

## PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

## OFFICIAL REPORT

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## HOUSE OF THE PEOPLE

Thursday, 24th July, 1952

The House met at a Quarter Past Eight of the Clock.

[MR. SPEAKER in the Chair]

## QUESTIONS AND ANSWERS

(See Part I)

9-15 A.M.

## STATEMENT RE KASHMIR

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Sir, I am grateful to you for this opportunity to make a statement in regard to affairs relating to the Jammu and Kashmir State. The House has been interested and the wider public is also interested in these developments and, therefore, with your permission, Sir, I shall take a little time of the House to state not only the present position, but go somewhat into the background, because we are apt to forget what has happened in the recent past. Public memory is short and unless we remember that past it is sometimes a little difficult to understand the present.

The State of Jammu and Kashmir for long years was a delectable playground for those who could afford it, one of the famous playgrounds of the world, and though the people living there were for the great part poverty-stricken, it drew many people from the rest of the world. This Kashmir, which was politically-speaking a backwater for these long years, was suddenly thrust into the current of history and since then events have happened there, many developments have taken place—good and bad—and naturally public attention has been drawn to them and it has become an international affair. For us in India it is, of course, something much more than that

not only because of our long contacts ranging over a thousand years; but also because of these recent developments which have brought us nearer to one another. So, therefore, I would ask the indulgence of the House, if I may put it so, for some background information.

First of all, I would like the House just to form a mental picture of the geography—the geographical situation. From the southern tip of India, Kanya Kumari, Kashmir is just about or a little over two thousand miles. It is a far cry. Roughly speaking, Kashmir is about a thousand miles from the sea. While a part of India it is, in fact, the heart of Asia, geographically speaking, and for countless ages great caravans have passed from India right up to Central Asia through this State. It is essentially, and it has been for two thousand years or more, very closely connected with India culturally and politically often enough. It is also connected in various ways with Central Asia. Even now I wonder how many people realise that Kashmir is further north than Tibet. So one has to think of Kashmir in that peculiar geographical position apart from the other factors in the case.

Now Kashmir, as I said, was suddenly thrust into this current of history. This current is moving very rapidly in many parts of the world and sometimes it becomes a rushing and raging torrent in some parts. We seem, all of us or most of us all over the world, to live on a thin crust of peace and the crust threatens to crack up often enough and does crack up sometimes. Even this morning's news will bring this picture to the minds of hon. Members—the happenings in some States in Western Asia, the *coup d'etat* and the rest taking place and the lack of stability. We in India are perhaps a little fortunate in this respect, because in spite of many things that some hon. Members may complain of, or protest against, there is, it is widely recognised, a large measure of

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stability in our machinery of Government and affairs in the country and a continuous, progressive development, without those cracks appearing. This is a matter of good fortune for us. But at the same time nobody in this wide world can afford to forget this cracking and sometimes, as it appears, dis-integrating world of ours. That is the major background to be remembered.

Now in the State of Jammu and Kashmir, as in other Indian States of old, there were strivings for freedom against the feudal rule that existed there. As in other States again, they took their inspiration from the great nationalist movement of India. In essence, they were the outcome of that very movement and the off-shoots of that movement and their ideals and objectives also very largely came from that big movement and that great leader, Mahatma Gandhi. I think I would be right in saying that of all the various State movements in India during the last twenty or thirty years probably the State movement that developed in the Jammu and Kashmir State, the popular movement I mean that developed there, was the most powerful and grew up to be the best organised. It came in conflict, inevitably, with the State Government there, as all such movements did elsewhere. This movement was intimately connected with what was known as the All-India States People's Conference. Thereby it became a part of that allied movement in India which affected all the States in the country. It was closely connected with it. This is the background.

There were during these years, as in the rest of India, conflicts with the State machinery and the people there and the popular organisation there went through a great deal of torment and suffering. There is much to be said about that period, but I shall now come to more recent times.

When, or a little before, independence and partition came, the House will remember that we were faced by this big problem of the six hundred and odd Indian States in India. It was a terrific problem and we had to solve it with great rapidity. The announcement that the British Government had made—I think it was round about early in June 1947—had left the position of these States vague. We did not like that part of the British Government's announcement, because, in a sense it almost encouraged fissiparous tendencies in these States. It almost led some people to think or

imagine in these States all over India—I am talking about the Rulers there—to think that they could function more or less independently.

