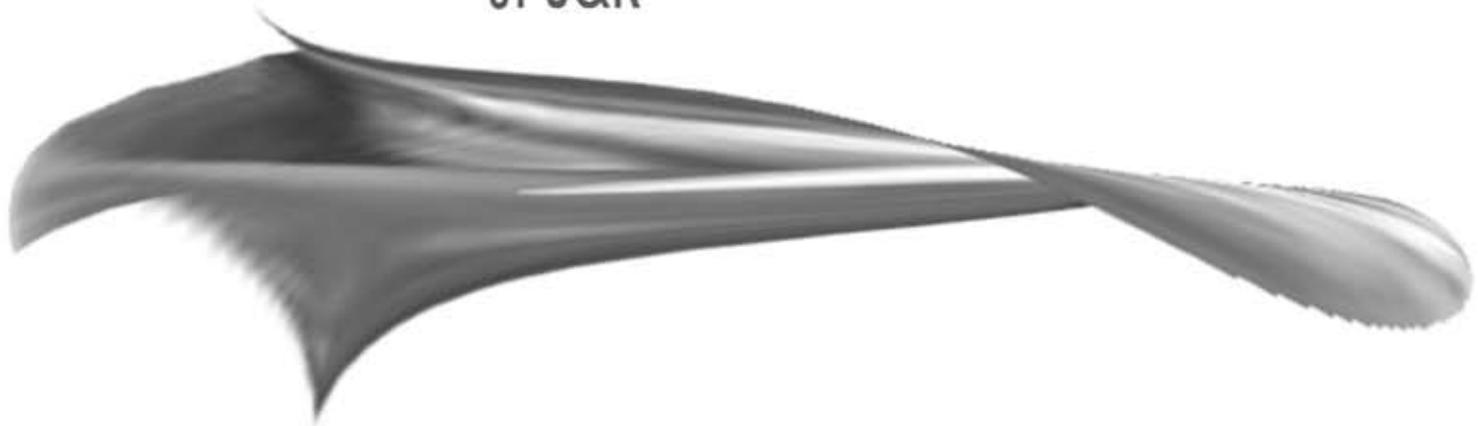


Anatomy of the Autonomy

A comparative study
of some documents
related to the autonomy
of J&K



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Introduction

Autonomy, according to a standard definition, means limited self-government, short of independence, of a political state, or more frequently, of a sub-division.¹ A demand for autonomy would then simply be a demand for limited self-government, short of independence. But the Kashmir issue has seldom rendered itself to such simplicities. In the first place, the knotted history of the period between 1947 and 1953 holds within its contested threads enough proof of the fact that the relationship between India and J&K commenced on the basis of a contract between two sovereign powers, the Government of India and the Maharaja of J&K, at a time when the former had just gained legitimacy (through independence) and the latter had lost it (because the people of the State contested the Maharaja's scheme of things and in the newly-arriving paradigm of democracy, the people's version gained precedence over the King's version). The knots of this history are the first barrier warping clear-cut definitions of the concept of autonomy.

In the second instance, what complicates the matter is that while almost all demands for autonomy arise out of a grievance, the demand for autonomy in J&K is in addition equally informed by the historical reality that autonomy means, and will lead to, the restoration of a previously existing political position. J&K has enjoyed considerable autonomy in the past, which has been systematically eroded over the years and therefore the demand for autonomy is essentially a throwback to the past rather than a programme of the future. The legality of this erosion, in light of the fact that it is done in violation of a contract between sovereign powers, only makes the issue more contentious.

A third factor which prevents a straightforward assessment of the autonomy of J&K is the concept of *azadi* or complete independence.² The demand for a right to self-determination has been the bedrock of the politics of the state, both internal and external, since 1947. Over a period of time, this demand has crystallized into the narrative of *azadi*, which has now risen to the eminence of being the major narrative in the state, especially in the Kashmir valley, and has at best subsumed and at worst consumed all other narratives, including the narrative of autonomy, in more ways than one can imagine. The experience J&K has had vis-à-vis India is full of erosions of basic political and human rights, manipulated elections, systematic misgovernance, economic disempowerment, oppression by the police and security forces and an institutionalized process of dialogue which always 'takes away' rather than 'giving something'. This experience has created a huge disconnect between India and the common people of J&K and has rendered the utilization of intellectual energies for building up the ideological apparatus of autonomy meaningless for most citizens of the state, thus creating a state of affairs wherein there is a focus on alienation and rhetoric, rather than on attempts to find solutions,

1 Collins English Dictionary, 2009; dictionary.com.

2 The present study does not concern itself with a discussion on the major narrative of *azadi* and its various strands, including those which favour the merger of J&K with Pakistan. That is a separate debate which needs to be dealt at length on a different level.

build a consensus and create a vision for the future. That this narrative commands a serious majority in the state is a fact which complicates, at least at the ideological and structural level, India's position on the issue, especially because India claims to be a democracy and its governments derive their legitimacy from this claim.

Such a situation is obviously far from conducive for the narrative of autonomy because, as already mentioned, the demand for autonomy basically arises from a grievance; usually a complaint of persistent mismanagement and perception of chronic discrimination. It is therefore natural to expect that this demand will always be accompanied by a framework of a solution; a solution suggesting an alternate system which not only addresses the grievance but also incorporates the best features of the existing system. But the peculiar conditions in J&K have ensured that this does not happen. The persistent mismanagement has tipped over into basic systemic decay and the chronic discrimination has metamorphosed into the institutionalization of mistrust. This has made the position of autonomy as a viable solution untenable. As a result, compared to some other movements, little work has been done with regard to autonomy of J&K and, consequently, few noteworthy documents pertaining to autonomy have been released into the public domain.³

However, an understanding of the history of the discourse of autonomy, its genesis and its different versions is a study which can throw light on many key issues of the Kashmir problem. Among other things, such a study will, by default, be a symptomatic exegesis on the larger question of what is wrong, and right, with the politics on Kashmir.

Acknowledging the pertinence of such an examination, the present study is a humble attempt to make a comparative analysis of some important documents related to the autonomy of J&K. The documents on which the study is based on are:

1. Naya (New) Kashmir, produced by J&K National Conference under Sheikh Mohammad Abdullah, the original version was made public in 1944, and a much-amended version was produced in 1977.
2. The Self-Rule framework for resolution, produced by J&K Peoples Democratic Party, October 2008.
3. Achievable Nationhood, produced by J&K People's Conference under Sajad Gani Lone, December 2006.
4. Report on J&K Regional Autonomy by Balraj Puri, 1999.
5. Report of the State Autonomy Committee, adopted by the state legislative Assembly on June 26, 2000 and by the State Legislative Council on June 27, 2000, read together with the Regional Autonomy Committee Report, April 13, 1999.⁴

The selection of these documents, and only these documents, is a carefully and precisely reasoned one. This is an attempt to examine some narratives emerging from within the state to arrive at a perspective on autonomy.⁵ The Self-Rule Document, the report of the State Autonomy Committee and Achievable Nationhood have been selected because they throw light on the issue from three political perspectives and together span almost the entire range of contemporary "mainstream"⁶ opinions about the nature, extent and latitude of

3 Even those documents which are in the public domain have been allowed to gather dust, thus reinforcing the arguments in favour of their uselessness.

4 The Regional Autonomy Committee was originally headed by Balraj Puri who was its working chairman, but later he fell out with other members of the committee on some key issues. The others members tabled their report on April 13, 1999 while Balraj Puri published his own version separately.

5 Documents such as the recommendations of the Justice Saghir Ahmed Working Group, the fifth such Working Group set up in consequence of the Prime Minister of India's Round Tables, or the Kashmir Study Group's reports, are therefore not part of the present study.

6 Positions favouring or inclined towards the official Indian position are labeled mainstream in the contemporary political language of J&K.

autonomy of J&K. Balraj Puri's report on regional autonomy, taking the debate into a deeper administrative and governance level, has been included for the depth, the themes, the challenges, the resolutions and the sheer fractal beauty that it provides to the narrative of autonomy. The Naya Kashmir document has been included in this study with an intention of ascertaining how the contemporary perspectives on autonomy, which are also visions of governance, compare with the original vision of Sheikh Mohammad Abdullah and his generation.

Points of Convergence and Divergence

Considering the narrowness of the corridor of political space within which the narrative of autonomy has to tread, constantly trying to avoid being squished by the arguments in favour of India and Pakistan on the one hand, and the now overarching nationalist argument in favour of *azadi* on the other hand, it is amazing how much diversity of opinion it manages to include within the breadth of its scope. An examination of the documents is a grand undertaking per se but what assumes even more relevance is an analysis of the ways in which these documents converge and diverge on some key parameters. Such an analysis will not only reveal how these documents address the key aspects of the grievance while assimilating the best features of the existent system, but will also be a beacon in the strenuous path of building a consensus on the issue of autonomy of J&K. The present study identifies nine parameters and endeavours to make such an analysis through them.

The parameters have been selected because together they provide a sort of litmus test on the issue of autonomy. These parameters raise key issues related to the concept of autonomy. Any vision of autonomy which does not delve on the questions incorporated within these parameters can hardly lay claim to being a complete vision. Therefore, a study based on these parameters is a first step towards building a consensus on the issues raised through a discussion on the convergence and divergence of the documents. It is also hoped to be helpful in the larger context of building a consensus on the narrative of autonomy of J&K.

1. APPROACH

The original **Naya Kashmir document** was released in September 1944. It takes sovereignty of J&K as a given because at that time J&K was an independent State under British protection and the question of Indian and Pakistani claims did not arise because these two countries did not exist. A reviewed version of the Naya Kashmir document was released in 1977. It is markedly different from the original 1944 version because already the official political discourse had shifted from the welfare of the citizens of an independent country of J&K to the integration of that country with India. However, the original Naya Kashmir document, which is in the nature of a Constitution for an independent nation, is so much a manifesto of democratisation of a sovereign country that even the sea-changes made in the 1977 version fail to erase the strong nationalist tone prevalent throughout the text. The document attempts to make provisions on all the issues which might be considered pre-requisites for a modern welfare state. While doing so, it is visibly self-conscious about its pioneering nature.⁷

⁷ For example, while concluding his introduction to the document [In our New Kashmir we shall build again the men and women of our State, who have been dwarfed by centuries of servitude, and create a people worthy of our glorious motherland.], Sheikh Mohammed Abdullah echoes Frantz Fanon's concluding remarks

The Self-Rule Framework for Resolution is revivalist to a certain extent, as it makes some legal proposals which might help in the restoration of an earlier state of the autonomy, but it goes much beyond that. It makes proposals regarding demilitarisation⁸ and also contemplates the political and economic integration of the part of J&K which is under Pakistan with the part which is under India⁹, thus leaving no doubt about the contemporary context of its text. This document is informed by the context of globalisation¹⁰, the evolution of democracy in India, particularly the rise of the Hindu right¹¹, and the violent movement that has been going on in J&K since 1988. It attempts to approach the problem by making an honest appraisal and by aiming at a wholesome solution.

Sajad Lone's **Achievable Nationhood** approaches the issue by stressing on the need for a new beginning. *Ipsa facto*, there is recognition of a previous beginning which has lost its relevance because it has become inadequate or obsolete. As a first step of the fresh start, instead of looking for solutions in the debris of older beginnings, Achievable Nationhood travels the whole wide world in search of a solution, thus making it the most cosmopolitan among the five documents.¹² Its primary focus is on the sentiments of the people of J&K, rather than on political pragmatism in a narrow sense.¹³ It makes use of an eclectic approach in its effort to arrive at a resolution.

