, did not favour this demand, it had to be changed for regional autonomy which was favoured by both the Janata and Congress party workers and leaders of all communities.²¹⁹

217. DHAR, M.K., Op.cit., in Hindustan Times, 1st July 1977.

218. From the Indian Express, "Action Plan for Ladakh's Autonomy", 9th November 1977. Lobzang is the leader of Action Committee for Regional Autonomy and Development of Ladakh.

219. Ladakhis ask for regional autonomy, Times of India, 9th November 1977. Kargil seat was bagged by the National Conference in 1977 General Elections, whereas the Lok Sabha seat went to a Congress nominee, Sonam Narboo, who after his election defected to N.C. and accepted Cabinet Minister ship. (Hindustan Times, 13th July 1977). The Lok Sabha seat was won by a candidate belonging to Congress, Parvat Devi from Leh. (Hindustan Times, 11th July 1977).

This unanimous decision according to Lobzang was taken by the representatives of the people of Ladakh irrespective of their party affiliations. He said at a news Conference (New Delhi, 8th November 1977) that "the people of Ladakh also demanded that a regional assembly be formed which should be empowered to deal with the development of Ladakh and the distribution of finances to be spent in the region."²²⁰ These developments clearly show that Ladakhis bear a grudge against the State Government for having neglected the development of this area and not making proper use of funds allotted by the Central government to promote its all round progress.

* * *

The politics of Jammu and Kashmir has, since the early days of accession to India, been marked by inter-regional tensions on the one hand and the question of the relationship between the valley and the Centre on the other. Valley politics has been largely centered on the question of special status which the Government of India has always supported to prove its secularism and democratic principles. Every State government - being mostly represented by the majority community - stood for special status to maintain its identity and wield political power. When, during 1952-53 the very idea

220. "Ladakhis ask for Regional Autonomy", Times of India, 9th November 1977. Cf. Indian Express, 9th November 1977.

of special status was endangered due to the adverse attitude of the Jammu and Ladakh regions, the result was a fresh proposal for the possible solutions - without any mention of accession to India - by the National Conference headed by the Sheikh leading to a deadlock between the Centre and the State and resulting in the arrest of the Sheikh and installation of Bakshi as the Premier of the State. Again when the special status of Kashmir was criticised by a few leaders of the Janata Party, before the 1977 State Assembly Elections, the entire valley reacted sharply and the Sheikh made Art. 370 the mandate for the elections and won with a thumping majority.

"Irrevocable accession" with special status of Kashmir remained the keynote of the Valley's politics during Bakshi's Premiership. He became instrumental in confirming the accession of the State to India, in applying certain more provisions of the Constitution to the State and in effecting financial integration of the State to India, resulting in great influx of financial aid, out of all proportions to the State. He remained a champion of the state's irrevocable accession to India, but did not surrender any of the powers and privileges of the State guaranteed under Article 370.

Mir Qasim, though a pro-Congress leader did not think that India had yet achieved the secularism of Gandhi and Nehru. Therefore, he too, like Bakshi, wanted the special status of Kashmir to continue without further disturbing

its provisions during his regime.

The politics of the Valley seemed to undergo a major change during the Premiership of Sadiq, who followed the policy of greater integration. Articles 356 and 357 were applied to the State, the designation of Sadar-i-Riyasat to Governor and that of Prime Minister to Chief Minister was changed; National Conference was merged with the Congress, & Central Labour Laws were applied to the State. Further, the recommendations of the Gajendragadkar Commission were considered for regionalisation of cadres. His Government accepted 42% reservation for the Backward Classes and 8% for Scheduled Castes in the State services. He was in favour of amending the Art. 370 to end the special status of Kashmir so that complete Fundamental Rights and the civil liberties are also available to the people of the State.

The net result of this policy of greater integration came to surface during 1968 when the Sheikh convened the State People's Convention. Wherein, he along with his followers wanted to keep the question of accession open, at least for discussion. The later developments amply proved that the Valley wanted to regain the lost quantum of special status of the State. He seemed clearly fighting for the same through the Indira-Abdullah accord and further integration of the State to India seems to have come to a halt. He revived his National Conference after having become victorious, using Art. 370 as the main prop. Now he favours the application of this article to other Indian States as a principle of federal system.

The politics of Jammu region has been in direct contrast to that of the Valley. The Jammu people desired complete accession of the State to Indian Union and never favoured its special status. They too, were guided by certain solid reasons, such as the anti-Dogra character of the National Conference movement, at its early stages; the deliberate neglect of Jammu's defence in 1947, the wholesale rejection of Praja Parishad nominations in 1951 elections, the very idea of not taking them into confidence at the time of the Delhi Agreement; the refusal of the Valley based leaders to share power with Jammu people, fearing that it may hamper their revolutionary programmes of land reforms in the State and by not providing any safeguards for minority communities (especially Hindus, Sikhs and Buddhists). All these factors antagonised the Jammu people, resulting in their constant demand of 'complete accession' of the State to India or Provincial autonomy. During their Satyagraha in early fifties, they demanded "one Constitution," "one President" and "one flag" for the whole of India including Kashmir. This was the clear outcome of deeprooted discontentment against the discriminatory economic and administrative policies followed by the then State Government in dealing with Jammu region. The satyagraha was only withdrawn after the Jammu people got assurances that their demand for regional autonomy shall be suitably met while framing the Constitution of the State.

The Constitution of the State ultimately did not include even the mention of provincial or regional autonomy.

As late as 1967, the Gajendragadkar Commission conceded in its report that regional autonomy may result in greater consolidation of the Jammu region with the rest of the State. In the State People's Convention and after the revival of the National Conference (1975) even the Sheikh stood for providing regional autonomy to the cultural units of the State. But he changed his stand after emerging victorious in the 1977 State Assembly Elections. His call to save "Kashmir Nationalism" which is only confined to the Valley - before these elections, has also resulted in strengthening the already persisting feeling of neglect in Jammu region, the people of which now feel simply betrayed.

Ladakh politics is mainly the politics of isolation and neglect. The Ladakhis have their own long-standing economic, religious, cultural, educational and political problems and feel quite neglected and isolated. On the eve of transfer of power to the political leaders of the State from the Valley, the Ladakhis wanted either to join Indian Union or to become a federating unit of the State and begged for necessary statutory provisions in the State Constitution. Like Jammu, Ladakh was also not consulted at the time of evolving the Delhi Agreement and their leader Kushak Bakula was denied his rightful place in the political set up of the State. Later he was taken as a Minister of State but notwithstanding his first joining the National Conference.

Since then the successive administrations have been trying to divide the population of this region in order to weaken their will for total integration with India or regional autonomy.

CHAPTER VI

SPECIAL STATUS AND CENTRE-STATE RELATIONS

The relations between Jammu and Kashmir and the Centre are very well defined under Article 370 of the Indian Constitution. It is understood on both the sides that the Union Constitution applies to this State with certain exceptions and modifications as provided in Article 370 and the Constitution order of 1954. These exceptions and modifications have been indicated in the Constitution of India article by article demarcating the existence of two levels of Governments as regards their separate jurisdiction.¹ On the line of political relations, Chandra has observed: "It has been the policy of Union leadership in case of Jammu and Kashmir that until and unless the official leadership of the State becomes essentially undesirable, it should support the Governmental faction".²

It seems, therefore, imperative, that the Centre and the State function with the basic understanding that Kashmir is a sensitive State quite different from other States of the Union. The State leadership has been so confident of this fact that the Sheikh once observed: "Whichever party came to power it could be expected to devote the same attention

1. The Position is so clear that by virtue of the modification of clause (2) of article 368, no amendment to the Constitution can have effect in relation to this State unless the same is applied to this State by a Special Presidential order. Constitution of India, Article 370, Cl (1) p.196.

2. Chandra, Prakash, Opcit p. 7.

to the State of Jammu and Kashmir".³ This is also amply proved by the fact that when the Constituents of the Janata party were in opposition, most of its leaders were staunch critics of Art. 370 and strongly favoured its abrogation. However, when they assumed power these leaders have started speaking in the same tone as their Congress predecessors.

A. THE FRAME WORK

During the past three decades article 370 and the resultant special Status has been the constant factor in Centre-State relations, with varying degrees of slant either towards the Centre or towards the State. Bakshi propagated his oft-quoted maxim of "irrevocable accession"⁴ and Sadiq went to the extent of achieving "Greater accession" whereas Qasim believed in the factual reality that "If the Green flag could fly freely in the State, it should not be a license for the destruction of tricolour"⁵. On the contrary, during the Sheikh's premiership till August 1953 and after the Indira-Abdullah accord of Feb. 1975, the slant has been towards the State. Though after this accord the Sheikh declared that the accession of Jammu and Kashmir into Indian Union was final,⁶ ruling

3. Cited in *The Statesman*, 3rd March, 1977.

4. As B.N. Mullik writes that "Bakshi and D.P. Dhar were more pragmatic and realized that Kashmir's Welfare depended on its unity with India"., *Opcit* p.14.

5. From the Northern India Patrika, 24th May 1969, Cited in Chandra, *Opcit.*, p.250.

6. Sunday Weekly, 24th July 1977.

out any future confrontation with the Centre,⁷ he nevertheless underlined the instrument of accession as the basis for Centre-State relations, thereby claiming more and more powers for the State and reducing the Central interference in the internal autonomy of the State.

The Sheikh aptly clarified the reality that Article 370 forms the basis of Centre State relations by stating:

While the State's accession to India in 1947 removed the apprehensions of the non-muslim minority in Jammu and Kashmir, the incorporation of this Article was meant to allay the fears of the Muslim majority by the provision of internal autonomy for the State⁸.

Before the 1977 Assembly elections a certain amount of damage was done by the utterances of some Janata leaders relating to article 370⁹. The result was that confusion, doubts and misgivings were created in the minds of the majority of the State with regard to the position of Article 370 in the Union Constitution¹⁰.

