

## **Publisher's Note**

Kashmir is burning and burning because of the faults of the weaknead policies of the successive Congress leadership which dealt with the merger of Jammu & Kashmir with India. India's first Deputy Prime Minister and Home Minister, Sardar Ballabhbhai Patel, was successful in integrating more than 500 princely States into the Indian Union through a fine display of firmness, farsightedness and persuasion. When the Hyderabad and Junagarh States displayed some resistance and ulterior motives, he was firm in dealing with them and made them fall in line with the rest of the States. J&K was the only State with which India's first Prime Minister Shri Jawaharlal Nehru dealt with himself directly and did not allow Shri Patel to interfere although he was the Home Minister of India. To snatch this matter out of the hands of the Home Ministry, Pandit Nehru, strangely, brought the issue of J&K under the purview of the ministry of external affairs. That cost the country very dearly. It is because of the folly of Pandit Nehru to order ceasefire to the advancing contingents of Indian Army to push the aggressor Pakistan out of the sacred soil of Jammu & Kashmir that the problem has now become a cancer for the country. Besides having spent immensely large sums of money and fighting three wars with Pakistan in defending the State from aggression, the country has also lost over sixty thousand of our innocent civilians and security forces. Yet, there is no solution to the problem

in sight. The dragon of terrorism continues to threaten peace and life of our citizens..

Former Union Minister, Shri Chaman Lal Gupta, presently leader of BJP Legislature Party in J&K assembly, who has watched the events from a very close quarter as a native of the State, has written the booklet "*Ek Desh Mein Do Nishan, Do Vidhan, Do Pradhan*" detailing the history of the problem. It was the late Dr. Syama Prasad Mookerjee, the first President of Bharatiya Jana Sangh who laid down his life fighting against the situation under which the country had two flags, two constitutions and two prime ministers in the same country. J&K, though just another State of the country, was enjoying a privilege which no other State of the country was enjoying although all the States had integrated itself into the Indian Union in similar circumstances. Dr. Mookerjee had given the slogan that Bharatiya Jana Sangh will never allow *Ek Desh Mein Do Nishan, Do Vidhan, Do Pradhan* under any circumstances.

Dr. Mookerjee Smruti Nyas is publishing this booklet to make the people understand what were follies that were then committed by the Nehru government and why did Dr. Mookerjee have to make the supreme sacrifice of his life for the unity, territorial integrity and sovereignty of the country.

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# Ek Desh Mein

## Do Nishan, Do Vidhan, Do Pradhan?

**Prof. Chaman Lal Gupta**  
(Ex Union Minister)

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**Article 370 provides special status to J & K in that the Parliament has powers to frame laws for all subjects of States of the Union, it cannot do so in relation to J&K. Rejection of the draft constitutional provision for the states by J&K was the first step towards rejecting integrative policy of India. Claim of separate political identity was admitted by Nehru who exercised "Control" over J&K affairs.**

The most counter-productive provision in the Constitution of India is Article 370 which provides that notwithstanding anything contained in the Constitution, the power of Parliament to make laws for the State of Jammu and Kashmir shall be limited. The Article limits Parliament's jurisdiction over the State to Defence, Foreign Affairs and Communications. All other laws framed by the Central Legislature require the consent of the State. While Parliament has unfettered power to frame laws for

all subjects of the States in the Union, on subjects included in the Union and Concurrent lists, it cannot do so in relation to Jammu and Kashmir. On October 26, 1947, Maharaja Hari Singh, as the sovereign ruler of Jammu and Kashmir, signed the Instrument of Accession through which he acceded to the Dominion of India. He accepted that the matters specified in the Scheduled to the Instrument of Accession would now vest in the Indian Legislature to make laws for Jammu and Kashmir. Article 370, originally numbered as Article 306A, however, placed the State on a separate constitutional pedestal. Since, then, it has remained a legal and psychological barrier between Jammu and Kashmir and the rest of the country, preventing the State's integration with India's mainstream political, social and economic activity. As it exists now, Article 370 is included in Part XXI of the Constitution, which is titled "Temporary, Transitional and Special Provisions". The origin of this Article lies in the vacillation of the leadership of the time; especially Jawaharlal Nehru, regarding this Princely State's accession to India.

