PETITIONER:
H. H. MAHARAJADHIRAJA MADHAV RAO JIWAJI RAOSCINDIA BAHADUR

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
15/12/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HIDAYATULLAH, M. (CJ)
SIKRI, S.M.
SHELAT, J.M.
BHARGAVA, VISHISHTHA
MITTER, G.K.
VAIDYIALINGAM, C.A.
HEGDE, K.S.
GROVER, A.N.
RAY, A.N.
DUA, I.D.

CITATION:
1971 AIR 530 1971 SCR (3) 9
1971 SCC (1) 85
CITATOR INFO :

R	1972 SC 202	(7)
RF	1973 SC1461	(186,700,703,1100,1609,2152,21
RF	1975 SC2299	(275,637)
E	1976 SC1207	(46,546)
D	1977 SC1361	(192)
R	1978 SC 803	(30,34)
R	1981 SC1284	(1)
RF	1982 SC 710	(25)
RF	1986 SC1126	(47)
D	1987 SC 522	(51)
R	1987 SC1010	(71)
RF	1989 SC1534	(11)

ACT:
Constitution of India, 1950-Article 366(22)-Scope of-Recognition of Rulers by President-Order by President "derecognising" all Rulers--Validity of order-Power, if political-If exercise of paramountcy rights.
Constitution of India 1950-Article 291-Article if creates an obligation to pay Privy Purse-Repudiation of obligation if act of State--"Charged on .... the Consolidated Fund of India", meaning of-Article if a provision relating to" covenant within the meaning of Article 363.
Constitution of India, 1950-Article 363-Exclusion of jurisdiction of Courts-Scope of exclusionary clauses-Determining the meaning of articles 366(22), 291, 362 and 363, if within bar of Article 363-"Dispute arising out of provision of the Constitution relating to covenant", meaning Artic le if "recreation" of paramountcy.
Constitution of India, 1950-Article 362-If a provision "relating to" Covenent etc. within the meaning of Article 363.
Constitution of India, 1950-Articles 19(1)(f) and 31 and Article 32-Order of President under Article 366(22)--Order

of President under Article 366(22) "derecognising" Rulers-Repudiation of liability to pay Privy Purse and denial of rights and privileges-If violation of fundamental rights-Maintainability of petition-Privy Purse-If property.

HEADNOTE:

On the promulgation of the Indian Independence Act, 1947, the Princely States adjoining the Dominion of India merged with the Dominion of India. The instruments of merger provided for_the integration of the States and guaranteed to the Rulers the Privy Purse, succession according to law and custom to the gaddi of the State and personal rights, privileges, dignities and titles. These instruments were concurred in and guaranteed by the Dominion of India. Later, the States integrated with the Union of India under the Constitution of India, 1950, the Rulers abandoning all authority in regard to their territories. Special provisions were enacted in the Constitution regarding Privy Purses and the rights and privileges of the erstwhile Rulers. By article 291, the sum-, guaranteed by the Dominion of India to any Ruler as Privy Purse under any covenant or agreement was to be charged on and paid out of the Consolidated Fund of India and the. sums so paid were to be exempt from all taxes on income. By article 362 the Parliament, the State Legislatures and the executive of the Union and the States were enjoined to have due regard to the guarantees and assurances under the covenants and agreements between the Governments of the Dominion of India and the heads of the former Indian States. Also, provisions were made in various statutes conferring on the "Rulers" certain privileges and benefits. By Art. 366(22) a "Ruler" was defined to mean the prince, chief or other person by whom covenant and agreements. were entered into and who "for the time being" was recognised by the President as the Ruler and included any person who "for the time being"

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was recognised by the President as the successor of such Ruler. Article 363 excluded the jurisdiction of the Supreme Court and all other courts "in respect of any dispute arising out of any provision of a treaty, agreement, covenant etc." or in any dispute "in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty, agreement, covenant" etc.

On September 2, 1970, a Bill intituled the Constitution (Twenty Fourth Amendment) Bill 1970, and providing that "Articles 291 and 362 of the Constitution and clause (22) of article 366 shall be omitted" was introduced in the Lok Sabha. The Bill was declared passed. On September 5, 1970, the motion for consideration of the Bill did not obtain in the Rajya Sabha the requisite majority of not less than two-thirds of the members present and voting as required by Art. 368 of the Constitution. The motion for introduction of the Bill was declared lost. A few hours thereafter the President of India, purporting to exercise power under cl. (22) of Art. 366 of the Constitution signed an instrument withdrawing recognition of all the Rulers. A communication to the effect was sent to all Rulers in India who had been previously recognised under art. 366(22) of the Constitution.

The petitioners moved this Court under Art. 32 of the Constitution challenging the order of the President "derecognising" them as unconstitutional, ultra vires and

void. They contended that the President had no power to withdraw recognition of Ruler once recognised; that assuming the President had such power, exercise of the power was coupled with duty to recognise his successor; that the order of the President "derecognsing" all the Rulers en masse amounted to arbitrary exercise of power for a collateral purpose; that the Order violated the constitutional mandates in articles 291 and 362; that article 291 created an obligation in the Union of India to pay the Privy Purse and Privy Purse was property; and that the Order being one without authority of law infringed the guarantee of the fundamental rights under Arts. 19(1)(f), 21 and 31 of the Constitution. The Union of India contended, inter alia, that the petition was not maintainable, because, the source of the right to receive the Privy Purse and to be accorded the privileges claimed was a political agreement and the privy purse was in the nature of a political pension; that in recognising or derecognising a ruler the President exercised a political power which was a sovereign power and that the rights and obligations were liable to by varied or repudiated in accordance with "State policy"; that the jurisdiction of the Courts to enforce rights and obligations arising out of the covenant was excluded, because, the rights and obligations arose out of act of state; that the concept of paramountly of the British Crown was inherited by the Union of India and therefore recognition of Rulership was a "gift of the President"; and further that the petitioners stood excluded by article 363, for, they were seeking either to enforce the covenants and agreements or were seeking to enforce the provisions of the Constitution "relating to" such covenants.

HELD: Per Hidayatullah, C.J. Shah, Vaidialingam, Hedge, Grover and Dua, JJ. (Mitter and Ray, JJ. dissenting).

The Order of the President "derecognising" the Rulers is ultra vires and illegal. [69 G; 100 C]

(Per Hidayatullah, C.J. (1) The action of the President withdrawing recognition of all Rulers is ultra vires article 366(22) and a nullity. Article 366(22) neither expressly nor by implication places the power in the hands of the President to say that although a Ruler is in existence or

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a successor is available there shall be no ruler of any particular state. The definition contemplates the existence of the Ruler "for the time being". The phrase "for the time being" cannot mean that any person can be appointed who has no claim whatever or that temporary appointments may be made or that no appointment need be made. The continuity of a Ruler of an Indian State is obligatory so long as the Ruler is alive or a successor can be found. The obligation to recognise a Ruler is bound up with the other guarantees contained in articles 291 and 362 and the definition in article 366(22) is merely the key to find a particular Ruler. The withdrawal of recognition from all the Rulers renders the guarantees, as also the relevant articles of the Constitution, inoperative. [58 A-H]

(ii) The right to recognise a ruler, from out of several claimants, is not an act of paramountcy. The selection has to be in accordance with law and custom. The Constitution gave the right to the President to recognise a Ruler for the time being; but it cannot be stretched to give a paramountly of the same character as that enjoyed by the British Crown. To claim such a paramountcy one has to, ignore completely the arrangements by which the Rulers parted with their territories and ruling rights and were assured of their privy purses and privileges. The rights became consti-

tutionally protected rights which so long as the Ruler's line was not extinct belonged to the Ruler "for the time being. In short, when the guarantees were given by the Constitution, paramountcy if any, went out. Article 362 is the converse of paramountcy inasmuch as it compels the two limbs of government to have "due regard"' to the guarantees and assurances given to the Rulers. Nor can article 363 be said to "recreate" paramountcy. That article was intended to keep certain matters outside the jurisdiction of the courts. The Rulers are citizens of India and the President or the Government of India cannot invoke the doctrine of paramountcy to sustain an illegal inroad upon the rights of citizens. [51 H-52 B]

(iii) The argument based on act of state is not of any more validity. An 'Act of State' is not available against a citizen. It is a sovereign act which is neither grounded in law nor does it pretend to be so. It is "a catastrophic change constituting a new departure". Since there are no sovereign or political powers under our Constitution every action of the executive limb of government must seek justification in some law. The very existence of article 363, which it is said incorporates some kind of paramountcy or act of state, shows that there is no political power outside the law; otherwise an additional bar would hardly have been necessary. [53 B]

Salaman v. Secretary of State for India, [1966] I K.B. 613, State of Saurashtra v. Menon Haji Ismail, [1960] 1 S.C.R. 537 and Secretary of State in Council for India v. Kamachee Boye Sahaba, [1859] 13 Moore P.C. 22, referred to.

(iv) Covenants and agreements cannot be said to create "imperfect obligations" since the Constitution takes the matter into itself and gives them its own guarantees. In so far as those guarantees became a part of our Constitution and were included in various statutes they would be enforceable according to the tenor of the Constitution and other laws subject, of course, to any bar created by article 363. [L55 G]

G. Gibson & Ors. Assignees of J. Mallandaino, Bankrupt v. The Eas India Co., 132 E.R. 1105, Peter Pazmany University, (Series A/B No. 61 p. 231) Jurisdiction of the Courts of Danzing, Advisory Opinion No. 15, Series B. No. 15 and State of Rajasthan v. Shyam Lal,[1964] 7 S.C.R. 174 referred to.

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(v) It is not open to the petitioner to describe the action of the President as wanting in good faith without pleading any collateral fact. Further, the reasons for a decision by the President cannot be probed into in view of articles 74(2) and 361(1). [56 E]

(vi) The argument on behalf of the Union of India that article 291 only lays down the source and manner of payment but creates no right to claim, receive or enforce payment is a complete misreading of the article. Article 291 makes the amount payable to the Ruler and, therefore, creates a right in him to demand it. The words "shall be charged and paid out of etc." make the payment obligatory and when expanded the words read "shall be charged on and shall be paid out of" etc. The direction to pay is in no uncertain terms. The recipient is mentioned in cl. (b) where the article says 'and the sums so paid to any Ruler' and this shows who is to be paid. Therefore, the Article in addition to the source and manner also lays down that it shall be paid and paid free of taxes on income to the Ruler. The article is self-supporting and self-ordaining. The result of charging a sum on the Consolidated Fund is to provide that this destination

shall not be altered even by vote of Parliament and the charging is sufficiently effective for ensuring the right application. [62 D-63 B]

(vii) Article 363 does not bar relief to the petitioners. The words provisions of this Constitution' in the latter part of article 363 arc not left unqualified. The draftsmen would have referred to the numbers of the articles if disputes of every kind under those articles stood excluded. The requirement is that it must be a provision "relating" to a treaty, covenant etc. The words 'relating to' mean that the provision must bear upon treaties etc. as its dominant purpose or theme; it is not sufficient if treaties are mentioned there for some collateral purpose. So tested, [65 D-E]

(a) Article 362 is a provision relating to a treaty, covenant etc. Its dominant theme is 'the rights, privileges and dignities of the Rulers under covenants and agreements and, therefore the provision is one relating to covenants and agreements. [65 G-H]

(b) Article 366(22) has for its dominant purpose the selection of Rulers through the application of the covenant and agreements. When the President acts-within the four corners of his authority the matter is barred by article 363. What the President has done is to take away recognition 'from all Rulers and such a power does not flow from article 366(22) and the bar of article 363 does not apply to such a dispute. The dispute arises neither from the covenants etc. nor from the provisions of the Constitution. Therefore, it ceases to have the protection of article 363. [66 C H]

(c) Article 291 is not a provision relating to covenants and agreements but a special provision for the source of payment of Privy Purse by charging them on the Consolidated Fund and for making the payment free of taxes on income; it does not in its dominant purpose and theme answer the description in the latter part of article 363. The mention in Art. 291 of covenants and agreements is for its own purpose so that the amounts need not be specified. [67 H-68 B]

[His Lordship did not express any opinion on the question whether withdrawal of recognition on grounds which are sound and sufficient is capable of being questioned in a court of law.]

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(viii) The petitions are maintainable under article 32 of the Constitution. The obligation to pay the Privy Purse being absolute the right to claim when due subsists in each ruler. As soon as an appropriation Act is passed there established credit-debt and the outstanding Privy Purse becomes the property of the Ruler in the hands of the government. It is also a sum certain and absolutely payable. Therefore Privy Purse is property and any action to deprive the Rulers of their Privy Purses must be an infringement of articles 19 and 31. [60 F; 62 0. 59 H]

H.H. The Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. The State of Rajasthan, [1964] 5 S.C.R. 1, Madhaorao Phalka v. State of Madhya Bharat, [1961] 1 S.C.R. 967, State of Madhya Pradesh v. Ranojirao Shinde & Anr., [1968] 3 S.C.R. 489 and Standard Marine Insurance Co. v. Board of Assessors, 128 La. 717, referred to.

Langdell, Summary of the Law of Contract, P. 124 Blackstone Commentaries Vol. II XXV pp. 390-398, referred to.

(Per Shah, Sikri, Shelat, Bhargava, Vaidialingam, Grover and Dua, JJ.)

(1) By the provisions enacted in article 366(22), 291 and

362 of the Constitution, the privileges of Rulers are made an integral part of the Constitution and they cannot be deprived of these privileges arbitrarily. Granting that under clause (22) of Art. 366 the President may withdraw the recognition of a person as a Ruler, the power to nullify important provisions of the Constitution does not flow 'from that clause. The power conferred by the clause has to be exercised consistently with and in aid of the constitutional scheme. The power may be exercised, in the case of first recognition, only in favour of a person who has signed the Covenant, and in favour of his successor having, regard to the customs and laws governing the state if the Ruler dies or becomes incapable of functioning or his recognition is withdrawn. By the use of the expression "for the time being" in cl. (22) Art. 366 the President is not invested with an authority to accord a temporary recognition to a Ruler nor with authority to recognise or not to recognise a Ruler arbitrarily; the expression predicates that there shall be a Ruler of the Indian State, that if the first recognised Ruler dies or ceases to be a Ruller a successor shall be appointed and that there shall not be more rulers at a given time. By the express injunction in Art. 53(1) the executive power vested in the President is directed to be exercised in accordance with the Constitution. Therefore, the power is intended to be exercised in aid of and not to destroy constitutional institutions. The power is plainly coupled with duty-a duty. to maintain con-stitutional institutions, the constitutional provisions, the constitutional scheme and the sanctity of the solemn agreements entered into by the predecessor of the Union Government, which are accepted, recognised and incorporated in the Constitution. An order merely "derecognising" a Ruler without providing for continuation of the institution of Rulership, which is an integral part of the Constitutional scheme, is, therefore, plainly illegal. [74 C; 81 H-82 D, E; 83 A]

[The Court did not express any final opinion on the question whether the expression "for the time being" in relation to the persons who had entered into covenants or agreements. and in relation to the successor, implies that the President has the power in appropriate cases and for adequate reasons to withdraw recognition. Also, the Court did not decide the question whether in certain exceptional circumstances the President may in granting recognition to a successor depart in the larger interest of the country from the strict rule of custom governing succession to the, gaddi. [74 B-C; 82 G-H]

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(ii) The President is not invested with any political power, transcending the Constitution which he may exercise to the prejudice of citizens. The Constitutional mechanism in a democratic polity does not contemplate existence of any function which may qua the citizens be designated as political. The history of negotiations which culminated in the integration of the territories of the Princely States before the commencement of the Constitution clearly indicates that the recognition of the status of the Rulers and their rights was not temporary and also not liable to be varied or repudiated in accordance with "State policy". Nor does the Constitution invest the executive branch of the Union with the power to abolish the concept of Rulership, Privy Purse and the privileges on the plea that these have become incompatible with "democracy, equality ,and social justice". The power of the President to determine the status of the Rulers by cancelling or withdrawing

recognition to effectuate the policy of the Government to abolish the concept of Rulership is therefore liable to be challenged in these petitions. [75 D; 76 B]
Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab, [1955] 2 S.C.R. 225 and Jayantilal Amritlal Shodhan v. F. N. Rana. [1964] 5 S.C.R. 294, referred to.
Nawab Usman Ali Khan v. Sagarmal, [1965] 3 S.C.R. 201 and Kunvar Shri Vir Rajendra Singh v. Union of India and Others. [1970] 2 S.C.R. 631 distinguished.
(iii) An action not authorised by law against the citizens of the Union cannot be supported under the shelter of paramountly. After the withdrawal of British power and the extinction of paramountcy of the British the Dominion Government of India. did not and could not exercise any paramountcy over the States. The functions of the President of India stem from the Constitution, not from a "concept of the British Crown" identified or unidentified. What the Constitution does not authorise, the President cannot grant. Rulership is therefore not a privilege which the President may in the exercise of his discretion bestow or withhold.[94 C-D]
(iv) Clause (a) of article 291 which enacts that the Privy Purse "shall be charged on and be paid out of the Consolidated Fund of India" clearly raise an obligation to pay the Privy Purse. A charge gives a right to receive payment out of a specified fund or property in preference over others. In the absence of clear indications to the contrary it would be difficult to hold that the expression "charge" used in the context of the financial matters of the state has a different meaning. The Constitution does not recognise any sequence of priorities. But that does not alter the fundamental character of a charge that it specifies a fund out of which satisfaction of the expenditure charged must be made and that the prescribed expenditure shall have priority in payment to the person for whose benefit the expenditure is charged on the Fund. The Constitutional obligation to proceed in the manner set out in Arts. 112, 113 & 114 imposed upon the President and the Parliament, implies, a right in the person or persons in respect of whom the expenditure is to be incurred. That view is supported by other provisions in the Constitution. Clauses (a) & (b) of Art. 291 must be read with articles 112, 113 and 114; they are parts of a single scheme. They contemplate that the Privy Purse shall be included in the financial statement as charged upon the Consolidated Fund; it shall be beyond the voting power of the Parliament; its destination shall not be altered: it shall be paid to the Ruler after the Appropriation Bill is passed, and
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when paid it shall be free from liability to pay taxes on income. This is an integrated process, which cannot be interrupted without dislocating the constitutional mechanism. [87 A; 88 B; 88 E & 89 D]
Govind Chandra Pal v. Dwarka Nath Pal, I.L.R. 35 Cal. 837 and Raja Sri Shiva Prasad v. Beni Madhab, I.L.R. I Pat. 387, referred to.
(v) Article 291 does not merely incorporate recognition of the obligation to pay privy purse under covenants incurred by the Government of the Dominion of India; it gives rise to a liability dehors the covenants. After the Constitution, the obligation to pay privy purse rested upon the Union of India not because it was inherited from the Dominion of India but because of the constitutional mandate under Art. 291. The source of the obligation is in Art. 291 and not in the covenants and agreements. Reference to the covenants

and agreements in the article is for defining the privy purse. The obligation which arose out of the merger agreement and was on that account an act of state stied its original character on acceptance by the Constitution. The Union of India cannot plead act of state as defence against claim by the Rulers to Privy Purse. [89 F; 90 B-D]
Doss v. Secretary of State for India in Council, [187] L.R. 19 Eq. 509, Saleman v. Secretary of State for India, [1906] I K.B. 613 and Union of India & Ors. v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. & Anr., [1964] I S.C.R. 892, held inapplicable.
(vi) An obligation which arises out of a constitutional provision to pay to the citizens sums of money in recognition of obligations of the predecessor Government may scarcely be called imperfect. A perfect obligation pertains to the domain of law and justice and imperfect obligation to the domain of benevolence. [89 E]
(vii) The courts have jurisdiction to interpret and to determine the true meaning of articles 366(22), 291, 36 2 and 363 and the bar to the jurisdiction of the courts by article 363 is a limited bar. Article 363 excludes the jurisdiction of the courts only in respect of the matter specified therein. A provision which purports to. exclude the jurisdiction of the courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for, it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the Courts is by clear enactment or necessary implication bar-red, be denied recourse to the courts for determination of his rights. It is within the province of the Court alone to determine what the dispute brought before it is, and to determine whether the jurisdiction of the Court is, because it falls within one of the two limbs of article 363, excluded qua that dispute. Jurisdiction to try a proceeding is barred under the first limb of article 363 if the dispute "arises" out of the provision of a covenant; it is barred under the second limb of the article if the court holds that the dispute is with respect to a right arising out of a provision of the Constitution relating to a covenant. A dispute that an order of an executive body is unauthorised, or a legislative measure is ultra vires, is not one arising out of any covenant under the first limb of article 363, merely because the order or the measure violates the right of the citizen which, but for the act or measure, were not in question. The dispute in such a case relates to the validity of the Act or the vires of the measures. Exclusion of the Court's jurisdiction by the terms of the relevant words in the second limb of Art. 363 lies in a narrow field. The expression "provisions of this Constitution relating
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to" means provisions having a dominant and immediate connection with; it does not mean merely having a reference to. If the constitutional provision relating to a covenant is the source of the right claimed to accrue, or liability claimed to arise, then clearly under the second limb the jurisdiction of the court to entertain a dispute with respect to the right or obligation is barred [94 H-95 D; 96 B-E, 99 F]
(viii) It cannot be urged that the jurisdiction of the courts to enforce rights and obligations arising out of the covenants was excluded because the rights and obligations arose out of acts of State and by constitutional provision that exclusion was affirmed and extended after the Constitution. There can be no act of State against its own

citizens by the State. The Rulers who were before integration of their States aliens qua the Dominion Government are now citizens. Their rights and obligations which arose from an act of State are now recognised and accepted by the Union of India. An act of state vanishes when the new sovereign recognises either expressly or by implication the rights flowing therefrom. Enforcement of those rights and obligations is governed by the municipal laws, and unless the jurisdiction of the Courts is excluded in respect of any dispute, the courts will be competent to grant relief. [93 A-C]

State of Gujarat v. Vora Fidalli Badruddin Mithibharwala, [1964] 6 S.C.R 461, referred to.

(ix) Article 366(22) is a provision relating to recognition of Rulers and that is the direct and only purpose of the provision. It is not a provision relating to a covenant and the reference to the covenant or the agreement of the nature mentioned in article 291 is only for determining who may be recognised as a Ruler. The limited exclusion of the, jurisdiction of courts in article 363 does not operate upon the claim for a privy purse relying upon article 291. [97 C-E; 98 E]

Nawab Usman Ali Khan v. Sagarmal, [1965] 3 S.C.R, 201 and Kunvar Shri Vir Rajendra Singh v. Union of India and Others, [1970]S.C.R. 631 distinguished and explained.

[The observations in Nawab Usman Ali Khan that the essential political character of the guarantee for the payment of privy purse preserved by article 363, and the obligation cannot be enforced in any municipal court held unnecessary for the purpose "of the decision in that case and incorrect.][98 D-E]

(x) Reference to the covenant in article 291 merely identifies the sum payable as privy purse; it does not make the article a provision relating to the covenant. The source of the right to receive the privy purse is the constitutional mandate; it is not the covenant. A dispute as to the right to ,receive the privy, purse is therefore not a dispute arising out of the covenant within the first limb of article 363 nor is a dispute with regard to a right accruing or obligation arising out of the provisions of a constitution relating to a covenant. [99 B-C]

(xi) Article 362 is plainly a provision relating to covenants within the meaning of article 363. A claim to enforce the rights, privileged and dignities under the covenants will therefore be barred by the first limb of article 363 and a claim to enforce the recognition of right and privileges recognised by article 362 will be barred under the second limb of article 363. Jurisdiction of the courts will however not by excluded where the relief claimed is founded on a statutory provision enacted to give effect to personal rights under article 362 [99 D]

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(xii) Therefore, the Court will give effect to the constitutional mandate in art. 363 only if satisfied that the dispute arises out of any provision of a covenant which is in force and was entered into or executed before the commencement of the Constitution and to which "the predecessor of the Government of India was a party, or that it is in respect of rights, liabilities or obligations accruing or arising under any provision of the Constitution in relation to a covenant; but since he right to privy purse arises under article 291 the dispute in respect of which does not fall in either clause, the jurisdiction of the court is not excluded. Again, the jurisdiction of the Court is not excluded in respect of disputes relating to personal

rights and privileges which are granted by statutes. [99 F-H]
(xiii) Since the order of the President is without authority of law there is a clear infringement of the guarantee of the fundamental rights under articles 19(1)(f), 21 and 31 (1) of the Constitution. [72 H]
The Court did not express any opinion (1) on the question whether a dispute that an executive act or legislative measure operating upon a right accruing or liability arising out of a provision is invalid, falls within the second limb of article 363 and (ii) on the plea that the order was made for a collateral purpose.
On the view taken, the Court did not deal with the plea that Rulership was "property" and the Order of the President deprived the petitioners of that property without authority of law. [73 A]
Per Hedge, J. (1) The meaning given to the expression 'Ruler' in article 366(22) is only for the purpose of the Constitution and not for any other purpose. Rulers of Indian States disappeared as soon as their territories were merged with India and all those quondam Rulers became citizens of India. Their rulership is merely a status entitling them to Privy Purse and certain privileges. Articles 291, 362 and 366(2)(a) and (b) (before Its deletion), as well as entry 34 of List I of Schedule VII referred to Rulers and, therefore, it became necessary to define that expression. [160 E-G; 161 A]
(ii) Article 366(22) imposes a constitutional duty on the President and for that purpose has conferred on him certain powers. The power is one coupled with duty. The President cannot create a successor; he can only recognise the successor. Recognition means the power to locate. Hence the power conferred on the President under the second part of article 366(22) is a very limited power. The power has to be exercised in accordance with law; in other words it has to be exercised as a quasi-judicial power. The expression "for the time being" in the second part of the article is relevant as the question of recognition of a new ruler arises on the death of each Ruler. The expression contemplates the continuity of Rulership so long as the Ruler who entered into covenant or agreement or a successor of his is in existence. [164 G, B-C]
(iii) The power to recognise the Rulers does not include the power not to recognise. The President cannot do indirectly what the legislature cannot do directly. Ruler as referred to in some of the provisions of the Constitution is an entity created by the Constitution to further certain purposes recognised by the Constitution. That entity cannot be abolished either by the executive or by the legislature. Therefore, it is not possible to spell out a power to abolish the Rulership under Article 366(22). [165 G, H]
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[His Lordships did not go into the question whether a Ruler once recognised can be derecognised by the President and, if so, under what circumstances.]
(iv) The power of recognition of the Rulers cannot be claimed to be a facet of the paramountcy enjoyed by_the British Crown. Paramountcy is the very antithesis of rule of law and the government of India cannot consider itself a superior, power in its relationship with the citizens of this country. Nature and scope of the power exercisable by the President under a provision of the Constitution must be spelled out from the language of the provision and from the purpose intended to be served by the provision. [166 E-G]
(v) The plea of State policy is irrelevant in the context

of this case. If the Constitution has laid down a policy, that policy cannot be departed from either by the legislature or by the executive. Neither the legislature nor the executive, can have a policy which runs counter to the policy laid down by the Constitution. [159 E]
(vi)The stand taken by the Union of India that the concept of Rulership, Privy Purse and the privileges guaranteed to the Rulers have become incompatible with "democracy equity and social justice" raise political issues. This Court is not the forum for going into political issues, nor is it concerned with political passions surrounding the issues arising for decision in this case. [159 B]
(vii) Hidayatullah, C.J. concurring). There is nothing like a political power under our Constitution in the matter of relationship between the executive and the citizens. The Constitution recognises only three power viz:, the legislative, judicial and executive. The executive cannot exercise any sovereignty over its citizens. The legal sovereignty vests with the Constitution and the political sovereignty with the people. The President is a creature of the Constitution; he can only act in accordance with the Constitution. [D-F]
Kunwar Shri Vir Rajendra Singh v. Union of India & Ors, [1970] 2 S.C.R. 631. distinguished.
(viii) The President on the advice of the Cabinet has disregarded the mandate of arts. 53(1), 73(1), 291, 362 and 366(22). That being so, his order must be held to be ultra vires the Constitution; hence a nullity. [168 B]
(ix)The impugned order is also unconstitutional for the reason that the power conferred under art. 366(22) is exercised for a collateral purpose. The circumstances under which the impugned order came to be made show that there was attempt to do indirectly what the government could not do directly. Such an exercise of power is impermissible under article 366(22). If the Constitution or any of its provisions have ceased to serve the needs of the people, ways must be found to change them but it is impermissible to bypass the Constitution or its provisions. For that reason also the impugned orders must be held to be ultra vires art. 366(22). [167 B]
Balaji v. State of Mysore, [1963] Supp. 1. S.C.R. 439.
(x)Article 363 has to be read harmoniously with articles 291 and 366(22). For the purpose of giving necessary direction to the Union and State executive as well as to the Union and State legislatures.
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the Constitution recognised the rights accruing and liabilities and obligations arising under various agreements and covenants which recognition made those right, liabilities and obligations enforceable. But without article 363 article 362 would have opened the flood gate of litigation. The Constituent Assembly evidently wanted to avoid that situation. That appears to have been the main reason for enacting article 363. [185 F-G & 186 A-C]
Rajendra Singh's case, State of Seraikella v. Union of India and Anr. etc., [1951] S.C.R. 474, Visweshwar Rao v. The State of Madhya Pradesh, [1962] S.C.R. 1020, Sri Sudhansu Shekhar Singh Deo v. The State of Orissa, [1961] I S.C.R. 779, H.H. The Maharana Sahib Shri Bhagwar Singh Bahadur of Udaipur v. State of Rajasthan & Ors. [1964] 5 S.C.R. I and State of Gujarat v. Vora Fiddali Badraddin Mithibarwala, [1964] 6 S.C.R. 461, held inapplicable.
Nawab Usmanali Khan v. Sagarmal, [1965] 3 S.C.R. 201, distinguished.
Nawab Bahadur of Murshidabad v. Karnani Industrial Bank

Ltd., 58 I.A. 215, referred to.
(xi)Article 363 excludes the jurisdiction of courts only in respect of matters coming under article 362. The contention that article 363 excludes also the right arising from article 291 because article 291 also protects personal rights falling within the scope of article 362, has no force. Privy Purse was taken out for special treatment by the Constitution under article 291 and therefore it is excluded from the general provision in article 362. Further, there was no purpose in guaranteeing the payment ofPrivy Purse under article 291 and then taking away the right to recoverthem under article 363. In the case of most of the Rulers the right toreceive Privy Purse was an enforceable right even before article 291 came into force. It is not easy to accept the contention that what was an enforceable right was made unenforceable by the Constitution. [184 H-185 D]
(xii)The liability undertaken under article 291 is a new liability and not an affirmation of an existing liability arising under the covenants and agreements. The article is in no way linked with covenants and agreements. The covenants and agreements only continue as evidence as to matters mentioned in the first part of article 291. After article 291 came into force there is no legal relationship between the covenants and agreements and that article. The article read with Art. 366(22) constitute a sell contained code in the matter of payment of Privy Purses and those articles operate on their own force. [177 D, E]
(xiii)It is not possible to accept the contention that the expression "charged on..... the Consolidated Fund of India" in article 291 merely means that the amounts payable as Privy Purse are not notable and that the expression neither creates a right in favour of the person in whose benefit the charge is created nor is the Consolidated Fund pledged for the payment of the Privy Purse. If an item of expenditure charged on the Consolidated Fund merely means that the expenditure is non-votable then there was no need to provide in article 113 that "so much of the estimate as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament". That part of article 113 was evidently enacted to make effective the statutory lien over the Consolidated Fund created in favour of the person to,
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whom the payment had to be made. It emphasises the fact that the pledge created in favour of the person for whose benefit the charge is created by the Constitution, cannot be taken away even by the Parliament. No sooner the President recognises the Ruler of an Indian State, he becomes entitled to the Privy Purse guaranteed under article 291 from the date the Constitution came into force. Every constitutional sanction for payment is necessarily a mandate to pay if that sanction relates to the discharge of an obligation; it is an enforceable mandate. Besidesthe executive cannot take the stand that it will not respect a mandate of the Constitution unless that mandate is enforceable in a court of law. Whether a particular constitutional mandate is enforceable or not, itis all the same binding on all the organs of the State. [177 E-H;182 C-D]
(xiv)A dispute whether the President has the power to abolish all Rulers under article 366(22) quite plainly cannot be held to be a dispute in respect of "any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any such treaty, agreement, covenant..... within the meaning

at the second part of article 363. What is in dispute is the true scope of the power of the President under article 366(22). Power is an authority whereas a right in the context in which it is used in article 363 signifies property. A dispute as regards the interpretation of a provision of the Constitution is not a dispute within the contemplation of the second limb of article 363 as it is not a dispute in 'respect of any right, liability or obligation. The word "relating to" is a word of wide import but in the context in which it is used in article 363, it must have a narrower, meaning. The word means "to bring into relation", or "establish relation between". In other words, the provision of the Constitution in question must be linked with the merged agreements or covenants directly and immediately. It must have no independent existence. Article 366(22) is an independent provision. It has nothing to do with the agreements and covenants. [186 G-187 G]

(xv)Article 362 clearly links itself with the agreements and covenants and it has no independent existence apart from the agreements and covenants; [182 G]

[His Lordship did not find it necessary to go into the scope of article 362.]

(xvi)The petitioners have established that their rights under articles 31 and 19(1)(f) have been contravened. The right to receive the Privy Purse under article 291, being a legal right, is a right enforceable through the courts of law. That right is undoubtedly property. The denial of those benefits which had been afforded the Rulers under statutes is again a contravention of the petitioners' fundamental right to property. [194 E, G]

State of M.P. v. Ranojirao Shinde and Anr. [1968] 3 S.C.R. 489 and Madhaorao Phalke v. State of Madhya Bharat. [1961] I S.C.R. 957, referred to:

(Per Mitter. J. dissenting). The Order of the President though unjustified, is not liable to be challenged, because, article 363 is a bar to the maintainability of the petitions. [152 G-H]

(1)Article 366(22) implies not merely a right or power but a duty or obligation to recognise a person as a Ruler both at the commencement of the Constitution and even afterwards so long as the line of

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Rulers lasted and the choice of a person as a Ruler to succeed another has to be made applying the law and custom attaching to the gaddi of a particular state. Unless a Ruler can be identified for the purpose of the Constitution articles 291, 362 and 363 cannot be applied. Clause (22) fixes the identity of the Ruler for the purposes of the Constitution as a prince, chief or other person by whom any covenant or agreement as is referred to in clause (1) of article 291 was entered. into. The power or duty to withdraw recognition must be confined to cases when the first recognition was not proper.

Maharaja Pravir Chandra Bhanj Deo Kakatiya v. The State of Madhya Pradesh, [1961] 2 S.C.R. 501 held inapplicable.

(ii)The power of recognition is- not a political power in the paramountcy field. In strict legal theory whatever paramountcy there was before the 15th August 1947 in the British Government lapsed with the passing of the Indian Independence Act. Paramountcy de facto there undoubtedly was but no legal sanction can be ascribed to such paramountcy.

Virendra Singh & Others v. State of U.P., [1951] 1, S.C.R. 415, Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income-tax, [1959] S.C.R. 729, Secretary of State v. Komachee Boyee

Shiba, 7 M.I.A. 476, Doss v. Secretary of State L.R. 19 Equity 509 and Solomon v. Secretary of the State, [1906] I K.B. 613, distinguished.
(iii) Once the Rulers ceded their territories and accepted the Constitution ofIndia they became citizens of India and the plea of continuance of an actof state as against them cannot be accepted.
(iv) The recognition of Rulership is not an exercise of political power vested in the President:
Kunwar Shri Vir Rajendra Singh v. Union of India, [1970] 2 S.C.R. 63 1, explained.
(v)Article 291 is meant to put the guarantee as to payment of Privy Purse contained in the Covenants and agreements on a firm and sure footing. It is not a mere declaration of pious intention which the executive could disregard at its whim or pleasure; so long as it finds a place in the Constitution it is to be acted upon.
(vi)Article 363 imposes an absolute bar on the jurisdiction of all courts to adjudicate upon disputes covered by it. The object of the article was as much to save the Rulers who had entered into covenants or agreements etc. from their rivals or kinsmen coming to court to upset the covenants or agreements as to shield the Government of India from attempts on the part of Rulers to rip open the covenants. To see whether any dispute falls within the second limb of the article one must examine the content of the right or the limit of the liability or obligation arising out of any constitutional provision which. provision in its turn must relate to any treaty, agreement etc. The expression relate to" means, inter alia, "stand in some relation, to have bearing or concern, to pertain, to refer to, bring into association with or connection with". [127 E-H]
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State of Seraikella & Others v. Union of India and Another. [1951] S.C.R. 174, Sudhansu Shekhar Singh Deo v. The State of Orissa, [1961] I S.C.R. 779, Nawab Usmali Khan v. Sagarmal, [1965] 3 S.C.R., 201, Bishambar Nath v. Nawab lmdad Ali Khan, 17 I.A. 181, Nawab Bahadur of Mushidabad v. Karnani Industrial Bank Ltd., 58 I.A. 215, referred to.
(vii)Article 291 is a provision of the Constitution relating to covenants or merger agreements. It is not a provision merely for finding out the amount of the liability of the Dominion of India by way of privy purse to a Ruler. It expressly refers to covenants or agreements entered into by the Rulers under which payment of sums free of tax has been guaranteed or assured by the government of the Dominion of India as Privy Purse and gives the term as to Privy Purse a new shape and form. The article seeks to instill life and vigour into the term for payment of Privy Purse in the covenant by creating a new channel leading out of the guarantee of the government of the Dominion of India which was no longer in existence and making it flow along a constitutional course by putting the liability of the Union of India for payment of the sums beyond controversy. So considered any dispute as to payment of privy purse would come under the bar of article 363. [136 G; 140 D; 14t D; 142 D; 143 C]
Kunwar Shri Vir Rajendra Singh v. Union of India, [1970] 2 S.C.R. 631, referred to.
(viii) Since the President’s power or right or duty or obligation to recognise a person as a Ruler arises not merely out of the provisions in article 366(22) but also the covenants, merger agreements or instruments of accession the dispute is one which arises out a provision of the Constitution relating to a treaty, agreement, covenant etc.

in terms of article 363. [151 D-E]
(ix)It cannot be urged that if the act complained of is ultra vires or a nullity the jurisdiction of the courts would not be excluded. constitutional provision of the kind of article 363 transcends this kind of consideration. All that the Court has to see is whether the dispute falls within either limb of the article. If the dispute is so covered the court is precluded from examining whether the contention of the party asserting a right was genuine or of real substance. Equally, the bar will apply where a party denying the right asserted or contesting the claim put forward is guilty of action which on the face of things appears to be arbitrary if there be some scope for raising the plea in denial or contradiction. [151 C]
Pratap Singh v. The State of Punjab, [1964] 4 S.C.R. 773 and Makhan Singh v. State of Punjab, [1964] 4 S.C.R. 797, explained.
R.M. Lohia v. State, [1966] I S.C.R. 709, Ram Swarup v. Shikar Chtind, [1966] 2 S.C.R. 553, Sadanandan v. Kerala [1966] 3 S.C.R. 590, Jaichand Lal v. West Bengal, [1966] Suppl. S.C.R. 464, Raja Anand v. U.P. Stale, [1967] I S.C.R. 373, Dhulabhai v. Madhya Pradesh,_[1968] 3 S.C.R. 662, The General Assembly of Free Church of Scotland v. Lord Over Town, [1904] A.C. 515, R. v. Bryant, [1956] I A.E.R. 341, Anismiminic Ltd. v. Foreign Compensation Commission and another, [1969] I A.E.R. 208, Secretary of State v. Mask & Co., 67 I.A. 222, Wolverhampton New Waterworks Co. v. Hawkesford, [1859] 6 C.B. (N.S.) 336. Neville v. London "Express" Newspaper, [1919] A.C. 368, Circo's Coffee Co. v. State of Mysore, 19 S.T.C. 66 and C. T. Santhulnathan Chettiar v. Madras, C.A. 1045 of 1966 decided on 20th July, 1967, referred to.
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Raleigh Investment Co. Ltd. v. Governor-General in Council, 74 I.A. 50, disapproved.
(x)Notwithstanding the wide sweep of the provision for ousting the jurisdiction of courts as regards disputes covered by it, article 363 gave ,express power to the President to have the opinion of this Court to guide himself by, and when disputes of such public importance were agitating the minds of members of Parliament and of the Cabinet it was not only his right but his duty to consult this Court. [152 A]
Per Ray, J. (dissenting), that the petitions fail and are dismissed.
(1) Articie 363 embodies the principles of Acts of state. The entire relationship of the Dominion of India vis-a-vis the Indian states was in the domain of Act of State and the instruments, merger agreements and covenants did not have any constitutional sanction and obligation and were totally unenforceable in municipal courts. This Court has in several decisions so held. Article 363 and the other allied articles really reflect what the makers of the Constitution picked up from the historical past and inserted in the Constitution. [206 G, 207 H]
State of Seraikella v. Union of India & Anr. [1951] S.C.R. 474, Virendra Singh & Ors. v. The State of Uttar Pradesh [1955] I S.C.R. 415, M/s. Dalmia Dadri Cement Co. Ltd. V. The Commissioner of Income-tax, [1959] S.C.R. 729, The State of Saurashtra v. Memon Haji Ismail Haji, [1960] I S.C.R. 537, State- of Gujarat v. Vora Fiddali Badruddin Mithibarwala, [1964] 6 S.C .R. 416 and Nawab Usmanali Khan v. Sagarmal, [1965] 3 S.C.R. 201, referred to.
(ii)The power of recognition of Rulership is political, because, it is exercised by the President in relation to

prince or chief by whom any covenant or merger agreement was entered into and the necessity for recognition arises from the covenants and merger agreements. It is political also because it is not limited only to the law of succession or custom. The reasons of state policy will enter the field. it is not a compulsive power. The considerations which moves the President are matters on which the Court will find no standard for resolving it judicially. [210 F]

(iii)The rights accruing under or obligations arising out of the provisions of the Constitution relating to covenants or merger agreements are imperfect rights. There are no legal rights as to recognition of rulership, payment of Privy Purse and enjoyment of rights and privileges. [208 G]

(iv)Recognition of a Ruler under article 366(22) is only for the limited purpose of payment of privy purse and it has no other reference. There cannot be any legal right to recognition because, the Power of the president to recognise for the time being repels any concept of legal right to Rulership Since the obligation to recognise a Ruler arises only from the covenants and agreements and there cannot be any legal enforceable right to recognition under the covenant, no legal right to arises under article 366(22) either. This is political power ship' power belonging to the State, its government and policy and there is no judicial process to adjudicate upon such considerations. It is sophistry to speak of Rulership as an institution. When institutions are recognised the Constitution has specifically designated and recognied them. The President has power to derecognise. The Constitution does not say that the President is bound to recognise a Ruler. It follows therefore that after derecognition he is not equally bound to recognise another person as Ruler. [213 H; 214 H; 214 C; 26 A]

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Maharaja Pravir Chandra Bhanj Deo Kaktiya v. The State of Madhya Pradesh, [1961] 2 S.C.R. 501, Umrao Singh Ajit Singh Ji & Anr. v. Bhagwati Singh Balbir Singh & Ors., A.I.R. 1956 S.C. 15 and Kunwar Shri Vir Rajendra Singh v. The Union of India & Ors., [1970] 2 S.C.R. 631, referred to.

(v) Article 363 is a non obstante clause and it is a constitutional mandate. The non obstante clause must be allowed to operate with full vigour in its own field. [211 A; 212 A]

N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Ors. [1952] S.C.R. 218, Aswini Kumar Ghosh and Anr. v. Arabind Bose and Anr. [1953] S.C.R. I and Dominion of India and Anr. v. Shrinbai A.Irani, [1955] I S.C.R. 206, referred to.

(vi)Article 363 is a positive rule of unenforceability of certain rights and obligations. This Court has held that the article is a bar in any dispute relating to covenants and merger agreements, that the privy purse is a political pension and that the article constitutes a bar to interference by court in a dispute arising by reason of recognition of Rulership. [209 H]

State of Seraikella v. Union of India & Anr., [1951] S.C.R. 474, State of Gujarat v. Vora Fiddali Badruddin Mithibarwala, [1964] 6 S.C.R. 416and Kunwar Shri Vir Rajendra Singh v. The Union of India & Ors. [1970] 2 S.C.R. 631, referred to.

(vii)The dispute as to jurisdiction of the President is not in vacuo but is adispute as to right of recognition of Ruler for the purpose of paymentof Privy Purse and enjoyment of rights and privileges. The disputeis whether the President has or has not the power to make the order

impugned in these proceedings. [213 B]
United Provinces v. Governor-General in Council, [1949] F.C.R. 124 referred to.
(viii)Article 366(22) relates to covenants or agreements. No person can be recognised as a Ruler until first be entered into a covenant referred to in article 291, or secondly, he is recognised by the President as the successor of the Ruler recognised under the first part of clause (22). Therefore, the claim to be recognised as a Ruler can only arise if he or his predecessor signed the covenant and thus there is express and direct relation to covenants. Article 366(22) has been put in relation to article 291 and article 362 and one cannot abstract article 366(22) from the collection of those articles. All these three articles viz., 291 362 and 366(22) stem from the covenants and merger agreements. Ruler in article 366(22) is description of the person referred to in article 291 and 362. If the petitioner challenges the power of the President to derecognise him he claims that he has a right to continue as a Ruler and this is a right related to covenants. [216 E-G, B-D]
(ix) The proposition that if the order is a nullity there is no bar of jurisdiction, is inapplicable to the present case where the question for consideration is of the Constitution which under some articles confers jurisdiction on this Court and in another article excludes the jurisdiction of the Court. A private clause of this nature in the Constitution stands on an entirely different footing from a clause of that nature in other statutes. The fallacy of the petitioners' submission that because the order of the President is a nullity the petitioners' property rights are invaded and hence the jurisdiction of this Court is attracted, is, in totally overlooking the provisions of article 363 which excludes in express and unambiguous terms the jurisdiction of this Court "notwithstanding" any provision of the Constitution. When the Constitution which invests this
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Court with jurisdiction with one hand divests it of jurisdiction with another in specifically designed disputes the attempt to overreach the article which bars the jurisdiction of the Court will be totally impermeable. [219 C, F-H]
Smt. Ujjam Rai v. State of Uttar Pradesh, [1963] I S.C.R. 778, S. Pratap Singh v. The State of Punjab, [1964] 4 S.C.R. 733, Makhan Singh v. State of Punjab, [1964] 4 S.C.R. 779, Lala Ram Swarup & Ors. v. Shikar Chand and Anr., [1966] 2 S.C.R. 533, Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147, Dhulabhai and 0rs. v. The State of Madhya Pradesh, [1968] 3 S.C.R. 662 and Communications Assns. v. Douds, 339 U.S. 382, referred to.
(x)Article 291, being a constitutional recognition of the guarantee regarding Privy Purse mentioned in covenants and agreements, does not create any new and independent right of payment of Privy Purse; therefore the article is related to covenants. It embodies the constitutional recognition for the fulfillment of the guarantees and assurances given by the Government of India in respect of Privy Purses and provides for necessary adjustments in respect of Privy Purse entailed by changed circumstances and conditions. A Ruler of an Indian State without being recognised a Ruler by the President, cannot prefer any claim to Privy Purse under article 291. The Ruler of an Indian State mentioned in the first Part of article 291 is different from Ruler mentioned in 291(b). The latter refers to the Ruler defined under

article 366(22) and recognised by the President. It is because of the combined effect of articles 291, 366(22) and 363 that this Court held in Nawab Usman Ali Khan's case the privy purse was paid on political consideration that it was not a right legally enforceable in any municipal court and that the political character was preserved by article .363 by taking privy purse beyond the reach of courts of law. [221 B, B; 222 E-H]

Nawab Usman Ali Khan v. Sagarmal, [1965] 3 S.C.R. 201 relied on.

Communications Assns. v. Douds, 339 U.S. 382, H. H. The Maharaja Sahib Shri Bhagwat Singh Bahadur of Udaipur v. The State of Rajasthan & Ors. [1964] 5 S.C.R. I and Shri Sudhansu Shekhar Singh Deo v. The State of Orissa and Anr., [1961] I S.C.R. 779, referred to.

(xi)Because the payment of privy purses was to be free of all taxes under the covenants and agreements whereas under the Constitution it is exempt from all taxes on income, article 291 cannot be said to create a new right. The words "the sums so paid" in cl. (b) of the article relate to the sum guaranteed under the covenants and agreements and to the same sum charged on the Consolidated Fund. One has to turn to, the covenants and merger agreement to have all the particulars of persons, sums guaranteed and assured. The fons et origo is the guarantee in the covenants and agreements. [227 F]

(xii) The words "charged on and paid out of the Consolidated Fund" in article 291 do not mean that a security is created in respect of privy purse and therefore a new and independent right is created. Under the article effect is to be given to the covenants and merger agreements where payment of any sum has been guaranteed. The charge is only in respect of the right and obligation under the covenant an it is therefore neither a new nor an independent right. [223 D]

(xiii)The words "charged on and paid out of the Consolidated Fund" mean that the sums shall not be submitted to the vote of Parliament and article 113(1) makes a provision to that effect. If it were a charge it

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would be a debt which would be; assignable and there cannot be any legal validity for such assignment. Charge on the Consolidated Fund is an .accounting arrangement before Parliament and charge is meant for expenditure. The words "paid out of the Consolidated Fund" denote the source from which the expenditure would be met. The right to payment ,arises de-hors the charge on the Consolidated Fund, the right arises from recognition by article 291 of guarantee of payment of privy purses under a covenant. [224 D; 225 G-H]

(xiv) Therefore, article 362 is not the only article which falls within article 363. Article 363 uses the word provisions of the Constitution. The word provisions indicate more than one article. It has to be emphasised that article 291, 363 and 366(22) have a most direct and visible relation to article 363. [228 B-C]

(xv)"Rights, liabilities and obligations" in articles 294(b) and 295(1)(b) of the Constitution refer to other legal rights which were enforceable in a court of law. Privy purses under the covenants and merger agreements were no such legal rights enforceable in a court of law for the obvious reason that if prior to the Constitution the covenants and merger agreements were sought to be enforced in a municipal court, the government would have demurred on the plea of Act of State. That plea in bar would be available to the Government of India as a defence to any

claim under articles 294(b) and 295(1)(b). Articles 294(b) and 295(1)(b) deal with devolution of liabilities of the dominion and part B States respectively. The Constitution has dealt with privy purses and covenants in separate articles. Therefore,_articles 294(b) and 295(1)(b) can have no application to privy purses and privileges. [229 E-F]

Union of India and Ors. v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. and Anr., [1964] 7 S.C.R. 892 and The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue, Trivandram ,and Anr., [1964] 4 S.C.R. 280, referred to.

(xvi) In sum, the agreement to pay privy purses and to continue privileges of the Princes which were guaranteed by the Government of India before the Constitution were all political agreements born out of political bargains to achieve integration of Indian States with the Dominion of India. This political bargain was carried into the Constitution by the insertion of article 291 for payment of privy purse, article 362 for continuance of privileges and article 366(22) for recognition of Princes, and the political character was preserved by inserting article 363 which bar the jurisdiction of the court in respect of disputes arising out of covenants and agreements and these articles which are related to the covenants and agreements. [229 G]

(xvii) The petitioners cannot claim that the Order affects their rights under the various statutes. If the rights are derived from recognition of rulership by the President under article 366(22) and if the recognition ,cannot be impeached no right arises. [230 E]

(xviii) Recognition of rulership is not a legal right nor is it a right to property. Privy purses is not a legal right to property and there is no fundamental right to privy purses. There is no fundamental right to rulership. The decisions of this Court which have held that article 363 is a bar to rights to privy purse, personal rights and privileges and recognition of rulership from being agitated in courts, have spoken the words of the Constitution. [231 C]

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JUDGMENT:

ORIGINAL JURISDICTION : Writ Petitions Nos. 376 to 383 of 1970.

Petitions under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

N.A. Palkhivala, M. C. Setalvad, B. G. Murdeshwar, R. Gopalakrishnan, J. B. Dadachanji, Ravinder Narain and 0. C. Mathur, for the petitioners (in W.P. No, 376 of 1970).

M C. Setalvad, B.G. Murdeshwar, R. Gopalakrishnan, J. B. Dadachanji, Ravinder Narain, O.C. Mathur and Suroja Gopalakrishnan for the petitioners (in W.P. No. 377 of 1970).

M.C. Chagla, B. G. Murdeshwar, J. B. Dadachanji, R. Gopalakrishnan and Suroja Gopalakrishnan, for the petitioners (in W.P. No. 378 of 1970).

M.K. Nambyar. B G. Murdeshwar. J. B. Dadachanji and R. Gopalakrishnan, for the petitioners (in W.P. No. 379 of 1970).

N. A. Palkhivala, M. C. Setalvad, B. C. Murdeshwar, J. B. Dadachanji R. Gopalakrishnan and R. N. Banerjee, for the petitioners (in W.P. No. 380 of 1970).

M.C. Setalvad, B. G. Murdeshwar. J. B. Dadachanji and R. Gopalakrishnan, for the petitioners (in W.P. No. 381 of 1970).
M.C. Setalvad, B. G. Murdeshwar. J. B. Dadachanji and R. Gopalakrishnan, for the petitioner (in W.P. No. 382 of 1970).
M.K. Nambyar, B. G. Murdeshwar, J. B. Dadachanji, R. Gopalakrishnan Shelandra Swarup and B. Dutta, for the petitioner (in W.P. No. 383 of 1970).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General, S. T. Desai, Amiva K. Basu N. H. Hinoorani, R. H. Dhebar, S. P. Nayar, for the respondents (in W.P. No. 376 of 1970).
Niren De, Attorney-General Jagadish Swarup, Solicitor-General H. R. Gokhale, R. H. Dhebar, S. K. Dholakia and S. P. Nayar, for the respondents (in W.P. No. 377 of 1970).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General, V. A. Sevid Muhammad R.H.Debar and S. P. Nayar, for the respondents (in W.P. No. 378 of 1970).
Niren De, Attorney-General, Jagadish Swarup, Solicitor-General R. H. Dhebar and S. P. Nayar, for respondents (in W.P. No. 379 of 1970).
Niren De. Attorney-General, Jagadish Swarup, Solicitor-General R. H. Dhebar S P Nayar and S. Chakravarti, for the respondents (in W.P. No. 380 of 1970).
Niren De. Attorney-General, Jagdish Swarup. Solicitor-General, R. R.Dhebar and S. P. Nayar, far the respondent (in W.P. No. 381 of 1970).
Jagadish Swarup, Solicitor General. Rameshwar Nath and S. P. Nayar, for the respondent (in W. P. No. 382 of 1970).
S.Mohan Kumaramangalam, Ram Murthi. Ram Panjuwani and S. P. Nayar, for the respondents (in W.P. No. 383 of 1970).
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R.M. Hazarnavis, R. N. Sachthey and Vineet Kumar, for the Advocate-General, Maharashtra.
M.M. Abdul Khadar, Advocate-General of Kerala and K. M. K. Nail-, for the Advocate-General for the State of Kerala.
Lal Narayan Sinha Advocate-General, for the State of Bihar, D. P. Singh, R. K. Garg and S. C. Agarwala, for the Advocate for the State of Bihar.
B. Das, Advocate-General, for the State of West Bengal, S. S. Ray, G.S. Chatterjee and Sukumar Basu, for the Advocate-General for the State of West Bengal.
Ashok Das, Advocate-General, for the State of Orissa, Santosh Chatterjee and G. S. Chatterjee, for the Advocate-General for the State of Orissa.
G. S. Kasliwal, Advocate-General for the State of Rajasthan and K. Baldev Mehta, for the Advocate-General for State of Rajasthan.
H.L. Sijabal, the Advocate-General for the State of Punjab and R. N. Sachthey, for the Advocate-General for the State of Punjab.
A.C. Gulati, Rajinder Jain, D. P. Ghosh and G. Banerjee, for the intervener (in W.P. No. 376 of 1970)
HIDAYATULLAH, C.J. delivered a separate concurring Judgment. The Judgment of SHAH, SIKRI, SHELAT, BHARGAVA, VAIDIALINGAM, GROVER and DUA, JJ. was delivered by SHAH, J. HEGDE, J. delivered a separate concurring judgment. MITTER and RAY, JJ. gave dissenting Opinions.
Hidayatullah, C.J--On September 6, 1970, the President of India passed a laconic order in respect of each of the Rulers of former Indian States. The order was served by a Secretary to Government of India. A sample order issued to the Ruler of Gwalior State may be read here :

No. 21/14/70-Poll.III
Government of India
Ministry of Home Affairs
New Delhi the 6th September 1970

ORDER

In exercise of the power vested in him under Article 366(22) of the Constitution, the President hereby directs that with effect from the date of this Order His Highness Maharajdhiraja Madhav Rao Jiwaji Rao Scindia Bahadur do cease to be recognised as the Ruler of Gwalior.

