



Sikkim : The Wounds of History

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Introduction

Growing up as a young child in Sikkim in the mid 1970's was pretty confusing to say the least. Not really understanding the reasons behind the move to a new National Anthem, we anyway put ourselves to learning it with gusto, but could not really fathom why there was a new flag which we were now saluting to. Subsequently we grew up as a generation which was the first to be truly “Indianized” after the political events of 1973, which culminated in Sikkim being a part of India.

This was just a starting point. The confusions deepened even further thereafter because of this “merger” thing. Having been brought up with the

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explanation of a merger it later came as a shock to realize that there was a whole section which called it an “annexation”. To put it simply, among the Sikkimese society the word “merger” was used in public, while “annexation” was generally used in private and in hushed tones. This, for a young mind was just another strange word, but as I grew up I found myself increasingly drawn towards trying to understand what this ambiguity was all about. I set out to find the truth behind these confusing terms that had suddenly gone on to become a part of our daily lives but unfortunately, with tense undertones.

This “quest” for the truth left me even more hopelessly confused. This time it wasn’t annexation or merger, it was a passport. Evidently the Chogyal (King of Sikkim), and his family members, carried an Indian passport all along! If that were the case, then where did the question of a merger or an annexation arise in the first place? More so, if the King himself were an Indian then why was he signing “international treaties” like the treaty of 1950 with India?

Divergent views were expressed by the Indian intelligentsia as well, which included judicial and

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constitutional experts, journalists, former intelligence officials etc. The most notable among them which caught my attention was the observation made by Shri M. Hidayatullah, an eminent jurist who retired as the Chief Justice of the Supreme Court of India and later, was elected the Vice-President of India. On being approached to give a legal opinion by members of the erstwhile Royal family after the “merger” he opined in conclusion that,

“... the status of Sikkim in International Law before and after the constitutional amendment in India remains exactly the same. Sikkim’s distinct International personality is unaffected and it is a protectorate as before”.

According to this highly credible source, after all the constitutional jugglery and amendments, Sikkim still remains a protectorate of India and basically, nothing has really changed. Does this mean that the elaborate exercises of amending the Indian Constitution twice was all in vain? And Article 371F, which was the result of the second amendment, is quite at odds with the basic structure of the Indian constitution. It does allow traditions like the institution of the Sangha, which seemd to go against India’s secular

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constitution. But, if these were the result of the “aspirations of the Sikkimese people for participation in the democratic institutions of India”, then why was Article 371f drafted which allows Sikkim to maintain a certain distinct identity and retain its old laws? The article effectively reiterates that Sikkim is not a “normal” state like Bengal, Bihar etc. Was this article included just to satisfy international scrutiny considering Sikkim’s “distinct international personality”?

So, what were these constitutional amendments? The 35th amendment turned Sikkim into an “associate state” of India, and later after a gap of seven months the 36th amendment was carried out, which officially declared Sikkim to be a “regular” state of India henceforth. Now the question to be asked is - what was this “associate state” and why was this status changed in a matter of seven months only. Moreover, what of the “referendum” of 1975? It was held in such a manner that it has now been trashed by the intelligentsia as a fraud perpetrated on the people of Sikkim. Looking back, we find that there are so many anomalies regarding the “referendum”, it could be the content of a whole book on its own.

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This ambiguity is further compounded considering the political environment of India that was at play then. The domestic Indian political climate in 1975 had touched the nadir in India's known history. A majority of Indian opposition leaders were in jail or legally restricted in some ways before the run up to the declaration of emergency in mid 1975. At a time when India's most powerful opposition leaders were almost voiceless, the Constitution was amended not once but twice to accommodate Sikkim. So how much of a voice did the representatives of Sikkim have in these debates for something as important as constitutional amendments? Was Sikkim suitably and justly represented in any way?

Yet another strange fact has been the role of the Indian Army in Sikkim. The King was an honorary General of the Indian Armed Forces, and in turn, the tiny Sikkimese army, the "Sikkim Guards", was trained and equipped by the Indian Army. The Sikkim Guards was headed by an officer of the Indian Army. The atmosphere of comradeship suggested these were sister armies in all intent, and it is a matter of historical fact that along with the Indian Army, the soldiers of the Sikkim Guards were manning all posts at the borders of Sikkim till 1975.

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The Indian Army was in Sikkim because of the provisions of the 1950 treaty by which the defense of the Himalayan kingdom was entrusted to the Government of India. So the question lies- how come an army welcomed with trust to protect the kingdom under the provisions of an international treaty, move on to become an occupying army? Who authorized this? Leave aside international law- was it ethical?

Then there are the questions of the 8th May Agreement of 1973. The agreement which was the culmination of the people's uprising of 1973, was agreed upon by the Indian Government, the political parties of Sikkim and the Chogyal. This agreement envisaged a solution which was to set up a new democratic order as per the aspirations of the people of Sikkim. The strange fact is that though this was the 'real' agreement between the people of Sikkim, the Chogyal and the Government of India, little is heard or mentioned of it today. And, after the 36th Amendment of the Indian Constitution, the Sikkimese cannot bring it up in any court of law in India. Why? The Sikkimese cannot talk about the agreement after they actually signed it? Should not an agreement be monitored to check if the parties are following it? And how come an agreement among

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parties with distinct “International Personalities” land up being part of the Indian Constitution which neither party can ever review?

Why so many questions and loose ends? It is a matter of common knowledge that every Sikkimese was and is still inclined to associate with the democratic traditions of India if given the choice. History is proof enough that the people have themselves come forward in the past to associate themselves with the Union. The seeds of autonomy started taking roots when these advances were turned down by the then Prime Minister of India, Shri Jawaharlal Nehru. The process for the consolidation of a nation started earnestly, keenly encouraged by the Govt. of India itself. This encouragement was exemplified in 1956 when the then Maharaja of Sikkim, Sir Tashi Namgyal, visited New Delhi.

On that occasion the Government of India laid it thick. The Maharaja was not only given a grand reception but there were also some eventful firsts. For the first time a hastily composed Sikkimese National Anthem was sung in a state function in New Delhi thereby clearly encouraging onlookers to think of Sikkim as an Independent entity. Yet another first, a

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separate flag of Sikkim was hoisted alongside the Indian flag reinforcing the earlier notion. But most importantly, the official communiqué from the foreign office termed this visit as a “State Visit”, giving a hint of the official Indian definition of Sikkim’s independent status. All this gave the Sikkimese the impression that they were the masters of their destiny and history shows that it was during this period that Sikkim set about putting up a legal, social and overall Government infrastructure in place befitting an ‘independent country’. This brought about conscious efforts to define and construct a articulated Sikkimese national identity during the 60’s and into the 70’s.

The outcome of this exercise was so strong that even after three decades of the “merger,” there still exists a symbolic remnant of this identity today. The younger generation is increasingly taking interest in Sikkim’s immediate past, and the debate about who is a Sikkimese rages on. This debate on identity remains partly due to the fact that the constitution now contains special provisions for the Sikkimese and it is imperative to distinguish the people of Sikkim with those from Nepal, Bhutan and Darjeeling District in its neighborhood. But now with the official

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announcement that the criteria for exemption of income tax would be the Sikkim Subject Certificate, the question of identity has become important again if only for the narrow reason of exemption from the Indian Income Tax Act.

Today the status of the Sikkim Subject Certificate is itself ambiguous. Despite being the citizenship document of a no-longer existing country, it is still in existence and is given cognizance by the Government of India. A notable fact here is that a whole lot of people had declined Sikkimese citizenship under the Monarchy in the 60's and preferred to retain their respective citizenships. Ironically, the situation today is that when all the Sikkimese have now become Indians, these very people who had declined the offer want to be counted as Sikkimese and get their name included in the citizenship register of a country which does not exist anymore! But unfortunately, the Sikkim Subject today is required for the purpose of exemption of Income Tax only and nothing more. For all other purposes the 'Certificate of Identification' seems quite adequate. Are there then two grades of Sikkimese that we are talking about?

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The puzzle deepens even further, while the Sikkimese is confused about his rights within India, the normal Indian citizen is even more confused about his rights in Sikkim today. Under the impression that Sikkim is a regular part of India, many citizens from other parts of the country have made Sikkim their home. But as some landmark cases in the Supreme Court of India have shown, even the most fundamental rights of non-Sikkimese Indians seem to be suspended in Sikkim. There is the famous case of a gentleman who approached the Supreme Court challenging Rule 4(IV) on the grounds that it violates his fundamental right to employment. This was struck down by the apex court in favour of Rule 4(IV), which gives a Sikkimese an “unconstitutional” edge in matters of employment in Sikkim and is blatantly ‘pro’ Sikkimese.

Due to the massive rate of influx during the last three decades, the rapid demographic changes have increased the urgency for a clear distinction between who is a Sikkimese and who is not. The special provisions accorded by Article 371F is the “right of the Sikkimese people” and, should be acknowledged by all concerned as such. It shall be to the detriment of Indian society if Sikkim is referred to as a

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“regular” state not realizing that the presence of Article 371F makes it anything but “normal”. Perhaps a new nomenclature like “associate state” needs to be cooked up; which Sikkim was after the 35th amendment, but done away with abruptly after the 36th amendment within seven months of each other.

It has been seen that in human society, prolonged confusion invariably results in a crisis. Today, due to the constitutional anomalies and inconsistent laws, there is a crisis of identity brewing among the Sikkimese people. This is further compounded by the massive influx of migrant population from the surrounding states and countries, and is now spilling out into the streets; an issue eagerly waiting to be taken up by political parties. This crisis shall continue to deepen if a clear picture is not formed soon and this book shall strive towards that end and help bring some clarity.

This book is not about the people’s revolution of 1973. Enough books have been written about that. Rather it shall focus on retracing the constitutional jugglery which took place to define Sikkim’s status within the Union of India. The question of status is important here because we need to determine whether

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it is correct to club Sikkim with other “regular” states of the Indian Union.

It shall enquire into the fact that after the merger/annexation, were the Sikkimese people expected to shed their distinct identity which was cultivated over the decades, and if their identity is to remain then how do they address it constitutionally? It shall also point out the controversial steps which were taken in this whole exercise so that it invigorates the younger generation to take interest in their political past because, unfortunately, succeeding generations of Sikkimese children are growing up having a distorted version of their own history, as none of these facts are included in the school curriculum in Sikkim that are affiliated to the Indian Boards.

And why am I bringing this up now? Because I believe the time has come when we need to bring a sense of closure to history. There are so many questions which have not been answered yet, and this state of continuing confusion has caused the wounds left over from history to fester again. These are the wounds of history, which have been around for more than three decades now, and shall have to be

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addressed if Sikkim is to move on into the future. But first we should determine as to what these “wounds of history” really are.

The Uprising and After

Popular dissent and demonstrations against the Chogyal peaked in April 1973. This led to a complete breakdown of law and order throughout Sikkim. The Government of India intervened on the request of the Chogyal and an Agreement was signed on the 8th of May 1973. This was an agreement between three parties, the Chogyal, The Government of India, represented by the Foreign Secretary, and the people of Sikkim represented by three political parties, viz. The Sikkim Janata Congress, The Sikkim National Congress and the Sikkim National Party.

In many ways this was a historic agreement. It was not only to bring the present situation under control and restore the rule of law, but it also outlined a new

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political order for Sikkim based on adult suffrage. This new order would include an assembly for Sikkim and an executive council to be made up of elected and nominated members. This agreement also formally requested the intervention of the Government of India into areas not covered by the treaty of 1950. This request for intervention was very specific and expected the Government of India:

- (i) *To take responsibility for the establishment of law and order and good administration in Sikkim following the breakdowns of all three;*
- (ii) *To ensure the further development of a constitutional Government, communal harmony, good administration and rapid economic and social development in Sikkim ;*
- (iii) *To provide the head of the administration (Chief Executive) in Sikkim to help achieve and to safeguard all the above needs and objectives.*

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The most notable thing introduced in this document was the concept of one man one vote. It must be said that while Sikkim had held elections in the past, it was under a complicated system where one man could have multiple votes depending on his ethnicity and the constituency he voted in. This complicated system had been one of the reasons behind the massive public uprisings in the first place, and also the cause for such an agreement. In short this agreement defined the rudiments of a clutch of democratic institutions which would otherwise be found in a modern state, with greater legislative and executive powers vested in the elected representatives of the people.

Another thing this agreement did was define the powers and the scope of each institution in specific terms. For example, the assembly was expressly given the powers to enact laws and adopt resolutions for the welfare of the people. These included areas like education, public health, forests, food supplies etc.

The institution of the Chogyal has been handled in a rather interesting way in this document. The role of the King in the new setup was envisaged more on the

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lines of a constitutional monarch than the traditional role he had been playing till then. As clause 6 of the agreement reads:

6. The Chogyal shall perform the functions of his high office in accordance with the Constitution of Sikkim as set out in this agreement.

