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1992

Kashmir Holocaust

The case against India

Being the text of a writ petition filed by
Bahauddin Farooqi, former Chief Justice,
Jammu & Kashmir High Court and Chairman,
Jammu & Kashmir People's Basic Rights
(Protection) Committee

KASHMIR HOLOCAUST

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**Being the Text of a Writ Petition
filed by Bahauddin Farooqi,
former Chief Justice of the Jammu & Kashmir High Court**

Edited with an Introduction by KHALID HASAN

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**This book is dedicated to the brave people of
Kashmir and to all those, wherever they may be,
who are supporting their struggle for freedom,
justice, peace and dignity**

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Justice (Retd) Baha-ud-din Farooqi

Justice Baha-ud-din Farooqi was born on 4th April 1924 at Srinagar (IHK). He received his primary education in Srinagar. He is MA, LLB and was enrolled as Pleader, Jammu and Kashmir High Court in 1946. He became Under Secretary, Law Department of IHK Government in 1950. In 1966, he was promoted as Law Secretary. In 1971 he became the Additional Judge of Allahabad High Court and in 1976 he was transferred to the Jammu and Kashmir High Court. In 1979, he rose to the Office of Chief Justice of Jammu and Kashmir and later in 1980 he was transferred as Chief Justice Sikkim High Court. After his retirement in 1983, he started practising law in the Jammu and Kashmir High Court. Ever since the start of independence movement in the occupied Kashmir, Justice Baha-ud-din Farooqi has been associated with the protection of human rights in the occupied Valley.

Editor's Note

In editing the text of Mr Bahauddin Farooqi's compelling case against the immoral and unconstitutional conduct of the Government of India in Kashmir, I have taken certain liberties in order to enhance the readability of this important document.

About one-third of the writ petition, which the former Chief Justice of the Jammu and Kashmir High Court, now the Chairman of the Jammu & Kashmir People's Basic Rights (Protection) Committee, has filed, consists of excerpts from newspaper and other reports describing the terrorism unleashed against the Kashmiris of the Valley by the Indian Security Forces. These excerpts appear in one sustained passage from page 25 to page 51 of the original text which covers 81 foolscap sheets.

I have taken out these excerpts and placed them at the back of this book in the form of 14 appendices which, in my view, will add to the cohesion and readability of the document.

I have also taken out from the main text a long excerpt (pp 56-62) reproducing the main features of the Jammu & Kashmir 1956 Constitution and placed it at Annex XV.

The text from which I was working was a poorly cyclostyled copy obtained from India. It contained scores of mistakes, with many words and figures barely legible. Every care has been taken to produce an error-free text, but if some errors are, in the end, detected, it will have happened despite the Editor's best efforts.

There were also mistakes of language or omissions which I have tried to repair in as uninterfering a manner as I could. Where in the text an essential word, such as an article, was missing, the necessary has been done in parenthesis. Some mistakes of language have been corrected but I wish to

emphasise that nowhere and at no point has anything been done which could constitute a rewriting or revision of the original text in any way.

Certain acronyms (such as BSF or CRPF) have been spelt out in the interest of clarity.

Other than these minor liberties, the text as presented here is exactly in the form in which it was filed by Mr Bahauddin Farooqi in the Jammu & Kashmir High Court nearly two years ago. Though admitted, it has not had a hearing.

Preceding the text of the writ petition is a representation addressed by Mr Farooqi to the President of India. It is not known if a reply was ever received.

**May 1992
Lahore**

Khalid Hasan

Introduction

Because it is a legal document and because the language employed and the points made are often and by necessity of a technical nature, a brief outline in simple English has been prepared by the Editor to help the average reader understand what Mr Bahauddin Farooqi's writ petition is about and why it is one of the most important documents in relation to the present revolutionary uprising in the Kashmir Valley against Indian occupation. The writ, which has been filed by Justice Farooqi on behalf of the Jammu and Kashmir People's Basic Rights (Protection) Committee, rests on the argument that not only are actions taken by and on behalf of the Government of India in Kashmir since the start of the insurgency or the uprising immoral and violative of the UN Charter of Human Rights, but they are also illegal and unconstitutional. Farooqi questions the validity of the various amendments made to the Constitution of the Jammu and Kashmir State, read in juxtaposition with the Constitution of the Indian Union, and maintains that these amendments which enabled the State administration to subvert the law and abridge or liquidate the rights of the Kashmiri people were void in law and in violation of the Constitution.

Farooqi also questions the manner in which the office and powers of the democratically elected Sadar-i-Riyasat were handed over to the Delhi-appointed Governor who, making use of authority which was never his to exercise under the law, let loose a state of terror in the Kashmir Valley resulting in loss of life and human rights abuses on an unprecedented scale. He contends that since the actions taken by the Governor were legally and constitutionally illegitimate, not only is the government guilty and answerable for the sufferings of the Kashmiris, but Governor Jagmohan is personally liable and should be brought to book in the interest of fairplay and the supremacy of the law.

The writ petition is preceded by a representation

addressed by the Committee to the President of India in which it has been contended that a judgment delivered by a bench of the High Court of Judicature at Allahabad on 16 January 1990 described Article 370 of the Constitution of India (which was enacted to make provision for the Indian Union's special relationship with Kashmir) as "unfortunate", and "discriminatory" while expressing "regret" that the courts were powerless to do anything about it and further that it was for parliament to do the necessary.

The Committee argues that what the judges who made these observations "do not realise (is) that what they wish and regret is exactly the same which (the) Jammu and Kashmir Liberation Front also wishes and regrets", namely the abrogation of Article 370 which gives Kashmir a special status within the Union of India. While through the abrogation of this Article, the Allahabad bench would desire Kashmir's total absorption in India, the Liberation Front wants the Article abrogated in order to gain the State's liberation. In effect, both are asking for something which is not "permissible under the Constitution and the law of the land".

The Committee goes on to argue that whereas action is being taken against the Liberation Front for its "anti-national" activities, no action has been initiated against the judges of the Allahabad Court who are equally in violation of the law. The judges also have not realised that it is not parliament which can abrogate Article 370 but another Constituent Assembly which will have to be convened for the State of Jammu and Kashmir.

The Committee contends that it is such observations which are "creating doubts in the minds of the people of Jammu and Kashmir that their constitutionally guaranteed position under the Constitution of India read with the Constitution of Jammu and Kashmir is sought to be taken away from them".

"The loss of the confidence of the people of Kashmir is

the result of the Rule of Law not being followed ... If the law of the land is acted upon ... it might solve the Kashmir problem within the framework of the Constitution of India."

The writ has been filed under Article 226 of the Constitution of India, read with Article 147 of the Constitution of Jammu and Kashmir, asking for the nullification of an amendment introduced to the State's Constitution in 1965 and a proclamation issued by the State Governor in 1990, both of which have enabled the State administration to assume arbitrary powers of arrest, detention, raids, curfews and house searches. The Committee headed by Bahauddin Farooqi also calls for holding Governor Jagmohan "personally liable for civil and criminal action in respect of acts of genocide, killings, oppression and suppression committed on the people of the State and the sufferings inflicted on them by him or under his orders or otherwise during his regime beginning from 19 January 1990 till he resigned".

The writ further demands that respondents number two and three, namely the Government of India and the Government of Jammu and Kashmir respectively, should be asked to prosecute respondent number one, former Governor Jagmohan, for "acts of genocide, killings, oppression and suppression committed on the people of the State and the sufferings inflicted on them by him or under his orders" during his term of office.

Other important legal questions "of public importance" raised by the Bahauddin Committee are: whether Jagmohan has been "the usurper of the office of the head of the State", whether proclamation No 1 p.. 1/90 of 1990, dated 19 January 1990 under which Jagmohan assumed sweeping administrative powers was void in law and, whether Jagmohan was in the first place "competent to deploy armed forces ... subject to the control of the Union in aid of civil power for the maintenance of law and order in the State". It is also the petitioners' prayer that it should be determined whether Jagmohan is not personally responsible and prosecutable for all the crimes and illegalities committed

during his tenure as Governor of the State of Jammu and Kashmir.

The writ petition begins by tracing the history of the great human tragedy that is Kashmir. It demonstrates how acting in "collusion" with the leadership of the Indian National Congress, the late Maharaja of Kashmir, Hari Singh, cleverly manipulated in 1947 to enter into a stand-still agreement with Pakistan "the real object being to gain time to present the State as a gift to India".

The writ highlights the role of Sheikh Mohammad Abdullah who today is seen as the man directly responsible for the enslavement of his people. He is described as a "ready collaborator in the hands of manipulative India's leadership". The document covers the UN history of the Kashmir question and then goes on to show how India went back on assurances given internationally to allow the people of the State to be the final arbiters of their future. It quotes Pandit Jawahar Lal Nehru as saying in January 1952: "Kashmir is not the property of India or Pakistan. It belongs to the Kashmiri people ... We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision."

The writ quotes Justice V.M. Tarkunde, a respected Indian judge, as saying that Nehru made a big mistake when he backed out of the plebiscite proposal "on the wholly irrelevant ground" that since Pakistan in the meanwhile had entered into two defence pacts with the west, India was no longer bound by its UN pledge. The judge argues that "the offer of plebiscite was not in the nature of a concession made by India to Pakistan, but was a recognition of the right of self-determination of the people of Jammu and Kashmir".

Tracing the origins of the present liberation struggle in Kashmir, the petition calls it the outcome of the state of helplessness and humiliation in which the people of Kashmir have lived under Indian rule, adding that "the movement has

turned into a mass upsurge since 1987 and there is hardly any conscientious Kashmiri who does not support it". It also demonstrates how this upsurge has been deliberately given a communal character, especially under the hated Jagmohan regime. Non-Muslims, mainly Kashmiri Pandits, were encouraged to migrate from Kashmir to distort the true nature of the struggle which was not communal, though the vast majority of the Kashmiris was and remains Muslim.

The writ petition provides a detailed and graphic account, often chilling, of how under Governor Jagmohan Kashmir was "converted into a virtual prison ... by continued imposition of curfew ... to harass and intimidate" the people with the result that today, in the words of Soumitra Bose writing in the magazine *Current*, "every Muslim in Kashmir is a militant. All of them are for secession from India".

The document shows how Kashmir's economy has been systematically destroyed, its youth thrown into virtual concentration camps or massacred, its beautiful countryside ravaged by the Indian security forces, its impoverished people impoverished further and the sanctity of the Kashmiri home and family desecrated through forcible entries, searches, rapes of women, killing of old men and children and general pillage. Even hospitals and terminally ill patients have not been spared during fascist-style searches for militants.

The writ devotes nearly one-third of its 81 pages to reproducing excerpts from newspaper and other reports to detail the atrocities committed against the people of Kashmir by the Indian para-military and security forces. It quotes an extended excerpt from a report prepared by the Committee for Initiative on Kashmir which is entitled 'India's Kashmir War'. It is a chilling document and deserves the attention of all those who care about human dignity and the right of men to be free and to live in peace and tranquility under benign and law-abiding governments. Also quoted extensively are various respected and well-known international newspapers. The case made out is so

compelling and the different accounts so equally condemnatory of Indian policy and actions in Kashmir that there is only one conclusion which any reasonable person, living in the Sub-continent or elsewhere in the world, can reach. India is guilty of grave moral crimes in Kashmir and its policies, even if not genocidal in intent, will end up, if not modified or revised, achieving the same nightmarish end.

The virtue of the Bahauddin Farooqi document is that not only does it make a powerful and unassailable moral case against Indian policies and actions in Kashmir, but it also demonstrates the illegality and unconstitutionality of these policies and actions.

The writ petition argues that because of the amendments made to the Constitution of the Jammu and Kashmir State, "the concept of republicanism enshrined in the Constitution has been obliterated", "the paramountcy of the people has lapsed from the people into the Government of India", "the supremacy of the Constitution has disappeared" making it a hand-maid of the Government of India, "the sovereignty of the State in its own sphere has passed into the hands of the Government of India" and the sanctity and immutability of Section 147 has been destroyed."

To quote from paragraph 73 of the petition, "... the aforesaid amendments have completely changed the basic structure of the Constitution and deprived it of its essential features ... and as such these amendments are unconstitutional. For the law is well-settled that an amendment of the Constitution which takes away any of its essential features is not amenable to the ordinary process of amendment provided therein".

According to the document filed by the Farooqi Committee, the legal position is that the appointment of Jagmohan as Governor was illegal, hence all actions taken by him were illegal too, making him personally liable as an individual who was always a "usurper". Similarly, the

proclamation of 19 January 1990 under which he assumed sweeping powers of life and death over the people of Kashmir was illegal and unconstitutional. It further contends that Jagmohan had no legal or constitutional authority to involve the armed forces of the Indian Union in suppressing the people of Kashmir, nor did he have any legal powers which could have enabled him to ship some of those detained outside the territories of the State of Jammu and Kashmir to other parts of India.

It accuses Jagmohan of wanting to "harass, intimidate and imprison the entire population in order to tame it". He is also charged with having "abused and misused his legislative powers solely with the object of committing barbarism in the name of law on the people of Kashmir". Jagmohan also had searches of people's houses made through security personnel who had no power or authority to do so. Nor were these searches made in accordance with laid-down procedures.

The petition charges Jagmohan with being "personally liable for all acts of omission and commission committed by or on his behalf which are arbitrary, malicious and malafide or in excess of his power and authority while purporting to discharge the functions of the government of the State, as such, he is personally liable for civil and criminal action, singly and jointly, with others, depending on the nature of each such act".

The petition though admitted by the Jammu and Kashmir High Court has not been accorded a hearing. One can guess why. So much for Indian justice and the independence of the judiciary.

An Appeal to the President of India

To

**His Excellency the President of India,
Rashtrapati Bhawan,
New Delhi.**

It is respectfully submitted as under:

1. That the Hon'ble Judges of the High Court before their appointment are required to take an oath of affirmation given in the Third Schedule Form VIII which is as under:

"I, A.B. having been appointed Chief Justice (or a Judge) of the High Court at (or of) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, (that I will uphold the sovereignty and integrity of India) that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill will and that I will uphold the Constitution and the law."

2. That a Writ Petition No. 10804 of 1989 was filed in the Hon'ble High Court of Judicature at Allahabad sitting at Lucknow in which a Judgment was delivered by Hon'ble Mr Justice S.C. Mathur who constituted a Bench with Hon'ble Mr Justice Virendra Kumar who concurred with the former. This Judgment was delivered on 16 April 1990.

3. That at page 11 of the script of the said Judgment, the Hon'ble Court has observed that "the Constitution provides a procedure for amendment of the Constitution. That amendment can be carried out only by the Parliament exercising constituent power. This Court cannot issue a mandamus to a legislature to frame a particular law. Similarly this Court cannot command the Parliament to exercise its constituent power of amending the

Constitution. For amending the Constitution, a Bill will have to be brought before the Parliament and that Bill will have to be passed by the requisite majority prescribed in the Constitution. This Court cannot control the will of the Parliamentarians. If the Parliamentarians do not give the Bill the requisite majority for its passage, the Constitution will not be amended. If this Court cannot control the voting pattern of a Bill seeking to amend the Constitution, this Court obviously cannot command any authority to abrogate Article 370 of the Constitution or to extend its benefits to other States also."

4. That at page 12 of the Judgment, it has been observed: "Kashmir is an integral part of the Country and it is unfortunate that such a discriminatory law has been enacted. But because of the constitutional status given to the State, the courts can do nothing in the matter except to express regret. However, we do not agree with the drastic remedy suggested by the petitioner for ending discrimination. Article 370 appears in part XXI of the Constitution which bears the heading "Temporary, Transitional and Special Provisions". The marginal heading of Article 370 reads "Temporary provisions with respect to the State of Jammu and Kashmir". From the heading of Part XXI and of the marginal heading of Article 370 it is apparent that Article 370 is of transitional nature. Obviously this temporary provision has been made as those charged with framing the Constitution felt that complete accession of the people of Jammu and Kashmir with the people of the rest of India will take some time. We can only wish that the time does not prolong unduly as it is of prime importance that a citizen of India living in one corner of the country may have the right to settle down and acquire property in any part of the country."

5. From the above it appears that the Hon'ble Judges regret that Article 370 exists in the Constitution and would like it to be repealed as early as possible. Article 370 reads as under:

Temporary provisions with respect to the State of Jammu and Kashmir - 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 (sic) 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 1984;

(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 the Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

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

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

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

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

6. That it will not be out of place to mention that it was under Article 370 that the people of Jammu and Kashmir gave themselves the Constitution of Jammu and Kashmir, Part XII section 147 of which deals with the amendment of the Constitution of Jammu and Kashmir. The said Part XII is reproduced hereunder :

PART XII AMENDMENT OF THE CONSTITUTION

147. Amendment of the Constitution: An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly, and when the Bill is

passed in each House by a majority of not less than two-thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of Bill:

Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by it by a majority of the total membership of Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting:

Provided further that no Bill or amendment seeking to make any charge in -

- (a) this section; or
- (b) the provisions of sections 3 and 5; or
- (c) the provisions of the Constitution of India as applicable in relation to the State;

shall be introduced or moved in either House of the Legislature."

7. That it is obvious from section 147 of the Constitution of Jammu and Kashmir that section 147 or provisions of sections 3 and 5 and provisions of the Constitution of India as are applicable in relation to the State i.e. Article 370 could not be changed.

8. That section 3 of the Constitution of Jammu and Kashmir provides that Jammu and Kashmir is an integral part of India and reads as under:

"3. Relationship of the state with the Union of India - The State of Jammu and Kashmir is and shall be an integral part of the Union of India."

9. That section 5 of the Constitution of Jammu and

Kashmir deals with the executive and legislative powers of the State and reads as under:

"5. Extent of executive and legislative powers of the State - The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India."

10. Thus it is obvious that the Constituent Assembly of Jammu and Kashmir has made Article 370 permanent.

11. That it is not very unfortunate that the Hon'ble sitting Judges of the High Court should make observations in respect of the provisions of the Constitution which were enacted by the Constituent Assembly itself to the effect that they can do nothing but express regret or they wish that such a provision is not prolonged unduly? And if so, it deserves a thorough enquiry and consideration. It seems that they do not realise that what they wish and regret is exactly the same which Jammu and Kashmir Liberation Front also wishes and regrets. The only difference between the two is that the Hon'ble Judges want the State of Jammu and Kashmir to be totally integrated like other States of the Union of India whereas the Jammu and Kashmir Liberation Front wants total independence from the Union of India. Both are constitutionally and legally not permissible under Article 370 read with the provisions of section 147 of the Constitution of Jammu and Kashmir. Thus constitutionally and legally the Hon'ble Judges and the Jammu and Kashmir Liberation Front are asking for something not permissible under the Constitution and the law of the Land which Prime Minister Sri V.P. Singh has time and again said will prevail.

12. That action is being taken against Jammu and Kashmir Liberation Front and their utterances asking for total independence from the Union of India is said to be and is indeed anti-national. However, it would be pertinent to visualise whether the observation of the learned Judges is also anti-

national according to the law of the Land which should be applied with an even hand to one and all.

13. That the Hon'ble Judges do not seem to realise that to do away with Article 370 it is not Parliament which can amend or abrogate it but another Constituent Assembly will have to be convened for the State of Jammu and Kashmir which in view of Article 370 can either opt for total independence or may opt for total integration. However, if a door is opened again as the Hon'ble Judges desire, there is no guarantee that (the) sovereignty and integrity of India will not be affected if the people of Jammu and Kashmir opt to go out of the Indian Union.

14. That in view (of), what has been stated above, appropriate action should be taken against the Hon'ble Judges under Article 217 of the Constitution of Indian read with section 124 of the Constitution of India, if it is deemed that there is violation of (the) oath of office taken by them.

15. That it is observations such as those made by the Hon'ble Judges that are creating doubts in the minds of the people of Jammu and Kashmir that their constitutionally guaranteed position under the Constitution of India read with the Constitution of Jammu and Kashmir is sought to be taken away from them as even Hon'ble Judges who should be fully aware of the constitutional provisions seem to want the constitutionally guaranteed position to be undone.

16. The concept of ignorance of law being no excuse for an ordinary man should apply with full force to the Hon'ble Judges of the High Court.

17. The loss of the confidence of the people of Kashmir is the result of the Rule of law not being followed and probably the solution to the happenings in the State lies in giving the people of (the) State an assurance that the Law of (the) Land will be followed in the State, that is (the) Constitution of Jammu and Kashmir read with Article 370 of the Constitution of India will

be followed in letter and spirit. If the Law of the Land is acted upon and the people of the State believe that the Government of India sincerely wants to follow the Law of the Land, it might solve the Kashmir problem within the framework of the Constitution of India.

In view of what has been stated above, it is respectfully prayed that suitable action be taken expeditiously in accordance with law to safeguard the unity and integrity of the Country.

Encl: Judgment dated
15 January 1990 in W.P.
No. 10804 of 89

We are
The Applicants.