The result was that Centre State relations became strained and Sheikh even gave a secession threat,¹¹ and warned Central leaders of dire consequences.¹² The estran-

7. From the Tribune 15th October 1976.

8. From the Indian Express, 18th May 1977.

9. For example: "Abdullah - Indra Gandhi pact was a marriage of convenience which had ultimately ended" - Balraj Madhok Statesman, 27th May 1977; Mahasabha President, Date, wanted the Centre to immediately repeal Art. 370 of the Constitution to bring the State of Jammu and Kashmir in line with other States of the Union, H.T., 26th June, 1977.

10. From the Indian Express, 31st May, 1977.

11. The Tribune, 26th May, 1977.

12. The Times of India, 16th July, 1977.

gement further increased as a result of Shiekh's Statement asking the Central leadership to keep its hands off Kashmir and the qualified demand made by Beg for reopening of the States communications with Pakistan, particularly the Rawalpindi Road.¹³

The Central leadership reacted and made it clear that it would not countenance anything that might come in the way of establishing normal ties between the State Government and the Centre. Madhu Limaye went to Sheikh personally and discussed Centre State relations and assured him that the Centre wished to build harmonious relations with that State.¹⁴ About a month earlier the Union Home Minister had already declared that "the differences during the elections will not be allowed to come in the way of cordial and harmonious relations between the Centre and the State."¹⁵ After a few days the State Chief Minister also reciprocated by declaring that Kashmir is keen on cordial ties with Centre for Secularism and democracy and added:

any attempt to erode the internal autonomy being enjoyed on the basis of the Special Status under Article 370 would not be tolerated. Our relations with the Centre will be based on the unity of hearts, it cannot be forced or brought about by pressure.¹⁶

13. From the Hindustan Times, 4th August, 1977.

14. From the Statesman, 10th August, 1977.

15. From the Statesman, 6th July, 1977.

16. From the Tribune, 14th August, 1977.

The Janata Party in the State "not only reconciled itself to its defeat in the State but also forgot the bitterness"¹⁷. The Union Government understanding fully well that the Sheikh is identified with the campaign for greater State autonomy, accorded him unfailing understanding and respect and the Union President himself described him not Sher-i-Kashmir but Sher-i-Bharat.¹⁸ In 1977 the State held its first free and fair elections (violence notwithstanding) and there is now a strong realisation that "Indian democracy which in the past stopped at Pathankot, had for the first time crossed the Pir-Panjal range."¹⁹

The major factor which paved the path for normal relations between the State and the Centre is the massive dose of Central help for this State without which it would be difficult to achieve anything, as the State's own income for instance during 1976-77 was Rs.56.90 crores which is insufficient even to pay the wages of the administration.²⁰ Central grants in the same year were Rs.95.21 Crores.²¹ There is also no doubt about the fact that Kashmir is a national issue which involves the whole country; it is also considered that the Sheikh, who commands a large

17. Hodge, R.K., Cited in Times of India, 16th July, 1977.

18. "A Retrograde step", The Hindustan Times, 9th Nov. 1977.

19. Hindustan Times, 4th Aug. 1977.

20. Ibid.

21. From the Indian Express, 28th May, 1977.

following in the Valley, cannot be ignored in the light of international intricacies which the Kashmir problem has created so far.²²

Pointing towards the Centre-State relations, the Sheikh recently declared: "Jammu and Kashmir had to be on the right side of whatever party was in power. The State could not have a policy of confrontation with the Centre which would be disastrous not only for Jammu and Kashmir but also for the whole country"²³. Special Status of Kashmir is, therefore, one of the major stable factors in Centre-State relations. For the same reason the Janata Party at the Centre retraced its steps very quickly, stopped dealing with Kashmir in a casual manner and formulated a policy based on the Constitutional position of the State in the Union. Every important Janata leader assured the State leadership that Centre State relations on the basis of Kashmir's Special Status would be maintained.

In the remaining sections of this Chapter, we shall examine three cases of special relationship between Jammu and Kashmir and the Centre.

22. "The Stakes in Kashmir", Tribune, 11th June, 1977

23. The Statesmen, 30th January, 1976.

B. CASE 1: REVOCATION OF CENTRAL LAWS

A federation is a structure as well as a process. As a structure a federation has various slants ranging from dangerously loose to extremely tight ones. As a process a federation includes operational relations between the Central and the State Governments.²⁴ But Indian Constitution according to Amal Ray, "Provides a cooperative federal structure with its slant towards a powerful Centre"²⁵. In this cooperative federal structure there is division of functions between the Centre and the States on the basis of territory and the subject matter.²⁶

From the territorial point of view, Indian Parliament, subject to the provisions of Indian Constitution, may make laws for the whole or any part of Indian territory.²⁷ A law thus made cannot be invalid merely because it has an extra territorial operation.²⁸ But this is not entirely true in the case of the State of Jammu and Kashmir since the total legislative sphere has been divided between the Parliament and the State Legislature - the former

24. RAY, Amal, Tension Areas in Indian Federal System, Calcutta, World Press, 1970, p.134.

25. Ibid. p.4

26. JAIN, M.P., Op cit., p.271.

27. Constitution of India, Art. 245(1), p.120.

28. Ibid. Art. 245(2).

exercises only enumerated powers in regard to the State while the latter enjoys the residuary powers.²⁹ The powers of the Indian Parliament are further limited in the Union and concurrent list to legislate in consultation with the State Government, after getting a declaration from the President of India that the matter corresponds to those specified in the instrument of Accession by which the State acceded to the Indian Union.³⁰ Further the Indian Parliament, with the concurrence of State legislature, is also authorised to make laws in this list when the same is specified by order of the Union President.³¹

There is, further, a unique provision which lays down that if the concurrence was given before the State Constituent Assembly, for the framing of the separate Constitution of the State, the matter would be placed before such Assembly for such decision as it may take thereon.³²

The said Constituent Assembly, according to Gundevia, was "to spell out which provisions of the Indian Constitution would apply to the State"³³. It is notable that the Central Government was going to give a blank cheque to the State Assembly. The Centre left over the vital provisions of citizenship and the fundamental rights of the citizens of the State to be decided by this Constituent Assembly.³⁴

29. SINGH, Balbir, Opit., p.38

30. Constitution of India, Art.370(b)(1), p.199.

31. Ibid. Art.370(b)(1i).

32. Ibid. Art.370(2)

33. GUNDEVIA, Y.D., Opit., p.104.

34. Ibid. p.105

The State Assembly (no doubt without Sheikh as Prime Minister) decided finally to make Kashmir an integral part of the Union of India.³⁵ Consequently, the Constitutional position of the State could not remain rigid and static.³⁶ However, due to these special features all the provisions of the Indian constitution do not apply to the State of Jammu and Kashmir. Some of these apply, some do not apply at all, while others apply in a modified form.

Sheikh's Stand On Laws Applicable to J & K State: By the end of 1972, the Central laws which had been extended to the State numbered 243.³⁷ Out of these laws, 46 relate to matters enumerated in the concurrent list.³⁸ These laws became a controversial issue after Sheikh Abdullah took over as Chief Minister of the State after having won the State Assembly elections in 1977. His government desired to review these laws, since these were "accepted by these state governments which were not truly representative of the people"³⁹. The Sheikh himself emphasized that he returned to power in 1975 after making it unambiguously clear that he could assume office only on the basis of the position as it existed on August 8, 1953

35. Constitution of Jammu and Kashmir, Vol.1, Sec.3, p.2

36. JAIN, M.P., Opit., p.456.

37. SINGH, Balbir, Opit., p.39.

38. Ibid.

39. From the Hindustan Times, 3rd Sept., 1977.

when he was arrested and deposed. He further held that the elected representatives had the right to reject all such laws which tend to restrict the State's autonomy.⁴⁰

The Sheikh's stand according to Gundevia, is that "Kashmir's accession to India stands but it was based on the Instrument of Accession, which limited the powers of the Government of India to three subjects: Defence, External Affairs and Communications."⁴¹ He may not object laws passed by the Central Legislature directly bearing on these subjects. The bone of contention are only those ones on the concurrent list already mentioned.

The Kashmir Government therefore appointed a Committee in September 1977 (headed by the then Deputy Chief Minister, Beg) to review these laws.⁴² The Committee's report would be placed before the legislature of the State who in turn could accept or reject its recommendations.⁴³ There was, however, a strong reaction against the very idea of reviewing these laws by the State government and the move was assailed in Indian political quarters and inside the state itself, holding the view that these laws were very beneficial to the people of the State and had cemented the State's relations with the Union.⁴⁴ Accordingly, the State Government changed

40. From the Statesman, 14th Sept., 1977.

41. GUNDEVIA, Y.D., OpCit., pp. 145-146.

42. From the Tribune, 26th Sept., 1977.

43. From The Statesman, 14th Sept., 1977.

44. From The Hindustan Times, 6th Sept., 1977.

its attitude, fearing a phase of Centre-State confrontation which Sheikh was keen to avoid. His Finance Minister remarked that "the State Government would modify or repeal the laws only when the Constitution allowed to do so"⁴⁵. Beg declared that "whenever we feel that a change in any Act is needed to suit the local conditions, we shall consult the Centre in a cordial atmosphere and nothing would be done in regard to the proposed review without consulting the Central Government"⁴⁶. Thus the attitude of the National Conference leadership towards this issue appears to have undergone a constructive change.