The Constitution of Sikkim had not been written as yet so the exact role of the king was to be decided upon. It is not made clear in the document as to how the constitution would be drafted or who would be doing it, but it was clear, whoever wrote the Constitution of Sikkim, would have a big influence on the future role of the monarch. This was strange because the assembly, populated by the elected members, had no say over the king either. Clause 3(ii) of this agreement reads:

3 (ii) The assembly shall not discuss or ask question on the following:

(a) The Chogyal and the members of the ruling family

(Please see Appendix I for full text of the agreement)

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The thing of import here is the fact that this assembly, which was expressly forbidden to even discuss the Chogyal, ended up abolishing the institution of the Chogyal at a later date. And no enquiry ever seems to have been undertaken as to the legality of the resolution which triggered such monumental changes in the life of Sikkim and her citizens. We shall discuss this crucial detail in later chapters when we discuss the 36th amendment to the constitution of India.

The Constitution of Sikkim was ultimately drafted by the Government of India and was placed in the Assembly, which by then had been elected, as the Government of Sikkim Bill, 1974 and passed unanimously. The Chogyal promulgated this Bill on the 14th of July 1974 as the Government of Sikkim Act, 1974. A new era started for Sikkim under a written constitution.

The terms of the 8th May Agreement had finally been met. There was a constitution for Sikkim, elections had been held under a more open and democratic system, people's participation in governance had increased substantially and law and order had been restored. But did this end of the turmoil mean that

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this tiny Kingdom could go on and live happily ever after? Not really.

The Government of Sikkim Act, 1974, which was drafted by the Government of India, contained article 30(c) which entitled the Sikkim Assembly to seek representation in the democratic institutions of India on a closer basis than had been done earlier. The Sikkim assembly did make such a request at a later date, which is why Sikkim suddenly figured in the Indian Constitution after the 35th amendment to the Constitution of India, which turned Sikkim into an “Associate State “of India.

The 35th Amendment of the Constitution of India was an interesting experiment in the constitutional history of India. Not only did it introduce a new type of relation with the union, the “associate state”, it also allowed two members of Parliament elected from Sikkim to be part of the Indian Parliament, despite their not being citizens of India. This fact has been discussed extensively in the parliamentary debates which took place during the discussions on the bill. But unfortunately, due to many reasons, this experiment was cut short under rather strange circumstances within a few months of its start and

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this bold constitutional experiment was consigned to the dustbins of history.

The death knell of Sikkim as an associated state was sounded after the passing of the controversial 36th Amendment of the Indian Constitution. This amendment was the last nail in the coffin as far as Sikkim's "international personality" was concerned. This was the move which gave rise to the cries of "Annexation" from the world community as Sikkim was absorbed and declared the 22nd State of the Union of India. This amendment also introduced Article 371F into the Constitution which was to be referred to in matters relating to Sikkim and which was touted as the "Special Safeguards" for the new state.

So what is Article 371F? It announced Sikkim as the 22nd State of India, yet there were provisions in it which seemed to go against the very structure of the Indian Constitution. While all Sikkimese became Indian citizens, they could still retain their 'distinct identity' as well as the 'old laws' which existed during the monarchy. In short they could officially retain every aspect of their life from the monarchy except for the system of governance. So what were

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the justifications behind the insertion of this article? What was it for and are the end objectives being met?

The 36th Amendment also made all of India's neighbors uneasy about its designs for the other Himalayan Kingdoms in the vicinity, and as journals of the period show, the Government of India was hard pressed for an explanation from the international community. These explanations sometimes give the impression that whatever transpired was in a state of haste and without considering the ramifications on the long run. The parliamentary debates which took place during the amendments throws light on the fact that things were not crystal clear to the Members of Parliament and there are even instances where the Parliament has been misinformed, maybe inadvertently, by the Government of the day.

The insertion of Article 371F into the Constitution actually ended the process started by the 8th May Agreement, which resulted in the judicial decapitation of the same agreement from Sikkim's political landscape. The historic agreement could never be referred to again or challenged in any court of law. Sikkim faced a future where this article would create more confusion for the people and start

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featuring prominently in political debates; instigating a sitting Prime Minister of India, Shri Morarji Desai, to comment that this whole exercise was “wrong” and that India should not have done what it did to Sikkim.

Agreeing on a Future

The 8th May Agreement was a document which laid down the outline of a democratic future for Sikkim after the uprising of 1973. Besides the Chogyal and the political parties of Sikkim, the Government of India was also a signatory to the agreement. This is significant because it gave a glimpse of the trust and faith the people of Sikkim and the Chogyal had on the Government of India. This trust had been nurtured over the years, right from the days of the British Raj, but after India gained independence, this trust was documented as the Treaty of 1950 between India and Sikkim.

The Agreement also laid down in principle that henceforth Sikkim would be guided by a written

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Constitution, with the Chogyal as its Constitutional Head. The head of administration was to be a Chief Executive Officer to be sent by the Government of India. The High Court would be independent and the creation of a new Assembly would culminate the process initiated by the uprising of the Sikkimese people for meaningful participation in governance.

However, it was specific in regards to the Chogyal. The new assembly would not even discuss the King or his family members! This view was integrated into the Sikkim Government Act of 1974 (Sikkim's Constitution), wherein, section 23 reiterates this fact. This fact is of importance simply because the Assembly which had no mandate to even discuss the King, abolished the very institution he embodied, at a later stage. This brings us to question the status of the Agreement itself. Did it have any validity? Was it a legal document which could stand up in a court of law? It is apparent there are no other agreements rescinding or replacing this one, and we have a situation where we cannot bring about a sense of closure to history without this document. And this closure is sorely needed, if Sikkim has to move on.

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While the Treaty of 1950 defined the relations of Sikkim with India, this agreement was more of a solution to Sikkim's internal problems with India as the guarantor of sorts. The focus of this agreement was in two areas. One was the consensus on having a constitution for Sikkim as a solution for its problem, while the other was the future role of the Government of India in helping Sikkim achieve growth.

Looking back over the decades, one question comes up. If the 8th May agreement was a document which existed to resolve Sikkim's internal problems, how come Sikkim suddenly figured in the Indian Constitution? As I have pointed out earlier, the role of the Government of India was put down in specific terms. As per the language of the document, India was committed to establish the rule of law, committed to nurturing Sikkim's transition to a constitutional Government, committed to help in economic and social development of the people of Sikkim. Further the Government of India was to provide a senior officer from India as the Chief Executive Officer to oversee the above commitments.

It appears Sikkim figured in the Indian Constitution because of a clause in the Government of Sikkim

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Act.1974, which basically was the new Constitution of Sikkim. It is inimical to note that the 8th May Agreement is in itself not clear about who would be drafting the new constitution for Sikkim. The measure of trust between the two countries can be seen at this stage because the constitution was wholly conceived and drafted at New Delhi and ultimately came “readymade” from India. Besides being accepted almost totally, the only bone of contention seemed to be Section 30 of Chapter VI of this draft, which read:

30. For the speedy development of Sikkim in the social, economic and political fields, the government of Sikkim may;

- (a) request the Government of India to include the planned development of Sikkim within the ambit of the Planning Commission of India while that Commission is preparing plans for the economic and social development of India and to appropriately associate officials from Sikkim in such work ;*
- (b) request the Government of India to provide facilities for students of*

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Sikkim in institutions for higher learning and for the employment of people from Sikkim in the public services of India (including the All India Service), at par with those available to the citizens of India;

- (c) *Seek participation and representation for the people of Sikkim in the political institutions of India.*

Though the Chogyal ultimately agreed to all the provisions in the draft and made the proclamation thereby officially giving Sikkim a Constitution in 1974, there seemed to have been some debate on the issue. The Chogyal was not satisfied with the above section and especially clause {c} which meant that the Sikkim assembly could “seek” representations in the political institutions of India like the parliament etc. This was funny as Sikkim had already signed a treaty with India and the word “seek” meant that there were more things to consider, but could they not have been covered with a revision of the Treaty or the Agreement itself? Another thing here was, Sikkim had just started afresh after a huge domestic turmoil, and instead of strengthening its own institutions, was talking about representations in a

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friendly but another country nevertheless. Why? Anyway this representation was “sought” for at a latter stage and the Indian Constitution was amended by the 35th amendment and Sikkim was announced as an “Associate State” of India in 1974.

And what happened to this agreement then? This document was the aspirations of a people for future of dignity under a new political dispensation. Other social indicators of the time show Sikkim was ahead of many states in India in areas of governance and education. Sikkim had an effective government infrastructure covering every district of the Kingdom. Education and healthcare, though rudimentary in the districts, were surprisingly modern and adequate in towns like Gangtok, Namchi etc. Every word in this document gave hope for the continuance of this trend, a better future for Sikkim to blossom into a modern state, so why do we not refer to it now?

We do not see this agreement around because it has been consigned to the dustbins of history. The 36th Amendment of the Indian Constitution expressly forbids documents of the period, including this Agreement, from being brought up in any court of law in India. Does it mean that it was valid till the

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36th Amendment? What about actions taken by the Sikkim assembly in violation of the provisions of the Agreement before the 36th Amendment, like abolishing the Monarchy? Was it valid? If not then the entire 36th Amendment would be unjustifiable as it is wholly based on a resolution of the Assembly which was anyway invalid! We shall take the matter of the 36th Amendment later.

Why is it that one of the signatories, the Government of India, was so keen to see this Agreement in the dustbin that a separate clause justifying that was inserted into article 371F after the 36th Amendment? The fact remains that developments in Sikkim after the signing were the result of the peoples will and needs to be respected as such. Was this will of the people respected? Won't an agreement be meaningless if it is not subject to review if the provisions have been met as per the agreement?

The point here is that this agreement was the only understanding, in writing, between Sikkim and India where the Sikkimese people were also involved, represented by the political parties who signed this document. This was not a treaty but a cry for help to tide over the problems Sikkim was facing then. It is

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ironical that it was taken out of the picture because, it does seem to be the central document acting as a catalyst in the whole sequence of events which unfolded later. It is also unfortunate that this document has been taken less seriously than it should have been by all concerned and, if peoples will was a consideration in a democracy, then even today relations between India and Sikkim should be guided solely by this agreement.

By all accounts it can be said that the events leading up to 35th Amendment were in accordance with the spirit of the 8th May Agreement. Time has also shown that the Government of India had been sincere in its effort to implement the provisions of the Agreement till this point. After this things got fuzzy and accusations started flying around. The issue was debated, resolutions were passed and constitutions were amended. The newly acquired status of an “Associate State” quickly got demoted to a “regular” state of India in a matter of months. And the people are still in the dark about it.

It was said the people wanted it and a crucial resolution, which could otherwise be challenged as illegal, was justified by a hastily organized

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referendum, which has since been rubbished as a hoax. But the people themselves were bewildered with the sequence of events. There are enough people alive who voted then and still remain bewildered now. Think about it... Which people in this world would have voted to demote and divorce itself from its international personality, to be equated with another regular State of India, say, like Bihar? Amidst all this confusion, the future agreed upon for Sikkim through this Agreement has been forgotten. Interestingly, the only people who have suffered seem to be the Sikkimese people who today are facing a crisis of identity and are fighting for their survival in their own lands.

To sum it up, the 8th May Agreement was signed between the people of Sikkim, the Chogyal and the Government of India. Besides bringing a stop to the political turmoil created by the mass uprising of people for a democratic setup, it set guidelines for the future under a written constitution. It also had India as a guarantor, as well as partner, for good governance and the economic and social advancement of the Sikkimese people. All interested parties seemed serious about the implementation of the provisions of this Agreement, and eventually all

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the political institutions agreed upon were born. Sikkim had changed internally and even the 35th Amendment which accorded Associate State status to Sikkim, was accepted gracefully. It was only the run up to the 36th Amendment which exposed the chinks in the armor. In fact it was these amendments of the Indian Constitution which shook Sikkim like an earthquake and caused heartburns to the Sikkimese people. We shall discuss these amendments in more detail in the following chapters.

Associate State

The Indian Constitution was amended twice within a year to accommodate Sikkim into the Indian Union. The first one was the 35th Amendment followed by the 36th some seven months later, drastically changing the destiny of Sikkim as an independent entity. The 35th Amendment accorded Sikkim the status of an “Associate State” of India, as opposed to that of a Protectorate, a status it held till then. The term “Associate State” was a misnomer as it gave the impression that Sikkim had been absorbed into the union. The truth was that Sikkim enjoyed the same status as it had done before, with a semblance of an international personality, and the only changes were really internal. Internally Sikkim had changed, the old system had yielded to a more democratic setup with India’s active participation, and people’s representation in governance was guaranteed under a

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new constitution. So what was this Associate State and why was it done away with so abruptly?