So, in those months of July and August 1947 we had to face this major problem. Fortunately, we had a man big enough to face it—Sardar Patel. And then during those two or three weeks preceding Independence we saw nearly all these States in India acceding to the Union of India, or to the Dominion of India as it then was—nearly all, barring two or three, barring Hyderabad, barring Kashmir and one or two small ones. Hyderabad's case, as the House well knows, was a very special one. Kashmir, I am dealing with. The other small ones did not count much. So practically all these States acceded to India with great rapidity. And I should like to say that we were helped greatly in that process by the then Governor-General of India, Lord Mountbatten. That help had great effect because it proved to all these Rulers in these States that they could not rely upon the British Government, as against India. And so they were faced by this coming Independence of India, of which they were afraid. They were faced by their own people who were dissatisfied with them and wanted a change. And when the last support which they perhaps looked up to, that is the British Government, also failed them they had no prop left, and hence the rapidity of their accession to India. They acceded on three basic subjects, Defence, Foreign Affairs and Communications. All the States did that. And so the Dominion of India started on the 15th August 1947 with all these States having acceded to it, excepting Hyderabad on the one side, Kashmir on the other, and one or two small ones.

In regard to Kashmir, even before the 15th August, I should imagine in July, the question came up before us informally. And the advice we gave was that the State of Jammu and Kashmir, for a variety of reasons, occupied a very special place. May I add here that even in regard to the other States in India the Government of India had declared its policy—the Minister of States, Sardar Patel, had declared our policy clearly—that where in regard to any State there was any doubt as to the wishes of the people, those people should be consulted. That is to say, normally speaking there was no doubt that these States wanted to become parts of the Union of India—there was no question of consultation,

no doubt—but where there was any doubt we declared that we will consult the people and abide by their wishes. That general policy and principle applied to every State in India. But there were hardly any cases where this question arose and that is a different matter. So that, when the question of Kashmir at first informally came up before us—it was always before us in a sense, but it came up before us informally round about July or the middle of July—the advice we gave to Kashmir State was—and, if I may say so, we had contacts with the popular organisation there, the National Conference, and its leaders, and we had contacts with the Maharaja's Government also, rather vague contacts, but they dealt with us—the advice we gave to both was that Kashmir is a special case and it would not be right or proper to try to rush things there, and the general principle we had laid down that the people of the State should be consulted specially applied to Kashmir. This was before Partition, before the actual coming of Independence. We made it clear that even if the Maharaja and his Government then wanted to accede to India, we would like something much more, that is, popular approval of it before we took that step. We did not wish by some clever tactics to gain something on paper. We were after something much bigger, that is to gain the hearts of the people there to have a real union. Indeed, the basis and the foundation for that real union had been laid in the past—a much more enduring basis than even any legal or constitutional document. That basis had been these national movements there and here, our working together in co-operation for common ideals, and our having to endure common suffering. That was the real basis. So we made it clear in the month of July 1947 that the State of Jammu and Kashmir should not be hustled into taking any action, though many of their leaders were personally inclined, but they knew their people too and they said that the initiative should come from the people and not merely from the Maharaja's Government, only then it will endure. We accepted that entirely. And so we informed the Maharaja's Government as well as the leaders of the popular movement there that this matter of accession should not be hurried, that it should wait over till some method was found of consulting the people. And at that time what we envisaged was some kind of Constituent Assembly being elected there. In fact we envisaged that for other places too, wherever such a question arose. And we advised that meanwhile there

should be Standstill Agreements with India and Pakistan that was going to come soon, so that no change need be made, except minor changes, and a little later, at leisure, this question could be considered further.

Well, of course there was little of leisure that we had after the 15th August 1947. Upheavals took place in Pakistan, in the States of India bordering on Pakistan, and we had to pass through much pain and torment during that period. We could not think of Kashmir or any other place. We had to deal with the immediate issues that faced us from morning to evening.

Suddenly, the House will remember, in the last week of October 1947 an invasion took place of Kashmir through Pakistan. Now, it has been said in Pakistan often enough that there was some deep conspiracy on the part of India, allied with the leaders of Kashmir, to create trouble in various parts of the State, in the Poonch area and the rest. It has also been said, some people have said, that we knew all about what was happening—this invasion, I mean. The fact of the matter is that when we first heard the news of this invasion it came to us as a complete surprise. In fact, even the news did not reach us properly, because communications were not working properly. And when this dawned upon us we were taken much aback. For a day or two we gave very serious thought to this matter, and we did not quite know what we could do about it. We were far out of reach. Physically it was difficult. We were terribly busy with our own troubles here. However, as this raid and invasion developed, news came to us of rapine, killing and arson that was going on in its train, and naturally there was a great public feeling in India. Public feeling was aroused and the House can well imagine what the state of public feeling in the State of Jammu and Kashmir was at the time. At that time we received independent appeals both from the Maharaja's Government and from the popular organization of Kashmir. The appeals were for help and for accession to India. We gave long and very anxious consideration to these, tried to consider and think out the implications etc., and we had to come to a quick decision. I remember, it must have been the 27th of October, after practically an all day sitting in the evening we came to the conclusion that in spite of all the risks and dangers involved, we could not say 'No' to that appeal and that we had to go there to help them. It was not an easy matter because we could only go by

