

# KASHMIR MYTH OF AUTONOMY

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*Kashmir : Myth of Autonomy*

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| <b>the memory of my father</b> |     |
| <b>Pandit Sri Kanth Teng</b>   |     |
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The demand for a separate political organisation of Jammu and Kashmir, independent of the constitutional organisation of India, was made by the National Conference leaders, when India and Pakistan accepted the cease-fire in the State in 1949 and more than two-thirds of its territories were left under the occupation of Pakistan. The National Conference claimed the rest of the State for the Muslim Nation of Kashmir.

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## Preface

The partition of India did not envisage the accession of the Princely States to the Dominions of India and Pakistan on the basis, the British India was divided. The partition of India left the States out of its scope and the transfer of power accepted the lapse of the Paramountcy: the imperial authority the British exercised over the States. The accession of the States to India was the culmination of a historical process which symbolised the unity of the people in the British India and the Indian States.

In 1947, when Jammu and Kashmir acceded to India, the ruler of the State, Maharaja Hari Singh signed the same standard form of the Instrument of Accession, which the other major Indian States signed. The accession of the State to India was not subject to any exceptions or pre-conditions to provide for any separate and special constitutional arrangements for the State. Neither Nehru, nor Patel gave any assurances to Hari Singh or the National Conference leaders that Jammu and Kashmir would be accorded a separate and independent political organisation on the basis of the Muslim Majority character of its population.

The demand for a separate political organisation of Jammu and Kashmir, independent of the constitutional organisation of India, was made by the National Conference leaders, when India and Pakistan accepted the cease-fire in the State in 1949 and more than one-third of its territories were left under the occupation of Pakistan. The National Conference claimed the rest of the State for the Muslim Nation of Kashmir.

The present study is aimed to provide the reader comprehensive account of the movement for the autonomy of the State of Jammu and Kashmir, its ideological content and its separatist character. The study presents an indepth analysis of the special provisions of the Constitution of India, envisaged by Article 370, and the partial application of the Constitution of India to the State in 1954. An attempt has been made to assess the consequences of the exclusion of the State from the constitutional organisation of India and their effect on the course of events in the State.

An effort has been made to uncover the linkages between the communalisation of the State, inevitable in the absence of constitutional safeguards against discriminatory exercise of authority, and the consolidation of the secessionist forces in the State. An attempt has also been made to trace the course of militarisation of the secessionist movement in the State and analyse its impact on the autonomy of the State.

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**Author**

## CHAPTER - 1

### *Indian States*

The British empire in India was divided into two separate and different political organisation: the British India which was constituted of the Indian Provinces and the Indian Princely States. The Indian Provinces were directly governed by the British Government through the Governor-General of India. Each Province was administered by a Provincial Governor, who was responsible to the Governor-General. The Governor-General as well as the Governors of the Provinces, carried on their administration with the help of the Indian Civil Service.<sup>1</sup>

The British, after they established their sway over India, allowed a vast number of local potentates to retain their kingdoms and fiefs in subordinate alliance with their power. These potentates, called the Princes, were after the proclamation of the British Empire in 1858, following the 1857 uprising, confirmed in their possessions, by treaties and agreements concluded between them and the British before the proclamation. The Princes were the feudatories of the British Crown, and accepted the supremacy of the British authority. The relations between the British Crown and the States were governed by the Paramountcy, which in actual practice, described the extent of the authority, the British exercised over them. The Governor-General of India was also designated the Viceroy of India, who symbolised the supremacy of the British Crown over the States.<sup>2</sup>

The transfer of power in India in 1947, involved the division of the British Indian Provinces into two Dominions

of India and Pakistan. The States were not brought within the scope of the partition. Paramountcy was dissolved and the States were liberated from the British tutelage, free to join the Dominions, or enter into such arrangements with them or among themselves, as they chose. Their technical independence was subject only to the British imperatives, which did not entitle them to the status of Dominions. "The two processes were distinctly separate and underlined political change which led to different consequences. The Provinces were reorganised into two independent Dominions; the States were released from the obligations of the Paramountcy and the rulers of the States were empowered to adhere to either of the two Dominions, irrespective of the communal division the Indian partition underlined."<sup>3</sup>

The Jammu and Kashmir State, was one of the Indian Princely States, which was carved out by the British, from the territories of the Sikh empire in 1846. After the first Anglo-Sikh war, in which the Sikhs were defeated, the British cut away almost all the Rajput principalities and north hill-states and the Provinces of Kashmir and Hazara from the Sikh empire and transformed them to Raja Gulab Singh of Jammu and Dogra feudatory of the Sikh state. Gulab Singh made good the war indemnity, which the British had imposed upon the Sikhs and which the latter had refused to pay and in lieu of which they had offered to cede to the former, the territories of the Sikh State, situated between Sutlej and Indus. Following the annexation of the Punjab by the British, the Dogra State was integrated into the Indian princely order and brought within the operation of the British Paramountcy.<sup>4</sup>