18 April 1990

cc to:

1. Chairman, Rajya Sabha,
Parliament House,
New Delhi.
2. Prime Minister,
Government of India,
Parliament House,
New Delhi.
3. Chief Justice of India,
Supreme Court,
New Delhi.
4. Speaker, Lok Sabha,
Parliament House,
New Delhi.
5. The Home Minister,
Government of India,
Parliament House,
New Delhi.

6. **The Law Minister,
Government of India,
Parliament House,
New Delhi.**
7. **The Minister of Railways,
Incharge J & K Affairs,
Parliament House,
New Delhi.**
8. **Leader of Opposition Congress (I),
Parliament House,
New Delhi.**
9. **Leader of HJP,
Parliament House,
New Delhi.**
10. **Leader of CPM,
Parliament House,
New Delhi.**
11. **Leader of CPI,
Parliament House,
New Delhi.**
12. **Leader of AIADMK,
Parliament House,
New Delhi.**
13. **Leader of Akali Dal (Mann Group),
Parliament House,
New Delhi.**
14. **Leader of National Conference,
Parliament House,
New Delhi.**

15. **Leader of Shiv Sena,
Parliament House,
New Delhi.**
16. **Leader of Muslim League,
Parliament House,
New Delhi.**
17. **The Governor of Jammu & Kashmir,
Raj Bhawan,
Srinagar (Kashmir).**
18. **The Chief Justice of
Jammu & Kashmir High Court,
Srinagar (Kashmir).**
19. **The Chief Justice of
Allahabad High Court,
Allahabad.**
20. **The Attorney General of India,
Supreme Court,
New Delhi.**

**Text of Bahauddin Farooqi's
Writ Petition**

Before the Hon'ble High Court of Jammu & Kashmir at Srinagar
in the case of:

**Jammu and Kashmir People's Basic Rights (Protection)
Committee through its Chairman B. Farooqi on**

**his own behalf and on behalf of all the members of the
Committee**

(Petitioner)

Versus

1. **Shree Jagmohan, Former Governor of
Jammu & Kashmir c/o Secretary, Rajya
Sabha, New Delhi,**
2. **Union of India through Secretary, Home
Affairs, Government of India, New Delhi,**
3. **State of Jammu and Kashmir through Chief
Secretary, J & K Government, Srinagar**

(Respondents)

• **Petition under Art. 226 of the Constitution of
India read with Section 147 of the Constitution
of Jammu and Kashmir for issuance of:**

- (i) **An appropriate writ, direction or order declaring
the Constitution of Jammu & Kashmir (Sixth
Amendment) Act, 1965 and/or alternatively,
Proclamation No. P-1/90 of 1990 dated 18
January 1990 to be void, illegal and of no effect;**
- (ii) **An appropriate writ, direction or order declaring
that all things done, actions taken and orders
made by Shree Jagmohan, while purporting to**

carry on the functions of the Government of the State of Jammu and Kashmir are void, illegal and without jurisdictions;

- (iii) An appropriate writ, direction or order declaring that Shree Jagmohan, respondent No. 1 is personally liable for civil and criminal action in respect of acts of genocide on the people of the State and the sufferings inflicted on them by him or under his orders or otherwise during his regime beginning from 19 January 1990 till he resigned;
- (iv) An appropriate writ, direction or order including writ of mandamus commanding respondents No. 2 and 3 to prosecute Shree Jagmohan singly or jointly with other persons for the acts of genocide, killings, oppression and suppression committed on the people of the State and the sufferings inflicted on them by him or under his orders or otherwise during his regime beginning from 19 January 1990 till he resigned;
- (v) Any other relief which the Honble Court may deem fit to grant on the facts and circumstances of this case.

May it please your Lordships,
the petitioner aforesaid states as under;

1. That the petitioner is the Chairman of Jammu and Kashmir Peoples Basic Rights (Protection) Committee. The objects for which the Committee has been formed are as follows:

- a) to provide a common place to the members of the Committee to discuss matters concerning the basic rights of the people of Jammu and Kashmir, as enshrined in the United Nations

Charter and Declaration on Basic Rights and its subsequent Government;

- b) to preserve, protect and defend the Basic Rights of the people of J & K including the Rule of Law, by all legal and constitutional means;**
- c) to bring to light all acts of the Government of India and State Government and the officers and the authorities working under them which take away or violate the basic rights of the people of Jammu and Kashmir or any section or individual member thereof and, generally, to act for the maintenance and advancement of these rights;**
- d) to aid, advise and assist the aggrieved persons in seeking adequate and appropriate relief in the courts of law or by other legal methods in matters of violation or deprivation of their basic rights;**
- e) to publish and encourage publication of articles, journals or periodicals dealing with the education and advancement of basic rights of the people of J & K;**
- f) to organise functions, conferences or other meetings for the advancement of the objects of the committee;**
- g) and such other allied objects as may be considered necessary to promote and secure the said objects;**
- h) to take measures necessary for the establishment maintenance and development of goodwill and friendly relations with the institutions, organisations and individuals within and outside**

the State dedicated to human and humanitarian values.

2. That the petitioner is a permanent resident of the State of Jammu and Kashmir and, as such, he is competent to maintain this petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir on his own behalf and on behalf of the members of the Committee and for the public interest for the enforcement of (the) legal and constitutional rights of the petitioner, the members of the Committee and the public in general.

3. That the petition raises the following important questions of law of public importance, namely:

- a) What is the true scope and powers of the State Legislature in regard to the amendment of (the) Constitution under Section 147 of the Constitution of Jammu and Kashmir?**
- b) Whether the Constitution or Jammu and Kashmir (sixth Amendment) Act, 1965 is ultra vires of the powers of the State Legislature under Section 147 of the Constitution of Jammu and Kashmir?**
- c) Whether Shree Jagmohan has been the usurper of the office of the Head of the State? If so, whether he is personally liable for civil and criminal action for the genocide and oppression committed during his regime on the people of the State?**
- d) Whether the proclamation No. 1P 1/90 of 1990 dated 19 January 1990 whereby Shree Jagmohan assumed the functions of the Government of the State is void, illegal and of no effect? If so, whether he is personally liable for oppression**

committed during his regime on the people of the State?

- e) Whether Shree Jagmohan, while purporting to discharge the functions of Government was competent to deploy armed forces and other forces subject to the control of the Union, in aid of civil power for the maintenance of law and order in the State? If not, whether he is personally liable for civil and criminal action in respect of the killings and atrocities committed by such forces on the people of the State?
- f) Whether the curfews imposed in various parts of the State during Shree Jagmohan's regime were legally valid and proper? If not, whether he is personally liable for civil and criminal action for the resultant human misery and deaths in the State?
- g) Whether the ban placed on vehicular traffic during curfew relaxation periods was legally valid and proper? If not, whether Shree Jagmohan is personally liable for civil and criminal action for the resultant human misery and deaths in the State?

4. That nearly forty-two years back, India annexed the Jammu and Kashmir State by manipulation, fraud and force against the declared wishes of the people of the State.

5. That at the time of the annexation by India, Muslims formed 77.11 per cent of the total population of the State which was essentially a homeland of Muslims.

6. That, unfortunately, the State of Jammu and Kashmir, particularly, the Valley of Kashmir, because of its splendour and beauty, has always invited invaders, aggressors and exploiters.

The invasions started with the Mughals, were followed by Afghans and, thereafter, by Sikhs.

7. That in the year 1846, the British defeated the Sikhs and acquired Kashmir with (the) help of Gulab Singh, one of the treacherous ministers in the Sikh Court. In return for his services, the British sold Kashmir to Gulab Singh for a paltry sum of Rs. 7.5 million.

8. That this ignoble, inhuman and humiliating bargain was completed by virtue of an agreement called the Treaty of Amritsar.

9. That Gulab Singh and his successors held on to the occupied territory by wanton suppression and oppression. But when the same became unbearable, the people rose in an open revolt against, the Dogra regime in the year 1931 and demanded complete self-government in the State.

10. That the freedom struggle in the State was still going on when (the) British decided to quit the Indian Sub-continent and to grant independence to its people.

11. That at that time some areas of the Sub-continent called British India were ruled directly by the British, and other areas, known as the Princely States were ruled by local Maharajas and Nawabs, as they were called.

12. That, consequent upon the grant of independence to the Sub-continent and the creation of the dominions of India and Pakistan by the Indian Independence Act, 1947, the British paramountcy in the Princely States lapsed and got vested back in their people who practically became independent.

13. That the said Act, however, left, it open to these States either to accede to India or Pakistan, if they so chose. In the matter of accession, the Rulers were to be guided mainly by the wishes of the people, economic interests and (the) geographical

contiguity or their States.

14. That, acting in collusion with the Congress leaders, the then Ruler of Kashmir, Maharaja Hari Singh, cleverly manipulated to hoodwink the people of the State by entering into a stand-still agreement with Pakistan, the real object being to gain time to present the State as a gift to India.

15. That the people of the State scented the mischief and continued the on-going freedom struggle with added determination.

16. That the Maharaja tried to crush the movement by means of brute force, but he miserably failed. His troops were completely routed by the freedom fighters. The Maharaja felt completely demoralised and fled Kashmir at the dead of night for his own safety and survival.

17. That on 6 October 1947 Shree V.P. Menon, the then Secretary of States, Government of India, appeared at Jammu, where the Maharaja was staying and obtained his signatures to the 'Instrument of Accession' on the dotted line for the accession of the Jammu and Kashmir State to India as a consideration for India providing necessary armed help to resurrect his rule in the State.

18. That the authors of *Freedom at Midnight* have described the scene in Delhi after Menon's successful return as under:

"V.P. Menon was back home in Delhi late on the evening of the same day, 26th October. Alexander Symon, Britain's Deputy High Commissioner, joined him for drink a few minutes after his return. Menon was jubilant. He poured for each a stiff drink. As they sat down, an enormous smile appeared across his face, He raised his glass. Then he pulled a piece of paper from his pocket and waved it gaily towards the

Englishman. 'Here it is,' he said, 'we have Kashmir. The bastard signed the Act of Accession and now that we have got it, we will never let it go.'

19. That "we will never let it go" reflected the real intentions of Government of India. To camouflage the same and mislead public opinion in the world, the Government of India decided to accept the Instrument of Accession provisionally on the express understanding that, on the question of accession, the wishes of the people of Jammu and Kashmir shall be ascertained and respected as soon as normalcy was restored in the State. On 27 October 1947, the Governor General of India, while accepting the State's accession to India, wrote back to (the) Maharaja as under:

"In consistence with the policy that, in case of any State, where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that as soon as law and order had (sic) been restored in Kashmir and her soil cleared of the invaders, the question of (the) State's accession should be settled by a reference to the people."

20. That on that very date, the Prime Minister of India informed the Prime Minister of Pakistan that:

"I should like to make it clear that the question of siding(?) Kashmir in this emergency is not designed in any way to influence the State to accede to India. Our view, which we have repeatedly made public, is that the question of accession in any disputed territory of the State must be decided in accordance with the wishes of the people and we adhere to this view."

(Telegram No. 402-PRIME-2227 dated 27 October 1947 to Prime Minister of Pakistan repeating telegram addressed to Prime Minister of (the) United Kingdom).

21. That on 27 October 1947 itself, India also airlifted its troops to Srinagar and deployed the same in other parts of the State to suppress the people's struggle for freedom.

22. That soon after the Indian Army landed in Kashmir it mounted a powerful offensive on freedom fighters and imposed a reign of terror in the State with the help of Sheikh Mohammad Abdullah and his henchmen who, unfortunately became ready collaborators in the hands of manipulative India's leadership.

23. That given the genuineness and righteousness of the freedom movement of the people of the State; their will to carry, the struggle to its logical conclusion whatever the cost; the suffering imposed on a vast number of people by the Indian Army; and the well-pronounced policy of the ruling Congress, that in the matter of accession by princely States, the wishes of the people, the economic interests of the State and its geographical contiguity shall be the governing considerations, India had entered the conflict with a despicable record which made it increasingly embarrassing and difficult for it in the eyes of the world opinion to suppress the people of the State and their will for freedom.

24. That in an attempt to save their face and camouflage their aggression on the people of the State, the Government of India decided to put (the) blame on Pakistan and carry the matter to the Security Council. Accordingly on January 1 1948, India referred the matter to the Security Council, complaining that Pakistan was (the) aggressor in Kashmir.

25. That Pakistan filed a counter complaint on 15 January 1948 and while strongly repudiating the allegations made against it, pleaded that the alleged accession of the State to India was

immoral, illegal and fraudulent and that the entry of the Indian Army into the State was naked aggression against the people of the State.

26. That, at the United Nations, the matter remained under discussion for nearly nine months. Ultimately on 13 August 1948 and 5 January 1949, the Security Council with the consent of India and Pakistan adopted two resolutions, calling for cession of hostilities to be followed by a free and fair plebiscite on the question of accession under the United Nations auspices and as a first consequence of which the fighting in the State was stopped on 1 July 1949.

27. That even before the Security Council, India unhesitatingly declared that the question of accession was a matter for unfettered decision by the people of the State. On 15 January 1948, India's representative, Shree Gopaldaswamy Ayanger declared before the Security Council that:

"The question of the future status of Kashmir vis a vis her neighbours and the world at large and a further question, namely, whether she should withdraw from her accession to India and either accede to Pakistan or remain independent, with a right to claim admission as a member of the United Nations — all this we have recognised to be a matter for an unfettered decision by the people of Kashmir after normally will have first been restored to them. In accepting the accession, the (Government of India) refused to take advantage of the immediate peril in which the State found itself and informed the Ruler that the accession should finally be settled by a plebiscite being conducted, if necessary, under international auspices." (227th Meeting of the Security Council, 15 January 1948, Official Records PP 29.20).

Again on 3 February 1948, Shree Gopaldaswamy declared before the Security Council:

"As the Security Council is aware, the Government of India is fully committed to the view that after peace is restored and all people belonging to the State have returned here, a free plebiscite should be taken of the people to decide whether they wish to remain with India, go over to Pakistan or remain independent, if they choose to do so."

28. That similar assurances were repeatedly given by Pandit Jawahar Lal Nehru and his Government to the people of the State in more emphatic and categorical terms as under:

In a broadcast from Delhi on 2 November 1947, Pandit Jawahar Lal Nehru, the then Prime Minister of India, said:

"We have declared that the fate of Kashmir is ultimately to be decided by the people. The pledge we have given and the Maharaja has supported is not only to the people of Kashmir, but to the world, We will not and cannot back out of it. We are prepared when peace and law and order had been established to have a referendum also under the (sic) international auspices like (the) United Nations".

In a White Paper issued by the Government of India in 1948, it was stated that:

"The question of accession has to be decided finally in a free plebiscite, on this there is no dispute. There will be no victimisation of any native of the State, whatever his political view may be and no Kashmiri will be deprived of his right to vote."

In January 1952, Pandit Jawahar Lal Nehru repeated the previous assurances more elaborately, saying that:

"Kashmir is not the property of India or Pakistan. It belongs to the Kashmiri people. When Kashmir acceded to India, we made it clear to the leaders of (the) Kashmiri people that we would ultimately abide by the verdict of their plebiscite, and if they tell us to walk out, I would have no hesitation in quitting Kashmir. We have taken the issue to the United Nations and given our word of honour for a peaceful solution. As a great nation, we cannot go back on it. We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision".

Amrit Bazar Patrika, Calcutta,
2 January 1952.

29. That in order to lend a constitutional guarantee to the assurances given by Pandit Jawahar Lal Nehru and his Government to the people of the State as also to the United Nations, Article 253 of the Constitution of India was suitably modified in its application to the State of Jammu and Kashmir. Article 253, as so modified, reads as follows:

"Notwithstanding anything in the foregoing provisions of this Chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision at any international conference, association or other body; provided that, after the commencement of the Constitution (Application to J & K order 1954) no decision affecting the disposition of the State of J & K shall be made by the Government of

India without the consent of the Government of the State."

30. That the words used in the proviso leave no room for doubt that in the matter of the future of the State of J & K, the overriding consideration shall be the will of the Government of the State. In a democratic set-up, the Government means the duly elected Government which carries the mandate of the people ascertained in a fair and impartial manner and in the context of the proviso, with a special mandate for this specific purpose which, in essence amounts to a fair and impartial plebiscite.

31. That the pronouncements and commitments made by Pandit Jawahar Lal Nehru and his Government and the guarantee provided to the same by the Constitution of India, itself were so clear and unambiguous that the people of the State sincerely believed that the Government of India was really interested in redeeming its pledge and opted to wait for them to take the necessary steps in this behalf. This was even acknowledged by the Security Council while debating the issue in 1954, in the summing up of the proceedings by the President of the Council as reproduced below:

"The people of the State stopped the struggle for liberation because the United Nations and the Governments of India and Pakistan assured them that the object they were crusading and battling for was undoubtedly their right and they would have their right through the peaceful means of plebiscite."

32. That instead of taking steps to have the promised

plebiscite, Government of India tried to find ways and means to back out of the same, and in their efforts do so, they received encouragement from some outside powers in order to promote their own interests in this region.

33. That the first escape route devised by the Government of India to sabotage the proposal for plebiscite was to woo the people of Kashmir, but as all these efforts were not based on sincerity, they did not succeed. They directed their energies towards (the) gradual integration of the State with India and when Sheikh Mohammad Abdullah, who was considered by them to be their friend and ally, reacted to this volte face, he was put behind (the) bars for eleven years on the basis of the trumped-up allegation that he had been conspiring with the United States of America for achievement of independent Kashmir. This is a long story to which the petitioner will make detailed reference hereafter.

34. That another escape route used by India to wriggle out of its pledge for a plebiscite was based on a wholly irrelevant development at the international level. Pakistan had joined military alliances called SEATO and CENTO. Pandit Jawahar Lal Nehru stated that "in the changed circumstances", the proposal for a plebiscite shall have to be re-examined. Commenting on this plea, an eminent judge, jurist and humanist of India, Mr Justice V.M. Tarkunde has observed:

"One of the biggest mistakes committed by Jawahar Lal Nehru was to back out of the plebiscite proposal on the wholly irrelevant ground that Pakistan in the meantime had accepted arms and entered into a military pact with the United States. The offer of plebiscite was not in the nature of a concession made by India to Pakistan, but was a recognition of the right of self-determination of the people of Jammu & Kashmir. The denial of the right of self-determination by India on irrelevant

grounds led naturally to a plebiscite movement in Kashmir. It became a secessionist movement and was further strengthened by the subsequent policy of the Government of India which showed that the Government had no confidence in the people of Kashmir. This was evident from the fact that every election in Jammu and Kashmir, except the one in 1977, was rigged at the instance of the Indian Government. This convinced the people of Kashmir that India did not want them to have the democratic right of self-government. The situation was made worse by the frequent communal riots which took place in India and in which the minority community suffered the most. This naturally strengthened the anti-Indian feeling of Kashmiri Muslims. Finally, the coalition between the National Conference and the Congress (I) under the weak leadership of Dr Farooq Abdullah convinced the people of Kashmir that they cannot remain in India without losing their separate identity. There has thus been a growing disenchantment of the people of Kashmir from India and the position has now reached when almost the entire population of Kashmir has become anti-Indian."

The Radical Humanist, March 1990.

35. That, as rightly stated by Mr Justice V.M. Tarkunde, the attempt by the Indian Government to wriggle out of its commitment of plebiscite forced the people of Kashmir to revive and reinforce their struggle for the right of self-determination.

36. That, instead of conceding the right of self-determination with grace and dignity, the Government of India used disgraceful means of force, fraud and money to cripple and escape sic the movement, but could not at all succeed. On the other hand, the

gravity of the matter brought India and Pakistan to a headlong collision in 1965. The hostilities ended, however, with an agreement called the Tashkant Declaration under which the two countries resolved to settle all outstanding issues by peaceful means.

37. That rather than taking an initiative to settle the Kashmir problem in accordance with the declared commitments of both countries about plebiscite, the Indian Government worked on the (sic) plan to weaken and dismember Pakistan and to maintain hegemony over Kashmir through sheer might. This resulted in another war between the two countries in 1971 and (the) breaking away of East Pakistan into Bangla Desh. As a result of mediation by friendly countries, the Prime Minister of India and (the) President/Prime Minister of Pakistan had talks in Shimla to negotiate the repatriation of about 90,000 prisoners of war held by India and to discuss other matters arising out of (the) war. At the end of (the) talks, the Prime Minister of India and the President of Pakistan signed an agreement on 2 July 1972 which has come to be known as the Simla Agreement.

38. That by virtue of the Simla Agreement, the two countries, inter alia, agreed to resolve the Kashmir problem through mutual negotiations in accordance with the principles and purposes of the Charter of the United Nations which was the same thing as saying that (the) Kashmir problem shall be solved by holding a free and impartial plebiscite as promised by them to the people of Kashmir.

39. That instead of taking any steps to implement this Agreement, the Government of India again tried to find an escape route to frustrate the proposal for (a) plebiscite. They again tried to woo Sheikh Mohammad Abdullah and succeeded in bringing him into their fold, as a result of which Sheikh Mohammad Abdullah struck an accord with the Indian Government for the loaves and fishes of power in 1975.