As seen earlier, the 8th May agreement led to the drafting of a constitution for Sikkim. This new Constitution contained, among others, a section which had a provision by which the assembly in Sikkim could seek representation in the Parliament of India. Why the assembly would want to participate in a foreign country's parliament has never been understood, but it would explain a little if you consider the fact that the constitution for Sikkim had wholly been drafted by the Government of India. This also seemed to go beyond the brief of the 8th May Agreement and was opposed to by the Chogyal and other sections within Sikkim. It is understandable that there was opposition to certain sections of the draft within Sikkim. It is interesting to note that the constitutional experts in India had a difficulty in actually implementing it eventually.

The Chief Minister of Sikkim, on behalf of the assembly and through the Chief Executive officer, made a formal request to the Government of India to “*take steps as may be legally or constitutionally necessary*” to give effect to the Government of

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Sikkim Act., 1974 and also to provide for the representation of the people of Sikkim in the Parliament of India. This request was made as per the provisions contained in section 30(c) of the Act. The urgency shown in making this request, or the rationale behind this move, has never been explained, but urgent it certainly was, and was made immediately after the Assembly passed the Government of Sikkim Act., in 1974.

Requesting for representation in the Indian Parliament was one thing, but accommodating this would be thorny considering the inherent nature of the Indian Constitution. The first problem was that the Indian Constitution stated that only Indian Citizens were eligible to be elected to the Parliament. Article 84 of the Constitution of India reads:

84. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the

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*form set out for the purpose in the
Third Schedule*

while Article 102 (1)(d) further disqualifies non-Indian citizens and reads:

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

Alternatively, for a Sikkim representative to occupy a seat in the Indian Parliament a few changes were required in the constitution. These changes were accomplished with the 35th Amendment which inserted Article 2A, which made it clear that Sikkim would not be a part of the territory of India but would be ‘associated’ with it. It also resulted in the insertion of the 10th Schedule in the Constitution which laid out the terms and conditions of the association and the solutions to the obstacles posed by Articles 84, 102 and others.

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Ultimately what came about was an arrangement, whereby Sikkim would be entitled to send one representative each to both the houses of Parliament. The catch was that, though these representatives enjoyed all the rights and privileges as any other Member of Parliament, the representatives from Sikkim would not be entitled to vote in elections for the President or the Vice-President of India. Sikkim's representatives would be '*neither fish nor flesh*' as one witty member put it.

Though a little hazy in its vision, the 35th amendment was a very bold experiment in India's Constitutional history. Presence of Article 2 shows that the founding fathers had envisaged an expanding India, but the accommodation of Sikkim as an associate state was unique. This arrangement also seemed to challenge the core structure of the Constitution itself in many ways. The Indian Constitution speaks of a Federation and there was no mention of any 'association'. This amendment sought to introduce a new concept more on the lines of a 'Confederation', thereby going against the grain of the Constitution as conceived, and was expected to be hotly debated. But it was an interesting experiment nevertheless, and should have

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been investigated and nurtured longer than it eventually was.

Parliamentary debates during the amendment reveal that serious questions were raised by members on a range of issues both political and constitutional. Some questioned the logic of giving representation to “strangers” while others questioned the international ramifications and constitutional propriety of the Amendment. But what transpires is the feeling that most members were genuinely concerned about the fact that a major amendment to the Constitution was being proposed based on a simple resolution of the newly constituted Assembly of Sikkim. Records show that one question which was asked repeatedly was that, if the constitution was being amended due to a simple resolution, what if another assembly at a later date decides to pass another resolution reversing or rescinding the earlier one? This question was articulated very well by Shri Shyamanandan Mishra, MP Lok Sabha, Begusarai, who during his speech on the 2nd of September, 1974 questioned:

“Are we going to base our constitution on the vicissitudes of political opinion in Sikkim? There might be a particular political

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constellation prevailing in Sikkim at a particular point of time. But another constellation might come into being again. Should we be asked to amend our Constitution accordingly?"

The answer to this question was given by Shri Swaran Singh, who was also the Minister of Foreign Affairs at the time. His answer declared to the House that there could not be a unilateral withdrawal from this deal. That the decision taken was binding, and that once taken, there was no question of withdrawal by either side.

His answer is significant as it was not only given to the Lok Sabha, but it was also the official explanation given to the international community, which had been raising questions on those lines. Declassified documents and transcriptions of a meeting released by the CIA show Henry Kissinger, the foreign Minister of the USA, and Z.A. Bhutto, the President of Pakistan, agreeing that they too were offered the same explanation officially by the Government of India. The same arguments were used in the Rajya Sabha at a later stage and a MP from Kerala, Shmt.

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Leela Damodara Menon, had the following to say in one of her speeches.

“Sir, there is a feeling that unilateral withdrawal might be made by the Sikkim Assembly later on. But the External Affairs Minister had made it very clear in the Lok Sabha that there is no question of unilateral withdrawal, that this decision that has been taken is binding on both nations and once it is taken, there is no withdrawal after that”

By all accounts the response of the Minister gives the impression that associate status for Sikkim was more of a permanent nature than it ultimately turned out to be. It also gave the impression that the Amendment was a serious attempt at bringing Sikkim closer to India without losing Sikkim’s distinct identity and international personality. If that was the case then why is Sikkim not an associate state any more? What did the Minister mean when he said there was no question of withdrawal by either side..? Because as events unfolded everything was to change drastically within just a few months, so was the minister misleading the house?

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With regard to the intentions of the Indian Government in introducing this bill, many questions were raised by the MPs cutting across party lines. The official position was articulated by Shri Swaran Singh, who by virtue of being the External Affairs Minister had introduced the Bill. In his summation to the Rajya Sabha on the 7th of September 1974, he stated the official position, so far as the Amendment Bill was concerned:

“...we are considering amendments that are necessary in our own Constitution to give effect to, if I may say, only one provision, that is, to enable the representatives of Sikkim to sit in our Parliament. That is why we have come to this Parliament. The rest of the various provisions are, to a certain extent, complementary or procedural. But the basic reason we have to make this amendment is to enable the representatives of Sikkim to be seated in the Lok Sabha and the Rajya Sabha.”

In the same speech he further went on to say:

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“It is true that in this bill our responsibilities are enumerated. But I would like to remind the hon: House, as very aptly put by my friend, Shri Bhupesh Gupta, that we are not, by this amendment bill, undertaking responsibilities on behalf of Sikkim in any new sphere. We could exercise and we have been exercising those responsibilities and have also that authority there under other agreements, the treaty of 1950 or several other agreements and understanding that have been arrived at.”

Now, according to the Minister, the 35th Amendment was basically nothing more than a simple change required in the Indian Constitution, so that two members elected from Sikkim could sit in the two houses, enjoying all the privileges of a regular member, except for the fact that they could not participate in a vote for the President or Vice-President of India. As for the rest, Sikkim would carry on as before but the relationship was given a new name, “Associate State”. Sikkim would carry on into the future under a new constitution, with the Government of India being given more

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responsibilities than those that had been laid down in the Treaty of 1950.

I am not quite sure as to how the 35th Amendment was explained to the people of Sikkim in 1974, or if it was explained at all. Not much about this seems to have been discussed among the general population because, for the Sikkimese, the changes happening at the local level were more important. This seems to explain the ignorance exhibited by most in Sikkim even today regarding this crucial development in Sikkim's history.

But having gone through all the events which took place then, it would seem like the 35th Amendment was indeed the result of the aspirations of the Sikkimese people, notwithstanding the controversy over the request sent by the Sikkim Assembly for representation under section 30(c) of the new Constitution. All the events which took place as a run up to this amendment seemed consistent with the spirit of the agreement of 8th May 1973. It did bring normalcy in Sikkim after a period of uncertainty, and also defined a new relationship with India.

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It is unfortunate that this bold experiment was cut short abruptly within a period of seven months when the 36th Amendment to the constitution of India brought about changes which was huge in its implications to everyone involved. But for Sikkim it was gigantic. It stripped its identity in the international community in one stroke and closer home, this one move almost obliterated the Sikkimese identity which had been cultivated over centuries.

More than the act itself, the manner in which it was achieved gave rise to a great deal of embarrassment for the Indian Government, and generated heated debates in Parliament and outside. The 35th Amendment of the Constitution of India was an experiment no one seems to have even given a chance to be successful. The Chogyal was blamed as the impediment, but in a new set up, more time should have been given to sort things out. If the King was the problem then how come Sikkim itself lost any sovereignty it had?

For all purposes, this could have been a fairy tale ending. But this was not destined to be. We shall discuss the events which took place after the 35th

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Amendment later, but it must be said that if public opinion expressed through elected representatives is a measure of a healthy democratic process, then the 35th Amendment can be seen as such.

Admitting this brings about responsibilities on the Sikkimese people also. The people will have to stand up for every action taken on their behalf by their elected representatives, and the 35th amendment is an example of one which should be seriously studied.

Compared to the ambiguous status Sikkim enjoys today, the “Associate State” status seems more in tune with the spirit of all the treaties, agreements, parliamentary debates, legislations and other instruments which were affected to promote good relations between India and Sikkim till then. And as it was the result of the people’s aspirations directly, the people of Sikkim could not have got a better deal than that of the “Associate State” considering the options it had. The people should have opposed the scrapping of this Amendment later when the Indian Constitution was amended once more as the 36th Amendment.

The 36th Amendment

My father once told me that if the 35th Amendment was the “smash”, then the 36th Amendment was the “grab”. He was obviously making this observation with reference to a popular book, “Smash and Grab: The Annexation of Sikkim” by Shri Sunanda K Datta-Ray, a renowned Indian journalist associated with the prestigious National daily, the Statesman, as well as a personal friend of the Chogyal. Most Sikkimese today consider this book the most authentic account of what transpired in Sikkim in 1973 and after, and has become a sort of history textbook for the younger generations who take interest in Sikkim’s history.

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So what is this amendment and why was it required? On the 21st of April 1975, leave was requested to introduce a Bill to amend the Constitution of India by the then External Affairs minister, Shri Yeshwantrao Chavan. Two days later, on the 23rd, it was introduced in the Lok Sabha and commended to the House for acceptance. The statement of objects and reasons normally reflects the reasons behind the amendments, and the house takes up each in lengthy debates. Clause number 5 in the objects and reasons for the proposed amendment states one of the objectives clearly and reads:

“5. Accordingly, it is proposed to include Sikkim as a full-fledged State in the First Schedule to the Constitution and to allot to Sikkim one seat in the Council of States and one seat in the House of the People. It is also proposed to insert a new article containing the provisions considered necessary to meet the special circumstances and needs of Sikkim.”

In this case the objectives were simple, accommodating Sikkim into the Indian Union as a full-fledged State. But why was this to be done? And

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on who's request/authority? Clause one of the statements gave an idea of the reasons and reads as follows:

“1. The Sikkim Assembly unanimously adopted a resolution on the 10th April, 1975 which, inter alia, noted the persistent harmful activities of the Chogyal which were aimed at undermining the responsible democratic Government set up under the provisions of the May 8 Agreement of 1973 and the Government of Sikkim Act, 1974. The Resolution declared that the Assembly had satisfied itself that these activities of the Chogyal not only violated the objectives of the Agreement of May 8, 1973, but also ran counter to the wishes of the people of Sikkim and impeded their democratic development and participation in the political and economic life of India. Accordingly the Assembly solemnly declared and resolved that "The institution of the Chogyal is hereby abolished and Sikkim shall henceforth be a constituent unit of India, enjoying a democratic and fully responsible Government".”

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As per this statement, this exercise was being undertaken because the Sikkim Assembly had passed a resolution asking for these changes. And why the Sikkim Assembly had to resort to this resolution was explained as “*the persistent harmful activities of the Chogyal*” and no further details or specifics were given. But a reference has been made to the 8th May Agreement, stating that the Chogyal had violated the objectives of the agreement. The agreement itself as the focal reference point, as far as spirit of cooperation between India and Sikkim goes, was given its due place of importance.

It is another matter that no additional details beyond this have ever come up over the decades to substantiate the serious charges leveled on the Chogyal, like the accusation above, that his activities “*ran counter to the wishes of the people of Sikkim and impeded their democratic development and participation in the political and economic life of India*”, and that he had indeed worked against the objectives of the 8th May Agreement.

Now, going back to the resolution, what really was resolved on the 10th of April 1974 by the Sikkim

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Assembly at Gangtok? The resolution was in fact divided into two parts, A and B and you shall find the full text as an appendix at the end of the book. The resolutions passed that day read, in part, as follows:

A.

Solemnly declares and resolves as follows:

The institution of the Chogyal is hereby abolished and Sikkim shall henceforth be a constituent unit of India, enjoying a democratic and fully responsible Government.

B.

Solemnly resolves further as follows:

- 1. The Resolution contained in part "A" shall be submitted to the people forthwith for their approval.*
- 2. The Government of India is hereby requested, after the people have approved the resolution contained in part "A", to take such measures as may be necessary and appropriate to implement this resolution as early as possible"*

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Here too the “*harmful activities of the Chogyal*” was cited as the reason for the resolution and it was stressed, in the reasons given, that the king had gone against the objectives laid down in the 8th May Agreement of 1973 without any specific detail. As far as the people of Sikkim were concerned, in their capacity as a signatory to the agreement through their representatives, any deviation from the agreed objectives of the agreement had to be dealt with firmly and the defaulting party pulled up. It is also evident in the agreement that the people of Sikkim had already determined to restrict the monarchy to a constitutional role. But even if the king had defaulted and tried to assert his authority, was it correct for him to have been “executed” rather than tried?