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air. We did not even know if the one and only temporary air-field was working or was in the hands of our foes. There was no other way to get there immediately and time was important, because every day brought further news of the depredations of those raiders. We decided to go to their help with all its consequences and within 12 hours of our decision our troops were on the way by air. That was a fine piece of staff work on the part of our Army and Air Force. They arrived just in time; indeed it is possible that if they had arrived 24 hours late, the air-field would have been in the enemy's possession and that would have made matters much more difficult. From the air-field they went straight within a few miles to oppose these raiders. The raiders were driven back. Those raiders were supposed by us to be tribal people, no doubt, encouraged and abetted by Pakistan. At first we did not think it was a major military operation to drive out these tribal people. May I add here that before our forces reached there, probably before three or four days, the administration of Kashmir had completely collapsed. There was no administration. There was nobody—I cannot say definitely, but I hardly think there was any police force left or anything else. During these very critical days when this ruthless enemy was advancing on the famous city of Srinagar, the people of Srinagar had nobody to protect them, either big or small, and it was only the popular effort of the people, the volunteers of the National Conference that protected that city and protected it, not so much from armed forces—they could not do that because they had no arms—but they gave the necessary moral stimulus to the people and it is a fact worth remembering that when the enemy was within ten or twelve miles of Srinagar city, not a shop in Srinagar was closed. They were functioning. That showed the morale of the people and of the National movement at the moment of severe crisis. We drove back these raiders and when we drove them back to a place called Uri, where only a year or more earlier, I had been a prisoner of the Maharaja's Government, suddenly our forces discovered that a little beyond Uri they were not dealing with the tribal raiders, but with the armed might of the Pakistan army. That was a different matter that had to be dealt with on a different plane and so for the moment our armed forces stopped there.

Well, since then—this was in November 1947—war continued there and

elsewhere in the State, on the Jammu side, on the Kashmir side and on the northern side. It continued for a year and a half nearly. Round about December when we saw that we were up against the regular forces of the Pakistan army, immediately we felt that this matter was likely to become much bigger than we had imagined, that it might very well lead us to a full-scale war with Pakistan.

I should like the House to remember that time because we must judge every event in the context of that period. It was a period when soon after Partition with all the troubles we had due to the Partition and even our armies and services, everything else was split up, we wanted to settle down and apart from that, so far as we are concerned, we are averse to war, if we can help it. When we saw this matter might well develop into a full-scale war against Pakistan, we decided to refer the matter to the United Nations, I think, round about December 1947. Our reference was that certain tribal people had invaded the Kashmir State territory, behaved ruthlessly etc., that they had come through Pakistan territory and that Pakistan had aided and abetted them in doing so. Our request to the United Nations or the Security Council was that they should inform Pakistan not to aid and abet these people. That was our request and that was the question we put. For the rest we proposed to deal with the situation ourselves. Our object was that this war should not spread in this way. We had, of course, asked Pakistan directly this question. But Pakistan had stoutly denied having anything to do with the matter. It was rather difficult to understand how a few thousand people could march through Pakistan territory almost unaware so far as the Pakistan Government was concerned. However they denied that the tribal people had marched through their territory with their help at all and they denied absolutely then and for some months afterwards, that any Pakistan force or any part of the Pakistan Army had taken part in this Kashmir invasion. Later, we had plenty of evidence of this and in Delhi city a little museum was opened by our Defence people, showing the participation of the Pakistan army when they were doing it, because we had all kinds of captured materials, diaries of soldiers, insignia, etc.

In 1948 these military operations went on fiercely throughout the winter. It is a very difficult time in those high

valleys of the Kashmir State during winter when you have to go up 15,000 feet or so. Simultaneously, the Security Council came into the picture. At first, for many months they talked and argued in New York. We were surprised because the question we had put was a very simple one and admitted only of a simple answer. We had not asked them to take our word for it, if it was challenged, as it was challenged, by Pakistan. The obvious course was to find out for themselves if we were telling the truth or Pakistan was telling the truth in this matter. During these four or five years of discussion, negotiation and mediation that simple question that we put at the end of 1947 has not been answered and has not been considered in that way. It has been answered in a sense rather indirectly by the Resolution of the United Nations Commission that came here in 1948, when they said that a new situation had arisen because Pakistan troops were in Kashmir. They did say that, because till the very eve of this statement, Pakistan Government had firmly denied the fact that their troops were there. That is an amazing instance of continuing to repeat what was patently false, and without foundation and which was found to be so by this United Nations Commission.