Dogra rule was as good and as bad as the British rule in the Indian Provinces was. Indeed the Princely rulers, were mere shadows, of the authority they were supposed to wield and except for the resources, enough to maintain their oriental splendour, the British governed the State through the Residents. The inspiration for political change in the States came from the Indian struggle against the British. The response of the

people in Jammu and Kashmir to the Indian liberation struggle was divided: the Hindus and the Sikhs were widely influenced by the Indian struggle, in the aftermath of the non-cooperation movement in 1921.<sup>5</sup> The Muslims, who formed the majority of the population of the State, and who were largely impervious to the Indian renaissance, remained aloof, till they were pulled into the Khilafat movement.<sup>6</sup>

The communal conflict, in the Punjab which followed the withdrawal of the Khilafat, had its impact on the Muslims in the State, who quickly turned round to support the British. They had, for quite sometime in the past, solicited British intervention in the State to deliver them from the Hindu rule of the Dogras, which they alleged, symbolised their slavery. Sir Mohamad Iqbal was of Kashmiri origin and his address to the annual session of the Muslim League, in 1930, envisaging the proposal to establish a Muslim confederacy in the north of India, had a deeper impact upon the Muslims in the State. Indeed, after the Muslims launched their agitation against the Hindu rule of the Dogras in 1931, Kashmir Committees were organised all over India, under the aegis of a Central Kashmir Committee which was headed by Iqbal in Lahore. The Muslim agitation led to fresh British intervention in the State. The British, however, did not bring the deliverance for the Muslims from the Dogra rule.<sup>7</sup>

In 1939, a section of the Muslim leadership, influenced by the formation of the Congress ministries in the Indian Provinces and joined by several Hindu and Sikh leaders, resolved to reorganise the Muslim Conference, formed in 1932, into a secular political organisation, committed to constitutional reform.<sup>8</sup> The main exponents of the integration of the various community movements in the State, into a joint struggle for political reform were; Sheikh Mohammad Abdullah, Sardar Budh Singh and Kashyap Bandhu. Abdullah had spearheaded the Muslim movement right from its inception in 1931. Budh Singh and Kashyap Bandhu were revolutionaries, who had revolted against the colonial rule of the British decades earlier

and repudiated the Indian princedom as an appendage of the British colonial rule.

The conversion of the Muslim Conference into a secular organisation named the National Conference, led to a split in the Muslim leadership, a part of which refused to abandon the struggle for the liberation of the Muslims from their subjection to the Dogra rule. After, the Muslim League adopted the Pakistan resolution in 1940, a large section of the Muslim leadership in the National Conference, mostly from Jammu, advocated the acceptance of the League resolution for Pakistan on the plea that the Muslims in the State formed a part of the Muslim India and therefore, their aspirations, were bound with the creation of Pakistan. They broke away from the National Conference, after, the Conference rejected the League resolution. The break-away faction of the National Conference and the leaders and the cadres of the Muslim Conference, led by Chaudhry Gulam Abbas Khan, of Jammu and Moulvi Yussouf Shah, the Mirwaiz of Kashmir, revived the Muslim Conference in June 1941. The Muslim Conference pledged support to the League demand for the separate Muslim State of Pakistan.<sup>9</sup>

The British plans about the Indian States came to surface when the Cabinet Mission proposals were announced. The Cabinet Mission refused to bring the States within the scope of the constitutional organisation, it proposed for India, portending a division of India, separating the States from the Provinces. At this crucial juncture, the Congress leadership should have turned to the people of the States to forge a common front against the British as well the Muslim League, which supported the British in their designs to Balkanise India. Instead, the Congress leadership turned to the Princes, invoking their cooperation and inviting them to join a united India on the basis of a federal division of powers.<sup>10</sup>

While the Congress leaders were trying to solicit the support of the Princes to a united India, which they were

invited to join on a federal basis, the National Conference upturned the whole process of negotiations, the Cabinet Mission had set in motion, by launching an agitation, demanding the abrogation of the Treaty of Amritsar, by virtue of which the State was formed in 1946. The National Conference agitation, called the "Quit Kashmir" movement, demanded the abolition of the Dogra rule and the transfer of the authority of the State to its people.<sup>11</sup>

The Quit Kashmir Movement marked a major shift in the outlook of the Conference. The Conference was affiliated to the All India State People Conference, which spearheaded the liberation movement in the Indian States. The States People Conference was committed to the independence of India from the British and the unity of the States and the Provinces. It advocated self-government in the States, on the same basis that the people in the Provinces would be granted in accordance with any future constitutional reform. The Quit Kashmir movement repudiated the demand for self-government, the States' People's Conference espoused, as well the unity of the States and the British India, as a basis for the Indian federation. The demand for the abrogation of the Treaty of Amritsar underlined the repudiation of the Paramountcy. However, the lapse of Paramountcy and the adherence of the States to the Indian Union went together and did not, in effect, prejudice the treaty rights of the Princes.<sup>12</sup>

The Quit Kashmir movement demanded the abrogation of the Treaty of Amritsar, but the National Conference did not specify the national context in which power would be transferred to the people of the State. The annulment of the treaties with the Princes, visualised beyond the unity of the States with the British India, and their adherence to a future union of India, pretended the division of India in to several independence states.<sup>13</sup>

The Quit Kashmir caused concern to the Congress leaders because it antagonised the Princes, whose role could not be

ignored in the constitutional reforms, which would precede the transfer of power. The lapse of Paramountcy in principle, envisaged the abrogation of the treaties between the British and the Princes, and to that extent come close to the demand for the rescission of the Treaty of Amritsar, the National Conference demanded.