If the Chogyal had been judged by the yardstick of the 8th May Agreement and its objectives, were the activities of the other signatories ever evaluated? No. India was amending its constitution based on the resolution of the Sikkim assembly, which itself was created due to the 8th May Agreement, clause 3(ii) of which reads:

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3 (ii) The assembly shall not discuss or ask question on the following:

(a) The Chogyal and the members of the ruling family

So how come the assembly which could not even discuss the Chogyal, end up abolishing his institution by this resolution? Readers should note that the Assembly of Sikkim then was populated with a majority of members from the Sikkim National Congress Party headed by Shri L.D. Kazi. Did this party have the mandate to decide on the King's fate, or even the accession to India? And were these questions a part of their election manifesto? It seems not. The fact remains that this party was elected to run the country; it was not elected on the issue of giving the country away. Was it not strange that out of three parties who agreed on the 8th of May 1973, only the Chogyal was expected to keep his side of the bargain?

Another issue remains, that despite the Government of India being a signatory, it not only gave cognizance to this resolution which, prima facia, looked violative of the 8th May Agreement, but also

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went on and amended its own Constitution to accommodate the resolution. What if the Sikkim Assembly were to determine and declare this resolution invalid and illegal at a later date. Would this amendment be automatically considered nullified considering the fact that the amendment was now based on an invalid/illegal resolution?

Lets look at part “B” of the resolution which kind of gives the game away. Clause 1 seeks democratic sanction by offering to put the resolution to the people for their ratification, presumably by a referendum. But clause 2 sounds like the members had already pre-assumed the people’s support when they decided to approach and request the Government of India to start taking steps to implement this resolution, even *before* the referendum had been held. As the resolution was basically to abolish the monarchy, what would the Government of India have done if the outcome had been different and the Sikkimese people had rejected the resolution?

Yes, the referendum was held ultimately and the resolution was seemingly ratified by the people. The fact that the referendum was held now seems more to gloss over the truth, and the fact, that the Assembly

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had no authority or mandate to pass a resolution such as this. The referendum was also held under controversial circumstances and has now been rubbished as a hoax by some of the players themselves, including some from the Research and Analysis Wing (RAW), India's foreign intelligence wing, who played an active part in manipulating its outcome.

That this referendum was a charade was also made evident a few years later when elections were announced in 1979, and the party which passed the resolution with a majority of 31 members in a house of 32, was wiped out from the political landscape for ever. Kazi Lhendup Dorji, the Chief Minister, and his party which had ushered in momentous changes in Sikkim, lost all their seats and would never win any elections ever again. The Kazi died a dejected man never forgiven by his people, who never understood whether he was a pawn or a facilitator to the events which put Sikkim's fate in the balance. But later in life Kazi did write to the Indian Government, quoted non-adherence to the principles and objectives of the 8th May Agreement, and demanded restoration of "Associate State" status back for Sikkim.

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But by then the 8th May Agreement had also been taken out of the picture by the same 36th Amendment Act. Another point of interest here is that the Government of India had recognized that the agreement was paramount and had cited violation of its objective as the reason for the amendment. But surprisingly this same amendment rendered it meaningless, almost as if it had never existed. One of the outcomes of the amendment was the insertion of Article 371F into the Constitution of India. As per the Bill's objectives, this was basically "*a new article containing the provisions considered necessary to meet the special circumstances and needs of Sikkim.*" And Clause (m) of this Article reads:

(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143

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According to this the 8th May Agreement or any document signed between the Governments of India and Sikkim before the 16th of May 1975 could not be brought up in any court of law in India. This meant that under Indian laws, these documents had no legal standing any more. These documents included the treaty of 1950 which was a document signed between two sovereign entities which would have stood/held up under international laws. So did the Indian Parliament have the authority to rescind a Treaty or even the Agreement?

Another way of looking at the events is this; an agreement is signed between three parties for a future of trust, cooperation and growth. Two of these parties gang up and has the third party executed. Now one of the remaining two goes/is put into a coma (for 35 years?), so the healthy one opens the safe, tears up the agreement and sets it on fire. And everybody is supposed to live happily ever after that?

However, the Bill was eventually passed and the Constitution of India was amended for the 36th time. This resulted in the insertion of Article 371F and Sikkim was included in the territory of India as a full

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fledged State of the Union. But the haste shown by the Government of India in rushing through the Bill brought comments from a number of members and onlookers. The haste only brought focus on the fact that there was a case pending in the High Court at Gangtok questioning the legality of the resolutions passed by the Assembly. Despite the fact that the Indian Government had recognized the Sikkim High Court, it did not wait for it to announce its verdict and went ahead with the amendment. This fact was articulated during the debates by Shri. Surendra Mohanty, MP (Kendrapara), whose observation, in part, was:

“You will find that sub-clause (i) of clause 3 of the Bill confers the status of continued legitimacy on the High Court functioning at present at Gangtok. Yet, these very issues which are embodied in this Bill are sub judice before the high court at Gangtok. So, for the Government of India to rush through this Bill is really ungraceful. If you confer legitimacy on the High Court at Gangtok, then certainly you owe an explanation to the international community as to how you can bring this Bill, extinguishing the right of the Gangtok High

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Court to sit in judgment over the issues which had been challenged before it”

The haste resorted to by the Indian Government in pushing through the Amendment, which evidently did not slow down even to accommodate legal formalities, provoked the MP to make the above observations. This rush is indeed questionable/strange if you look at the time frame within which the whole process was completed because the whole process took only about a month. The Assembly passed a resolution on the 10th of April 1973, the referendum was held on the 14th, three days later, the results announced on the 15th, the elected members went to Delhi on the 16th, the amendment bill was introduced on the 21st and passed and the 36th Amendment came into effect on the 16th of May, 1975. That was indeed quick considering the fact that there was no talk of a merger or abolishing the monarchy in Sikkim even a day earlier, and yet, the people were expected to give a verdict within three days on such a crucial matter.

There are enough books exposing the fabricated figures of the referendum so this is not the route I shall take. However, one needs to remember that

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Sikkim then was not what it is today. Communicating with far flung villages of the Himalayan Kingdom was not easy, and it is difficult to believe that in just three days the population of Sikkim was informed about the referendum, ported to polling booths to vote, and informed of the outcome. The rush also gave the impression that something was amiss because at that time the political climate in India was charged in the run up to the infamous imposition of emergency by Smt. Indira Gandhi in June 1975. It was a time when, perhaps for the first time in the history of Independent India, the whole opposition had been paralyzed and almost had no say. Of course, as the records show, there was no one in the parliament who took part in this debate and represented Sikkim. But even if there were any, it was unlikely that they would be heard.

Whatever might have transpired, the end result was that Sikkim was announced as the 22nd State in the Indian Union and Article 371F inserted into the Constitution. But did that make Sikkim a full fledged State of the Indian Union? Because if it did then why Article 371F, which basically allowed the Sikkimese people to retain their separate identity, their laws and their autonomy? As such, most of the provisions in

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this article seemed to be the very same as was proposed for Sikkim as an “Associate State”.

Even though Article 371F accords protection for the people of Sikkim, time has shown that implementing some of its provisions is becoming more difficult as time passes, especially due to the massive influx of population which has now almost drowned the Sikkimese people. So what is Article 371F? How does it protect their special interest and does it meet the objectives of the historic 8th May Agreement; especially now, when the people cannot refer to it anymore? Questions about the Article shall be addressed next.

Article 371F

Article 371(f) was inserted into the Constitution of India vide the Constitution (Thirty-sixth Amendment) Act, on the 16th of May 1975. This day is also known as the “appointed day” and is also referred to as the day of the merger/annexation, when the erstwhile Kingdom of Sikkim became part of the Indian Union. This article consists of 16 clauses which lay down the constitutional directives and procedures to be followed in respect of the state of Sikkim. This Article starts with the declaration, “*Notwithstanding anything which is contained in this constitution*”, called the non-obscurant clause, which effectively means that when it comes to matters relating to Sikkim, the conditions laid out in this document shall override those laid out in the Indian Constitution

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As the Statement of Objects and Reasons of the Amendment Bill proclaims, it was an article “*containing the provisions considered necessary to meet the special circumstances and needs of Sikkim.*” So what were these special circumstances and needs of Sikkim? What were these provisions? And how does this article “meet” these circumstances and needs?

The 36th Amendment was the culmination of a process initiated by the signing of the 8th May Agreement in 1973. We can safely say that the “needs of Sikkim” as defined above are the same as those enshrined in the May Agreement. And these were the need to ensure that full power was vested with the people under a constitution and to allow them to shape their destiny as per their desire. That this amendment did not meet the objectives was pointed out by Shri Shamar Mukherjee, MP (Howrah), who argued the following:

“It is good in that sense that he (the Chogyal) is going but the other part, that full power in the hands of the people of Sikkim to shape their own destiny according to their own desire, has been denied. Its implication is that

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all smaller states surrounding India will look at this development with apprehension and internationally the prestige of India will not increase. The whole thing had been prepared in such a way that it could automatically fit in with the framework of the Indian Constitution and the way it has been hurried through shows that the Government of India is aware that in future the people of Sikkim may go against the Government of India. This shows some motive is in your mind and you want to rush through because some developments may take place which will not be desirable”

According to this renowned Parliamentarian the amendment not only failed to fulfill the people's desires, but also seemed to have got the other smaller states like Sikkim, looking towards India with apprehension. Further he seems to think it would be so offensive that he cautions the Government that the people of Sikkim may go against it in the future. Though some of the above observations may seem extreme, there were some proposed provisions that provoked discussions on their legal and constitutional validity and were argued vociferously in both the houses, among which a few stand out.

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In many ways Article 371F can be considered a mini constitution within the Constitution of India. This makes it a little confusing as the very reason for its existence was to turn Sikkim into a regular State of India, but certain provisions in it seem to negate that impression and suggest that these are in fact special provisions which no other state in India seems to enjoy. One of these provisions, which were again hotly debated, was the Clause (g) which reads:

(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his discretion;

On studying the clause closely, it is found that the Governor of Sikkim is given almost absolute power which seems to contradict the spirit of the Indian Constitution. According to the language adopted in this clause, it becomes clear that the Governor is not

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bound by the standard constitutional role but also has “*special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim*”. This sentence appears so ambiguous that it can be interpreted any way and reads more like the powers granted to a dictator than a Governor under the constitution of a democratic country. It is also a fact that this is not how a Governor’s powers are defined for any other State.

The Indian Constitution, under Article 356, gives the President the power to interfere in a state, and declare Governors rule, if he is satisfied that constitutional machinery has failed. But in Sikkim it is the Governor who is to be satisfied because here he can “act in his discretion”! To put it simply, the Governor of Sikkim, an individual, has the power to dismiss a legally elected Government of the people to uphold the “peace” and is not bound by the Constitution, or answerable to it, in any way. Not “law and order” which is definable, mind you, but “peace”, which can mean anything. Can one individual in a modern democracy have so much power over an elected body? In Sikkim, he certainly can. And this was

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pointed out during the Parliamentary debates by Shri Sezhiyan, MP (Kumbakonam), who said:

“You have got provisions in the constitution. Why do you want a special provision here? Apart from this, my main objection is to the discretion being given. The discretionary powers of the Governor have got one more special significance here. In the case of Nagaland, you say ‘The Governor shall have special responsibility with respect to law and order’. Here, you say ‘The Governor of Sikkim shall have special responsibility for peace’. ‘Peace’ has a different connotation in the legal terminology. ‘Law and Order’ is definable whereas ‘Peace’ is a wide word. Even if you take the dictionary meaning, ‘peace’ is a word of wide import, giving wide discretion to the authority to pass Acts, whereas, law and order, is definable. You can go to a court on any specific point. There at least, you say ‘law and order’. Here you have put the word ‘peace’. This is a very old concept taken from British Law. It is not your intention. But those legal draftsmen have always taken these ideas from the British

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legal jurisprudence, wherein for any crime committed, in a court of law, it will conclude with the accusation that he has disturbed the peace of the lord, the King”.

These observations show that, as the clause was passed as it is, it has the potential to be misused in the future. The Governor of Sikkim can take any action, including dismissing an elected Government, if he alone is satisfied that there has been a breach of ‘peace’, which could be any sort of peace including mental peace and also the lords peace. These sound like the powers enjoyed by the last dictator of Romania rather than a Governor in modern India, the world’s biggest democracy.