Towards a 'special status' and Nehru's role

From the very beginning, after there was no option but to accept Hari Singh's offer of accession, Nehru was keen that Jammu and Kashmir should not be treated at par with the other Princely States that had joined the Dominion of India and which were later integrated into the "Union of India". He was aware of Sheikh Abdullah's political aspirations which contradicted those of Sardar Patel who wanted to forge a united country on the basis of his vision of India as a single nation State. The Instrument of Accession signed by Hari Singh was no different from that

signed by other rulers of princely States. It required the Princely States to surrender their sovereignty on three subjects – Foreign Affairs, Defence and Communications. The credit for negating the balkanizing effect of such an accession goes to the founding fathers of the Indian Constitution, and especially to Sardar Patel's role as States Minister. For a while after accession, the Constituent Assembly acknowledged the right of the acceding states to prepare their separate constitutions and devise their relationship with the Union.

#### States not to have constituent assemblies

In November 1948, the Ministry of States constituted a special committee to prepare broad guidelines for the Constituent assemblies of the States. But the process of setting up constituent Assemblies was extremely slow. Only three states, Saurashtra Union, Travancore and Cochin and Mysore were prompt in setting up constituent assemblies. To overcome this problem, the States Ministry organised a conference of the premiers of the States in Delhi in 1949. The premiers decided at the conference not to wait for the setting up of separate constituent assemblies but to entrust the task to the constituent assembly of India. The State subjects were to be decided upon in consultation with the States. In a sense this step laid the foundation of an irreversible Union of the States into a composite whole in which the Union government and Parliament were to emerge as paramount authority over the entire territory of the Republic of India. Accordingly, the Drafting Committee of the Constituent Assembly prepared a draft of the constitutional provisions for the States and this was circulated among the State Governments for their

concurrence. All of them accepted the provisions except the Government of Jammu & Kashmir. This was the first step towards rejecting the integrative polity of India.

For a better appreciation of the folly of incorporating Art 370, we need to understand the forces at work at that moment of independent India's history. By then the National Conference, led by Sheikh Abdullah, had taken control of the reigns of power in Jammu and Kashmir and it had begun to claim a separate political identity for the State on the strength of its Muslim majority population. The claim was admitted by Nehru who exercised 'control' over Jammu and Kashmir affairs to the exclusion of everybody else barring N Gopalaswami Ayyangar who, by virtue of the fact that he had served as Hari Singh's Dewan and had close links with Shiekh Abdullah, was appointed as Minister without portfolio and entrusted the task to deal with Kashmir. Sardar was not consulted by Nehru while taking this decision. V Shankar, Vallabhbhai Patel's secretary and author of *My Reminiscences of Sardar Patel* informs us that Nehru was unable to face Sardar and looked for 'outside support' for his Kashmir policies, which he found in Ayyanagar and John Mathai. Shankar also talks about the 'wrong assessment' of Sheikh Abdullah by Nehru and Ayyangar and how they allowed him to 'dictate terms' against the better sense of assessment of his influence in the state'. Nehru believed that 'only Sheikh Abdullah could swing the vote and was prepared to make any concessions.'

**Sheikh Abdullah had asked for special status for J&K on the basis that it is a Muslim majority State. By accepting this Congress was legitimizing Jinnah's two**

**nation theory. Soon after January 01 1949, when ceasefire came into operation, tone and tenor of Sheikh Abdullah changed and he asked for abdication of Maharaja Hari Singh which would help him in winning the plebiscite.**

#### Legitimising Jinnah theory

It is an irony that Nehru was convinced of Sheikh Abdullah's case for a separate political identity for Jammu and Kashmir on the basis of its Muslim majority. By capitulating to his demand, Nehru and other Congress leaders of the time were also legitimizing Mohammed Ali Jinnah's pernicious two-nation theory. Nehru's willingness to accommodate Sheikh Abdullah's aspirations amounted to accepting the existence of a sub-national identity based on religion which the Indian constitution was to later reject. Also, by institutionalizing political power on the basis of the Muslim majority of the State, he and Sheikh Abdullah subordinated Jammu and Kashmir's Hindus, Buddhists and Sikhs to the permanent status of minorities. It must be noted here that no other constituent part of India was given a special status on similar grounds. On his part Nehru argued that he needed to keep the National Conference on his side, keeping in view the ongoing debate in the UN on Jammu and Kashmir.