The Cabinet Mission Plan proposed the transfer of power in the States to the Princes. The National Conference sought the transfer of power to the people of Jammu and Kashmir. Both the British and the National Conference rejected the transfer of Paramountcy to the federal union of India, as a basis for the transfer of power in the States.

The Congress leadership, however, did not abandon the National Conference. Nehru offered his good offices to bring about the settlement of differences, between the National Conference and the State Government. The State Government refused to accept Nehru's offer, and when he decided to visit the State, the State Government banned his entry. For the British, the developments in Jammu and Kashmir were not unwelcome. They did not oppose the Quit Kashmir movement, but they took such measures, as were necessary to curtail any active help, the movement received from outside.<sup>14</sup>

The Quit Kashmir movement marked the beginning of a train of events, which in the long run, were exploited by the Muslim League as well as the British, to ensure the isolation of some of the larger Indian States from India. Hari Singh imprisoned Sheikh Mohammad Abdullah and a large section of the leaders and cadres of the National Conference, including Sardar Budh Singh.

#### **Invasion to Accession**

The British cast their shadows on India, even after they had quit and India was free. In the months that intervened between the transfer of power and the accession of Jammu and Kashmir to India, the British spread no effect to prepare

the ground for the accession of Jammu and Kashmir to Pakistan. Earlier, they had accomplished the accession of all the Muslim States situated within the Pakistan to that country, including the State of Kalat, where the ruler stubbornly refused to join Pakistan and insisted upon his independence. Kalat was smothered by the combined pressure of the States Department, headed by Konrad Corfield, and the Muslim League.

The British favoured the accession of Jammu and Kashmir to Pakistan. Mountbatten, did not conceal his intentions, when he told Hari Singh in Srinagar, while the two were alone and driving up to a game-preserve in South Kashmir, that his interests and the interests of his people would be served better by the accession of the State to Pakistan. Hari Singh was stunned and closed himself up in his palace refusing to meet the Viceroy, till the latter concluded his visit to the State. Mountbatten, though he had forced Congress to accept the lapse of the Paramountcy quietly resiled from his position and surreptitiously put into motion, the process of extending the partition to the States, which the lapse of the Paramountcy did not envisage. The extension of the partition to the States, was bound to ensure the accession of Jammu and Kashmir to Pakistan. After the accession of Jammu and Kashmir to Pakistan, he believed, that a workable settlement could be reached between the States of Junagarh and Hyderabad and the Dominion of India.

In August 1947, when the British quit India, the Conference leaders were still in jail. Hari Singh, offered a standstill agreement to the two Dominions, which was promptly accepted by Pakistan. The Indian Government advised him to send to the Indian capital, a properly accredited representative, to finalise the terms of the standstill agreement. By the time the transfer of power was accomplished, Hari Singh had changed his stand and quietly waited for the time when he could come to terms with India. He was aware of the dangers in any precipitate action he took, because of Hyderabad, where the Nawab waited for his opportunity to join Pakistan and Junagarh



which had acceded to Pakistan. The Congress leaders too, realised the dangerous implications of the accession of Jammu and Kashmir to India. They conveyed their fears to Hari Singh, and secretly counselled him not to take any action, till the issue of Hyderabad and Junagarh was settled.

Pakistan, aware of the intentions of the Maharaja of Kashmir, imposed a blockade on the State, closing transit on the two roads and the railway line which connected Jammu with Sialkot and Srinagar with Rawalpindi, in Pakistan. The communication line with India, left open for the State was the fair-weather track, which ran into the State from Madhopur in Pathankot. Hari Singh, took immediate steps to construct a new road from Jammu to Madhopur.

The League leaders having been assured by the Nawab of Hyderabad of his determination to align himself with the Muslim homeland of Pakistan, set out to reduce Jammu and Kashmir by strategem and force. After Jammu and Kashmir was annexed, Pakistan would be able to deal with India in respect of Hyderabad and Junagarh, from a position of strength.

Sensing danger, Hari Singh, declared a general amnesty, withdrawing all punitive measures taken against the National Conference and released its leaders from detention. Sheikh Mohammad Abdullah was released on 29th September 1947.

The Muslim opinion about the future of the State, was almost vertically divided. The Punjabi speaking Muslims, mainly inhabiting the Jammu province and a section of the Kashmiri speaking Muslims owing allegiance to Maulana Youssouf Shah, the head of the Muslim clerical order in Kashmir, supported the accession of the State to Pakistan. The Kashmiri speaking Muslims, who formed the main support-base of the National Conference and who had opposed the Muslim League demand for Pakistan, were caught in a dilemma. The National Conference leadership accused by the Muslim Conference leaders as well as Pakistan, of having

bargained with the Dogras for their freedom, felt insecure about their future. They realised that if the State acceded to Pakistan they would meet the fate, that had befallen the Red Shirts of the North-West Frontier Province, led by Khan Abdul Gaffar Khan.