40. That on its part, the Indian Government deluded itself

into the false hope and belief that the Accord would automatically dissipate the movement for self-determination, but that was not to be.

41. That the traditional leadership had already lost most of its credibility with the people and the Accord only served to put an end to whatever little was left of it. The people of the State, naturally turned towards the younger generation. There has been tremendous response from the youth whose involvement has ever (sic) since accelerated the pace beyond expectations.

42. That all along the Indian Government felt more concerned to dole out terror rather than statesmanship to meet the demand symbolised by the movement.

43. That in the other areas too like (the) development of the State and (the) welfare of its people, the attitude and the approach of the Government of India was equally arrogant, irresponsible and discriminatory, with the result that the economy of the State fell in shambles. And unemployment grew rapidly and has since acquired alarming proportions.

44. That this only reinforced the resolve of the people to come together and continue the on-going struggle for self-determination with courage and added determination.

45. That two things have given an added dimension to this struggle for self-determination: firstly, the happenings in Europe where all the fortifications raised by the communist regimes, including the Berlin Wall to maintain their hegemony by force, have collapsed one after the other under the pressure of the will of the people; secondly, the self-respecting youth of Kashmir have staked everything including their careers, liberty and even their lives to help the people to get rid of their state of helplessness and humiliation (in) which they have been living under the Indian rule.

46. That the movement has turned into a mass upsurge since

1987 and there is hardly any conscientious Kashmiri who does not support it.

47. That Dr Farooq Abdullah's Ministry used heinous methods, not excluding the use of brute force, to crush the people. They did not even hesitate to distribute arms to their party workers to deal with the freedom fighters. But all their dirty tricks ended in failure. On the other hand, the movement spread to every nook and corner of the State with ever-increasing speed.

48. That unnerved by the changed situation, the Government of India dismissed Dr Farooq Abdullah's Ministry and imposed Governor's Rule in the State. They even changed the Governor and sent Shree Jagmohan, reportedly a nominee of the Bharatiya Janta Party (BJP) to replace General Krishna Rao as Governor of the State. By virtue of Proclamation No. P-1/90 of 1990 dated 19 January 1990 issued under Section 92 of the Constitution of Jammu and Kashmir, Shree Jagmohan assumed the functions of the State.

49. That acting in concert with the Union Government, Shree Jagmohan used strong-arm methods to crush the movement. He did everything possible to hold down the people through continuous repression and terror. He did not have any respect for law, much less decency, morality or any other civilised value. He has beaten all previous records of (the) fascist regimes of the world in the matter of unleashing terror and oppression on the innocent people of the State without caring for the human misery that it entailed.

50. That the acts of omission and commission committed by Shree Jagmohan or under his orders or otherwise during his regime are very large in number, but because of the continuous imposition of curfew and other constraints, including weather conditions in the Valley and the paucity of transport, these could not be adequately listed. The petitioner craves leave to submit an exhaustive list of such acts of omission and commission in due

course. However, by way of illustration, a few instances of these acts of omission and commission are given below:

- (i) That he is a rabid communalist whose only mission in Kashmir was to exterminate Muslims, thinking that every one of them was a militant or potential militant and he has even acknowledged it in his interview with Soumitra Bose, published in a national weekly, *The Current*, 26 May - 1 June 1990 in these words:

"Every Muslim in Kashmir is a militant today. All of them are for secession from India. I am scuttling Srinagar Doordershan's programme because everyone there is a militant. I dissolved the Assembly because it eliminated mass killing. Though HMT is a Central Government unit, I advised its closure because it harboured militants. That is why its general manager Khera was killed... The situation is so explosive that I cannot go out of this Raj Bhavan. But I know what is going on, minute by minute. The bullet is the only solution for Kashmir. Unless the militants are fully wiped out, normalcy cannot return to the Valley," asserted Jagmohan.

He has proved himself true to his word during his stay in Kashmir and caused mass killings of innocent people as a result of indiscriminate firing by the Security Forces, out of which incidents of firing at Gaw Kadal, Alamgari Bazar, Zakure and Hawal (near Islamia College) have come to be regarded as gruesome tragedies of genocide worse than the tragedy of Jallianwala Bagh, Amritsar.

- (ii) That he converted Kashmir into a virtual prison for nearly four months beginning from 19

January 1990 by continued imposition of curfew with a view to harass and intimidate the Kashmiri people. The relaxation, if ever allowed, was nominal. It started at 5 o'clock in the morning when it would be still dark and ended at 9 o'clock which was the usual time for Kashmiris to move out of their houses due to chilling cold outside, making it difficult for the people even to buy minimum supplies to sustain life. Later on, he made even this nominal relaxation stringent by placing (a) ban on vehicular movement during relaxation hours with the result that the essential commodities could not be transported from one place to the other which inconvenienced the people enormously and, worse still, the sick and even pregnant women were unable to go to the hospitals which resulted in many avoidable deaths of sick, pregnant mothers and infant children.

- (iii) That the continued imposition of curfew otherwise also resulted in many deaths due to either starvation or inability to get medicines from the market.
- (iv) That on account of unjustifiable and indiscriminate firing resorted to by military and para-military forces even during the relaxation periods, the traders could not venture to keep their shops open with the result that all trade and commercial activity in the Valley came to a grinding halt and this was deliberately done to cripple the ailing economy of Kashmir with the object of hastening the death of as many people as possible on account of economic strangulation.

- (v) That in view of the prevailing situation in Kashmir, private transporters were hesitant to transport goods from outside to the Kashmir Valley which worsened the stock position in the markets in Kashmir and even the (sic) medicines became scarce but the administration made no alternate arrangements which caused a lot of human misery in Kashmir.
- (vi) That on account of imposition of indefinite curfew even those medicines which were available could not be purchased from the shops which remained closed and resulted in many avoidable deaths. Jagmohan's response was a (sic) callous indifference except that as an eye-wash, curfew passes were given to a few chemists in Srinagar city in order to enable them to keep their shops open during curfew hours, but it was not possible to reach those shops during curfew hours without curfew passes. In consequence, thousands of sick, men, women, children and old people could not get medicines, resulting in many deaths.
- (vii) That the imposition of continuous and indefinite curfew hit the daily wage earners the hardest. Ever since Jagmohan took over as Governor, they were not able to work except for a few days when day curfew was lifted. To alleviate their sufferings, a number of local voluntary relief organisations were formed which were not allowed to function by Jagmohan as their members were arrested and mercilessly beaten, causing serious injuries to most of them. Thus even this relief was denied to the starving daily wagers.
- (viii) That even those who had money could not buy

essential commodities as supplies could not be brought to the local markets owing to continuous and indefinite curfew and restrictions on movement of vehicles even during relaxation of curfew. Added to this was the omnipresent threat of indiscriminate firing by Security Forces who hovered like the sword of Damocles with their fingers on the trigger. Their money got locked up in the banks which remained closed and did not open even during curfew relaxation.

- (xi) That even when opened, the banks either refused to make payments or made small payments on the specious plea that there was a shortage of cash in the bank. According to the petitioner's information, they were doing so under verbal instructions from Shree Jagmohan so that even those who had bank deposits were driven to the brink of starvation.
- (x) That the para-military forces were not withdrawn from the main markets even when there was relaxation of curfew. In view of a number of bitter experiences of the people, particularly the one on 14 February 1990 when para-military forces opened fire in Hari Singh High Street and on another occasion in Lal Chowk (which) killed several Muslims including shopkeepers without any rhyme or reason during relaxation period, the shopkeepers preferred to keep their shops closed out of fear for their lives during such periods. This policy was deliberately pursued by Jagmohan to hasten the death of as many innocent people as possible on account of economic strangulation.
- (xi) That it is common knowledge that Kashmir is dependent for every small thing for import from

outside the State. The only road connecting Kashmir Valley with the outside world is the Banihal Cart Road, This road was often closed for traffic during Jagmohan's rule on the false plea that there were landslides and each time it was reopened many days after and lastly after 14 days only to prevent flow of supplies of food and other essential commodities to Kashmir, particularly those for which the customers are dependent on the open market.

- (xii) That Shree Jagmohan did not make or order arrangements to be made for carrying patients from their houses to the hospital during curfew hours. The result was that most of the people died because they could not get any timely aid from the hospitals. The worst sufferers were pregnant ladies who died or gave birth to stillborn babies only because of lack of proper transport arrangements to the hospitals due to curfew restrictions.
- (xiii) That a number of patients from even non-curfew bound areas died because they could not be removed to the hospitals which are located in urban areas like the city of Srinagar and Tehsil headquarters which were curfew-bound and no arrangements were made by Jagmohan or his administration for the transportation of such patients to the hospitals during curfew hours.
- (xiv) That the people had set up a voluntary relief organisation under the name and style of Hilal-i-Ahmar in order to collect donations and provide relief to the poor and needy including, if necessary, to the injured people. The organisation provided such relief irrespective of caste, creed, or colour. But Jagmohan branded it

as a terrorist organisation and cracked down on its organisers and even confiscated the stocks collected by them. This was done to agonise (sic) the common man as much as he could.

- (xv) That the people residing in the vicinity of prominent hospitals in the city of Srinagar and district and sub-district hospitals outside Srinagar, feeling moved by the helpless condition of the in-patients and their attendants on account of non-availability of food during curfew days, managed to set up free kitchens in nearby places for providing cooked food to them free of charge. But even these kitchens were not allowed to be run and the organisers were beaten up by para-military forces posted for duty at these hospitals. This was done under the instructions of Shree Jagmohan.
- (xvi) That in order to create a communal divide within and outside the State, Shree Jagmohan planned the exodus of Kashmiri Pandits from Kashmir and even provided them transport during curfew hours to facilitate such exodus.
- (xvii) That Shree Jagmohan ordered setting up of relief centres for Kashmiri Pandits at various places in the State but he failed to make similar arrangements for those Muslims who had to leave their hearth and home for fear that their young boys might be lifted on suspicion of being Mujahids or that the ladies in their houses might be molested in the course of surprise raids and search of their houses.
- (xviii) That Shree Jagmohan visited the houses of some deceased Kashmiri Pandits to sympathise with and provide relief to their survivors but he failed

to show (a) similar gesture of goodwill to the survivors of similarly situated Muslim victims.

- (xix) That Shree Jagmohan sent his representatives around to enquire about the welfare of non-Muslim and to find out if they wanted any security to be provided to them but he did not bother about Muslims who required similar security to guard against the excesses of the security forces.
- (xx) That on account of continued curfew, Government ration depots could not function except very rarely during the months of January, February, March and April 1990 which made it impossible for most of the people to draw their rations from the depots and drove them to the brink of starvation and even resulted in some avoidable deaths. Shree Jagmohan responded to this predicament of the people with callous indifference, thereby causing a lot of human misery.
- (xxi) That in accordance with the orders of Shree Jagmohan, non-Muslim Government employees who have migrated to Jammu or Delhi, get their salaries at those places without doing any work. On the other hand, if a Muslim Government employee could not reach his place of posting due to curfew restrictions or non-availability of transport, he was subjected to harassment and even threatened with disciplinary action on account of the verbal instructions issued in that behalf by Shree Jagmohan.
- (xxii) That Shree Jagmohan has dismissed a number of Muslim officers and staff on the plea that they were collaborating with militants but he did not

like to look into one single instance where a non-Muslim officer or staff member was suspected of working hand-in-glove with Shiv Sena to create communal tension in the State.

- (xxiii) That as a result of (the) escape of 12 prisoners from Srinagar Jail, 28 Muslims were summarily dismissed by Shree Jagmohan without even giving them a chance to give their explanation but no such action was taken against those on duty in (the) Samba Police Station where six prisoners escaped within 12 hours of the incident that had taken place in Srinagar Jail. It is said that the officers and staff on duty at Samba were spared only because they were non-Muslims.
- (xxiv) That as a result of the decision of Shree Jagmohan to impose dusk-to-dawn curfew within a five kilometre belt on this side of the Line of Control, most of the people living in those areas, all of whom are Muslims, had to leave their hearth and settle elsewhere in Kashmir or outside Kashmir. Shree Jagmohan failed to provide any relief to such displaced persons although they were worse hit than Kashmiri Pandit migrants.
- (xxv) That the news sections of Radio Kashmir and Door Darshan Kendra at Srinagar were closed at Srinagar at the instance of Shree Jagmohan to enable himself (sic) to have tailored news broadcast from their counterparts at Jammu.
- (xxvi) That, allegedly, acting under instructions from Shree Jagmohan, the insurance companies delayed the settlement of claims of Muslims who had suffered loss on account of damage or

destruction of their property in the course of the prevailing situation in the Valley. As against this, the claims arising out of the fire in Delhi's Saddar Bazar were ordered to be settled within a week.

- (xxvii) That on account of indefinite curfews imposed by Shree Jagmohan, many small babies lost their lives because they could not get milk or other baby foods.
- (xxviii) That in order to suppress facts and deny the people (an) opportunity to voice their cries and woes, Shree Jagmohan banned the publication of local newspapers and entry of foreign correspondents into Kashmir by illegal and underhand means. To begin with, he ordered the withdrawal of curfew passes of all newsmen including foreign correspondents on the ostensible ground that he was doing so in the interest of their personal safety, the real intention being to suppress true facts about the sufferings inflicted by him on the people of Kashmir. The news about the ingenious method adopted by him, however, leaked out. Under the pressure of public opinion, he decided to issue curfew passes to the local newsmen on (a) selective basis hoping that this could be helpful for the suppression of true facts about the situation in Kashmir. However, the constraints so imposed did not work to the satisfaction of Shree Jagmohan as the various newspapers still acted fairly and fearlessly. To wreak fury on these unwanted newspapers, Shree Jagmohan banned the publication of (the) same, even sealed their printing presses and threatened others with prosecution without any justification. What is rather worse, no written

order was either served on or supplied to them despite demand.

- (xxix) That Shree Jagmohan did not even spare the political parties. He has declared almost all the political parties as unlawful despite the fact that most of these parties have been in existence for years together without anyone suspecting their bonafides. So acting, Shree Jagmohan simply wanted to stop any kind of political activity in Kashmir, unmindful of the fact that this was clearly against the letter and 'spirit of the Constitution.
- (xxx) Shree Jagmohan deployed armed forces and para-military forces subject to the control of the Union to deal with the situation in Kashmir though he could not do so under (the) law.
- (xxxi) That Shree Jagmohan authorised the regular troops and other para-military forces to make arrests and to conduct searches and seizures although (the) law does not permit it.
- (xxxii) That during Shree Jagmohan's regime, and allegedly with his blessings, illegal searches and raids were made by military and para-military forces ostensibly on the ground of flushing out militants but what they really did is horrible. They used to drag out young boys, beat them mercilessly and take them into their custody without any warrant of detention. Even other inmates were brow-beaten, manhandled and tortured and sometimes their valuables and cash were removed.
- (xxxiii), That in (the) later days of Shree Jagmohan's rule, these raids and searches became more

humiliating and oppressive and, that too, allegedly under (the) verbal instructions of Shree Jagmohan. What was being done was that in the pre-dawn period, the military or para-military forces or both forces together would cordon off the locality where (a) house-to-house search was desired to be conducted. The inhabitants of the locality would be asked through (the) public address system to come out of their houses and were herded to a vacant place usually one or one and a half kilometre away from the locality. Taking one person from each house, the Security Forces would enter the houses with the ostensible purpose of search but they actually looked for books and newspapers and other published or unpublished material in order to make an ideological X-ray and, in some cases, decamped with valuables and money. This process would continue for the whole day till as late as 7 o'clock in the night with the inhabitants herded in the open space without food, water or shelter. After the searches were over, the security forces would pick up young boys of the locality and take them away for interrogation and torture. Those who perished during such torture were left at the control room, hospital or near the locality from where they were taken while those who managed to survive were left with severe injuries, crippling and maiming them for the rest of their lives.

- (xxxiv) That in the district of Kupwara, personnel of the para-military and army would surround a village in the middle of the night and force their way into the houses of the sleeping inmates, drag out all male members, young and old, and mercilessly beat them up before taking them for interrogation and torture in the temporary camps

set up in the village for this purpose. Meanwhile the security forces would set themselves upon the women-folk and molest them who could do little to defend their honour, except to cry themselves hoarse which, however, was lost in the wilderness of the jungles. The Security Forces thus spent several days in each village. The men-folk were given electric shocks to their genitals, rendering most of them impotent. Some of them were even branded with hot iron rods, while most others were beaten with clubs. A number of persons who died during this barbarism, were later claimed to have died during encounters though their bodies did not bear any bullet marks.

- (xxxv) That in Sopore during a search by Security Forces in May 1990, the people encountered two groups. The first group after entering the houses would conduct a most innocuous and perfunctory search and make the inhabitants sign on the dotted line of a declaration to the effect that the search had been conducted in a proper manner and nothing had been taken away. Immediately thereafter the second party consisting of men and woman armed with clubs and electric wires would enter the house and start beating the inmates indiscriminately without regard to age or sex. The ire of the searching parties was particularly directed against young men and women who received liberal hits of clubs and sticks and who were also given electric shocks. The people were also made to drink gutter water and were forced to shout Ram Ram'. As in other places, the young men were herded in army trucks and taken for interrogation and torture.

(xxxvi) That the pattern and the nature of atrocities committed during such searches by the security forces is similar all over the Valley. Thousands of young man have been unauthorisedly jailed, tortured, maimed, electrocuted, murdered and generally rendered useless for the rest of their lives in the course of such interrogation. The kidnapping of Mr Yousuf Jameel, a highly respected journalist, from his residential house at Srinagar during broad daylight by the Army and the murder of Maulana Farooq and the subsequent attempt of the Government to shift the blame to the Mujahids is illustrative of the machinations of the Security Forces and the Governor and his administration as also the Central Government including Shree Jagmohan and his administration.

Commenting editorially on the episode involving (the) kidnapping of Yousuf Jameel, one of the prestigious newspapers of the State, namely *Kashmir Times* has inter-alia said as under:

"The murky episode involving army and journalist Yousuf Jameel brings into focus the lack of grip of the established authority on agencies dealing with the on-going militancy in Kashmir.

It appears that all categories of uniformed people have been authorised to operate as they wish, even without seeking the approval of their respective seniors. The scenario that emerged on Sunday was that of a wholly demolished administrative structure. This was inevitable in the arrangement allegedly evolved by the former Governor under which junior officers from army and para-military forces were authorised to take

any action they thought was required in dealing with the militants."

Kashmir Times
5 June 1990

(xxxvii) That as part of his plan to terrorise the local population and break their spirit, Shree Jagmohan gave instructions to the Security Forces to open indiscriminate firing on peaceful demonstrators as is evident from the fact that no action has been taken on the cases registered in various police stations in this respect. On the other hand, Shree Jagmohan and his administration have tried to justify these firings (sic) and killings on false and frivolous grounds. As a result of indiscriminate and unprovoked firing on peaceful processions, hundreds of people including men, women and children have been killed while several thousand have been seriously injured, maimed and crippled for the rest of their lives. The unprovoked and unjustified firing on peaceful processions at Gaw Kadel on 21 January 1990, at Zakura and Bye pass on 3 March 1990 and at Hawal on 21 May 1990 in Srinagar district and several other places in Anantnag, Kupwara, Baramulla, Badgam and Pulwama districts of the Kashmir Valley, resulted in deaths of several thousand people and injury to many more. Apart from this, there were several unjustified killings of innocent people in other minor incidents throughout the Valley.

(xxxviii) That security forces entered the houses of people at several places in the Valley and apart from committing other atrocities, molested women and in some cases violated their honour. In this connection, the incidents at Channpora,

Nawa Kadal and Badgam bear special mention. On 8 March 1990, Central Reserve Police Force (CRPF) personnel entered some residential house at Channpora, Srinagar, and beat up male inmates while women were molested and raped. Some of the women could save their honour only by jumping through the windows several storeys high, resulting in serious injuries to them. At Nawa Kadal, Srinagar on 4 May 1990 Security Forces forced their entry into the residential houses of the local inhabitants, beat them up and resorted to indiscriminate firing and molestation of women. As a result, a young girl, namely Jala Bani, was killed while her mother was seriously injured. They also took young boys, namely Miraj-ud-Din Lone and Ghulam Mohammad Shafiqi, and mercilessly beat them to death on Nalla Mar Road near Doma Kadal (See *Wadi-Hi-Awaz* dated 9 May 1990). At Badasgam, Anantnag, during the intervening night of 17/18 May 1990, a Border Security Force (BSF) patrolling party stopped a bus carrying a marriage party and resorted to indiscriminate firing killing one Abdullah son of Lassi Mali, resident of Lissar, and seriously injuring the bridegroom. The bride and the bride maid were gang raped by the BSF personnel and the former was kidnapped. The bus was removed to the District Police Lines, Anantnag, with 78 bullet hole marks. The local authorities reportedly informed Shree Jagmohan about the occurrence but he treated this report with his usual indifference.

