

Delhi Agreement, 1952

The main features of this agreement are:—

- (i) in view of the uniform and consistent stand taken up by the Jammu and Kashmir Constituent Assembly that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all states other than Jammu and Kashmir, in the case of the latter they vested in the State itself;
- (ii) it was agreed between the two Governments that in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the 'State subjects' in view of the 'State Subject Notifications of 1927 and 1932' (Notification No. 1-L/84, dated 20th April, 1927 read with State Notification No. 13/L, dated 27th June, 1932): the State Legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of the communal disturbances of 1947, in the event of their return to Kashmir;
- (iii) as the President of India commands the same respect in the State as he does in the other Units of India, Articles 52 to 62 of the Constitution relating to him should be applicable to the State. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc., would also vest in the President of India;
- (iv) the Union Government agreed that the State should have its own flag in addition to the Union flag, but it was agreed by the State Government that the State Flag would not be a rival of the Union flag; it was also recognised that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons connected with the freedom struggle in the State, the need for continuance of the State flag was recognised;
- (v) there was complete agreement with regard to the position of the Sadar-i-Riyasat; though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before his installation as such; in other Indian States the Head of the State was appointed by the President and was as such his nominee but the person to be appointed as the Head, had to be a person acceptable to the Government of that State; no person who is not acceptable to the State Government can be thrust on the State as the Head. The difference in the case of Kashmir lies only in the fact that

Sadar-i-Riyasat will in the first place be elected by the State Legislature itself instead of being a nominee of the Government and the President of India. With regard to the powers and functions of the Sadar-i-Riyasat the following argument was mutually agreed upon:

- (a) the Head of the State shall be a person recognised by the President of the Union on the recommendations of the Legislature of the State;
 - (b) he shall hold office during the pleasure of the President;
 - (c) he may, by writing under his hand addressed to the President, resign his office;
 - (d) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office;
 - (e) provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office”;
- (vi) with regard to the fundamental rights, some basic principles agreed between the parties were enunciated; it was accepted that the people of the State were to have fundamental rights. But in view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State, the question which remained to be determined was whether the chapter on fundamental rights should form a part of the State Constitution or of the Constitution of India as applicable to the State;
- (vii) with regard to the jurisdiction of the Supreme Court of India, it was accepted that for the time being, owing to the existence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction;
- (viii) there was a great deal of discussion with regard to the "Emergency Powers"; the Government of India insisted on the application of Article 352, empowering the President to proclaim a general emergency in the State; the State Government argued that in exercise of its powers over defence (Item I on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the State delegation was, however, averse to the President exercising the power to proclaim a general emergency on account of internal disturbance.
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