During the night of 22 October, 1947 a massive force of armed irregulars, with army formations of Pakistan, led by Tochi Scouts, invaded the State. During the months after the transfer of power, a large numbers of armed Muslim activists had infiltrated into the State, across its border with Pakistan. The infiltration had led to severe unrest in the border districts of the State, where a sustained campaign of eliminating the Hindu and Sikh population had been put into operation. The ground was, therefore, prepared for the invading forces, who swept into the State. The British Resident in Jammu and Kashmir, the Chief of the Army staff, General H.L. Scott, who had cultivated the confidence of the Maharaja, and the officers commanding the Gilgit Scouts, which garrisoned the Gilgit Agency, all worked in their own way to bring about the merger of the State with Pakistan. General Scott deployed the State troops in penny-pockets over the vast border of the State with Pakistan and then told Hari Singh, how untenable the position of his defence was. He did not advise the Maharaja, about the disaffection that had set in the Muslim officers and ranks of the State Army, comprising a little less than half of its strength. In the invasion, the small army pickets were easily overrun and other Muslim officers ranks of the State army deserted and joined the enemy. On 1 November 1947, a week after the invasion of the State had commenced, the British officers of the Gilgit Scouts, hoisted the flag of Pakistan on the Garrison Quarters in Gilgit Agency and handed it over to the Pakistani troops.

Maharaja Hari Singh appealed to India for help and offered to acced to the Indian Dominion. Mountbatten delayed a decision on the despatch of the Indian troops to Kashmir to stop the invasion. Nehru watched by helplessly. Both the

Viceroy, and the Indian Prime Minister were aware of the peril to which the State was exposed as the road from Baramullah in Uri bowl, for which the invaders headed straight, and Srinagar lay before them undefended and open for their advance. The invaders entered the Uri bowl on 26 evening. The Indian troops reached Srinagar, shortly after the dawn on 27 October, 1947.

The Indian troops went into action the instance they landed on the Srinagar airport. Few of the soldiers of the first Sikh Regiment, which went into action that day, returned home. Their Commander Ranjit Roy was killed in an ambush on the outskirts of Baramullah, while he led a frontal attack on the invaders who were beginning to fan out in the suburbs to reach Srinagar and surround it. As the Indian forces increased their strength and fresh troops arrived by road, covering most of the Bannihal cart-road by forced marches, the invading armies mounted a massive assault on Srinagar during the early hours of the 8 November 1947. The Indian forces repulsed the attack. The invading armies fell back into Baramullah with the Indian troops on their heels. After the Indian troops recaptured Baramullah the invading forces began to withdraw from the Uri bowl.

The National Conference denounced the invasion and extended its support to the accession of the State to India. Together with a million of Hindus and other minorities, the Kashmiri speaking Muslims, formed more than two-third of the population of the State. The Indian leaders claimed, though interestingly, that the majority of the people of the State had repudiated the right of Pakistan to Jammu and Kashmir, which the Muslim League claimed on the basis of its Muslim majority population. The British moved in again, now to neutralise the military initiative the Indian army had assumed against the invading forces. Intriguingly the cleansing operations slowed down after the invaders were cleared off the Uri bowl and precious days, during which the Indian armies could have reached Domel and cleared the invading

forces from Muzaffarabad, were lost in indecision. Evidently, Mountbatten applied the brakes and the Indian army was bogged down in an indefensible position in the midst of a war which was bound to decide the fate of the State. The British design, of which Mountbatten had put one part into operation, was to enable Pakistan to build the strength of its forces in the state. Mountbatten achieved his objective with considerable ease as Nehru and the other Indian leaders followed his instructions without demur.

The Indian Government threw away the political as well as military initiative, it had assumed by the accession of the State, when it decided to invoke the United Nations intervention to end the invasion of the State. Mountbatten was keen to refer the dispute to the Security Council and there is enough reason to believe that his advice carried considerable weight with some of the Congress leaders. Whether the decision to refer to the United Nations on his advice alone, is highly doubtful. Gandhi had expressed skepticism about any such move. Was Nehru persuaded by the Muslim leaders in the Congress to act upon Mountbatten's advice? The Indian leaders were, perhaps, unaware of the consequences of the United Nations intervention in Kashmir for Junagarh as well as Hyderabad.

Pakistan claimed that the Jammu and Kashmir State rightfully belonged to Pakistan because of its Muslim majority population and the Indian Government had intrigued with the Hindu ruler of the State to bring about its accession to India. The Security Council did not utter a word to condemn the invasion of the State by Pakistan and instead, sought to ensure the people of the State, their right to decide their future. Ayangar was dumb-founded, and sore over the turn the events had taken. In fact, Ayangar had a brief from his government which reflected vague commitments to the principles of freedom and self-determination and secular society, on the basis of which India claimed Jammu and Kashmir, where the Muslims had upheld their traditional

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values of communal tolerance. The members of the Security Council, however, had adequate information about the fraternal regard, the Muslims had shown for the invading armies in the areas which were overrun by them, the desertion of Muslim ranks from the Dogra army which had hastened the disintegration of the defences of State; the neat military manoeuvre of the Gilgit Scouts to hand over the Gilgit Agency and Baltistan to the invading armies and last ditched struggle of the Muslims of Jammu to facilitate its fall to the invaders. They viewed with scorn the judgments of the Indian Government that India had rejected the Two Nation theory of the Muslim League and on that basis accepted the accession of Jammu and Kashmir to India.