(xxxix) That in an attempt to legitimise the barbarism unleashed on the people of Kashmir, Shree Jagmohan has either enacted new laws or carried out amendments in the existing laws and so

acting, transgressed not only the bounds of decency, morality and civilised values but also the parametres of the Constitution to uphold which he had made a solemn declaration when he entered upon his office. In this connection mention may be particularly made of the J & K Public Safety Act. Shree Jagmohan has amended it to facilitate the transfer of detenues to places outside the State in order to harass and intimidate them.

- (xxx) That thousands of people from Kashmir have been booked under the Terrorist and Disruptive Activities Act (Central Act No. XX of 1985). The accused were being tried by the Designated Court at Srinagar. But, in order to persecute the accused and those connected with them, Shree Jagmohan wound up the Court by means of S.R.O. 168 of 1990 and directed that there shall be one single Court with headquarters at Jammu to try all the cases whether pending or arising in future under the Act, least realising that this amounted to total denial of justice which is not countenanced by the Constitution which he had sworn to uphold in Kashmir.

51. That the blood-soaked soil of Kashmir, widely-scattered graveyards of the martyrs, bruised bodies and terrified faces of its people bear mute testimony to the large-scale genocide and oppression committed on the people of Kashmir, but a glimpse of it can also be found in the cold print which is a contribution to the freedom struggle in Kashmir by some human rights activists and press correspondents who made it convenient to visit Kashmir and see things for themselves during the last few months. The relevant excerpts of their reports and press clippings are quoted hereunder:-

Speaking about the happenings in Kashmir, the

Committee for Initiative on Kashmir in its report titled *India's Kashmir War* has said (See Appendices I to XIV)

52. That reverting back to the question about the escape route used by India to woo the people of Kashmir as a device to back out of the proposal for plebiscite, it is submitted that after re-establishing (the) Maharaja's authority in the State with the help of their armed forces, the Government of India persuaded the Maharaja to establish an interim Government in the State with Sheikh Mohammad Abdullah as its head which could take steps for the purpose of framing a Constitution for the State. On 5 March 1948, the Maharaja issued a Proclamation accordingly. Pending formation of the new Constitution, the Government had to act under the J & K Constitution Act Smv. 1990 (1939).

53. That operating through the said Government, Pandit Nehru tried to sell out an assurance to the people of the State that they shall be allowed to have autonomy within the India Union with only defence, foreign affairs and communications being the concern of the Union Government. He also tried to entice them with the further assurance that they could have their own constitution to protect their Kashmiri identity and to reflect their own ideals and aspirations.

54. That Pandit Nehru, as the then Prime Minister of India formally affirmed the aforementioned assurances by his letter dated 18 May 1949 to the then Prime Minister of the State, Sheikh Mohammad Abdullah. The letter reportedly stated that the Constituent Assembly of the State shall be free to accede or not to accede on any subject other than those on which the State had already acceded to India by virtue of the Instrument of Accession. Article 370 of the Constitution of India was adopted and enacted by the Constituent Assembly of India on 17 October 1949 with the avowed object of incorporating these assurances in the Constitution.

55. That the first rumblings of the political estrangement which was to take place in the early fifties between Sheikh

Abdullah and the Government of India could be heard in the course of discussions regarding Article 370 originally numbered as Article 306-A. Sheikh Abdullah felt unhappy because this Article, as adopted and enacted by the Constituent Assembly of India, did not conform to the agreed draft.

56. That Article 370, as finally adopted and enacted by the Constituent Assembly of India, was as follows:

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 Current List which in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation. — For the purpose 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, 1984;

(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 exemptions 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 para (i) of sub-clause (b) shall be issued except in consultation with the Government of the State.

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

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

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

57. That on 5 November 1951, the Jammu and Kashmir Constituent Assembly was convened at Srinagar. Addressing the inaugural session of the Assembly, Sheikh Mohammad Abdullah, inter alia, observed:

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

58. That the Constituent Assembly of the State was required to apply itself to the following four main questions:

- (1) Future of the ruling dynasty.
- (2) Payment of compensation for land transferred to tillers under the Big Landed Estates Abolition Act.
- (3) Consideration of the question of (the) State's accession.
- (4) Framing of the Constitution of the State.

59. That while the Constituent Assembly was still engaged in its deliberations, the Government of India pressurised Sheikh Mohammad Abdullah to agree to surrender to the Union various matters in addition to those specified in the Instrument of Accession. Sheikh Mohammad Abdullah succumbed to the pressure and surrendered a few additional matters to the Union by virtue of an agreement which has come to be known as (the) Delhi Agreement. The Agreement was concluded in August 1952. However, at home, it became embarrassing for Sheikh Abdullah to justify the Agreement which was against his declared stand, both inside and outside the Constituent Assembly that with the exception of matters corresponding to defence, foreign affairs and communication "we shall have complete freedom to frame our Constitution in the manner we like".

60. That placing the Agreement before the Constituent Assembly of the State on 11 August 1952, Sheikh Mohammad Abdullah reiterated the constitutional position, explained by him in his inaugural address adding that it was for the Constituent Assembly to determine whether it should "agree to continue the relationship (with India) on the present basis or extend its scope as it might like and consider feasible and proper."

61. That on 15 November 1952 the Constituent Assembly of the State resolved to abolish the hereditary rulership in the State and to have an elected head of the State called the Sadar-i-Riyasat, and recommended to the President to reflect this change in Article 370 of the Constitution of India. Acting on this recommendation, the President was pleased to make the following order, namely:

"In exercise of powers conferred by Article 370 of the Constitution of India, the President, on the recommendation of the Constituent Assembly of the State of Jammu and Kashmir declares that as from the 17th day of November, 1952, the said Article 370 shall be operative with the modification that for the Explanation in clause

(1) thereof, the following Explanation shall be substituted, namely:

Explanation: — For the purpose of this Article, the Government of State' means the persons for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of Council of Ministers of the State for the time being in office."

Ministry of Law
Order No. C.O. 44 dated
15 November, 1952.

62. That the decision of the State Constituent Assembly to have an elected head of the State, invited murmurs of disapproval in India which eventually led to open hostility in which Dr Shyma Prasad Mukherjee and his camp followers at Jammu played a leading role though it was widely believed to have inspiration from other quarters as well. In order to keep Sheikh Abdullah under check, agitation was started and carried on under the aegis of a newly formed party called Praja Parishad and the agitators vigorously campaigned for "one Vihan, one Pradhan and one Nishan" (one Constitution, one President and one Flag).

63. That Sheikh Mohammad Abdullah understood the game, more so because of the shocking experience that he had earlier had in the course of discussions about Article 370 and the Delhi Agreement. He naturally felt disillusioned with India and could not even conceal his resentment. He made several speeches to give vent to his feelings out of which the one made by him at Ranbir Singh Pora in the early fifties has come to be regarded as a "controversial landmark of his political career".

64. That the public speech made by Sheikh Abdullah at

Ranbir Singh Pora emphasised nothing more than the truth that there was divergence in the pronouncements and performance of India in relation to Kashmir. Neither the Government of India nor even the Indian people relished it and eventually Sheikh Abdullah had to pay for his forthrightness very heavily. On 9 August 1953 he was arrested and put behind the bars for eleven long years on the trumped-up allegation that he had conspired with the USA for declaring Jammu and Kashmir as an independent state. The Sheikh, however, had his own explanation. Talking to ENS, the Sheikh denied that he had ever wanted an independent Kashmir. "I voice my opinion while others do not. I suggested that we have defence, foreign affairs and communication common with India so that there be least interference by the Centre."

Indian Express, 10 September 1982.

65. That after Sheikh Abdullah's incarceration, India manipulated to let the State Constituent Assembly put its seal of confirmation on the State's accession to India to dupe world opinion that the commitment for plebiscite had been met but it did not actually serve that purpose. Pakistan took up the matter before the Security Council and after hearing India and Pakistan, the Council adopted a resolution on 24 January 1957 wherein it was declared that:

"The Security Council reaffirmed the affirmation in its resolution of 10 March 1951 and declared that convening of the Constituent Assembly as recommended by the General Council of (the) All Jammu and Kashmir National Conference and the action that the Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire state or any part thereof or action by the parties concerned in support of such action by the 'Assembly' would not constitute disposition of the State in accordance with the

above principle."

66. In face of this resolution which was also accepted by India and of the provisions of Article 253 of the Constitution of India as applicable to (the) J & K State, herein before reproduced in this petition, the exercise of the State's 'Constituent Assembly' can be appropriately described merely as an interim working arrangement till a final disposition of the State is made through a free and impartial plebiscite.

67. That the Constituent Assembly of the State concluded its deliberations on 17 November 1956 and adapted and enacted what has been styled as the 'Constitution of Jammu & Kashmir'. By its preamble, the said Constitution declared that it was intended:

(i) to further define the existing relationship with India;

(ii) to give a Constitution to the State.

68. That the Constitution of Jammu and Kashmir was broadly patterned on the Constitution of India.

69. That the petitioner asserts and states that, keeping in view the historical background, scheme and language of the Constitution of Jammu and Kashmir, as originally enacted, its essential features were as follows:-

(i) That the State of Jammu & Kashmir shall be an autonomous unit within (the) Union of India.

(ii) That the State shall be sovereign in its own sphere subject, of course, to the matters ceded to the Union of India.

(iii) That the State shall have a republican democratic form of Government; that is the political power shall vest in the people both in

form and substance.

- (iv) That there shall be separation of powers between (the) Executive, the Legislative (sic) and (the) Judiciary in the State.
- (v) That paramountcy shall always rest with the people.
- (vi) That the Constitution shall be supreme.
- (vii) That the State shall be of (a) secular nature.

70. That, acting at the behest of the Government of India, the puppet regimes in the State have sponsored amendments in the Constitution of Jammu and Kashmir from time to time to distort the same in order to please their masters and benefactors in Delhi.

71. That the most important amendments so made were those effected though what was styled as (the) Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965. By virtue of this Act, the elected head of the State called the Sadar-i-Riyasat was replaced by a nominee of the President of India called the Governor. The relevant provisions governing the election and recognition of Sadar-i-Riyasat contained in sections 26, 27, 28, 29, 30, 31, 32 & 33 were recast as follows:-

"26. Head of State (1) The Head of the State shall be designated as the Governor.

(2) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him to him in accordance with this Constitution.

(3) Nothing in this section shall

(a) be deemed to transfer to the Governor any

functions conferred by any existing law or any other authority; or

- (b) prevent the State Legislature from conferring by law functions or any authority subordinate to the Governor.

27. Appointment of Government: The Governor shall be appointed by the President by warrant under his hand and seal:

Provided that the person holding office as Sadar-i-Riyasat immediately before the commencement of the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, shall on such commencement be the Governor and shall, subject to the other provisions of this Constitution, continue to hold office as Governor until the remaining period of his term for which he was elected as Sadar-i-Riyasat expires.

28. Terms of Office (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this section, the Governor shall hold office for a term of five years from the date on which he enters upon his office.

Provided that he shall, notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

29. Qualifications for appointment as Governor: NO. person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty years.

30. Conditions of Office (1) The Governor shall not be a member of either House of Legislature and if a member of either House be appointed as Governor, he shall be deemed to have

vacated his seat in the House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled to such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

31. Oath of Office: The Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court or, in his absence, the senior most Judge of that Court available, an oath or affirmation in the following form, that is to say:

do swear in the name of God

I, _____ that
solemnly affirm

I will faithfully execute the office of Governor (or discharge the functions of the Governor) of Jammu and Kashmir and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of the State.

33. Discharge of the functions of the Governor in certain contingencies: The President may make such provision as he thinks fit for the discharge of functions of the Governor in any contingency not provided for in this Part."

Moreover, (the) First Schedule regulating the Procedure

for (the) election of Sadar-i-Riyasat was omitted. By virtue of Section 2 of the Act, the expression 'Sadar-i-Riyasat', wherever appearing in the Constitution was sought to be replaced by the word 'Governor' except as regards Section 147 which provided that no Bill or amendment seeking to make any amendment in this section shall be introduced or moved in either House of the Legislature. To overcome this difficulty, a subtle and dubious device, though untenable in law, was employed. Sub-section (3) was added to section 2 of the Constitution to the following effect:

"Any reference in this Constitution to the Sadar-i-Riyasat shall, unless the context otherwise requires, be construed as a reference to the Governor."

72. That these amendments have resulted in having the following effects on the Constitution of Jammu and Kashmir:

- (i) That the concept of republicanism enshrined in the Constitution has been obliterated by bringing in a nominee of the President in place of (an) elected representative of the people as head of the State.
- (ii) That the paramountcy of the people has lapsed from the people into the Government of India.
- (iii) That the supremacy of the Constitution has disappeared and the same has become a handmaid of the Government of India.
- (iv) That the sovereignty of the State in its own sphere has passed into the hands of the Government of India.
- (v) That the sanctity and immutability of Section 147 has been destroyed.

73. That the petitioner asserts and claims that the aforesaid amendments have completely changed the basic structure of the Constitution and deprived it of its essential features mentioned in the preceding paragraph and, as such, these amendments are unconstitutional. For the Law is well-settled that an amendment of the Constitution which takes away any of its essential features is not amendable to the ordinary process of amendment provided therein.

74. That, as already emphasised, the sanctity and immutability of Section 147 of the Constitution of Jammu and Kashmir has been destroyed by a subtle and dubious process. In this connection, the petitioner craves leave to refer to the newly inserted sub-section (3) of section 2 which is to the following effect:

"Any reference in this Constitution to Sadar-i-Riyasat shall, unless the context otherwise requires, be construed as (a) reference to the Governor."

75. That the petitioner asserts and states that the aforesaid sub-section was inserted by (the) Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 simply to overcome the bar against amendment of Section 147. It is submitted that what could not be done directly, could not also be done indirectly and on this ground too, the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 is void, illegal and without jurisdiction.

76. That the legal position emerging from the submissions made above is that the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, being unconstitutional, it is void, illegal and of no effect and, accordingly, the only person who is elected and recognised by the President as Sadar-i-Riyasat in accordance with the provisions of (the) unamended Constitution of Jammu and Kashmir can validly act as head of the State and assume (the) powers of the Government of the State under

section 92 of the Constitution of Jammu and Kashmir if he is satisfied that a situation has arisen when the Government of the State cannot be carried out in accordance with the provisions of the said Constitution.

77. That, on this hypothesis, Shree Jagmohan, while purporting to act as Governor, was merely a usurper of the office of the head of the State which rendered him constitutionally incompetent to assume the functions of the Government of the State under section 92 of the Constitution of Jammu and Kashmir. Accordingly, all things done, actions taken and orders made by Shree Jagmohan while purporting to carry on the functions of the Government of the State are wholly void, illegal and without jurisdiction and, as a necessary adjunct, he is personally responsible for all acts of omission and commission committed by him or on his behalf in the State during that period.

78. That, as a corollary, it follows that Shree Jagmohan is liable for civil and criminal action in respect of acts of genocide, killings and oppression and suppression committed on the people of the State and the sufferings inflicted on them by him or under his orders or otherwise during his regime, and he shall be so liable either singly or jointly with others depending upon the nature of each such act.

79. That, assuming without admitting, that the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 is constitutionally valid and that the appointment of Shree Jagmohan, as Governor, in accordance with the Amended Constitution was valid and proper, still Shree Jagmohan cannot escape liability, as aforesaid, because Proclamation No. P-1/90 of 1990 dated 19 January, 1990, under which he assumed the functions of the Government of the State under section 92 of the Constitution, is void, illegal and of no effect.

80. Section 92 of the Constitution, as amended, reads as follows:

"(1) If at any time the Governor is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Government may by Proclamation

- (a) Assume to himself all or any of the functions of the Government, of the State and all or any of the powers vested in or exercisable by anybody or (any) authority in the State;**
- (b) make such incidental and consequential provisions as appear to the Governor to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to anybody or (any) authority in the State.**

Provided that nothing in this section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Any such Proclamation whether varied under subsection (2) or not, shall except where it is a Proclamation revoking a previous Proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Governor by a Proclamation under this section assumes to himself any of the powers of the Legislature to make laws, any law made by him in the exercise of that power shall,

subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Act or laws made by the Legislature shall be construed as including a reference to such law.

(5) No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

(6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each House of the Legislature as soon as it is convened."

81. That, Article 356 of the Constitution of India reads as follows:

Provisions in case of failure of constitutional machinery in State:

(1) If the President on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation

- (a) assume to himself all or any of the functions of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

- (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of (the) Proclamation, including provisions for suspending in whole or in part the operation of any Provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of parliament, the Proclamation shall, unless revoked, continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

Provided further that if the dissolution of the House of the People takes place during any such period of one year and a resolution approving the continuance in force of such (a) Proclamation has been passed by the Council of State, but no resolution with respect to the continuance in force of such (a) Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(5) Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in Clause (1) shall be final and conclusive and shall not be questioned in any Court on any ground.

82. That, purporting to act under Article 370, the President, by C.O. No 71 dated 12 December 1964 applied the above mentioned Article to the state of Jammu and Kashmir with the following modification:

"In clause (1) of Article 356, reference to the provisions of this Constitution shall, in reference

to the State of Jammu and Kashmir, be construed as (a) reference to the provisions or provision of the Constitution of Jammu and Kashmir."

83. That, in order to narrow down the controversy in this case, the petitioner shall assume that the President was competent to so act and that Article 356, as modified, has been validly applied to the State with effect from 21 December 1964.

84. That, acting upon Article 356, as applicable to the State of Jammu and Kashmir, the President can assume the functions of the Government of the State on receipt of a report from the Governor that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution of Jammu and Kashmir.

85. That Article 356, of the Constitution of India, as applicable to the State and Section 92 of the Constitution of Jammu and Kashmir, are obviously repugnant to each other in the sense that both occupy the same field and operate in the same area. Consequently, one cannot co-exist with the other.

86. That, applying the principle of Article 254 of the Constitution of India, it necessarily follows that Article 356 as modified has come to stay and Section 92 of the Constitution of Jammu and Kashmir has become void ever since C.O. 71 was issued by the President. It is submitted that any other interpretation would lead to absurd and anomalous results and even render Article 356 discriminatory in its operation in relation to (the) Jammu & Kashmir State which the President could not have intended

87. That by Proclamation No P-1/90 dated 19 January 1990, Shree Jagmohan, acting as Governor, assumed the functions of the Government of the State under Section 92 of the Constitution of Jammu and Kashmir which was then extinct and, as the said Proclamation is void ab initio and Shree Jagmohan never

acquired any power or authority to carry on the Government of the State on the basis thereof.

88. That, on this hypothesis, all things done, actions taken and orders made by Shree Jagmohan, while purporting to discharge the functions of the Government of the State, are void, illegal and of no effect and, as a necessary consequence of this, he is personally liable for all acts of omission and commission committed by him or on his behalf in the State.

89. That, as a corollary, it follows that Shree Jagmohan is liable for civil and criminal action in respect of acts of genocide, individual killings and oppression committed on the people of the State and the sufferings inflicted on them by him or on his behalf and he shall be so liable either singly or jointly with others depending upon the nature of each such act.

90. That, at any rate, Shree Jagmohan is personally liable for all acts of omission and commission committed by him or on his behalf which are arbitrary, malicious, malafide or outside the parametres of the Constitution and laws. For the well-accepted principles of public administration are that the government and its functionaries must act fairly, honestly, (in a) bonafide (manner) and within the bounds of their power and authority.

91. That the petitioner has hereinbefore in this petition given an illustrative list of acts of omissions and commissions committed by and on behalf of Shree Jagmohan to show how the aforementioned norms of public administration have been outraged by Shree Jagmohan with impunity out of bias and malice against Kashmiri Muslims.

92. That the more heinous acts committed by Shree Jagmohan relate to his abuse and misuse of laws and the Constitution to legitimise the barbarism let loose on the innocent people of Kashmir. The list of such acts is fairly long but it has not been possible for the petitioner to collect the entire relevant material, particularly because of the prevailing constraints.

Therefore, the petitioner craves leave to refer to the following few such instances with liberty to file a supplementary list as and when possible.

