

**POLITICAL PROCESSES AND CENTRE-STATE
RELATIONS – THE CASE OF JAMMU AND KASHMIR
(1984-1998)**

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partial fulfilment of the requirements for the award of the
degree of*

MASTER OF PHILOSOPHY

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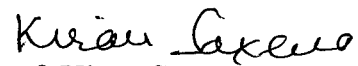


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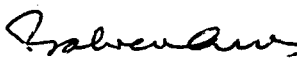
CERTIFICATE

Certified that the Dissertation entitled "**POLITICAL PROCESSES AND CENTRE-STATE RELATIONS - THE CASE OF JAMMU AND KASHMIR (1984-1998)**" submitted by **Shumana Sen**, is in partial fulfilment of the requirements for the award of the degree of **Master of Philosophy** of this University. This dissertation has not been submitted for any other degree of this University, or any other University and is her own work.

We recommend that this Dissertation may be placed before the examiners for evaluation.



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PREFACE

India, comprising various religions, regions, ethnic and linguistic groups is truly a multi-hued and multi-layered fabric, which needs special attention with regard to the mode of treatment of the culturally diverse and disparate groups that exist in the country.

India's Constitutional system of centralized parliamentary federalism is undergoing a transition towards a more decentralized and multi-layered distribution of political and economic powers and the states too are demanding more autonomy in their internal dealings, on the plea that this would make the administration more efficacious and responsive to the needs and demands of the people.

Among the various constituent units of India, the state of Jammu and Kashmir which enjoys a special status needs to be looked into seriously, so as to be able to redefine the contours of the Centre-State relations, with special emphasis on the state of Jammu & Kashmir.

Jammu and Kashmir makes an interesting case study for analysis and investigation, as the delineation of problems and an exploration of the possible solutions in the case of Kashmir may pave the way for an overhauling of the entire federal system, so as to satisfactorily grapple with the question of Centre-State relations in order to build up a healthy and vibrant political system.

The present crisis in the state needs to be looked into in the light of the historical and legal circumstances under which the state of Kashmir acceded to

India. In view of the special circumstances of the state, special provisions for it have been made in the Constitution of India through Article 370. It provides that only Articles 1 and 370 are applicable in relation to Jammu & Kashmir and other Articles subject to exceptions and modifications specified by an order of the President, which are studied in detail in the course of the analysis in this study.

It has been alleged by the supporters of the special-status for the State, that the amount of autonomy that was promised to it at the outset has got eroded with the passage of time and the Centre's dealings with the State, in the form of extension of Central laws and institutions, are to be blamed for it.

The study aims to look into the various aspects and angles of the problem, including the Constitutional and political processes. Although the study of Constitutional Developments in the State begin from 1947 i.e. at the time of the signing of the Instrument of Accession as that would make matters clearer, the analysis of the political processes is between the period of 1984 and 1997.

The year, 1984 is of utmost importance as it was in that year that the democratically elected Government in the State, headed by Farooq Abdullah was dismissed by the Centre on very flimsy grounds, leading to widespread dissatisfaction among the Kashmiris, thus clearing the way for militancy and secessionism to take root in the valley.

The analysis, thus, would strive to study the various political and constitutional developments over the years, the role of the Centre, the political parties and their leaders, the manipulations and machinations indulged in by them

and how these and other related factors have led to the present imbroglio in the state, as well as the solutions in sight at this stage, taking everything into consideration.

The Dissertation would be divided into three parts. The first part would provide the background of the constitutional and political developments in the area of centre-state relations with regard to J&K, leading to Part II, which would outline the actual, constitution and political processes over time. The outline of the constitutional developments as well as a brief commentary on the political processes would be divided into two parts, covering the Central Rule and Popular Rule Periods, the time period being 1984 to 1997.

Part III would comprise the analysis of the report of the various committees and accords on Kashmir and centre-state relations and the alternative solutions to the problem put forth from time to time including the suggestion of going back to the pre-1953 status and finally entering into the area of the final and important question of how much autonomy is to be provided to the state in view of the need for an asymmetrical relationship between the centre and the state, so as to enable the various communities to live harmoniously with one another as well as at the same time to live as they wish and to compete politically by soliciting the voluntary choices of individuals in a democratic framework.

After fifty years, it is time to take stock of where the democratic and federal institutions of India are headed and also to search for new arrangements and relationships in order to develop a design to strengthen the concept of 'unity in diversity' in the true sense of the word.

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Chapter - 1

HISTORICAL AND CONCEPTUAL ISSUES

Federalism has emerged as a major issue in the contemporary period owing to the rise of ethno-nationalist forces which have been fighting for occupying more space within the Nation-State, in the form of demands for more autonomy and power. A federal set up of government strives to accommodate the various forces and their demands in such a manner so as to enable them to live in peace and harmony together. Thus, "it is a search for how best to organise our national and ethno-regional communities so that they can live with difference."¹

Federalism, therefore, is a term which can be used very broadly to describe the mode of political organisation which unites separate polities and maintains their fundamental political integrity. It is infact a developing idea and it is not a rigid conception confined to a particular pattern.²

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

¹ Graham Smith, ed., "Mapping The Federal Condition" in *Federalism - The Multi-Ethnic Challenge*, (London and New York : Longman, 1995), pp. 1.

² Hari Ram, *Special Status in Indian: Federalism* J&K. (Delhi, Seema Publications, 1983), pp. 8.

Federalism has been represented as a centralising and decentralising ideology as well as a doctrine of balance. For Proudhon, a loose federal state was to provide the only solution to the key problem of socio-political organisation, the reconciliation of authority and liberty. Dicey broadens this in identifying the federal idea as bound up with the goal of finding an equilibrium between centralisation and decentralisation, of reflecting the societal desire for union but not unity.

Need for Special Concessions to Federating Units

In any federation, there are a large number of regional and political, social and economic problems to be solved for its smooth and successful working and these are often met by giving special concessions to the federating units or particular areas or particular sections of the society and the special status accorded to the state has to be studied within this context of what particular mould a federation should be cast in. As Habermas argues, "that it is only through constructing our political communities on the basis of a constitutional patriotism, that respects all forms of cultural differences and therefore reflects the wishes of all groups within civil - society, ethnic, religious injustice or gender based to live as they wish and to compete politically by soliciting the voluntary choices of individuals, that federation will act as an antidote to nationalism. Much however will depend upon the nature of the particular federal arrangement and of the

symbolic meanings behind the identified boundaries upon which federalism is construed.³

Protection of Minority Rights

In many parts of the world, minority groups face enormous discrimination and persecution, even genocide or 'ethnic - cleansing' and so are fighting for the minimal set of basic civil and political rights. For these groups, the sort of issues addressed here like language rights, regional autonomy or group representation may seem like utopian ideals.⁴

In rethinking the issue of minority rights, the first task is to come to a clearer understanding of the nature of cultural groups and the value of belonging to such groups. The groups play a significant role in people's lives and it is important to understand that people would be adversely affected if these groups become subject to assimilation. According to Kymlicka, "it is only through having a rich and secure cultural structure that people can become aware, in a vivid way of the options available to them and intelligently examine their values."⁵

Minority rights are not designed to favour one set of choices about the good life over another. These minority rights help to ensure that the members of such

³ Graham Smith, op. cit, pp. 2.

⁴ Will Kymlicka, *The Rights of Minority Cultures*. (London: Oxford University Press, 1995) pp.3.

⁵ Will Kymlicka, *Liberalism, Community and Culture*. (Oxford : Clarendon Press, 1991), pp. 165.

groups have access to a secure cultural structure from which to make such choices for themselves and thereby promote liberal equality.⁶

Kymlicka is of the view that cultural membership has an important status and that the individuals of a cultural community, view themselves as the members of that particular community and such a membership is an important good; and that the members of minority cultural communities may face particular kinds of disadvantages whose ratification requires and justifies the provision of minority rights.⁷

Terms like 'cultural structure' or 'cultural community' though difficult to define, refers to the character of a historical community. On this view, changes in the norms, values and their attendant institutions in one's community (e.g. membership in churches, political parties, etc.) would amount to loss of one's culture and thus one's identity.

Thus according to Kymlicka, "cultural membership is important in pursuing our essential interest in leading a good life, membership is important for the interests of each member of the community".⁸

However, at the same time, he claims that we must be on guard against the abuse of such an argument since it is possible for some members of a community to project their particular preferred vision of what sort of character the community

⁶ Ibid, pp. 192.

⁷ Ibid, pp. 163.

⁸ Ibid, pp. 168

should have. Kymlicka gives the example of Islamic - fundamentalists who claim that without restrictions on the freedom of speech, press religion, sexual practices, etc. of its own members, their culture will disintegrate thus undermining the self - respect individuals derive from cultural membership.⁹

Thus, Kymlicka's main contention is that "cultural membership seems crucial to personal agency and developments; when the individual is stripped of her cultural heritage, her development becomes stunted. The constitutive nature of our cultural identity may be the result of contingent facts about existing forms of social life, rather than of universal features of human thought and development. But, whether universal or not, this phenomenon exists in our world, and is manifested in both the benefits people draw from their cultural membership, and the harms of enforced assimilation."¹⁰

Cultural identity provides an anchor for people's self - identification and the safety of effortless secure belonging. But, this in turn means that people's self - respect is bound up with the esteem in which their national group is held. If a culture is not generally respected, then the dignity and self respect of its members will also be threatened.

Tensions among various cultural groups within a multi-national state can be linked to fears of cultural barriers being eroded to the extent of endangering the

⁹ Ibid, pp. 169.

¹⁰ Ibid, pp.176.

existence and survival of a minority cultural group, a condition possible in federal systems dominated by a single hegemonic culture.

The Two Models of Addressing Cultural Pluralism

The State can follow two possible models by way of solution. In the first model, the state does not oppose the freedom of people to express their particular cultural attainments, but nor does it nurture such an expression, rather as Nathan Glazier puts it, the State responds with 'salutary neglect'.¹¹

However, the right to free speech does not by itself ensure an appropriate language policy, neither does it imply that proper political boundaries should be drawn or how powers should be distributed between levels of government. These questions have been left to the usual process of majoritarian decision making within each State. The result has been to render cultural minorities vulnerable to significant injustice, which in turn could lead to a perception of threat by the minority culture, thereby exacerbating possibilities of ethnic cultural conflict.

The second model which Walzer calls the 'corporatist' model and Glazier calls it the 'group right' model, requires that the Government instead of remaining neutral, specifies groups and assigns individuals to groups, so as to determine who should exercise these group rights.

¹¹ Kymlicka, Op. cit., pp. 9.

According to Walzer, the non discrimination model involves a 'sharp divorce' of state and ethnicity. The State stands above all the various ethnic and national groups in the country and remains neutral with reference to language, history, literature, calendar of these groups. On the other hand, the group rights model is appropriate if a society operates on the assumption that group membership is central and permanent and that the division between groups are such that it is unrealistic to envisage these group - identities weakening in time to be replaced by a common citizenship.¹²

Cultural self-preservation is highly desirable and should be defended, according to scholars like Walzer. Individuals are essentially constituted and sustained by their cultural identities. Thus, as an antidote to assimilation, subordinate cultures need to be protected. Thus, any conception of entitlement should extend to protecting the right to be culturally different. Citizens in multi-ethnic societies should therefore be entitled to the kind of cultural recognition that goes beyond basic civil - rights of association, 'speech and toleration.

On the other hand, those who question the merits of mutli - ethnic federations are concerned about the fact that recognizing the special rights of minority culture groups and structuring the polity along those lines by granting special recognition to them, by policy areas may be hijacked by highly partisan ethno - regional groups, who are able to impose their will on others. Federations have the propensity to secure 'tyranny by a minority' which acts as an impediment

¹² Ibid, pp. 10-11.

to freedom for all. Dominant cultural groups may seek to control or influence power threatening others to live in a certain way.

This forms the backdrop against which the theory of asymmetrical federalism is situated which has been followed by a number of federations such as Spain, Canada and Russia, whereby certain ethnic regions have been granted more autonomy than other provinces. It enable regions to engage in what Trudeau once called 'creative politics' in so much as it can empower localities to tailor economic, social and cultural policies to their specific needs.

Role of Special Status in a Multi-Ethnic and Multi-Cultural Society as India

Special status in federalism in the form of asymmetrical federalism is a unique feature to meet unique circumstances. It is devised to express multi-nationalism, linguistic diversities, caste and communal loyalties, ethnological dissimilarities particulars, religious heterogeneity and numerous other similar diversities.¹³

India, as a nation comprising multiple communities, ethnic as well as religious, opted for a federal system as the basic structure of government of the country, although there is a strong admixture of unitary bias and the exceptions from the traditional federal scheme are many.

¹³ Hari Ram, op. cit., pp. 17.

Owing to the country's diversities in terms of the presence of multi-ethnic and multi-religious communities, the Constitution made provisions for granting special status to the North - East and the State of Jammu and Kashmir.

The state of Jammu and Kashmir holds a peculiar position under the Constitution of India. It forms a part of the 'territory of India' as defined in Article 1 of the Constitution, being the fifteenth state included in the First Schedule of the constitution as it stands amended. To understand why J&K should be accorded a separate treatment, a retrospect of the developments of the constitutional relation of the state with the rest of India becomes necessary. Under the British regime, Jammu and Kashmir was an Indian State ruled by a hereditary Maharaja. On the 26th of October, 1947, when the state was attacked by Azad Kashmir Forces with the support of Pakistan, the Maharaja (Hari Singh) was obliged to seek the help of India, after executing an Instrument of Accession similar to that executed by the Rulers of other Indian states. By the Accession, the Dominion of India acquired jurisdiction over the state with respect to the subjects of Defence, External Affairs and Communications and like other Indian states which survived as political units at the time of the making of the Constitution of India, the state of Jammu and Kashmir was included as a Part B state in the first Schedule of the Constitution of India, as it was promulgated in 1950. But, though the state was included as a Part B state, all the provisions of the Constitution applicable to Part B States were not extended to J&K. The Government of India had declared that it was the people of the state of Jammu and Kashmir, acting through their Constituent Assembly, who

were to finally determine the Constitution of the state and the jurisdiction of the Union of India.¹⁴

The applicability of this provision was to be in the form of an interim arrangement and it became the substance of the provision embodied in Art 370 of the Constitution of India. Thus, J&K's constitutional relationship with the rest of India needs to be analysed in terms of the level of asymmetry, whereby the various constitutional provisions have to be studied in order to determine the nature of special status accorded to the state and how J&K in India enjoys an explicit overall special status under Art 370 of the Indian constitution. The salient features of the constitutional position of the state of J&K in relation to the Union, as modified up - to - date may be summarized as follows:

- a. **Jurisdiction of Parliament :** The jurisdiction of Parliament in relation to J&K shall be confined to the matters enumerated in the Union list, and the concurrent list, subject to certain modifications, jurisdictions while it shall have no jurisdiction as regards most of the matters enumerated in the Concurrent list in the case of J&K. The residuary power shall belong to the legislature of that state, excepting certain matters specified in 1969, for which Parliament shall have exclusive power, e.g. prevention of activities relating to cession or secession, or disrupting the sovereignty or integrity of India.

¹⁴ Durga Das Basu, *Introduction to the Constitution of India*. (New Delhi: Prentice Hall of India, 1995), pp. 247-248.

- b. **Autonomy of the State in Certain Matters :** The plenary powers of the Indian Parliament is also curbed in certain other matters, with respect to which Parliament cannot make any law without the consent of the legislature of the state of Jammu and Kashmir, where that state is to be affected by such legislation, e.g. alteration of the name or territories of the state (Art 3), international treaty or agreement affecting the disposition of any part of the territory of the state (Art 253). Similar fetters have been imposed upon the executive power of the Union to safeguard the autonomy of the state of J&K, a privilege which is not enjoyed by the other states of the Union.
- c. **Fundamental Rights and the Directive Principles :** The provisions of Part IV, of the Constitution of India relating to the Directive Principles of state Policy do not apply to the state of J&K.
- d. **Separate Constitution for the state :** While the constitution for any of the other states of the Union of India is laid down in Part VI of the constitution of India, the state of J&K has its own Constitution.
- e. **Procedure for Amendment of state constitution :** The revisions of Art 368 of the Constitution of India are not applicable for the amendment of the state Constitution of J&K. The provisions of the state constitution of J&K may be amended by an Act of the Legislative Assembly of the state passed by a majority of not less than two thirds of its membership, but if such amendment seeks to affect the Governor or the Election commission. it shall have no

effects unless the law is reserved for the consideration of the President and receives his assent.

- f. No alternation of the area or boundaries of this state can be made by Parliament without the consent of the legislature of the state of J&K.¹⁵

The constitutional complexities arising from the grant of special status through Art 370 have led to a serious debate on Centre-state relations in India and over the past fifty years this debate has intensified in the light of allegations of constant erosion of the autonomy of the state derived from the special status attained by virtue of Art 370. Champions of the autonomy issue have argued that an asymmetrical federal set-up in the case of Kashmir is ideal under the circumstances, keeping in mind its ethno-religious composition, which has not been sufficiently safe-guarded, leading to a situation where Kashmir is gradually and subtly being brought at par with the other states of the country.