Ayengar, however, failed to tell the Security Council that the British had supported the Muslims to divide India, but after the British had left, India would not allow the Muslims to Balkanise the States. Instead, he heard Sheikh Mohammad Abdullah deliver another harrangue to the members of the Security Council in which the National Conference leader claimed the right of the Muslim nation of Kashmir to determine its own future in respect of accession. Abdullah told the Security Council that Pakistan had invaded the State to usurp the freedom of the Muslim nation of Kashmir and India had taken up arms against Pakistan, to protect its freedom. The British and their allies in the Security Council, made no mistake about the message Abdullah sought to convey. He was in search of another Muslim nation in India, the nation of Kashmir, which did not form a part of Pakistan. Several major powers exhibited interest in a settlement which did not necessarily follow the political arrangement, by virtue of which the British had withdrawn from India. Perhaps, several of these powers, fiddled with the idea of recognising the independence of Jammu and Kashmir as well as Hyderabad, because, they were as much indifferent to the urge of the Indian people for unity, as the British were, while they ruled India.

**Interim Government**

On the advice of the Indian leaders, Hari Singh appointed an Emergency Administration, headed by Sheikh Mohammad Abdullah and constituted of the other Conference leaders, to deal with the situation of emergency created by the invasion. The National Conference leadership had insistently demanded the transfer of authority to the people in the State, which they had stressed would be necessary to fight Pakistan and its collaborators inside the State.

The Emergency Administration was a half-way measure and did not function smoothly. The Maharaja presumed that the Emergency Administration would act within the ambit of the authority, his Council of Ministers, delimited for it. The Conference leaders, once they were saddled into power, repudiated their responsibility to the ruler and arrogated unlimited authority to themselves. When Hari Singh objected to the manner in which the Emergency Administration functioned, the Conference leaders complained that the Maharaja was reluctant to part with any substantial authority to the people.<sup>15</sup>

In November 1947, the Government of India, advised Hari Singh to institute an Interim Government in the State based upon the model adopted for the Mysore State. The Mysore model envisaged the division of the powers of the State Government into two parts: the powers reserved for the Maharaja and the powers delegated to a Council of Ministers, constituted by the leaders of the popular political party in the State. The reserved powers included the prerogatives of the ruler, the ruling family, succession, judiciary, audit, Public Service Commission, elections to the State Legislature, protection of the minorities and powers pertaining to the emergencies.<sup>16</sup>

Hari Singh accepted to institute an Interim Government on the basis of the Mysore model. However, the Conference

leaders, did not approve the reservation of any powers for the Maharaja. The Conference leaders demanded a total transfer of powers to them. They did not agree to the inclusion of Mehar Chand Mahajan in the Interim Government to represent the Maharaja and asked for the removal of Mehar Chand Mahajan from his office. Mahajan had played a factoral role in the Boundary Commission which was entrusted to demarcate the dividing line between the East and the West Punjab. He had, later, headed the State administration, during the crucial days, when the State was blockaded by Pakistan. In the Boundary Commission, both, Mahajan, representing the Hindus and Teja Singh, representing the Sikhs, had fought resolutely to resist the demand of the Muslim representatives for the inclusion of the whole of the Upper Bari Doab, including the Lahore division in Pakistan and saved the districts of Amritsar and Gurdaspur and thwarted the plans of the Muslim League to cut off the northern frontiers of India and extend the Muslim power to the borders of Tibet and Western China in the east.<sup>17</sup>

After further negotiations with the Maharaja and the Conference leaders, a compromise was finally struck, which accepted the reservation of the subjects in respect of the ruling family, succession, prerogatives of the ruler, his private office and the Dharmarth Trust. The agreement embodied the transfer of the rest of the powers to the Interim Government, which would be constituted by the leaders of the National Conference. Mahajan, it was agreed, would be relieved of his office.

Mahajan quit his office in sullen silence and left the State in humiliation. The National Conference leaders, accused him of partisanship in the communal clashes, in the Jammu Province, which followed the invasion and which were engineered by the Muslim Guard, an underground armed Muslim volunteer corps. The Muslim Guard lay in wait for the invading armies to attack Jammu.

The Interim Government was installed into office on March 5, 1948. The arrangements which formed the basis of the Interim Government underlined:

- (i) the Interim Government would exercise the powers transferred to it and it would not interfere with the reserved powers;
- (ii) the Interim Government would abide by the directions, if and when the Maharaja would give it in respect of the State Government;
- (iii) the Interim Government would be responsible to the Maharaja.