By order and in the name of the President.

Sd./-
L. P. SINGH
Secretary to the Government of India

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All these orders were notified together in the Gazette of India of September 19, 1970, Part II. They resulted in the forthwith stoppage of the Privy Purses received by the Rulers and the discontinuance of their personal privileges.

These writ petitions under Article 32 of the Constitution were filed by some of the Rulers as test cases to question the orders. They ask for a writ, direction or order, declaring the Presidential Order to be unconstitutional, mala fide, ultra vires and void, and for quashing it, a writ, direction or order declaring that the several petitioners continue to be Rulers and thus to be entitled to their respective Privy Purses and personal rights and privileges and a further writ, direction or order directing the Union of India to continue to 'pay the Privy Purses as before and to recognise the personal rights to privileges and to observe the, provisions of the Covenants and Merger Agreements.

This judgment and order will govern all these petitions. Since the issues involved in all the petitions are common and there are only minor differences in the steps before the States merged with the Indian Union, it is sufficient if an illustrative petition is dealt with. In this judgment I shall refer to the petition filed by the Ruler of Gwalior which is first on my list and embraces almost all the varying aspects of the question. The other petitions are identical except for some details which are special to a particular Ruler but are not material for the discussion of the issues involved.

The Ruler of the Gwalior State succeeded to the gaddi of the State on July 16, 1961 on the demise of his father. On August 15, 1947 the father had signed an Instrument of Accession of his state to the Dominion of India, as then established, and it was accepted by the Governor-General of India on the following day. This Instrument of Accession was similar to those which the other Rulers signed on diverse dates. It is to be found at p. 165 of the White Paper on Indian States and is exhibited with the Petition as Ex. A. On April 22, 1948 the father, as Ruler, signed a Covenant with other Rulers of this area and the United States of Madhya Bharat was formed on June 15, 1948. On the coming into force of the Constitution of India, the State of Madhya Bharat became a Part B State. On the passing of the Constitution (Seventh Amendment) Act 1956, Madhya Bharat State ceased to be a Part B State and was integrated with the State of Madhya Pradesh as provided under the States Reorganisation Act, 1956. I shall now say something in more detail about these several steps.

The Instruments of Accession were executed in furtherance of the Indian Independence Act, 1947. On June 3, 1947 the

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British Government announced their plan of transfer of power in India. The Government of India formed a Ministry of States under Sardar Vallabihbhai Patel and it was decided to secure the accession of Indian States on three subjects : External Affairs; and Communications. The Act provided for lapse of sovereignty of the British Crown in India over the Indian States' and they were free to accede to any of the two Dominions of India or Pakistan or to continue as independent sovereigns. A reference to the Indian Independence Act, 1947 appears necessary at this stage.

The preamble of the Act stated that the Act was to make provision for the setting up in India of two independent Dominions and to provide for matters consequential on or connected with the setting up of those Dominions and-to substitute certain provisions in the Government of India Act 1935. Section 1 of the Act fixed the 15th day of August, 1947 as the appointed ate, from which the two independent Dominions were to come into existence. Section 2 demarcated their territories, but without prejudice to the generality of the provisions of sub-section (3) of that section, the accession of Indian States to either of the two Dominions was not to be prevented. Immediately afterwards the India (Provisional Constitution) Order 1947 was promulgated and certain substitutions were made in the Government of India Act 1935 by the Governor-General by virtue of subsection (2) of Section 8 read with section 9 of the Indian Independence Act. Sections 5 and 6 of the Government of India Act 1935 were replaced by the following sections

"5. Establishment of the Dominion :

(1)The Dominion of India established by the Indian Independence Act, 1947, shall as from the fifteenth day of August 1947, be a Union comprising :-

(a) the Provinces hereinafter called Governors' Provinces;

(b)the Provinces hereinafter called Chief Commissioners' Provinces.

(c) the Indian States acceding to the Dominion in the manner hereinafter provided, and

(d) any other areas that may with the consent of the Dominion be uncured in the Dominion.

(2) The said Dominion of India. is hereafter in this

Act referred to as "the Dominion" and the said fifteenth day of August is hereafter in this Act referred to as 'the date of the establishment of the Dominion'.

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6. Accession of Indian States-

(1)An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified his acceptance of an Instrument of Accession executed by the Ruler thereof whereby the Ruler on behalf of the State :-

(a) declares that he accedes to the Dominion with the intent that the Governor-General, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of his Instrument of Accession but subject al-ways to the terms thereof, and for the purposes only of the Dominion exercise in relation to the State such functions as may be vested in them by order under this Act; and

(b) assumes the obligation of ensuring that due effect is given within the State to the provisions of this Act so far as they are applicable therein by virtue of the Instrument of Accession.

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Dominion Legislature may make laws for the State and the limitations, if any, to which the power, of the Dominion Legislature to make laws for the State, and the exercise of the executive authority the Dominion in the State, are respectively to be subject.

(3)A Ruler may, by a supplementary Instrument executed by him and accepted by the Governor General vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by any Dominion authority in relation to his State.

(4)References in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State whether by reason of the Ruler's minority or for any other reason.

(5)In this Act a State which has acceded to the Dominion is referred to as an acceding State and the Instrument by virtue of which a State has so acceded

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construed together with any supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(6)As soon as may be after an Instrument of Accession or supplementary instrument has been accepted by the Governor-General under this Section, copies of the Instrument and of the Governor-General's acceptance thereof shall be laid before the Dominion Legislature and all courts shall take judicial notice of every such instrument and acceptance."

In furtherance of these new provisions, the Instruments of Accession were executed on different dates, after negotiations between the Government of India and the Rulers, but nothing turns upon the date of an Instrument. Many Rulers had immediately signed Instruments of Merger, transferring full and exclusive authority, jurisdiction and powers in relation to the governance of their States to the Government of India. They were merged with the existing Provinces or were set up as Chief Commissioner's Provinces. Some others signed Instruments of Accession first and Instruments of Merger later. The remaining at first formed themselves into different Unions of States, making over the administration of their States to a Rajpramukh of the Union of the States vesting in him all rights, authority and jurisdiction belonging to the Ruler which appertained to or were incidental to the Government of the Covenanting States. In this way several Unions of States or United States emerged. A brief reference to the Instrument of Accession, the Covenants and the Instruments of Merger is necessary at this stage. The Ruler of Gwalior, father of the present petitioner, joined the United State of Madhya Bharat as already indicated. I can therefore conveniently study the

Instrument of Accession and the Covenant executed by him as illustrative of the documents signed by the Rulers.

I begin with the Instrument of Accession. In the Preamble to the Instrument the Ruler observed that he was executing it in the exercise of his sovereignty in and over his State. He declared that he was acceding to the Dominion of India and authorised the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion Authority. established for the purposes of the Dominion to exercise in relation to hi-, State functions vested in them by or under the Government of India Act 1935 as in force on the 15th August 1947. On his part he undertook the obligation of ensuring that effect was given to the provi-sions of the Government of India Act 1935 in his State. He accented that the Dominion Legislature would make law-, with respect to matters specified in the Schedule to his Instrument.

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These topics have only a historical significance and need no mention here. There were certain reservations, particularly in regard to any future constitution of India affecting the continuance or his sovereignty in and over the State, and the exercise of any powers, authority and rights then enjoyed by him as Ruler. The Governor-General accepted the Instrument of Accession and signed it in token thereof.

The Ruler of Gwalior next signed a Covenant with certain Rulers in the former Madhya Bharat area and agreed to form a United State of Madhya Bharat. The covenant contains 18 articles and 4 schedules. This covenant is a detailed document and is reproduced in the White Paper and is also exhibited in the. case before me. It is not necessary to refer to all its terms but. the relevant ones may be noted here. The Covenanting States agreed to unite and integrate their territories into one State with common Executive. Legislature and Judiciary. Room was kept, for other Rulers to join later if they were so minded. The Covenant established a Council of Rulers, with a right to elect a President (to be called the Rajpramukh of the United State) and one Senior Vice-President and two Junior Vice-Presidents. The President and the Senior Vice-President were to hold office during their lifetime and the Junior Vice-Presidents for a term of five years. The Rajpramukh was to be aided and advised by a Council of Ministers to be chosen by him and they were to hold office during his pleasure. July 1, 1948 was fixed for making over the administration of the Covenanting States to the Rajpramukh including a transfer of all assets and liabilities of the State and of the Scheduled Areas. The Rajpramukh had jurisdiction to make laws for the peace and good Government of those areas whether with or without consultation with his Council of Ministers but subject to direction or instructions of the Government of India. The Rajpramukh was to execute by 15th June 1948 a fresh Instrument of Accession in place of the separate Instruments already executed by the Covenanting Rulers. By that Instrument he was to accept the making of laws by the Dominion Legislature on all matters mentioned in Lists I and III of the Seventh Schedule to the Government of India Act 1935 except the entries in List I relating to any tax or duty. The Rajpramukh and the Vice-Presidents were to enter upon their duties on 11th May 1948. The Rajpramukh and the Vice-President were to be paid Rs. 2,50 000 per year as consolidated allowances and the Junior Vice Presidents were to be paid such allowances as the Rajpramukh was to fix. The executive authority of the United State (subject to the provisions of the Covenant and

a Constitution to be framed later) was to be exercised by the Rajpramukh and the competant Legislature of the United State was to be given the competence to confer functions upon the subordinate authorities but the Covenant
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was not to be deemed to transfer to the Rajpramukh any functions conferred by any existing law on any Court, Judge, officer or local or other authority in a Covenanting State. The Covenant next provided for the setting up, as soon as possible, of a Constituent Assembly in the manner set out in the Third Schedule to the Covenant to frame a Constitution of a unitary type for the United State within the framework of the Covenant and the Constitution of India and for providing a Government responsible to the Legislature. The Rajpramukh was to constitute not later than August 1, 1948 an interim Legislative Assembly for the United State in accordance with the provisions set out in Schedule, IV till the formation of the Constituent Assembly which was then to perform legislative functions as well. The Rajpramukh was also given power to promulgate,- Ordinances. Articles XI to XV were as follows :

"

ARTICLE XI

(1) The Ruler of each Covenanting State shall be entitled to receive annually from the revenues of the.United States for his privy purse the amount specified against that Covenanting State in Schedule I :
Provided that the sums specified in the Schedule in respect of the Rulers of Gwalior and Indore shall be payable only to the present Rulers of these States and not to their successors for whom provision will be made subsequently.
(2)The said amount is intended to cover all the expenses of the Ruler and his family including expenses of his residence, marriages and other ceremonies, etc. and shall subject to the provisions of paragraph (1) neither be increased nor reduced for any reason what-soever.
(3)The Rajpramukh shall cause the said amount to be paid to the Ruler in four equal instalments at the beginning of each quarter in advance.
(4)The said amount shall be free of all taxes whether imposed by the Government of the United State or by the Government of India.
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ARTICLE XII

(1)The Ruler of each Covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of his making over the administration of that State to the Raj Pramukh.
(2)He shall furnish to the Raj Pramukh before the first day of August 1948 an inventory of all immovable properties, securities and cash balances held by him as such private property.
(3)If any dispute arises as to whether any item of property is the private property of the Ruler or State property, it shall be

referred to such person as the Government of India may nominate in consultation with the Raj Pramukh and the decision of that person shall be final and binding on all parties concerned :

Provided that no such dispute, shall be so referable after the first day of July 1949.

ARTICLE XIII

The Ruler of each Covenanting State, as also the members of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August 1947.

ARTICLE XIV

(1)The succession, according to law and custom to the gaddi of each Covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler thereof, is hereby guaranteed.

(2)Every question of disputed succession in regard to a Covenanting State shall be decided by the Council of Rulers after referring it to a bench consisting of all the available Judges of the High Court of the United State and in accordance with the opinion given by the High Court."

Article XV gave complete immunity to the Ruler in respect of past acts and omissions. The next two articles guaranteed the continuance in service, of the permanent members of the public service of the States on conditions not less advantageous than those existing on April 15. 1948 or payment to them of reasonable compensation. There were other guarantees and also

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immunity for past acts or omissions in the execution of duty as a Public servant. Article XVIII continued in their respective States the prerogative of suspension, remission or commutation of death sentences enjoyed by the former Rulers of Gwalior and Indore. Schedule I then stated the Privy Purses of the Rulers. It was divided into two sections-Salute States and Non-Salute States. They ranged from Rs. 25,00,000 to the Ruler of Gwalior to Rs. 6,000 to the Rubber of Mathwar. The rest of the provisions are not material for my discussion.

The Covenant was signed by all the Rulers of the Covenanting States and the Government of India endorsed on it their acceptance thus :

"The Government of India hereby concur in the above Covenant and guarantee all its provisions. In confirmation whereof Mr. Vapal Pangunni Menon, Secretary to the Government of India in the Ministry of States, appends his signature on behalf and with the authority of the Government of India.

Secretary to the Government of India,
Ministry of States".

Further agreements were devised for each of such other States as might join later and the Government of India concurred in the same way with such agreements.

A fresh Instrument of Accession was executed by the Raj-pramukh on behalf of the United State of Madhya Bharat. Special provisions were made for avoiding legislative conflict, and for any future agreement between the

Rajpramukh and the Government of India. Such agreements were to form part of the Instrument of Accession. It was however expressly provided by clause 6 as follows :

> "6. The terms of this Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by the Raj Pramukh of the United State by an Instrument supplementary to this Instrument."

The Governor-General of India accepted this Instrument of Accession on September 13, 1948. By then 23 Rulers bad joined the United State. On November 24, 1949, on the passing of the Constitution of India, the Rajpramukh issued a Proclamation after

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a resolution of the Covenanting Rulers. It affirmed the constitutional relationship' between the United State and the Dominion of India and provided as follows

> "PROCLAMATION FOR MADHYA BHARAT
> Gwalior, the 24th November 1949
>
> WHEREAS with the inauguration of the new Constitution for the whole of India now being framed by the Constituent Assembly of India, the Government of India Act, 1935, which now governs the constitutional relationship between .this State and the Dominion of India, will stand repealed;
>
> AND WHEREAS, in the best interests of the State of Madhya Bharat, which is closely linked with the rest of India by a community of interests in the economic, political and other fields, it is desirable that the constitutional relationship established between this State and the Dominion of India, should not only be continued as between this State and the contemplated Union of India but further strengthened, and the Constitution of India as drafted by the Constituent Assembly of India, which includes duly. appointed representatives of this State, provides a suitable basis for doing so;
>
> I, Jiwajirao Madhavrao Scindia, Raj Pramukh of the Madhya Bharat, now hereby declare and direct-
>
> That the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for the Madhya Bharat as for the other parts of India and shall be enforced as such in accordance with the tenor of its provisions;
>
> That the provisions of the said Constitution shall, as from the date of its commencement' supersede and abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State.

This in short is the constitutional history of the States which united to form the United State of Madhya Bharat. It is apparent that the Instrument of Accession and the Covenants operated as a constitution in little for the governance of the United State. The identity of the United State as a semi-independent unit was preserved and the constitutional framework of this State was indicated. The Covenant was an Act of State on the part of the Rulers. It may be regarded also as such by the Government of India

although no volition beyond concurrence, of the Government Played any Part whatever might I have been the diplomatic
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consultations between the acceding United State and the Government of India. The Government of India merely accorded them recognition and guaranteed its provisions. If treated as an Act of State it ended with the recognition. It was also an Act of State on the part of the Rulers who surrendered their lights but the provisions that they evolved for the joint governance of their territories made a constitution proper of which the Courts were to take judicial notice and apply according to their tenor as occasion demanded. From these documents flowed consequences which were binding alike upon the Covenanting States, the United State of Madhya Bharat and the Government of India and the Courts-. None of them could avoid these consequences.

The Merger agreements were much simpler documents. As an illustration I may refer to the Bilaspur Merger agreement. It was executed on the 15th August 1948 by the Raja of Bilaspur. It consisted of five articles. By the first article the Raja ceded to the Dominion government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State, agreeing to transfer the administration on October 12, 1948. By article 2 the Raja was to receive annually a sum of Rs. 70,000/as privy purse free of taxes. The sum included Rs. 10,000/- as an allowance for the Yuvraj. These amounts were to cover all expenses and were not to be increased nor reduced for any reason whatsoever. By article 3 the Raja was entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him, and he was to furnish an inventory of such properties. In case of dispute the matter was to be referred to such officers with judicial experience as the Dominion government might nominate and the decision was to be binding on both parties. By article 4, the Raja, the Rajmata, the Yuvraj and the Yuvrani were to enjoy all personal privileges enjoyed by them within and without the territories immediately before the 15th day of August 1947. By article 5 the Dominion government guaranteed the succession, according to law and custom. to the gaddi of the State and to the Raja's personal rights, privileges dignities and titles. The Merger agreement was signed by the Raja and Mr. V. P. Menon, Secretary in the Ministry of States.

Although the Merger Agreement of the Raja of Bilaspur sufficiently illustrates the line followed it may be mentioned here that some of the Merger Agreements had more clauses than the one noticed. In the Merger Agreement of the Maharao of Kutch there were other articles such as immunity for past acts of the Maharao in his personal capacity or otherwise and also a guarantee for continuance in service of the permanent members of the Public services of Kutch and for their conditions of service, pensions
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and leave salaries and immunity for past acts. In the Bhopal Merger Agreement the Nawab was to receive Rs. 11,00,000/- as Privy Purse but each of his successors was to receive only Rs. 9,00,000/-. Article IV however provided that the income derived annually from the share of the Nawab in the original investment by Qudsia Begum in the Bhopal State Railway, which share was agreed to be Rs. 5,50,000, was to be treated as the personal income of the Nawab and to be paid by the Government of India to the Nawab and his successors. Article VII provided that the succession to the

throne of Bhopal State would be governed by and regulated in accordance with the provisions of the Act known as "The succession to the Throne of Bhopal Act of 1947", and then in force in the Bhopal State. The Government of India further agreed that all rights and privileges secured by the Agreement to the Nawab would be continued to his successor.

The course of historical events is different according to the States emerged in or merely acceded to the Dominion. The merged States were either incorporated in the existing Governor's Provinces or, were administered centrally as Chief Commissioner's Provinces. I am not concerned with these historical events and, therefore, I refrain from saying anything here.

The next step in the chain of historical events in regard to Gwalior came with the Constitution which was accepted by the Rajpramukh in his Proclamation. Special provisions were incorporated in the Constitution to which reference may be made here. Four Articles in the Constitution are only relevant and are quoted here. Article 291 was amended by the Constitution (Seventh Amendment) Act, 1956 by deleting clause (2) but is quoted here as it was before the Amendment :

> "291 (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse.
>
> (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and
>
> (b) the sums so paid to any Ruler shall be exempt from all taxes on income.
>
> (2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule. there hall be charged on, and paid out of, the Consolidated Fund of
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>
> that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 278, be determined by order of the President".

This Article does not apply to the State of Jammu and Kashmir. Article 366 contained a definition in (21) which was deleted by the Constitution (Seventh Amendment) Act 1956. This definition may be read here :

> "366. In this Constitution, unless the context 'otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-
>
> (21) "Rajpramukh" means-
>
> (a) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
>
> (b) in relation to the State of Jammu and Kashmir' or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and
>
> (c) in relation to any other State specified in Part B of the First Schedule, the person

who for the time being is recognised by the President as the Rajpramukh of the State, and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;"

These two repeals were occasioned by the constitutional readjustment of States when Part B States disappeared. The definitions became obsolete after the Reorganization and hence they were deleted. Article 366 contained other definitions in (15) and (22) which may be quoted:

"(15) 'Indian State' means any territory which the Government of the Dominion of India recognised as such a State."

" (22) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of

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article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;"

They are intact till today. So also two other Articles, namely, 362 and 363. of these the former does not apply to the State of Jammu and Kashmir, but the latter does. They may be quoted here :

"362. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

363 (1). Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessors Governments was a party and which has or has been continued in operation after such com-mencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other smilar instrument.

(2) In this article--

(a) 'Indian State' means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) 'Ruler' includes the Prince, Chief or

other person recognised before such commencement of His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

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The intention behind the definitions in 2(a) and (b) specially included here was to bind even those Rulers who were recognized before and who might not have been recognised by the President under article 366(22).

The Indian States formed a significant but separate part of India before they merged with the rest of India. it is common knowledge that the aim of the Government of India Act, 1935 was to associate the Indian States with British India as equal partners in a loose federation. When India became independent by the Indian Independence Act 1947, British paramountly in respect of the Indian States lapsed. In theory the Rulers became independent but, as shown above, in actual fact, almost all the Rulers signed almost immediately, Instruments of Accession in August 1947 surrendering Defence, External Affairs and Communications. The Rulers immediately after Independence became divided into four classes :

(a) those who had signed Instruments of Accession;

(b) those who had signed instruments of Merger;

(c) those who had formed themselves into Unions and the Unions had signed Instruments of Accession;

(d) Hyderabad, Mysore and Jammu and Kashmir.

The merged States were either directly administered by the Dominion Government as Chief Commissioner's Provinces or were handed over to the neighboring Provinces. Thus 216 States merged in the adjoining Provinces, 61 States were converted into centrally administered areas and 275 States formed Unions. Only three States retained their integrity; but when the Constitution came into force, they too became part of the Union of India on a later date. They were Hyderabad, Mysore and Jammu and Kashmir.

The Indian States covered about 48 per cent of the area of the Indian Dominion. The population of this area formed 28 per cent of the total population of the Dominion. All the Rulers (including the Rajpramukhs of the Unions) issued proclamations of which reference has earlier been made in relation to Gwalior. On the merger or integration of the States with the Union of India the Rulers were left with a Privy Purse and a few of their personal privileges and properties. The Privy Purses were fixed with due regard to the incomes of the Rulers, before integration with a ceiling of Rs. 10 lakhs. Eleven Rulers were to be paid more than that sum as a personal Privy Purse. The total amount of the Privy Purses came to Rs. 58 crores. Today the highest Privy Purse is Rs. 26 lakhs per annum to the Ruler of Mysore and the lowest is Rs. 192 per annum to the Ruler of Kotodia.

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The Privileges of the Rulers included many items. A memo-randum on these privileges was issued by the Ministry of States in 1949. it did not contain an exhaustive list but was drawn up to inform Provincial and Union Governments about them. It contained an itemised list of 34 privileges. They included several exemptions from the operation of Indian Laws, the enjoyment of Jagir and personal property of the Rulers and members of their families, the payment by the States of the marriage expenses of the brothers and sisters of the Rulers, immunity from some processes of courts of

law, immunity from requisitioning of the private properties of the Rulers and their families and so on and so forth. During the negotiations letters were written to the Rulers to assure them that the Privy Purse was fixed in prepatuity and the freedoms enjoyed by them would be continued.

The Privy Purses and the Privileges were continued till 6th September 1970. Their payment or enjoyment was a part of the guarantee of the Constitution. However the All India Congress Committee passed a Resolution on 25th June 1967 for their abolition. In furtherance of this resolution the Union Home Ministry held several conferences with the representatives of the Rulers. Although shorn of all but a shadow of their former power and panoply, the Rulers seemed to regard themselves as something different from the people or perhaps, as princes in exile. They had their Concord, their Intendant-General and Conciliar Committee, thereby evoking a certain measure of hostility among persons who were oblivious of the constitutional transition in India. The summary of the proceedings of these conferences were marked collectively as Annexure A annexed to the affidavit of the Union of India. It shows six meetings between November 3, 1967 and January 8, 1970. There were perhaps a number of informal meetings and consultations. Nothing seems to have been achieved. Government of India repeated their intention of withdrawing the recognition of the Rulers and stoppage of the Privy Purses and Privileges, and was prepared only for a negotiated settlement as to the terms on which the abolition should take place. The Concord of Princes was not prepared to enter into any negotiations and were chary of a fresh settlement which might be broken just as simply as the past solemn engagements and assurances. The Rulers who, before Independence, had always displayed the sentiment Ego et rex meus had realised that Princes were not the only people in Whose word trust should not be placed.

The Government of India acted rapidly. The President in his speech to the Houses gave expression to the policy of Government. A Resolution recommending the abolition was moved and passed in the Rajya Sabha. A Bill was then moved in the Lok

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Sabha intituled. The Constitution (Twenty Fourth Amendment) Bill 1970. It consisted of three clauses and a short statement of Objects and Reasons. 'the Statement read :

> "The concept of rulership, with Privy Purses and Special Privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government have therefore decided to terminate the Privy Purses and Privileges of the Rulers of former Indian States. Hence this Bill.
>
> 14-5-1970 Y. B. CHAVAN"

The Address of the President to the Joint Session of Parliament, the Resolution above referred to and the Statement of Objects and Reasons all gave identical reasons. The Bill was voted upon in the Lok Sabha on September 2, 1970. 332 votes for and 154 votes against it, were cast. It was considered in the Rajya Sabha ,on September 5, 1970 and was defeated, 149 voting for and 75 against it. It failed in the Rajya Sabha to reach the requisite majority of not less than two-thirds of the members present and voting.

The Bill originally gave no indication of the date when the Act was to come into operation but in the Lok Sabha an amendment was accepted by which it was to come into force

from October 15, 1970. By the second clause the Bill omitted Article 291 and 362 of the Constitution and the third clause omitted Article 366(22). The same evening the Cabinet is said to have met and to have decided to advise the President to withdraw the recognition of the Rulers. The same night the President signed at Hyderabad an instrument withdrawing recognition of all the Rulers. Separate orders were. issued to all the Rulers on the 6th September 1970 and they were also notified in the Gazette as already mentioned.

on September 7, 1970, the Finance Minister laid on the table of the Rajya Sabha a statement. He claimed that the power of the President to withdraw the recognition of the Rulers was unquestioned and had also been suggested as alternative to the amendment of the Constitution, and that Government was in fact going to use the power after the adoption of the Bill amending the Constitution. He gave as his reason for the President's action that the Bill amending the Constitution was lost by a fraction of a vote in one of the Houses, that there was widespread support against this out-moded and antiquated system of Privy Purses', that even those who opposed the Bill supported the abolition and

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that it was Government's policy to put an and to the concept of Rulership and the abolition of Privy Purses and the Privileges. He hinted that arrangements would be made to enable Rulers to make adjustments in the transitory period. These petitions were then filed to question the action of the President and the Government of India.

The petitioners put at the forefront the sentiments expressed at the time of the Merger of the Indian States. The Princes were then described as imbued with imagination, foresight and patriotism and as co-architects of a democratic and united India. Sardar Vallabhbhai Patel as the Minister in the newly formed Ministry of States made a speech on October 12, 1949 in the Constituent Assembly (Ex. C) in which he pointed out that the Madhya Bharat Rajpramukh alone gave sufficient cash assets which, if invested, would cover payments to the Rulers as Privy Purses. and that the payments to the Rulers represented one-fourth of what they were previously enjoying. He said that there was nothing by which the Rulers could be forced to merge their States with India and that the Privy Purses were quid pro quo for parting with the ruling power by the Rulers and the dissolution of their States as separate units. He regarded this as a small price for the bloodless revolution and avoidance of mischief. He exhorted the Constituent Assembly that the Indian Peoples on their part should ensure fully the guarantee given to them and concluded:

> "Our failure to do so would be a breach of faith and seriously prejudice the stabilization of the New' Order".

The same sentiments were reiterated by Mr. V. P. Menon (who was the Secretary to the Ministry) in his recent book "The Story of the Integration of the Indian States",(1961) pp. 461 and 462. He cataloged the number of villages, palaces, museums, buildings, stables garages, fleets of motor cars, aeroplanes etc. surrendered by the Rulers. He pointed out that cash balances were to the tune of Rs. 77 crores and that palaces in Delhi alone were worth several lakhs of rupees. According to him, the price paid as Privy Purses was not too high for integration and indeed it was insignificant when compared with what the Rulers had lost.

The petitions are long argumentative documents and the reply affidavit equally so. The verbosity of the petitions (which

are almost identical) and the reply affidavit (which is common to all petitions) does not render the-task of the Court in this important case any the easier. It is, therefore, necessary to place in their proper perspective the respective cases of the parties.

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According to the petitioners, the failure to amend the Constitution resulted in the retention in it, of the articles relevant to the Rulers' rights. These Articles, particularly Articles 291 and 362 continued the obligation of the Government to pay the Privy Purses and also to recognise the Privileges. The Privy Purses stood charged on and were to be paid out of the Consolidated Fund of India and even Parliament could not vote upon them. The assurances and guarantees being that of the people in the Constitution, the Executive Government could not by the indirect device of withdrawing the recognition of the Rulers avoid the obligation created by the Constitution. These assurances and guarantees of the Constitution, the Accession and Integration were but steps and the fixation of Privy Purses and the recognition of the Privileges was not doubt a historical fact but the guarantees flowed from the Constitution and were independent of the historical fact, and had thus to be carried out according to the constitutional provisions. They based their claim not on the agreements or the covenants but on the constitutional provisions. According to them, the order of the President was in violation of the spirit and meaning of Articles 366(22), 291 and 362 and was an affront to Parliament which had turned down the move for amendment of these articles. The President's action robbed the articles of their content which Parliament did not allow to be done and thus the order of the President indirectly had the effect of amending the Constitution. The President's order itself was said to be mala fide, ultra vires since his power was to recognise a Ruler at a time and for the time being or to withdraw recognition from a Ruler for cogent and valid reasons, naming in his place a successor, and not to withdraw recognition from all Rules en masse for no reason except that the concept of Rulership was considered outmoded or that some persons held the view that it should not be continued. According to the petitioners the gaddi of a Ruler had to be filled in accordance with the law and custom of the family and could not be left vacant. The vast power to withdraw recognition from all the Rulers at the same time without nominating any successor could not and did not flow from the definition of a Ruler in Article 366(22) which contemplated the Continuance of a Ruler who had signed the Merger Agreement or his successor. The President was thus guilty of a breach of his duties under the Constitution and acted outside his jurisdiction. The act of the President was thus said to offend Articles 53, 394, 295 291 and 362 of the Constitution.

In supporting their petition under Article 32, the petitioners claimed that important questions of deprivation of property and of personal liberty were involved. As illustrations the petitioners contended that the right to receive Privy Purses was a right to

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property of which the Rulers stood deprived as also of other personal properties and benefits of exemptions under diverse laws was also an inroad upon property rights. Since there was no authority of law and no compensation, the action was said to offend Articles 19(1)(f) and 31 of the Constitution. They also claimed that Government was prevented by

promissory estoppel and had acted in breach of a fiduciary duty.

In the reply affidavit filed by Mr. Asoka Sen (Joint Secretary in the Ministry of Home Affairs) all the allegations and submissions (besides the patent facts) were denied. The main contentions in reality were that this Court lacked jurisdiction to enter upon this dispute in view of the express bar of Article 363 that the petitions did not lie as no right of property or personal liberty of the petitioners, was jeopardised and lastly that the action of the President was perfectly valid and binding as it was a political act in the exercise of the sovereignty of India, as to which this Court could say nothing being outside its jurisdiction. 'Article 363, it was claimed, barred the jurisdiction of all Courts (including the Supreme Court of India) in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was executed before the commencement of the Constitution and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which had,-or had been continued in operation or in any dispute in respect of any right accruing under or any liability arising out of any of the provisions of the Constitution relating to any such treaty etc. and the present was such a dispute. Since the article began with the words "Notwithstanding anything in this Constitution", the article could only be read by itself and even the chapter on Fundamental Rights was excluded. The reason given was that these instruments were political agreements between High Contracting Parties and the Municipal Courts had no say in matters which were political or Acts of State. The Covenants were not self-executing and created imperfect obligations and depended for their enforceability upon the willingness of Governments to im-plement them. Since the claim was based upon what was recognised in these instruments, this Court could not give any relief as it had no jurisdiction to do so. The President's,powers to recognise a Ruler, which carried with it the power to withdraw such recognition flowed from Article 366(22) and this power being an incident of sovereignty and a political act was not questionable in Courts of Law. The bar of Article 363 covered such a case also because there was nothing to show that any recognition carrying with it a Privy Purse and Privileges was ever intended to be perennial even when the State policy demanded an abolition. The Privy Purse itself being-in the nature of a political pension, a claim to it was not property and no claim could arise if it was

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stopped. Article 291 did not create any legal right but only laid down the source and method of payment of Privy Purse guaranteed by the Dominion of India and even if it were assumed that it was private property or that other property rights were affected by the withdrawal of the recognition, the matter was not justiciable because of the bar of Article 363 which applied to Articles 291 and 362.

The pleadings in the case are long but the points are few. The case involves a positive and a negative approach in so far as this Court-is concerned. The positive approach involves the consideration of the reliefs that can be granted and the negative approach the bar operating under Article 363. The first approach requires consideration of the validity of the action of the President. It is obvious that if the action of the President is valid and operative, the implications of that action must necessarily follow. If

it is invalid, for any reason, then the question of the bar of the jurisdiction of the Court to give relief will arise. The Union Government however places the bar at the very threshold and contents that the dispute is such as is expressly barred by Article 363 but the petitioners contend that there is no dispute at all under Articles 291 and 362 or it is not of the kind contemplated by that Article. The Union Government asks that the question of jurisdiction be decided first because in their opinion it is conclusive, while the other side contends that there is no(dispute once the invalidity of' the President's order is established, since articles 291 and 362 would then speak for themselves. I intend considering first the question of the validity of the order of the President because everything turns on it. The arguments for and against that action may, therefore, be considered. According to the Union of India the act is political and in the exercise of sovereignty and paramountly. It cannot, therefore, be questioned in a Court of Law. According to the petitioners it is not, and is a plain executive order open to question like any other such act and the bar of article 363 does not apply to such a dispute.

The Union government invokes the analogy of the British Crown Paramountcy which lapsed on the Indian Independence. In this connection the claim is that the provisions of Article 363 and 366(15) and (22) preserve the paramountcy of the Crown in the President. This argument is independent of the question of bar of jurisdiction under Art. 363. It seeks to put the President's act outside the jurisdiction of the Court by reason of the nature of the act. A word may, therefore, be said about the paramountcy of the British Crown and what is meant. Reference was made in this connection by the Attorney General to the White

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Paper on Indian States, Mr. V. P. Menon's book already referred to, and the account contained in a recent book 'The Great Divide' by Mr. Hodson. He traced the paramountcy of the British Crown in India. I do not consider it necessary to refer to them. The best exposition of British Paramountcy is to be found in a famous letter by Lord Reading Viceroy of India addressed to the Nizam of Hyderabad when the latter claimed rights of kingship. It is printed as Appendix I to the White Paper. This is what the Viceroy said

> " The Sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India. The consequences that follow are so well known, and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary to point them out. But if illustrations are necessary. I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a Sanad declaratory of the British Government's desire

> for the perpetuation of his House and Government, subject to continued loyalty to the Crown : that no succession in the Masnad of Hyderabad is valid unless it is recognised by His Majesty the King-Emperor : and that the British Government is the only arbiter in cases of disputed succession.
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> 5.The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, no less than the external security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of
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> internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that except in matters relating to foreign powers and policies, the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title "Faithful Ally" which Your Exalted Highness enjoys has not the effect of putting Your Government in a category separate from that of other States under paramountcy of the British Crown".

The 1858 Act had recognised all treaties made by the East India Company with the Rulers, as binding on the Crown. Lord Canning in his dispatch of April 30, 1860 recommended the Perpetuation of the rule of the Princes over their States. This was accepted and a special power of adoption was recognised and new sanads were issued. The policy of annexation started by Lord Dalhousie then ceased. The Ruler could, thereafter, be punished only for extreme bad conduct but even so the territory was not annexed. The Ruler was deposed but a successor was recognized in his place.

This position continued down to 1935. in 1927 the Butler Committee clearly recognised the claim of the Princes that making any transfer of the Crown’s rights and obligations in relation to the States, to persons not under the Crown’s authority, would be conditional on the agreement of the States. This was particularly directed against an Indian Government responsible, to the Indian Legislature. To keep the Indian Government away from the States, after the advent of the Government of India Act, 1935 the old political department under the charge of the Governor-General disappeared. Previously the Governor-General’s Executive Council had left the States entirely to the Governor-General. The Act of 1935 formed the basis of a personal

relationship between the States and the rest of India. This meant a reversal of the policy and the British Indian Executive was slowly deprived of all constitutional status vis-a-vis the States. A Crown Representative was introduced as the link between the States and British India. The Government of India Act 1935 had visualised a federation between British India and the Indian States but that scheme did not materialise. The Indian States were anxious to create sovereign States but the Crown prerogatives in respect of them continued. Lord Linlithgow's declaration promised no commitment about the States without their consent in any future constitution

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that the Indians might frame for themselves. This was implemented by instructions to the Governor-General not to hand over paramountcy to the future Indian Government and paramountcy, so long as it lasted was that of the Crown and not of the Government of India.

When the Constitution came paramountcy had already lapsed. The Indian States were able to make several reservations in their own favour. They were anxious to frame their own Constitutions but many States could not withstand pressure of the Ministry of States and thought better of merging. with such reservations as the Merger Agreements made in their favour. The other States like Hyderabad, Mysore and Jammu & Kashmir on the one hand and the United States or Union of States on the other also dropped the idea of separate Constitutions for themselves (except Jammu & Kashmir) and integrated with India, accepting the Indian Constitution. The Rulers were allowed to get a Privy Purse free of taxes on income and to enjoy personal property and privileges. Articles 291, 362, 366(15) and (22) were included to recognise those conditions on which surender of power had taken place. Article 363 was included to keep certain matters away from Courts and now the most important question is what was granted to the Rulers by the Constitution and how for their rights could be enforced in a Court of Law. Paramountcy as such was no more as there was no paramount power and no vassal. The Rulers had lost their territories and their right to rule and administer them. They were left only a recognition of their original title, a privy purse, their private properties and a few privileges. These rights were the only indicia of their former soveignty but they enjoyed them by the force of the Constitution although in every respect they were ordinary citizens and not potentates. The paramountcy which the Crown exercised over them was different. Then the Crown had an absolute freedom to make and unmake Rulers in the exercise of paramountcy. The Constitution ensured the position of the Ruler and his successor with regard to the Privy Purse and privileges, although leaving the President the right, to confer that status on a Ruler by recognition. This result was reached by treaties, covenants and agreements.

The source or origin of paramountcy of the Crown was not the treaties, sanads or agreements. There were no paramountcy rights by reason of which the British were paramount but because they were paramount, therefore, they had paramountcy rights. When paramountcy lapsed it did not fall on the shoulders of Indian Government. The right to recognise a Ruler from out of several claimants was not an act of paramountcy. The selection had to be in accordance with law and custom. It was not the arbitrary power which made the conferral of Rulership a gift

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from the Crown. There is no provision to that effect in the

Constitution or even the Covenants and Agreements. That the Constitution gave the right to the President to recognise a Ruler for the time being, is apparent enough but it cannot be stretched to give a paramountcy of the same character as that enjoyed by the British crown. To claim such a parmountcy one has to ignore completely the arrangements by which the Rulers parted with their territories and Ruling rights and were assured of their Privy Purses and privileges. These rights became constitutionally protected rights which so long as the Ruler's line was not extinct belonged to the Ruler for the time being. In one sentence when the guarantees were given by the Constitution, paramountcy, if any, went out. If it was intended that rightful claims could be disregarded, at any time, a very clear provision authorising that they be overridden would have been included. On the other hand article 362 says in admonitory terms that in the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of executive power of the Union or, of a State, due regard shall be had to the guarantee or assurance given in any such Covenant or Agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges, and dignities of the Ruler of an Indian State. This provision is rather the converse of paramountcy in as much as it compels the two limbs of Government to have 'due regard' to the guarantees and assurances given to the Rulers.

There can be no paramountcy against a citizen of India and the Rulers today are not potentiates they were. They are citizens of India like other citizens albeit with some privileges and privy purses which other citizens do not get. That is an accident of history and with the concurrence of the Indian People in their Constituent Assembly. The power that has been exercised against them must, therefore, be justified under the Constitution and the laws and not by invoking a nebulous doctrine of paramountcy which Lord Jowitt describes in his Dictionary of English Law thus

> The relationship of the Sovereign as Emperor of India to the rulers of the native States, terminated by the Indian Independence Act, 1947".

The Attorney General contended that article 363 'recreated' paramountcy. That article was intended to keep certain matters outside the jurisdiction of the Court. It must be construed according to its own terms. No meaning, beyond what the words convey, can be attributed to those words by resorting to the imperial doctrine. What those words mean I shall consider later but I

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reject the claim that the President or the Government of India can invoke the doctrine to sustain an illegal inroad upon the rights of citizens.

Nor is the argument that this was some kind of an 'act of State' of any more validity. This Court has ruled on more than one occasion that an act of State' is not available against a citizen. An act of State is a sovereign act which is neither grounded on law nor does it pretend to be so. It was described by me, quoting from Fletcher-Moulton L. J. Salaman v. Secretary of State for India(1) as 'a catastrophic change constituting a new departure', in the State of Saurashtra v. Menon Haji Ismail(2). I have not been able to better that expression. I further pointed out that 'in civil commotion or even in war or peace, the State cannot act 'catastrophically' outside the ordinary law and there is legal remedy for its wrongful 'acts against its own

subjects or even a friendly alien within the State". I may again reaffirm the observations in that case 'based upon the statement of the law by Lord Kingsdown in Secretary of State in Council for India v. Kamachee Boyl Sabha (3). This is what I Said:

> "The question thus ,Is always : Did the State or its agents purport to act "catastrophically' or subject to the ordinary course of the Law? This question was posed in Secretary of State in Council for India v. Kamachee Boye Sahaba by Lord Kingsdown in these words :
> "What was the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain, of the dominations and property of a neighbouring State, an act not affecting to justify itself on grounds of Municipal Law? Or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Raja of Tanjore, in trust for those who, by law, might be entitled to it on the death of the last possessor? If it were the latter, the defence set up, of course, has no foundation."

The defence is not available if there is only a colour of legaltitle against a citizen. In that event, the action must fail unless supported by law. Since there are no sovereign or political powers under our Constitution every action of the Executive limb of Government must seek justification in some law. The very existence of article 363, which is said to incorporate some kind of

(1) [1966] I K.B. 613 at 640
(2) [1960] I S.C.R. 537 at 544
(3) [1859] 13 Moore P.C. 22.

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paramountcy or act of State,, shows that there is, no political power outside the law, otherwise an additional bar would hardly have been necessary.

The learned Attorney General when faced by the rulings on the act of State of this Court and the English Courts, gave up the attempt for justification as such and pleaded that the Covenants and Agreements created 'imperfect obligations'. The phrase.'imperfect obligations' is more often to be met with in the Law of Contract but it was applied by Tindal, C.J. to political treaties in G. Gibson & Ors. Assignees of J. Mallandaino Bankrupt v. The East India Co.(1). There the claim was made by a retired,' Military Officer for pension against the Directors of the East India Company based on certain treaties. It was held that such agreements lacked vinculum juris. The Phrase 'imperfect obligations' was thus used in regard to individuals as subjects of international rights and duties. The recognition in an international treaty or other instrument of rights inuring to the benefit of individuals other than the parties to the agreement, is sometimes 'held not to confer the right of enforceability at the instance of such other persons. Therefore, the beneficiary under these rights cannot take measures to enforce them by his own independent steps. In the Peter Pazmany University(1) case the Permanent ,Court of International Justice observed

> "It is scarcely necessary to point out that the capacity to possess civil rights does not necessarily imply the capacity to exercise those rights oneself".

Thus a rule of International Law formerly held the field that persons holding such rights are incapable of asserting them in the international sphere or in the Municipal Courts. The instrument may make them owners of rights and yet take away the remedy from them. This is the sense in which Tindal C.J. used the phrase 'lacking in vinculum jurists This position has now altered and there is a rethinking on the subject. It is now gradually gaining recognition that if there be 'some municipal legislation giving enforceability to the right, then the right can be claimed in a Municipal Court. This change of view followed the Advisory Opinion of the Permanent Court of International Justice in the jurisdiction of the Courts of Danzing in the matter of Railway officials in Danzing. (I) The rights given by a treaty received a broader acceptance there. This case gave an exposition of the. rights of individuals in the international

(1) 132 E.R. 1105 (2) Series A/B No. 61 p. 231
(3) Advisory Opinion No. 15, series B No. 15.

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sphere and the Municipal Courts. The argument of Poland in the case was that the agreement between Poland and Danzing regulating the conditions of employment of the Railway officials taken over in Railway Service, created rights only between Poland and Danzing and as that agreement was not incorporated in the laws of Poland, it created no rights for individuals, and that the Danzing Courts had no jurisdiction to decide in respect of those rights. The Court did not accept the contention. It observed

> "It may be readily admitted that, according to a well-established principle of international law, the Beam-tenabkommen, being an international agreement, cannot, as such, create direct rights and obligations for private individuals. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting parties, may be the adoption by the Parties of some definite rules, creating individual rights and-obligations and enforceable by the national Courts. That there is such an intention in the present case can be established by reference to the terms of the Beamtenabkommen." (Page 17)

Before dealing with the position of the Rulers themselves, let me illustrate the application of this observation in our country in relation to third parties, safeguarded by an international agreement. The Covenants and Merger Agreements contained clauses guaranteeing continuance of service to the Civil Servants and of their pensions. Those Civil servants would not have been able to enforce these agreements in Municipal Courts by their own individual steps if there was no law or the rights were not otherwise recognised. But when they shared with the Civil servants of the former British India, the benefits of Articles 309-311 of the Constitution and the Rules governing such services, it is not possible to deny to them the benefits that the Constitution and the Rules confer. The Covenants, cannot then be said to create 'imperfect obligations' since the Constitution takes the matter into itself and gives them is own guarantees. The individual rights and obligations no doubt originally flowed from a contract between High Contracting Parties and might not have create a vinculum juris in favour of third parties but the Constitution having

granted rights and created corresponding obligations, those rights and obligations are enforceable in our Courts. This Court has ruled on many occasions that a recognition of rights by law or otherwise makes them _justiciable : see for example State of Rajasthan v. Shyam Lal(1).

(1) [1964] 7 S.C.R. 174.

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The case of the Rulers in a fortiori for they are the contracting parties. In so far as those guarantees became a part of our Constitution and were included in various statutes passed by Parliament such as the Income-,tax Act, the Wealth-tax Act etc., they would be enforceable according to the tenor of the Constitution ,and the other laws (subject of course to such bar. as the Constitution creates by Article 363). Then no question of an 'act of,State' or of 'imperfect obligations' arises. To sustain the President& act repudiating the rights and obligations on the basis of a discarded theory of 'imperfect obligations' would drain the constitution and the. laws of their efficacy by an executive act without amendment of the Constitution or the laws and that cannot be permitted. This is not a right for enforcement in foro Conscientiae to make good, or of which the performance could only be sught for by petition, memorial or remonstrance. This is a ,case for an action in a Court of Law if the dispute is not barred by the Constitution itself.

Therefore there is no bar to the jurisdiction of this Court except that created by Article 363. The ambit of that bar will be worked out by me on the terms of that article later but before that bar can be applied one must know what is it that is in controversy here. The main dispute is as to the validity of the action of the President in withdrawing recognition from the Rulers without an exception. The petitioners question the power, authority and jurisdiction of the President to do so. They characterise the act as mala fide, ultra vires and therefore a nullity. I will consider the matter in the same order.

The charge of mala fide action in this connection can only mean want of good faith. Good faith according to the definition in the General Clauses Act means a thing which is in fact done honestly, whether it is done negligently or not. In other words an act done honestly must be deemed to, be done in good faith. Mr. Palkhivala described the act as wanting in good faith and relying on many cases contended that want of good faith must avoid the act. It is hardly necessary to refer to those cases here as it is well-settled that lack of bona fides unravels every transaction. I do not think that it is open to Mr. Palkhivala to describe the act as wanting in good faith without pleading any collateral fact. Further it is not open to me to probe the reasons for a decision by the President. To begin with under Article 74(2) the question, whether any and if so what, advice was tendered by the Ministers to the President cannot be inquired into by any Court. Again by Article 361(1) the President is not answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise of those powers and duties

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except in an investigation of a charge under Article 61. All that is saved is that appropriate proceedings against the government of India can be taken. Therefore, whether the President acted rightly or wrongly in the matter may be decided against the Government of India without questioning the conduct of the President. Therefore, the only question

open is whether the act of the President was ultra vires the Constitution.

> The question of ultra vires was put thus by the petitioners
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> " An executive exercise of power must be in accordance with the Constitution under Article 53. Article 362 says that the President must exercise the power with due regard to the guarantees and assurances. The President in his action has completely disregarded Articles 291 and 362 and by withdrawing the recognition of the Princes has acted ultra vires the Constitution. Under Article 73 the Executive power of the Union is co-terminous with the law making power of Parliament. When Parliament refused to amend the Constitution, the President's power did not extend that far by executive action. By his executive act the President has denuded articles 291 and 362 of their content for ever. The President was required to recognise the Rulers and has with one stroke withdrawn the recognition. He is trying to do indirectly what Parliament refused to dot directly that is to say remove articles 291,362 and 366(22) from the Constitution. This has, been done without a hearing to the Rulers and is in breach of accepted principles of natural justice. The rule of law prevails and no unconstitutional act of any authority, unsupported by law, can avail(1).
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> The action is not only against the Constitution but it also affects a large body of tax and other concessions. Prominent among them are Wealth Tax Act 1957 Ss.2(p) and 5(1)(iii), Gift Tax Act 1958 S. 5(1)(xiv), Hindu Succession Act, 1956 S. 5(iii), Income-tax Act 1922 Section 4(3) (x); Income-tax Act 1961 S. 10(19), Estate Duty Act 1953, Section 33(1)(1); Part B States (Taxation Concessions) Order 1950, Clause 15. Sea Customs Act 1878 Section 23. Freedom from prosecutions and Civil suits to a certain extent is assured respectively by the Code of Criminal Procedure 1898 S. 197A and the Code of Civil Procedure 1908 S. 87A and 87B read with sections 85 and 86. These privileges have fallen with Rulership and it could not have been
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> (1) [1967] 2 S.C.R. 454, 460.
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>
> intended that these laws would be rendered nugatory by the expedient of removing the Princes."

The power to withdraw recognition from a Ruler is claimed by the Attorney General to be implicit in Article 366(22) because it defines a Ruler in terms of recognition 'for the time being' by the President. It is also contented that the power to recognise, itself includes the power to withdraw recognition. It is, therefore, necessary to see how far the President can go on the words of the article. The critical words in the articles are 'for the time being.' These words show that the Ruler is a person, who, to be considered as a Ruler must, at any given moment of time, be recognised by the President whether he be the original signatory of a Covenant or Agreement or his successor. The words thus

indicate that only one person at a time can be recognised as the Ruler of a State. It also shows a continuity of succession so that an interregnum is avoided. It does show that Rulership cannot be permanent since the continuance as Ruler depends upon the continuance of the recognition. But the definition neither expressly nor by implication places the power in the hands of the President to say that although a Ruler was in existence or a successor was available that, there shall be no Ruler of any particular State. Such a power does not flow from the definition which contemplates the existence of a Ruler for the time being. The phrase 'for the time being' cannot mean that any person can be appointed who has no claim whatever or that temporary appointments may be made or that no appointment need be made. The continuity of a Ruler of an Indian State is obligatory so long as the Ruler is alive or a successor can be found. It may be that where the line becomes extinct (as happened in some cases) or no suitable successor could be found that no Ruler need be recognised. But where the Ruler exists or there is a suitable successor the power to recognise a Ruler is implicit just as much as the power to withdraw recognition in suitable cases. The Union Government cannot escape this obligation by invoking paramountcy or some state policy. The obligation to recognise a Ruler is bound up with the other guarantees contained in articles 291 and 362. The definition in article 366(22) is merely the key to find a particular Ruler. The withdrawal of recognition from all the Rulers renders the guarantees as also the relevant articles of the Constitution inoperative. It could never be the intention of the Constitution that by an Executive act the operation of those articles would come to a stop. The action of the President has the indirect effect not only of abrogating these articles but also of rendering certain provisions in the Income-tax Act, Wealth Tax Act, the Gift Tax Act, the Codes of Civil and Criminal Procedures etc., completely otiose. Executive action can never be allowed to have that effect unless

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the power is explicitly conferred. The intention of Article 366(22) is exactly the converse of what the Union Government understands it to be.

The answer of the first question is that the power of the President was wholly outside Article 366(22). However wide that power, it does not extend to withdrawing recognition of all the Rulers by a mid-night order. The President was incompetent to, do so and, therefore, his act must be treated as a nullity. This question is independent of Article 363 and has no bearing upon: any Covenant etc. It relates only to the power of the President in behalf of recognition of Rulers and withdrawal of recognition. The Court is, therefore, free from Article 363 to consider whether the act can be sustained or not. That Article only applies to acts within the four comers of the Article and not to acts wholly outside. I will show later how that bar can operate on Article 366(22) when I consider Article 363. For the present I state my conclusion that having considered the matter I am satisfied that the act must be declared to be ultra vires and a nullity. This, answers the first ground of attack in favour of the petitioners The question,, is however, reserved for answer whether I am barred by article 363.

Before I consider the matter from the angle of the Articles of the Constitution bearing upon the controversy and the bar of Article 363 I wish to dispose of one, matter which is

also, in a manner of speaking, a bar at the very threshold. That bar would arise if this is not a petition coveted by Article 32. The petitioners seem to base their claim to relief on four grounds

(a) That the order of the President is a nullity;

(b) that by the order of the President their privy puruses are stopped and that is an infringement articles 19(1)(f) and 31;

(c) that the order also deprives them of their privileges and some are property rights and some affect personal liberty; and

(d) that statutory rights under certain statutes (already mentioned above) are destroyed and they result in deprivation of property through illegal taxes.

It is sufficient for this purpose to find out if any right of property is involved. The most outstanding effect of the order is the deprivation of the Privy Purses. These Privy Purses are charge on and paid out of the Consolidated Fund of India, free of all taxes on income (Art. 291). If the payments are obligatory and they

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can be regarded as property a petition under Article 32 will lie as the action to deprive the Rulers of their Privy Purses must be an infringement of Articles 19 and 3 1.

Therefore, I need begin only with the Privy Purses, the stoppage of which is the direct consequence of the order withdrawing recognition. A preliminary point arises under article 19 whether the Rulers can be regarded as citizens. I have assumed this so far as I cannot see how otherwise they can be described. In H.H. the Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. The State of Rajasthan(1) it is laid down that

"The appellant has also, since the Constitution, been a citizen of India, and his recognition as Ruler under Art. 366(22) of the Constitution has not altered his status, but as a citizen he is undoubtedly assured a privileged position."

Therefore, the matter can be considered both under Article 1 9 and Article 3 1.