Balraj Puri's Report on Regional Autonomy builds up its approach by drawing on the autonomy of J&K, which constitutes its backdrop, and taking the concept to its next logical level by illuminating the grievances which the regions have against the state (of J&K). These grievances are, for the most part, similar to the grievances which the state has against the Centre. The measures suggested to redress these grievances have the same tinkle to them as the larger narrative of the autonomy of J&K vis-à-vis India. The traditional idea of the autonomy of J&K has been an integral narrative, in that it considers J&K a unit, differentiable from the rest of the Union, and therefore special, with special needs and requirements. These needs and requirements, the narrative has it, can only be addressed by authorities working at the local (state) level because the Union government has too much to look after to really be able to care about the special needs of J&K. Balraj Puri's discourse reinforces the logic of local needs being best catered by local authorities, but contests the integral narrative by throwing light on not only the diversity within J&K, but also the grievances of mismanagement and discrimination which (politically) less powerful regions and sub-regions of J&K have against the more powerful regions. Thus, paradoxically, Balraj Puri's report at the same time both undermines and reinforces the narrative of the autonomy of J&K.¹⁴

The Report of the State Autonomy Committee, 2000 was constituted by the government to look into the functioning of the autonomy and suggest measures for its augmentation. The report is informed by the history of slow erosion of the autonomy of J&K. It is therefore not surprising that the report is revivalist in its approach. It makes a list of legal recommendations aimed at the restoration of the original state of autonomy as it existed in 1952. The **Regional Autonomy Committee Report** makes a list of proposals for achieving

8 J&K: The Self-Rule Framework for Resolution, October 2008, pp. 12 & 13.

9 *Ibid.*, pp. 22-31.

10 *Ibid.*, pp. 6-8.

11 *Ibid.*, pp. 8-10.

12 The third chapter of Achievable Nationhood, titled *Empirical Evidence*, sketches different models of conflict resolution like the ones of Aland Islands, the South Tyrol, the Sami Parliamentary Assembly, 'shared sovereignty and free association proposed by Basque leader Jose Ibarretxe, Andorra, Liechtenstein, Monaco, Bhutan, Associated States of New Zealand, Hong Kong and Northern Ireland etc.

13 This brings it closer than the rest of the documents to the discourse of self-determination.

14 Even though the document itself does not stand the rigors of such a test; by working within a framework which treats as an integral region the motley assembly of areas bundled together as Jammu, the document is guilty of the same oversight which it seeks to critique in the traditional narrative of autonomy.

equality among the different regions and sub-regions of the state. It is informed by the principles of federalism and devolution of power.

An interesting fact about the context of these documents is that the Self-Rule Document and Achievable Nationhood have been written against the background of a particular¹⁵ India-Pakistan peace process and the semi-public discussion on a framework for resolution whereas the other documents were written before the said peace process started. The Self-Rule Document and Achievable Nationhood are therefore informed by that particular peace process and a conscious attempt at providing a framework for resolution of the Kashmir problem is one of their primary objectives.

Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	State (and Regional) Autonomy Committee Report, 2000
A charter for a soon-to-be-born nation.	Revivalist in part (wants to restore certain positions) and novel in part (has several new suggestions to make).	Innovative, recognising previous attempts at a solution.	Unique because it uses the traditional concept of autonomy of J&K to build its thesis on regional autonomy.	Revivalist; wants 1952 position to be restored. Devolution of power for equitable development.

SUMMING UP:

- i) Naya Kashmir is in the nature of a charter for a soon-to-be-born nation.
- ii) The report of the State Autonomy Committee is revivalist in nature as it wants to restore the position existing in 1952. The Regional Autonomy Committee Report is informed by the principles of federalism.
- iii) Self-Rule Document is both revivalist (because it wants to restore some of the things) and novel (because it has several new suggestions to make).
- iv) Achievable Nationhood is innovative, but recognises previous attempts for reaching at a solution.
- v) Balraj Puri's report on regional autonomy is unique because it uses the traditional concept of autonomy of J&K to build its thesis on regional autonomy.

2. POLITICAL VISION

As already mentioned, the **Naya Kashmir document** was meant to work as a guiding Charter/Constitution for a sovereign state. As such, it puts together a comprehensive scheme of provisions envisioning the future of the State. J&K is conceived as a democracy and republic with liberty¹⁶ and equality¹⁷ as its guiding principles. Complete freedom of faith, conscience, worship and expression is guaranteed¹⁸. Freedom of speech, of press,

¹⁵ Which might be termed post-Kargil bonhomie.

¹⁶ Naya Kashmir, Article 4.

¹⁷ Ibid, Article 1.

¹⁸ Naya Kashmir, Article 2.

of assembly and meetings and of associations and organisations is also guaranteed.¹⁹ The 1944 version also guarantees freedom of street processions and demonstrations.²⁰ Secularism and socialism are declared basic national objectives.²¹ The socialist base is further strengthened by the provisions making work compulsory for all fit to work²², guaranteeing a right to rest²³, a right to education²⁴, and social security²⁵. A judiciary subject to the Supreme Court of India is envisaged.²⁶ Promotion of a composite culture is also envisioned.²⁷ The political vision of Naya Kashmir revolves around the welfare, in the socialist sense, of the people.

The original 1944 version also lays down an elaborate scheme of the National Assembly²⁸, Council of Ministers²⁹, the Electoral System³⁰, the courts and the Advocate General³¹, local administration³² and national economic plan³³. It envisages the elective character of the lower rungs of judiciary³⁴ and also provides for recall of members elected to the national assembly in case people of their constituency feel that they are not performing satisfactorily.³⁵

Achievable Nationhood envisions "a sovereign state which is as a rule a single state in which one single political authority viz. the government represents the state internally and externally. The government would have complete internal independence to deal with internal affairs and external independence to deal with external affairs."³⁶ J&K shall be a democracy³⁷ and would have a **right to independence**.³⁸ It shall have an independent election commission, a separate flag and a right to exercise jurisdiction over its territory.³⁹ It shall have a right and the capacity to enter into relationships with other states.⁴⁰ It shall be free to choose its own economic system in accordance with the will of the people without any external interference.⁴¹ It shall have its own currency, central bank and foreign exchange reserves.⁴² It shall have the independence to raise an army and air force for the purposes of self defence.⁴³ This vision is termed Independent Homeland Model and the document makes provisions to accommodate Indian and Pakistani claims, thereby diluting the model and creating achievable overlaps. Independent institutions of executive, legislature (which will inter alia have the power to monitor and legislate upon relationships with India and Pakistan) and judiciary are envisioned.⁴⁴

19 Ibid, Article 3.

20 Ibid, Article 3.

21 Ibid, Article 15.

22 Ibid, Article 7.

23 Ibid, Article 8.

24 Ibid, Article 10 & 45.

25 Ibid, Article 9 & 44-49.

26 Ibid, Article 20. This article has obviously been added in 1977.

27 Ibid, Article 50.

28 Ibid, Articles 20-22.

29 Ibid, Articles 23-25.

30 Ibid, Article 28-32.

31 Ibid, Articles 33-40.

32 Ibid, Articles 45-47.

33 Ibid, Part II.

34 Ibid, Article 14.

35 Naya Kashmir, Article 31.

36 Achievable Nationhood, Chapter 5, *Evolving an Eclectic Model*, pp. 165 & 166.

37 Ibid, p. 166.

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid, p. 168.

42 Ibid, p. 168.

43 Ibid, p. 170.

44 Ibid, Chapter 5A, *The Eclectic Model*, p. 229.

A proposal is made in favour of the concept of earned sovereignty through which J&K can benefit from progressive and conditional devolution of sovereign powers and authority from India and Pakistan under international supervision.⁴⁵

The other documents largely eschew the debate pertaining to a political vision. Two main reasons may be identified for the same. Firstly, none of the principles expounded in the Indian Constitution contradict any of the ideals featuring in the Naya Kashmir document, many, but not all, of which later found their way into the Constitution of J&K, even though there is a (sometimes substantial) difference in the degree to which the practice of these principles is envisioned in the Naya Kashmir document and the Indian Constitution. For example, while equality and liberty are fundamental rights under the Indian Constitution; the right to work, education and public assistance in certain cases find a place in the directive principles of State policy; all these have been classified as rights under the Naya Kashmir charter. The vast similarities between the Indian Constitution on the one hand and the Naya Kashmir document and the Constitution of J&K on the other hand means that it becomes unnecessary for parties and interests which endorse the practices and structural arrangements of the Indian State to take a stand in favour of one of them. So the other documents calmly go on with their business of debating on other issues, in full knowledge of the fact that the shade of the political vision under which they work is an amalgamated, indistinguishable shade of the Constitution of India and the Constitution of J&K read with the Naya Kashmir document.

A second, more compelling reason is that these documents visualize autonomy as something flowing out of the Indian State and therefore take for granted the position that the political vision of the Indian State must in letter and spirit apply to J&K except when and where it comes into direct conflict with the model of autonomy. As such, democracy and secularism are deemed vital pre-requisites by these documents. Compared to Naya Kashmir, the opinions on socialism differ, which is explained by the fact that Naya Kashmir was produced at the zenith of Soviet hegemonic power when socialism was the most romantic of ideas while the other four documents have been produced in an era of free-market economy, liberalisation and globalisation. It is also pertinent to note here that when imagining the territory for its political vision, the Naya Kashmir document unconsciously includes the territory under both India and Pakistan. The inclusive character is markedly eroded in the report of the State Autonomy Committee, the Regional Autonomy Committee Report and Balraj Puri's report on regional autonomy. The Self-Rule Framework for Resolution and the Achievable Nationhood consciously include the territory under both India and Pakistan in their discourse. This gives their political vision a pervasiveness not found in the other recent documents.

The Self-Rule Framework for Resolution is primarily concerned with creating a creative framework for resolution of the issue without compromising the sovereignty of the two nation states. It terms this concern as Self-Rule which it itself defines "as a way of 'sharing sovereignty', without the need or the commitment to political merging."⁴⁶ "Self-Rule" is based on the creation of innovative international institutional arrangements that have a political, economic and security character. Self-Rule encompasses the society, the State and the economy. Self-Rule, being a trans-border concept, has a pan-Kashmir dimension but at the same time seeks to regionalise power across J&K."⁴⁷

Balraj Puri's Report on Regional Autonomy recommends that the State level institutions, viz. Governor, Chief Minister and his cabinet, Legislative Assembly, Judiciary and the State cadre of services

⁴⁵ Ibid, Chapter 5C, Sovereignty Context, pp. 262 & 263. See also, Karen Heymann, *Earned Sovereignty for Kashmir: The Legal Methodology to Avoiding a Nuclear Holocaust*, 19 Am. U. Int'l L. Rev. 153 (2003).

⁴⁶ J&K: The Self-Rule Framework for Resolution, p. 3.

⁴⁷ J&K: The Self-Rule Framework for Resolution, p. 3.

continue in their present structural form.⁴⁸ The only modification suggested in this regard is to change the way members of the legislative council are elected, which the report considers unfair to Kashmir as the two seats reserved for Ladakh come from its quota.⁴⁹ The report also recommends that subjects which are of importance for the whole State and which can be handled more efficiently at the State level, should be handled at the State level.⁵⁰ It also recommends that the 29 subjects allocated to the districts in other parts of the country, according to the 73rd amendment of the Indian Constitution,⁵¹ plus subjects of inter-district importance, within the financial reach of the regions should be included in the regional list.⁵² It suggests that the regional governments should be elected in the same manner in which the State or National Government is elected.⁵³ It also proposes the democratisation of the Panchayati Raj institutions.⁵⁴

The Report of the State Autonomy Committee, by its very nature, supports the political vision of the Naya Kashmir document read with the Constitution of J&K and proposes several legal changes so that the politico-legal situation of 1952 is restored. The **Regional Autonomy Committee Report** is informed by the principles of federalism which it applies to the state within the framework of the overall scheme suggested by Naya Kashmir.

Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	State (and Regional) Autonomy Committee Report, 2000
Envisions J&K as a sovereign democracy and a socialist republic.	Envisions a system of shared sovereignty with India and Pakistan.	Envisions a system of shared sovereignty with India and Pakistan.	Envisions a J&K in which regions have a greater quantum of power.	Supports the vision of Naya Kashmir by default. Federalism in consonance with Naya Kashmir.