The Dissertation would outline and analyse the constitutional developments over the past fifty years and political processes since the 1980s and would thus delve into the facts in order to determine the nature and extent of symmetry in the relations between the Centre and the state. It would also sift through the various solutions that have been suggested by eminent personalities and the committees set-up to look into the matter. The methodology adopted would be one of review of literature, both primary as well as secondary sources, including the perusal of

¹⁵ Basu, Op. cit., pp. 253-255.

government documents and other official material, as well as newspaper clippings, which would throw sufficient light on the problem under study.

Thus, the study of constitutional relationship between Kashmir and the rest of the country, as well as the various political processes and developments becomes necessary in the light of the fact that one of the most urgent problems facing modern democratic theorists and practitioners is how to reconcile nationalism and democracy, specially in multi-ethnic settings. Federalism is often one of the potentially attractive political formula for those wishing to craft democracy in multi-national polities must consider. An implicit and often explicit, normative argument for federalism is that it protects individual rights against too powerful a Centre or even a 'tyranny of the majority'.¹⁶

The use of creative federalizing devices in India seems simultaneously to respond to diversity, while reducing secessionist tendencies to small minorities in almost all states. Thus, in a country like ours, federalism has a policy impact, because it enables the system to have at its disposal the vast repertoire of federal policies that allow the multi-cultural, multi-linguistic, multi-religious Indian polity of a billion people to hold together.

¹⁶ Alfred Stepan, 'Comparative Democratic Federalism' in *Seminar*, November, 1997.

Chapter - 2

CONSTITUTIONAL DEVELOPMENT AND POLITICAL CHANGE - HISTORICAL OVERVIEW (1947-84)

The Historical Background

Part XXI of the Constitution of India is specifically devoted to making provisions for special status or treatment in respect of certain states in certain definite areas. The chapter on special status was added to the Constitution on October, 17, 1949 when the final touches were being given to the Constitution by the Constituent Assembly. The need for the inclusion of this chapter arose in view of the understanding of the Instrument of Accession signed by the then ruler of J&K and developed subsequently with the passage of time, keeping in mind the changing circumstances.

The Salient Features of Special Treatment are the following: -

The component units of the Indian Union have not been given the right to frame their own separate, constitutions as it has been the practice in most of the federations such as the USA, Swiss and USSR; but an exception has been made in the case of Jammu and Kashmir. The separate constitution of this State was enacted by a separately convened Constituent Assembly in the State and became effective from Jan 26, 1957.

The historical background to the convening of the Constituent Assembly for the State was provided by the abolition of the Dogra rule, involving the

dissolution of the prerogatives and the powers the Maharaja was vested with after he signed the Instrument of Accession. It involved the institution of a new executive instrument with defined statutory powers. The entire constitutional structure, sought to be devised by the Constituent Assembly was required to be adjusted within the imperatives of the political structures the Constitution of India envisaged.¹

Differences had cropped up between the Central and State Governments with regard to the Plenary powers of the Constituent Assembly, the application of the provisions of the Constitution of India in the matters of citizenship, fundamental rights, Supreme Court and the Emergency Powers of the President to the State and the placement of the state within the framework of political control the Constitution of India envisaged.

In July 1952, a conference, between the leaders of the two Governments was convened in Delhi, to find a settlement of the outstanding political issues and formulate principles on the basis of which the Constituent Assembly of the State would proceed on its work. An agreement was finally drawn up by the representatives of the two sides on most of the Constitutional problems including those related to the application of the provisions of the Constitution of India with regard to citizenship, fundamental Rights, the jurisdiction of the Supreme Court and the division of powers between the Union and the state, which laid the

¹ Teng, Kaul Bhatt and Kaul, *Kashmir Constitutional History and Documents, Vol. I*. (New Delhi, Jammu and Rohtak: Light and life publishers 1977) pp. 199-200.

foundation of future constitutional developments pertaining to the state, embodied on in the provisions relating to Art. 370 of the Constitution.

The Basic Provisions

In the Indian Constitution which was adopted on 26th Nov, 1949 and which went into force on 26th Jan, 1950, the territory of India was to comprise the territories of the states specified in parts A, B and C of the schedule-I of the Constitution and of territories in Part D of the schedule. The state of J & K was one of the eight states specified in Part B of this schedule. All these Part B states were governed by Art. 238 of the Constitution, but the J & K state was not so governed. For this state the Constitution makers drafted a special article - Art. 370, according to which the Parliament of Indian can exercise limited law making power so far as the J & K state is concerned.

Substance of Art 370

The substance of Art 370 is as follows:

1) Notwithstanding anything in this Constitution

(a) The provisions of Article 238 shall not apply in relation to the state of Jammu and Kashmir.²

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

² Art 238 was subsequently repealed and the case of J&K was dealt with separately.

- (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 the 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.
- (c) The provisions of Art 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 be order specify; provided that no such order which relates to 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 these reffered to in the last preceding proviso shall be issued except with the concurrence of the Government.

- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub clause (b) of clause (I) 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.³

Scope and Implications of Article 370

This article was included in the Constitution as a special provision in view of the problems arising in respect to the state of Jammu and Kashmir and also the fact that the Government of India had given assurance to the people of the state that their political future would be finally determined by themselves.

The policy of the Constitution which appears from this article is that the Constitution was framed for the entire Union of India but the provisions of that Constitution should not apply to the territories of the state of Jammu and Kashmir until and unless the President made an order that they shall apply. The effect of the article was to give jurisdiction to the Union Parliament to make laws for the state

³ Syed Tassadque Hussain, *Reflections on Kashmir Politics*. (Rima Publishing House, New Delhi 1987), pp. 52-53.

on matters specified either in the Instrument of Accession or by later additions made with the concurrence of the state Government. It in no way altered the basis of relationship between the state and the Union Government and left the state to be governed by its own laws and Constitution in the residuary field.

Under this article the President has been empowered to make the following orders:-

- (1) Declaring the matters in the Union and the concurrent lists which correspond to the matters specified in the Instrument of Accession as matters with respect to which the Parliament can make laws for the state;
- (2) Declaring the extension of the jurisdiction of the Parliament over matters in the said lists other than those specified in the Instrument of Accession and ;
- (3) Applying provisions of the Constitution other than Art I and this article subject to exceptions and modifications specified by him.

The President under this article can issue an order applying the provisions of the Constitution after more consultation with the state government only where these provisions relate to a matter specified in the Instrument of Accession itself. In matters pertaining to the residuary field he cannot promulgate an order to apply to those provisions without the concurrence of the State Government subject to the notification of the Constituent Assembly.⁴

⁴ Ibid, pp. 384-385

The article empowers the President to make exceptions and modifications when applying the provisions of the Constitution to the state of Kashmir. The article is a self-contained provision having a specific purpose of its own and hence it is not legitimate to look at any other article and restrict the powers conferred by this article upon the President.⁵ His power to except does not mean merely the power to omit any provision of the Constitution. In exercise of the power he could, while applying an article as a whole or as a part, except a particular thing, person or a place from its operation.⁶ Similarly the word modify should also not be given a restricted meaning. In order to give effect to the purpose explicitly set out in the article itself the word must be given an enlarged sense so as to include a power to enlarge the scope of a provision in the constitution whenever necessary.⁷ The power that is conferred on the President under sub. cl. (d) of cl. (1) of Art 370 is not limited to applying provisions of the Constitution of Jammu and Kashmir but extends to making governments in the Constitution as applied to that state.

This Article is virtually an amendment of the earlier provisions of the Constitution, or it states that “notwithstanding anything in the constitution,” the provisions of Art 238 relating to part B states shall not apply to the state of J & K. In fact, it provides that only Arts. 1 and 370 are applicable in relation to J & K and other, Articles subject to exemptions and modifications specified by an order of the President.

⁵ Teng, Kaul, Bhatt & Kaul, *Kashmir Constitutional History and Documents*. (New Delhi, Jammu and Rohtak: Light and Life, 1977), pp. 386.

⁶ Ibid., pp. 387.

⁷ Ibid., pp. 388.

The Subsequent Amendment of 1950

The President on 26th Jan, 1950, issued the Constitution (Application to Jammu and Kashmir) order, 1950. By that order he specified the matters in the Union List which corresponded to the matters mentioned in the Instrument of Accession and also made the Constitution applicable to the state with certain omissions, exceptions and modifications. That order was later superseded by the Constitution (Application to Jammu and Kashmir) Order, 1954. The President of India, has so far issued five orders, the first was issued on 26th Jan, 1950. The second and third orders were amendments of the first order, and were issued on 20th March 1952, and 15th Nov 1952, respectively. The fourth order was issued on 14th May 1952. The fifth order of the President is known as order of the Constitution (Application to J & K). Second Amendment Order, 1958, was issued on 26th Feb '58 and amends the order of 14th May '54. On 15th Nov '52 was also issued a Declaration under Art. 370 (3).

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Implications of President's Order of 1950

According to the President's order 26th Jan '50, Parliament could make laws applicable to the Jammu and Kashmir state only on matters specified in 39 entries out of 97 in the Union list. Some of these 39 entries had to be further modified so that they may correspond to matters specified in the 47 entries of the concurrent list which was not applicable to this state. According to this order the following parts of the constitution were made wholly inapplicable to this state : -

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1. Part II (Citizenship)
2. Part III (Fundamental Rights)
3. Part IV (Directive Principles of State Policy)
4. Part VI (States in part 4 of the schedule I)
5. Part VII (states in part B of the schedule I)
6. Part XIII (Trade, commerce and Intercourse within the territory of India).
7. Part XIV (Services under the Union and the States).
8. Part XVIII (Emergency Provisions)
9. Part XXII (Short title, commencement and Repeals).
10. Schedules I, IV, V, VI, VII and VIII.
11. The Preamble.

Of the remaining 13 parts the following articles were not applicable in whole or in part or were applicable with modifications.

1. Part I (The union and its territory)
Articles 2,3,4 - not applicable.
2. Part V (The Union)
 - i) Arts 133-136, 138, 149-150 - not applicable.
 - (ii) Arts. 72, 145 and 151, - applicable in parts.
 - (iii) Arts. 80 and 81 - applicable with modifications.

- 3) Arts 247 - 252, 260, 263 - not applicable.
 - i) Arts. 246, 257 - Applicable in parts.
 - ii) Arts. 246 (I) and 252 - applicable with modifications.
4. Part XII (finance, Property, Contracts and suits).
 - i) Arts. 264-265, 268-281, 286-291, 293, 295, 296 and 297 - not applicable.
 - ii) Arts. 267 and 283 - applicable in parts.
 - iii) Arts 266, 282, 284, 298-300 - applicable with modifications.
5. Part XV (Elections).
 - (i) Arts 325-329 - not applicable.
 - (ii) Arts 324 - applicable with modifications
6. Part XVI (special provision relating to certain cases)
 - (i) Arts 332-333, 337-342 - not applicable'
 - (ii) Arts 330, 334, 335 - applicable with modifications.
7. Part XVII (official language) The nine articles (Arts 343 - 351) were to apply only in so far as they relate to the official language of the Union and to proceedings in the Supreme Court.
8. Part XIX (Miscellaneous)
 - i) Arts 362, 363, 365 – inapplicable.
 - ii) Arts 361, 364 – applicable with modifications.

9. Part XX (amendment of the constitution) Art. 368 No. amendment to have effect in this state unless made applicable by a special order of the President under Art 370 (I).

10. Part XXI (Temporary and Transitional Provisions)

i) Arts 369, 371, 373, 376, 376, 378 – not applicable.

ii) Arts 374, 388 – applicable in parts.

iii) Arts 379, 389-90 applicable with modifications.⁸

Thus, under this order 235 articles of the constitution were wholly inapplicable, 9 were applicable in parts and 29 were applicable with modifications. This long list of constitutional provisions wholly or partly inapplicable to J&K.

The Nature of Special Status of Kashmir

The long list of constitutional provisions wholly or partly inapplicable to J&K conclusively shows that this state had a special status in the Indian Constitution on 26th Jan 1950.

Towards the end of 1953, the Indian state decided to make provisions for greater integration of the state with the rest of India in the light of geo-political considerations arising out of military aid to Pakistan by the U.S.

⁸ Boodh Raj Sharma; "The special position of Jammu and Kashmir, in the Indian Constitution" in Verinder Grover ed., *The Story of Kashmir Yesterday and Today – (2)* .(New Delhi: Deen & Deep Publications, 1995), pp. 9176-177.

Constitutional Order of May 1954

On the 14th May, 1954, the President of India, issued his fourth order under Art 370 of the Constitution. According to this order 98 more articles of the Constitution of India were extended to Kashmir. According to this order the Preamble to the Constitution was made applicable to the state. Parts I, II, III were made wholly applicable with the following exceptions. In Art 3 of Part I no bill could be introduced in Parliament for increasing or diminishing the area of this state or for altering its consent of the state legislature. In part II a proviso was added to Art 7 authorizing the State Legislature to make laws for issuing permits of re-settlement of permanent return to permanent residents of this state who had migrated to Pakistan.

Part III was applied with four important modifications in Art 19, the state legislature was empowered to impose such restrictions on the exercise of rights relating to freedom of speech and expression, right to form associations and unions and to move freely within the state as may be necessary to safeguard the security of the state for five years beginning from 14th May 1954.

Secondly, in Art 22 the state legislature and not the Parliament of India was to fix the maximum period of detention and to prescribe the circumstances under which a person may be detained for a period longer than 3 months such a law of preventive detention was not to be declared void if it was inconsistent with the Fundamental Rights enumerated in Part III.

Art 31 was modified to protect the land reform laws of the state under which no compensation is payable for property acquired by the state government. Another Article 35-A was added to Art 35 which authorized the state legislature to make laws defining permanent residents of the state and conferring upon such citizens privileges regarding employment under the state government, acquisition of immovable property and settlement in the state.

Almost the whole of Part V was now made applicable. The Supreme Court was given practically the same jurisdiction in J&K as in other parts of the country. Almost the whole of part XI was made applicable now except that the laws passed by Parliament on matters of residency or in the national interests could not apply to this state. Most of the provisions of parts XII and XIII were now made applicable. The financial relationship as well as the allocation of taxation powers between the Centre and this state now become the same as between the Centre and other part A and B states. Customs duties levied by the state Government were now to be removed.⁹

This process of integrating J&K with India was further extended by the President's Order of 26-1-1958. Under this order the Jurisdiction of the Comptroller and Auditor General has been extended to this state. Parts XII and XIII had been extended with a minor modification about the date of application.

⁹ Ibid, pp. 179-180.

Thus the state became integrated in the matter of All India Services also with the rest of India.¹⁰

Meanwhile on the political front the situation became quite volatile after Sheikh Abdullah was imprisoned on charges of anti-national activities and Bakshi Ghulam Mohammad become the head of the J&K Government. It was only after this that the Delhi Agreement (July, 1952) began to be implemented and various legal and Constitutional measures were taken to end the confusion and contradiction in the situation and bring about workable arrangement in the political as well as administrative areas.

The process of giving a concrete shape to the Delhi Agreement was set in motion by the promulgation of the Constitution (Application to J&K Order 1954), by the President of India. This order was amended from time to time extending a few provisions of the Indian Constitution to the state.

Financial integration was effected through the 1954 Presidential order and the jurisdiction of customs, central excise, post and telegraph and civil aviation were extended. The jurisdiction of Comptroller and Auditor General was extended in 1958. In 1959, the legislative entry relating to the census was applied.

In 1960, the Supreme Court was given powers to appeal from the decision of the J&K High Court.

¹⁰ Ibid, pp. 181.

The supervisory role of the Election Commission of India was also allowed, though the elections continued to be held under the laws of the State. Arts 356 and 357 of the Indian Constitution were extended in 1964 and some central labour laws in 1965. In 1968, entry 72 of the Union list, which provides for decisions of the High Court on election petitions, was extended.

In 1965 a number of legislative entries relating to the welfare of labour trade unions, social security and social insurance were applied. As a result of this a number of Central labour laws were extended. In 1966, the provisions of the Constitution relating to the elections of the representatives to Lok Sabha were applied. In 1968, entry 97 of the Union list (relating to the residuary powers of the legislature) of the Constitution were applied in modified form and as a consequence, the Unlawful Activities Prevention Act, 1967 was extended. Subsequently in 1971, Art 226 which relates to the powers of the High Courts to issue certain writs were made applicable. In 1972 entry 60 of the Union list (relating to the sanctioning of cinematography films) was applied. In 1986, Art 249 was extended, Chartered Accountants, Comptroller and Auditor General Act, Conservation of Foreign Exchange and prevention of smuggler Activities law, Contempt of Court Law, Customs Law, Copyright Act, Dangerous Drugs Acts, Delimitation Act etc have been extended to the state of Jammu and Kashmir from time to time from 1953 (in all 337 laws).