But what if Clause (g) was there for a purpose? As I see it, the world was shedding its imperialist past in the 70’s. It was an era when nations were rejecting colonial rule and new States were being born. When most protectorates of the world were going on to gain full Independence, the Government of India was hard pressed to prove that it had no imperialistic ambitions in Sikkim. But like the parliamentarian Shri Shamar Mukherjee pointed out earlier, could it be “*that the Government of India is aware that in future the*

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people of Sikkim may go against the Government of India”, and clause (g) was inserted as an emergency switch for the future?

What I mean by that is, as we have seen earlier, almost every action taken by the Government of India in realizing the objectives of the 8th May agreement since 1973, seem to have challengeable motives. And as the merger/annexation of Sikkim was based on a controversial resolution which may not stand the test of legal scrutiny, the Government of India may have been aware all along that these Amendments of its Constitution was not really watertight or even enough. Unlike other states of the Union, Sikkim has not signed the instrument of accession, and in the future if, under a new government, the Sikkim Assembly passes a resolution to reverse the earlier resolution, then what would the Government of India do? In my opinion if this situation arises, the Government of India shall then resort to this provision, dissolve the Assembly that passed the resolution, and declare Governor’s rule in the name of ‘peace’, and take matters into its hands again. So, again in my opinion, because the 36th Amendment to the Indian Constitution can be challenged anytime on Constitutional, Legal and

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moral grounds, this could be the only reason why this clause exists.

If clause (g) gives an idea of how differently Sikkim was treated in comparison to the other states, there are more which reinforces this view. But there is one provision which seems to have been included to protect the special circumstances of the people of Sikkim as agreed upon in the 8th May Agreement. This was to do with the old laws prevailing in the Kingdom prior to absorption into the union. Clause (k) of Article 371F, which gives constitutional sanction for the old laws of Sikkim to continue, while giving a measure of protection to the people from exploitation, is perhaps the most misinterpreted and misused today. After the population explosion of the 90's, due to the unchecked influx in violation of these old laws, it now runs the risk of being a catalyst for the undoing of the whole article itself.

Clause (k) reads as follow:

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until

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amended or repealed by a competent Legislature or other competent authority;

Clause (k) thus states that all old laws prevalent in Sikkim before the merger/annexation, shall carry on being in effect, till some competent authority changes it or cancels it as per the limitations laid out in the other clauses of the Article such as clause (l) which reads:

(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be

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questioned in any court of law;

Clause (1) informs us that if any of the old laws have to be changed to conform to the provisions of the Constitution of India, they shall have to be done within two years from the appointed day. So according to this, as the two year period has long been over, no more adaptations and modifications are possible any more. This also implies that if there are a few old laws which have not been modified yet and do not conform to the provisions of the Constitution, they still have Constitutional sanction to remain in effect and shall have legal standing in a court of law, and again, cannot be modified any further.

But the ramifications of having the old laws of Sikkim remain effective, and in force, were not really felt for a long time. These contradictions were bound to surface later because, as I have pointed earlier, some of the old laws were such that it seemed to deny a normal Indian Citizen even his basic fundamental rights if he was residing in Sikkim. An excellent example of such a law would be the Sikkim Employment Rule 4(iv).

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I take the example of the Rule 4(iv) is because this particular ‘old law’ was challenged in the Supreme Court of India on the grounds that it infringed upon the petitioner’s fundamental rights. This rule is an archaic law which requires a non-Sikkimese employed in Sikkim to give up his job the moment a qualified Sikkimese claims the position, regardless of any considerations like seniority, years on the job etc. The Case went against the petitioner and the Supreme Court upheld the validity of the rule. Though I personally feel that this rule is unfair, even against human rights and would never advocate its implementation, this rule will remain as per the provisions of clauses (k) & (l) and the courts will be bound to uphold it as per the law.

But there is one more interesting ‘old law’ left. The Sikkim Assembly considered and passed the Government of Sikkim Bill, 1974 unanimously on the 28th of June, 1974. The Chogyal promulgated this Bill on the 4th of July, 1974 as the Government of Sikkim Act, 1974. This came into force on that day and was also recognized and given legitimacy by India after the 35th Amendment of the Constitution. As per interpretations of the clauses in question, this Act should automatically be in effect and

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enforceable. But like we have said earlier this Act was basically the new Constitution of Sikkim agreed upon in the May Agreement of 1973.

So is the Constitution of Sikkim still in existence? This question was asked by a member of the Rajya Sabha Shri Salil Kumar Ganguli to the external affairs minister Shri Y.B Chavan and I shall leave the reader to make the most of the answer to this question when the minister replied as under:

“What I was telling the other house; I think that I will not be required to repeat the whole thing here. What we are dealing with is not a purely constitutional or a merely legal situation. What we are dealing with is a developing political situation in the State where there is a conflict of will of the people against a constitutional Head who refused to act as a constitutional Head of the Government. Therefore, what has happened is that the Government of Sikkim Act has become inoperable for all practical purposes. What will happen to that Act when this Constitution Amendment becomes the Constitution after the assent of the president?”

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To that extent that Act either stands repealed or amended or whatever it is. I am not talking in legal phraseology about it. What we are dealing with is a political situation. As I have said earlier, we are acting on the resolution. That resolution says, "Hereby, we abolish the office of the Chogyal". So, the office of the Chogyal stands abolished. To that extent, the Government of Sikkim Act is inoperative."

This did not answer the question for me, but it sort of reinforced the idea, that the Act is very much alive and kicking, as far as the law was concerned. Though the Minister has tried to equate the fate of the Chogyal with that of the Act, I do not subscribe to that view, on the grounds that the Chogyal at the time was being addressed as a Constitutional Head under the definitions of this Act and was subservient to it. In fact the minister's answer gives the impression that he basically had no answer for a constitutional or legal enquiry and ended up on a feeble note by saying "*What we are dealing with is a political situation*". But I did liked the way he says "*I am not talking in legal phraseology*", because to explain his Government's actions at that point in time he, or anybody else for that matter, would have to resort to

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“bulldozer phraseology” but that would again be un-parliamentary.

The point I am getting at is, though Article 371F seems to be well thought out, it apparently is not. Though it was supposed to prevent exploitation of the resources and people of Sikkim, it has failed to do so. Even after 35 years of being a part of the union, the question of who is a bona fide Sikkimese is still being debated, and has reached such ridiculous proportions, that there is a whole lot of people clamoring for a ‘Sikkim Subject’, the citizenship documents of a country that exists no more!

And whenever any solution is contemplated to mitigate problems like these, the other clauses of the article come in the way along with a bushel of old laws, and a meaningful solution is never arrived at. Are these problems going to be the undoing of the Article itself someday? No one can answer that now, but the truth is that today; unfortunately, this Article is the only link the Sikkimese people have with the 8th May Agreement which started the process of change for them and ended up here. Being the only link there is of the people’s aspirations as agreed upon, it should be the duty of every generation of the

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Sikkimese people to strive towards getting the 8th May Agreement back onto the centre stage again and to check if Article 371F is in harmony with its spirit and whether it meets its objectives. This should also be done because, though Article 371F does give a bit of a special status to Sikkim, it does not address the question of Sikkim's Identity domestically and also within the world community.

Sikkim's National Identity

History shows that, though there was not much Sikkim had ever done with its international personality or identity, it still had one. It had evolved, along with its domestic form, over the centuries and was influenced by the mix of cultures and political changes which had taken place. This identity seems to have been recognized even in ancient times, but in the recent past, contact with the British gave this identity a boost when a Treaty was signed, and this identity became documented and recognized as a distinct nation in the new era.

So what was this identity? Most academics and scholars seem to agree that nationality or national

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identity is normally constructed. This could be spontaneous or the result of careful and conscious construction. Now everyone is aware that Sikkim is populated by three dominant ethnic groups, the Lepcha's, the Bhutia's, the Nepali's and the small but significant plainsman community, who all made Sikkim their home at different points in time. Its existence and political status had been announced with the consecration of a King in 1642 AD and declaration of a Kingdom, but there was a certain ambiguity about this status which would go on to plague the Kingdom in later years.

Another factor influencing a nation's identity seems to be its relationship with its political status. The coming of the British helped in giving direction to the question of political status with which Sikkim would ultimately have to relate to India, after the British left in 1947. The British did not have a uniform policy for the Himalayan Kingdoms like Bhutan, Sikkim, Nepal etc., but it was clear Sikkim was the least independent of them and, in fact the British directly administered Sikkim from 1890 till 1908. After India got Independence, the people of Sikkim approached the Government of India for total accession with India. This request was turned down twice, once in

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1947 and the other, in 1949. A treaty was signed between these two countries in the year 1950, and it was a time when the seeds of an articulated national consciousness began sprouting, the likes of which had never been seen before.

The Signing of the treaty also brought a new meaning to the relationship. Who signs a treaty? It seems treaties will only be recognized if they are entered into between Sovereign parties only. If that were true, then the fact that a treaty had been signed gives rise to the understanding that Sikkim too enjoyed a form of sovereignty. This was a form of International identity as far as the world community was concerned, and this fact seems to have played a role in making distinct efforts to direct the construction of both the domestic and international identity by the intelligentsia in Sikkim, during that period.

By the early 1960's, a National Anthem had been written, citizenship had been formalized with the passing of the Sikkim Subject Regulation Act, and the National Flag was being prominently displayed at home and at the rare official interactions of the Chogyal with other nations, including India. In fact visits by the Chogyal to India were officially tagged

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as a 'state visit' and the reception given was that comparable to that of a Head of Government. Around this time, it is seen, that most of the Sikkimese, regardless of their ethnic background, were commonly attached to the King and country and a sincere effort was seen to be put to bring about a shared Sikkimese identity.

The only hindrance to the progress towards forging this identity was the complicated electoral system of Sikkim. This system heightened the inherent differences between the communities and had been established in 1953, with the help from the Government of India. This was a system so complicated that ultimately it created great public unrest and the people rose up, in massive numbers in 1973 demanding, among others, "one man one vote". After the uprising took a violent form and there was a complete breakdown of the Law and Machinery, the Sikkimese people turned to the Government of India, who graciously agreed to intervene, and the Agreement of 8th May 1973 was signed.

This agreement was not all political. Among its objectives was the emphasis that this distinct Sikkimese identity was to be preserved and protected

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and comes through like it was the dominant spirit of the agreement. It is rather unfortunate that this agreement ultimately led to Sikkim having Article 371F to realize the objectives, because this Article has literally ignored the key question of the Sikkimese Identity. How do we manage it now? Were all the encouragements in the past given with the motive of crushing it in the end? The provisions of the Article implicitly suggest that the Sikkimese people can continue to assert their unique identity within the framework of the Indian Union, but how it is to be done in practice has not been worked out even after these three decades which have passed.

And what has become of Sikkim's International Identity? As per the opinion of a retired Chief Justice of India, it still exists. If that were so, then where is it, or rather, where has it been all these years? I say again that Sikkim could never have done much with this international personality because, contrary to what most might think, this personality was nothing like that which Bhutan enjoys, and is restricted. The Chogyal himself held an Indian Passport with the stamp, "INDIA PROTECTED PERSON" on it, which might give an idea of the flavor of the 'international personality' Sikkim basically enjoyed.

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That Article 371F is being strained almost to the breaking point can be seen 35 years down the line. This is due to the massive influx of people coming into Sikkim today from the surrounding areas and the mushrooming of Mega Hydel projects, both of which concerns land, and has brought the contradictions of this Article to the forefront again. But if the situation on the ground is any measure of the success of the Article, then truly it has failed when you consider the reasons behind having this Article. And the reasons are clear in some of the arguments put forth during the Parliamentary debates, like the excerpt below from the oration of Shri Samar Mukherjee, an eminent CP(M) MP of those days, who had the following to say:

“Let me express my fears and apprehensions. These are matters of very serious consequences. You have to understand it. India is dominated by big business, by monopolists, hoarders, profiteers. So they want that all land would come under their purview, under their field of exploitation. So, they are very much interested that Sikkim should be part of India. And this

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constitutional amendment will give them ample scope immediately purchase lands and to purchase this management of the cardamom plantations and they will turn themselves to be the exploiters there afterwards. What would be the feeling of the Sikkimese people? They will be the victims of the terrible exploitations and they will look to India not as friends but, as exploiters and anti-Indian feelings are bound to rise and that will create further estrangement in the relations between the people of Sikkim and the people of India. Apart from international consequences, these implications are of serious consequence and the people of Sikkim will actually become, and they have become, the object of exploitation of the Indian vested interests and big business.”

How prophetic! Are we not seeing the same happening today? It was because of such apprehensions that the Parliament thought it fit to allow all old laws to carry on in Sikkim, among which are the stringent land laws which forbid any Sikkimese land from any form of transfer including buying or leasing. But we find land being transferred

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with impunity, including in the restricted area of Dzongu where, not even people from other parts of Sikkim were allowed to buy land, by laws which are still in force. What is happening today in Sikkim, especially regarding the transfer of lands, is a glaring example of the nexus between big money and unscrupulous companies as prophesized above in the parliamentary debates. If this state of affairs continues, then it could mean the death of the Sikkimese identity and the lofty ideals of the 8th May agreement ultimately. Then, the Sikkimese people would have truly lost a lot.