In two cases of the Court Madhaorao Phalka v. State of Madhya Bharat(2) and State of Madhya Pradesh v. Ranajirao Shinde and Anr.(3) pensions and cash grants were regarded as property. The reason for the decision is not as fully given as the importance of the subject required and, therefore, I permit myself to say a few words here.

I shall show later that the obligation to pay the Privy Purse to a Ruler is absolute and the right to claim it when due subsists in each Ruler. This is a petition for the enforcement of Fundamental Right to property and therefore the petitioners must show that a right to property is infringed or is in imminent danger of being threatened. The learned Attorney General questioned the competency of these petitions and the claim that property rights were involved. According to him the right is one to continue to receive a payment de futuro and no more. A right to receive payment is not, according to him, a right to property.

The attempt is to equate the periodic payments as being in the nature of payments of debts. It is said that this creates a right in personam and not a right in rem. Therefore, there is enforcement of an obligation in personam but not a right to reach property which can be said to

belong to the Rulers. I do not accept the contention of the learned Attorney-General.

(1) [1954] 5 S.C.R. 1, at page 6 (2) [1961] 1 S.C.R. 957
(3) [1968] 3 S.C.R. 489

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In his summary of the Law of Contract (p. 124) Langdell remarked that 'a debt..... according to the popular conception of the term, is a sum of money belonging to one person (the creditor), but in the possession of another (the debtor). He questioned this approach. Blackstone contrasted property in possession and property in action and held contracts to be within the latter(1). He was in effect thinking of a debt. According to him property in action exists :

"Where a man hath not the occupation, but merely a bare right to occupy the thing in question, the possession whereof may, however, be, recovered by a suit or action at law.....".

He was of opinion that till then the thing or its equivalent, remains in suspense, and the injured party has only the right and not the occupation. It being a thing in potentia and not in esse it is only a thing in action and not possession. Sohm (The Institutes) also says that till the fulfilment of the obligations the creditor has right only against the debtor and not against a thing.

This old concept of property is no longer held to be true. Mark by (2) regards the liability of the promisor as itself a thing which is capable of being bought and sold, assigned and transferred and if of money value, may itself be regarded as an object of ownership. An obligation according to him is as much a res as any other property and the only difference is in the mode of enjoyment. The creditor realizes this ownership by compelling the debtor to perform his obligation. As illustration he gives a catalogue of passive 'rights of ownership. Anson (Principles of Law Contract) supports him by pointing out that an obligation is a right of control exercisable by one person over others for acts which have a money value.

The dynamic theory of obligations regards a debt as a claim to 'an equivalent in a value to a floating charge against the generality of things which are the properties of the debtor'. From this is developed the notion of a credit-debt where property rights arise from a promise, express or implied in respect of ascertained or readily ascertained sums of money. Thus a debt or a liability to pay money passes through four stages. First there is a debt not 'yet due. The debt has not yet become a part of the obligor's 'things' because no net liability has yet arisen. The second stage is when the liability may have arisen but is not either ascertained or admitted. Here again the amount due has not become a part of the obligor's things. The third stage is reached when the liabi-

(1) (See Commentaries Vol. II XXv pp. 396-398)
(2) (Elements of Law 1871 6th Edition p. 320)

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lity is both ascertained and admitted. Then it is property proper of the debtor in the creditor's hands. The law begins to recognise such property in insolvency, in dealing with it in fraud of creditors, fraudulent preference of one creditor against another, subrogation, equitable estoppel, stoppage intransitu etc. A credit-debt is then a debt fully provable and which is fixed and absolutely owing. The last stage is when the debt becomes a judgment debt by reason of a decree of a Court. Thus an American Judge held 'outstanding uncollected accounts' as property. Standard

Marine Insurance Co. v. Board of Assessors(1). It is because of this that the French Law includes such obligations in mobiles.

Applying these tests to the Privy Purses, it is clear that they would be property. As soon as an Appropriation Act is passed there is established a credit-debt and the outstanding Privy Purse becomes the property of the Ruler in the hands of Government. It is also a sum certain and absolutely payable.

The learned Attorney-General however contends that Article 291 which charges the Privy Purse on the Consolidated Fund of India, to be paid to the Ruler, free of all taxes on income does not provide that it shall be paid and, therefore, the Article only lays down the source and manner of payment but creates no right to claim, receive or enforce payment. In my judgment this is a complete misreading of the Article.

The word 'charged', is a term of art. In general law 'a charge' creates a pledge and also a priority in payment. The word also denotes in Parliamentary practice non-votability. The latter meaning distinguishes it from those items which are payable indiscriminately from the same fund. The result of charging a sum on the Consolidated Fund is to provide that its destination shall not be altered even by vote of Parliament and the charging is sufficiently effective for ensuring the right application. It also sometime,; creates priorities as in the Constitutions of some other countries. In our Constitution numerous items of payment are charged on the Consolidated Fund but no priority inter. se is established. Yet Article 291 makes the..... amount payable to the Ruler and, therefore, creates a right in him to demand it. The words of the Article are 'shall be charged on and paid out of etc'. The article makes the payment obligatory. The words when expanded read 'shall be charged on and shall be paid out of etc'. the direction to pay is in no uncertain terms. The article is thus self-ordaining. The recipient is mentioned in (b) where

(1) 123 La 717, 720.

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the Article says 'and the sums so paid to any Ruler' and this shows who is to be paid. Therefore, the article in addition to the source and manner also lays down that it shall be paid and paid free of taxes on income to the Ruler. The Article thus not only creates a liability but also a right in the Ruler. It is self-supporting and self-ordaining.

The learned Attorney-General contends that even accepting all this as a valid construction of the article 291 of the Constitution, the petitioners must fail because they are seeking either to enforce the Covenants and Agreements or on seeking to enforce a provision of the Constitution relating to such Covenants and Agreements. The same argument is also raised in respect of articles 362 and 366(22). According to him the petitioners stand excludedby Article 363.

This is the crux of the case before us. The answer to this question depends on the meaning to be attributed to the four article in question, and determines the fate of these petitions.

I begin with article 363. That article was quoted in extenso earlier. The learned Attorney-General used the historical events as background for his contention that Article 363 must be construed as giving an exclusive right of determination to the President on the subject of recognition and withdrawal of recognition. He submitted

that just as an act of State cannot be questioned in a Municipal Court so also the withdrawal of recognition cannot be called in question. He cited a large number of authorities in support of his case that an act of State is not subject to the scrutiny of the Courts.

The question here is not one of an act of State. Nor can any assurance be drawn from the doctrine of act of State. What we have to do is to construe the article. It bars jurisdiction of Courts. It, has no bearing upon the rights of the Rulers as such. It neither increases. nor reduces those rights by an iota. I shall presently attempt to find out its meaning. Before I do so I must ,say that it is a well-known rule of interpretation of provisions barring the jurisdiction of Civil Courts that they must be strictly construed for the exclusion of the jurisdiction of a Civil Court, and least of- all the Supreme Court, is not to be lightly inferred. The gist of the present dispute is whether the article bars the relief to the petitioners although as held by me, the order of the President is ultra vires.

The article commences with the opening words 'notwithstand-ing anything in this Constitution'. These exclusionary words are no doubt potent enough to exclude every consideration arising

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from the other provisions of the Constitution including the Chapter on Fundamental Rights, but for that reason alone we must determine the scope of the articles strictly. The article goes on to say that jurisdiction of all Courts including the Supreme Court is barred except that the President may consult the Supreme Court. Having said this the articles goes on to specify the matters on which the _jurisdiction is barred. This it does in two parts. The first part is : 'in any dispute arising out of any provision of a treaty etc. which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State to which the Government of the Dominion of India was a party and which has or has been continued in operation after such commencement'. This shows that a dispute relating to the enforcement, interpretation or breach of any treaty etc. is barred from the Courts' jurisdiction. The words 'arising out of the provisions, of a treaty etc.' limit the words. Thus if a treaty, covenant etc. is characterised as forged by any party, that would not be a dispute ,arising out of any provision of a treaty, covenant etc.. That dispute would be whether there is a genuine treaty or not. This illustration is given by me to show that the exclusion is not all-embracing. The dispute to be barred must be arise from a provision of the treaty etc.

The second part .bars the Courts' jurisdiction 'in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty etc.' Here the dispute must be in respect of a right which accrues under a provision of the Constitution or the liability or obligation must arise similarly from a provision. The words 'provisions of this Constitution' are not left unqualified. They could not be left unqualified for then the latter part would have barred every dispute from the Courts. The provisions had to be pointed out. The article however does not refer to any article by its number. If the article had said 'in any dispute in respect of any right accruing under or any liability or obligation arising out of articles 291,362 and 366(22)' all controversy in this case would have

been at an end. But the article uses a qualifying phrase which does not name but describes the provisions. A search has, therefore, to be made with a view to determining which provision answers the description and which does not. In other words, we have to satisfy- ourselves, before we deny out jurisdiction, that of the articles 291,362,366(22) which one, or all of them answer the description. The requirement is that the article must be a provision 'relating to' a treaty covenant etc. I must therefore examine each of the three articles 291,362,366(22) to discover if all of them and, if not, which of them would fit in with those words.

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The learned Attorney-General practically read every word through some dictionary or other. The words are 'relating to. They mean that the provisions must bear upon treaties etc. as its dominant purpose or theme. It is not sufficient if the treaties etc. are mentioned there for some collateral purpose. During the course of arguments I illustrated my meaning by referring to Article 102 which provides that a person is disqualified if he is an undischarged insolvent 'and asked the question whether the provision could be said to be relating to 'membership' or to 'insolvency' and got obvious answer that it is the former. The fact that it mentions 'insolvency', 'insanity' etc. does not make it any other than a provision relating to membership of parliament. The dominant purpose and theme of the article is one and one only and that has to be discovered before one can say that it is 'relating to' this or that. A similar illustration is to be found in article 105 (3) where a provision is to be found relating to powers etc. of Indian Parliament and not to those of the House of Commons. Therefore, in trying to find out whether any provision is 'relating to' a treaty etc. it is not enough to find a mention of treaty etc. That may be for a subsidiary purpose, not sufficient to qualifiy for consideration as the dominant theme. It is the dominant purpose and theme which alone determines the quality of the provision.

I shall now apply this test to article 291,362 and 366(22) beginning with article 362 since to my mind it is the plainest of all and is definitely within the description. It provide directly for the enforcement of guarantees and assurances by requiring Parliament, the Legislatures and the Executive Governments of the Union and the States to have 'due regard' for those guarantees and assurances. The article can only be used to support a claim to rights, privileges and dignities. Its dominant theme is the rights, privileges and dignities of the Rulers under Covenants and Agreements and therefore, the provision is 'relating to' Covenants and Agreements. The reference to Article, 291 does not influence the application of the test to Article 291 because that is merely a legislative device and does not tie the two Articles together. It only saves repetition of certain phrases already used in Article 291. If Article 362 were earlier in the Constitution the phrase would have occurred in it and would have been referred to in the other article. Therefore no conclusion can be drawn from this description in Article 362. Therefore article 362 is one of the provision relating to a treaty, covenant etc. A litigant invoking its aid really relies on a provision relating to a Coveant etc.

I shall now consider Article 366(22). That is only a de-finition clause. It is intended to point out who is the Ruler of

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which State. It does so by saying that a Ruler is a person

(a) who entered into a Covenant or Agreement before the commencement of the Constitution and the payment of any sum free of tax had been guaranteed or assured by the Government of the Dominion of India as privy purse or (b) the successor of such Ruler. For purposes of (a) the same repetition is again avoided by the same legislative device of referring to article 291 for brevity. This Article renders the certainty of assumption of Rulership to depend upon recognition and that recognition is worked out primarily under Covenants and Agreements. The. ,dominant and immediate purpose and application of the Article depends upon Covenants and Agreements. I have earlier said that the President in recognising a Ruler or withdrawing his re-cognition does not act arbitrarily but in the light of Covenants and Agreements. All such instruments mention law and custom of the family except the Bhopal Agreement where a local statute has to be observed. The selection of a Ruler's successor thus has to be worked out under a Covenant or Agreement. The Article, therefore, has for its dominant purpose the selection of Rulers through the application of the Covenants and Agreements. After the President has exercised his jurisdiction and power to recognise ,a Ruler according to his understanding of the implications of a ,Covenant etc, no one else has jurisdiction to enter upon the same question unless it can be proved that the act was null and void in toto. When the President acts within the four corners of his authority the matter is barred by Article 363. If this were not so then the recognition of a Ruler or successor by the President would be subject to further confirmation by the Courts and that is not the meaning of article 366(22).

During the course of arguments I pointed out that if the Maharja of Jhind were recognised as the Nizam of Hyderabad, there would be no application of Article 366(22) and the action so wholly arbitrary as not to be protected by Article 363. The answer was that the President would never do so. But who would have thought in 1950 that recognition of. all the Rulers would be withdrawn by a single order? Therefore, extreme examples are necessary to solve extreme cases. I have questioned the action of the President because the bar of Article 363 does not operate. Neither is the recognition of an original signatory of a Covenant or Agreement involved, nor the recognition of a successor. The act is not even one which the Court leaves alone because the dis-cretion is exercised in a manner and to the extent a President in the proper discharge of his functions can go. What is done is to take away recognition from all Rulers and as such power does not flow from Article 366(22), the bar of Article 363 does not apply to such a dispute. It arises neither from the Covenants etc.

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nor from the ,provisions of the Constitution. It ceases to have the protection of Article 363.

Article 363 immediately follows Article 362. Although not much significance can be attached to the collocation of the articles, it is to be noticed that the exclusionary article wants us to search for a provision relating to a treaty etc. before staying our hands. It does leave the matter open when it could have ruled out the mystery by naming the articles under which relief was to be barred. By applying the test, I have indicated, the provision is located. One such provision is article 366(22) when the President acts within the discretion given by Covenants and Agreements.

There remains Article 291 to consider. That article was read and re-read before us. Every word in that article was

commented upon and dictionaries were consulted. I do not propose to refer to dictionaries at all. The words of the article are plain enough to me and I have only to discover its dominant and immediate purpose or theme to say whether it is a provision relating to Covenants or Agreements. It, no doubt, begins by mentioning Covenants and Agreements but that is not all. We cannot from that fact alone bar ourselves. The relationship between the dominant purpose of the provision and the Covenants and Agreements still remains to be established and their involvement in the dispute must be found. In this connection we must ask the question : Is this provision in reality and substance a provision on the subject matter of Covenants and Agreements? It is not enough that it refers to the Covenants and Agreements. It should make them the subject matter of enactment and decision.

The Article when carefully analysed leads to these conclusions : The main and only purpose of the provision is to charge Privy Purses on the Consolidated Fund of India and make obligatory their payment free of taxes on income. It narrows the guarantee of the Dominion Government from freedom from all taxes to freedom only from taxes on income. Earlier I had occasion to show that the Princes had guaranteed to themselves their Privy Purses free of all taxes. The Dominion' Government had guaranteed or assured the same freedom. The Constitution limits the freedom to taxes on income and creates a charge on the Consolidated Fund. There were other guarantees as in the Merger Agreements of Bilaspur and Bhopal (quoted earlier) which are ignored by the Article. The guarantee of the Dominion Government is thus continued in a modified form. The reference to Covenants and Agreements is casual and subsidiary. The immediate and dominant purpose of the provision is to ensure payment of Privy Purses, to charge them on the Consolidated Fund

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and to make them free of taxes on income. The argument of the learned Attorney-General that it indicates only the source and manner of payment rather destroys the case for the application of article 363 than lends support to it. The mention therein of Covenants and Agreements is for its own purpose so that the amounts need not be specified. In this connection there is no difference between Art. 290A and 291 although the learned Attorney-General made much of the mention of the name of the Travancore Devasom Fund in the former and absence of the names of the Rulers in the latter, or again the mention of a specific sum in the former and no sum in the latter. The article is self sustaining and self-ordaining. Its purpose is not relating to Covenants etc. but to something else. Article 291 differs from Articles 362 and 366(22) in this that the Privy Purses have already been settled and one has not to enforce the Covenants at all. One does not enforce the Covenants but the mandate of the Article itself. Whenever the Privy Purse is modified under the terms of a Covenant, the Article is again invoked-ab extra. That dispute isnot related to Article 291 and the bar of Article 363 operates. That matter is outside the jurisdiction of Courts. It is only when the Privy Purse is a settled fact of which the Courts can take notice, without having to construe the Covenants for itself that the bar of Article 363 is avoided. In that case the Article does not answer the description of 'a dispute' or of the latter part of Article 363.

My conclusions on articles 291, 362, and 366(22) are that article 291 is not a provision relating to Covenants and

Agreements but a special provision for the source of payment of privy purses by charging them on the Consolidated Fund and for making the payment free of taxes on income. It does not in its dominant purpose and theme answer the description in the latter part of Article 363. Article 362 is within the bar of Article 363 because its dominant purpose is to get recognised the Covenants and Agreements with Rulers However, in so far as the same guarantees find place in legislative measures the provisions of Article 362 need not be invoked and the dispute decided on the basis of those statutes. Such a case may not attract article 362 and consequently the bar of Article 363 may not also apply. Article 366(22) is within the description so long as the President in recognising a Ruler or a successor is effectuating the provisions of a Covenant or Agreement. It may apply when the discretion exercised is relatable to his powers flowing from the Covenants read with the Article. However where the President acts wholly outside the provisions of Article 366(22) his action can be questioned because the bar applies to bona fide and legitimate action and not to ultra vires actions.

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The error in the case of the Union of India arises from certain circumstances. The first is to think that the paramountcy of the Crown descended upon the President on Indian Government. In that paramountcy the recognition of a Ruler was a gift from the Crown. In view of the history of integration of States and the: provisions of the Constitution in Articles 291, 362 and 366(22), there is no paramountcy left at all, if paramountcy could at all. be exercised against citizens. The only discretion left is to select a suitable successor to a Ruler and perhaps to withdraw recognition on grounds which are sound and sufficient. Whether such. another kind of withdrawal of recognition may be equally capable of being questioned in a Court of law, is a matter on which I do not express an opinion. Therefore the President cannot claim a total immunity for his acts from the scrutiny of the Court. Neither the paramountcy of the Grand Moghul who could give Subehdarships to his Generals as he pleased nor the paramountcy of the British Crown has descended to him.

This eorror is further enhanced by too facile a reading of Article 363. Any tenuous connection between an Article and the Covenant or Agreement, how-ever remote, is not to be considered sufficient to make a provision fall within the description in the latter part of Article 363. Due, regard was not paid to the fact that the draftman would have referred to numbers of Articles if the disputes of every kind under those article stood excluded.

The learned Attorney-General relied in particular on some cases which he said had laid down that the act of recognition is a political act, that it cannot be questioned before a Court of' Law. He also referred to cases in which the question of the application of article 363 had arisen. My brother Hegde in his judgment has sufficiently considered them and I am in such agreement with him that I find it unnecessary to repeat what he has said' there. I adopt his reasoning.

In conclusion I hold the orders of the President to be ultra vires and declare them to be so. In consequence a writ of mandamus shall issue not to enforce the orders. The petitions are allowed with costs.

Shah, J. On August 15, 1947, Maharajadhiraja Jivaji Rao Scindia of Gwalior--hereinafter called 'Jivaji Rao'--executed in instrument of accession stipulating that

the Governor-General of India, the Dominion Legislature, the Federal Court of India, and other Dominion authorities shall for the purpose of the Dominion, exercise in relation to the State of Gwalior, such functions as may be vested in them by the Government of India Act, 1935, in respect of Defence, External Affairs, Communications and matters ancillary thereto.

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On April 22, 1948, twenty heads of States in the Madhya Bharat region executed a covenant to form the United State of Gwalior, Indore and Malwa. The covenant guaranteed to each head of covenanting State payment of the amount specified therein as his privy purse out of the revenues of the United State; to full ,ownership, use and enjoyment of all private properties belonging to him on the date of making over the administration of the State to the Rajpramukh; to succession to the gaddi of the State accord-ing to law and custom; and to all personal privileges, dignities and titles enjoyed by him within and outside the territories of his State immediately before the 15th day of August, 1947.

Five more States joined the United State of Gwalior, Indore and Malwa (Madhya Bharat) with effect from July 1, 1948. On .July 19, 1948, Jivaji Rao executed on behalf of the United State of Gwalior, Indore and Malwa (Madhya Bharat) a revised instrument of accession. Pursuant to the merger agreements, it was proclaimed on November 24, 1949, that the United State of .Madhya Bharat adopted the Constitution of India as the Constitution of the United State. The Constitution of India was promulgated on November 26, 1949, and was brought into force (except for certain articles specified in Art. 394) with effect from January 26, 1950.

The President of India recognized Jivaji Rao as the Ruler of Gwalior. The Government of India continued to pay the privy purse and accoredd to him the privileges specified in the instrument of accession and the merger agreement, except those which were modified by statutes. After the death of Jivaji Rao the President recognized Madhav Rao-petitioner herein-as the Ruler of Gwalior.

Under the Madhya Bharat Gangajali Fund Trust Act, 1954, enacted by the State Legislature the Ruler of the State of Gwalior is one of the three trustees authorised to manage the Gangajali Fund settled by the State and to apply the income thereof for charitable purposes.

On September 2, 1970, a Bill intituled the Constitution. (Twenty fourth Amendment) Bill, 1970, and providing that ."Articles 291 and 362 of the Constitution and clause (22) of Article 366 shall be omitted"- was introduced in the Lok Sabha. The Bill was declared passed with the amendment that the provisions thereof shall come into oporeation with effect from October 15, 1970. On September 5, 1970, the motion for consideration of the Bill did not obtain, in the Rajya Sabha, the requisite majority of not less than two-thirds of the Members present and voting as required by Art. 368 of the Constitution. The motion for

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introduction of the Bill was declared lost. A few hours there-after the President of India purporting to exercise power under clause (22) of Art. 366 of the Constitution signed an instruments withdrawing recognition of all the Rulers. A communication to;, the effect was issued "by Order and in the name of the President"’ was received by the petitioner stating that :

> "In exercise of the powers vested in him under Article 366(22) of the Constitution, the

President hereby directs that with effect from the date of this Order His Highness Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur do cease to be recognised as the Ruler of Gwalior."

Similar orders were communicated to all other Rulers in-, India who had been previously recognized under Art. 366(22) of the Constitution.

The Union Finance Minister laid on the table of the Rajya Sabha, on September 7, 1970, a statement, inter alia, that :

"..... Government is fortified in the belief that there is widespread, support in the country for putting an end to an out-moded and antiquated system which permitted the enjoyment of privileges and privy purses by a small section of our people without any corresponding social obligations on their part.

As it has been Government's declared policy to. abolish these privileges and privy purses and also to put an end to the very concept of Rulership, Government felt they would be justified in de-recognising the Rulers and thus putting an end to a period of political and' other uncertainties so undersirable in a matter of this nature. Accordingly, President has decided to derecognise all the Rulers and thereby terminate their privy purses and privileges with immediate effect. Orders have been issued in pursuance of the decision."

Madhav Rao Scindia moved a petition on September 11, 1970, in this Court under Art. 32 of the Constitution claiming-(a) a declaration that the order dated September 6, 1970 was "unconstitutional, ultra vires and void" and a direction quashing that order; (b)a declaration that the petitioner continues to be the Ruler of Gwalior and to be entitled to privy purse and to, personal rights and privileges accorded to him as Ruler; and (c) a direction to the Union of India to continue to pay the privy,

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purse and to continue to recognise the Rulership and the personal rights and privileges of the petitioner arid to implement and observe the provisions of the covenant and the merger agreement. He claimed that in making the order the President acted without authority of law; that the order was made for collateral purpose; .and that by the order the rights guaranteed to the petitioner under Arts. 14, and 19 and 31 of the Constitution were infringed. The petition was later amended with leave of the Court and it was claimed that the order infringed the guarantee under Art. 21 of the Constitution also.

The Union of India by their affidavit contended, inter alia, that the petition was not maintainable because the source of the right to receive the privy purse and to be accorded the privileges ,claimed was a political agrement and the privy purse was in the nature of a political pension; that Art. 291 did not impose any obligation upon the Union to pay the privy purse; that Arts. 291 and 362 of the Constitution did not in-vest the petitioner and the other Rulers with any enforceable rights; that recognition of the Rulers under Art. 366(22) was a "matter of State policy" and the President was competent to pass the order dated September 6, 1970; that the order was not made for a collateral purpose

as alleged; and that by the order the guarantee of Arts. 14, 19(1)(f), 31(1) or any other article of the Constitution was not infringed.

By the order of-the President withdrawing his recognition as Ruler, the petitioner is denied the right to the privy purse and to the personal rights, privileges and dignities accorded to him as a Ruler; he is also denied the benefit of the exemption from liability to pay income-tax under s. 10(1a) of the Income-tax Act, 1961; Wealth-tax under s. 5 (1) (iii) & (xiv) of the Wealth-tax Act, 1957; Gift-tax under s. 5(1)(xiv) of the Gift-tax, 1958; and of the exemption from liability to pay duty under the Sea Customs Act, 1878, which remains operative under the Customs Act, 1961: he is also deprived of the statutory protection that he shall not be sued without the consent of the Central Government under S. 87-B of the Code of Civil Procedure, 1908, and that cognizance of any offence alleged to have been committed by him shall not be taken by any Court without the previous sanction under s. 197-A of the Code of Criminal Procedure, 1898. The petitioner is also disentitled to the management and administration of the Gangajali Fund Trust.

By his order dated August 22, 1961, the President recognised the petitioner as the Ruler of Gwalior. If the order of the President is without authority of law, as the petitioner contends it is, there is a clear infringement of the guarantee of the fundamental rights under Arts. 19(1) (f), 21 and 31 (1) of the Constitution.

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It is unnecessary in the view we take, to deal with the plea raised by Mr. Palkhivala that Rulership is "property" and the order of the President deprives the petitioner of that property without authority of law.

Validity of the order of the President is challenged on the grounds that-(1) the President has no power to withdraw re-cognition of a Ruler once recognised; (2) exercise of the power to withdraw recognition, assuming that the President has such power, is coupled with the duty to recognise his successor and an order made without recognising a successor is invalid; (3) the order of the President "de-recognising" all the Rulers en masse amounted to arbitrary exercise of power; and (4) in any event, the order was made for a collateral purpose, that is, to give effect to the "policy of the Government" after the Government was unable to secure the requisite majority in the Parliament to the Constitution Amendment Bill.

Article 366(22) of the Constitution reads

"In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

(22)"Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler."

Clause (15) of Art. 366 defines an "Indian State" as meaning "any territory which the Government of the Dominion of India recognised as such a State'.-" Article 291, as amended by the Constitution (Seventh Amendment) Act,

1956, reads as follows:

"Where under any covenant or agreement entered in by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State, as privy purse--

(a) such sums shall be charged on, an paid out of, the Consolidated Fund of India; and

(b) the sums so paid to the Ruler shall be exemept from all taxes on income."

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The definition of "Ruler" in cl. (22) of Art. 366 is in two parts : a person is a Ruler if he being (a) a Prince, Chief or other person who had entered into the covenant or agreement as is referred to in cl. (1) of Art. 291, is for the time being recognised by the President as the Ruler; or (b) if he is for the time being recognised by the President as the successor of the Ruler mentioned in part (a). Use of the expression "for the time being" in relation to the persons who had entered into covenants or agreements, and in relation to the successor, may perhaps imply that the President has the power inappropriate cases and for adequate reasons to withdraw recognition, but that is a matter on which it is unnecessary for the purpose of this petition to express any final opinion

Granting that the President may withdraw recognition of a Ruler once granted, the power conferred by Art. 366(22) is exercisable only for good cause, i.e. because of any personal disqualifications incurred by a Ruler. By the provisions enacted in Arts. 366(22), 291 and 362 of the Constitution the privileges of Rulers are made an integral part of the constitutional scheme. Thereby a class of citizens are, for historical reasons, accorded special privileges. They cannot be derprived of those privileges arbitrarily,. for the foundation of our Constitution is firmly laid in the Rule of Law and no instrumentality of the Union, not even the President as the head of the Executive, is invested with arbitrary authority.

In the affidavit on behalf of the Union of India it was averred that "the concept of Rulership, the privy purse and the privileges without any relatable function or responsibility have become incompatible with democracy, equality and social justice in the context of India of today"; and that since "the commencement of the Constitution many things have changed, many hereditary rights and unearned income have been restricted and many privileges and vested interests have been done away with and many laws have been passed with the object of checking the concentration of economic power-both rural and industrial, the Union of India have decided that the concept of Rulership, the privy purse and the privileges should be abolished." Thereby the executive arrogates to itself power which it does not possess : our Constitution does not invest the power claimed in the executive branch of the Union.

The plea that in recognising or "de-recognising" a person as a Ruler, the President exercises "political power which is a sovereign power and that after an order of de-recognition "no erstwhile Ruler can make a claim in respect of the Rulership or the privy purse or any of the privileges' since the relevant covenants under which the rights of the Rulers were recognised were

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" political agreements" and the rights and obligations

thereunder were liable to be varied or repudiated in accordance with "State policy" in the interests of the people also receives no countenance from our Constitution. The first branch of the argument is inconsistent with the basic concept under our Constitution of division of State functions; the second is inconsistent with the history of events between 1947 and 1949, and the third receives, for reasons to be presently stated, no support from the. relevant constitutional provisions.

Whether the Parliament may by a constitutional amendment abolish the rights and privileges accorded to the Rulers is not, and cannot be, debated in this petition, for no such constitutional amendment has been made. The petitioner challenges the authority of the President by an order purporting to be made under Art. 366(22) to withdraw recognition of Rulers so as to deprive them of the rights and privileges to which they are entitled by virtue of their status as Rulers.

The functions of the State are classified as legislative, judicial and executive : the executive function is the residue which does not fall within the other two functions. Constitutional mechanism in a democratic policy does not contemplate existence of any function which may qua the citizens be designated as political and orders made in exercise whereof are not liable to be tested for their validity before the lawfully constituted courts : Rai Sahib Ram Jawaya Kapur and Others v. State of Punjab;(1) Jayantilal Amritlal Shodhan v. F. N. Rana;(1) and Halsbury's Laws of England 3rd Edn., Vol. 7, Art. 409, at p. 192. Observations made in two judgments of this Court, on which the Attorney-General relied, do not support a contrary view. In Nawab Usman Ali Khan v. Sagarmal(3) this Court held, that the amount payable to the Ruler of Jaora "on account of the privy purse" was exempt from attachment in execution of the decree Civil Court, because it was a "political pension" within the meaning of s. 60 (1) (g) of the Code of Civil Procedure. The Court in determining the true nature of the privy purse, characterised the sanction for payment as "political and not legal". That has, however, no bearing on the question in issue here. In Kunvar Shri Vir Rajendra Singh v. Union of India and Others (4) this Court negatived the claim of an applicant that his right to property was violated because the President accepted another claimant to the gaddi of Dholpur as Ruler. The Court observed that the recognition of Rulership by the President, in exercise of his political power, did not amount to recognition of any right to private properties of the Ruler. The Court

(1) [1955] 2 S.C.R. 225 (2) [1964] 5 S. C.R. 294
(3) [1965] 3 S.C.R. 201 (4) [1970] 2 S.C.R. 631

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did 'not attempt to classify the exercise of the Presidential function under Art. 366(22) as distinct from executive functions: that is clear from the dictum that the exercise of the President's power was "an instance of purely executive function".

The history of negotiations which culminated in the integration of the territories of the Princely States before the commencement of the Constitution clearly indicates that the recognition of the status of the Rulers and their rights was not temporary, and also not liable to be varied or repudiated in accordance with "State policy". Power of the President to determine the status of the Rulers by cancelling,or withdrawing recognition to effectuate the policy of the Government to abolish the concept of Rulership

is therefore liable to be challenged in these petitions.
The circumstances in which the constitutional provisions under cls. (15) and (22) of Art. 366, and Arts. 291 and 362 were incorporated may be briefly set out.
In the era before 1947 the term "State" applied to a political community occupying a territory in India of defined boundaries and, subject to a single Ruler who enjoyed or exercised, as belonging to him, any of the functions and attributes of internal sovereignty duly recognised by the British Crown. There were-, in India more than 560 States : forty out of those States had treaty relations with the Paramount Power : a larger number of States had some form of engagements or sanads, and the remaining enjoyed in one or the other form 'recognition of their status by the British Crown. The treaties, engagements and sanads covered a wide field, and the rights and obligations of the States arising out of those agreements varied from State to State. The rights that the British Crown as the Paramount Power exercised in relation to the States covered authority in matters external as well as internal. The States had no international personality, the Paramount Power had exclusive authority to make peace or war, or to negotiate or communicate with foreign States. The Paramount Power had the right of intervention in internal affairs which could be exercised for the benefit of the head of the state of India as a whole, or for giving effect to international commitments.
The Government of India Act, 1935, was a step in the direction of achieving a political unity over the entire sub-continent : it envisaged a constitutional relationship between the Indian States and Provinces in British India on a federal basis. But the concept of a loose federation of disparate constituent units in which the power and authority of the Federation were to differ between one constituent unit and another was soon abandoned as inherently impracticable. The Second World War awakened
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a new consciousness which regarded colonialism as an anachronism. With the object of transferring power to a Dominion, several schemes were evolved by the British authorities from time to time. There was the Cripps Plan, followed by the Simla Conference of 1945, and the Cabinet Mission Plan of 1946. The Cabinet Mission issued a Memorandum dated May 12, 1946, in regard to the States' Treaties and to Paramountcy : it affirmed that the rights of the States which flowed from their relationship with the Crown will no longer exist and that the rights surrendered by the States to the Paramount Power will revert to the States. The void caused by the lapse of paramountcy, it was said, may be filled either by the States entering into a federal relationship, with the successor Government or Governments in British India, or by entering into a particular arrangements with it or them. On May 16, 1946, the Cabinet Mission announced its Plan for the entry of the States into the proposed Union of India. They simultaneously declared that the paramountcy of the British Crown could not be retained nor transferred to the new Government.
The British Parliament decided to set up the two Dominions of India and Pakistan, and promulgated on July 18, 1947, the Indian Independence Act, 1947. By s. 1, two new independent Dominions of India and Pakistan were set up as from August 15, 1947, and s. 7 of the Act provided :

"(1) As from the appointed day-
(a) His Majesty's Government in the United

Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all obligations of His Majesty at that, date, towards Indian States or the rulers thereof and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, suffrance or other-wise; and

"Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of the sub-section, effect shall, as nearly as may be continued to be given to

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the provisions of any such agreement as is therein referred to which relate to Customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the ruler of the Indian State or person having ,authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the, other hand, or are superseded by subsequent agreements,

(2)The assent of the Parliament of the United Kingdom is hereby. given to the omission from the Royal Style and Titles of the words "Indiae Imperator" and the words "Emperor of India", and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great, Seal of the Realm."

By the Indian (Provisional Constitution) Order, 1947, ss. 5 & 6 of the Government of India Act, 1935,. were extensively amended, setting up machinery for the Indian States to accede to the Dominion of India. Promulgation of the Indian Independence Act generated great political activity. On July 5, 1947, Sardar Vallabhbhai Patel, Minister for Home Affairs, made a statement defining the policy of the Government of India, and inviting the Princes to accede to the Dominion on three subjects-Defence, Foreign Affairs and Communications, in which the common interests of the country were involved. He assured the Princes that the policy of the States Department (which had been set up in place of the Political Department) was not to conduct the relations with the States in a manner savouring of domination of one over the other; the domination, if any, would be the domination of mutual interests and welfare. He expressed the hope that the Princes would bear in mind that the alternative to cooperation in the general interest was anarchy and chaos which would overwhelm the great as well as the small in a common ruin, if the States and Provinces were unable to act together in the minimum of common tasks. On July 25, 1947, at a special meeting of the Princes, Lord Mountbatten--the Crown representative--advised. the princes to accede to the appropriate Dominion in regard to the three subjects of Defence, External Affairs and Communications, and assured them that their accession on those subjects would involve no financial liability and in other matters there would be no

encroachment on their internal sovereignty.
The plea for accession met with a favourable response. Negotiations for accession of the States were soon completed and instruments, of accession were executed by the heads of the Indian States. Simultaneously, Standstill Agreements, the
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acceptance of which was made by the Government of India a condition of accession by the States concerned, were also entered into between the Dominion Government and the acceding States. The Standstill Agreements recited :
"Whereas it is to the benefit and advantage of the Dominion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being between the Dominion of India or any part thereof and the Indian States :
Now therefore it is agreed between the State and the Dominion of India that:-

> "1. (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, insofar as may be appropriate, continue as between the Dominion of India, or, as the case may be, the part thereof, and the State.
> (2) In particular, and without derogation from the generality of sub-clause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this Agreement.
> 3.Nothing in this agreement includes the exercise of any paramountcy functions."

By the instruments of accession the Princes were assured that the terms of the instrument will not be varied by any amendment of the Government of India Act, 1935, or the Indian, Independence Act, 1947, unless such amendment be accepted by the Prince by a supplementary instrument; that nothing in the instrument shall be deemed to commit the Prince in any way to, acceptance of any future Constitution of India or to fetter his discretion to enter into agreements with the Government of India under any such future Constitution, and that nothing in the instrument shall affect the continuance of the Princes sovereignty in and over the State, or, save as provided by or under the instrument, the exercise of any powers, authority and rights enjoyed by the Prince as head of the State or the validity of any law in force in the State.
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This was a significant step in the direction of forging a vital ,constitutional link between the Dominion of India and the States. It was followed by the next phase culminating in integration of some States in the Provinces, , consolidation of other States into sizable administrative units, and some other States executing agreements integrating with the Dominion. The process of integration of States varied from State to State. 216 out of the States merged with the existing Provinces; 61 States were taken over as Centrally administered areas; and 275 States were integrated in five Unions of States, Saurashtra, Madhya Bharat, Rajasthan, Pepsu and Travancore-Cochin. Merger of the States with the Provinces was achieved initially in name only, because the authority--executive, legislative and judicial-was still exercised under the Extra-Provincial

Jurisdiction Act by the Provinces within which the States were initially merged. The merger agreements of the Unions of States were to operate as their provisional Constitutions. Even the Centrally administered areas did not become part of the Dominion territory.

The instruments of merger provided for the integration of States and for transfer of power from the Princes and guaranteed to the Princes the privy purse, succession to the gaddi, rights and privileges, and full ownership, use and enjoyment of all private properties belonging to them as distinct from State properties. The covenants for establishing Unions of States and the agreements of merger contained provisions guaranteeing to the heads of merged States or integrated States payment of privy purses. These instruments were concurred in and guaranteed by the Government of the Dominion of India.

The next phase was of assimilation and consolidation of the unity achieved till then. In the case of the "Provincially merged" and "Centrally administered" States, authority for exercising the powers of administration and legislation originally derived from the Extra-Provincial, Jurisdiction Act, 1947, was later exercisable by virtue of orders issued under ss. 290A and 290B incorporated in the Government of India Act, 1935, with effect from January 15, 1949. By an order issued under S. 290A diverse steps were taken for integration of the former State into the Provinces.

TO ensure an organic unity of India, the Princes were invited to accede to the Dominion, and later to integrate with India under a Constitution with a Republican form of Government. The Princes, some out of patriotism and others from motives of selfinterest, agreed to merge their territories and to abandon all authority in regard to their territories in consideration of certain special concessions. To give constitutional sanction to the merger agreements, special provisions were expressly incorporated in the

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draft Constitution recognising the status of the Princes, the obligation to pay the privy purse, and the personal rights and privileges guaranteed to them- The territories of the States after integration retained no political or legal identity. Special recognition was given to the status of the Princes and to their rights and the obligations of the Union, and for that purpose, Arts. 366(15), 366(22), 291 and 362 were incorporated in the Constitution. In Art. 366(15) the expression. "Indian State" was defined as meaning any territory which the Government of the Dominion of India recognised as such a State; and in Art. 366(22) a special definition of the expression "Ruler" was evolved for the purpose of the Constitution; by Art. 291 the privy purse was charged on, and made payable out of, the Consolidated Fund of India, and .the sum so paid as privy purse to the Ruler was declared exempt from all taxes on income. By Art. 362 the Parliament, the State Legislatures and the executive of the Union and the States were enjoined to have "due regard to the guarantees and assurances" under the covenants and agreements between the Government of the Dominion of India and the heads of the former Indian States.

The stage was then set for the promulgation of the Constitution. A few days before November 26, 1949, a large majority of the States proclaimed that the Constitution of India will be the Constitution for their respective territories, and shall be enforced as such in accordance with its provisions, and that the provisions of that Constitution shall, as from the date of its commencement, supersede and abrogate all other existing constitutional provisions inconsistent

therewith. Merger agreements were executed to give effect to the proclamations. The proclamation and the execution of the merger agreements resulted in complete extinction of the States and Unions of States as separate units. The Princes ceased to retain any vestigage of sovereign rights or authority qua their former States. They acquired the status of citizens of India.

The plea raised by the Union must be considered in the light of these developments. The negotiations, the assurances given by leading statesmen, and the terms of the covenants and agreements were certainly not intended to be an exercise in futility. The argument that the parties to the instruments were entering into solemn undertakings intending the arrangements to be temporary, and liable to be set at naught by the unilateral act of the Union of India, must be rejected.

In form Art. 366(22) is a definition clause : It however invests the President with authority to recognize a person as a Ruler. Granting that under Art. 366(22) the President may withdraw the recognition of a person as a Ruler, the power to nullify important provisions of the Constitution does not flow from that clause.

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The plea raised by the Attorney-General that recognition of Rulership was a "gift of the President" or was "in the gift of the President" is not borne out by the position of and the nature of the powers and functions of the President under our constitutional scheme. President is made by the Constitution repository of the power to recognise the Rulers. That power may be, exercised consistently with and in aid of the constitutional scheme. A democratic Constitution founded in the Rule of Law does not envisage authority in any instrumentality of the Union reminiscent of autocracy. The power to recognise a Ruler may be exercised in the case of first recognition only in favour of a person who has signed the covenant, and in favour of his successor having regard to the custom and laws governing the State if the Ruler dies, or becomes incapable of functioning or his recognition is withdrawn. By the use of the expression "for the time being" in cl. (22) of Art. 366 the President is not invested with authority to accord a temporary recognition to a Ruler, nor :with authority to recognise or not to recognise a Ruler arbitrarily : the expression "for the time being" predicates that there shall be a Ruler of the Indian State, that if the first recognised Ruler dies, or ceases to be a 'Ruler, a successor shall be appointed, and that there shall not be more Rulers than one at a given time.

By express, injunction in Art. 53(1) of the Constitution the executive power vested in the President is directed to be exercised " in accordance with the Constitution". That power is intended to be exercised in aid of and not to destroy constitutional institutions. Granting that power to recognise a Ruler carries with it the power to withdraw recognition of the Ruler, the power must be exercised bona fide, and in the larger interest of the people consistently with the provisions of the Constitution to maintain the institution of Rulership. Power may therefore be exercised in the course of and for recognising another person as a successor to the Ruler, having regard to the laws and customs governing the State. The President is not competent to recognise a person as a Ruler who is not by the custom and laws governing succession to Rulership qualified to be a Ruler. The President cannot obviously withdraw recognition of a Ruler and recognise another person as a matter of political patronage. Nor can be lawfully depart from the

laws and customs governing succession so as to introduce a person as a Ruler who' is not by ties of blood or affiliation related to the previous Ruler. Whether in certain exceptional circumstances the President may in granting recognition to a successor depart in the larger interest of the country from the strict rule or custom governing succession to the gaddi, is a question which need not be decided. But unquestionably the President is not invested with authority to recognize a stranger as successor to the gaddi, or not to recognise any person at all as a successor

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if he so chooses. The power of the President is plainly coupled with a duty; a duty to maintain the constitutional institution, the constitutional provisions, the constitutional scheme, and the sanctity of solemn agreements entered into by the predecessor of the Union Government which are accepted, recognised and incorporated in the Constitution. An order merely "de-recognising" a Ruler without providing for continuation of the institution of Rulership which is an integral part of the constitutional scheme is, therefore, plainly illegal.

Clause (22) of Art. 366 is intended to invest the President with authority to recognise Rulers : see Kunvar Shri Vir Rajendra Singh v. Union of India("). The clause incorporates the history of momentous events which took place in India between 1947 and 1949 leaving a lasting impression upon our national and constitutional structure. Articles 291, 362 and Part VII of the Constitution were when incorporated intended to grant recognition to the solemn promises on the strength of which the former Princes were invited by those at the helm of affairs to join the experiment for achieving for the millions their dream of securing a truly democratic form of Government in a united independent India, and clauses (15) & (22) of Art. 366 were intended to serve the purpose of identifying the persons who remained entitled to the benefits of those constitutional guarantees.

A brief reference may be made to what was said in the Constituent Assembly by the Minister for Home Affairs who was in charge of the States when he moved for adoption Art. 291. He used memorable words :

> "These guarantees (merger agreements) form part of the historic settlements which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distinct dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence.
>
> Human memory is proverbially short. Meeting in October, 1949, we are apt to forget the magnitude of the problem which confronted us in August, 1947. ..... the so-called lapse of paramountcy was a part of the Plan announced on June 3, 1947, which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had no option to act otherwise. While there was recognition in the

(1)[1970] 2 S.C.R. 631

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various announcements of the British

Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically contiguous, the Indian Independence Act released the States from all their obligations to the British Crown. In their various authoritative pronouncements, the British spokesmen recognised that with the lapse of paramountcy, technically and legally the States would become independent The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare independence and others to join the neighbouring Dominion.

(c)

It was against this unpropritious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the status quo except for accession on these subjects. It had been made clear to them that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new Constitution of India. These commitments had to be borne in mind when the States Ministry approached the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. The minimum which we could offer to them as quid pro quo for parting with their ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units

"The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these agreements, is to ensure that the guarantees given by us in respect of privy purse

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are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilisation of the new order."

In the larger interest of achieving the unity of the country our statesmen chose to appeal to the patriotism of the Princes and not to rely upon the force of arms or methods of political agitation within the States. Negotiation of a friendly settlement was in the circumstances then prevailing the only advisable course. A discontented group of Princes was a serious threat to a smooth and orderly transition. The Constituent Assembly resolved to honour, without

reservation, the promises made to the Princes from time to time. Clauses in the draft Constitution relating to the obligation of the Union to pay the privy purses and recognising certain rights, privileges and dignities till then enjoyed by the Princes, were intended to incorporate a just quid pro quo for surrender by them of their authority and powers and dissolution of their States.

A legislative mechanism was devised to grant the benefit to the former Princes by making a provision for recognising them as Rulers, and of incorporating in the Constitution the guarantees of the privy purse and personal rights and privileges. The former Princes were accordingly recognised as a class of citizens with special privileges granted to them because they had surrendered their powers; privileges and authority. The argument that the President as the head of the Executive may, in exercise of his executive power, destroy that institution, is plainly contrary to the fundamental concept of the Rule of Law.

There are many analogous provisions in the Constitution which confer upon the President a power coupled with a duty. We may refer to two such provisions. The President has under Arts. 341 and 342 to specify Scheduled Castes and Scheduled Tribes; and he has done so. Specification so made- carries for the members of the Scheduled Castes and Scheduled Tribes certain special benefits, e.g., reservation of seats in the House of the People, and in the State Legislative Assemblies by Arts. 330 and 332, and of the numerous provisions made in Schedules V & VI. It may be noticed that expressions Scheduled Castes and Scheduled Tribes are specially defined for the purposes of the Constitution by Arts. 366(24) and 366(25). If power to declare certain classes of citizens as belonging to Scheduled Castes and Scheduled Tribes includes power to withdraw declaration without substituting a fresh declaration, the President will be destroying the constitutional scheme. The power to specify may carry with it the, power to withdraw specification, but it is coupled with,, a duty to specify in a manner which makes the constitutional provisions operative.

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Article 366(21) before it was deleted by the Constitution (Seventh Amendment) Act, 1956, defined "Rajpramukh" as meaning :-

> (a)in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
>
> (b)in relation to the State of Jammu and Kashmir, or the State of Mysore, the person who for the time being is recognized by the President as the Maharaja of that State; and
>
> (c)in relation to any other State specified in Part B of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State, and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;"

The first two clauses contemplated recognition of the Nizam of Hyderabad and the Maharajas of Jammu & Kashmir and of Mysore to be the Rajpramukh. There can be no dispute that the Ruler of Hyderabad was the Nizam, and the Rulers of Jammu and Kashmir and Mysore were the Maharajas of those

States. Assuming that power to recognise a person as the Nizam or Maharaja may carry with it the power to withdraw recognition, if carried with it a duty to recognize the successor. If no successor was recognized the constitutional scheme, of administration of Part B States would be destroyed. Such a result could never have been contemplated.

By Art. 291 payment of any sum, free of tax guaranteed or assured under any covenant or agreement with a Ruler of an Indian State as privy purse, is charged on and is made payable out of the Consolidated Fund of India, and the sum so paid to any Ruler is exempt from all taxes on income. The Attorney-General said that the recognition by Art. 291 of the existence of the guarantees and assurances under the covenants and agreements gives rise to no obligation to pay the privy purse, that, even if the constitutional provisions raise an obligation of the Union, they do not raise corresponding rights in the Rulers; that in any event the covenants being acts of State violation of their terms will not because of Art. 363, first limb and also on general principles of law found an action in the Municipal Courts. He finally submitted that the dispute with respect to the rights claimed to accrue in favour of the Rulers arises out of the provisions of the Constitution relating to the covenants and on that account the jurisdiction of the Courts is excluded in regard to that dispute.

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The Constitution in terms recognizes and accepts the obligation of the Union to, pay the privy purse to the Rulers. Clause (a) of Art. 291 enacts that the privy purse shall be charged on and be paid out of the Consolidated Fund of India. The words clearly raise an obligation of the Union to pay the privy purse.

The second branch of the argument is also without force. Article 266 provides that all revenues received by the Government of India, all loans raised by the issue of treasury bills, loans or ways and means advances, and all moneys received in repayment of loans shall form the Consolidated Fund of India. By Art. 112(2) the President is required in respect of every financial year to cause to laid before the Houses of Parliament the annual financial statement of the estimated receipts and expenditure of the Government of India showing separately-(a) sums required to meet expenditure charged upon the Consolidated Fund of India; and (b) sums required to meet other expenditure proposed to be made from the Consolidated Fund of India. Clause. (3) of Art. 112 categorizes heads of expenditure charged on the Consolidated Fund of India. So much of the estimates as relate to expenditure charged upon the Consolidated Fund are by Art. 113(1) open to discussion in, but not to be submitted to the vote of the Houses of Parliament. After demands in respect of sums required to meet other expenditure have been made and assented to by the House of the People, a Bill is introduced to provide for appropriation out of the Consolidated Fund of India of all moneys required to meet the expenditure charged on the Consolidated Fund of India and the grants : Art. 114(1). No amendment may be proposed in either House to vary the amounts or to alter the destination of the grant or the expenditure charged.

In support of his contention that by using the expression "charged" in Arts. 291 and II 2(2) it is only intended to enact that the expenditure is not subject to the vote of the Parliament and that no priority in payment in respect of expenditure is declared, and in any event the expression

"charged" creates no obligation enforceable at the instance of the person for whose benefit it is. charged, the Attorney-General invited our attention to different provisions of the Constitution in each of which there is both a charge oil the Consolidated Fund of an item of expenditure and an express direction for payment of the prescribed sum, and contended that Art. 291 which merely recognizes the obligations of the Union Government to abide by the preexisting covenants, creates no obligation for payment of the privy purse to the Rulers He urged that the word "charge" in the Constitution in dealing with State financial procedure has the meaning it has in accountancy practice; it merely specifies the source from which payment is to be made and does not create a right in the Ruler or any en-
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forceable obligation against the Union. Under the general law relating to transfer of property, a charge does not give rise to a right in rem : the right is however more than a mere personal obligation, for it is a jus ad rem a right to payment out of property specified : Govind Chandra Pal v. Dwarka Nath Pal(1). Raja Sri Shiva Prasad v. Beni Madhab(2). A charge gives a right to payment out of a specific fund or property, and a right to prior payment; but it does not create a right in rem in the fund or the property. A charge therefore gives rise to a right to receive payment,, out of a specified fund or property in preference over others. In the absence of a clear indication, to the contrary, it would be difficult to hold that the expression "charged" used in the context of financial matters of the State, has a different meaning. Our Constitution-makers borrowed the concept of a Consolidated Fund from the British system. That has also been adopted in the Constitutions of Canada, Australia, South Africa and other Commonwealth Countries. Certain Acts in the United Kingdom and elsewhere prescribe a sequence of priorities in payment of different heads of expenditure charged on the Consolidated Fund : s. 1. Consolidated Funds Act, 1816; s. I The House of Commons (Speaker) Act, 1932, ss. 103, 104 & 105 of the British North America Act, 1867; ss. 117, 119 Constitution of the Union of South Africa, 1909; ss. 81 & 82 of the Australian Constitution 1900.

Our Constitution does not recognize any sequence of priorities. But that does not alter the fundamental character of a charge that it specifies a fund out of which satisfaction of the expenditure charged must be made, and the prescribed expenditure shall have priority in payment to the person for whose benefit the expenditure is charged on the Fund. The constitutional obligation to proceed in the manner set out in Arts. 112, 113 & 114 imposed upon the President and the Parliament implies a right in the person or persons in respect of whom the expenditure is to be incurred. That view is supported by other provisions in the Constitution. The expression "shall be charged on and paid out of the Consolidated Fund" is used in Arts. 290, 290A and 291. Articles 290 and 291 do not expressly designate the payee : Art. 290A designates the payee. Article 273 merely uses the expression "shall be charged" in dealing with the grants-in-aid to the States of Assam, Bihar, Orissa and West Bengal, without Any direction for payment. Article 275(1) deals with grants-in-aid to the revenues of such States as the Parliament may determine: it is only the provisions dealing with the capital and recurring sums which refer-to the obligation to pay, but in respect of these heads of expenditure there is no charge. There are also other

provisions in the Constitution which charge expenditure on the Consolidated Fund, e.g. Art. 148(6);
(1) I.L.R. 35 Cal. 837, 843.
(2) I.L.R. I Pat. 387
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Art. 146(3); Art. 299(3) and Art. 332, without any express provisions in the Constitution relating to payment. By leaving the payee innominate in Art. 291(a) no intention to raise an obligation without a corresponding right is disclosed. The expression "shall be charged on, and paid out of the Consolidated Fund" in Art. 291, is intended to enact that the privy purse "shall be charged-. on, and shall be paid out of the Consolidated Fund". The expression "sums so paid to any Ruler" does not mean "sums if paid to any Ruler" : it means that "sums when paid to any Ruler". Clauses (a) and (b) of Art. 291 read with Arts. 112, 113 & 114 are, in our judgment, parts of a single scheme; they contemplate that the privy purse shall be included in the financial statement as charged upon the Consolidated Fund : it shall be beyond the voting power of the Parliament : its destination shall not be altered : it shalt be paid to--the Ruler after the Appropriation Bill is passed, and when paid it shall be free from liability to pay taxes on income. This is an integrated process, which cannot be interrupted without dislocating the constitutional mechanism.
The Attorney-General said that Art. 291 raises an "imperfect obligation". An imperfect obligation is used to describe a moral duty-for instance, a duty to pay a debt of honour, or a debt barred by limitation, but is properly left to the free will of him whose duty it is to discharge the obligation. A perfected obligation pertains to the domain of law & justice : an imperfect obligation to the domain of benevolence. An obligation which arises out of a constitutional provision to pay to the citizens sums of money in recognition of obligations of the predecessor Government may scarcely be called imperfect.
Article 291 does not merely incorporate, recognition of the obligation to pay the privy purse under covenants incurred by the Government of the Dominion of India : it gives rise to a liability dehors the covenants. Under the covenants and agreements the obligation to pay the privy purse was undertaken in the case of all Princes (bar the the heads of the States of Bhopal, Hyderabad and Mysore) to be made out of the revenues of their respective States. The Government of India concurred in and guaranteed payment of the amount of the privy purse under the terms of the agreements constituting the Unions. By the States Merger (Governors' Provinces) Order, 1949, this liability was imposed upon the Provinces when the States merged with those Provinces. In the case of a Union of States the liability to pay the privy purse to a head of State lay upon the Union of States to be discharged out of the revenues of the State. In the case of Centrally merged States the Dominion Government had to pay the privy purse out of the revenues of the State.
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Even after the integration of States, the obligations under the covenants were to be met out of the revenues of the respective States. The covenants and the various stages through which ultimate integration was achieved probably remained acts of State. The rights and obligation accruing or arising under those acts of State could be enforced only if the Union of India accepted those rights and obligations. After the Constitution the obligation to pay the privy purse rested upon the Union of India, not because it was inherited from the Dominion of India; but because of the

constitutional mandate under Art. 291. The source of the obligation was in Art. 291, and not in the covenants and the agreements. Reference to the covenants and agreements in Art. 291 was for defining the privy purse : the obligations of the Provinces in respect of the "Provincially merged States", and obligation of the Union of States in respect of the States merged in such Unions, ceased by recognition to retain their original character. The obligation which arose out of the merger agreement and was on that account an act of State shed its original character on acceptance by the Constitution. The entity obliged to pay the privy purse did not after the Constitution remain the same; the source out of which the obligation was to be satisfied was not the original source; the incident relating to exemption from payment of tax was vitally altered, and the amount also was in some cases different. Whereas the liability to pay the privy purse to the Rulers under the merger agreements was assured by the Dominion Government, the Constitution imposed upon the Union Government a directive to pay the privy purse.