- (i) That Shree Jagmohan constituted (the) Security and Law & order Board and involved (the) Army, (BSF) and the CRPF in the maintenance of internal law and order in the State. The petitioner could not lay his hands on the formal order concerning the constitution of the Board. However, the news item appearing in (the) *Kashmir Times*, Jammu, dated 26 April, 1990 under the caption 'Governor revives Security Board' shows that it includes GOC-in-C, Northern Command, Lt. General Gurinder Singh, Lt. General M.A. Zaki, Lt. General Harwant Singh, as also (the) Directors - General of the BSF and the CRPF. From the editorial note of the *Kashmir Times*, dated 5 June 1990, hereinbefore referred to in this petition, it appears that, in accordance with the arrangement evolved by Shree Jagmohan, junior officers from army and para-military forces were authorised to take any action they thought was required in dealing with the prevailing situation in Kashmir even without seeking approval from their respective seniors. It is submitted that Shree Jagmohan could neither involve (the) armed forces of the Union nor even other forces subject to the control of the Union of India even if it had the blessings of the Government of India. For entry 2-A of List I of (the) Seventh Schedule of the Constitution of India providing:

"deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any state in aid of civil power, powers, jurisdiction,

privileges and liabilities of the members of such forces while on such deployment"

does not apply to the State of Jammu and Kashmir. But Shree Jagmohan and his masters in Delhi took the people of Kashmir for a ride and did not hesitate to overrule the Constitution for the advancement of their sinister objective to crush the innocent people of Kashmir'

- (ii) That soon after Shree Jagmohan, took up his assignment in the State in January 1990, he imposed indefinite curfew in Srinagar and various other parts of Kashmir with orders to shoot at sight anyone violating it and the same continues even now except that the period and frequency of the relaxation has increased ever since. The Hon'ble High Court, on a writ petition by the Kashmir Bar Association issued the necessary directions in this behalf. However, that is not what the petitioner seeks to emphasise. His submission is that Government has no power to impose curfew, much less indefinite curfew. The power to impose curfew is exercisable by the respective District Magistrate in his district under Section 144 Criminal Procedure Code (Cr P.C.) and even he is required under law to make a speaking order and the settled law is that no shoot-at-sight orders for violation of curfew can be passed. But there is not a single order, at least none has appeared in the press, which could demonstrate that the orders regarding imposition of curfew emanated from the competent authority. That apart, Shree Jagmohan did not feel bothered about the constitutional position that the imposition of indefinite curfew is violative of Articles 19, 21 & 22 of the Constitution. Worse still, he made a further order that no vehicle

shall ply during the relaxation period least(?) that he had no authority under (the Law) to impose such (a) restriction. Conscious of its weakness, the State Government has not ventured to file its reply in the pending writ petition in the High court and has been getting time on one pretext or the other. It is submitted that the action taken by Shree Jagmohan in regard to imposition of indefinite curfew with shoot-at-sight orders for its violation and the further orders placing (a) ban on (the) movement of vehicles constitutes an abuse and misuse of his powers. By so acting, he simply wanted to harass, intimidate and imprison the entire population in order to tame them. Thus, he has not only acted (in a) malafide (manner) but also arbitrarily and exceeded the powers and authority vested in him.

(iii) That Shree Jagmohan abused and misused his legislative powers solely with the object of committing barbarism in the name of law on the people of Kashmir. By an Act of the State Legislature called (the) Jammu and Kashmir Public Safety Act, 1978 (the) Government as also (the) Divisional Commissioners and District Magistrates are competent to order detention of any person with a view to preventing him for acting in any manner prejudicial to

- (a) the security of state or maintenance of public order, or
- (b) the maintenance of supplies and services essential to the community.

By section 10, it was provided as under:

"Power to regulate place and conditions of detention: Any person in respect of whom a detention order has been made under Section 8 shall be liable

- (a) to be detained in such place and under such conditions including conditions as to the maintenance of discipline and punishment for breaches of discipline as the Government may, by general or special order specify; and**
- (b) to be removed from one place of detention to another place of detention in the State by order of the Government."**

By means of (the) Jammu and Kashmir Public Safety Act (Amendment) Act, 1990 (Governor's Act No 1 of 1990) Shree Jagmohan amended section 10 as hereunder:

"In clause (b) of section 10 of the Jammu and Kashmir public safety Act the words 'in the state' shall be omitted."

On the basis of this amendment Shree Jagmohan enabled himself with malafide intention to remove the detenués from the State to places outside the State solely with the object of subjecting them to mental and physical torture and, in fact, he has already done it. He has removed most of the detenués to the hottest places in India. However, what is worse is that the amendment is in excess of Shree Jagmohan's powers as Governor which he knew and, at any rate, had reason to believe to be so, for the effect of the amendment is that the operation of the Act has got extended to territories outside the

State. Both, on principle and terms of (the) original Act, the amendment is clearly in excess of the legislative powers of the Governor. On principle, neither the State Legislature nor he while exercising legislative powers can enact any law which has got territorial operation outside the State. For the executive and legislative power of the State is limited to the territories administered by it. That apart, by subsection(2) of section 11, the original Act provides that it shall extend to the State of Jammu and Kashmir which is the same thing as saying that its operation shall be limited to the territories administered by the State. Consequently, on the terms of the Act, too, the amendment is not tenable. It is difficult to presume that Shree Jagmohan did not know that he could not lawfully carry out the desired amendment particularly when he had the services of the (sic) legal experts available to him, both at the State and the Central level. If he has still effected this amendment, it is only because he considered himself to be above (the) law while purportedly acting under the law. However, (in) so acting, Shree Jagmohan has grossly abused and misused (the) power and authority vested in him.

- (iv) That Shree Jagmohan abused and misused (the) Terrorist and Disruptive Activities (Prevention) Act, 1985 (No 31 of 1985) to legitimise barbarism in the name of law. The said Act is a Central Act. By its preamble, it is intended to prevent and cope with terrorist and disruptive activities. Section 7 makes provision for the constitution of courts called Designated Courts, for the trial of offences under the Act. The Act came into force in the State in 1985 with the

consent of then state Government, headed by Mr G.M. Shah as a quid pro quo for his induction into power from the backdoor in the State. Legally and constitutionally, the extension of this Act to the State is untenable but, for the limited purpose of this petition, the petitioner shall assume that it was validly extended to the State and confine himself to the question as to how it has been used by Shree Jagmohan to persecute the innocent people of Kashmir rather than prosecute those guilty of its contravention. In this connection, it may be noted that in the course of (the) implementation of this Act, two Designated Courts were established in the State, one at Srinagar and another at Jammu. There were only a few cases in these courts. After Jagmohan's induction as Governor, thousands of people have been booked under this Act without proper justification. Even the newspapermen have not been spared. They too were booked under this Act. The High Court does not have any jurisdiction under the Act. Aggrieved by the decision of the Designated Court, the accused is required to approach the Supreme Court for relief. How many persons can really approach the Supreme Court, it is not difficult to guess. Keeping in view all these things, Shree Jagmohan should have normally established more Designated Courts in Kashmir. However, what he did was that by SRO No 168 of 1990 he wound up the Designated Court at Srinagar and directed that the Designated Court at Jammu shall have jurisdiction in respect of the whole State with the result that people from far-flung areas of Kashmir are expected to go and face trial at Jammu. Does it advance the cause of war or the cause of justice, one can easily imagine? The petitioner submits that the said SRO is

arbitrary, malafide, illegal and unconstitutional and constitutes an abuse and misuse of his powers and authority by Shree Jagmohan.

- (v) That Shree Jagmohan caused searches to be made through security personnel who had no power and authority to do so. However, assuming without admitting, that they had the necessary powers and authority but the way the searches were conducted constitutes a flagrant abuse and misuse of the legal process governing the same. The provisions governing searches are contained in the Criminal Procedure Code which requires that a search should be made under a written warrant, issued by a Magistrate competent to do so. It should be conducted in (the) presence of the person residing in or incharge of the place, as also two or more inhabitants of the locality and a list of all things seized in the course of such search, signed by such witnesses, should be prepared and (a) copy thereof delivered to the owner or occupier as the case may be. But, as hereinbefore indicated in this petition, these provisions were followed more in (the) breach rather than in the compliance of such provisions. The entire exercise constitutes an abuse and misuse of the legal process governing the searches.

93. That the petitioner asserts and states that having acted arbitrarily, maliciously, malafide and in excess of his power and authority, Shree Jagmohan has rendered himself liable to civil and criminal action singly or jointly with others for the genocide and oppression committed on the people of the State.

94. That, the petitioner is entitled to relief hereinafter mentioned, among others, on the following grounds:

- (i) That the constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 is unconstitutional and as such, the only person who can act as head of the State must be one who is elected and recognised as Sadar-i-Riyasat in accordance with the provisions of the Constitution of Jammu and Kashmir, as it stood before the said amendment was enacted. In this connection, the petitioner craves leave to refer to submissions hereinbefore made in this petition generally and particularly at paras 68, 69, 70, 71, 72, 73, 74, 75 & 76.
- (ii) That, Shree jagmohan, while purporting to act as Governor, was a usurper of the office of the head of the State and, as such, he had no power and authority to assume the functions of the Government of the State on the ground that there was (a) constitutional breakdown. Consequently, all things done, actions taken and orders made by him or on his behalf are void, illegal and of no effect and, as a corollary, he is liable for civil and criminal action for anything done, any action taken or any order made by or on his behalf. In this connection, the petitioner craves leave to refer to the submissions hereinbefore made in this petition generally and particularly at paras 77 and 78.
- (iii). That, alternatively, the Proclamation No P/90 of 1990 dated 19 January 1990 is void, illegal and of no effect and as such, all things done, actions taken and orders made by or on behalf of Shree Jagmohan in the discharge of his functions as Government of the State are void, illegal and of no effect and, as a corollary, he is liable for civil and criminal action for anything done, any action taken or any order made by him or on his

behalf and, as a corollary, Shree Jagmohan is personally responsible for acts of genocide, killings, oppression and suppression committed on the people of the State and the sufferings inflicted on them by him or under his orders or otherwise during his regime. In this connection, the petitioner craves leave to refer to the submission hereinbefore made generally in this petition and particularly at paras 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, & 89.

- (iv) That, at any rate, Shree Jagmohan is personally liable for all acts of omission and commission committed by or on his behalf which are arbitrary, malicious and malafide or in excess of his power and authority while purporting to discharge the functions of the Government of the State and, as such, he is personally liable for civil and criminal action, singly or jointly with others, depending on the nature of each such act. In this connection, the petitioner craves leave to refer to the submissions hereinbefore made in this petition generally and particularly at paras 90, 91 & 92.
- (v) That respondents 2 and 3 are bound to ensure Rule of Law in the State and bring to book all those guilty of any offence punishable under law and, accordingly, they are duty-bound to prosecute respondent No 1 and those others responsible for committing genocide and oppression in Kashmir.

In the premises, it is prayed that the Hon'ble Court be pleased to issue:

- (i) An appropriate writ, direction or order declaring (the) Constitution of Jammu and Kashmir (Sixth

Amendment) Act, 1965 and/or alternatively, Proclamation No. P-1/90 of 1990 dated 19 January 1990 to be void, illegal and of no effect,

- (ii) An appropriate writ, direction or order declaring that all things done, actions taken or orders made by Shree Jagmohan, while purporting to discharge the functions of the Government of the state from 19 January 1990 till he resigned on 25 May 1990 are void, illegal and of no effect,
- (iii) An appropriate writ, direction or order declaring that Shree Jagmohan, respondent No 1, is personally liable for the acts of genocide, killings, oppression and suppression and the suffering inflicted on the people of the State by him or under this orders or otherwise during his regime beginning from 19 January 1990 till he resigned,
- (iv) An appropriate writ, direction or order including writ of mandamus commanding respondent No 3 and/or respondent No 2 to prosecute Shree Jagmohan singly or jointly with other persons for the acts of genocide, killings, oppression and suppression and the sufferings inflicted on the people of the State by him or under his orders or otherwise during his regime beginning from 19 January 1990 till he resigned,
- (v) Any other relief which the Hon'ble court may deem fit to grant on the facts and circumstances of the case.

Appendices (I to XV)

Appendix I

The National Front Government's plan to check terrorism in Kashmir has, in practice, turned out to be an exercise directed against the vast masses of the Kashmiri common people, who are being denied the fundamental rights guaranteed under the Indian Constitution, and enshrined in the Universal Declaration of Human Rights to which the Indian Government is a signatory.

A four-member team on behalf of the Committee for Initiative on Kashmir, during a visit to Jammu and Kashmir from 12 March 1990, obtained detailed information from (a) large number of sources, including victims, eye-witnesses as well as senior Government officials, about indiscriminate killings, arbitrary arrests, unlawful searches, unproved assaults on peaceful demonstrators and a complete dislocation of normal life due to imposition of indefinite curfew for months together with rare breaks of a few hours. The team found, in the course of investigation, that these abuses have been carried out by the official law enforcement personnel, the Central Reserve Police Force (CRPF), the Border Security Force (BSF) and in certain cases, by the Indian army. That these cases of blatant violation of human rights were not isolated instances of aberrations, but operative extensions of an official policy was evident to the team members when they met senior administrators who justified such actions on the ground that they were necessary to contain terrorism.

While the team condemns as a matter of principle any form of "terrorism" (in the sense of the use of violence and intimidation by a handful of decision-makers whether among the rulers or the forces of the opposition), it believes that such terroristic actions do not absolve the Indian state of its responsibility to respect and protect fundamental human rights of the rest of the citizens in any part of the Indian Union. The findings of the team reveal that the representatives of the Indian

State in Kashmir, both the civil administration and the paramilitary forces, have failed so far to contain "terrorism", and are instead trying to compensate for that failure by wreaking vengeance on the innocent masses of the Valley. The team's talks with officials (in charge of tackling terrorism) indicated that they suffered from the paranoiac feeling that the entire population of the Valley are (made up of) pro-Pakistani" terrorists. Dictated by such suspicious feelings, operations to maintain law and order have invariably led to the alienation of the common people who are subjected to humiliation, discrimination and firing by the security forces. As a result, ironically, the Government's plan to suppress "terrorism" is ending up in a situation where the hitherto non-committed masses are being pushed to a position where they feel that "independence "from New Delhi as demanded by the assortment of secessionist militant groups is the only way of escape from state repression. This feeling was eloquently summed up by a Kashmiri government officer: "Till 19 January . I was against the militants. Today, I am for them."

The team also met Hindu refugees who had migrated from the Kashmir Valley and had taken shelter in Jammu. They said in one voice that they had been persecuted and threatened by militants and that the Indian government was not doing enough to suppress the militants. Their feelings can be summed up by the comment made by one of their leaders: "It is now a question of recapturing and reconquering Kashmir by the Indian government."

This difference in the perception of the current situation by the two communities, the Kashmiri Muslims and the Hindus, has been aggravated to a large extent by the policies and actions of the government. As the following report will indicate, these policies and actions are increasingly driving a wedge between the Muslim and Hindu residents of the Valley, which has sinister implications for the future of communal harmony in the rest of the country.

Along with the information gathered during the tour, the

team is also presenting in this report the stated feelings and perceptions of the Kashmir Muslims and Hindus. An outline of the historical and economic background to these events is also being provided. The report suggests measures which the team believes are necessary to stop the persistent human rights abuses against the people of Kashmir...

MAJOR INCIDENTS

The date 19 January 1990, when Jagmohan took over as Governor of Jammu and Kashmir, is regarded as a watershed by many Kashmiris. It is not as if there was no police firing or curfews before Jagmohan's arrival. During Farooq Abdullah's Chief Ministership, there were many occasions when in anti-terrorist operations, unarmed and peaceful people became targets of the Security Forces, following attacks on them by the militants. On 8 January, for instance, 17 people were killed in police firing. Imposition of curfew at frequent intervals was also becoming a regular feature.

But Jagmohan's return to Jammu as Governor signalled the unleashing of state repression on a massive scale. Widespread searches and raids by the Security Forces have brought about untold misery and sufferings for the common people. Since his taking over, there have been at least three incidents leading to deaths and injuries to hundreds including women and children.

Jagmohan's first day in office was marked by raids and searches conducted by Security Forces (with the ostensible objective of flushing out terrorists) in the Habba Kadal area of Srinagar from the midnight of 19 January till the morning of 20 January. About 400 young people, both Muslims and Hindus, were dragged out from their houses, mercilessly beaten and taken away. It is significant that the local civil authorities of Srinagar were never consulted before the raids were conducted. The CRPF and other para-military forces which carried out the raids were on their own, unaccompanied by the local police. The

Divisional Commissioner of Srinagar later told protesting demonstrators that he had no knowledge of the raids and searches.

On 20 January when a group of people were proceeding to express solidarity with others who had gathered outside the Divisional Commissioner's office to protest against the atrocities of the para-military forces, they were tear-gassed. The same night (20 January) curfew was clamped down on the city.

On 21 January, a 20,000 strong procession, including people from the city's outskirts, passed through the streets of Srinagar, defying curfew and protesting against the illegal searches and arrests. When the procession reached Basant Bagh in the Gow Kadal area, the para-military forces started firing upon them. According to the local police, at least 60 dead bodies were recovered from the spot and taken to the police control room, while unofficial sources claim that more than 200 were killed. We met a survivor whose experience on that day as narrated to us, indicated not only the ruthlessness of the para-military forces, but also their anti-Muslim bias. The survivor, Farooq Ahmad Wani, is an Assistant Executive Engineer in the Public Health (Engineering), Water Supply Department of the J & K Government. Listen to his experience in his own words.

'My house is in the Rajbagh area. On the day of the incident (21 January) I was told by a water tanker driver that due to curfew water tankers were not being allowed to move about and reach water to the citizens. I contacted the Superintending Engineer who told me to go to the police and collect curfew passes for the water tankers and distribute them to the drivers. I went with my curfew pass and identity card. When I reached Jehangir Chowk (near the High Court complex), I saw a procession coming from the other side of the Amira Kadal Bridge. A CRPF man asked me to go away, and when I

showed him my curfew pass and told him that I was on my way to the police control room, he snatched away my curfew pass and tore it. I then decided to go to my sister's house in Badshah Chowk. I saw another procession moving towards Gow Kadal. I joined the women who were marching in the procession, hoping that I would be safe in their company. As we were just about to cross the Gow Kadal bridge, there were two shots. Then the Security Forces opened fire. I saw several people in army uniform behind me. I wanted to jump into the river to save myself, but fell down on the road. When I started getting up, I saw small boys being shot and falling down in the river. I remained lying for some time till I saw a para-military officer coming, when I lifted my head. I saw him pumping bullets into (the) bodies of the injured who were lying on the road. A boy, who was trying to hide, was killed under the platform of the bridge. As I lifted my hand, a CRPF man shouted, "He is still alive." I pleaded, "I am a government officer. Please don't shoot." The Officer shouted abuses at me and said '*Islam mangta hai?* (Do you want Islam?)' and fired at me. My back and my hands were injured as I turned to run. I fell down. When the officer left, a few Jammu & Kashmir Armed Police (JKAP) men came and watched me. They were, however, soon chased away by the para-military men. Another para-military officer moved up to me and shouted. '*Tum sale zinda hai - mara nahi hai?*' (You wretch, are you still alive, not yet dead?), and aimed his sten-gun at my chest. At this stage, the officer who had earlier fired at me, came up and dissuaded the other officer saying, 'Don't waste bullets on him. I have pumped enough bullets, and he will die soon?'

He left after kicking my back. Soon after this, a truck was brought and all of us, both the dead and the injured, were piled into it. As I was dragging myself up, that officer came over and shouted at me: 'You are not yet dead?' I kept on pleading to a constable: 'Save me.' The truck had many bedrooms(?). There were 30 to 35 dead bodies. As there was no space for more, the officer ordered the driver: '*Baki ko nale me phak do*' (Throw away the rest into the river). A tarpaulin cover was thrown over us, and two Security Force (men) sat upon it.

After some time we stopped at a place where we heard voices speaking Kashmiri. One of the injured among us cried out. The tarpaulin cover was lifted, and we saw a Kashmiri constable, who discovering us alive, said, 'My God, there are living bodies here'. Those of the who were still alive pleaded: 'Please save us.' The doctor on duty in the police control room identified three other people who were still alive, put us in the ambulance and rushed us to the Bone and Joint Hospital. We later heard that the head constable who saw us - the living piled up with the dead in the truck - had later suffered a heart attack."

Farooq Ahmad Wani showed us his arms and back, where six bullets were pumped in. He has been released from hospital after (an) operation. But there are other victims of the 21 January firing who are still recuperating in the Bone and Joint Hospital in Srinagar whom we interviewed during our trip. Kashm Rashid (32) who is lying in the hospital with his legs in plaster, told us that as he was coming out from his home in Srinagar, (when) the CRPF fired at him and he received two shots in his legs. He was then beaten up for hours by the CRPF Jawans. When he tried to complain to a CRPF officer about the misbehaviour of the Jawans, the officer put a revolver to his head

and asked him to say that he was injured in "cross firing". He was later thrown at the gates of the hospital.

Doctors at the Bone and Joint Hospital told us that Kasim's case was not an isolated one. They were getting daily 300 cases at the OPD(?) after 20 January as against the earlier number of 20 per day. Dr Najib, Medical Officer in the Hospital, told us that the hospital staff who were used to treating normal bone injuries were not quite equipped to treat injuries caused by high velocity bullets. It were victims of such bullet injuries who were being brought to the hospital now. "They are like mass casualties," he said. Dr Najib added that many among the injured were left unattended for hours in the streets and lost a lot of blood before they reached the hospital. Due to the curfew, many could not reach the hospital.