Particulars of the Extensions of provisions of Indian Constitution to the state of Jammu and Kashmir.

S. No.	Year	Particulars
1.	1954	Financial integration effected through 1954 Presidential Order the operations of customs, control exercise, civil aviation, posts and telegraphs extended.
2.	1958	All India Services – IAS and IPS were introduced functions of comptroller and auditor General Extended.
3.	1959	The legislative Entry relating to census was applied the census of 1961 could for the first time be conducted under the central law.
4.	1960	The Supreme Court was given the powers to give special leave to appeal from the decisions of the High Court of J&K.
5.	1961	The legislative entry relating to industries, the control of which by the union is declared by law to be expedient in public interest was applied to the state and it enlaced the extension of the Industries (Dec 2 Regulation) Act, 1951.
6.	1964	Arts 356 and 357 of the Constitution were applied to the state.
7.	1965	A number of legislative entries relating to the welfare of labour, trade unions social security and social-insurance., etc. were applied. As a result of this laws were extended.

8. 1966 The Provisions of the Constitution relating to the direct election of the representatives to Lok Sabha were applied.
9. 1968 Entry 72 of the union list was applied in a modified form in relation to the appeals to the supreme Court from the decisions of the State High Court in election positions.
10. 1969 Art 248 and entry 97 of the union of the union list creating to residency powers of legislature of the Constitution were applied in a modified form and as a consequence, the unlawful Activities (Prevention) Act, 1967 was extended subsequently.
11. 1971 Entry 60 of the Union list creating to the sanctioning of cinematography films) was applied on 24th Feb, 1972.
12. 1986 Art 249 extended.

Political Implications of the Extensions

In view of these extensions and applications the nomenclature, status functions and mode of appointment of Sadr-e Riyasat and the P.M. of J&K became anachronistic. It was, therefore, considered necessary and proper to change the nomenclature and mode of appointment of Sadr -e- Riyasat and also the nomenclature of the Prime Minister. Necessary, changes in this regard were

effected in 1966 by the state legislature itself by way of amendment of the J&K Constitution. It was only during the reign of Bakshi Ghulam Mohammad (August 1953-Sept 1963) that a number of revolutionary steps were taken to democratise the polity. These included the abrogation on May 14, 1954 of section 75 of the JKCA as the final interpreter of the state Constitution, the abolition of the Board of Judicial Advisors, extension of the Jurisdiction of the Supreme Court to J&K, the approval and adoption on Nov. 17, 1956 of a new Constitution by the peoples representatives in the Constituent Assembly and its launching on Jan 26, 1957.

The most significant aspects of the Constitution were the recognition of the peoples natural rights to shape and control fully their political, administrative and economic policy and the grant of full freedom to the press and the judiciary.

THE SPECIAL RIGHTS RETAINED BY EXTENSIONS

Moreover, there is still a vast area which remains under the exclusive jurisdiction of the state Government. It includes a substantial portion of the concurrent list and also residuary powers. The citizens of India are not ipso facto the citizens of J&K.

Even if they have been residing in the state for years, they cannot acquire the right of settlement and hold property in the state. They have no right to vote in the elections to the state Assembly or the local bodies or the panchayats. No declaration of financial emergency can be made with regard to J&K as Article 360 of the Indian Constitution has not been applied to it. Article 365, which authorized

the President of India to issues directions to the state Government in exercise of the executive power of the union, has not also been extended to J&K. Art 352 too, has only limited application.

The executive authority of Kashmir, like that of other states, is under obligation to ensure compliance with the union laws and is to be so exercised so as not to impede or prejudice the exercise of the executive authority of the Union which extends to giving to the state executive such directions as may be necessary for that purpose. As in the case of other states, the President may with the consent of the Government of Kashmir entrust to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends. Again as in the case of other states, a law made by Parliament which applies to Kashmir may confer powers and impose duties, upon the state or its offices and authorities. The Delhi Agreement of July 1952, provides that J&K will be covered by the President's power to grant reprieves or commute death sentences.

But the executive power of the union in respect of Kashmir is subject to various restrictions not applicable to other states. For instance the executive power of the Union does not extend to the giving of directions to Kashmir as to the measures to be taken for the protection of the railways within the state.

In respect of all states but Kashmir there is a provision that any failure on the part of the state to comply with the direction issued by the Union executive powers of the Union under the Constitution will enable the President to hold that a

situation had arisen in which the Government of the state cannot be carried on in accordance with the provisions of the Constitution and to apply the provisions relating to the breakdown of the Constitutional machinery in the State but this was later extended to J&K too.¹¹

Sheikh Mohd Abdullah assumed the reigns of administration of the state in 1975 and retained the Chief Ministership till his death in 1982. During his reign the issue of autonomy came to the fore with Sheikh Abdullah claiming that the extension of the above-mentioned Central laws were in contradiction to the provision of greater autonomy promised to the state of J&K, as compared to the other constituent units of the State of India.

In order to resolve the difference which surfaced as a result of the extension of the Constitutional provisions to the state, the Kashmir Accord of 13 November, 1975 was signed between the Prime Minister Mrs. Indira Gandhi and the Chief Minister, Sheikh Md. Abdullah. The basic provisions of the Accord were as follows :

The state of J&K shall in its relation with the Union will continue to be governed by Art 370 of the Constitution of India.

The residuary powers of legislation shall remain with the state, however, Parliament will continue to have power to make laws relating to the prevention of activities directed towards disclaiming, questioning the sovereignty and territorial

¹¹ Sharma in Grover, Op. Cit; pp. 200.

integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union.

Where any provision of the Constitution of India has been applied to the state of Jammu and Kashmir with adaptations and modifications, such adaptations and modifications can be altered by an order of the President under Art 370, but provisions of the Constitution of India already applied to the State of J&K without adaptation or modification are unalterable.

It is agreed that the State Government can review the laws made by Parliament or extended to the state after 1953 on any matter related to the concurrent list and may decide which of them in its opinion, needs amendment or repeal. Thereafter, appropriate steps may be taken under Art 254 of the Constitution of India.

As an arrangement reciprocal to what has been provided under Art 368, a suitable modification of that Article as applied to the state should be made by Presidential order to the effect that no law made by the legislature of the state of J&K, seeking to make any change in or in the effect of any provisions of the Constitution of the state of J&K relating to any of the undermentioned matters, shall reserve for the consideration of the President, receive his assent. The matters are :

- a. The appointment , powers, functions, duties, privileges, and immunities of the Governors and

b. The following matters relating to Election, namely the superintendence direction and control of Elections by the Election Commission of India, eligibility for inclusion in the electoral rolls without discrimination, adult suffrage and composition of the legislative council, being matters specified in section 138, 139, 140 and 50 of the Constitution of the state of Jammu and Kashmir.¹²

In essence, the Kashmir Accord did not change the Constitution relationship between the Union and the state. It was primarily a device to bring Sheikh Abdullah back to power and also give an impression that certain aspects relating to autonomy could be reviewed.

Thus a brief overview of the Constitutional development from the time of signing the Instrument of Accession till date enables us to understand the nature and form of relationship the state of Jammu and Kashmir has with the rest of India in terms of the special status which the state enjoys within the union, and analyzing the various provisions and Acts which have been extended to Jammu and Kashmir, with or without modifications, would lead us to properly understand the demands made by the leaders of the State on the face of greater integration with the rest of India, even if such closer association is on the grounds of welfare and the benefit of the people. Obviously the legal and Constitution relations between India and Kashmir are complex. Legally further modifications need to be

¹² K.L. Bhatia, *Jammu & Kashmir: Article 370 of the Constitution of India*. (New Delhi: Deep & Deep Publications, 1997), pp. 154.

preceded by a thorough analysis of the requirements of the state as well as the rest of India, so as to ensure a proper balance between the security and integrity of the entire country on the one hand, and the cultural, political and economic compulsions of the state of J&K on the other hand.

Chapter - 3

POLITICAL PROCESSES UNDER POPULAR RULE (1984-97)

A Brief Background

The political processes and development in Kashmir have often taken the form of a roller-coaster ride with regard to the relationship between the Centre and state governments over the last fifty years, and this in turn has fashioned subsequent events in the valley.

Soon after independence, the internal political situation in Kashmir developed in its own way and the internal dynamics was provided by the National Conference led by Sheikh Mohammad Abdullah who continued to be in power till 8 August 1953, when he was dismissed from office and then arrested under Kashmir Public Security Act. His place was taken up by Bakshi Ghulam Mohammed, which was symptomatic of the fact that the post-1953 Government in the state was not representative of the people and had failed to ameliorate the lot of the people of the state. By 1970 the Government of India as well as Sheikh Abdullah had felt the necessity of a dialogue between them and the way for a meaningful dialogue became somewhat clear by the Sheikh's address to the business community of Kashmir in Delhi where he said that Kashmir had joined India of its own free will. Besides, the State People's convention held in Srinagar in 1968 also paved the way for a dialogue between Abdullah and the Union Government.

This then was the backdrop against which the Accord of 1975 was signed and the decision to make room for Sheikh Abdullah was a tacit admission of the fact that continuous interference by the Centre in the state's internal politics had not paid off and thus there was felt the need to accommodate the representative forces of the people of the valley.

The Accord, did not provide for a long term political arrangement which could hold together the two parties - NC and the Congress. There were several factors that contributed towards the germination of the seeds of discord and one of the important factors was the difference of opinion between the two parties on the three following issues:-

- a) The post 1953 political developments in the state.
- b) The respective roles of the two parties in the politics of the state and
- c) The economic development of the state since 1953.¹

Sheikh Abdullah and other leaders of the NC described the period from August 52 to February 75 as “a dark patch of 22 years”. Regarding the role of the Congress, the NC leader accused it of having eroded the autonomy and special status of the state.

Another factor that embittered the relations of the two parties was the open welcome extended by Sheikh Abdullah to those Congress members of the

¹ Ghulam Hassan Shah, *State Politics in India*. (Delhi: Independent Publishing Company, 1989) pp 150-152.

legislature who defected to National Conference. This episode dealt a serious blow to the accord of cooperation between the Congress and National Conference. The Congress leaders in the state began to feel that Sheikh Abdullah was out to seek the liquidation of the Congress party in the state by hook or by crook.²

The Janata Phase and the Return of Mrs Gandhi (1977-84)

The parliamentary election of March 1977 and the emergence of Janata Party proved to be the last nail in the coffin of the Accord.

The assumption of power by Janata Party at the Centre and preparations for setting up a Janata unit in Kashmir took the Congress by surprise and it began to entertain the fear that the NC and Janata Party could get together to exterminate Congress from the state altogether. The Congress decided to topple the NC Government by withdrawing its support, which created a constitutional and political crisis in the state. Sheikh Abdullah called for the dissolution of the Assembly which was done followed by the imposition of Governor's rule and preparations for fresh elections in 1977 were made, after a complete split between the NC and the Congress had taken place in the process.

Crisis in the State – A Result of Mishandling & Miscalculations

A number of commentators have attempted to analyze the reasons behind the problem in Kashmir. Most have referred to the repeated rigging of elections as the principal cause of disenchantment of the people. However that seems to be only

² Ibid, pp.415.

one of the numerous significant factors responsible for the rising levels of alienation and militancy among the people of Kashmir.

A thorough analysis of the ground situation in Kashmir would show that despite having a tradition of a liberal interpretation of Islam without compromising the basic tenets of the faith, people have resorted to violence and sectarianism in the past two decades. This can be attributed not only to constant rigging of elections and abuse of democratic institutions thereby constantly closing the option of redressing grievances through the proper democratic mechanisms, but also to the type of internal political and administrative policies followed by the various parties in power both at the Centre and the state over the years.

In 1977, soon after the National Conference's victory in Assembly elections, Sheikh Abdullah adopted a policy of appeasement of religious extremists. The essentially secular nature of "Kashmiriyat" got slowly and steadily eroded. In its place was established a culture of orthodox religions fundamentalism. Due to the National Conference's concentration on its Sunni base in the valley, the other Muslim groups, the Shias, Gujjars and Baltis - were left unaffected by this indoctrination. As a result, these groups have of present refused to take up insurgency, an overwhelmingly Sunni phenomenon in the valley.³

Since 1947 care was taken to see that the valley Sunnis got most Government jobs and this kind of a policy followed by the National Conference

³ Murari Mohan Mukherjee, "Administering Medicine" in *The Telegraph*, 16th Feb 1996.

was later emulated by the state unit of the Congress. Thus, the other sects like Gujjars, Shias, Baltis and Hindus are not in favour of autonomy, which they interpret as the continuation of Sunni domination.

Complicating the situation is the evidence that support was given to religious extremism by the “secular” governments which have ruled the state. During Congress rule in the sixties, religious schools were set up which spread the separatist message.

The mess in Kashmir today can also be attributed to administrative bungling and widespread corruption. Estimates show less than a third of the Rs. 100 billion spent by the Centre on Kashmir has been appropriated by politicians, officials and middlemen⁴

The Kashmir problem has become intractable today also largely because of the wide chasm that exists between the perceptions of the Union Government and the state governments representing the people of the valley. The inhabitants of Kashmir perceive their identity to be under threat not only because of uncalled for interference by the Centre in the affairs of the state, but also what they view as a constant erosion of the degree of autonomy which was promised to them.

The ‘Ilhaq’ (accession) with the Indian State was accepted by free will by the Kashmiris in respect of the matters relating to defence, external affairs and communication and anything contrary was to be adopted after the explicit and fair

⁴ Ibid.

approval of the people of the state. That being the sum and substance of the Article 370 of the Constitution, today this article is identified more by its violation than adherence.⁵

Political Processes in the Period 1984 to 1990

On the eve of the Assembly Elections, Dr. Farooq Abdullah ran into trouble with the Government at the Centre led by Mrs. Indira Gandhi. The issue was the resettlement bill which was a means to give anyone who was a citizen of Kashmir before May 1954, or his descendent, the right to return provided the person swore allegiance to the Constitutions of both India and Kashmir.⁶

The reaction in Jammu was hostile, New Delhi felt that legislation concerning citizenship was a central prerogative. Gradually, it became a prestige issue for Abdullah who thought that if he backed down on a measure introduced by his father, he would lose face in the valley. The crisis was finally diffused and a confrontation with the centre was finally avoided by Farooq Abdullah agreeing to refer it to the Supreme Court.

However, the real problem began when Mrs. Gandhi sought to establish her supremacy in the state by sidelining Dr. Abdullah, which he resisted. He was interested in early elections to enlarge his following in the party, but Mrs. Gandhi had plans to consolidate the position of her party in the state and insisted on a NC-Congress poll alliance, which the Chief Minister knew would be suicidal for his

⁵ *The Pioneer*, 29th May 1996.

party. Polling was fixed for 5 June 1983 and during the election campaign which was heavily tinged with communal colours and rhetoric in tone, especially on the part of Mrs. Gandhi in Jammu, the relation between the leaders of the two parties nosedived.

Dr. Abdullah swept the 1983 Assembly elections and electorally the Congress had been virtually eliminated in the valley, but its local leaders carried weight in New Delhi. On the other hand, Farooq Abdullah brimming with confidence after his victory decided to take up the issue of autonomy at the national level and thus pose a challenge to the Congress.⁷

At this juncture, Dr. Abdullah sought a wider role for himself and his party at the national level and thus joined the concave of opposition parties. He attended the first session in Vijayawada on 31 May, 1983 which marked a new beginning in state politics of Kashmir as it was the first time the Kashmiris took interest in development outside the state. This was followed by holding the next session in Srinagar itself and this could have been translated into a concrete step towards greater emotional and political integration of Kashmir with the rest of India, but that was not to be as the Government at the Centre wanted there to be a "relationship of subservience with the Congress party in command" and thus was keen to roll back such a process of greater participation.⁸

⁶ Ajit Bhattacharjee, *Kashmir, The Wounded Valley*. (New Delhi: UBS Publishers, Distributors Ltd.) pp. 242-243.

⁷ Ibid, pp. 244.

⁸ Ibid, pp. 244.

Dismissal of the Farooq Abdullah Ministry, 1984.

Mrs. Indira Gandhi sought to establish her dominance at the level of the state at any cost and this she did by dismissing the Government of Farooq Abdullah in J&K in the wake of the withdrawal of support by 12 erstwhile National Conference legislators and the installation in its place of another ministry headed by his brother -in-law and political rival, Mr. G.M. Shah.

Analysts are of the view that the Congress (I) could never reconcile itself to Farooq Adbullah's victory in the elections after he rejected the Congress (I)'s offer of an electoral alliance. The speed with which Shah claimed to form a Government and then was supported by the Congress (I) and the subsequent dismissal are indication of the fact that political machinations had been resorted to by the Centre and it was an example of the blatant misuse of power and interference by Government of India.

