

- (iv) currency, coinage and legal tender ;
- (v) foreign loans ;
- (vi) Post Office Saving Bank ;
- (vii) corporation tax ;
- (viii) duties of excise on tobacco and goods manufactured and produced in India ;
- (ix) fees in respect of any of the matters in the Union List, but not including any fees taken in any Court ;
- (x) lotteries ;
- (xi) posts and telegraphs ; telephones, wireless broadcasting and other communications ;
- (xii) railway fares and freights ;
- (xiii) stamp duty in respect of bills of exchange, cheques, promissory notes, etc. ;
- (xiv) Reserve Bank of India ;
- (xv) taxes on income other than agricultural income ;
- (xvi) taxes on capital value of the assets, exclusive of agricultural land of individuals and companies ;
- (xvii) estate duty in respect of property other than agricultural land ;
- (xviii) duties in respect of succession to property other than agricultural land ;
- (xix) terminal taxes on goods, passengers carried by railway, sea and air ;
- (xx) taxes other than stamp duties on transactions in stock exchanges and future markets ;
- (xxi) taxes on the sale or purchase of newspapers ;
- (xxii) taxes on capital value of assets exclusive of agricultural land of individuals and companies.

State Sources

- (i) land Revenue;
- (ii) taxes on agricultural income ;
- (iii) taxes on land and buildings ;
- (iv) taxes on mineral rights subject to limitations imposed by the Parliament relating to mineral development ;

- (v) duties in respect of succession to agricultural land ;
- (vi) estate duty in respect of agricultural land ;
- (vii) duties of excise on goods manufactured and produced in the States, such as alcohols, opium narcotics and narcotic drugs ;
- (viii) taxes on sale and consumption of electricity ;
- (ix) taxes on the entry of goods into a local area for consumption, use or sale ;
- (x) taxes on sale and purchase of goods other than newspapers ;
- (xi) capital taxes ;
- (xii) taxes on goods and passengers carried by road or on inland water-ways ;
- (xiii) fees in respect of any matters in the State List except the fees taken in any Court ;
- (xiv) stamp duty in respect of documents other than those specified in the Union List ;
- (xv) taxes on advertisements except those published in the newspapers ;
- (xvi) taxes on vehicles ;
- (xvii) taxes on animals and boats ;
- (xviii) tolls ;
- (xix) taxes on professions, trades, callings and employments ;
- (xx) taxes on luxuries including taxes on entertainment, amusements, betting and gambling.

Taxes Levied and Collected by the Union but Assigned to the States

- (i) duties in respect of succession to property other than agricultural land ;
- (ii) estate duty on property other than agricultural land ;
- (iii) terminal taxes on goods or passengers carried by railway, sea or air ;
- (iv) taxes on railway fares and freights ;
- (v) taxes other than stamp duties on transactions in stock exchanges and future markets ;

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- (vi) taxes on the sale and purchase of newspapers and on advertisements published therein ; and
- (vii) taxes on the sale and purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-state trade and commerce.

**Duties Levied by the Union but Collected
and Appropriated by the States**

Stamp duties and duties of excise on medicinal and toilet preparations mentioned in the Union List levied by the Government of India and collected and appropriated by the State except in case where such duties are leviable within a Union territory.

**Taxes Levied and Collected by the Union but
Distributed Between the Union and the States**

- (i) taxes on income other than agricultural income ;
- (ii) Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List and collected by the Government of India.

The division of financial powers underlined by the Constitution, in fact, envisages two distinctly separate schemes ; the division of the powers to tax and distribution of the revenues. The Constitution does not only envisage a plan for the division of taxable sources between the Union and the States, it envisages a pattern of distribution of the revenue return between the Union and the States. The Union and the States levy taxes within the orbit of their competence to tax but the division of revenues is based on the principle of their needs and requirements. This, in fact, accounts for the unusual constitutional provisions under which taxes included in the Union List are wholly or in part intended for the States and in certain cases their collection is entrusted to the States. The net proceeds assigned to the States are distributed among them on the principles recommended by the Finance Commission.

The division of the taxing powers and the financial resources between the Union and the Jammu and Kashmir State follows the main principles of the pattern of allocations explained

above.¹³ The sources enumerated for the Union in the Union List are demarcation for the exclusive operation of the Union Government. No tax-head, enumerated in the Union List, is reallocated to the Jammu and Kashmir and all the tax-heads enumerated in the Union List are placed within the exclusive competence of the Union Government. Provision with regard to the taxes and duties levied by the Union and collected and appropriated by the States or taxes levied by the Union and divided between the Union and the States are applicable to the State of Jammu and Kashmir as well. The reservation made in favour of the State is that entry ninety seven of the Union List is not applicable to the State and the residuary powers of taxation are not transferred to the Union but are vested with the State.

Grants-in-Aid

In the scheme of the division of powers, the distribution of the revenues is made in favour of all the States uniformly. However, due to regional disparities and economic stresses the financial needs of some of the States are more pressing than that of the others. In order to meet exigencies arising out of the regional and economic disparities, the Constitution provides for a system of Grants-in-Aid to the States chargeable on the Consolidated Fund of India. The Grants-in-Aid are given to the States in addition to the assignment of the various tax proceeds including those shared with the Union Government. The Grants-in-Aid are actually the final balancing instruments of the resources of the States with their manifold functions particularly in the fields of social utilities and services. The Parliament is empowered to make the grants every year to the extent deemed necessary. The grants are fixed in accordance with the recommendations of the Finance Commission. The State of Jammu and Kashmir is covered by the constitutional provisions pertaining to the Grants-in-Aid and in fact the Second Finance Commission in its interim report covered the financial integration of the State.¹⁴

¹³ Constitution (Application to Jammu and Kashmir) Order, 1954, para 7.

¹⁴ Chanda, Ashok. *Federalism in India*, 1965, p. 205.

Finance Commission

The Constitution of India provides for the appointment of a Finance Commission by the President every five years to advise the President with regard to the distribution of revenues between the Union and the States, Grants-in-Aid to the States and any other financial matter referred to the Commission by the Parliament. These provisions of the Constitution are applicable to the Jammu and Kashmir State as well and consequently, therefore, the financial relations between the Union and the State also come within the scope of the powers of the Commission. The Commission constitutes a chairman and four other members, all appointed by the President. The Parliament is vested with the authority to determine by law the qualifications of the members of the Commission and the manner of their selection. The Commission is required to make recommendations on the following issues :

- (i) the distribution between the Union and the States of the net proceeds of taxes, which are to be, or, may be divided between them and the allocation between the States of the respective shares of such proceeds ;
- (ii) the principles, which should govern the Grants-in-Aid of the revenues of the States out of the Consolidated Fund of India ; and
- (iii) any other matter referred to the Commission by the President in the interests of sound finance.

Immunity of Instrumentalities

In the division of financial powers between the Union and the States, the Parliament enjoys precedence. The Union Government is unmistakably entrusted with very wide powers to tax the sources, which by nature are substantial and uniform. The financial structure of the federation does not accept unqualified reciprocal immunity of instrumentalities between the Union and the States. Several prohibitions are placed on the power of the States to impose taxes on the Union activities. The immunity accorded to the States, is however, subject to a number of restrictions. In fact, with their dependence on the federal grants, the States are in reality, a shadow of the autonomy that the division of powers in the Constitution of India

apparently envisages. Viewed in this broad perspective the financial relations between the Union and the States complete the subordination of the States to the Centre.

The State of Jammu and Kashmir is also subject to the paramount power of the Union in the same manner as the other Indian States are. Even the reciprocal immunity of instrumentalities is not secured between the Union and the State Governments. Instead, the same determinatives and instruments which regulate the financial relations between the Union and the other Indian States, regulate the financial relations between the Union and the Jammu and Kashmir State. The only aspect, in which the financial relations between the Union and the State differ from financial relations between the Union and the other States, is that the residuary powers of taxation are reserved for the State Government. The other Indian States are not vested with any residuary powers of taxation. However, within the general scheme of the exhaustive enumeration of the financial powers for the Union Government and the dominant position of the Centre in the division of financial sources, the residuary powers given to the State do not augment in any substantial way the financial position of the State.

Chapter Six

Federal Principle

The analysis of the constitutional relations between the Union and the State of Jammu and Kashmir, reveals that the special position, the State was placed in, at the time, the Constitution of India was framed, has been gradually eroded and the State has been integrated into the federal structure. There is little doubt about the fact, that the pattern envisaged by Article 370 carried many inherent defects and on the basis of the provisions embodied in the Article, as it was originally devised, no stable and organic relationship, between the Union and the State, could be organised. The division of powers provided for, by the Article deprived the Central Government of its rightful sphere of legislative competence and reduced it to utter helplessness and dependence in regard to its administrative authority. With regard to the financial provisions, which governed the financial relations between the Union and the State, the Article imposed obligations on the Central Government, without assigning to it the power to check and control actions undertaken in accordance with those obligations. Obviously, not only from the point of view of the administrative opprobrium and political expediency, but from the point of view of the national sociology also, the provisions of Article 370 were untenable.

The wider area of autonomy, which included a separate constitutional structure for the State, neither affected the accession of the State to India, nor prejudiced the sovereignty of India. The fundamental issue that divided the leadership levels, was the extent to which the quantum of autonomy, the State was reserved under Article 370, could be adjusted to the

federal principle, the Constitution of India envisaged. The State leaders, sought to find a place for the State in the Indian federal structure, on the basis of a rigid balance of power. Federalism in general, however, underlines national precedence. The Indian federalism did not only underline national precedence, it envisaged a parliamentary form of government, which presupposes the sovereignty of the Parliament. The inbuilt conflict in the Constitution of India, between the sovereignty of the Parliament and the operation of federal instrumentalities, specially the power of judicial review, took quarter of a century to come to surface. The Twenty Fourth Amendment in the Constitution of India, which was passed in November 1971, finally established the sovereignty of the Parliament.

The history of federalism clearly proves that, whatever the extent of decentralisation and the orbit of autonomy a federal structure was launched with, the structure either disintegrated or the decentralisation ultimately gave way to federal supremacy. This happened with most of the federal patterns.