Viewed legally and constitutionally, the State Legislature or the Chief Minister of the State are not authorised to set up committees for revision of the Central laws already applied to the State. There is absolutely no provision in the Constitution of India or that of the State which can empower the State Government to recommend revocation or make amendments to Central laws.⁴⁷ The President of India under various Presidential orders from May 1954 had been specifying the subjects over which the Parliament had the power to make laws for the State and

45. From The Tribune, 26th Sept., 1977.

46. From the Hindustan Times, 3rd Sept., 1977.

47. Jammu Bar Association in the Hindustan Times, 11th October, 1977.

the concurrence of the State Governments had always been duly obtained.⁴⁸

According to V.S. Shanker, the greatest concession India secured from the Sheikh during the negotiation before the Indira-Abdullah Accord was that he agreed to the application of entry 97 of the Seventh Schedule of the Indian Constitution.⁴⁹ This entry provides that Parliament will continue to make laws for J & K State relating to the:

Prevention of activities directed towards disclaiming, questioning and disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory from the Union...⁵⁰

The legal and constitutional position of Jammu and Kashmir State may not be sound as regards the Central laws since these pertain to the Central List which applies to this State in its entirety, subject to certain slight alterations.⁵¹ But in the State List - which stands omitted as regards this State - and in certain subjects of the Concurrent List the State of Jammu and Kashmir enjoys maximum autonomy, the example of which can be fully understood when we examine the issue of the Public Safety Ordinance, which the Governor of Jammu and Kashmir promulgated

48. Ibid.

49. SHANKAR, V.S. "Euphoria Over Kashmir Accord", The Tribune, Chandigarh, 18th March, 1975.

50. Constitution of India, Seventh Schedule, Union List, 97th entry as applicable to J&K, p.271.

51. BASU, D.D., Commentary on the Constitution of India, Vol.5, Calcutta, S.C. Sarkar & Sons, 1970, p.513.

in the fall of October 1977.

G. CASE 2 : THE PUBLIC SAFETY ORDINANCE

Law, order and duties of individuals figure prominently in democracies and in federations. Law, according to Apter, "arose through legislation and the legislation was a process of government"⁵². For man is subjected to live with his fellow beings in organised and free societies, freedom faces as much threat from forces of indiscipline and lawlessness as it may face from forces of authoritarianism and dictatorship. Thus a need was felt to impose some reasonable restrictions on his behaviour. Therefore opines Montesquieu "Legislators through political and civil laws bound him to his duties as well"⁵³. Both law and duties, when combined in human behaviour lead to order which, in the opinion of Bohannan, "is characteristically coercive and institutionalized"⁵⁴.

Gradually law and order became a serious problem in federations. In Indian federal system it is also a problem since the Seventh Schedule of our Constitution makes a clear demarcation of the operational areas of the Centre and the

52. ECKSTEIN & APTER, ed., Comparative Politics: A Reader, New York, The Free Press, 1963, p.726.

53. MONTESQUIEU, L'esprit des lois: (Spirit of Laws), Robert, Jacques, ed., Paris, Editions Seghers, 1972, p.3

54. PAUL, Bohannan, "Law and Legal Institutions", in International Encyclopedia of Social Sciences, Vol.9, SILLS, David L, ed., USA, Macmillan Company & Free Press, 1968, p.73.

States. The Indian States are exclusively in charge of public order and the Centre cannot claim any share in it.⁵⁵ But the crux of the problem, in the words of V.T. Joshi is, "Whether a government should assume powers to avert serious crimes like acts of sabotage or take action only after an offence has been committed"⁵⁶.

Main features of the Ordinance : The State of Jammu and Kashmir/^{Promulgated} Public Safety Ordinance 1977. This was not the first such law but was a legacy of the monarchical rule of Maharaja Hari Singh.⁵⁷ The State Government, through this Ordinance, arrogated to itself the right to detain any person, without trial, in public or State interest for as long as two years⁵⁸ without disclosing the grounds for such detention⁵⁹, which can also be renewed for a further term after the expiry of the first two years.⁶⁰ It is striking to note that all offences under this Ordinance are cognizable and non-bailable.⁶¹ In case the Advisory Board so recommends, the Government may continue the detention of the person concerned for such

55. Constitution of India, p.271.

56. JOSHI, V.T., "M.P.'s Mini-MISA" may lapse - The Times of India, New Delhi, 17th November, 1977.

57. J & K Public Security Act of December, 1946, Srinagar, Government Press, 1970. It remained in force in this State upto May, 1974.

58. J & K (Govt. of) Gazette, Vol.90, No.30, Public Safety Ordinance, Srinagar, Govt. Press, October, 1977, Sec.26(a) read with sub-sec.(1) of Sec.16., pp. 9-13.

59. Ibid. Sec.21(2) p.11.

60. Ibid. Sec. 23(2) p.15.

61. Ibid. Sec.13(2) p.8.

periods as it thinks fit.⁶²

It is clear that the Advisory Board shall be supreme in its own sphere for the Ordinance plainly says that, "Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board"⁶³. The Ordinance therefore appears to remove the jurisdiction of the Supreme Court of India in such cases,⁶⁴ just as the Centre does not want to put any check on itself by proposing an amendment to the Criminal Procedure Code in the new bill designed "to repeal MISA"⁶⁵. It is quite clear that the aim of the proposed legislation is to empower the Central Government with extraordinary powers without any judicial inhibitions.⁶⁶ But the outstanding feature of the State Ordinance is the policy of bullying and brow-beating the press in Jammu and Kashmir,⁶⁷ of course an integral part of India which is a "Sovereign Socialist Secular Democratic Republic."

Democracy however cannot exist without freedom to dissent,

62. Ibid. Sec. 25(1), p.13. Maximum period of detention under MISA was one year. It was imposed throughout India during 1971(a). It was not applicable to J&K which had the J&K Preventive Detention Act 1964, and J&K Preventive (Amendment) Act 1967 instead. Under the former the maximum detention period was one year (b) and under the latter it was two years (c) See GHOSH, S.K. Law and Order, Calcutta, Eastern Law House, 1972, pp. (a) 153, (b) 160, (c) 163.

63. Ibid. Sec. 25(1), p.13.

64. The Hindustan Times, 9th Nov. 1977.

65. SAHAY, S, "A Close Look", The Statesman, 29th Dec. 1977.

66. "Scrap the Bill" ed., Indian Express, 13th Feb., 1978

67. The Hindustan Times, 13th Sept. 1977.

without the right and opportunity to express a view different from and opposite to the view of those in power. Advani observed that, "1977 gave us the freedom of speech" in India,⁶⁸ but in Kashmir the said ordinance snatched it away by violating the fundamental rights of freedom of speech and expression guaranteed under Art.19 of our Constitution.⁶⁹

This Ordinance came therefore at a time when democratic forces in India were pressing the Central Government to withdraw the MISA⁷⁰ - a lawless law - abrogate the 42nd Constitutional Amendment Act and restore all civil liberties⁷¹. In the same atmosphere of civil liberties the Sheikh Government in Kashmir banned two Dailies from entering the State under Sec.25 of the State Customs Act.⁷² This was challenged in the Supreme Court before the Constitution Bench and the State nearly lost the case.

68. ADVANI, L.K., Union Minister for Information & Broadcasting cited in The Hindustan Times, 26th Dec., 1977.

69. Article 19 is applicable to J & K State under Art.370 from May, 1954.

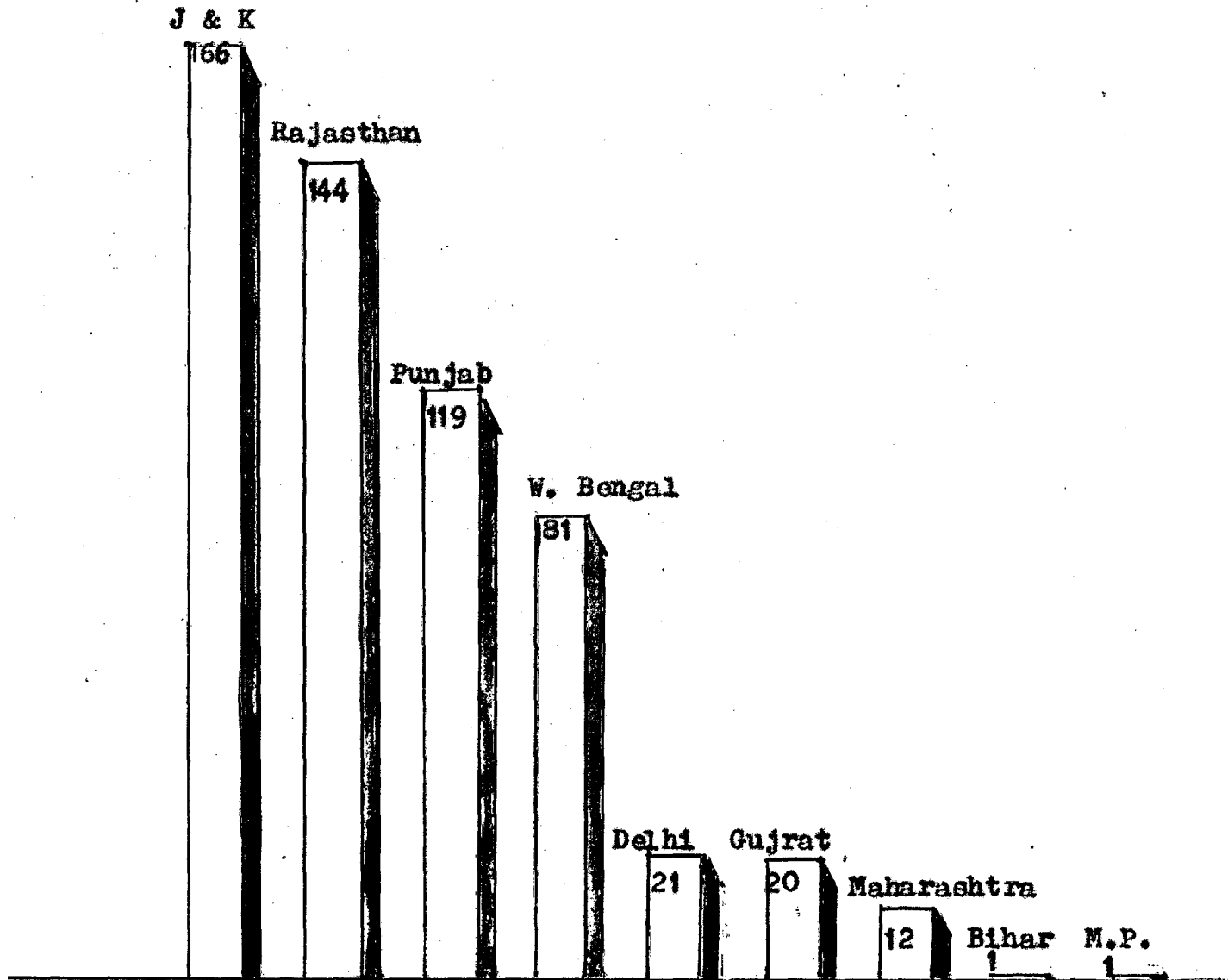
70. MISA is applicable to J & K State during emergency vide Art. 250 of the Indian Constitution, p.122. Arrests under MISA during the Janata period (April to Sept. 1977) were the maximum in J & K State. See Table No.6.