SUMMING UP:

- I) Naya Kashmir envisions J&K as a sovereign democracy and a socialist republic. It would be a welfare state with liberty, equality and freedom of speech and expression of the people being its guiding principles. The report of the State Autonomy Committee supports this vision by default.
- II) Achievable Nationhood and Self-Rule Document both envision a system of shared sovereignty with India and Pakistan. They also envision an economic union of the two parts of J&K.

48 J&K Regional Autonomy, Balraj Puri, 1999, Chapter III, *Political Autonomy*, p. 17.

49 Ibid, p. 18.

50 Ibid, p. 17.

51 Part IX (Articles 243, 243-A to 243-O) was added to the Constitution of India by the 73rd Amendment Act, 1992 and is popularly known as Panchayati Raj Act. It provides constitutional sanction to the strengthening of democracy at the grass-roots level.

52 J&K Regional Autonomy, Balraj Puri, 1999, Chapter III, *Political Autonomy*, p. 17.

53 Ibid, p. 19.

54 Ibid, pp. 21-24.

III) Balraj Puri's report on regional autonomy envisions a J&K in which the regions have a greater quantum of power and the State serves as an example of grassroots-level democracy.

3. PROPOSALS VIS-A-VIS THE CONSTITUTION

The Report of the State Autonomy Committee formulates a list of proposals vis-a-vis the Constitution of India.

- It recommends that the word 'Temporary' be deleted from the title of Part XXI of the Constitution and the word 'Temporary' occurring in the heading of Article 370 be substituted by the word 'Special'.⁵⁵
- Matters in the Union List not connected with the three subjects of Defence, External Affairs and Communications or ancillary thereto but made applicable should be excluded from their application to the State.⁵⁶
- All modifications made in Article 246 (providing for three lists, Union, State and concurrent) in its application to the State subsequent to the 1950 Order should be rescinded.⁵⁷
- Articles 248 (residuary powers of legislation), 249 (power of parliament to legislate with respect to a matter in the State list in the national interest), 250 (power of parliament to legislate with respect to any matter in the State list if a proclamation of emergency is in operation) and 251 (dealing with inconsistency between laws made by parliament under articles 249 and 250 and laws made by Legislature of States) whether applied in original or modified form should be omitted from their application to the State.⁵⁸
- As in 1950 and 1954, List II (State) and List III (Concurrent) of the seventh schedule should not be applicable to the State.⁵⁹
- Article 254 (dealing with laws made by parliament and laws made by the legislatures of states) should be restored to the position it had in the application to the State in 1954.⁶⁰
- Articles 262 (adjudication of disputes relating to waters of inter-state rivers or river valleys) and 263 (inter-state council) which were not applicable under 1950 order but were subsequently extended to the State should cease to apply.⁶¹
- Changes brought in Part XV (elections) should be reversed and consequential changes in other Articles in the part be effected.⁶²
- The following should be added to clause 6 of Article 352 (proclamation of emergency for reasons of war or external aggression or armed rebellion) in its application to the State: - "Provided that this request for concurrence of the Govt. of the State shall be subjected to whatever decision the State Assembly may

55 Report of the State Autonomy Committee, Chapter XIV, *Summary of Recommendations*, p. 122.

56 Ibid.

57 Report of the State Autonomy Committee, Chapter XIV, *Summary of Recommendations*, p. 122.

58 Ibid.

59 Ibid.

60 Ibid, pp. 122 & 123.

61 Ibid, p. 123.

62 Ibid.

take within two months of declaration of emergency and failing any such decision, the proclamation of emergency shall be deemed to have been revoked.”⁶³

- Articles 355-360 should be made non-applicable to the State as was the position in 1954.⁶⁴
- A separate chapter on Fundamental Rights should be included in the State Constitution and Part III of the (Indian) Constitution should be made non-applicable to the State.⁶⁵
- Articles 72(1) (c) (presidential power to pardon sentences of death), 72 (3) (saving clause for sentences of death exercisable by the governor of a state), 133-136 (appellate, Federal Court and special leave petition powers of the Supreme Court of India), 138 (enlargement of jurisdiction of the Supreme Court), 145 (1) (c) (Supreme Court’s power to make rules as to the proceedings in the court for the enforcement of any of the rights conferred by Part III) and 151 (2) (audit reports by the Comptroller and Auditor-General of India to relating to the accounts of a State to be laid by the governor before the legislatures) should be made non-applicable to the State as was the position in 1950 Order.⁶⁶
- Articles 149-151 should apply to the State in the form in which they were in 1954.⁶⁷
- Article 218 (impeachment of High Court judges) should be omitted in its application to the State and the position as it existed before the J&K Constitution (First Amendment Act) of 1959 should be restored.⁶⁸
- Articles 220 (restriction on practice after being a permanent judge of High Court), 222 (transfer of a judge from one High Court to another) and 226 (power of High Courts to issue certain writs) should also be omitted in their application to J&K.⁶⁹
- In Article 312 (all-India services) the words “including the State of Jammu and Kashmir” inserted by the Constitution (Application to J&K) Order 1958 should be omitted.⁷⁰
- Application of Articles 338-342 to the State should be omitted and corresponding provisions made in the State Constitution.⁷¹

63 Ibid, p. 123. In its existing form, the article provides for the review of the proclamation only by the Parliament of India.

64 Ibid.

Article 355: Duty of the Union to protect States against external aggression and internal disturbance.

Article 356: Provisions in case of failure of constitutional machinery in States.

Article 357: Exercise of Legislative powers under Proclamation issues under article 356.

Article 358: Suspension of provisions of Article 19 during emergencies.

Article 359: Suspension of the Enforcement of the Rights conferred by Part III during emergencies.

Article 360: Provisions as to financial emergency.

65 Ibid, p. 124.

66 Ibid.

67 Report of the State Autonomy Committee, Chapter XIV, Summary of Recommendations, p. 124.

Article 149: Duties and powers of the Comptroller and Auditor-General.

Article 150: Form of accounts of the Union and of the States.

Article 151: Audit reports.

68 Ibid.

69 Ibid.

70 Ibid, p. 125.

71 Ibid.

Article 338: National Commission of Scheduled Castes.

Article 339: Control of the Union over the administration of Scheduled areas and the welfare of scheduled tribes.

- Clause (4) of Article 368 (amendments made under Article 368 not to be called in question in any court on any ground) added vide C.O. 101 should be deleted. Clause (2) of the Article should apply with the proviso already introduced by 1954 Order and clause (1) thereof which was not in existence in 1954 and which was introduced in 1971 should remain omitted in its application to the State.⁷²
- In the Seventh Schedule entries in the Union List not applied to the State by the Constitution (Application to J&K) Order, 1950 should be omitted. Concurrent List which was not applicable to the State in 1950 but was applied by subsequent Orders should cease to apply to the State.⁷³
- Part XIV of the Constitution should be deliberated upon by State representatives and the Union Government.⁷⁴

The report also makes some recommendations with regard to the State Constitution. It suggests that all amendments made in the Constitution of J&K made vide: -

- i) Constitution of J&K (First Amendment) Act, 1959 insofar as they relate to superintendence, direction and control of elections to the State Legislature and the State High Court should be repealed and the original provisions of the Constitution of J&K restored.⁷⁵
- ii) Constitution of J&K (Sixth Amendment) Act, 1965 relating to change of nomenclature of Head of the State and State Executive, mode of appointment of the Head of the State and other consequential amendments should be repealed and the original provisions of the Constitution of J&K restored.⁷⁶

These recommendations together have the effect of pressing for the restoration of the position existing after the Delhi Agreement of 1952 and making the Constitution of J&K of November 17, 1956 as the model at the State level.

The viewpoint of **the Self-Rule Framework for Resolution** converges with the report of the State Autonomy Committee on many issues of Constitutional restructuring.

- The Self-Rule document, like the report of the State Autonomy Committee, recommends that the word 'temporary' in Article 370 should be replaced by the word 'special'.⁷⁷
- It further concurs with the report of the State Autonomy Committee in recommending that Clause (4) of Article 368 should be deleted;⁷⁸ and also in recommending that Articles 249,⁷⁹ 312 – consequently the All India Services Act, 1951⁸⁰ and Article 356⁸¹ should be rolled back/omitted from their application to the State.

Article 340: Appointment of a commission to investigate the conditions of backward classes.

Article 341: Scheduled castes.

Article 342: Scheduled tribes.

72 Ibid.

73 Ibid, p. 125.

74 Ibid, p. 124.

75 Ibid, p. 126.

76 Report of the State Autonomy Committee, Chapter XIV, *Summary of Recommendations*, p. 126.

77 J&K: The Self-Rule Framework for Resolution, p. 35.

78 Ibid, p. 33.

79 Ibid, p. 32.

80 Ibid, p. 36.

81 Ibid, pp. 31 & 32.

- Both documents are united in their opinion about the sixth amendment to the Constitution of J&K and recommend that it should be repealed.⁸²

Nevertheless, there are certain important points of divergence between the two documents.

- The report of the State Autonomy Committee is in favour of omission from application to the state of Article 248 of the Indian Constitution, while the Self-Rule Document recommends that the said Article should continue to apply to the State but should confer concurrent jurisdiction on the State under clause (i) to legislate on the subject of terrorist activities.⁸³ In doing so, the Self-Rule Document vitiates its concept of Self-Rule by approving the legitimacy of residuary powers of the Indian Parliament.
- Further, the document recommends that in its application to the State, Article 251 should omit reference to Article 249;⁸⁴ the report of the State Autonomy Committee simply recommends a total rollback of Article 251.
- On the issue of the Seventh Schedule of the Indian Constitution, the Self-Rule Document is only concerned with entries 17 (Water) and 23 (Mines) of the State List which correspond to entries 56 and 54 respectively of the Union List. It makes the very important point that Chenab, Jhelum and Sindh by virtue of not being inter-state rivers fall in the state list, not the Central List. But it concludes that to allow India to meet its international obligations, the Indus Water Treaty may stand. It only demands adequate compensation for the State for conceding its rivers to the Indus Water Treaty of 1960.⁸⁵ The report of the State Autonomy Committee, on the other hand, inspects the issue from a much broader perspective and recommends that in the Seventh Schedule entries in the Union List not applied to the State by the Constitution (Application to J&K) Order, 1950 should be omitted; and Concurrent List which was not applicable to the State in 1950 but was applied by subsequent Orders should cease to apply to the State.

The **Naya Kashmir Document** and the **Balraj Puri's Report on Regional Autonomy**, by their very nature, are for the most part clear of a discussion on constitutional proposals, and so is the **Regional Autonomy Committee Report**. The Naya Kashmir document states that all residuary powers not mentioned in the Union List of the Constitution shall vest in the state except those delegated to the lower tiers in accordance with the provisions that shall be made in the constitution of the State.⁸⁶ At a fundamental level, however, Naya Kashmir is a constitution in itself and therefore can only be read as a separate document establishing a different grundnorm.

Achievable Nationhood lays claim to a sui generis outlook on the issue of constitutionality. It discusses in some detail the slow erosion of Article 370 as well as the history of undemocratic and underhand tactics used by both Indian and Pakistani establishments to smother the popular sentiments in both parts of J&K⁸⁷ but does not look for a solution in these histories. It rather vouches for brand new and identical constitutions for the two parts of J&K to achieve a lasting solution. Nevertheless, it is forced to admit that the legality of those constitutions requires not only the corresponding changes in the Constitutions of both India and Pakistan but also a constitutional passage in the Indian and Pakistani parliaments.⁸⁸

82 Ibid, pp. 34 & 35. Report of the State Autonomy Committee, Chapter XIII, *Recommendations*, pp. 118 & 119.

83 J&K: The Self-Rule Framework for Resolution, p. 32.

84 Ibid.

85 Ibid, p. 35.

86 Naya Kashmir, Article 16.

87 Achievable Nationhood, Chapter 1, *Historical Perspective*.

88 Ibid, Chapter 5A, *The Eclectic Model*, p.231.

	Naya Kashmir	Self-Rule framework for resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	State Autonomy Committee Report, 2000
Restoration of Article 370		Supports it.			Supports it
Roll-back of Article 312 and Article 356		Supports it.			Supports it.
Seventh Schedule		Only concerns itself with entries related to water and mines, demanding adequate compensation.			Entries in the Union List not made applicable to the State through the Constitution (Application to J&K) Order, 1950 to be made inapplicable.
Residuary powers	Should be with the State.	Should be with the Union.			Should be with the State.
New Constitution	Is a Constitution per se.		Supports it.		