As a matter of fact, the federal principle is an expression of class identities and property interests. The federal polity as it evolved in America, was an outcome of the clash in the class interests that the federating units represented, with the class interests at the national level. The local authority and the residuum of the political power, were the instruments retained and sometimes even perfected to safeguard the local property interests and property relations. The basic endeavour was to restrict the growth of a national property ownership and limit the reach of the national instruments which inevitably would reflect the interests of the national property ownership. As a matter of fact, therefore, the federal polity was a political device, aimed to secure the property relations of the federating Units against the effect of the operation of the national property interests. This is amply borne out by the long and protracted struggle between the protagonists of the slave system and its opponents in the American States which ultimately ended in the Civil War. The nascent industrial middle class, with which the American national government found itself identified, vigorously advocated the abolition of slavery mainly to establish right to free contract, an essential basis of the industrial economy. The

recognition of the right to contract, however, was destructive to the agrarian property ownership particularly of the Southern States where the "Cotton Kings" had amassed fabulous fortunes from the slave labour. The Missouri Compromise made the first dent in the agrarian aristocracy but most of the States with pronounced agrarian interests were left free to continue the slave system. During the next thirty years the industrial revolution changed the whole aspect of the economic life of the country. Lincoln's struggle for the American Presidency and his eventual victory was not the mere climax of the anti-slavery movement, it was the final bid of the national middle class to subjugate local and regional property interests and property relations and destroy the political protection, the legal procedures of the United States provided for the federating units. This was inevitable. Justice Marshall had laid down the trail when he had asserted that "The Government of the United States, then though limited in its powers is supreme, and its laws when made in the pursuance of the Constitution, form the supreme law of the State to the contrary notwithstanding." The Union was paramount.

The Indian federal structure, apparently a collectivity of diverse patterns, was also founded on the fundamental basis of the constitutional and political protection, aimed to secure the regional and local property interests and property relations, against a national middle class.

Indian politics, however, presented a slightly more difficult situation. Though the provinces of the British India, had local property interests, the British India on the whole had evolved a national middle class constituted, mainly of commercial interests, the Civil Service official hierarchies and the small industrial elements. The Indian Princely States, on the other hand, represented strong and deeply vested, local property interests, which were at no time, within the purview of the national middle class. Thus, as the federal structure evolved, there obviously, was a strong pressure for a centralised political structure, and an equally strong compulsion for the recognition of local property interests and property relationships. The centralist trends were intensified by a number of other factors, the more significant among them being the agrarian sociology of the

country, the unitary administration in the British Indian provinces and the commitment of the national movement to a close political and cultural unity.

The federal structure that emerged after the independence and the integration of the Indian States, was therefore, not only unitarian in content, it assumed an aggressively nationalist bias. The widespread vested interests in land, which were avowedly provincial in outlook could not counter those influences, and in fact, did not find it necessary, as the growth of national middle class, was, at least in the near future, hardly expected to affect their operation.

The special status of Kashmir, as it was envisaged by the Constitution was obviously a political mechanism allowing a wide orbit of permissibility for localism in the State. Obviously, however, it had no concrete basis, because apart from the commercial and administrative interests of the small middle class, there were hardly any forces to resist the centralist and aggressively national influences of the Indian federal system. The Indian leadership rightly claimed that the State should be integrated with the rest of the country and justifiably pursued the policy of integrating the State with the broad frame of the Indian political structure. The resistance mustered up by the small middle class leadership of the State was futile, a fact which was amply proved by the political developments that occurred hardly two years after the special status was inaugurated.

The process which involved the ultimate reduction of the autonomy of the State was, therefore, historical in content. The Constitution of India underlined a concentric political frame and as it assumed shape, it reduced the peripheral salients one after the other. Within a few years the Princes, Provinces and the States were fused into a closely knit political fabric, with most of the identities which characterised the India of the British empire, wiped out of existence for ever. The termination of the special provisions for the State, was an inseparable part of this process. The paramountcy of the Parliament prevailed.

Right to Freedom

The special provisions for Kashmir, originally envisaged by Article 370 did, neither carry any inbuilt safeguards for freedom

nor provide for any coordinate lines for the development of a responsible political function in the State. As noted above, the position did not last long and the special provisions were drastically amended and the rights and safeguards envisaged by the Constitution of India, were declared applicable to the State. It is, however, important to be noted that the rights and remedies available to the people of the State even after the latest amendments, fall short of the rights and remedies available to the people of the country as a whole and in certain respects suffer restrictions and limitations, which to a great extent, divest them of their substance and value. The right of the State Legislature to frame and construct rules and regulations for the 'Permanent Residents', defining their rights and obligations; the unfettered power and discretion, the Legislature is vested with, to determine the "reasonability" of the restrictions which can be placed on the right to freedom; the unrestricted procedural operatives, which the Government of the State is reserved, to limit the right to personal liberty and the over-riding limitations, the jurisdiction of the courts and the due process of law is subjected to, leave the rights with scant scope. Except for its tame and meaningless stipulation that the rights and relevant safeguards, envisaged by the Constitution of India, are available to the people in the State, to the extent they are applicable to the State, the Constitution of the State provides for no alternative safeguards. The unabridged gap, therefore, deprives the people of the State, of an important and extensive measure of equality, liberty and freedom, ordinarily available under the Constitution of India.

In a democratic set-up safeguards are not provided for, against executive authoritarianism and legislative absolutism only; safeguards are deemed essential in order to regularise the operation of political power in general. There is a very thin line of demarcation between a democratic political frame and the government by patronage. Right to vote has a potent and inherent tendency to degenerate into a demand for patronage. In view of certain characteristic features of the politics in the country, the democratic processes have more than often changed places with the processes of patronage. And patronage, has its own mechanism and finds shape in pressure groups, money

monopolies, class interests and even communal, caste and regional appeasement. This is destructive not only of the democratic process in general, but the fundamental values which legitimise the total democratic structure.

The possibility for a parliamentary democracy to degenerate into a process of patronage is greater at the State level than at the national level and, in fact, an elaborate network of patronage has already replaced the representative model, which the framers of the Constitution visualised for the States. Jammu and Kashmir is no exception. Contest for the State offered employment opportunities, scramble for status, services and jobs yielding a higher measure of graft, competition for loans, doles, concessionary contracts and undertakings and financial assistance in manifold forms, establishment of the positions of patronage and authority and their distribution along pressure channels, manipulation of educational and religious trusts, social and other non-governmental organisations are the processes, the politics in the State flows into. The growth of these processes has given the operatives of the government a different political meaning. With a lower level of education and characterised by a typical social pluralism, communal and caste gradation and an agrarian economy with a widespread non-productive commercial element and with limited alternatives of employment, these processes of political patronage are bound to disturb the traditional social equilibrium and upturn the existing allocations and roles. Though necessary to a certain extent, such changes are likely to prove detrimental to the society ultimately and obstruct a healthy and organic social and political development. Readjustment in allocations and roles would get wrongly assigned in a pattern of pressure politics in case proper political and constitutional safeguards were not available. Such safeguards are an imperative necessity to save the democratic processes from degenerating into instruments of influence and corruption. More important is the necessity to streamline the machinery of the government and regulate its functions to suit and serve the new political context of the post-independence era.

Emphasis is not necessary on the issue that the constitutional safeguards are fundamental to the operation of the political instruments, whatever their type and form. Political power and limi-

tations on political power, need to be balanced, if power is required to be contained within its rightful perspective. In any pattern of political action the operative orbit of the government always requires to be restrained within the limits prescribed by the general right to freedom. This fundamental principle, in fact, gives meaning to the democratic processes, which otherwise, can hardly be distinguished from absolute forms of politics.

The framers of the Indian Constitution, conscious of the necessity of the safeguards for a general right to freedom, formulated elaborate provisions, enumerating the fundamental rights and the requisite legal remedies. A close scrutiny of the structure of these rights, clearly shows that the basic aim of the framers was to contain the operation of political power at both the Central and the State levels. The credit goes to them that they did not only provide for safeguards against any pernicious effects, the various expressions of the political system could have, on the freedom and the rights of the people. This is an extremely important dimension of the rights and remedies envisaged by the Constitution of India.

In order to avoid the extension of the remedies and rights to extremes, and save them from being used as instruments of reaction, the framers of the Constitution, however, left out a reasonably wide scope for the evolution and development of a responsible state policy in terms of planning goals and objectives, social reform and social legislation. The framers adroitly included in the constitutional set-up important directives, laying down broad and general lines on which the State politics was to be conducted. It would be misreading intentions of the framers to dismiss the directives as unnecessary adjuncts to the provisions embodied in the Constitution. To admit that the framer indulged in idle expressions of wishes is tantamount to an underestimation of their sense of history and the understanding of the Indian sociology and the perspectives of the progress of the nation. The Indian Constitution was not only committed to the people who gave it to themselves, but to the posterity as well; not only to the unsettled time that followed the independence, but also to the time bound to follow; not only to a nation at the threshold of freedom, but also to a people living through freedom.

This, however, does not mean that the general right to freedom can be conditioned by the idealised social goals, political perspectives, expedients and pressures, for in that case the right to freedom is subjected to factional interests and ultimately melts away in ambiguous slogans. In due course of time, it loses its legitimacy and executive absolutism and legislative extremism come to be regarded as norms of political action as well as political behaviour. Unlimited political control comes to be recognised as rational social process and freedom is lost. This, of course, immediately brings to surface the problem of the location and the definition of the orbit of the right to freedom, in a society, which has remained for long periods of history in a state of cultural and economic stagnation and has degenerated into atrophied hierarchical forms, involving exploitation in its worst form. Obviously, such social forms require widespread and efficient process of political engineering. Not only is it necessary to formulate for them a political policy regarding social reform and social legislation, but also to lay down processes for the readjustment of the existing property relations. The alternatives do not stand in opposition to each other, though, apparently they seem to be so. They are complementary to each other. In fact, a responsible state policy warrants a general right to freedom. Freedom presupposes social justice. Liberty to dissent is an essential condition for a legitimate state policy. The framers of the Indian Constitution, therefore, did not only devise instruments and processes of political power, they laid down the directives for the growth and evolution of a responsible state policy.

While the constitutional provisions regarding the State, were being formalised, the Indian leadership, including Nehru, was of the view that certain parts of the Indian Constitution, which included the provisions regarding the Fundamental Rights would unfailingly be applied to the State. The State leadership, however, strongly resisted the extension of any provisions and among them those provisions regarding the Fundamental Rights to the State. In fact, the Indian leadership had to resile from its position under duress. It is difficult to explain that the leadership of the State should have taken such a hard and unfavourable stand with regard to the application of the Funda-

mental Rights envisaged by the Constitution of India to the State, particularly in view of the role, the leadership had played in the National Liberation movement. The National Conference leadership had throughout its struggle against the Dogra Princedom insistently reiterated its commitment to Fundamental Rights to freedom, personal liberty and equality before law. In its Manifesto "The Naya Kashmir", the Conference leadership specially included a charter of basic rights.