In support of his contention that even if Art. 291 itself gives rise to a fresh obligation, the Union of India has the same defences against the claim by the Rulers which the predecessor Government had, and on that account if the Dominion Government could plead an act of State as a defence, the Union of India could do so, the Attorney-General relied upon two decisions : Doss v. Secretary of State for India in Council;(1) and Saliman v. Secretary of State for India(1). The e cases were decided on the interpretation of the Government of India Act, 1958, which by S. 67 enacted that treaties and all contracts, covenants, liabilities and engagements of the East India Company made before the Act ,of 1858 were declared enforceable against the Secretary of State as they might have been by and against the East India Company, if the Government of India Act, 1858, had not been passed. There is no such reservation in Art. 291, or in Art. 294(1) (b) and 295(1)(b) of the Constitution. The cases of Doss (supra) and Salaman (supra) have therefore no application.

(1) [1871] L.R. 19 Eq. 509

(2) [1906] 1 K.B. 613

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The judgment of this Court in Union of India & Ors. v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. & Another(1) has also no bearing on the character of the obligation arising by virtue of Art. 291. In that case a company which had entered into an agreement with the State of Gwalior in 1947, whereby the State of Gwalior granted exemption from liability to taxation of certain industries started in the State, claimed to enforce that right against the Union of India after integration of the State. This Court held that by virtue of the agreement the Central Legislature was not deprived of its legislative power to impose taxes, and on that account after the extension of the Income-tax Act, 1922, the exemption granted under the agreement of 1947 must fall and that the Company was entitled only to such concessions as may be provided by the State law applicable thereto after the integration.

The structure of Art. 362 is somewhat different. That Article imposes restrictions upon the exercise of legislative and executive functions. Recognition of the personal rights and privileges of the Rulers arising out of the covenants is not explicit, but the, injunction that in the exercise of legislative and executive power due regard shall be had to the guarantees, clearly implies acceptance

and recognition of the personal rights, privileges and dignities. The Constitution thereby affirms the binding force of the guarantees and assurances under the covenants, of personal rights, privileges and dignities, but unlike the guarantee of payment of the privy purse in Art. 291, the guarantee under Art. 362 is of the obligations under the original covenants and agreements executed by the Rulers, barring those regarding which there is express legislation enacted to give effect to certain personal rights and privileges, e.g., Wealth-tax Act, 1957, Gift-tax Act, 1958, notifications under the Sea Customs Act, 1878, Code of Civil Procedure, 1908 and Code of Criminal Procedure, 1898. A Ruler seeking to enforce privileges which parliamentary statutes have recognised relies for right to relief upon the mandate of the statutes, and not of the covenant.

Article 363 of the Constitution provides

" (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143 neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution

(1)[1964] 7 R.C.R. 892

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by any Ruler of an Indian "State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article--

(a) "Indian State" means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

Exclusion of the jurisdiction of the Courts is emphasized by the non-obstante clause with which the Article commences. Notwithstanding the investment of jurisdiction upon this Court by Art. 32, notwithstanding the jurisdiction conferred upon the High Courts by Art. 226, and notwithstanding the competence of all Civil Courts to decide disputes in respect of the obligations of the Union, it is declared that the Courts have no jurisdiction in respect of the two classes of disputes. The exception carved out of the exclusion in respect of the jurisdiction conferred upon this Court by Art. 143 is not a real exception for the jurisdiction of this Court under Art. 143 is merely advisory. The non-obstante clause however does not enlarge the field of exclusion of judicial authority.

The Attorney-General urged that the jurisdiction of the Courts to enforce rights and obligations arising out of the

covenants entered into by the Rulers to which the Government of the Dominion or the predecessor Governments were parties, was excluded, because the rights and obligations arose out of acts of State, and by constitutional provision that exclusion was affirmed and extended after the Constitution. An act of State need not, it is true, arise out of war or conquest : It may be the result of an agreement, and the terms of the agreements and the obligations flowing only from such agreements may not be enforced in the Municipal Courts of either State, unless the rights and obligations
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are recognized and accepted by the States, or unless the document evidencing the act of State is itself the Constitution of the State or States. But there can be no act of state against its own citizen by the State. The Rulers who were before integration of their States aliens qua the Dominion Government are now citizens. Their rights and obligations which arose from an act of state are now recognized and accepted by the Union of India. Enforcement of those rights and obligations is governed by the, municipal laws, and unless the jurisdiction of the Courts is excluded in respect of any dispute, the Courts will be competent to grant relief. An act of state vanishes when the new sovereign recognizes either expressly or by implications the rights flowing therefrom : State of Gujarat v. Vora Fiddalti Badruddin Mithibarwala(1).

We are unable to agree with the Attorney-General that "old unidentified concept of paramountcy of the British Crown" was inherited by the Union, by reason of the instruments of accession and merger agreements, and that "recognition of Rulership was a 'gift of the President', and not a matter of legal right, existing as it did in the area of paramountcy and remaining with the Government of India". The British Crown did not acquire paramountcy rights by any express grant, cession or transfer:it exercised paramountcy because it was the dominant power. Paramountcy had no legal origin, and no fixed concept: its dimensions depended upon what in a given situation the representatives of the British Crown thought expedient. Paramountcy meant those powers which the British authorities by the might of arms, and in disregard of the sovereignty and authority of the States chose to exercise. But that paramountcy lapsed with the Indian Independence Act, 1947: even its shadows disappeared with the integration of the States with the Indian Union. After the withdrawal of the British power and extinction of paramountcy of the British power the Dominion Government of Indian did not and could not exercise any paramountcy over the States. In clause 3 of the Standstill Agreement it was expressly recited that "Nothing in the agreement includes the exercise of any paramouncy functions". The relations between the States and the Dominion Government were strictly governed by the instruments executed from time to time. Subject to the power conferred in respect of certain matters of common interest to legislate and exercise executive authority, the Princes had sovereignty within their territories. With the advent of the Constitution the States ceased to exist, and the Princes and Chiefs who were recognized as Rulers were left with no sovereign authority in them. It is difficult to conceive of the

(1) [1964] 6 S.C. R. 401
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government of a democratic Republic exercising against its citizens "paramountcy" claimed to be inherited from an Imperial Power. The power and authority which the Union may exercise against its citizens and even aliens spring from

and are strictly circumscribed by the Constitution.
The fundamentals on which paramountcy rested-i.e. the compulsion of geography and the essentials for ensuring security and special responsibility of the Government of India to protect all territories in India survived the enactment of the Indian Independence Act, for between August 15, 1947 and the date of integration, of the various States, the Government of India was the only fully sovereign authority. But paramountcy with its brazen-faced autocracy no longer survived the enactment of the Constitution. Under our Constitution an action not authorised by law against the citizens of the Union cannot 'be supported under the shelter of paramountcy. The functions of the President of India stem from the Constitution-not from a "concept of the paramountcy of the British Crown" identified or unidentified. What the Constitution does not authorise, the President cannot grant. Rulership is therefore not a privilege which the President may in the exercise of his discretion bestow or withhold.
-Jurisdiction of the Courts in matters specified is excluded not because the Union of India is a successor to the paramountcy of the British Crown,, nor because the rights and obligations accepted and recognized by the Constitution may still be regarded as flowing from acts of State : it is only excluded in respect of specific matters by the express provision in Art. 363 of the Constitution. Jurisdiction of the Courts even in those matters is not barred "at the threshold" as contended by the Attorney-General. The President cannot lay down the extent of this Court's jurisdiction. He is not made by the Constitution the arbiter of the extent of his authority, nor of the validity of his acts. Action of the President, is liable to be tested for its validity before the Courts unless their jurisdiction is by express enactment or clear implication barred. To accede to the claim that the jurisdiction of the Court is barred in respect of whatever the executive asserts is valid, is plainly to subvert the Rule of Law. It is therefore within the province of the Court alone to determine what the dispute brought before it is, and to determine whether the jurisdiction of the Court is, because it falls within one of the two limbs of Art. 363, excluded qua that dispute.
In dealing with the dimensions of exclusion of the exercise of judicial power under Art. 363, it is necessary to bear in mind certain broad considerations. The proper forum under our Constitution for determining a legal dispute is the Court which is by
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training and experience, assisted by properly qualified advocates, fitted to perform that task. A provision which purports to exclude the jurisdiction of the Courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the Courts is by clear enactment or necessary implication barred, be denied recourse to the Courts for determination of his rights. The Court will interpret a statute as far as possible, agreeably to justice and reason and that in case of two or more interpretations, one which is more reasonable and just will be adopted, for there is always a presumption against the law maker intending injustice and unreason. The Court will avoid imputing_to the Legislature an intention to enact a provision which flouts notions of justice and norms of fairplay, unless a contrary intention is manifest from words plain and unambiguous. A provision in a statute will not be

construed to defeat its manifest purpose and general values which animate its,, structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property will, unless the contrary mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of constitutional and statutory provisions alike.

Article 366(22) defines a "Ruler" as a Prince, Chief or other person who has entered into a covenant or agreement as is referred to in Art. 291, and is recognized for the time being by the President and includes the successor of such Ruler. Article 291 in defining the sum guaranteed or assured to the Ruler as privy purse refers to covenants and agreements entered into by the Rulers which guarantee or assure the payment of sums as privy purse free from tax. It was contended on behalf of the Union that the expression "relating to in Art. 363 means " referring to", and since Arts. 291, 362 and 366(22) refer to covenants, the Courts have no jurisdiction to entertain disputes with respect to rights arising from those provisions. In support of that argument counsel for the Union referred us, to the diverse meanings in which the expression "relating to" is used. But a constitutional provision will not be interpreted in the attitute of a lexicographer, with one eye on the provision and the other on the lexicon. The meaning of a word or expression. used in the Constitution often is coloured by the context in which it occurs: the simpler and more Common the word or expression, the more meanings and shades of meanings it has. It is the duty of the Court to determine in what particular meaning and particular shade of meaning the word of expression was used by the Constitution makers, and in discharging the duty the Court will take

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into account the context in which it occurs, the object to serve which it was used, its collocation, the general congruity with the concept or object it was intended to articulate and a host of other considerations. Above all, the Court will avoid repugnancy with accepted norms of justice and reason. The expression "provisions of this Constitution relating to" in Arts. 363 means provisions having a dominant and immediate connection with": it does not mean merely having a reference to. A wide meaning of the expression may exclude disputes from the jurisdiction of the Courts in respect of rights or obligations, however indirect or tenuous the connection between the constitutional provision and the covenant may be.

Jurisdiction to try a proceeding is barred under the first limb of Art. 363 if the dispute arises out of the provision of a covenant : it is barred under the second limb of Art. 363 if the Court holds that the dispute is with respect to a right arising out of a provision of the Constitution relating to a covenant. A dispute that an order of an executive body is unauthorised, or a legislative measure is ultra vires, is not one arising out of any covenant under the firm limb of Art. 363, merely because the order or the measure violates the rights of the citizen which, but for the act or measure, were not in question. The dispute in such a case relates to the validity of the act or the vires of the measure. Exclusion of the Court’s jurisdiction by the terms of the relevant words in the second limb lies in a narrow field. If the constitutional provision relating to a covenant is the source of the right claimed to accrue, or liability claimed to arise, then clearly under the second limb the jurisdiction of the Court to entertain a dispute

arising with respect to the right or obligation is barred. We need in the present case express no opinion on the question whether a dispute that an executive act or legislative measure operating upon a right accruing or liability arising out of a provision is invalid falls within the second limb of Art. 363.

As a quid pro quo for agreeing to surrender their power and authority, it was enacted in the Constitution that the Princes who had signed the covenant of the nature specified will be recognized as Rulers. But under the treaties, covenants and agreements executed by the former Princes, there was no provision for recognition of Rulers. The President was invested by the Constitution with power to recognise Rulers under Art. 366(22). The status of the Rulers under the Constitution is not the status which the Princes had: their rights, privileges and functions are fundamentally different from those of the former Princes. Some degree of obscurity is introduced by the use of the expression "Ruler" and "Ruler of an Indian State" in the Articles. But the mean-

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ing is reasonably plain. Ruler as defined in Art. 366(22) is a former Prince, Chief or other person who was on or after January 26, 1950, recognised as a Ruler, he having signed the covenant, or his successor. The Ruler of an Indian State means a Prince, or Chief who was recognized before the, Constitution by the British Crown. The Ruler of an Indian State had sovereign authority over his State. The Ruler recognized by the President rules over no territory, and exercises no sovereignty over any subjects. He has no status of a potentate and no privileges which are normally exercised by a potentate. He is a citizen of India with certain privileges accorded to him because he or his predecessor had surrendered his territory, his powers and his sovereignty.

Article 366(22) is, in our judgment, a provision relating to recognition of Rulers: that is the direct and only purpose of the provision. It is not a provision relating to a covenant. The qualification of a person being recognized as a Ruler is undoubtedly that he is a Prince, Chief or other person who had entered into a covenant or agreement as is referred to in Art. 291, or that he is the successor to such a Ruler. Reference to the covenant or the agreement of the nature mentioned in Art. 291 is for determining who may be recognized as a Ruler. Because of that reference the provision enacted with the object of conferring authority upon the President to recognize a Ruler, will not be deemed one relating to the covenant or agreement.

The Attorney-General urged that this Court has decided that the Courts have no jurisdiction to determine whether the order of the President under Art. 366(22) is valid, and that the Court will not be justified in unsettling the law. The decisions relied upon are: Nawab Usman Ali Khan v. Sgarmal (supra) and Kunvar Shri Vir Rajendra Singh v. Union of India (supra). In our judgment, in neither of these cases the question about the bar to the Court's jurisdiction by virtue of Art. 363 was directly in issue. In Nawab Usman Ali Khan's case (supra) this Court upheld the claim that the privy purse payable to the Ruler of Jaora was exempt from attachment under s. 60 (1) (g) of the Code of Civil Procedure. The Court in that case considered the nature of the privy purse and held that it was a "political pension" within the meaning of s. 60(1) (g) of the Code of Civil Procedure. Bachawat, J., speaking for the Court, after setting out the history of integration and absorption of

States, summarised the provisions of Arts. 291, 362, 363 and 366(22) of the Constitution and observed (at p. 208):

> "Now, the Covenant entered into by the Rulers of Madhya Bharat States was a treaty entered into by the Rulers of independent States by which they gave
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> up their sovereignty over 'their respective territories and vested it in the new United State of Madhya Bharat. The Covenant was an act of State, and any violation of its terms cannot form the, subject of any action in any municipal courts. The guarantee given by the Government of India was in the nature of a treaty obligation contracted with the sovereign Rulers of Indian States and cannot be enforced by action in municipal courts. Its sanction is political and not legal. On the coming into force of the Constitution of India, the guarantee for the payment of periodical sums as privy purse is continued by Art. 291 of the Constitution, but its essential political character is preserved by Art. 363 of the Constitution, and the obligation under this guarantee cannot be enforced in any municipal court. Moreover, if the President refuses to recognise the person by whom the covenant was entered into as the Ruler of the State, he would not be, entitled to the amount payable as privy purse under Art. 291."

The dictum that the essential political character of the guarantee for the payment of periodical sums as privy purse is preserved by Art. 363, and the obligation cannot be enforced in any municipal Court was not necessary for the purpose of the decision, and is, in our judgment, not correct. Article 363 prescribes a limited exclusion of the jurisdiction of Courts, but that exclusion does not operate upon the claim for a privy purse, relying upon Art 291. The question as to the jurisdiction of the Courts to entertain a claim for payment of privy purse did not fall to be determined in Nawab Usman Ali Khan's case (supra). The, only question raised was whether the privy purse was not capable of attachment in execution of the decree of a Civil Court, because of the specific exemption of political pensions under s. 60 (1) (g) of the Code of Civil Procedure. In Kanvar Shri Vir Raiendra Singh's (supra) the Court did not express any opinion that Art. 366(22) was a provision relating to a covenant within the meaning of Art. 363. In that case the petitioner who was not recognised as a Ruler by the President abandoned at the hearing of his petition his claim to the privy purse payable to the Ruler of Dholpur, and pressed his claim by succession under the Hindu Law to the private property of the former Ruler. The Court was not called upon to decide and did not decide that Art. 366(22) was a provision relating to a covenant within the meaning of Art. 363. It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not ,even fall to be answered in that judgment.

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In the view we have expressed, the argument raised by Mr. Palkhivala that even if cl. (22) of Art. 366 is a provision relating to the covenants, the jurisdiction of this Court

under Art. 32 to grant relief against an invalid exercise of power withdrawing recognition of the Rulers is not barred, needs no consideration.

The source of the right to receive the privy purse is for reasons already stated the constitutional mandate : it is not in the covenant. Reference to the covenant in Art. 291 merely identifies the sum payable as privy purse : it does not make Art. 291 a provision relating to the covenant. A dispute as to the right to receive the privy purse, is therefore not a dispute arising out of the covenant within the first limb of Art. 363, nor is it a dispute with regard to a right accruing or obligation arising out of a provision of the Constitution relating to a covenant.

The personal rights (other than the right to the privy purse) privileges and dignities are recognized by Art. 362 of the Constitution and the Legislature and the executive are enjoined to have due regard to those personal rights, privileges and dignities, in exercising their respective power. Article 362 is plainly a provision relating to covenants within the meaning of Art. 363. A claim to enforce the rights, privileges and dignities under the covenants will therefore be barred by the first limb of Art. 363 and a claim to enforce the recognition of rights and privileges recognized by Art. 362 will be barred under the second limb of Art. 363. Jurisdiction of the Courts will, however, not be excluded where the relief claimed is founded on a statutory provision enacted to give effect to personal rights under Art. 362

We are accordingly of the view that the Courts have jurisdiction to interpret and to determine the true meaning, of Arts. 366 (22), 291, 362 and 363. The bar to the jurisdiction of the Courts by Art. 363 is a limited bar : it does not arise merely be cause the Union of India sets up a plea that the dispute falling within Art. 363 is raised. The Court will give effect to the constitutional mandate if satisfied that the dispute arises out of any provision on of a covenant which is in force, and was entered into or executed 'before the commencement of the Constitution and to which the predecessor of the Government of India was a party, or that it is in respect of rights, liabilities or obligations accruing or arising under any provision of the Constitution relating to a covenant. But since the right to the privy purse arises under Art. 291 the dispute in respect of which does not fall within either clause, the jurisdiction of the Court is not excluded. Again, the jurisdiction of the Court is not excluded. in respect of disputes relating to personal rights and privileges which are granted by statutes.

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We further hold that the President is not invested with any political power transcending the Constitution, which he may exercise to the prejudice of citizens. The powers of the President arise from and are defined by the Constitution. Validity of the exercise of those powers is always amenable to the jurisdiction of the Courts, unless the jurisdiction is by precise enactment excluded. Power of this Court under Art. 32, or of the High Courts under Art. 226, cannot be bypassed under a claim that the President has exercised political power.

On the view we have expressed, it is unnecessary to express any opinion on the plea that the order was made for a collateral purpose.

A writ will therefore issue declaring that the order made by the President on September 6, 1970 "do-recognising" the Rulers is illegal and on that account inoperative, and the

petitioner will be entitled to all his preexisting rights and privileges including the right to the privy purse, as if the order had not been made. The petitioner will get his costs of the petition.

Writ petitions Nos. 377 to 383 of 1970 raise the identical question which is raised in the main petition. For reasons set out in the principal petition a similar writ will issue. Each petitioner will get his costs of the petition. One hearing fee in those, petitions in which the petitioners have appeared through the same counsel.

Mitter, J. On the 6th September, 1970 there was issued in the name of the President an order of the following text :

"In exercise of the powers vested in him under Art. 366 (22) of the Constitution of India, the President hereby directs with effect from the date of this order His Highness Maharajadhi Raj Madhav Rao Jiwaji Rao Scindia Bahadur do cease to be recoginised as a Ruler of Gwalior."

Admittedly this followed the signing of an instrument by the President on the night of 5th September 1970 purporting to withdraw recognition of all the Rulers. Orders like the above were issued in the case of each and every individual Ruler of an Indian State numbering over three hundred and sixty. The petitioner in Writ Petition No. 376 of 1970 is the person to whom the above order was directed. He is a national and citizen of India and was recognised by the President of India as a Ruler on 16th July 1961 as the successor to the gaddi of the State of Gwalior on the death of the preceding Ruler of the State. The late Ruler had signed an instrument of Accession on the 15th August 1947 which was accepted by the then Governor-General of India on the 16th

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August 1947. On 22nd April, 1948 the said preceding Ruler of the State had signed a covenant with the other Rulers of various States in Central India which led to the formation of the Madhya Bharat State on the 15th June 1948. As such Ruler the petitioner was being paid a privy purse of Rs.10,00,000. per year and was also entitled to certain rights and privileges under various statutes.

The recognition as a Ruler was not an empty formality. Different Articles of the Constitution provide for and deal with the rights and privileges of the Rulers. The forenost among them is Art. 291 which after its amendment as a result of the Seventh Amendment of the Constitution Act, 1956, runs as follows

> "Where under any covenant or agreement entered into by the Ruler of any Indian State) before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse--
>
> (a) such sums shall be charged on, and paid out of, the Consolidated Fund of India;
>
> (b) the sums so paid to any Ruler shall be exempt from all taxes on income."
>
> Art. 362 of the Constitution in its present form deals with the rights and privileges of Rulers of Indian States other than the privy purse and reads :
>
> "In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any

such covenant or agreement as is referred to in article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

The only article in the Constitution which mentions the recognition of a person as a Ruler is Art. 366 which is a key to the meaning of various words and expressions used throughout the Constitution. Clause 22 of the article provides

"In this Constitution unless the context otherwise, requires, the following expressions have the meaning hereby respectively assigned to them, that is to say-

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(22)"Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;"

Clause (15) of Art. 366 defines an Indian State as any territory which the Government of the Dominion of India recognised as such a State Clause (21) of Art. 366 (now deleted) provided as follows :--

"Rajpramukh" means-

(a)in relation to the state of Hyderabad the person who for the time being is recognised by the President as the Nizam of Hyderabad;

(b)in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and

(c)In relation to any other state specified in Part B of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State;"

To complete the account of the provisions of the Constitution with regard to Rulers it is necessary to set out Art. 363 of the Constitution,, the interpretation of which is the most important point in the series of petitions presented by a number of Rulers ,of Indian States to this Court with identical prayers.

"363(1) Notwithstanding anything in this Constitution but subject to the, provisions of article 143, neither the" Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the

Dominion of India or any of its predecessor Governments was a party and which has or has been con-
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tinued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to such treaty, agreement, covenant, engagement, sanad or other similar instrument.
(2)

The grievance of the petitioner in this series of petitions is the same' as the rights asserted by them flow from more or less similar transactions.

We have to delve into the past history of India in order to appreciate the setting in which these persons or their ancestors who were formerly Rulers of territories in India wore brought within the fold of the Constitution. Though not sovereign within the meaning of that expression in International Law these former Rulers had certain attributes of sovereignty during the days preceding the independence of India.

As is well known to all students of history the achievement of setting up a British Empire in India was "in its early stages at any rate, brought about by the agents of the East India Company in India." The Company entered into treaties with Indian States in the early stages aiming at no more than securing for the Company a privileged position in trade against its rivals. For the first time the Parliament of England asserted its authority and control over the East India Company's activities both in. India and in England by the Regulating Act of 1773, under which the Governor of Bengal became the Governor-General in Council with a certain amount of control over the Presidencies of Bombay and Madras. The Marquis of Wellesley as the Governor-General felt convinced when he came to India in 1798 and saw the state of affairs here that the British must become the one paramount power in the country. He set up a system under which no Indian State which had accepted subsidiary alliance with the British could make any war or carry on negotiations with another State without the Company's knowledge and consent. It was during his time. that the British Dominion in India expanded considerably. He had practically eliminated the French influence in India and brought many States under the subsidiary alliance, the notable instances being Hyderabad, Travancore, Mysore, Baroda and Gwalior. Under this system of subsidiary alliance the bigger states were to maintain armies commanded by British officers for preservation of the public peace and their rulers were to cede certain territories for the upkeep of these forces; the smaller States were to pay a tribute to the Company. In return the Company were to
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protect them, one and all, against external aggression and internal rebellion. A British Resident was also installed in every State that accepted the subsidiary alliance. This process was carried on during the regime of Hastings and Dalhousie. The Marquis of Hastings who came out as a Governor-General in 1813 crushed the Pindaris and finally broke the Mahratta power and carried the spread of the British dominion over northern and central India to a stage which it was only left for Lord Dalhousie, a quarter of a century later, to complete. He resumed Wellesley's policy by extending the Company's supremacy and protection over

almost all the Indian States. By the time he left the country in 1823, the British empire in India had been formed and its map in essentials drawn. Every State in India outside the Punjab and Sind was under the Company's control. The influence of the company over the internal administration of the States rapidly increased ,during the period following the retirement of Lord Hastings. Residents became gradually transformed into diplomatic agents representing a foreign power into executive and controlling officers of a superior government. The Charter of 1833 abolished the Company's trading activities and the Company assumed the functions of the Government of India. Lord Dalhousie acquired vast territories for the Company conquering the Punjab and pushing the frontiers to the natural limits of India i.e. the base of the mountains of Afghanistan. Whatever may have been the cause which led to the Mutiny of the year 1857 it was realised by the British people that the Indian States could play a vital role as one of the bulwarks of British rule. An Act of 1858 intituled "An Act for the Better Government of India" provided by the 67th section that "all treaties made by the Company shall be binding upon Her Majesty". In her proclamation Queen Victoria made it clear that the Government would respect the rights, dignity and honour of Native Princes. The policy of annexation vigorously pursued by Dalhousie gave way to the perpetuation of the States as separate entities. Lord anning carried this new policy to its next logical step by recommending that the integrity of the States should be preserved by perpetuating the rule of the Princes whose power to adopt heirs should be recognised. The Secretary of State for India agreed to this recommendation and sanads were granted to the Ruler under which in the event of the failure of the natural heirs, they were authorised to adopt their successors according to their law and custom. These sands were intended to remove mistrust and suspicion and knit the Native Sovereigns to the paramount power. The new policy was to punish the ruler for extreme misgovernment and if necessary to depose him but not to annex his State for misdeeds. The Indian States thus became part and parcel of the British Empire in India. In The words of Lord Canning : 105

> "The territories under the sovereignty of the Crown became at once as important and as integral a part of India as territories under its direct domination. Together they form one direct care and the political system which the Moghuls had not completed and the Maharattas never contemplated is now an established fact of history."

The next five decades were occupied with the task of evolving a machinery for controlling the States. A political department was set up under the direct charge of the Governor-General. It had at its disposal a service known as the Indian Political Service, manned by officers taken from the Indian Civil Service and the Army. It had a police force which was maintained partly by the revenues of the Central Government and partly by contributions made by the States. The Political Department had Residents and Political Agents in all important States and groups of States. The Secretary of State kept a close control over the activities of the Political Department mainly because of the interest of the Crown in matters affecting the rights and privileges of the Rulers.

Constitutionally the States were not part of the British India nor were their inhabitants British subjects.

Parliamentary had no power to legislate for the States or their people. The Crown's relationship with the Indian States was conducted by the Governor-General in Council and since he was in charge of the political Department, his Executive Council tended in practice to leave States' affairs to him which meant that the Political Department came gradually to assume the position of a government within a government.

With the building up of a strong Political Department the Crown started asserting rights never claimed by the East India Company and even at times cutting across treaties. The most outstanding example and at the same time one of far-reaching consequence, in the relations of the paramount power with the Rulers was the prerogative assumed of recognising succession in the case of natural heirs. The first ruling in this behalf was laid down by the Government of India in 1884 in a letter addressed to the Chief Commissioner of the Central Provinces in which it was stated that succession to a native State is invalid until it receives in some form the sanction of the British authority. In the view of the Secretary of State expressed in 1891 it was admittedly the right and duty of Government to settle successions in the protected States in India. This right it was claimed flowed essentially from the-position of the British as the Supreme power responsible for maintaining law and order throughout the country. That power alone had the necessary sanction to enforce decisions regarding

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disputed successions. The Ruler thus did not inhert his gaddi as of right but as a gift from the paramount power.

A definite pattern of the Government of India's relationship with the States had been developed b the time the first world War broke out in 1914. The Rulers rallied to fight for the Empire, and the organisation of the war effort involved closer coordination of administrative activity in the States as well as in the Provinces.

Throughout the country the tide of national aspirations was rising fast. Although Britain claimed to be fighting a war to defend freedom and democracy the system of government by which she continued to hold India in imperial thrall was clearly at variance with her professed aims. The British Government recognised that the situation needed now handling. In 1917 Montagu, the Secretary of State for India, announced that the policy of His Majesty's Government with which the Government of India was in complete accord, was that of an increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to progressive realisation of responsible government in India as an integral part of the British Empire.

The Secretary of State for India and the Viceroy Lord Chelmsford published a joint report on Constitutional Reforms which was the first major investigation into the relations of the States with the rest of India and with the paramount power. The authors of the report visualised that the Provinces would ultimately become self-governing units held together by a Central Government which would deal solely with matters of common concern to all of them.

With regard to the Rulers the authors of the report felt that the time had come to end their isolation and that steps should be taken for joint consultations by them for the furtherance of their common interest. There was a conference of ruling Princes and Chiefs in 1919 which recommended that the rulers of States having full and unrestricted powers of civil and criminal jurisdiction in

their States, and the power to make their own laws should be termed sovereign Princes as against those who lacked such powers. This was however not favoured by the Government of India. In 1921 a Chamber of Princes was brought into being by a Royal Proclamation which announced that the Viceroy would take counsel of the Chamber freely in matters relating to that territories of Indian States generally and in matters which affected these territories jointly With British India or with the rest of the Empire. The Chamber of Princes would have no concern in the internal affairs of individual States or relations of Individual States with
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the Government of India while the existing rights of these states and their freedom of action would in no way be prejudiced or impaired.

In the years following the first World War the Nationalist Movement in India gained, considerable impetus. Lord Irwin who came out as Viceroy in 1926 felt that the political situation in the country demanded some gesture on the part of Britain. In March 1927 an announcement was made for appointing a statutory Commission to enquire into the working of the Government of India Act 1919 and to make recommendations regarding further constitutional advancement. At or about this time the Rulers of the Indian States also demanded an impartial enquiry into the whole relationship between themselves and the paramount power. The Secretary of State appointed a Committee of three members headed by Sir Harcort Butler to enquire into the relationship between the States and the paramount power and to suggest means for the more satisfactory adjustment of the existing economic relations, between the States and the British India.

On behalf of the States it was contended before the Committee that all original sovereign powers except those which had been transferred with their consent to the Crown were still possessed by them and that such transfers could be effected only by the consent of the States and that the paramountcy of the British Crown was limited to certain matters-those relating to foreign affairs and external and internal security. The Committee was not prepared to accept this and held that none of the States overhad any International status. Ile committee refused to define paramountcy but asserted that paramountcy must remain paramount; it must fulfil its obligations defining or adopting itself according to the shifting necessities of the time and the progressive development of the States. They however observed that if any Government in the nature of Dominion Government should be constituted in British India such Government could clearly be a new Government resting on a new written Constitution. The Committee noted the grave apprehension of the Princes on this score and recorded a strong opinion that in view of the fact of the historical nature of the relationship of the paramount power and the Princes the latter should not be transferred without their agreement to a relationship with a new Government in British India responsible to an Indian Legislature. This really laid the foundation of a policy whereby in later years a wedge was effectively driven between the States and the British India.

The Rulers were certainly disappointed with the findings of the Butler Committee with regard to their main hopes of being freed from the unfettered discretion of the Political Department
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to intervene in their internal affairs. Nationalist opinion in the country viewed the recommendations of the, Butler Committee with grave apprehension and emphatic protests were entered in the report of a committee presided over by Pandit Motilal Nehru and an All Parties Conference was arranged in 1928 to frame a Dominion Constitution for India. It gave a warning that it was inconceivable that the people of the states who were fired by the .same ambitions and aspirations as the people of British India would quietly submit to existing conditions for ever, or that the people of British India bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line would .never make common cause with them. The Viceroy Lord Irwin who had conferred with the British Government in 1929 made an official pronouncement on his return to India to the effect that the natural issue of India's constitutional progress was the attainment of Dominion Status. He also announced that the British Government had accepted the suggestion of Sir John Simoh for a Round Table Conference. There was a series of these conferences which debated on many and various points including Federation of the States with the Provinces of British India.

Then came the Government of India Act 1935 which provided for a constitutional relationship between the Indian States and British India on a federal basis. A special feature of the scheme 'Was that whereas in the case of the provinces accession to the Federation was to be automatic in the case of the states it was to be voluntary. A State was to be considered to have acceded when its Ruler executed an Instrument of Accession and after it was accepted by His Majesty the King of England. The Government of India Act 1935 other than the Part relating to Federation, came into force on the 1st April 1937. From that date the functions of the Crown in the relations with the States were entrusted to the Crown Representative; those functions included negotiations with the Rulers after accession to the Federation: The Federation however never took shape,.

An important announcement in the Constitutional set up of India which came after the Second World War had broken out was the Draft Declaration known as Cripp's Plan. This accepted the principle of self-determination but it contained numerous pitfalls which imperilled the future of India. The Mission failed but its failure gave a new turn to India's political struggle. In spite of the deepening crisis of war no further serious effort was made .to resolve the political dead lock in India until the Simla Conference of 1945. This also proved abortive. After the assumption of power by the Labour Government in England a Parliamentary delegation visited India and later the Secretary of State announced the Government's decision to send a delegation of three Cabinet

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Ministers to India. In May 1946 the Cabinet Mission issued the memorandum dated 12th May 1946 in regard to States' treaties and paramountcy; it affirmed that the rights of the States which flowed from the relationship of the Crown would no longer exist and that the rights surrendered by the States to the Paramount Power would revert to the States. The plan provided for the entry of the States to the proposed Union' of India in the following manner :

(a) Paramountcy could neither be retained by the British Crown nor transferred to the new Government. But according to the assurance given by the Rulers that they were ready and willing to do so, the States were expected to co-operate

in the new development of India.
(b) The precise form which the co-operation of the States would take must be a matter for negotiation during the building up of the new constitutional structure.
(c) The States were to retain all subjects and powers other than those ceded to the Union, namely, Foreign Affairs, Defence and Communications.
(d) In the preliminary stage the States were to be represented 'on the Constituent Assembly by a Negotiating Committee.
The Viceroy Lord Mountbatten made it clear that the British Government resolved to transfer power by June 1948 and a solution had to be found in a few months' time. On June 3, 1947 he announced that His Majesty's Government would be prepared to relinquish power to two Governments of India and Pakistan Oil the basis of Dominion Status and this relinquishment of power would take place much earlier than June 1948. In regard to States the plan laid down that the policy of His Majesty's Government towards the Indian States contained in the Cabinet Mission Memorandum of May 1945 remained unchanged. 'At a Press Conference held by him Lord Mountbatten gave it out that the date of transfer of power would be about 15th August, 1947.
The Indian Independence Act enacted for the purpose of giving effect to the plan envisaged as above, received the Royal Assent on 18th July 1947. It provided for the setting up of two independent Dominions as and from the 15th August 1947. Section 2 of the Act defined what the territories of the two Dominions would be S. 6 provided that the Legislature of each of the new Dominions would have power to make laws for that Dominion. Under s. 7(1)(b) the suzerainty of His Majesty over the Indian States would lapse and with it all treaties and agreements in force at the date of the passing of the Act between His Majesty and the Rulers of Indian States, all functions exercisable by His
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Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the Rulers thereof. Under cl. (c) any treaties or agreements in force at the date of passing of this Act between His Majesty and any person having authority in the tribal areas were also to lapse. Section 9 empowered the Governor-General, to promulgate orders for making such provisions as appeared to him to be necessary or expedient for bringing the provisions of the Act into effective operation, for dividing between the new Dominions, and between the new Provinces to be constituted under the Act, the powers, rights, property, duties and liabilities of the Governor-General in Council, etc. Even before the passing of the Act Lord Mountbatten was debating the States' problems with Indian leaders. He put forward to them a peaceful settlement he had in mind, namely to allow the Rulers to retain their titles, extra territorial rights. and personal property and civil list in return for which they would join a Domiion-most of them India, and a few like Bahawalpur Pakistan only three subjects of defence external affairs and communications being reserved for the Central Government. A draft Instrument of Accession was prepared in the States Department of the Dominion of India. The Instrument of Accession took three forms according to the existing status and powers of the various States. By the Instrument of Accession the States were to accede to the Dominion of India on the three subjects, Defence, External Affairs and Communications and their content being as defined in Schedule VII of the Government of India Act,

1935. Shortly before the 15th August 'with the helpful efforts of Lord Mountbatten negotiations were concluded and barring Hyderabad, Kashmir and Junagadh all the States within the geographical limits of the Indian Union had acceded to the Indian Dominion by the 15th August. The accession of the Indian States to the Dominion of India established a new organic relationship between the States and the Government of India.

The second phase which rapidly followed involved a process of two-fold integration, consolidation of States into sizable administrative units and their democratization.

With the advent of independence in India the popular urge in the States for attaining the same measure of freedom as was enjoyed by the people in the Provinces gained momentum and unleashed strong movements for the transfer of power from the Rule to the people.

So far as the larger units were concerned democratization of administration could be a satisfactory solution of their constitutional problem. However in the case of small States responsible Government could have only proved a farce. The Rulers of smaller States were in no position to meet the demand. for equating

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the position of their people with that of their countrymen in the Provinces. Without doubt the smaller State units could not have continued in modern conditions as separate entities; integration provided the only approach to the problem.

The integration of States did not however follow a uniform pattern. Merger of States in the Provinces geographically continuous to them was one form of integration; the second was conversion of States into Centrally administered areas; and the third form was the creation of new viable units known as Unions of States. Each of these forms was adopted according to size, geo graphy and other factors relating to each State or group of States.

The problem of integration was first faced in Orissa where the States formed scattered bits of territory with no geographical contiguity. After long discussions with the Rulers of the States and the Minister of the State Department it was eventually decided to integrate the small States with the adjoining Provinces. Agreements were signed by the Rulers of these States in December 1947 and on subsequent dates providing for cession by them to the Dominion of India full and exclusive authority, jurisdiction and power in relation to the governance of their States.

There were several groups of States which with due regard to geographical, linguistic, social and cultural affinities of the people could be consolidated into sizable and viable units consisting entirely of States. In such cases, territories of States were united to form Unions of States on the basis of full transfer of power from the Rulers to the people. A special feature of these Unions was the provision for the Rajpramukh as the constitutional head of the State who was to be elected by a Council of Rulers. The United State of Gwalior, Indore and Malwa and other small States came to be known as Madhya Bharat of which the Ruler of Gwalior became the Rajpramukh. Integration of Rajputana was completed in three stages.

As a result of the application of the various merger and integration schemes 216 States were merged in Provinces, 61 States were taken over as Centrally administered areas and 275 States were integrated into the Union of States.

The process of the merger of the States with the Provinces or their constitution into Centrally Administered areas,

transfer of power to the people was automatic in that the merged States became part of the Administrative units which were governed by the popular Government of the Provinces and the Centre as the case might be. So far as the Provincially merged States were concerned, under the arrangements made virtually by the statutory
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orders issued under S. 290-A of the Government of India Act 1935 provision was made for the representation of the people of the merged States in the Provincial Legislature. As regards the Unions of States wherever practicable popular interim ministries were set up to conduct their administration.
The Instruments of Merger and the covenants establishing the various units of States were in the nature of overall settlements with the Rulers who had executed them. While they provided for the integration of States and for the transfer of powers from the, Rulers they also guaranteed to the Rulers privy purses succession to the gaddi, rights and privileges and full ownership, use and enjoyment of all private properties bellinging to them as distinct from State properties.
The above is a thumb-nail sketch of the political developments and the major political events between 1773 and 1948 or 1949. Most of the historical account is taken verbatim from V. P. Menon's "Story of Integration of Indian States" and the White Paper on Indian Constitution-both of which were freely referred to by counsel appearing in the case. In the above setting I now propose to examine the implications of the important documents to which the Ruler of Gwalior became a party.
An Instrument of Accession was signed by the Ruler of Gwalior on the 15th August, 1947 in the exercise of his sovereignty in and over his State containing inter-alia the following material terms:-
"I declare that I accede to the Dominion of India. with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall, by virtue of this instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion exercise in relation to the State..... such functions as may be vested in them by of under the Government of India Act, 1935.
Clause 31 accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for the State. (The schedule mentioned contained several matters of which the main were defence, external affairs and communications).
Clause 5. The terms of this Instrument of Accession shall not be varied by any amendment of the Act (Government of India Act) or the Indian Independence Act, 1947 unless such amendment is accepted by me, by an instrument supplementary to this instrument.
Clause 7. Nothing in this Instrument shall be deemed to com-mit me in any way to acceptance of any future constitution of India
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or to, fetter my discretion to enter into arrangements with the Government of India under any such future constitution.
Clause 8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and right,,, now enjoyed by me as Ruler of this State or the validity of any law at present in force in

this State.
Clause 91 hereby declare that I execute' this Instrument on behalf of this State and that any reference in this Instrument to. me or to ;The Ruler of the State, is to be construed as including a reference to my heirs and successors."
This Instrument was accepted by the Governor-General of India and signed by him.
On 22nd April 1948 a document was executed by the Ruler of Gwalior, Indore and certain other States in Central India for the formation of the United State of Madhya Bharat. The recitals to the document show that the Rulers were entering into a covenant on the terms mentioned therein as they were convinced that the welfare of the people of the region could best be secured by the establishment of a State with a common executive, legislature and judiciary, and they were resolved to entrust to a Constituent Assembly consisting of elected representatives of the people the drawing up of a democratic constitution of the State within the framework of the Constitution of India. By Article II the Covenanting States agreed to unite and integrate their territories into one State with a common executive, legislature and judiciary and to include therein any other State the Ruler of which agreed with the approval of the Government of India to the merger of his State in the United State. Article III provided for the constitution of a Council of Rulers with a President known as the Rajpramukh. Article IV provided inter alia for payment of a sum of Rs. 2,50,000 to the Rajpramukh from the revenues of the United State as consolidated allowance. Under Art. V there was to be a Council of Ministers to aid and advise the Rajpramukh in the exercise of his functions. Under Art. VI the Rulers of each Covenanting State agreed as soon as possible and not later than the 1st July 1948 to make over the administration of his State to the Rajpramukh whereupon all rights, authority and jurisdiction belonging to the Ruler which pertained to or were incidental to the Government of the Covenanting State were to vest in the United State and all the assets and liabilities of the Covenanting State were to be the assets and liabilities of the United State. Under Art. VIII the Rajpramukh was to execute on behalf of the United State, as soon as practicable and in any event not later than 15th June 1948 an Instrument of Accession in accordance with the provisions of s. 6 of the
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Government of India Act, 1935 and he was to accept as matters with respect to which the Dominion Legislature might make laws for the United State all the matters mentioned in List I and List III of the Seventh Schedule to the said Act, except the entries in List I relating to any tax or duty, by such instrument. Under Article XI the Ruler of each Covenanting State was to be entitled to receive annually from the revenues of the United State for his privy, purse the amount specified against that Covenanting State in Schedule I : provided that the sums specified in the Schedule in respect of the Rulers of Gwalior and Indore were to be payable only to the Rulers of these States and not to their successors for whom provision was to be made subsequently. The said amount was intended to cover all expenses of the Ruler and his family including expenses of his residence, marriage and other ceremonies and subject to the provisions of paragraph I were neither to be increased nor reduced for any reason whatever. Under paragraph 3 the Rajpramukh was to cause the said amount to be paid to the Ruler in four equal instalments at the beginning of each

quarter in advance. Under paragraph 4 the said amount was to be free of all taxes whether imposed by the Government of the United State or by the Government of India. Under Art. XII the Ruler of each Covenanting State was to be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to hi-in on the date of his making over the administration of that State to the Rajpramukh. Under paragraph 3 of this Article if any dispute arose as to whether any item of property was the private property of the Ruler or State Property, it was to be referred to such person as the Government of India might nominate in consultation with the Rajpramukh and his decision was to be final and binding. Art. XIH ran as follows .-

" The ruler of each Covenanting State, as also the members of his family, shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State immediately before the 15th day of August, 1947."

Art. XIV provided

(1) The succession, according to law and custom to the gaddi of each Covenanting State, and to the personal rights, privileges, dignities and titles of the Ruler thereof, is hereby guaranteed.

(2) Every question of disputed succession in regard to a Covenanting State shall be decided by the Council of Rulers after referring it to a Bench consisting of all the available Judges of the High Court of the United State and in accordance with the opinion given, by that High Court.

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The document ends with the following paragraph "The Government of India hereby concur in the above Covenant and guarantee all its provisions. In confirmation whereof Mr. V. P. Menon, Secretary to the Government of India in the Ministry of States, appends his signature on behalf and with the authority of the Government of India."

On July 19, 1948 'the Ruler of Gwalior who had then become the Rajpramukh of the United State of Madhya Bharat executed a revised Instrument of Accession reciting the covenant of April 1948 referring in particular to Art. VIII of the same and declaring. that he as Rajpramukh was acceding to the Dominion of India with intent that the Governor-General of India, the Dominion Legislature the Federal Court and any other Dominion authority established for the purpose of the Dominion would by virtue of the instrument of Accession but subject always to the terms thereof and for the purposes only of the Dominion exercise in relation to the United State such functions as may be vested in them or under the Government of India Act, 1935. By cl. (2) he assumed the obligation of ensuring that due effect was given to the provisions of the Act (the Government of India Act 1935) within the United State so far as they were applicable by virtue of the Instrument of Accession. By cl. (3) he accepted all matters enumerated in List I and List III of the Seventh Schedule to the Act as matters in respect of which the Dominion Legislature might make laws for the United State. This was of course subject to some provisos which it is not necessary to set out. Under cl. (6) the terms of the Instrument of Accession were not to be varied by any amendment of the Act or the Indian Independence Act

1947 unless such amendment was accepted by the Rajpramukh. Under cl. (8) it was made clear that nothing in the instrument was to be deemed too commit the United State in any way to acceptance of any future Constitution of India or to fetter the discretion of the Government of the United State to enter into arrangements with the Government of India under any such future Constitution.

This Instrument of Accession was duly accepted by the Governor-General of India.

The Constituent Assembly was in session about this time and the future Constitution of India was being discussed and given a final shape and form.

The provisions of the Constitution had been finally settled before the 24th November 1949, the date on which the Rajpramukh made a solemn declaration that the Constitution of India shortly

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to be adopted by the Constituent Assembly of India was to be the Constitution for Madhya Bharat, as for the other parts of India and was to be enforced as such in accordance with the tenor of its provisions. The preamble to the proclamation shows that the Rajpramukh took the step in the best interest of the, State, of Madhya Bharat which was closely linked with the rest of India by the community of interests in the economic. political and other fields and it was felt desirable that the Constitutional relationship established between the State of Madhya Bharat and the Dominion of India should not only be continued but further strengthen and the Constitution of India as drafted by the Constituent Assembly of India, which included duly appointed representatives of the, States provided a suitable basis for doing so.

The Constitution of India was finally adopted by the Constituent Assembly on the 26th November 1949. Under Art. 394 of the Constitution fifteen of its articles were to come into force at once and the remaining provisions of the Constitution were to come into force on the 26th day of January 1950 referred to in the Constitution at the commencement of the Constitution. By Art. 395 the Indian Independence Act 1947 and the Government of India Act 1935 together with all enactments amending or supplementing the latter were repealed.

The above gives a fairly complete picture of the disappearance of the former Indian States which formed the combination of the United State of Madhya Bharat with the commencement of the Constitution of India as also the rights and privileges of the Rulers save as expressly provided otherwise in the Constitution itself, or the covenants agreements 'etc to the extent necessary.

The above pattern did not however apply to all the Indian States. A number of small States of Orissa executed Merger agreements which were confirmed on behalf and with the authority of the Governor-General by the Secretary. to the Ministry of States. These agreements were entered into in December 1947. By Art. I of the agreement the Raja of the State ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on the 1st January, 1948. As from that date the Dominion Government was to be competent to exercise the said powers and authority and jurisdiction in such manner and through such agency as it might think fit. Under Art. 11 the Raja was to be entitled to receive from the revenues of the State annually for the privy purse a certain sum of money which

was to cover all the expenses of the Ruler and this family etc. Under Art. III he was to be
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property (as distinct from State properties) belonging to him on the date of the agreement. 'Under Art. IV the Raja and certain other persons were to be entitled to all personal privileges enjoyed by them whether within or outside the territories of the State immediately before the 15th August, 1947. By Art. V the Dominion Government guaranteed the succession according to law and custom to the gaddi of the State and to the Ruler's personal rights privileges, dignities and titles.
Similar Merger agreements were signed by the Rulers of Gujarat and Deccan States. The terms of the agreements were on similar lines.
There were however departures from the above in some cases. For instance, the Nawab of Bhopal executed a Merger agreement on the 30th April, 1949 whereby the administration of the State of Bhopal was to be taken over and carried on by the Government of India and for a period of five years next after the date of transfer the State was to be administered as a Chief Commissioner's Province. The personal rights and privileges and the privy purse were secured as in the case of other Rulers. With regard to succession to the throne of Bhopal State it was agreed that the same would be governed and regulated in accordance with the provisions of the Act known as the Succession to the Throne of Bhopal Act 1947. It may be mentioned that in the case of Bhopal Art. III of the agreement provided that although. the then Ruler was to get a sum of Rs. 11 lakhs per annum free of all taxes, each of his successors with effect from the date of succession was to be entitled to receive for his privy purse a sum of Rs. 9 lakhs per annum free of all taxes.
There was some similar provision in the cases of Mysore and Hyderabad but it is hardly necessary for the purpose of this series of petitions to go into the differences. There were separate agreements with the Nizam of Hyderabad regarding the privy purse, private property and rights and privileges entered into on the 25th January 1950. Under Art. I of the agreement with the Nizam the said Ruler was to be entitled to receive annually for his privy purse a sum of Rs. 50 lakhs free of all taxes. But with regard to his successors provision was to be made subsequently by the Government of India. Under Art. IV the Government of India guaranteed the succession according to law and custom to the gaddi of the State. A very similar agreement was entered into with the Maharaja of Mysore on the 23rd 1 January 1950. The then Maharaja was to receive Rs. 26 lakhs free of all taxes as and by way of privy purse per annum but provision was to be made subsequently by the Government of India with regard to his successor.
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For an other instance of integration through Merger Agreement I may refer to the Kutch Merger Agreement dated 4th May, 1948 between the Governor-General of India and the, Maharao of Kutch. The preamble shows that the agreement was being entered into in the best interests of the State of Kutch as well as of the the Dominion of India to provide for the administration of said State by or under the authority of 'the Dominion Government. Under Art. I the, Maharao ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on

the 1st day of June 1948. As from that day the Dommion Government was to be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it might think fit. By Art. 2 the Maharao was to be entitled to continue the same personal rights, privileges, dignities and titles which he would have enjoyed had the agreement not been made. Under Art.. 3 the Maharao was to be entitled with effect from the said day to receive from the revenues of the State annually for his ,privy purse the sum of Rs. 8 lakhs free of all taxes. The Government of India undertook that the said sum of Rs. 8 lakhs would be paid to the Maharao in four equal installments in advance. Art 4 provided for the retention by the Maharao of full ownership, use .and enjoyment of all private properties (as distinct from State properties). Under Art. 6 the Dominion Government guaranteed the succession of the State according to law and custom of the gaddi of the State and to the Maharao his personal rights, privileges, ,dignities and titles. As the original Government of India Act 1935 did not provide for any Merger agreement steps had already been taken towards-that end. The Extra Provincial Jurisdiction Act 1947 was passed giving power to the Central Government to ,exercise extra Provincial jurisdiction over a State only if it had by a treaty agreement etc. acquired full and exclusive authority and jurisdiction and power for an in relation to the governance of the State. The Government of India Act 1935 was also amended by insertion of section 290-A and 290-B.

The States' Merger (Governors' Provinces) Order, 1949 was promulgated on the 27th July 1949 under s. 290-A of the Government of India Act for the administration of the States specified in the Schedule together with the adjoining Governors' Provinces, Under Cl. 3 the States specified in each of the Schedules were to be administered as from the appointed day in all respects as if they formed part of the Provinces specified in the heading of that Schedule and, accordingly, any reference to an Acceding State, in the Government of India Act, 1935, or in any Act or Ordinance made on or after the appointed day was to be construed as not

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including a reference to any of the merged States, and any reference in any such Act or Ordinance as aforesaid to Provinces specified in that Schedule. Under Cl. 4 all the law in force in a.,. merged State or in any part thereof immediately before the appointed day including orders made under section 3 or section 4 of the Extra-Provincial-Jurisdiction Act, 1947 was to continue in force until repealed, modified or amended by a competent Legislature or other competent authority Under Cl. 5 all property wherever situate which, immediately before the appointed day was vested in the Dominion Government for purposes of the governance of a merged State was as from that date to vest in the Government of the absorbing Province unless the purposes for which the property was held immediately before the appointed daywere central purposes.

Another Order known as the Stages Merger (Chief Commissioners' Provinces) Order, 1949 was promulgated on the 29th July 1949. The State of Kutch along with other States was to be administered by and under this Order in all respects as if they were a Chief Commissioner's Province to be known as the Chief Commissioner's Province of Kutch.