71. Polit Bureau of the CPI(M) in The Times of India, 8th November, 1977.

72. The J & K Customs Act, 1958 gives uncanalised, unguided arbitrary and unbridled powers to this State to ban the entry of any goods whatsoever for any purpose, Hindustan Times, 16th Sept. 1977.

TABLE NO. 6

*ARRESTS UNDER MISA DURING JANATA PERIOD (April to Sept. 1977)



*Source: The Statesman 23, December 1977

N.B: 1182 Persons were taken into custody in J & K State during the emergency. These included 420 held under MISA. 762 under the DIR and 11 under COFEPOSA. Of the MISA detenus, 232 were affiliated with political parties and 112 detentions made under DIR were on political grounds (The Hindustan Times, 28th Sept. 1977).

Chief Justice Beg observed, while addressing the Advocate General: "I was wondering if you could withdraw and amend the law instead of getting a verdict from us."⁷³ The State Government withdrew the ban but promulgated the Ordinance with underset motives. According to Abraham this was done by the State Government "smarting under the imaginary humiliation of a defeat in the Supreme Court"⁷⁴. It is intended to curb the freedom of the press, freedom of expression and right to dissent in this State. These are some of the rights which the people of India secured after a long and non-violent struggle against the dictatorial regime of Indira Gandhi.⁷⁵ This Ordinance came as a "Bolt from Banihal"⁷⁶. It was all the more shocking as this was perhaps the State which, more than any other had not readily or wholly fallen in step with the Centre in curtailing individual freedom and other basic rights during Emergency.⁷⁷

By means of various sections of this ordinance, the State Government can regulate, restrict, or prohibit the importation in the State, of any newspapers, periodical leaflet or

73. The Statesman, 7th Sept., 1977.

74. ABRAHAM, A.S., "Pursuit of Public Safety", - Indian Express, 24th November, 1977.

75. The Hindustan Times, 18th November, 1977.

76. From the Indian Express, 8th November, 1977.

77. Ibid.

other publication⁷⁸, and require the editor, printer or the person in possession of such documents to inform the authority about the name and address of any person concerned in the making of the 'prejudicial report'⁷⁹, even though it might have been printed or published before the Ordinance came into force.⁸⁰ It does not provide for any judicial review. If we contrast it with Sec.24 of the Prevention of Publication of Objectionable Matter Act of 1976, in the latter the High Court can go into the merits of executive action.⁸¹ These are some of the "unhappy features, relating to the curbs on the freedom of the press in the State which seem to be more stringent than before"⁸². It seems that the gross abuse to which such absolute powers have been put during the emergency, has been simply ignored by the Centre as well as by the Jammu and Kashmir Government.

Reactions and Criticism: The Public Safety Ordinance provoked strong reaction from almost all national political parties and political circles throughout India. Virendra, the President of 'AINEC' opined that, "Freedom of Press is the very life-breath of democracy. Any attempt to strangle it would ultimately destroy democracy and usher in once again dictatorial tendencies."⁸³ Observers really wondered why the State should

78. J & K (Govt. of) Gazette, Opcit., Sec. 11(1).

79. Ibid. Sec.10(1)(a)

80. Ibid. Sec.10(1)

81. NOORANI, A.G., "Preventive Detention Revived", Indian Express, 23rd Nov., 1977.

82. The Economic Times, 3rd Dec., 1977.

83. VIRENDRA, President of the All India Newspapers' Editors' Conference, The Times of India, 9th Nov., 1977.-

have resorted to such measures. The Jammu Bar Association observed that this "Mini Emergency in the State would debar a person from expressing views against regional imbalances"⁸⁴. Common people in Jammu, the winter capital of the State, felt hurt by these 'iron laws' and held the view that this Ordinance has been issued "to perpetuate the National Conference rule in the State, which has won just six out of 32 seats in Jammu Province."⁸⁵ The Polit Bureau of the Communist Party of India (Marxist) commented: "It was least expected of the Sheikh, himself a victim of preventive detention for years at the hands of the Congress rulers to issue an Ordinance like this!"⁸⁶

Such sweeping fiats are either a sequel to visible public disorder or a precaution to meet certain perceptible danger. At the time of promulgation, there has been no trace of either in the State. One fails to understand as to what are the reasons behind this 'anti-people' order. A.G. Noorani observed that, "Neither the 'peculiar' situation prevailing in the State nor the necessities of defence can justify the acquisition of unfettered power over the liberty of the citizens and the freedom of the Press."⁸⁷

A glimpse of the unfettered powers can be visualised from

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84. Jammu Bar Association, Times of India, 10th Nov. 1977.
85. From the Indian Express, 9th Nov. 1977.
86. The Times of India, 8th Nov. 1977
87. NOORANI, A.G., "Preventive Detention Revived", Indian Express, 23rd Nov., 1977.

the text of the ordinance itself wherein a 'prejudicial report' is defined as "any report or statement whether true or false" which incites the commission of a prejudicial Act.⁸⁸ Keeping this in view Noorani very judiciously opined that, "Such a law enacted elsewhere in India would be instantly struck down by the courts, as, violative of the fundamental right to freedom of speech and expression (Art.19) and to protection against arbitrary arrest and detention (Art.22)."⁸⁹

Decidedly it is the Special Status of Jammu and Kashmir under Art.370, which slashes down Article 19 and 22 of their worth totally and deprive the people there, of the fundamental rights which they are otherwise entitled to enjoy as Indian citizens.⁹⁰ It is more so because in its application to J & K State, reasonable restrictions on the rights conferred by Art.19 mean "such restrictions as the appropriate legislature deems reasonable" and not the courts as in the rest of India.⁹¹

The State Government's Defence: The State Government defended the Ordinance in the garb of special circumstances such as :

88. J & K (Govt. of) Gazette, Opcit., Sec.2(4).

89. NOORANI, A.G., Opcit.

90. Ibid.

91. Constitution of J & K, 1970, Opcit., p.94

Jammu and Kashmir is a strategic border state flanked by China and Pakistan. Parts of its area are held under their illegal occupation. The State has been confronted with such problems of security which the other states of India do not have to face.⁹²

Infiltration and spying is a common feature in this sensitive border state.⁹³ Pakistanis are also to be seen; no doubt with valid permits, near large number of defence installations.⁹⁴ Under what law could the State Government detain them? All such state laws became redundant in May 1976.⁹⁵ MISA & DISIA ceased to operate in this state on Sept. 27, 1977.⁹⁶ Thus there occurred a vacuum which it was necessary to fill in.⁹⁷ When the proclamation of emergency was revoked in April, 1977, the States in India were told that the Defence of India Act too would cease to be operative six months after the revocation of emergency and they may enact appropriate legislation, in case, their prevailing detention laws were not adequate to their needs. Even at the time of promulgating the ordinance there were about one hundred such spies in the state who had served their

92. The Hindustan Times, 17th Dec., 1977.

93. Indian Express, 9th Nov., 1977.

94. The Times of India, 9th Nov., 1977.

95. The Hindustan Times, 8th Nov., 1977

96. The Times of India, 16th Nov., 1977.

97. The Indian Express, 16th Nov., 1977.

sentences and awaited repatriation.⁹⁸ The Government had no law on the Statute to hold them.⁹⁹ It could not set them free till a settlement was worked out. This was one of the major considerations which forced the government to issue the Ordinance.¹⁰⁰

The State has to deal with some of the unforeseen difficulties such as unauthorised foreigners, smugglers, saboteurs,¹⁰¹ and communalist mischief-mongers,¹⁰² who put the security of the State in jeopardy. These are the peculiar problems of the State for which it has justified the Ordinances.¹⁰³

Much more important than these special circumstances is the fact that the state is legally and constitutionally empowered to make such a promulgation. Item 3 of the Concurrent List pertaining to "Preventive detention for reasons connected with the security of a state" is not applicable to J & K.¹⁰⁴ Consequently, Basu observes:

the power to legislate with respect to preventive detention in Jammu and Kashmir under Art.22(7) shall belong to the legislature of the State

98. The Hindustan Times, 17th Dec., 1977.

99. The Indian Express, 9th Nov., 1977.

100. The Hindustan Times, 17th Dec., 1977.

101. The Indian Express, 16th Nov., 1977.

102. The Hindustan Times, 17th Dec., 1977.

103. Ibid., 3rd March, 1978.

104. Constitution of India, p.276. footnote 2.

instead of Parliament, so that no law of preventive detention made by Parliament will extend to that State.¹⁰⁵

Finally, it is here that we find the special status of J & K State at work. The Madhya Pradesh Government also promulgated a 'Mini-NISA' in Sept., 1977, to deal with the threat of a strike by the electricity board employees and fears of possible sabotage of the power-generating units. This also met with adverse criticism and was allowed to lapse in Feb., 1978 in view of the Preventive Detention measures being enacted by the Union Government.¹⁰⁶ The M.P. Ordinance, however, set a post-emergency precedent for the passage of abhorrent legislation behind the facade of legality and continuity. The Jammu and Kashmir Government followed suit. The failure of the Janata Government at the Centre to promptly censure the M.P. Government and pressurize it to withdraw the measure has seriously weakened its position in Jammu and Kashmir where the Sheikh Government too revived and restored the status quo ante. While elections in the rest of the country had been followed by restoration of civil liberties and democratic freedoms, in Jammu and Kashmir though after the fairest ever elections - these have been followed by curbs on civil liberties. Freedom of the Press and

105. BASU, D.D., Introduction to the Constitution of India,
Opcit., p.235.

106. The Times of India, 6th Dec., 1977.

expression has been ruled out under the Chief Ministership of Sheikh Abdullah who had been an apostle of such liberties during the thirties and the forties and also when he was kept out of office due to such draconian laws.