If I may just for a moment go back a little, on 31st December 1948, a cease fire was agreed to between the parties. Since then, there has been no military operation on any major scale. There have been petty raids; but, otherwise, there has been no serious fighting. That has been the position since then. Apart from local troubles and infiltrations—if you take that kind of thing, there is plenty of that—the scene has shifted to the Security Council of the United Nations, the United Nations Commission, United Nations representatives and the like, who have been visiting India from time to time. I shall not go into that history.

The latest mediator has been Dr. Graham. Dr. Graham has been here twice and has had long consultations with us and with the Pakistan Government, and is at the present moment in New York still continuing these conversations. He confined his enquiries almost entirely to what he called the demilitarisation of the State. That word is hardly a happy word; but, nevertheless, for the sake of convenience we may use it. The position that we had agreed to when the United Nations Commission was here was this. In our desire to have peace, we had agreed to this, that, first of all, Pakistan armies, auxiliaries and the rest

should withdraw from every inch of State territory. In fact, we had laid the greatest stress on it, not merely for military reasons, but much more so for moral reasons. They had no business to be there. They had to withdraw. They had invaded. Even if Pakistan challenged the accession of Kashmir to India, and as the House knows, they have challenged it and called it a bogus accession and all that kind of thing—even leaving it apart, I shall deal with it a little later—whatever India's position in Kashmir might be, one thing is dead clear and dead certain, that Pakistan had no position there; moral political, constitutional or anything else, and Pakistan had no business to send any forces or abet any forces going there. So that, we made it an essential condition, a pre-requisite of any kind of approach to a settlement with Pakistan, their withdrawal completely from that area which they had invaded and occupied. That was the thing agreed to in that Resolution of the United Nations Commission.

Meanwhile something else had happened and that was the building up in the Western area of the State, which was occupied by Pakistan, of forces sometimes called the Azad Kashmir forces. They had built up local levies called Azad Kashmir forces. At that time, that is in 1948, we did not have too much information about that, although we knew about it. We asked that these levies should be disbanded and disarmed. We could not ask them to go away from the State because the people lived in the State. We asked that they should be disbanded and disarmed. The form that the Commission put it later in the Resolution was, large scale disbandment and disarmament of Azad Kashmir forces. There has always been an argument between us and Pakistan on that issue. We have insisted that this meant, and we meant, a complete disbandment and disarmament: complete in the sense as far as could be. Some people may not give up arms; some may hide them. That is a different matter. Officially, it must be complete. Pakistan did not agree to that interpretation. And, this has been one of the arguments coming in the way of the conversion of the Cease Fire into a Truce Agreement. This was what Pakistan had to do. On our side, we had agreed to withdraw the bulk of our forces, mark the word "bulk", from the State territory provided that we keep enough forces there to maintain the security of Kashmir from external invasion or any other internal troubles. It was always a condition that we must have

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enough forces, and we were the judges of that. We had said that we will withdraw the bulk of our forces, that is, when Pakistan armies had gone to Pakistan. We felt we could do that. This was more or less the position. Then came the Cease fire and these talks are taking place. These talks had got rather struck up over the interpretation of the Resolutions passed in August 1948 and January 1949, by the United Nations Commission. I shall not go into those details.

Now, Dr. Graham has been dealing solely with this so-called demilitarisation problem. He laid down at one time 12 proposals. I think, as far as I can remember, we agreed to eight, about one or two, we wanted some change, and we did not agree to one or two.

May I go back a little? We had agreed to two proposals of the United Nations Commission in 1948 and 1949. The other things happened in between. But, at a later period, the Security Council passed a Resolution with which we did not agree and we made it perfectly clear in the Security Council that we could not possibly accept that Resolution because, apart from the fact that it went against all that we have stood for and all the assurances we had given to our people and the people of Kashmir, and our responsibility for the defence of Kashmir, we felt that it went against even the Resolutions passed by the Security Council itself at the instance of the Kashmir Commission. It was going back on that. So, we never accepted that Resolution, or parts of that Resolution. Dr. Graham was appointed in terms of it later. We made it clear to Dr. Graham.....

**Pandit L. K. Maitra (Nabadwip):** Dixon's report preceded that.

**Shri Jawaharlal Nehru:** I am not going into all matters. Other people came in between. I am saying that we did not accept that Resolution. But, it has always been our point of view in the Security Council and elsewhere that we shall gladly—because we want peace and settlement—discuss this matter with anybody, certainly with a representative of the United Nations, and we are prepared to treat him as a mediator, but on no account are we prepared to agree to something which was imposed upon us. We are not prepared to have anything imposed upon us, and we are not prepared to accept anything which goes against our own responsibilities in this

matter. So, when Dr. Graham came—he came here as a mediator, not in furtherance, so far as we are concerned, of that Resolution of the Security Council which we had not accepted. I might add that throughout his stay here, his visits here, Dr. Graham has never mentioned that Resolution here. So, he concentrated his attention on the demilitarisation—what is called demilitarisation—of the State, and although we agreed to many things that he said, there has always been a gap between our position and the position taken up by Pakistan. That gap has not yet been bridged.