The second major incident occurred on 22 January when people came out in large number from all parts of the Valley and congregated at Srinagar to protest against the killings of the previous day. The procession was allowed to proceed till it reached Alamgari Bazar in the Hawal area of the town. Here the demonstrators were trapped between a CRPF force in the front and another behind. They were fired upon by the CRPF and (according to unofficial sources again) about 100 people were killed. The injured were taken to the nearby Sher-i-Kashmir Institute of Medical Sciences in Soura by the people who complained that the para-military forces tried to prevent them from moving the injured to the hospital. One of those killed was 32 year old Ajalal Hassan, a well known Kashmiri research scholar, author of four books, including one on Gandhi's non-violence. We interviewed one among the injured, 24 year old Meraj-ud-Din Najar, at the Bone and joint Hospital. He was shot at Tankipore where the CRPF fired upon demonstrators protesting against searches and raids. We learnt that the CRPF also fired upon local policeman, killing one in the Tankipora area, as a result of which the Jammu and Kashmir Auxiliary Police (JKAP) personnel raised protest slogans in the police lines and many of them deserted their posts.

Although all through February police firing and pitched battles with anti-Indian militants continued, there was a brief respite from curfew during which time huge processions came out on the streets protesting against the Indian Government's deployment of security forces. Almost every day surging crowds demonstrated before the office of the UN Military Observers' Group in Srinagar to submit a plethora of memoranda demanding the implementation of the UN resolutions providing for plebiscite in Jammu & Kashmir.

The third major incident took place on 1 March when a record number of people — 1.5 million according to our sources - converged in the streets of Srinagar demanding independence. At three different places - Zakura, Tengaura-Bemina Bye pass and Shalimar the Indian para-military forces opened fire on people, killing and injuring a large number. The injured, whom we interviewed in the hospital, claimed that their procession was peaceful and that the firing was unprovoked. At Tengpura, the demonstrators were returning home in buses when the military forces stopped them and asked them to disembark. As they were climbing down, they were shot dead. One of the survivors Mohammad Aslam (30) gave us an eye-witness account of how army vehicles stopped their bus, brushed aside all pleading by the passengers and fired indiscriminately. Aslam escaped death by tilting to one side and got injured in his left ankle. He saw scores of people with bullet injuries in their throats and blood gushing out.

Following widespread protests against the killing of bus passengers at Tengpura, the army conducted an inquiry into the incident under the directions of the Government. The report of the inquiry sought to justify the killings on the ground that the people had pelted stones at an army vehicle carrying school children of military personnel. Local people whom we interviewed dismissed the inquiry report as blatantly false since all the schools in the Valley were closed at the time for winter holidays. Besides, there was no army school anywhere near the spot where the firing took place. Incidentally, the J & K

Government issued an order on 20 February asking schools, colleges and other educational institutions to remain closed till 15 March. Surprisingly enough, the Government has now ordered registration of cases against the erring military personnel involved in the incident at Tangpora.

The same day, army Jawans opened fire on a procession of 10,000 to 15,000 people at the Zakura crossing, killing and injuring several people. Bashir Ahmad (22), one of the injured, told us that army vehicles forced their way into the procession and fired from sub-machine guns. His right lower arm around the elbow was shattered.

According to a first information report (FIR) filed by the Srinagar City Senior Superintendent Police, M.A. Chowdhury, army vehicles came towards the procession as it was passing through the Zakura crossing. A police constable Abdul Rehman (No. 1497/S) advised the army people to stop or change their route. They did not comply and forced their way into the procession which, according to the FIR, was "peaceful". An army personnel snatched away a flag from the hands of an old man at the front of the procession. The army personnel then started to fire indiscriminately, killing two on the spot. Others from among the army people also started firing. About 100 rounds were fired in all, resulting in innumerable deaths. (FIR filed at Zakura police Station on 1 March 1990 in the presence of Mr M.A. Abbas, Deputy Commissioner, Srinagar (ARC - Police No. 89 899024 - Register No. 2 Roznamcha, 1 March 1990 Thana, Police Chowki, Zakura).

From our investigations into these major incidents, we found that the para-military forces and the army Jawans had no excuse or self-defence (as normally given when dealing with riotous mobs) when they fired indiscriminately upon what were crowds of unarmed demonstrators. A savage thirst for blood seemed to have gripped the CRPF, as (is) evident from the calculated manner in which they went about pumping bullets into (the) bodies of injured people in the Gow Kadal area on 21

January. The brutalities perpetrated by the army Jawans on 1 March call for serious disciplinary action against them. Attempts by the army authorities to justify their killing of bus passengers at Tengpura on the day, by inventing a false story, are a further blot on the country's defence forces who are required to be a highly disciplined cadre dedicated to the task of protecting our people. We urge upon the government to institute judicial enquiries into these major incidents and punish the personnel of the para-military forces and the army who were responsible for the killings.

While the major incidents described above, accounted for the largest number of casualties, there have been innumerable cases of daily raids on houses, assaults on peaceful demonstrations (often resulting in deaths and injuries), firing on innocent by-standers, indiscriminate arrests and harassment of ordinary citizens at the hands of the Security Forces. We are giving a few instances.

On 7 March 1990 at Channpora, following firing by militants on the CRPF, the latter raided the houses in the locality. We visited the area on 14 March and interviewed the victims mainly women who were molested and raped by the para-military forces. Noora (24), wife of Abdul Rehman, told us that she was working in the kitchen in the morning that day when she heard sounds of firing outside. She claims that some twenty CRPF personnel walked in, dragged her out, and raped her. She added that her sister-in-law (Zaina) was also raped. She saw two girls Gulshan (14) and Fatima (16) molested by the CRPF. An elderly lady, Ayesha, wife of Samad Ganai, told us that when the CRPF assaulted her son, the daughter-in-law Maymoona tried to rescue him. The CRPF threw her down but she managed to escape by getting up and jumping out of the first floor window. The male members of the affected families in Channpora told us that they had sent away their women-folk to places outside the area to escape humiliation by the CRPF personnel who still came to the locality every day harassing the inhabitants. At least 15 families had left their homes. We were told that of the residents

Abdul Majid had been taken away by the CRPF along with his father Ghulam Mohamad Sheikh. Their whereabouts are not known till now. The residents took us around the locality and invited us to their houses where we saw household goods destroyed by the CRPF. Broken TV sets, radios, glass utensils and mirrors (were) strewn all over the place.

On 14 March, when our team was present in Srinagar, curfew was lifted for a few hours in the morning. We saw women, some with their faces veiled by *borkha*, others with chadar on their heads, coming out in processions in the streets. They were members of a woman's organization called Dukhtaran-i-Millat carrying banners demanding 'independence' and the withdrawal of Indian Security Forces from Kashmir. The immediate reason for their demonstration that day, they told us later, was to protest against the CRPF atrocities on women in Channpora on 7 March. We found the demonstration peaceful. But when they were moving towards the office of UN, the para-military force tear-gassed them. They ran helter-skelter and took refuge in a mosque nearby. They were not spared by the CRPF Jawans who entered the mosque, beat them up and smashed up the furniture in the mosque. Incidentally, as the women were marching towards the UN office, we heard the police announcing over loud-speakers that the curfew was being re-imposed even before it was due.

It is not only peaceful demonstrators who are being attacked by the para military forces. We found that even doctors, going around in the normal course of their duties, are not spared. During our visit to the Sher-i-Kashmir Institute of Medical Sciences on 14 March senior doctors narrated their experiences at the hands of the para-military forces. Body searches have become a regular affair. On 2 March as the doctors were coming to the hospital in an ambulance van, they were stopped by the para-military forces who pointed guns at their heads. Although they showed their curfew passes and identity cards, each one of them was frisked. Two women doctors, Dr Shugra Kaul and Dr Vijay Tikku, were humiliated to such an extent that they had

stopped coming to the hospital to escape humiliating body searches. Within the hospital complex, doctors and attendants are searched every time they move out to collect medical equipment from the stores, packets of sterilized linen wrappers, among other things, are the main targets of the para-military personnel who on suspicion that they contain explosives, prise them open, thus exposing them to contamination.

At the Bone and Joint Hospital, a nurse complained to us that she and her colleagues were insulted by CRPF patients in the hospital, apart from being searched by the para-military forces when outside. This perhaps explains why the staff in the hospitals in the Valley refuse to take patients from among the Indian para-military forces.

It is the common patient who suffers the most due to the harassment of the para-military forces. We were told about people taken seriously ill and pregnant women being turned back from the hospitals by the Security Forces who man the roads leading to the hospitals. The height of cruelty was demonstrated by the para-military forces on 22 January, when doctors of the Institute of Medical Sciences sent four ambulance vans to a neighbouring locality where firing had taken place, to collect the injured victims. All the four drivers who went to the spot, came back as patients after having been severely beaten up by the para-military forces, which refused them permission to take the injured people to the hospital.

We also came to know about arrests of young people, whose whereabouts are not known. Seventeen among those arrested earlier have been transferred to jail in Bhilwara in Rajasthan.

We found that the daily lot of the ordinary citizens of the Valley, the raids and searches, the threat to their lives even when they come out when curfew is lifted, has hardened their attitude towards the Indian Government in general and the para-military forces and the army Jawan in particular. They regard the latter as

an occupation force. We could understand their mood when we heard a pathetic story about a women with a sick child on her way to the hospital, who was stopped by the para-military forces and asked to go back. They were reported to have shouted at her: "Let the child die. There will be one militant less."

THE CURFEW

Barring a few days in February, when curfew was lifted in Srinagar and people demonstrated in an atmosphere which they described as a brief "glasnost", the Valley had remained under long periods of curfew since 20 January. Even when the administration relaxed curfew, the people felt that it was a cruel joke played on them. Since the curfew was relaxed for a few hours only in the morning from 5 am, they found it difficult to come out to shop in the cold mornings. Besides, in many areas, the para-military forces were the first to buy off entire supplies from the shops, leaving very little for the local consumers.

What is even more disturbing is the disruption in the supply of essential commodities because of the curfew. Banks have remained closed, leading to a virtual stoppage in wholesale trade. Even when they open, they refuse to release more than Rs. 1,000 per person, making it difficult for business to operate. The worst to be hit is the supply of medicines and medical goods. We met representatives of Ranbazy and Sandoz. The former told us that the Indian Airlines was not accepting consignments for Srinagar as a result of which stocks of medicines were not arriving in the city. The latter complained that although the Union Railways Minister, George Fernandez, during his last visit to Srinagar assured him that medicines will be sent immediately, nothing had come till the day of our departure from Srinagar (15 March).

Hospitals, as a result are facing a crisis. Drugs, anesthetic gases like nitrous oxide (necessary in operations) which are not manufactured in Jammu and Kashmir and are imported from outside, are in short supply. Although oxygen is

locally manufactured, the local factory has remained closed since January.

The deserted streets of curfew-bound Srinagar with only gun-toting para-military forces moving around, make it look like a city under siege. Almost every establishment is closed - Government offices, Indian Airlines Office, Post and Telegraph office (we were told that about 12,000 telegrams were lying undelivered), shops and markets. There is a virtual breakdown in the administration throughout the entire Kashmir Valley. People either do not or cannot attend offices or their work in the field out of fear of the harassment by the Security Forces. All development works and projects are dormant. Contractors have abandoned the sites and labour, most of which is from outside the State, has fled either to Jammu or to their home states. Doctors at the Sher-i-Kashmir Institute of Medical Sciences complained to us that the officer manning the treasury had disappeared and the Governor had pleaded his helplessness when a deputation of the doctors went to him for the release of funds.

Even the law and order administration is severely limited in its movement. Senior Officers move around only under heavy security cover. Many senior officers are actually confined to their offices or residences. The newly appointed Special Commissioner in Anantnag is reported to have admitted that he is virtually a prisoner in the dak bungalow.

A leading citizen of Srinagar wryly commented to us: "The only visible sign of the presence of the Indian Administration in the valley is the ubiquitous movement of the CRPF, BSF and Army Jawans."

Appendix II

Dealing with the same subject, the team headed by Mr Justice V.M. Tarkunde, an eminent judge, jurist and humanist and including, among other distinguished persons, the former

Chief Justice of Delhi High Court, Mr Rajinder Sachhar, have, in their report dated 25 April 1990, said:

The People's Union for Civil Liberties (PUCL), the Citizens for Democracy, the Radical Humanist Association and the Manay Ekta Abhdyan had appointed a joint team to visit Kashmir and make a first-hand assessment of the situation there. The team comprised Shree V.M. Tarkunde, Rajinder Sachhar, Amraik Singh, Balraj Puri, Inder Mohan, Ranjan Dwivedi, N.D. Pancholi and T.S. Ahuja. The first visit was from 9 to 13 March and the second from 28 March to 3 April 1990. Both Srinagar and Jammu were visited as also a few outlying towns.

Our team members were able to meet cross sections of people in large numbers wherever we went.

The team members covered certain areas together and also in groups of two and three according to their arrivals in Jammu, Srinagar and Anantnag.

Groups of individuals from all walks of life such as lawyers, businessmen, retired officers, Government employees, journalists, intellectuals and other well known citizens met us on their own initiative. Simultaneously, we visited quite a number of areas with their cooperation. The places where we went included Gow Kadal, Zakura, Sonewar, Pir Bagh, Nadargund, Channpora, Basant Bagh, Chhota Bazar, Zaina Kadal, Zere Bridge Mosque, Raj Bagh Mosque, Batamalu, Khrew, Bone & Joint Hospital at Surzalla, S.W.H.S. Hospital, Institute of Medical Sciences and Soura, also Shah Hamdan Mosque and Id-Ghah. Everywhere large crowds awaited us varying between 350 to 5,000 in number. They included women, adults and youth. We were also able to visit homes of Kashmiri Pandits and a few Sikh families who had decided to stay in the Valley. One-third of non-Muslim population is still in Srinagar. Shree Balaraj Puri and Shree Inder Mohan met Shree Jagmohan, Governor of Jammu and Kashmir. Other team member met CRPF Chief of the Valley. The team members had requested the offices of the

Advisers to the Governor for arranging a meeting of the team members with the said Advisers but there was no response inspite of repeated reminders...

ATROCITIES BY THE SECURITY FORCES

A large number of excesses were brought to our notice. Some of them are heart-rending.

In Anantnag which was visited by one member of the team, it was alleged that an injured person was brought to the doorstep of a doctor for medical attention. Neither was the injured person allowed to enter the clinic nor was the doctor allowed to come out to attend to him with the result that he died.

On 29 March 1990 at about 8.30 a.m. (at a time when curfew was not in force) Security Forces fired without any provocation upon a three-wheeler and a Matador van. This led to several deaths including that of a pregnant woman and her eight year old son. We visited the injured husband in the hospital and got the full story from him.

On 31 March 1990, a group of children in the age group 11-12 assembled at the house of a teacher to have tuition from him in the Vicharnag locality of Srinagar. The teacher was non-Muslim and all students except one were also non-Muslims. There was an incident in the vicinity and the CRPF men burst into a house. The CRPF men asked the identity of the pupils with their names. Only the Muslim boy was shot and killed.

Again on 1 April 1990 after a CRPF Jawan of 77 Battalion was killed, some of them sought revenge of uninvolved persons far away from where the incident had occurred. At 7.30 a.m. on 1 April 1990 (when curfew had been relaxed) a CRPF ambulance fired in the locality of Navpura injuring five persons, including two women. Subsequently, one woman died. The other persons were three boys aged 15 to 17. The persons who tried to take (the) injured to the hospitals were beaten and arrested. One

of them, Mr Latif Ahmad, showed us the marks of beating all over his body, which he had received for helping the injured. We reached the scene of the incident within three hours of its happening. We also found 25 year old Fida Hussain with a bullet in his thigh but afraid to go to the hospital on account of being arrested or killed by the army. We ourselves took him to the hospital where we saw many people lying with bullet injuries.

On the same day when we were returning from Navpura we were stopped on the way in Gojwara Tulwara Mohalla where barely 15 minutes before, the Jawans of the 77 Battalion had gone berserk, entered various houses and had beaten and manhandled the local people. We saw several persons lying in the houses with fresh injuries and were told that besides beating them, their cash was also looted by the Security Forces. The 69th Battalion attached to that area did not even know what was happening. However, it did interfere later and prevented further violence on the local people.

The reports of such incidents were pouring in and we were asked to visit several places in order to see the continuous rampage going on, but due to paucity of time it was not possible for us to visit each and every place.

We met several injured persons in the hospitals. Ghulam Kadar from Bij-Behara, a 20 year old person, while he was closing his shop during curfew relaxation at 8.30 a.m. on 24 March 1990 he was fired upon by the Security Forces injuring his right hand. Shree Bashir Ahmad, from the same place, gardener in the State Government Garden Department was shot on 26 February 1990 at the main market. Nazir Ahmad was lying with an amputated leg from bullet injuries. He, a student of 9th class, was going to join a peaceful procession to be held at Charari Sharif, about 35 kilometres from Pampur in a truck with 40 persons on 22 February 1990. There was no curfew at that time.

He told (us) that he along with others was asked to get

down by the Security Forces on the way, and despite "our pleas of being innocent, we were fired upon". Three persons, Farukh Ahmad (driver), Manzur Ahmad and Ghulam Mustafa died on the spot. Five boys were injured.

Shahzada Mehmood from Saharanpur working as a hawker in Gurgari Mohalla, Srinagar, for the last 15 years nearly told us that he was shot at 9.30 p.m. in the waist by the CRPF without any provocation or warning.

Two victims of Anantnag were lying injured in the emergency ward. We also saw victims of (the) mini bus shooting. Shakil Ahmad, a second year student of S.P. College had a bullet injury in his thigh.

In fact, the hospitals were full of the injured persons and we were pressed by numerous relatives and friends of the said injured ones to come to the relevant bed and listen to the story of horror perpetrated by the Security Forces on them. However, we were told that neither any compensation was provided to any of the victims of the firing by the para-military forces nor had the Government taken any care to investigate such incidents and reasons for such injuries. Nor any compensation was given to the families of those Muslims who were killed in firing by the Security Forces.

When some of these incidents were brought to the notice of senior officers, in certain cases they were acknowledged and in several other cases they did not even know. There appears to be no system whereby individuals who suffer can lodge complaints and seek redress.

Instances regarding molestation of women in Channpora were brought to the notice of the team members, Mr Balraj Puri and Inder Mohan, who were taken to the house where two young girls were said to have been raped by the Security Forces. This was confirmed by the victimised girls themselves. The team members Mr Balraj Puri and Inder Mohan were moved by the

feelings of the family members and neighbours who were showing full respect and consideration to the girls.

It is not possible to list all the cases which were brought to our notice. But the broad pattern is clear. The militants stage stray incidents and the Security Forces retaliate. In this process, large numbers of innocent people get manhandled, beaten up, molested and killed. In some cases, the victims were caught in cross-fire and in many more cases they were totally uninvolved and there was no cross-firing. This tends to alienate people further. The Muslims allege that they are being killed and destroyed because they are Muslims.

Everywhere the people gave heart-rending accounts of how Security Forces were gunning down the innocent Muslims of the Valley. During the seven or eight days the curfew had been relaxed, the unprecedented huge processions, peaceful and disciplined, were blocked by para-military forces at particular points by putting heavy vehicles on both ends. They resorted to merciless firing at random and killed many innocent persons. These accounts were given to us by the participants in all such localities where processions had been taken out and (which) were brutally attacked by the Security Forces.

UNPARALLELED CURFEW

For more than three and a half months now, except for a break of a few days, the Srinagar city and other major towns have been under curfew by and large. It used to be relaxed at very odd hours i.e. between 5 to 8 or 9 in the morning. Since 7 April to 19 April 1990, there was practically no relaxation at all. The result is that the civil life is totally disrupted. Shops hardly open; banks, schools, courts etc. remain closed and no mail is delivered, nor are the government treasuries functioning. Traders cannot transport the (sic) essential commodities and medical drugs due to curfew. The people in the Valley neither have the cash nor the opportunity to be able to purchase anything. Mobility of people in the Valley is almost at a stand-still. Even

during the curfew relaxation period for a few hours since April 20 1990, vehicles are not permitted on the road. The people are not allowed even to carry their sick brethren to the hospitals in most of the cases. Wherever we went, slogans used to be raised: "We want anti-people curfew raj to be ended. What to say of our day-to-day necessities of life, we cannot purchase even a white shroud for our dead victims." We do not find any government machinery involved in the supply of medicines or essential commodities to the people to mitigate the rigours of curfew. In fact, we found many persons reluctant to come out of their houses during curfew relaxation hours as they feared unprovoked firing on unarmed people by the Security Forces. People in the Valley say: "There is more terrorism in Punjab than in Kashmir and a large number of people are killed there in comparison to Kashmir, but the Government do not impose such a continuous curfew there. But the Government is imposing this continuous curfew here because they want to punish the entire population and wishes to starve them."

Mr Jagmohan in his press conference on 2 April, is reported to have said that the present continuous curfew is imposed in order to provide safety to the people from the militants. Nothing can be further from the truth. Rightly or wrongly, the militants have become heroes of the Kashmiri Muslims and the people have no reason to be afraid of them. The continuous curfew has been imposed in order to prevent the people from coming together for organising peaceful processions and demonstrations, and also to tame them by reducing them to the starvation level. The people bitterly resent the curfew and look upon it as a method of keeping them in virtual house arrest.