SUMMING UP:

- The report of the State Autonomy Committee and the Self-Rule Document converge on the issue of restoration of Article 370 of the Indian Constitution to the position subsisting in 1952; the rolling back of Article 312, and All India Services Act, 1951; and ensuring the inapplicability of Article 356 to the State.
- Regarding the Seventh Schedule of the Indian Constitution, there is some divergence of opinion between the two documents. The State Autonomy Committee report recommends that the entries in the Union List not applied to the State through the Constitution (Application to J&K) Order, 1950, and the concurrent list, should be made inapplicable with respect to the State; the Self-Rule Framework for Resolution is only concerned with entries related to water and mines and recommends that the State should be adequately compensated for surrendering its rivers under the Indus Water Treaty, 1960.
- The report of the State Autonomy Committee as well as the Naya Kashmir document are in favour of retention of residuary powers by the State but Self-Rule document ratifies Article 248 of the Indian

Constitution granting residuary powers to the Union. Naya Kashmir has also to be read as a separate grundnorm.

- Achievable Nationhood is in favour of drafting new constitutions for the two parts of J&K which are to be ratified by Indian and Pakistani parliaments.

4. CROSS-LoC RELATIONSHIPS

The territory and people of J&K were separated into two parts in 1947 courtesy a war which they neither started nor instigated. This forced division has always been a source of great pain and sorrow for the people of the State. Any document claiming to address the grievances of the people of the State must take cognizance of the psychological impact of this disconnection.

The Self-Rule Framework for Resolution propounds a new political superstructure in which a Regional Council of Greater Jammu and Kashmir will be established.⁸⁹ It suggests that this council could be a kind of a regional senate.⁹⁰ Members of the Regional Council will be from Indian Administered as well as from the Pakistan Administered Kashmir.⁹¹ The 25 seats held by the Legislative Assembly for representatives from Pakistan Administered Kashmir could be given up and held as the representation of that part of Kashmir in the Regional Council.⁹² The Self-Rule Framework hopes that this will serve as a major cross-border institution, ensuring long-term coordination of matters and interest relating to the State.⁹³

The document further proposes that the Regional Council of Greater Jammu and Kashmir should have 50 members, 40 of which shall be elected by the respective assemblies of Indian Administered and Pakistan Administered Kashmir while the remaining 10 will be nominated, five each, by the Governments of India and Pakistan.⁹⁴

The idea of the Regional Council of Greater Jammu and Kashmir as proposed by the Self-Rule Framework for Resolution is subsumed to the idea of economic integration of the two parts. In addition, cross-LoC cooperation is sought on such issues as financial market regulation, coordination of cross-border transport networks, telecommunications, power grids and data transmission; agricultural research and extension; law enforcement; environmental management; and public health.⁹⁵ A Greater Kashmir Regional Energy Basin, based primarily on hydro resources, is proposed to provide modern and liberalised gas and electricity systems to the entire region and not just J&K alone.⁹⁶ It is hoped that the political and economic integration will lead to the establishment of Greater Jammu and Kashmir, a fairly unified entity with a system of shared sovereignty vis-à-vis India and Pakistan.

Achievable Nationhood is in almost full convergence with the Self-Rule Document on the issue of the importance of economic ties in cross-LoC relationships and visualizes an option, which it dubs “the new state of affairs”, of creating a complete economic union of the two parts of the State by employing a phased approach. The document itself says that “the objective of the economic union is to create a single unified economic territory of ‘J&K economic union’ out of two distinct political and geographical territories of J&K

89 J&K: The Self-Rule Framework for Resolution, p. 22.

90 Ibid.

91 Ibid.

92 Ibid, pp. 22 & 23.

93 Ibid, p. 23.

94 Ibid.

95 Ibid, pp. 23-31.

96 Ibid, p. 31.

under India and J&K under Pakistan. The 'J&K economic Union' would be an economically boundary-less J&K."⁹⁷ In addition to this, the document also deliberates upon joint immigration control of the movement of residents of the two parts across the LoC.⁹⁸ It also envisions a joint management of natural resources.⁹⁹ Further, in convergence with the Self-Rule Document, it mulls over cooperation, coordination and consultation on such issues as tourism, demographic data, education, social welfare, IT and communication, civil aviation, health, environment, sporting and cultural activities, forest policy, human rights laws and policies, scientific research, research and preservation of archaeological and heritage sites, development of museums, archives and libraries, multi-nodal transport strategy to facilitate cross-LoC movement of commercial and private transport and integrated border management.¹⁰⁰

However, unlike the Self-Rule Document, Achievable Nationhood recommends the establishment of two sets of legislature, one each for the part of J&K under Indian and Pakistani control.¹⁰¹ It also recommends the establishment of two sets of executive and judiciary on the same pattern. To coordinate executive and legislative functions of the two parts, the document recommends a joint institution which would frame a hierarchical structure of a mix of political and bureaucratic institutions needed to run the joint operation of various sectors.¹⁰² This arrangement only differs from the arrangement under Self-Rule Document's proposition in the addition of one more tier of government at the level of the division of territory under Indian and Pakistani control.

As mentioned earlier, the **Naya Kashmir** document, **Balraj Puri's Report** on Regional Autonomy and the **State (and Regional) Autonomy Report** do not deal with issues of cross-LoC relationships.

	Self-Rule Framework for Resolution	Achievable Nationhood
Cross-LoC Economic Superstructure	Entente in matters of mutual interest, particularly trade, leading to eventual economic union of the two parts.	Entente in matters of mutual interest, particularly trade, leading to eventual economic union of the two parts.
Cross-LoC Political Superstructure	Regional Council of Greater J&K.	Separate sovereign legislatures for both parts with a mechanism to coordinate issues of mutual interest.

SUMMING UP:

- Both Achievable Nationhood and the Self-Rule Document are in favour of increase in cross-LoC entente, particularly in the matter of trade and favour an economic union of the two parts as a long-term goal.

⁹⁷ Achievable Nationhood, Chapter 5, *The Eclectic Model*, p. 219.

⁹⁸ Ibid, pp. 222 & 223.

⁹⁹ Ibid, p. 223.

¹⁰⁰ Ibid, p. 224.

¹⁰¹ Ibid, Chapter 5A, *The Eclectic Model*.

¹⁰² Ibid, pp. 229 & 230.

- While the Self-Rule Document favours a new political superstructure consisting of a Regional Council of Greater J&K, Achievable Nationhood is in favour of separate legislatures for the two parts of J&K and a mechanism to coordinate issues of mutual interests.

5. RELATIONSHIPS WITH INDIA AND PAKISTAN

The Report of the State Autonomy Committee, 2000 underlines the current discourse on this aspect by stating that Article 370 has acquired a dangerously ambiguous aspect. To rectify this ambiguity, the report recommends a pact between the Union and the State which makes ample redress and finalizes their relationship by declaring a “Constitutional Understanding” that Article 370 of the Constitution of India can no longer be used to apply to the State of J&K any other provisions of the Constitution of India beyond the ones extended under 1950 Order and the Delhi Agreement, 1952.¹⁰³

This will mean that India will have legislative powers only on three matters: Defence, External Affairs and Communications, and also matters ancillary to these three. The legislative powers on all the other matters will be with the State. Thus, the relationship between J&K and India will effectively be the same as after the Delhi Agreement, 1952.

This report specifically deals with the relationship between J&K and India so we find no mention of the relationship between J&K and Pakistan.

The **Self-Rule Document** seeks to characterise the relationship between India and Pakistan on the one hand and the respective parts of J&K under their control on the other hand by a framework of shared sovereignty. This, the document hopes, will lead to the integration of the region without disturbing the extant sovereign authority over the delimited territorial space. This framework is informed by the premise that a search for solution to the issue of J&K is a search for an inter-nation state institutional arrangement that preserves sovereignty of the two nation-states but still has a supranational basis.¹⁰⁴

The document reasons that this can become possible by giving the institutional arrangement an economic, rather than a political, basis. A border is a barrier to people, commodities and capital, so the idea is to let markets override these boundaries.¹⁰⁵ Thus, this approach of according primacy to the economic over political in some ways turns the current paradigm on its head, because historically, the document tells us, J&K has been a political and not an economic partner of both India and Pakistan.¹⁰⁶ A political framework of Self-Rule is envisioned, which the document distinguishes from autonomy in that autonomy connotes relative autonomy from the Central Government while Self-Rule refers to autonomy from the nation-state.¹⁰⁷ This framework of Self-Rule will be the basis of relationship of J&K with India and Pakistan. In this way the document envisages an economic, but not political union, of the two parts of J&K, and a scheme of Self-Rule which will ensue from shared-sovereignty between India and Pakistan and the respective parts of J&K under their control.

The document therefore converges with the report of the State Autonomy Committee in the belief that internal sovereignty must belong to the State while external sovereignty belongs to the Centre. However, it also diverges from the report on two important points. One, it concerns itself with a solution for both parts of J&K while the State Autonomy Committee’s report is only concerned with the part of J&K under Indian control.

¹⁰³ Report of the State Autonomy Committee, 2000, Chapter XV, *Safeguards for future*, p. 129.

¹⁰⁴ J&K: The Self-Rule Framework for Resolution, p. 15.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*, pp. 18 & 19.

Two, it considers solution based around the restoration of autonomy by means of Article 370 as only a part of the larger scheme of a solution, while the report considers the restoration of autonomy as the total and final solution. The final resolution of the issue, according to the Self-Rule document, must reside in the outcome of the negotiations held by elected representatives of both parts of the State with their respective country for a resolution framework within the given parameters.

Achievable Nationhood proposes a system of shared sovereignty between India and the Indian Administered Kashmir. Under this system, foreign affairs and defence will be the responsibility of India and all other matters will be the responsibility of the Government of J&K. An identical system is proposed to govern the relationship between Pakistan and Pakistan Administered Kashmir. The document also lists propositions governing the relationship between Pakistan and Indian Administered Kashmir as well as India and Pakistan Administered Kashmir. The Indo Nepal Treaty of Peace and Friendship, 1950 is deemed an inspiration to define the contours of these relationships.¹⁰⁸

It is proposed that the state of Pakistan, as a token of appreciation for the historical bond exhibited by the people of the State of Indian Administered Kashmir should on a non-reciprocal basis give the State subjects of Indian Administered Kashmir, in its territory, national treatment with regard to participation in industrial and economic development of its territory and should grant concessions and contracts relating to such development.¹⁰⁹ Pakistan should also grant these state subjects the same privileges that it gives to its nationals in matters of residence, ownership of property, participation in trade and commerce, employment and other privileges of similar nature.¹¹⁰

The document further proposes that an identical relationship should be worked out between India and the part of J&K under Pakistani control. The part of J&K under Indian control should grant similar privileges to the nationals of the state of Pakistan only to the extent of level of independence of the Government and subject to Indian interests.

The above discussion strongly suggests that despite a marked difference in nomenclature and conceptual imagining, the proposals regarding the relationship between India and the part of J&K under its control put forward by the report of State Autonomy Committee, the Self-Rule Framework for Resolution and the Achievable Nationhood Document are basically the same, in that they all propose a sharing of sovereignty, with only a difference of degree. The constitutional restructuring recommended by the State Autonomy Committee Report will lead to a situation where India will have power only over defence, foreign affairs and communications of the State; Achievable Nationhood proposes that India have power only over defence and foreign affairs; and the Self-Rule Document advocates that India have power only over defence, security, foreign affairs and communications. The Self-Rule document endorses the residuary powers of the Union while the other two documents are of the opinion that such powers should vest in the State. Recall that the Naya Kashmir Document is also in favour of retention of residuary powers by the State.¹¹¹

A major difference between these documents is that the report of State Autonomy Committee only deals with the relationship between India and the part of J&K under its control; the Self-Rule Document deals with relationships between India and the part of J&K under its control, between Pakistan and the part of J&K under its control as well as between the two parts of J&K; and the Achievable Nationhood goes even beyond this

108 Achievable Nationhood, Chapter 5A, *The Eclectic Model*.

109 Ibid, pp. 225 & 226.

110 Achievable Nationhood, Chapter 5A, *The Eclectic Model*, pp. 225 & 226.

111 Naya Kashmir, Article 16.

and in addition to these three also deals in some detail with the relationships between India and the part of J&K under Pakistani control and between Pakistan and the part of J&K under Indian control.