I should like to express, if I may, my admiration for Dr. Graham and his sincere efforts and extraordinary patience. He has, undoubtedly, I believe, tried his utmost to achieve results, he desires it, and in some matters he has made progress too, but a certain gap still remains. So far as we are concerned, if I may say so with all respect, we have also been very patient, and we are prepared to match our patience with others' patience, because the consequences of being impatient are bad. So, these talks are going on, and certain reports appear in the newspapers. They are sometimes partly true, partly not true; it becomes very difficult for us to deal with these reports which are not made by any official source, but get out nevertheless. Now, that is so far as Dr. Graham is concerned.

Now, to go back to the other aspect. The position in 1948 in regard to Kashmir and all other States, the acceding States, was that they had acceded on three basic subjects—Foreign Affairs, Defence and Communications. But, then, the other States in India, all of them almost, were more closely integrated—the process of closer integration started, and was achieved, very largely again at the instance of Sardar Patel. So that we had a picture in India of—practically we had removed any difference between the old States and the old Provinces. It is true that provisionally some States were called B States, some were called A States, and some C States, but that is exceedingly temporary, and that goes, that must go and it is going. In effect, that difference which marked a Province and an old State was gone, and India became a much more closely integrated State.

Now, while that process was going on in regard to other States, it did not go on in regard to Jammu and Kashmir State, deliberately, for a variety of reasons. Well, reason number one,

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because, one reason was, that the whole matter was in a fluid state, before the United Nations etc. Reason number two equally important, that from the very beginning, for obvious factors, we had recognised that the position of Kashmir was somewhat different. Thirdly, that from the very beginning we had repeated that—from even before the Partition, I may inform the House—that no step will be taken about Jammu and Kashmir State without the concurrence and consent of the people of Kashmir. So, deliberately, Kashmir remained with those three subjects, and those three subjects only. Of course, when I say three subjects like Defence, Communications and Foreign Affairs, please remember that each subject itself is a category of subjects. It is not a small subject, it is a category, if you go into details. We did not touch that. And Sardar Patel was all this time dealing with these matters.

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, he wanted to leave it, we all wanted to leave it in a fluid condition because of these various factors, and gradually to develop those relations, those legal and constitutional relations, and not to force the pace in any way. As a result of this, a rather unusual provision was made in our Constitution relating to Jammu and Kashmir. That provision is now in article 370 in Part XXI, Temporary and Transitional Provisions. Now, that article if you will look into it—I will not trouble you by reading it. If you refer to it, if you are interested, you will see the position that emerged at the time of our finalising our Constitution. And I might say that that article 370, although it is by no means a final article, nevertheless, it defined more precisely the relationship of that unit, that constituent unit, with the Union of India. After that, on the 26th of January, the President issued an Order in terms of that article 370, a President's Order defining the categories of subjects and parts of the Constitution that should be applicable to the Jammu and Kashmir State. Now, the position since the Constitution was framed is thus contained in article 370 and in the President's Order following it. Article 370 was obviously of a transitional nature, and it allowed the President to make any additions to it.

any variations to it, later on, the object being that if any change or addition was required, we need not have to go through the cumbersome process of amending our Constitution, but the President was given authority to amend it in the sense of adding a subject, part of a subject, whatever, it was, to the other subjects in regard to Kashmir. But in article 370, the old principle was repeated and emphasized that all these changes or any change required the approval of the Constituent Assembly of the Jammu and Kashmir State. Now, when this was put down in our Constitution, there was no Constituent Assembly of Jammu and Kashmir State, but we envisaged it. We had envisaged it for a long time. And if the Constituent Assembly was not there, then, it required the consent of the Jammu and Kashmir Government. So, that was the position.

The House will appreciate that throughout our position has been, from before partition, that we will not take any step which might be considered a step in the nature of compulsion or coercion, that everything should flow with the consent of the people concerned. That was the basic position. In addition to that fact, when this became an international issue, we did not wish to do anything which might be thought as if we were trying to override or bypass any assurance that we had given to the United Nations. This rather fluid condition continued, and our relationship was fluid in this sense, namely legally fluid; otherwise there was no difficulty and we carried on. It might have continued some time longer, one year, or two years, or three years. There is nothing to compel us. We were getting on in an ordinarily friendly and co-operative way. There was no other difficulty. There were minor matters. We discussed them and decided them.