Without meaning any disrespect to Jagmohan, it is a fact (which he too must realise) that today he is the most despised person in the Valley. All the journalists, eminent or otherwise, who have been showering high praises upon Jagmohan for his well "deserved popularity in the Valley are totally cut off from reality.

Appendix III

In the national weekly *Current* (26 May - 1 June 1990) it has been said:

At Anantnag, Naseema complained: "My brother Mohammad Shafi Butt was taken away by the security forces 30 days back. So far we know nothing about him. We do not even know whether he is alive. How can he be a terrorist? He is a junior engineer in the Rural Development Department."

Barbaric

Linesman Ghulam Hussain complained: "The local DIG Virana Aball and SP Ashek Bhan are barbaric. Their men misbehave with our women - talk but they take no action. They say we deserve such treatment."

Commented Abdul Ghani: "The way Security Forces raid our villages, loot our houses and mess up our household goods has to be seen to be believed. Such behaviour only generates hatred for the Government. How long can we tolerate such barbarism? If they find a militant and nab him, we don't mind. When they are unable to do that they harass us. is it justified?"

Appendix IV

In the 'Sunday Review' of the *Times of India* dated 29 April 1990, Ayesha Kagal, an eminent journalist, says:

Today, truth flips faces somewhere in the middle of Jawahar Tunnel, the two and a half km long, leaking lifeline that connects — or divides, depending on how you view it — the Valley from the rest of the country. Two separate realities exist on either side of the tunnel, two entirely different sets of

perceptions. And two terrible stereotypes congeal to face each other.

To the rest of India — exposed to an unrelieved diet of militant kidnaping, millings, bomb blasts and Pakistan forays together with the BJP-abetted Pandit problem — the face of the Kashmiri is now dissolving into a blurred, featureless mask. He has become a secessionist-cum-terrorist-cum-fundamentalist traitor, an image exemplified in the 30 April *India Today* cover and its story. In Kashmir, on the other hand, the face of India crystallising into focus in that of a weapon-wielding oppressor, a *darinda* a beast, not human. Both sides need to obliterate contradictions and erect an Enemy. For how else can wars be waged?

Communication in Kashmir

The normal channels through which news and information is transmitted ... have collapsed, replaced by a Tower of Babel, propped up by the militants, one of 40-odd groups, the administration's and Radio Pakistan's desired version of events.

Each day in Srinagar, a hundred rumours bloom, circulate, fade and are reborn. So one moment Captain Rashid, a leading Jammu and Kashmir Liberation Front (JKLF) figure is killed, the next moment he is resurrected and someone takes his place. Taseen Malik, Chief Commander of the JKLF, is caught; then he is dead then he got caught but escaped; then he got caught and was injured but did not escape. And finally he did not get caught. But injured. Not too badly however.

What happened, where it happened, how it happened, who knows? But everyone is still saying. It is like that children's game of Chinese whispers. And seven lakh players in Srinagar alone — and full-time players because with curfew on there's little else to do — make it quite a game.

This atmosphere makes for perfect conspiracy - creating

conditions. So, whether it is a Secretary with the Jammu and Kashmir Government who believes that the J & K highway was deliberately not cleared for two weeks from end March in order to starve the Valley of essential supplies, or a roomful of young girls in a mohalla, who troop out for every Dukhtaran-e-Millat's (the militant women's organisation) call, who tell you that the water in Srinagar was poisoned one day in order to kill them, the truth is irrelevant. What is seen as the truth is what matters.

Television, then is seen as an utterly one-sided Government mouthpiece and to even the brief visitor to the Valley the yawning discrepancy between Doordarshan's view from New Delhi and the ground level reality in Kashmir is evident. The Governor's New Delhi utterances that there are no shortages may convince the rest of the country. It is a little more difficult to do so in a middle class home where the children have had no milk for eight days, where the son has been foraging the slopes of the Shankaracharya hill for edible shrubs because there are no vegetables and the family has subsisted on rice and dal for the last ten days.

This in the month of Ramzan, the month of Rozas, fasting, where from dawn to dusk, some 14 hour long abstinence is offset by the evening meal of good, nourishing food, Iftar, the breaking of the fast, is usually done with dates, milk or fruit, followed by the main meal of rice and meat dishes. Poor families, for whom meat is a luxury, save during the year to be able to consume meat during Ramzan, when one is expected to offer special prayers, *taraweh*, spend well and eat well. This year, Iftar was usually observed with water and dal was the staple in practically every Kashmiri household, a deprivation experienced only in the unverbaised code of a community, bound as it is by shared strands of identity, one of them being the association of pleasure with certain kinds of food.

We define ourselves in many ways, food is one of them. Religion another. And this year in Kashmir curfew put paid to a number of Muslim festivals: Shab-i-Barat, the night God wrote

the destiny of his followers and when Muslims visit the graves of their dead ones; Mehraj-u-Nabi, when God appeared before the Prophet, which is marked by a night - long vigil in mosques where Koranic Verses are read aloud and Nauroz, a day celebrated by the community as a mark of amity and understanding.

Appendix V

In *Far Eastern Economic Review* dated 24 May 1990, under the caption "The deep chasm between Kashmiri Muslims and India", James Clad, President of Foreign Correspondents for South Asia says:

Since January, day in and day out, a terrible cycle of repression has been savaging one of South Asia's most beautiful places. New Delhi seems to hope that a measured but relentless use of force will keep the Kashmir Valley within the Indian Union. The trouble is virtually no Kashmiri Muslim any longer wishes to remain in India.

On 9 May, Security Forces reacted to several grenades thrown in the Lal Chowk Market area in Srinagar by indiscriminately firing automatic weapons. Firing continued sporadically for several hours. Visits to local hospitals showed at least eight people died in the violence. Even after the authorities relaxed the curfew later in the day, inhabitants walked past sandbagged control points with hands held high; the soldiers' rifles were trained on them.

Even on days without curfew "normality is deceptive", says a senior police officer. There is a sharp divide between outside Security Forces, numbering nearly 150,000 men, and the 17,000 local Jammu and Kashmir Police men. The two forces hate one another. Indian troops believe some Kashmiri police collaborate with the separatist groups, the largest of which is the Jammu and Kashmir Liberation Front (JKLF), originally a

secular movement of middle class students, whose appeal has spread to the less educated, rural people. Each day results in new block-by-block searches, often by regular army units in full battle dress.

At the hospitals, exhausted staff deal with traumatic injuries. Records at the city's largest hospital show 415 people entering since January 1 with bullet wounds. Kashmiri Hindus were numerous in medical and other service jobs. Most of them have left the Valley. The largest hospital has lost 40 per cent of its staff. The Valley's only gynaecological hospital operates at 20 per cent of its normal staff. "It is terrorism," said a senior surgeon speaking of the Security Forces, "They go absolutely amok."

Dr Mir Nazir Ahmed, Superintendent of the Gynaecological Hospital, described the bedlam erupting in his hospital when shooting occurred nearby on 9 May and casualties started to come in, including a peddler caught in the cross-fire. "I could see that he had started sinking. We have no surgical theatre here. I sent him in an ambulance but they — the para-military forces — would not let the vehicle through to the main hospital." Many ambulances do have bullet holes and large dents said to be caused by rifle butts.

Physicians claim that two of their colleagues, Dr Yasin Malik and Dr Salim, have in recent weeks been detained and beaten. Gul Javid Mohammad, a 70-year old retired Director of Statistics and Planning is in hospital with a chest wound. Soldiers burst into his home and rushed up the stairs. He recalled: "I opened the door and thought 'why is this man standing in front of me with a gun?' and then he shot me."

That abuses are being committed by India's array of forces is beyond question. Interviews with public servants and private citizens reveal some home truths unpalatable to India.

First, the hatred for India by Muslim Kashmiris is almost

universal. Kashmiris want freedom from India, but do not want to join Pakistan. Secondly, New Delhi's answer to such sentiments is, at present, to apply brute force against the population. This said, it is important to distinguish between the action and the type of atrocities seen, for example, in East Pakistan in 1971, or in contemporary State-sponsored terrorism in Sri Lanka.

Fervent claims that extra-judicial executions have occurred could not be substantiated during the visit by this correspondent. Governor Jagmohan stoutly denied the killings. But the former State Chief Justice Mufti Bahauddin Farooqi said that Jagmohan applied "genocide and oppression" in Kashmir. Unpopularity does not faze Jagmohan one bit, however. He frequently compares himself to "a nursing orderly, here to inject bitter but necessary medicine". He listed his accomplishment to the *Review*, compared to former Chief Minister Farooq Abdullah's administration which, he said, had ceased to function last year. Now, power, water, roads were supplied and maintained. Schools and colleges have reopened.

On 7 May he moved nearly 3,000 reluctant civil servants to Srinagar from Jammu for the summer months, a routine move in earlier years but now a major logistics challenge. The bureaucrats live in fortified barracks, are fed at a central depot and are bused to work down streets completely cleared of other traffic. Maintaining a visible state government apparatus means much to Jagmohan and to New Delhi. It has a symbolic effect. Running through interviews with Jagmohan and other Indian leaders is the theme that the State Government had virtually collapsed by last October, sending signs of weakness to the separatists and to Pakistan.

Jagmohan also said trials would soon begin of militants accused of killing various officials including the Vice-Chancellor of Kashmir University and of the alleged master-minds behind the kidnapping of the daughter of Home Minister Mufti Mohammad Sayeed.

Acting with uncommon speed, the Supreme Court of India repeatedly has stayed orders from the Srinager High Court whose latest ruling, still pending, requires Jagmohan to list all people detained after 6 April. The Governor says the court has trespassed into issues of state security, where it has no business. He says there are no more than 450-500 people in detention. He explains that the Security Forces sweep up lots of 150-200 people at a time but release all of them after a short interrogation.

"I won't say that there is no internal disgruntlement," he said. "But we cannot remove our forces from the scene because of the danger of militant attack." He denied any widespread ill-discipline by Security Forces but, in the same breath, noted that "they are under heavy stress".

He defended his regime by saying. "The local people now see functioning government." He also claimed the knock-on effect from civil servants' wages was helping the local economy, devastated by the complete disruption of tourism, Kashmir's main stay.

Elections remain the promised goal. The Governor said it would take five to six months to eliminate the militants and their associates. Only then does he see elections going ahead though "80 per cent of the people would like to come back to the electoral process."

In curfew-gripped villages west of Srinagar, this and other claims seem pretty far from reality. In Khojabagh, near Baramulla, only 10 per cent of a local primary school's students have come back to classes in May. Just as well; 20 of its 75 teachers have vanished. Villagers described nightmarish searches, wives being dragged down stairs, beatings and disappearances of relatives for up to two weeks for interrogation.

Hard though it may be, the tough government actions seem to have the JKLF and lesser groups on the back - out. The

intelligence services have made a dent into the separatist leadership. Retaliatory action against Indian forces, other than random attacks, seems rare than a few months ago. The militant leaders have gone underground. Yet, at other levels of the struggle, the partisanship of the people remains obvious; a commercial shutdown called by the JKLF on 7 May was totally successful.

Jagmohan's severe clampdown seeks more than just the temporary emasculation of a movement. It also aims to make Kashmiris realise that their political options will never include separation from India. New Delhi's severity results from the strategic and symbolic place of Kashmir in the Indian federation; it is far more than alienation of just 4 million of India's 830 million people. All of India's political parties see India's only Muslim majority state as a litmus test of India's secularism.

In this climate of palpable fear and near total alienation from India, national politicians speak of restarting the political process. Yet the government's tactics may ensure that this can never happen or, at least, that a return of the status quo ante is impossible.

Appendix VI

In *Time* dated 14 May 1990, under the caption "Sing a Song of Freedom", Edward W. Desmond says:

For the Indian soldiers and policemen in the streets, Srinagar is enemy territory. At every major crossing, they huddle around sandbag bunkers, taking shelter against the rage around them. They never know when a young man might dash up, slip back his cloak and blast away with an AK-47 rifle, to disappear seconds later in a warren of back alleys. He may kill or wound a soldier or two, and his shots will no doubt trigger a ricocheting over-reaction. The locals call it "cross-firing" angry soldiers giving chase, shooting at anything that moves, spilling their fury

- and playing into the hands of the militants' efforts to spark atrocities, which in turn generate recruits for the cause.

Given the frequency of such confrontations, it is no surprise that the troops look nervous and twitchy at their posts around a picturesque city fallen into gloom. They train their rifles or stenguns at every car approaching on empty, curfew-bound streets. They check the truck and indulge in a bit of informal interrogation. "What time does your watch say?" It should not be half an hour behind; that might mean the person joined the rebels' call to adopt Pakistan Standard Time. "Will you have a drink with us?" One should not say no, that might be a sign of Islamic fundamentalism. If one does not pass the tests, the results can be violent. An orthopaedic specialist in the city has seen 35 broken arms, several broken noses, more than 200 broken or bruised ribs - all said to have been inflicted by Indian security forces since January.

The best recruiter for the rebels, however, is the curfew. The government has imposed one for more than three months; in April it clamped down a curfew for a solid 15 days, 24 hours every day in most of the Valley. It was supposed to freeze 1.5 million town-dwelling Kashmiris in place where the Security Forces cordoned off hot spots with armored vehicles and heavily armed men, then conducted house-to-house, room-to-room, closet-to-closet searches. Though the soldiers were not widely accused of abuses — like incidents of rape and thievery alleged against para-military forces who had conducted earlier searches — they did not have a light touch. Today, if a visitor happens into a place recently combed by troops, there is an instant mob scene, with a dozen offers to see someone "beaten by the army" and complaints about the press's failure to "tell the world about our cause and suffering here."

One man, a prosperous merchant in Kashmir's craft export trade, was held at gunpoint on the lawn of his home in Srinagar while soldiers entered his house, frisked his wife — an extraordinary violation of honor in India, most of all among

Muslims — and grilled him on his political beliefs. An old copy of a foreign newsmagazine with a picture of Pakistani Prime Minister Benazir Bhutto on the cover nearly got him hauled off for interrogation, but he managed to explain it away. His neighbour was less fortunate. He was taken away because he was flying a green Islamic flag on his house; four days later, he returned, badly bruised after hours of interrogations and beatings by soldiers. Says a senior local policeman, "The army was told to teach these people a lesson."

The curfew strangles life in the Valley. When it is on, men simply sit in their houses or on street corners or in small parks, out of sight of the security men on the main roads. They cannot go to work because of the curfew, but there is no work anyway. The 300 million tourism industry of Kashmir, once touted as paradise on earth, is dead. Government offices, shops and the few industries are shuttered under the curfew. Banks are also closed most of the time, though a few, like the State Bank of India, open when the curfew lifts and long lines form outside under the watchful eye of soldiers in bunkers manning machine guns.

Markets are open only when the curfew is lifted, and - even then supplies are low owing to the disruptions of commodities — Vegetables, mutton and medicine — that come by road from the south, But people adapt. One new business in these hard times is the sale of beef. Cow slaughter was banned in the State long ago in deference to the Hindu reverence for the cow, and the majority of Muslims were content to eat mutton. But now there is no mutton, and butchers have started slaughtering cows. Asked why he was breaking the law, one butcher grumbled, "There is no government anyway."

Appendix VII

In the *Financial Times*, London dated 11 May 1990 under the caption "A Soldier came knocking at the old man's

door", David Housego says:

In a hospital room in downtown Srinagar, an old man yesterday recounted how he narrowly escaped death in one of these incidents that helps explain the bitterness that has developed against the Indian Security Forces attempting to regain control from Kashmiri separatists.

Mr Ghulam Mohammad, 70, is a retired director of statistics in the State government and thus a respected figure in the local community. On Wednesday, he heard firing in the streets close to his house in the Lal Chowk district. With his wife, he took shelter upstairs on the first floor of his house, which adjoins a mosque.

Then came the noise of the smashing of glass and wood as his window and front door were broken in. Footsteps climbed the stairs, there was a knock on the door and he opened to a soldier holding an automatic weapon.

He stepped back and saw the man pointing his gun at him. He says, "I thought to myself, what is he doing at such close range, 1.5 yards? Then that man shot me."

The bullet passed through his breast bone, close to the heart and out through his shoulder blade. His wife, Raja, 50, says she sought the help of Security Forces who were outside to get her husband to hospital.

They told her to get back, otherwise she would be shot as well. It took two hours before a member of the local police provided a vehicle.

Altogether eight bystanders were killed and 16 injured in what officials described euphemistically as Wednesday's "cross-firing" — one of the worst such incidents in recent weeks. It began when Kashmiri Moslem nationalists threw hand grenades at a security post manned by the para-military forces in the Lal

Chowk area. With curfew now lifted in the day-time, the streets were crowded.

Two other grenades were thrown nearby in what seemed a crude and amateurish attack by the Jammu and Kashmir Liberation Front.

Members of the Border Security Force panicked and opened fire indiscriminately, according to local residents. Police claim their commanders ordered them to stop but the firing continued.

In a nearby bed in the hospital, Mrs Jana Assad Khan lay with two bullet wounds in her chest. Hearing firing, she had rushed from her house to find her son, who earlier this year had a leg amputated after the bone had been smashed by a bullet in another incident. Her husband stood by sobbing.

Appendix VIII

In *Mid-Day* dated 2 May 1990 (The Guest Column), Mani Shankar Aiyar, says:

.... It is upon this Valley — and this people — that the Governor and his administration have launched a war of attrition. For there is nothing sophisticated or selective about their hunt to flush out the terrorists. Everyone in the Valley — man, woman or child, of every faith and every political persuasion — is indiscriminately the target of continuous curfews of Draconian dragnet and swingeing security operations. The administration seems animated by the quite mistaken belief that if they smother, smash and starve the Valley into submission, the people will yield up the terrorists in their midst and, exhausted by the severity of the security onslaught, return like lambs to the strait and narrow.

There is little or no food in Srinagar. Infants are going without milk. Life-saving drugs are virtually unavailable. Since December 15 — that is, for much of the last 4 months — curfew has been almost continuous, lifted only for a few brief hours early on cold, wintry mornings and reimposed before the

commencement of (the) normal working day. Inevitably, the economy has collapsed. With no one able to go out to work, manufacturing activity is at a standstill, whether it be of the exquisite crafts for which the Valley is justly renowned or in the larger factories. Shops open, only to be quickly shuttered again. The banking system has folded up. The Post Office neither despatches nor delivers letters. Telephones are on the blink. Neither cargo nor passengers can be booked. The export trade has dried up. And no tourists — the holiday-makers on whom the livelihood of lakhs of Kashmiris depends — are anywhere in sight.

The Governor does not answer, but his administration's actions speak for themselves: Yes, without Kashmiris. And, yes without too many Muslims. For, of the 6 new Directors General of police appointed, none are Muslims: of the 19 new Inspectors General of police appointed, only 2 are Muslims; none of the Deputy Commissioners in the Valley is a Kashmiri; nor are any of the heads of department in the Secretariat.

The "dismantling and rebuilding" of the administration in Kashmir is a chimera; it cannot be done, it must not even be attempted. At best, the bad may be weeded out and the general administrative ethos revamped. But because the concept of "dismantling and rebuilding" is bruited about from on high, and because it emanates primarily from the Governor himself, every Kashmiri is made to feel a second-class citizen in his own state. This never happened under Farooq — or, indeed, under any of his predecessors. It is the inevitable consequence of the BJP finding the right agent to bypass the vacuous Central Government and begin at the beginning; the building of the Hindu Rashtra from the crown of India, top down.

Appendix IX

In (the) *Financial Times*, London, dated 15 May 1990, under the caption 'Military crushes Kashmir Faith in secularism',

David Housego, inter alia, said:

India's democratic traditions have suffered the damage that comes from using force to cow a segment of its own people — an operation that at the same time brings the armed forces into disrepute.

Secularism — the belief that different creeds can live together and which has been the cornerstone of India's identity as a nation — has been lost from sight with the departure of (the) Hindu minority who dominated hospitals, education, banks, insurance and the distribution of pharmaceuticals. Kashmiri Moslems increasingly feel that their religion itself has become an offence.

Industry has come to a halt. In what is normally the height of the tourist season — with the snow-lined ridges and intense green of the Valley drawing Indians in their millions up from the suffocating heat of the plains — the hotels and houseboats are empty. The endless rows of handicraft shops remain closed.

The traumatised face of Babbo Imtiaz Ahmad, 19, a young man of almost film-star looks with a great hock of black hair, recounts how, during interrogation by para-military forces, he was suspended from a rotating ceiling fan.

In a backyard in the Khwaja Bazar district of old Srinagar, he displayed four cigarette burns on his arms and legs and deep bruising on his back from being trodden on.

The painful stammer of a 50-year old villager, Ghulam Mahdadar, released after 18 days of interrogation, told at his village of Fatehpur, near Baramulla, how he had been hung from a tree and beaten with clubs. In the same crowded room others showed the marks of chains on their legs.