Conclusions for the future

This book was not meant to be an endless rant about the past. Rather I have tried to bring up certain aspects of the events leading up to the 36th Amendment. These were events which rattled me personally, and should rattle anybody who is a Sikkimese. I had grown up a proud Indian, and still am, so it hurt me to realize that there was a long story of alleged subterfuge behind the ‘merger’ of Sikkim as we knew it. If a proud citizen like me has been forced to doubt certain aspects of my existence and nationality, then the country has some explaining to do to me and also the coming generations. But one question which plagues me is, why would anybody resort to so much of jugglery to achieve something which was already there?

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Consider this, before 1973 Sikkim was more or less under the complete dominance of India in every field. Like I have said earlier, even the King had an Indian passport. The people had not only expressed their desire to join the Indian Union, they had done this twice and were turned down both times. With such credentials, one can assume the 'merger' would have been done in a way which would conform to the high democratic traditions as enshrined in the Indian Constitution. But it was not, and that is what is so surprising. This act not only caused a lot of embarrassment for India in front of the world community, it also created apprehensions in the surrounding countries about their own fate and today we find India rapidly losing ground and influence among all its neighbors.

But what did it do to the Sikkimese people? Its effect can be seen today in the resurgence of interest in Sikkimese identity and Article 371F. It is also due to the fact that today the Sikkimese are almost outnumbered in their own lands. Only eleven percent of Sikkim is habitable and the strain on land and public resources is beginning to be felt. The Sikkimese are now turning back to the protections, or

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the lack of them, which has been the legacy of the past. But again this past in itself is murky because the aspirations of the people have got diluted within the churning of the Parliament of India, and whatever is left is a shadow of the original Agreement. And of course, we cannot even refer to that Agreement anymore.

It is the duty of the people to check if instruments which have been ratified are being honored, but in Sikkim's case, the people should also object strongly to the disappearance of the instrument and demand that the 8th May Agreement be brought back to the table as a reference point and as the hallowed document which contains the peoples will and aspirations. It can be said that while the 35th Amendment can be seen as the result of the peoples will, the same cannot be said for the 36th, which in 1975 was imposed on the people. If these are challenged with a purely democratic approach and steadfastness to the principles of fair play and jurisprudence, then the 36th Amendment will be an action which the Government of India will be hard pressed to explain in the light of what we have seen.

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Challenging the 36th Amendment should not be considered separatist. Even with the 35th Amendment Sikkim was a part of the Union as an associate state so it cannot be considered separatist in any way. It will only bring back an experiment in India's constitutional history which was never given a chance to succeed and done away with in a very non-transparent manner. In my opinion this model should have been given time because it was an excellent way to give autonomy to some regions who today are seeking cessation from the union. Making the Government of India understand this should be the priority of every Sikkimese.

But what is my point in taking this up now? I would say, to bring the focus back to the agreement that started it all. If the spirit and objective of the 8th May Agreement were truly followed, then would Sikkim be what it is today? Sikkim today has become more of a banana republic, with its own version of a tin pot dictator. The so called prosperity we hear about today is wholly based on corruption which is increasingly becoming institutionalized.

Sikkim today boasts of the highest rates of school dropouts and suicides in the country. Huge cement

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monsters have become the face of development and unemployment has gone through the roof. Prostitution is rampant. A state once known for its rice production is no more self sufficient in food grains. The social fabric has been ripped apart and social values have all but vanished. And economically Sikkim has reached a stage where if the 'central funds' don't arrive, the state will stop functioning and maybe even starve.

Under such grim circumstances, I sincerely feel Sikkim needs to move forwards with a positive attitude and unless the past is known, this may not be possible. Things need to be got to a closure if things are to settle down. That is what justice does. Convicting a murderer will not get the murdered man back, but the process of law leading to the conviction brings the sense of closure which will allow the affected parties to move on. Sikkim needs such a closure now.

It also needs this closure to serve as a balm for the people whose collective pride has been bruised by the seemingly bulldozing tactics adopted to push through the 36th amendment. This will help to bring back the sense of social responsibility which is so lacking in

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Sikkimese society today. It will also free the Sikkimese people from the state of resigned stupor they are in today, if they realize that they are a part of the largest democracy on earth and have every right to ask the most uncomfortable questions, if need be, to ensure that the people's objectives are met.

In a democracy the aspirations of the people are paramount, and if these are not met, people are expected to protest, otherwise it shall be assumed to have been accepted for all purposes and, I feel, the Sikkimese people cannot afford that any more. If people do nothing about it, it will fester into sores and wounds. And these wounds of history have the power to derail Sikkim from heading towards a glorious future, if left un-treated for too long.

Appendix I

May 8 Tripartite Agreement of 1973

An Agreement envisaging a democratic set up for Sikkim and administrative reforms was signed in Gangtok on Tuesday.

The following is the text of the Agreement:

Whereas the Chogyal and the people of Sikkim are convinced that their interest and the long term interest of Sikkim as whole call for;

(i) The establishment of a fully responsible Government in Sikkim with a more democratic and greater legislative and executive power for the elected representatives of the people;

(ii) A system of elections based on adult suffrage which will give equitable representation to all sections of the people on the basis of the principle of one man one vote;

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(iii) The strengthening of Indo-Sikkim co-operation and inter-relationship; and whereas the Chogyal as well as representatives of the people and requested the Government of India:

- (i) To take responsibility for the establishment of law and order and good administration in Sikkim following the breakdowns of all three;
- (ii) To ensure the further development of a constitutional Government, communal harmony, good administration and rapid economic and social development in Sikkim;
- (iii) To provide the head of the administration (Chief Executive) in Sikkim to help achieve and to safeguard all; the above needs and objectives.

Basic Rights:

And whereas the Government of India has agreed to discharge the responsibilities hereby renewed to them;

Now, whereas the Government of India, the Chogyal of Sikkim and the leaders of the political parties of Sikkim, have agreed as follows:-

1. The three parties hereby recognized and undertake to ensure the basic human rights and fundamental freedom of the people of Sikkim. The people of

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Sikkim will enjoy the right of election on the basis of adult suffrage to give effect to the principle of one man one vote.

2. There shall be an assembly in Sikkim. The assembly shall be elected every four years. Elections shall be fair and free and shall be conducted under the supervision of a representative of the Election Commission of India, who shall be appointed for the purpose by the Government of Sikkim.

3. (i) In accordance with this agreement, the assembly shall have the power to purpose laws and adopt resolution for the welfare of the people of Sikkim, on any of the matters enumerated herein below, namely;

(i) education (ii) public health (iii) excise (iv) press and publicity (v) transport (vi) bazaars (vii) forest (viii) public works (ix) agriculture (x) food supplies; and (xi) economic and social planning, including state enterprises (xii) home and establishment (xiii) finance and (xiv) land revenue.

(ii) The assembly shall not discuss or ask question on the following:

(a) The Chogyal and the members of the ruling family

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- (b) Any matter pending before the Court of law
- (c) The appointment of the Chief Executive and members of the judiciary and
- (d) Any matter which concerns the responsibilities of the Government of India under this agreement or any other agreement between India and Sikkim.

Executive Council:

4. There shall be an Executive Council consisting of elected members of the assembly who shall be appointed to the Executive Council by the Chogyal on the advice of the Chief Executive. The Chief Executive will preside over the meeting of the Executive Council.

5. The system of elections shall be organized as to make the assembly adequately representative of the various sections of the population. The size and composition of the assembly and of the Executive Council shall be such as may be prescribed from time to time with care being taken to ensure that no single section of the population acquires a dominating position due mainly to its ethnic origin and the rights and interests of the Sikkimese of Bhutia Lepcha origin and of the Sikkimese Nepali, which includes

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Tsong and Schedule Castes origin, are fully protected.

6. The Chogyal shall perform the functions of his high office in accordance with the Constitution of Sikkim as set out in this agreement.

7. To head the administration in Sikkim there shall be a Chief Executive, who shall be appointed by the Chogyal on the nomination of the Government of India.

8. The Chief Executive shall have all the powers necessary for the discharge of his functions and responsibilities; and exercise his powers in the following manner:

(i) With respect to matters allocated to a manner of the Executive Council, he shall act in consultation with the members to whom administrative function in this regards have been allocated.

(ii) He shall submit all important matters to the Chogyal for his information and for his approval of the action proposed to be taken, except where immediate action is required. In the later case, he shall obtain the Chogyals approval as soon after the action has been taken as possible.

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(iii) He shall have special responsibilities to ensure the proper implementation of the constitutional and administrative changes in Sikkim, the smooth and efficient running of its administration, the continued enjoyment of basic rights and fundamental freedom by all sections of the population of Sikkim, and the optimum utilization for the benefits of the people of Sikkim of the funds allocated for the economic and social development of Sikkim.

(iv) In case involving amity between the various sections of the population of Sikkim , on the development of democratic Government and efficient administration in Sikkim , any difference of opinion between him and Chogyal shall be referred to the Political Officer in Sikkim , who shall obtain the advice of the Government of India, which shall be binding.

9. There shall be equality before the law in Sikkim . The judiciary shall remain independent.

10. The Palace establishment and the Sikkim Guards shall remain directly under the Chogyal.

11. The Government of India, who are solely responsible for the defence and territorial integrity of

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Sikkim and who are solely responsible for the conduct and regulations of the external relations of Sikkim, whether political, economic or financial, reaffirm their determination to discharge these and their other responsibilities for the benefit of the people of Sikkim, for their communal harmony, good administration and economic and social development. It is hereby reaffirmed that they shall have the necessary powers for carrying out these responsibilities.

Done in triplicate at Gangtok on this the eight day of May of the year one thousand nine hundred and seventy three A.D.

Signatories

The Chogyal of Sikkim Palden Thondup Namgyal

Kewal Singh
Foreign Secretary
Government of India

Leaders of the Political parties representing the people of Sikkim.

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For the Sikkim National Congress

K. Lhendup Dorji, C.S. Rai, C.B. Chettri, N.K. Subedi, D.N. Tiwari

For the Sikkim Janata Congress

K.C. Pradhan, B.B. Gurung, S.K. Rai, B.P. Dahal, B.P. Kharel

For the Sikkim National Party

Netuk Tshering, Man Bahadur Basnet, Man Bahadur, Tasa Thengay, Padam Kharel, K. Wangdi.

Appendix II

THE CONSTITUTION (THIRTY-FIFTH AMENDMENT) ACT, 1974

Statement of Objects and Reasons appended to the Constitution (Thirty-sixth Amendment) Bill, 1974 which was enacted as the Constitution (Thirty-fifth Amendment) Act, 1974

STATEMENT OF OBJECTS AND REASONS

In pursuance of the historic agreement of the 8th May, 1973, between the Chogyal, the leaders of the political parties representing the people of Sikkim and the Government of India and of the unanimous desire of the members of the Sikkim Assembly expressed in the meetings of the Assembly held on the 11th May, 1974, for the progressive realization of a fully responsible Government in Sikkim and for furthering its close relationship with India, the

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Sikkim Assembly considered and passed the Government of Sikkim Bill, 1974 unanimously. The Chogyal promulgated this Bill on the 4th July, 1974 as the Government of Sikkim Act, 1974. For the speedy development of Sikkim in the social, economic and political fields, section 30 of the Government of Sikkim Act, 1974 empowers the Government of Sikkim, inter alia, to seek participation and representation for the people of Sikkim in the political institutions of India. On the 28th June, 1974, after passing the Government of Sikkim Bill, the Sikkim Assembly resolved unanimously that measures should be taken, amongst other things, for seeking representation for the people of Sikkim in India's parliamentary system.

2. After the promulgation of the Government of Sikkim Act, the Chief Minister of Sikkim had made formal requests to the Government of India through the Chief Executive requesting the Government of India to take such steps as may be legally or constitutionally necessary to give effect to the Government of Sikkim Act, 1974 and the resolutions passed by the Assembly and particularly for providing for representation for the people of Sikkim in Parliament.

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3. With a view of giving effect to the wishes of the people of Sikkim for strengthening Indo-Sikkim co-operation and inter-relationship, the Bill seeks to amend the Constitution to provide for the terms and conditions of association to Sikkim with the Union. The terms and conditions are set out in the Tenth Schedule proposed to be added to the Constitution by clause 5 of the Bill. Apart from referring to the responsibilities of the Government of India and the powers of the President in this regard, the Schedule provides for allotment to Sikkim of one seat in the Council of States and one seat in the House of the People and for the election of the representatives of Sikkim in the Council of States and the House of the People by the members of the Sikkim Assembly.

NEW DELHI; SWARAN SINGH.

The 30th August, 1974.

THE CONSTITUTION (THIRTY-FIFTH AMENDMENT) ACT, 1974 [22nd February, 1975.]

An Act further to amend the Constitution of India to give effect to the wishes of the people of Sikkim for strengthening Indo-Sikkim co-operation and inter-relationship.

