

PREFACE TO THE FIRST EDITION

A Constitution is the fundamental law of the nation, the express embodiment of the doctrine which governs the country and from which all public authorities derive their powers. It is the mechanism under which the laws are made for the governance of the subjects. A Constitution of a country is a living and organic thing which of all the documents has the greatest acclaim and regard. It is a document having a special legal sanctity. It is a command of the people to the rulers for regulating the socio-political and economic setup reflecting the history of the people who are its maker's and ultimate beneficiaries. It must necessarily be a vehicle of the life of the nation. A Constitution is not an end in itself, rather a means for ordering and disciplining the life of a nation.

Despite being a part of India, that is Bharat, being one of the twenty-eight States, the State of Jammu and Kashmir is the only State which has a separate Constitution. What was the necessity of a separate Constitution after its accession to the dominion of India and adoption of the Constitution of India on 26th of January, 1950?; is a question lurking in the minds of millions in the country and abroad. To find out the truth persuaded me to make deeper study of the matter which has resulted in the compilation of this book for the benefit of all concerned. The Constitution of Jammu and Kashmir has born from the womb of history and nourished by the internal and external situations keeping in mind, the special position it enjoyed geographically and historically. It appears to have been enacted to fulfill the international commitments, the Security Council Resolutions, Instrument of Accessions, various agreements executed between the State Government and the Central Government, solemn promises made to the people of the State to seek and implement their views regarding accession and to give effect to Article 370 of the Constitution of India which had mentioned and referred to the Constituent Assembly of the State for regulating the Constitutional relationship between the Union and the State. It has served the purpose of clothing the existing constitutional relationship of the State with the Union of India.

To understand the necessity and requirement of a separate Constitution of the State references have been made to the geographical location, the circumstances under which the modern State of Jammu and Kashmir emerged, the tyrannical and suppressive rule of the Maharajas in the State which resulted in the exploitation and suppression of the poor citizens, the urge for a separate Constitution to establish the rule of law, the recommendations of the Glancy Commission, the State Constitutions of 1934 and 1939, the Freedom Movement in the State and its effect on the history, the Quit-Kashmir Movement and adoption of Naya Kashmir, the resolve to abolish the dynastic rule, the circumstances under which the State acceded to the Dominion of India and the convening of the Constituent Assembly for the aforesaid purpose.

As the State Constitution is the child and bye-product of the Federal Constitution, special care has been taken while dealing with the subject of State's relationship with the Union of India, extent of Executive and Legislative powers of the State, the status and rights of the permanent residents of the State, the conferment of fundamental rights upon such residents, the Directive Principles of the State policy mandating the State to establish a socialist order of society for promotion of welfare of the people and to give effect to Naya Kashmir, the economic and political manifesto

of National Conference which fought for the abolition of monarchical rule in the State and establishment of a Peoples Democratic Setup.

It is for the first time that a detailed commentary on all the Sections of the State Constitution with particular reference to the corresponding provisions in the Federal Constitution has been scribed. Up-to-date relevant judgments of the Supreme Court of India, High Courts of the Country, particularly of the State High Court have been referred and relied to support the views expressed. Effort has been made to incorporate the latest law settled by the Constitutional Courts. All Amendments made in the State Constitution and the Presidential Constitutional Orders issued under Article 370 of the Constitution of India have been added.

Important documents relevant for the purposes of the State and its Constitution have been annexed for the convenience and the record of the readers. The interim Constitution of PAK Administered area of Kashmir is also being published for comparative study of the Constitutions, on both sides of the line of control.

To accomplish this task I was inspired, persuaded, encouraged and guided by my elder brother Com. K. D. Sethi who has been a beacons light in my life and was himself an architect of the Constitution being a member of the Constituent Assembly. Useful colloquy with late former Chief Minister Mr. Mir Qasim (Former Chief Minister) who was also the Secretary of the Drafting Committee of the Constitution helped me in getting the right track. Justice A. S. Anand's usual generosity of permitting me to quote him from his book, "The Constitution of Jammu and Kashmir—Its Development and Comments" added to my knowledge. Useful discussions which I had with M/s. A. R. Rather, Leader of Opposition in J&K Assembly, Sardar Teja Singh, Member/ Convenor of State Autonomy Committee, Mr. Balraj Puri, Political activist and writer particularly on J&K Affairs, crystallized my views on various subjects which I have dealt with in this compilation.

I am grateful to Hon'ble Justice Sh. R.C. Lahoti, the Chief Justice of India for sparing some moments from his precious time to write a foreword to this book.

I also acknowledge with thanks the help and assistance rendered to me by Mr. M.Y. Teng (Former Director Information and Secretary J&K Cultural Academy, MLC), Mr. Iqbal Ganai, Secretary of the Legislative Assembly, Ms. Shalini Chuni and Ms. Ekta Bhan in the accomplishment of the task in writing of this book.

In compiling this book a long and cherished desire of mine has been fulfilled and I wish that this work may also serve the cause of the legal profession, the general public, academicians and all those interested in the subject.

All Income from the sale proceeds of this book shall be dedicated to a charitable trust.

May, 2005

Justice R.P. SETHI