At the Id Gah in Srinagar — the open field where

Moslems celebrate the Eid festival — on one side a rough martyr's grave has been dug for militants and others who have recently been killed. A young man shouts in a characteristic mixture of bravado and desperation. "Everyone here is prepared to die. We have only two choices — to die or be liberated."

An old man sobs in Court Lane in Srinagar. He lost his two sons in cross-fire the day before.

Among the most distraught are the doctors. At the SMHS Hospital, doctors say that most of the wounded brought in have had to be treated for head, neck and chest injuries — suggesting that the para-military forces have fired high.

At the Lalla Ded maternity hospital — the largest in Kashmir — Dr Mir Nazir Ahmad, the Chief Medical Superintendent, describes the last five months as a nightmare. He says that he has had to manage with only 20 per cent of his skilled staff. "Most of the staff is Hindu," he said. "They have left, packed up and gone without even telling me."

Medicines have been in short supply, blood banks have run out of stock because of the continuing curfew and most of the complicated cases have been referred to the hospital because of the loss of staff at smaller clinics.

Appendix X

In a special report, appearing in a national journal *Sunday* (25-31 March 1990) it has been inter alia said:

At the Sher-e-Kashmir Medical Institute in Srinagar's Soura area, a mob gathers mysteriously despite the curfew. A human rights team has come to the Valley to prepare a report. Feeling let down by an unsympathetic administration, the people are willing to talk to anybody who will listen.

The Institute's doctors are disgusted and upset that there

has been no attempt yet to establish the number of people dead or wounded in the incidents that have tainted two months of Jagmohan's rule. One the weekend 20-21 January, the doctors estimate that at least 450 injured were brought to the hospital. The canteen tables were turned into makeshift beds and the mobs outside forced the doctors to carry patients into the hospital from the road. "That day I wept in the theatre," recalls, Dr Rashid Chak, a young neuro-surgeon. Dr Zahoor Fazili adds that 70-80 per cent of the injuries were head wounds. "They aimed to kill," he alleges. There were at least 30 deaths in the hospital that night.

The 1 March incident, which official reports describe as a shootout by unknown persons on a busload of army children, was also "a total massacre". "This story seems improbable because all schools are closed," points out a doctor. Before they knew it, the hospital's wards were overflowing with patients. Some of them are still at the hospital, a mute testimony to the events that have come to be referred to as 'Jallianwalla Bagh'. Abdul Rahman, a 19-year-old labourer, has a gaping hole where his left eye once was. Twenty-year-old Abdur Rahim Lone jumped off a bus that was being fired at and will be in hospital for many more weeks. Mohammad Yusuf, a farmer from Bijbehara, was hit on the head with the butt of a gun.

Heart-rending scenes abound in the hospital. Mohammed Ismail Butt from Bandipora was knocked down by a passing military truck and spent 20 days at Soura. Ishrat, a nine-year old boy, was shot in the groin; he is lucky to be able to limp around. "We will make a militant of him before we discharge him," declares the rosy-checked nurse, half seriously, No government official has cared to record the number of dead or injured, let alone visit the hospitals, complain the patients.

In the new, squalid suburb of Channpora, there is a strange hush — a lull after the crying and breast-beating that the whole Valley is reverberating with. On 8 March, International Women's Day, a truck load of CRPF personnel descended upon a

group of huts, looted all the money they could lay their hands on, smashed television and radio sets and raped at least eight women. "It is absolutely bogus," denies Jagmohan's adviser J.A. Qureshi, as he plots his next move to contain the "mischief-mongers", as he calls the militants. He brushes aside evidence of a video cassette taken hours after the assault, which records the women's horrific experiences.

Most of the women have fled the area. Many of the men and their families were injured in the attack, which lasted three hours, from 8.30 to 11.30 a.m. One girl, Amina, has filed a first information report; the others did not dare. The incident went largely unreported in the press, but the incredible network of the Masjid loudspeakers spread the sorry word. "Let the government condemn Channpora and institute an inquiry into the incident if they mean justice," says a young teacher in Jawahar Nagar. "There may be one soldier to 40 of us, but you have put him here not to protect us, but to kill us. Shame."

Appendix XI

In *Patriot* dated 2 March 1990 under the caption "Kashmir: a time for treason", Baljit Malik has, inter alia, said:

But, right now, it is not Amritsar that is being consumed by flames. At least not any more than has become normal for it. Right now it is Kashmir that is burning. It is Kashmiris who are being battered and massacred by the Security Forces. Do we have any tears for the Kashmiris? Or are, our tears reserved for those with stakes in perpetuating Indo-Pakistan enmity?

Appendix XII

In a press-clipping in 'the daily *Al-Saif*' dated 30 May 1990 from a national daily under the caption "Jagmohan choice was wrong: Rajiv", Shree Rajiv Gandhi, President of Congress (I) has said:

Congress (I) President Rajiv Gandhi has, in a communication to President R. Venkataraman, described as "scandalous" that the Prime Minister should have selected a person of such "rabid communalist opinion" as Mr Jagmohan to hold the office of Governor of a crucial State at such a sensitive time.

In a telegram to Mr Venkataraman he has said that the responsibility "for this disaster rests squarely with Mr V.P. Singh".

Mr Gandhi has brought to his notice an interview which Mr. Jagmohan is purported to have given to a weekly news magazine in which he is alleged to have condemned "every Muslim in Kashmir" as a "militant" and accused all of them as wanting secession from India. According to the interview, he has further accused the Muslims of having adopted an approach of killing of every Hindu in the Valley and in revenge, threatened to eliminate them first. Communalism permeated every word the Governor had uttered, Mr Gandhi has complained.

Mr Gandhi further stated in his letter that Mr Jagmohan had described the Hindus as more intelligent and capable than the Muslims and revealed the condition of his mind in declaring that he did not think even economic and academic opportunities on a par with the Hindus would bring the Muslims up to the Hindu level.

Accusing Prime Minister V.P. Singh of selecting Mr Jagmohan for the gubernatorial post, he said it was scandalous that he should have selected a man of such rabid communalist opinions to hold such high office in such a crucial State at such a sensitive time. The appointment was made despite the vociferous protests of the elected Chief Minister of Jammu and Kashmir. The Prime Minister had also backed the Governor's strategy of alienating the people of Kashmir, acquiesced in the dismissal of the democratically constituted State Assembly and brought about an unprecedented deterioration in the condition of the Valley.

Mr Gandhi has also said that it is Mr V.P. Singh's politics of managing contradictions; that is temporising, compromising and accommodating with every variety of communalism — majority or minority — that has brought us to this terrible pass.

He has further said that the responsibility for this disaster rested with Mr Singh. The Governor was only carrying out the policies of the Government. It was not enough that Mr Jagmohan be dismissed forthwith. It was indispensable that the Prime Minister be called to account for foisting such a Governor on the helpless people of Kashmir, unleashing unprecedented violence on the Valley, destroying its communal harmony, besmirching the fair name of India in the world and dragging us to the brink of a war.

Appendix XIII

In the course of (a) discussion about Shree Jagmohan's role in Kashmir, Mr Guardas Das Gupta, M.P., while opposing BJP' members attempt to defend Shree Jagmohan, remarked:

"I am ashamed that the member is holding (a) brief for such a person who is a 'maneater'."

Tribune, 29 May 1990

Appendix XIV

In a memorandum submitted by the doctors of the Medical Institute, Soura, Srinagar to the Governor, they inter-alia, complained:

The Institute has been subjected to a number of siege and search operations by the security forces on the following dates: Sunday, 8 April 1990, Tuesday, 10 April 1990, Sunday, 15 April 1990

The Security Forces comprising regular army, BSF, CRPF, JKAP and other commando groups raided the Institute in large numbers and carried out massive siege and search operations. These lasted from a few to about 14 hours on different occasions. During these raids the wards, operation theatres, medical and surgical intensive care units, emergency, private ward block (under construction), doctors' offices, library, blood bank, laboratories, basement area comprising central stores, pharmacy, photography unit, purchase section, kitchen, boiler house, laundry and linen services and the residential quarters of the doctors, nurses, para-medical staff were thoroughly searched. During this operation, the Security Forces harassed a number of doctors, nurses, other para-medical staff, patients and their attendants, who were subjected to unpleasant questioning.

It is with pain that we record the following facts of maltreatment of patients by the Security Forces:

- a) The patients suffering from dreaded diseases like cancer with severe and intractable pain (Mrs Sheikh Parveena, 45 years female, MRD 67719 and Mrs Lone Zeba, 60 years female, MRD 67628) were rolled over and over in their beds. This considerably increased their pain and difficulty. Masks worn by many of them to prevent life-threatening infection were removed.
- b) The unpleasant behaviour of the security forces caused exacerbation of chest pain in a few patients (Mr Bazaz Abdul Ahad, 70 years male MRD 68276) suffering from heart ailments in the cardiac intensive care unit and ward.
- c) A patient suffering from a kind of blood cancer (polycythaemia rubra vera), with thrombotic vascular disease leading to gangrene of his right toes was severely harassed. His gangrenous toes were taken as frost bite by (the) Security Force's

doctor. He was accused to (sic) have sustained the "frost bite" at the border. This patient (Mr Ghulam Mohammad, 25 years, male, MRD 67945) has been attending this hospital for the last five years regularly.

- d) A young patient (Mr Abdul Rahim 35 Years., male, MRD 68381) suffering from a completely treatable disease — liver abscess with metabolic acidosis and hypotension — was on a life-saving intravenous (i/v) line to maintain his vital functions. In the process of his thorough search the Security Forces lolled him over and over causing the disconnection of his vital i/v line. The doctor on duty was prevented by security forces to restart the i/v line for about 45 minutes as he was being interrogated regarding another patient discharged from the same ward 24 hours before. Repeated requests by the said doctor fell on deaf ears. As a result the patient, deprived of the life support, bade farewell to this world due to an irreversible cardiac arrest.

These operations produced a show of heavily armed personnel in the Institute campus which is unprecedented in the functioning of hospitals.

In addition, the faculty of the Institute feel deeply concerned about the constant imposition of curfew since January 1990, particularly its repercussions on the patients with various life-threatening illness. It is inferred that these patients must have faced (a) serious outcome without reaching the hospital. The hospitals cannot run their routine surgical operations for patients with treatable diseases and those with cancer. The drugs, particularly the life-saving drugs, are also in short supply in the market causing adverse effects on patient care.

Appendix XV

Part I gave the title and the definition clause. By section 2(1) "Constitution of India" was defined as meaning "the Constitution of India as applicable to this State".

Part II defined the relationship of the State with the Union of India. By section 5, it was provided:

"The executive and legislative power of the State extends to all matters except those with respect to which parliament has power to make laws for the State under the provisions of the Constitution of India."

Part III laid down the definition of the expression 'Permanent Resident' at the Commencement of the Constitution and provided for the power of the State Legislature to lay down the norms for the acquisition thereof in future.

Part IV made provisions as regard the directive principles of State Policy.

Part V provided for the composition of 'Executive'. Sections 26, 27, 28, 29, 30, 32 & 33 provided as follows:

S. 26 (1) The Head of the State shall be designated as the Sadar-i-Riyasat.

(2) The executive power of the State shall be vested in the Sadar-i-Riyasat and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this section shall —

(a) be deemed to transfer to the Sadar-i-Riyasat

any functions conferred by any existing law on any other authority; or

(b) prevent the State Legislature from conferring by law functions on any authority subordinate to the Sadar-i-Riyasat

S. 27 The Sadar-i-Riyasat shall be the person who for the time being is recognised by the President as such:

Provided that no person shall be so recognised unless he —

(a) is a permanent resident of the State;

(b) is not less than twenty-five years of age; and

(c) has been elected as Sadar-i-Riyasat by a majority or the total membership of the Legislative Assembly in the manner set out in the First Schedule.

S. 28 (1) The Sadar-i-Riyasat shall hold office during the pleasure of the President.

(2) The Sadar-i-Riyasat may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this section, the Sadar-i-Riyasat shall hold office for a term of five years from the date on which he enters upon his office:

Provided that he shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

S. 29 A person who holds or has held office as Sadar-

i-Riyasat shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

- S. 30 (1) The Sadar-i-Riyasat shall not be a member of either House of Legislature and if a member of either House be elected and recognised as Sadar-i-Riyasat he shall be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-i-Riyasat.
- (2) The Sadar-i-Riyasat shall not hold any other office of profit.
- (3) The Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as are specified in the Second Schedule.
- (4) The emoluments and allowances of the Sadar-i-Riyasat shall not be diminished during his term of office.
- S. 32 The Sadar-i-Riyasat may be removed from his office by the President if an address by the Legislative Assembly supported by a majority of not less than two-thirds of its total membership is presented to the President praying for such removal on the ground of violation of the Constitution.
- S. 33 When a vacancy occurs in the Office of the Sadar-i-Riyasat by reason of his death, resignation or removal or when the Sadar-i-Riyasat is unable to discharge his functions owing to absence, illness or any other cause, the functions of the office shall, until the assumption of office by a newly elected Sadar-i-Riyasat or the resumption of duties by the Sadar-i-Riyasat,

as the case may be, discharged by such person as the President may, on the advice of the Council of Ministers of the State, recognise as the acting Sadar-i-Riyasat.

By section 35, 36 it was provided as follows:

Section 35 (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the Sadar-i-Riyasat in the exercise of his functions.

(2) All functions of the Sadar-i-Riyasat except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.

(3) The question whether any and if so what, advice was tendered by Ministers to the Sadar-i-Riyasat shall not be inquired into in any court.

Part VI provided for the composition of State Legislature. Sections 46, 47 & 49 provided as follows:

Section 46 There shall be legislature for the State which shall consist of the Sadar-i-Riyasat and two Houses to be known respectively as the Legislative Assembly and the Legislative Council.

Section 47 (1) The Legislative Assembly shall consist of one hundred members chosen by direct election from territorial constituencies in the State:

Provided that the Sadar-i-Riyasat may, if he is of the opinion that women are not adequately represented in the Assembly, nominate to more than two women to be members thereof.

(2) For the purposes of sub-section (1), the State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of each constituency and the number of seats allotted to it shall, as far as possible, be the same throughout the State.

Explanation: In this sub-section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each Census, the number, extent and boundaries of the territorial constituencies be readjusted by such authority and in such manner as the Legislature may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly.

S. 49

(1) There shall be reserved in the Legislative Assembly for the scheduled Cases in the State a number of seats which shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes bears to the population of the State.

Explanation:- In this sub-section —

- (a) "population" has the same meanings in sub-section (2) of section 47; and
- (b) "Scheduled Castes" means the castes, races

or tribes or part of, or groups within, castes, races or tribes which are for the purposes of the Constitution of India deemed to be Scheduled Castes in relation to the State under the provisions of Article 34 of that Constitution.

(2) The provisions of sub-section (1) shall cease to have effect on the expiration of a period of five years from the commencement of this Constitution:

Provided that such cession shall not affect any representation in the Legislative Assembly until dissolution of the then existing Assembly.

Section 91 provided for the Legislative power of the Sadar-i-Riyasat and said:

- (1) If at any time, except when both Houses of the Legislature are in session, the Sadar-i-Riyasat is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear him to require.

Provided that the power of making an Ordinance under this section shall extend only to those matters with respect to which the Legislature has power to make laws.

- (2) An Ordinance promulgated under this Section shall have the same force and effect as an Act of the Legislature assented to by the Sadar-i-Riyasat, but every such Ordinance —
- (a) Shall be laid before both the Houses of the Legislature, and shall cease to operate at the

expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, upon the resolution being agreed to by the Legislative Council, and

- (b) may be withdrawn at any time by the Sadar-i-Riyasat.

Explanation: Where the Houses of the Legislature are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Section 92 provided for (the) breakdown of the Constitutional machinery and said:

- (1) If at any time the Sadar-i-Riyasat is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the Sadar-i-Riyasat may by Proclamation —
- (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or any authority in the State;
- (b) make such incidental and consequential provision as appear to the Sadar-i-Riyasat to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to anybody or authority

in the State:

Provided that nothing in this Section shall authorise the Sadar-i-Riyasat to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

- (2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- (3) Any such Proclamation whether varied under sub-section (2) or not, shall, except where it is a Proclamation revoking a Previous Proclamation, cease to operate on the expiration of six months from the date on which it was first issued.
- (4) If the Sadar-i-Riyasat by a Proclamation under this section assumes to himself any of the powers of the Legislature to make laws, any law made by him in the exercise of that powers of the Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any acts of or laws made by the Legislature shall be construed as including a reference to such law.
- (5) No Proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

- (6) Every Proclamation under this section shall, except where it is a Proclamation revoking a previous Proclamation, be laid before each house of the Legislature as soon as it is convened.

Part VII provided for the Judicial set-up of the State.

Sections 93, 95, 98, 103, 109 and 111 provided as follows:

S. 93 (1) There shall be a High Court for the State, consisting of a Chief Justice and two or more other Judges.

- (2) The High Court exercising jurisdiction in relation to the State immediately before the commencement of this Constitution shall be the High Court for the State.

S. 95. Every Judge of the High Court shall be appointed by the President under his hand and seal after consultation with the Chief Justice of India, the Sadar-i-Riyasat, and in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office until he attains the age of sixty years.

S. 98. (1) There shall be paid to the Judges of the High Court such salaries as are specified in the Fourth Schedule.

- (2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by the Legislature, and until so determined, to such allowances and rights as are specified in the

Fourth Schedule.

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence of pension shall be varied to his disadvantage after his appointment.

- S. 103 The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purpose other than those mentioned in Clause (2A) of Article 32 of the Constitution of India.
- S. 109 (1) Appointment of persons to be, and the posting and promotion of, district judges in the States shall be made by the Sadar-i-Riyasat in consultation with the High Court.
- (2) A person not already in the service of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or pleader and is recommended by the High Court for appointment.
- S. 111. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of State and holding any post inferior to the post of district judge shall be vested in the High Court; but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as

authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Part VIII provided for matters concerning Finance, Property and Contracts.

Part IX governed matters concerning the Public Services including the Public Service Commission

Part X made provisions regarding Elections.

Sections 138, 140 and 141 provide as follows:

- S. 138 (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, the elections held under Part VI shall be vested in an Election Commissioner to be appointed by the Sadar-i-Riyasat.
- (2) The Sadar-i-Riyasat, for such period as he may deem necessary, appoint one or more Deputy Election Commissioners to assist the Election Commissioner in the performance of the functions conferred by sub-section (1).
- (3) Subjects to the provisions of any laws made by the Legislature, the conditions of service of the Election Commissioner and Deputy Election Commissioner shall be such as the Sadar-i-Riyasat may by order specify.
- (4) The Sadar-i-Riyasat may make available to the Election Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commissioner by sub-section (1).

S. 140. The elections to the Legislative Assembly shall

be on the basis of adult suffrage; that is to say, every persons who is a permanent resident of the State and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified under this Constitution or any law made by the Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitle to be registered as a voter at any such election.

- S. 141 Subject to the provisions of this Constitution, the Legislature may from time to time by law make provision with respect to all matters relating to, or in connection with elections to either House of the Legislature, including the preparation of electoral rolls, the delimitation of constituencies, appointment of election tribunals and all other matters necessary for securing the due constitution of the two House.

Part XI incorporated 'Miscellaneous Provisions'

Part XII provided for Amendment of the Constitution.

By Section 147, it was provided as follows:

An amendment of this Constitution may by initiated only by the introduction of a Bill for the purpose in the Legislative Assembly, and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by it by a majority of not less than two-thirds of the members of the Assembly present and voting:

Provided further that no Bill or amendment seeking to make any change in —

- (a) this section; or
- (b) the provisions of sections 3 & 5; or
- (c) the provisions of the Constitution of India as applicable in relation to the State;

shall be introduced or moved in either House of the Legislature.

Part XIII covered the Transitional Provisions.

By section 158, it was provided as follows:

Unless the context otherwise requires, the General Clauses Act, S. 1977, shall apply for the interpretation of an Act of the State Legislature.

The First Schedule regulating the Procedure for election of Sadar-i-Riyasat provided as follows:-

1. When election to the office of the Sadar-i-Riyasat becomes necessary, the Speaker of the Legislative Assembly shall fix (a) time and date for the holding of the election and shall cause a notice thereof to be sent to every member.
2. At any time before noon on the date preceding the date so fixed, any member of the Legislative

Assembly may nominate another person for election by delivering to the Speaker or any officer authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the annexure to this Schedule signed by himself as proposer and by another member as seconder.

3. Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at any time before the Assembly proceeds to hold the election.

4. At the time fixed for election under para 1, the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominated and have not withdrawn their candidature together with those of their proposers and seconders, and, if there is only one such candidate, shall declare him to be duly elected. If there is more than one such candidate the Assembly shall proceed to elect the Sadar-i-Riyasat by ballot.

5. Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the Speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

6. Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than (the) aggregate (the) candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining

the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

7. Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under para 6, the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the Speaker or in his absence of the person presiding.

8. The Prime Minister of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognised as the Sadar-i-Riyasat.