Then came actually the Constituent Assembly of Kashmir into being, and it came into being with our goodwill some time last year. When the subject that the first elections to the Constituent Assembly were going to take place was mentioned, there was a good deal of opposition to this idea in some foreign countries, which was voiced in the Security Council. And I need not say that Pakistan disliked it intensely. However, I saw no reason why and I see no reason now as to why any foreign country should interfere with the internal relationship of Kashmir with India, and what the people of Kashmir do to themselves. If other countries objected to that, we objected strongly to their objection, and we carried on. So, this Consti-

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tuent Assembly came into existence last year and it has done various things, various important reforms it has introduced, but then it set down to itself the major task of drawing up a Constitution for the Jammu and Kashmir State. Now immediately we were faced with this problem. It is all right to have a fluid state for some time, but when you draw up a precise Constitution you have to be precise. This was the background and the reason for the talks we have been having amongst ourselves and with the leading members of the Jammu and Kashmir Government. We had no desire to make the relationship as a static unchanging, or a finalised one; because the position is a dynamic one, a changing one. Nevertheless, it was perhaps too fluid and once a Constitution is going to be framed, a greater precision was necessary and it was obviously necessary that there should not be any contradictory provision in that which might not conform to the provisions of our Constitution. Hence these talks. Well, we had these talks for the last few days and I am going to tell you now what has emerged from these talks.

But before I say that, I would like to remind you that one of the first things that this Constituent Assembly did was to tackle the land reform question, and in the course of a few months, they have successfully accomplished them or almost accomplished them. I confess that I look with some envy on the speed and celerity with which they have performed this task there, considering the enormous trouble we have had in the various States in India, the difficulties, the obstructions and the delays that we have had to face, and so I became a little envious when I saw how this was done in Kashmir State. Now I might just give you some indication of what was done there. It is said that they have expropriated the landlords there. That is not quite correct. They have put a ceiling on land holdings, the ceiling is roughly 23 acres, plus orchards. They did not touch orchards. They have allowed, about 23 acres to remain with every person possessing land, plus the orchards he possesses. They have not touched them at all. And the House ought to remember that orchards are very important in Kashmir which is a great fruit-growing country. Then there are some other lands, grazing lands etc.; they are also still with the landholders. That matter will be considered further later. I said that each person has been allowed 23 acres. It should be

remembered that the average holding of land in Kashmir State is barely two acres, and so the 23 acres is a fairly generous holding ceiling that has been given.

Now in regard to the talks we have had, the position, obviously the admitted position, is that the Jammu and Kashmir State is a constituent part or unit of the Indian Republic. It is a unit of India and is therefore a part of the territory of India. That is the basic position.

The question of citizenship arose obviously. Full citizenship applies there. But our friends from Kashmir were very apprehensive about one or two matters. For a long time past, in the Maharaja's time, there had been laws there preventing any outsider, that is, any person from outside Kashmir, from acquiring or holding land in Kashmir. If I may mention it, in the old days the Maharaja was very much afraid of a large number of Englishmen coming and settling down there, because the climate is delectable, and acquiring property. So, although most of their rights were taken away from the Maharaja under the British rule, the Maharaja stuck to this that nobody from outside should acquire land there. And that continues. And in the State subjects notification by the Maharaja, they have defined four grades of subjects, Class number one Class two, Class three and Class four. And unless you come in one of these classes, you just cannot acquire land there, or any immovable property. So the present Government of Kashmir is very anxious to preserve that right because they are afraid, and I think rightly afraid, that Kashmir would be over run by people whose sole qualification might be the possession of too much money and nothing else, who might buy up and get the delectable places. Now they want to vary the old Maharaja's law to liberalize it, but nevertheless to have checks on the acquisition of lands by persons from outside. So far as we are concerned, I agree that under article 19, clause (5), of our Constitution, we think it is clearly permissible both in regard to the existing law and any subsequent legislation. However, we agreed that this should be cleared up. The old State's subjects definition gave certain privileges regarding this acquisition of land, the services, and other minor things, I think, state scholarships and the rest. So, we agreed and noted down this:



"The State Legislature shall have power to define and regulate the rights and privileges of the permanent residents of the State, more especially in regard to the acquisition of immovable property, appointments to services and like matters. Till then the existing State law should apply."

Then there was another matter relating to citizenship, because owing to these troubles in Kashmir since 1947 and a little before and after, there have been large numbers of people who gave gone out of Kashmir but want to return. So there must be provision made for them to return. In fact in our own Constitution, some provision has been made, and I might inform the House that this question was raised early this year or last year about the inclusion of a large number of migrants from East Bengal. We could not include them in our electoral rolls, because they came too late. We are including them now. Those that fulfil the conditions will all come in. So those who had gone away from Kashmir into Pakistan or elsewhere and who normally speaking might not be eligible for citizenship should be provided for, if they want to return. So we said:

"Special provision should be made in the laws governing citizenship for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or earlier in fear of them, and could not return. If they return they should be entitled to the rights and privileges and obligations of citizenship."