The Interim Government showed scant regard for the powers reserved for the ruler. Shortly after the Interim Government was installed into power, the Conference leaders, demanded the political arrangement on the basis of which the Interim Government was instituted and demanded the transfer of the reserved powers to the Interim Government. They scoffed at the prerogatives of the Maharaja to issue instructions to the Interim Government and openly repudiated their responsibility to him.<sup>18</sup>

The difference between the Maharaja and the National Conference revolved round several major issues:

- (i) Hari Singh did not approve of the land-grab, which the Interim Government undertook under the cover of the land-reforms, to deprive the Hindus of their landed property;
- (ii) Hari Singh opposed the process of elimination of the Hindus and the other Minorities from the State administrative organisation, ostensibly to correct the imbalances, which the Conference leaders alleged, had been fostered by the Dogra rulers;
- (iii) Hari Singh refused to agree to the proposals made by the Conference leaders to convene a Constituent

Assembly in the State, without giving wheitage to the minorities;

- (iv) Hari Singh insisted upon the retention of his reserved powers and his prerogatives, such as the rulers of the other Indian State were vested with.<sup>19</sup>

Hari Singh complained to the States Ministry about the peremptory manner in which the Interim Government functioned and the open hostility with which the Conference leaders treated him. Patel wrote to Nehru: "I have written letters to Sheikh Sahib about easing the tension and improving relations but I regret to say that I have 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 being treated as a nullity and the presence of the Maharaja and the existence of the reserved subjects are both being ignored."<sup>20</sup> However, Nehru did not intervene nor did Gopaldaswami Ayangar, who had negotiated the terms of the transfer of authority, which formed the basis of the Interim Government. Ayangar had served the Maharaja as his Prime Minister during the crucial years, which had followed the introduction of provincial autonomy in the Indian Provinces. Ayangar had served the interests of the British empire with devotion. He did not muster courage to assume the initiative and resolve the differences between the Maharaja and the Interim Government. The consequences were disastrous.

The National Conference, firmly entrenched in authority launched a surreptitious campaign against the Maharaja, who they accused of having obstructed the reforms, the Interim Government sought to carry out. Sheikh Mohammad Abdullah wrote to Nehru "I am therefore, constrained to aver once again that the choice is between the Maharaja and the people and if the choice is not soon made, it might lead us into very serious trouble both militarily and politically". Sheikh Mohammad Abdullah wrote: "The only alternative is that His Highness should abdicate in favour of his son and that

there should be no reservation whatsoever, in the administration of various subjects under the Ministers".<sup>21</sup>

Sheikh Mohammad Abdullah did not stop here. He and the other Conference leaders launched a fresh tirade against Hari Singh, who they accused of having fomented communal riots in Jammu, in the wake of the invasion to bring about the annihilation of the Muslims. They also accused the Maharaja of seeking to retain his powers, and to perpetuate the slavery to which the Muslims of the State were subject to during the Dogra rule. In a press conference, Sheikh Abdullah, publically denounced the constitutional arrangements on which the Interim Government was formed.

The press statement evoked sharp reaction from the State's Ministry of the Government of India. Patel denounced the statement as an attempt to blackmail the Government of India. He sent in his communication to the conference leaders and upbraided them for having disowned the constitutional arrangements on which the Interim Government was based.<sup>22</sup>

The communication from the State's Ministry, infuriated the Conference leaders, who complained that the States Minister sought to shield the Maharaja and supported him in his effort to thwart the reforms the Interim Government intended to undertake in the State. Sheikh Mohammad Abdullah threatened to quit office, in case the Maharaja was not removed and all the powers were not transferred to the Interim Government.

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## CHAPTER - 2

### Article 370

The Instrument of Accession, signed by Maharaja Hari Singh, envisaged, no provisions other than those, which the Instrument of Accession, signed by the rulers of the other Princely States embodied. No exceptions were accepted by the Dominion Government in respect of the Jammu and Kashmir State. The State Department of the Government of India, did not accept any conditions laid down by the Maharaja, or the National Conference leaders to accept any special constitutional organisation of Jammu and Kashmir, or any form of federal relationship between the State and the Union of India, which the other federating States were not accorded. The Instrument of Accession stipulated:

- (i) that the State of Jammu and Kashmir was merged with the Dominion of India into an indissoluble Union;
- (ii) that the powers in respect of defence, foreign affairs and communications were delegated by the State to the Dominion Government of India; and
- (iii) that the State was reserved the right to form a constitution for its government.<sup>1</sup>

The National Conference leaders, laid down no conditions for the accession of the State to India, nor did the Dominion Government, suggest to offer a separate constitutional identity of the State, independent of the constitutional organisation of India and based upon the Muslim majority character of its population. Indeed, at the time of the accession of the State,

the National Conference demanded the transfer of power to the people of the State. The Congress was already pledged to the liberalisation of the governments in the States and the introduction of political responsibility in the function of the State Governments. In the acceding States, the rulers accepted to constitute Interim Governments on the basis of responsibility to conduct the State Governments till the State Constituent Assemblies framed the constitutions for their government. The transfer of power in case of Jammu and Kashmir followed, largely, the same pattern of devolution of authority, that was followed in the other acceding States.<sup>2</sup>

No separate agreements of any nature, in respect of the future government of the State or its relations with the Union of India, were reached between the National Conference and the Dominion Government, before or after the accession of the State.