#### Sheikh Abdullah changes tone

Sheikh Abdullah was aware of Nehru's views and took full advantage of this reality. As soon as the UN brokered ceasefire came into operation on January 1, 1949, the tone and tenor of Sheikh Abdullah's statements changed. To begin with, he refused to acknowledge the constitutional primacy of the Maharaja and wrote to Nehru: 'I am

therefore constrained once again that the choice is finally between the Maharaja and the people and if the choice is not made soon, it might lead us into very serious trouble both militarily and politically. The only alternative is that His Highness should abdicate in favour of his son and that there should be no reservation whatsoever, in the administration of the various subjects under the Ministers' (*Sardar Patel's correspondence, Vol I*). He followed this up with his revealing interview to a British, newspaper *The Scotsman*, published on April 14, 1949 in which he said, "Accession on either side cannot bring peace... we want to live in friendship with both dominations. Perhaps a middle path between them, with economic cooperation with each, will be only way of doing it. But an independent Kashmir must be guaranteed not only by India and Pakistan, but also by Britain, the United States and other members of the United Nations." He stressed: "When during the crisis India accepted the Maharaja's accession, Pandit Nehru insisted that it was only provisional and that the people must decide later."

#### Patel outraged

Outraged by his views, Sardar Patel wrote to Ayyangar, pointing out Sheikh Abdullah's conversion to an independent Kashmir. Ayyangar, in turn, asked Dwarka Nath Kachru, Government of India's nominee. Informing Sardar Patel of the action that had been taken, Ayyangar wrote: "I have asked him to inform the Sheikh that, reading between the lines, I suspect a plan, the first step of which is this blessing by the premier of Kashmir of the idea of an independent Kashmir and this public expression of his conviction that accession to India will not bring peace, and

the first step of which may well be perhaps one of the greatest betrayals of history..." Nehru could not have been ignorant of what his close associate described as the impending "one of the greatest betrayals of history." Yet he chose to pander to Sheikh Abdullah's whims and fancies.

#### UN's increasing interest

Meanwhile, as the UN began to take an increasing interest in the affairs of Jammu and Kashmir at the behest of Pakistan, Sheikh Abdullah became more vocal about his lack of faith in the finality of the accession. Congress leaders, with a view to placate Sheikh Abdullah, decided to ask Hari Singh to leave Jammu and Kashmir temporarily. In order to convince him, they fell back upon Sardar Patel whom the Maharaja trusted. (Later, the Congress was to betray both Sardar Patel and Hari Singh). By a special cable, Sardar Patel invited Hari Singh to come to Delhi to discuss matters which 'admit of no delay'. On arrival, Hari Singh was told by Patel that Sheikh Abdullah was insisting on his abdication as this would help him in winning the plebiscite. Much against his better judgment, Patel went on to tell Hari Singh that his absence from the State would be in the interest of Jammu and Kashmir and India. Hari Singh conveyed his distress to Patel: "I would not, however, be human if I did not express my keen sense of disappointment and bewilderment at having been called upon to make such a sacrifice of personal prestige, honour and position when all along I have been content to follow, sometimes even against my own judgment and conscience, the advice in regard to the constitutional position in the State which I have been receiving from the Prime Minister of India or yourself, sometimes against the arrangements

which were agreed to only a few months before. Nor would it be fair on my part to conceal from you my own feeling while Sheikh Abdullah has been allowed to depart, from time to time as suited his inclinations, from the pledged and written word, to act consistently in breach of the loyalty which he professed to me prior to his release from jail and the oath of allegiance which he took when he assumed office, and to indulge openly along with his colleagues in a campaign of vilification and foul calumny against me, both inside the State and outside."

#### Sheikh Abdullah breaching understanding

The Maharaja concluded by seeking an assurance from Patel that this was not a prelude to his abdication, saying, "I regard such a demand from my Prime Minister and his colleagues as a clear breach of the many understandings on which constitutional arrangements have been made from time to time and a positive act of his disloyalty, treachery and deception." Sardar Patel assured the Maharaja: "Regarding the points which your Highness has referred to me, I should like to state that the question of Your Highness abdication does not arise. We have made the position quite plain to Sheikh Mohammad Abdullah..."