The unification of India however thus achieved was not as a result of negotiations across the table nor was it accomplished overnight in the way ordinary contracts and

engagements are entered into after some deliberation. Full credit for the same goes not only to the Ministry of States led by Sardar Vallabhbhai Patel but also to the Rulers of the hundreds of Indian States who realised that in the interest of the people of their States as also their personal interest it was necessary for them to come to terms with the Government of India. They agreed to part with their States and the territories so far governed by them on the basis of the assurances and guarantees given by the Dominion of India before the commencement of the Constitution by the Government of India as contained in the Constitution itself. It will not be out of place to set out what Sardar Vallabhbhai Patel said in the Constitutent Assembly on 12th October 1949 in regard to the settlements with the Rulers. A portion of his speech is quoted as below

> "In the past, in most of the States there was no distinction between the expenditure on the administration and the Ruler's privy purse. Even where the Ruler's privy purse had been fixed no effective steps were taken to ensure that the expenditure expected to be covered by the privy purse was not, directly or indirectly charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers on the members of the ruling families . . . . the privy purse settlements made,
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> by us will reduce the burden of the expenditure, on the Rulers to at least one-fourth of the previous figure. Besides, the States have benefited very considerably from the process of integration in the form of cash balances inherited by them from the Rulers. . . . I shall now come to the political and moral aspect of the settlements. In order to view the payments guaranteed by us' in their correct perspective, we have to remember that they are linked with the momentous developments affecting the most vital interests of this country. These guarantees form part of the historic settlements which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence . . . Human memory is proverbially short. Meeting in October 1949, we are apt to forget the magnitude of the problem. which confronted us in August 1947 . . . . the so-called lapse of paramountcy was a part of the plan announced on June 3, 1947 which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had no option to act otherwise. While there was recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically cotinguous, the Indian Independence Act released the States from all their obligations

to the British Crown..... They (the British Crown) even conceded that theoretically the States were free to link their future with whichever Dominion they liked, although, in saying so, they referred to certain geographical compulsions which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, which some of the Rulers did wish to, exercise their technical right to declare independence and others to join the neighboring Dominion. If the Rulers had exercised their right in such an unpatriotic manner, they would have found considerable support from influential elements hostile to the interests of this country . . . . It was in this unpropitious background that the Government of India invited the Rulers of the States to accede on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the status quo except for accession on these
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subject. . . . There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the, Rulers had elected to stay out, they would have continued to draw the heavy Civil Lists which they were drawing before and in a large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as quid pro quo for parting with their ruling powers was to guarantee to them privy purses and certain privileges on a reasonable and defined basis. The privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units . . . . The capacity for mischief and trouble on the part of the Rulers if the settlement with them would not have been reached on a negotiated basis was far greater than could be imagined at this stage. Let us do justice to them; let us place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these Agreements is to ensure that the guarantees given by us in respect of privy purses ire fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilization of the new order."

it may not be out of place to quote from the debates in the Constituent Assembly which bear upon the interpretation of Art. ’363. Before

the Constitution finally took shape in the draft, this article was numbered as 302-AA and article 143 was numbered as 119 Shri T. T. Krishnamachari who moved for the insertion of Art. 302-AA said in the course of his speech :

" .....it is self explanatory. The idea is to bar the jurisdiction of the courts including the Supreme Court in regard to adjudicating in respect of any disputes that might arise out of any treaty, agreement, covenant, engagement, sanad or other similar instruments that might have been entered into by the Government of the Dominion of India or by any predecessor Government. "

Questioned by a member as to who would decide, T. T. Krishnamachari replied

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The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of Art. 119 by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him. The House will also remember that there are a few articles in the Constitution, specifically 302-A (the present Art. 291) and 267-A (the present Art. 362) where there are references to these agreements, covenants, sanads etc. and even these are precluded from adjudication by any court. The House will recognise that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well nigh probably upset certain arrangements that have been recommended and agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period. After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VI-A and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two Articles 267-A and 302-A the covenants will by and large not affect the working of the Constitution; and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operatable after the passing of the Constitution must not be a subject matter of a dispute in a court of law. I think that Members of this House will understand that it is a very necessary provision so as to save unnecessary disputes by people which might feel that they have been affected or injured and who would rush to a court to make the court recognise such rights and other similar matters which have been practically extinguished by the provisions of

this Constitution excepting in so far as certain articles of the Constitution preserved them."

There was also some discussion with regard to the definition of "Ruler" and "Rajpramukh" which figured in Art. 303 of the draft Constitution. According to Dr. B. R. Ambedkar the definition of 'Ruler' was intended only for the limited purpose of' making payments out of the privy purse. It had no other reference at all. He also said that the expression was deliberately used in order to give the power of recognition to the President.

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After referring to the historical background of the settlement in W.P. No. 376 of 1970 takes note of the attempt made to amend the Constitution by the Constitution (Twenty Fourth Amendment), Bill 1970 passed by the Lok Sabha on 2nd September 1970. It was however rejected by the Rajya Sabha on the 5th September, 1970. The same night the President signed an instrument withdrawing recognition of all the Rulers and orders were issued for and on his behalf to each and every Ruler in the country. According to The petition the order of the 6th September violated Articles. 14, 19 (1) (f), 21 (as per amendment allowed) and 31 (1) and. (2) of the Constitution. The order was dubbed as unconstitutional, ultra vires, void and inoperative, arbitrary, malafide and a fraud on the Constitution on various grounds formulated in paragraph 20, the notable ones being as follows :-

(1) Art. 291 embodied the Constitutional acceptance and recognition of the guarantees or assurances regarding tax-tree privy purses.,

The privy purse guaranteed by the Government under the Merger agreements or Covenants were further assured and guaranteed by the Constitution and charged on the Consolidated Fund of India. Arts. 291 and 362 themselves created new and independent rights. The pledge to pay privy purses and the guarantee regarding privileges etc. are inseverable from these accessions and mergers. The obligation to pay privy purses and the said guarantee regarding privileges etc. which are inseverable from the accession and merger cannot be abolished by any law, much less by any executive action.

(ii) (1) The President of India passed the order withdrawing the recognition of the petitioner and the other Rulers without applying his mind to the question of legality or propriety of the Order. The whole and only object of the Order was to deprive the petitioner and the other Rules of their privy purses and their personal rights and privileges. The derecognition of all the Rulers en masse is itself the clearest possible proof that the whole object is to abolish the institution of Rulership altogether and all the rights and. privileges attached thereto.

(iv) Under the agreements executed between the Dominion of India and the Rulers and the covenants concurred in and guaranteed by the Dominion of India, a Ruler is entitled to privy purse of a stipulated amount and to rights and privileges which he enjoyed before the 15th August 1947 and succession to his 'gaddi" in accordance with the law and custom of the family was guaranteed. Once the President has recognised a person as entitled to receive privy purse and to be accorded rights and privileges due to, him as a Ruler, there can be no interference with his right to re-

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ceive the privy purse or with his other rights and privileges. The Constitution contains no substantive

provision conferring on the President a right to recognise or not to recognise a Ruler or to withdraw recognition. All that the Constitution requires is an indication of the Indian States which are recognised as such under Art. 366(15) and a Ruler with reference to such a State under Art. 366(22). Arts. 366(22) and 366(15) cast upon him a power or authority but a constitutional duty to recognise an existing fact and continue to do so in accordance with the provisions of the covenants and agreements. The Order being in clear contravention of Arts. 291, 362 and 366(22) was also in contravention of Art 53(1) which required that the executive powers of the Union vesting in the President be exercised by him in accordance with the provisions of the Constitution.

(v) The right to receive privy purse and other rights of Rulers constitute property within the meaning of Art. 19(1)(f) and 31. Deprivation of privy purses and other rights without authority of law contravenes Art. 31(1) as the petitioner was to be expropriated of his moneys and his right to receive money periodically by way of privy without any compensation.

(vi) The Privy purse was in substance and in reality compensation for the transfer by Rulers of inter alia their properties.

(vii) There was a duty cast upon the Government of India to respect and implement the provisions of the Merger agreements and the Covenants.

The petitioner's further contentions were that the order left the Merger agreements and covenants untouched and did not in any way abrogate or affect any of the assurances, guarantees and obligations under the agreements and covenants. According to the petition Art. 363 covered cases of a dispute arising out of a settlement with a Ruler or a dispute in respect of a right or obligation founded on a provision of the Constitution relating to such a settlement but it did not cover the case of policy embodied in legislative or administrative action to abolish altogether the institution of Rulership and its rights and privileges and of privy purses.

The prayers formulated in the petition were as follows

(a) A writ, direction or order under Art. 32 of the Constitution declaring-the Order dated 6th September 1970 to be unconstitutional, ultra vires and void and further to quash the Order;

(b) a writ, direction or order declaring that the petitioner continues to be the Ruler and continues to be entitled to the privy purse and to his personal rights and privileges as a Ruler;

(c) a writ, direction or order directing the Union of India to continue to pay the privy purse to the petitioner and to continue'

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to recognise the Rulership and the personal rights and privileges of the petitioner and to implement and observe the provisions of the covenant/Merger agreement entered into with the petitioner.

In the forefront of the counter affidavit of the Joint Secretary to the Government of India in the Ministry of Home Affairs is the contention that "by reason of the provisions of Art. 363 of the Constitution this Court has no jurisdiction to entertain the petition". The main propositions out forward in the said counter affidavit are as follows .-

(a) By the petition disputes had been raised which arose directly out of the provisions of the relevant covenant as

also his alleged rights accruing under the provisions of the Constitution.
(b) The covenant was a political agreement among High Contracting Parties and an act of State and as such could not form the subject matter of any proceeding in any municipal court. The guarantee given by the Dominion of India was only a political act and not a legal one.
(c) Neither the covenants nor the Merger agreements nor any provision of the Constitution relating to the covenants or the Merger agreements confer any legal right on the petitioner or on any erstwhile Ruler.
(d) The covenant being a political agreement, the alleged rights and obligations thereunder could not be and were not perennial and were inherently temporary in character and liable, to be varied or repudiated in accordance with State policy in the interests of the people.
(g) The power of the President to recognise or not to recognise a person as a Ruler was political in character and an incident of sovereignty. The power included the power to recognise and the power to cease to recognise any person as a Ruler.
(k) The relevant covenant being a political agreement among High Contracting Parties and an-act of State, the petition has no legal right to the gaddi or the privy purse or any of the said privileges and as such neither the gaddi nor the privy purse or any of the said privileges is property within the meaning of Art. 19(1)(f) or Art. 31(1) or Art. 31(2) of the Constitution.
(1) If the State policy changed and the State decided not to pay such political" pension in future, a dispute arising from such decision was not justiciable in a municipal court.
(m) Rulership or the succession thereto, the privy purse and the said privileges were inter alia the subject matter of an agreement and an agreement could not confer on the petitioner any fundamental right under the Constitution.
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(n) Art. 291 of the Constitution did not create any legal right in a person. It only laid down the source and method of payment of the privy purse. The article in laying down that the privy purse shall be charged on and paid out of the Consolidated Fund of India meant no more than that these sums would be sums within the meaning of Arts. 112(2)(a) and 113(1) of the Constitution and would not be submitted to the vote of Parliament. And secondly that such sums would be exempt from all taxes on income. Even if the article created a legal right in a person recognised by the President as a Ruler, to receive payment of privy purse Art. 363 barred the enforcement of such right.
(o) Art. 362 of the Constitution did not create or impose any legal obligation on Parliament or the Legislature of a State or the Union executive or the State executive in respect of the said privileges and even with respect thereto Art. 363 barred jurisdiction of all courts in India.
(p) The concept of Rulership, the privy purses and the said privileges unrelated to any current functions and social purposes have become incompatible with democracy, equality and social justice in the context of India today. Since the commencement of the Constitution many things have changed, many hereditary rights and unearned incomes have been restricted and many privileges and vested interests have been done away with. The question continuance of covenants and Merger agreements had been exercising the minds of the Congress Party for many years past and the Constitution (Twenty Fourth Amendment) Bill was introduced with that object.

All the grounds set forth in paragraph 20 of the petition were controverted. In particular it was said
(a) Art. 291 did not cast an obligation on the Government to pay the privy purse and the obligation, if any; was not a legal obligation.
(b) The Order of 6th September 1970 did not violate Art. 291 or Art. 362. To recognise or not to recognise any person as a Ruler was exercise of a political power which was not dependent on any provision of the Constitution.
(c) The covenants and Merger agreements were and continued to be political agreements and acts of State which could not be enforced in a court of law by reason of Art. 363.
(d) Art. 366(22) impliedly conferred a power on the President to recognise or not to recognise a person as a Ruler and such a
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power was a political power. There was no provision in the Constitution which conferred-on the petitioner or any of the erstwhile rulers any rights to be recognised as Ruler and continues to be recognised as such or to privy purse or any of the privileges.
(e) As neither the petitioner nor any erstwhile Ruler had or now has any legal right to the privy purse or to any of the privileges or to any of the alleged other rights enforceable in a court of law, there could be no question of the impugned order infringing Art. 19(1)(f), Art. 31(1) or Art. 31(2) and that in any event Art. 363 barred the enforcement of any such alleged right.
(f) The Rulers entered into the covenants and Merger agreements by reason of political compulsion and in their own interests and not on the faith of any undertaking or guarantee on the part of the then Dominion of India. Neither the petitioner nor any erstwhile Ruler acted upon any assurance or guarantee on the part of the Government of India. On the other hand a fiduciary duty was cast upon the respondent Government not to continue Feudal institutions and anachronistic systems against the interests of the people.
(g) The petitioner has no fundamental right as claimed and Art. 363 barred adjudication by a court of law with respect to the rights claimed.
The crucial question in the petition is whether the petitioner is entitled to a declaration that the order withdrawing his recognition as a Ruler is beyond the scope of any executive action of the President. The only provision in the Constitution in which the recognition of a person as a Ruler appears is Art. 366(22). The article being a Code to the meaning of the words used in the Constitution we have to see exactly what it proposes to do and what it achieves. Unless a ruler can be identified for the purposes of the Constitution Art. 291, Art. 362 and Art. 363 cannot be applied. Clause (22) fixes the identity of the Ruler for the purposes of the Constitution as a Prince, Chief or other person by whom any covenant or agreement as is referred to in cl. 1 of Art. 291 was entered into. Obviously before a person can be a Ruler under this limb of the article he must be a person who had entered into the kind of agreement just now mentioned. But in order to be a Ruler for the purpose of the Constitution he is also to be recognised by the President as a Ruler of a State. This means that at the commencement of the Constitution claims of the former Rulers to be recognised as the Rulers of the respective States had to be considered. Clearly the Constitution did not contemplate the eventuality of the President not choosing to recognise anybody as a Ruler or

choosing only those whom he liked. In the setting in which the Rulers accepted the Constitution as binding on them and their States it
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must have been in their contemplation as also of the Constitution makers that all of them who were alive at the commencement of the Constitution would get such recognition. So much for the time when the Constitution became effective to start with. But as Rulers are human beings and are not immortal the Constitution had to provide for the continuity of the line of Rulers and to lay down who would be a Ruler after the first set of Rulers was no more. This was done by providing that the President would recognise someone as a successor of the Ruler who had departed this life. The expression "for the time being" was not inserted for the purpose of giving power to the president to recognise a person or withdraw recognition from him as his fancy dictated. It was put in for the purpose of fixing the identity of the Ruler at a given point of time and to emphasise the fact that there could be only one Ruler for a State at any point of time. Read as a whole the clause proceeds on the assumption that the President had the right, power or duty or obligation to recognise some person as a Ruler both at the commencement of the Constitution and ever afterwards so long as the line of Rulers lasted and so long as these provisions were in the Constitution. A duty or power or right or obliation to recognise someone as successor to the Ruler is also embedded in the clause. If there were no covenants or agreements to guide him or bind him, the President could probably recognise and derecognise or withdraw recognition at his will and pleasure. Clearly however the grant of such a power was not in the minds of the Constitution-makers. At the time when they entered into covenants and agreements, a solemn assurance or guarantee was given by the Dominion of India that succession to the gaddi of each Ruler would be according to law and custom of the State. It would appear that invariably the rule of lineal male primogeniture coupled with the custom of adopting a son prevailed in the case of Hindu Rulers who composed of the bulk of the body. When on the eve of the Constitution being finally adopted the Rulers with the exception of two or three accepted the same as binding upon them and their States, it must follow that they accepted and adopted the Constitution of India because they thought and were assured that the provisions in it regarding themselves and their successors were to their satisfaction and were binding in nature. They certainly never imagined that they would be the play-things of the executive Government of the Union of India to be thrown out like pawns off the chequer board of politics at any moment when the Government felt that their presence was irksome or that they were anachronistic in the democratic set up of India. This democratic set up was what the Constitution ushered in albeit with a shadow of the past in the Rulers with attenuated pomp and pelf. The choice of a person as a Ruler to succeed another-on his death was certainly not left to the mere caprice of the President. He had to
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find out the successor and this he could do not by applying the ordinary rules of Hindu Law or Mohamedan Law but by the law and custom attaching to the gaddi of a particular State. That the Government of India had no doubts about it is exemplified by several instances where on a question of disputed succession a reference was made to a very high judicial officer to find out the rightful successor with the

help of other Rulers. I may mention only two such instances, namely, the appointment of Shri H. V. Divatia, Chief Justice of the Saurashtra High Court and a retired Judge of the Bombay High Court and their Highnesses the Maharaja of Jaipur and the Maharao of Kotah as members, to enquire into and report on the rights of the various claimants to the gaddi of Sirohi and the validity of the succession of His Highness Maharao Shri Tejsinghji Bahadur who was recognised as the Maharao of Sirohi by the Crown Representative in May 1946 on the death of His Highness Shri Sarupramsinghji who left no male heir of the body or adopted son. The insertion in the Gazette of India Extraordinary under date 7th October 1950 refers to this as also to the activities of the Committee and its conclusion that there was no such valid adoption of Shri Tejsinghji into the Bajawat family as deprived him of his legal status as a member of the ruling family. The notification ends with the following :-

> "Having carefully considered the report, the President accepts the findings of the Committee of Enquiry in their entirety. Accordingly in exercise of the powers vesting in him under Art. 366(22) of the Constitution, the President is pleased to recognise Shri Abhaisinghji as the Ruler of Sirohi in place of the present minor Maharao Shri Tejsinghji Bahadur who shall cease to be recognised as such with effect from the date of this Order."

This clearly shows that the President, did not act in any arbitrary manner. The claims were investigated into with the help of one of the highest judicial officers of the land and reported on to the President The President thereupon withdrew recognition from Shri Tejsinghji Bahadur and recognised Shri Abhaisinghji as the Ruler of Sirohi. To my mind Art. 360'(22) read with the rules of succession in the Merger agreements and the covenants was given full effect. Recognition was given to the person lawfully entitled to be declared the successor to the gaddi and the same was with-drawn from a person who was held not entitled to it. The Act was certainly executive but in nature it was based on a judicial scrutiny and not on any political consideration or in an arbitrary fashion.

Another instance of applying the law and custom of succession is afforded by the case of Dholpur which was enquired into by Shri

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K. N. Wanchoo, Chief Justice of the Rajasthan High Court (as he then was) forming a Committee with two Rulers.

To my mind the Merger agreements and covenants did not be-come waste paper on the commencement of the Constitution to be consigned to the record room or any museum. So long as the above provisions enure in the Constitution a Ruler will have to be found for a State and such finding must be on the basis of the law and custom of the State. That is the assurance which was given to the Rulers when they accepted the Constitution and I see no reason why the Constitution should be interpreted in a way to set that .at naught.

In the light of the above, my view is that Art. 366(22) implied not merely a right or power but a duty or obligation to recognise a person as a Ruler i.e. a duty or obligation to do so and the power ,or duty to withdraw recognition must be confined to cases when the first recognition was not proper as in the case of the Sirohi succession.

But the learned Attorney-General would interpret the same differently. He put forward his contention in the following

propositions :-
(a) Recognition was only for the purpose of fixing the identity of a person for payment of privy purse and grant of privileges pursuant to the Constitutional provisions in Arts. 291 and 362.
In support of this he relied on the Debates in the Constituent Assembly to which reference has already been made. He relied on a decision of this Court in Maharaja Pravir Chandra Bhanj Deo Kakatiya v. The State of Madhya Pradesh(1). There the appellant was the Ruler of the State of Bastar and had entered into an agreement with the Government of India whereby he had ceded the State of Bastar to the Government of India to be integrated with the Central Provinces and Berar. He challenged the applicability to him of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Madhya Pradesh Act I of 1951) meant to provide for the acquisition of the rights of proprietors in estates, mahals, alienated villages and alienated lands in Madhya Pradesh which was applicable to a person described as an ex-Ruler of an Indian State merged with Madhya Pradesh. The appellant's contention was that he was still a sovereign Ruler and absolute owner of the villages to which the Act was sought to be applied. In the course of the judgment of this Court there is an observation at p. 506 reading
(1) [1951] 2 S.C.R. 501
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> "The effect of the Merger Agreement is clearly one by which factually a Ruler of an Indian State ceases to be a Ruler but for the purpose of the Constitution and for the purposes of the privy purse guaranteed, he is a Ruler as defined in Art. 366(22) of the Constitution. There is nothing in the provisions of Art. 366(22) which requires a court to recognise such a person as a Ruler for the purposes outside the Constitution."
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> Earlier in the judgment at page 504 it was said
>
> "The expression 'Ruler' as defined in Art. 366(22) of the Constitution applied only for interpreting the provisions of the Constitution."
>
> In my view these observations do not advance the contention of the Respondent as the Court was not there concerned with the question of power to recognise or withdraw recognition from a Ruler. The only question before the Court was whether the appellant was an ex-Ruler for the purposes of the Act.,
>
> Reference may be usefully made to paragraph 241(3) at page 129 of the White Paper on Indian States under the heading "Recognition of Rulers" reading :
>
> "The Rulers of the merged and integrated States have been guaranteed succession according to law and custom. In the Covenants and some of the Agreements of Merger, provision has been made for the procedure to be observed for the, settlement of the cases of disputed succession. In the case of Rulers of States forming Unions, every question of disputed succession is to be decided by the Council of Rulers after referring to the High Court of Union and in accordance with the opi-

nion of that Court."
The above is followed by the quotation of Art. 366(22) and according to the White Paper "it is expected that in according recognition to Rulers, the President will show due regard to the provisions of the Covenants and Agreements of Merger in respect of the cases to which these provisions apply."
(b) The learned Attorney-General then submitted that the power of recognition was a political power in the paramountcy field to which the Dominion Government and thereafter the Union Government under the Constitution succeeded and for this he referred to White Paper, paragraph 266 at p. 143 reading:
"In spite of the declaration regarding the lapse of paramountcy, the fundamentals on which it rested remained. The essential defence and security requirements of the country and the compulsions of geography
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did not cease to be operative with the end of British rule in India. If anything, in the context of world events, they have become more imperative. The Central Government in India which succeeded the British was unquestionably the paramount power in India both de facto and, de jure and that Government, alone was the only completely independent sovereign in India."

To my mind the British Crown was the paramount power in India because of the might of its power. Its power was so great compared to,that of the Rulers of the Indian States that it could annex any territory at any time and bring under subjugation all the Rulers by compulsion or subsidiary alliances. There was no sanction of (International law behind it. Paramountcy after the British had come to be the foremost power in the. country was one of their own creation. In strict legal theory whatever paramountcy there was before the 15th August 1947 in the British Government lapsed with the passing of the Indian Independence Act. Thereafter the Dominion of India was free to do what it liked subject to world opinion and their own conscience. Paramountcy de facto there undoubtedly, was but speaking for myself I cannot ascribe any legal sanction to such paramountcy. The Rulers of Indian States submitted or agreed to the cession of their territory and the government of their people by the Government of the States with which they merged and ultimately *the Government of the Union of India because they felt that it was in the best interests of their people and also of themselves.
(c)The learned Attorney-General argued that paramountcy continued and the advent of the Constitution did not put an end to it and the debates of the Constituent Assembly with regard to Art. 302-AA (present article 363) that the disputes covered by the said article were beyond the pale of adjudication of courts of law only recognised the same. According to him the old concept of paramountcy was virtually- inherited by the Dominion of India before January 1950 by reason of the Instruments of Accession, Covenants and Merger agreements : the recognition of a Ruler which was the gift of Paramount power was not the matter of a legal right and was exercised as an act of paramountcy and retained the same character. He cited various decisions of this Court to show that covenants,and Merger agreements have

always been so interpreted, e.g. Virendra Singh & others v. State of U.P.(1), Dalmia Dadri Cement Co. Ltd. v. Commissioner of Income Tax(2) and a number of other cases. He argued further that a plea which was available to the Dominion of India can now be put forward by its, successor government and in support of his contention relied on, the cases of Secretary of State V.

(1) [1955] 1 S. C.R. 4 5 at 429
(2) [1959] S.C.R. 729 at 744

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Kamachee Boys Sahaba(1), Doss v. Secretary of State(2), Solmon v. Secretary of State (3) and several others. In the first case the British Government acting as sovereign power had seized the whole of the Raj of Tanjore as an escheat on the ground that the dignity of Rajah was extinct for want of male heir and this being on act of State the Supreme Court of Madras had no jurisdiction. In Doss's case (Supra) what was sought to 'be enforced was the liability of an ex-Ruler of Oudh which was annexed by the Government of India in 1856 on inter alia the ground that the claim was a charge upon the revenues of Oudh. The plaintiffs who filed the Bill in the English Court of Chancery sought to rely upon a statement of Lord Stanley, President of the Board of Cotrol in the House of Commons that "the transfer of the revenues of the Kingdom of Oudh carried with it a liability for such debts on the former government and were justly contracted". The plea in, demurer that the seizure of the property was an, act of State and that it was not liable to any review by a court of law or equity was upheld. The above and cases of the type to my mind are easily distinguishable. Once the Rulers ceded their territory and accepted the Constitution of India as the Constitution of their States they became citizens of India on the commencement of the Constitution and the plea of continuance of an act of State as against them cannot be accepted. The Rulers became citizens of India like millions of others but in recognition of the past the Constitution gave them certain special rights like privy purses and assured them of continuance of personal privileges in terms of articles 291 and 362.

(d) The learned Attorney-General submitted that the recog-nition of Rulership was an exercise of political power vested in the President on the strength of certain observations in Kunwar Shri Vir Rajendra Singh v. Union of India (4) In that case the petitioner claimed to be entitled to the private properties left by Maharaja Rana Udaibhan Singh of Dholpur on the basis that it was an impartible estate and he was entitled thereto according up the law and custom of lineal primogeniture. There was a WI-it petition to this court as also an appeal from a judgment of the High Court which were dealt with by a common judgment of this Court. The last Ruler of Dholpur died in 1954 leaving him surviving no direct male heir but he had left his daughter who was married to the Maharaja of Nabha. His widow adopted a grandson, viz., one of the sons of the daughter and thus arose a controversy as to who was entitled to the Rulership of Dholpur and the Government of India by notification dated December 22,.

(1) 7 M.I.A. 476 (2) L.R. 19 Equity 509
(3) [1906] 1 K.B. 613 (4) [1970] 2 S.C.R. 631

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1954 constituted a Committee, as already mentioned, to examine the contentions of various claimants and no the basis of the report of that Committee, the President recognised His Highness Maharaja Rana Shri Hemant Singh as the Ruler of Dholpur from 22nd October, 1954. The

contentions put forward on behalf of the petitioner, the appellant to this Court were
(1) The handing over or authorising the taking over of private properties was by executive flat and was ex facie bad as infringing Art. 19 (1) (g) and Art. 31 of the Constitution; (2) that the recognition of a Ruler even if it was an instance of exercise of political power was itself an insignia of property and therefore it could only be by authority of law and would have to yield to fundamental rights. (3) After the commencement of the Constitution recognition of the Ruler was not an exercise of political power and that such recognition under cl. (22) meant recognising a fact that a person was a Ruler and the clause did not empower the President to create a fact of bringing into effect a Ruler by recognising a person as a Ruler. (4) If there was any power to recognise the Ruler it was an arbitrary and unguided power and infringing the fundamental right to property, and (5) As there was no dispute regarding the covenant inasmuch as succession did not arise out of the covenant Art. 363 of the Constitution was not attracted. The right to succession to private property was said to be independant of any covenant. The above contentions were turned down by this Court. Referring to the notification published in the Gazette of India on 22nd December 1956 the Court said that it did not state that the Ruler thereby became entitled to private properties of the late Ruler. It was observed :

> "The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power voted in the President and is thus an instance of purely executive jurisdiction of the President. The act of recognition of Rulership is not, as far as the President is concerned, associated with any act of recognition of right to private properties."
>
> It was also said :
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> "The words 'is recognised by the President' indicate beyond any doubt that the power of the President to recognise a Ruler is embedded and inherent in the clause itself. Again, the words "for the time being" indicate that the President has power not only to recognise but also the withdraw recognition whenever occasion arises . . . . . .
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> The recognition of Rulership is one of 'personal status. It cannot be said that claim to recognition of Rulership is either purely a matter of inheritance or a matter of descent by devolution. Nor can claim to recognition of Rulership be based only on covenants and treaties. ;That is why Article 363 of the Constitution constitutes a bar to interference by Courts in a dispute arising out of treaties and agreements. No claim to recognition of Rulership by virtue of a Covenant is justiciable in a Court of law. The Constitution, therefore, provided-for the act of recognition of the Rulership by the President 'as a political power."

Some of the above observations undoubtedly sustain the contention of the learned Attorney-General but they must be limited to the facts of the case. The petitioner-cum-

appellant before this Court did not claim any right to the gaddi. He only claimed to, be entitled to the private properties of the deceased Ruler according to law and custom of lineal primogeniture. His complaint against the notification under cl. (22) of Art. 366 was not accepted mainly because the notification made no reference to the private properties of the late Ruler. The Court held that the petitioner had not been able to establish any claim to any private property belonging to the last Ruler.

There have ’however been instances where the President did not act strictly in accordance with what conceive to be his power, duty or obligation to recognise or to withdraw recognition to a Ruler. A notable instance of this occurred soon after the commencement of the Constitution when recognition was withdrawn from Sir Pratap Singh, the Ruler of Baroda and his eldest son Yuvaraj Fatehsingh was purported to be recognised as the Ruler of Baroda under the powers conferred by Art. 366(22). The order was served on Sir Pratap Singh on April 12, 1951. The trouble in this case originated with Sir Pratap Singh’s attempt to foment trouble against the Union of India and his design to challege the merger of Baroda. Full details of this episode are given in Mr. Menon’s book from page 403 onwards. Some instances where there was no recognition of any successor to an erstwhile Ruler occurred in the case of Baudhraj of Orissa, Nandgaon of Madhya Pradesh and Delath of Himachal Pradesh. In the first case the widow of the Raja was informed in May 1958 that "after consideration of the report submitted by Shri B. C. Das the President has decided not to recognise any successor to the late Raja Narayan Prasad Roy". There was no statement that the Rulership had lapsed. In the other two cases Rulership was said to have lapsed.

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(e) The learned Attorney-General also argued that the rights .given by Art. 291 and Art. 362 at best were imperfect obligations not enforceable in a court of law. In view of my conclusion on article 363 I do not think it necessary to examine the, decisions cited by him or make any pronouncement on his contention.

(f) The learned Attorney-General next submitted that assuming Art. 366(22) gave a right to be recognised as a Ruler and obligation to recognise, the enforcement of such right or obligation was barred by Art. 363. According to him, claim to recognition arose from the covenant and not from Art. 366(22). The covenant was signed by the Ruler as Ruler and it was guaranteed by the Government of India. I have already dealt with the scope and content of Art. 366(22) and held that it is inextricably linked with the covenants, Merger agreements etc.

On the basis of the above contentions it cannot be said that the Government of India has not raised a dispute with regard to the right, power, obligation or duty to recognise and a co-related power or duty etc., to withdraw recognition.

However, in the light of historical facts i.e. the events preceding the Constitution, the covenants and the Merger agreements entered into by the Rulers uniformly providing for succession to the gaddi by the law and custom of the particular State, the guarantee thereof by the Government of the Dominion of India and the provisions of the Constitution perpetuating the payment of privy purses and mandate of the regard to the personal rights and privileges of the Rulers, the contention of the learned Attorney-General cannot find favour in a court of law. The covenants and Merger Agreements were undoubtedly political acts entered into by High Contracting Parties and as such-they could not be en-

forced in a court of law. But once the Constitution of India took the field and the Rulers became citizens of India there could be no acts of State as against such citizens living in India.

The question however remains as to whether these are matters which can be adjudicated upon by the municipal courts in India.

This point would fall to be considered under 'Art. 363 but before that one must refer to Art. 291 which is the prop and pillar to the claim of privy purse. This 'article places the payment of privy purse on a constitutional foundation. It expressly refers to the covenants or agreements entered into by a Ruler of an Indian State before the commencement of the Constitution and provides for the disbursement thereof by directing that the sums shall be charged on and paid out of the Consolidated 'Fund of India. In effect it means that the guarantee given by the Government of India for the payment of sums free of taxes by way of

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privy purse under convenants or agreements etc., is to be worked out and discharged by ensuring that the said sums shall be charged on and paid out of the Consolidated Fund.

According to Mr. Palkhivala.

(1) Art. 291 is mandatory. It creates new and independent rights and obligations by being engraved in the Constitution and as such beyond the reach of the Legislature and the Executive. This new and independent right makes the article a self-ordaining and self-sustaining one. In cases where there is no dispute about the amount of the privy purse no question of any reference to the covenant arises.

(2) The amounts of privy purse guaranteed by Art. 291 are the same as mentioned in the covenants but in other vital respects the provisions of Art. 291 constitute a marked departure from the provisions of the covenants.

(3) First, whereas the liability under the covenant was that of the relevant State or the United State, it is made a liability of the Central Government under Art. 291; secondly, the amounts of privy purses are charged on the Consolidated Fund of India for the first time; thirdly, the amounts are guaranteed to be exempt from all taxes on income whereas under the covenants the amounts were to be free of all taxes whether imposed by the Government of the United State or Government of India.

(4) The covenants are referred to in the article only for the limited purpose of identifying the privy purses which are the subject matter of Art. 291. The article cannot be said to elate to convenants merely because it refers to them for the limited purpose of identifying the privy purses.

(5) Once Art. 291 is held to be mandatory there can be no dispute as to whether the privy purse will or will not be paid. In other words Art. 363 only refers to bonafide disputes and not disputes which would merely amount to a mockery of the Constitution.

(6) The principle of harmonious construction would have to be applied. Art. 363 cannot be so construed as to violate the effect and mandate of articles 112, 113, 114, 291 and 366(22). Article 366(22) would be violated because one of the main legal effects of recognition under that article is to entitle the recognised Ruler to the privy purse and denial of the privy purse would stultify one of the main objects of recognition.

(7) The second limb of Art. 363 read along with the first makes it clear that the whole object is to prevent disputes arising from covenants being raised in the garb of enforcing a right

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conferred by a provision of the Constitution. In the present series of cases Art. 363 does not apply since there is no dispute as to rights arising from the covenant and the constitutional provisions merely guarantee that right.
(8) In any view of the matter any decision to repudiate the obligations under Art. 291 would be malafide and ultra vires. The power or jurisdiction cannot avail an authority to make an order or decision which is malafide and ultra vires because such an order or decision is a nullity and the-bar of jurisdiction under Art. 363 cannot be pleaded to protect a nullity.
The submissions of the learned Attorney-General were
(a) The right to privy purse which accrues under Art. 291 clearly relates to a covanant : hence Art. 363 bars any dispute in respect of such a right or recognition. The Constituent Assembly Debates go to show that this article was meant to give constitutional recognition to guarantees given by the Government of India and provided for the expenditure being charged on the Central revenues subject to such recoveries as might be made from time to time from the Provinces and States in respect of these payments. It did not create any new and independent right unrelated to the covenant.
(b) The second limb of Art. 363 bars any dispute under Art. 291 as would be apparent from the correspondence between Shri V. P. Menon, the Secretary to the Ministry of States and S. N. Mukherjee.
(c) Art. 291 which gave constitutional guarantee to those demands embodied constitutional sanction for the due fulfilment of the Government of India's guarantees and assurances in respect of privy purses.
(d) The covenant was an act of State and any violation of its terms cannot form the subject of any action in any municipal courts. The guarantee given by the Government of India was in the nature of a treaty obligation contracted with the sovereign Rulers of independent States and cannot be enforced by action in municipal courts; its sanction is political and not legal; on the coming into force of the Constitution of India the guarantee for payment of periodical sums as privy purse is continued by Art. 291 of the Constitution but its essential political character is preserved by Art. 363 of the Constitution. Art. 363 in effect recreated paramountcy and barred the adjudication of any dispute which had its seed in act-% of State by any court of law.
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(e) A charge on the Consolidated Fund of India only means that it shall not be submitted to the vote of Parliament as provided in Art. 113(1). It does not by itself create an independent right in the recipient.
(f) Art. 291 arose out of an act of State to give constitutional recognition to a right which was previously unenforceable.
(g) Assuming that Art. 291 by itself created a new right and a new obligation the article related to a covenant on the face of it and as such is barred by Art. 363.
In my view, it is not necessary to examine all the contentions raised for and against the petitioner for the final conclusion to be arrived at. There can be no doubt that the provision of Art. 291 was not a mere declaration of pious intention which the executive could disregard at its whim or pleasure. So long as it finds a place in the Constitution it was meant to be acted upon. It was meant to assure the. Rulers that the privy purses which were con-

tained in the covenants and agreements guaranteed by the Government of the Dominion of India were to be fully honoured and not cast away on a false morass of public opinion or buried under acts of State. No doubt the covenants or Merger agreements were acts of State but when the framers of the Constitution came to provide for the Rulers by giving them assurance of continuance of the payment of privy purse and regard to their personal rights and privileges by enshrining them in the Constitution, in my view they never contemplated that the same was to be the play-thing of the executive. It was by the incorporation of Arts. 291 and 362 that the Constitution-makers were able to get the willing consent and co-operation of the Rulers to be brought within the fold of the Constitution. As observed by Sardar Vallabhbhai Patel the settlements with the Rulers were overall settlements taking all the pros and cons of the situation into consideration the aspirations and ambitions of the people of the States, their wish and desire to get independence of the same type which their brethren in the erstwhile British India had obtained, their right and determination to have a voice in the administration of the country through their elected representatives, their zeal for getting out of the arbitrariness of some of the Rulers, no less than the wish and desire of the Rulers to honour and accept the desires and ambitions of their people coupled with a desire, to live in peace at least with a part of their denuded status, their decimated right to property and a fraction of the personal privileges to which they were previously entitled. As Sardar Vallabhbhai Patel put it :

> "The privy purses and the guarantee as to personal rights and privileges was the quid pro quo for the parting of their powers and their huge States by the Rulers and was the minimum which could be afforded to them."

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Sardar Vallabhbhai Patel speaking in 1949 said that human memory was proverbially short and that in October 1949 people might not remember what had taken place in the years preceding, namely, the tremendous upheaval in the country since 1946 and the possibility of the Rulers taking sides with States or peoples not favourably disposed towards India. Only twenty years have passed since then-too short a period to sweep overboard all that took place during the memorable years preceding the commencement of the Constitution. The old order must change yielding place to new but the change should not be cataclysmic. at the sacrifice of the interests of fairly large number of persons who had helped to consolidate India in a manner far different from anything that had taken place in the past. However that may be we are only concerned with the legal aspect, the morals being for the country at large through their elected representatives to decide.

Article 291 was undoubtedly meant to put the guarantee as to payment of privy purses contained in the covenants and agreements on a firm and sure footing. But it was not completely dissociated from the covenants. It has a link with the covenants which were partially-projected into the Constitution. This article has its base in the covenants. Its object was to give a lasting and permanent setting to the term in the covenants as to payment of privy purses. I find myself unable to hold that the article does not relate to a covenant. 'In my view it deals with a portion-the main portion of the entire stream of the covenant and makes it flow along a particular and well-defined channel--a channel

which is not only well-defined but with a solid foundation and sides.

Counsel on both sides were at pains to show what the effect of the expression 'charged on and paid out of the Consolidated Fund or India' meant. According to the learned Attorney-General and Mr. Mohan Kumara Mangalam who followed him, the expression "charged on" was only a form of expression used for the purpose of financial estimates and Appropriation Bills. It was meant to distinguish certain items in the Appropriation Bills from grants which were votable at the will of Parliament and the further direction for paying out thereafter did not advance matters. According to Mr. Palkhivala who referred to some of the financial provisions in the Constitution, a security was created thereby on, the Consolidated Fund, that there was something akin to a pledge of it for the payment of the privy purse giving rise to a new right.. in my view whatever the nature of their right it- is related to the covenants and as such within the fold of Art. 363.

Before referring to any decisions on the point it may be useful to make an attempt to define the scope of Art. 363 as if it was a case of first impression. The article purports to over-ride all

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other provisions of the Constitution excepting Article 143. in respect of recourse to any court of law for settlement of any disputes. covered by it. Article 143 is a provision enabling the President of India to obtain the opinion of this Court by a reference on any question of law or fact of such public importance as merits a scrutiny by the highest court of the land. Article 143 is only anenabling provision but its scope, is so wide that on any question, of public importance-be it one of law or fact-the President may. refer to this Court for its opinion. Save for the power of the President to refer a matter to this Court for its opinion under Art. 143, Art. 363 imposes an absolute bar on the jurisdiction of all courts to adjudicate upon disputes covered by it. of necessity,, the bar must apply to Art. 32 also. Under the last mentioned article the Constitution reserves to everybody entitled to any right. covered by Part III i.e. the fundamental rights, to move this Court., The amplitude of the right and the kind of directions which may be issued to enforce that right are contained in various clauses of the article. None of these clauses over-ride the all-embracing, provision of Art. 363. Rights, be they fundamental or otherwise which form the subject of any dispute covered by this article must, alike come under its bar.

The disputes which fall within this bar may be of two kinds., Under the first limb of the article any dispute arising out of any provision of a treaty, engagement, covenant, sanad or other similar' instrument which was entered into or executed before the 26th January 1950 by any Ruler of an Indian State and to which the Dominion of the Government of India or any of its predecessor Governments was a party and which is or has been continued in operation after the said date, are not to be the subject matter of any judicial proceedings.

Clearly, therefore, any one seeking to have his rights adjudicated upon on the basis of a covenant or agreement or Merger agreement or Instrument of Accession would be debarred from coming to court and ventilate his grievance about any violation of. his right.

Under the second limb of the article fall disputes in respect- of-. any right accruing under or any liability or

obligation arising out. of any provisions of the Constitution relating to any treaty, agreement etc. To see whether any dispute falls within this limb one must examine the content of the right or the limit of the liability or obligation arising out of any constitutional provision which provision in its turn must relate to any treaty, agreement etc. Dispute means any contradiction or controversy. Whenever a person asserts or claims a right in respect of a subject matter and another person contradicts it or denies it, there is a dispute. Disputes may
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be many and of various kinds. it may relate to a question of fact ,or a question of law which again may be a very simple or a complicated one. A question of law may arise about the interpretation of a contract; equally it may arise, about the interpretation of the provisions of the Constitution. But whatever be the quality or the nature of the controversy it would be a dispute short of somebody trying to raise a contention which was absurd on the face of it e.g., ,that 'black means white.

The right, liability or obligation in dispute must arise out of the provisions of the Constitution which has any bearing on any treaty, agreement, covenant, engagement etc. The expression " relating to" means inter alia "stand in some relation, to have bearing or concern, to pertain, to refer, to bring into association with or connection with."

In my view Art. 291 is undoubtedly a provision of the Constitution relating to covenant, agreement etc. As I have already indicated Art. 291 is not merely a provision for finding out the .amount of the liability of the Dominion of India by way of privy purse to a Ruler. It expressly refers to covenants or agreements ,entered into by the Ruler under which payment of sums free of tax had been guaranteed or assured by the Government of the Dominion of India as privy purse and gives the term as to privy purse a new shape and form Article 291 not refers to the covenant, engagement etc. but certainly has a bearing on or concern with the same and is brought into association or connection with the same.

As already indicated, the article seeks to instill life and vigour into the term for payment of privy purse in the covenant by creating a new channel leading out of the guarantee of the Government of the Dominion of India which was no longer in existence and making it flow along a constitutional course by putting the liability of the Union of India for payment of the sums beyond any controversy. The article places the payment beyond the reach of voting by Parliament and expressly directs that the moneys shall be paid out of the Consolidated Fund of India and that the sums so paid shall be exempt from all taxes of income. I find myself unable to accept the argument of Mr. Palkhivala that for the purpose of Art. 29.1 a reference to the covenants is only called for to find out the amount of privy purse. If that was the sole object of the article it might well have been achieved by using the following words or words to the like effect

> "all sums om money mentioned as privy purse of Rulers of Indian States in any engagements entered into by them and to which the Government of the Domi-
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> nion of India was a party, shall be charged on and paid out of the Consolidated Fund of India."

If one was asked whether and if so, how the Constitution had dealt with the rights of the Rulers of Privy purses

contained in the covenants and Merger agreements guaranteed by the Government of India, the answer would have to be that the same has been recognised and perpetuated in Art. 291 making assurance doubly sure by directing the charging of the Consolidated Fund with the amounts thereof and payment thereout without deduction of income-tax. So considered Art. 291 must be held to be an, article of the Constitution relating to covenants or Merger agreements and any dispute as to payment of privy purse would come, under the bar of Article 363.

Article 363 has come up for consideration before this Court in a number of cases and reference has been made to this article quite frequently in several decision.

In one of the earliest decisions of this Court in State of Seraikella & others v. Union of India & another(1) the Court had to consider whether a suit filed on the 15th January 1950 (before the commencement of the Constitution) under the Original, Jurisdiction of the Federal Court for a declaration that the various orders under which the State of Seraikella came to be administered as a part of Bihar and the laws under which those orders were made were ultra vires and the Province of Bihar had no authority to carry on the administration of the State, was dismissed by a majority of the Judges of this Court as being barred by Art. 363. Among the contentions urged there was one that the suit which was filed before the 26th January 1950, stood transferred to Supreme Court under Art. 372(2) of the Constitution and that the Bar of Art. 363 was only prospective and of retrospective. Kania, C.J. observed that the all embracing opening words of Art. 363 over-rode the operation of Art. 374(2). The learned Chief Justice also said

> "If the plaintiff contends that that agreement (agreement of 15th December 1947) is not binding on it, it cannot enforce its rights under the original jurisdiction of the Court. If the plaintiff has a grievance and a right to a relief which the defendants contend it has not, the forum to seek redress is not the Supreme Court exercising its original jurisdiction on the transfer of the suit from the Federal Court."
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> (1) 1951 S.C.R. 174
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> In Sudhansu Shekhar Singh Deo v. The State of Orissa(1) the Ruler of the erstwhile State of Sonepur in orissa which had merged with Orissa complained of a violation of his rights and privileges by the inclusive definition of a "person' in s. 2(i) of the Orissa Agricultural Income Tax Act, 1947 (Orissa Act 24 of 1947). His case in substance was that as a Ruler of a State he had been immune from payment of agricultural income-tax when it was imposed in 1947 and by articles IV and V of the Merger agreement executed by, him, the Dominion of India had guaranteed to him all his personal rights, privileges etc. a
>
> nd so the
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> attempt to tax his private property violated that guarantee. In dismising his appeal this Court referred to Art. 362 'and observed :
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> "If despite the recommendation that due regard shall be had to the guarantee or assurance given under the covenant or agreement, the Parliament or the Legislature of a State makes

> laws inconsistent with the personal rights, privileges and dignities of the Ruler of an Indian State, the exercise of the legislative authority cannot, relying upon the agreement or covenant, be questioned in any court, and that is so expressly provided by Art. 363 of the Constitution.".

Nawab Usmanali Khan v. Sagarmal (2) was a case where the respondent had taken execution on proceedings in enforcement ,of an award and a prohibitory order under Or. 21 r. 46 Civil Procedure Code was passed in respect of the sums payable to the appellant by the Central Government on account of privy purse. One of the contentions urged on behalf of the appellant was the the privy purse was a political pension within the meaning of s. 60 (1) (g) of the Civil Procedure Code and as such protected from the execution proceedings. Relying upon the decisions of the Judicial Committee in Bishambar Nath v. Nawab Imdad Ali Khan(3) and Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Ltd.(4) the Court came to the conclusion that privy purses were political pensions. That Court also referred to Arts. 291--and 363 of the Constitution and observed that "the covenant entered into by the Rulers of Madhya Bharat State was a treaty entered into by the Rulers of independent States by which they gave up their sovereignty over. their respective territories and vested it in the new United State of Madhya Bharat. The covenant was an act of State, and any violation of its terms cannot form the subject of any action in any municipal courts. The guarantee given by the Government

(1) [1961] 1 S.C.R. 779.
(2) [1965] 3 S.C.R.,201
<3) 17 I.A. 181
(4) 58 I.A. 215

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of India was in the nature of I treaty obligation contracted with the sovereign Rulers of Indian States and cannot be enforced by action in municipal courts. Its sanction is political and not legal. On the coming into force of the Constitution of India, the guarantee for payment of periodical sums as privy purse is continued by Art. 291 of the Constitution, but its essential political character is preserved by Art. 363 of the Constitution and the obligation under this guarantee cannot be enforced in any municipal court." With all respect, it appears to me that all the above was not strictly necessary for the decision of the case and it would have been enough to say that privy purse was a pension--a word which according to the Oxford Dictionary means, "a periodical payment made specially by a Government, company, employer etc."-which was political in nature because it was based on a political settlement. However it was not the expression of opinion of only one learned Judge but the unanimous view of three learned Judges of this Court. In Kanwar Shri Vir Rajendra Singh v. Union of India(1) a Bench of another five learned Judges of this Court have pronounced on the non-enforceability of the provision for payment of 'privy purse under Art. 291 by resort to legal proceedings. In my view, on the reasoning already given by me it must be held that the payment of privy purse although placed on a pedestal which defies annihilation or fragmentation as long as the abovementioned constitutional provisions enure is still subject to the constitutional bar of non-justiciability and cannot be upheld or secured by adjudication in a court of law including this Court.

Mr. Palkhivala however tried to cut across the argument of the learned Attorney-General that a dispute which fell under either limb of Art. 363 of the Constitution was not justiciable by urging that if the act complained of was ultra vires or a nullity, the jurisdiction of the courts of law would not be excluded and this would apply with greater force to denial of a petitioner's right to the property of privy purse i.e. a fundamental right and the solemn duty of this Court to uphold the same. To support this plea under this,, head he referred to a fairly large number of decisions of this Court where it had been held that than an order which was a nullity or which was malafide or ultra vires would not stand in the way of the exercise of jurisdiction of a court of law to strike it down. The notable decisions of this Court are- the following : Pratap Singh v. The State of Punlab(2), Makhan Singh v. State of Punjab (3), R. M. Lohia v. State(4) , Ram Swarup v. Shikar Chand(5), Sadanandan v. Kerala

(1) [1970] 2 S C.R. 631.
(2) [1964] 4 S.C.R. 773
(3) [1964] 4 S.C.R. 797.
(4) [1966] 1 S.C.R. 709.
(5) [1966] 2 S.C.R. 553.

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State(1), Jaichand Lal v. West Bengal(2), Raja Anand v. U.P. State(3), Dhulabhai v. Madhya Pradesh(4). He also relied on several English decisions, namely, The General Assembly of Free Chaurch of Scotland v. Lord Over Town(5), R. v. Bryant(6) and Anismiminic Ltd. v. Foreign Compensation Commission and another (7) .

The first case S. Pratap Singh v. The State of Punjab(8) was one where the appellant who was a civil surgeon in the employment of the State of Punjab challenged the legality of the orders of suspension, revocation of leave, retention in service after the date of superannuation and institution of the departmental enquiry against him inter alia on the ground that the same were mala fide passed at the instance of the Chief Minister who was personally hostile to him in order to wreak vengeance on him. The power exercised the Government in that case rested on service rules the proper application of which is always subject to scrutiny by courts of law. Examining the content of the power vested in the Government to pass the impugned orders the Court observed that "the use of that power for achieving an alien purpose-wreaking the ministers vengeance on the officer would be mala fide and a colourable exercise of that power, and would therefore be struck down by the Courts". The second case Makhan Singh v. State of Punjab(9) was one where the appellants contended that sections 3 (2) (15) (1) and 40 of the Defence of India Act, 1962 and r. 30(1) (b) of the Defence of India Rules were unconstitutional and invalid as they contravened the fundamental rights of the appellants inter alia under Arts. 14, 21 and 22. The petitions had been dismissed by the High Court on the ground that the Presidential Order which had been issued under Art. 359 of the Constitution created a bar which precluded them from moving the High Court under s. 491 (1) (b) of the Cr.P.C. This Court held (p. 827) :

> "If in challenging the validity of this detention order, the detenu is pleading any right outside the rights specified in the Order, his right to move any court in that behalf is not suspended because it is outside Art. 359(1) and consequently outside the Presidential Order itself."

(1) [1966] 3 S.C.R. 590
(2) [1966] Supp. S.C.R. 464
(3) [1967] 1 S.C.R. 373
(4) [1968] 3 S.C.R. 662
(5) [1904] A.C. 515
(6) [1956] 1 A.E.R. 341
(7) [1969] 1 A.E.R. 208
(8) [1964] 4 S.C.R. 773
(9) [1964] 4 S.C.R. 797

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The observation amounts to saying that the Presidential Order suspending the right to move a court of law can only apply within the proper ambit of the President's power and the same cannot be used by the executive as a cloak to shield any misuse of that power.

With regard to the allegation of malafides it was observed that

It is hardly necessary to emphasise that the exercise of a power malafide is wholly outside the scope of the Act conferring the power and can always be successfully challenged."

The third case R. M. Lohta v. State(1) was one in which the petitioner moved this Court under Art. 32 of the Constitution challenging the order of a District Magistrate and asking for his release on various ground, inter alia that though an order of detention could be made to prevent acts prejudicial to the maintenance of public order it could not be made to prevent-acts which were only prejudicial to law and order as distinct from public order. It was. there observed by our present Chief Justice that :

"where statutory powers are conferred to take drastic action against the life and liberty of a citizen, those who exercise it may not depart from the purpose. Vast powers in the public interest are granted but under strict conditions. If a person, under colour of exercising the statutory power, acts from some improper or ulterior motive, he acts in bad faith. The action of the authority is capable of being viewed in two ways. Where power is misused but there is good faith the act is only ultra vires but where the misuse of power is in 'bad faith there is added to the ultra vires character of the act, another vitiating circumstance. Courts have always acted to restrain a misuse of statutory power and the more readily when improper motives underlie

The provision of law which came up for consideration there was the Defence of India Rules and his Lordship laid down that powers given by such rules could be used only within the limits prescribed. Lala Ram Swarup v. Shikar Chand (2) was a case in which the appellants complained of refusal of permission to sue their tenants by the District Magistrate under s. 3(1) of the U.P. Act 3 of 1947. The said section provided that

(1) [1964] 1 S.C.R. 709
(2) [1966] 2 S.C.R. 553

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"Subject to any order passed under sub-section (3) no suit shall, without the permission of' the District Magistrate,

be filed in any Civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds."

Sub-section (2) enabled the party aggrieved by the order of the District Magistrate to go up in revision to the Commissioner and section 7-E provided for revisional powers to the State Government n very wide terms. Section 16 of the Act in terms provided that the order made under the Act to which S. 3(4) applied was not to be called in question in any court. There it was observed:

"but the exclusion of the jurisdiction of the civil courts must be made by a. statutory provision which expressly provides for it, or Which necessarily and invariably leads to that inference. In other words, the jurisdiction of the civil courts can be excluded by a statutory provision which is either express in that behalf or which inevitably leads to that inference."

The bar of jurisdiction of the court of law came up for consideration in two notable cases decided by the Judicial Committee of the Privy Council. Secretary of State v. Mask & Co.(1) was a case in which a suit was filed by the respondent to recover the excess amount collected from them-, under protest, by levying duty upon a tariff and not an ad valorem basis. The main question for determination in the appeal was whether the order passed by the Collector of Customs under the provisions of S. 183 of the Sea Customs Act, 1878 against the assessment of duty by the officer of Customs and which was subsequently affirmed on revision under the provisions of s. 191 of the Act, constituted a final adjudication or whether the civil courts had jurisdiction to entertain the suit of the respondents. Section 188 provided that :

" every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final'.