Such a move by the Centre strengthened the hands of the fundamentalists and supporters of secessionism who had all along been waiting in the wings to strike at an opportune moment. Such machinations facilitate the "stirring up of memories of ancient wrongs and the far from settled loyalties of the common people of the state under the barrage of propaganda from across the border".⁹ Such feelings are accentuated by the fact that it is all over again the same story, only the time and people involved are different. In Delhi, instead of Pt. Jawaharlal Nehru, it

⁹ *The Financial Express*, July 1984.

was Mrs. Indira Gandhi and in Srinagar, instead of Sheikh Md. Abdullah it was his son, Farooq Abdullah.

Tavleen Singh in her article, *The Clock Put Back by 30 Years* writes “Memories of political repression had begun to fade in Kashmir in the past 10 years as had thoughts of secession but with the toppling of Dr. Abdullah’s government, they have been revived and strengthened . Those who remember 1953 say this is what it was like.

It was Mrs. Gandhi who through her accord with Sheikh Abdullah in 1975, started the process of restoring democracy in Kashmir and it is she who has now ended it”.¹⁰

The stand of Farooq Abdullah in the political crisis of that period was vindicated when he got the taste of the support of his people in the Parliamentary elections held in January, 1985 when he was rewarded with sweeping success and the credibility of the Shah Ministry was further eroded.

At this stage, the Congress too began to realize that its support for Shah had become a liability with nothing to show in return. It had failed to consolidate and augment the substantial electoral support it had won in the Kashmir Valley, in the 1983 Assembly polls when nearly 25% votes were cast in its favour.¹¹ With hindsight it is crystal clear that the July ‘coup’ against Farooq Abdullah had turned counter - productive for the Congress.

¹⁰ *The Telegraph*, 11 July, 1984.

¹¹ *The Tribune*, 25 March. 1985.

From April 1985 onwards. Farooq started moving closer to the Awami Action Committee headed by Mirwaiz Moulvi Farooq, thus seeking to project an image different from that one of being secular in order to enlarge his base through revivalism. Along with the Awami Action Committee, the People's Conference and the Ittehadul Muslimeen, he sought to launch a movement for restoration of democracy in the state . This movement would demand elections in September 1985 which should follow a spell of Governor's rule.

Imposition of Governor's Rule

The political scenario in J&K was unfolding at a feverish pace at this stage. The Congress (I) was split vertically with reports that the revolt had percolated down to the lower echelons encompassing sizable sections of the rank and file, who were said to be angry over the mounting corruption at the ministerial and other levels and the G.M. Shah regime's failure to check it and to solve the other problems facing the people. Even within the ruling National Conference (Khalida Faction) wide fissures had appeared, with the party losing ground in both Jammu as well as Kashmir.

Thus, there was a persistent and continuous downslide in the situation, which caused law and order problems coupled with the rise of secessionism and fundamentalism. This formed the backdrop against which Governor Jagmohan had to take action, which he did by imposing Governor's Rule in the State on the 7th March, 1986 , under Section 92 of the State.

Non Presidential Period (1987 to 1990).

In the aftermath of the accord of 1986 between Congress (I) and National Conference (F), there was widespread criticism by the hardliners of the NC(F), who accused D.F, Abdullah of selling the interests of the state to the Congress(I) in order to further his own political interests. Even after the elections took place and the NC(F) and Congress(I) alliance came to power, problems besetting the state did not in any way diminish.

To complicate things further. Farooq who had promised liberal central assistance for development and employment in the valley during the elections, had to end up searching for excuses before the people for the Centre had not given him enough in the name of relief for flood victims and sufferers of similar natural calamities¹²

To add fuel to the fire, forces which could have checked the growth of fundamentalism and religious fanaticism were engaged in a war of nerves within their own parties to settle old scores and protect their leadership.

Inter - Party Fights

At the inter-party level, the Central Government and the Congress leadership, egged on obviously by local congressmen who were dissatisfied at having been kept out of power for ten years, compounded their earlier mistake by

¹² *Hinduatan Times*, 17th July 1987.

fomenting trouble in the state by constantly putting pressure on the National Conference (F)- Congress (I) Ministry.

Thus, Farooq was further isolated, being exploited by communal mischief makers, nor was the situation helped by the State Government failure to honour its promise to provide jobs for unemployed youth, its complacent attitude to sporadic violence etc.

It was because of the Government's lack of political will which in turn stemmed from its pre-occupation with keeping the patch work alliance together that pro-Pakistani elements had been able to gain strength to the extent that the Army and para-military forces had to be deployed.

Further, the Congress (I) and NC (F) were plagued by infighting, leaving no scope for the two organizations to assume political capability of fighting the rising menace of militancy.¹³

Meanwhile, the J&K Government turned down the New Delhi's suggestions for tackling the anti-national forces in the state. These suggestions pertained to the imposition of ban on secessionist organizations, limited press censorship to the extent that coverage of pro-Pakistani activities and other anti-national demonstrations was not permitted, the immediate arrest of top leaders of secessionist organizations and administrative measures for weeding out pro-Pakistan elements in the civil-administration and the police.

¹³ *Tribune*, 11th November, 1988.

These four suggestions had been made by the Centre to the state Government in the light of the spurt in anti-national activities, including incidents of violence.

Farooq had conveyed to the Centre his opposition to a ban on secessionist organizations and against limited press censorship on the plea that such bans often proved counter productive and more people are lured by it after it is banned.¹⁴

The Implications of the Congress (I)- NC(F) Alliance for the State Polity

It was the third time that the Congress(I) had entered into an accord with the National conference. In 1975 it had an accord with late Sheikh Mohd Abdullah, in 1984, it supported G.M. Shah who broke away from the National Conference to become the Chief Minister and finally again with the NC (F).

In the past, allegations had been made that it was the Congress (I) and NC(K) leaders who had patronized Maulvi Nissar, who is also known as the Bhindranwale of Kashmir.

Thus, the alliance struck by Congress(I) NC(F) did not finally lead to any political gains for both the parties due to widespread mistrust of the people who preferred to view the entire scenario in the light of their past experiences. The breaking up of the alliance with Maulvi Farooq also eroded the strength of the NC(F). The former CM, G.M. Shah also exploited the situation by propagating that

¹⁴ *News Time*, 8 March, 1989.

“while he had kept the Congress (I) at bay, Farooq had fallen at its feet to grab power”.¹⁵

Imposition of Governor’s Rule 19 January 1990.

The situation was drifting towards a virtual collapse of the law and order situation in the state, compounded by internal squabbling within and among the two parties in power. Things came to a head in 1990 when Mr. Jagmohan was appointed as the Governor of J&K, which was opposed to by the State Government in power.

The culmination of all the processes and counter - processes was that Dr. Farooq Abdullah resigned from Chief Ministership and Governor Jagmohan announced the dissolution of the State Assembly and proclaimed Governor’s Rule in the State under Sec. 92 of the State Constitution, triggering a Constitutional crisis in the state.

Political Processes in the Period October 1996 to 1997

In October 1996 the National Conference in J&K swept the Assembly Polls and the autonomy issue was the main plank on which the NC had contested the polls and won with a wide margin. It was generally predicted that the NC would join forces with the UF Government at the Centre , which would also have a bearing on the anticipated ‘negotiation’ between the Centre and the state on the question of autonomy for J&K.

¹⁵ S. P. Sharma, “Dialogue and Dithering in Kashmir” in *The Hindustan Times*, November 2, 1987.

Farooq Abdullah had promised internal autonomy for the three regions in the state within a year of being elected, thereby meeting the aspirations of the people of J&K. Apart from promising greater autonomy and a better and competitive administration, the Governments at both the Centre and state levels realized that they needed at all costs, to avoid the previous pitfalls which included undue interference by the Centre in the internal affairs of the state.

The role of the Governors in the state needs to be redefined in order to make it more positive in approach. The general impression regarding the various Governors in the State over the years has been that barring two notable exceptions, Governors B.K. Nehru, L. K. Jha & perhaps a third Girish Saxena, Raj Bhavan occupants in recent years have played a very negative role in Kashmir. As far as Governor Jagmohan is concerned, he is perceived to have played a negative role in his first term by toppling Farooq Abdullah's Government and installing the G.M. Shah Government. Similarly, the attitude of Gen. K.V. Krishna Rao after the installation of the Farooq Abdullah's Government in 1996 came in for criticism for creating a schism between the Raj Bhavan and the Secretariat in Srinagar, by accusing the newly installed Government of indulging in corruption and nepotism in the past.¹⁶

Thus, to create and maintain stability in the region as well as reduce and finally eliminate the degree of alienation felt by the Kashmiris, the Governors have to act with utmost restraint, so as not to fuel the old suspicions.

¹⁶ *News Time*, 12 October, 1996.

Relations of the NC with The Coalition Government At the Centre

As in the earlier period of 1984 to 1990, when Chief Minister F. Abdullah sought a wider role for himself at the national level, in 1996 too he virtually joined the UF at the Centre and has been since then clearly endeavoring to attain a national stature, which would help him gain recognition as a political player at the national level rather than being confined within the state of J&K . The presence of a coalition government at the centre comprising various regional parties and outfits facilitated the accommodation of leaders like Farooq Abdullah in the national mainstream politics, which in the long run is beneficial for the emotional and political integration of Kashmir with the rest of India.

Farooq Abdullah, however has to do a bit of tight rope walking, if he desires to maintain a proper balance between the importance given to the state as well as the Centre, because if he is found to be leaning too much towards the Centre, he risks losing the trust of the Kashmiris who view the Centre and its dealings with the leaders of the state with a great deal of suspicion. On the other hand if he is found to be excessively concerned about the interests of the state vis-à-vis the Centre and the rest of the country, he is in danger of being labelled as an anti-national.

During this period, the UF was fully involved in dealing with the question of more autonomy for the state. However, internal contradictions within the various constituents within the front as well as UF-Congress relationship hampered the smooth functioning of the government, which affected its Kashmir policy too.

The UF was in power with the support of the Congress, but being in power was not the same thing as running a stable government. The relationship between the two parties was uneasy, which made it difficult for the UF to take any concrete action. Moreover both the parties were anxious to stop the growing popularity of the BJP, which has been taking a diametrically opposite view with regard to the solution to the Kashmir problem.¹⁷

The relationship between the National Conference and the UF also started deteriorating, the main bone of contention being control of military and paramilitary forces. He accused the forces of targetting civilian population in retaliation to a militant attack. He also laid the blame for the turmoil on New Delhi, accusing them of having never trusted Kashmiris, thus alienating them from the mainstream¹⁸

A major flashpoint in the centre -state relation was caused by Farooq Abdullah's remark that the LOC should be converted into a permanent border between India and Pakistan. The hardliners at the centre and other parties like the BJP took a strong exception to this statement arguing that such a comment would only strengthen Pakistan's claim and correspondingly weaken India's stand on the issue. The various constituents of the UF too seemed to have been taken by surprise at this comment. All this led to the resurfacing of doubts and suspicions

¹⁷ *The Times of India*, 12 November, 1996.

¹⁸ *Current*, 2 November, 1996.

which endangered the fragile and unconsolidated relationship between the UF and the NC.

Other developments such as the gunning down of scores of Hindu families in separate incidents in the valley also eroded the credibility of the newly formed governments at both the centre and the state. The problems were further compounded by Prime Minister Gujral backtracking on the offer of unconditional talks with the militants during his visit to the valley in august 1997. By avoiding any offer of talks with the All Party Hurriyat Conference and doubting its credibility the Government at the Centre had to some extent, bruised the trust the Kashmiris seemed to have started reposing on the centre.¹⁹

Thus, the periods of popular rule in the valley, which were separated by a long phase of Centre's rule from 1990 to 1996 had many features in common, chief among them being the ascendance of Farooq Abdullah as a national level leader, coupled with certain policies which smacked of indecisiveness, delay, incompetence and corruption. On the other hand, however, there has been in both the periods a steady integration of the Kashmiris with the mainstream politics, which in the first phase was characterized more by a sense of mistrust, suspicion and mutual antagonism on both sides leading to widespread militancy than in the latter period, where there was a coalition government in the Centre, which was more open and responsive to regional aspirations and needs than the former governments in the Centre.

¹⁹ Syed Shujaad Bukhari, 'J&K- Groping in the Dark' in *Hindu*, 3 August, 1997.

Chapter - 4

POLITICAL DEVELOPMENTS IN THE STATE DURING CENTRAL RULE (1984-96)

According to the Constitution, two types of Proclamation can be made in Jammu & Kashmir:

- a. The Governor's Rule under S. 92 of the Constitution of J&K and
- b. The President's Rule under Article 356 as in the case of other states.

The first occasion when President's Rule was imposed in Jammu & Kashmir was on 7th Sept 86. It followed Governor's Rule which expired on 6th Sept 86.

Imposition of President's Rule. (7th Sept 1986 to 6th Dec 86).

On the 3rd of September 1986, Governor Jagmohan in a letter to the Home Minister gave his opinion regarding the general condition of the law and order situation in the state, on the basis of which he recommended that "as a situation has so arisen that the Government of the state cannot be carried on in accordance with the provisions of the Constitution of state and that of India, the administration of the state needs to be taken over by the President under Art. 356 of the Constitution of India. Subsequently, on the 7th of September, 1986, the President of India issued a proclamation directing that all the functions of the Government of the state

of Jammu and Kashmir be exercised by the Governor under Art 356 of the Indian Constitution.

The Constitutional Implication

The Constitutional implication of the proclamation, consequent on the assumption by the President of all the functions of the Government of J&K and of the powers vested in or exercisable by the Governor of that state under the Constitution of India were as follows:

- a. Ministeries / Departments would deal with matters which fell within the executive and legislative powers of the state and which may be referred to the Central Government to the extent that were relatable or relevant to their sphere of business such as Bills, Parliament Questions and other references.
- b. The powers of the legislature of the state would be exercisable by or under the authority of Parliament.
- c. The operation of the following provisions of the Constitution and of the state Constitution were suspended:-
 - i. So much of the first proviso to Article 3 of the Constitution as relates to the reference by the President to the legislature of the state and the second proviso to that Article.

So much of clause (2) of Article 151 of the Constitution as relates to the laying before the legislature of the state of the report submitted to the Governor by the Comptroller and Auditor - General of India.

Sections 35 to 41, so much of Section 43 as relates to the allocation among the Ministers of the business of the Government of the state ---- and so much of Section 137 as relates to the laying of the report with a memorandum before the legislature of the state.

ii. Any reference in the Constitution and the state Constitution to the Governor shall, in relation to the said state, be construed as a reference to the President and any reference in the Constitution and the state Constitution to the legislature of the state or the houses thereof shall in so far as it relates to the functions and powers thereof be construed as a reference to Parliament

iii. Any reference in the Constitution or the state Constitution to Acts or laws made by the legislature of the state shall be construed as including a reference to Acts or laws made in exercise of the powers of the legislature of the state, by the Parliament by virtue of this Proclamation or by the President --- shall have effect in relation to any such Act or law as if it were an Act of the Legislature of the State.¹

¹ Office Memorandum Government of India, Ministry of Home Affairs, 12, Sept 1986, pp. 2-4.

The Political Fallout

As a result of the Proclamation and its Constitutional implications, the Governor was vested with widespread powers by the President of India. This led to a series of political processes and counter - processes culminating in the much famous and controversial, Rajiv-Farooq Accord of Nov. '86, Governor Jagmohan's tenure as the Governor under President's Rule in J&K was beset with controversies and failed to strike a delicate balance which was needed in moments of crisis where religious sentiments were involved. Every action of the Governor tended to be looked as biased towards one community and the fundamentalists were there to exploit it. Vested interests in the state had been playing a nefarious game for a long time and these forces have cashed in on the consistent and ambiguous policy of the Centre-vis-a-vis Kashmir and under the garb of protecting the interests of the majority community, which was perceived to be under threat.

Some of the political leader encouraged the communalists by demanding seats in the professional institutions like the Regional Engineering College on community basis. The National Conference Newspaper Nawa-Subah ran editorials criticizing the Governor and the alleged discrimination to the majority community.²

The Kashmir Accord Nov 1986

Ultimately, Prime Minister Rajiv Gandhi took the initiative to stem the rot and reverse the drifting and debelitating situation by signing an agreement with

² *The Hindustan Times*, 17 July 1987.

Farooq Abdullah However even as the two leaders tried to forge together a caretaker coalition government and appealed to their partymen for sabotaging the new Kashmir accord. What saved the accord was the quick dissolution of the state Assembly on the evening of Nov. 7 and the announcement of fresh elections within six months. According to Tohir Muzadar, Political secretary to Farooq, the dissolution had been Dr. Abdullah's greatest achievement, otherwise the groupism that could have emerged would not have allowed him to function.³

This kind of opportunistic politics and last minute intrigues have become a common feature of Kashmir politics since Independence, which have been further strengthened due to the ambiguous and in certain cases partisan politics and policies of the government at the Centre. Politics of such nature holds the state in a tight grip and threatens to make a mockery of attempts to restore long-term democratic stability to the state.