The accession of the State to the Dominion Government envisaged exactly the delegation of the same powers to the Dominion Legislature which the other States transferred to the Dominion Legislature by virtue of the accession of their States. Hari Singh undertook to transfer powers to the Dominion Government in respect of:

- (i) defence and armed forces of the Dominion of India and the State;
- (ii) external affairs;
- (iii) communications;
- (iv) election to the Dominion Legislature.

The subjects transferred to the Dominion Government were listed in a schedule attached to the Instrument of Accession. Maharaja Hari Singh assumed the obligation to ensure that due effect was given to the instruments of the Dominion Government, applicable in the State, by virtue of the Instrument of Accession. The State was reserved all residuary powers and the Instrument of Accession clearly

stipulated that the terms in regard to the delegation of powers to the Dominion Government would not be altered by any subsequent amendment of the Indian Independence Act of 1947, unless such an amendment was accepted by the ruler of the State by a subsequent instrument.

Hari Singh too, like the other rulers of the Indian States, did not commit himself to accept any future constitution of India. He reserved the right to enter into agreements with the Government of India under any future constitution of India. The Instrument of Accession did not affect the authority of the Ruler in and over the State or the validity of any law in force in the State, except as provided for by the Instrument of Accession.

Express stipulations were incorporated in the Instrument of Accession, whereby the Dominion Legislature was precluded to make laws, authorising compulsory acquisition of land in the State. The Maharaja undertook to acquire land at the request of the Dominion or at their expense on terms as would be agreed between him and the Government of India.

The terms and conditions envisaged by the Instrument of Accession, were not an exception, specially admitted in favour of Jammu and Kashmir. They were a part of the broad framework of the constitutional arrangements, which the States Ministry of the Government of India had evolved and within which the Indian States were invited to join the Indian Dominion. The accession of the States underlined a minimal transfer of power to the Dominion Government which the States Ministry offered to the rulers of the States to accept accession to India, whereby they would be able to retain the prerogatives and power, they exercised under the British Paramountcy.<sup>3</sup>

The institution of representative governments in the States, led to radical changes in the whole process of constitutional development in the States. The Princes had, at the time of

their accession, demanded that the Constitution Assembly of India would not interfere within the constitution making in the States. Consequently it was agreed upon between the States and the Constituent Assembly that the Constituent Assemblies would be convened in the States' and the Union of the States to draft their respective constitutions. The Unions of the States had been brought into being by the integration of the smaller States into viable political units. Constituent Assemblies were set up on the Saurashtra States Union, the States Union of Travancore-Cochin and the State of Mysore. It was also agreed that a model constitution would be drafted which the Constituent Assemblies of the States would follow to ensure a broadly uniform pattern of constitutional provisions for the States.

The Mysore scheme which formed the basis of the Interim Government in Jammu and Kashmir, also stipulated the convocation of a Constituent Assembly to "draft an Act for the Government in the State." It was agreed upon between the Maharaja and the Government of India that the Interim Government would formulate proposals for the election of constitution-making body to draft a constitution for the State. "I am agreeable to your suggestion", Hari Singh wrote to Gopalaswami Ayangar, "that the Interim Ministry should put up proposals for the election of the Constituent Assembly and its composition, but I should like to add that besides the elected elements, I must have the right to nominate a few persons to the Constituent Assembly out of the minority communities and other persons having substantial interest in the State if the result of the elections does not show their adequate representation."<sup>4</sup> Hari Singh, was not opposed to the institution of a constitution-making body elected on the basis of adult franchise and he was justified in seeking adequate representation for the minorities, to safeguard their interests in the process of the constitution-making. In the Constituent Assembly of India as well, adequate representation was ensured for the minorities, scheduled castes and special interests, to safeguard their interests in the future constitutional

organisation of India, a vital interest which every minority community in India espoused. In fact, the future course of constitutional evolution, amply proved that Hari Singh was not wrong and the Hindus and other minorities were reduced to a state of servitude in less than a decade. The Constituent Assembly instituted political instruments, which were used by the successive State Governments to enforce the communal precedence of the Muslim majority in the government and society of the State.

The Conference leaders, however, did not recognise Mysore model as the basis of the proposed constitution-making body of the State. In fact, they sought the convocation of the Constituent Assembly in the State, as an act independent of the Maharaja as well as the Instrument of Accession signed by him. "The outlook of the Conference was characterised by ambivalence and the Conference leaders made conflicting statements which varied in their content and emphasis from time to time and place to place. In effect they refused to recognise the validity of the political arrangements, the Instrument of Accession envisaged." The Conference leaders, considered the action of the State to India accomplished by the Hari Singh as a formal act, which they ridiculed as "paper accession".<sup>5</sup> The "paper accession", they claimed was an instrument, the Maharaja had created and as such, it did not create any obligations binding upon the people of the State. The people were bound by obligations which they had undertaken. "The Conference leaders did not accept that the Instrument of Accession had integrated the State into the political jurisdiction, the Indian Dominion described, and did not recognise any obligations which emanated from the accession of the State to India."<sup>6</sup>

The Conference leaders claimed that the obligations undertaken by the Maharaja by virtue of the Instrument of Accession were subject to their approval. Therefore, they did not accept the accession of the State, as it was envisaged by the State Department or the ruler of the State. The Conference



leaders visualised the accession of the State as an act which was accomplished by the Interim Government, representing the people.