While rejecting the respondents' contention including inter alia that an exclusion of the subject's right of resort to the civil courts would be ultra vires of the Indian Legislature in view of the provision of S. 32 of the Government of India Act 1915 the Board referred to the well known principle of law laid down in

(1) 67 I.A. 222

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Wolverhampton New Waterworks Co. v. Hawkesford(1) approved by the House of Lords in Neville v. London "Express" Newspaper, Ltd.(2) and adopted on the basis of these decisions the dictum that

> "Where a liability not existing at common law is created by 'a statute which at the same time gives a special and particular remedy for enforcing it".
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> the party must adopt the form of remedy given by the statute. It was also observed :
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> "It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must be either by explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not beep complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

In Raleigh Investment Co. Ltd. v. Governor-General in Council(1) the bar of jurisdiction of civil courts in regard to income-tax proceedings was contained in s., 67 of the Indian Income-tax Act, 1922 providing

"no suit shall be brought in 'any civil court to set aside or modify any assessment made under this Act, and no prosecution suit or other proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under this Act."

The argument for the appellant was that an 'assessment was not "made under the Act" if it gave effect to a provision which was ultra vires the Indian Legislature and that in law such a provision was 'a nullity and non-existent. The Board held that there was ample provision in the Income-tax Act by which an assessee could question the validity of any taxing provision in the statute which provided effective and proper machinery for review on grounds of law of any assessment. Further according to the Board

" . . assessment made under this Act" is an assessment finding its origin in an activity of the assessing officer acting as such. The circumstance that the assessing officer has taken into account an ultra vires I provision of the Act is in this view immaterial in deter-

(1) [1859]6 C.B. (N.S.) 336
(2) [1919] A.C. 368
(3) 741.A. 50.

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mining whether the assessment is "made under this

Act "..... Jurisdiction to question the assessment otherwise than by the use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation to pay arising by virtue of the assessment."

It may be noted that this authority has not found favour with this Court.

Most of the other decisions which were cited by Mr. Palkhivala were cases where liability under various Sales Tax Acts was questioned. I do not find it necessary to examine these cases in any detail because of the lucid exposition of the law on the subject in Dhulabhai v. Madhya Pradesh(1), a case arising out of the Madhya Pradesh Sales Tax Act 30 of 1950 which by s. 17 provided that

"Save as is provided in s. 13, no assessment made and no order passed under this Act, or the rules made hereunder by the assessing authority, appellate authority or the Commissioner shall be called in question in any Court and gave as is provided in sections 11 and 12 no appeal or application for revision shall lie against any such assessment or order."

In the unanimous judgment of this Court it was observed:

" . . jurisdiction of the civil court is all embra

cing except to the extent it is excluded expressly by clear intendment

arising from such law."

Referring to Mask & Co.'s case (supra) and Raleigh Investment Co.'s case (supra) it was said that :

"Both these cases thus appear to be decided on the basis of provisions in the relevant Acts for the correction, modification and setting aside of assessments and the express bar of the jurisdiction of the civil courts. The presence of a section barring the jurisdiction was the main reason and the existence of an adequate machinery for the same relief was the supplementary reason."

Referring to the dicta in Circo's Coffee Co. v. State of Mysore(1) and C. T. Santhulnathan Chettiar v. Madras(s) the learned Chief Justice observed

the question of validity of the taxing laws is always open to the civil courts for it cannot be

(1) [1968] 3 S.C.R. 662

(2) 19 S.T.C. 66

(3) C.A. 1045 of 1966 decided on 20th July, 1967

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the implication of any provision to make such a decision final or that even void or invalid laws must be enforced without any remedy."

The result of the enquiry into the views expressed by this Court in ,a large number of cases was summed up at pages 682-683 in seven propositions. It is not necessary to set out the propositions as they all relate to exclusion of jurisdiction of the civil court by express provisions of law or clear implications therefrom.

But a constitutional provision of the kind of Art. 363 transcends this kind of consideration. All that the Court has to see is whether the dispute falls within either limb of the article. If the dispute is so covered the court is precluded from examining whether the contention of the party asserting a right was genuine or of real substance. Equally the bar will apply where a party denying the right asserted or contesting the claim put forward is guilty of action which on the face of things appears to be arbitrary if there be some scope for raising the plea in denial or contradiction. I have taken the view that the President's power or right or duty or obligation to recognise a person as a Ruler arises not merely out of the provisions in Art. 366(22) but also the covenants, Merger agreements or Instruments of Accession the dispute is one which arises out of a provision of the Constitution relating to a treaty, agreement, covenant etc. in terms of Art. 363 of the Constitution. A dispute as to right to privy purse, as already examined, attracts the same bar.

With regard to Art. 366(22) read with Art. 363 it may be safely asserted that it could have never crossed the minds of the makers of the Constitution that in devising a key for the recognition of the Rulers and at the same time protecting them and the Government of India from disputes based on or about pre-Constitution covenants, agreements etc. they were forging a weapon with which the Government of the day could destroy them all and seek shelter be-hind a total embargo on litigation to vindicate their rights. The debates of the Constituent Assembly to which reference has

already been made show that Art. 363 was inserted for the Purpose of giving a quietus to any dispute which anyone might seek to raise on the basis of covenants and Merger agreements or rights flowing therefrom. In my opinion, the object was, as much to save the Rulers who had entered into covenants or agreements etc. from their rivals or kinsmen coming to court to upset the Covenants, agreements etc. as to shield the Government of India from attempts on the part of rulers to rip open the covenants. agreements or to seek recourse to law for establishing their rights.

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I also take the opportunity of remarking that if ever there was an occasion for the President to make a reference to this Court the present was eminently suited to the purpose. Notwithstanding the wide sweep of the provision for ousting the jurisdiction of courts as regards disputes covered by it Art. 363 gave express power to the President to have the opinion of this Court to guide himself by and when disputes of such public importance were agitating the minds 'of members of Parliament and of the Cabinet it was not only his right but his duty to consult this Court.

I do not think it necessary to express any opinion on the rights or privileges covered by Art. 362 of the Constitution because prima facie they are relatable to the guarantees or assurances given under the covenants or agreements referred to in Art. 291. How much regard Parliament or Legislature of States are to pay to such guarantees or assurances is for the appropriate Legislatures to consider. I may only add that the Constitution makers could not have contemplated exemption from the impositions such as those under the Wealth Tax Act and the Gift Tax Act inasmuch as such taxing provisions probably were not contemplated at the time. The Government of India in its graciousness saw fit to exempt the Rulers from the operation of these and many other statutes which are still on the statute book. The occasion for considering such statutes has not arisen yet and they may be left for future consideration.

Mr. Patkhivala's plea that the act of the President resulted in the destruction of the institution of Rulers and as such was invalid does not bear scrutiny. The orders if valid would operate in the case of each Ruler and have been challenged by the petitioning Rulers in their individual capacity. No body of persons known to law can be called an institution of Rulers According to the figures given by Mr. Palkhivala himself Rulership of. over one hundred States has lapsed during the last twenty years 'and the process may go on till no Rulers are left. In this case we are concerned with the rights of individual Rulers and not of them as a class.

In the result I have to hold that this series of petitions is not maintainable remarking, at the same time, that the action of the President appears to be unjustified. The President may, if he, chooses, guide himself by the exposition of the law as made above. What a stroke of the pen has done may be undone by another stroke of it. "Because right is right", the President it is hoped, would "follow right" as "wisdom in the scorn of consequence". I would leave the parties to bear their own costs.

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Hegde, J. These petitions under Art. 32 of the Constitution present for decision common questions of law. In each of these petitions the petitioner therein prays for the following reliefs

(1) a writ, direction or order declaring the order of the President dated the 6th

September, 1970 to be unconstitutional, ultra vires and void and further to quash the same;
(2) a writ, direction or order declaring that the petitioner continues to be the Ruler and as such continues to be entitled to the Privy Purse and to his personal rights and privileges as a Ruler;
(3) a writ, direction or order directing the Union of India to continue to pay to the petitioner the privy purse to which the petitioner is entitled and to continue to recognize his Rulership and the personal rights and privileges and to implement and observe the provisions of the Covenant/ Merger Agreement entered into between the Ruler of Gwalior and the Government of India; and
(4) such other further orders as the nature and circumstances of the case may require.

For pronouncing on the questions arising for decision it is sufficient if I refer to the facts pleaded in any one of the cases. Hence I shall deal with the facts and pleas put forward in Writ Petition No. 376 of 1970. Therein the petitioner's case is as follows

His father was the Ruler of Gwalior prior to August 15, 1947. He signed the Instrument of Accession on August 15, 1947. The same was accepted by the Governor General of India on August' 16, 1947. Under the Instrument of Accession, he made over to the Dominion of India. three subjects viz. Defence, External Affairs and Communications. On April 24, 1948, he signed a Covenant with several other Rulers as a result of which the State of Madhya Bharat came to be formed on June 15, 1948. Thereafter Madhya Bharat merged with the Union of India. After the Constitution of India came into force, the President recognised the father of the petitioner under Art. 366(22) of the Constitution as the Ruler of Gwalior. After the death of the petitioner's father, the petitioner succeeded to the Gaddi on July 16, 1961 and thereafter he was duly recognised by the President under Art. 366(22). Ever since the merger of the State with the Union of India, the petitioner's father and later on the petitioner was being paid the privy purse guaranteed

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under Art. 291 of the Constitution. The petitioner is entitled to a ,privy purse of Rs. 10 lacs per year. He is also entitled to other rights and privileges arising from the Covenants.

Prior to August 15, 1947, the Ruler of Gwalior was a Sovereign though his sovereignty was subject to the paramountcy of the British Crown; but that paramountcy lapsed on August 15, 1947 as a result of the Indian Independence Act, 1947. Consequently the Ruler ,of Gwalior as well as other Rulers became absolute Sovereigns. In law they were free to accede to either of the two Dominions of India and Pakistan or to remain independent. But by stages the Indian States adjoining the Dominion of India merged in the Dominion of India. After their merger the Rulers of those States had ,no ruling powers. They had only such rights and privileges as were recognized or created under the Covenants entered into by them with the Government of India and those embodied in the Constitution. On the coming into force of the Constitution all the former Rulers of the Indian States that had merged with the Dominion of, India as well as their quantum subjects became citizens of India having all the rights and duties of citizens of this country. From about 1967, there was a move in the ruling

party to abolish the privy purses guaranteed to the Rulers under the Constitution as well as the privileges guaranteed to them under the Covenants and agreements and recognised in Art. 362. Consequently the Government moved in the Lok Sabha on September 2, 1970, the Constitution (Twenty fourth) Amendment Bill, 1970 to delete certain provisions of the Constitution relating to the guarantees given to the Rulers about their privy purses as well as privileges. That bill was passed in the Lok Sabha but it failed to get the requisite majority in the Rajya Sabha. The motion for consideration of the bill was rejected at about 4-30 p.m. on September 5, 1970. The same evening the Union Cabinet met and decided to advise the President to withdraw the recognition of the Rulers so that the privy purses and privileges guaranteed to the Rulers may be abolished. On the same night, the President purporting to act under cl .(22) of Art. 366 of the Constitution signed in his Camp at Hyderabad an Instruments withdrawing recognition of all the Rulers. After obtaining his signatures, the concerned document or documents were flown back to Delhi the same night and the impugned orders issued on September 6, 1970. On the strength of these orders, the Government of India asserts that all the Rulers in India had been derecognized and consequently none of them is entitled to the rights and privileges to which they were entitled as Rulers.

It is contended on behalf of the petitioners that in exercise of his powers under Art. 366(22) of the Constitution, the President is not competent to abolish Rulers as a class and therefore the impugned orders are nullity. The farther contention of the peti-

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tioners is that the rights conferred on them under Arts. 291 and 362 of the Constitution as well as under various statutory provisions or rules having the force of law are fundamental rights and as such they cannot be abolished by an executive order. It is said the impugned orders contravene Axts. 19(1) (f), 21, 31 (1), 31(2), 51(3) and 73(1) of the Constitution. According to the petitioners Arts. 291 is a mandatory provision and it is not open to the Government to refuse to obey the mandate of the Constitution. The petitioners also complain that in making the impugned orders, the President not only acted outside the scope of Art. 366 (22) of the Constitution but he also thereby violated Art. 53 (1), 60, 73(1), 362, 291, 112 to 114 of the Constitution. The petitioners' further grievance is that under various statutes as well as under the Merger Covenants they are entitled to certain privileges; the President by purporting to take away those privileges has contravened Arts. 14 and 21 of the Constitution. It is also said that the Council of Ministers were guilty of mala fides in advising the President for making the impugned orders for collateral reasons and for the, sake of political exigencies. According to the petitioners, Art. 363 of' the Constitution does not bar the jurisdiction of the Court in granting the reliefs prayed for by them.

The respondent in its reply does not deny that the object of the impugned orders was to abolish the Rulers as a class. It contends that the present policy of the Government is not to have any Rulers in this country or to allow them any rights or privileges as Rulers. It is contended that the respondent has right to abolish Rulership in exercise of its power under Art. .366(22) which power_according to it is a sovereign power; the decision of the Government to abolish Rulership is a political decision and as such the same is not open to be questioned in municipal courts; the rights

conferred under the relevant Covenants are not perennial and are inherently temporary in character and are liable to be varied or repudiated in accordance with the State Policy in the interests of the people. It is further pleaded that a fiduciary duty is cast upon the Government not to continue feudal institutions and anachronistic systems against the interests of the people; to respect and give effect to the needs and wishes of the people and to the will of the representatives of the people, the impugned orders have been passed. According to the respondent this Court is precluded from going into the validity of the impugned orders in view of Art.363. As regards Art.291 the plea taken by the respondent is; that it confers no legal right on the Rulers. That Article merely lays down the source and method of payment of the privy purses. The respondent takes the stand that this Court cannot go into the scope or effect of Art. 291, in view of Art. 363. So far as the Covenants and Agreements are concerned it is urged on its behalf that the rights, liabilities or obligations arising therefrom are outside the 'jurisdiction of this Court firstly

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because they arise from political agreements between High Contracting Parties and secondly because of the bar under Art.363. It is next contended on behalf of the respondent that neither under the Covenants nor under any of the provisions of the Constitution any fundamental right was conferred on any Ruler and hence the, petition under Art. 32 is not maintainable. It is 'also urged on, behalf of the respondent that Art. 362 of the Constitution does not confer any right on the Rulers and any failure to obey the direc-tion given in that Art. does not lead to any violation of the: provision of the Constitution.

From the pleadings, the following issues arise for decision

(1) What is the scope of Cl. (22) of Art. 366 ? Does it confer on the President power to abolish Rulership ? Are the impugned orders invalid for any of the reasons mentioned in the Writ Petitions ?

(2) Does Art. 291 impose any mandatory duty on the Government and confers corresponding rights on the Rulers ?

(3) What is the scope of Art. 362 ?

(4) Does Art. 363 exclude the jurisdiction of this Court from considering whether the impugned

orders are ultra vires the powers of the President and- whether there has been any violation of Arts. 291 and 362 of the Constitution ?

(5) Are these petitions under Art. 32 of the Constitution maintainable ? What fundamental rights of the petitioners, if any, have been infringed and

(6) What relief, if any, the petitioners are entitled to in these petitions ?

Before proceeding to consider and pronounce on the issues formulated above, it would be useful to briefly refer to the historical background leading to the merger of the Indian States in the Indian Union as both the petitioners and the respondent have laid great stress on the same. During the time of the British rule. there were over 500 Indian States possessing varying degrees of sovereignty. In the matter of internal administration, most of the Rulers had complete

freedom. But their sovereignty was subject to the treaties, engagements and sanads entered into by them with the British Crown and also the paramountcy of the British Crown. Paramountcy was an undefined concept. It was an all pervading power. The Butler Committee declined to define its scope but
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said that "paramoutcy was paramount'. Paramountcy meant just what the British Government choose, it to mean. It was a convenient fiction devised by the imperial power to further its imperial interest. Paramountcy did not flow from treaties or international law. The sanction behind it was the British military strength. Subject to the Imperial needs the Rulers of Indian States were left free to govern their 'States as they thought best though in few cases, when the Rulers were guilty of gross atrocities the paramount power intervened even in their internal administration. Government of India Act, 1935 visualised a Federation consisting of provinces as well as Indian States. The States were expected to accede to the Federation on limited number of subjects retaining their sovereignty in respect of other subjects. But the States were so jealous of their rights that it was not possible to persuade them to join the Federation. Hence, the Federal part of the Constitution visualised by the Government of India Act, 1935 did not come into being. After World War 11 when it became inevitable for the British Government to grant freedom to this country, the question as to the future relationship of the Indian States with the Dominion of India assumed importance. As there was no agreement between the concerned parties, the British Government under the Independence Act, 1947 divided the then British India into two parts, India and Pakistan. So far as the Indian States were concerned, it allowed its paramountcy to lapse and those States were asked, if they so choose, to enter the new relationship with one or the other of the Dominions or remain independent. The paramountcy of the British Crown was not inherited either by India or by. Pakistan. It was allowed to lapse. This situation created a crisis. There was an imminent threat to the unity of India, politically as well as economically. The situation called for the highest degree of. statesmanship on the part of our leaders. Naturally the Rulers of the Indian States were anxious to remain as independent sovereigns but they could not have been oblivious of the internal and external dangers to their authority. It was a highly explosive situation. Sardar Vallabhbhai Patel with his political sagacity and pragmatic approach, availing himself. of the co-operation of Lord Mountbatten and the assistance of his energetic and tactful Secretary, V. P. Menon first persuaded practically all the Rulers to accede to India on three subjects viz. Defence, External Affairs and Communications and thereafter stage by stage drew them closer to the Dominion of India and finally persuaded them to merge with the Dominion of India. All this was done in the course of about two years, a feat unparalled in history. The saga of the integration of the Indian States into the Dominion of India will remain the most exciting and most glorious chapter in the history of our country. This mighty achievement could not have been had peacefully but
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for the patriotism and farsightedness of many of the Rulers of the Indian States. Sardar Patel told the Constituent Assembly that the Rulers of the Indian States were the co-architects of India's unity.
But it was said on behalf of the respondent that the Rulers

merged, their States in the Dominion out of sheer necessity and not out of any patriotism, they were not in a position to resist the compulsion of geography and pressure of their subjects in favour of self Government and therefore they merely made a virtue of necessity. It may be that they acted in self-interest. But there can be ,no doubt that it was enlightened self-interest. Sardar Patel told the Constituent Assembly on October 12, 1949 : "There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principle but would have also caused serious repercussions. If the Rulers had elected to stay out, they would have continued to draw the heavy civil list which they were drawing before and in large, number of, cases. they could have continued to. enjoy unrestricted use of the State revenues. The minimum which %ye could offer to them. as quid pro quo for parting with their ruling powers was to guarantee to them _privy purses an certain privileges on a reasonable and defined basis." Proceeding further the Sardar exhorted the Constituent Assembly. "The capacity for mischief and trouble on the part of the Rulers if the settlement with them would not have been reached on a negotiated basis was far, greater than could be imagined at this stage. Let us do justice to them, let us place ourselves in their position 'and then assess the, value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all the ruling powers and by agreeing to the integration of their States. I The main part of our obligation under these Agreements is to ensure that-the guarantees given by us in respect of privy purses are fully implemented. Our failure to do so would be a breach of faith and and seriously prejudice the stabilisation of the new order". Even quite recently, both our President and the 'Home Minister acknowledged with gratitude the sacrifice made by, the 'Indian Rulers. But it was argued onbehalf of the respondent that we should not take those utterances at their face value. It was indirectly suggested that those expressions were platitudes intended to achieve some political purposes. If that be so, all that one can say is, mysterious are the ways of politics.

The respondent in its counter-affidavit has taken the stand that the people of this country having become conscious of their social. and economic rights would not tolerate any longer the concept of Rulership or the privy purse or any of the privileges

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incorporated in the Covenants and Merger Agreements. Therefore it was the duty of the Government to give effect to the will of the people. It has also taken the stand that the concept of Rulership, privy purse and the privileges guaranteed to, the Rulers without any relatable function and responsibility have become incompatible with democracy, equity and social justice in the context- of India of today. These contentions raise political issues. This Court is not the forum for going into these issues nor is it concerned with the political passions surrounding the issues arising for decision in this case. Our primary function in this case. is to interpret the relevant provision of the Constitution and to see. whether the complaint of the petitioners that some of their fundamental rights have been infringed is correct.

It is also not for this Court, except to the extent it bears on the question of interpretation of the Constitution, to go into the historical background of any constitutional

provision. If the meaning of a provision is plain and unambiguous, its historical background becomes irrelevant. But if there is any ambiguity, 'in interpreting the same, it is. permissible, for the Court to take into consideration the object intended to be achieved by that provision as well as the surrounding circumstances which may bring out the intention of the Constituent Assembly.

The respondent, though in a somewhat vague way, has raised the plea of State policy. That plea appears to me to be irrelevant in the context of this case. If the Constitution has laid down a policy, as is contended on behalf of the petitioners, with respect to matters with which we are concerned, that policy cannot be departed from either by the legislature or by the executive. Neither the legislature nor the executive can have a policy which runs counter to the policy laid down by the Constitution. In this country the voice of the Constitution is paramount. On matters on which the Constitution speaks, no one else can speak, Every organ of the State in this country has to function within the limits prescribed by the Constitution.It has no power dehors that derived from the Constitution. Its powers are only those

The learned Attorney-General in the course of his arguments, time and again, tried to impress on us that the will of the people has to be respected and as it is the desire of the people that Rulership should be abolished, it had become imperative for the Government to advise the President to make the impugned orders. The petitioners deny that there is any such public opinion. We are not in a position to go into this controversy. Our duty is to obey the Constitution. The question of public opinion is not relevant for our purpose. Many of the safeguards provided in

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the Constitution are for the benefit of the minorities. The Government might have acted with the best of intentions. But the real question is whether it has acted within the powers conferred on it by the Constitution. In this connection it would be worthwhile to borrow and adapt some (1) the observations of Chief Justice Patanjali Sastri in State of Madras v. V. G. Row(1). If the courts in this country face up to, important and none too easy task of declaring void any of the important policy decisions taken by the Government it is not out of any desire to tilt at executive authority in a crusader's spirit, but in the discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the fundamental rights, as to which this Court has been assigned the role of a sentinel on the quivive. In these cases as in other cases we do not seek to sit in judgment on Govern-ment's policies. They are the concern of the legislative and the executive organs of the State. But the Constitution has imposed a special duty on this Court to preserve and protect the Constitution--we, only seek to discharge that duty.

Now coming to the scope of cl. (22) of Art. 366, it is necessary to notice that Art. 366 is an article which defines 30, expressions appearing in one or more of the articles in the Constitution. That article starts by saying that "In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them.....".

From this it is clear that the meaning given to the expressions mentioned in that article are only for the purpose of the Constitution and not for any other purpose as he

ld by this Court in Maharaja Pravir Chandra Bhanj Deo Kakatiya v. State of Madhya Pradesh (2). Clause (15) of Art. 366 defines an "Indian State" as meaning "any territory which the Government of the Dominion of India recognised 'as such a State". It may be noted that no "Indian State" as such exists after the Constitution came into force. But yet as that expression has been used in the Constitution in some places for certain purposes, it became necessary to define, that expression and not because that there is an Indian State now. Similarly Rulers of Indian States disappeared as soon as their territories were merged in India and all those quandum Rulers became citizens of India-see Bhanj Deo's case (supra) and H. H. Maharaja of Udaipur v. State of Rajasthan and ors.(3) The Rulers referred to in Art. 366(22) have no kingdom or subjects to rule. They have no ruling power. They do not have dual capacity firstly 'as citizens of India and secondly as Rulers. Their rulership is merely a status entitling them to privy purse and

(1) [1952] S.C.R. 597 at p. 605.
(3) [1964] 5, S.C.R. I
(2) [1961] 2, S.C.R, 501.

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certain privileges. As Arts. 291, 362, 366(21)(a) and (b) (before its deletion) as well as Entry 34 of List I of Sch. VII refer to Rulers, it became necessary to define that expression.

> Art. 366(22) defines "Ruler" thus:
> "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of Art. 291 was entered into and who for the time being is recognised by the President as the Ruler of the State and include any person who for the time being is recognised by the President as the successor of such Ruler.
> " This clause has two parts namely :
> (1) the Prince, Chief or other person of an Indian State who had entered into any Covenant or Agreement as is referred to in cl. (1) of Art. 291 and who is for the time being recognised by the President as the Ruler of the State; and
> (2) any person who for the time being is recognised by the President as the successor of such a Ruler namely the Ruler who entered into the Covenant or Agreement referred to earlier and recognised by the President.

The words "other person" in the first part of Art. 366(22) means someone analogous to a Prince or Chief of a former Indian State who had entered into the Covenant or Agreement referred to in that clause. It cannot be some third person because, no person other than a ruler of an Indian State had entered into any Covenant or Agreement with the Dominion of India. The words "other person" should be read ajusidem genesis with the words "other person" should be read ejusidem genesis with the words were known by various names such as Maharana,, Maharaos, Maharaja, Nizam etc. To avoid listing all those names in Art. 366(22), the draftsman has used the words "other person" but the, meaning of those words has been made clear by the words accompanying the words "other person' viz. by whom any such agreemeat as is referred to in cl. (1) of Art. 291 was entered into and who for the time being is recognised by the President as Ruler. Now coming to the second part of that clause, 'here again

the words "any person" refers to the person who at the relevant time is the successor of the person who entered into the Covenant or Agreement. This is made clear by the expression "for the time being is recognised by the President as the successor of such Ruler", such Ruler being the Ruler referred to in the first limb of the clause.
Art. 366(22) contemplates two classes of persons who are to be recognised by the President as Rulers. The first group
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consists of those persons who entered into the Covenant with the Dominion of India and the second group their successors. Coming to the first group, the President has no power to recognise any one other than who had entered into the Covenant or Agreement and so, far as the second group is concerned, he can only recognise the successor of the person who had entered into the Covenant or the Agreement. "Successor" is a term of law. Succession is regulated by law or custom. It, is no doubt true that it "or the President to decide as to who is the, successor for the time being ,of the person who had entered into the Covenant or Agreement. The President cannot create a successor. He can only recognise the successor. His power is only to find out who is the successor at the relevant time of the Ruler who entered into the Covenant ,or Agreement. Recognition is not the same thing as appointment. Recognition means the power to locate and not a power to create. Hence the power conferred on the President under the second part of Art. 366(22) is a very limited power. That power is no doubt an executive power but the same has to be exercised in accordance with law. In other words it has to be exercised as a ,quasi-judicial power. SD far as the first part is concerned, the President has no power to recognise any person other than the Ruler who entered into the Covenant or Agreement with the Dominion of India. We shall presently see that he has a constitutional duty to recognise, the Ruler of an Indian State. Hence the words ",for the time being" in the first part of Art. 366 can only come into play if there was any error in locating the person who entered into the Covenant or Agreement, the condition for, the recognition being that the person recognised must be the person who entered into the Covenant or Agreement. So far as the second part is concerned the expression "for the time being" is relevant as the question of recognition of a new Ruler arises on the death of each Ruler. On each of those occasions, the President has to find out as to who is the successor according to law and in the absence of law, according to custom, of the Ruler who ,entered into the Covenant or Agreement. The procedure of recognition of Rulers appears to have been intended as a status symbol and also to avoid the necessity of hunting up Covenants and Agreements at the time of payment of privy purses and while affor
ding other privileges and rights.
Art. 366(22) contemplates that for each Indian State, there shall be a Ruler at any given point of time. That Article does not say that the, President may recognise a Ruler. On the other hand it speaks of the Ruler who "for the time being is recognised by the President", an expression which contemplates the continuity of Rulership and not merely of its possible existence. A Rulership of an Indian State can only disappear if both the original, Ruler who entered into the Covenant or Agreement as well his success ors
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cease to exist as in that case President cannot recognise any one as the Ruler of that State. From the above discussion it follows that the power of the President under

Art. 366(22) is fully regulated.
In this context we may refer to the definition of the "Ruler" in s. 311 (1) of the Government of India Act, 1935 which says ""Ruler" in relation to an Indian State means the Prince, Chief or other person recoginised by His Majesty as the Ruler of the State". The power to recognise given to His Majesty,under this section is blanket power. It is subject to no limitation. Under that section Any one could have been recognised as the Ruler of an Indian State. No such power is conferred on: the President under Art.. 366(22).
I shall now proceed to consider whether the President has power to say that he will not recognise a Ruler for an Indian State. It was urged on behalf of the respondent that a power to recognise includes a power not to recognise. Evidently this contention is based on s. 21 of the General, Clauses Act which Says

> "Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable 'in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

In view of Art. 367 of the Constitution unless the context .otherwise requires, the General Clauses Act, subject to any adaptations and modifications made therein under Art. 372 applies for the interpretation of the Constitution as it applies for the interpretation of an Act of the legislature of the Dominion of India. I have not thought it necessary to go into the question whether the recognition referred to in Art. 366(22) can be considered as a power to issue notifications or orders as in my opinion that clause imposes a constitutional duty on the President. No discretion. is left to the President to recognise or not to recognise the Ruler of an Indian State. In that view, s. 21 of the General Clauses Act, 1897 is irrelevant. We have already. seen that Art. 366(22) contemplates that each Indian State must have a Ruler, at all times so long as the Ruler who entered into the Covenant or Agreement or a successor of his is in existence otherwise Arts.- 291 and 362 will become meaningless. They will be empty shells if "Ruler" referred to in Art. 291 (b) Art. 362 and Entry 34 of List I of the Seventh Schedule must ,necessarily be that person who is recognised as Ruler by the President under Art. 366(22). If the President fails to or declines to discharge his function under Art. 366(22),
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Arts. 291 and 362 would become inoperative. In effect the benefit conferred bythose Arts. will be denied to the person entitled to be recognised as a Ruler of a particular Indian State. Further the legislative power given under Entry 34 of List I of the Seventh Schedule would disappear. It is to give meaning to Arts. 291, 362 and Entry 34 of List I of the Seventh Schedule, a duty is imposed on the President to recognise the Ruler of each Indian State. In my opinion Art. 366(22) imposes a constitutional duty on the President. To enable him to discharge that duty, certain limited powers are; conferred on him. While discharging his duty under the first part of Art. 366(22), he has to locate the person who according to law can be said to have entered into the Covenants or Agreements and under the second limb his duty is to find out the successor of the Ruler coming within the scope of the first limb. As mentioned earlier the

recognition of the Ruler who executed the Covenant or Agreement is a mere formality. So far as the recognition of the successor of that Ruler is concerned, in case of dispute, it becomes the duty of the President to decide as to who is the successor of the Ruler who executed the Covenant or Agreement at the relevant- time. Evidently the Constitution makers were of the opinion that any dispute as to who is the "Ruler" for the purpose of the Constitution should not be left to be decided by courts of law because such a procedure would involve years of delay in determining the person who is entitled to the benefit of the privy purse and the privileges. Hence that question was left to the exclusive decision of., the President. Despite the fact that exclusive power was given to the President to recognise the successor of the original Ruler, the procedure that invariably adopted in case of disputed succession was to act on the basis of the recommendation of either of 'a High Court judge who had inquired into the matter or of a committee presided over by a High Court judge, set up for that purpose. That is what happened when disputes arose as to the succession to the Rulers of the States, of Sirohi and Dholpur. In my opinion Art. 366 (22) imposes a duty on the President and for that purpose has conferred on him certain powers. In other words the power conferred on the President under that provision is one coupled with duty. There are similar powers conferred on the President under the Constitution. Under Chap. XVI of the Constitution certain special provisions were made for the benefit of the Scheduled Castes and Scheduled Tribes. Seats were reserved for them both in the Parliament as well as in the State Assemblies. Certain other benefits were also secured to them in the matter of appointments to services and posts in connection with the affairs of the Union or of a State. But the Constitution did not specify which castes were Scheduled Castes and which Tribes were Scheduled Tribes. Under Arts. 341 (1) and 342(1) of the Constitu-

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tion, the President was given power to specify the castes which he considered to be Scheduled Castes and the Tribes which he considered to be Scheduled Tribes. Though both the Articles say the President "may" specify the Castes which he considers as Scheduled and Tribes which he considers Scheduled, it is clear that a constitutional duty was imposed on him to specify which castes were Scheduled Castes and which Tribes were Scheduled Tribes for the purpose of the Constitution. The word "may" in those clauses must be read as "must" because if he had failed or declined to. specify the Castes and Tribes, Arts. 330, 332, 334, 335, 338 and 340 would have become inoperative and the constitutional guarantees given to the Scheduled Castes and Scheduled Tribes would have become meaningless. At this stage it may be noted that under Art. 366(24) and (25) Scheduled Castes and Scheduled Tribes are defined as such Castes, races, tribes, tribal communities or their parts or groups within them as are deemed under Art 341 and 342 respectively. Again under 'cl. (7) of Art. 366, the President is given power to determine for the purpose of the Constitution the "corresponding Provinces" "corresponding Indian State" or "corresponding State" in case of doubt. This, again is a duty imposed on the President. He cannot refuse to discharge that duty.

Now coming to the contention that power to recognise the: Rulers includes power not to recognise, we shall test the correctness of that contention with reference to some other Articles in the Constitution which deal with certain

constitutional duties of the President. The power to appoint the Election Commission is that of the President. The Election Commission alone can hold the elections of the President, Vice-President, members of that Parliament and the State legislatures. The President cannot decline to appoint the Election Commissioners. It is not in the power of the cabinet to advise the President not to appoint one or more of Election Commissioners even if some future cabinet should think that the elections are trappings of feudalism. Similarly the cabinet cannot advise the President not to appoint a Governor and thus destroy the federal structure of our Constitution or not to appoint the Chief Justice of Supreme Court or of the High Courts and' thereby remove those courts and thus make a mockery of the fundamental rights. The President cannot do indirectly, what the legislature cannot do directly. It is wrong to mistake a duty for a right. Ruler as referred to in some of the Provisions of the Constitution is an entity created by the Constitution to further certain, purposes recognised by the Constitution. That entity cannot be abolished either by the executive or by the legislature. Therefore the argument advanced on behalf of the respondent that the power to recognise the Ruler includes within itself the Power not to recognise is clearly a fallacious one. It is not necessary for our

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present purpose to go into the question whether a Ruler once recognised can be de-recognised by the President and if so under what circumstances. We were told that there was one instance of derecognition of a recognised Ruler namely that of the former Ruler of Baroda. That derecognition was not challenged before any court. Hence its validity remains undecided. In this case we are concerned not with derecognition of one or more Rulers for some reason or. other but of the abolition of Rulership. For the reasons mentioned earlier, it is not possible to spell out a power to abolish the Rulership under Art. 3 66 (22).

It was strenuously argued by the learned Attorney General that the power of recognition of the Rulers found in Art. 366(22) is a facet of the paramountcy enjoyed by the British Crown before the 15th August, 1947. No such plea was taken in the counteraffidavit. The argument of the learned Attorney General on this point was somewhat indefinite. He was hesitant to call the power embodied in Art. 366(22) as a paramount power but yet he was repeatedly asserting that it contains certain aspects of paramountcy. It is strange that the learned Attorney General representing the Union of India should have claimed that the Government of India inherited any aspects of the paramountcy exercised by the British Crown. Paramountcy as claimed by the British Rulers was one of the manifestation of imperialism. It is surprising that the Government of this country whose people had fought imperialism for years and who are even today supporting both morally as well as materially the countries which are fighting imperialism should claim to have inherited even a fraction of impeperialism should claim to have inherited even a fraction of impemountcy is the very antithesis of rule of law. It was a power exercised by a superior sovereign over the subordinate sovereigns. I fail to see how the Government of India can consider itself as a superior power in its relationship with the citizens of this country. The doctrine of paramountcy even during the days of the Imperial rule had nothing to do with the British Government's relationship with its subjects. Herein we are concerned with the power exercisable by the President under

a provision of the Constitution. Nature and scope of that power must be spelled out from the language of the provision and from the purpose intended to be served by that provision. it is an insult to our Constitutionl to say that any facet of imperialism has crept into it. One should have thought that paramountcy so far as this country was concerned was dead and was deeply buried as far back as on the 15th August 1947. Its resurrection in any form is repugnant to our 'Constitution. It is true that even after August, 1947, on some occasions some of our leaders, referred to the existence of paramountcy. But that reference is not to the paramountcy which was the insignia of imperialism but the paramountcy of geographical
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compulsions, economic compulsions, the compulsions, of public opinion and need for common defence, all operating in favour of the unity of India. The effect of these forces was pithly described, as a sort of paramountcy. But that paramountcy has nothing to do with paramountcy claimed by the British.

The impugned orders are also unconstitutional for the reason that the power conferred under Art 366(22) is exercised for a collateral purpose. As seen earlier, power to recognise Rulers was conferred for the purpose of implementing some of the provisions of the Constitution and not for denuding the contents of those provisions. We have earlier seen how the impugned orders came to be made. The Government of India sought to amend the Constitution by deleting Arts. 291, 362 and clause 22 of Art. 366. But as the bill seeking the amendment of the Constitution failed to get the required majority in the Rajya Sabha, that attempt failed. Within hours after the said bill was rejected, the cabinet met and advised the President to pass the impugned orders. This is clearly an, attempt to do indirectly what the Government could not do directly. Such an exercise of power is impermeable under Art. 366(22). Exercise of a constitutional power for collateral' reasons has been considered by this Court in several decisions as a fraud on that power-see Balaji v. State of Mysore(-). Breach of any of the Constitutional provisions even if made to further a popular cause is bound to be dangerous precedent. Disrespect to, the Constitution is bound to be broadened from precedent to precedent and before long the entire Constitution may be treated with contempt and held up to ridicule. That is what happened to the Weimar, Constitution. If the Constitution or any of its provisions have ceased to serve the needs of the people, ways must be found to change them but it is impermissible to by-pass the Constitutions its provisions. Every contravention of the letter or the spirit of the Constitution is bound to have chain reaction. For that reason, also the impugned orders must be held to be ultra vires Art. 366(22).

The impugned orders also violate Art. 53 (1) of the Constitution which directs the President that the executive power of the Union shall be exercised by him either directly or through the, officers subordinate to him in :accordance with the Constitution. Further Art. 73(1) prescribes that the executive power-of the Union must be exercised subject to the provisions of the Constitution. The executive is bound to obey this mandate. It, has no, competence to exercise the executive power in violation of the mandates given by the C
onstitution. Art. 291 gives a mandate to the executive to pay the
privy purses guaranteed to the Rulers
exempt from all taxes on income. Art. 366 (22)
(1) (1963). Suppl. 1. S.C.R. 439.

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imposes a constitutional duty on the President to recognise the Rulers of the Indian States. Art. 362 requires the executive that due regard should be given to the guarantees and assurances given under the Agreements or Covenants entered into with the former Rulers of the Indian States. The President on the advice of the cabinet has disregarded the mandate of Arts. 53(1), 73(1), 291,362 and 366(22). That being so his order must be held to be ultra vires the Constitution, hence a nullity.

It was urged on behalf of the petitioners that the members of the cabinet who advised the President to issue the impugned orders were bound by their oath to bear true faith and allegiance to the Constitution; but they have shown scant respect for their oath, treating the same as a mere formality; they have thereby not only broken their oath but have damaged the Constitution as well. It is not necessary to pronounce on this contention.

In my opinion it is not open to, the executive or for that matter to any of the organs of the State to disregard the provisions ,of the Constitution merely because those provisions do not accord ,with its views. The mandate of every provision of the Constitution is a binding mandate. No one has power to depart from that mandate or circumvent it, whatever his views about the appropriateness of the mandates may be. If the Constitution or any part of it has now become out of tune with the present day society of ours, appropriate steps may be taken to alter the Constitution. It is no virtue to uphold the Constitution when it suits vs. What is important, nay necessary, is to uphold it even when it is inconvenient to do so.

It was contended on behalf of the respondent that the impugned orders were made in exercise of the political power of the State which according to it, is an incident of the sovereignty. In support of that contention reliance was placed on the decision of this Court in Kunwar Shri Vir Rajendra Singh v. Union of India and Ors. (1) The facts of that case are :

After the death of the previous Ruler of Dholpur who had been recognised by the President under Art. 366(22), there was dispute as regards his successor. That dispute was inquired into by a committee presided over by the Chief Justice of the Rajasthan High Court. On the recommendation of that committee, the President was pleased to recognise Maharaja Rana Shri Hemant Singh as the successor of the previous Ruler. Kr. Shri Vir Rajendra Singh challenged that decision by means of a .writ petition under Art. 226 of the Constitution.' That petition was dismissed by the High Court. In appeal this Court affirmed-

(1) [1970] 2, S.C.R. 631

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the decision of the High Court. I was a party to that decision. In that decision, it was held that the recognition granted by the President under Art. 366(22) could not be challenged in court of law. The only point in dispute in that case was as to who was ;the successor to the deceased Ruler. This Court came to the conclusion that under the circumstances of that case the decision of the President was not open to challenge. In the course of the judgment it was observed :

'The recognition of the Ruler is a right to succeed to the gaddi of the Ruler. This recognition of Rulership by the President is an exercise of political power vested in the President and is thus an instance of purely executive jurisdiction of the President.'

What is said in that case is that the President while acting under Art. 366(22) is exercising his executive jurisdiction and that jurisdiction was described as "political power". That expression may be inappropriate but that is not the ratio of the decision. It was a casual observation. There is nothing like a political power under our Constitution in the matter of relationship between the executive and the citizens. Our Constitution recognises only three powers viz. the legislative power, the, judicial power and the executive power. It does not recognize any other power. In our country the executive cannot exercise any 'sovereignty over the citiznes. The legal sovereignty in this country vests with the Constitution and the political sovereignty is with the people of this country. The executive possesses no sovereignty. There is no analogy between our President and the British Crown. The President is a creature of the Constitution. He can only act in accordance with the Constitution. It is true that some aspect of the executive power of the Government is for the sake of convenience called political power but it is nonetheless an executive power derived from the Constitution.

It was next urged that we cannot go into the validity of the impugned orders or even as to the scope of Art. 366(22) in view of Art. 363. We shall, while examining the ambit of Art. 363 see the hollowness of this contention.

Earlier, I have in a general way, referred to some of the political events that took place in the years 1947 to 1949. In order to consider some of the contentions raised by the Counsel for the parties, relating to the scope and effect of Art. 291, it is now necessary to refer in some detail to some aspects of those events. I have earlier referred to the instruments of Accession executed by various Rulers of Indian States. By means of those Instruments, the concerned Indian States became federating units of the Dominion of India though under those Instruments, powers were con-

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ferred on the Dominion legislature, executive and judiciary only in respect of three subjects viz. Defence, External Affairs and Communications. But nonetheless as a result of the accession, the concerned Indian States became parts of the Dominion of India. At the time those Instruments were executed, no question of either guaranteeing the privy purses to Rulers or preserving their privileges arose. Hence those Instruments did not refer to any rights and privileges of the Rulers. Very soon after the execution of the Instruments of Accession other developments took place in quick I succession. Most of the small Indian States fully merged in the Dominion of India. Under the merger Agreements the privileges then enjoyed by the Rulers, their right to get the, privy purses fixed under the agreement as well as some of the rights of the third parties referred to in the agreements were guaranteed. Excepting in the case of Bhopal, the privy purses to be paid to the Rulers were to be paid from out of the revenues of their former States. Under the Merger Agreement entered into between the Governor-General and the Nawab of Bhopal, the Nawab was entitled to receive the privy purse stipulated therein from the Government of India. It is not stated in the agreement that the same has to come out from the revenues of Bhopal State. The privy purses payable to all those Rulers were free of all taxes. In some of the Merger Agreements rights were also created in favour of the third parties, such as guaranteeing the continuity of the services of the permanent members of the Public Service of those States as well as the payment of pensions due to the retired civil servants. In

several of the Merger Agreements it is provided that if there was any dispute as to whether a particular item of property is the private property of the Ruler or the property of the State, that dispute was to be decided by an authority to be appointed as provided in those agreements. In most of those agreements, it is provided that the succession to the Rulership should be according to law and custom. That provision was a redundant provision as succession means succession according to law or custom. No one can succeed to a deceased person excepting according to law or custom. Those agreements also provide that no enquiry should be made by or under the authority of the Government of India and no proceedings should be taken in any court in their former States in respect of anything done or omitted to be done by the Rulers or under their authority, whether in a personal capacity or otherwise during the period of their administration of their States. In those agreements, it is further provided that no suit should be brought against the Rulers of the merged States in any of the Courts in the Dominion except with the previous sanction of the Government of India.

Under the Merger Agreement executed by the Ruler of Bilaspur, the Ruler was entitled to a privy purse of Rs. 7,0,000/- per year

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but that included a sum of Rs. 10,000/- as allowance to the Yuvraj. Under the Merger Agreement executed by the Nawab of Bhopal, the State of Bhopal was merged into the Dominion of India for a period of five years only. Art. IV of the Merger Agreement provided that the income derived annually from the share of the Nawab in the original investment by Qudsia Begum in the Bhopal State Railway, which share was agreed to be Rupees five lakhs and fifty-five thousand, shall be treated as the personal income of the Nawab and shall be paid by the Government of India to the Nawab, and his successors. Article VII of the Agreement provided that the succession to the Throne of Bhopal State shall be governed by and regulated in accordance with the provisions of the Act known as 'the Succession to the Throne of Bhopal Act of 1947' which was in force in the State at the time of the agreement. Under the Merger Agreement entered into by the Maharaja of Manipur, he was given a right to the use of the Residences known as 'Redlands' and 'Les Chatalettes' in Shillong and the property in the town of Gauhati known as "Manipuri Basti" though all those properties were considered as the State properties. Then came the States Merger (Governors' Provinces) Order 1949, an order made under s. 290(A) of the Government of India Act, 1935. Under this Order, several of the States that had merged in the Dominion of India were added on to one or the other of the Provinces. Thereafter those States became a part of those Provinces. Section 7(1) of that Order provides

> "All liabilites in respect of such loans, guarantees and other financial obligations of the Dominion Government as arise out of the governance of a merged State, including in particular the liability for the payment of any sums to the Ruler of the merged State on account of his privy purse or to other persons in the merged State on account of political pensions and the like, shall as from the appointed day, be liabilities of the absorbing province, unless the loan, guarantee or other financial obligation is relatable to central purposes."

This Order was made on July 27, 1949. Under this Order fifty-five Indian States merged in the Bombay Province, three in Madras, two in Bihar, fifteen in Central Provinces and Berar, three in East Punjab and twenty-four in Orissa. It was not disputed that the Merger Order is a legislative measure. Its validity was not challenged before us. In view of that Order, the liability to pay the privy purses of the Rulers whose former States had been added to any particular Province, became the liability of that Province,- a liability imposed by law. Whatever might have been the nature of the liability undertaken by the Govern-

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ment of the Dominion of India under the various Merger Agreements those liabilities came to be recognised by law and made a part of the Municipal law and thereafter they became enforceable as against the concerned Province. It may be noted that this Order was made long before the Constitution came into force. This Order was subsequently amended and a few more Indian States were included in one or the other of the Provinces. From the foregoing, it is seen that before the Constitution came into force, the liability to pay the privy purses to several of the Rulers whose States had directly merged with the Dominion of India became that of some of the Provinces and ceased to be that of the Dominion of India. Under the Merger Agreements excepting in the case of Bhopal, the privy purses to the former Rulers were payable from the revenues of their former States. But after the Merger Order they became payable from the revenues of the concerned provinces. At this stage we may also note that under the Merger Agreements, the privy purses payable to the Rulers were free of all taxes. We may further note that under the Merger Agreements, there were several other rights created either in favour of the concerned Rulers or in favour of the third parties. The Merger Order is silent about those rights.

Now we come to those States which formed unions. There were five such unions namely

1. United States of Kathiawar;
2. United States of Gwalior, Indore and Malwa (Madhya Bharat).
3. Patiala and East Punjab States Union.
4. United States of Rajasthan and
5. United States of Travancore and Cochin.

Those unions were formed on regional basis. Various Indian States in a particular region merged together and formed a union. The concerned States entered into a Covenant under which the union was formed. To those Covenants, the Dominion of India was not a party. Under those covenants, the covenanting States agreed to entrust to the Constituent Assembly to be formed in accordance with the provisions of the covenant the work of framing a Constitution for the union. Each of those unions were to have a Rajpramukh who was to be the head of the union.' There were provisions in those covenants for the formation of a Council of Ministers to aid and advise the Rajpramukh in the exercise of some of his functions. Under those covenants, the Ruler of each of the covenanting State was entitled to receive a fixed privy purse annually from

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the revenues of the concerned union. That amount was to be free of all taxes, whether imposed by the Government of the concerned union or by the Government of India. In the matter of raising, maintaining and administering the military force of the concerned union, the Rajpramukh was to

act subject to any directions and instructions that may from time to time be given by the Government of India. The covenants provided that the Rulers of the covenanting States as also the members of their families should continue to be entitled to all their personal privileges, dignities and titles enjoyed by them. The succession to the Gaddis was to take place according to law and custom. Questions of disputed succession in regard to covenanting Salute State were to be decided by the Council of Rulers on the re-commendation of a Judicial Tribunal to be constituted in accordance with the provisions of the covenants. The Secretary, Ministry of States on behalf of the Government of India concuffed to the covenants and guaranteed to all its provisions. The concurrence of the Government of India to the covenants was necessary as, the covenanting States had earlier acceded to the Dominion of India. In view of the formation of unions, in the place of old Indian States new units were to come into existence and therefore it was necessary for them to execute fresh Instruments of Accession and that could be done only with consent of the Dominion of India. So far as the guaranteeing of these covenants is concerned it could only mean a political guarantee and not a guarantee in the sense of undertaking any financial obligations. What the Dominion of India guaranteed was the provisions of the covenant which included provision relating to the formation of the Constituent Assembly, the appointment of Council of Ministers etc. Under the covenants the liability to pay the privy purses of the covenanting Rulers was that of the concerned union and not that of the Dominion of India. Further the privy purses to be paid to the Rulers were to be paid free of all taxes. From these it is seen that before Arts. 291,362, 363 and 366(22) came into force, the Dominion Government had no liability in the matter of payment of privy purses to Rulers of the covenanting States. Even in the matter of deciding any dispute as regards succession, the Dominion of India had no responsibility. That had to be decided by the agencies created under the covenants. Under some of the covenants some of the covenanting Rulers were given special rights e.g. under Art. XVIII of the covenant under which Madhya Bharat union was formed, it was provided

> "Notwithstanding anything in the preceding provisions of this covenant, the Rulers of Gwalior and Indore shall continue to have and exercise their present ,powers of suspension, remission or commutation of
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> death sentences in respect of any person who may have been or is hereinafter, sentenced to death for a capital offence committed within the territories of Gwalior or of Indore, as the case may be."

Under Art. VIII of the covenant entered into by the Rulers of Travancore and Cochin forming the United State of Travan-core and Cochin, it was provided that the obligation of the covenanting State of Travancore to contribute from its general revenue a sum of Rs. 50 lakhs every year to the Devaswom fund shall from the appointed day be the obligation of the United State and the said amounts shall be payable therefrom and the Rajpramukh shall cause the said amount to be paid every year to the Travancore Devaswom Board and the Executive Officer referred to in sub-clause (b) of that article respectively.

In respect of the administration of Padamanahhaswamy Temple the right of the Ruler of Travancore was preserved under

Art. VIII(b) of the covenant. Similarly the existing rights of the Rulers of Travancore and Cochin as regards the management of certain temples and funds were preserved. They were also given a right to nominate some members to some of the statutory Boards. From the foraging it is seen that under the various covenants, several rights in addition to the right of receiving privy purses had been created in favour of the Rulers of some of the covenanting States.

In the draft Constitution, there were no articles similar to Arts. 291, 362, 363 and 366(22). Sometime before October 14, 1949 the Ministry of States, which was instrumental in bringing about the merger of the States with the Union of India wrote to the drafting committee that the guarantees given to the Rulers in regard to privy purses should be given constitutional section. Further it desired that so far as the privileges and other rights of the Rulers are concerned, the same must find recognition in the Constitution though it may not be possible to give any constitutional guarantee in respect of them. It is in pursuance of this request the drafting committee introduced Art. 267(A) (present Art. 291), Art. 302-A (present Art. 362) on October 13, 1949 Art. 303(1) (present Art, 366) (22) on October 14, 1949 and Art. 302(A) (present Art. 363) on October 16, 1949 into the draft Constitution.

Art. 291 of the Constitution as it now stands after its amendment by the 7th Amendment Act reads :

> "Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any
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> sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse--
> (a) such sums shall be charged on and paid out of the Consolidated Fund of India; and
> (b) the sums so paid to any Ruler shall be exempt from all taxes on income."
>
> Dealing with Art. 291, this is what the White Paper says in paragraph 238 :
>
> "Art. 291, thus, embodies constitutional sanction for the due fulfilment of the Government of India's guarantees and assurances in respect of privy purses and provides for the necessary adjustments in respect of privy purse payments necessitated by changed conditions."
>
> Art. 291, has four principal ingredients namely
> (1) the conditions giving rise to the liability to pay the privy purses;
> (2) charging of the privy purses payable on the Consolidated Fund of India;
> (3) the payment of the same from out of the Consolidated Fund; and
> (4) the sums so paid to any Ruler to be exempt from all taxes on income.

According to Mr. Palkhiwala, learned Counsel for some of the petitioners, Art. 291, guarantees the payment of privy purses referred to in various Merger Agreements and Covenants to the concerned Rulers, charges the same on the Consolidated Fund of India and makes them payable out of that fund to the Rulers, exempt from all taxes on income. He contended that Art. 291 confers a legal right on a Ruler

to claim the privy purse to which he is entitled to, from the Dominion of India. He asserts that the right created in favour of the Rulers, is enforceable in court of law. But according to the learned Attorney-General, Art. 291 does not create any legal right in favour of the Rulers. That Art. merely gives a moral assurance to the Rulers that the privy purses guaranteed under the Covenants and Agreements will be paid by the Union of India. He further contended that Art. 291 merely recognizes the obligation undertaken by the Dominion of India either under the Merger Agreements or under the Covenants and it does not create any new right or obligation. According to him the expression that "such fund shall be charged on the Consolidated Fund of India" does not mean that a lien

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on the Consolidated Fund is created for the payment of privy purses; it only means that the amount payable as privy purses is not votable. He asserted that the expression "paid out of" in cl. (b) of Art. 291 merely refers to the Fund out of which the payment is to be made and not that it should be paid to any person. Clause (b) of Art. 291 does not according to him give any direction to the Union Government to pay to the Rulers the agreed privy purse but it merely says that the privy purse, if and when paid to any Ruler will be exempt from all taxes on income.

In my opinion the contentions advanced by the learned Attorney-General are falacious. The liability undertaken under Art. 291 is a new liability and not an affirmation of an existing liability. As seen earlier, the liability to pay the privy purses of most of the Rulers who merged their States with the Dominion of India had been transfered to one or the other provinces. The liability to pay privy purses to the Rulers who entered into Covenants for forming unions was that of the concerned union and not that of the Dominion of India. In the case of most of the Rulers of States which merged in the Dominion of India until Art. 291 came into force, the Dominion of India had no liability to pay the privy purses.

For the first time after Art. 291 came into force, the privy purses were made payable from out of the Consolidated Fund of India. Till then they were payable firstly out of the revenues of the concerned State which merged into the Dominion of India and later on by one or the other provinces from out of its revenues and in the case of the covenanting States, the privy purses payable to the covenanting Rulers were payable from out of the revenues of the concerned union. As seen earlier, the privy purses payable either to the Rulers of the merged States or to those of the covenanting States, were free of all taxes. But the privy purses payable under Art. 291 are only exempt from all taxes on income and riot all taxes. To summarize, under Art. 291, the Union of Indian for the first time undertook the liability to pay the privy purses in respect of most of the Rulers of the Indian States. The fund from which the privy purses are made payable under Art. 291 is different from those from which they were payable earlier. The terms of payment, to some extent are also different inasmuch as the privy purses provided under the Merger Agreements and Covenants were free of all taxes but the privy purses guaranteed under Art. 291 are exempt only from tax on income.