The special status of J & K is further illustrated by the provisions relating to the role of the Governor, which is examined in the concluding section of this chapter.

D. CASE 3. GOVERNOR'S RULE

Due to the Special Status enjoyed by the State of Jammu and Kashmir, Part VI of the Indian Constitution is not applicable to it.¹⁰⁷ The State has its own Constitution and right from November, 1952 the Head of the State was designated as Sader-i-Riyasat.¹⁰⁸ The State Constitution laid down his qualifications - one of these being a first class State subject - and the procedure for his election by the Legislative Assembly. The Prime Minister of the State was vested with the authority to communicate the decision of the Assembly to the President of India for his recognition.¹⁰⁹ According to Basu he "should have the position and powers of the Governor of a State under the Constitution of India."¹¹⁰ But this was not actually so.

107. BASU, D.D., Introduction to the Constitution of India Op cit., p. 205.

108. TENG, BHATT AND KAUL, Op cit., P. 202. The Chief Minister of the State was called Prime Minister and the Head of the State, President of the State, till 10th April, 1965.

109. Ibid

110. BASU, D.D., Commentary on the Constitution of India, Vol. Op cit., p. 1286, footnote 1.

From Sadar-i-Riyasat to Governor: After the State adopted its own Constitution (on 26th January 1957) it laid down that a person to be elected as Head of the State must be a permanent Resident of the State with other enumerated qualifications for such an election.¹¹¹ There was also a provision for his removal from the office by the President of India on the ground of violation of the Constitution.¹¹² It also contained a provision for an Acting Sadar-i-Riyasat recognised by the Council of Ministers.¹¹³

The Sadar-i-Riyasat was empowered to declare a State of emergency in the case of Constitutional breakdown, which the Governor of no other State in India can do.¹¹⁴ It was the elected Sadar-i-Riyasat who dismissed Prime Minister Abdullah in August 1953.¹¹⁵ This was the first ever suspension of a Prime Minister by the Constitutional Executive of a State in India.¹¹⁶ The dismissal of Sheikh Abdullah was on the charges of anti-India attitude.¹¹⁷

111. BASU, D.D., Commentary on the Constitution of India, Vol.7, Opit., pp.1292-94.

112. Ibid., p.1294

113. Ibid.

114. TENG, BHATT AND KAUL, Opit., p.213.

115. MADHOK, Balraj, Kashmir Centre of New Alignment, Opit., p.126.

116. (1) In 1967, in West-Bengal Governor Dharam Vira dismissed the Chief Minister Ajoy Mukherjee

(ii) In 1970, in UP Governor Gopala Reddy dismissed the Chief Minister Charan Singh.

117. MULLIK, B.N., Opit., p.44

He was on the same day arrested and deposed under the Defense of Kashmir Rules.¹¹⁸

It was only the Sixth Amendment Act of the State Constitution, in April 1965, by which the nomenclature of Sadar-i-Riyasat was replaced by that of Governor.¹¹⁹

"This", observes Mangat Rai, the then Chief Secretary of the State, was done "as a part of Sadiq's policy of great integration with India"¹²⁰.

There is ample difference between the Governor of Jammu and Kashmir State and the Governor of any other Indian State due to the provisions of the Constitution of this State relating to the Executive Head of the State. In other states, the Governor exercises his powers according to the Indian Constitution but the Governor of Jammu and Kashmir state exercises his executive power in accordance with the Constitution of that State¹²¹ and under the Constitution of India as applicable to this State.¹²² Thus he is to preserve protect and defend the State Constitution and only those Articles of Indian Constitution which are applicable to Jammu and Kashmir State under its special status.

118. MADHOK, Balraj, Oncit., p.126.

119. Constitution of J & K, Srinagar, Govt. Press, 1968, p.71

120. RAI, E.N. Mangat, Commitment My Style, Oncit., P.252

121. Constitution of J & K, Oncit., Vol.1, Sec.26(2) p.7.

122. Ibid., Sec.2(a), p.2.

The most important similarity between the Governor of J & K and that of any other State of India in addition to their appointment by the President of India is that the President has the power to make provisions as he thinks fit for the functions of the Governors in any contingency not provided for in Part V of the State Constitution or in Chapter I of Part VI of the Indian Constitution both dealing with the State Executive.¹²³ This provision was introduced in the J & K Constitution by the Sixth Amendment Act of 1965.¹²⁴

The Governor of Kashmir is bound by the advice of the Council of Ministers in all his functions except those under Section 92 of the State Constitution. Here, according to Teng & Kaul, "the final decision lies with the Governor" who can declare a state of emergency even in the teeth of opposition by the Council of Ministers.¹²⁵ The discretionary powers of the Governors of other Indian states are much wider: they are free from such rigid control of their Council of Ministers, and have a certain number of discretionary powers. In such cases, the Governor's decision is final, "the validity of which is not to be called in question on the ground that he ought or ought not have

123. Cf. Sec. 33 of the J & K Constitution and Art. 160 of the Indian Constitution are quite identical.

124. J & K Constitution, Op cit., 1968, p.71.

125. TENG AND KAUL, Kashmir's Special Status, Op cit., p.116

acted as such.¹²⁶ Teng & Kaul have rightly observed that "the Governor of Kashmir is relegated to the position of nominal constitutional entity" in the State constitution.¹²⁷ It is only in the case of the breakdown of the Constitutional Machinery wherein the Governor of Kashmir is vested with powers to declare a state of emergency in the State.¹²⁸ None of the Governors of the Indian States have been given such powers under Indian Constitution.

Constitutional Breakdown 1977: In March 1977 there occurred a Constitutional Breakdown in the State of Jammu and Kashmir due to the withdrawal of support by the Congress Party to the Sheikh's government. The governor of the State took over the administration after dissolving the State Legislative Assembly.¹²⁹ This he could not do without the concurrence of the President of India.¹³⁰ He, therefore, had gone personally to the Acting President Shri B.D. Jatti to get this concurrence before imposing his rule in the State. Sheikh Abdullah as Chief Minister, had recommended to the Governor dissolution of the Assembly and a fresh election.¹³¹ The State of Kashmir, thus, was not under the direct President's Rule but under Governor's rule

126. The Constitution of India, Art.163(2), p.74.

127. TENG AND KAUL, Opit., p.115

128. J & K Constitution, Opit., Vol.1, Sec.92, 1970, pp.27-28.

129. The Tribune, 28th March, 1977.

130. J & K Constitution, Vol.1, Sec.92(5).

131. From the Tribune, 28th March, 1977.

under State Constitution.¹³²

On this issue, the Janata Government at the Centre was accused of breach of privilege of the House since the Lok Sabha was in Session but was not informed about the dissolution of the Assembly and imposition of Governor's Rule in Jammu and Kashmir State.¹³³ The Congress Party held the view that the Sheikh's Government existed due to their support. Once this support was withdrawn the Sheikh ceased to enjoy the right to speak on behalf of the majority party in the State Assembly and therefore had no right to advise the Governor for its dissolution.¹³⁴ The Congress Party also criticised the Governor's rule as dictatorial, undemocratic and unconstitutional since Congress Legislature Party having a strength of 46 in the 75 Members State Assembly could form a new Government.¹³⁵ The Chief Minister on the other hand had only three supporters and none of them including Sheikh, were initially members of the State Legislature.¹³⁶

The Janata Party Government at the Centre declared in Parliament that the action of the Governor and the Centre were both constitutional and legal for the decision of the

132. J & K Constitution, Vol.1, Sec.92, 1970.

133. The Tribune, 30th March, 1977, 134. Ibid.

135. From the Statesmen, 31st March, 1977.

136. BASU, D.D., Introduction to the Constitution of India, Oncit., p.213.

Congress (J&K) Party to withdraw support to Sheikh's government was announced by the Congress President of Jammu and Kashmir and not by a resolution of the Congress Legislative Party. The Congress Legislature Party passed the resolution and informed the Governor in the afternoon of March 26, while the Chief Minister tendered his advice for dissolution of the Legislature on the morning of March 26.

Had the Congress Party moved a no-confidence motion against the Government in the Kashmir Assembly and won, the Prime Minister of India would have certainly recommended to the Governor not to dissolve the Assembly. But the Congress Legislature Party did not do so and the Prime Minister had no option.¹³⁷ If the Congress Party in Jammu and Kashmir claimed the majority in the Assembly "it should not be afraid of facing the fresh elections."

The stand taken by the National Conference in Parliament and outside it was that "the issue of dissolution of the Kashmir Assembly should be viewed in the context of the Special Status conferred on Kashmir by the Indian Constitution under Art. 370."¹³⁸

137. The Indian Express, 8th April, 1977.

138. The Tribune, 30th March, 1977.

A further question to be considered is whether the Sheikh's advice was in accordance with the Constitution of Kashmir or not. Under the circumstances it was strictly speaking a legitimate advice and the Governor gave an opportunity to the people of the State to elect their representatives freely and dispassionately. The Centre preferred to act in accordance with the Kashmir constitution as it provided for election within six months of the dissolution of the Assembly.¹³⁹ Under the Indian Constitution the President's rule can be continued with yearly extension for three years.¹⁴⁰

The attitude of the Centre was actually based on the position of Art.356 as applicable to the State of Jammu and Kashmir wherein "its provision must be construed as including reference to the provisions of the Constitution of Jammu and Kashmir."¹⁴¹ The Governor, therefore, prior to issuing such proclamation is bound to consult and get concurrence of the President of India for issuing such proclamations.¹⁴² It seems that the view held by Teng and Kaul that "the power to decide whether Presidential intervention is necessitated, rests squarely in the hands of the Governor"

139. J & K Constitution, Vol.1, 1970, Sec.92(3), p.28.

140. The Constitution of India, Art.356(4), p.183.

141. Ibid., p.181, footnote 2. (Art.356 as applicable to J&K).

142. J & K Constitution 1970, Sec.92(5), p.28.

is not tenable. Presidential intervention, guidance and concurrence is a must and it is here that we really find that Art.92 of the State Constitution does not stand by itself but under the umbrella of Art.356 of Indian Constitution.¹⁴³

Some other questions deserve to be answered:

- (i) Why was the Governor's rule imposed under Art.92 of the State Constitution? And Why not that of the President's rule under Art.356 of the Indian Constitution?
- (ii) Why was the proclamation to be laid before the State Assembly and not before the Parliament? and,
- (iii) Was the Indian Constitution really distorted in the present case?