Each new government or coalition in the state has carried within itself the germs of its own destruction. Sheikh Abdullah blowed hot and cold with the Centre; Farooq, who also played to the fundamentalist gallery at home while displaying a pro-national attitude to Delhi, was pulled down in 1984 by the weight of defectors from his own party because he failed to take the power of the Centre seriously. So what guarantee is there, observers ask, that the new Kashmir accord is anything more than another dose of old wine in a new bottle?"⁴

³ *India Today*, November 30 1986, pp. 25.

⁴ *Ibid.* pp. 25

Even while negotiating the terms and conditions of the accord, partisan politics was indulged in to the hilt. During the early stages of the talks, Farooq Abdullah was insistent upon the fact that there should be immediate dissolution of the Assembly and fresh elections, but when Rajiv Gandhi came to know of the weak and disorganized nature of the Congress in the state, which had taken full advantage of political and monetary patronage during GM Shah's time, he refused on the ground that such a step would wipe out the Congress organization from the state and thus he obviously would not preside over such an agreement. They finally found a via-media when Rajiv Gandhi publically pledged to uphold the application of Article 370.

This agreement earned Farooq Abdullah and his National Conference party the ire of the various sections and forces, including his allies. The ire was directed against the Centre, the general impression being that Kashmir's identity and the honour of the people of the valley had been sold to Delhi. The various allies of the party including Mirwaiz Farooq of the Awami Action Committee, Mr. Bhim Singh of the Panthers party and Mr. A.G. Lone of the Peoples Conference denounced the agreement by saying that it was a big let down from the position adopted by them to restore democracy in the state.

The Terms And Conditions Of The Accord

The Accord on Kashmir envisaged something like a 60:40 ratio in the strength of the National Conference and Congress (I) in the interim Government to

be formed. Further, the NC and Congress (I) would contest the mid term elections jointly by sharing the seats among themselves.

The tentative arrangement in this connection seemed to be that the NC (F) would leave out eight seats for the Congress (I) in the valley and contest in the remaining constituencies, the Congress (I) would contest 28 seats leaving out eight seats for the National Conference (F). The two seats in Ladakh region would go the two parties with Kargil going to the NC (F).⁵ After the formation of the new caretaker Government in the state, Presidential rule came to an end in Dec. 86.

The Assembly elections were held on 23 March, 1987. The results were in favour of the ruling alliance but the winning margin was miserably low in certain places. Dr. Abdullah's legacy of 1977 and 1983 elections which his party was in the forefront in exploiting religion to help in vote catching took its toll on these elections. He was trapped in a situation of his own making which changed the entire pattern of his politics. The Congress had also contributed in to its own weakening and that of Farooq Abdullah's too. The dismissal of his government and the installation of the G.M. Shah government in 1984 was one such factor which had weakened its credibility. Such an action first in 1953 by dismissing the Sheikh Abdullah government and then again in 1984, paved the way for the emergence of the Front. Although in 1983, under the stewardship of Farooq Abdullah, these forces had been contained, but subsequently when the credibility of the secular

⁵ *Stateman*, 5 November 1986.

forces in the state nose dived the forces of fundamentalism again came to the fore and this time with an intensity and vengeance which was absent previously.

Political Process In The Presidential Rule Period From 1990 To 1996

Imposition of President's Rule

On 18th January, 1990, General K.V. Krishna Rao, the then Governor of Jammu and Kashmir, had reported to the President of India that a situation had arisen in which government of the state could not be carried on in accordance with the provisions of the Constitution of Jammu and Kashmir. He had, therefore, sought the concurrence of the President to the issuing of a Proclamation under section 92 (1) of the Jammu and Kashmir Constitution which would enable the Governor of Jammu and Kashmir to assume to himself all or any of the functions of the Government of the state. He had also recommended that the legislative Assembly may be kept under suspended animation.

After the President's concurrence was received a proclamation under section 92 of the state constitution was issued by Governor Jagmohan on 19th January, 1990, which had a life of six months under sub-section 92 of the Constitution of J&K . After the expiry of the Proclamation on 18th July, 1990 President's Rule was imposed on the state on the recommendation of the then Governor, Girish Chandra Saxena; on the grounds that the terrorist elements had stepped up their attacks on the security forces and had been carrying out selective killing of people on a large scale.

Reports being received also indicated that there had been a steady and sharp rise in the number of terrorists infiltrating into the Kashmir valley. Further, a sizeable section of state employees, including those belonging to the state police were sympathising and supporting the terrorist elements.

The Constitutional implications of the imposition were the same as those of September 1986, when such a proclamation was last issued.

Political Reactions

There arose a controversy regarding the dissolution of the state Assembly by Governor Jagmohan in February 1990, after it was kept in suspended animation for some time. Even the Chandra Shekhar Government at the Centre was convinced that the former Governor had not acted as per the directive of the Constitution because the President's concurrence was essential for the dissolution of the state Assembly. The then Prime Minister V.P. Singh and Home Minister Mufti Mohd Sayeed had even declared in the Parliament that the Governor had not consulted them about the dissolution.

The issue regarding restoration of an elected Government at the state level was further complicated by deep-seated divisions between the Congress (I) and the National Conference headed by Farooq Abdullah on two crucial issues. The first issue was rooted in the opposition expressed by the majority of the leaders of the National Conference to the Congress (I)'s proposal for the "immediate revival of

the State Legislative Assembly, which had been dissolved by the former Governor Jagmohan”.

The second issue was also a violently divisive one in that it related to the administrative set up in J&K. Whereas Farooq Abdullah favoured the replacement of Girsh Saxena as Governor by K.V. Krishna Rao a retired army general the virtually defunct Congress (I) opposed any such move as it felt that Rao was pro-National Conference.

The Political Administrative Policies of the Centre Vis-A -Vis The State

At the national level, there was a change of government with the Congress (I) led by Narasimha Rao coming into power.

The Union government announced a much published action plan on Kashmir which was still born. It was yet another manifestation of the malaise from which the Kashmir policy had suffered over the years, namely premature publicity to half-baked ideas of politicians indulging in one-upmanship to corner the glory by offering easy solutions to complex problems.⁶

To compound the already complex and intractable situation, the pursuing of a parallel policy on Kashmir by the Minister of State for Communicaitons. Mr. Rajesh Pilot, which was often at cross purpose with the policies of the Home Minister, further complicated the entire problem.

⁶ Shyam Khosla, “Non-policy in Kashmir” in *Tribune*, 7th October, 1991.

Pilot was of the firm view that Dr. Farooq Abdullah was the best bet and that he must be brought back to power in J&K to win back the confidence of the Kashmiri Muslims. Further, he had no faith in the Governor, Girish Chandra Saxena and wanted the latter to be recalled. He also wanted the state administration to be revamped and had thus identified certain officials whom he wanted to be sent to Kashmir to start the process of reconciliation. The Home Ministry, on the other hand, was of the view that all mainstream politicians had become irrelevant in the valley. The Ministry was of the opinion that Farooq Abdullah had lost his clout and was unpopular both among the Kashmiri Muslims and the people of other regions of the state.

Sharp differences in the Home Ministry between S.B. Chavan and Rajesh Pilot on how to deal with the issue of restoring normalcy in the Kashmir Valley had thrown up the issue whether the Centre should adopt a “hard-line” or a “softline” policy for achieving the purpose and this difference continued throughout almost the entire reign of the Congress at the Centre, thereby seriously crippling the possibilities of taking concrete actions and steps.

The Union Home Minister had expressed the view that there could be no talks with militants unless normalcy was restored. On the other hand, Rajesh Pilot, the Minister of state for internal security had expressed the view that there could be no normalcy unless talks were held with all those, including militants, interested in bringing back normalcy.

The contradictory stands taken by Chavan and Pilot were being attributed to the fact that while the former depended on “desk information” and took “desk decisions” the latter went in for “field information” and thereby claimed to have taken ‘field decisions’.⁷

Thus the ambiguity on how to cope with the Kashmir problem continued and the constant public bickerings between the two only increased the mistrust of the Kashmiris and made things worse.

The activist role of Pilot on the issue of Kashmir finally led to the appointment of K.V. Krishna Rao as Governor in May 1993, change of governors advisors and other related policies, which had the distinct imprint of the Pilot-Farooq duo policy for the state.⁸

Thus, the Government of India’s Kashmir policy tended to “fall between two stools,” the conservative view which was gradualist in approach and administrative in content, represented by the Union Home Minister, Mr. S.B. Chavan, and the radical view, which was impatient with slow processes and was more political in nature represented by Mr. Rajesh Pilot. The clash between these two schools of thought and the consequent confusion over policy and mistakes and inaction had generally been considered to be partly responsible for the continuous slide for the worse, in the situation in the Kashmir Valley.⁹

⁷ *The Times of India*, 2 May, 1993.

⁸ M.M. Kaul, “J&K suffers from a non-policy” in *Patriot*, 9 May, 1993.

⁹ *Deccan Herald*, 16th April, 1994.

The Political Outfits in the State and the Role of The Centre

It came to be slowly recognized that the most unpalatable feature of unfreezing of political process in the valley was that no Kashmiri political outfit had any chance of acquiring a popular base if it was perceived to be playing the Indian card.¹⁰ Even the National Conference could retain its hold on the people only so long as it did not identify itself with the ruling party at the Centre.

In November, 1991, The All Party Conference on Kashmir was held and was attended by prominent leaders of the state. It was a significant move towards heralding in a new era of initiating a political process in so far as it marked a pronounced departure from the earlier police oriented approach.

At this stage, there developed a consciousness, to weaken the militants hold on the people by evolving an appropriate package to establish the credibility of the government's intentions to have a break from the past.

However, there was not any worthwhile political activity on in the valley. Farooq Abdullah and his National Conference did not have any visible standing at this stage and neither did the Congress, for that matter.

The Congress ceased to have any roots in the valley. Earlier it used to have a small band of dedicated cadres in the party leadership, but they gradually vanished into thin air. The state Congress was in no condition to play a

¹⁰ S. S. Gill, "Kashmir - Beyond Holding of Operations" in *Indian Express*, 7th September, 1991.

constructive role in the valley, until it had set its house in order. Rival public meetings by the Congress leaders in the state exposed the divided state of the Congress. In the absence of strong direction from the top, the middle rung politicians had rushed in to fill the vacuum. Thus Pilot was said to patronize one faction and Ghulam Nabi Azad, the other.¹¹

The National Conference was in even an worse state. A second rung of leaders with grass - roots support, which might have revived the regional party had never been nurtured and thus had now no role to play. In the absence of any strong and widespread influence of any political party, there was a splattering of minor and scattered entities in the state.. There was the BJP in Jammu, the Ladakh Buddhist Association and Muslim organisations opposed to it in Ladakh, and in the valley only the political formations, which some militant groups were launching were active to some extent. With their narrow base and limited focus, none of these outfits were in a condition to facilitate any major launching of political rejuvenation in the state.

The demand for Internal Regional Reorganisation of The State

While the Centre was still groping in the dark over how to commence the political process, regional parties and their leaders had taken the initiative to initiate discussions on how to return normalcy in the valley and also to protect the integrity

¹¹ *Indian Express*, 9 June 1992.

of the state by respecting the plural identities spread over the various regions in the state.

The parties which included the Congress, the National Conference, the CPM and the CPI met for two days in March 1993 and adopted the “Jammu declaration”.

The most interesting resolution was for the reorganization of the state while preserving its identity. The meeting felt that this would ensure equitable benefits to all the three regions. The proposed envisaged the creation of three statutory and autonomous regional councils, vested with all development work including industry, agriculture and recruitment. Every block would send one representative to the council, while all legislators would be ex-officio members.¹²

In keeping with the need to give more internal autonomy to the various regions, the Ladakh administration was reorganized in accordance with the tripartite agreement reached on October 29, 1989. In Nov. 1993, plans were laid down to enable the Buddhist majority areas of Ladakh to have a popularly elected Hill council within three months. The Shia-dominated Kargil area was also considered for a similar dispensation, with a view to end “Kashmiri domination” over Leh.

Similarly, a need was felt to look into Jammu’s complaints in this regard. The Gajendragadkar Committee (1967), the Sikri Commission (1979) and the

¹² *The Times of India*, 4th March 1993.

Wazir Commission (1980) had all acknowledged Jammu's unequal share in the state's political, administrative and economic structure.

An objective examination of the Jammu issue had become imperative in view of the October 14, 1993 BJP ultimatum to the Centre to set up a regional council at Jammu forwith or face an uncontrollable agitation”.

Importance of Local Level Governance in Resolving the Issue

In 1989, Mohammad Sharif, the Minister for local self Government under the Farooq Abdullah Ministry had initiated the drafting of Panchayati Raj Bill for J&K.

A Bill was duly drafted and introduced in the J&K Assembly. The modified bill was thereafter duly enacted and today constitutes part of the Constitution of the J&K. Unfortunately, soon- after the enactment of the J&K Panchayati Raj Act and before the Act could be implemented, President's rule was imposed on J&K. In the words of Arun Ghosh, that put paid to any hope of the Act being implemented, and that is the situation which pertains today”.¹³

It was open to the state government in J&K to set in motion the process of elections to the Panchayati bodies and thereafter, to leave local administration to be handled by the Panchayats, which according to a few leaders, could be important in solving the problem. It was felt if the people of J&K can be empowered, merely by

¹³ *The Hindustan Times* , 30 June, 1993.

allowing the J&K Panchayati Act to be implemented for which local elections had to be organised this could completely turn around popular opinion in the state.

Movement Towards Regeneration of Available Political Process

Notwithstanding incidents like the Hazratbal, Charar-e-Sharif crises in 1993-94, there was a slight improvement in the ground situation, with petitioners beginning to frequent government offices and the gradual commencement of dialogue between the people and the administration.

In November, 1994, Prime Minister Rao decided to take over Kashmir under his direct charge. Already the public squabbles between S. B. Chavan and Rajesh Pilot had seriously begun to damage the reputation of the government and thus this decision was seen as a welcome change.

The question of greater autonomy cum economic package now began to become the central focus of the Kashmir question. The question now was should the package come before the elections, or after?

Farooq Abdullah was of the view that in the given situation, the grant of "total internal autonomy to J&K is the cheapest settlement that the central government can bargain for".

In November, 96, Prime Minister Rao announced from Burkina Faso a package which more or less conformed to the Indira-Sheikh accord of 1975 with some room for further adjustment.

While adhering to the 1975 formula on the retention of Art 370 of the Constitution, Mr. Rao's proposals spoke of enlarging the autonomy of the state by providing for adaptation and modifications in the application of the Indian Constitution's provisions extended to J&K over the past two decades.¹⁴

The Formation of the United Front Government at the Centre

In 1996, Congress was voted out of power, and the United Front Government led by the Deve Gowda was installed at New Delhi.

The new Government considered the political package involving autonomy to the state. As a coalition government, the United Front had to clear crucially important and sensitive issues with the parties which formed the coalition as well as the parties supporting it from outside before it could take any concrete steps.

Meanwhile, internal strifes within the UF began to emerge over the coalition government's Kashmir policy regarding how to go about solving the problem and also hold free and fair elections. At this stage any internal bickering and indulgence in partisan politics could have been suicidal for the UF government and its endeavour to solve the Kashmir tangle.

The Parliamentary elections in Kashmir in June'96 had upset the calculations of nearly all the significant players in the valley, forcing them to rethink their strategies to achieve their respective goals.

¹⁴ *The Hindustan Times*, 6 Nov., 1995.

The Hurriyat had so far adopted a rigid, negative and conditional stand that it would neither participate in any elections nor talk to the Central government on Kashmir till the latter recognized Kashmir to be a disputed issue. As a result, the Hurriyat had been getting marginalized and thus was forced to soften its stand.¹⁵

The National Conference also had decided to adopt a negative stance, but eventually realized that its non-participation would only create a political vacuum which would then be filled by either the Congress or the radical and the fundamentalist forces in the state. He thus, decided to participate in the assembly elections in the valley, abandoning his earlier stance of participating only if the pre 1953 status of Kashmir was restored.

An all party meeting convened by Prime Minister H.D. Deve Gowda, concluded that the much delayed Assembly elections in J&K should take place as soon as possible as a result of which they were held in October.

After sweeping the Assembly polls in J&K, Farooq Abdullah's National Conference assumed power in the state and also was all set to join forces with the UF government at the Centre.

The analysis of the various political events and developments in the state of Jammu & Kashmir is indicative of the fact that the political imbroglio which the state witnessed on such a scale was mainly due to misgovernance, both at the central and the state levels. Apart from rampant corruption and misuse of power,

¹⁵ *Indian Express*, 29 June, 1996.

the Centre-state relations had also nosedived, partly due to gross negligence and misreading of the situation as also due to partisan considerations, which were often placed above national interests.