	Self-Rule Framework for Resolution	Achievable Nationhood	State Autonomy Committee Report, 2000.
Shared Sovereignty	Between India and Indian Administered Kashmir and Pakistan and Pakistan Administered Kashmir.	Between India and Indian Administered Kashmir and Pakistan and Pakistan Administered Kashmir.	Between India and Indian Administered Kashmir.
Subject-Matter	India-Indian Administered Kashmir, Pakistan-Pakistan Administered Kashmir and intra-Kashmir Relationships.	India-Indian Administered Kashmir, India-Pakistan Administered Kashmir, Pakistan-Pakistan Administered Kashmir, Pakistan-Indian Administered Kashmir and intra-Kashmir Relationships.	India-Indian Administered Kashmir Relationship.
Extent of Indian Control	Over defence, security, foreign affairs and communications.	Over defence and foreign affairs.	Over defence, foreign affairs and communications.

SUMMING UP:

- 1) The report of the State Autonomy Committee, the Self-Rule Document and Achievable Nationhood all advocate a system of shared sovereignty between India and the part of Kashmir under Indian control. The Self-Rule document extends this vision to Pakistan and the part of Kashmir under Pakistani control as does Achievable Nationhood.
- 2) Achievable Nationhood also envisions the relationship between Pakistan and the part of Kashmir under Indian control and India and the part of Kashmir under Pakistani control and suggests The Indo-Nepal Treaty of Peace and Friendship, 1950 as a possible model for these relationships.
- 3) Self-Rule documents suggests that India have power only over defence, security, foreign affairs and communications; the report of the State Autonomy Committee recommends Indian control only over defence, foreign affairs and communications; while as Achievable Nationhood advocates Indian control over only defence and foreign affairs.

6. ECONOMIC VISION

As already mentioned, **Naya Kashmir Document** is a product of times when socialism was the darling of all revolutionary movements. Its content is therefore highly charged with socialistic ideals.

- The document provides a right to work (Article 7), a right to rest (Article 8) and a limited right to social security (Article 9).

- The right to property and inheritance is envisaged under Article 14, but it is subject to the exigencies of planned economy and overall social objectives of the state.
- Article 23 provides for a planned economy with a view to ensuring a rapid rate of economic growth along with increasing social justice. It also calls for pursuing the aim of self-sufficiency so far as it contributes to maximisation of total income of the state and is consistent with objectives of the national plan.
- Article 24 aims at raising the standard of life of the people by providing them with adequate food, shelter, clothing and health-care; and by nationalising heavy industries as well as maintain dignity of labour of all kinds.
- Articles 26 (Agriculture), 27 (Dairy Farming), 28 (Horticulture), 29 (Forests) and 30 (Agriculture Council) provide ways and means through which improvement may be achieved in these fields resulting in better production and equitable distribution.
- Article 31 provides for the rights of peasants and some benefits available to them.
- Article 32, while dividing industry into public, private and cooperative sectors, clearly establishes the socialist base of the economic vision by showing preference for the public and cooperative sectors.
- Article 33 provides for five-year industrial plans directed, supervised and controlled by an industrial council (Article 34).
- Article 35 provide for the amelioration of Handicrafts and Cottage Industries. Article 36 deals with worker's rights.
- Article 37 lays down the transport policy, which includes a proposal for nationalisation of bus and truck transport on major roads.
- Articles 38, 39 and 40 deal with different aspects of trade and call for a preference to the public and cooperative sectors.
- Tourism is covered under Article 41, Financial Institutions under Article 42 and credit institutions under Article 43.
- Article 44 proposes equitable distribution of income from the various sources.
- Articles 45-48 deal with various social services while Article 49 provides for limited social insurance.

All these provisions add upto an economic vision which is deeply socialistic in its outlook and which lays stress on social justice and equitable distribution as a means of progress and development.

The primary objective of the **Naya Kashmir Document** was to provide a roadmap for the policy-makers of the incipient sovereign J&K. The other documents work in an entirely different paradigm and the goals they have set for themselves are very dissimilar from the goals of the Naya Kashmir Document. Consequently, the other documents move away from the socialist economic vision of Naya Kashmir, as a matter of fact their entire economic context is poles apart from the economic context of Naya Kashmir.

The primary economic concern of **Self-Rule framework for Resolution** and **Achievable Nationhood** document is the significance of economic matters, particularly trade, in cross-LoC relationships.

The Self-Rule Document identifies three stages of the economic integration of the two parts of J&K.

The first stage will cover the establishment of a common economic space through a “Preferential Trade Agreement” offering tariff reduction, confined to the geographical boundaries of “Greater Jammu and Kashmir (GJAK)”.¹¹²

The second stage will consist of making GJAK a free trade area, which will be termed “Regional Free Trade Area”. An agreement to eliminate tariffs between the two parts of J&K while they maintain their own external tariff on imports from the rest of the world, including India and Pakistan, will be reached at, but for that agreement to function properly, elaborate “rules of origin” will have to be developed.¹¹³

The third stage will comprise of setting a common external tariff in imports from India, Pakistan and the rest of the world. A “co-circulation of the two currencies” (Indian and Pakistani rupee) in GJAK is proposed.¹¹⁴

A final move towards an economic union which typically will maintain free trade in goods and services, set common tariffs, allow the free mobility of capital and labour, and will also relegate some fiscal spending responsibilities to a supra-national agency is also envisaged by the document.¹¹⁵

Achievable Nationhood terms the new system which will evolve out of its eclectic model as “the new state of affairs”. In the new state of affairs, the union of the two parts of J&K will primarily be an economic union. This union will be a separate customs territory with free movement of goods, services, capital and labour between the two parts. In the new state of affairs, internal trade barriers will be removed and external trade barriers will be harmonized. There will be acceptance as legal tender of both Indian and the Pakistani currencies.¹¹⁶

In making all these proposals, Achievable Nationhood converges with the Self-Rule Framework for Resolution. What is more, while the Self-Rule Document contemplated relegation of some fiscal spending responsibilities on some supra-national agency, without going into the details, Achievable Nationhood lays down the mechanism for such a scheme by recommending joint development of banking and insurance sector; common banking norms and regulations, harmonized fiscal policy, cooperation in investment, joint exploration of natural resources and energy sector – this is identical to the Self-Rule Document’s proposal regarding the same – harmonization of industrial policy, labour laws and environmental laws etc.¹¹⁷ In addition to all this, Achievable Nationhood also identifies four thrust areas for economic cooperation, viz: service, industry, energy and agriculture.¹¹⁸

However, the document acknowledges the fact that economic union of the two parts, with the volume of trade not likely to be more than US \$ 20 million, will at best serve limited political and psychological objectives.¹¹⁹ The Self-Rule Document makes a similar, if not identical, acknowledgement.¹²⁰ To counter this problem, both documents recommend greater cooperation of the economic union of the two parts of J&K with

112 J&K: The Self-Rule Framework for Resolution, p. 26.

113 Ibid.

114 Ibid.

115 J&K: The Self-Rule Framework for Resolution, p. 27.

116 Achievable Nationhood, Chapter 5A, *The Eclectic Model*, pp. 219-222.

117 Ibid, p. 224.

118 Ibid, Chapter 5B, *Role of Economics Post Solution*, pp. 242-247.

119 Ibid, p. 239.

120 “Even as political significance is paramount for both, economic links between India and J&K and Pakistan and POK are limited. The political significance of the two parts of Kashmir to their respective mainlands is disproportionate to their economic significance.” J&K: The Self-Rule Framework for Resolution, p. 15.

both India and Pakistan. Thus, India and Pakistan have not only the role of political facilitators in the economic union, but are also needed as active trade partners to boost the economy and bring prosperity to the region.

It is perhaps pertinent to mention here that both these documents eschew a meditation on equitable distribution of the wealth generated through these schemes. They anticipate that the benefits of increase in trade and commerce will reach all the sections of the society without any intervention of the policy-makers. This subscription to the trickle-down model therefore creates an important divergence from Naya Kashmir on the issue of social justice.

Balraj Puri's Report on Regional Autonomy is concerned with the financial autonomy of the regions. It proposes that the total receipt of grants of the State should be shared with the regions in 50:50 ratio.¹²¹ It devises formulae for determining the share of each region and each district. These formulae are based on eight indicators or variables:

- i) Population,
- ii) Area,
- iii) Road mileage; surface road divided by area,
- iv) Share in Government jobs as percentage of population in the relevant age group,
- v) Average annual admission in the last five years to technical institutions as percentage of population in the relevant age group,
- vi) Female literacy,
- vii) Infant mortality and
- viii) Some performance incentive criteria like contribution to the state revenue in proportion to region's income.

Population, area and viii) are positive criteria while the rest are negative. Allocation to a region is sum total of ranking of these eight indices divided by the sum of indices for the three regions, multiplied by resources available for distribution. The corresponding formula for district x_i within a region will be equal to

$$\frac{I_x}{I_1 + I_2 + \dots + I_n} \times R$$

$$I_x \text{ (Index for District } x) = x_1 + x_2 + \dots + x_8$$

x_1 to x_8 are ranks for a district in terms of variables 1 to 8 and R denotes total resources available to the State for distribution as grants while n represents number of districts. $I_1 + I_2 + \dots + I_n$ are indices for the districts within a region.¹²²

The report further provides that subsequently the State Finance Commission may use further sophistications to measure deprivation gaps in various fields between regions and add weights to the indices or even increase the number of indices if relevant data are available by that time.¹²³

121 J&K Regional Autonomy, Balraj Puri, 1999, Chapter V, *Financial Autonomy*, p. 42.

122 Ibid, pp. 43 & 44.

123 J&K Regional Autonomy, Balraj Puri, 1999, Chapter V, *Financial Autonomy*, p. 44.

On the issue of distribution of taxes, the report lays down some elaborate principles calling for an equitable distribution of taxes between the State and the regions.¹²⁴ The share of local bodies out of the total regional revenue is pictured broadly on the basis of the same criteria as are being used for calculating regional share.¹²⁵

Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy
Economic vision revolves around socialism, social justice and equitable distribution of wealth.	Primary economic concern is how improved economic relationships, particularly trade, will improve the relationship between the two parts of J&K.	Primary economic concern is how improved economic relationships, particularly trade, will improve the relationship between the two parts of J&K.	Contains detailed analysis of how the funds of the State should be distributed between the State and the lower tiers of governance.

SUMMING UP:

- i) Naya Kashmir's economic vision revolves around socialism, social justice and equitable distribution of wealth.
- ii) Balraj Puri's Report on Regional Autonomy contains detailed analysis of how the funds of the State should be distributed between the State and the lower tiers of governance.
- iii) Achievable Nationhood and Self-Rule Document have as their primary economic concern the question of how economic relationships, particularly trade, will improve the relationship between the two parts of J&K. Both documents differ from Naya Kashmir in that they eschew a meditation on how the wealth generated through trade and other means may be equitably distributed among the citizenry.

7. MINORITY RIGHTS AND PROTECTION

The **Naya Kashmir Document** provides for due representation in the Council of State of Backward Classes and those communities which have not been properly represented in the Legislative Assembly.¹²⁶ It advocates a policy of promotion of composite culture of the State and the protection and harmonization of cultures of all ethnic and linguistic groups residing in the State.¹²⁷ It accords official status to languages like Punjabi, Hindi, Gojri, Baderwahi, Dardi and Bultistani.¹²⁸

Article 11 grants women equal rights with men in every field of life including economic, social, and cultural as also in government employment. Women have the right to work in similar conditions and on equal wages as men. Article 52 provides for minimum representation of women through reservation of seats. The

¹²⁴ Ibid, p. 45.