Answers to all these questions are to be found in the Constitutional special status enjoyed by the Jammu & Kashmir State under Art.370, whereby it shall be the duty of the Union to ensure that the government of the State is carried on in accordance with the provisions of the Constitution of India.¹⁴⁴ The Union has no power to suspend the ^{State} Constitution directly by issuing a proclamation

143. See J & K Constitution, Opit .. Sec.33.

144. The Constitution of India, Art.355, p.181

on the ground of failure of the Constitutional machinery in the State of Jammu and Kashmir.¹⁴⁵ It is only the Governor of the State who assumes to himself all or any functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or authority in the State,¹⁴⁶ (except those of the High Court).

The Central Government did not like to take over the administration of the State under Art. 356 as it is already a "defamed article" about which Narked has rightly observed:

It is no denying the fact that the Centre had misused the powers under Article 356, what was meant to be a safety valve, has been used as political weapon to do away with government not of their choice in the states.¹⁴⁷

Since there was a Janata Party government at the Centre and the Congress in Jammu and Kashmir, the Centre very wisely and constitutionally shifted the onus upon the State Governor with the result that, for the first time in the history of the State, National Conference and Congress confronted each other before the electorate.

If the Lok Sabha was not informed about the dissolution of the J & K State Assembly it was again constitutional as the State constitution provides that every proclamation

145. Ibid. Art. 356 (as applicable to J & K) p.181.

146. Constitution of J & K, Vol.1, 1970, Sec.92(a), p.28.

147. NAKED, S.R. "Article 356 of the Indian Constitution - Its Use and Misuse", cited in Maheshwari, B.L., ed. Centre-State Relations in the Seventies, Minerva Associates, Calcutta, 1973, p.14.

pertaining to the breakdown of the constitutional machinery is to be placed before each House of the State Legislature¹⁴⁸ and not before the Parliament.

Finally we can conclude that Governor's rule in Jammu and Kashmir in 1977, though for a few months, was in keeping with the provisions of the Special Status given to this state. The question of distortion of Indian constitution does not arise at all. The Centre thus acted wisely in guiding and maintaining the good relations between the State and the Union with the help of the governor who acted as a sagacious counsellor adding harmony between the two governments, himself serving as a close link between the two.

* * *

Under the existing arrangement of Special Status the Parliament at the Centre exercises only the enumerated powers and the State of Kashmir enjoys the residuary powers. The relation between the two is therefore defined article by article in the Constitution.

As a result of gradual integration of the State with the Indian Union, various Central laws and provisions of the Constitution have been applied to this State with the consent

¹⁴⁸. Constitution of J & K, 1970, Sec.92(6), p.28.

of the respective State Governments, and by following the proper procedure of Constitutional law. The result seems to be that the position of the State could not remain that rigid and static as was defined in the Instrument of Accession. Even now the internal autonomy of the State stands largely unimpaired.

The Sheikh, who wanted to go back to the position of 8th August, 1953, regarding Centre-State relations, before signing the Accord in 1975, became a strong critic of these laws and wanted to get them revoked after the victory of the National Conference in the 1977 State Assembly Elections. He even appointed a Committee for this purpose but met with strong reaction, for these laws are useful for the people of the state and have cemented Centre-State relations without doing much harm to the special status of the State. Legally and constitutionally there is no provision in the Constitution (of India or that of the State) to allow for the revocation of these laws.

As a result of very well demarcated Legislative spheres of the Centre and the State, the legislation for preventive detention also falls within the purview of the State Legislature by force of which the public safety ordinances were promulgated in October, 1977. The State Government arrogated to itself the right to detain any person without trial

in public or State interest for as long as two years and made all offences under this ordinance as cognisable and non-bailable. This ordinance curbs the freedom of the press, the freedom of expression and the right to dissent in this State. It also shows clearly that Art. 19 and 22 are slashed down considerably in this State where legislature is supreme and not the law courts as is the case in the rest of the country.

If such a law were enacted anywhere else in India, it would have been struck down by the courts as violative of the fundamental rights to freedom of speech and expression and protection against arbitrary arrest and detention. The State Government is at present upholding the Safety laws on the ground of special circumstances such as infiltration and spying from China and Pakistan and saboteurs and smugglers who are equally dangerous for the security of the State, which has constitutional competence to legislate in the matter. The Parliament cannot extend any such law to this State. These provisions of the Constitution seem to be extraordinary concessions but they are the result of the division of power under the federal process and can be modified only with the consent of the State legislature. Thus the view held by Choudhary that "the special status of Kashmir cannot remain for ever and the

State should be brought in line with other states of India by a gradual process", does not seem to be tenable.¹

It was also the duty of the Governor of this State to see and satisfy himself whether the circumstances actually existed or not for the promulgation of such an ordinance. But he too, unlike other Governors in India, is bound to act on the advice of the Council of Ministers of this State. He enjoys much narrower discretionary powers and is thereby relegated to the position of a nominal constitutional entity by the State Constitution.

A unique power enjoyed by him, unlike Governors' in other Indian States, is that he can declare a state of emergency - no doubt in consultation with the President - in the case of a break-down of constitutional machinery and thereafter can assume to himself the administration of the State. This happened when the Congress Legislature Party withdrew its support from the Sheikh Ministry in March 1977 and the Governor's rule, instead of President's rule, was imposed in the State. The Union Parliament has no power to suspend the constitution of this State directly on the ground of failure of the Constitutional machinery.

1. CHAUDHARY, Reeta, Attitude of Indian Parties Towards the Accession of Kashmir to India, 1957-62, New Delhi, JNU(CPS) M.Phil. Dissertation, 1972 p.78.

Thus, it seems imperative that the Governments at the Centre and the State levels function with the basic understanding that Kashmir is a sensitive State, quite different from other States of the Union. The massive dose of central help to this State; its importance in national as well as in international politics and the strength of the National Conference are some of the other important factors leading to this cordial relationship.

Chapter VII

CONCLUSIONS

Special status in a dynamic federal system, is always a unique feature to meet unique circumstances. Federalism is intended to be a solution for multifarious problems resisting national unity. On the bases of such problems a federating unit may bargain constitutional autonomy to maintain its individual identity. There are various types of special status granted to certain territories for reasons of their neutrality, administrative convenience, backwardness and strategic position. Thus there may be autonomous regions within the federating states under some special constitutional arrangements. Sometimes, some special but temporary and transitional provisions are also provided for certain areas to meet their peculiar requirements. The Indian federal system provides various provisions to solve its long-standing and intricate problems pertaining to the minorities, backward classes, scheduled tribes and scheduled castes, in a democratic manner. But the maximum flexibility of the Indian federal system is to be seen in the special status enjoyed by the State of Jammu and Kashmir.

This State followed the same process for its accession to India as was followed by the other princely states, making its accession legal, rightful and constitutional

beyond dispute. The analysis of the available data makes it abundantly clear that the state leadership desired the issue of accession to remain open at least to enable them to obtain a greater amount of internal autonomy which they got in due course. The net result of this internal autonomy is to be seen in a sort of double citizenship enjoyed by the permanent residents of this State. Thus birth or residence in this State does confer separate status to its own subjects, which is legally denied to non-residents. Taken together, this amounts to a considerable difference in rights between permanent residents and non-residents of the State - otherwise the citizens of the same Indian Union of which Kashmir is an integral part - who cannot enjoy the civil rights of citizenship in this State. Furthermore, the residents of this State are also subjected to curtailed fundamental rights and constitutional remedies which make their civil and political rights of limited value.

The residuary powers are vested in the State of Jammu and Kashmir whereas they are vested in the Centre for all other Indian States. Thus for this State the Indian federal system respects state's rights more than in the case of any other Indian State. Making the most of the internal autonomy provided by the special status, the various State governments have done nothing to permanently re-

habilitate those thousands of refugees who are otherwise permanent residents of the State and, therefore, citizens of India. Their permanent settlement seems to be linked with the overall settlement of the Kashmir dispute on purpose, which has only increased the miseries of refugees from Pakistan-held Kashmir. There are two possible solutions to the problem; either the evacuee property and lands are declared evacuee property as is the case in rest of India or these refugees are permanently rehabilitated on the lands obtained free from the landlords. These lands are owned by the State government which is also constitutionally responsible for the resettlement of these displaced persons.

After the 1977 elections the State leadership wants to maintain the status quo of the State as a principle of federal bargain to retain power in the hands of the majority community at the cost of some special safeguards to the minorities of the State. Since it is only the secular principle which holds the regions of the State together and in its broader circumference keeps this State within India, the majority community in the State in general and National Conference government in particular must go out of their way to ensure that the minorities in the State have more economic and political openings than before. This will help the "dominant ruling minority" in winning

the hearts of the people of Jammu and Ladakh, chiefly inhabited by minorities. Otherwise, their claims for provincial autonomy and regional autonomy should also be considered on democratic principles as justifications of the same sound federal system. Muslims in India are now somewhere near 80 to 90 million out of 650 million of entire population and are treated as a minority in India, but the minorities of the State of Jammu and Kashmir being a little more than 34 per cent of the total population of the State are not even treated as minorities.

Circumstances have made Kashmir a national as well as international problem and those who come to power in this State make the most of this situation to maintain the special status of Kashmir in Indian federal system. Even the recent issues of Revocation of the Central Laws, the Public Safety Ordinance and the Governor's Rule in 1977, also prove beyond any doubt that the special status which was at the outset a device, an instrumentality, to permit the organized ^{Ex}pression of Kashmir opinion on affairs that directly concerned Kashmir, has acquired intrinsic value and has become a thing to be preserved for its own sake because it is now an essential part of the relationship between the Indian Union and the State of Jammu and Kashmir.

The special status of Kashmir has enhanced the regional loyalty of the Kashmiris in the Valley, who have developed political consciousness with the rest of the country. They are part of two cultural streams and despite a close association with India during the last three decades, a really strong all-India nationalism, which should be the essence of federalism could not be created in the Valley. The reason for this is that Kashmiris, especially in the Valley, have developed a pride of place, race and language and have grown up as a compact community aspiring to be a nation. They had cherished ideas of sovereign independence. Therefore, they resisted and still resist their submergence in the Indian Union. It is only under force of circumstances that they have had to put up with some supervision and control but there is still a limit beyond which they may not allow curtailment of their special status. The people of the Valley will never agree to ending special status, especially when their bargaining power has been enhanced considerably since the 1977 elections. The deletion of Art. 370 would also freeze Centre-State relations at the existing level and halt the process of further integration, if any with India. What is required is a sense of allegiance towards India in a broader spectrum alongside the regional loyalties in the state, both being complementary in a sound federal system.

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APPENDIX

CHRONOLOGY OF IMPORTANT EVENTS

1947--77

1947:

- The ruler of Kashmir requests India and Pakistan for Standstill Agreements; Cyril Radcliff reports on Indo-Pak border in the Panjab awarding a portion of Gurdaspur to India. (12-18 August)

 - Maharchand Mahajan takes over as the Prime Minister of the State; an all out invasion of Kashmir by tribesmen begins with abetment of Pakistan, India is requested for military aid to defend the State. (15-24 October)

 - V.P. Menon arrives at Srinagar for an on the spot investigation; Maharaja offers accession of the State to India, which pledges support against invaders and despatches troops to Kashmir. (25-27 October)

 - The Sheikh is appointed Head of the Emergency Administration; Pakistan refuses to recognize Kashmir's accession to India. (30 October)

 - The Valley of Kashmir is cleared of the invaders, the town of Rajauri falls to invaders; Mirpur follows suit. (10-25 November)
- 1948
- The Security Council charges Pakistan with aggression in Kashmir. (6 January)

- The Sheikh defends Kashmir's accession to India in the Security Council. (5 February)
 - The ruler of the State announces the establishment of popular government in place of emergency government. (5 March)
 - The Valley people celebrate the Independence Week. (7-14 May)
 - U.N. Commission proposes a cease-fire agreement between India and Pakistan in Jammu and Kashmir State. (13 August)
- 1949:
- U.N. Kashmir Commission announces terms for the proposed plebiscite. (7 January)
 - The Indian Constituent Assembly decides to fill up four seats, allotted to Jammu and Kashmir by nomination, one goes to the Sheikh. (27 May)
 - The ruler transfers all his powers to his son Karen Singh, who becomes the Regent and the ruler decides to leave the State. (9-20 June)
 - Constituent Assembly of India adopts Article 370 of the Constitution making special provisions for Jammu and Kashmir State. (17 October)
 - The Regent extends the Indian Constitution to the State. (25 November)

1950:

- The President of India issues the Constitution (Application to Jammu and Kashmir) Order by force of which citizenship of India is extended to the Permanent Residents of the state. (26 January)
- Sheikh Abdullah announces land-reforms measures; the legislation is promulgated accordingly. (13 July, 20 October)
- The General Council of the Jammu and Kashmir National Conference adopts a historical resolution that elections be based on adult franchise. (27 October)

1951:

- The Regent proclaims his order for holding elections for the Constituent Assembly in the State. (24 April)
- The Praja Parishad announces the boycott of the elections as their nominations are rejected wholesale; the first elections take place and all the seats are won by the National Conference. (9, 15 October)
- The Constituent Assembly of the State meets for the first time. (31 October)
- The Constituent Assembly brings its Interim Constitution into force. (20 November)

1952:

- The Constituent Assembly decides to terminate hereditary monarchy in the State. (12 June)
- The Delhi Agreement is signed which gives a special status to Jammu and Kashmir State. (14 July)
- The existing status of Jammu and Kashmir in Indian Union is approved by the Constituent Assembly of the State. (19 August)
- The Assembly provides for an elected Head of the State to be called President (Sadar-i-Riyast); Karan Singh becomes the first one and the new flag and the new emblem are adopted publicly. (12-14 November)
- The Praja Parishad launches a Satayagrah campaign in Jammu Province and demands complete accession of the State to Indian Union. (23 November)

1953:

- Dr S.P. Mookherjee, the President of Jana Sangh, launches civil disobedience movement in Delhi in support of Praja Parishad's demand for complete accession. (5 March)
- The Sheikh promises autonomy for all cultural units of the State. (16 April)
- Dr Mookherjee is arrested at Lakhnampur for unauthorised entry into Jammu and Kashmir State; he dies in Srinagar while in detention. (11 May, 23 June)

-- Jawaharlal appeals for the withdrawal of the Praja Parishad agitation; which is called off accordingly.
(3, 7 July)

-- Major crisis inside the Jammu and Kashmir government, which had been developing for nearly three months' comes to an end; the Sheikh is removed from office and arrested, Bakshi is sworn in as new Prime Minister. (7, 9 August)

1954:

--- Bakshi declares the State as a part of the Indian Union. (23 January)

-- Constitution Order (Application to Jammu and Kashmir) is issued forming the basis of the special status of Kashmir; the Fundamental Rights are applied to the State in a lopsided manner. (14 May)

1955:

-- Speaking in Srinagar, Bulganin refers to Kashmir as "Northern part of India"; Khrushchev observes "it to be so as the people of Kashmir have themselves decided".
(9, 10 December)

1956:

-- Kashmir Constituent Assembly unanimously passes the clause defining the State of Jammu and Kashmir as an integral part of India; it passes the 158-clause Constitution to come into force from 26 January 1957.
(30 October, 17 November)

1957:

- The State adopts its own Constitution. (26 January)
- General Elections begin in the State. (25 March)
- Bakshi is sworn-in as Prime Minister. (26 July)
- G.M. Sadiq, G.L. Dogra, Mir Qasim, D.P. Dhar, Rampiara Saraf and Motiram Balgira resign from the National Conference Working Committee; Sadiq declares the resignations as a protest against "authoritarianism and corruption" within the government. (6, 7 August)
- V.K. Krishna Menon tells the U.N. Security Council that under no circumstances would India compound the felony that Pakistan had committed in Kashmir nor would India acquiesce in the Commission of aggression; thus he clarified Indian stand on Kashmir. (5 November)
- Karan Singh is re-elected Sadar-i-Riyasat of the State. (5 November)
- Menon concludes his statement before the U.N. Security Council with a plea that Pakistan should first vacate her aggression in Jammu and Kashmir. (13 November)

1958:

- Jurisdiction of the Comptroller and Auditor General of India is extended to the State. (28 March)
- The Sheikh is taken into custody under Security Act and is removed to Kud jail. (30 April)

-- Lok Sabha passes a Bill extending Indian Administrative Services and the Indian Police Services Cadres to the State of Jammu and Kashmir. (12 August)

1959:

-- Permit system regulating entry into and exit from the State is abolished. (1 April)

-- India lodges a protest with the U.N. Security Council over the construction of the Mangala Dam in Pak-held Kashmir. (7 August)

-- The State Legislative Assembly adopts the official Bill amending the State Constitution to extend jurisdiction of the Union Election Commission to the State; it also brings the State High Court at par with other High Courts in India. (1 October)

1960:

-- The President of India promulgates an ordinance to further formal integration of the State with Indian Union. (26 January)

-- 153-mile Leh-Kargil road linking the trans-Himalayan region with the Kashmir Valley is opened to traffic. (1 August)

-- The 22nd annual session of the National Conference meets at Baramulla. (8 October)

-- The Democratic National Conference of G.M. Sadiq's decides to merge with the National Conference in Kashmir. (5 December)

1961:

-- Maharaja Hari Singh dies in Bombay, the President of India recognises Karan Singh as Maharaja's successor with effect from the date of former's death.
(26 April, 8 July).