The State was reserved the right to frame a Constitution for its Government and the leadership had, probably, made up its mind to draw up a bill of rights for the people of the State. There was, however, no justification in depriving the people of the State of the rights and remedies envisaged by the Constitution of India and hardly any reason to entrust the State Government with the task of drawing up a bill of rights for the people in the State. The scope of the Fundamental Rights detailed out in the Constitution of India was fairly wide and the government of the State was expected to make little improvement on it. On the other hand, if the Government of the State restricted the scope of the Fundamental Rights, which obviously, it planned to do, it would lead to the negation of Indian democracy for it would be a sacrilege to disallow the people of the State the privileges and the rights and remedies that were bestowed on the rest of the people in India. The truth must be told and it must be admitted that the Government of the State, in the absence of rights and safeguards, exercised authority indiscriminately and rule of law was undermined. The damage could not be mitigated even after the partial application of the rights and remedies, embodied in the Constitution of India, was secured.

Power has a tendency to degenerate into persecution and therefore power must be contained. There are strains in the politics of the State which warrant a more careful application of the right to freedom, but that does not imply that these strains can be used to justify a denial of the right to freedom. It may be necessary to locate these strains and isolate them for administrative and legal action. The limitations imposed on the operation of the fundamental rights in the State, leave the people of the State at the mercy of the imperatives, which

belong to the politics of transition and are therefore, dangerous as well as pernicious.

Autonomy and Accession

One of the main aspects of the special provisions envisaged by Article 370 of the Constitution of India, which deserves keen analysis and clarification, is the relevance of the special provisions to the accession of the State. Considerable confusion prevails with regard to these issues, mainly because of the impact, the dispute with Pakistan, and political developments inside the State, has had on them. The secessionist elements have continuously attempted to interpret the special provisions as the constitutional guarantee of a conditional accession and in terms of the commitments made by the Government of India in the Security Council that a reference with regard to accession would be made to the people of the State, after Pakistan had cleared out of the territories under its occupation and peace had been restored in the war-torn State. The myth gradually hardened into a political precept and in fact, many efforts were not spared to legitimise it by long drawn arguments of doubtful validity and irrelevant reference. The long and protracted constitutional wrangle that preceded the re-organisation of the constitutional relations between the Union and the State and the evolution of the doctrine of double charge in the Constituent Assembly of the State and its consequent political implications, considerably helped in the formation of these notions. The special provisions were sought to be converted into constitutional commitments, for political objectives not within the competence of the instruments established by the Constitution of India. Thereby, an extra-constitutional charge was meant to be placed in the provisions. The charge was, however, spurious. It was a political contradiction, a perfidy which a country like India alone, could carry along with. The special provisions did not constitute a commitment in terms of accession, nor did they create a separate charge.

When the Constitution of India was framed, the State of Jammu and Kashmir was brought within the definition and the ambit of Article I and Article 370 of the Constitution. In accordance with the provisions of Article I, the State was included in the Union of India and its territories were defined in the

First Schedule, appended to the Constitution. Article I of the Constitution of India, is pivotal to the entire structure embodied by the Constitution in so far as it defines the territories of the Union and enunciates the basis of its jurisdiction. The State of Jammu and Kashmir is, without any reservations brought within the territorial limits of the Indian Union and consequently within its jurisdiction. The position, the State is ensured in the Indian constitutional structure, emanates from the basic presumptives involved in the territorial provisions enshrined in Article I of the Constitution. According to Article 370, however, Article I and Article 370 are applicable to the State by virtue of Clause 1 (c) of Article 370. Clause 1 (c) of the Article stipulates :

“The provisions of Article (I) and of this Article shall apply in relation to that State”.

Obviously there is an overlapping of the provisions embodied in Clause 1 (c) of Article 370 and the provisions envisaged by Article I. The overlapping has led to considerable confusion about the main import of Article 370. The inference is often drawn that the inclusion of the Jammu and Kashmir State, in the territories of India is accomplished by Article 370. Another implication follows : in case, the provisions of Article 370 were ever abrogated the application of Article I to the State of Jammu and Kashmir would immediately cease to be effective and the State would fall out of the territorial jurisdiction, the Constitution of India describes. A new dimension is imparted to these presumptives, when the special provisions are recognised as a commitment to conditional accession. Accordingly, if the provisions embodied in Article 370 are abrogated the accession stands nullified.

There are, however, certain fundamental principles, constitutional and political, which underline the special provisions envisaged by Article 370. First, Article I of the Constitution of India determines the territories and the jurisdiction of the Union of India and brings the State within the limits of the territories defined and within the ambit of the jurisdiction established. The significance of Article I is more sacrosanct than any other provision of the Constitution and finds precedence over all the stipulations, the Constitution makes, for the

fundamental reason that Article I defines the jurisdiction of the instruments created by the Constitution and establishes a ground for their validity. Clause 1 (c) of Article 370 is redundant to that extent and reiterates the fact, Article I underlines. Article 370 is a transitional and temporary instrument of jurisdiction created by Article I.

Secondly, since Article I is applicable to the State independently, the stipulation of Clause 1 (c) of Article 370 does not prejudice its applicability and in case Article 370 is abrogated, Article I remains applicable to the State. In fact, in such a condition, the State will immediately be placed along with the other States comprising the Indian federal structure and come under the purview of all the provisions of the Constitution of India, including those pertaining to the Government in the State. In the absence of any limitation, the Constitution of the State will immediately be set aside and its instrumentalities will cease to operate in the State.

In the third place, it needs to be noted that even if Article I of the Constitution of India ceased to be applicable and operative in regard to the State, the accession of the State to the Union would remain unaffected. Article I only confirms what the sovereignty of the State of India actually performs. In fact, no Indian state became a part of the State of India by virtue of Article I of the Constitution or any other provision of the Constitution. The State of Jammu and Kashmir became an integral part of the State of India, when it acceded to the Dominion of India by virtue of the Instrument of Accession. The State of India was prior to the Constitution of India. The Constitution of India has laid down the structure of its Government, the orbit of its authority and purposes of its action ; it has not defined the State of India. The Constitution of India is not constitutive of the State of India, or the sovereignty of India. Nor does it create the territory of India ; it defines the jurisdiction of the Indian Government. The territories of India, not defined by the Article, also and rightfully belong to India. The Constitution is, therefore, only declaratory of the State of India. The State of Jammu and Kashmir, which is an integral part of the State of India is also a constituent part of the political structure, the Constitution of India creates.

Provisions of Article 370, in spite of the overlapping, they suffer with the provisions of Article I of the Constitution of India, are not relevant to the accession and do not constitute a condition for it and even if abrogated will not prejudice the territorial sovereignty of the State of India of which Jammu and Kashmir is a part.

Abrogation and Amendment

Another important aspect of the special provisions, is the procedure, which determines the amendment and the abrogation of the provisions embodied in Article 370 of the Constitution. The President is empowered to extend to the State, the application of the provisions of the constitution of India, which are not made applicable to the State. The President is also empowered to order the transfer, to the Union, of such matters in the Union List and the Concurrent List, which are still within the reserved powers of the State. In case, the President orders any such application of the constitution of India to the State, or orders any transfers of subjects included in the Union List and the Concurrent List, the concurrence of the Government of the State is required to be secured by him. Any such concurrence, given by the Government of the State for such orders, is to be placed before the Constituent Assembly of the State for approval.

With regard to provisions of Article 370, the President of India is not empowered to abrogate and amend any of the provisions embodied in the Article. He is, however, empowered to order that "the Article shall cease to be operative or be operative only with such exceptions and modifications and from such date as he may specify." The powers of the President to modify and suspend the operatives of the special provisions, embodied in the Article, are subject to an over-riding limitation : that an order suspending or modifying the special provisions, will be issued only on the recommendations of the Constituent Assembly of the State. The initiative to suspend or abrogate the operation of the special provisions is vested with the Constituent Assembly of the State. President himself, is powerless to order any modification in the operatives of the Article, even if he is faced by conditions which make any

modifications necessary. The only alternative he has, is to advise his government to move a Bill in the Parliament and secure the necessary modifications. The initiative of the Constituent Assembly is also subject to the approval of the President. Though the Assembly can initiate the modifications of the operatives, the President, armed with the power of veto, can scuttle the initiative vested with the Assembly. Obviously, the President is not under any obligation to accept the recommendations of the Assembly. The Assembly has no remedies to compel the acceptance of its initiative by the President, except that it may repeat a resolution as many times as the President is pleased to turn it down.

An important issue which comes up for consideration here is that the Article envisages a perpetual Constituent Assembly for the State. The framers of the Indian Constitution, it is clear, perhaps, laboured under the impression that the temporary provisions with regard to the State would subsist only for a relatively short duration and their operation would hardly extend beyond the time, the Constituent Assembly of the State would take to frame the Constitution for the State. Perhaps, they visualised that, in case the temporary provisions under Article 370 were perpetuated beyond the tenure of the Constituent Assembly, the Constituent Assembly would by a resolution initiate amendment in the provisions and recommend to the Parliament of India to vest the powers of the Constituent Assembly in an instrument accredited to undertake the function. This, however, was not done. The Constituent Assembly of the State was dissolved in 1957, when its function of the framing the Constitution of the State was completed. In case, a necessity is felt to suspend or abrogate the operation of the special provisions, the President is left with no alternative but to advise the Parliament to amend the provisions envisaged by Article 370. It needs to be noted that Article 370 does not vest any constituent power in the hands of the President as it did not vest any such powers with the Constituent Assembly of the State. The two instrumentalities were only endowed with the power to suspend or modify the operation of the provisions envisaged by the Article and not the power to abrogate or amend the provisions of the Article.

The provisions of Article 370, subject the powers of the President and the Constituent Assembly of the State to limitations, but do not prejudice or limit the power of the Parliament to amend or abrogate the provisions envisaged by it. The plenary power of the Parliament, to amend the provisions of Article 370 or repeal them, is reserved. The power of the Parliament to repeal or amend the provisions envisaged by 370 is not subject to any restraint. The constituent power to amend the provisions of the Constitution, in accordance with the procedure laid down by the Constitution, cannot be fettered except by an instrument expressly created by the Constitution. Even if such a stipulation and reservation was incorporated in the Constitution, the power would remain with the Parliament to repeal the special provisions and the reservations in one stroke.

Politics of Autonomy

The unfortunate events that preceded the accession of the State to India and the consequent unsettled political conditions that prevailed in the State for a long time after, did not only impede the growth of a progressive social and political outlook in the State and its economic development, it also damaged the evolution of democratic precepts and processes. These conditions liberated many extremist tendencies ranging from secession from India to complete integration in the Indian federal structure. The special provisions envisaged for the State have been used to justify the diverse opinions the different sections of the leadership have espoused. Needless to say, that the provisions have offered the psychological ground for extremism in most of the cases. Role performance of the political parties and factions, in the Government and outside, has usually been evaluated in the context of the autonomy, the State has enjoyed. This has directly and usually led to blurring of the political perspectives. The censure has often been piled on the federal instrumentalities.