¹²⁵ Ibid.

¹²⁶ Naya Kashmir, Article 19.

¹²⁷ Ibid, Article 50.

¹²⁸ Ibid, Article 22.

Article further provides for abolition of the dowry system and makes a list of provisions concerning the special needs of women-folk.

The Self-Rule Framework for Resolution acknowledges that Kashmiri Pandits are an integral part of Kashmiri society and essential for the strengthening of the composite, but pluralistic culture that has defined Kashmir historically.¹²⁹ It therefore considers the return and rehabilitation in the valley of this ethnic minority as critical not only to the peace process but also to the present and future of the State. It concedes that the return and rehabilitation of economic and political migrants and recognition of their rights will not only be the index of normalcy in the State but also of the democratic maturity of the civil society and state institutions; and proposes to guarantee minority representation for Kashmiri Pandits in the State Assembly. A Minority Ombudsman with the aim of creating and expanding the availability and effectiveness of institutions addressing minority issues in J&K is also proposed by the Self-Rule Document.¹³⁰

Achievable Nationhood endorses a right to return and a right to reclaim property for all the residents of J&K who have migrated since 1947, mainly due to violence, to different parts of India, Pakistan and J&K itself.¹³¹ It lays particular emphasis on the right to return and the right to reclaim property of the people displaced due to violence since 1989, a majority of whom are Kashmiri Pandits.¹³²

Balraj Puri's Report on Regional Autonomy also suggests measures for the preservation and promotion of regional languages like Gojri, Pahari, Punjabi, Bodhi, Baderwahi and Sheena etc.¹³³ It ponders upon whether Kashmiri Pandits should get a separate homeland in the form of a Union Territory and puts forward the arguments in favour and against such a demand.¹³⁴ It also takes note of the odd condition which exists in the state whereby a single community is a minority in one region and a majority in another.¹³⁵

In this context, it raises the issue of revised delimitation of constituencies in Srinagar City because of which the Pandits have been deprived of an opportunity of getting two representatives to the State Assembly from Habakadal and Rainawari.¹³⁶ It suggests that the next delimitation commission should consider restoration to an earlier position.¹³⁷

The report opines that more than constitutional and institutional safeguards the solution to the problem of minorities essentially lies in the political field.¹³⁸ Strength of genuine secular parties and polity are seen as the best guarantees for interest of the minorities.¹³⁹ The report also calls for a non-official effort to complement the official effort on the issue of return of Kashmiri Pandits.¹⁴⁰ The report also broods over the sorry state of migrants from the part of J&K under Pakistani control and recommends a lump-sum compensation for them.¹⁴¹

Further, the document acknowledged that women are the largest minority and for the amelioration of their condition makes a list of proposals including reservation of 33% in Panchayats and local bodies,

129 J&K: The Self-Rule Framework for Resolution, p. 36.

130 J&K: The Self-Rule Framework for Resolution, p. 36.

131 Achievable Nationhood, Chapter 5A, *The Eclectic Model*, p. 232.

132 Ibid, Chapter 5, *Evolving the Eclectic Model*, p. 160.

133 J&K: Regional Autonomy, Balraj Puri, 1999, Chapter IV, *Cultural Autonomy*, pp.27-37.

134 Ibid, Chapter VI, *General*, p. 48 & 49.

135 Ibid, p. 48.

136 Ibid.

137 Ibid.

138 Ibid, p. 49.

139 Ibid.

140 &K: Regional Autonomy, Balraj Puri, 1999, Chapter VI, *General*, p. 49.

141 Ibid, pp. 49 & 50.

establishment of women cells by the police and at least one women police station in every district, improving the working of Women Development Corporation, removing discrimination in issuing State subject to women and special packages for women affected by militancy.¹⁴²

The report also recommends creation of the post of Schedule Castes and Scheduled Tribes Commissioner. Further, the report suggests increasing the SC/ST reservation.¹⁴³

The **Regional Autonomy Committee Report** recognises the ethnic diversity of the State and seeks measures to ensure equity and justice among the different groups.¹⁴⁴ It also recognises the pluri-culture, pluri-lingual and pluri-religious nature of the State.¹⁴⁵ The devolution of power to the lower tiers of administration is suggested as a means to achieve the end of progress for all. The report proposes 25% reservation for women in the District Councils.¹⁴⁶ The Committee also recommends that the J&K Academy of Art, Culture and Languages should establish its proposed Regional/Provincial or District Cultural Offices at Regional/Provincial or District levels.¹⁴⁷ It wants special attention to be paid to Urdu because it is the official language of the state.¹⁴⁸

	Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	Regional Autonomy Committee Report
Kashmiri Pandits		Recognises the pain they have endured, and stresses on their right to return.	Recognises the pain they have endured, and stresses on their right to return.	Recognises the pain they have endured, and stresses on their right to return.	Silent.
Women	A guarantee of minimum reservation.			A guarantee of minimum reservation.	Proposes 25% reservation for them in the District Councils
Linguistic and ethnic minorities	Preservation of their language and culture.			Preservation of their language and culture.	Preservation of their language and culture.
Other safe-guards	Promotion of composite culture.	Minority Ombudsman.	Right to reclaim property for all migrants.	Strengthening of genuinely secular polity.	Federalism and devolution of power.

142 Ibid, pp. 50 & 51.

143 Ibid, pp. 52 & 53.

144 Regional Autonomy Committee Report, pp. 3 & 4.

145 Ibid, p. 5.

146 Ibid, p. 18.

147 Ibid, p. 19.

148 Ibid, p. 20.

SUMMING UP:

- Almost all the documents written after the commencement of the armed uprising of 1989 in J&K (not counting the report of State Autonomy Committee because it is an official report dealing with a specific issue) recognise the pain which Kashmiri Pandits have had to endure and reiterate their right to return. However, the Regional Autonomy Committee Report in the notable exception is this regard.
- Naya Kashmir and Balraj Puri's Report on Regional Autonomy talk about a minimum reservation for womenfolk in various administrative bodies.
- Both these documents, as well as the Regional Autonomy Committee Report, also mull over ways and means to preserve languages like Gojri, Pahari, Punjabi, Baderwahi, Bodhi and Sheena etc.

8. VISION FOR THE REGIONS

Naya Kashmir proposes the equitable distribution of political power among the regions of the State and also envisions further decentralization at the lower levels like districts, blocks and panchayats.¹⁴⁹ It provides for setting up of appropriate institutions elected by the people at the respective levels to exercise political power that may be delegated to them. The process of decentralisation of powers and functions is envisaged as a gradual, phased process.¹⁵⁰ The document further recommends the setting up of an autonomous academy for the promotion of arts, culture and languages of the three regions.¹⁵¹

The Self-Rule Framework for Resolution subscribes to the belief that trifurcation of the State is not a solution for the alleged discrimination suffered by the people living in the regions of Jammu and Ladakh.¹⁵² The document explains that it is better "to ensure that all the regions share a sense of equal and equitable empowerment."¹⁵³ It is no surprise then that the promotion of genuine sub-regional political and economic empowerment is one of the crucial components of Self-Rule.

Three basic requirements for efficient policy towards constructive regionalisation are identified as follows: a) Building and strengthening of regional decision-making powers. The document hopes that, inter alia, this will help in improving inter-ethnic and inter-religious relations in the region. b) Effective institution-building, as structures of sub-regional democracy.¹⁵⁴ The document specifies that this may be achieved by creating sub-regional councils as a third tier of the legislative system.¹⁵⁵ Thus, a federal system of government is envisaged which means that powers and responsibilities will be divided between the legislative assembly and the sub-regional councils. c) Creation of economic networks. The document conveys that from the top-down, bottom-up and horizontal perspectives, a region is the best level for utilisation of money and execution of economic policies.¹⁵⁶ Stabilization and redistribution may remain with the region while the local functions may be transferred to the local level of government.¹⁵⁷

149 Naya Kashmir, Article 17.

150 Ibid, Article 17.

151 Ibid, Article 51.

152 J&K: The Self-Rule Framework for Resolution, p. 23.

153 Ibid.

154 Ibid, p 24.

155 Ibid, p. 24.

156 J&K: The Self-Rule Framework for Resolution, pp. 24 & 25.

157 Ibid, p. 25.

Achievable Nationhood sees regional aspirations as basically ethnic aspirations of the majority group in a particular region and warns that accommodating the aspirations of an ethnic group and mistaking it for regional aspirations would be the beginning of a new conflict, created by not catering to the aspirations of the other ethnic minorities in that region.¹⁵⁸ To solve the problem of identifying a unit for accommodating aspirations, the document suggests a district as a viable option. It identifies two options which could be made available to the districts:-

- i) *Opt out*: A district where the majority feels that their rights are better protected by not being a part of J&K should be allowed to opt out. This should be done in a spirit of civility and democracy. A district marooned at the end of a part of a region with no link to J&K as a result of other districts opting out would have to be a part of the opting out entity. Similarly, a district landlocked between other districts who want to be part of J&K would have to continue to be a part of J&K.
- ii) *Devolution of power*: The districts could be empowered with administrative autonomy, so that they enjoy a higher degree of power in the decision-making process. This would mean devolving more power to the districts. The ethnic groups would have to make the choice of either accepting more power in a new devolved system or still exercise the option of opting out of the union of J&K.¹⁵⁹

Balraj Puri's Report on Regional Autonomy recommends the establishment of a regional legislature which may be called "Regional Council" and which may be elected from twice the number of constituencies as are for the State Assembly; delimited by the same Election Commission which does it for the State.¹⁶⁰ The leader of the majority party shall be called by the Governor to form his/her cabinet.¹⁶¹ To differentiate the State and Regional Council set up, the report suggests that the members of the Regional Cabinet may be called Executive Councils and their head be named Chief Executive Councillor.¹⁶² The head of the Regional Council should have a status of a cabinet Minister of the State.¹⁶³ The legislative, executive and taxation powers of the Regional Councils shall be limited to the subjects allocated to the regions.¹⁶⁴

The report also recommends empowerment of Panchayati Raj Institutions. Further, it also recommends setting up of an independent ministry of culture to deal with diversity and complexity of the cultural problems of the state. Cultural Academy, the report suggests, should be headed by a non-government whole time and competent personality and not by the Chief Minister. The Academy should be trifurcated on the National pattern to deal with language and literature, theatre and music and fine arts respectively. The report also recommends the setting up of a full-fledged translation department. A four language formula (English, Hindi, Urdu and Regional) is also proposed.

The Report of the State Autonomy Committee is structured for silence on a vision for the regions, so it is not surprising that it does not have anything to say on the issue.