In support of his contention that the liability undertaken under Art. 291, is merely a continuation of the earlier liability the learned Attorney-General strongly relied on the first part of Art. 291 which says :

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> "Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy pure....."

From this he wants us to conclude that the liability under-taken under Art. 291 is nothing but a continuation of the liability arising under the Covenants and Agreements. Here again the learned Attorney-General is not correct. That part of Art. 291 does not create any liability. It is only a legislation by incorporation. That part of the Article points out the person who is entitled to the privy purse and the amount payable to him. It was a legislative device adopted for the convenience of drafting. It would have been a cumbersome process to list all the names of the Rulers who are entitled to privy purses and the amount payable to each of them. To avoid that difficulty, relevant portions of Agreements and Covenants were bodily lifed from those documents and incorporated into Art. 291. This is a well known drafting device. Art. 291 is no way linked with the Agreements and Covenants. The Convenants and Agreements only continue as evidence as to matters mentioned in the first part of Art. 291. After Art. 291 came into force, there is no legal relationship between the Covenants and Agreements and that Article. That Article read with Article 366(22) constitute a self-contained code in the matter of payment of privy purses. Those Articles operate on their own force. In several provisions of the Constitutions, the device of legislating by incorporation has been adopted-see Art. 105(3), Art. 106, cls. 2, 3, 7, 8, 9(5) and 12(3) of the second Schedule.

I am also unable to accept the contention of the learned Attorney-General that the expression "charged on..... the Consolidated Fund of India" in Art. 291 merely means that the amounts payable as privy purse are not votable and that expression neither creates a right in favour of the person in whose benefit the charge is created nor is the Consolidated Fund pledged for the payment of the privy purse. The Constitution does not define the word "charge". Therefore we must understand that word as it is understood in law. According to law the creation of a charge over a fund in respect of an item of payment to a person means a conferment of a legal right on that person to get the amount in question on the pledge of the fund. If an item of expenditure charged on the consolidated fund merely means that that expenditure is non-votable then there was no need to provide in Art. 113 that "so much of the estimate as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament." That part of Art.

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113(1) was evidently enacted to make effective the statutory lien over the Consolidated Fund created in favour of the person to whom the payment has to be made. It emphasises the fact that the pledge created in favour of the person for whose benefit the charge is created by the Constitution cannot be taken away even by the Parliament.

The learned Attorney-General and Mr. Mohan Kumaramangalam read to us passages from May's Parliamentary Practice and other treatises on Parliamentary Practice and Procedure to show how the practice of charging certain items of expenditure on the Consolidated Fund of England came into

being. They also invited our attention to some of the statutes passed by the British Parliament. Neither the treatises on which they relied nor any of the statutes to which they referred show that the charging of an item of expenditure on the Consolidated Fund in favour of a person does not create a legal right in him to get that amount or that the same does not pledge the Consolidated fund for the payment of that amount. In fact some of the Statutes referred to by them do show that some of the items of expenditure charged on the Consolidated fund were required to be paid in preference to the other items. On the other hand Mr. Palkhiwala referred to us to the Dictionary of English law by Earl Jowitt (1959 Ed) Vol. 1, page 459, wherein the meaning of the expression 'charged on the consolidated fund' is explained thus

> "Consolidated Fund, a repository of public money which now comprises the produce of custom, excise stamps and several other taxes, and some small receipts from the royal hereditary revenue, surrendered to the public use. It constitutes almost the whole of the public income of the United Kingdom (Consolidated Fund Act, 1816). This fund is pledged for the payment of the whole of the interest of the national debt of Great Britain and Northern Ireland (National Debt Act, 1870- s. 6); and besides this, is liable to several other specific charges imposed upo n it at various periods by Act of Parliament, such as the civil list, and the salaries of the judges and ambassadors and other high official persons; after payment of which the surplus is to be indiscriminately applied to the service of the United Kingdom under the direction of Parliament"
>
> Section 6 of the National Debt Act, 1870 reads "6. Stock Charged an consolidated fund.--The annuities and dividends aforesaid shall continue to be charged on and payable out of the consolidated fund."

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The language of this section is similar to that of Art. 291 so far as the creation of "charge' 'is concerned. Section 6 of the National Debt Act, 1870 is according to Earl Jowitt pledges the consolidated fund of Great Britain and Northern Ireland for the payment of the whole of the interest of the national debt of Great Britain and Northern Ireland. If that is the true effect of s.6 of the National Debt Act, 1870 the same must be the position under Art. 291. From the passage quoted above from the Dictionary of English law by Earl Jowitt, it is seen that as soon as an item of expenditure is charged on the consolidated fund, the said act creates a legal obligation to pay out of the consolidated fund that item of expenditure to the person for whose benefit the charge is created. Secondly that item has to be paid before paying the non-charged item of expenditure. And lastly the charge created, pledges the consolidated fund for the payment of that item of expenditure. The practice of creating charges on the consolidated fund was started for the first time in this country under the Government of India Act, 1935 which Act was passed by the British Parliament evidently following the British practice. Arts. 112 to 115 of the Constitution are similar to the corresponding Sections in the Government of

India Act, 1935.

The contention of the learned Attorney General that the expression "paid out of" in cl. (a) of Art. 291 refers to the fund out of which it is to be paid out and not to the person to whom it is payable is also not correct. Under Art. 291 as it now stands, there is only one fund and that is the Consolidated fund of India. Therefore there is no question of pointing out the fund from out of which the payment is to be made. If some amount is required to be paid out of the Consolidated Fund of India, it must be paid out to somebody. There cannot be any paying out in abstract. To whom that payment is to be made is made clear by cl. (b) of Art. 291. it is to be paid to the Ruler as defined in Art. 366(22).

Even before Art. 291(2) was deleted the privy purses were to be paid out of the Consolidated fund of India though some of the States had a liability to reimburse the Union to a certain extent. According to the learned Attorney-General on the date when Art. 291 came into force, no Ruler had been recognised under Art. 366(22). Therefore we cannot spell out any commitment under Art. 291. We have earlier seen while discussing the scope of Art. 366(22) that the President has a constitutional duty to recognise a Ruler. Art. 291 proceeds on the basis that President has to recognise a Ruler to each one of the Indian States contemplated by Art. 366(15). By recognising the President merely locates the Ruler. He does not appoint or create a Ruler. No sooner the President recognizes the Ruler of an Indian State,

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he becomes entitled to the privy purse guaranteed under Art. 291 from the date the Constitution came into force. We are told that as a fact most of the Rulers who entered into the Covenants and Agreements were recognised only in the year 1952 but yet they were being paid the amounts agreed to be paid as privy purses ever since the Constitution came into force and the privileges guaranteed to them were also extended to them even before they were recognised. Similarly, we were told that in the case of successors of the Rulers when there was no dispute as to succession, they were treated as Rulers for all purposes though they were recognised several months after they succeeded to the Gaddi. This shows that the recognition under Art. 366(22) was considered as a mere formality except in the case of disputed succession.

To my mind Art. 291 is plain and unambiguous. It says in the clearest possible language that the privy purses payable to the Rulers under the Merger Agreements as well as under the Covenants are charged on the Consolidated fund of India and that they shall be paid out to the Rulers exempt from all taxes on income. No provision of a statute much less a provision of a constitutional statute should be read in a pedantic way. Nor is it justifiable to hair split the clauses in a provision and quibble about their words. A constitutional provision is not to be interpreted by taking words of the provisions in the one hand and the dictionary in the other or by taking the meaning given in a decision to a word in different setting. Each provision must be read as a whole and its meaning understood.

We have earlier seen that under the Merger Agreements and Covenants, various rights, liabilities and obligations mere created. What the Constituent Assembly did was to separate two obligations out of them and give those obligations constitutional sanction or guarantee. As seen earlier, under the Convenants entered into by the Rulers of

Travancore and Cochin certain contribution was to be made every year to the Devaswom Fund. This payment is guaranteed under Art. 290 (A). , Under Art. 291 the payment of the privy purses is similarly guaranteed Arts. 290(A) and 291 are more or less similarly worded.

If the mandate contained in Art. 291 is an unenforceable mandate, similar would be the position so far as Art. 290(A) is concerned. If the mandates contained in these Articles are unenforceable these Articles can only have ornamental value. It is difficult to believe that the Constituent Assembly would have indulged in an exercise in futility. We repeatedly asked the learned Attorney General that if Art. 291 did not create a legal

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right, what purpose that Article was intended to serve and why did the Constituent Assembly put that article, in the Constitution. His answer was that under Art. 291 while the payment of privy purse received a constitutional sanction, it received no, constitutional guarantee. This distinction to my mind appears, to be a distinction without difference. Every constitutional sanction for payment is necessarily a mandate to pay if that sanction relates to the discharge of an obligation. It is an enforceable mandate. As seen earlier that a fair reading of Art. 291 shows that there is a direction to pay the privy purses to the'Rulers. The contention of learned Attorney General was that by Art. 291 the Constituent Assembly merely wanted to give some sort of assurance to the Rulers about the payment of privy purses to them in future so as, to allay their apprehensions that may not be paid privy purses in future but in reality, no legal right was created in favour of the Rulers nor any binding obligation imposed on the Union of India. It is difficult to understand this Argument. It will be an uncharitable insinuation to make against the founding fathers that all that they wanted was to, create an illusion in the mind of the Rulers while in reality giving them no guarantee as regards the future payment of the privy purses. If all that the Constituent Assembly desired was to, give some assurance about the payment of privy purses in the future then Art. 362 would have served that purpose. In a general sense the words "personal rights" include privy purse. Even if the Constituent Assembly wanted to make things clear they could have easily said in Art. 362 "personal rights including privy purse" instead of wasting a whole article. Further there was nor purpose in charging the privy purses on the Consolidated fund or giving a constitutional exemption from payment of all taxes on income in respect of privy purse. No word in the Constitution can be considered as superfluous.

During the hearing some the members of the Bench felt that it may not be necessary to go into the scope and effect of Art. 191 in the present proceedings. It was felt that if the Court came to the conclusion that the impugned orders are valid orders then there is an end of the matter. If on the other hand, the Court came to the conclusion that those orders are violative of the Constitution then status quo ante would be restored. But both the learned Attorney General and Mr. Palkhiwala insisted that we should pronounce on the scope and effect of Art. 291, each one for his own reason. The learned Attorney General repeatedly made it plain to us that even if we come to the, conclusion that the impugned orders are invalid, the privy purses will not be paid by the Government, unless we hold that the right given to the Rulers under Art. 291 is an enforceable one. This,

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is a strange stand particularly in view of the fact that even according to him the Constitution has recognised the liability to pay the privy purses to the Rulers and the obligation in question has received constitutional sanction. It is clear from the stand taken by him that the Government will not respect the mandate of the Constitution if that mandate is not enforceable by law.

We have to proceed on the basis that the learned Attorney General made that submission on the strength of the instructions received by him from the respondent. But yet, it is difficult to believe that the executive which is a creture of the Constitution, whose head (the President) and the members of the cabinet had taken the oath of allegiance to the Constitution would take the stand that they will not respect a mandate of the Constitution unless that mandate is enforceable in a court of law. The enforceability of a constitutional mandate is one thing, the existence of such a mandate is another. Whether a particular constitutional mandate is enforceable or not, it is all the same binding on all the organs of the State. No organ of the State can choose to disregard any of the mandates of the Constitution. There are many mandates in the Constitution which are not enforceable through courts of law. If the executive or the legislature or the judiciary refuse to comply with those mandates they will be not only breaking the oath taken by them but they will be breaking the Constitution itself. I doubt whether the grave implications of the stand taken on behalf of the Government have been realised.

I shall now proceed to Art. 362. That Article reads

"In the exercise of the power of Parliament or of the legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

This article clearly links itself with the Agreements and Covnants. It has no independent exercise apart from the Agreement and Covenants. Mr. Palkhiwala conceded that Art. 362 is a provision of the Constitution relating to the Agreements and Covenants. Therefore, it follows that if any dispute arises in respect of anyright accruing under or any liability or obligation arising out of Art. 362 then the same would be covered by the second .part of Art. 363. But Mr. Palkiwala sought to place his own interpretation on the word "dispute" found in Art. 363. it is

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not necessary for us in this case to decide what controversy relating to Art. 362 can be considered as a "dispute" under Art. 363. At present we have no concrete complaint before us relating to the contravention of Art. 362. It is not proper to decide the scope of an article in the Constitution in abstract. The scope of Art. 362 as well as the meaning of the expression "dispute" in Art. 363 can be best considered when a proper case comes up for decision. In this view, I have not thought it necessary to go into the scope of

Art., 362.

This takes me to Art. 363(1). That Article reads

"Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument."

Under cl. (2) of that Article "Indian State" is defined for the purpose of that article as meaning any territory recognised before the commencement of the Constitution by His Majesty or the Government of the Dominion of India as being such a State, and the "Ruler" for the purpose of that article is defined thus

" "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State."

Art. 363 has two parts : the first part deals with disputes arising out of any provisions of a treaty, agreement or covenant etc., and the second part with dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution, relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

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Dealing with Art. 362 and 363 this is what the White Paper says in paragraph 240 (at p. 125)

"Guarantees regarding rights and privileges.- Guarantees have been given to the Rulers under the various Agreements and Covenants for the continuation of their rights, dignities and privileges. The rights enjoyed by the Rulers vary from State to State and are exercisable both within and without the States. They cover a variety of matters ranging from the use of the red plates on cars to immunity from Civil and Criminal jurisdiction and exemptions from customs duties etc. Even in the past it was neither considered desirable nor practicable to draw up an exhaustive list of all these rights. During the negotiations following introduction of the scheme embodied in the Government ,of India Act, 1935. The Crown Department had taken the position that no more could be done in respect of the rights and privileges enjoyed by the Rulers than a general assurance of the intention of the Government of India to continue them.

> Obviously, it would have been a source of perpetual regret if all these matters had been made as justiciable. Article 363 has, therefore been embodied in the Constitution which excludes specifically the Agreements of Merger and the Covenants from the jurisdiction of Courts except in cases which may be refered to the Supreme Court by the President. At the same time, the Government of India considered it necessary that constitutional recognition should be given to the guarantees and assurances which the Government of India have given in respect of the rights and privileges of Rulers. This is contained in Art. 362, which provides that in the exercise of their legislative and executive authority, the legislative and executive organs of the Union and States will have due regard to the guarantees given to the Rulers with respect to their personal rights, privileges and dignities."

From the above passage, it is clear that according to the Government's understanding of Art. 363, that article merely deals with matters coming under Art. 362. That is also the contention of the petitioners. But according to the learned Attorney 'General that article excludes from the jurisdiction of all courts including this Court not merely those matters that fall within the 'scope of Art. 362 but also the right arising from Art. 291. It

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was urged by him that Art. 291 also protects only. a personal right. Therefore it is a matter that falls within the scope of Art. 362, Consequently any dispute relating thereto is excluded from the jurisdiction of this Court under Art. 363. Privy purse was taken out for special treatment by the Constitution under Art. 291. Therefore it is excluded from the general provision in Art. 362. Arts. 291 and 362 have to be construed harmoniously. It is a well known rule of construction that a special provision excludes the general provision. Hence I have to reject the contention that Art. 363 includes the right to get privy purses because it also comes within the scope of Art. 362. If it is otherwise, there was no need to enact Art. 291. Further there was no purpose in guaranteeing the payment of privy purses under Art. 291 and then taking away the right to recover them under Art. 363. We have earlier seen that in the case of most of the Rulers, the right to receive privy purse was an enforceable right even before Art. 291 came into force. it is not easy to accept the contention that what was an enforceable right was made unenforceable under the Constitution. If the contention advanced on behalf of the respondent is correct the, purpose of Art. 291 was to take away an existing enforceable right, at any rate in the case of several Rulers and substitute the same by a recognition, devoid of all legal contents. To say that is to be cynical about the august body i.e. the Constituent Assembly. the Constituent Assembly could not have enacted Art 291 to show its contempt for the Rulers of Indian States as well as for the recommendation of States Ministry headed by Sardar Patel, the maker of modern India. If two or more provisions in the Constitution deal with one group of topics, those provisions have to be read together and interpretted harmoniously. It is not proper to say that the Constitution is speaking in two voices, as the learned Attorney General wants us to do or that it takes away by the

right hand what is gave by the left hand. Therefore we have to read Art. 363 harmoniously with Art. 291. That is equally true of Arts. 363 and 366(22). The rule of harmonious construction is a well known rule. If the aforementioned articles are harmoniously interpretted then the position becomes clear. The purpose of Art. 363 is made clear in the White Paper. Under the Merger Agreements as well as under the Covenants, various rights were conferred and privileges assured to the Rulers. Some of the agreements entered into between the former Rulers and His Majesty's Government or the Dominion of India are undoubtedly acts of State. So far as the Covenants ,are concerned, the question whether they were acts of State or constitutional documents is a highly debatable question. Rights accruing as well as liabilities and obligations arising under acts of State were not enforceable in the municipal courts unless

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they were recognised by the new sovereign. For the purpose of giving necessary direction to the Union and State executives as well as to the State and Union legislatures, the Constitution recognised the rights accruing and liabilities and obligations arising under various Agreements and Covenants which recognition made. those rights, liabilitie and obligations enforceable. But the Constituent Assembly did not want to open up the Pandora's box. Without Art. 363,Art. 362 would have opened the flood gates of litigation. The Constituent Assembly evidently wanted to avoid that situation. That appears to have been the main reason for enacting Art. 363. Evidently there were other reasons also for enacting Art. 363. Some of the Rulers who had entered into Merger Agreements were challenging the validity of those agreements, even before the draft of the Constitution was finalised. Some of them were contending that the agreements were taken from them by intimidation; some others were contending that there were blanks in the agreements signed by them and those blanks had been filled in without their knowledge and to their prejudice. The merger process went on hurriedly. The Constitution makers could not have ignored the possibility of future challenge to the validity of the Merger Agreements. Naturally they would have been anxious to avoid challenge to various provisions in the Constitution which are directly linked with the Merger Agreements.

As seen earlier Art. 363 has two parts. The first part relates to disputes arising out of Agreements and Covenants etc. The jurisdiction of this Court as well as of other courts is clearly barred in respect of disputes falling within that part. Then comes the second part of Art. 363 which refers to disputes in respect of any right accruing under or any liability or obligation arising out of any of the provisions of the Constitution relating to any agreement, covenant etc. We are concerned with this part of Art. 363. Before a dispute can be held to come within the scope of that part, that dispute must be in respect of a right accruing under or liability or obligation arising out of a Provision of the Constitution and that provision of the Constitution must relate to agreements, Covenants etc.

The principal dispute with which we are concerned in these cases is whether the President has the power to abolish all Rulers under Art. 366(22). Quite plainly this dispute cannot be held to be dispute in respect of a right accruing or a liability or obligation arising under any provision of the Constitution. Herein we are not concerned with any right, liability or obligation. We are concerned with powers of the President under Art. 3 66 (22). What is in

dispute is the true scope of the power of the President under Art. 366(22). That dispute does not fall within Art. 363.

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Power is not the same thing as right. Power is an authority whereas a right in the context in which it is used in Art. 363, signifies property. The fact that the court's decision about the scope of the power of the President under Art. 366(22) may incidentally bear on certain rights does not make the dispute, a dispute relating to any right accruing under any provision of the Constitution. A dispute as regards the interpretation of a provision of the Constitution is not a dispute within the contemplation of the second part of Art. 363 as it is not a dispute in respect of any right, liability or obligation. The contention of the petitioners is that the impugned orders are ultra vires the powers of the President, hence null and void. Such a dispute does not come within Art. 363.

It cannot be said that Art. 366(22) is a provision relating to Merger Agreements and Covenants. The word 'relating to' is a word of wide import but in the context in which it is used in Art. 363 it must receive a narrower meaning otherwise all rights accruing or liabilities and obligations arising under one of other of the provisions of the Constitution to the former Rulers of Indian States as well as to their subjects has to be held to come within the mischief of Art. 363 because they became Indian citizens as a result of the merger of the Indian States in the Dominion of India in pursuance of Merger Agreements. Nothing so startling could have been intended by the Constituent Assembly. If it is otherwise, the life, liberty and property of that section of our citizens would be under the mercy of our Government because if they complain against any high handedness on the part of the Government, the Government can seek shelter under Art. 36. The word 'relating' in Art. 363, in my judgment means "to bring into relation" or "establish relation between". In other words the provision of the Constitution in question must be linked with the Merger Agreements or Covenants directly and immediately. It must have no independent existence. That is not the position under Art. 366(22). It is an independent provision. It has nothing to do with the Agreements and Covenants. It does not take any strength from the Covenants and Agreements. The power to recognise the Rulers is a new power conferred on the President by the Constitution. There was no such power under the Agreements and Covenants. Between 1947 and 25th of January, 1950 there was no question of recognising the Rulers of Indian States. In respect of several of the Indian States, the Dominion of India had no right to decide the question of successorship. The provision in the Merger Agreements that succession will be according to law and custom is merely a statement of the legal position. The same cannot be considered as a part of the

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Agreement. The reference to Agreements and Covenants through Art. 291 is a convenient drafting device. Even if all the Agreements and the Covenants are abrogated the provision will stand intact.

Mr. Mohan Kumaramangalam, appearing on behalf of the respondent contended that Arts. 291, 362 and 363 should be considered as one group of Arts. which group together relates to Agreements and Covenants; Art. 3 66 (22) was enacted to effectuate Arts. 291 and 362; Articles 291 and

362 are related to Agreements and Covenants; therefore Art. 366(22) must also be held to be related to Agreements and Covenants. I have earlier considered the meaning of the word 'relating' in Art. 363. Further I have held that Art. 291 is not related to Art. 363 as it not linked with the Agreements and Covenants; it is an independent provision. I have also held that the definition of "Ruler" in Art. 366(22) is not merely for the purpose of Art. 291 and Art. 362 but also for the purpose of supplying contents for the legislative ,entry 34 of of List I of Sch. VII of the Constitution. Hence the group relation theory ingenuously advanced by Mr. Mohan Kumaramangalam cannot be accepted. Art. 363 speaks of "any provision of the Constitution relating" to Agreement and Covenants. If the contention of Mr. Mohan Kumaramangalam is analysed, it means that at Art. 366(22) is related to the Agreements and Covenants through Art. 2912 and 362. In other words that Art. is a relation of the relations of the Agreements and Covenants. That is the type or relationship contemplated by Art. 363. That article contemplates direct relationship between the concerned articles and the Agreements and Covenants. The further contention of Mr. Mohan Kumaramangalam that in finding out whether an article is related to Agreements and Covenants, we should look to its origin or genesis, is not correct. If it is otherwise it must be held that all the articles of the Constitution in so far as hey deal with the former Rulers of Indian States and their subjects are concerned are related to Agreements and Covenants as they had their origin or genesis in the Agreements and Covenants. If that is so Art. 363 becomes all pervasive. We have earlier noticed the far reaching implications of such conclusion.

The petitioners contend that the plea of the respondent that Art. 291 does not confer a legal right on the Rulers to get privy purses cannot be considered as raising a genuine dispute and that contention is a mere manoeuvre to oust the jurisdiction of this Court and hence the same cannot be considered as dispute within Art. 363. According to the petitioner the said plea of the respondent is a mere pretence and not a dispute because dispute in law means a triable issue and not an assertion which is ex-

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facie untenable. It is not necessary to examine these contentions.

The basic issue arising for decision in these cases is of far greater significance than it appears at first sight. The question whether the Rulers can be derecognised by the President is of secondary importance. What is of utmost importance for the future of our democracy is whether the executive in this country can flout the mandates of the Constitution and set at night legislative enactments at its discretion. If it is held that it can then our hitherto held assumption that in this country we are ruled by laws and not by men must be given up as erroneous.

Before, proceeding to consider the decisions relied on by the learned Attorney General and Mr. Kumaramangalam in support of their contention that the disputes with which we are concerned in these cases are disputes falling within the ambit of Art. 363, it is necessary to mention at the very outset that the question whether the orders similar to the impugned orders are within the powers of the President under Art. 366(22) did never come before these Court for decision. No such orders had been passed by the President in the past. There was just one derecognition in the past i.e. that of the former Ruler of Baroda. That matter did, not come before courts. Hence there was no occasion for this Court

or for that matter any court in this country to consider the scope of Art. 366(22). The observations made by this Court in Rajendra Singh's case (supra) had been considered by me earlier. Even the scope of Art. 291 had not directly arisen for consideration in any of the decisions of this Court. It is true that there are a few observations in some of the decisions to which I shall presently refer about the nature of the right guaranteed under that Art. 291 and the impact of Art. 363 on that right.

Let me now consider the decisions relied on by the learned Attorney General. The first decision relied on by him is State of Seraikella v. Union of India and anr. etc.(1). Therein certain States which had acceded to the Dominion of India and which had merged in the Province of Bihar and administered as part of that Province instituted suits in the Federal Court of India 'before the 26th January 1950 for a declaration that various orders under which States came to be administered as part of Bihar and the laws under which those orders were made were ultra vires and void and the Province of Bihar had accordingly no authority to carry on the administration of the States. Those suits stood transferred to the Supreme Court of India under Art. 374(2) of the Constitution after the Constitution came ino force.

(1) [1951] S.C.R.474

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In those suits the principal question that fell for decision was whether the dispute as regards the validity of the merger could be gone into by this Court in view of Art. 363 of the Constitution. This Court held that as the suits were really to enforce the plaintiffs' right under the Instruments of accession and the dispute between the parties really arose out of those instruments, in view of Art. 363(1) is court had no jurisdiction to hear the suits. The principal controversy in that case came squarely, within the ambit of the first part of Art. 363(1). Hence that decision is not relevant for our present purpose.

The next case referred to is Visweshwar Rao v. The State of Madhya Pradesh(1). Therein the dispute was about the validity ,of some of the Provisions of the Madhya Pradesh Abolition of Proprietory Rights (Estates Mahals, Alienated Lands) Act (1 of 1951). One of the contentions advanced on behalf of the petitioner in that case was that by the terms of the Merger Agreement, the properties concerned in that case were declared as the, petitioner's private properties and were protected from State legislation by the guarantee given under Art. 363 of the Constitution and hence the impugned Act was bad as that contravenes the provisions of that Art. The Court rejected that contention with these observations :

> "It is true that by the covenant of merger the properties of the petitioner became his private properties as distinguished from properties of the State but in respect of them he is in no better position than any other owner possessing private property. Article 362 does not prohibit the acquisition of properties declared as private properties by the covenant of merger and does not guarantee their perpetual existence. The guarantee contained in the article is of a limited extent only. It assures that the, Rulers properties declared as their private properties will not be claimed as State properties. The guarantee has no greater scope than this. That guarantee has been

fully respected by the impugned statute, as it treats those properties as their private properties and seeks to acquire them on that assumption. Moreover it seems to me that in view of the comprehensive language of article 363 this issue is not justiciable."

From this it is clear that the decision in question does not bear on the points in controversy in these cases.

The learned Attorney-General next relied on the decision in Sri Sudhansu Shekhar Singh Deo v. The State of Orissa and

(1) [1962] S.C.R. 1020.

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Anr.(1). Therein a former Ruler of an Indian State challenged the levy of agricultural income-tax on his agricultural properties under the Orissa Agricultural Income-Tax Act, 1947 (Orissa Act 24 of 1947). He contended that in view of the guarantees given to him under cls. (4) and (5) of the merger agreement entered into between him and the Dominion of India, no agricultural income-tax can be levied on the income from his private agricultural properties. That contention was repelled by this Court holding that the privileges granted under cls. (4) and (5) of the Agreements of Merger were his personal privileges as an ex-Ruler and those privileges did not extend to his private properties and that the claim made by him of immunity from taxation relying upon the Agreement of Merger was not justiciable. The ratio of that decision is of no assistance in these cases. But the learned Attorney-General relied on the observations found at pp. 785 and 786 of the Report. Those observations are :

"Even though Art. 362 is not restricted in its recommendation to agreements relating to the privy purse and covers all agreements and covenants entered into by the Rulers of Indian States before the commencement of the Constitution whereby the personal rights, privileges and dignities of the Ruler of an Indian State were guaranteed, it does not import any legal obligation enforceable at the instance of the erstwhile Ruler of a former Indian State. If, despite the recommendation that due regard shall be had to the guarantee or assurance given under the covenant or agreement, the Parliament or the Legislature of a State makes laws inconsistent with the personal rights, privileges and dignities of the Ruler of an Indian State the exercise of the legislative authority cannot, relying upon the agreement or covenant, be questioned in any court and that is so expressly provided by Art. 363 of the Constitution."

The only remark in the above observation relevant for the purpose of the present cases is : "Even though Art. 362 is not restricted in its recommendation to agreements relating to the privy purse" thereby meaning that guarantee as regards the privy purse also comes within the scope of Art. 362. This is a casual remark. In that case the Court had no occasion to consider the scope of Art. 291 or Art. 362.

The decision of this Court in ('H. H. The Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. State of Rajasthan and Ors., referred to by the learned Attorney-General during the

(1) [1961] 1, S.C.R. 779

(1) [1964] 5 S.C.R. 1.
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course of his arguments does not in the least bear on the point under consideration. Therein Shah, J. speaking for the Court merely set out the arguments of the parties as to the scope of Arts. 291, 362 and 363 but declined to go into them as those Arts had not been relied on in the High Court. The next decision relied on by the learned Attorney-General is the decision of this Court in State of Gujarat v. Vora Fiddali Badruddin Mitniberwala(1). The material facts of that case were that the Ruler of the, State of Sant had issued a Tharao dated 12th March, 1948 granting full right and authority to the jagirdars over the forest in their respective villages. Pursuant to the agreement dated March 19, 1948 the. State of Sant merged with the Dominion of India. At the time of the merger, it was expressly agreed that no order passed or action taken by the Maharana before the day of April 1, 1948 would be questioned but after the merger the Government of Bombay in which province the former State of Sant had merged in consultation with the Government of India cancelled the Tharao in question holding that it was not a bona fide grant. The jagirdars challenged the validity of that order and in support of their case they relied on the relevant clauses in the Merger Agreement. This Court held that the guarantees given under the Merger Agreements cannot be relied on by the Municipal Courts in view of Art. 363.
The last case relied on by the learned Attorney-General is Nawab Usmanali Khan v. Sagermal (2). In that case a creditor of a former Ruler sought to attach the privy purse payable to the Ruler under Art. 291. The Ruler objected to the same on the ground that attachment is invalid in view of cl. (g) to the Proviso of s.60(1), C.P.C, which provision says that political pensions are not liable to be attached. The word "pension" in s.60(1) (g) implies periodical payment of money by the Government to the pensioners-see Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Ltd. (3). In Bishambhar Nath v. Nawab Imdad Ali Khan(4), Lord Fatson observed

> "A pension which the Government of India has given a guarantee that it will pay, be a treaty obligation contracted with another sovereign power, appears to their Lordships to be, in the strictest sense a political pension. The obligation to pay as well as the actual payment of the pension, must in such circumstances, be ascribed to reasons of State Policy.

(1) [1964] 6, S.C.R. 461
(2) [1965] 3, S.C.R. 201.
(3) [58] 1. A. 215;
(4) [1890] L.A. XVII 18.
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Relying on these decisions and taking into consideration the nature of the liability in relation to the payment 'of privy purse, this Court held that Privy Purse is a political pension and as such, the same is not liable to be attached. This, in short is the ratio of the decision. If the decision had said nothing more it would not have advanced the case of the respondent. But in the course of the judgment Bachawat J. who spoke for the Court after summarising Arts. 291, 362 and 363 observed as follows

> "On the coming into force of the Constitution of India the guarantee for the payment of periodical sums, as privy purse is continued

by Art. 291 of the Constitution but its essential political character is preserved by Art. 363 of the Constitution, and the obligation under this guarantee cannot be enforced in any municipal court. Moreover, if the President refuses to recognise the person by whom the covenant was entered into as the Ruler of the State, he would not be entitled to the amount payable as privy purse under Art. 291. Now, the. periodical payment of money by the Government ,to a Ruler of a former Indian State as privy purse on political considerations and under political sanctions and not under a right legally enforceable in any municipal court is strictly a political pension within the meaning of s.60(1) (g) of the Code of Civil Procedure."

But these observations are obiter. The learned judges in that case had no occasion to consider nor did they go into the scope of Art. 291 or Art. 363. Every observation of this Court is no doubt, entitled to weight but an obiter, cannot take the place of the ratio. Judges are not oracles. In the very nature of things, it is not possible to give the same attention to incidental matters as is given to the actual issues arising for decision. Further much depends on the way the case is presented to them.

In the State of Orissa v. Sudhansu Sekhar Misra and Ors.(1) dealing with the question as to the importance to be attached to the observations found in the judgments of this Court. this is what this Court observed

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Early of Halsbury LC said in Quinn v. Leathem (1901) A.C 495 :

"Now before discussing the case of Allen v. Flood 1898) A:C.1 and what was decided therein, there are

(1) [1968] 2, S.C.R. 154.

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two observations of a general character which I wish to make, and one is to repeat what I have very often said before; that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical

at all."

It is not a protable task to extract a sentence here and there from a judgment and to build upon it.

In my opinion none of the questions of law arising for decision excepting that relating to the petitioners' right to move this Court under Art. 32 is res Integra.

The only question remaining for consideration is whether the petitioners have been able to establish any construction of their fundamental rights in order to entitle them to move this Court under Art. 32. This question need not detain us for long. The petitioners have complained that the rights under Arts. 14, 19, 21 and 31 have been contravened. As I am satisfied that the rights under Arts. 31 and 19 (1) (f) have been contravened it is not necessary to examine the alleged contravention of other rights.

I have earlier come to the conclusion that the right to get the privy purse under Art. 291 is a legal right. From that it follows that it is a right enforceable through the courts of law. Thai right is undoubtedly a property. A right to receive cash grants annually has been considered by this Court to be a property-see State of M.P. v. Ranojirao Shide and Anr(1). Even if it is considered as a pension as the same is payable under law namely Art. 291, the same is property-see Madhaorao Phalke v. State of Madhya Bharat(2).

We have also earlier seen that certain benefits have been conferred on the Rulers under the Wealth Tax Act. As a result of the impugned orders, all those benefits are purported to have

(1) [1968] 3, S.C.R. 489

(2) (1961) 1, S.C.R. 957

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been taken away. The denial of those benefits which had been afforded to the Rulers under law is again a contravention of the petitioners' fundamental right to property. It was conceded by the learned Attorney General that an illegal deprivation of any pecuniary benefit to which a person is entitled under any law is. a deprivation of his fundamental right. In view of this concession it is not necessary to refer to decided cases.

For the reasons mentioned above, I allow these petitions with costs, quash the impugned orders which means that the status quo ante is restored. The declaration asked for in relief No. 2 is unnecessary. There is no need at present to go into the, other reliefs asked for.

Ray, J. These are eight petitions. The petitioners are described as Rulers of Gwalior, Udaipur, Nabha, Nalagarh, Kutch, Dhrangadhra, Patna and Benaras.

On 6 September, 1970 in exercise of the powers vested in the President under Article 366(22) of the Constitution, the President directed that with effect from the date of the said order His Highness Maharajdhiraja Madhav Rao Jiwaji Rao Scindia Bahadur do cease to be recognised as a Ruler of Gwalior.

Similar orders were made by the President in regard to the other seven petitioners.

All the petitions are in substance the same. It will not, there fore, be necessary to refer to all the petitions separately. The case of the petitioner in Writ Petition No. 376 of 1970 can be arbitrary, malafide and a fraud on the Constitution.

The petitioner challenges the aforementioned order (hereinafter referred to as the order) as violative of Articles 14, 19(1) (f) and 31(1) and (2) of the Constitution. The order is also challenged to be unconstitutional,. ultra vires, void, inoperative,, arbitrary, malafide and a fraud on the

Constitution.
The grounds for challenge alleged in the petition are these First, the privy purses have been guaranteed under Merger Agreements and Covenants. Merger Agreements and Covenants are inextricably linked up with Instrument of Accession. There pledge to pay privy purses and the guarantee regarding privileges are inseparable from accession and merger. The obligation to, pay privy purse and the guarantee regarding privileges cannot be abolished by an executive order. The whole purpose of the order is to deprive the petitioner of privy purse and privileges, guaranteed under the Covenants and Merger Agreements and also guaranteed and asured by Articles 291 and 362 of the Constitution. The whole object of the order is to override and overrule
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the Constitution on the point of Rulers rights, privileges and privy purses after the rejection of the Constitution (24th Amendment) Bill by the Rajya Sabha.
Secondly, derecognition of all the Rulers en masse is itself .the clearest possible proof that the whole object is to abolish the institution of Rulership altogether and the rights and privileges .attached thereto including the right to privy purse. Under-the Merger Agrements and Covenants a Ruler is entitled to privy purse, rights and privileges enjoyed before 15 August, 1947 and succession to the gaddi in accordance with the law and custom of the family. The Government of India in discharge of the obligation to ensure the fulfilment of these rights has been recognising successors to Rulers and paying privy purses to the Rulers and to their successors. 'The procedure of recognition of the persons, so entitled by the President for the purpose of Articles 291 and 362 has to be read with the contractual obligation which still survived between the Union of India and the Ruler. Once the President has recognised a person who is entitled to receive privy purse and to be accorded rights and privileges as a Ruler, there can be no interference with the right to receive privy purse.
Thirdly, there is no substantive provision in the Constitution .conferring on the President a right to recognise or not to recognise a Ruler or to withdraw recognition. Once the procedure of recognition has been exhausted the President becomes functus officio and has no further authority to withdraw the recognition which he has accorded. In recognising a Ruler the President has to ,conform to the fact of a certain person being Ruler or to the fact of succession in accordance with the position under the Covenants and Merger Agreements and in accordance with law and custom of the family. Article 366(22) imposes a constitutional duty on the President to recognise an existing fact in accordance with the provisions of the Covenants and Merger Agreements and the President has no power or authority independent of such facts. The President is bound by contractual obligations in the Covenants and Merger Agreements and by the Constitutional duty imposed upon him to recognise a person entitled to receive privy purse. The order derecognising Ruler en masse brings the institution of Rulership to an end. The order is in contravention of Articles 291, 362, 366(22) and 53(1).
Fourthly, the order violates Article 14, because it singles out the Rulers for hostile discrimination and deprives them of their valuable rights to property without compensation and violates solemn agreements and the express provisions of the Constitution. 'There is deliberate defiance of the Constitution by wilful repudiation of contractual obligations against a class of citizens.

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Fifthly, the right to receive privy purse and other rights constitutes property within Articles 19 (1) (f) and 31 and the order seeks to deprive the petitioner of his right to privy purse and other rights in violation of Article 19(1) (f). The right to taxfree privy purse and other rights are properties of the petitioner and the petitioner is deprived of the same without authority of law in violation of Article 31(1). The privy purse is in substance and in reality compensation for the transfer by Rulers of inter alia their properties and it is not competent to the Government to abolish the right without compensation in the form of privy purse.

Sixthly, the Rulers, it is alleged, acted on the faith of the undertakings and guarantee given by the Government of India regarding privy purses and preservation of Rulership and of personal rights and privileges. The Rulers acted to their detriment by giving away vast properties. The Government is, therefore, estopped by the doctrine of promissory estoppel from refusing to pay the privy purse. A fiduciary duty is cast on the Government of India to respect and implement the provisions of the Merger Agreements and the Covenants: The Government is bound by its pledged words to pay privy purse and to recognise Rulership. Alternatively, the order leaves the Merger Agreements and Covenants untouched and the Union is bound to pay privy purse and to recognise the personal rights and privileges and to discharge all obligations under the Covenants and Merger Agreements and the Constitution.

Finally, the petitioner alleged that Article 363 does not cover the case of a policy to abolish the institution of Rulership and rights and privileges and privy purses of Rulers. The questions whether en masse derecognition of Rulers is ultra vires Article and whether the Government by executive action can abolish the institution of Rulership and wipe out Articles 291 and 362 by policy decisions are said to be outside Article 362.

On these allegations in the petition the petitioner seeks three declarations; First that the order is ultra vires, secondly, that the petitioner continues to be a Ruler and continues to be entitled to privy purse and privileges, and thirdly, a. writ 'under Article 32 directing the Government to pay privy purse, recognise Rulership and pay compensation.

The respondent denies that the petitioner is legally entitled to privy purse and privileges or that the Government is bound to pay privy purse and accord the privileges by reason of the Covenants or Merger Agreements. The Government denies that the petitioner is entitled to privy purse or to privileges or that the Government is bound to pay privy purse or accord privileges under Arti-

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cles 291 and 362 respectively. The Government denies that the alleged obligation to pay privy purse or the alleged guarantee regarding privileges cannot be abolished by executive order. The Government denies that independently of Article 366(22) the petitioner is entitled to privy purse or to privileges. The Government denies that the President is bound by contractual obligations or constitutional duty to recognise a person to be entitled to privy purse. The Government denies that the Government has no right to refuse to pay privy purse or to derecognise Rulers. The Government denies that the order violates Articles 19 and 31 or that the petitioner has been deprived of privy purse or privileges because of the grounds alleged. The Government

denies that Article 366(22) imposes any duty on the President to recognise any existing fact in accordance with the Covenants or that any existing Ruler is an existing fact for recognition.

The Government denies that the order is ultra vires or there is any institution of Rulership. Finally, the Government denies that derecognition is outside Article 363 or that questions of abolition of Rulership or wiping out Articles 291 and 362 are outside Article 363.

The Attorney General raised the plea of the bar of jurisdiction of this Court under Article 363 at the threshold. Article 363 is as follows :

> "363. (1) Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predessor Governments was a party and which has or has been continued in operation after such commencement or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty,, agreement, covenant, engagement, sanad or other similar instrument.
> (2) In this Article-
> (a) "Indian State means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and
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> (b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State".

The first bar is in any dispute arising out of any provision of a treaty, agreement, covenant entered into before the commencement of the Constitution and which has continued in operation after such commencement. The second bar is in any dispute in respect of any right accruing under or any liability or obligation arising out of any provision of the Constitution relating to any treaty, agreement, covenant, engagement, sanad and other similar instruments.

It is, therefore, vitally necessary to ascertain first whether there are disputes; secondly, as to what those disputes are; and, thirdly, whether the disputes fall within Article 363.

The reason why I referred to the rival allegations is to indicate the nature and character of disputes. Mr. Palkhivala on behalf of the petitioner contended that there was no dispute as to privy purse or to recognition of a Ruler and the only contention was that the order of the President was a nullity. It is indisputable that no one comes to a court of law unless disputes have arisen. When the petitioner alleges that the order is a nullity and the Government alleges that the order is valid a dispute arises at once.

Mr. Palkhivala contended that the first limb of Article 363 was clearly not applicable because there is no dispute arising out of any Covenant or Merger Agreement and the bar under the second limb was not attracted for four reasons. First, rights, liabilities and obligations are not to be confused with powers or jurisdiction or limits of legislative or executive powers or jurisdiction. Any executive or legislative action which goes beyond the scope of Article 366(22) or violates Article 291 or Article 362 would raise a question as to the limits of executive or legislative competence and it cannot be said to raise a dispute as to any right, liability or obligation. It was emphasised that the only dispute is whether the President's order is a nullity and it is a dispute as to the limits of the President's jurisdiction and not a dispute in respect of any right, liability or obligation. Secondly, it was said that Articles 291 and 362 are mandatory Articles and if the Government chose to raise disputes about those Articles it would amount to saying that the Government was disputing the very obligation enacted by those Articles in the Constitution. Dispute in Article 363 was said not to cover a dispute the raising of which was expressly prohibited by the other provisions of the Constitution. Thirdly, any executive action in violation of Arti-
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cles 291 and 362 or beyond the ambit of Article 366 (22) would be a violation of Articles 53 and 73 of the Constitution and the latter Articles did not at all relate to Covenants or Merger Agreements. The refusal to pay privy purse was said to be in viola 4 of Articles 112, 113 and 114. Again it was said that if a law was passed in violation of Articles 291 or Article 362 it would be a breach of Articles 245 and 246 which Articles were not related to Covenants or Merger Agreements at all. Fourthly,, an executive action which is ultra vires or mala fide is a nullity and the bar of jurisdiction under Article 363 would apply only where the action is bona fide and cannot apply where the order is ultra vires and nullity.

Article 363 bars the jurisdiction of all courts in respect of any dispute covered by the Article. It is seriously challenged and controverted by the Government that Articles 291 and 362 have any mandatory character as alleged by the petitioner. It is disputed that the order is a nullity. It is. equally disputed that there cannot be any dispute as to rights or liabilities or obligations under the Articles aforesaid. If both parties say that an order is bona fide there can be no dispute. It is only when one party alleges the order to be a nullity and the other party affirms the order to be valid that parties will have a dispute. The petitioner's contentions bristle with disputes which in the ultimate analysis resolve into keenly debated disputes as to rights of Rulership and Privy Purse. The dispute as to jurisdiction of the President under Article 366(22) is not in vacuo but is a dispute as to rights of recognition of Ruler for the purposes of payment of Privy Purse and enjoyment of rights and privileges. Mr. Palkhivala submitted that he did not want any relief as to Privy Purse now and if the petitioner succeeded in getting a declaration that the order is nullity and if the Government thereafter did not pay Privy Purse the petitioner would then apply for that relief. This position indicates beyond any doubt that the heart of the matter is dispute as to Privy Purse which is stopped by the Order of the President. The order is for purposes of payment of Privy Purse and that is what the petitioner is seeking to enforce.

In order to appreciate the true scope and content of Article 363 it is necessary to find out as to why this Article and Articles 291, 362, 366(22) (hereinafter referred to collectively as the allied Articles) found place in the Constitution. These allied Articles deal with privy purses, princely privileges guaranteed under the Covenants and Merger Agreements entered into by Rulers of Indian States and recognition of Rulers by the President under Article 366(22). The roots of these Articles lie deep in the past. Therefore, the history and chronicle of events will have to be told. The transition from the British Rule to the Indian
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Independence and the establishment of the Republic of our country is a great constitutional development. The Constitution which was evolved represented the national ethos forged by the aims and aspirations of the, people throughout the length and breadth of our country. A great problem which awaited solution on the eve of our independence was the relation between our country and the Indian States. The British Cabinet Mission came to India in the month of March, 1946. The Mission came to bring about a change in the British policy towards India. Imperialism was crumbling after the Second World War. The Cabinet Mission in no uncertain terms said that when India was going to be an independent country it was not only necessary but also desirable that the Indian States should combine with free India for security, stability and solidarity. The Rulers of Indian States also realised the importance of such a measure in an advised age when the leaders of our country impressed upon the Rulers the wisdom. of such a course of action to avert the upheaval and upsurge of the people in the Indian States which were also tottering with the decline of British imperialism. It is in this background that the Cabinet Mission declared in May, 1946 that paramountcy of the British Crown which provided the basis of relations between British India and the Rulers of Indian States could neither be retained by the British Crown nor transferred to the new Government of India. The paramount power in British India was derived from the Royal Prerogative. The rights which the paramount power claimed in exercise of the functions of the Crown in relation to the State covered both external and internal matters in the States. The Indian States had no international status. The paramount power under the British Regime recognised succession to the gaddi and settled disputes as to succession and imposed the duty of loyalty to the Crown. The Indian States Committee in 1927 had expressed the view that 'paramountcy must remain paramount, it must fulfil its obligations, defining or adapting itself according to the shifting necessities of the time and the progressive development of the States". This was the essence of the doctrine of paramountcy in British India. Paramountcy could not be defined. It was an imperialist imposition on the Rulers of Indian States.

The Cabinet Mission issued a Memorandum dated 12 May, 1946 and announced a plan on 16 May, 1946 later on known as the Cabinet Mission Plan. In the memorandum the Cabinet Mission affirmed that the rights of the Indian States which flowed from their relations with the British Crown would no longer exist when the British would leave India and that the rights surrendered by the States to the paramount power would revert to these States. The Cabinet Mission Plan was a statement embodying suggestions
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and recommendation towards the speedy setting up of a new Constitution for India. Referring to the States, the

Cabinet Mission Plan said that with the attainment of the Independence of our country, the relationship which had existed between the States and the British Crown would no longer be possible and paramountcy ,could neither be retained by the British nor transferred to the new Government. The Plan further said that the Rulers had given assurances that they were ready and willing to co-operate in the new development of India. On 3 June, 1947 the British Government superseded the Cabinet Mission Plan in so far as it referred to the States and made it clear that the decisions announced related only to British India and the British policy towards Indian States contained in the Cabinet Mission memorandum of 12 May, 1946 remained unchanged.

As a prelude to the transfer of power from the British Crown to our country the Government of India decided to set up a Department called the States Department to conduct their relations with the States in matters of common concern. On 5 July, 1947 Sardar Patel defined the policy of the Government of India by stating that "the people of India were knit together by bonds of blood and feeling no less than of self-interest" and "no impassable barriers could be set up between us" and he said that the alternative to co-operation was anarchy and chaos. There was special meeting of the Rulers on 25 July, 1947. The then Crown re-presentative Lord Mountbatten in the course of his address to the Rulers advised them to accede to the appropriate Dominion in regard to three subjects of Defence, External Affairs and Communications and assured them that their accession on these subjects would involve no financial liability and in other matters there would be no encroachment on their internal sovereignty. Barring three States the other Indian States acceded to the Dominion of India by 15 August, 1947.

The Indian Independence Act was to come into existence on ’15 August, 1947. Section 7 of the Indian Independence Act, 1947 provided that with the lapse of suzerainty of the Crown over Indian States all treaties and agreements between the Crown and the Rulers of Indian States, all functions exercisable by the Crown with respect to India in States, all obligations of the Crown towards Indian States or Rulers thereof and all powers, rights, authority or jurisdiction exercisable by the Crown on that date in or in relation to Indian States by treaty, grant, usage, suzerainty or otherwise would also lapse. The proviso to section 7 of the Indian Independence Act, 1947 was that notwithstanding the lapse of suzerainty and lapse of treaties, effect shall, as nearly as might ’be, continued to be given to the provisions of any such agreement

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referred to in section 7 (b) of the Act which related to customs. transit, communications, posts and telegraphs or other like matters until the provisions in question were denounced by the Ruler of the Indian State or by the Dominion or Province or were superseded by subsequent agreements.

The Instruments of Accession executed by the Rulers of Indian States declared accession to the Dominion of India on three subjects, viz., Defence, External Affairs and Communications. In the Instruments of Accession the Rulers provided that nothing in the instrument wag to be deemed to commit the Ruler in any way to acceptance of any future Constitution of India or to fetter a Ruler’s discretion to enter into arrangements with the Government of India under any such future Constitution. The Instrument concluded by

stating that nothing in the Instrument would affect the continuance of the Ruler's sovereignty in and over the State or save as provided by or under the Instrument, the exercise of any powers, authority and rights then enjoyed by him as a Ruler of the State or the validity of any law then in force in his State.

The Instrument of Accession was followed by Stand Still Agreement. The Stand Still Agreement between the Ruler and the Dominion of India provided that until new agreements were made all agreements and administrative arrangements as to matters of common concern then existing between the Crown and the Indian States should, in so far as might be appropriate, continue as between the Dominion of India or as the case might be, the part thereof, and the State. In a Schedule were enumerated the various matters of common concern. The important matters were, inter-alia, Air communications, Arms and equipment, Currency and coinage Customs, Indian States Forces, External Affairs, Extradition, Import and Export Control, Irrigation and Electric Power, Motor vehicles, National Highways, Posts, Telegraphs and Telephones, Railways, Salt, Central Excises and 'Wireless.

The pattern of integration of Indian States was not uniform in all cases. There were 562 Indian States whereof 216 merged in Provinces, 61 were taken over as centrally administered areas and 275 integrated in different Unions of States. The Merger Agreements were entered into by the Rulers with the Dominion of India. The two important clauses in the Merger Agreements were one whereby the Ruler, was to be entitled to receive from the revenues of the State annually for his privy purse the sum mentioned therein free of taxes and the other whereby the Dominion Government guaranteed succession according to law and custom to the gaddi of the State and to the Ruler's personal rights, 14-L744supCI/71

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privileges,, dignities and titles. These two principal clauses are to be found in all Merger Agreements. There were differences in the Merger Agreements as to the amount of privy purse and in some cases as to the rights of successors to Rulers with regard to privy purses. The Rulers of Centrally merged States also entered into similar agreements with the Dominion of India. Those agreements also had two similar principal clauses for privy purse the sum mentioned free of taxes and guaranteed succession according to law and custom to the gaddi of the State and to the Ruler's personal rights, privileges, dignities and titles. The third type of integration was the formation of a Union of States whereby certain States described as the Covenanting States entered-into a Union of States with a common executive, legislative and judiciary. These Covenants provided for a Council of Rulers with the Rajpramukh as the President of the Council. These Covenants also had similar provisions with regard to privy purses and succession. The Ruler of each Covenanting State was to be entitled to receive annually from the revenues of the United State for his privy purse, the amount mentioned free of all taxes. The succession according to law and custom to the gaddi of each Covenanting State and to the personal rights, privileges, dignities and titles to the Rulers was guaranteed. The Government of India concurred in the Covenants and guaranteed all the provisions. The Covenant for the United State of Madhya Bharat came into existence in the month of April, 1948. The other Unions also came into existence near about the same time. The Merger Agreements

came into existence near about the months of April and May, 1948.

In the month of September, 1948 the Rulers of Covenanting States executed revised Instruments of Accession, and these were signed by the Rajpramukhs of the different Unions of States. These Unions accepted all matters enumerated in List I and List III of the Seventh Schedule of the Government of India Act, 1935 as matters in respect of which the Dominion Legislature might make laws for the Union of States other than items relating to any tax or duty in the territories of the United State. These Revised Instruments of Accession were accepted by the Governor-General on behalf of the Dominion of India. In the month of November, 1948 the Unions of States by their Rajpramukhs issued proclamations accepting the Constitution of India.

The Government of India Act, 1935 was amended in the year 1947 to effect necessary changes on the passing of the Indian Independence Act, 1947. Sections 5 and 6 of the Government of India Act, 1935 as amended in 1947 provided first for the accession of Indian States to the Dominion and secondly that an Indian State was to 'be deemed to have acceded to the Dominion if the Governor-General signified his acceptance of an instrument of

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accession making a declaration in terms of section 6 thereof. Accession was to be subject to the terms of the instrument. It has already been noticed earlier that all Rulers of Indian States executed Instruments of Accession but some Indian States thereafter merged with the Governors' Provinces and some were centrally administered areas after merger and then formed Unions of States.

It should be noticed that the Government India Act, 1935 did not provide for any Merger Agreement. These Merger Agreements in the case of Provincially merged and Centrally merged States did not have any legal basis and sanction under the Government of India Act, 1935. The Extra Provincial Jurisdiction Act 'was therefore passed in the year 1947 giving power to the Central Government to exercise extra provincial jurisdiction over a Provincially merged or a Centrally merged State only if the Centre had by treaty, agreement, acquired full and exclusive authority and jurisdiction and power for and in relation to the governance of the State. The administration of the merged Indian States could not be done either under the Government of India Act, 1935 or the Instrument of Accession. The Extra Provincial Jurisdiction Act, 1947 was passed for exercising powers of administration and legislation in regard to provincially merged and centrally merged States. The Extra Provincial Jurisdiction Act was really a half way house between complete separateness and full integration. A law passed by the Dominion Parliament did not automatically apply to the merged States but had to be made applicable by a notification under the Extra Provincial Jurisdiction Act, 1947. That is why sections 290A and 290B were inserted by the Government of India Act Amendment Act, 1949 into the Government of India Act, 1935 for effecting integration of merged States.