The orbit of autonomy secured for the State has been gradually reduced by the various Presidential Orders which have been promulgated from time to time, to modify the provisions of Article 370 of the Constitution of India. The provisions of the Constitution of India with regard to the division of powers between the Centre and the States, the Union Government, the jurisdiction of the Supreme Court, the Emergency Powers of the

President, Auditor and Comptroller General, Services and the Official Language have been extended to the State with reservations which are not substantially significant. The structure of the government, which the Constitution of the State has devised, is not different from the form of the government the Constitution of India envisages for the States in India. The Constitution establishes a parliamentary government and ensures executive responsibility to the legislature, elected on the principles of universal adult franchise. The Constitution of the State also adopts the general principle of the state policy incorporated in the Constitution of India, with modifications which reflect a remarkable sense of commitment to social justice. The only aspect of the Constitution of India over which the shadows of the special status still persist, is in regard to the rights and remedies available to the people of the State. There is hardly any justification and necessity for the restrictions which are placed on the general right to freedom as it is applicable to the Jammu and Kashmir State. The interests of the State-subjects are needed to be safeguarded, particularly in view of the protracted isolation, the State has lived through, for long periods of its history and the economic and educational lag, it still suffers. The interests can, however, be secured by legal safeguards which do not prejudice the right to rule of law and freedom.

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Appendix I

“Resolution on Responsible Government August 5, 1938”

“This mass meeting of the people places on record its complete repudiation of the present system of irresponsible Government, and wishes to express its faith in the establishment of complete responsible government which alone can cure the ills of the people. Therefore this gathering appeals to all patriotic persons to muster under the banner of freedom and to be prepared for the coming struggle for liberty. The victory of that struggle alone would usher in a period of complete political, economic and social emancipation.”

“Resolution of the Working Committee of the All Jammu and Kashmir National Conference, February 10, 1946.

“The Working Committee of Jammu and Kashmir National Conference have taken into consideration the speech made by the Viceroy of India in the Princes’ Chamber on the 17th January, 1946, alongwith the declaration made by the Chancellor of the Chamber on behalf of the Princes regarding Constitutional advancement in the States. After fully examining the salient points in both the speeches, the Working Committee have come to the following conclusions :

1. That the advice tendered by the Crown Representative to the Princes regarding the steps to be taken in making the administration of these States progressive did not amount to anything progressive. In fact it lost all its significance when he (Viceroy), made such progress conditional on the maintenance of the treaties and the consent of the Princes. These treaties and engagements which are outdated, reactionary and questionable have always stood and will always stand in the way of the States People’s progress and to think that the Rulers

will give up their privileged positions that they enjoy under them at their sweet will is nothing but wishful thinking. The National Conference has at several occasions made it clear that these treaties have been made in times and under circumstances which do not obtain now and have been framed without seeking the consent of the States People. Under such circumstances no treaties or engagements which act as a dividing wall between their progress and that of their brethren in British India, can be binding on the people."

Appendix II

Text of letter dated October 26, 1947 from Sri Hari Singh, the Maharaja of Jammu and Kashmir to Lord Mountbatten, the Governor-General of India.

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware, the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan. Geographically, my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides, my State has a common boundary with the Soviet Republic and China. In their external relations the Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. I could not arrange this in view of the development indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government that Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State at

first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mahora power-house which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the state are marching on with the aim of capturing Srinagar, the summer Capital of my Government, as first step to over-running the whole State.

The mass infiltration of tribesmen drawn from the distant areas of the North-West Frontier coming regularly in motor trucks using Manschra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possibly be done without the knowing of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government no attempt has been made to check these raiders or stop them from coming to my State. The Pakistan Radio even put out a story that a Provisional Government has been set up in Kashmir. The people of my State, both the Muslims and non-Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to freebooters. On this basis no civilized Government can exist or be maintained. The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I may also inform your Excellency's Government that it is my intention at once to set up an interim Government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved, immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kindest regards.

Yours sincerely,
Hari Singh.

The Palace, Jammu,
26th October, 1947.

Instrument of Accession of Jammu and Kashmir State

The following is the text of the actual Instrument of Accession executed by the Ruler of Jammu and Kashmir State on 26 October, 1947.

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

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

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

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purpose only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions

as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947 (which Act as so in force is hereafter referred to as "the Act").

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

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

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

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

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

7. Nothing in this Instrument shall deem to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by

or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

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

Given under my hand this 26th day of October, nineteen hundred and forty-seven.

Sd/-Hari Singh,
Maharajahdhiraj of Jammu
and Kashmir State.

Appendix III

Text of the Proclamation issued by the Head of the Jammu and Kashmir State on 1 May, 1951

Whereas it is a general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a constitution for the State ;

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State ;

And whereas the terms of the proclamation of the Maharaja dated 5 March, 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation ;

I, Yuvraj Karan Singh, do hereby direct as follows :

1. A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir ;

2. For the purpose of the said elections the State shall be divided into a number of territorial constituencies, each containing a population of 40,000 or as near thereto as possible, and each electing one member. A Delimitation Committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency ;

3. Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State Subject or any class, as defined in the notification No. 1-L/84 is not less than twenty-one years of age on the first day

of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a competent court, shall be disqualified for registration ;

4. The vote at the election shall be direct and by secret ballot ;

5. The Constituent Assembly shall have power to act notwithstanding any vacancy of the Membership thereof ;

6. The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business.

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

Appendix IV

Opening Address by Honourable Sheikh Mohamad Abdullah to the Jammu and Kashmir Constituent Assembly (Extracts)

"Today is our day of destiny. A day which comes only once in the life of a nation. A day on which to remember the hosts of those gone before us, and of those yet to come, and we are humbled by the greatness of this day.

After centuries, we have reached the harbour of our freedom, a freedom, which, for the first time in history, will enable the people of Jammu and Kashmir, whose duly elected representatives are gathered here, to shape the future of their country after wise deliberation, and mould their future organs of Government. No person and no power stand between them and the fulfilment of this—their historic task. We are free, at last to shape our aspirations as people and to give substance to the ideals which have brought us together here.

We meet here today, in this palace hall, once the symbol of unquestioned monarchical authority, as free citizens of the New Kashmir for which we have so long struggled.

When we look back on these years, we see how our footsteps have taken us not among the privileged, but into the homes of the poor and downtrodden. We have fought their battle against privilege and oppression and against those darker powers in the background which sought to set man against man on the ground of religion. Our movement grew and thrived side by side with the Indian National Congress and gave strength and inspiration to the people of the Indian States.

We must remember that our struggle for power has now reached its successful climax in the convening of this Constituent Assembly. It is for you to translate the vision of NEW

KASHMIR into reality, and I would remind you of its opening words, which will inspire our labours :

"We the people of Jammu, Kashmir, Ladakh and the Frontier regions, including Poonch and Chenani Illaqa—commonly known as Jammu and Kashmir State—in order to perfect our union in the fullest equality and self-determination, to raise ourselves and our children for ever from the abyss of oppression and poverty, degradation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of the East, and the working masses of the world, and in determination to make this our country, a dazzling gem on the snowy bosom of Asia, do propose and propound the following Constitution of our State."

This was passed at the 1944 Session of the National Conference in Srinagar. Today, in 1951, embodying such aspirations, men and women from the four corners of the State in this Constituent Assembly have become the repository of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws, laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir ; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and French Constitutions, is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791 :

"The source of all sovereignty resides fundamentally in the nation.....Sovereignty is one and indivisible, inalienable and imprescriptible. It belongs to the nation."

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the

happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform ?

One great task before this Assembly will be to devise a Constitution for the future governance of the country. Constitution-making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labours of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Your decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our 'land to the tiller' policy brought light into the dark homes of the peasantry ; but, side by side, it has given rise to the problem of the landowners' demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives that I shall state later, declare its reasoned conclusion regarding accession. This will help us to canalise our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Constitution-making, we shall naturally be guided by the highest principles of the democratic constitutions of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of the Judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association

should be guaranteed ; freedom of the Press and of opinion would also be features of our Constitution. I need not refer in great detail to all those rights and obligations, already embodied in NEW KASHMIR, which are integral parts of democracy which has been defined as "an apparatus of social organisation wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties."

You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and Government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other constituent units. With the exception of the items grouped under Defence, Foreign Affairs, and Communication in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable constitutional arrangements with the Union establish our right to seek and compel Federal co-operation and assistance in this great task, as well as offer our fullest co-operation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a framework of law and order, as also a survey of the duties and rights of citizens, it will need more arduous labour to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principle that there is one thing common to men of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu and Kashmir is their appalling poverty, and if, we merely safeguard their political freedom in solemn terms, it will not affect their

lives materially unless it guarantees them economic and social justice.

'New Kashmir' contains a statement of the objectives of our social policy. It gives broadly a picture of the kind of life that we hope to make possible for the people of Jammu and Kashmir and the manner in which the economic organisation of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up which you decide upon for Jammu and Kashmir must also take into consideration the existence of various sub-national groups in our State. Although culturally diverse, history has forged an uncommon unity between them; they all are pulsating with the same hopes and aspirations, sharing in each other's joys and sorrows. While guaranteeing this basic unity of the State, our Constitution must not permit the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics, without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the fundamental character of the State itself. As an instrument of the will of a self-determining people who have now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

The present House of the Rulers of our State based its claim to authority on the Treaty Rights granted to it by the British Government in 1846. To throw light on the nature of these rights, it will be helpful to recall that the British power, in its drive for territorial expansion, achieved its objectives through a network of alliances with the Indian Princes, subsidiary and subordinate, offensive and defensive. This mutually helpful arrangement enabled the British to consolidate their power, and strengthened the grip of the Princes, giving them military help in the event of rebellion by their exploited subjects. The

Butler Committee Report on Treaty Rights in 1929 bears ample testimony to this. It says :

"The duty of the Paramount Power to protect the States against rebellion and insurrection is derived from the clauses of treaties and sanads, from usage and from the promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes . . . The promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him and substitute another form of Government."

In recognition of their services to the British Crown, the Indian Princes earned the rewards of a limited sovereignty over their States under the protection and suzerainty of the Paramount power. It was in this way that their rights, privileges and prerogatives were preserved.

