

# **INTERNATIONAL LAW AND THE RIGHT TO SELF-DETERMINATION OF PEOPLE OF JAMMU KASHMIR**



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## **RIGHT TO SELF DETERMINATION**

- Right to self-determination is the right of people to decide and determine their own future and destiny in the International society of nations.
- Self-determination refers to "the right claimed by a 'people' to control their destiny."<sup>1</sup>

## **UN CHARTER**

### **Article 1**

The Purposes of the United Nations are:

1. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;<sup>2</sup>

### **Article 55**

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>3</sup>

### **Article 73,**

it is also implicitly referred to the principle of self-determination in the part concerning colonies and other dependent territories.<sup>4</sup>

### **Article 103**

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other

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<sup>1</sup> Berman, "Sovereignty in Abeyance: Self-Determination and International Law" in Koskeniemi (ed), International Law (1992) 389, 390.

<sup>2</sup> U.N. CHARTER art. 1, para. 2. Similarly, Article 56 provides that "all members pledge themselves to take joint and separate action in cooperation with the Organization to the achievement of the purposes set forth in Article 55." The purposes included in Article 55 foresee the creation of "friendly relations among nations based on respect for the principle on equal rights and self-determination of peoples."

<sup>3</sup> UN Charete, art. 55.

<sup>4</sup> UN Charter , art. 73.

international agreement, their obligations under the present Charter shall prevail”.<sup>5</sup>

*(Shimla and other agreements cannot supersede UN charter)*

## **International Covenant on Civil and Political Rights (ICCPR) & International Covenant on Economic, Social and Cultural Rights (ICESCR)**

### **Common Article 1:**

“The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>6</sup>

### **Declaration on Granting of Independence to Colonial Countries and Peoples Adopted by General Assembly resolution 1514 of 14th December 1960**

“All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”<sup>7</sup>

### **Resolution adopted by the General Assembly 2625 Oct 24, 1970**

“Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter...”<sup>8</sup>

## **INTERNATIONAL COURT OF JUSTICE**

### **Western Sahara Case**

1975 Advisory Opinion on Western Sahara, the Court states that developments in international law during the past fifty years indicate general acceptance of self-determination as a recognized international right.<sup>9</sup>

### **Nicaragua case**

In Nicaragua case<sup>10</sup> about right to self-determination it was declared that the right to self-determination is *jus cogen*.

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<sup>5</sup> UN Charter, art. 103.

<sup>6</sup> General Assembly Resolution 2200 A (XXI), 16 December 1966.

<sup>7</sup> General Assembly Resolution 1514 (XV), 14 December 1960.

<sup>8</sup> [Friendly Relations Declaration 1970](#), [Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations](#), UNGA Resolution 2625 (XXV) of 24 October 1970

<sup>9</sup> Advisory Opinion on Western Sahara, [1975] I.C.J. 12, 32.

<sup>10</sup> Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

## **East Timor Case**

In the East Timor case, the Court observed that the right of self-determination “is one of the essential principles of contemporary international law” and described as “irreproachable” the assertion that the right of peoples to self-determination has an erga omnes character.<sup>11</sup>

The right of self-determination has been identified by the International Court of Justice (ICJ or ‘the Court’) as ‘one of the essential principles of contemporary international law’.<sup>12</sup> And with reference to the East Timor case, the International Law Commission describes “the obligation to respect the right of self-determination” as a norm whose peremptory character is “generally accepted”.

## **Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**

In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court observed that the obligation to respect the right of peoples to self-determination is an obligation erga omnes.<sup>13</sup>

## **IMPORTANT UN RESOLUTIONS ON KASHMIR<sup>14</sup>**

### **➤ Resolution 47 (1948)**

**On the India-Pakistan adopted by the Security Council at its 286th meeting held on 21 April, 1948.**

“..... both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite, considering that the continuation of the dispute is likely to endanger international peace and security”.

### **➤ Resolution adopted by the United Nations Commission for India and Pakistan on 13 August 1948.**

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

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<sup>11</sup> ICJ Reports 1995, p. 90, at para. 29.

<sup>12</sup> Case Concerning East Timor (Portugal v Australia) Merits, Judgment, ICJ Reports 1995 4 at 102, para 29.

<sup>13</sup> ICJ Reports 2004, p. 136, at para. 155.