Thus in the case of Kashmir, both the Congress and the National Conference are to be blamed as time and again they failed to view the situation in its proper perspective and instead chose to adopt a blinkered approach favouring their own partymen. They always chose to safeguard their partisan interests at the cost of the welfare of the people.

The role played by the Governors in the state has also come under considerable criticism from various quarters. Instead of facilitating a smooth transition from Central rule to popular government, many Governors chose to adopt an authoritative and intransigent policy which further alienated the people. The policies by themselves were not ill-conceived or detrimental to the welfare of the people but their timing and mode of implementation was certainly wrong. For example Governor Jagmohan's endeavours to set right the imbalances in the admission policies of the colleges and other educational institutions, though commendable in its own right, was perceived to be communal in nature.

Thus the weak - kneed and ambiguous approach of the Centre and the communal part played by the state level parties along with an assortment of various other factors led to the intractable situation in Kashmir, which can be salvaged only after a proper assessment of previous follies by all concerned parties.

Chapter - 5

EXPLORING POSSIBLE SOLUTIONS

The exploration of the various possible solutions to the problem of Kashmir would entail an analysis of the varied demands made from time to time by the proponents of more autonomy for the state of J & K as well as the parameters on which such an autonomy would be based, coupled with an examination of their respective advantages and drawbacks.

The problem of Jammu and Kashmir is a very complicated one and it is an issue which involves not only historical, constitutional, political, social and economic considerations of far-reaching consequences, but also psychological and emotional ones.¹ A final and long lasting solution to the problem would be one which would take into consideration not only the legal and constitution aspects, but also would efficaciously deal, with the psychological and emotional issues concerning the residents of Jammu and Kashmir. Thus, Art, 370 *per se* cannot be made the ground on which the various parameters of a solution are to be based and similarly other considerations such as extension of central laws to the state, jurisdiction of Supreme court over the State and other such institutions and other division of powers have to be viewed in the light of administrative efficiency which would correspond to the needs and aspirations of the residents of the state .

¹ Jagmohan, *My Frozen Turbulence in Kashmir*, (New Delhi : Allied Publishers, 1992), pp. 230.

Thus, an examination of the various propositions and suggestions leads one to the view that along with the preservation of 'Kashmiriyat', so as to do away with the alienation of the people of the valley, other considerations have to be borne in mind which include, first and foremost the unity and integrity of the country, the sub-regional aspirations of the people belonging to the various regions within the state and finally all the above should be in line with administrative efficiency and governing capacity of the state, leading to an all round economic, social and political development, which would be in consonance with the principle of a democratic, secular and harmonious set-up.

Recent developments in the state suggest that there is now a genuine endeavour to address the question of autonomy which has come to the fore after the recent elections in which the National Conference had used the issue as its main electoral plank. After assuming power, in 1996, Chief Minister Farooq Abhullah had set up two committees, one headed by Dr. Karan Singh to look into the overall amount of autonomy to be enjoyed by the state vis-à-vis the rest of the country and the other led by Mr. Balraj Puri to consider sub - regional autonomy within the state, the reports of which are yet to be submitted.

The, various propositions and suggestions can be broadly classified into the following four categories : -

- a. Clamour for the Pre-1953 Position

- b. Abrogation of Article 370 and greater integration with the rest of the country, in other words, denouncing the proposition of special - status given to the state of J & K.
- c. Special status to be given in consonance with the 1975 Agreement.
- d. Greater devolution of financial and administrative powers to the state in keeping with the Sarkaria - Committee Report recommendations.

a) Demand for reverting to the pre - 1953 position : -

In the recent times, the National Conference has taken up the issue with the Centre and before the elections it felt that it must at least pitch for “pristine” autonomy if it could carry credibility with the electorate, though the meaning of this pristine autonomy has not yet been grasped.²

It was with the view to elaborate and expand the implications of such a suggestion that, Farooq Abdullah had setup a committee to go into the question of greater autonomy, within the Constitution for the state.

There were two inter - connected aspects for discussion by the nine member committee that was set up under the chairmanship of Karan Singh. One is the question of J & K’s special relationship with the centre. The other is the quantum of effective autonomy that the state may enjoy. Although the reports of the committee is still to be completed and made public, the parameters on which the

² *The Hindu*, 4th February, 1996

question of autonomy is to be based would imply a constitutional relationship between the state and the centre, whereby, large scale changes would sought to be made, beginning with the abrogation of all the central laws enacted and extended to the state of J & K since 1952.

The proposition is based on the assumption that the chances of reducing the influence of the sectarian forces in the state lies in preserving Kashmiryat, which can be augmented by reverting back to the pre 1953 status, which would imply that the constitutional relationship between the Centre and the state of J & K would be based on the Delhi Agreement of 1952, the main features of which were the following :

- i. Sovereignty in all matters other than those specified in the Instrument Accession, would continue to reside in the state.
- ii. In accordance with Article 5 of the Indian constitution, persons who have their domicile in J & K shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'State subjects'.
- iii. The Union Government agreed that the State should have its own flag in addition to the Union flag, it was also recognized that the Union flag should have the same status and position in J & K as in the rest of India.
- iv. There was complete agreement with regard to the position of the Sadar-i-Riyasat, though the Sadar-i-Riyasat was to be elected by the state legislature.

With regard to the powers and functions of the Sadar-i-Riyasat, the following agreement was mutually agreed upon -

- a) The Head of the state shall be a person recognized by the President of the Union on the recommendations of the legislatures of the state.
- b) He shall hold office during the pleasure of the President.
- c) He may, by writing under his hand addressed to the President, resign his office.
- d) 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;
- e) Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.
- v) With regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being owing to the existence of the Board of Judicial Advisers in the state, which was the highest judicial authority in the state, the Supreme Court should have only appellate jurisdiction.
- vi) In the event of war or external aggression, the Govt. of India would have full authority to take steps and proclaim emergency, but the state delegation was averse to the President exercising the power to proclaim a general emergency on account of internal disturbances.

The process of giving a concrete shape to the Delhi Agreement was set in motion by the promulgation of the Constitution (Application to J & K) order, 1954,

by the President of India. This order was amended from time to time, extending a few provisions of the Indian constitution to the state. Financial integration was effected through the 1954 Presidential Order and the jurisdiction of customs, central excise, post & telegraph and civil - aviation were extended.

The Jurisdiction of Comptroller and Auditor - General was extended in 1958. In 1959, the legislative entry relating to the census was applied. In 1960, the Supreme Court was given powers to appeal from the decision of the J & K High Court. The supervisory role of the Election Commission of India was also allowed, though the elections continued to be held under the laws of the state.

Articles 356 and 357 of the India constitution were extended in 1964, and some central labour laws in 1965.

In view of these extensions and applications, the nomenclature, status, functions and mode of appointment of Sadar-e-Riyasat and the Prime Minister of J&K became anachronistic. It was therefore considered necessary and proper to change the nomenclature and mode of appointment of Sadar - e-Riyasat and also the nomenclature of the Prime Minister. Necessary changes in this regard were effected in 1966 by the state legislature itself by way of amendment of the J & K constitution.³

For the proponents of the pre - 1953 status, such a step would alone assuage the "hurt - feelings" of the Kashmiris and solve the 50-year old Kashmir problem.

³ *Organiser*, 29th Sept, 1996

Their solution is that the central laws and institutions extended to the state after August 9, 1953 should be withdrawn, restore without any delay the “pre-1953 constitutional position” and meet all its financial needs.

The consequences of the application to the 1953 Agreement would be as follows :

- a) Revival of Permit System.
- b) Inability of the Indian Parliament to legislate on matters other than Defence, Foreign Affairs & Communications,
- c) Withdrawal of all the central laws extended to the state since August 9, 1953 including the jurisdiction of the Supreme Court, Election Commissioner & Controller & Auditor General of India;
- d) Withdrawl of Article 372 of the Indian constitution under which the All - India Services were extended to the state in 1958 as also reservation for the Scheduled Castes & Scheduled Tribes,
- e) Change in the nomenclature from the Governor and Chief Minister to the Sadar-e-Riyasat and Wazari-i-Aazam;
- f) Restoration of section 75 of the state constitution which would empower the “state council of Ministers” to act as the final interpreter of the state constitution.⁴

⁴ *The Hindustan Times*, 15th June 1992

Disadvantages Of Pre - 1953 Position: -

The opponents of the pre- 1953 status, such as Hari Om claim that any solution based on the 1952 Delhi Agreement would be disastrous in nature as it would strengthen the forces of sectarianism and communalism. They believe that such a move would at once subvert all democratic institutions, deprive the common people of civil liberties and political rights and fetter the press & judiciary.⁵

The opponents claim that those who demand pre - 1953 status or advocate maximum autonomy for J & K take care not to address themselves to concrete questions. For instance, in the absence of full financial integration with the Union, J & K would have no resource at all for development.

Likewise, the extension of Article 356 of the Indian Constitution enables the President of India to bring the state under his rule. If there is a breakdown of the constitutional machinery in the state, or if the state refuses to comply with any direction concerning Defence, foreign affairs or communications what will happen in the absence of President's powers under Art 356?⁶

The restoration of pre - 1953 status would mean not only the negation of over 40 years' efforts of the people of the state to bring in democratic and secular traditions by the adoption and extension of 337 central laws duly ratified by the state assemblies but it will also be a highly retrograde step towards annulling the

⁵ *Hindu*, 3 July 1997.

⁶ *Organiser*, 29 September, 1996

progressive march of the people and will amount to entrusting the fate of the people into the hands of fundamentalists, terrorists and rank communalists.

Such a step would lead to the setting aside of the jurisdiction of Supreme Court and will annual its power to review the verdict of the High Court & other correlated matters.

The operation of Articles 356 and 357 of the Indian Constitution would cease to have jurisdiction over the state and would lead to glaring constitutional and legislative anomalies and chaos. The state's separate Constitution provides for Governor's rule only for a maximum period of 6 months and there is no scope whatsoever for extension of Governor's rule in the state. This makes holding of elections within the stipulated period of Governor's rule if mandatory respective of the law and order or any other hostile environment as it exists at present.

With the restoration of pre - 1953 status, abrogating Articles 356 and 357, and jurisdiction of Supreme Court over state as well as other such central laws, the judiciary in the state would lose independence and would become a hand - maid of the executive i.e. the Chief Minister and his cabinet.

A few scholars like Hariom even go to the extent of claiming that the withdrawl of the Articles and central laws will result in dictatorship and even theocracy and the autocracy of the state would amend the state Constitution to suit its own needs. This would also lead to an abrupt disintegration or secession of the state in the near future, thus hampering the unity and integrity of the country.

The Issue Of Sub - Regional Autonomy:

It is generally believed that the restoration of pre - 1953 status could be a great challenge to the people of Jammu & Ladakh.

To the many problems associated with the state of J & K, a new one, namely the increasing assertion of sub - regional aspirations, has been added to the list. The seeds of the problem were sown sometime in the 1940s, when the Maharaja refused to take a decision regarding the accession of the state to India, which in the long run was responsible for the troubles that followed.

Recognizing the magnitude of the problem, Farooq Abdullah had set-up a committee to look into the kind of autonomy the state can have at the sub-regional levels, thus promising regional autonomy not only to Jammu, but also to Ladakh. The committee led by Balraj Puri is expected to work in tandem with the other committee so that it takes care of the or symmetries and its recommendations could provide the necessary premise for evading a consensus among the people of the state's three regions.⁷

Over the years, the subject of sub - regional autonomy in Jammu and Kashmir has been dealt with sheer callousness. Not much importance has been given to the diverse regional, religious and cultural aspirations, apart from the developmental needs of the three regions of the state with the objective of

⁷ *The Hindustan Times*, 28 November 1996.

cementing their bonds.⁸ An attitude of this kind which smacked of a step-motherly treatment led to various uprisings and protests in the regions of Jammu and Ladakh calling for adequate redressal of their grievances and to this effect certain committees such as the Gajendragdkar Commission (1967), the Kadri Commission (1972), the Sikri commission (1979), the Wazir Commission (1981) and the Thakur Commission (1985-86) were set up from time to time.

The most important among them, which received the maximum attention was the Gajendragadkar Commission which was appointed in November 1967.

Its terms of reference were:

- i) To make an assessment of development programmes apportioned to the various regions of the state and to recommend measures necessary to give assurance that the resources available are being shared equitably and also to ensure a feeling of equal participation in the integrated development of the state,
- ii) To examine the recruitment policies of the Government and to recommend measures for giving an equitable share in Government employment to the various regions and communities having special regard to the claim of scheduled castes and other economically and socially backward communities, classes and groups among the citizens of the state consistent with the maintenance of efficiency of administration,

⁸ *The Pioneer*, 4th December, 1996

- iii) To examine the policies of the state Government regarding admissions to institutions of higher education and the schemes of assistance by way of scholarships and loans, with a view to ensuring an equitable distribution of the available facilities to the various regions and communities and having special regard to the claims of scheduled castes and other backward communities, and
- iv).To consider generally the causes that lead to irritations and tensions and to recommend remedial measures.

The commission of inquiry had, after an exhaustive study, concluded that the Jammu and Ladakh regions received lesser attention than the Kashmir region. Under various development programmes, the commission invariably says that Jammu and Ladakh did not get shares according to their population and area.

In its report, submitted on November 29, 1968, the Gajendragadkar commission had recommended statutory regional development boards and religion and district based service cadres. It had also recommended the opening of technical colleges in the Jammu region and a degree college each at leh and kargil. Another logical recommendation of the commission was a uniform quantum of ration and review of foodgrain prices.

The commission had agreed that “the doubts on the manner in which the elections have been conducted is a cause of irritation and tension.”⁹

⁹ Ibid, pp. 503

It therefore recommended that as the Jammu and Kashmir State occupies a strategic area, it is necessary to nurture the faith of the common man in democracy and democratic institutions in the state.

Later in 1979, another commission headed by Mr. Sikri, inquired into regional grievances following a mass upsurge in Jammu for “a statutory, political and democratic setup at regional, district, block and panchayat levels”.¹⁰

The state People’s convention called by Sheikh Abdullah and inaugurated by Jayaprakash Narayan in Srinagar in 1968, had unanimously accepted a five-tier internal constitution of the state, including regional autonomy and devolution of power at district, block and panchayat levels. Similarly other such measures and recommendations were made from time to time by the various committees and the People’s convention, but the report of all these have been gathering dust as no action has been taken on them or to translate the concepts into reality because of political and electoral considerations.

b) Abrogation of Article 370 and Greater Integration with the Rest of the country :

The supporters of this particular view - point are of the opinion that J & K already enjoys greater autonomy than the other states. The question of giving more autonomy, therefore, does not arise.

¹⁰ *The Pioneer*, 4th December 1996

According to Jagmohan, former Governor of Jammu and Kashmir one of the strongest roots of Kashmiri separatism and alienation lies in Article 370 of the Constitution of India, which gives special status to the state of Jammu and Kashmir. Although he concedes that any decision on the scrapping or abrogation of Article 370 should follow a fierce nation - wide debate, one thing he is certain of is the constant misuse of power by vested interests. He claims that over the years, "Article 370 has become an instrument of exploitation in the hands of the ruling political elites and other vested interests in bureaucracy, business, the judiciary and bar. It has set in a vicious circle breeds separatist forces which in turn sustain and strengthen Article 370 ---- . The provisions of the wealth Tax, the Urban Land Ceiling Act, the Gift Tax, etc. and other beneficial laws of the Union have not been allowed to operate in the state under cover of Article 370."¹¹

The supporters of this view claim that the contents of Article 370 were transitional in nature and further, overlooking this fact would lead to a number of problems, which are constitutional in nature. These provisions create problems, particularly in regard to the right to hold property, right to citizenship, and right to settlement. The citizens of India do not automatically become the citizens of Jammu and Kashmir. They have no constitutional right of settlement in the state. The constitution of India recognizes only one citizenship. But the citizens of J & K enjoy double privileges, one as citizen of India and the other as citizen of the state. Those who are not citizens of the state of J & K are subject to a number of

¹¹ Jagmohan, Op. cit., pp. 252.

disabilities. They cannot hold any property in the state. They have no right to vote in the election to the state Assembly or local bodies or panchayats & Co-operative societies elections. Further, if a woman, belonging to J & K gets married to a person who is not a citizen of J & K, she loses her property.'

"These provisions of the constitution are anachronistic, legally and constitutionally antiquated, create emotional barriers between the state and the Union, and are otherwise incompatible with the fundamental principles of justice and fairplay. The unhealthy position is compounded by the fact that the state has its own flag and its own emblem."¹²

Article 370 has been misused to build a political oligarchy e.g., the central legislation to prevent defection in the legislatures was not extended to or adopted in J & K and the local legislation facilitates undemocratic norms by vesting unbridled powers in the Party Chief and not the speaker, who decides whether a member of the legislature has defected or not.

Apart from pointing out the inherent defects of Article 370 which has led to its widespread misuse, the supporters of this theory challenge the basic need for the existence and continuance of this Article. Their contention is that what is so special about Kashmir that this Article is not applicable to other states? According to Jagmohan, "If Article 370 is there to protect and preserve the cultural entity of

¹² Ibid, pp. 234.

Kashmir, then such a provision should have been made for all the states. The need for preserving the cultural entity is common to all the states”.

Recognizing the need for Article 370 is in other words tacitly accepting the two - nation theory. Article 370 in its present form does not facilitate autonomy in the true sense of the word, because implicit in its existence is the recognition and strengthening of separation of identities, which hampers the emotional and psychological integration of the residents of Kashmir with the rest of the country. Article 370 emanates from a clever strategy “to stay away from the mainstream, to set up a separate fiefdom, to fly a separate flag, to have a Prime Minister rather than a Chief Minister, and a Sadari - Riyasat instead of a Governor, and to secure greater power and patronage, not for the good of the masses, not for serving the cause of peace and progress or for attaining cultural unity amidst diversity, but for serving the interests of the ‘new elites’, the ‘new Sheikhs.’¹³

Setting aside all claims for a special - status for Kashmir, the protagonists of this viewpoint claim that the lack of autonomy did not stand in the way of extension of the same rights to the people of other parts of India in the state which the people of J & K enjoy by virtue of the special - status given to them. What, after all is the rationale or the *raison d’etre* of Article 370 in this context ?

Even within Jammu and Kashmir, opinion about special status is divided. A section of Kashmiri Muslims, is for making Kashmir a part of Pakistan. But there

¹³ Ibid, pp. 240

is quite a good section of Kashmiris who want to have nothing to do with this kind of special status or autonomy in the state. A large section of Kashmiri Pandits want a compact rehabilitation zone in the southern part of the valley including the Amarnath cave, Pahalgam, Mattan, Martand and Anantnag, with Union territory status.¹⁴

Similarly in Jammu, according to some observers, things appear to be moving towards a full-scale movement of "liberation from Kashmir", which gained momentum after the realization that the future status of the state of J&K could be status of the state of J & K could be based on the Delhi Agreement, which envisages greater autonomy for the state. The people of Jammu recognize that whatever advance they seek, must be within India and under the Indian Constitution.

The attitude of the Buddhists in Ladakh and Kashmi migrants is on similar lines, who want the Centre to honour and implement the 1989 tripartite agreement in its entirety, providing for the setting up an act of autonomous Hill Council for Leh, which was established in 1995.

In view of the developments in Jammu and Ladakh, it is apparent that the people of these regions are not in favour of giving more autonomy to the state or creating greater asymmetry vis-a-vis the rest of the country. Their contention is that

¹⁴ *Tribune*, 1 December, 1996.

in order to solve the Kashmir problem, we must delink Jammu and Ladakh from Kashmir and provide sufficient safeguards for Pundits through a special statute

Regarding the practical aspects of Article 370 and the autonomy syndrome, it is believed that autonomy in this sense is not really feasible in the context of the Kashmir situation. Both for plan and non-plan finances Jammu and Kashmir is heavily dependent upon the Union Government. Its five-year plans are wholly funded by the centre. A substantial part of its non-plan expenditure is also met by the Union. In the last 43 years, the Union Government has injected several thousand crores, almost to the tune of Rs. 70,000 crores, in J&K. It is getting 2.57% of the total grant disbursed by the Centre, while its population is 0.8% of the country's population.

Another practical difficulty is related to the division of powers. Defence is a Union subject, whereas land acquisition is the subject assigned to the state. In case of a direct clash between the interests of the Union and the state governments, such as the setting up of a cantonment at a particular place for which the state govt. refuses to acquire land, the only remedy would be to enforce the will of the union.¹⁵

Thus, in the words of Jagmohan, "the primary task in Jammu and Kashmir is not the circulation of the fake coin of autonomy and fooling the people in the name of cultural entity, but to eliminate poverty, hunger and disease and carry out balanced development by stressing the commonality of the deprived and the underprivileged. Abrogation of Article 370, would in fact, help in removing

poverty and backwardness, which, in turn would help in rejuvenating Kashmiri culture and enhancing cultural personality of the state as a whole.”¹⁶

Thus, for those who are in favour of abrogating Article 370, the question of greater autonomy has wider dimensions and ramifications. For them, it is a matter which concerns all states and not Kashmir alone and thus provision of special status to Kashmir alone leading to an asymmetrical relationship between the Centre and a particular state, in this case Kashmir, does not make any sense.

C) Special Status to be Given in Consonance with the 1975 Agreement:

The Kashmir Accord of February 1975 between Sheikh Abdullah and Mrs. Indira Gandhi, which led to the subsequent assumption of office by Sheikh Abdullah as Chief Minister in February 1975 could, according to some, be the basis for considering any modifications or revision in Art 370, both in the interest of the people of J & K as well as the larger interest of peace, security, sovereignty and territorial integrity of the whole country.

Para 3 of the accord makes it clear that while “adaptations and modifications can be altered or repealed by an order of the President under Article 370, each individual proposal in this behalf and being considered on its merits, but provisions of the Constitution of India already applied to J&K without adaptation or modification are unalterable”.¹⁷

¹⁵ Op. cit; Jagmohan, pp. 243.

¹⁶ Ibid, pp. 245.

¹⁷ *The Hindustan Times*, 23 December 1996.

Article 4 of the Accord does provide for “assuring freedom to the state of J&K to have its own legislation on matters like welfare measures, cultural matters, social, security, personal laws and procedural laws, in a manner suited to the special conditions in the state, extended to the state after 1953 on any matter related to the concurrent list”.¹⁸

Appropriate steps in this regard may be taken under Article 254. Such steps will require the grant of the President’s assent which would be sympathetically considered. The same approach would be adopted in regard to laws to be made by the Parliament in future. The state Government shall be consulted regarding the application of any such law to the state and views of the state Government shall receive the fullest consideration.

As far as regional autonomy within the state is concerned, there is a case for considering it sympathetically, specially in regard to Ladakh, which has been neglected in the past both by the state and the Centre.

Further it was clarified that care should be taken to ensure that decentralization and subregional autonomy do not lead to a kind of dictatorship in each region by any one community or by the administration. Decentralization must percolate down to the lowest level of the village panchayat, the pargana, tehsil and district level bodies.

¹⁸ Ibid.

D) Greater Devolution Of Financial And Administrative Powers According To The Sarkaria Committee Report Recommendations:

The Sarkaria Committee Report began, in the case of the state of Jammu and Kashmir, by quoting the observations of the supreme court in a case titled *Khazan Chand versus State of Jammu and Kashmir*, wherein it had been held that the constitution of India does not apply in its entirety to the state of Jammu and Kashmir, because the state holds a special position in the constitutional set-up of our country. By reason of the application of Article 7 to the state of Jammu and Kashmir by sub-clause (c) of clause (1) of Article 370, the state of Jammu and Kashmir is one of the states which form the Union of India and by virtue of sub-clause (d) of clause (1) of that Article so far as the provisions of the constitution, other than those of Article 1 and 370, are concerned, the President of India has the power, with the concurrence of the Government of the state of Jammu and Kashmir to issue an order specifying which of them shall apply to that state and whether such provisions shall apply to that state in their entirety or subject to such exceptions and modifications as may be specified in that order.¹⁹

The commission further states that to assuring freedom to the state of J&K to have its own legislation on matters mentioned in the state constitution and like welfare measures, cultural matters, social security, Press law, and procedural laws, in a manner suited to the special conditions in the state, it is agreed that the state Government can review the laws made by Parliament or extended to the state after

¹⁹ Sarkaria Commission Report, pp. 207.

1953 on any matter relatable to the concurrent List and may decide which of them, in its opinion, need amendment or repeal.

Thereafter, 'appropriate steps may be taken under Article 254 of the constitution of India. The grant of President's assent to such a legislation could be sympathetically considered. The same approach would be adopted with regard to laws to be made by Parliament in future under the proviso to clause 2 of that Article. The state Government shall be consulted regarding the application of any such law to the state and the views of the state government shall receive the fullest consideration.²⁰

Regarding Article 256, which deals with the obligation of states and the Union, the commission states that it also applies to the state of J&K in the following modified form "The executive power of every state shall so exercised so as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state, and the executive power of the union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. The state of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the constitution in relation to that state, and in particular, the said state shall, if so required by the Union, acquire or requisition property on behalf and at the expense of the union, or if the property belongs to the state

²⁰ Ibid, pp. 207.

transfer it to the union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India”.²¹

Regarding Article 365, it claims that it does not apply to the state of Jammu and Kashmir. It believes that there should be least possible interference with the running of state Administration through regulations or otherwise of the central Government in as much as such interference is inconsistent with the principle of accountability, which governs the relationship between the state Government and its electorate.

In general, the recommendations of the Sarkaria Commission dealt with the following provisions’, which encompassed all the states, and Jammu and Kashmir in particular:

- i) The entire constitutional scheme regarding collection of taxes by the Union and the states and distribution of available finances between the Union and states is highly unfair, it puts the states in very difficult situation where they find it impossible to meet their growing responsibilities of planning and development.

The hopeless dependence of the states on the centre for the financial allocations & stultifies the process of development and economic growth of the States. The States must be allocated a higher share of financial resources which should be made mandatory by an appropriate amendment to the constitution.

²¹ Ibid; pp. 209.

2) The Governor can be a cementing bond between the centre and state, but the state has gone through two traumatic experiences One in August 1953 when the duly elected Government headed by Sheikh Abdullah was dismissed and another in July, 1984 when the duly elected Government headed by Farooq Abdullah was dismissed without testing the rival claims of majority on the floor of the Assembly.

The Report hoped that the Governor would exercise powers under Article 306 of the Constitution of India which correspond to section 9 of the state constitution in the same spirit in which Article 356 was framed. It was suggested that the scope of Article 356 or section 92 of the state constitution should be restricted to :-

- i) a situation where all possible methods of forming a Government have failed and the Assembly has been dissolved : here too the maximum period of a proclamation should be three months within which fresh elections must be held.
- ii) a situation of completely breakdown of law and order in a state : the inter-state council must be consulted before the centre intervenes.

The constitution should be amended to make it obligatory for election to be held latest within three months of dissolution of state Assembly or Parliament in the event of such a dissolution.

3. It also recommend the implementation of the following provision :

The guiding principle for the freedom Movement of the State against the autocratic Rule which can collectively be called as the programme for naya - Kashmir Independence came to be enshrined in Part IV of the State Constitution Section 3 envisages the State to establish a socialist order of society for promotion of welfare of the people : -

Section 15 envisages that the State shall endeavour to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.

Section 16 envisages that the State shall take steps to organise village Panchayats and vest them with such powers and authority as may be necessary to enable them to function as unit self - government.

Section 17 envisages that the State shall in order to rehabilitate guide and promote the crafts and cottage industries of the State, and execute well considered programmes for refining and modernising techniques and modes of production, including the employment of cheap products so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of the production is enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.

Section 18 envisages that the State shall take steps to separate the judiciary from the executive in the public services, and shall seek to secure a judicial system which is humane, cheap, and impartial.

Section 19 envisages that State shall, within the limits of its economic capacity and development make effective provision for securing : -

- a) That all permanent residents, men and women both equally have the right to work, that is, the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law :
- b) That the health and strength of workers, man and women and the tender age of children are not abused and that permanent resident are not forced by economic necessity enter avocations, unsuited to their sex, age and strength;
- c) That all workers, agricultural, industrial and otherwise, have reasonable just and human conditions or work with full enjoyment of leisure and social and cultural opportunities.
- d) That all prominent residents have adequate maintenance in old age as well as in the case of sickness, disablement, unemployment and other cases of underserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expense.

Section 20 envisages that the State shall endeavour :

- a) to secure to every permanent resident the right to free education up to the University standard;
- b) to provide, within a period of ten years from the commencement of this constitution, compulsory education for the children until they complete the age of fourteen years; and
- c) to ensure to all workers and employees adequate facilities for adult education and part - time technical, professional and vocational courses.

Section 21 envisages that the State shall strive to secure :

- a) to all children the right to happy childhood with adequate medical care and attention : and
- b) to all children and youth equal opportunities in education and employment; protection against exploitation and against moral or material abandonment.

Section 22 envisages that the State shall endeavour to secure to all women :-

- a) the right to equal pay for equal work :
- b) the right to maternity benefit as well as adequate medical care in all employment:
- c) the right to reasonable maintenance, extending to cases of married women who have been divorced or abandoned;
- d) the right to full equality in all social , educational, political and legal matters;

- e) special protection against discourtesy defamation, hooligans and other forms of misconduct.

Section 23 envisages that the State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material and cultural interests and protection against social injustice.

Section 24 envisages that the State shall make every effort to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

Section 25 envisages that the State shall combat ignorance, superstition, fanaticism, communalism, radicalism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of Secular State.

It may be recalled that under the instrument of accession the Dominion Legislature was empowered to make laws only in relation to Defence, External Affairs, Communication, Ancillary matters relating to Election to Dominion Legislature as set out in the Schedule to the Instrument of Accession. Thereafter in Delhi agreement of 1952 while the necessity of some financial arrangement

between the Union and the State was felt but it was left open for a detailed and objective examination.”

- 4) Regarding fiscal relations between the centre and the state, it recommended that there should be complete separation of the fiscal relation of the Union and the states, abolition of the schemes of transfer of resources and instead, transferring of more taxing heads to List II, Seventh schedule.

More central taxes such as corporation tax, customs Duty Surcharge on Income Tax etc. should be brought in to the shareable pool.

Financial resources, other than tax - revenues of the Union, be also distributed between the centre and the States.

Referring to the role played by the Planning commission, an extra constitutional authority, the commission states that it requires the State Government to seek approval and consent for every little item of expenditure and aid. Thus apart from highly unfair and one sided distribution of financial resources in favour of the centre, the procedure for allocation of finances to the states is also highly arbitrary and at time displays insensitivity to the development needs. It is as a result of this financial arrangement between the Union and the state that the dream of Naya - Kashmir setout in Part IV of the State Constitution has remained largely unrealized.²²

²² Ibid, pp. 213.

The commission did not favour the complete separation of fiscal relations of the Union and State at least till the time vertical economic inequities are removed, balanced and uniform development of all states takes place it recommended that all taxes which are allocated to the states should form the divisible pool. There is no justification to keep them out of it.²³

5) There is need to consider and incorporate national priorities in the State Plans and the States themselves should be conscious of this Corrective action to overcome the present short-comings of the Planning process would restore the initiatives to the States and also remove the complaint that the autonomy of the state is being eroded.

Specific to the J&K State, although it is a special Category State, the present pattern of providing Central assistance is of 70% loan and 30% grant with the liability of loan repayment that this involves. It is necessary to provide Central assistance to J&K State through the pattern of 90% grant and 10% loan as is the case which other Special - Category States.²⁴

Thus, the Sarkaria Commission made a strong case for a decentralised administration and planning, which would involve the participation of the people, which would infuse a spirit of co-operative federalism in the governing system. There is no alternative to a decentralized system, as a means of ensuring people's participation. Problems of local pressures can be resolved through a process of

²³ Ibid, pp. 214.

²⁴ Ibid; pp. 218.

training as well as increasing the responsibility of local level leadership, which can come about if such local level leadership is given the chance to participate in and have experience in decentralized and responsive governance.

Role of The Various Political Parties and The Political Outfits:

The various political parties and the outfits in the valley have been propagating different viewpoints on the issue of more autonomy for Jammu and Kashmir, though certain sections of the population in the state are clamouring for secessionism from the Indian State, the saner voices are either demanding more autonomy within the Indian constitutional framework or greater efficiency, honesty and transparency in Centre - State relations, as well as in the administrative and governing mechanisms within the state.

Of the various national and state level Parties, the National conference party headed by Farooq Abdullah is demanding the restoration of the pre - 1953 period status, whereas the Congress wants the implementation of the 1975 Accord between Mrs. Indira Gandhi and Sheikh Abdullah.

The Bhartiya Janata party on the other hand, has all along been demanding the abrogation of Article 370 and thus doing away with the special status being given to J&K, so as to bring it at par with the rest of the country. It contends that it is the only way of bringing about greater integration of Kashmir with the rest of India; the nature of such an integration being both psychological and emotional.

The Left parties of India, in particular the Communist Party of India (Marxist) and the Communist Party of India have, from time to time, called for the grant of autonomy to Kashmir. Naxalites and some other extremist groups have gone further and expressed support for separation of Kashmir from India. The origin of the Indian Left's stand on Kashmir lies in the mechanical parallel which the CPI drew between this country and the erstwhile Soviet Union. Thus, the CPI, relying on what came to be known as the Adhikari thesis, had supported the creation of Pakistan in the forties, by applying the principle of self - determination to Muslims.

Thus, there are various view - points on the question of how to solve the present imbroglio in Kashmir, though the underlying assumption in all the cases has been to preserve the separate identity and culture of the Kashmiris and within the state of Jammu and Kashmir the need to respect the plural identities by providing for the safeguard of such identities through the process of granting sub-regional autonomy within the state of Jammu and Kashmir.

EPILOGUE

Centre State Relations Under BJP-Led Coalition Government

The formation of the BJP-led coalition government at the Centre in March 1998, was beset with problems involving the attainment of the requisite numbers needed for establishing a two-thirds majority in the Parliament. During hectic negotiations with the various parties, both national and regional, the BJP sought to strike deals with them which would enable it to form the Government at the Centre, and one such party was the National Conference of Jammu and Kashmir led by Farooq Abdullah.

The role played by National Conference in general, and Chief Minister, Farooq Abdullah in particular during this period of uncertainty and speculations came in for considerable criticism from various quarters, especially within the Valley, where he was seen by many to be towing the Centre's line to the detriment of Kashmiri interests. After the NC abstained during the vote on motion in the Vajpayee Government, which enabled the coalition to win the motion by a thin margin, the role played by the party and its Chief, Farooq Abdullah came in for a lot of flak.

Farooq Abdullah on his part justified his action of indirectly helping the installation of the BJP-led coalition government at the Centre by stating that he could not, in any case, afford to antagonise the forces at the central level because that would jeopardise the development projects in the state due to the lack of funds. This statement made by the Chief Minister of Jammu and Kashmir triggered off on intense debate on the federal set-up of our country vis-à-vis the role played by the

various political parties and their leaders both at the institutional and the non-institutional or personal levels.

“Dr. Farooq Abdullah’s significance to the political destiny of federal India is in one sense considerably critical. The son of Sheikh Abdullah has a well delineated historical role to play in the present national context. The picture of a Chief Minister of a Muslim-majority State in an otherwise Hindu-majority nation, powerfully defending the idea of State’s rights and the need for more autonomy, is an eloquent testimonial to the genius of India’s political capacity to retain the adherence of alienated regions.”¹

Although the increasing role of regional parties like the NC and regional leaders like Farooq Abdullah was recognised and even appreciated, his new thesis that the government in Srinagar needs to have a good relationship with whichever government is in New Delhi was considered to be dangerous for the federal framework of the country.

In view of the earlier developments, especially during the U.F’s brief reign in the centre, the abrupt change in Farooq Abdullah’s stance was seen as a compromise, fraught with considerable danger of distorting the federal idea. The latest stand taken by Farooq Abdullah that the party ruling in the state ought to have an amicable relationship with the party at the Centre militates against the spirit of federalism and such an attitude has disturbing implications for the institutional character of the polity.² Thus, Farooq Abdullah’s claim that political

¹ Malini Parthasarathy, “Distorting the Federal Idea” in *The Hindu*, 30th March, 1998.

² Ibid.

compulsions had forced him to seek refuge under the shade of BJP's umbrella was to aid and abet the gradual breakdown of the institutional framework of a federal polity.

The developments following the installation of the BJP government at New Delhi, namely the explosion of the nuclear bomb and the subsequent internationalisation of the Kashmir issue, the role played by Farooq Abdullah in the episode including the fact that he accompanied the Prime Minister to Pokhran on May 20th, his increasing tilt towards the BJP and the rising dissent within the National Conference in the state could roll back the progress made in the state since an elected government came to power. The bye-elections held on June 3, 1998, in which the performance of the National Conference was not as spectacular as in the previous Lok-Sabha Elections. This indicates a growing disillusionment among the people which could pose a great threat to the democratic structure of the state.

In the earlier period, during the United Front's sojourn in power, the presence of the NC had bolstered the Front's promise to revitalize the federal spirit by enabling the regional parties to play a catalytic role in the process of strengthening the role of the States in the Union. The fact that the autonomy issue was taken up seriously for the first time bears ample testimony to the claim that the presence of regional parties in the Centre's coalition government led to the development of a healthy and constructive relationship between New Delhi and Srinagar.

Even within the state of J & K, such an attitude was seen to be dangerous because an implied alliance with the party of Hindutva would give a new lease of life to the militant and extremist groups, who had been relatively weakened by the revival of the political process.

Since the Instrument of Accession was signed and J & K became a part and parcel of Indian territory, the Kashmiris have always been wary of leaders who, were seen to be playing the Indian card. Such an attitude was deemed to be a threat to the separate identity and culture of Kashmiris, and thus a spirit of independence and maintenance of distance from the Centre has been taken to be a pre-requisite for upholding and preserving 'Kashmiriyat'. In this context, the latest stance taken by Farooq Abdullah could adversely affect revival of peace and security in the state by alienating the population further by such irresponsible remarks and statements. If such a thing were to happen in Kashmir in the wake of the implicit BJP-NC alliance, it would be history repeating itself as this was precisely the case in 1986, when the Rajiv-Farooq Accord was signed to facilitate an electoral alliance between the Congress and the NC.³

Recent political developments such as the formation of a common front by the NC, The Telugu Desam and the DMK, after breaking away from the United Front could also have its fallout both at the national and the state levels. Such a move can be interpreted as an endeavour made by Farooq Abdullah, to strengthen his foothold in national level politics, rather than let his influence and power be

³ *The Hindustan Times*, 2nd April, 1998.

confined to his state. The Front, which was formed to in order to bring issues relating to the states to the forefront, had the potential to strengthen the federal institutions by underlining the flexibility and accommodativeness of the nation's constitutional and political experiment in federal democracy. More recently it has been further weakened. However, what is needed is a degree of restraint on the part of the various political players, so that there is no further erosion of credibility and de-institutionalization of the Indian political system, which often happens when core federal issues and Centre-State relations are brought into the realm of bargaining and political manipulations. By giving credibility to an idea that it is necessary to have cordial relations with the Centre, irrespective of the policies followed and implemented, regional parties, such as the NC are betraying the project to strengthen federal institutions and Centre State relations.

Impact of BJP-led Alliance at the Centre on the State

Although the abrogation of Article 370 was not there in the National Agenda of the BJP-led coalition government at the centre, it continued to adopt a hard-line approach towards the Kashmir problem. This was made explicit after the Home Minister Mr. L.K. Advani was given exclusive charge of Kashmir, who along with his other colleagues is pursuing slogans like a 'pro-active engagement', 'hot pursuit', 'making proxy war costly', etc. The government has thus been heading towards a more aggressive policy which is indicated of how it is seeking to solve the tangled issue. Apart from the statements issued by the Home Minister on the Kashmir issue which are indicative of the tough and unambiguous line of thought followed by the Government of India, there are other indications which

imply that there is a perceptible change in the Centre's stance. While previously, the Union Government was more keen on towing a soft line, on Kashmir, keeping the autonomy issue at the forefront, the present government has pushed the issue of autonomy to the background. Instead, it has brought into the picture, a variety of other factors such as the nuclear issue, security concerns which are to be dealt with severely, beefing up of border security etc. Thus, the focus has now again shifted from negotiations and dialogue to force in order to bring about normalcy in the Valley.

The change in the approach, and the nuclear issue in particular has had grave repercussions on Kashmir. On the domestic front, it has created dissensions within the National Conference in the state, the major dissenters being Saiffudin Soz and Sheikh Nazir. Whereas the former has been demanding that the NC maintained a respectable from the BJP, especially on nuclear issues, the latter wants better relations with China, as J&K shares a long border with that country. Thus, there is now the element of an inter-linking between domestic and foreign affairs, with a state level party such as the NC taking active interest in foreign policy decisions.⁴

Another area of controversy and dissension has been the tacit support given by the NC to the BJP-led government at the Centre. While Farooq Abdullah claims that it is only issue based support, dissenters within the party are of the view that

⁴ 3rd July, *Frontline*, pp 10.

such a stand would only alienate its supporters further and also dilute the autonomy issue.⁵

The recent spate of killings in Jammu, especially in the Doda district is indicative of the fact that militancy could yet make a come back in the state again and the only way to prevent this from happening is by following a policy which would adequately balance the security needs of the country with that of the needs and aspirations of the people of the valley.

A Brief Evaluation

An evaluation of political events and process in Jammu & Kashmir leads one to the conclusion that the basic problem has been the failure of the democratic and federal institutions to take root. There has been an overplay of political forces, political manipulations and calculations to suit various political leaders both at the Centre and in the state, at the cost of the larger interests of the masses; this has led to the erosion of credibility and legitimacy of the political rôle, leading to alienation in the long run.

A brief review of the decisions taken by the political leaders brings to light the discrepancies in the policies, which in case of the Centre, have tended to tilt more towards either an authoritarian or manipulative attitude like the constant rigging of elections, dislodging of elected governments, first in 1953 and then again in 1984, or a weak-kneed and ambiguous approach eg. at the time of Narasimha Rao's reign in power with two of his ministers squabbling over the

⁵ Ibid; pp.10

issue. On the other hand, the state level parties and their leaders have followed policies ranging from demanding secessionism to declaring total loyalty towards the Indian nation. In each case, policy decisions or actions have been dictated by considerations of personal gain or loss, rather than an analysis based on a non-partisan and holistic approach.

Thus, taking into consideration, concrete examples of events which have heightened the feeling of alienation among the Kashmiris, one can cite the Rajiv-Farooq Accord 1986, the extension of Central Laws to the state without the popular concurrence even if they were beneficial for the people of the state, the imposition of Governor's rule, the forcible installation of the G.M. Shah Government after removing the democratically formed Government led by Farooq Abdullah, the constant rigging of elections, and above all the slow but steady dilution of the provisions of Article 370.

The truth must be recognised that the people of Kashmir had a raw deal as the Central Government wanted, most of the time, only stooge politicians and these politicians in turn have made the most of their reign in terms of monetary benefits and political patronage.

Therefore, the basic problem in Kashmir seems to be that of excessive political interference by New Delhi without restraint by way of political machinations and manipulations both from the central and state level leadership, to suit their own vested interests. Any remedy or solution in terms of re-drawing of the constitutional relationship between the Centre and the state of Jammu &

Kashmir will have to take the various causes responsible for the imbroglio into consideration, before taking any concrete step in that direction.

Any policy on Kashmir must take into account maintenance of the minorities, an integrated approach towards the three regions of the valley, Jammu and Ladakh and above all a sane and politically mature handling of the situation, by following the norms of a democratic and federal set-up, and rising above party and personal considerations.

APPENDIX – I

THE JAMMU & KASHMIR GOVERNMENT GAZETTE (Proclamation of Governor's Rule in Kashmir)

P-1/86 of 1986 - Whereas I, Jagmohan, Governor of the State of Jammu and Kashmir, am satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution of Jammu and Kashmir (hereinafter referred to as the State Constitution).

Now, therefore, in exercise of the powers conferred by section 92 of the State Constitution and of all other powers enabling me, in that behalf, I hereby proclaim that I-

- a) assume to myself all the functions of the Government of the State and all powers vested in or exercisable by anybody or authority (other than the powers vested in or exercisable by the High Court) in the State; and
- b) make the following incidental and consequential provisions which appear to me to be necessary or desirable for giving effect to the objects of this proclamation, namely :-
 - i) the operation of the following provisions of the State Constitution is hereby suspended, namely; section 35 to 41 allocation among the Ministers of the business of the Government of the State, section 44, so much of section 53 as

relates to the stipulation of a maximum intervening period of six months between the last sitting in one session of the legislature and the date appointed for its first sitting in the next session, section 54 to 57 (both inclusive) clauses (b) and (e) of section 53 and the first proviso thereto, section 59 and 60, sub-section (2) of section 61 so far as it relates to clause (e) of and the first proviso to section 53 and to section 60, sections 65, 66, 67, 71 and 72.

The J&K Govt. Gazette, 7th March, 86/16th Phal, 07(No. 49-I)

Sections 74, 75 and 76, sub-sections (3) and (4) of section 77, proviso to section 78, sub-sections (1) and (2) of section 79, sections 80, 81 and 82, sub-section (2) of section 83, sections 84 to 88 (both inclusive) and so much of section 137 as relates to the laying of the report with a memorandum before the Legislature of the state;

- ii) in the exercise of the powers of the Legislature to make laws under or by virtue of this proclamation, I shall prepare such bills as I deem necessary and assent thereto;
- ii) in the exercise of the powers of the Legislative Assembly to make grants under sub-section (1) of section 83 of the State Constitution, I shall, as often as I may deem it necessary and pending due appropriation by law;
 - a) make, by notification in the official gazette, grants in advance in respect of the estimated expenditure or grants in respect of

supplementary or additional expenditure for the period during which this proclamation may be or is in force.

b) make, by notification in the official Gazette, exceptional grants which form no part of the current service of the financial year; and

iv) any reference in the State Constitution to Acts of laws of or made by the legislature of the State shall be construed as including a reference to Acts or laws made in exercise of the powers of the Legislature of the State by me under this proclamation and the Jammu and Kashmir General Clauses Act, S. 1977 as in force in the State shall have effect in relation to any such Act or law as if it were an Act of the Legislature of the State.

Jammu
7th March, 1986

JAGMOHAN

APPENDIX – II

No. V/11015/1/86-CSR (I)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
(Proclamation of President's Rule in Kashmir)

Whereas, I, Zail Singh, President of India, have received a report from the Governor of the State of Jammu and Kashmir and after considering the report and other information received by me, I am satisfied that a situation has arisen in which the Government of that State cannot be carried on in accordance with the provisions of the Constitution of India, as applicable to that State (hereinafter referred to as "the Constitution") and of the constitution of Jammu and Kashmir (hereinafter referred to as "the State Constitution");

Now, therefore, in exercise of the powers conferred by article 356 of the Constitution and of all other powers enabling me in that behalf, I hereby proclaim that I -

- a) assume to myself as President of India all functions of the Government of the said State and all powers vested in or exercisable by the Governor of that State under the Constitution and the State Constitution;
- b) declare that the powers of the Legislature of the said State shall be exercised by or under the authority of Parliament; and
- c) make the following incidental and consequential provisions which appear to me to be necessary or desirable for giving effect to the objects of this

Proclamation, namely:-

i) in the exercise of the functions and powers assumed to myself by virtue of clause (a) of this proclamation as aforesaid, it shall be lawful for me as President of India to act to such extent as I think fit through Governor of the said State;

ii) the operation of the following provisions of the Constitution and of the State Constitution is hereby suspended namely :-

so much of the first proviso to article 3 of the Constitution as relates to the reference by the President to the Legislature of the State and the second proviso to that article;

so much of clause (2) of article 151 of the constitution as relates to the laying before the Legislature of the State of the report submitted to the Governor by the Comptroller and Auditor-General of India;

sections 35 to 41 (both inclusive), so much of section 43 as relate to the allocation among the Minister of the business of the Government of the State, section 44, sub-section (1) and clause (a) of sub-section (2) of section 53, section 54, 55, 5 and 57, clauses (b) and (c) of section 58, and the first proviso thereto, section 59, section 60, sub-section (2) of section 61 so far as it relates to clause (c) of, and the first proviso to, section 58 and to section 60; sections 65, 66, 67, 71 and 72; sections 74, 75 and 76 sub-sections (3) and (4) of section 77, sections 85 to 88 (both inclusive)

and so much of sections 137 as relates to the laying of the report with a memorandum before the Legislature of the State, of the State Constitution;

iiii) any reference in the Constitution and the State Constitution to the Governor shall, in relation of the said state, be construed as a reference to the President, and any reference in the Constitution and the State constitution to the Legislature of state or the Houses thereof shall, in so far as it relates to the context otherwise requires, as a reference to Parliament, and in particular, the references in section 91 of the State Constitution to the Governor and to the Legislature of the state or the Houses thereof, shall be construed as reference to the President and to Parliament or to the Houses thereof respectively;

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Provided that nothing herein shall affect the provisions of sub-section (1) of section 26, sections 27 to 31 (both inclusive), section 122, section 143 and paragraph 1 to 8 (both inclusive) of the Second Schedule, to the State Constitution to prevent the President from acting under sub-clause (I) of this clause to such extent as he thinks fit through the Governor of the said State;

iv) any reference in the Constitution or in the State Constitution to Acts or laws of or made by the Legislature of the State shall be construed as including a reference to acts or laws made, in exercise of the powers of the Legislature of the State, by Parliament by virtue of this Proclamation, or by the President or other authority referred to in sub-clause (a) of clause (1) of article 357 of the Constitution, and the Jammu and Kashmir General Clauses Act, 1977 (Act No.

XX of 1977) and so much of the General Clauses Act, 1897 (10 of 1897) as applied to state laws, shall have effect in relation of any such Act or law as if it were an Act of the Legislature of the State.

NEW DELHI

(ZAIL SINGH)
PRESIDENT

The 7th September, 1986.

(F. No. 11011/4/B6-K)

NEW DELHI

(C.G. SOMIAH)
HOME SECRETARY

The 7th September, 1986.

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