Section 290A of the Government of India Act, 1935 provided for administration of certain Acceding States as Chief Commissioners' Provinces or as part of a Governor's or Chief Commissioner's Province. Section 290B provided for administration of areas included within a Governor's Province or a Chief Commissioner's Province by an Acceding State. Under the said section 290A there came into existence the States Merger (Governors' Provinces) Order,

1949 issued on 27 July, 1949. This order was applied to the provincially merged States with effect from 1 August, 1949. Under the States Merger (Governors' Provinces) Order, 1949 the provincially merged States were to, be administered in all respects as if they formed part of the absorbing Provinces and all laws including orders made under the Extra Provincial Jurisdiction Act, 1947 were to continue in force until repealed or modified. Under the States Merger Order, 1949

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provision was made for representation of the merged States in the Legislature of the absorbing Province,, the apportionment of assets and liabilities as between the Centre and the Provinces and the institution of suits and other proceedings against the Government and the continuance of pending proceedings. A similar order known as the States' Merger (Chief Commissioners' Provinces) Order 1949 was made applicable to the centrally merged States with effect from 1 August, 1949. The provisions of the States' Merger (Chief Commissioners' Provinces) Order, 1949 were simil ar to the States Merger (Governors' Provinces) Order, 1949. With the issue of the States Merger (Government Provinces) and 'States Merger (Chief Commissioners' Provinces) Orders, 1949 the position of the provincially merged States became to all intents and purposes, the same as that of the provinces. Similar progress was also made in the direction of improving the administrative machinery of the Chief Commissioner's Provinces which :assimilated the centrally merged States.

Mr. Palkhivala on behalf of the petitioner contended that the developments and integration of Indian States on the basis of the Instruments of Accession and the Covenants and Merger Agreements were constitutional developments and provided constitutional obligations. The Attorney General on the other hand rightly contended that the entire relationship of the Dominion of India vis-a-vis the Indian States was in the-domain of Acts of State and the Instruments, Merger Agreements and Covenants did not have any constitutional sanction and obligation and were totally unenforceable in municipal courts. The British Crown as Sovereign State dealt with the Indian States and either conquered or annexed their territories or Rulers of these States ceded their territors or some Rulers entered into alliances with the British ,Crown. Such action of the British Crown was held by long series ,of decisions to be an Act of State and treaties and stipulations arising out of Acts of State could not be enforced in municipal courts. This Court has in several decisions held that Covenants and Merger Agreements with the Indian States are Acts of State and not enforceable under municipal law. lsee State of.Seraikella v.Union of India & Anr.(1) Virendra Singh & Ors. v. The State of Uttar Pradesh (2) M/s. Dalmia Dadri Cement Co. Ltd. v. 'The Commissioner of Income-tax (3) , The State of Saurashtra v. Memon Haji Ismail Haji (4), State of Gujarat v. Vora Fiddali Badruddin Mithibarwala(5) and Nawab Usmanali Khan v. Sagar. mal(61).

(1) [1951] S.C.R. 474. (2) [1955] 1 S.C.R. 415.
(3) [1959] S.C.R. 729. (4) [1960] 1 S.C.R. 537.
(5) [1964] 6 S.C.R. 416. (6) [1965] 3 S.C.R. 201.

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Mr.Palkhivala contended that on the accession of Indian States there could be no Act of State between the Dominion of India and the Rulers who acceded to the Dominion and thereafter between the Republic of India and the Rulers who were citizens. This argument is also fallacious. This

Court in the same case, State of Gujarat v. Vora Fiddali Badruddin Mithibarwala(1) "interpreted the integration of Indian States with the Dominion of India as an Act of State and has applied the law relating to an Act of State as laid down by the Privy Council in a long series of cases. ..... The Act of State comes to an end only when the new sovereign recognises either expressly or impliedly the rights of the: alliens..... This Court further said "we are not concerned with the succession of India from the British Crown but with State: succession between Sant State and India and there was no second succession in 1950. Whatever had happened had already happened in 1948, when Sant State merged with the Dominion of India. The Act of State which began in 1948 could continue uninterrupted even beyond 1950 and it did not lapse or get replaced by another Act of State". In State of Gujarat v. Vohra Fiddali(1) the citizen claimed right on the basis of a Tharao granted by the Ruler before the merger. Apart from the fact. that the Government of Bombay cancelled the right this Court held that the right granted by the Ruler was not recognised before 1950 and the Constitution gave support to those rights which were extant on 26 January 1950. Fiddali failed on both the grounds of recognition and existing law. The Act of State is illustrated by the making of peace and war, the annexation or cession of territory, the recognition of a new State or new Government of an old State. Such acts have been held not to form the basis of action because they form the subject of political action in an Act of State. 'The sanction of an Act of State is political to all sovereign powers and that is why municipal courts accepted that position.

It is in this background that the Attorney General described Article 363 as embodying the concept of paramountcy being recreated in the form of a constitutional provision excluding interference by Courts in disputes relating to Instruments of accession,. Covenants and Merger Agreements. The Attorney General did not submit that there was any paramountcy between the Republic and its citizens nor that there was any doctrine of paramountcy subsisting in our country after 1950 or that it survived as a constitutional provision. Article 363 and the other allied Articles really reflect what the makers of the Constitution picked up from the historical past and inserted in the Constitution. The Constitution provided for recognition of Rulers by the President. This recognition was necessary because without it the Rulers could not be paid privy purses or enjoy their rights and privileges.

(1) [1964] 6 S.C.R. 416.

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These four Articles in the Constitution appear to be slightly unrealistic or anachronistic in a Republican Constitution as it deals with citizens and the sovereignty of the people being reposed in the Republic. The founding fathers inserted these four allied Articles as rich hangings in a homely house. The real basis for Article 363 was that when the Constitution recognised the ,guarantee of privy purses and succession to the gaddi in the Merger Agreements and Covenants it was appreciated that if any dispute in regard to such agreements or covenants or any dispute as to any right accruing under or any obligation arising out of any pro-vision of the Constitution relating to such covenants or agreements were allowed to be brought in a court of law, the entire political relationship of the Dominion of India with the Indian States in an aegis of Act of State might be upset and upturned by such litigation in

municipal courts and there would be room for regret on many courts. If Article 363 were not inserted litigations would have gone on endlessly as some of the, Orissa Rulers commenced in the State of Seraikella(1) case to undo the Orissa merger agreements.

The Constitution contemplated political power of the President to recognise Rulers. If people or disgruntled contenders for Rulership were allowed to litigate by challenging either the recognition or by preferring a claim of recognition, the courts would not be capable of adjudicating these disputes because the character and content of, the President's power of recognition of Rulers is political and is not limited by the personal law of succession. Again, if the President withdrew recognition of a Ruler and the latter came to a court of law it would be equally impossible for .courts to decide in an area which was consigned to the President as an inheritance of political power from the domain of Acts of State and privileges of Paramountcy. That is why Article 363 really embodied the principles of Acts of State which regulated and guided the rights and obligations under the covenants or merger agreements by incorporating the doctrine of unenforceability of covenants or merger agreements coming into existence as Acts of State.

The other reason for insertion of Article 363 was that the rights accruing under or obligations arising out of provisions of the Constitution relating to covenants or merger agreements were imperfect rights. A question was posed that if there were rights as to succession, privy purse and privileges there should be a remedy. In the first place, there are no legal rights to recognition of Rulership, payment of privy purse and enjoyment of rights and privileges. Prior to the Constitution, the Rulers of Indian States could not start proceedings in municipal courts to enforce agreements or obligations arising out of covenants or merger

(1) [1951] S.C.R. 474.

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agreements because such rights and obligations were unenforceable on the ground of dealings under Acts of State. The Constitution gave recognition to guarantees under covenants and agreements by the allied Articles 291, 363 and 366(22). The Attorney General characterised the payment of privy purse, enjoyment of rights and privileges and the recognition of Rulership as imperfect rights and obligations. Whatever rights and obligations are to be found in the merger agreements and covenants were recognised by the Constitution in relation to those covenants and agreements. But the Constitution made such rights unenforceable in a Court of law. That is why these rights and obligations are called imperfect rights and imperfect obligations. Examples can be found of such imperfect legal rights when claims are barred by lapse of time or claims are unenforceable because of lack of registration. These imperfect rights and obligations are described in Salmond on Jurisprudence, 12 Ed. at pages 233-234 to be exceptions to the maxim ubi jus ubi remedium because "the customary union between the rights and the rights of action has been for some special reasons severed" Salmond warns against confusing obligatriness with enforceability. It is "because of unenforceability" that "these rights are sometimes termed imperfect". Take for instance an ordinary contract of a merchant with the Government. If the contract is not in compliance with Article 299 it is unenforceable. The merchant has a mere imperfect right. "The ordinary

imperfect right is unenforceable because some rule of law declares it to be so. One's rights against the State are un-enforceable, not in this legal sense but in the sense that the strength of the law is none other than the strength of the State and cannot be turned or used against the State whose strength it is". Imperfect rights are not based on morality. Many rights are wrecked on the rock of unenforceability. Act of indemnity is one illustration. Duty is legal, when sanction is attached to its breach. Sanction means the appointed consequences of disobedience Sanctionless duties are imperfect obligations. Really speaking imperfect rights and obligations are what authors of Jurisprudence describe as no claim in the jural opposites of claim and no claim". A statute barred debt cannot be recovered in a court of law but if for some reason the debtor pays it he cannot later sue to recover it. The creditor had no liability but only liberty to pay. Liberty or privilege begins where duty ends and no right exists. These imperfect rights are thus in the category of "no claim" because of lack of legal sanction for enforcement by the bar of unenforceability laid down in the Constitution.

In our Constitution Article 363 is a positive Rule of unenforceability of certain rights and obligations. The Constitution is supreme and the provisions cannot be circumvented. This Court held in the Seraikella case(1) that Article 363 is a bar in any

(1) [1951] S.C.R. 474.

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dispute relating to covenants and merger agreements. In State of Gujarat v. Vahra Fiddali(1) this Court held that Article 363 precluded the municipal courts from considering and adjudicating upon any right under the Merger Agreement and guarantees were matters for the political department of the State and were thus outside the jurisdiction of this Court.

Again, in Usman Ali Khan;s(2) case, this Court held 'that the privy purse was a political pension and the payment was in relation to covenants and Merger Agreements, and, therefore, Article 363 was a bar. in a recent decision of this Court in Kunwar Shri Vir Rajendra Singh v. The Union of India's OrS. (3) it has been held that the recognition of rulership by the President is not an indicia of property but it entitles the Rulers to the enjoyment of Privy Purse contemplated in Article 291 and the personal rights, privileges and dignities mentioned in Article 362 of the Constitution. It was also held that the recognition of rulership by the President was an executive and political power and Article 363 constitutes a bar to interference by courts in a dispute arising by reason of recognition of rulership.

Mr. Palkhivala submitted that there was no political power of the President who had only executive power. The words "political power" denote power belonging to the State,, its government and policy. The Executive power has the political facet in many cases. To illustrate the exercise of rights, authority and jurisdiction by virtue of any treaty or agreement (Article 73); Foreign Affairs (Entry 10 in List I; of the Seventh Schedule) Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions in foreign countries (Entry 14 in List I of the Seventh Schedule); War and Peace (Entry 15 in List I of thE Seventh Schedule) and Foreign jurisdiction (Entry 16 in List I of the Seventh Schedule): The power of recognition of Rulership is political because it is exercised by the President in relation to Prince or

Chief by whom any Covenant or Merger Agreement was entered into and the necessity for recognition arises from the Covenants and Merger Agreements. It is a political power because it is not limited only to the law of succession or 'custom. The reasons of State Policy will enter the field. It is also a political power because it is not a compulsive power. If the scope of the power permits the President to recognise some one who is not entitled by law and custom then law and custom does not control it. By political power is meant that the consideration which moves the President is a matter on which the Court will find no standard for resolving, it judicially. "There is no judicial process to adjudicate upon such political consideration".

(1) [1964] 6 S.C.R. 416.

(2) [1965] 3 S.C.R. 201. (3) [1970] 2 S.C.R. 631.

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Article 363 is a non-obstante clause. It is a constitutional mandate. The prefatory words in Article, 363 "notwithstanding anything in the Constitution" exclude all other provisions of the Constitution from being attracted in disputes which fall within Article 363. There have been decisions of this Court on the meaning of the words "notwithstanding anything in this Constitution" occurring in Article 363 and in Article 329. In the State of Seraikella(1) case this Court held that Article 363 overrides all provisions of the Constitution. In N.P. Ponnuswami v. Returning Officer. Namakal Constitutency & Ors.(2) Article 329 was construed to mean that the jurisdiction of the High Court under Article 226 to interfere in regard to rejection of a nomination paper could not be challenged by a writ of certiorari to quash the proceedings. This Court, observed the difference between the words "subject to the provisions of this Constitution" occurring in Article 328 and "notwithstanding anything in this Constitution" occurring in Article 329 and held that the words in Article 328 could not exclude the jurisdiction of the High Court. The effect of a non-obstante clause was also considered by this Court in Aswini Kumar Ghosh and Anr. v. Arabind Bose and Anr.(3). In that case section 2 of the Supreme Court Advocates Act, 1 provided that notwithstanding anything contained in the Bar Councils Act, 1926 or in any other law regulating the conditions, subject to which a person not entered in the roll of Advocates, of a High Court might be permitted to practise in that High Court every Advocate of the High Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of' that High Court. The petitioner in that case insisted on the right to practise as an Advocate in the High Court at Calcutta by virtue of his being an Advocate of the Supreme Court. He made an application under Article 226. The High Court of Calcutta rejected the application. There was an appeal as well as a writ petition under Article 32. This Court observed that the High Court had not correctly approached the construction of section 2 by enquiring what the provisions were which that section sought to supersede- and then place upon the section such a construction as would make the rights conferred by it co-extensive with the disability imposed by the superseded provisions. This Court observed that first it would be ascertained as to what the enacting part of the section provides on a fair construction of the words used according to the natural and ordinary meaning and the non-obstante clause, was to be understood as operating to set aside as no longer valid' anything contained in relevant existing laws which were inconsistent

with the new enactment.
(1) [1951] S.C.R. 474.
(3) [1953] S.C.R. 1
(2) [1952]S.C.R. 218.
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The non-obstante clause must be allowed to operate with full vigour in its own field. In The Dominion of India and Anr. v. Shrinbai A. Irani & Anr.(1) section 3 of Ordinance No. 19 of 1946 contained a non-obstante clause with the words "notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition-until the expiry of this Ordinance and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient". The non-obstante clause was invoked in support of the submission that only those orders which would have ceased to be operative and come to an end on the expiration of the Defence of India Act and the Rules were the orders which were intended to be continued under section 3 of the Ordinance. This Court held that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. The, non-obstante clause was held not to cut down the construction and restrict the scope of the operation of the enactment, but was to be understood to have been incorporated in the enactment by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment. The result was that all immoveable properties which when the Defence of India Act expired were subject to any requisition effected under the Defence of India Act and Rules thereunder were to continue to be subject to requisition until the expiry of the Ordinance.
Mr. Palkhivala submitted that the petitioner's contention that the order of the President was a nullity was not a dispute within Article 363. The ordinary meaning of dispute is a contention, a controversy, a difference of opinion, a conflict of claims, and assertion of right on one side and the denial of it by the other. In Stroud's Judicial Dictionary it will appear that dispute as to whether a thing is ultra vires is nonetheless a dispute within an arbitration clause. In United Provinces v. Governor-General in Council(2) the plaintiff asked for a declaration that certain, provisions of the Cantonment Act, 1924 were ultra vires. The ,Governor-General in Council denied that the provisions were invalid and further contended that the dispute was not justiciable before the Court. It was h.-,Id that section 204 (1) of 'the Government of India Act, 1935 conferred exclusive jurisdiction on the Federal Court in any dispute. between the Governor-General in Council and any province if and in so far as the dispute involves any question (whether of law or fact) on which the exist-
(1) [1955] 1 S.C.R. 206.
(2) [1959] F.C.R. 124
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ence or extent of a legal right depends. The law in that case was challenged to be ultra vires. The plaintiff denied the validity of the law and the respondent asserted its validity. It was, therefore, a dispute on which the existence of a legal right depended. In the present case the dispute is whether the President has or has not the power to make the order impugned in these proceedings'.
The next question Which falls for consideration is the

meaning of the words "right accruing under", "any liability or obligation arising out of", "any of the provisions of the Constitution". It is obvious that if any right is said to accrue under or liability is said to arise out of any provision of the Constitution, the matter ends there as far as those words are concerned. The contention' of the petitioner that the President has no power under Article 366(22) to make an order for derecognition is a right asserted by the petitioner under the provisions of the Constitution and it is also the petitioner's contention that the President has no right arising out of Article 366(22) not to make an order of derecognition. It is necessary to have recourse to Article 366(22) and Article 291 to find out the nature of the petitioner's claim, the extent of the petitioner's right on the one hand and the nature of the order of the President and the extent of the right of the President on the other.

The most crucial words in Article 363 are "the provisions of the Constitution relating, to any such treaty, agreement, covenant, engagement, sanad or other similar instruments". Mr. Palkhivala's contention was that the order of the President under Article 366(22) did not give rise to a dispute in respect of a right accruing under the provisions of the Constitution relating to any agreement or covenant. Ordinarily, the word "relate" means to bring a thing or person in relation to another, to connect, establish a relation between, to have reference to, to be related, having relation to and to stand in some relation to another thing. This is the dictionary meaning. Mr. Palkhivala submitted that the provisions of the Constitution, viz., Articles 366(22), 291 and 362 might have reference to the Covenant but were not related to the Covenant. That is a mere verbal subterfuge because the word relate is synonymous with the word refer.

When Article 366(22) was introduced in the Constituent Assembly as will appear from the Constituent Assembly Debates, Vol. 10 it was said that "the form in which the Rulers find recognition in the new Constitution in no way impairs the democratic set up of the States". Recognition of a Ruler was necessary for the limited purpose of payment out of privy purse and it had no other reference. In Maharaja Pravir Chandra Bhanj Deo Kakatiya

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v. The State of Madhya Pradesh(1) the Ruler of the State of Bastar contended that he was still a sovereign Ruler and an absolute owner of certain villages and that the provisions of the Madhya Pradesh Abolition of Proprietary Rights Act did not apply to him. The Ruler of Bastar ceded to the Government of India full and exclusive authority in relation to the governance of the State and this Court held that the effect of the merger agreement was that a Ruler ceased to be a Ruler of an Indian State and under Article 366(22) of the Constitution a Ruler was recognised for the purpose of privy purse guaranteed under Article 291. In the Dholpur case (supra) the claim to recognition of Rulership is said to be neither a matter of inheritance nor a matter of descent by revolution. This power of recognition of Rulership is not traceable to any statutory authority and it is not a power vested in the executive by virtue of a statute. This power is political power in the field of paramountcy to which the Dominion Government and thereafter the Union Government succeeded. Between the execution of the covenants and the commencement of the Constitution the Rajpramukh exercised the power of recognition upon political consideration. (See Umrao Singh Ajit Singh Ji & Anr. v.

Bhagwati Singh Balbir Singh & OrS.,(2). The Constitution does not mention any right to be recognised nor any obligation to recognise Ruler. In Article 366(22) which is a definition clause is embedded only the political power to recognise a Ruler.

Succession to Rulership is not automatic in the sense that one who claims succession by law or custom is bound to be recognised. If it were so, the Constitution would have provided. Again, the words "for the time being" indicate that the recognition is neither for any fixed duration nor even for the life time of any person nor is, a line of succession is perpetuated.

The power of recognition of Rulers, existed during the British days. Between the Indian Independence Act, 1947 and the coming into effect of the Constitution Rulers were so described in covenants and agreements which were unenforceable in municipal courts on the ground of those being Acts of State. It cannot be said that there is any right to Rulership because the Constitution does not enact that there shall be Rulers or that the President shall recognise Rulers. Therefore, there is no constitutional mandate of what was contended by the petitioner to be an institution of Rulership. There cannot be said to be a legal right to recognition, because the power of the President to recognise for the time being repels any concept of a legal right to Rulership. The claim to recognition can only arise from the covenant or the Constitution. The claim to recognition arises

(1)[1961]2S.C.R.501.

(2) A.I. R. 1956 S.C. 15.

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from the covenants and merger agreements and not from Article 366(22), because the covenants and merger agreements were signed by the Rulers and guaranteed by the Government. Under Article 366(22) it was that Ruler or his successor who could be recognised. The guarantee regarding succession to the gaddi according to law and custom is in the covenants and agreements. Such succession can only mean succession to the Ruler who signed the covenant. When the covenant guaranteed the succession, it was guarantee of succession to the Ruler who signed the covenant. Therefore, the obligation to recognise a Ruler arises only from the covenants and agreements. There is no legal enforceable right to recognition under the co ant. No legal right to Rulership arises under Article 366(22)either. If there were legal right, Article 366(22) would have said that a Ruler means the Prince by whom any covenant was entered into and who shall be recognised by the President as a Ruler.

The recognition of Rulership does not exist in splendid isolation. The recognition of Rulership is intended only for the purpose of Article 291 and Article 362 in relation to covenants and merger agreements and for no other purpose. Therefore, Article 366(22) is a necessary and ancillary provision relating to Articles 291 and 362. Without recognition of Ruler under Articles 366(22) no effect can be given to payment of privy purse,, guaranteed in the covenants and agreements,

When counsel for the petitioner submitted that the order of the President was intended to abolish the concept of Rulership, he was reading into the Constitution, a permanent constitutional mandate for continuance of Rulers under the rubric of recognition of Rulers. Analogies between the President, Vice-President, the Chief Justice and the Judges of this Court, the Judges of the High Court, the Public Service Commission and the Election Commission and the

Rulers were drawn to support the theory that Rulership was an institution like the offices mentioned by way of illustration. These are constitutional offices recognised by the Constitution. The sanction of these offices is the Constitution. It is sophistry to speak of Rulership as an institution. When institutions are recognised the Constitution has specifically designated and recognised them by names, like Devaswom in Article 290A, the National Library, the Indian Museum, in List I Entry 62 of the Seventh Schedule, the Banaras Hindu University, the Aligarh Muslim University, the Delhi University in List I Entry 63 of the Seventh Schedule. Article 366(22) has no significance apart from Articles 291 and 362. Inasmuch as there is no legal right to recognition it makes no difference whether there is derecognition of one Ruler or derecognition, of all the Rulers. It was said that there is no

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power of derecognition. This Court has held in the Dholpur case (supra) that there is power to derecognise. The Constitution does not say that the President is bound to recognise a Ruler. It follows therefore that after derecognition he is not equally bound to recognise another person as Ruler.

The second limb of Article 363 speaks of rights accruing under or liability or obligation arising out of the provision of the Constitution relating to covenants or agreements. It is, therefore, to be seen whether Article 366(22) relates to covenants or agreements. No person can be recognised as a Ruler under Article 366(22) until first he entered into a covenant, referred to in Article 291 or secondly he is recognised by the President as the succession of the Ruler recognised under the, first part of Article 366(22). Therefore, the claim to be recognised a Ruler can only arise if he or his predecessor signed the covenant. There is express and direct relation to covenants. Counsel for the petitioner submitted that if the dominant and immediate purpose was not the enforcement of the covenant neither Article 291 nor Article 366(22) could be said to be related to the covenants or merger agreements. These words "dominant immediate purpose of enforcement of the covenant" are new words and therefore these words can neither be read into the Constitution nor the meaning of the words 'relate to" be allowed to have such a constricted meaning by the introduction of alien words.

It was said that the covenants and merger agreements were meant only for the purpose of identifying the Rulers. Article 366(22) has been put in relation to Art. 291 and Art. 362 and one cannot abstract Article 366(22) from the collocation of those Articles. All these three Articles 291, 362 and 366(22) stem from the covenants and merger agreements and but for the covenants and merger agreements these Articles would have not been there in the Constitution. The entire concept of recognition comes from the covenants and merger agreements, and cannot be divorced from Articles 291 and 362. The object of Article 366(22) was to subserve Articles 291 and 362 for understanding and giving effect to them. Ruler in Art. 366(22) is description of the person referred to in Articles 291 and 362. If the petitioner challenges the power of the President to derecognise him he claims that he has a right to continue as a Ruler which is a right related to covenants.

It was said that if the President derecognises one the President was bound to recognise another person as his successor. In 1956 the Ruler of Baudh in Orissa died. The

President decided not to recognise any successor to the Ruler. The widow was granted an allowance and a suitable residence was allotted to her use for her life-time. Again in 1958 when Mahant Digvijay Das of Nandgao died the Rulership of Nandgaon was
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allowed to lapse. The widow was granted allowance. No successor to the Ruler was recognised. In the year 1968 when the Ruler of Delath died no successor to the Ruler was recognised. In the month of August, 1970 the Rulership of Malpur was also allowed to lapse. In the case of Baroda the Ruler was. derecognised and during his lifetime his successor was recognised as a Ruler. That was on grounds of misconduct. These cases indicate that no legal right to Rulership was asserted. The President in recognising a Ruler need not follow law of succession and above all there is no legal obligation on the President to appoint a Ruler. The Attorney General and Mr. Mohan Kumarmangalam rightly said that the character and quality of recognition by the President was such that no duty was cast on the President to recognise any person as Ruler after he derecognised one since Article 366(22) did not contain words of compulsion that a Ruler must be recognised for each State: and' there must always be a Ruler for each State.

It was said that the power of the President was used after-the Constitution Amendment Bill was rejected" by the Rajya Sabha. That is a totally irrelevant consideration and cannot prejudice or alter the Constitution. If the President has the power to derecognise, the power will speak and hold good.

Mr. Palkhivala relied on the decisions of this Court as also the recent decision of the House of Lords in support of the proposition that if the order was a nullity there was no bar of jurisdiction. The decisions are Smt. Ujjam Bai v. State of Uttar Pradesh(1), S. Pratap Singh v. The State of Punjab (2), MakhanSingh v. State of Punjab(3), Lala Ram Swrup & Ors. v. Shikar Chand and Ani.(4) and Anisminic Ltd. v. Foreign Compensation Commission(5). It is a general rule that where Parliament has created new rights and duties and has appointed a specific Tribunal for their enforcement recourse must be had to that Tribunal alone. The jurisdiction of the courts of Law in those cases is ousted until the statutory process has been completed except in so far as the courts may prohibit the Tribunal from proceeding on the ground that it had no jurisdiction to determine a particular matter. In situations, where the courts have no jurisdiction to intervene, they may nevertheless review the validity of the final determination by the chosen Tribunal either on the, ground that the authority was not the one designated by the Act or where it was empowered to determine an issue it did not address itself to the matter committed to it or where it violated the rule, of natural justice. All the decisions relied on by Mr. Palkhivala

(1)[1963] 1 S.C.R. 778 (2) [1964] 4 S.C.R. 733 (3) [1964] 4 S.C.R. 779 (4) [1966]2 S.C.R. 553,
(5) [1969] 2 S.C.R. 147
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dealt with, the power of the Court to interfere where a statute is impeached as ultravires or action under the statute is said to be without jurisdiction or where the action is said to be procedurally ultra vires as in the case of Ujjam Bai (supra) or where the executive act was malafide and for alien purpose as in Pratap Singh's case (supra) or where an order of detention under the Defence of India Act was challenged in violation of the Act and also on the

ground that it was malafide as in Makhan Singh's case (supra). The decision of this Court in Dhulabai and others v. The State of Madhya Pradesh(1) on which Counsel for the petitioner relied is again illustrative of the type of cases where Courts have interfered on the ground that the appointed 'Tribunal did not comply with provisions of the statute or exceeded jurisdiction or failed to observe principles of natural justice.

The decision of the House of Lords in the Foreign Compensation Commission case (supra) on which the petitioner relied contained a clause in a statute called the Foreign Compensation (Determination and Registration of Claims) Order which provided for determination of compensation by the Commission and contained a section that the determination by the .Commission of 'any application made to them under the Act was not to be called in question in any court of law. It was held that a finality clause of the nature in that statute protected determination which was not a nullity. The English Company owned property in Egypt. The property was sequestrated under the provisions of a proclamation by the Egyptian Authorities. The plaintiff company sold the sequestrated property to an Egyptian Organisation. The English Company made an application to the Foreign Compensation Commission and claimed that they were entitled in the Egyptian Compensation Fund in respect of their sequestrated property. The Commission made a determination that the plaintiff company failed to establish a claim. The plaintiff company then brought an action for a declaration that the determination was a nullity by contending that the Commission had misconstrued the order in finding that the Egyptian Organisation to whom the plaintiff had sold the property was the plaintiff's successor in title. The House of Lords held that the word "determination" was not to be construed as including everything which purported to be a determination but was not in fact a determination because the Commission had misconstrued the provisions of the order defining their jurisdiction. The ratio of the decision of the House of Lords was not whether the Foreign Compensation Commission made a wrong ,decision but whether the Commission enquired into and decided

(1) [1968] 3 S.C.R. 662

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a matter which they had no right to' consider. The Foreign Compensation Commission in that case, held that the Egyptian Organisation to whom the plaintiff company had sold the property was the successor-in-title and as the Egyptian Organisation was not a British National, the Commission rejected the claim of the English Company. These decisions deal with the jurisdiction of the appointed Tribunal, viz., whether the Tribunal has exceeded its jurisdiction or has failed to exercise its jurisdiction.

In the present case,, the question for consideration is the provision of the Constitution which under some Articles confer jurisdiction on this Court and in another Article excludes' the jurisdiction of the Court. A privative clause of this nature in the Constitution stands on an entirely different footing from a clause of that nature in other statutes. In ordinary statues, statutory authorities are entrusted with powers and duties. When a finality clause appears in such statutes, the courts interfere with acts or decisions of such statutory bodies or authorities,- by issuing writs of mandamus, prohibition or certiorari, on the grounds of commanding them to exercise their jurisdiction or not to exceed their jurisdiction or not to usurp any

jurisdiction they do not possess or to observe the principles of natural justice or where the courts find that the acts of decisions are tainted by extraneous consideration or collateral reasons or malafide or fraud.

In the present case, the petitioners have invoked the jurisdiction of this Court under Article 32. Article 32, is excluded by the opening words in Article 363. It was said by counsel for the petitioner that the order of the President was a nullity, the petitioners property rights were invaded, and,' therefore, the jurisdiction of this Court was attracted. The fallacy of the petitioner"s submission is in totally overlooking the provisions of Article 363 which exclude in express and unambiguous terms the jurisdiction of this Court notwithstanding any provision of the Constitution. The courts normally leap in favour of stretching the jurisdiction but when the Constitution which invests this Court with jurisdiction with one hand divests it of jurisdiction with another in specifically designated disputes the attempt to overreach the Article which bars jurisdiction of courts will be totally impermissible. It is at this stage that the words of Holmes C. J. in Communications Assns. v. Douds(1) will throw light. "The provisions of the Constitution are not mathematical formulae having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is Vital, not formal; it is to be gathered not simply by

(1) 339 U.S. 382

L744Sup.CI/71

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taking the words and a dictionary, but by considering their origin and the line of growth". Therefore, if the Constitution has placed a restriction on the jurisdiction of this Court, it will he trifling and tinkering with the Constitution if this Court interfered, in matters which were excluded from jurisdiction. It is well-settled that what is forbidden directly cannot be achieved indirectly.

In interpretting these four allied Articles when this Court finds that it has no jurisdiction it will say so and in saying so, the jurisdiction of this Court is not whistled down in any manner.' The jurisdiction of this Court is all pervasive and all embracing in regard to fundamental rights of citizens. The petitioners are citizens but the rights they claim are recognition of rulership, payment of privy purse and enjoyment of princely privileges which are not fundamental rights on account of unenforceability. These special rights belong to a world of their own and that is, why the makers of the Constitution intertwined Article 363 with the allied Articles 291, 363, 366(22) as the forbidden frontiers of Courts.

It is now to be found out whether there are disputes with regard to payment of privy purses and whether such disputes can be said to arise out of the provisions of this Constitution, and thirdly Whether the provisions of the Constitution in Article 291 relate to covenants and merger agreements.. Mr. Palkhivala contended that there were no disputes as to payment of privy purses. This submission is unacceptable. The petitioner's claim in the petition to continue to be recognised a Ruler is for the purpose of payment of privy purse. It is not suggested that a recognition, of Ruler is in the abstract. A recognition of a Ruler is not by itself property. When there has been an order of recognition of a Ruler the Ruler then becomes, entitled to payment of privy purse and enjoyment of other rights and privileges mentioned in Articles 291 and 362

respectively. For days there were discussions, debates and disputes at the Bar as to whether there were disputes as to privy purses. The pleading and the affidavit evidence point with unerring accuracy that the petitioners claim privy purse, assert title to privy purse and insist on payment of privy purse guaranteed in covenants and merger agreements and recognised in Article 291 and by reason of provisions contained in Article 366(22) which speaks of recognition of Rulers they ask for relief with regard to continuance of recognition of Rulers and payment of privy purses. It is indisputable that the merger agreements and covenants not only speak of payment of privy purse but also mention guarantee of the Government in that behalf. These covenants and

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merger agreements were totally unenforceable prior to the Constitution. Article 291 is a constitutional recognition of the guarantee regarding privy purse mentioned in the Covenants and agreements. Article 291 does not create any new 'and independent right of payment of privy purse. Article 291 is related to the covenant and is not unrelated to the covenants and merger agreements.

When Article 291 was introduced in the Constituent Assembly as Article 267 it was said to give constitutional recognition to those guarantees and to provide for the expenses being charged on the central revenues subject to such recoveries as might be made from time to time from the States in respect of these payments. Article, 291(2) as it stood at the time of the commencement of the Constitution indicated that where territories of any Indian State are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged. on and paid out of the consolidated fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as, may, subject to any agreement entered into that behalf under clause (1) of Article 278 be determined by order of the President. Article 278 of the Constitution as it stood in 1950 provided that the Government of India might, subject to the provisions of clause (2) of Article 278 enter into an agreement with the Government of the State specified in Part B of the First Schedule with respect to inter alia the contribution by such State in respect of any payment made by the Government of India under clause (1) of Article 291 and when an agreement was so, entered into the provisions of Chapter I of Part XII of the Constitution (Articles 264 to 291 under the title Finance) shall in relation to such States have effect subject to the terms of such agreement. Article 278 and Article 291 (2) were omitted, by the Constitution (Seventh Amendment) Act, 1956 in the year 1956. By the same Constitution (Seventh Amendment Act, 1956 the First Schedule to the Constitution 'as it originally stood consisting of Parts A, B and C in regard to the States and the, territories of India was repealed and substituted by the First' Schedule containing the States and the Union territories. These provisions in the Constitution as they stood in 1950 indicated that Article 291 embodied the constitutional recognition for the fulfilment of the guarantees and assurances given by the Government of India in respect of privy purses and provided for necessary adjustments in respect of privy purse entailed by changed circumstance and conditions.

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This Court has held in H. H. The Maharana Sahib Shri Bhagwat Singh Bahadur of Uaipur v. The State of Rajasthan and

Ors.(1) that in order to give constitutional recognition to the guarantees and assurances under the Covenants and Merger Agreement Articles 362, 363, 131 proviso and 291 were incorporated in the Constitution. The Covenants and Merger Agreements did not have any legal sanction inasmuch as neither the Government of India Act, 1935 provided for the same nor were these enforceable in municipal courts. The sanction of the Covenants and Merger Agreements was purely political. The treaties in the United States are enforced as law. It is not so in our Constitution nor is it so under the British law. During the British Rule in India political pensions were given to persons in Indian States. They were given because of reasons of State policy. When the Constitution came into force the guarantee for the payment of the sums of money as privy purse contained in the Covenants and Agreements was continued by Article 291 but the esential political character of the privy purse was preserved by Article 363 by enacting that the guarantee could not be enforced in municipal courts.

It might be asked here as to whether any Ruler of an Indian 'State without being recognised a Ruler by the President could I prefer any claim to privy purse under Article 291. The answer would be. in the negative, because the words of Article 291 in the Constitution predicate that where under any agreement or covenant entered into by the Ruler of an Indian State before the commencement of the Constitution the payment of any sum free of tax has been guaranteed or assured to any Ruler of such State, as privy purse (a) such sums shall be charged on and paid out of the consolidated fund of India and (b) the sums so paid to any Ruler shall be exempt from all taxes on income. The Ruler of an. Indian State mentioned in the first part of Article 291 is different to the Ruler mentioned in Article 291 (b). The latter refers to the Ruler defined under Article 366(22) and recognised by the President. At once the provisions of Article 366(22) are attracted to find out as to who that Ruler is. It is a Ruler who is recognised by the President 'as the Ruler of the State. It is because of the combined effect of Articles 291. 366(22) and 363 that this Court in Nawab Usman Ali Khan A v. Sagarmal (supra) held that privy purse was paid for political ,consideration and was not a right legally enforceable in any, municipal court and the political character was preserved by Article-363 by taking privy purse beyond the reach of courts of law. In Sri sudhansu Shekhar Singh Deo v. The State of Orissa ,and Anr. (2) this Court said on a consideration of Articles 291

(1) [1964] 5 S.C.R. 1

(2) [1971] 1 S.C.R. 779

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and 362 that if in disregard of the guarantee or assurance given under the, covenant or agreement any legislation were made it could not be questioned in Court because of Article 363. It is true that Article 362 speaks of guarantee of rights other than that of privy purse.

It was said on behalf of the petitioner that the words "charged on and paid out of the consolidated fund" in Article 291 meant that a security was created in favour of the petitioner in respect of privy purse, and, therefore, a new and independent right was created. It was said that Article 291 was a self sustaining or self ordaining provision. Article 291 draws its sustenance and vitality from covenants and merger agreements. If payment has not been guaranteed under the covenants or merger agreements, Article 291 does not come into operation at all. Under Article 291 effect is to be given to the covenants and

merger agreements where payment of any sum has been guranteed. Each covenant has to be examined and construed to give effect to the guarantee mentioned in the covenant 'and recognised in the Article. It will be utterly wrong to equate the words "charged on the consolidated fund" with "a charge by way of security", because Article 291 only gives effect to guarantees in the covenants and agreements by charging the payment on the consolidated Fund. Article 291 cannot be said to create a new right or a new obligation by charging the sum on the consolidated fund because the charge is only in respect of the right and obligation under the covenant and it is therefore neither a new nor an independent right. It was said that the covenants and merger agreements were merely to be referred to for the purpose of identifying the Rulers and the privy purse. The identification is a verbal subterfuge. Assuming Article 291 were a right enforceable a Ruler would have to prove first that he was a Ruler who was recognised by the President and thus entitled to privy purse the payment of whereof was guaranteed by the covenant or the merger agreement. Secondly, he would have to prove the covenant whereby he claimed 'a privy purse. For that again be would have to prove on the strength of the covenant or the merger agreement. Proof is in aid of title. Proof is not dissociated from claim. Claim will fail without proof. Therefore, covenants and merger agreements are indissolubly bound up with Article 291.

Again, there were different merger I agreements with different Rulers providing for different sums for payment to the Rulers and also in some cases for payment of different sums to successors. The Orissa and Chattisgarh Merger Agreement did not mention about payment of privy purse to the successors to Rulers. The Tehri Garhwal Merger Agreement mentioned also

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the heirs 'and successors of the Maharaja for payment of privy purse. The Rampur Merger Agreement mentioned certain amount as privy purse for the Nawab and a different sum for payment to the successors. The Bhopal Merger Agreement mentioned a certain sum for the Nawab and a different sum for the Nawab and a different sum for his successor. The Agreement of Himachal Pradesh Rulers mentioned a certain sum for the Ruler but did not mention 'about successors. The Bilaspur Merger Agreement mentioned a certain sum as privy purse of. the Raja which was to include the allowances of the Yuvraja but did not mention anything about successors. These difference illustrate that Article 291 is vitally related to the covenants and merger agreements and draw substance from them.

The words "charged on and paid out of the consolidated fond" in Article 291 mean that the sum shall not be submitted to the vote of Parliament, and Article 113(1) makes a provision to that effect. Article 291 does not by itself create any independent right of any Ruler to be paid any sum out of any charged fund. If it were a charge, it would be a debt which would be assignable. It a Ruler were to 'assign or mortgage or create a charge in respect of his privy purse in favour of another person there would have been no legal validity for such assignment and mortgage or charge. The reason is that there is no vested legal right in praosenti in favour of a Ruler. Again, a privy purse is a payment of a political character and is legally unenforceable. There is no right either in rem or in personam in favour of a Ruler in regard to payment of privy purse. Supposing the privy purse were reduced would it be competent to a Ruler to

maintain an action for payment of the entire sum. Article 363 would be an impediment and no court would be able to adjudicate the question. The words "charged on and paid out of the consolidated fund" are technical Parliamentary expressions for payment out of public revenues. These words have been borrowed from English Parliamentary Practice. These words have a specific legal history since 1816 when Consolidated Fund Act was passed in England and in 1854 the English Act provided in 2 Schedules as charges, payable out of the consolidated Fund and charges upon which vote would lie.

Prior to 1935 the system of presenting accounts before the legislature was under four heads, i.e. transferred subjects, reserved subjects voted 'and non-voted items. In 1935 the Government Act, 1935 used the expressed "charged" in replacement of ,the expression "voted". After the Constitution came into existence the same system continued for presentation of the Annual Financial Statement under Article 112(2) and Appropriation Bill under Article 114(1). The Estimates under Article 113(1)

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were (a) sums required to meet the expenses as expenditure charged upon the consolidated fund and (b) the sum required to meet the other expenditure proposed to be met from the consolidated fund. The Appropriation Bill means (a) the grants made by the House of the People; and (b) the expenditure charged on the consolidated fund but not exceeding in any case the amount shown in the statement previously laid before Parliament. Article 113 says that so much of the estimates as relates to expenditure charged upon the, consolidated fund shall not be submitted to the vote of Parliament but there is nothing to prevent discussion in either House of Parliament of any of those estimates. The expenditure is charged and removed from the vote of Parliament.

In the English Parliamentary Practice what is charged is the expenditure that is to be made without vote of Parliament. These are first, a sum appropriated to a particular service which cannot be spent on another service, secondly, the sum appropriated is the maximum sum, and thirdly, it is available only in respect of charges which have arisen during one of the years to which the relevant Appropriation Act applies (See May Parliamentary Practice, 17th ed. 713). The tests used to determine whether the expenditure involves a charge on the consolidated fund are that a charge must be new and distinct, that it must be payable out of the exchequer and it is to be effectively imposed. In England it will appear that the Ministers of the Crown Act, 1937 in section 4 enacts that a pension under that section is payable as of :right. Section 7 of that English Act of 1937 used the expression "shall be charged and payable out of the consolidated fund". These provisions in the English Act show first that the right to be paid is under section 4 and the creation of a charge on the consolidated fund is under section 7.

The words "charged on the Consolidated fund" in Article 291 mean that the expenditure is non-votable and these are terms of public finance. Charge on the Consolidated Fund is an accounting arrangement before Parliament. Certain expenditure is authorised out of public revenue as independent of Parliamentary control. Charge is meant for expenditure. The words "paid out of the consolidated fund" denote the source from which the expenditure will be met. The words "charged and paid out of the consolidated funs' do not create any legal right in a party. The right to payment

arises dehors the charge on the consolidated fund. The charge on the consolidated Fund is for purposes of payment in 'accordance with the guarantee and assurance of payment under the covenants and merger agreements. The right to payment of privy purse arises from recognition by Article 291 of guarantee of payment of privy
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purse under a covenant. The scheme of Article 291 is similar to Article 290 where the expenses of any court or commission or pension payable to any person who served before or after the commencement of the Constitution in connection with the affairs of the Union or the State are charged on the Consolidated fund. Article 290A which speaks of a sum of Rs. 46,50,000 to be charged on and paid out of the Consolidated Fund of the State of Kerala every year to the Travancore Devaswoin Fund is a different provision because it speaks of payment to a designated person as a part of the Constitution. No such comparable words are to be found in Article 291, namely, that the sums shall be paid to the Rulers. The reasons are two-fold. First, payment of privy purses is under covenants or merger agreements and secondly these payments were charged on the Consolidated Fund of India because the payment was not out of the Consolidated Fund of any State.

Originally, Article 291 contained the expression "paid out of" in both sub-clause (a) of clause (1) and clause (2) of Article 291 for the purpose of integration of finances, assets, and liabilities of the new Constitution as between Federal Government at the Centre and the Indian States which guaranteed payment of Privy Purse under covenants and merger agreements. The original Article 291 was the result of the decision of the Constituent Assembly regarding sharing between the Consolidated Fund of India and the Consolidated Fund of Part A and Part B States regarding privy purse.

Counsel on behalf of the petitioner submitted that unless the words "charged on and paid out of the consolidated fund" mean security and right to be paid neither the President, nor the Chairman or Deputy Chairman, nor the Speaker and the Deputy Speaker, nor the Judges of the Supreme Court, nor the Comptroller and Auditor General would have security as to payments. But, these persons do not derive their right to be paid from any covenant or merger agreement. Secondly, these persons hold offices under the Constitution whereas the Rulers do not. Thirdly, Articles 59(3), 97, 125, 148(3) indicate in no uncertain terms that they shall be entitled to such emoluments and allowances and privileges as may be determined by Parliament by law. In the case of the President, the Chairman, the Deputy Chairman of the Council of States, the Speaker and the Deputy Speaker of the House of the People Articles 59 (3) and 97 provide that there, shall be paid to them such allowances and salaries as may be fixed by Parliament, by law and until the provision in that behalf is so made such salaries and allowances as are specified in the Second Schedule. As for the Judges of this Court Article 125(1) enacts that there shall be paid to the Judges of this Court, such
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salaries as are specified in the Second Schedule. Article 148(3) enacts that the salaries and other conditions of the Comptroller and Auditor General shall be such as may be determined by Parliament and until they are so determined, shall be as specified in the Second Schedule. Therefore, it was an unfortunate comparison made by Mr. Palkhivala between these persons and the Rulers. To illustrate, some of these persons become entitled to salaries by virtue of provision

in the Constitution, e.g. Article 1.25 directing payment of their salaries and therefore the charge on the Consolidated Fund. in respect of such salaries e.g. in Article 112 (d) (i) cannot be intended again as a diction for payment.

It was said on behalf of the petitioner that in the covenants and merger agreements, the payment of privy purse was to be free of all taxes whereas under the Constitution privy purse was to be exempt free of all taxes on income and therefore there was a new right. This is totally misreading Article 291 (b) where it is said that "the sums so paid to any Ruler shall be exempt from all taxes on income". The words "so paid' relate to the slum guaranteed under the covenants and the agreements and to the same sum charged on the Consolidated Fund It is only when payment is made to a Ruler that it shall be exempt from taxes on income That is why the words "so paid to any Ruler" in Article 291 (b) indicate that when the sums are paid to a Ruler out of the Consolidated Fund the sums shall be exempt from all taxes. The Constitution does not mention payment of Privy Purse to any particular person. One has to turn to the covenant and the merger agreement to have all the particulars of persons, sums guaranteed and assured. Article 291 does not create any new and independent right but it merely gives constitutional recognition to guarantees under covenants and merger agreements which Were and are unenforceable as those arise, out of Acts of State. (See State of Gujarat v. Vohra Fiddali (supra). Article 291 is strung with the covenants because such sums in Article 291 (a) mean the sums guaranteed under covenants and merger agreements. The fons et origo is the guarantee contained in the Covenants and Agreements.

Another argument was advanced on behalf of the petitioner that there was a substitution of rights under covenants and merger agreements by Article 291. The rights guaranteed under the covenants and merger agreements are matters to which Article 291 relates. The guarantee of payment under the covenants and merger agreements is recognised under Article 291. This Article gives effect to the covenants and agreements and it is related to these.

There were some arguments that if the amount charged on the consolidated fund on account of privy purse were not paid,

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the same would be carried over, in the Consolidated Fund from year to year. That is not so because any sum charged on the consolidated fund is not carried to the next year but it lapses.

Article 362 has been held by this Court in Udaipur case (supra) to fall within Article 363. Article 291 has also been held by this Court to fall within the bar of Article 363 in Nawab Usman Ali Khan's case (supra). It was suggested that the only Article which could fall within Article 363 was Article 362 which was in closest proximity. That would be an erroneous approach to interpret the Constitution. Article 363 uses the words "provisions- of the Constitution". The word "provisions" indicate more than one Article. Even at the risk of repetition it has to be stated that Articles 291, 362 and 366(22) have a most direct and visible relation to Article 363.

Mr. Palkhivala contended that the petitioner had existing rights to privy purge and privileges prior to the Constitution and that such existing rights were incorporated in the Constitution by Articles 294 (b) and 295 (1) (b) of the Constitution. It. has been consistently held by this Court that till recognition, either express or implied, is granted by the new sovereign, the Act of State continues

(See State of Gujarat v. Vohra Fiddali (supra). Therefore, the covenants and merger agreements were outside the jurisdiction of municipal courts. The administration of the provincially merged and centrally merged States was by reason of the Extra Provincial Jurisdiction Act 1947 which applied the laws of the Dominion of India to those merged States. It was only by reason of the-merger agreement that the Dominion of India exercised such extra provincial jurisdiction. The Instruments of Accession did not confer such authority. Even when sections 290A and 290B were introduced in the Government of India Act, 1935 administration in the provincially merged States was still carried on the strength of the merger agreement. (See Seraikela case (supra). The merged States were not yet completely integrated with India.

The States Merger (Governors' Provinces) Order, 1949 stated that as from the appointed day, i.e.,the date of the commencement of the order 1 August, 1949, the States specified in the Schedule "shall be administered in all respects as if they form part of the provinces specified in the heading of the Schedule". Again in section 7 of the States Merger (Governors' Provinces) Order, 1949 it is stated that all liabilities in respect of loans, guarantees and other financial obligations of the Dominion Government as arise out of covenants, of a merged State, including in particular the liability for the payment of any sums to the Ruler of the merged State on account of his privy purse or to persons in the merged State on account of political pensions and

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the like shall as from the appointed day be liabilities of the absorbing Provinces unless the loan, guarantee or other financial obligation is relateable to central purpose. The privy purse is mentioned separately to and independently of loans, guarantees and other financial obligations. The character of the liability regarding privy purse is not changed by the States (Merger Governors' Provinces) Order, 1949. The Act of State which commenced with the Instruments of Accession continued even after the merger agreements as has been held by this Court in Vohra Fiddali's case (supra). The liabilities in Articles 294 (b) and 295 (1) (b) of the Constitution refer to other legal rights which were enforceable in a court of law. Privy purses under the covenants and merger agreements were no such legal rights enforceable in a court of law for the obvious reason that if prior to the Constitution the covenants and merger agreements were sought to be enforced in a municipal, court the Government would have demurred on the plea of Act of State. That plea in bar would be available to the Government of India as a defence to any claim under Articles 294 (b) and 295 (1) (b). (See Union of India and Ors. v. Gwalior Rayon Silk Manufacturing (Weaving) Co. Ltd. and Anr.) (1) Furthermore, Article 295 (1) (b) cannot apply because neither privy purse nor privileges are matters enumerated in the Union List. Articles 291 and 362 are special provisions dealing with privy purses and privileges. Articles 294(b) and 295(1) (b) deal with revolution of liabilities of the Dominion and Part B States respectively. The Constitution has dealt with privy purse and privileges in separate Articles. Therefore, Articles 294(b) and 295 (1) (b) can have no application to privy purses and Privileges. (See The South India Corporation (P) Ltd. v. The Secretary, Board of Revenue, Trivandrum and Anr.) 2) where this Court held that Article 372 was a general provision and Article 277 was a special provision and a special provision was to be given effect to the extent of its scope, leaving

-the general provision to control cases where the special provision does not apply. The petitioner's contention on existing rights prior to the Constitution as well as continuance thereof falls.

Agreement to pay privy purses and to continue privileges of the Princes which were. guaranteed by the Government of India before the Constitution- were all political agreements born out of political bargains to achieve integration of Indian States with the Dominion of India. This political bargain was carried into the Constitution by the insertion of Article 291 for payment of privy purse, Article 362 for continuance of privileges and Article 366(22) for recognition of princes, and the political character was preser-

[1] [1964] 7 S.C.R. 892 at 908

[2] [1964] 4 S.C. R. 280 at 297

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ved, by inserting Article 363 which bar the jurisdiction of the court in respect of disputes, arising out of covenants and agreements and these Articles which are related to the covenants and agreements.

Mr. Palkhivala contended that the order affected the rights of the petitioner under the Wealth Tax Act, the Income-tax Act, the Gift Tax Act, the Hindu Succession Act, the Estates Duty Act, Customs Regulation, Code of Civil Procedure, Code of Criminal Procedure and Madhya Bharat Gangajali Trust Fund Act, 1954. The Wealth Tax Act, 1957 defines a Ruler as defined in clause (22) of Article 366 of the Constitution and enacts certain exemptions in respect of certain assets namely the official residence in the occupation of the Ruler. The right of the petitioner under the Wealth Tax Act is dependent on being recognised as a Ruler by the President under Article 366(22). If the order cannot be challenged for the reasons given above, the petitioner can have no right under the Wealth Tax Act, because the right under the Wealth Tax Act is derived only from his recognition as a Ruler under Article 366(22). Under the Income Tax Act, 1922 (,section 4(3)(x)) and the Income Tax Act, 1961 (section 10(19) amount received by a Ruler as privy purse is not in-clued as income. Under Income Tax Part B States Taxation concessions Order, 1950 the bonafide annual value of the palaces declared by the Central Government as official residence of the Ruler is exempted from taxation. Therefore, if the rights are derived from recognition of Rulership by the President under Article 366(22) and if the recognition cannot be impeached no right arises. Under the Gift Tax Act, tax is not leviable on gifts out of privy purse for maintenance of relatives or for performance of official ceremonies. If no privy purse is paid no question of any gift out of privy purse arises. Under the Hindu Succession Act the Act shall not apply to any estate which descends to a single heir by the terms of any covenant or agreement. Succession is a right which can be claimed by heirs of the petitioners. The petitioners cannot have any fundamental right of any such right under the Hindu Succession Act. Under the Estates Duty Act, exemption is given in respect of any building in the occupation of a Ruler declared by the Central Government as his official residence. If the petitioner disposes of his property he will not be affected. The duty will have to be paid by someone who will inherit or succeed. As for the Customs Regulations exemption is available only to Rulers recognised by the President. When he ceased to be recognised no exemption applies. The trust properties arise only in the case of Madhya Bharat Gangaiali Fund Trust Act, 1954. The

Ruler of Gwalior is one of the trustees and is the President. The Trust will not fail. The trustees wilt continue and the Act may have to be amended in a suitable manner.

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The Civil Procedure Code grants exemption to Rulers from being sued. Exemption from being sued is not personal liberty within the meaning of Article 21. Exemption from being sued is pro-cedural advantage which will no longer be available. Again, s. 197 of the Code of Criminal Procedure is a procedural advantage. In all these cases the petitioner cannot complain in this Court because the position is derived from the recognition of Rulership and Art. 363 is an insurmountable and impenetrable bar.

Recognition of Rulership is not a legal right. It is not a right to property. Privy purse is not a legal right to property. There is no fundamental right to privy purse. There is no fundamental right to Rulership.-

A series of decisions of this Court have held that Article 363 is a bar to rights and privileges, recognition of Rulership from being agitated in courts. These decisions have spoken the words of the Constitution.

The petitions, therefore, fail and are dismissed. Each party will pay and bear its own costs.

ORDER

In accordance with the opinion of the majority the petitions are allowed and writs will issue declaring that the orders made by the President on September 6, 1970 challenged here, were illegal and on that account inoperative and the, petitioners will be entitled to all their pre-existing rights and privileges including right to privy purses, as if the orders have not been made. The petitioners will get their costs of the petitions. One hearing fee in those petitions in which the petitioners have appeared' through the, same counsel.

K.B.N.

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