<sup>14</sup> United Nations Resolutions on Kashmir, Kashmir Policy Research Institute, [www.kprijk.org](http://www.kprijk.org).

➤ **Resolution adopted at the meeting of the United Nations Commission for India and Pakistan on 5 January, 1949.**

The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite;

➤ **Resolution 80 (1950) adopted by the Security Council on March 14, 1950.**  
“Having received and noted the reports of the United Nations Commission for India and Pakistan establishing its resolutions 39 (1948) of 20 January and 47 (1948) of 21 April 1948.

Having also received and noted the report of General A. G. L. McNaughton on the outcome of his discussions with the representatives of India and Pakistan which were initiated in pursuance of the decision taken by the Security Council on December 17, 1949, *Commending the Governments of India and Pakistan for their statesman like action in reaching the agreements embodied in the United Nations Commission's resolutions of August 13, 1948 and January 5, 1949 for a cease-fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite”*

➤ **Resolution 91 (1951)**  
**Concerning the India-Pakistan question adopted by the Security Council on March 30, 1951.**

“Having received and noted the report of Sir Owen Dixon, the United Nations Representative for India and Pakistan on his mission initiated by the Security Council resolution 80 (1950) of March 14, 1950. Observing that the Governments of India and Pakistan have accepted the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and 5 January, 1949, and have re-affirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. Observing that on 27 October, 1950, the General Council of the "All Jammu and Kashmir National Conference" adopted a resolution recommending the convening of a Constituent Assembly for the purpose of determining the "future shape and affiliations of the State of Jammu and Kashmir";

Observing further from statements of responsible authorities that action is proposed to convene such a Constituent Assembly and that the area from which such a Constituent Assembly would be elected is only a part of the whole territory of Jammu and Kashmir”.

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47(1948) of 21 April 1948, 51(1948) of 3 June, 1948 and 80 (1950) of 14 March, 1950 and the United Nations Commission for India and Pakistan resolutions of 13 August, 1948, and 5 January, 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with

the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. Affirming that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that Assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle.

➤ **Resolution 98 (1952)**

**Adopted by the Security Council at its 611th meeting on 23 December 1952.**

Having received the third report, dated 22 April 1952, and the fourth report, dated 16 September 1952, of the United Nations Representative for India and Pakistan;

1. Endorses the general principles on which the United Nations Representative has sought to bring about agreement between the Governments of India and Pakistan;
2. Notes with gratification that the United Nations Representative has reported that the Governments of India and Pakistan have accepted all but two of the paragraphs of his twelve-point proposals;
3. Notes that agreement on a plan of demilitarization of the State of Jammu and Kashmir has not been reached because the Governments of India and Pakistan have not agreed on the whole of paragraph 7 of the twelve-point proposals;
4. Urges the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations Representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarization, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the India side of the cease-fire line, as suggested by the United Nations Representative in his proposals of 16 July 1952, such specific numbers to be arrived at bearing in mind the principles or criteria contained in paragraph 7 of the United Nations Representative's proposal of 4 September 1952;

➤ **Resolution 122 (1957)**

**Adopted by the Security Council at its 765th meeting on 24 January, 1957.**

Reaffirms the affirmation in its resolution 91 (1951) and declares that the convening of a Constituent Assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the Assembly, would not constitute

a disposition of the State in accordance with the above principle; Decides to continue its consideration of the dispute.

➤ **Resolution 126 (1957)**

**Adopted by the Security Council at its 808<sup>th</sup> meeting on 2 December, 1957.**

Observing further that the governments of India and Pakistan recognize and accept the provisions of its resolution 38(1948) of 17 January, 1948 and of the resolutions of the United Nations Commission for India and Pakistan dated 13 August, 1948 and 5 January, 1949, which envisage in accordance with their terms the determination of the future status of the State of Jammu and Kashmir in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and that Mr. Jarring felt it appropriate to explore what was impeding their full implementation,

**RESOLUTION 211 (1965) OF UN SECURITY COUNCIL**

**(SEPTEMBER 20, 1965)**

*Convinced* that an early cessation of hostilities is essential as a first step toward a peaceful settlement of the outstanding differences between the two countries on Kashmir and other related matters,

➤ **RESOLUTION 307 (1971) OF UN SECURITY COUNCIL  
(DECEMBER 21, 1971)**

*Demands* that a durable cease-fire and cessation of all hostilities in all areas of conflict be strictly observed and remain in effect until withdrawals take place, as soon as practicable, of all armed forces to their respective territories and to positions which fully respect the cease-fire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan;

**COMMITMENTS OF INDIAN LEADERS<sup>15</sup>**

**MAHATAMA GANDHI**

- "The People of Kashmir should be asked whether they want to join Pakistan or India. Let them do as they want. The ruler is nothing. People are everything."

(Speech at Prayer Meeting July 29, 1947)

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<sup>15</sup> [Print Document \(na.gov.pk\)](#) .



- "The princes being the creation of British imperialism and the British having quitted India, the people in the States were their own masters and Kashmiris must, therefore, decide without any coercion or show of it from within and without to which dominion they should belong."

(During visit to Srinagar)

- "I want to repeat the Government of India will stand by that pledge, whatever happens. That pledge itself stated that it is for the people of Kashmir to decide their fate without external interference."

(August, 1947)

- "If the people of Kashmir are in favour of opting for Pakistan, no power on earth can stop them from doing so. They should be left free to decide for themselves."

(Speech at Prayer Meeting October 26, 1947)

- "The accession was provisional upon an impartial plebiscite being taken by the Kashmiris."

(October 30, 1947)

(Speech at Prayer Meeting, 26<sup>th</sup> October, 1947. Complete Works of Mahatama Gandhi)

### **LORD MOUNTBATTEN, GOVERNOR GENERAL OF INDIA**

- "The question of the State's accession should be settled by a reference to the people."

(Letter to Maharaja of Jammu & Kashmir October 27, 1947)

### **JAWAHARLAL NEHRU, PRIME MINISTER OF INDIA**

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

(Telegram to the British and the Pakistani Prime Ministers October 27, 1947)

- "In regard to accession also, it has been made clear that this is subject to reference to people of State and their decision."

(Telegram to Prime Minister of Pakistan October 28, 1947)

- "Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order is restored and leave the decision regarding the future of this State to the people of the state is not merely a promise to your Government but also to the people of Kashmir and to the world."

(Telegram to the Prime Minister of Pakistan October 31, 1947)

- "We are anxious not to finalize anything in a moment of crisis and without the fullest opportunity to be given to the people of Kashmir to have their say. It is for them ultimately to decide.

"And let me make it clear that it has been our policy all along that where there is a dispute about the accession of a state to either dominion, the accession must be made by the people of the State".

(Address to the nation: All India Radio (November 2, 1947)

- "We have declared that the fate of Kashmir is ultimately to be decided by the people. The pledge we have given not only to the people of Kashmir but to the world. We will not and cannot back out of it."

(Statement in New Delhi: All India Radio November 3, 1947)

- "..... Where the State has not acceded to that dominion whose majority community is the same as state's, the question whether state has finally acceded to one or other dominion should be ascertained by reference to the will of people."

(Telegram to the Prime Minister of Pakistan November 8, 1947)

- "Kashmir should decide question of accession by plebiscite or referendum under international auspices, such as those of the United Nations."

(Letter to the Prime Minister of Pakistan November 21, 1947)

- "In order to establish our bonafides, we have suggested that when the people are given the chance to decide their future, this should be done under the supervision of an impartial tribunal such as the United Nations Organisation. The issue in Kashmir is whether violence and naked force should decide the future or the will of the people."

(Statement in the Indian Constituent Assembly November 25, 1947)

- ".... I confess, however, that I find myself unable to suggest anything beyond what I have offered already, namely, to ask the UNO to send impartial observers to advise us regarding the plebiscite."

(Telegram to the Prime Minister of Pakistan December 12, 1947)

- "Even at the moment of accession, we went out of our way to make a unilateral declaration that we would abide by the will of the people of Kashmir as declared in a plebiscite or referendum. We insisted further that the government of Kashmir must immediately become a popular government. We have adhered to that position throughout and we are prepared to have a plebiscite, with every protection for fair voting and to abide by the decision of the people of Kashmir. ".....Ultimately there is no doubt in my mind that, in Kashmir as elsewhere, the people of Kashmir will decide finally, and all that we wish is that they should have freedom of decision without any external compulsion."

(Statement in the Constituent Assembly of India March 5, 1948)

- "It has always been our view that, in the event of a plebiscite, the people of Kashmir should decide their future for themselves."

(Telegram to the UN Representative for India and Pakistan August 16, 1950)

- "We have always right from the beginning accepted the idea of the Kashmiri people deciding their fate by referendum or plebiscite."

(September 7, 1948)

- "... We all agreed that it is the people of Kashmir who must decide for themselves about their future. It is an obvious fact that, even without our agreement, no country is going to hold on to Kashmir against the will of the Kashmiris."

(Press Conference in London, January 16, 1951)

- "We had given our pledge to the people of Kashmir and subsequently to the United Nations; we stood by it and we stand by it today. Let the people of Kashmir decide."

(Statement in the Indian Parliament February 12, 1951)

- "First of all, I would like to remind you of the fateful days of 1947 when I came to Srinagar and gave the solemn assurance that the people of India would stand by Kashmir in her struggle. On that assurance, I shook Sheikh Abdullah's hand before the vast multitude that had gathered there. I want to repeat that the Government of India will stand by that pledge, whatever happens. That pledge itself stated that it is for the people of Kashmir to decide their fate without external interference. That assurance also remains and will continue."

(Address at public meeting in Srinagar June 4, 1951)

- 22. "People seem to forget that Kashmir is not a commodity for sale or to be bartered. It has an individual existence and its people must be the final arbiters of their future."

(All-India Congress Committee Daily Statesman, New Delhi July 9, 1951)

- "We have taken the issue to the United Nations and given our word for a peaceful solution ..... As a great nation, we cannot go back on it. We have left the question for final solution to the people of Kashmir and we are determined to abide by their decision."

(Daily Amrita Bazar Patrika, Calcutta January 2, 1952)

- "India is a great country and Kashmir is almost in the heart of Asia. There is an enormous difference not only geographical but in all kinds of facts there. Do you think (in dealing with Kashmir) you are dealing with a part of U.P or Bihar or Gujrat?"

(Statement in Indian Parliament June 26, 1952)

- "I want to stress that it is only the people of Kashmir who can decide the future of Kashmir. It is not that we have merely said that to the United Nations and to the people of Kashmir; it is our conviction and one that is borne out by the policy that we have pursued, not only in Kashmir but everywhere. Though these five years have meant a lot of trouble and expense and in spite of all we have done we would willingly leave Kashmir if it was made clear to us that the people of Kashmir wanted us to go. However sad we may feel about leaving, we are not going to stay against the wishes of the people. We are not going to impose ourselves on them at the point of the bayonet.

"I started with the presumption that it is for the people of Kashmir to decide their own future. We will not compel them. In that sense, the people of Kashmir are sovereign."

(Statement in Indian Parliament August 7, 1952)

- "From the beginning, we have stressed the fact that it is for the people of Kashmir to decide their future, we have held by that and we have to hold by it still. They must decide in the proper way and in the proper context."

(August 15, 1953)

- 27. "The most feasible method of ascertaining the wishes of the people was by fair and impartial plebiscite."

(Joint communiqué of the Prime Ministers of India and Pakistan, Delhi – August 20, 1953)

- "As a result of the plebiscite over the entire State, we would be in a position to consider the matter, so that the final decision should cause the least disturbance and should take into consideration geographical, economic and other important factors.

"I should like to make it clear that there is no intention on my part to exclude the UN from this question of Kashmir."

(Letter to the Prime Minister of Pakistan September 3, 1953)

- "Our object is to give freedom to the people of Kashmir to decide their future in a peaceful way so as to create no upset, as we said in our joint statement."

(Letter to the Prime Minister of Pakistan November 10, 1953)

- "India will stand by her international commitments on the Kashmir issue and implement them at appropriate time."

"The repudiation of international commitments would lower India's prestige abroad."

(Daily Time of India – May 16, 1954)

- "But so far as the Government of India is concerned, every assurance and international commitment in regard to Kashmir stands."

(Statement in Indian Council of States May 18, 1954)

- "Kashmir is not a thing to be bandied about between India and Pakistan but it has a soul of its own and an individuality of its own. Nothing can be done without the goodwill and consent of the people of Kashmir."

(Statement in the Indian Parliament March 31, 1955)

- "The question of aiding Kashmir in this emergency is not designed in any way to influence the State to accede to India."

(Cable to the British Prime Minister)

- "The people of Kashmir would be free to decide their future by the recognized democratic method of plebiscite or referendum, which in order to ensure complete impartiality may be held under international auspices."

This was also in accordance with Mahatama Gandhi's view, since he had stated that the India Government sent troops by air to Kashmir telling the Maharaja that the accession was provisional upon an impartial plebiscite being taken of Kashmir irrespective of religion."

(Letter from Government of India to UN December 31, 1947)

- "In accepting the accession they [the Government of India] refused to take advantage of the immediate peril in which the State found itself and informed the Ruler that the accession should finally be settled by plebiscite as soon as peace had been restored. They have subsequently made it quite clear that they are agreeable to the plebiscite being conducted if necessary under international auspices.

"On the question of accession, the Government of India has always enunciated the policy that in all cases of dispute the people of the State concerned should make the decision.

"We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established.

"We desire only to see peace restored in Kashmir and ensure that the people of Kashmir are left free to decide in an orderly and peaceful manner the future of their State. We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established."

**Gopalaswami Ayangar**

(Chairman of the Armed Forces Nationalization Committee and Minister in Interim Government in India, Statement at the Security Council January 15, 1948)

- "The question of accession is to be decided finally in a free plebiscite, on this there is no dispute."

(White Paper on Kashmir issued by Government of India, 1948)

- "No doubt we have offered to have a plebiscite taken when the conditions are created for the holding of a proper, fair and impartial plebiscite. But if the plebiscite produces a verdict which is against the continuation of accession to India of the Kashmir State, then what we are committed to is simply that we shall not stand in the way of Kashmir separating itself from India."

**Gopalaswami Ayangar**

(Address at the Indian Constituent Assembly May 27, 1949)

- 38. My government has always taken the view that resolutions, if they are passed, must be implemented."

**Krishna Menon**

Defence Minister of India Statement at the UN General Assembly April 5,  
1951)

- We adhere strictly to our pledge of plebiscite in Kashmir – a pledge made to the people because they believe in democratic government ..... We don't regard Kashmir as a commodity to be trafficked in."

**Krishna Menon**

(Daily Statesman, New Delhi August 2, 1951)

- "The Government of India not only reaffirms its acceptance of the principle that the question of the continuing accession of the State of Jammu and Kashmir to India shall be decided through the democratic method of a free and impartial plebiscite under the auspices of the United Nations, but is anxious that the conditions necessary for such a plebiscite should be created as quickly as possible."

(Letter from Govt. of India to the UN Representative for India and Pakistan  
September 11, 1951)

- "We do not seek to go behind the UNCIP resolutions, or to ignore the vital elements of principle contained in them. .... We have always adhered to the UNCIP resolutions... .... We cannot be a party to the reversal of previous decisions taken by the United Nations Commission with the agreement of the parties."

**Vijay Lakshmi Pandit**

Permanent Representative of India in UN (Statement at the Security Council  
December 8, 1952)

- "I want to say for the purpose of the record that there is nothing that has been said on behalf of the Government of India which in the slightest degree indicates that the Government of India or the Union of India will dishonour any international obligations it has undertaken."

**Krishna Menon**

(Statement at UN Security Council, January 24, 1957)

- "If, as a result of a plebiscite, the people decided that they did not want to stay with India, then our duty at that time would be to adopt those constitutional procedures which would enable us to separate that territory."

**Krishna Menon**

(Statement at UN Security Council February 8, 1957)

- "The resolutions of January 17, 1948 and the resolutions of the UNICP, the assurances given, these are all resolutions which carry a greater weight – that is because we have accepted them, we are parties to them, whether we like them or not."

**Krishna Menon**

(Statement at UN Security Council February 20, 1957)

- "These documents (UNCIP reports) and declarations and the resolutions of the Security Council are decisions; they are resolutions, there has been some resolving of a question of one character or another, there has been a meeting of minds on this question where we have committed ourselves to it."

**Krishna Menon**

(Statement at the Security Council October 9, 1957)

- "India believes that sovereignty rests with the people and should return to them."

**Krishna Menon**

(Daily Statesman, Delhi January 19, 1962)



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