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BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:-

1. Short title and commencement.-

(1) This Act may be called the Constitution (Thirty-fifth Amendment) Act, 1974.

(2) It shall come into force on such date_667 as the Central Government may, by notification in the Official Gazette, appoint.

2. Insertion of new article 2A.-After article 2 of the Constitution, the following article shall be inserted, namely:-

"2A. Sikkim to be associated with the Union.-Sikkim, which comprises the territories specified in the Tenth Schedule, shall be associated with the Union on the terms and conditions set out in that Schedule."

3. Amendment of article 80.-In article 80 of the Constitution, in clause (1), for the words "The Council of States", the words and figure "Subject to the provisions of paragraph 4 of the Tenth Schedule, the Council of States" shall be substituted.

4. Amendment of article 81.-In article 81 of the Constitution, in clause (1), for the words and figures "Subject to the provisions of article 331", the words and figures "Subject to the provisions of article 331 and paragraph 4 of the Tenth Schedule" shall be substituted.

5. Addition of Tenth Schedule.-After the Ninth Schedule to the Constitution, the following Schedule shall be added, namely:-

TENTH SCHEDULE

[Articles 2A, 80(1) and 81(1)]

PART A

TERRITORIES OF SIKKIM

1. Sikkim.---Sikkim comprises the following territories, namely:-

The territories which, immediately before the coming into force of the Government of Sikkim Act, 1974, were comprised in Sikkim.

PART B

TERMS AND CONDITIONS OF ASSOCIATION OF SIKKIM WITH THE UNION

2. Responsibilities of the Government of India.-

(1) The Government of India-

(a) shall be solely responsible for the defence and territorial integrity of Sikkim and for the conduct and regulation of the external relations of Sikkim, whether political, economic or financial;

(b) shall have the exclusive right of constructing, maintaining and regulating the use of railways, aerodromes, landing grounds and air navigation

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facilities, posts, telegraphs, telephones and wireless installations in Sikkim;

(c) shall be responsible for securing the economic and social development of Sikkim and for ensuring good administration and for the maintenance of communal harmony therein;

(d) shall be responsible for providing facilities for students from Sikkim in institutions for higher learning in India and for the employment of people from Sikkim in the public service of India (including the All-India Services), at par with those available to citizens of India;

(e) shall be responsible for providing facilities for the participation and representation of the people of Sikkim in the political institutions of India.

(2) The provisions contained in this paragraph shall not be enforceable by any court.

3. Exercise of certain powers by the President.-The President may, by general or special order, provide-

(a) for the inclusion of the planned development of Sikkim within the ambit of the planning authority of India while that authority is preparing plans for the economic and social development of India, and for appropriately associating officials from Sikkim in such work;

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(b) for the exercise of all or any of the powers vested or sought to be vested in the Government of India in or in relation to Sikkim under the Government of Sikkim Act, 1974.

4. Representation in Parliament.-Notwithstanding anything in this Constitution-

(a) there shall be allotted to Sikkim one seat in the Council of States and one seat in the House of the People;

(b) the representative of Sikkim in the Council of States shall be elected by the members of the Sikkim Assembly;

(c) the representative of Sikkim in the House of the People shall be chosen by direct election, and for this purpose, the whole of Sikkim shall form one parliamentary constituency to be called the parliamentary constituency for Sikkim:

Provided that the representative of Sikkim in the House of the People in existence at the commencement of the Constitution (Thirty-fifth Amendment) Act, 1974, shall be elected by the members of the Sikkim Assembly;

(d) there shall be one general electoral roll for the parliamentary constituency for Sikkim and every person whose name is for the time being entered in the electoral roll of any constituency under the

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Government of Sikkim Act, 1974, shall be entitled to be registered in the general electoral roll for the parliamentary constituency for Sikkim;

(e) a person shall not be qualified to be the representative of Sikkim in the Council of States or the House of the People unless he is also qualified to be chosen to fill a seat in the Sikkim Assembly and in the case of any such representative-

(i) clause (a) of article 84 shall apply as if the words "is a citizen of India, and" had been omitted therefrom;

(ii) clause (3) of article 101 shall apply as if sub-clause (a) had been omitted therefrom;

(iii) sub-clause (d) of clause (1) of article 102 shall apply as if the words "is not a citizen of India, or" had been omitted therefrom;

(iv) article 103 shall not apply;

(f) every representative of Sikkim in the Council of States or in the House of the People shall be deemed to be a member of the Council of States or the House of the People, as the case may be, for all the purposes of this Constitution except as respects the election of the President or the Vice-President:

Provided that in the case of any such representative, clause (2) of article 101 shall apply as if for the words "a House of the Legislature of a State", in both

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the places where they occur, and for the words "the Legislature of the State", the words "the Sikkim Assembly" had been substituted;

(g) if a representative of Sikkim, being a member of the Council of States or the House of the People, becomes subject to any of the disqualifications for being a member of the Sikkim Assembly or for being the representative of Sikkim in the Council of States or the House of the People, his seat as a member of the Council of States or the House of the People, as the case may be, shall thereupon become vacant;

(h) if any question arises as to whether a representative of Sikkim, being a member of the Council of States or the House of the People, has become subject to any of the disqualifications mentioned in clause (g) of this paragraph, the question shall be referred for the decision of the President and his decision shall be final:

Provided that before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion;

(i) the superintendence, direction and control of the preparation of the electoral rolls for the conduct of elections to Parliament under this paragraph of the representatives of Sikkim shall be vested in the

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Election Commission and the provisions of clauses (2), (3), (4) and (6) of article 324 shall, so far as may be, apply to and in relation to all such elections;

(j) Parliament may, subject to the provisions of this paragraph, from time to time by law make provision with respect to all matters relating to, or in connection with, such elections to either House of Parliament;

(k) no such election to either House of Parliament shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by Parliament.

Explanation.-In this paragraph, the expression "the Sikkim Assembly" shall mean the Assembly for Sikkim constituted under the Government of Sikkim Act, 1974.

5. Schedule not to derogate from agreements, etc.- The provisions of this Schedule shall be in addition to, and not in derogation of, any other power, jurisdiction, rights and authority which the Government of India has or may have in or in relation to Sikkim under any agreement, grant, usage, sufferance or other lawful arrangement.'

Appendix III

THE GOVERNMENT OF SIKKIM ACT, 1974

To provide in pursuance of the historic Agreement of the 8th of May, 1973, between the Chogyal, the leaders of the political parties representing the people of Sikkim and the Government of India and of the unanimous desire of the Members of the Sikkim Assembly expressed in the meeting of the Assembly held on 11, 1974 for the progressive realization of a fully responsible government in Sikkim and for further strengthening its relationship with India.

CHAPER I PRELIMINARY

1. This Act may be called the Government of Sikkim Act, 1974.
- It shall come into force on the fourth day of July 1974.
2. In this Act, unless the context otherwise required,
 - a. “Assembly” means the Sikkim Assembly;

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- b. “Chief Executive” means the chief Executive referred to in section 28;
- c. “Chogyal” means the Chogyal of Sikkim;
- d. “Member” means a member of the Assembly;

CHAPTER II THE CHOGYAL OF SIKKIM

- 3. The Chogyal shall take precedence over all other persons in Sikkim and he shall continue to enjoy the honour, position and other personal privileges hitherto enjoyed by him.
- 4. The Chogyal shall exercise his powers and perform his functions in accordance with the provisions of this Act, and nothing contained in Section 3 shall affect the provisions of this section.
- 5. All executive action of the Government of Sikkim taken in accordance with the provisions of this Act shall be expressed to be taken in the name of the Chogyal.

CHAPTER III SIKKIM ASSEMBLY

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6. (1) There shall be an Assembly for Sikkim.
- (2) The total number of seats in the Assembly to be filled by person chosen by direct election shall be such as may be determined by law.

7. (1) For the purpose of elections to the Sikkim Assembly, Sikkim shall be divided into constituencies in such manner as may be determined by law.

(2) the government of Sikkim may make rules for the purpose of providing that the Assembly adequately represents the various sections of the population, that is to say, while fully protecting the legitimate rights and interests of Sikkimese of Lepcha or Bhutia origin and of Sikkimese of nepali origin and other Sikkimese, including Tsongs and Schedule Castes no single section of the population is allowed to acquire a dominating position in the affairs of Sikkim mainly by reason of its ethnic origin.

8. For ensuring free and fair elections in Sikkim, the Chogyal shall appoint a representative of the Election Commission of India nominated by the government of India in this behalf and the elections shall be for this purpose the representatives shall have all the posers necessary for the effective discharge of his functions.

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9. A person shall not be qualified to be chosen to fill a seat in the Assembly unless he:

a. is an elector for any constituency and makes and subscribes before some person authorised by the authority conducting the election an oath or affirmation according to the form set out in the Schedule;

b. is not less than 25 years of age;

c. possesses such other qualifications as may be specified in any law for the time being in force.

10. a. The elections to the Sikkim Assembly shall be on the basis of one man vote, that is to say, every person who on the prescribed date is subject of Sikkim, is not less than twenty one years of age and is not otherwise disqualified under this Act or under any other law on the ground of residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such election.

b. Every person whose name is for the time being listed in the electoral roll of any constituency shall be entitled to vote at the election of a member from that constituency

11. The Assembly shall, unless sooner dissolved, continue for four years from the date appointed for its first meeting and no longer, and the

expiration of the said period of four years shall operate as dissolution of the Assembly.

12. The Chogyal shall, on the advice of the President of the Assembly, summon the Assembly to meet at such time and place as thinks fit, but for six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

13. (1) The Chief Executive shall be an ex-officio President of the Assembly and as such shall perform the functions of the Speaker thereof.

(2) The Assembly shall, as soon as may be, choose a member to be Deputy Speaker thereof who shall act as Speaker during the absence of the President of the Assembly from any sitting of the Assembly.

14. The Chogyal may address the Assembly after intimating to the President of the Assembly his intention to do so.

15. Every member of the Assembly shall, before taking his seat make and subscribe before the Chogyal or some person appointed in that behalf by him as oath of affirmation according to the form set out for the purpose in the schedule.

16. If a member of the Assembly:

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(a) Becomes subject to any disqualification mentioned in Section 7 for membership of the Assembly; or

(b) Resigns his seat by writing under his hand addressed to the President of the Assembly, his seat shall thereupon become vacant.

17. (1) A person shall be disqualified for being chosen as, and for being, a member of the Assembly.

(a) if he holds any office of profit under the Government of Sikkim other than an office declared by law not to disqualify its holder;

(b) If he is of unsound mind and stands so declared by a competent court;

(c) If he is so disqualified by or under any law.

(2) For the purpose of this Section, a person shall not be deemed to hold any office of profit under the Government of Sikkim by reason of only that he is a Minister.

(3) If any question arises as to whether a member of the Assembly has become disqualified for being such a member under the provisions of Sub-section (i), the question shall be referred for the decision of the Chogyal and his decision shall be final.

(4) Before giving any decision on any such question, the Chogyal shall obtain the opinion of the Election Commission of India or such other election authority as may be specified by the Government of India for the purpose, and shall act according to such opinion.

18. If a person sits or votes as a member of the Assembly before he has complied with the requirements of Section 15 or when he knows that he is not qualified or that he is disqualified or membership thereof; he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the Government of Sikkim.

19. (1) Subject to the provisions of this Act, and to the rules and standing orders regulating the procedure of the Assembly, there shall be freedom of speech in the Assembly.

(2) No member shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof, and no person shall be so liable in respect of the publication by or under authority of the Assembly of any report, paper, votes or other proceedings.

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20. (1) Subject to the provisions of this Act, the Assembly may discuss, make recommendations or make laws for the whole or any part of Sikkim with respect to any of the following matters, namely:

- (a) Education;
- (b) Public Health;
- (c) Excise;
- (d) Press and Publicity;
- (e) Transportation;
- (f) Bazaars;
- (g) Forest;
- (h) Public Works;
- (i) Agriculture;
- (j) Food Supplies;
- (k) Economic and Social Planning including

State Enterprises; and

- (l) Land Reforms.

(2) Subject to the provisions of this Act, the Assembly shall also have the right to discuss and make recommendations with respect to any matter not enumerated in sub-section (1) which may from time to time be referred to it by the Chief Executive.

(3) The Chogyal shall on the recommendation of the Government of India, by Notification in the Sikkim Durbar Gazette add any other matter to the matters enumerated in sub-

section(1), and thereupon the matter so added shall be deemed y have been included in that Sub-section for the purpose of this Act.

21. When a Bill has been passed by the Assembly, it shall be presented to the Chogyal and the latter shall either give his consent to the bill or withhold his assent therefrom.

Provided that the Chogyal may, as soon as possible after the presentation to him of a Bill of assent ,return the Bill to the Assembly with a message requesting that they will reconsider the Bill or any specified provisions thereof and , in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Assembly shall re-consider it accordingly within a period of three months from the date of receipt of such message and if it is again passed by the Assembly with or without amendment and presented to the Chogyal for assent, the Chogyal shall not withhold his assent there from.