Its complementary, the **Regional Autonomy Committee Report**, discusses the regional aspirations in the state, their history and validity at a great length.¹⁶⁵ It then proposes the division of the State into eight provinces. Kashmir valley, the report suggested, may be divided into **Kamraz**, made up of Baramulla

158 Achievable Nationhood, Chapter 5, *Evolving the Eclectic Model*, pp. 156 & 157.

159 Ibid, p 157.

160 J&K: Regional Autonomy, Balraj Puri, 1999, Chapter III, *Political Autonomy*, pp. 19-21.

161 Ibid, p. 19.

162 Ibid, p. 19.

163 J&K: Regional Autonomy, Balraj Puri, 1999, Chapter III, *Political Autonomy*, p. 19.

164 Ibid.

165 In this regard, see also Paul Brass, *Ethnicity and Nationalism: Theory and Comparison*, Sage, New Delhi 1991.

and Kupwara districts, **Nundabad**, consisting of Budgam and Srinagar districts, and **Maraz**, comprising of Anantnag and Pulwama districts. In addition to these provinces, Ladakh would be divided into two provinces: **Leh** and **Kargil** while the Jammu division would be divided into **Jammu**, consisting of Jammu, Kathua and Udhampur districts, **Pir Panchal**, consisting of Poonch and Rajouri districts, and **Chenab Valley**, consisting of district Doda and the Muslim-dominated Tehsil of Mahore from neighbouring Udhampur district, because Mahore has ethnically, culturally and linguistically affiliations with Chenab Valley rather than with Udhampur.¹⁶⁶

The report further provides an alternate model which may be used in place of or together with the first model of sub-regionalization. The suggestions for an alternate model consist of establishment of District Councils for all districts of the state.¹⁶⁷ The District Councils shall enjoy the executive and taxation powers which should be limited to the subjects allocated to the Council.¹⁶⁸ The report recommends that the J&K Academy of Art, Culture and languages should establish its proposed Regional/Provincial or District Cultural offices at Regional/ Provincial or District levels.¹⁶⁹ The report underlines the need for the use of media in the promotion of language and culture and suggests that the government take appropriate steps in this regard.¹⁷⁰

In the context of a discussion on the vision for regions, it is interesting to note to that the two Ladakh Autonomous Hill Development Councils, established in Leh and Kargil districts, provide an excellent example of a working model of sub-regional mechanism of governance within the State. The Leh Council has been in function for more than a decade now and the changes it has brought to this far-flung area, this roof of the world, are too visible to go unnoticed. Micro-planning and then execution at the grassroots level is the name of the game. Development of infrastructure in a way which is both sustainable and beneficial to the local population is but the most obvious of the changes. What the devolution of governance and some power to the Council has done is to not only ensure that only schemes with a high content of public good embedded within them are executed, but it has also increased public participation in the issues of local governance on a scale quite unprecedented. One of the countless benefits of such a state of affairs is that corruption is made very visible. Theoretically, this should have helped in eradicating the menace of corruption altogether. However, this is not the ground reality. If on the one hand systemic corruption has been made a difficult practice through the increase in the level of transparency of Local governance mechanisms, at the same time, the tininess of the constituencies (about 4000 people send in one councillor) has ensured that nepotism and favouritism get a boost. Also, petty politics among the councillors has shifted the focus from development to the wrangle over power. In the absence of a strong mechanism of control from higher authorities, and an apparently indifferent attitude of the State and Central governments, these problems become almost impossible to solve, escalating the frustration of sections of the population who feel neglected or discriminated. However, the presence and authority of the State government has visibly been reduced in the regime of the Hill Councils and this experience also needs to be taken into consideration in any debate about designing similar structures for other parts of the State.

¹⁶⁶ Regional Autonomy Committee Report, pp. 14-17.

¹⁶⁷ Regional Autonomy Committee Report, pp. 17-20.

¹⁶⁸ Ibid, p. 18.

¹⁶⁹ Ibid, p. 19.

¹⁷⁰ Ibid, pp. 19 & 20.

	Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	Regional Autonomy Committee Report
Regional Council	Does not conflict the idea of Regional Councils.	Proposes constitution of Regional Councils.	Sees regional aspirations as ethnic aspirations and suggests two modes to deal with them at the District Level. 1) Opt out, 2) Devolution of power.	Proposes constitution of Regional Councils.	Proposes the constitution of eight Sub-Regional Councils.
Local Governance Structures	Decentralisation to districts, blocks and panchayats.	Strengthening local governance structures to deal with local problems.	Devolution to District Level.	Strengthening of the Panchayati Raj system	Proposes the development of District Development Boards.
Culture	Setting up of an autonomous academy to promote arts, culture and languages of the three regions.			Independent Ministry of Culture. Cultural academy to be trifurcated and not headed by the Chief Minister of the State.	Setting up of District Cultural Offices.

SUMMING UP:

- i) Balraj Puri's Report and Self-Rule Document converge on the issue of constitution of Regional Councils and emphatically recommend them. Naya Kashmir's vision for the region does not conflict this recommendation.

- ii) Achievable Nationhood sees regional aspirations as basically ethnic aspirations and suggests two modes to deal with them at the level of the Districts: a) Opt-out, whereby the District opts out of the State; b) Devolution of power, whereby the District administration is empowered.
- iii) The Regional Autonomy Committee Report divides the state into eight sub-regions, thus creating a new tier of governance. It also suggests setting up of District Councils.

9. BUILDING AND MAINTAINING PEACE

It may well be argued that most of the measures suggested under the preceding heads are designed to work as instruments for building and maintaining peace. There is no denying such an argument and, as a matter of fact, this section will repeat some of the ideas already expressed, albeit in a different context. The documents comment on some specific methods of conflict resolution and building and maintaining peace and these will obviously be discussed too.

The **Naya Kashmir Document** propounds a scheme of an equitable distribution of resources and champions a just society in which even the poorest and most marginalised sections, like peasants and workers, will have equal rights and protection. The document also espouses the promotion of a composite culture where all the linguistic and ethnic minorities will be provided equal opportunities. Regional discrimination is proscribed by the document. All these measures are intended to lead the civil society into a heaven of peace and prosperity.

Balraj Puri's Report on Regional Autonomy looks at one aspect of peace-building and recommends political, cultural, financial and other measures to redress the grievances of the people living in the different regions of the State. These measures, the report hopes, will foster a sense of equality and empowerment among people of the three regions and help in promoting fraternity and peace.

The Report of the State Autonomy Committee, as has been said now quite a few times, is structure for silence on this issue. However, if we may squeeze an opinion on peace out of it, it may be said that the report believes repealing all orders not in conformity with the Constitution (Application to Jammu and Kashmir) Order, 1950 and the terms of the Delhi Agreement of 1952; and also maintain the sanctity of Article 370 will go a long-way in creating mutual trust and respect between the Indian State and the people of J&K, thus helping in ensuring a lasting peace. The **Regional Autonomy Committee Report** deems a reasonable balance and equitable development of all the sub-regions as the most important factor in the construction of a more peaceful future.

The issue of peace in the context of J&K mainly revolves around the context of violence perpetrated upon the people during the last two decades. Self-Rule Framework for Resolution and Achievable Nationhood are the two documents which directly deal with this issue.

Achievable Nationhood accords utmost importance to the *sentiments* of the people.¹⁷¹ It theorizes extensively on the psychological aspect of the Kashmir issue.¹⁷² In its opinion, the sentiments of the people should have weight above and over everything else. So, it proposes that an Independent Homeland Model be made the reference point model into which Indian and Pakistani claims be adjusted. This, the document believes, will satisfy the collective yearning of the people of J&K for recognition as active political players

171 Achievable Nationhood, Chapter 5, *Evolving the Eclectic Model*, p. 147.

172 Ibid, pp. 145 & 146.

apropos their own life. In this way the internal aspect of peace-building will be dealt with. The process of accommodating Indian and Pakistani claims would deal with the external aspect of building and maintenance of peace. The document strongly believes that improvement in cross-LoC relationships, particularly trade, can be a vital aspect of peace-building. An economic union of the two parts of J&K, which the document sees as the next logical step, will only help in strengthening peace and stability. However, the document benefits from the trickle-down theory of economic development and is therefore structured for silence on how statecraft will help the benefits of increase in trade and commerce reach the common man. Even though the document admits that the cross-LoC trade will mainly have a psychological, as opposed to economic, impact; but by not taking up a discussion on the importance of social justice in peace-building, the document creates a great divergence between its vision and the vision of Naya Kashmir.

Demilitarisation of the part of J&K under Indian control as well as the part of J&K under Pakistani control is thought of as an essential pre-requisite for peace by the document.¹⁷³ Respect for Human Rights,¹⁷⁴ release of political prisoners,¹⁷⁵ identification rather than a process of selection and rearing of leadership in the State,¹⁷⁶ rehabilitation of the victims of violence¹⁷⁷ and setting up a Truth and Reconciliation Commission¹⁷⁸ are some other measures suggested by the document as harbingers of peace.

The concept of earned sovereignty is seen as a remedy for the political hurdles in the path of peace.¹⁷⁹ Earned sovereignty, as developed in the recent state practices, entails the conditional and progressive devolution of sovereign powers and authority from state to a sub-state entity under international supervision.¹⁸⁰

The Self-Rule Framework for Resolution considers demilitarisation and other related efforts, like the rolling back of AFSPA (Armed Forces Special Powers Act), as the first steps towards peace-building. Cross-LoC trade is seen as the next step but like Achievable Nationhood, and unlike Naya Kashmir, the document fails to enlighten on how the benefits of an improved economy will reach all sections of the society.

The document identifies six methods which can be employed for the resolution of the Kashmir problem:

- a) A plebiscite held simultaneously throughout the entire State of J&K;
- b) A phased plebiscite held in stages in different specified regions of the State;
- c) An election held under international supervision in both parts of the State to choose representative for holding negotiations regarding the future of the State with both India and Pakistan;
- d) An election held in both parts of the State to choose representatives who would then hold negotiations with their own country;
- e) The framing of a broad frame-work on the future of the two parts of the State to be formulated by India and Pakistan;

173 Ibid, pp. 162-164.

174 Ibid, pp. 158 & 159.

175 Ibid, p. 160.

176 Ibid, pp. 153 & 154.

177 Ibid, pp. 161 & 162.

178 Ibid, p. 159.

179 Ibid, Chapter 5C, *Sovereignty Context*, pp. 258-263.

180 See Micheal P. Scharf, *Earned Sovereignty: The Juridical Underpinnings* 31 *Denver Journal of International Law & Policy* (2003). See also, Paul R. Williams & Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap between Sovereignty and Self-Determination*, *Stanford Journal of International Law* (2004).

- f) The elected representatives of each part of the State would then hold negotiations with their respective country for a resolution framework within the given parameters.

Out of these, the document considers only the sixth (f) sensible and practicable.¹⁸¹

In convergence with the Achievable Nationhood Document, the Self-Rule Document proposes the establishment of a Truth and Reconciliation Commission based on the South African model.¹⁸²

The document also hopes for peace through the application of its concept of Self-Rule which has four components: Autonomy, Control, Legitimacy and Identity.¹⁸³ The document expects the last three components to work in a way by thorough which people will develop an overriding sense of empowerment and identification as a collective group.¹⁸⁴ Regional empowerment and constitutional restructuring are also instruments necessary for building and maintaining peace, according to the document.

Through all these documents, there is a strong current of opinion that nurturing a sense empowerment among the people of the State is the most imperative step necessary for the creation of a better, more peaceful society and for the preservation of that peace and stability.

	Naya Kashmir	Self-Rule Framework for Resolution	Achievable Nationhood	Balraj Puri's Report on Regional Autonomy	State (and Regional) Autonomy Committee Report, 2000
Peace through...	Social justice, which it considers the bedrock of peace and stability.	Demilitarisation, rolling back of Draconian provisions like AFSPA, setting up of Truth and Reconciliation Commission and increasing cross-LoC trade.	Demilitarisation, rolling back of Draconian provisions like AFSPA, setting up of Truth and Reconciliation Commission and increasing cross-LoC trade.	Incorporating regional aspirations.	Restoring the autonomy to create a feeling of empowerment among people. Devolution of power.

SUMMING UP:

- i) Naya Kashmir, the Report of the State Autonomy Committee, the Regional Autonomy Committee Report and Balraj Puri's Report on Regional Autonomy do not deal with the violence being perpetrated on the people of J&K during the last 20 years, therefore their perspective of peace-building is not very relevant to the contemporary scenario. Naya Kashmir believes that social justice is the bedrock and peace and stability, the report of the State Autonomy Committee suggests that once the grievance of erosion of autonomy is redressed, peace will automatically take roots in the hearts of the people

181 J&K: The Self-Rule Framework for Resolution, p. 17.

182 Ibid, p. 37.

183 Ibid, p. 19.

184 Ibid.

of the State; and Balraj Puri's document says that incorporating regional aspirations into mainstream narratives of autonomy will remove grievances and foster peace and harmony.

- ii) Achievable Nationhood and the Self-Rule Document deal with the contemporary problem of violence directly and suggest several measures to counter it. Demilitarisation, rolling back of Draconian provisions like AFSPA, setting up of a Truth and Reconciliation Commission and promoting cross-LoC relationships, particularly those related to trade, are all measures suggested for building and maintaining peace by these documents.