Then came the question of fundamental rights. Now there was general agreement that there should be fundamental rights and these fundamental rights should apply to the State. But again there were great apprehensions in the minds of our friends from Kashmir. First of all, the question was how far these fundamental rights might not come in the way of their land legislation now or any later development of it. Certainly we did not want them to come in the way of their land legislation. We like their land legislation. We thought it was very good. In fact it is quite impossible to upset a thing that has been done, but we said the matter should be cleared. The second thing was this. Owing to all this business of invasion of Kashmir State, war, cease-fire, all kinds of continuing tensions, difficulties due to infiltration etc.—constant attempts are made by infiltration, espionage cases are repeatedly

heard there is sabotage and the rest, out if you go to that State, you find normalcy there, that is to say, the State is functioning adequately normally, but behind that normalcy there is this tension, constant tension of an enemy trying to come in to create trouble, to disturb, and all that. And the State Government has to be wary and watchful all the time, and so we were told that it was possible that some part of the fundamental rights provisions might very well hamper the activities of the State Government from taking these precautions and these measures. We agreed that it was essential and in the interests of Kashmir situated as the State is now, that the State Government should have that authority. So subject to this, further consideration can be given to it as to how this could be done, so that a fuller consideration of this and like matters was necessary so that the fundamental rights might be applied with such modifications and exceptions as might be considered necessary from this point of view, and agreed upon.

Then in regard to the Supreme Court, it was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in article 131 of the Constitution of India. It was further agreed that the Supreme Court should have jurisdiction in regard to fundamental rights which are applied to that State. On behalf of the Government of India we recommended that the advisory tribunal in the State which is designated as His Highness's Board of Judicial Advisers should be abolished, and the jurisdiction exercised by it should be vested in the Supreme Court of India, that is to say, that the Supreme Court should be the final Court of Appeal in all civil and criminal matters as laid down in the Constitution of India. The Kashmir Government delegation had no objection to this. They were prepared to agree but they said they would like to consider the matter in some detail further.

Now I come to the question which has been much discussed and referred to in the newspapers, the question of the Head of the State.

I might mention that apart from past history when this Constituent Assembly met in Kashmir, the inaugural address to that Assembly stated quite clearly some of the policies that they were going to pursue, and among these policies was the election, by democratic process, of the Head of the State. That has been the declared policy of the National Conference Organisation in Kashmir for a long time.

[Shri Jawaharlal Nehru]

We had no objection with regard to the enunciation of that principle then. Now, after careful consideration—because we have always had to consider two matters: firstly to give effect to the wishes of the people of the State and secondly, to give effect to our own Constitution—we have come to an agreed formula. Of course, you will not attach too much importance to the language—a word here or there. For legal and constitutional purposes the words may be changed, but it describes the way we have been thinking and what we have agreed to. Now it was agreed: (1) that the Head of the State shall be the person recognised by the President on the recommendation of the Legislature of the State. (How the Legislature of the State recommends is a matter for the Legislature. Whether it is by the process of election or not it is for them to decide: it may be by the process of a majority, or two-thirds majority; it is entirely for them to decide. Anyhow they recommend and then it is for the President to recognise). (2) He, that is, the Head of the State, shall hold office during the pleasure of the President. (3) He—the Head of the State—may by writing under his hand addressed to the President, resign his office. (4) Subject to the foregoing provisions of this article, the Head of the State shall hold office for a term of five years from the date he enters upon his office, provided that he shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. That is so far as the Head of the State is concerned.

Then there has been a good deal of misunderstanding in regard to the National Flag. This has been cleared up, I think, adequately by public statements made. Nevertheless, we thought that this should be further cleared up. Sheikh Abdullah, the Prime Minister of Jammu and Kashmir State, had stated publicly that the question did not arise so far as they were concerned, because the National Flag was the supreme flag and it had exactly the same status and position in the Jammu and Kashmir State as in any other part of India. The State Flag was in no sense a rival to the National Flag, but for historical and sentimental reasons connected with their struggle for freedom in Kashmir, they wanted this State symbol to continue. This was agreed to. It was added that this should be made clear in a formal manner, preferably by the Constituent Assembly of the State.

Then in regard to the President of India, it was agreed that the powers to reprieve and commute death sentences etc. should belong to the President of India.

There has been some talk about financial integration. It was decided that such financial arrangements between the State and the Government of India should be considered further and details worked out. The position, as I said, is a dynamic, changing one. Matters have to be gone into in some detail; so whatever the financial arrangements might be, we shall gradually work them out.