Thus the pioneers of British Imperialism subjugated India, aided by the Indian Princes. This was hardly diplomacy ; it amounted to fraud and deceit. Mutual agreements arrived at for such ignoble purposes were invested with the sanctity of treaties. And it is from such 'treaties' that the Princes claimed their right to rule. Our own State provides a classic example of this. One glance at a page of our history will lay bare the truth.

The State of Jammu and Kashmir came to be transferred to Maharaja Gulab Singh in 1846, after the Sikh Empire began to disintegrate. His failure to render competent assistance to the Sikh armies was duly noticed by the British as also his willingness to acknowledge their authority. This paved the way for the total occupation of Northern India by the British who were not slow in recognising Maharaja Gulab Singh's services to them. In reward they sold him the territory of Jammu and Kashmir for 75 lakhs of rupees, and, in the Treaty of Amritsar, the British Government made over the entire country in independent possession to "Maharaja Gulab Singh and the heirs male of his body." In this way, the entire population of Jammu and Kashmir State came under his absolute authority. The peculiar indignity of the transaction naturally offended the

national self-respect of our people, who resisted the occupation of their country. But the direct intervention of the British troops helped the Maharaja to take possession of the territory."

By 1947, India had achieved independence and reached one of her historical watersheds. It was clear that with the withdrawal of the Paramount Power, the treaty rights of the Indian Princes would cease. Sovereignty in that case should revert to the people; they wished therefore to be consulted about the arrangements to be made with regard to the transfer of power. But a strange situation arose. The Cabinet Mission, while admitting the claims of the Indian National Congress and the Muslim League in British India, completely refused a similar representation of the States' peoples, who would not allow the right of the Princes to speak on their behalf.

In our own State, the National Conference had made it clear as early as February 10, 1946, that it was against any further continuance of the treaty rights of the Princes which had been "made in times and under circumstances which do not obtain now and which have been framed without seeking the consent of the State peoples. Under such circumstances, no treaties or engagements which act as a dividing wall between their progress and that of their brethren in British India can be binding on the people."

It was in this connection that I invited the attention of the Cabinet Mission to the standing iniquity of the Treaty of Amritsar, and sought its termination. I wrote to the Cabinet Delegation that

"as the Mission is at the moment reviewing the relationship of the Princes with the Paramount Power with reference to treaty rights, we wish to submit, for us in Kashmir re-examination of this relationship is a vital matter because a hundred years ago in 1846 the land and people of Kashmir were sold away by the British for 50 lakhs of British Indian Rupees. The people of Kashmir are determined to mould their destiny and we appeal to the Mission to recognise the justice and strength of our cause."

In the Memorandum submitted to the Cabinet Mission later by the National Conference, the demand for independence from autocracy was reiterated. "Today the national demand of the people of Kashmir is not merely the establishment of responsible Government but their right to absolute freedom from autocratic rule. The immensity of the wrong done to our people by the sale deed of 1846 can only be judged by looking into the actual living conditions of the people. It is the depth of our torment that has given strength to our protest."

The indifferent attitude of the Cabinet Mission to the claims of the State's people convinced us that freedom would not be given to a hundred million people who were to be left to groan under the heel of autocratic rulers. Consequently the National Conference gave a call to the people to prepare themselves for fresh ordeals and new responsibilities in the final bid for the capture of power from the hands of autocracy. This call came on the eve of the transfer of power in India and was therefore in keeping with the spirit of the times.

The partition of India in 1947 brought many new problems and developments in its wake. In Kashmir, the very foundations of the administration began to shake, and the Government made frantic efforts to patch up the cracking structure. Its incompetence had become glaring. With the tribal raids on the State in October 1947, it was obvious that the Maharaja's authority had ceased to function and the real power lay in the hands of the people's organisation, the National Conference. Even at this hour of grave national danger, the Ruler failed to see the wisdom of taking this organisation into his confidence and he preferred escape to the dignity of a formal surrender. When the situation became critical, the unprecedented pressure of the people forced him to call upon the representatives of the National Conference to deal with the emergency, when he himself had failed to handle the affairs of the State effectively.

The Emergency Administration in the State marked in effect a revolutionary transfer of power from the Ruler to the people.

It was however the Proclamation of March 5, 1948, which constituted the first step towards the completion of national emancipation. On this day, I, as leader of the largest party of the State, was entrusted with its Government, being assisted by

a Cabinet with full powers to run the administration. The Maharajah's authority was limited to that of a constitutional ruler, making it imperative upon him to consult his Government on all issues relating to the governance of the State.

This was obviously an interim measure. The Cabinet of the people's representatives thus chosen functioned with the support and co-operation of the National Conference, but with the passage of time it became clear that the Maharajah could not reconcile himself to this democratic system of Government. He put positive impediments in the way of the Government. These threatened to block much-needed reforms in various spheres of administration. It was, therefore, natural that following disagreement between him and the Government on matters of policy, that he should disconnect himself from the administration and leave the State. His young son Yuvaraj Karan Singh thereupon became the Regent and has functioned since as Constitutional Head of the State.

Today, the Constituent Assembly having met, the time has come for the people's representatives to make the fundamental decision about the future position of the present dynasty.

It is clear that this dynasty can no longer exercise authority on the basis of an old discredited Treaty. During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my party when I said :

"The future constitutional set-up in the State of Jammu and Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the Head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head :

"The State and its Head represent the constitutional circumference and the centre of this sovereignty respectively, the Head of the State being the symbol of the

authority with which the people may invest him for the realisation of their aspirations and the maintenance of their rights."

In consonance with these principles, and in supreme fulfilment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the functions which this Assembly may choose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence, monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronisms. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of them exercise the limited authority of constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of goodwill to recognise Maharajah Hari Singh as the first Constitutional Head of the State. But I must say with regret that he has completely forfeited the confidence of every section of the people. His incapacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic Head of the State. Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of his people in Jammu.

Finally, we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves, after three and a half years of tense expectancy, "Is there any solution?" Our

answer is in the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, judged by any norm of international behaviour? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets out of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly cooperate with any sound plan of demilitarization. They would withdraw their forces, only garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observers to ensure fair play and the requisite conditions for a free choice by the people.

Instead, invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issues. Sometimes, against all our ideals of life and way of living, attempts to divide our territories have

been made in the form of separation of our State religion-wise, with ultimate plans of further disrupting its territorial integrity. Once an offer was made to police our country with Commonwealth forces, which threatens to bring in Imperial control by the back door. Besides the repugnance which our people have, however, to the idea of inviting foreign troops on their soil, the very presence of Commonwealth troops could have created suspicions among our neighbours that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea.

We have watched all this patiently; but we cannot be indifferent to the growing sufferings of our people, we cannot any longer tolerate being bandied about and left with an indefinite future. Not only has our patience been tried to its limits, but our self-respect has been challenged by allegations that we are the "stooges of India", and nobodies in our own land, that our influence rests on Indian bayonets, that we are running a Police State, and various other taunts and fantastic allegations.

We, therefore, thought it best to call upon our own people to declare what future they seek. At last we, in October 1950, decided to convoke a Constituent Assembly which would pronounce upon the future affiliations of our State. We were, and are, convinced that whatever some groups or individuals in the world outside might have to say about this decision of ours, there are in every country many people who have faith in justice and straightforward dealings.

I have no doubt that our considered views will be understood and supported by freedom-loving, peace-loving and democratic-minded people all over the world. I am sure too that Almighty God who guards all just causes will bestow His blessings upon us and guide our footsteps towards correct and honest ends.

The problem, then, of accession has to be considered against the background of history in particular, of the immediate past consequent on the British quitting India and disappearance of the Paramount Power. The end of the War brought to a head the question of Indian freedom. Let me recapitulate. The Cabinet Mission was sent to India to hammer out plans for the transfer of power. This Mission had a series of consultations with parties and leaders of opinion in British India, but refused

to agree to the people of the Indian States being represented by their popular leaders and instead backed up their old allies, the Indian Princes. I and my colleagues had at that time raised our voice against this attitude in the following words of our Memorandum:

"The fate of the Kashmiri nation is in the balance and in this hour of decision we demand our basic democratic right to send our selected representatives to the constitution-making bodies that will construct the framework of Free India. We emphatically repudiate the right of the Princely Order to represent the people of the Indian States or their right to nominate their personal representatives as our spokesmen."

I have no doubt in my mind that if popular representatives from the Indian States had been included in the discussions they would have certainly helped in having many controversial issues resolved fairly and smoothly. But that was not to be. To our misfortune, and to the misfortune of millions of people in India and Pakistan, the Cabinet Mission as well as the Indian political parties seemed to have been swayed by various conflicting considerations, with the result that the Indian sub-continent, which had acquired an organic unity through ages of social, cultural and economic intercourse, was suddenly vivisected into the two Dominions of India and Pakistan. I need not relate here the horrors that followed this unnatural operation. Millions of hearts in both countries still ache with wounds that will not heal.

The agony of this changeover became all the more intense as a result of the position in which the Indian States were left. Under the Indian Independence Act of the British Parliament, the Paramountcy of the British Crown, against which the Princes had been leaning, lapsed, and it was made clear that it would not be transferred to either of the succeeding Dominions. There were three alternative courses open to them. They could accede to either of the two Dominions or remain independent. This gave the Princes themselves the option to decide the fate of their States.

Following the announcement of the "Mountbatten Plan" on June 3, some of the Indian States acceded to Pakistan and some

to India by means of Instruments of Accession executed through their Princes. There were also some who entered into Standstill Agreements with either or both pending finalization of their decisions.

The betrayal of the interests of the State's people had been expected following the rejection of the Memorandum of the National Conference, and so we in Kashmir decided to place the issue before the people themselves.

This is how our well-known "Quit Kashmir" agitation began. The National Conference once again led the people through a great struggle, and once again the Ruler tried to curb it, this time with unprecedented severity. But when a whole people is on the move it is not possible to repress them and they do not stop until they wrest freedom and justice for themselves from the unwilling hands of those above them.

The crucial date of Indian and Pakistani Independence, therefore, came when I and my colleagues were still behind prison bars. The whole sub-continent was in a state of high tension and disturbance. If, at that time, the Head of the State of Jammu and Kashmir had had even the slightest sense of realism or proper awareness of the danger lurking in the situation, he would have immediately taken the people into his confidence. By associating their representatives with administration, I am sure many of the complications that arose later could have been avoided.

Instead of that, the Maharaja's Government entered into a Standstill Agreement with Pakistan, and this was accepted without question by that Dominion. A similar arrangement was suggested to India, also, but it is noteworthy that the Government of India insisted that it could not consider any agreement entered into by the Government of the State valid until it had the approval of the people's representatives.

While the Indian leaders consistently refused to recognise the right of the Maharajah to decide the vital issue of accession without first securing the approval of his people, the Muslim League and the Pakistan Government supported the claims of the Rulers to speak for their States. The late Mr. Jinnah took the position that after the lapse of Paramountcy, the Princes

were completely independent and that they could themselves determine what relations they should have with the two Dominions. Throughout the struggles that the people of Kashmir waged against autocracy, we should never forget that the Muslim League leadership had completely disassociated itself from them, and that, during the upsurge of 1946, their local party organs had assisted the administration to suppress the movement.

It was at this stage, taking advantage of the isolation of the Kashmiris from the rest of the world, that Pakistan imposed an economic blockade upon us with a view to starving us into submission. Attempts were made even to excite communal hatred to disrupt our peaceful civic life. Even in the face of such provocation, the National Conference, I am proud to say, took an objective and democratic stand. Immediately on my release from imprisonment, I clarified the issue at a mass meeting in Srinagar. The first and fundamental issue before us was the establishment of a popular Government. Our objective might be summarised as "Freedom First." Thus alone could we as a free people decide our future associations through accession. I also made it clear that the National Conference would consider this issue without prejudice to its political friends and opponents, and strictly in accordance with the best interests of the country as a whole. I said that, in the state of tension and conflict that obtained both in India and Pakistan, it was difficult for the people here and now to predict what the final shape of both would be.

You will realise, therefore, that we could not be accused of being partial to one side or the other. During that period we openly discussed the matter with representatives of the Muslim League who had come to Srinagar for this purpose. We even sent one of our representatives to Lahore to acquaint the authorities in Pakistan with our point of view. We were thus still struggling against autocracy and for freedom when the State was suddenly invaded from the side of Pakistan.

The overwhelming pressure of this invasion brought about a total collapse of the armed forces of the State as well as its administrative machinery, leaving the completely defenceless people at the mercy of the invaders. It was not an ordinary

type of invasion, inasmuch as no canons of warfare were observed. The tribesmen who attacked the State in thousands, killed, burned, looted and destroyed whatever came their way and this savagery no section of the people could escape. Even the nuns and nurses of a Catholic Mission were either killed or brutally maltreated. As these raiders advanced towards Srinagar, the last vestige of authority, which lay in the person of the Maharajah, suddenly disappeared from the Capital. This created a strange vacuum, and would have certainly led to the occupation of the whole State by Pakistani troops and tribesmen, if, at this supreme hour of crisis, the entire people of Kashmir had not risen like a solid barrier against the aggressor. They halted his onrush, but could not stop him entirely as the defenders had not enough experience, training and equipment to fight back effectively. There is no doubt that some of them rose to great heights of heroism during these fateful days. Who can help being moved by the saga of crucified Sherwani, Abdul Aziz, Brigadier Rajendra Singh, Prempal, Sardar Rangil Singh, early Militia boys like Pushkar Nath Zadoo, Somnath Bira, Ismail, among scores of other named and unnamed heroes of all communities. But we, though rich in human material, lacked war equipment and trained soldiers.

When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation by asking for help from a friendly neighbour. The representative of the National Conference, therefore, flew to Delhi to seek help from the Government of India. But the absence of any constitutional ties between our State and India made it impossible for her to render us any effective assistance in meeting the aggressor. As I said earlier, India had refused to sign a Standstill Agreement with the State on the ground that she could not accept such an Agreement until it had the approval of the people. But now, since the people's representatives themselves sought an alliance, the Government of India showed readiness to accept it. Legally, the Instrument of Accession had to be signed by the Ruler of the State. This the Maharaja did. While accepting that accession, the Government of India said that she wished that "as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the

question of the State's accession should be settled by reference to the people."

Actuated by a sincere desire to avoid bloodshed and further conflict, the Government of India approached the Security Council in 1948, with a plaint against Pakistan. The request was simple. The contention of India was that Pakistan was responsible for the invasion of Kashmir and was continuing to help the raiders who had been employed as mercenaries for this purpose. And it was further said that legally bound as India was to clear the Jammu and Kashmir State of raiders, she might be constrained to pursue the invaders to their bases in Pakistan, which might lead to a still bigger conflagration. India, therefore, wanted the Security Council to dispose of the case as quickly as possible in the interests of world peace. If this had been done, conditions would have ipso facto come into being when the people of Jammu and Kashmir would have expressed their will with regard to the continuance of the accession to the Dominion they had joined. This was not to be.

This is the essential background which we must fully take into account. Now I shall indicate some of the considerations which should be kept in view when you, the Hon'ble Members of this August Assembly, shoulder the grave responsibility of giving your considered opinion on this issue of accession which affects not only the present generation of our people but generations yet to come.

The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining their future affiliations. A State can either accede to India or accede to Pakistan, but, failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme consideration, what are the advantages and disadvantages of

our State's accession to either India or Pakistan, or of having independent status?

As a realist I am conscious that nothing is all black or all white, and there are many facets to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's people's freedom. The autocratic rule of the Princes has been done away with and representative governments have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and, above all, built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has strengthened our confidence in them as a democratic State.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our

common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and as I have detailed before, we have been able to put through our "land to the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through; are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that these economic reforms of ours will be tolerated? We have already heard that news of our Land Reforms has travelled to the peasants of the enemy-occupied area of our State, who vainly desire a like status, and like benefits. In the second place our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods for which we are justly known all over the world, have been centred in India. The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here—for instance, sugar, cotton cloth and other essential commodities—can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of living of the man-in-the-street depends.

I shall refer now to the alleged disadvantage of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link as dependable as the one we have with Pakistan does not exist. This must necessarily hamper trade and commerce to some extent, parti-

cularly during the snowy winter months. But we have studied this question, and, with improvements in modern engineering, if the State wishes to remain with India, the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilising our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed, in the presence of our fleets of timber-carrying trucks, river transport is a crude system which inflicts a loss of some 20% to 35% in transit.

Still another factor has to be taken into consideration. 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. This would happen if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilising relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes unto the hills, from whence cometh my help."

As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudices stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, a big majority of our people being Muslims the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may

not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, as supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this. Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Western Pakistan which is contiguous to our State, is hardly 25 million, while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims if they are worried by such considerations should choose the forty millions living in India.

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliances of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of one million non-Muslims now in our State? As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must however, remember that we are not concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan there is

a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialisation, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan we should remember that the lot of the State's subjects has not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a constitution in Pakistan. As it stands at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside Parliament which gives no idea whatsoever of the future shape of civic and social relations. It is reasonable to argue that Pakistan cannot have the confidence of a freedom loving and democratic people when it has failed to guarantee even fundamental rights of its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters in Baluchistan. Our National movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States, but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it could also have certain obvious advantages. But in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly, we must have the goodwill of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us

freedom from aggression? I would like to remind you that from August 15 to October 22, 1947, our State was independent and the result was that our weakness was exploited by the neighbour with whom we had a valid Standstill Agreement. The State was invaded. What is the guarantee that in future too we may not be victims of a similar aggression?

I have now put the pros and cons of the three alternatives before you. . . It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce where the true well-being of the country lies in the future.

Appendix V

Interim Report of the Basic Principles Committee (Extracts)

The Basic Principles Committee feels that the time has come when a final decision should be taken in regard to the institution of hereditary rulership.

After due deliberation and careful thought, the Committee is of the opinion that the institution of monarchy is a relic of the feudal system which was based on mass exploitation of the resources of a country and the labour of its people for the self-aggrandisement of an individual and a limited class of his associates. As such, the Committee considers this system opposed to the aspirations of the people for an untrammelled democratic order, the spirit of which is surging throughout all countries of the world. It strongly feels that the continuance of a monarchical system would be the imposition of an anachronism particularly when these monarchies are disappearing fast in many parts of the world under the compelling forces of history and social change.

It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its Head, respectively, symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by the people for the maintenance of their rights. The promotion of this vital principle of constitutional progress makes it imperative that this symbol of State power should be subject to the vote of the people. The Committee therefore strongly feels that, consistent with the democratic aspirations of the people of the State, the office of Head of the State should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities

to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity required by democracy demands that in no sphere of State activity should a citizen be debarred from participating in the progress of his country and the advancement of its ideals and traditions. It is clear that the hereditary principle in the appointment to any office of power curtails the people's choice and to that extent, restricts their right to elect suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner, the Head of the State will be the repository of the unbounded respect, confidence and esteem of the people.

In view of these considerations the Committee feels that there must be a sense of finality about the decisions in regard to this fundamental issue. Accordingly, the Committee recommends that :

- (a) the form of the future constitution of Jammu and Kashmir shall be wholly democratic,
- (b) the institution of hereditary Rulership shall be terminated,
- (c) the office of the Head of the State shall be elective.

Sd/- S. M. Abdullah.
 Sd/- G. M. Bakshi.
 Sd/- M. A. Beg.
 Sd/- G. L. Dogra.
 Sd/- S. L. Saraf.
 Sd/- D. P. Dhar.
 Sd/- Piar Singh.
 Sd/- Harbans Singh.
 Sd/- Mubarik Shah.
 Sd/- G. M. Hamdani.
 Sd/- Mir Qasim.
 Sd/- Bhagat Ram Sharma.
 Sd/- Abdul Gani Goni.
 Sd/- Ram Devi.
 Sd/- Moti Ram Baigra.
 Sd/- Ram Piar Saraf.
 Sd/- Mir Assadullah.

Report Relating to Citizenship and Fundamental Rights (Extracts)

The Advisory Committee on Fundamental Rights and Citizenship was set up by the resolution of the Constituent Assembly dated 7th November, 1951, in order to make recommendations as regards qualifications required for Citizenship and the determination of Fundamental Rights of the residents of the State. The Committee was reconstituted by the Constituent Assembly by its resolution dated the 20th October, 1953.

The State having acceded to the Union of India, every State Subject and every person having his domicile in the State is a Citizen of India under the provisions of the Constitution of India. It is, however, recognized by the Government of India that this position would not affect the existing State Subject definition. While the Committee adheres to principle underlying this definition, it feels that the definition should be liberalized in keeping with the changed times. The Committee therefore recommends that all the three classes of State Subjects provided in the definition be removed and a uniform class of permanent residents be established. Accordingly, every person residing in the State who is a State Subject of Class I or Class II or who after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforcement of this provision shall be a permanent resident of the State.

The power of the State Legislature to define 'Permanent Residents of the State' in future in any manner it deems fit and to regulate the special rights and privileges of the Permanent Residents of the State should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. The Committee is of the opinion that while adequate provisions to that effect should be incorporated at an appropriate place in the Constitution of India, the provisions of Part II of the Constitution of India relating to Citizenship should also be made applicable to the State and care should be taken to protect the special position accorded to the State Subjects to be now known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that

Part to enable those subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbances or in fear of the same, to return to the State under a Permit for resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view that the State Legislature should also be competent to make provisions with respect to acquisition and termination of the Status of permanent residents of the State and until the State Legislature enacts provisions in that behalf, the existing Ijzatnama Rules should continue to remain in force and the existing procedure for obtaining a State Subject Certificate should apply for the purpose of securing a certificate as to the status of a permanent resident.

Fundamental Rights

The Committee having taken note of the Fundamental Rights provided in various constitutions including the Constitution of India recommends the following rights for adoption by the State :

1. Equality of rights of all citizens, irrespective of religion, race, caste, sex, place of birth or any of them, all spheres—economic, political, cultural and social—should be guaranteed, that is to say, every citizen should have the right to EQUALITY before law and there should be no discrimination against any citizen on grounds only of religion, race, caste, sex or place of birth; and no citizen should be subject to any disability, liability, restriction or condition with regard to

- (a) access to shops, public restaurants, hotels and place of public entertainment; or
- (b) the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

2. The Committee strongly feels that women must attain their just and rightful place in society and their co-operation in the mighty and responsible task of nation-building must be secured. Similarly all children born in the State should be ensured equality of opportunity irrespective of accidents of birth and parentage. In order to achieve that end the State should

be able to make any special provisions it deems fit for women and children.

3. Untouchability is abolished and its practice in any form shall be forbidden.

4. In conformity with the interests of the people, all citizens shall have right to FREEDOM of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of the State, to reside and settle in any part of the territory of the State, to acquire, hold and dispose of property subject to the laws of the State and to practise any profession, or to carry on any occupation, trade or business.

The State should, however, have powers to impose such restrictions as are considered reasonable by the State Legislature on the exercise of these rights in the interests of general public, security of the State, public order, communal harmony, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence, or for the protection of the special rights and privileges of the permanent residents of the State.

5. Protection in respect of conviction for offences, and of life and personal liberty shall also be afforded. The provisions and procedure pertaining to preventive detention should follow on the lines of the corresponding provisions in the Fundamental Rights of India.

6. All citizens shall have RIGHT AGAINST EXPLOITATION, *i.e.*, traffic in human beings and forced labour, employment of children in factories etc., shall be prohibited.

7. FREEDOM OF RELIGION shall be guaranteed, *i.e.*, all citizens shall have the freedom of conscience and shall be free to profess, practise, and propagate any religion and to manage their respective religious affairs.

8. CULTURAL AND EDUCATIONAL RIGHTS should also be guaranteed by the Constitution. The interests of the minorities should be protected and any section of citizens having a distinct language, script or culture should have the right to conserve the same.

9. RIGHT TO PROPERTY shall be guaranteed, and no person shall be deprived of his property save by authority of

law. This should not, however, in any way affect the existing laws relating to land reforms nor should it prevent the State Legislature to make any further land reforms. Accordingly, no law, made by the State Legislature, providing for the acquisition by the State of any land or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the aforesaid rights. The existing definition of land shall be preserved.

10. Similarly, all these Fundamental Rights should be subject to the over-riding condition that :

- (i) no law of the State relating to State Subjects to be hereafter called 'Permanent Residents' and regulating their rights and privileges ; and
- (ii) no law hereafter to be made by the State Legislature defining the permanent residents and conferring on them special rights and privileges in relation to acquisition and holding of property in the State or in matter of employment under the State and imposing restrictions on citizens other than permanent residents for settling within the State should become void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Part III of Constitution of India.

11. The Committee feels that a declaration of Fundamental Rights would be more effective if suitable judicial remedies for the enforcement of these rights are provided and therefore it is proposed that the citizens shall have the right to Constitutional Remedies. In order to ensure the fullest protection in regard to enjoyment of these rights the citizens shall be allowed to seek redress from the highest court, *i.e.*, the Supreme Court of India.

In order to avoid any possibility of conflict of the Fundamental Rights proposed above and those contained in Part III of the Constitution of India, the Committee feels that the former rights in so far as they vary in certain respects, the provisions of the Fundamental Rights of the Union should be reflected in Part III of the Constitution of India. The Government of India has already agreed to provide appropriate modifications or exceptions in Part III of the Constitution of India to suit the requirements of the State.

Appendix VI

370. Temporary provisions with respect to the State of Jammu and Kashmir.

1. Notwithstanding anything in this Constitution :

- (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir ;
- (b) the power of Parliament to make laws for the said State shall be limited to—
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State ; and
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

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

- (c) the provisions of article (1) and of this article shall apply in relation to that State ;
- (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify;

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

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

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

3. Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify.

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Appendix VII

The text of the Kashmir Premier's statement on the Delhi Agreement in the State Constituent Assembly on the 11th August, 1952.

I crave permission to make a statement before the House in regard to the constitutional relationship between the Jammu and Kashmir State and the Indian Union. As the Hon'ble members are aware, during the last session of the Constituent Assembly the Basic Principles Committee had submitted a report making certain specific recommendations about the future Head of the State. The House, while accepting these recommendations, had charged the Drafting Committee to present for the consideration of the Assembly, a draft resolution incorporating the proposed principles for the election of the Head of the State. The Drafting Committee will, no doubt, submit its report to the House during this session.

Since the changes proposed by this Assembly involved corresponding adjustments in the Indian Constitution, the Government of India desired that it should have time to discuss with our representatives other matters pertaining to the constitutional relationship of our State with the Union. During the last stage of these discussions, it became necessary for me and some of my other colleagues in the Government to participate in the talks. I am now in a position to inform the House that certain broad principles have been laid down and certain decisions have been tentatively arrived at between the two Governments.

Before I apprise this House of the details of these tentative decisions, I wish to review briefly the background of our relationship with India. For some time past, there has been a good deal of discussion on this important question both here as well as outside. In the heat of public controversy, which this question aroused, the points at issue were sometimes obscured.

May I mention here the developments which led to the establishment of our relationship with India in October 1947? After the Independence Act of 1947 was passed by the British Parliament, the Dominion Status was conferred on India and Pakistan; and the British Paramountcy having lapsed, the Indian States became independent. They were, however, advised to join either of these two Dominions. It is a tragic commentary on these arrangements proposed by the British Government that the position of these Indian States, comprising one-fourth of the total population of the entire Indian subcontinent, was left absolutely vague and nebulous with the result that the future of the States people came to be subjected to the vagaries of their respective rulers. Many of them acceded to either of the two Dominions after a good deal of procrastination while others hesitated and delayed the final decision to the detriment of the interests of the people living in those States.

The Jammu and Kashmir State was one of the States whose ruler had not taken a decision in regard to accession. While the State was in the condition of uncertainty and indecision and while the national movement was seeking transfer of complete power to the representatives of the people and the then State Government was indulging in repression in certain areas of the State particularly in Poonch, the State was suddenly invaded. Thousands of tribesmen from Pakistan, as well as Pakistan nationals, launched a savage attack against the people of this State. The administration then in charge of its affairs proved singularly ineffective to cope with the grave emergency and consequently it collapsed all of a sudden. At that critical moment in the history of the State, the National Conference stepped in to avert what looked like total annihilation at the hands of raiders from Pakistan who were later proved to have been abetted by the Pakistan Government. The National Conference mobilised all sections of the population in an effort to prevent conditions of chaos and dislocation from spreading to the entire State. This factor was mainly responsible for the splendid morale displayed by the people of Kashmir who were inspired to heroic deeds in their resistance against the invaders.

It was, however, obvious that in face of the overwhelming number of the well-armed raiders the unarmed people of

Kashmir could not hold out for long. Consequently, it became urgently necessary for us to seek the assistance of a friendly neighbour which alone would enable us to throw back the invaders. In that critical moment, we could turn only to India where the Government and the people had demonstrated their sympathies for the ideals for which we were fighting the raiders.

But legal complications came in the way of India rendering the State any immediate help for its defence against aggression. The Government of India could send their army only if the State would accede to that Dominion. In accordance with the Indian Independence Act of 1947, the Instrument of Accession had to be executed by the Ruler of the State in order to make it legally valid. Consequently with the backing of the most popular organization in the country, the Maharaja signed the deed of Accession on the 26th of October, 1947, and the State of Jammu and Kashmir became part of the Indian Dominion.

The basis of our relationship with India is the Instrument of Accession which enabled our State to enter into a union with India. In accordance with the terms of the Instrument, certain powers were transferred to the Centre. The principal matters specified for this purpose in respect to which the Dominion Legislature could make laws for this State were :

- (a) Defence,
- (b) External Affairs, and
- (c) Communications.

This arrangement involved a division of sovereignty which is the normal feature of a Federation. Beyond the powers transferred by it to the Dominion, the State enjoyed complete residuary sovereignty.

These terms of the association of our State with the Dominion of India were maintained; and, subsequently, when the Constituent Assembly of India was charged with the task of framing a Constitution, this over-riding consideration was kept in view in determining the position of this State in the proposed Constitution. Earlier to this, it had been agreed between the two Governments that "in view of the special problems arising in respect of this State and the fact

that the Government of India have assured its people that they would themselves finally determine their political future," a special position should be accorded to Jammu and Kashmir in the future Constitution so that a limited field of the Union Powers over the State is ensured. Four representatives were nominated from the Jammu and Kashmir State to the Constituent Assembly of India. These representatives participated in the deliberations of the Constituent Assembly of India at a time when the bulk of the Indian Constitution had already been adopted. It was at this stage that the constitutional position of this State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was at this stage that the constitutional position of this State was determined in the Constitution of India. The representatives of the Jammu and Kashmir State reiterated their view that our association with India should be based on the terms of the Instrument of Accession. It was also made clear that while the accession of the Jammu and Kashmir State with India was complete in fact and law to the extent of the subjects enumerated in this Instrument, the autonomy of the State with regard to all other subjects outside the ambit of the Instrument of Accession should be preserved.

Here I would like to point out that the fact that Article 370 has been mentioned as a temporary provision in the Constitution does not mean that it is capable of being abrogated, modified or replaced unilaterally. In actual effect the temporary nature of this Article arises merely from the fact that the power to finalise the constitutional relationship between the State and the Union of India has been specifically vested in the Jammu and Kashmir Constituent Assembly. It follows that whatever modification, amendments or exceptions that may become necessary either to Article 370 or any other Article in the Constitution of India in their application to the Jammu and Kashmir State are subject to the decisions of this sovereign body.