1962:

-- Chinese claim nearly 4,000 sq. miles of territory in Gilgit area already held under illegal occupation of Pakistan. (8 January)

-- Bakshi is sworn-in as the Prime Minister of the State.
(6 April)

-- China and Pakistan enter into negotiations to locate and align portions of Indo-Chinese boundary west of Karakoram Pass, presently under Pakistan's unlawful occupation. (3 May)

-- India lodges protests, simultaneously with Pakistan and China warning both, of the grave consequences of the agreement entered into by them. (10 May)

-- India expresses her willingness in the interest of peace, to permit the use of Aksai-Chin road constructed by China in Ladakh area for Chinese civilian traffic.
(14 May)

-- Kushak Bakula, the Head of Lama of Ladakh is appointed Minister of State in Kashmir Cabinet. (16 July)

-- Chinese mount a massive attack in Ladakh. (20 October)

-- Daulat Beg Oldipost falls to Chinese in Ladakh.
(5 November)

-- Pakistan and China decide to sign a boundary agreement on the basis of the "location and alignment of the boundary" actually existing between Sinkiang and Pakistan-occupied portion of Kashmir. (28 December)

1963:

-- An agreement is signed between China and Pakistan to delimit and demarcate the boundary between the two usurpers in Pak-held Kashmir, India protests to China against Sino-Pak agreement. (2 March)

-- Jawaharlal Nehru decides to accept the resignation of Bakshi Ghulam Mohammed under the Kamaraj Plan.
(24 August)

-- Bakshi submits his resignation to the Sadar-i-Riyasat.
(3 October)

-- The new 11-member Ministry of the State headed by Khawaja Shamsuddin is sworn-in in Srinagar.
(12 October)

-- Government of India reveals that an area of 14,500 sq. miles in Ladakh territory is with China.
(10 December)

-- A sacred hair of the Prophet Mohammed is removed by some miscreants from Hazratbal Shrine. (26 December)

1964:

- The Hbly relic is discovered by CBI of India.
(4 January)
- Shamsuddin resigns from the Chief Ministership,
G.M. Sadiq is elected in his place and new port-
folios are announced. (27-29 February)
- The Sheikh is released and Kashmir Conspiracy Case
against him is withdrawn. (8 April)
- The Sheikh flies to Rawalpindi for a two-week visit
where he stresses on plebiscite and self-determina-
tion for Kashmir; he cancels his stay there and re-
turns to Delhi on hearing Nehru's death. (24-28 May)
- Bakshi is arrested in Srinagar under DIR and is
removed to Udhampur jail. (22 September)
- The President of India issues an order to apply
Articles 356 and 357 of the Constitution to Jammu
and Kashmir State. (21 December)

1965:

- Complete hartal is observed by the Muslims of Kashmir
to protest against the application of Sections 356 and
357 of the Constitution to the State. (15 January)
- Appointment of Ayyangar Commission is announced to
inquire into the charges against Bakshi Ghulam Moham-
mad. (30 January)
- Formation of Congress Legislative Party is formally
announced in the State. (2 March)

- Pakistan gives away over 2,000 sq. miles of Indian territory in Kashmir to China under the Sino-Pak boundary agreement. (5 April)
 - Designation of the Head of State and the Head of Government are changed from Sadar-i-Riyasat to Governor and Premier to Chief Minister. (10 April)
 - The Sheikh and Mirza Afzal Beg are taken to Cotacmund under DIR and their movements are restricted to the municipal limits of that town. (8 May)
 - Pakistani troops violate the cease-fire line in Tithwal, Uri, Mander, Naushera and Akhnoor sectors of the State. (4 June)
 - Indian army occupies Haji Pir Pass and a number of other important posts. (30 August)
- 1966:
- China virtually admits her repeated military intrusion into the Thagla Ridge area and Longju as well as remilitarization of the 20 km. zone in Ladakh. (6 January)
 - Withdrawal by Indian troops from Haji Pir begins. (21 February)
 - Union Home Minister, Nanda asks Sheikh Abdullah to reconsider his stand on Kashmir. (21 June)
 - C. Rajagopalachari pleads for the release of Sheikh Abdullah. (12 July)
 - India protests to China against recent intrusion in the Daulat Beg Oldi area in Ladakh. (11 August)

1967:

- The State Government issues an ordinance amending the Representation of the People's Act to bring it at par with the Central Law. (2 February)
- Karan Singh is declared elected to the Lok Sabha from the Udhampur (Kashmir Parliamentary Constituency) in a by-election. (9 May)
- Kashmir Pandits start an agitation over an alleged forced marriage of a girl to a Muslim youngman, they end their agitation in helplessness. (13 August, 3 September)

1968:

- Government withdraws all restrictions imposed on Sheikh Abdullah and allows him to move about anywhere in the country including the State. (2 January)
- The Prime Minister of India rules out discussions with Sheikh Abdullah on Kashmir's future and rejects autonomy demanded for Jammu Province. (22 June)
- Central Cabinet decides to extend 18 Central laws concerning Labour Welfare to the State. (7 October)
- A convention organised by Sheikh Abdullah opens in Srinagar, wherein Jayaprakash Narayan tells the convention that Kashmir cannot go out of the Indian Union. (10 October)
- Kashmir Jana Sangh Chief Baldev Singh wants special status of Kashmir to go. (18 November).

-- Gajendragadkar Commission submits its Report on regional imbalances in the State. (6 December)

1969:

-- Jammu and Kashmir Land Commission suggests radical land reforms in the State. (1 March)

-- China completes second link road connecting Pakistan-occupied Kashmir with Aksai-Chin area in Ladakh. (21 June)

-- Jammu and Kashmir Bill on Mortgage of Land Stands passed. (3 October)

1970:

-- The Prime Minister of India warns Pakistan against a fresh aggression in the State. (15 July)

-- Kashmir Police smashes a Pak-spy ring in the State. (19 July)

-- The State Government promulgates an ordinance amending Ranbir Penal Code of Criminal Procedure and the Jammu and Kashmir Representation of People's Act, 1957, to curb communalism in the State. (3 September)

1971:

-- Sheikh Abdullah, Mirza Afzal Beg and G.M. Shah, are served with externment from the State. (8 January)

-- The State police smashes a Pakistani spy ring which intended to assassinate the Chief Minister Sadiq and his cabinet colleagues. (18 January)

- A new party called the State People's Party is formed in Kashmir to strive for a just cause - democratic rule. (11 February)
- Tenth census begins all over the State. (10 March)
- The State is excluded from MISA, when the same is imposed throughout the country. (7 May)
- Unlawful Activities (Preventive) Tribunal in its Report released in Srinagar, holds that Kashmir's accession to India is now a closed chapter. (22 June)
- Thirteen Central Acts are extended to the State as a result of its progressive integration with the Indian Union. (1 September)
- National Emergency is proclaimed for Pakistan launches a sudden air-attack on various air fields of India including Srinagar and Avantipur. (3 December)
- Syed Mir Qasim is sworn-in as the Chief Minister of the State following the death of G.M. Sadiq. (12 December)

1972 :

- Five-member J & K Congress Ministry headed by Mir Qasim is sworn-in at Jammu. (18 March)
- J & K National Conference merged with the Indian National Congress. (3 April)

-- J & K Government lifts the ban on the entry into
the State of Mirza Afzal Beg and G.M. Shah. (11 May)

-- J & K Government lifts the restriction on Sheikh's
entry into the State. (5 June)

1973:

-- Outlawed J & K Plebiscite Front becomes a lawful
body. (12 January)

-- Mir Qasim visits Ladakh and says that its backward-
ness is the result of centuries of neglect. (9 Sep-
tember)

-- Sheikh says "Kashmir's accession to the Indian
Union is final". (10 November)

1974:

-- The President of India issues an order extending
by another five years, upto 14 May 1979, certain
special constitutional privileges enjoyed by Jammu
and Kashmir State. (14 May)

1975:

-- Jammu and Kashmir Congress Legislative Party unani-
mously endorses the accord between the Centre and
Sheikh Abdullah, on the future Centre-State relations.
(22 February)

-- Chief Minister, Mir Qasim submits the resignation
of his Ministry. (22 February)

- Prime Minister of India announces in Parliament the main features of the accord, formulated within the framework of the Indian Constitution; the accord empowers the State Assembly to propose changes in Central Laws conferring matters in the concurrent list. (24 February)
- A new cabinet headed by Sheikh Abdullah is sworn-in at Jammu. (25 February)
- Indian Parliament approves Kashmir accord between the Centre and the Sheikh. (13 March)
- Four-member Ministry of the State is expanded with induction of 11 more Ministers of State, six belonging to Congress, three to Plebiscite Front and two independent ones. L.K. Jha, the Governor of the State administers the oath of office to them all. (24 April)
- Proposal of Sheikh Abdullah, to revive the National Conference and project it as the main party are virtually rejected by the Working Committee of the Pradesh Congress in Srinagar. (9 June)
- The Sheikh and Beg are declared elected to the J & K Assembly. Delegates' session of J & K Plebiscite front unanimously decides to dissolve the Front and revive National Conference as suggested by the C.M. Sheikh Abdullah. (4-5 July)
- The Ladakh Lok Sabha seat goes to a Congress candidate, Mrs Parvati Devi. (10 July)

-- Beg is designated as Deputy Chief Minister, the Sheikh is sworn-in as a member of the State Legislative Assembly. (11-15 July)

-- The Sheikh joins National Conference which was revived following the decision to wind up the Plebiscite front in view of the accord. (19 October)

1976:

-- The Sheikh is formally elected President of the National Conference. (13 April)

-- The annual session of National Conference adopts a resolution to hail the accord. (25 April)

1977:

-- The Congress Party withdraws its support from the Sheikh Government, he resigns, the Assembly is dissolved and Governor's Rule is imposed in the State. (25-27 March)

-- The formation of the Kashmir unit of the Janata Party is announced by Kara. (2 April)

-- A new political organisation known as Mahaz-i-Azadi is formed in Kashmir under the leadership of Sofi Mohd. Akbar, senior Vice-President of the dissolved Kashmir Plebiscite Front. (17 May)

-- The Janata Party declares its unequivocal support for Art. 370 of the Constitution; Desai declares that this article will not be altered unless this is desired by the people of the State. (25-31 May)

- Polling begins in the State. (30 June)
 - New Ministry headed by Sheikh Abdullah is sworn-in ending the Governor's Rule. (9 July)
 - The State Government withdraws the famous Al-Fateh Conspiracy Case against 30 accused. (24 August)
 - The Government bans the entry of the Urdu daily, Hind Samachar into the State under section 25 of the State Customs Act. (2 September)
 - The Sheikh says that Article 370 of the Constitution conferring a special status on the State was for all the times to come, no matter what party comes to power at the Centre. (7 September)
 - The government promulgates an ordinance which empowers the State to detain persons and put curbs on newspapers and other publications. (6 November)
 - The people of Ladakh demand regional autonomy. (8 November)
 - Jammu town observes hartal to protest against the Safety Ordinance issued by the government. (26 November).
- 1978:
- The J & K Legislative Council hustles the public Safety Ordinance Bill to jeopardise the fundamental rights in the State; the Sheikh says this law is necessary for the security of the State. (6 April-13 September)
 - Mirza Afzal Beg, Deputy Chief Minister submits his resignation. (25 September)