Then there is the question of emergency powers contained in our Constitution, more especially in our article 352 of the Constitution. It was agreed to; I will remind the House what article 352 is: in case of invasion, external danger or internal disturbances, the President has power to declare a state of emergency, and then various consequences flow from it. This Parliament is then seized of the position. Now this was agreed to; but the friends from Kashmir were slightly apprehensive of what 'internal disturbances' meant there. For the rest they have said, of course, if there is a grave emergency this should happen. So, with regard to adding some words to clear up, not to clear up that matter but rather to bring in the fact that in the case of internal disturbances any action taken should be with the concurrence of the Government of the State, it was agreed that article 352 of the Constitution should apply to the State with the addition at the end of the first paragraph of the following words:

“but in regard to internal disturbances, at the request or with the concurrence of the Government of the State”.

That is, the state of emergency will be declared with the concurrence of the Government of the State.

These are the principal things that have been discussed and I think that we have arrived at very satisfactory decisions—agreements which are in consonance with the wishes of the people of Kashmir and in consonance with our Constitution. I would repeat that there is nothing final about this and gradually we can fill in other details later. I presume that at the present moment, as I said, the relationship of Kashmir with the Union of India is governed more or less by article 370 of our Constitution. Now the accession has been complete. There is a certain confusion in people's minds. The accession is complete in law and in fact, Jammu

and Kashmir State is a constituent unit like any other. It is a part of the territory of India, the people of Jammu and Kashmir are citizens of India like any other. But the fact that the subjects to which Jammu and Kashmir has acceded are limited, or less than those applying to other States, that fact produces this misunderstanding as if there was partial accession. That is not so: Accession is quite complete. In fact, all the States acceded only in regard to these three subjects to begin with. It may be that we may have more subjects later, but we are proceeding and we propose to proceed always in such matters with the consent of the other parties concerned. Now, presumably the President of the Union will have to issue some order under article 370 of the Constitution to give effect to any of these modifications or changes that we have suggested.

I am very grateful to you, Sir, and to the House for the indulgence shown to me.

**Shri N. C. Chatterjee (Hooghly):** Sir, on the 26th June the hon. Prime Minister, while speaking on Kashmir, gave some kind of an assurance to the House that the House would have an opportunity of a full-dress debate on Kashmir. Having regard to the important matters we have now heard from the Prime Minister, we want an assurance, Sir, that that undertaking will be fulfilled and the House will be given an opportunity of discussing the matter through a full-dress debate, especially when there are certain things proposed which will mean the amendment of the Constitution. . . . .

**Mr. Speaker:** Order, order. That argument could not be gone into at this stage. The only request is whether Government will give some time for a further discussion of this question.

**Shri Jawaharlal Nehru:** Yes, Sir. Government is perfectly prepared to give time or a day for consideration of these matters, for a full discussion. I hope that hon. Members will be prepared to stay on here as long as necessary for this and other purposes.

#### MESSAGE FROM THE COUNCIL OF STATES

**Secretary:** Sir, I have to report the following message received from the Secretary of the Council of States:

"In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Council of States, I am

directed to inform you that the Council of States, at its sitting held on the 22nd July, 1952, agreed without any amendment to the following Bills which were passed by the House of the People at its sitting held on the 16th July, 1952, namely:

1. The Indian Tea Control (Amendment) Bill, 1952.
2. The Rubber (Production and Marketing) Bill, 1952.

#### RESERVE AND AUXILIARY AIR FORCES BILL

**Shri B. Das (Jajpur-Keonjhar):** When the House adjourned yesterday I was just making a few preliminary remarks. I gave my full support to the measure which my hon. friend, Shri Gopalaswami Ayyangar had brought forward and I told him that though the measure is belated I would give him full support in the matter. Though India through its leader, the Prime Minister, stands for the peace of the world, that peace can only be maintained by building up an efficient Defence Force. I submit that though we have advanced to various stages of sovereignty in other Ministries, in the Defence Ministry we are still trudging on in the old Grand Moghul style of the I.C.S. Secretaries who ruled 25 years ago, and there is no change in the organisation and conception of the Defence Ministry. My friend, Shri Uma Charan Patnaik referred to it and I was rather saddened to read the three passages in the financial memorandum attached to the Bill, which of course is not drafted by my hon. friend, the Minister but by the I.C.S. Secretary who controls the Defence Ministry. My friend is a little bit saddened that there is no finance available. Well, finances must be provided from within the Defence Budget.

[MR. DEPUTY-SPEAKER *in the Chair*]

In the first paragraph of the financial memorandum it says, the Bill "does not involve immediately any appreciable extra expenditure". In the third paragraph entitled "Air Defence Reserve", it says;

"The size of this Reserve has also to be determined keeping in view the capacity of the Indian Air Force to provide training and the amount of money available in the Defence budget."

In the last paragraph on "Auxiliary Air Force" it again refers to finance: