

KASHMIR'S SPECIAL STATUS

Krishan Mohan Teng, M. A., Ph.D.

and

Santosh Kaul, M. A.

ORIENTAL PUBLISHERS & DISTRIBUTORS
DELHI • BOMBAY • MADRAS

Head Office

Oriental Publishers & Distributors
Pataudi House, Darya Ganj, Delhi-110006

First Edition : 1975

Price : Rs. 40-00

Published by **Inder Jeet Sharma** for **Oriental Publishers and Distributors, Delhi-110006**. Composed by **Mohan Composing House, Agra-2** and Printed at **Shiva Art Printers, Agra-2**

Preface

The special provisions, by virtue of which Jammu and Kashmir State enjoys a distinct place in the Indian federal structure, are widely misunderstood and widely misinterpreted. The provisions envisage a partial application of the Constitution of India to the State with many reservations and modifications. The provisions and the reservations imposed upon them are interwoven into a plethora of intricate alternatives and specifications. Curiously enough, some of these reservations have by successive amendments, either lost their meaning and purpose or assumed dimensions which they were never meant to acquire. The present study is an attempt to examine the various aspects of these provisions, assess their constitutional and political significance.

The provisions of the Constitution of India with regard to the Governments in the States are not applicable to Jammu and Kashmir and the Government of the State is not organised in accordance with the provisions of the Constitution of India according to which the other State Governments in India function. At the time the Constitution of India was framed, the State was reserved the right to frame a Constitution for its government and the provisions were included in the Constitution of India which envisaged the institution of a Constituent Assembly for the State. The Constituent Assembly was convened in 1951. In 1956, the Assembly framed the Constitution which was promulgated on 26th January, 1957. In its broad aspects the Constitution of the State is similar to the constitutional structure provided for the States under the Constitution of India. Obviously, therefore, there are two sets of constitutional provisions which govern the State of Jammu and Kashmir and two levels of jurisdiction which determine its operatives. The division of powers between the two governments is governed by the provisions of the Constitution of India to

the extent of the enumerations made in the Union List, and the Concurrent List, except certain subjects, which along with the subjects enumerated in the State List and the residuum are reserved for the State.

The purpose for which this study has been undertaken is fourfold ; first, to locate and analyse the various factors and processes which led to the inclusion of the special provisions for the State in the Constitution of India ; second, to examine the functional operatives which the provisions involve and assess the working of the model, the special provisions embody ; third, to establish a comparative focus between the constitutional position the other Indian States enjoy in the Indian federal structure and the place Jammu and Kashmir has in it ; and finally to establish the validity and the legitimacy of the area of permissibility allowed to the State. The orientation of approach is particularly objective in the sense that the substantive political purposes sought to be achieved by the incorporation of the special provisions for the State were motivated by political compulsion arising out of the partition of the country and the manifold problems the integration of the Princely States involved. Efforts have, however, not been spared to demarcate boldly, individual attitudes and institutional interests, wherever such attitudes and pre-dispositions have found precedence over national objectives.

The authors are thankful to the keepers of the records of the State Archives Repositories at Jammu and Srinagar. The authors are indebted to Shri Autar Krishan Kaul, the Librarian, Oriental Research Library, Srinagar for his help and guidance. The authors are also indebted to Shri Bhushan Lal Bhat, who took down the first notes and Santosh Teng who prepared the Index of the study. The authors owe a deep debt of gratitude to Jaishuri Teng without whose devoted attention the study could not have been completed.

K. M. Teng
Santosh Kaul

Contents

Chapters	Pages
I Jammu and Kashmir	1
The British Intervention, 7	
The Freedom Movement, 17	
Independence to Accession, 26	
II Special Status	34
Article 370, 40	
Operatives and Impediments, 49	
Doctrine of Double Charges, 56	
Delhi Agreement, 60	
Political Crisis, 66	
President's Proclamation, 75	
The Last Phase, 79	
III Application of the Indian Constitution	82
Union and its Territories, 83	
Citizenship, 84	
Fundamental Rights, 88	
Constitutional Remedies, 101	
The Union Government, 102	
Emergency Powers, 104	
The Constitutional Amendment, 105	
Official Language, 106	
IV State Government	108
Governor, 111	
Council of Ministers, 113	
The State Legislature, 117	
High Court, 123	
Services, 130	
Public Service Commission, 131	
Directive Principles, 133	
Amendment, 140	

Chapters	Pages
V The Division of Powers	142
The Legislative Relations, 144	
Administrative Relations, 156	
Financial Relations, 161	
Immunity of Instrumentalities, 166	
VI Federal Principle	168
Right to Freedom, 171	
Autonomy and Accession, 177	
Abrogation and Amendment, 180	
Politics of Autonomy, 182	
Bibliography	184
Appendices I to VII	189
Index	241
III	
Application of the Indian Constitution	
Linguistic Territories	
Citizenship	
Fundamental Rights	
Constitutional Remedies	
The Union Government	
Emergency Powers	
The Constitutional Amendment	
Official Language	
State Government	
Governor	
Council of Ministers	
The State Legislature	
High Court	
Services	
Public Service Commission	
Directive Principles	
Amendment	
IV	

Chapter One

Jammu & Kashmir

The territories of Jammu, Kashmir and Ladakh, which constitute the Jammu and Kashmir State, were, before the Punjab was annexed by the British, a part of the Sikh empire of Ranjit Singh. Jammu was annexed by the Sikhs in 1808.¹ The ancient kingdom of Kashmir fell to the Sikhs in 1819.² In 1822, Ranjit Singh granted the province of Jammu to Raja Gulab Singh, a Dogra Rajput chieftain of Jammu, as a fief in perpetual possession.³ Gulab Singh had joined the Sikh armies in the wake of the fall of Jammu and later risen to much eminence and power at the Sikh Court.⁴ A shrewd statesman and a brave soldier, he put the opportunity he was offered by the Sikh monarchy, to purposeful use. Within a decade he subdued the territories and chieftainships lying along the borders of his fief and rapidly extended his possessions over the entire regions south of the Pir Panjal range bringing within his domains the important Rajput principalities of Kishtwar and Badarwah.⁵ In 1834, Gulab Singh invaded Ladakh. The Ladakhis held the jealously guarded monopoly of the lucrative trade in shawl-wool of the main shawl-wool producing centres in Tibet and western regions of Central Asia.⁶ The subjugation of Ladakh was completed by Gulab Singh in 1837.

1 Charak, Sukh Dev. *Maharaja Ranjit Dev and the Rise and Fall of Jammu Kingdom*, p. 123; *Gulab Nama* V. S. p. 100.

2 Panikkar, K. M. *Founding of the Kashmir State*, p. 16.

3 *Ibid.*, p. 32.

4 *Ibid.*, p. 18.

5 *Ibid.*, pp. 34-38.

6 Lamb, Alastair. *Britain and Central Asia*, p. 88.

Ranjit Singh died in 1839. The long internecine strife, which followed the death of the Sikh monarch, sapped the Sikh Durbar of its vigour and resources. The Dogras had become the most powerful political faction at Lahore.⁷ Gulab Singh's brother, Raja Dhian Singh, who had joined the Sikh army after his brother, had been appointed the Prime Minister of the State. The participation of the Rajputs in the Sikh politics had in fact proved a stabilising factor in otherwise paramilitary organisation of the Khalsa. In fact, the astute Sikh monarch had realised that, and had with considerable skill and keen interest forged the Sikh-Rajput fraternity. In the struggle for power that followed the monarch's death the Dogras were liquidated.⁸ Raja Dhian Singh and his valorous son, Hira Singh, were killed. Suchet Singh, the youngest of the Dogra brothers, who also had joined the Sikh army and risen to high eminence, was also killed in the strife. Gulab Singh alone survived.⁹

While the Sikhs were fighting each other, the British, who were by now the virtual masters of the rest of India and had prudently kept away from the Sikhs during the life time of Ranjit Singh, were preparing the plans for the destruction of the Khalsa and the annexation of the Sikh domains. The reduction of the Rajputs and their subjugation was the second phase of the grand design they envisaged.¹⁰ The final denouement, came when the First Anglo-Sikh war broke out and Sikhs fell in headlong collision with the British, an eventuality which Ranjit Singh had all along his career manoeuvred to avoid.

In the meantime, the Khalsa Council had appointed Lal Singh, the Prime Minister of the State. Lal Singh, a favourite of Rani Jindan, was a Brahmin from Jammu who had risen to power by intrigue and duplicity.¹¹ He hardly had the soldierly qualities and the political acumen to lead the Sikh armies in their hour of crisis. Commanded by irresolute

7 Hasrat, Bikarma Jit. *Anglo-Sikh Relations*, p. 184.

8 Panikkar, K. M. *Founding of the Kashmir State*, pp. 64-65.

9 *Ibid.*, p. 64.

10 Ellenborough to the Duke of Wellington, 20th Oct. 1873; *The Punjab Papers*, Ed. Bikrama Jit Hasarat, p. 67. *Kashmir Papers*, Introduction, p. xiv.

11 Hasrat, Bikarma Jit. *Anglo-Sikh Relations*, p. 261.

and corrupt military leaders, the army was defeated in a number of successive engagements.¹² After the battle of Feroz Shah, the Sikh leaders lost whatever of the vigour and zeal was still left in them. In anger and consternation the army, which refused to accept defeat turned to Gulab Singh for leadership and invited him to take control of the affairs at Lahore.¹³ No changes were effected in the army command and both the commanders-in-chief, Lal Singh and Tej Singh, were allowed to conduct the operations of war.¹⁴ This was a fatal mistake and proved the undoing of the empire and the army. The commanders were in secret liaison with the British officials and had been offered proper consideration for their connivance at the destruction of the Sikh army.

Gulab Singh was an ambitious politician and a shrewd statesman. He had carefully watched the events which had followed the death of Ranjit Singh. He realised the significance of the rising strength of the British and the British involvement in northern India. In the British power pressing at the southern borders of the Sikh empire, Gulab Singh visualised his emancipation from the Sikh hegemony and a deterrent to its domineering might. He had followed a measured strategy of securing the British support to carve an independent state for himself, right after the fall of Dhian Singh from power at Lahore.¹⁵ Time and again, particularly after the liquidation of Hira Singh, when his fate hung in the balance, he had sought to secure the British help to save himself from the scourge of the political turmoil at Lahore.¹⁶ More than once he had offered assistance to the British in case they were prepared to reduce the Sikhs.¹⁷ For reasons dictated by political and military considerations, the British, who could have turned the opportunity, the Dogra Chief offered them, to

12 Gough, Sir Charles and Arthur D. Innes. *The Sikhs and the Sikh Wars*, p. 61 and 68. Khushwant Singh. *A History of the Sikhs*, pp. 48-54.

13 Hasrat, Bikarma Jit. *Anglo-Sikh Relations*, p. 276.

14 Hasrat, Bikarmajit. *Anglo-Sikh Relations*, pp. 267-280; Khushwant Singh. *A History of the Sikhs*, Vol. II, pp. 48-54; *Kashmir Papers*, Introduction, p. xiv.

15 *Kashmir Papers*, Introduction, xiv.

16 Hasrat, Bikarma Jit. *Anglo-Sikh Relations*, p. 254.

17 *Ibid.*, pp. 22, 255.

their advantage, proved reluctant to accept his proposals.¹⁸ The strains had shifted now. The British were aggressively keen to destroy the Punjab and they neither lost time nor spared the effort to put to use the tactical advantage Gulab Singh's presence at the Court gave them to liquidate the Sikhs. From the position of authority, Gulab Singh now held at the Court, he was in a position to negotiate with the British with greater advantage to himself.

Gulab Singh, however, was not alone in quest of political gains. The Sikh leaders, except for a few men of honour, were involved in the plot aimed to get the army beaten by the British and then collect, whatever they could of the spoils.¹⁹ Many of the court dignitaries were in league with the British officials, seeking the destruction of the Sikh army, which threatened their ignoble existence. Gulab Singh had an advantageous position. He was insulated in a huge and lucrative fief, was rich in money and materials, and had quite a few powerful legions of hill troops to support him in case he needed to force an issue. In fact, Gulab Singh arrived in the capital at the head of five regiments of his crack hill troops.²⁰

While the Khalsa was crumbling under its own weight, the British strengthened their positions on the fronts. Had the Sikhs made a concerted and a bold move even at this time, the British would have taken a long time to recover for a fresh assault. That, however, did not happen. Instead, the British were given ample time to reorganise their formations, and vital information pertaining to the Sikh positions and the deployment of their troops continued to be supplied to them by treacherous Sikh commanders.²¹ The commanders wanted to destroy both the Khalsa and the new minister at the Court. Gulab Singh, perhaps, more astute, played back and with subtler effect.

The most decisive battle of the First Anglo-Sikh War was fought at Sobraon. The British mounted offensive on the Sikh

positions on February 10, 1846. The Sikhs fought with reckless resignation. But treachery took its toll. Immediately after the assault developed, Tej Singh fled away from the field. Lal Singh and his cavalry troops who were encamped nearby and who, if they had joined the battle, would have reversed the fortunes, never appeared on the scene.²² Leaderless and abandoned, the Sikh troops could not withstand the British onslaught. The battle of Sobraon was lost. With that the Sikhs lost their freedom. On February 20, the triumphant British troops entered Lahore.

The victory in the war gave the British, the territory between Satluj and Bias and a claim to one and a half crores of rupees of war indemnity. In the meanwhile a new Regency, with Lal Singh as the Prime Minister, had been instituted in Lahore and recognised by the British. The British demand for the huge indemnity was not acceptable to Lal Singh. Instead, he offered to cede to the British, additional territories between Bias and Indus including the province of Kashmir and Hazara. Lal Singh's design was to ward off the indemnity as well as to deprive Gulab Singh of his fief, who ironically enough was charged by Lal Singh of having conspired with the British against the Sikhs. The British were reluctant to accept the offer for many military and tactical reasons.²³ The British retained Kulu, Mandi, Nurpur and Kangra. The rest of the territory was offered to Gulab Singh, who had expressed his readiness to make good a part of the indemnity if the Sikh territories of Jammu and Kashmir were transferred to him in independent possession.²⁴ The transaction was formalised at Amritsar on 18th of March, 1846, where by a separate Treaty with Gulab Singh, the territories of Jammu and Kashmir, with the frontier districts of Ladakh and Baltistan, were ceded to the Dogra chief and he was recognised an independent ruler. The treaty of Amritsar stipulated:

“The British Government transfers and makes over for independent possession, to Maharaja Gulab Singh

18 Hasrat, Bikarma Jit. *Anglo-Sikh Relations*, p. 254.

19 *Kashmir Papers*, Introduction, xiv.

20 Hasrat, Bikarmajit. *Anglo-Sikh Relations*, p. 276.

21 Lawrence to the Secretary of State, May 16, 1846. Henry Lawrence Private Papers.

22 Hasrat, Bikarmajit. *Anglo-Sikh Relations*, p. 282.

23 Letters from Governor General to the Secret Committee, dated 14th March, 1846; K. M. Panikkar. *Founding of the Kashmir State*, p. 161.

24 Panikkar, K. M. *Founding of the Kashmir State*, p. 104.

and the heirs male of his body, all the hilly or mountainous country, with its dependencies, situated to the eastward of the river Indus, and westward of the river Ravi, including Chamba and excluding Lahul being part of the territories ceded to the British Government by the Lahore State, according to the provisions of Article 4 of the treaty of Lahore, dated 9th March, 1846."²⁵

Article 4 of the Treaty of Lahore provided :

"The British Government having demanded from the Lahore State, an indemnification for the expenses of the war, in addition to the cession of territory described in Article 3, payment of one and a half crore of rupees ; and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment ; the Maharaja cedes to the Honourable Company, in perpetual sovereignty, as equivalent for one crore of rupees all his forts, territories, rights ; and interests in the hill countries which are situated between the rivers Beas and Indus, including the provinces of Kashmir and Hazara."

Gulab Singh undertook to pay the British a sum of seventy-five lakhs of Nanakshahi rupees, for the prize they bestowed on him and the protection they promised him and his future generations. The district of Hazara was exchanged by Gulab Singh with an equal extent of territory east of Jhelum towards Jammu.²⁶ A significant feature of the Amritsar agreement was that, though, Gulab Singh was recognised independent, he accepted the supremacy of the British and thus bound himself to the vassalage of the British empire. These provisions were embodied in Article 10 of the Treaty of Amritsar.

"Maharaja Gulab Singh acknowledges the supremacy of the British Government and will, in token of such supremacy, present annually to the British Government one horse, twelve perfect shawl goats of

approved breed (six male and six female) and three pairs of Kashmiri Shawls."

Sheikh Imamudin, the Sikh Governor of Kashmir, refused to hand over the province of Kashmir to Gulab Singh. The British troops were despatched to the Valley to assist the Dogras to occupy it.²⁷ Lal Singh met the fate he deserved. He was charged by the British with having incited Imamudin to refuse to surrender the Valley to Gulab Singh. A mock trial was organised by the British officers. On charges of conspiracy he was divested of his power and possessions and banished from the State.²⁸

The British Intervention

By the Treaty of Bhairawal, which the British imposed on the Sikhs in December 1846, the British assumed virtual control over the administration of the Punjab. Rani Jindan was deprived of all her power and pensioned off. The British Government undertook the responsibility to protect the Maharaja during his minority. The control of the administration was vested with the Resident and a Council of eight Ministers who were to be appointed by the Resident. The military administration was also vested with the Resident and he was empowered to recruit Sikh armies, disband them or replace them, whenever he deemed that necessary. Lahore was to continue to be garrisoned by the British troops and the Governor General was authorised to deploy British troops, throughout the State, on such positions, as he thought necessary for the security of the Capital and the preservation of peace in the State. The Khalsa had been defeated and broken. The British now put into operation the second phase of their grand design to reduce the Rajputs and to extend their imperial possessions to the northern borders of the sub-continent, they had conceived long before the Sikh empire had crumbled.²⁹

Hardly a few months after the Treaty of Bhairawal, the British mounted their first offensive against the Dogras. Gulab Singh no longer had the formidable stature which he had

27 Panikkar, K. M. *Founding of the Kashmir State*, pp. 118-19.

28 Singh, Khushwant. *A History of the Sikhs*, p. 59. See also Sethi. *Triaq of Raja Lal Singh*.

29 *Kashmir Papers*, Introduction, p. xiii.

25 Treaty of Amritsar, Article I.

26 Singh, Khushwant. *A History of the Sikhs*, Vol. II, p. 56.

enjoyed as the most powerful Rajput chieftain of the mighty Sikh empire. He was now a petty feudatory subject to the purview of the British Paramountcy. On the ground that the Government of India had received complaints of oppression, alleged to have been perpetrated by the Maharaja on his subjects, the Governor General deputed Henry Lawrence to make an on-the-spot enquiry in the working of the administration in the State and report on the conditions prevailing there. Lawrence found the allegations false and though, he absolved the Maharaja of the blame,³⁰ he addressed a sharp note to the Maharaja urging him to reorganise the administration in the State failing which the Government of India would be compelled to make arrangements "for the protection of the hill people."³¹ Lawrence also advised the Governor General to administer a stern warning to the Maharaja. In his communication, the Governor General wrote to the Maharaja :

"In no case will the British Government be the blind instrument of a ruler's injustice towards his people, and if, in spite of friendly warning, the evil of which the British Government may have just cause to complain, be not corrected, a system of direct interference must be resorted to, which as your Highness must be aware would lower the dignity and curtail the independence of the ruler."³²

Lord Hardinge delivered the first psychological shock to the Maharaja and scored on him the impression that his territories were subject to the wide operation of the British Paramountcy and the Government of India meant to enforce the right to intervene in the affairs of the State, which it had come to possess by virtue of the Paramountcy, it exercised on the Indian States. In 1852 the government of India proposed to the Maharaja, the appointment of a Civil Officer on Special Duty in the State, to look after the European visitors, who came to

Kashmir in large numbers and whose conduct in the State, required supervision.³³ The Maharaja refused to accept the proposal. Heavy pressure was, however, put on him and he ultimately relented and accepted the appointment of the Officer on Special Duty.³⁴

In the wake of the Russian advance in Central Asia after 1860, the British interest in the politics of the State and security of its Northern frontiers assumed new dimensions. Apprehensive of the impact, the Russian frontiers rapidly descending south, would have on the Dogras, who had been probing in for some time, the small tribal principalities situated on the outskirts of the State borders, the British promptly warned Maharaja Ranbir Singh to suspend his activities "And make no attempt to extend his authority beyond the limits which had been conferred on his father."³⁵ The warning was a declaration of the strategic interests the British had in the northern frontiers of Kashmir and also a fresh enunciation of their claim to control the processes of the Dogra politics, whenever that was found necessary. In 1864, the British snatched from the Dogras the monopoly of trade in Shawl-wool, of which Ladakh was the main centre and imposed a new tariff agreement on the Maharaja. In 1867, a British commercial agent was appointed in Ladakh.³⁶

In 1870, the Government of India sent Douglas Forsythe on a commercial mission to Yarkand. In 1873, he was sent again with clearer instructions to report on the strategic importance of the adjoining regions. Forsythe's findings regarding the importance of the frontier regions and their undefended nature were startling. The Government of India was prompted to an immediate reappraisal of the entire frontier policy, which inevitably involved a reconsideration of its relations with Kashmir.³⁷ Across the northern borders of the State were

33 National Archives of India, Foreign Department, Political, 14th Dec. 1852, Nos. 82-83.

34 National Archives of India, Foreign Department Political, 1852, Nos. 82-83.

35 National Archives of India, Foreign Sec. 1877, No. 34-B.

36 Lamb, Alastair. *Britain and Chinese Central Asia*, p. 85.

37 National Archives of India, Foreign Department, Proceedings, Secret, July 1877, No. 34-B.

30 National Archives of India, Foreign Department, Sec. 28th November, 1847, No. 36 to 41.

31 National Archives of India, Foreign Department, Sec. 28th Jan. 1848, No. 35.

32 National Archives of India, Foreign Deptt., Sec. 28th Jan. 1848, No. 43-A.

scattered a number of tribal principalities, the more important among them being Chitral, Yasin, Hunza, Nagar and Dir. These principalities stretched to the south of the strategic passes Baroghil and Ishkoman which led through the great mountain range running north. In case a hostile power came to control these passes, it would dominate the tribal principalities and threaten the British Indian position of Jalalabad, Peshawar and the Punjab.³⁸ Not prepared to risk an involvement in the sensitive outposts so close to the restive Russian borders and reluctant to undertake major military commitments on such a remote front, the British informed the Maharaja that they would help him materially in bringing the tribal principalities under his control.³⁹ The Governor General personally assured the Maharaja in a meeting at Madhopur in November 1876, that "such States as Chitral and Yasin should come under the control of a friend and ally of the British Government like His Highness, rather than be absorbed, in the course of events by powers inimical to Cashmir."⁴⁰ In fact, the proposals suggested by the Government of India were aimed to secure the British a vicarious control over the tribal territories without any major tactical and military commitments. The proposals were, however, subject to the condition that a British Political Officer would be appointed in Gilgit to report directly to the Government of India, about the developments on the frontier. The Maharaja, apparently pleased on the prospect of extending his territories, readily accepted the proposals and in fact suggested a number of measures to effect the extension of his control over the tribal chieftainships.⁴¹

The Dogra efforts to secure the tribal areas, however, proved abortive. Not equipped with necessary power and prestige, incapable of taking any purposeful action and crudely unaware of the cultural and institutional patterns the tribal principalities presented, and intricate interaction of the political

38 National Archives of India, Foreign Department, Proceedings, Secret, July 1877, No. 35.

39 *Kashmir Papers*, Introduction, p. xxi.

40 National Archives of India, Foreign Department Proceedings, Sec. July 1877, No. 38.

41 *Kashmir Papers*, Introduction, p. xxi.

interests and ambitions in the region, the Dogras achieved little. As a matter of fact, the active political interest, the Dogras took in the region upset its age-old balance of power, liberating stresses which were far beyond the Dogras to control. Suddenly, the entire frontier erupted alive. Within a short time it was obvious that the forward thrust by the Dogras and the Gilgit agency had failed to fulfil its objective.⁴² The agency was withdrawn.

Having failed to utilise the Maharaja as a political instrument to influence the trans-frontier politics, presumably one of the main objectives of the British politics in Kashmir, the Government of India sought to tighten its hold on the Maharaja and his administration, for the anxiety remained that the management of a difficult and dangerous frontier could not be left to him. The British officials vehemently advocated intervention in the State, and believed in self-righteous conviction, that the resumption of the State administration, was necessary to secure the strategic interests of the empire in the northern borders of the State and effect reorganisation of its Government. In the background, were, however, subtler compulsions which goaded the British to interfere in the affairs of the State. These compulsions arose out of the inherent expansionism of the British colonial empire, the narrow parochialism of the British officials and the interests of trade and commerce with the Central Asian regions.⁴³ The British officials in India, in fact, never reconciled to the wider orbit of autonomy the Dogras had been allowed under the Treaty of Amritsar.

Maharaja Ranbir Singh died in September, 1885. Immediately, the Government of India conveyed to Maharaja Pratap Singh their decision to appoint a Resident Political Officer in the State. Pratap Singh appealed to the Governor General to reconsider the decision and pleaded for some more time to improve his administration and introduce reforms in the government of the State.⁴⁴ On 25th September, 1885, Pratap Singh was formally installed the Maharaja. The same day, the

42 National Archives of India, Foreign Department Proceedings, Secret, July 1881, Nos. 314-397.

43 *Kashmir Papers*, Introduction, p. xxxvi.

44 *Ibid.*, p. xxv.

Officer on Special Duty took over as the Resident Political Officer in the State. Instructions were given to the Resident to inform the Maharaja, that the Government of India was dissatisfied with the administrative conditions of the State and the Agent was authorised to tell the Maharaja that in case he failed to take immediate and effective action, the Government of India would not hesitate to take such action as they deemed necessary. In fact, the Government of India underlined measures such as the abolition of the State monopolies, rationalisation of taxes, reorganisation of financial administration, construction of roads and removal of restrictions on emigration, which in their opinion deserved the first attention of the Maharaja.⁴⁵ Pratap Singh made some feeble efforts, but his enthusiasm was short-lived. Not many months after the Resident was appointed, he reported to the Government of India that it was hopeless to look for any serious improvement in the administration of the State without material interference in its affairs.⁴⁶

Matters came to a head when the Government of India appointed T. C. Plowden, a diehard British bureaucrat, the Resident in the State. Hostile to the Dogras, the new Resident immediately set out to undo the regime. He broke up the Ministerial Council, inducting in it his proteges and puppets. A clash of approaches followed and the government disintegrated into several factions, each vying with the other to ingratiate itself with whoever mattered. The administration came to a grinding halt. After having outmanoeuvred the Maharaja, the Resident informed the Government of India that the administration had broken down in the State and the time was ripe for intervention in the affairs of the State and final take-over of its administration. The Government of India accepted in general terms the plea made by the Political Agent but hesitated to take the action that was proposed by him.⁴⁷

45 National Archives of India, Foreign Department Proceedings, Secret, E, October 1886, No. 725.

46 Resident to the Secretary to the Government of India, 16th Sept. 1885, *Condemned Unheard*, Appendix A.

7 *Kashmir Papers*, Introduction, p. xviii.

In 1888, Colonel Parry S. Nisbet, a personal friend of Pratap Singh was appointed the Resident in the State. A couple of months after Nisbet assumed office, the Kashmir Residency made a startling disclosure that it had come into possession of treasonable letters written by the Maharaja to the Tzar, Maharaja Dilip Singh and some of his favourites in the State.⁴⁸ The Maharaja vehemently denied having written any of the letters. But the trap was so well laid that the younger brother of the Maharaja, Raja Amar Singh, who had already been won over by the Resident to his side, was made to testify that the letters were genuine and written by the Maharaja himself.⁴⁹ In the whirlwind that followed, Colonel Nisbet in collaboration with his accomplices, extorted from the Maharaja, an Edict of voluntary resignation by virtue of which the Maharaja undertook to relinquish all the powers of the government and entrust the administrative authority to a Council constituted of his two brothers, Raja Amar Singh and Raja Ram Singh, Rai Bahadur Pandit Suraj Koul, Rai Bahadur Bagh Ram and an English Officer nominated by the Government of India.⁵⁰ Nisbet forwarded the Edict to the Government of India urging immediate acceptance of the offer the Maharaja had made. Gilding the perfidy, Nisbet wrote to the Foreign Secretary :

“As the Government of India have carefully refrained as long as was possible, from any sort of interference in the direct management of the affairs of the Kashmir State, so I think now a direct appeal to do so cannot be ignored, and that there should be no hesitation in adopting the best and most complete measure likely to bring about the reforms necessary.”⁵¹

The episode of the treasonable letters and the Edict of voluntary resignation gave the Government of India, the much needed pretext to intervene in the affairs of the State. However, in view of the fact that the Maharaja had denied having written

48 *Ibid.*, p. xxix.

49 Nisbet to Durand, 27th Feb. 1889. *Condemned Unheard*, Appendix A.

50 *Kashmir Papers*, Introduction, xxxi.

51 National Archives of India, Foreign Department Proceedings, Secret, E, April 1889, No. 86.

the letters and the action on the basis of the Edict would have bound them to conditions laid down by the Maharaja in the Edict, including the five year limit, for which he had offered to abdicate, the Government of India did not find it feasible to base their action on the Edict or the issue of the treasonable letters. Decision was taken to relieve the Maharaja of his administrative responsibilities, on the simple ground that Government of India deemed the action necessary.⁵²

On April 1, 1889, the Governor General, by a unilateral Command Order issued to a recalcitrant feudatory, divested the Maharaja of all his powers and entrusted the administrative authority to a Council constituted of the Maharaja's brothers, Raja Amar Singh and Raja Ram Singh and three or four other members selected by the Government of India.⁵³ In his instructions to the Resident, the Foreign Secretary wrote :

"In communicating to the Maharaja and others concerned the decision of the Government of India, you should be careful to avoid basing that decision exclusively either upon the letters or upon the Maharaja's resignation. The letters are repudiated by the Maharaja, and as I have said before, they are not of a very novel character; while on the other hand, Government of India are by no means prepared to make the present settlement a matter of compact with the Maharaja and to accept all conditions laid down by his Edict of the 8th March, for example, the five years' limit. You should, therefore, base the decision of the Government upon a full consideration of all the circumstances, the letters and the Maharaja's wish to retire from the control of affairs being considered amongst other things, but only as portions of a difficult and complicated case, which it has been necessary to settle on broader grounds of general policy."⁵⁴

52 *Kashmir Papers*, Introduction, xxxii.

53 *Ibid.*

54 National Archives of India, Foreign Department Proceedings, Secret, E, April 1889, No. 96.

On April 17, 1889, Colonel Nisbet conveyed the decision of the Government of India to the Maharaja, who perhaps unable to grasp the purport of the communication, promised the Resident to give the communication his immediate and active consideration. Nisbet informed the embarrassed Maharaja, that the communication no longer needed any consideration as it embodied the final orders of the Government of India.⁵⁵

The assumption of the government of the State by the British, earned them greater notoriety than even the Amritsar transaction had involved. The obvious violation of the treaty commitments evoked general censure, not only from the non-official opinion in India, but considerable official and non-official opinion at home also disapproved of the action taken by the Government of India. To placate the ruffled tempers and also to dispel the fears of the other Indian Princes, who had been shaken by the turn the events in Kashmir had taken, the Government of India adopted a measured strategy of gradual restoration of the powers to the Maharaja, while, at the same time, the essential sovereignty over the State and control over its administration was retained unimpaired.

In 1891, the Council was reconstituted and the Maharaja was offered its presidentship which till then was vested with Raja Amar Singh. Raja Amar Singh was appointed the Chief Minister.⁵⁶ The reconstitution of the Council gave the Maharaja little substantial authority which continued to be exercised by the Council under close and strict supervision of the Resident. In 1896, another concession was given to the Maharaja and he was empowered to review the proceedings finally disposed off by a Member in the Council and in case the Maharaja did not agree with the decisions and orders of the Council, he was empowered to return them for reconsideration.⁵⁷ In 1905, the Council was abolished and the Maharaja was empowered to

55 National Archives of India, Foreign Department Proceedings, Secret, E., May 1889, No. 563.

56 Jammu and Kashmir Archives, Papers relating to Procedure of Business in the Council, 1889, No. 49.

57 Papers relating to procedure of Business in the Council, Jammu and Kashmir Archives, 1889, No. 49; State Council Resolution, 24th August, 1896, Jammu and Kashmir Archives, 1889, No. 49.

appoint the Council of Ministers which was to aid and advise him in the conduct of his government. The Council was to be constituted of a Chief Minister and three other Ministers⁵⁸ Granting the powers to the Maharaja, Lord Curzon, in his *Kharita*, wrote to Pratap Singh :

"It rests with your Highness, by exercise of constant restraint and vigilance and by full possession of a sense of great responsibility which now falls on you, to determine, the reputation which future generations shall always be ready to support your Highness in any legitimate undertaking for the good of your country, but it must not be forgotten that, in their duty to the populations which are brought under their influence, they will never be prepared to tolerate a lapse from the standard to which the administration of your state has attained under the existing constitution. But I have every confidence that your Highness's conduct of affairs will justify the extension now made of the authority which was restored to you in 1891, and that it will be entirely for the good of your State and people."⁵⁹

Apparently, the constitutional reforms amounted to the grant of some major concessions to the Maharaja. In reality, however, this was not so. The reforms only widened the procedural functions of the Maharaja without enhancing his powers in any substantial manner. The Council was to be appointed by the Maharaja in consultation with and the final approval of the Government of India. The Maharaja was not to take any "step of importance", without consulting the Resident and was bound to exercise his powers on the advice of the latter. The annual budget was to be prepared in consultation with the Resident and expenditures were not to be incurred without his prior sanction.⁶⁰

Obviously, not content with what he had got, the Maharaja appealed to the Government of India to reconsider their deci-

sion and lift off some of the major limitations still imposed on him. The Government of India ignored his plea and allowed the existing arrangements to continue.

In 1914, the Government of India, on the advice of the Resident, decided to relax the control, the Resident exercised on the finances of the State. A long and protracted correspondence ensued between the Government of India and the Maharaja, which finally culminated in the restoration of some more powers to the Maharaja.⁶¹

In September 1920, the Maharaja addressed an impassioned appeal to the Viceroy pleading for the return of the powers of the administration to him. The Government of India demanded in return an assurance from the Maharaja, that he would accept the advice of the Resident in administrative matters, whenever it was offered and would also inform the Resident of any important changes in the existing rules and regulations and the frontier policy.⁶² The Maharaja accepted the conditions laid down by the Government of India. On February 4, 1921, the Maharaja was restored the powers of the government.⁶³

The Freedom Movement

The British intervention ended the exclusiveness of the Dogras and paved the way for the integration of the State in the Indian Princely Order, which by now was gradually being shaped into a powerful flank of the British Empire in India. The vigour and the ruthlessness with which the British set to reorganise the age-old economic and social structure and the administrative and educational system in the State created a new complex of economic and social relationships, and liberated many, hitherto un-experienced stresses and strains. The most characteristic feature of the new patterns was the consolidation of middle class interests in land and trade, which the British genuinely believed would work as a powerful ring-fence to contain as well as safeguard the Dogra dynasty. The inevitable

58 Documents Relating to the Abolition of the State Council, Jammu and Kashmir Archives, 1905.

59 Curzon to Pratap Singh, 30th August, 1905.

60 Note on the New Arrangements for the Administration of the Jammu and Kashmir State, Jammu and Kashmir Archives, 1905.

61 First Assistant Resident to the Chief Minister, 7th March, 1914.
62 Bannerman to Pratap Singh, 26th Nov. 1920, Jammu and Kashmir Archives, 1920, No. 104.

63 Chelmsford to Pratap Singh, 4th Feb. 1921, Jammu and Kashmir Archives, No. 104.

sequel was the gradual emergence of a middle class intellectual ferment, a development of deep import for the processes of the national struggle in the State.⁶⁴ In fact, this intellectual movement furnished the freedom movement in the State with its determinatives and directives. The educated young men found their way into the State services and thus cast in a new and progressive sociological role assumed the community leadership. The agrarian economic frame of the State, however, promised few prospects to the rapidly increasing number of the educated young men. The administrative organisations of the State also offered a very restricted margin of employment. Most of the administrative offices were filled from among the Indian Civil Service cadres and wherever any opportunities were available, they were distributed by the Dogras on political and other considerations. Naturally, therefore, the middle class intelligentsia developed a reactionary interest in the administrative employments in the State. It is here that the first seeds of mass distrust against the Dogras as well as the British were sown. A number of social and political organisations, more important among them, the Dogra Sadar Sabha, the Mahajan Sabha, the Muslim Youngmen's Association were founded in the State. The organisations reflected the deepening frustration in the educated youth and espoused the cause of wider participation for the middle class intellectuals in the politics and the administration of the State.⁶⁵ The Dogra Sabha, founded in 1905, voiced disapproval of the domination of the administrative structures by the Indian Civil Service cadres, immediately after its inception and from 1912, started a vigorous campaign urging for the reservation of civil service employments for the people of the State. In the Kashmir province, the movement evoked greater response from the small Kashmiri Pandit community, which, with a long academic and intellectual tradition poured out educated youngmen at a fairly more rapid pace, and, therefore, experienced greater containment.

64 Teng, M. K. and Santosh Koul. *Ideological Foundations of the National Movement in Kashmir*, Journal of Political Studies, Vol. IV, No. II, p. 28.

65 Resolutions of the Dogra Sadar Sabha. Annual Sessions, 1912, 1914, 1915.

The middle class ferment proved an ideal ground for the nurture of the many influences which crept in from the other parts of India, particularly from the Punjab after the Rowlatt debacle. An idea of the emerging political outlook can be had from many reports and pamphlets, prepared, during those formative years,⁶⁶ by Sardar Budh Singh, a Sikh revolutionary who was actively associated with the new resurgence, and who gave it direction and later played a memorable role in the freedom struggle till its culmination in the war of resistance against the invaders from Pakistan in 1947. The impressions, the State assimilated during those days, served for many years after, as the basis of the struggle against the Dogra regime in the State.

When the territories of Jammu and Kashmir were handed over to Gulab Singh, the cultural configuration of the new State presented many peculiarities which created a complex situation of cultural contact. Kashmir was predominantly Muslim and for most of its history compelled to seclusion by her geographical location. Jammu province, with a powerful structure of caste control and a history of continuous involvement in the politics of northern India was a part of the Sanskrit people of the Punjab. Ladakh was an independent cultural entity which shared little with the cultural patterns of the other two provinces. The integration of these peoples into a single political entity inevitably put the three patterns in close contact with each other, but the incongruencies and the dissimilarities that each bore to the other had great potentiality for concussion and conflict. The Dogras turned these differences and divisions to their advantage and used the hierarchical gradations as potent instruments of political and social control. In fact, the Dogras used the caste gradations, class factions and other social stratifications to safeguard their interests. Alignments were effected by them with agrarian and commercial interests, the social strata with superior role status and regional influences, to strengthen their regime.⁶⁷

66 Sardar Budh Singh. *Masvada Mulazimat* (Vern.); *Fariyade Rayat* (Vern.); *Kisan Ki Dastan* (Vern.); *Garibon Ke Dukk Ka Illaj* (Vern.).

67 Teng, M. K. and Santosh Koul. *Foundations of National Movement in Kashmir* (ii), Journal of Political Studies, Vol. V, No. II, p. 29.

The vast masses of the people, however, remained imperious to the Dogra persuasion and politics. Dogra administration was characterised by much irresponsibility, considerable corruption and the absence of any development. Many pernicious practices like impressment of forced labour were prevalent in the State. The land rents were heavy and taxes widespread and staggering. Scattered over the State, the peasantry, of which the vast majority was Muslim, bore the brunt of the heavy administrative structure. The plight of the people in the frontier districts of Ladakh and Skardu and on the lower rungs of caste gradation among the Hindus was even worse.⁶⁸

The middle class movement and the reaction articulately expressed by the middle class intellectuals could neither rectify nor remedy these ills. The new class actually constituted an inseparable part of the Dogra political and economic organisation and was, therefore, geared to the perpetuation of these ills. What actually happened, and for obvious sociological reasons, was the break-up of the middle class leadership into regional and communal factions and the growth of reactions which had never been experienced before. The objectives of the various factions were, however, identical. Each contested for wider permissibility, more concessions and opportunities of employment under the regime. Only the determinatives differed. Gradually, however, as the contest among the various factions sharpened, the determinatives assumed precedence over the objectives. The Muslim leadership extra-conscious of its role as the spearhead of a religious majority ruled by the Dogra Rajputs, turned to feed on the seething discontent and distrust among the Muslim masses. As the mass involvement in the Muslim middle class movement increased, the objectives, the Muslim intellectuals sought to achieve, were completely relegated to the background. The movement rapidly widened its

68 Lawrence, Sir Walter. *Valley of Kashmir*, pp. 402, 425-26; *Jagirs, Mauji and Mukararies*; Government of Jammu and Kashmir; Bazaz, P. N. *Inside Kashmir*, p. 60; Residency suggestion regarding the alleviation of the hardships of the people, 1960, M. S. 155/p. 62, Jammu and Kashmir State Archives, Jammu Repository; Official Report of the First Praja Sabha Debates, Vol. III-A, Part III, 1935, p. 26.

scope and operation and soon assumed the expression of a Muslim upsurge against the Dogras.

Maharaja Hari Singh assumed the throne in 1925. He was an intelligent prince. He took a serious view of the deep discontent among his Muslim subjects. On the occasion of his Raj Tilak, he tried to placate the ruffled tempers, declared that his Government would strictly adhere to a secular policy and would abolish any discrimination that any community in the State suffered. A number of concessions were announced by him with regard to revenue assessment, grazing taxes, the cultivation of waste and fallow, etc.⁶⁹ The reforms, though of considerable merit, could hardly satisfy the Muslim aspirations for the concessions meant hardly any radical change in the conditions they were in and nothing short of a drastic transformation of the state policy was needed to restore the Muslims their trust in the Dogra Government. The Dogras had, however, their own commitments to fulfil. They were an inseparable part of the princely order the British had established in India, and their discretion and initiative was as much circumscribed by the nature of the order as by the context and conditions on which their existence was based and which they were kept in the saddle to perpetuate. Beyond the few concessions the Raj Tilak Boons offered, the Maharaja did not accomplish much. The Muslim distrust remained unremedied.

In 1931, an ugly incident occurred at Jammu which allegedly involved the desecration of a Muslim scripture. An enquiry was immediately ordered to be instituted by the Government. Considerable tension ensued. The Muslim press in the Punjab launched a virulent campaign against the Dogras.⁷⁰ The British, who were on the look out for a breach, played one side against the other. Hari Singh, as a matter of fact, had followed a policy of indiscreet reaction against the British patronage. By the end of the summer, a wide-spread and organised Muslim agitation against the Dogras was in progress. The agitation culminated in the crisis of July, 1931 when the Muslims fell into headlong collision with the Dogras.⁷¹ The Dogras, instead

69 A note on Jammu and Kashmir State, Ranbir Government Press, 1928.

70 Ranbir, Jammu, Vol. III, 1927, Nos. 47, 48.

71 Report of the Srinagar Riot Committee, 1931.

of following a sympathetic and organic attitude towards the Muslim expressions, adopted a policy of repression and factless severity. Muslim political factions in the Punjab, in an attempt to exploit the situation in the State, jumped into the fray. Ahrars from the Punjab entered the State in thousands. Their main objective was to eliminate and drive out the Ahmadya elements and influences which had so far directed the Muslim movement in the State. The Government, which probably could suppress the local troubles, was hardly capable of facing the situation created by the Ahrar involvement.⁷² Religious fervour which underlined the agitation, soon gave it a communal turn and within days, communal riots broke out in the Jammu province and some contiguous parts in the Kashmir province. Districts of Mirpur, Punch and Rajouri were completely ravaged. Cut off from the disturbed areas, the government in Jammu stood by helpless.⁷³ The British allowed the events to take their toll for they wanted to see Hari Singh on his knees. The Maharaja finally yielded and appealed to the Government of India to save him from the calamity and offered to entrust the administration of the State to any British civil service officer, the Government of India would nominate. That was what the British waited for. With feverish expedition British troops were despatched to Jammu to quell the riots and bring the situation under control.⁷⁴ An Ordinance was promulgated by the Government of India, prohibiting the Ahrar ingress in the State. The Maharaja was advised to institute a Commission of Enquiry under an officer nominated by the Government of India, to investigate into the allegations and suggest measures to remedy the grievances of the people.⁷⁵

The prospect of the investigation in the administrative processes, the possibility of the consequent reforms and the

72 Report of the Enquiry on Jammu Disturbances, 1931.

73 Report of Mr. L. N. Jardine, Special Minister on the Measures adopted for the Restoration of Law and Order in the Mirpur Wazarat and Rajouri Tehsil.

74 Note on Political Situation, printed at Ranbir Government Press, Jammu, 1932.

75 Commission appointed under the order of the Maharaja in Nov. 1931, under the chairmanship of B. G. Glancy.

shift in the policy of the Government of India toned down the excitement to some extent. Ultimately an agreement was reached between the Government and the Muslim leadership which stipulated the withdrawal of the Muslim agitation. The leadership was assured speedy consideration of the Muslim demands after the enquiry had been completed.⁷⁶

In November 1932, the Muslim leadership called a general convention at Srinagar to which delegates were invited from all over the State. On the final day of the three day convention the Jammu and Kashmir Muslim Conference was founded. Sheikh Mohammad Abdullah, who had first led the Muslim intellectuals and later directed the Muslim agitation, was elected President of the Conference. The Conference committed itself to :

- (a) organise the Muslims of the State and secure their due rights ;
- (b) endeavour and struggle for their economic and cultural betterment ; and
- (c) absolve them from the oppression they laboured under.⁷⁷

The Muslim agitation and the consequent British intervention in the State brought to surface the identity between the interests of the British colonial empire in India and the purposes of the Princely order and uncovered the facade of nativity, the Dogras wore. The Dogras, shaken and seared, liberalised the administration and rationalised the recruitment to the government services. A number of Enquiry Commissions were appointed to look into the grievances of the different communities. A Constitutional Reforms Conference was also convened in 1934, and in pursuance of its recommendations a representative assembly was instituted on the basis of limited and qualified adult franchise.⁷⁸

The mass involvement in the middle class movements in the State, the futility of the half-way political reforms, the arraignment

76 Taseer, Rashid. *Tehrik Hurayate Kashmir*, p. 246.

77 The Constitution of All Jammu and Kashmir Muslim Conference, cl. 2.

78 Regulation No. 1, 1934.

ment of the British imperialism behind the Dogras and the frustration caused by communal violence, ultimately led to the evolution of a secular mass movement in the State. In 1939 the constitution of the Muslim Conference was amended to convert it into a secular organisation, the 'National Conference'. The National Conference committed itself to struggle for the freedom of the country from foreign rule, the establishment of self-government in the State and the realisation of political India comprising the British Indian provinces and the Indian States.⁷⁹

From 1939 to 1941, the National Conference conducted a vigorous campaign for the establishment of responsible institutions in the State. With the outbreak of the Second World War, however, it settled to a more subdued attitude. In 1942, the scarcity of the food grains in the State and the rising prices of the other commodities assumed critical proportions. The National Conference offered to cooperate with the Government in the efforts to deal with the situation. In Jammu, however, the scarcity was severe and a number of people died in police firing in demonstrations organised to protest against the failure of the Government to adopt remedial measures.⁸⁰

In 1943, the Government appointed a high power Commission to investigate into the working of the government and the impact of the constitutional reforms undertaken so far and suggest ways and instruments for the reform of the administrative processes and the introduction of administrative responsibility in the government.⁸¹ All the political organisations of the State were invited to participate in its work. The appointment of the Commission created an atmosphere of optimism and all the political parties including the National Conference agreed to participate in its deliberations. The Conference submitted a long memorandum to the Commission. The Commission was, however, from its very appointment, ill-starred. Differences set in among the participants on a wide variety of matters. The

⁷⁹ Bazaz, Prem Nath. *Struggle for Freedom in Kashmir*, p. 169.

⁸⁰ Saraf, Mulk Raj. Ranbir, Jammu, ix, 6.

⁸¹ Ganga Nath Commission appointed by the Command Order 12th July 1943.

National Conference withdrew from the Commission and published the memorandum, it had submitted to the Commission, in the form of a manifesto under the title 'the Naya Kashmir.'⁸²

In 1944, the Maharaja offered to appoint two ministers from among the elected members of the Legislative Assembly. Erroneously though, the National Conference accepted the offer. Dyarchy, as was expected, did not work well and within a year the National Conference nominee to the Cabinet had to resign.

These were the critical days when the Indian independence was on the anvil. The National Conference represented to the Cabinet Mission that the Indian States were as much a part of India, as the British Indian provinces were and demanded the constitutional right to take part in the efforts to determine the future of the country. "At a time", the National Conference wrote to the Cabinet Mission, "When the new world is being built on the foundations of the Atlantic Charter, a new perspective of freedom is opening before the Indian people, the fate of the Kashmiri nation is in the balance, and in this hour of decision we demand our basic democratic right to send our elected representatives to the constitution-making bodies that will construct the frame-work of free India. We emphatically repudiate the right of the Princely order to represent the people of the Indian States or their right to nominate their personal representatives as our spokesmen."⁸³

The Memorandum was ignored. On 19th July, 1946, the National Conference launched the famous 'Quit Kashmir Movement' against the Dogras. The Dogras who were now fully backed by the British, reacted swiftly and suppressed the movement. The repression the Dogras unleashed, caused nation-wide repercussions. Pandit Nehru rushed to Srinagar. At Uri, he was served with an order by the District Magistrate of Srinagar prohibiting him to proceed further. Nehru refused to turn back. He was placed under arrest and detained. A day after, however, he was released to return to Delhi. Leaders and the followers of National Conference, who

⁸² Resolution of the Working Committee of the National Conference, dated 20th February, 1944.

⁸³ Memorandum submitted by the All Jammu and Kashmir National Conference to the Cabinet Mission, 1946, pp. 2-3.

had participated in the movement and who had been detained, were sentenced to various terms of imprisonment and punishment.⁸⁴

While the Dogras were grappling with their people, changes of far-reaching importance were under way on the sub-continent. The future of the colonial structure, the British had built on the sub-continent, and with that the future of the Princely order was on the anvil. India was on the threshold of freedom and the days, the Princes had on their side, were numbered. The Dogras, however, failed to realise that.

Independence to Accession

In 1947, India was divided. With the other Indian States, Jammu and Kashmir was also released from the purview of the British Paramountcy. The Princes were given the choice to determine their relations with the two Dominions and accede to either of them.⁸⁵ The implication, that the Princes would hardly be able to retain the technical independence earned by the lapse of the Paramountcy, was obvious, for the British government was neither prepared to recognise the States as dominions nor carry out any obligations the Paramountcy involved. The States were to finalise the accession to the Dominions before fifteenth of August 1947, the day fixed for the transfer of power.

At this critical hour, the Maharaja and his Government signally failed to appreciate the strains of the situation and finalise the issue of accession. The Maharaja and his Government followed a policy of biding time and deferred a decision on this vital issue. It is difficult to locate the political factors which prompted the Maharaja and his government to stand by in indecision and allow the crucial days to pass. There is little doubt that the advisers and men who surrounded the Maharaja failed to realise the significance of the developments which were taking place on the sub-continent. Most of them, devoid of any political foresight, could not even visualise the possibility of the British withdrawal and the ultimate dissolution of the Indian Princely order. Hari Singh suffered from an excessive

sense of incredibility and found it difficult to realise that the British would abandon the Princes even if they meant to leave India. To that extent the British officers of the State Department spared no efforts to assure the Maharaja. The Prime Minister of the State, Ramchandra Kak, a thoroughbred bureaucrat proved as incapable to read the run of the history as his master did. He scrupulously obeyed his master. Hari Singh continued, as every Indian Prince did, to poison himself on the tight balance between the operatives of the British colonial framework and the Indian national struggle. The princes had little significance otherwise. In fact, the Maharaja and his Prime Minister tried in their own way to put the small weight they had, on the side of the Paramountcy and suppress and sabotage the national movement in the State, realising little that their demonstrative loyalty would actually fling them into oblivion.

Much is not known about the course of action the Maharaja and his government had taken, but all circumstantial evidence proves that independence for him and his State was uppermost in his mind. Ramchandra Kak followed his master with loyal vigour and though adequate evidence is not available to assess his role during those critical days, it can safely be said that he did not disagree with his master, but actively supported the Maharaja till he remained in office, a course which ultimately proved disastrous to both. The coterie of the Court grandees was hostile to the adoption of a politically sound policy. In fact, the zest with which they had isolated the Dogras from the national mainstream and arraigned themselves against the national movement in the State and the fear they harboured that the transfer of power at the national level would consequently involve the loss of patronage they enjoyed, had blinded them completely. With thoughtless resignation they applauded the obstinacy, the State government demonstrated. Ramchandra Kak had, however, a keen sense of history, but he tripped where he should have been able to look miles ahead. Perhaps, he too refused to learn the vital lessons from history to which he had been so devoted. By his obdurate policies he had brought himself as well as the Dogras to a dead end. Time offers no chance, but it is another of the inexplicable turns in the history of the State, that he and his master were saved in the holocaust that followed.

84 *Kashmir on Trial*, p. 12.

85 Gupta, Sisir, *Kashmir, a Study in India-Pakistan Relations*, pp. 76-79.

It was neither realised by the Maharaja nor by his Prime Minister, nor the men who thronged the Court and supported the Maharaja in his endeavour to secure independence for his State, that the Dogra estates, running over long stretches of mountainous terrain, inhabited by less than four million people and with resources barely sufficient to sustain them, could not be integrated into a viable political unity. The State, after it was constituted by the British in 1846, had lived along under the patronage of Paramountcy and in fact, had fed on it. Effective instruments of political control did not exist and the borders of the State stretched along the tactical frontiers of some of the most powerful nations in Asia. Major General H. L. Scott, who commanded the armies of the State had under his command a few battalions of foot troops to man the borders of the State.⁸⁶ Scott was a glamorous old man with much glittering steel in his deep blue eyes, but after all, no independent state could be founded on dramatics. The Englishman was under no illusion himself, for the disposition and the deployment of the State troops, that he ordered to be effected clearly proves that he was well aware of what was to happen and possibly played his part well. The Maharaja and his Prime Minister on whose shoulders the responsibility of the security of the State and its future lay, continued to remain oblivious to what was happening around them. Both, possibly, refused to recognise that the Second World War had shattered the British Colonial Empire and destroyed the Paramountcy for ever. Britain had ceased to be the power it was before the War, and a new balance of power was in the process of evolution. The patterns of power sought to be built on the sub-continent, were therefore, inescapably bound to be affected and determined by the factors other than those involved in Paramountcy. Not long after, the events proved that, for the Dogras could not withstand the onslaught of the invaders from Pakistan, and had it not been for the two hundred gallant men with General Rajinder Singh, the new chief of the State troops, who fought for moments at Uri with their bare teeth and laid down their lives to earn the Maharaja, a day's reprieve, the story would have been different.⁸⁷

⁸⁶ Sen, L. P. *Slender Was The Thread*, pp. 3-4.

⁸⁷ Sen, L. P. *Slender Was The Thread*, pp. 37-38.

Lord Mountbatten came to Srinagar to discuss with the Maharaja the position the latter intended to take with regard to the accession of the State. He had long discussions with the Maharaja.

“Lord Mountbatten spent four days discussing the situation and arguing with the Maharaja. He told him that independence was not in his opinion, a feasible proposition and that the State would not be recognised as a dominion by the British Government. He assured the Maharaja that so long as he made up his mind to accede to one dominion or the other, before fifteenth of August, no trouble would ensue, for whichever dominion he acceded to would take the State under its protection as part of its territory. He went so far as to tell the Maharaja that if he acceded to Pakistan, India would not take it amiss and that he had a firm assurance on this from Sardar Patel himself. Lord Mountbatten went further to say that, in view of the composition of the population, it was particularly important to ascertain the wishes of the people”.⁸⁸

The Maharaja was evasive and avoided to commit himself to any of the courses underlined by the Governor General. Mountbatten sought another meeting with him and his Prime Minister on the morning of the last day of his visit, probably to persuade the Maharaja to take a decision. The meeting, however, did not come off. It is interesting to find that Lord Mountbatten gave an assurance to the Maharaja that if he acceded to Pakistan, the Government of the Dominion of India would readily accept his decision. It is difficult to believe that the Government of India did not know the Maharaja's mind and also that accession to Pakistan would be the last act, the Maharaja was prepared to commit. It is more difficult to appreciate the Governor General offering an assurance to the Maharaja and reiterating a formulation which he knew was only formal. Perhaps the Governor General wanted to convey to the Maharaja, his disapproval and the discomfiture of the Indian leadership at his plans of remaining independent. Pandit Ram Chandra Kak was given ample opportunity by the

⁸⁸ Menon, V. P. *The Story of the Integration of the Indian States*.

Indian leaders to reconsider the course of action, he and his government had taken and take a decision which would ultimately be helpful to the State. Sardar Patel wrote to the Prime Minister and in a very mild and sedate tone told him that the time had come to reconsider the policy with regard to National Conference and evolve a new line of approach in view of the developments occurring on the sub-Continent. Kak assumed silence and did not even care to communicate his views to the Sardar. In July, Patel again wrote to the Prime Minister, exhorting him to reconsider the issue while there was still time. Patel wrote to Kak :

"Do you still think Sheikh Abdullah should continue to remain in jail. I am asking this question purely in the interests of the State. You know my attitude all along and my sympathy towards the State. I am once again advising you as a friend of the State to reconsider the matter without any delay."⁸⁹

Kak was attending the meetings of the Negotiating Committee and Patel felt he could persuade the Prime Minister to relent. Patel, as a matter of fact, plainly advised the Maharaja to join the Indian Dominion and in unambiguous terms laid out the proposals to his Prime Minister, possibly trying to allay the fears, the Maharaja and his advisers entertained about the Indian Dominion and about the future set-up in the State.

Patel also communicated to the Maharaja his disappointment at the inability of the Maharaja to discuss the issue with Lord Mountbatten when the Governor General was in Srinagar and his inability to avail of the opportunity to come to Delhi on his invitation. Patel in more or less remonstrative words, which were replete with more pathos than impatience almost implored the Maharaja to come to Delhi for talks.

"I fully appreciate the difficult and delicate situation in which your State has been placed, but as a sincere friend and well wisher of the State, I wish to assure you that the interest of Kashmir lies in joining the Indian Union and its Constituent Assembly without

89 Patel to Ramchandra Kak, *Sardar Patel's Correspondence*, Vol. I, p. 32.

any delay. Its past history and traditions demand it, and all India looks up to you and expects you to take that decision. Eighty percent of India is on this side. The States that have cast their lot with the Constituent Assembly have been convinced that their safety lies in standing together with India.

I was greatly disappointed when His Excellency the Viceroy returned without having a full and frank discussion with you on that fateful Sunday, when you had given an appointment which could not be kept because of your sudden attack of choleric pain. He had invited you to be his guest at Dehi, and in that also he was disappointed. I had hopes that we would meet here, but I was greatly disappointed when His Excellency told me that you did not avail of the invitation.⁹⁰

The Maharaja did not take any decision. On fifteenth of August 1947, the two Dominions of India and Pakistan came into being. Expeditiously, the Maharaja offered a Standstill Agreement to both the Dominions. Pakistan clutched at the opportunity and immediately accepted the Standstill Agreement. Government of India, however, asked the Maharaja to send a representative to Delhi to discuss the implications of the Standstill Agreement. The Maharaja, thus assumed technical independence and isolated himself both from India and Pakistan, unaware of the dangerous possibility that Pakistan, poised all along the borders of the State and more than eager to grab it, could swoop down on him and wrest away the State from him by a single stroke of neat strategy.

That is what actually happened. Within a few days after the agreement was signed, Pakistan changed its mood and hardened its attitude towards the Maharaja. The two lines of communication which linked the State with the outside world, ran into Pakistan; the one connecting Srinagar with Rawalpindi and the other, Jammu with Sialkot. Both were sealed. In the beginning of September, Pakistan commenced the first phase of its forward thrust by organising raids all over the State borders

90 Patel to Maharaja, *Sardar Patel's Correspondence*, p. 33.

destroying property and killing people.⁹¹ As the Pakistani offensive intensified, the Maharaja realised the predicament he had placed himself in. Towards the close of the month, Pandit Ram Chandra Kak was dismissed from his office and Meher Chand Mahajan, a judge of the Punjab High Court was appointed the Prime Minister of the State. On 29th September, Sheikh Mohammad Abdullah was released from his imprisonment.

Mahajan had a difficult situation to handle. There were hardly any troops to withstand the onslaught of the Pakistani raiders. Inside the State, there was chaos. The spirited appeals and sharp protests he preferred to the Government of Pakistan proved futile and instead drew counter protests and invective. The National Conference refused to commit itself to any course of action till the Maharaja did not accept the people's demand for political reforms.⁹²

On 22nd October, large bands of armed raiders entered Kashmir via the Abbottabad road near Muzaffarabad. The irregulars were closely followed by the regular troops of Pakistan. Within a couple of days Pakistan mounted offensive all along the borders of the State. The invading armies poured in thousands making a frenzied bid to reach Srinagar and Jammu, the two capital towns of the State. The few Dogra battalions, which were posted at the frontiers, offered heroic resistance but were over-run without much difficulty. The attack was sudden and intense and a considerable section of civilian population perished in the holocaust. How did the people of Kashmir rise in resistance against the invasion is a saga of sheer daring and fortitude. The price that they paid to live and also to save their country was not in any way less than that staked by any freedom loving peoples of the world to uphold their faith.

On the 24th October, the Maharaja appealed to the Government of India for help and offered accession of his State to the Indian Dominion. Three days after, the accession was accepted and the Indian troops were rushed to the State to save it

91 Mahajan, Meher Chand, *Looking Back*, p. 144.

92 Sharma, B. L. *Kashmir Awakes*, p. 78.

from the fast advancing raiders.⁹⁵ After some resistance the invaders fell back. By the end of the year they were fast on retreat.

On 1st January 1948, India appealed to the United Nations and requested the Security Council to ask Pakistan to withdraw the raiders and its forces from the territories of the State. Pakistan, after prolonged silence, presented to the Security Council a long list of complaints against India. Security Council appointed a Commission to conduct on the spot investigations of the complaints lodged by India. The enquiry ultimately confirmed the complicity of Pakistan in the tribal invasion. Long and protracted mediation by the Commission brought round the two governments to accept a cease-fire on the battle front, pending the final disposal of the case. Fighting was suspended on first January, 1949. A large part of the territory of the State remained under the occupation of Pakistan. It is still unreclaimed.⁹⁶

95 Menon, V. P. *Integration of the Indian States*, p. 399.

96 Gupta, Sisir, *Kashmir, a Study of India-Pakistan Relations*, p. 189.

Chapter Two

The Special Status

During the critical days the accession was finalised and the Indian troops were sent to the State, the National Conference leadership insisted that the power be transferred to the popular leaders and a pattern of responsible government be instituted in the State. Immediately after the accession of the State was finalised, an Emergency Administration, headed by Sheikh Mohammad Abdullah, was set up in the State. Other leaders of the National Conference were appointed to the other offices in the Emergency Administration.¹ The Maharaja desired that the Emergency Administration operated within the ambit of the authority earmarked for it by the Council of Ministers, which in fact, was intact but hardly in a position to function effectively and with any prospect of fruitful achievement. Obviously, the Emergency Administration was meant to work in subordination to the Ministerial establishment of the Maharaja. This, however, placed hardly any purposeful initiative and power with the Emergency Administration. Its powers were not defined nor was the orbit of its authority. As a matter of fact, even the territorial jurisdiction of the Emergency Administration was not delimited; confusion reigned supreme and everyone interpreted the powers he had, the way that suited him. For a few days after the institution of the new administration, the Prime Minister of the State carried the impression that the Emergency Administration had been established to cover the province of Kashmir only and he was rudely jolted out of his complacency when an Emergency Officer was despatched to Jammu to take over the administration there.

1 Command Order, 30th Oct. 1947.

Looking back, it is difficult to locate the reasons for which the Emergency Administration was instituted and the tasks it was expected to undertake. The Emergency Administration, as it was organised, was a shoddy structure hardly equipped with the power and prestige to face the crisis the State was in. The situation, as it had emerged after the invasion, and the confabulations which had passed between the Central leadership and the Prime Minister of the State, clearly indicated that a quantum of power would be transferred to the National Conference. Sheikh Mohamad Abdullah had suggested that the powers of the Government be transferred to the Conference leaders and the present ministerial establishment be abolished or, in case, it was allowed to continue, divested of its powers.² In fact, the choice was very limited. The invaders were hardly a few miles away from Srinagar and destroying everything that came in their way in the Jammu Province with fiendish ferocity. Scarcity was acute and the supply lines were suspended. Streams of refugees poured in from the occupied areas. The law and order had completely broken down. The Maharaja, however, was reluctant to part with any substantial authority and hand over any power to the National Conference leadership. The juxtaposition of the Ministerial Council between him and the Emergency Administration, was bound to lead to clash in the operation of the two authorities. That happened and generated considerable ill will and acrimony on the two sides; the Maharaja and his Prime Minister protesting that they had been left with nothing and the leaders in the Emergency Administration grumbling that they had been secured nothing.

In November, the Government of India advised the Maharaja to institute an Interim Government in the State with Sheikh Mohamad Abdullah, the Prime Minister. The Maharaja was advised to retain his Prime Minister in the capacity of his Dewan, who would remain a member of the Council of Ministers and also formally preside over the Council meetings. The plan was the same as that adopted for the Mysore State. Unfolding the proposals, Nehru wrote to the Maharaja :

2 Nehru to Hari Singh, Sardar Patel's Correspondence, p. 104.

"I think that the time has come when there should be no further delay in this matter and a stable government should be established. This will have a good effect on the people of Kashmir, and others outside Kashmir will also realise that enduring arrangements are being made there. We have agreed that this Interim Government should be on the model of Mysore. In Mysore the leader of the popular party was asked to choose his colleagues, he himself being the Prime Minister or Chief Minister. The Dewan was also one of the Ministers and he presided over the meetings of the Cabinet. In following this precedent, Sheikh Abdullah should be the Prime Minister and should be asked to form the Government. Mr. Mahajan can be one of the Ministers and formally preside over the Cabinet. But it would introduce confusion if Mr. Mahajan continues to be styled as Prime Minister. This Interim Government, when formed, should be in full charge and you will be constitutional head of the Government."³

Difficulties again cropped up. Sheikh Mohamad Abdullah was not satisfied with the arrangements and did not agree to the interposition of a Dewan between him and the Maharaja. This was communicated by Gopalaswamy Ayyangar to the Maharaja shortly after Nehru's despatch to him. Ayyangar suggested to the Maharaja that while the broad frame within which the Interim Government would be constituted, would follow the Mysore scheme, certain modifications and adjustments were necessary to be made in the scheme in order to adapt it to the situation as it had developed in Kashmir. Ayyangar suggested that :

- (i) an Interim Government, constituted of a Council of Ministers, be set up under the Constitution Act of 1939 ;
- (ii) Sheikh Mohamad Abdullah be appointed the Prime Minister of the State and the other Ministers of the Council be appointed on his advice ;

³ Nehru to Hari Singh, Dec. 1, 1947. *Sardar Patel's Correspondence*, Vol. I, p. 105.

- (iii) provision for the retention of a Dewan, who would preside over the Council and act as a link between the Ministry and the Maharaja be abandoned and Mr. Mahajan be relieved of his office ;
- (iv) the Maharaja be permitted to retain the power to place restrictions on the function of the Council of Ministers by special directions in respect of certain matters of administration ; and
- (v) the Interim Government would be responsible to the Maharaja.⁴

The plan underlined by Ayyangar envisaged a more coherent and coordinated administrative structure for the State. The interposition of the Dewan, between the Maharaja and the Council of Ministers, would not only create a system of dual government and loyalty but would break up the government of the State into warring factions and hamper the evolution of an organic and integrated administrative function. The Maharaja, however, insisted on the strict adherence to the Mysore model. Instead he drew up another scheme on the basis of the Mysore model and submitted it to Ayyangar for consideration.

The main features of the Scheme drawn by the Maharaja were :

- (i) Matters, such as, the Ruler, his family, prerogatives, succession, privy purse, Constitutional relation between the State and the Dominion of India as defined in the Instrument of Accession, High Court, the appointment of the Judges ; the Chairman and the members of the Public Service Commission, and Auditor-General, the Military, the protection of the legitimate interests of the minorities, summoning and the dissolution of the legislature, elections, emergency and breakdown of the constitutional machinery of the State and the residuary powers be excluded from the purview of the Council of Ministers and specifically reserved for the Maharaja ;
- (ii) Dewan be appointed a member of the Council and be empowered to be the President of the Council and

⁴ Ayyangar to Hari Singh, Dec. 9, 1947. *Sardar Patel's Correspondence*, Vol. I, p. 108.

function as the link between the Ministry and the Maharaja ;

- (iii) Praja Sabha be revived and after fresh elections be declared the Constituent Assembly.⁵

The scheme was neither appreciated by Ayangar nor accepted by the National Conference leadership. Ayangar made a few minor modifications to his plan and agreed to reconsider the reservation of certain subjects for the exclusive control of the Ruler. The wrangle was finally resolved. The Interim Government was instituted by a Proclamation, the Maharaja made on 5th March, 1948. The powers of the administration, except for a few subjects, reserved for the Ruler were vested with the Council of Ministers which was to work on the principle of joint responsibility. The Council was charged with the task of convening a national Constituent Assembly based on adult franchise to frame a Constitution for the State. Four representatives were deputed by the Maharaja to the Constituent Assembly of India.

Though the constitutional crisis was finally averted, the two sides failed to evolve and work in a spirit of compromise. The undercurrent of tension between the Maharaja and the Interim Government continued unabated. In fact, he was hardly left with any substantial authority and could not influence the function of his Ministry. He sulked away, closing himself up in his palace at Jammu; almost indifferent to what the Interim Government did. This left the Interim Government free to operate. For the Government of India, this was far from satisfactory. Commenting on the situation Nehru wrote to Patel :

“There continues to be an undercurrent of tension between the Maharaja and Sheikh Abdullah. There was no incident while I was there and Sheikh Abdullah was courteous throughout to the Maharaja, who participated in some of the functions. But the fact remains that there is this tension. The Maharaja means well but cannot easily get out of the habits of a life time.

5 Maharaja Hari Singh to Gopalaswami Ayangar, Dec. 17, 1947. *Sardar Patel's Correspondence*, Vol. I, p. 94.

His reluctance to meet people helps in creating misunderstandings.”⁶

On their part, the Interim Government too, did not adopt an attitude of sympathy and compromise with the Maharaja. Where the Maharaja required to be consulted he was bullied and where he was needed to be informed, he was ignored. The agreement pertaining to the conduct of the government was hardly followed by the Interim authority and the reserved subjects were shown scant respect. Patel wrote to Nehru :

“In fact, this problem of differences and tension between the two has been worrying me very much. I have written several letters to Sheikh Sahib about easing this tension and improving relations, but I regret to say that I have had no reply. From all accounts it appears that the arrangements regarding reserved and non-reserved subjects to which Sheikh Sahib had agreed in March last are now being treated as nullity and the presence of the Maharaja and the existence of the reserved subjects are both being ignored.”⁷

It looks rather tragic that both Nehru and Patel, who knew so well the actualities of the situation in Kashmir, and realised how dangerous the consequences of the political crisis could be, watched the time and opportunity pass by, helplessly. In the confusion that prevailed in the State, it was difficult to locate the blame and even if the blame was located, it was hardly expected to improve the situation. The Government of India had adopted a policy of wild commitments followed by half-hearted decisions and this had neither served the Maharaja nor carried the National Conference any further. Towards the Summer, 1948, the political crisis deepened and it was clear that the Maharaja and the Interim Government could not go along any longer. Sheikh Mohamad Abdullah became severely critical of the Maharaja and asked for his abdication. In his communication to the Home Minister he wrote :

6 Nehru to Sardar Patel, May 12, 1948. *Sardar Patel's Correspondence*, Vol. I, p. 189.

7 Sardar Patel to Nehru, June 4, 1948. *Sardar Patel's Correspondence*, Vol. I, p. 193.

"I am therefore constrained to aver once again that the choice is finally between the Maharaja and the people and if the choice is not soon made, it might land us into very serious trouble both militarily and politically. The only alternative is that His Highness should abdicate in favour of his son and that there should be no reservations whatsoever in the administration of various subjects under the Ministers. This is my considered opinion after taking stock of the whole situation in the last seven months. I have on a number of occasions apprised Pandit Ji, Mr. Gopalaswami Aiyangar and other high-ranking officials of the Government of India of this. Recently I had a frank talk about this with Rajkumari Amrit Kaur. I am therefore giving here my considered, decisive and final opinion in this behalf. It is now upto the States Ministry and Pandit Ji to decide how this object is to be achieved."⁸

In September 1948, Sheikh Mohamad Abdullah sharply criticised the existing constitutional arrangements in the State, in a press conference in Srinagar. The press conference worked a sharp rejoinder from the Home Ministry. Abdullah hit back harder. The stalemate lingered on for some more time. Finally, on April 29, 1949 a shocked and bewildered Maharaja was politely told by Sardar Patel to leave the State and appoint his son, Yuvraj Karan Singh, the head of the State.⁹

Article 370

The Instrument of Accession transferred to the Dominion Government, the powers with regard to defence, external affairs and communication. The matters corresponding to these powers were enumerated in the Schedule attached to the Instrument of Accession. These matters were :¹⁰

8 Abdullah to Nehru, June 1, 1948. *Sardar Patel's Correspondence*, Vol. I, p. 3.

9 Nehru to Sardar Patel, May 11, 1949. *Sardar Patel's Correspondence*, Vol I, p. 268.

10 Schedule of the Instrument of Accession : The matters with respect to which the Dominion Legislature may make laws for the State.

- (i) the military, air and naval forces of the dominion, armed forces raised or maintained by the Dominion, forces including the forces raised or maintained by acceding States attached to and operating with any of the armed forces of the Dominion, naval, military and air-force works and the administration of cantonments, arms, ammunition, and explosives ;
- (ii) external affairs, treaties and agreements with other countries, extradition, admission into, emigration, expulsion from India, regulation of the movement of foreign nationals, pilgrimages to places outside India and naturalization ;
- (iii) communications, posts and telegraphs, telephones, wireless, broadcasting and other forms of communication, railways, maritime shipping and navigation, admiralty jurisdiction, major ports, port quarantine, delimitation of port and port authorities, air-craft and air navigation; aerodromes, air-traffic, light houses, beacons, safety for shipping and air craft, carriage of passengers and goods by sea and air and police force of the railways ;
- (iv) Elections to the Dominion Legislature, offences against laws with respect to any of the matters transferred to the Dominion of India, inquiries and statistics with regard to these matters and the jurisdiction of all courts with regard to these matters.

The implications of the division of powers, envisaged by the Instrument of Accession, were neither assumed by the Indian Government nor realised by the Government of the State. In fact, till the controversy with regard to the formation of the Interim Government remained unresolved, the Government of India hardly got the opportunity to assess the issue of Centre-State relationships with any clarity of approach.

Uppermost in their mind was the difficult problem of the finding a balance between what the Maharaja of Kashmir still thought constitutionally right for the State and what the leaders of the National Conference deemed politically expedient. The Government of India was also more than involved

in the disputation with Pakistan and the complicated problem of negotiating a truce on the battlefield and conduct of the plebiscite in the State. The dispute with Pakistan had taken its own course. The Security Council dealt a frontal blow to the idealism Nehru cherished and before the Indian leaders realised the predicament they had pushed themselves into, by going to the Security Council with the complaint, they were in the dock, explaining all else than that relevant to their complaint. India had gone to the Security Council with a sincere belief that the aggression committed by Pakistan was patently obvious. Within a few days, after the complaint was lodged, the Indian leaders, scared and frustrated, were frantically and abjectly trying to prove the obvious again and again, more than often by going to absurd extremes.

After the Maharaja left the State and the Yuvraj was appointed the Regent, the relations between the two governments and the delimitation of their respective spheres of authority came up for consideration. As a matter of fact, the Constitution of India was in the final phase of its making and the constitutional provisions with regard to the State were required to be defined. The process of integration and constitutional adjustment which had been adopted in regard to the other Indian States, was not followed in case of Kashmir, and the constitutional relationship between the State and the Central Government continued to be governed by the provisions embodied in the Instrument of Accession. The issues were discussed in a meeting held in Delhi in May 1949, between the Indian leaders and the leaders from the State. Certain broad principles were agreed upon by the two sides, on which, the constitutional position of the State, in the future constitutional structure of India, was to be based. These principles stipulated :¹¹

1. the constitution of the State would be framed by a Constituent Assembly representing the people of the State ;
2. the future of the dynastic rule of the Dogras would be determined by the Constituent Assembly of the State ;

11 Nehru to Sheikh Mohamad Abdullah, May 18, 1949. *Sardar Patel's Correspondence*, Vol. I, p. 226.

3. the division of powers between the Government of India and the State would be governed by the provisions of the Instrument of Accession ;
4. the Constituent Assembly of the State would be empowered to determine what other powers would be transferred to the Government of India ;
5. provisions with regard to citizenship, Fundamental Rights and the Directive Principles of State Policy, envisaged by the Constitution of India, would be uniformly applicable to this State ; and
6. the operational and the administrative control of the State armies would be taken over by the Government of India.

Not long after, the National Conference leadership started a gradual withdrawal from the commitments it had made in Delhi. The position the State leaders ultimately came to take, crystallised finally, when the special provisions for the State were drafted for being placed before the Constituent Assembly of India. The draft provisions were mainly based on the general principles agreed upon at Delhi by the Central and the State leaders in May. The provisions envisaged :¹²

1. "the provisions of the Constitution of India with regard to the government in the other Indian States which had acceded to the Dominion of India were not to apply to Jammu and Kashmir, which was reserved the power to draft a Constitution for its government ;
2. the State was empowered to convene a Constituent Assembly representing the people of the State to draft the Constitution of the State ;
3. the Government was to have the power to legislate in regard to the State on the subjects enumerated in the Union List, and the Concurrent List, which were declared by the President of India to correspond to the matters specified in the Instrument of Accession and such other matters which the concurrence of the Government of the State, the President would by order specify ;

12 Draft Article 306-A.

4. the provisions of the Constitution of India pertaining to citizenship, Fundamental Rights and the Directive Principles of the State Policy, embodied in the Constitution of India were to apply to the State ;
5. the other provisions of the Constitution of India were to apply to the State by an order of the President, which he was empowered to issue with the concurrence of the Government of the State except in case of the matters incidental to the constitutional provisions for the Government of the State and the subjects transferred to the Government of India under the Instrument of Accession where the President was only required to consult the Government of the State ;
6. The President was empowered to amend or repeal the special provisions for the State on the recommendations of the Constituent Assembly of the State.

Sheikh Mohamad Abdullah wrote to Gopaldaswami Ayangar, shortly after the draft provisions were sent to the State leaders for their final approval, that the proposals had not been accepted by the Working Committee of the National Conference. The Conference leaders were apprehensive of the fact that the powers vested with the Constituent Assembly of the State, opened the possibility of the total abrogation of special provisions and the consequent application of the Constitution of India to the State in its entirety. The Conference leadership was also fearful that the application of the provisions of the Constitution of India with regard to citizenship and Fundamental rights, would affect the State-Subject laws, prohibiting the acquisition of property by other citizens of India in the State and prejudice the land reforms undertaken by the State Government. Sheikh Mohamad Abdullah sent to Gopaldaswami Ayangar an alternative draft which provided for the application of the Constitution of India to the State only in regard to the subjects which had been transferred to the Dominion of India by virtue of the Instrument of Accession.

Ayangar hurriedly redrafted the proposals he had made earlier, and sent them to the National Conference leaders for their approval. The revised draft incorporated the fateful change of omitting the provisions pertaining to the Fundamental

Rights and Directive Principles.¹³ Little did the State leaders, who pressed for this reservation, realise that, they had vested the government in the State with unrestricted authority, and whoever had the government in hand, would assume dictatorial powers and powers which could be operated absolutely.

The revised draft was also rejected by the State leaders. The Indian leaders were far from happy at the turn the events had taken. Nehru was away and for Ayangar it was an ordeal to formulate a compromise. He wrote to Abdullah :

“Our discussion this morning, as I indicated to you, left me even more distressed than I have been since I received your last letter from Srinagar.

But this personal reaction of mine is irrelevant when I feel weighted with the responsibility of finding a solution for the difficulties that, after Panditji left for America and within the last few days, have been created, from my point of view, without adequate excuse.”¹⁴

Ayangar wrote to Sardar Patel also.

Sheikh Abdullah and two colleagues of his had a talk with me for about an hour and a half this morning. It was a long drawn out argument, and, as I told you this morning, there was no substance at all in the objections that they put forward to our draft. At the end of it all I told them that I had not expected that, after having agreed to the substance of our draft both at your house and the party meeting, they would let me and Panditji down in the manner they were attempting to do. In answer, Sheikh Abdullah said that he felt very grieved that I should think so but that in the discharge of his duty to his own people he found it impossible to accept our draft as it was.¹⁵

Finally, however, the wrangle was resolved. A revised draft was prepared by Ayangar in consultation with Mirza

¹³ Redraft of Article, 306-A.

¹⁴ Ayangar to Sheikh Mohamad Abdullah, Oct. 15, 1949. *Sardar Patel's Correspondence*, Vol. I, p. 304.

¹⁵ Ayangar to Sardar Patel, Oct. 15, 1949. *Sardar Patel's Correspondence*, Vol. I, p. 243.

Afzal Beg and other Conference leaders. Another important change was made in the draft and provisions pertaining to citizenship were also dropped out.

The draft was moved in the Constituent Assembly on 17th October. Shortly before the revised draft was taken up for discussion, controversy again cropped up, now on the question of who constituted the Government of the State. The Conference leaders, extra-conscious of their role in the politics of the State, insisted that the Government of the State should be construed to mean the Maharaja acting on the advice of the "Council of Ministers" appointed under the Maharaja's Proclamation dated 5th March, 1948." Ayangar had probably glossed over the intricacy involved in the definition evolved by the Conference leaders and accepted to include it in the revised draft. However, when the draft was circulated in the Assembly, many members objected to the draft stipulation on the obvious ground that the definition was restrictive to the extent that it covered only the Ministry appointed by the Proclamation issued on 5th March, 1948, and excluded any subsequent ministries appointed under the Proclamation. Ayangar modified the explanation to the extent that the Government of the State would be construed to constitute of the Maharaja acting on the advice of "the Council of Ministers for the time being in office under the Maharaja's proclamation dated 5th March, 1948." However, when the modified explanation was presented to the State leaders, they blankly refused to accept it. Ayangar assured the Conference leaders that the changes made in the explanation were trivial, but were considered necessary from many points of view. Maulana Azad also tried to persuade the Conference leaders to accept the changes suggested by the members of the Constituent Assembly. The Conference representatives, however, refused to relent. The draft provisions were put before the Assembly with the amendment made by Ayangar, and passed unanimously.¹⁶ The Conference leaders sulked away. Sheikh Mohamad Abdullah wrote a sharp rejoinder to Ayangar asking

16 Gopaldaswamy Ayangar to Sheikh Mohamad Abdullah, Oct. 17, 1949. *Sardar Patel's Correspondence*, Vol. I, p. 307.

him to reconsider the issue failing which, he threatened to resign from the Constituent Assembly.¹⁷ The controversy, however, ended there.

The special provisions as they came to be included in the Constitution of India, were finally embodied in Article 370 of the Constitution.¹⁸ In accordance with these provisions, the State was exempted from the application of the provisions of the Constitution of India dealing with the States included in Part B of the First Schedule of the Constitution. In part B of the First Schedule were listed the princely States which had acceded to the Dominion of India and which were not either merged with any province or brought under the Central control but were organised into viable units of administration. The Princely States, when they acceded to the Dominion of India in 1947, transferred to the Dominion Government, powers with regard to three subjects only namely, foreign affairs, defence and communications, retaining the residual powers with them. Later, however, most of the Rulers, transferred, by subsequent agreements to the Dominion Government, all the powers with regard to the Union List and the State List except with regard to taxation. The Part B States, therefore, were put at parity with Part A States except for the special provisions embodied under Article 238 and the supervisory powers the centre was given for a transitional period of ten years. Kashmir was saved from the application of the special provisions provided for the States included in Part B of the First Schedule. The State was reserved the right to frame a Constitution for its government. Provisions were included in the Constitution of India, for the institution of a Constituent Assembly in the State which would prepare a constitution for the State.¹⁹

The powers of the Parliament to legislate in regard to the State were limited to the matters which were declared by the President, in consultation with the Government of the State, to correspond to the Instrument of Accession.²⁰ The Union

17 Sheikh Mohamad Abdullah to Gopaldaswamy Ayangar, Oct. 18, 1949. *Sardar Patel's Correspondence*, Vol. I, p. 309.

18 Constitution of India, Article 370, cl. 1 (a).

19 *Ibid.*, Article 370, cl. 2.

20 *Ibid.*, Article 370, cl. 1 (b) i.

Government retained the powers which the Dominion Government had been transferred by virtue of the Instrument of Accession. The residuary powers were reserved for the State. The scheme of the division of powers between the Union and the States embodied in the Constitution of India, was not, therefore, adopted in case of the Jammu and Kashmir State. The President was empowered to transfer powers with regard to such other subjects in the Union List and the Concurrent List as he specified in concurrence with the Government of the State.²¹ In case, any agreements were reached between the Union and the State with regard to such transfer of powers to the Union, before the Constituent Assembly of the State was convened, the agreements were to be "placed before the Assembly for such decision as it might take thereon."²²

Among the other provisions of the Constitution of India, the provisions embodied in Art. 1 were made applicable to the State.²³ The State was included in the Schedule listing the territories of the Union and therefore brought within the territorial jurisdiction of the Union defined by the Constitution of India. The territories of the State were defined as the territories which formed the State, when the Maharaja of the State had signed the Instrument of Accession and therefore, included the part of the State under the occupation of Pakistan. Other provisions of the Constitution of India, including those pertaining to the Fundamental Rights and the Directive Principles were not made applicable to the State. Powers were vested with the President of India, to order the extension of the other provisions of the Constitution of India to the State. No such order was, however, to be issued without the concurrence of the State Government.²⁴ In case, any such order was issued before the Constituent Assembly of the State was convened, the concurrence given by the State Government was to be placed before the Constituent Assembly "for such decision as it may take thereon."

21 Ibid., Article 370, cl. 1 (b) ii.

22 Ibid., Article 370, cl. 1 (c).

23 Ibid., Article 370, cl. 1 (c).

24 Ibid., Article 370, cl. 1 (d).

Provisions were also embodied in Article 370 by virtue of which the President of India was empowered to declare, by a public notification, these provisions or any part of these provisions not operative or operative with such modifications as he would specify. The Powers vested with the President were subject to the limitation that he could restrict or limit the operation of the special provisions only on the recommendations of the Constituent Assembly of the State.²⁵ Obviously, the President was not vested with the power to amend or abrogate the special provisions envisaged by Article 1; he was only authorised to order restrictions and limitations on its operation.

On 25th November, 1949, Yuvraj Karan Singh, by a proclamation, ordered that the relationship between the State and the Union of India be governed by the Constitution of India. According to the proclamation the Constitution of India superseded and abrogated all other constitutional provisions inconsistent with it which were in force in the State. On 26th January, 1950, the Constitution of India came into force.

Operatives and Impediments

Not long after the special provisions for the State were incorporated in the Constitution of India, many lacunae and short-comings which the special provisions were fraught with, came to surface. In fact, the special provisions had a number of inherent defects. The Government of the State left apart, the division of powers between the State and the Union created difficulties of great magnitude. Obviously, no organic and tenable federal relations between the State and the Union could be based on the division of powers envisaged by the special provisions for the State. The legislative relations, though intricate, did not present with as pressing a problems as those created by the administrative and financial relations between the Union and the State. In the absence of any federal instruments to carry out the decisions of the Central Government, the Central Government found itself at the mercy of the State Government. In regard to the other Indian States, the Central Government was vested with the power to direct and instruct the State Governments not only to execute the decisions

25 Ibid., Article 370, cl. 2.

of the Central Government, but also to exercise their administrative authority so as not to impede the execution of the decisions of the Union Government. However, no rescript of the Union could operate in Jammu and Kashmir State. The problem assumed fresh significance after the unforeseen and unexpected pressures were piled on the Government of India as a result of the turn the events took in the Security Council. The rude jolt, the Indian leadership received from the Council and the merciless mauling it got, ultimately compelled the Government of India to recast the entire strategy they had adopted in regard to the State. The need was acutely felt to build defences against the political blackmail and the psychological war unleashed by Pakistan. The population of the State predominantly muslim, the task was not only difficult, it was also delicate. The State leaders, however, jealously guarded the exclusive sphere of authority, the State Government was reserved under the special provisions. The division of powers, in regard to which the Union Government was at a disadvantage, set apart, the State leaders vehemently refused to accept the extension of the provisions of the Constitution of India, pertaining to Citizenship, Fundamental Rights, Directive Principles of the State Policy and the Union Judiciary, to the State.

The exclusion of the Fundamental Rights from the provisions applicable to the State, and the consequent deprivation of the people of these rights, was the most glaring defect the special provisions suffered from. The National Conference leadership had pledged itself to secure the people of the State, the basic rights to freedom and liberty. In its manifesto, 'Naya Kashmir', the Conference had underlined a Charter of Basic rights for the people of the State.²⁶ However, at the time Article 370 was framed, the Conference leaders exhibited much reluctance to accept the extension of the provisions of the Constitution, envisaging the Fundamental Rights, to the State. The Conference leaders also failed to devise an interim system of rights and remedies till the Constitution of the State, which presumably was to embody these rights, was drafted. The

problem of national security and the unsettled conditions in the State, necessitated limits on the general right to freedom, but in no case did these exigencies warrant a total denial of the rights to the people of the State. The absence of the rights and liberties had many implications in the circumstances where the operation of the government had no directives to follow a due process of law. Exercise of authority was indiscriminate and led to the curtailment of the right to freedom and personal liberty. The people of the State continued to be governed under the stringent provisions the local penal code and the penal procedures embodied and in fact more than necessary measures were adopted by the government to restrict the sphere of individual activity. The majoritarianism, more often than not, identified with communal and regional prejudices had many deleterious effects on the growth and function of the democratic ideas and institutions of the State.

The moral and ethical aspects of the problem were more important, for the reason that a section of the people of one and the same country were denied rights and liberties the rest of the people enjoyed. The National Conference leadership had insisted for the immediate transfer of power to them and in fact more feverishly on the establishment of a representative Assembly. The Conference leaders had, however, exhibited little enthusiasm to define the limits of political authority which throughout the Dogra rule had remained unrestricted in operation and caused irreparable damage to the people. The Conference leadership clutched at the strings of power with such vigour that even the Government of India faced considerable inconvenience and embarrassment. The Conference leadership incessantly clamoured for the institution of a "National Assembly" probably to achieve executive responsibility, but failed to lay down any imperatives to contain the power vested in the executive, they constituted or would come to be vested with the Assembly, they invoked. The limitations on executive as well as legislative authority had the same object: the prevention of dictatorship and despotism.

"It must be conceded that there are such rights in every free government beyond the control of the State. A government, which held the lives, the liberty and the

property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true, it is a despotism of the majority, if you choose to call it so, but is none-the-less despotism."²⁷

The Conference leaders made a fetish of the National Assembly, and after it was instituted, they secured their political precedence without much difficulty. The Constituent Assembly also functioned as the legislature of the State, and the Council of Ministers declared itself to be responsible to it. Soon, however, the distinctions were blurred and the Council, the Legislature and the Constituent Assembly were fused into one monolithic instrument.

Another anomalous feature of the special provisions with regard to the State was the total absence of any arbitral and judicial machinery to settle any disputes that could arise between the Union Government and the State. For inexplicable reasons, the provisions of the Constitution of India with regard to the jurisdiction of the Supreme Court, were not made applicable to the State. The Supreme Court of India is vested with the jurisdiction, to the exclusion of all other courts, in disputes between :

- (a) the Union of India and one or more States ;
- (b) the Union of India and any State or States and one or more States ; and,
- (c) two or more States.²⁸

Judicial supremacy and the provisions for a machinery of impartial arbitrament is a pre-requisite for a federal structure. In fact, an impartial and independent judiciary is a guarantee for the division of powers between the federal government and the governments of the federating units. The orbit of powers, the federal government is vested with and the governments of the States are vested with, is determined by the judiciary, and judicial interpretation, therefore, acts as a safeguard against any encroachment of the power the two tiers of the government. The Constitution of India clearly envisages provisions which em-

27 Citizen's Saving and Loan Association V. Topeka.

28 Constitution of India, Art. 131.

power the Supreme Court, to settle, in its original jurisdiction disputes between the Union Government and the States. The Constitution, creates infra-instruments within the federal structure, to safeguard the powers vested in the Union Government and the States. This is a validly viable provision of the Constitution. It is unbelievable, however, that the framers of the Indian Constitution should have ignored this important aspect of the division of powers between the federal government and the government of Jammu and Kashmir and the provisions in regard to the jurisdiction of the Supreme Court were not extended to the State. More intriguing is the fact that the State leaders stubbornly refused to accept the extension of the jurisdiction of the Supreme Court to the State. The State leaders, by insisting on the exclusion of the State from the purview of the original jurisdiction of the Supreme Court, preferred to leave the ultimate authority, to determine the federal relations between the Union and State, to the Parliament of India. For a long time the autonomy, the State enjoyed, remained without safeguards. A wily and aggressive Parliament, could have, with little difficulty, reduced the powers, left with the State by virtue of the special provision of the Constitution of India. For Nehru, however, the period between 1947 to 1954, was an era of great idealism. He carried the Parliament with him ; displayed the judgement of a jurist and voluntarily imposed on himself the limits, he was under no obligation to accept.

Another unsatisfactory aspect of the special provisions for the State, was the complete economic isolation, the State was forced in. In fact, both the Central leaders as well as the State leaders failed to evolve a rational policy with regard to the economic problems of the State and the financial relations between the Central Government and the State. The abolition of the big landed estates and interests and the destruction of the agrarian aristocracy, the abolition of indebtedness and usury, restitution of mortgaged properties, and the rationalisation of the land tenures were progressive in content and measures of great significance. But these measures alone could not improve the economic conditions in the State: its productive potential and the economic standards of the people. Planning of agricultural and industrial development, improvement in transport, com-

munications, irrigation and production of power, and other effective economic and fiscal measures were necessary to achieve any level of economic progress in the State. The State, however, lacked in necessary resources and the financial means to make a breakthrough. The Conference leaders chose to isolate the State within the tariff barriers, which yielded the State exchequer a sum of 1.5 Crores of rupees annually, and preferred to remain out of the fiscal structure the Union had devised. Incidentally, it may be noted, that the custom receipts constituted nearly the third of the revenues of the State. It is understandable that the State leadership was not in a position to lose the custom proceeds, but it is difficult to explain how the leadership planned to raise the means and finances necessary for the economic development of the State. The reluctance of the State Government to participate in the financial structure, the Government of India had evolved, and secure the support of the allocations from national sources closed all the possibilities of any economic breakthrough in the State.

One of the basic principles, the Indian federal structure envisaged, was the construction of an integrated national economic set-up for the entire country. A specific system of allocation of financial sources between the Union Government and the State Governments was provided by the Constitution. The financial relations between the Union and the State had certain broad aspects and in all these aspects the pattern followed was generally concentric. In the first place, the Union was given precedence over the States in the allocation of the sources and the States were placed in a subservient position in relation to the Union. In the second place the planning of the economic development and determination of the planning goals was entrusted to the Union Government. The most important aspect of the economic structure, the Constitution envisaged, was the fact that the Union Government was explicitly as well as impliedly vested with the power to lay down the broad basis of economic system, the country was to have. The right to property was included in the list of fundamental rights and the Union Parliament was empowered to amend and modify it. The Union Government was, therefore, given the ultimate power to shape the property relations in the Indian Society.

The Jammu and Kashmir State could not escape the imperatives of this system. Not only that, isolation was bound to lead to economic stagnation in the State and any contest between the national pressures and local resistance, possibly generated by such isolation, was bound to be disastrous for the federal relations between the two governments. The placement of the State in the economic system which was being built in the country was inescapable. The State leadership appreciated the constitutional significance of this fundamental fact and secured statutory guarantees for the economic reforms they had undertaken, but they failed to realise its political implications.

The operational problems created by the special provisions set apart, the wide permissibility which almost bordered on isolation, was irreconcilable to the essential features of the Indian federal structure—a fact, which deepened the contradiction between the decentralisation, the special provisions presupposed, and the uniformity, the Indian Federalism was founded upon.

The post-partition politics in India was aggressively national in outlook. The federal union, the framers of the Constitution, evolved was essentially concentric in content. The process of the integration of the Indian States, undertaken and accomplished by Sardar Patel with assiduous vigour, had finally eliminated the centripetal trends in the Indian States represented, and created a powerful central authority. The politics in India had, in fact, a far reaching sociological role to play in integrating the diverse regional, cultural and social pluralism into a unified political structure. The process was an imperative necessity and more shrewd of the Indian leaders realised that well. The special status envisaged for Kashmir could hardly be reconciled to this broad movement for national integration. Curiously enough, the Indian leadership took it for granted and more than often, articulately affirmed that the movement for national integration covered the State of Jammu and Kashmir as well; in spite of the fact, however, that the Government of India had abandoned the initiative for it by virtue of the special provisions pertaining to the State and had refused themselves the political operatives, without which the State could not be brought within the pale of national integration.

Doctrine of Double Charge

The most significant aspect of the special provisions was the institution of the Constituent Assembly in the State. Provisions for the establishment of a Constituent Assembly in the State were included in Article 370 of the Constitution of India and the State Government was given the power to convene a Constituent Assembly to draft a Constitution for the State and its government. The Assembly was ordered to be convened by the Yuvraj by a proclamation issued on 20th April, 1951. Elections to the Assembly were held in September. The Assembly was inaugurated in November, 1951. The proclamation of the Yuvraj read :

“Whereas it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a Constitution for the State ;

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State ;

And whereas the terms of the proclamation of the Maharaja dated 5 March, 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation ;

I, Yuvraj Karan Singh, do hereby direct as follows :

- (i) A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir.”²⁹

In November, the Assembly enacted the Constitution Act of 1951, by virtue of which the powers of the government were vested with the Council of Ministers and the ruler was reduced to the position of a constitutional head. The enactment further provided that the powers of the legislative assembly could be exercised by the Constituent Assembly until other provisions were made by or in accordance with any law made by the Constituent Assembly.

29 Proclamation dated.

The Constituent Assembly was established within the framework of the special provisions made under Article 370 of the Indian Constitution.³⁰ The Assembly was, obviously, charged with the power to lay down statutory provisions to regulate the area of autonomy reserved for the State. The scope of its competence and its placement within the constitutional set-up was determined by the Constitution of India. Subject to the provisions of the Constitution of India, the Assembly was vested with the power to advise the President of India to redefine the extent of the applicability of the Constitution of India to the State. Difficulties, however, cropped up immediately after the Assembly was convened. Though the Constituent Assembly of the State was constituted by an instrument of the Constitution of India and drew powers from the same source, the National Conference leaders claimed for the Assembly, inherent powers and powers original to it. The Conference leaders, therefore, evolved a doctrine of double charge. The concept of double charge did not only violate the fundamental principles of the Indian Constitution, it prejudiced the sovereignty of India. Accordingly, the Conference leaders sought for the Constituent Assembly, powers, not only to frame the Constitution for the State, but also the power to decide the final disposition of the State. In his inaugural address to the Constituent Assembly, Sheikh Mohamad Abdullah said :

“You are the sovereign authority in this State of Jammu and Kashmir ; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and the French Constitutions is once again given shape in our midst. I shall quote the famous words of Article 3 of the French Constitution of 1791 : “The source of all sovereignty resides fundamentally in the nation. . . sovereignty is one and indivisible, inalienable and imprescriptible. It belongs to the nation.”

We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be

30 Constitution of India, Art. 370.

called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform ?

One great task before this Assembly will be to devise a Constitution for the future generations of the country. Constitution making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution which should be the product of the labours of this Assembly.

Another issue of vital importance to the nation involves the future of the Royal Dynasty. Your decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our 'land to the tiller' policy brought light to the dark homes of the peasantry ; both side by side, it has given rise to the problem of the landowner's demand for compensation. The nation being the ultimate custodian of all wealth and resources ; the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives, that I shall state later declare its reasoned conclusions regarding accession. This will help us to canalise our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country."

Unfolding the alternatives before the Assembly, Sheikh Mohamad Abdullah pointed out :

"The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States

when determining their future affiliations. A State can either accede to India or accede to Pakistan, but, failing to do either, it still can claim the right to remain independent. . . These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes, the representatives of the people must have the primary consideration of promoting the greatest good of the common people. Whatever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent."³¹

Concluding the address Sheikh Mohamad Abdullah said :

"I have now put the pros and cons of the three alternatives before you. . . It should not be difficult for men of discrimination and patriotism gathered in this Assembly to weigh all these in the scales of our national good and pronounce where the true well-being of the country lies in future."

The stand taken by the State leaders in the Constituent Assembly and the enunciation of the doctrine of double charge instantly undermined the accession of the State to the Indian Union. In fact, the Indian leaders, in consternation, had to hurry to clarify the confusion and reiterate the fact that the Constituent Assembly of the State was vested with no charge except to reaffirm the accession of the State to the Indian Union. The State of India was constituted of one integral charge which had been vested in the Constituent Assembly of India. The Constituent Assembly of the State was subservient to the instruments created by the Constituent Assembly of India and drew powers from these instruments.

The doctrine of double charge accosted the Government of India with another problem, more anomalous than the first. In case a separate charge was recognised in the Constituent Assembly of the State, the competence of Union and the applicability of the Constitution of India, would be suddenly

31 Inaugural Address of Sheikh Mohammad Abdullah, Constituent Assembly of Jammu and Kashmir.

limited to the terms specified in Article 370; a position which would not only be prejudicial to the Constitution of India in the sense that the Constituent Assembly of the State would, by the provisions it made, exclude any jurisdiction of the Union Government, but close for ever any possibility of modifying the provisions in regard to the State in future. The recognition of any inherent powers in the Constituent Assembly of the State would also destroy the precedence of the Constitution of India over the provisions made by the Assembly and reduce the Government of India to utter helplessness, even in case the Constituent Assembly of the State, transgressed its limit and violated the Constitution of India. In view of the fact that the original jurisdiction of the Supreme Court of India was not accepted by the State, conflicts which involved constitutional precedence, were bound to arise and prove catastrophic and ultimately lead, either to the termination of the special provisions for the State, or to the disintegration of the Indian Federation. The Supreme Court of India, has to the exclusion of all other Courts, original jurisdiction in inter-governmental disputes which involve questions of law or fact, affecting rights and constitutional interests of the Union Government and the State Governments.

Delhi Agreement

The events came to a head when the Basic Principles Committee of the Constituent Assembly of the State started deliberations to finalize the principles, on which the proposed Constitution of the State would be based. The area of autonomy, for which the Constituent Assembly would devise statutory provisions, required to be defined in order to eliminate any possible conflict and inconsistency between the provisions, the Assembly would make, and the provisions the Constitution of India included. The Government of India had indicated their preference for the extension of the other provisions of the Constitution of India to the State, at least in regard to Citizenship, Fundamental Rights, jurisdiction of the Supreme Court of India, Emergency powers of the President and the division of powers between the State and the Union. The existing arrangements had proved unworkable beyond doubt and had not only led to the unnecessary conflict in the operatives of the two

governments, but had also created many legal anomalies and political deviations. Besides, the Basic Principles Committee had already recommended the abolition of the hereditary rule of the Dogra Princes and decisions had to be reached with regard to the appointment and the tenure of the chief-executive that would replace the Maharaja.³² The issue was of fundamental importance in the sense that the chief-executive of the State was to be placed within the framework of the political control, the Constitution of India established. Nehru clarified the position in the Parliament.

"Now this position might well have lasted some time longer, but for the fact that the Constituent Assembly of Kashmir came into existence and came into existence with our goodwill and with our consent. Now it is sitting down to draw up its Constitution. When it is drawing up its Constitution, it has to be in some precise terms; it cannot be fluid. Therefore, the question arose that nothing should be done by the Constituent Assembly of the Jammu and Kashmir State which does not fit in with our Constitution, which in no sense is contrary to it or conflicts with any part of it. That is why this question arose now to consider."³³

It was against this background that the representatives of the two governments met in Delhi to settle their differences on some of these issues which had now assumed pronounced dimensions. An agreement was finally drawn up by the representatives which covered many of the constitutional problems including those related to the abolition of the Princely rule, the application of the provisions of the Constitution of India with regard to citizenship, Fundamental Rights, the original jurisdiction of the Supreme Court and the division of powers between the Union and the State. Agreement was also reached with regard to the flag of the State and its official language. It was agreed that the State Government would place the stipulations, the agreement envisaged, before the Constituent Assembly of the State, in order that the Assembly made recommendations to

32 Report of the Basic Principles Committee, Constituent Assembly of Jammu and Kashmir State.

33 Nehru, J. L. Speech, Council of States, August 5, 1952.

the President of India, to order the necessary modifications in the existing constitutional provisions pertaining to the State. The agreement was finalised on 14th of July, 1952.

Agreement was reached between the two governments with regard to the extension of the provisions of the Constitution of India dealing with citizenship. In accordance with Art. 5 of the Indian Constitution, the persons who had their domicile in the State were to be the citizens of India. The State Legislature was, however, reserved the right to define and regulate the rights and privileges of the 'Permanent Residents' of the State in regard to the acquisition of property and the appointment to services. The 'Permanent Residents' were the State-Subjects who had been declared so under the proclamation of the Maharaja dated 27th June, 1932. Special provisions were to be made in the law governing the citizenship, to provide for the return of those 'Permanent Residents' of the State who had gone over to Pakistan in 1947, and returned with the intention to settle in the State. Nehru lucidly explained the position in the Parliament.³⁴

"The point was raised by the representatives from Kashmir that certain old privileges dating from several generations past attached to what used to be the State-Subjects. These are especially in regard to the acquisition and holding of immovable property, appointment to services, scholarships and the like. Now Honourable Members know that Kashmir is supposed to be one of the beauty spots of the world. And apart from its being a beauty spot, there are many other things which attract people there. And from olden times the old Maharajas, who succumbed to many things that came from the then British Government, did not succumb to one thing. They were afraid that the climate of Kashmir and its other attractive features being what they are, that Kashmir might become a kind of colony of the British if they came and settled down there in large numbers. They were afraid of that. So they stuck to one thing—that no foreigner could acquire

34 Nehru, J. L. Speech, Council of States, August 5, 1952.

property in Kashmir and they did keep them out. They made rules to the effect that only State-Subjects could acquire property. . . In fact, they have made four different classes of state-subjects for that purpose. Property was given to class I and Class II. These rules in regard to property still subsist. These are the rules in regard to property in Kashmir, and every body in Kashmir, to whatever group or community or region he belongs, wants to uphold these rules. Naturally, because they are for the benefit of the residents of Kashmir, whether Hindus or Muslims. They are afraid that people from India or elsewhere, rich people and others might come and buy up property there and thereby gradually all kinds of vested interests would grow up in property in Kashmir on behalf of the people from outside. We thought that this was only the existing law there and the existing law prevails under Article 370 of the Constitution, which I have just read. We thought it was a perfectly justifiable feeling on their part, and that acquisition of property in Kashmir State should be protected on behalf of the people there."

Agreement was also reached between the two governments with regard to the application of the fundamental rights embodied in the Constitution of India. The Government of Kashmir desired that the Fundamental Rights could be made applicable to the State with modifications and exceptions in order to save the Land Reforms that had been undertaken in the State and also safeguard the autonomy, the State had been secured, under the Constitution of India. Sheikh Mohamad Abdullah reported to the Constituent Assembly of the State :³⁵

"It is obvious that while our Constitution is being framed, the Fundamental Rights and duties of a citizen have necessarily got to be defined. It was agreed, however, that the Fundamental Rights, which are contained in the Constitution of India could not be conferred on the residents of Jammu and Kashmir State

35 Statement of Sheikh Mohamad Abdullah. Constituent Assembly Jammu and Kashmir State.

in their entirety taking into account the economic, social and political character of our movement as enunciated in the New Kashmir plan. The need for providing suitable modifications, amendments and exceptions as the case may be, in the Fundamental Rights Chapter of the Indian Constitution in order to harmonise those provisions with the pattern of our principles, was admitted. Particular care would have to be taken to preserve the basic character of the decisions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller and other matters. The main point to be determined is whether the chapter of our Fundamental Rights—should form a part of the Kashmir Constitution or that of the Union Constitution.”³⁶

Settlement was also made with regard to the extension of the original jurisdiction of the Supreme Court of India. It was agreed upon that the jurisdiction of the Supreme Court in regard to the enforcement of the fundamental rights be extended to the State. While the negotiations were in process the Government of India had recommended that the ‘Board of Judicial Advisers’ in the State be abolished and the appellate jurisdiction of the Supreme Court be extended to the State. The State Government, however, was not ready to countenance the proposals and asked for time to consider the issue. Sheikh Mohamad Abdullah said in the Constituent Assembly :

“On behalf of the Government of India, it was recommended that the Board in the State designated ‘His Highness’s Board of Judicial Advisers’ should be abolished and the jurisdiction exercised by it should be vested in the Supreme Court of India. That is to say that the Supreme Court should be the final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that this would need a detailed examination and consequently it was agreed that we should have time to consider it further.”

³⁶ Ibid. Statement of Sheikh Mohammad Abdullah, Constituent Assembly, Jammu and Kashmir State, 1952-53, Vol. 1, p. 100.

With regard to the division of powers between the Union and the State, the two governments agreed that the residuary powers would continue to remain vested with the State. In his statement to the Constituent Assembly, Sheikh Mohammad Abdullah said :

“It was agreed that while under the present Indian Constitution, the Residuary Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the Instrument of Accession on which this Article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is upto the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union.”³⁷

In regard to financial integration of the State with the Indian Union, the two governments agreed that it was necessary to evolve some sort of financial arrangement between the State and the Union. But as this involved far reaching consequences, the Government of the State felt that a detailed and objective examination of this subject would be necessary.

Agreement was also reached with regard to the extension of the powers of the President of India to the State to grant reprieve and commutation of punishments. No agreement was, however, reached with regard to the provisions of the Constitution of India dealing with the emergency powers of the President, though the Government of India had desired that provisions with regard to the emergencies arising out of war, aggression and internal disturbance be made applicable to the State. The Government of India had offered to make an exception with regard to emergencies arising out of internal disturbance, but the Government of the State expressed its inability to accept the proposals made by the Government of India.

³⁷ Ibid.

"On behalf of the Kashmir delegation, it was stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with defence, etc. In particular, we were averse to internal disturbance being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352."⁴⁰

Another issue, that was settled by the Delhi Agreement, was that regarding the Head of the State. It was agreed upon that the Head of the State was to be recognised by the President of India on the recommendations made by the State Legislature. He was to hold office during the pleasure of the President, enjoy a tenure of five years, and continue to remain in office till his successor was appointed.

Agreement was also reached with regard to the flag of the State and the official language in the State. The two governments agreed that the State would retain its flag but the Union flag would have a supremely distinctive place in the State. Urdu was recognised the official language in the State.

Political Crisis

In November, 1952, the Constituent Assembly took up for consideration the report of the Basic Principles Committee which recommended the abolition of the hereditary rule of the Dogras and its replacement by a chief-executive who would be elected to his office. The Committee recommended :

"It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its Head, respectively symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by the people for the maintenance of their rights. The promotion of this vital principle of constitutional progress

makes it imperative that this symbol of State power should be subject to the vote of the people. The Committee therefore strongly feels that, consistent with the democratic aspirations of the people of the State, the office of the Head of the State, should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity required by democracy demands that in no sphere of State activity should a citizen be debarred from participating in the progress of his country and the advancement of its ideals and traditions. It is clear that the hereditary principle in the appointment to any office of power curtails the people's choice and to that extent, restricts their right to elect a suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner the Head of the State will be repository of the unbound respect, confidence and esteem of people."

In view of these considerations the Committee feels that there must be a sense of finality about the decision in regard to this fundamental issue. Accordingly, the Committee recommends that :

- (a) the form of the future Constitution of Jammu and Kashmir shall be wholly democratic ;
- (b) the institution of hereditary Rulership shall be terminated ;
- (c) the office of the Head of the State shall be elective.⁴¹

The Committee also made recommendations with regard to the flag of the State and its official language. These recommendations were in conformity with the principles embodied in the Delhi Agreement. The Constituent Assembly accepted the recommendations of the Basic Principles Committee and hereditary rule of the Dogras was abolished in November, 1952.

The Chief executive of the State was designated Sadar-i-Riyasat. He was to be elected to his office and later confirmed by the President. The Sadar-i-Riyasat was to remain in office during the pleasure of the President and subject to that, was to enjoy a term of five years.

Though these provisions of the Delhi Agreement were implemented, the other provisions of the Agreement were not taken up for consideration. As a matter of fact, the Agreement had established the precedence of the instruments created by the Constitution of India and had reorganised the division of powers between the two governments into a more coordinated and integrated adjustment. It was evident that Government of the State was not ready to abandon their claim to an independent orbit of sovereign authority and insisted on the assumption of the separate charge, they had evolved in the Constituent Assembly. In the months that followed, the relations between the two governments deteriorated again. Inside the State, new political alignments took shape. In Jammu province a virulent movement for the complete integration of the State in the Indian federal structure and abrogation of the special provisions for the State was in full swing. The movement had started in the wake of the abdication of Maharaja Hari Singh and represented a strong reaction against the policies followed by the National Conference. The Conference pushed itself into a direct confrontation with the movement. The confrontation did not take long to assume a regional bias; a development which proved of considerable harm to the Government of the State. Rumblings of similar reaction were heard in the frontier district of Ladakh also.⁴² Dissensions and factional alignments spread in the leadership cadres of the National Conference as well and on the issue of centre-state relationships, split it, into diametrically opposite groups.

The percolation of the doctrine of double charge in the politics of the State had far-reaching effects on the political relations between the Union Government and the State. The indiscriminate interpretation, the different sections of the State leadership gave to the special provisions of the Constitution of

India, sought to link up autonomy of the State and the safeguards it involved, with the issue of accession. The supporters of special status as well as the supporters of complete integration of the State in the Indian federal structure helped to confuse the situation further. The impression was gradually created that the Instrument of Accession was conditioned by the provisions of the Constitution of India. In fact, the State leaders, consciously or otherwise, perpetrated the myth that the special position the State enjoyed in the Indian federal structure, constituted a condition for the future disposition of the State. These assumptions directly led to the conclusion that the special provisions of the Constitution with regard to Kashmir were destructive of the accession of the State. That such a position was neither legally valid nor politically permissible, has been discussed above. No instrument of the State Government, constitutional or legal, could be vested with a separate charge or a charge other than that vested in it by the Constitution of India. The emphasis which the State leaders came to place on the division of powers between the two governments and the applicability of the provisions of the Constitution of India to the State put an undue premium on the autonomy which the State was granted. At no time, while the special provisions with regard to the State were on the anvil, did the Constituent Assembly of India link them with the issue of accession or render accession of the State subservient to these provisions. In case any such position was admitted, the Instrument of Accession was undermined. The central government was alive to this fact and as the tone of the State leaders crystallised, the Government of India realised the difficult position it was put in. Pandit Nehru, in an attempt to cut the confusion short, declared in unequivocal terms in the Parliament that the special provisions pertaining to the State did not constitute a condition for accession.

“While all this was happening in Kashmir,—war and other things,—in the rest of India, the process of integration went further. Mind you, the process of integration went further. The accession of every State was complete. This fact I go on repeating because

there is some confusion. The accession of every State was complete when it first acceded in 1947."⁴³

Probably the leniency in approach and the wide area of discretion, the State leaders had been given, had created a belief in them that the placement of the State in the Indian federal structure, was subject to their veto. For this, however, the wild commitments, the Indian leaders had made from time to time, were more responsible. The impression was strengthened by the commitment given by the Government of India to the Security Council that when the aggression by Pakistan was cleared, a reference would be made to the people of the State with regard to accession. The State leadership identified the two commitments. In this respect the autonomists and the integrationists fought on identical grounds but both failed to realise that there was a fundamental difference between the two commitments. The commitments given to the Security Council created obligations of a dubious nature with doubtful legality and perfidious sanction and could be terminated by the Government of India at any time it was deemed feasible. But the commitments made under the Constitution of India could only be modified or terminated in due process of law laid down by the Constitution.

Sheikh Mohamad Abdullah and his close associates made no secret of their bitterness against the hardened attitudes of the Government of India. Possibly there was disillusionment on both sides. In fact a tragedy of great magnitude in the outlook of both the Congress leaders and the leaders of the National Conference was that, after the accession of the State, they were unable to adjust their political objectives and coordinate their political operatives. Underneath the stable political facade there lurked simmering discontent and disappointment upon each other's performance. Nehru had a fancy for illusions and he had led the State leaders to thrive on many. The stark realities were, however, harsh. Though the Congress leadership and the leadership of the National Conference had found identification in their approaches and objectives in so far as the struggle for national independence was concerned and had

43 Nehru, J. L. Speech, Council of the States.

adopted more or less identical tactics to achieve freedom, yet the leaders had hardly evolved a similarity of views and strategies with regard to the politics of the government. Sheikh Mohamad Abdullah earnestly believed that the Indian federation was, in the ultimate analysis, the expression of the long struggle for freedom in the British India and the Princely States. Perhaps, Nehru too contributed to the same ideology. The Indian federalism, however, was an expression of the peculiar content of the Indian society : the pluralist composition of the Indian people, the political vivisection the British colonialism had foisted on the sub-continent, regional and cultural dissimilarities and the assortment of the vested interests ranging from Princes to petty peasantry. This cleavage caused the great divide between the two leadership levels and drove them to assume reckless extremes. The structural compulsions of the Indian politics overwhelmed the expressions and the principles of Abdullah's historical struggle. The divergence in the outlook between the leadership levels is reflected in the statement issued by Maulana Mohamad Sayeed Masoodi, Member of the Parliament and the General Secretary of the National Conference, to press on 6th August, 1953, three days before the Ministry headed by Sheikh Mohamad Abdullah was dismissed. The statement read :

"The fact of the matter is that there is a deliberate attempt on the part of those who do not view Kashmir's present position with favour to cloud the real issue so as to escape responsibility for the harm that has been caused to the Indo-Kashmir relationship by the support given to the recent agitations for Kashmir's merger with India. The real issue, it should be realised, is that there are people in India, who are not prepared to see Kashmir maintain its existing position. They are angry that Kashmiris should remain aloof both from India as well as Pakistan ; one should not work oneself up necessarily to see this view being expressed. Instead it should be examined dispassionately. Then only can there be possible a correct appraisal of the situation in Kashmir. If Kashmiris rose as one against Pakistan it was because they saw that that country wanted to

force them into a position which they were not prepared to accept. If today demands are made in India which endanger the present autonomous position of the State and, realising this danger, the people of Kashmir feel inclined towards a third alternative, it is not they who should be blamed for it but those who are the root cause of it. It will not do to point out the defects of this or that alternative. What is required is to remove the causes which have led to this line of thinking. All those people in India who are honestly interested in seeing Kashmir and India thrive together on the basis of a willing, not forced association should come into the field and organise the Indian public opinion against the movement for merger of the State. The communal and reactionary forces within the State who have made Sheikh Abdullah's task difficult should be exposed and no quarter given to them. The difficulties referred to by Sheikh Sahib in his recent speeches should be appreciated clearly and honest efforts made to remove them. Above everything else those who are thinking in terms of solving the difficulties by creating dissensions within the National Conference should realise that the people of Kashmir, whom the National Conference has the privilege to represent, will not countenance any such move from any quarter. Such tactics as these are not going to help a solution of the problems confronting India and Kashmir. Never before has there been a greater need for a clear understanding of the Kashmir problem as it is today. I would earnestly appeal to all patriotic people to realise this fact and rise to the occasion by strengthening the hands of Sheikh Abdullah. Thus alone can the problem be solved.⁴⁴

Many of the senior leaders of the Conference went to farther extremes and frantically sought to establish a categorical balance between the autonomy, the State was ensured under the Indian

44 Statement issued by Maulana Masoodi, General Secretary, National Conference.

Constitution, and the accession of the State to the Union. In fact, their reckless postures proved disastrous to both: the accession as well as autonomy. On 8th August, 1953, the Ministry, headed by Sheikh Mohamad Abdullah was dismissed and Bakshi Ghulam Mohamad was asked to form a new government.

In October, 1953, the Constituent Assembly of the State was convened to consider the provisions of the Delhi Agreement and finalise the principles on which the Constitution of the State would be based. The Basic Principles Committee of the Assembly and the Advisory Committee on Fundamental Rights and Citizenship were reconstituted by a resolution of Constituent Assembly on 20th October, 1953. The clauses of Delhi Agreement were referred to the Basic Principles Committee and on Fundamental Rights for report and recommendations a Sub-Committee of the Constituent Assembly was set up on January 4, 1954, to prepare the draft proposals to be presented to the two Committees for their consideration and recommendation. The Sub-Committee submitted its report to a Joint Session of the two Committees on 22nd January, 1954. The joint meetings of the two Committees approved the provisions of the Delhi Agreement. On 27th January, a high power Committee which was led by the Prime Minister of the State, and which included, among others leaders of the National Conference, Ghulam Mohamad Sadiq, President of the Constituent Assembly, and Syed Mir Qasim, the Chairman of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, went down to Delhi to finalise the provisions of the Delhi Agreement and find a settlement pertaining to some of the problems, which had not been finally resolved when the Delhi Agreement was formalised. An important issue which was still pending decision was the placement of the State in the economic structure, the Constitution of India devised. The financial integration of the State meant for it the loss of the customs duties, toll taxes, the excise duties and the income tax returns which amounted to one and a half Crores of rupees a year. The loss could not be met by any means as there were few possible sources to raise the revenues inside the State.

On 3rd February, 1954, Syed Mir Qasim presented the report of the Basic Principles Committee and the report of the

Advisory Committee on Fundamental Rights and Citizenship to the Constituent Assembly. The Committee *inter alia*, recommended that the directives be issued to the Drafting Committee to frame the proposals redefining the sphere of the Union jurisdiction in the State with such modifications and amendments, which were deemed necessary in the existing relations between the State and the Union Government. With regard to the citizenship of the people of the State the Advisory Committee recommended :

“The State having acceded to the Union of India, every state subject and every person having his domicile in the State is a Citizen of India under the provisions of the Constitution of India. It is, however, recognized by the Government of India that this position would not affect the existing State Subject definition, while the Committee adheres to principle underlying this definition, it feels that the definition should be liberalised in keeping with the changed times. The Committee therefore recommends that all the three classes of State Subjects provided in the definition be removed and a uniform class of permanent residents be established. Accordingly, every person residing in the State who is a State Subject of Class I or class II or who after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years, prior to the date of enforcement of this provision shall be a permanent resident of the State.

The Advisory Committee also recommended the extension of the provisions of the Constitution of India pertaining to the Fundamental Rights, with certain modifications and reservations which were found necessary. The Committee recommended the application, to the State, of the provisions envisaging the right to equality, the right against exploitation, rights for women and children, the right to freedom, the right to personal liberty, the right to freedom of religion, the right to conserve culture and education and the right to property. The Committee also recommended the application of the right to constitu-

tional remedies provided for, by the Constitution of India. The Committee reported :

The Committee feels that a declaration of Fundamental Rights would be more effective if suitable judicial remedies for the enforcement of these rights are provided and therefore it is proposed that the citizens shall have the right to Constitutional Remedies. In order to ensure the fullest protection in regard to enjoyment of these rights the citizens shall be allowed to seek redress from the highest court, *i. e.*, the Supreme Court of India.

In order to avoid any possibility of conflict of the Fundamental Rights proposed above and those contained in Part III of the Constitution of India, the Committee feels that the former rights in so far as they vary in certain respects from the provisions of the Fundamental Rights of the Union should be reflected in Part III of the Constitution of India. The Government of India has already agreed to provide appropriate modifications or exceptions in Part III of the Constitution of India to suit the requirements of the State.

The Constituent Assembly conveyed its recommendations to the President of India and on 14th May 1954, the President of India proclaimed the Constitution (Application to Jammu and Kashmir) Order, 1954, incorporating the recommendations of the Constituent Assembly and amending the special provisions, envisaged by Article 370 to that effect.⁴⁵

President's Proclamation

The provisions pertaining to the Union and its territories were declared applicable to the State with the exception that the powers of the Parliament to increase and diminish the area of the State or alter its name, were restricted to the extent that the consent of the State Government was to be secured before any change was made by the Parliament.⁴⁶

45 Constitution (Application to Jammu and Kashmir) Order, No. C.O. 48 dated 14.5.1954.

46 *Ibid.*, Para 2.

Provisions pertaining to citizenship were also declared applicable to the State subject to the condition that the 'Permanent Residents' of the State who had migrated to the territories now under the occupation of Pakistan, but returned to the State for settlement, were reserved the right to acquire Indian Citizenship on a 'permanent return', issued to them by or under the authority of any law made by the Legislature of State. The State Legislature was reserved the right to define the 'Permanent Residents' and confer on them special rights or privileges or impose on other persons restrictions in regard to employment in the State, settlement in the State, and right to scholarship and other forms of aid provided by the State Government.⁴⁷

The most significant changes introduced in the applicability of the Indian Constitution by the Presidential order, were those pertaining to the extension, to the State, of the provisions envisaging the fundamental rights and related legal remedies.⁴⁸ Rights envisaging equality before law, prohibition of discrimination on grounds of religion, race, caste and place of birth and rights embodying equality of opportunity in regard to public employments were extended to the State without any reservations. The application of the provisions of the Constitution of India with regard to rights to freedom and personal liberty, was also extended to the State, subject, however, to a number of stringent restrictions. The State Legislature was vested with the arbitrary power to impose restrictions on the right to freedom and personal liberty on certain grounds, not specified otherwise in the Constitution of India. The rights against exploitation providing for the prohibition of traffic in human beings, 'begar' and other forms of forced labour, employment of children, below fourteen years in age, in factories and on other hazardous occupations, were also made applicable to the State. Rights, envisaging freedom of conscience and religion and the rights to the management of religious affairs were also made applicable to the State. Provisions with regard to the protection of the minorities and their rights to manage educational institutions were also extended to the State. The right to property was also extended to the State, subject, however, to certain limitations.

47 Ibid., Para 3.

48 Ibid., Para 4.

State Legislature was not required to reserve any Bill, pertaining to the acquisition of property, for the consideration of the President. Under the Constitution of India, the other Indian States are required to reserve a Bill for acquisition of property for the consideration of the President. The application of the provisions did not affect any existing laws regarding property, nor could these provisions affect the right of the State, to impose any levy or tax or penalty or make any law for the promotion of public health or prevention of danger to life or property or the evacuee property. The instruments of the State Legislature were also saved from the effect of the extension of the right to property to the State for a period of five years and no such instruments could be deemed to be void on the ground that the instruments infringed any of the fundamental rights.⁴⁹

Provisions of the Constitution of India with regard to the Government of India were made applicable to the State with the following exceptions:⁵⁰

- (a) the representatives of the State for the House of the People were to be appointed by the President on the recommendations of the State Legislature;
- (b) the power of the Parliament, to extend the appellate jurisdiction of the Supreme Court, was limited to the extent that any such extension could only be made on the request of the State Legislature;
- (c) the Supreme Court was not vested with any power to issue directions, orders and writs, for purposes not pertaining to the enforcement of the Fundamental Rights; and
- (d) The powers of the Auditor and Comptroller General were not made applicable to the State.

The provisions of the Constitution of India envisaging the division of powers between the Union and the State were not extended to the State. The scheme of the division of powers between the Union Government and the State was not altered

49 Subsequently the period was extended to fifteen years.

50 Constitution (Application to Jammu and Kashmir) Order, 1954, Para 5.