Conclusions

If we look at the matters purely from the perspective of the discourse of autonomy, the twin needs of empowerment and good governance lie at the core of the issue. People need to be made comfortable in the idea that they have a measure of control over their own destiny. As a matter of fact, in the discourse of autonomy, this is considered the very kernel of the ideal of democracy. This ideal is sought to be achieved through a top-down empowerment and a corresponding increase of public participation in the political processes of the State. The courses of action suggested by the State Autonomy Committee Report and the Self-Rule Framework for Resolution all are expected to eventually lead to this. Achievable Nationhood's position is more problematic. It proposes a bottom-up model flowing out of the sentiments of the people, in which the concerns of the India and Pakistan will be accommodated later. Whether to approach autonomy from a top to bottom, devolutionary perspective as the State Autonomy Committee Report and the Self-Rule Document suggest; or whether to adopt a bottom to top, achievable overlap perspective as Achievable Nationhood suggests; is a matter which has to be pondered over in the most relevant paradigm and an appropriate strategy chalked out accordingly. Yet, at the same time, nobody can deny that the underlying demand for transfer of power is a genuine one.

However, a substantial majority in the state¹⁸⁵, and an overwhelming majority in the Kashmir region, contests both the top-down and the bottom-up models of empowerment, holding the alternate viewpoint that the people of the state should get the kind and measure of power which they want instead of that which the Indian and Pakistani governments decide they need.

Once there is some positive movement in the quantum and nature of self-governance which the Indian State is agreed to granting; and practical, binding steps are taken to ensure the same, the discourses of self-determination and *azadi* can be taken on board to find a final political arrangement acceptable to all parties to the dispute, particularly the citizens of J&K.

A second issue involved in empowerment is recognising the contemporary sentiments of the people and respecting them. Demilitarisation and some form of a Truth and Reconciliation Commission will help to heal the wounds more than two decades of armed conflict and State violence have left behind.¹⁸⁶ The sentiment for a free people-to-people interaction across the LoC is very strong and to facilitate this by doing away with

185 The Chatham House poll carried out in the autumn of 2009 in both the Indian as well as Pakistani controlled part of J&K revealed that 43% of people of undivided J&K want independence from both India and Pakistan, as compared to 21% who want India and 15% who want Pakistan. Within the Kashmir valley, the percentage of people who want independence goes up substantially to between 74-95% across the districts. (www.chathamhouse.org.uk/files/16664_0510pp_kashmir.pdf)

186 Some mechanisms which seek to deal with these questions in the state are already in place in the form of the J&K Right to Information Act 2009, the Accountability Commission and the women's commission, but there has been little headway in their implementation, which has precluded a discussion on their merits.

red-tapism and diplomatic and bureaucratic miserliness will go a long way in making people feel empowered. The recommendations of the Self-Rule Framework for Resolution and Achievable Nationhood can be very handy in forming an informed policy in this regard.

Regional empowerment is but the necessary corollary of this state of affairs. The citizenry of any region or sub-region of the State must not be allowed to sink into a position where they feel neglected and discriminated against. Equitable development of all regions must therefore be a top priority. The framework suggested by Balraj Puri's Report on Regional Autonomy and the Self-Rule Document, and some of the points raised by Achievable Nationhood, can act as a guiding light in this respect.

Corresponding to this generation of empowerment, there must be a stress on good governance. The administrative institutions must be overhauled so that they function more smoothly and are oriented towards sustainable development and the welfare of the people. They should also promote a genuine sense of equality among the different parts of the state. One way of doing this is by creating smaller administrative units. The Ladakh Autonomous Hill Development Councils are a shining example of how smaller administrative units can work wonders despite having shortcomings. The big advantage with having a working model like the Ladakh Councils as an example is that the shortcomings and loopholes can be identified and measures taken so that they are not repeated de novo. Smaller administrative units will increase people's participation in the processes of governance and generate a welcoming attitude towards the political process, thereby fostering the temperament of democracy.

Minority rights and protection of minorities is a thrust area where a lot needs to be done. The migration of Kashmiri Pandits in the incipient years of militancy is a blot on the rich and hugely diverse multiculturalism of the State. Instead of blaming everything on the invisible 'foreign hand', or on the conspiracy of individuals, the State should accept its share of culpability in creating the present state of affairs and work to undo the wrongs which have taken roots in this regard. Taking up necessary measures so that they may have a secure future will not only redeem some of the face Kashmiris complex and unique pluralism has lost in the years of armed conflict, but can also be the showpiece of the shape of things to come. In any case, since issues of discrimination and neglect are always entangled with issues of minority psyche, and since J&K has had these issues with India, it will only strengthen the case of transfer of more powers from the Union to the State if the State has a very good mechanism and policy to ensure the safety, equality and development of its own minorities. The Self-Rule Document, Balraj Puri's Report on Regional Autonomy and Achievable Nationhood all have some very relevant suggestions to make on these issues.

The Naya Kashmir document is a good guide in the context of all these issues. Specifically, its vision of sustainable economic development which is all-inclusive, although a little out of sync with today's liberalised market driven world, can be very useful as a background in dealing with the peculiar situation which is beginning to arise in the J&K as a result of the yawning gap between the rich and the poor.

The present is a time of opportunity. The partisans of peace must seize the initiative now. Peace is an investment; it must be done with a big heart and an open-mind. It is time everybody, especially the ruling class in New Delhi and Islamabad, realise that the road to peace passes through the gardens of a resolution.

SUMMARY TABLE

Issue	Naya Kashmir	State (and Regional) Autonomy Committee Report	Balraj Puri's Report on Regional Autonomy	Self-Rule Framework for Resolution	Achievable Nationhood
Approach	A charter/ constitution for a soon-to-be-born/ democratised nation.	Revivalist; recommends restoration of Article 370 in letter and spirit. Calls for devolution of power to sub-regions.	Fractal; therefore evolutionary and devolutionary.	Part-revivalist, part novel.	Innovative, with recognition of failure of previous approaches.
Political Vision	J&K to be a sovereign democracy and a socialist republic.	By default, supports the vision of Naya Kashmir. Federalism.	Devolution of power to lower tiers of governance will make J&K a stronger and exemplary State.	Shared-sovereignty with India and Pakistan. Economic Union of the two parts of J&K.	Shared-sovereignty with India and Pakistan. Economic Union of the two parts of J&K.
Article 370	Silent.	Restoration to the 1952 position.	Silent.	Recommends its restoration to the position of strength.	Discusses the history of its erosion but makes no recommendations.
Article 248 (Residuary Powers of Legislation)	Retention of these powers by the State legislature.	Restoration of these powers to the State legislature.	Silent.	Ratifies the Article, wants conferment of concurrent jurisdiction on the State to legislate on the subject of terrorist activities.	Silent. But is in favour of retention of residuary powers by the two State legislatures of J&K.

Article 312 (All India Services) and the All India Services Act, 1951	Silent.	Rolling back of the Article and the Act from applicability to the State.	Silent.	Rolling back of the Article and the Act from applicability to the State.	Silent. But is in favour of an independent bureaucracy in both parts of J&K.
Article 356	Silent.	Recommends making the Article inapplicable to the State.	Silent.	Recommends making the Article inapplicable to the State.	Silent.
Seventh Schedule	Silent.	Constitution (Application to J&K) Order, 1950 should be the test for determining the entries in the Union List applicable to the State.	Silent.	State must be compensated for rendering its waters (Union List: 56; State List: 17) to the Indus Water Treaty.	Silent.
Administration of the Two Parts of J&K.	Silent.	Silent.	Silent.	A Regional Councils consisting of members from both parts of the J&K.	Two legislatures from the two parts and coordination between them.
Cross-LoC Trade	Silent.	Silent.	Silent.	Will not only bring economic prosperity but will also help to heal the wounds of separation.	May not much business sense but will help in uniting the people.

Shared Sovereignty	Silent.	Shared sovereignty between India and the part of J&K under its control.	Silent.	Shared sovereignty between Indian and the part of J&K under its control as well as Pakistan and the part of J&K under its control.	Shared sovereignty between India and Pakistan on the one hand and the two parts of J&K on the other hand.
Relationship Between India And Indian-Controlled J&K and Pakistan and Pakistan-Controlled J&K	Silent.	Autonomy. Only defence, foreign affairs and communications under India.	Silent.	Self-Rule. Only defence, security, foreign affairs and communications to be under the respective countries.	New state of affairs. Only defence and foreign affairs to be under the respective countries.
Relationship Between India and Pakistan-Controlled J&K Pakistan and Indian-Controlled J&K	Silent.	Silent.	Silent.	Silent.	The Indo-Nepal Peace and Friendship Treaty, 1960 as a model.
Economic Union of the Two Parts of J&K	Silent.	Silent.	Silent.	Economic Union of two parts of J&K with removal of all trade barriers and tariffs and free flow of capital, labour and goods.	Economic Union of two parts of J&K with removal of all trade barriers and tariffs and free flow of capital, labour and goods.

Economic Vision	Socialism. Equitable distribution of wealth.	Supports the vision of Naya Kashmir by default.	Economic emancipation of all regions and areas without discrimination.	Increase in cross-LoC trade resulting in the economic union of the two parts.	Increase in cross-LoC trade resulting in the economic union of the two parts.
Kashmir Pandits	Silent.	Silent.	Recognition of the agony of exile felt by Kashmiri Pandits and reiteration of their right to return.	Recognition of the agony of exile felt by Kashmiri Pandits and reiteration of their right to return.	Recognition of the agony of exile felt by Kashmiri Pandits and reiteration of their right to return and right to reclaim property.
Other Migrants	Silent.	Silent.	Lump-sum compensation for people who were uprooted by the partition or subsequent wars.	Silent.	Recognition of the agony of exile felt by these migrants and reiteration of their right to return and right to reclaim property.
Women	Minimum reservation for womenfolk in various administrative bodies.	Supports Naya Kashmir by default.	Minimum reservation for womenfolk in various administrative bodies.	Silent.	Silent.
Linguistic Minorities	Preservation of languages like Gojri, Baderwahi, Pahari, Punjabi, Bodhi and Sheena etc.	Preservation of all languages. Special reference to Urdu.	Preservation of languages like Gojri, Baderwahi, Pahari, Punjabi, Bodhi and Sheena etc.	Silent.	Silent.

Regional Councils	Devolution of power to the lower tiers of governance.	Suggests a division of the State into eight Provinces.	Regional Councils should be constituted and empowered.	Regional Councils should be constituted and empowered.	Regional aspirations are basically ethnic aspirations. Every District should be given two options; either to opt out or to get more powers through devolution.
Truth and Reconciliation Commission	Silent.	Silent.	Silent.	A Truth and Reconciliation Commission should be set up on the model of South Africa.	A Truth and Reconciliation Commission should be set up on the model of South Africa.
Demilitarisation	Silent.	Silent.	Silent.	Necessary pre-requisite for peace.	Necessary pre-requisite for peace.
Vision for the Future	Silent.	Restoration of Autonomy. Creating eight administrative sub-regions in the State.	Regional empowerment.	The elected representatives of each part of the State would hold negotiations with their respective country for a resolution framework within the given parameters.	Making an Independent Homeland the reference point and creating achievable overlaps of Indian and Pakistani claims.

Appendix I

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

(1) Notwithstanding anything in this Constitution,--

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

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

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

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

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

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

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

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

Appendix II

Instrument of Accession of Jammu and Kashmir State

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

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

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

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force is hereinafter referred to as "the Act").
2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.
3. I accept the matters specified on the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.
4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this state whereby any functions in relation to the administration in this state of any law of the Dominion Legislature shall be exercised by the ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.
5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act

or of the Indian Independence Act, 1947, unless such amendment is accepted by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any laws for this State authorising the compulsory acquisition of the land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which is applied in this state deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.
7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.
8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.
9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October Nineteen Hundred and Forty-Seven.

HARI SINGH

Maharajadhiraj of Jammu and Kashmir State



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