**In May 1949, NC once again insisted upon abdication on Maharaja Hari Singh and an agreement was also arrived at deciding modalities of relation of the State with the Union. It was decided that the State will have its own Constituent Assembly; Sheikh Abdullah sought clarifications on the agreement which amounted to its non-acceptance. Four members were nominated to Constituent Assembly of India. In June 1949 Maharaja**

**Hari Singh announced his decision to leave the State nominating Yuvraj Karan Singh as Regent.**

Nehru strikes a deal with Abdullah

After Maharaja Hari Singh moved from the State, leaders of the National Conference were invited to Delhi for a conference to work out the constitutional relationship of Jammu and Kashmir with India. The meeting took place in May 1949. During the discussions, the National Conference leaders insisted on the Maharaja's abdication. More importantly, they refused to accept the inclusion of the State into the territory of India and the applications of the provisions of the Indian constitution on Jammu and Kashmir. They went to the extent of demanding the withdrawal of the Indian Army from the State and restoration of Kashmir's right to have its own defence force. The National Conference delegates were told that they were raising issues which had already been determined by the Instrument of Accession. The conference, they were reminded, was aimed at deciding the modalities of the Union. An agreement was finally arrived at and it envisaged:

I. The provisions of the Constitution of India with regard to the government in the States would not apply to Jammu and Kashmir State;

II. The Constitution of the state would be framed by the Constituent Assembly of Jammu and Kashmir, which would represent the people of the State;

III. The future of the ruling family of the Maharaja would be decided by the Constituent Assembly of the State;

IV. The division of powers between the State and the Union would be based on the terms specified in the Instrument of Accession and the Union's jurisdiction would extend to the subjects in respect of which the dominion Government had assumed powers by virtue of the Instrument of Accession;

V. The Constituent Assembly of the State would determine such other subjects which would be transferred to the Union and in respect of which the Union would assume jurisdiction over the State;

VI. The provision of the Constitution of India with regard to the jurisdiction of the Union, citizenship of the Union, fundamental rights and the related legal safeguards, principles of State policy and the jurisdiction of the federal judiciary would extend to the State, subject to the modification that the provisions would not impinge upon the special domiciliary rights in the State and the economic reforms the Interim Government would under take;

VII. The administrative and operational control of the State Army would remain vested in the Indian Army;

VIII. The President of the Indian Union would be vested with the powers to modify or terminate the operation of the specific provisions of the Constitution of India in regard to Jammu and Kashmir State, on the recommendations of the Constituent Assembly of the State.

*(Sardar Patel's Correspondence, Vol I, p 226)*

Capitulation, which was to become the hallmark of successive Congress regimes at the Centre in their dealings with Jammu and Kashmir, had begun.

Abdullah backs out, Nehru capitulates

Not even a day had passed after these arrangements were worked out when Sheikh Abdullah wrote to Nehru and sought clarification on various issues which amounted to their non-acceptance. Nehru feigned dismay and reiterated the points covered by the agreement. He then visited Srinagar in the last week of May 1949, and held further discussions with Sheikh Abdullah and his colleagues. He assured them that the provisions of the Constitution of India not included in the Instrument of Accession would not be extended to the State and the Constituent Assembly of the State would be vested with the residuary authority to formulate constitutional provisions with regard to matters which were not covered by the Constitution of India. (Syed Mir Qasim – Savani Hayat). In the light of the agreement, the interim Government of Jammu and Kashmir, under the authority of the Maharaja, nominated four members to represent the State in the Constituent Assembly of India in May 1949. The representatives joined on June 6, 1949, Maharaja Hari Singh announced his decision to leave the State and nominated his son, Yuvraj Karan Singh Regent of the State. Soon after this, the National Conference assumed complete control over the Government of Jammu and Kashmir and began trying to wriggle out of the agreement which they had entered into with Nehru.

A number of closed-door meetings were held to discuss the agreement at which only Muslim members of the National Conference hierarchy were invited. A number of leaders and officials had opposed the discussions. The most significant outcome of these meetings was that they decided

to ensure that the Muslim majority character of the State would not be impaired and the only safeguard to protect it would be to keep Jammu and Kashmir out of the Constitutional organization of India. Sheikh Abdullah did not apprise Nehru or anybody else of these views till the draft provisions of the Constitution of India which were evolved in the light of the agreement were sent to him for approval.

**Draft Article 306-A was prepared and before it could be discussed in the Congress party, Nehru left for foreign tour leaving Gopaldaswamy Ayyangar to present it. Congress party was furious on being apprised of the draft. Even Sheikh Abdullah did not accept for different reasons though. To please Nehru, Ayyangar agreed to redraft the Article which now made Constitution of India applicable to the State restricted to Article 1.**

- i. A Constituent Assembly would be convened in Jammu and Kashmir to draft the Constitution of the State;
- ii. Provisions of the Constitution of India with regard to territories of India, Indian citizenship, fundamental rights and the related legal safeguards and the Directive Principles of State Policy would apply to the State;
- iii. The other provisions of the Constitution of India would apply to the State with such exceptions as were mutually agreed upon between the Government of India and the State Government;
- iv. The Union would exercise powers with regard to the

subjects which were specified by the President of India to correspond with the subjects transferred to the Dominion government by the Instrument of Accession, in consultation with the State Government, and such other subjects as would be specified by the President of India in consultation with the State Government

- v. The President of India would be empowered to modify, restrict or suspend the operation of the provisions of Article 306-A on the recommendations made by the Constituent Assembly of Jammu and Kashmir State.

Having finalised this draft in secrecy and in consultation with Sheikh Abdullah, Nehru proceeded on a foreign tour. He entrusted the task of piloting the draft through the Constituent Assembly to Ayyangar. The subsequent protest against the draft in the Congress can be reconstructed from V Shankar's account (*My Reminiscence of Sardar Patel*) and from *Sardar Patel's Correspondence*.

### Storm of protest in Congress

According to Shankar: "In the (Congress) party there was a strong body of opinion which looked askance at any suggestion of discrimination between the Jammu and Kashmir and Union and was not prepared to go beyond certain limits in providing for the special position of Jammu and Kashmir. In fact, he had not taken any part in framing the draft proposals with the result that he heard the proposals only when Gopalaswamy Ayyangar announced them to the Congress Party." When Ayyangar put up the draft for the party's consideration, there were howl of

protest. According to Shankar, "The announcement was followed by a storm of angry protests from all sides and Gopalaswami Ayyangar found himself a lone defender with Maulana Abul Kalam Azad an ineffective supporter. Metaphorically, the situation may be succinctly described by saying that both Gopalaswami Ayyanagar and his proposal were torn to pieces by the Party." The proposals, were in reality, that of Nehru, Ayyangar was merely trying to sell it. On facing such a hostile reaction, Ayyangar rushed to Sardar Patel and appealed to him to come to his rescue. Sardar heard Ayyangar and lapsed into silence. To Shankar's query as to what reply he would like to give, he said he would think it over.

The Sardar convened a meeting of the Congress Executive the following day. The details of what followed as recorded in Vol II of Shankar's *My Reminiscences of Sardar Patel* (p 61-64): "The meeting was one of the stormiest I have ever witnessed... The opinion in opposition to Gopalaswami's formula was forcefully and even militantly expressed... even Maulana Azad was shouted down." It was left to Sardar to bring the discussion down to a practical place and to plead that because of international complications, a provisional approach alone could be made.

Why did Patel agree to placate the Congress members? Shankar provides the answer: "I was somewhat taken aback at Sardar's acquiescence in the draft formula of Gopalaswami Ayyangar and strongly felt that Sardar had compromised the position of the Indian Union and other states in accepting the formula as the basis... He said, 'I was deeply concerned at the situation. Gopalaswami had

acted under Panditji's advice. If Jawaharlal were here I could have had it out with him. But how could I do so with Gopaldaswami who was only acting under orders? If I did, people would have said that I was taking revenge on his confidant when he was away.... I then asked why he (Sardar Patel) had let down the country and the other states whose Constituent Assemblies had been scrapped in accordance with his advice and policy... He said after all, neither Sheikh Abdullah nor Gopaldaswami was permanent. The future would depend on the strength and guts of the Indian government and if we cannot have confidence in our own strength we do not deserve to exist as a nation.

#### *Jawaharlal Royega*

To others, Sardar said, "*Jawaharlal Royega*." Even while all this was happening, the working committee of the National Conference refused to accept this draft. It disapproved of the preamble to the Article which stipulated that it was of a transitional nature. It also objected to the application of citizenship, fundamental rights and the related constitutional and legal guarantees as these would prejudice the domiciliary State Subjects Rules in force in the State. Sheikh Abdullah communicated to Ayyangar on October 12, 1949, the view of his party. Ayyangar had a meeting with Sheikh Abdullah and Mirza Afzal Beg on October 14 in which he tried to persuade them to accept the draft Article.

The latter stuck to their stand. Ayyangar was "dismayed" at the attitude of the National Conference leaders. Nehru was away in the United States. In this situation and with a view to please Nehru, Ayyangar agreed

to redraft the Article. The new draft restricted the application of the Constitution of India to the State to Article 1 which defined the territories of the Union and the provisions relating to Indian citizenship.

**At the behest of NC, a new draft of the Agreement was made by Ayyangar but that was also rejected by Abdullah on 17 October 1949, original draft was presented to Constituent Assembly of India and passed without NC members moving their amendment and Article 306A, was renumbered as Article 370. Constitution of all states except Jammu and Kashmir were embodied in the Constitution of India. Jammu and Kashmir was to determine sphere of Union jurisdiction through its own Constituent Assembly. On 24 July 1952, Nehru in his speech to Parliament absolved himself and put the blame on Patel who was dead by then.**

Ayyangar then wrote to Patel informing him of the change and the background to it, saying, "I have since thought over the matter and dictated a draft which, without giving up the essential stand we have taken in our original draft, readjusts it, in minor particulars in a way which I am hoping Sheikh Abdullah would agree to." Patel replied: "I do not at all like any change after our party had approved of the whole arrangement in the presence of Sheikh Sahib himself. Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people. Of course, he owes a duty to India or to the Indian Government, or even on a personal basis, to you and the Prime Minister who have all gone out to accommodate him. In these circumstances any question of my approval does

not arise, if you feel it the right thing to do, you can go ahead with....”

But even the revised draft was not acceptable to Sheikh Abdullah. He wanted to have the draft amended and Mirza Afzal Beg gave notice of amendment. Finally, Ayyangar drew up a new draft in consultation with Beg which stipulated:

- i. Article I would apply to the State and the State would be included in the territories of the Union of India:
- ii. No other provision of the Constitution of India would be applied to the State, except with the approval of the interim Government of the State.
- iii. The division of powers between the Union and the State would be determined in accordance with the terms of the Instrument of Accession
- iv. The President of India would be empowered to terminate or modify the operation of the constitutional provisions with regard to the State on the recommendation of the Constituent Assembly of the State;
- v. The State would be construed to mean the Maharaja acting on the advice of the Council of Ministers appointed under his proclamation dated March 5, 1948. But, yet once again, the amended draft was also rejected by the National Conference.

Ayyangar and Azad tried in vain to persuade Sheikh Abdullah and his colleagues, but they did not relent. Ultimately the original draft was presented to the House

on October 17,1949. The National Conference representatives sulked and watched the proceedings with a grim look on their faces without participating in the discussions. The President of the Constituent Assembly waited for the National Conference members to move their amendment but they did not budge. Finally, the draft was voted and included in the Constitution after being renumbered as Article 370. On November 25, 1949, the Regent of the State, Yuvraj Karan Singh, by a proclamation ordered that the relations between the State and the Union of India would be governed by the Constitution of India.

Ayyangar's defence in Constituent Assembly

In the Constituent Assembly, the principal address in support of Article 370 came from Ayyangar “As the House is aware, Instruments of Accession will be a thing of the past in the new Constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself; and in the case of practically all the States other than the State of Jammu and Kashmir, their Constitutions also have been embodied in the Constitution for the whole of India.” At this Maulana Hasrat Mohani facetiously remarked: “Why this discrimination please?”

Ayyangar answered back: “That particular State is not yet ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other states. We are also

committed to ascertaining the will of the people by means of plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that will of the people through the instrument of a Constituent Assembly, will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State... at the present moment, we could establish only an interim system. Article 306-A (later renumbered as Article 370) is an attempt to establish such a system."

Later, of course, as was his wont, Nehru absolved himself of all responsibility when things started going wrong. Making a statement on the affairs of Jammu and Kashmir in the Lok Sabha on July 24, 1952 (by then Sardar Patel was dead) - statement that dealt with the invasion by Pakistan, the accession, the case in the UN - he gave his version of why integration with the rest of the country has progressed slower in the case of this State: "The matter has been before the UN, we had pledged to proceed with the consent of the people of Kashmir." And Sardar Patel was all this time dealing with these matters", Without betting an eyelid, he passed on the blame to Sardar Patel for something for which he alone was responsible, for something against which Sardar Patel had made his displeasure known in no uncertain terms.

**Article 370 came in for criticism in Lok Sabha. Nehru took the stand that the Article was dealt with by Sardar in his absence and he was not responsible for it. Though various provisions of Indian Constitution have been made applicable to the State through Presidential orders issued from time to time, yet there are vast areas which**

**still remain inapplicable.**

The proposal were embodied in draft Article 306-A, and they stipulated: i) The provisions of the Constitution of India with regard to Part B States would not apply to Jammu and Kashmir State: He wrote to Sheikh Abdullah saying, "I am anxiously keen now as ever I have been to see that you are not given any cause for genuine or even imagined grievances in regard to the policy that the Government of India is following in relation to Kashmir. I have, therefore, since you left me this morning, tried to find a way out of the present situation in regard to Article 306-A. I do hope you would appreciate the gesture I am making personally, I should like you to move this draft yourself in the House."

According to Nehru, "This came to an end in November: I think, of 1949 when we were designing our Constitution in the Constituent Assembly. Well, we could not leave everything quite vague and fluid there, something had to be stated in our Constitution about Jammu and Kashmir State. That problem had to be faced by Sardar Patel. Now, he did not wish to say very much, we wanted to leave it, we all wanted to leave it in a fluid condition because of these various factor, and gradually to develop those relations. As a result of this, a rather unusual provision was made in our Constitution relating to Jammu and Kashmir..."

Selective amnesia?

Selective amnesia? Or intentional distortion of the truth by the man who claimed that he knew "more about Kashmir" than anybody else"? was Nehru's absence from

the country in October 1949 a mere coincidence or planned with a purpose? By then Ayyangar had succeeded to Sardar's chair and Shankar was a Joint Secretary in his Ministry. He records in his memories: "When I was working as his (Ayyangar's) Joint Secretary in July 1952 the same Article came in for criticism in the Lok Sabha. In defence, Pandit Nehru took the stand that the Article was dealt with by Sardar in his absence and he was not responsible for it. I met Gopaldaswami the same evening... I questioned the bona fides of Pandit Nehru's stand. Gopaldaswami's reaction was one of anger and he said, "It is an ill-return to Sardar for the magnanimity he had shown in accepting Panditji's point of view against his better judgment."

Nehru's gift: An albatross around India's neck

Thus came in Article 370 into the Constitution as a purely temporary and transitional provision. The enactment of this Article was a result of the Congress leadership's political myopia. The Nehruvian thinking on Kashmir did not have the foresight to realize that its policy would hang like an albatross around the country's neck in the coming decades. Under various Presidential orders issued from time to time under Article 370, various provisions of the Indian Constitution have been made applicable to the State of Jammu and Kashmir, but many provisions still remain inapplicable. The Constituent Assembly of the State framed its own Constitution. Both the Indian Constitution and the Constitution of the State of Jammu and Kashmir provide that the State of Jammu and Kashmir is an integral part of the Indian Union. Provisions such as Article 356, the jurisdiction of the Supreme Court, the Election Commission and the Comptroller and Auditor General have been made

applicable to the State. However, there are vast areas which still remain inapplicable. Article 352 regarding proclamation of Emergency is applicable only in a limited way. The provisions relating to financial emergency are also applicable in a limited way. The Jammu and Kashmir Constitution creates a large number of legal problems, particularly in relation to the right to hold property, the right to citizenship and the right to settlement of persons living in other parts of the country.

Dual Citizenship

The citizens of India are not treated as citizens of Jammu and Kashmir. They have no right of settlement in the State. Even though the Constitution of India recognizes a single citizenship, the people of Jammu and Kashmir have a dual citizenship: They are citizens of India as well as citizens of Jammu and Kashmir. "Non-subjects" cannot hold property in Jammu and Kashmir and even though they may be living there they do not have the right to vote. Women in the state are issued state subject certificates which are only valid up to the time of marriage.

Anti Women provisions

Women who marry outside the State lose their right in property; they also lose the right of inheritance from their parents. On the Government building in Jammu and Kashmir the State Flag as well as the National Flag are flown.

Invalid argument

An argument is regularly advanced that Article 370 is necessary to enable Kashmiris to "preserve their culture

and satisfy their regional aspirations". The argument is wholly misconceived. There is no nexus between a law which weakens a nation's integrity and popular regional culture. Has the culture of Bengalis, Tamils and Maharashtrians been adversely affected in the absence of Central laws not being applicable to those regions? On the contrary, has not the changing demographic pattern of these states spread the message of these regional cultures to various corners of the country?

**Article 370 has resulted in creation of separatist movement, very little industrial investment, few educational institution of higher or technical knowledge, lack of healthy financial legislation, corruption, psychological barriers between Kashmir and rest of India, dependence on Central aid and creation of sub-national psyche.**

Regional aspirations are satisfied by decentralization of power in the hands of democratically elected State Governments, local bodies and panchayats. This is never achieved by perpetuating a separatist psyche and alienation. In the background of these events it is relevant to note as to what political and economic consequences have taken place on account of Article 370. This Article has hardly served the people of Jammu and Kashmir. The direct consequences of the special status for Jammu and Kashmir has been that persons outside the Kashmir Valley have been prevented from purchasing immovable property in the State. Added to this has been the separatist movement and the insurgency.

As a result, industry from other parts of the country

has been extremely reluctant to invest in the Kashmir Valley. There is a lurking fear in the minds of industrialists that investment in the Valley will not be a safe proposition. This has directly resulted in curtailment of job opportunities. The people have to primarily resort to tourism related industry for their survival. There has been some economic progress made by artisans of various kinds. However, even in the area of tourism large scale investment from outside has not been forthcoming. The Kashmiri people have thus suffered directly on account of Article 370 in terms of economic progress and job opportunities. Their main dependence has either been on tourism or on opportunities in the government sector. Educational institutions in the Valley have also been comparatively fewer in number.

Beneficiaries who?

Who are the beneficiaries? Not the people. The beneficiaries of Article 370 were thus not Kashmiri people but the ruling political elite and also a small vested interest of Kashmiri businessmen. Politicians used the bogey of Article 370 to create a separatist psyche and secure their own political positions. The rich in the Valley prevailed upon the local politicians and did not permit healthy financial legislation in the State. The provisions of beneficial laws such as Wealth Tax, Gift Tax and Urban Land Ceiling Act have not been permitted to operate in the Valley. Whenever the corrupt and tax evaders have been raided, the bogey of Article 370 has been used to frustrate the raids.

The political consequences of Article 370 on India as a nation have been disastrous. Article 370 has symbolized divisive thinking. It has institutionalized and

constitutionalised separatism. It has created a psychological barrier between Kashmir and the rest of India. It has prevented the political and economic integration of Jammu and Kashmir with the rest of the country. It has perpetuated a political order where the State is dependent upon Central grants and subsidies wherein the ruling mafia could survive on the strength of favouritism and nepotism.

### Refugees in own motherland

A direct consequence of non-state subjects not being allowed to purchase property in Kashmir Valley has prevented the citizens of India from settling down in the Valley. Similarly except those driven out of the valley due to insurgency, very few Kashmiris have ventured out to other parts of the country. Today we see Bengalis, Biharis, Tamils etc. in large numbers settled in various parts of the country. Except for refugees, how many Kashmiris do we find? As a result, there has been no social interaction and the demographic component of the State, especially the Valley, did not become broad-based. Article 370 is the culprit. It has created a sub-national psyche for which the country continues to pay every day. It has resulted in the single greatest failure of Indian secularism wherein the entire minority community of the Kashmir Valley was compelled to become refugee in its own country. Their houses were burned, their women raped, their men killed and they continue to suffer in refugee camps.

Article 370 has prevented the emergence of an alternative ideological movement in Kashmir which would have resisted this separatist thinking. Besides being a charter for national disintegration, Article 370 represents a dubious

model to the other states where similar demands have come up. The country has not recovered from such shocks in Punjab and tremors of this are being felt in the North-East. Article 370 was perhaps the single greatest Nehruvian blunder. The Partition of India was the result of Jinnah's two-nation theory whereby Kashmir became a third sub-nation. Article 370 is directly responsible for the creation of a Sheikhdome or a Sultanate and, eventually, the spread of anarchy.