Provided further that the Chogyal shall reserve for the consideration of the Government of India any Bill which would, if it became law, affect nay of the responsibilities of the Government of India or any of the special responsibilities of the Chief Executive

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referred to in Section 28 and shall act according to the decision of the Government of India

22. (1) the validity of any proceedings in the Assembly shall not be called in question on the ground of any alleged irregularity in procedure.

(2) No officer or member of the Assembly in whom powers are vested by or under this Act for regulating the procedure or the conduct of business or for maintaining order in the Assembly shall be subject to the jurisdiction of any court in respect of the exercised by him of these powers

23. (1) The Assembly may make rules for regulating, subject to the provision of this Act, its procedure and the conduct of its business.

(2) Or in any other provisions of this Act, the Assembly shall not discuss or ask any questions or any of the following, namely:

(3) Notwithstanding anything contained in subsection;

(a) The Chogyal and members of the ruling family;

(b) Any matter pending before a court of law;

(c) The appointment of the Chief Executive or members of the judiciary;

(d) Any matter which is exclusively the responsibility of the Government of India, whether under this Act or under any agreement or otherwise.

CHAPTER IV COUNCIL OF MINISTERS

24. (1) There shall be an Executive Council (in this Act referred to as the Council of Ministers) with one of the members thereof at the head who shall be designated as the Chief Minister and the other as Ministers

(2) The Council of Ministers shall be in charge of the administrative departments allotted to them and shall advise the Chogyal in respect of all matters within their jurisdiction.

(3) Every advice tendered by the Council of Ministers shall be communicated to the Chogyal through the Chief Executive, who may, if he is of opinion that the advice effects or is likely to affect any of his special responsibilities or the responsibilities of the Government of India referred to in section 28, require the Council of Ministers to modify the advice accordingly.

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(4) The question whether any, and if so what, advice was tendered by Ministers to the Chogyal shall not be enquired into by any court.

25. (1) the chief Minister and other Ministers shall be appointed by the Chogyal on the advice of the Chief Executive.

(2) The Council of Ministers shall be responsible to the Assembly.

(3) Before a Minister enters his office, the Chogyal or such other person as may be authorized in his behalf, shall administer to him the oaths of office and of secrecy according to the form set out for the purpose in the schedule.

26. The executive power of the Council of Ministers shall extend to the matters referred to in Section 20.

27. The Chogyal shall, on the recommendation of the chief executive taken in consultation with the chief Minister, make rules for the allocation of business to the Ministers and for the more convenient transaction of business.

CHAPTER V THE CHIEF EXECUTIVE

28. (1) At the head of administration of Sikkim, there shall be a Chief Executive , who shall be a

person a nominated by the Government of India and appointed to the post by the Chogyal.

(2) The functions of the Chief Executive shall be to ensure that

(a) the responsibilities of the Government of India in or in relation to Sikkim as respects all or any of the matters referred to in the agreement of the 8th of May 1973, between the Chogyal, the Government of India and the leaders of the Political Parties representing the people of Sikkim, or in any other agreement entered into between the Chogyal and the government of India, whether before or after the commencement of this Act;

(b) The special responsibilities of the chief Executive referred to in the agreement of the 8th of May 1973, aforesaid are duly discharged.

(3) The Chief Executive shall have all the powers necessary for the discharge of his functions and responsibilities, and the executive power in Sikkim shall be so exercised as to ensure compliance with any decisions taken or orders or directions issued by the Government of India in the due discharge of its responsibilities.

29. (1) the chief executive shall:

(a) Where any action taken in the performance of his functions concerns a matter the

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administrative functions relating to which have been allocated to a Minister, act in consultation with the Minister in respect thereof;

(b) Submit all important matters to the Chogyal for his information and for his approval of the action proposed to be taken;

Provided that where immediate action is required the chief Executive may take such action as he thinks fit and shall obtain the Chogyal's approval as soon as after the action has been taken as possible.

(c) Advise the Chogyal in respect of all other matters.

(2) Where difference of opinion arises between the chief Executive and the Chogyal in respect of any matter, it shall be referred to the Government of India or Decision and the decision of the Government of India shall be final.

CHAPTER VI GENERAL

30. For the speedy development of Sikkim in the social, economic and political fields, the government of Sikkim may;

(a) request the government of India to include the planned development of Sikkim within the ambit of the planning commission of India while

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that Commission is preparing plans for the economic and social development of India and to appropriately associate officials from Sikkim in such work ;

(b) request the Government of India to provide facilities for students of Sikkim in institutions for higher learning and for the employment of people from Sikkim in the public services of India (including the All India Service), at par with those available to the citizens of India;

(c) Seek participation and representation for the people of Sikkim in the political institutions of India.

31. All judges shall be independent in the exercise of their judicial function and subject only to this act and the laws.

32. (1) all sections of the people of Sikkim shall enjoy basic human rights and fundamental freedoms without discrimination.

(2) The government of Sikkim shall make every endeavor to secure for the people of Sikkim the enjoyment of the aforesaid rights and to maintain and promote communal harmony.

(3) Notwithstanding anything contained in the aforesaid provisions, special provision shall be made for the advancement or the protection of the aboriginal inhabitants of Sikkim and other minorities.

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33. The Assembly which has been formed as a result of the elections held in Sikkim in April, 1974, shall be deemed to be the first Assembly duly constituted under this Act, and shall be entitled to exercise the powers and perform the functions conferred on the Assembly by this Act.

34. If any difficulty arises in giving effect to the provisions of this Act, the Chogyal may, in consultation with the Chief Executive, by order, do anything not inconsistent with the provisions of this Act, which appear to be expedient or necessary for the purpose of removing the difficulty.

By Order

J.T. Densapa,
Secretary to the Chogyal

Appendix IV

RESOLUTION DATED 10-04-1975 PASSED BY THE SIKKIM ASSEMBLY

"The Sikkim Assembly, duly established by the will of the people and responsible to them:

Recalling the historic Agreement of May 8, 1973 between the Government of India, the Chogyal of Sikkim and the leaders of the Political parties in Sikkim in which the three parties agreed to establish a fully responsible Government in Sikkim with guarantee to its people regarding the fundamental rights, the rule of law, and a system of elections based on adult, and which provided for the strengthening of Indo-Sikkim cooperation and inter-relationship.

Having enacted the Government of Sikkim Act, 1974 for the progressive realization of a fully responsible

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Government in Sikkim and for further strengthening its close relationship with India.

Having observed the persistent harmful activities of the Chogyal since the conclusion of the Agreement of May 8, 1973 and the enactment of the Government of Sikkim Act, 1974, which activities are designed to restore his autocratic rule in Sikkim still democracy, frustrate the establishment of responsible Government in Sikkim and impeded the orderly political and economic progress of the people of Sikkim.

Being satisfied that the activities of the Chogyal of Sikkim have been and are violated of the objectives of the agreement of May 8, 1973 and that the institution of Chogyal not only does not promote the wishes and aspirations of the people of Sikkim but also impeded their democratic development and participation in the political and economic life of India.

“A”

Solemnly declares and resolves as follows:

1. The institution of the Chogyal is hereby abolished and Sikkim shall hence forth be a constituent unit of India, enjoying a democratic and fully responsible Government.

“B”

Solemnly resolve further as follows:

1. The Resolution contained in part “A” shall be submitted to the people forthwith for their approval.
2. The Government o f India is hereby requested, after the people have approved the Resolution contained in part “A” to take such measures as may be necessary and appropriate to implement this Resolution as early as possible.”

Appendix V

THE CONSTITUTION (THIRTY-SIXTH AMENDMENT) ACT, 1975

Statement of Objects and Reasons appended to the Constitution (Thirty-eighth Amendment) Bill, 1975 which was enacted as the Constitution (Thirty-sixth Amendment) Act, 1975

STATEMENT OF OBJECTS AND REASONS

The Sikkim Assembly unanimously adopted a resolution on the 10th April, 1975 which, inter alia, noted the persistent harmful activities of the Chogyal which were aimed at undermining the responsible democratic Government set up under the provisions of the May 8 Agreement of 1973 and the Government of Sikkim Act, 1974. The Resolution declared that the Assembly had satisfied itself that these activities of the Chogyal not only violated the objectives of the

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Agreement of May 8, 1973, but also ran counter to the wishes of the people of Sikkim and impeded their democratic development and participation in the political and economic life of India. Accordingly the Assembly solemnly declared and resolved that "The institution of the Chogyal is hereby abolished and Sikkim shall henceforth be a constituent unit of India, enjoying a democratic and fully responsible Government".

2. The Assembly also resolved that this Resolution be submitted to the people of Sikkim forthwith for their approval. A special opinion poll conducted by the Government of Sikkim on the 14th April, 1975 resulted in a total of 59,637 votes in favour and 1,496 votes against the Resolution out of a total electorate of approximately 97,000.

3. The result of this poll was communicated to the Government of India by the Chief Minister of Sikkim on the 15th April, 1975. The Chief Minister on behalf of the Council of Ministers strongly requested the Government of India to make an immediate response and accept the above decision, taking, as has been requested in the Assembly Resolution of the 10th April, 1975, such measures as may be necessary and appropriate to implement the decision as early as possible.

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4. The Chief Minister and other Ministers of Sikkim also visited New Delhi on the 16th-17th April, 1975 and urged the Government of India to take immediate action in this behalf.

5. Accordingly, it is proposed to include Sikkim as a full-fledged State in the First Schedule to the Constitution and to allot to Sikkim one seat in the Council of States and one seat in the House of the People. It is also proposed to insert a new article containing the provisions considered necessary to meet the special circumstances and needs of Sikkim.

6. The Bill seeks to achieve the above objects.

Y. B. CHAVAN.

NEW DELHI

The 19th April, 1975.

THE CONSTITUTION (THIRTY-SIXTH AMENDMENT) ACT, 1975

[16th May, 1975.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

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1. Short title and commencement.- (1) This Act may be called the Constitution (Thirty-sixth Amendment) Act, 1975.

(2) It shall be deemed to have come into force on the date_668 on which the Bill for this Act [introduced in the House of the People as the Constitution (Thirty-eighth Amendment) Bill, 1975], as passed by the House of the People, is passed by the Council of States.

2. Amendment of First Schedule.- In the First Schedule to the Constitution, under the heading "I. THE STATES", after entry 21, the following entry shall be inserted namely:-

"22. Sikkim The territories which immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975, were comprised in Sikkim."

3. Insertion of new article 371F.- After article 371E of the Constitution, the following article shall be inserted, namely:-

"371F. Special provisions with respect to the State of Sikkim.- Notwithstanding anything in this Constitution,-

(a) the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;

(b) as from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975

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(hereafter in this article referred to as the appointed day)-

(i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections (hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;

(ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and

(iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under this Constitution;

(c) in the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of five years in clause (1) of article 172 shall be construed as references to a period of four years and the said period of four years shall be deemed to commence from the appointed day;

(d) until other provisions are made by Parliament by law, there shall be allotted to the State of Sikkim one seat in the House of the People and the State of

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Sikkim shall form one parliamentary constituency to be called the parliamentary constituency for Sikkim;

(e) the representative of the State of Sikkim in the House of the People in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim;

(f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim;

(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his discretion;

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(h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim;

(i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to be the High Court for the State of Sikkim;

(j) all courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provisions of this Constitution;

(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority;

(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for

the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;

(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143;

(n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;

(o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order, do anything (including any adaptation

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or modification of any other article) which appears to him to be necessary for the purpose of removing that difficulty:

Provided that no such order shall be made after the expiry of two years from the appointed day;

(p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-sixth Amendment) Act, 1975, receives the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended."

4. Amendment of Fourth Schedule.-In the Fourth Schedule to the Constitution, in the Table,-

(a) after entry 21, the following entry shall be inserted, namely:---

"22. Sikkim 1";

(b) existing entries 22 to 25 shall be renumbered as entries 23 to 26 respectively;

(c) for the figures "231", the figures "232" shall be substituted.

5. Consequential amendments.-The following consequential amendments shall be made in the Constitution, namely:-

- (a) article 2A shall be omitted;
- (b) in article 80, in clause (1), the words and figure "Subject to the provisions of paragraph 4 of the Tenth Schedule," shall be omitted;
- (c) in article 81, in clause (1), the words and figure "and paragraph 4 of the Tenth Schedule" shall be omitted;
- (d) the Tenth Schedule shall be omitted.

A hard look by a "new generation" Sikkimese into the events of 1973 which changed Sikkim, but through the lens of the Constitution. Due to the conflict introduced by certain procedures and provisions of the Constitution of India, the Sikkimese people are today increasingly looking back to whatever protections they had. Why are these provisions there? and are these provisions enough to meet the objectives of the agreement which started it all? These and other interesting questions are covered in the book. Overall a fresh and totally radical look at an old story told many a time, but this time with some serious questions..