Since a good deal of confused thinking and uninformed criticism is indulged in by some interested people, I would like to point out here that the constitution has confined the scope and jurisdiction of the Union powers to the terms of the Instrument

of Accession with the proviso that they may be extended to such other matters also as the President may by order specify with the concurrence of the Jammu and Kashmir Constituent Assembly. The special problems facing the State were thus taken into account and under the Constitution the relationship approximated to that subsisting under the Instrument of Accession.

The Constitution of the Indian Union, therefore, clearly envisaged the convening of a Constituent Assembly for the Jammu and Kashmir State which would be finally competent to determine the ultimate position of the State in respect of the sphere of its accession which would be incorporated as in the shape of permanent provisions of the Constitution.

This briefly, is the position which the Constitution of India has accorded to our State. I would like to make it clear that any suggestions 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. The formula evolved with the agreement of the two Governments remains as valid today as it was when the Constitution was framed and reasons advanced to have this basis changed seem completely devoid of substance.

In arriving at this arrangement, the main consideration before our Government was to secure a position for the State which would be consistent with the requirements of maximum autonomy for the local organs of State Power which are the ultimate source of authority in the State while discharging obligations as a unit of the Federation.

I would, therefore, plead that the validity of such constitutional arrangement should not be appraised academically but in the proper context of the extraordinary circumstances through which the State has been passing for the last five years or so. Since the State was invaded in 1947, the situation here has been bristling with such compelling urgencies as needed drastic administrative and economic changes. The revolutionary conditions prevailing in our State could be coped with only through extraordinary measures. The Government of the State was, therefore, called upon to take vital decisions which could not wait.

Accordingly, it enacted laws which were calculated to transform the social and economic fabric of the common people. With the improvement in the internal situation of the country, the necessity for a legislature became obvious. Consequently, it was decided to convene a Constituent Assembly for the State elected on the basis of adult franchise. This Assembly accordingly came into being in October, 1951.

The Hon'ble Members are aware that as the leader of the National Conference party, I indicated in my inaugural address the scope of the decisions which I felt the Constituent Assembly would have to take. I listed the four main issues as pertaining to the main functions of the Assembly, *viz.*, the future of the Ruling Dynasty, payment of compensation for the land transferred to cultivators under the Big Landed Estates Act, ratification of the State's accession to India as well as the framing of a Constitution for the State. While discussing these issues in my address to the House, I had given clear indications of my party's view in regard to them. I had also an occasion to place my point of view on these issues before the representatives of the Government of India and I had the satisfaction that they approved of it.

When the Constituent Assembly commenced its labours, it had to tackle these issues in course of time. It took decisions in regard to payment of compensation to landlords and it came to the conclusion that no compensation was justified.

The Constituent Assembly has, at present, under its consideration the future of the Ruling Dynasty. In this connection the Basic Principles Committee recommended that the institution of hereditary rulership in the State should be abolished and in future the office of the Head of State should be elective. While accepting the recommendations of the Basic Principles Committee this Assembly charged the Drafting Committee to place before the House appropriate proposals for the implementation of these recommendations.

As I said in the beginning of my statement, such a fundamental decision involved corresponding adjustments in the Indian Constitution and in order to finalise the position in respect of this issue and other matters pertinent to it, I and my colleagues had discussions with the representatives of the Government of

India as a result of which we arrived at some tentative agreement, the details of which I wish to place before the House.

The Government of India held the view that the fact that the Jammu and Kashmir State was constituent unit of the Union of India led inevitably to certain consequences in regard to some important matters, namely :

- (a) Residuary Powers,
- (b) Citizenship,
- (c) Fundamental Rights,
- (d) Supreme Court of India,
- (e) National Flag,
- (f) The President of India,
- (g) The Headship of the State,
- (h) Financial Integration,
- (i) Emergency Provisions, and
- (j) Conduct of elections to Houses of Parliament.

Permit me, Mr. President, now to deal with each one of these items and also the agreements arrived at between the Jammu and Kashmir Government and the Government of India in relation to them.

Residuary Powers

It was agreed that while under the present Indian Constitution, the Residuary Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the Instrument of Accession on which this Article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is upto the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union.

Citizenship

It was agreed that in accordance with Article 5 of the Indian Constitution persons who have their domicile in the Jammu and Kashmir State shall be the citizens of India. It was further agreed that the State legislature shall have power to define and

regulate the rights and privileges of the permanent residents of the State, more especially in regard to acquisition of immovable property, appointments to services and like matters. Till then the existing State law would apply. It was also agreed that special provisions should be made in the laws governing citizenship to provide for the return of these permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or in fear of them, as well as of those who had left for Pakistan earlier but could not return. If they returned, they should be entitled to the rights, and privileges, and obligations of citizenship.

There are historic reasons which necessitate such constitutional safeguards as for centuries past, the people of the State have been victims of exploitation at the hands of their well-to-do neighbours. The Hon'ble Members are perhaps aware that in the last twenties, the people of Jammu and Kashmir agitated for the protection of their bonafide rights against the superior competing interests of the non-residents of the State. It was in response to this popular demand that the Government of the day promulgated a Notification in 1927 by which a strict definition of the term "State Subject" was provided. I am glad to say that the Government of India appreciated the need for such a safeguard. No definition of the special rights and privileges of the residents of the State can afford to remain static. The need may arise at one stage or the other to liberalise such a definition. The importance of the fact that State Legislature shall retain powers to be able to effect such modifications becomes obvious in this context.

There is yet another class of State Subjects whose interests had to be safeguarded. The Hon'ble Members of this House are aware that on account of the disturbances of 1947 and also as a consequence of the invasion of this country by Pakistan, large numbers of residents of this State suffered dislocation. We have, therefore, to visualize the possibility of their return to their homes and hearths as soon as normal conditions are restored. It has been suggested in certain quarters that this protection has been provided only for those residents of the State who are at present stranded in Pakistan. I would like to make it clear, as I have stated earlier, that this protection will

operate only when the conditions are normal and such conditions naturally presume that the resettlement of the dislocated population, whether Muslim or non-Muslim, cannot be one-sided or unilateral.

Fundamental Rights

It is obvious that while our constitution is being framed, the fundamental rights and duties of a citizen have necessarily got to be defined. It was agreed, however, that the Fundamental Rights, which are contained in the Constitution of India could not be conferred on the residents of the Jammu and Kashmir State in their entirety taking into account the economic, social and political character of our movement as enunciated in the New Kashmir Plan. The need for providing suitable modifications, amendments and exceptions as the case may be in the Fundamental Rights Chapter of the Indian Constitution in order to harmonize those provisions with the pattern of our principles was admitted. Particular care would have to be taken to preserve the basic character of the decisions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller and other matters. The main point to be determined is whether the Chapter of our Fundamental Rights should form a part of the Kashmir Constitution or that of the Union Constitution.

Supreme Court

It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. It was further agreed that the Supreme Court should have jurisdiction in regard to Fundamental Rights which are agreed to by the State.

On behalf of the Government of India, it was recommended that the Advisory Board in the State, designated "His Highness's Board of Judicial Advisers" should be abolished and the jurisdiction exercised by it should be vested in the Supreme Court of India. That is to say that the Supreme Court should be final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that this would need a detailed examination and consequently it was agreed that we should have time to consider it further.

National Flag

We agreed that in view of the clarifications issued by me in my public statements while interpreting the resolution of this House according to which the old State flag was in no sense a rival of the National flag. But for historical and other reasons connected with the freedom struggle, in the State, the need for the continuance of this flag was recognized. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State.

President of India

It was agreed that the powers to grant reprieve and commute death sentences, etc. should also belong to the President of the Union.

Headship of the State

I am glad to inform this House that the Government of India have appreciated the principle proposed by the Basic Principle Committee as adopted by this Assembly in regard to the abolition of the hereditary rulership of the State. In order to accommodate this principle, the following arrangement was mutually agreed upon :

- (i) The Head of the State shall be the person recognized by the President of the Union on the recommendation of the Legislature of the State.
- (ii) He shall hold office during the pleasure of the President.
- (iii) He may, by writing under his hand addressed to the President resign his office.
- (iv) Subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.
- (v) Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

Financial Integration

In regard to this subject, we agreed that it would be necessary to evolve some sort of financial arrangement between the State and the Indian Union. But as this involved far-reaching consequences, it was felt that a detailed and objective examination of this subject would be necessary.

Emergency Powers

On behalf of the Government of India, it was stated that the application of Article 352 of the Constitution was necessary as it related to vital matters affecting the security of the State. They did not press for the application of Article 356 or 360.

On behalf of the Kashmir Delegation, it was stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with defence, etc. In particular, we were averse to internal disturbance being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352.

In reply it was pointed out that Article 352 could only be applied in a state of grave emergency and not because of some small disorder or disturbance.

In order to meet our viewpoint, it was suggested on behalf of the Government of India that Article 352 might be accepted as it is, with the addition at the end of the first paragraph (1) of the following words : "but in regard to internal disturbance at the request or with concurrence of the Government of the State."

We generally accepted this position, but wanted some time to consider the implications and consequences as laid down in Articles 353, 358 and 359 which on the whole we accepted. In regard to Article 354, we wanted to examine it further before expressing our opinion.

Conduct of Elections to Houses of Parliament

Article 324 of the Indian Constitution already applies to the State in so far as it relates to elections to Parliament and to the offices of the President and the Vice-President of India.

I have put before this House the broad indications of the agreements arrived at between us and the Government of India. As the Hon'ble Members will, no doubt, observe, the attitude of the Government of India has been most helpful. A satisfactory position has emerged and we are now able to assess the

basic issues of our constitutional relationship with India in clearer terms. There has been a good deal of accommodation of our respective points of view. Both the representatives of the Government of India and the Kashmir Delegation, have been impelled by the desire to strengthen further the existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support both of the Government and the people of India in the fulfilment of our democratic ideals and the realization of our objectives.

This goodwill and amity, I am sure, will result in the consolidation of freedom and democracy in our country. I may, however, emphasize that the supreme guarantee of our relationship with India is the identity of the democratic and secular aspirations, which have guided the people of India as well as those of Jammu and Kashmir in their struggle for emancipation and before which all constitutional safeguards will take a secondary position.

It is, of course, for the Constituent Assembly, which is seized of these matters, to determine the extent and scope of the State's accession to India. The Assembly may agree to continue this relationship on the present basis or extend its scope as it might like and consider feasible and proper. In the course of framing the Constitution of the State, the Hon'ble Members of this Assembly will have an opportunity of discussing these agreements and expressing their views thereon.

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