The accession of the State envisaged the termination of the position of the princely states, which followed the lapse of the Paramountcy. The lapse of the Paramountcy which, was the consequent of an act of the British Parliament, separated the States from the British colonial organisation and absolved them from the British sovereignty. None of the States, however, assumed independence and sovereign status by virtue of the dissolution of the Paramountcy, and before the transfer of power, merged into the State of India. The two States, Hyderabad and Jammu and Kashmir, which did not accede to India before the withdrawal of the Paramountcy were unable to assume independence and sovereign status, because, the Indian States were a creation of the British imperial authority in India and their identity ended with the termination of the British Indian empire. The act of the accession of the States, therefore, heralded the end of the position the Princely States enjoyed by virtue of the Paramountcy as well as the position, they acquired after the Paramountcy was withdrawn. The Instrument of Accession were therefore, an irreversible processes, leading to their merger in the indissoluble and independent Union of the State of India. The delegation of powers to the Dominion Government was a subsidiary act, which followed the Union of the States with the Indian Dominion. The formation of the Constitution of the States, was also a subsidiary act to the fusion of the States with the Indian Dominion. A section of the Conference leadership, sought to subject the accession, accomplished by the Maharaja, to the implementation of the plebiscite envisaged by the resolutions of the Security Council in order to leave the option for the Muslims to exercise their choice on the issue of the accession of the State.

### Third Alternative

The British had tactily supported the vivisection of the Indian Princely States, during their rule over India and at the time of the transfer of power, they had stoutly refused to recognise the States as a part of the Indian Dominion and in fact, insisted upon the lapse of the Paramountcy to ensure the exclusion of the major States from the Dominion of India. In the Security Council, they refused to recognise the implications of the accession of Jammu and Kashmir to India in the wake of the invasion. They accepted to hold a referendum in the State, though they had stoutly opposed the right of the people in the Indian State to self-determination while they ruled India. The National Conference leaders, who had enough reason to oppose the accession to Pakistan, could be offered an alternative option to the accession of the State to either of the two Dominions, which ensured them protection from Pakistan and at the same time separated them from India.

By the fall of 1948, the leaders and senior cadres of the National Conference were seriously involved in a reconsideration of their outlook on the accession of the State. They had realised, so had the Hindus and the other minorities in the State, that the British and their allies were actively engaged in seeking to dismantle the traditional frontier of India in the north and ensure the extension of the Muslim power of Pakistan over the warm Himalayan hinterland, which spread from Afghanistan in the West to Sinkiang and Tibet in the east along the southern frontiers of Soviet Russia. The United Nations Commission for India and Pakistan, constituted to investigate into the antecedents of the dispute, following the invasion of the State, addressed itself much less to the task of conciliation, it was commissioned to perform. It concentrated more on the exploration of alternatives, on which a settlement on the issue of the accession of the State could be based. The Commission, in sheer disregard of its terms of reference, appointed a sub-committee to conduct a socio-economic and geographic survey of the State, more

specially its northern regions. The survey was a part of the Cold-War operations, undertaken to build a new alliance structure in which the State was integrated, as a counter weight to the new combine of Russia and China.

India was represented in the commission by Joseph Korbcl, the Czechoslovakian delegate, nominated by the Indian Government, evidently for the support India received from the Eastern European countries. Korbcl was however, secretly working for the west and later defected to take refuge in the United States. The Confidence, which the Government of India shared with him, was quietly conveyed to the intelligence agencies of several western powers. Treachery took its tool and gradually the Indian demand for the withdrawal of the forces of invasion from the State, was inverted and the Indian Government was pressurised to accept the demilitarisation of the State on the basis of a parity between the quantum of troops, India retained in the State and Pakistan would hold in the occupied territories. Korbcl and several other members of the Commission held long deliberations with the Conference leaders, not only on the demilitarisation of the State for the implementation of a plebiscite, but on the possibilities of seeking alternatives, which could provide the basis for a settlement of the dispute over the accession of State, acceptable to Pakistan as well as the Muslims of Kashmir. Several senior Conference leaders, some of whom had reluctantly agreed to the accession of the State to India in 1947, pleaded for an option, which excluded the State from India but did not necessarily involved its integration with Pakistan.

In September 1948, while India was under heavy pressure in the Security Council, the Interim Government mounted a severe villification campaign against Hari Singh, accusing him of obstructing the reforms which the Interim Government sought to undertake. The Interim Government denounced the Mysore model as unworkable and demanded the abdication of the Maharaja. The States Ministry sent a sharp rejoinder to Sheikh Mohammad Abdullah, disapproving of the trade

against the Maharaja, which the State's Ministry alleged, was bound to damage the Indian stand on Kashmir. Sheikh Mohammad Abdullah struck back and threatened to quit his office. The Conference demand for the removal of Hari Singh was highly motivated by considerations, other than those, the Conference leaders apparently emphasised. The events in the Security Council, had seriously impaired their commitments to the Indian unity and secular integration of the people of Jammu and Kashmir into the Union of India. They knew, that the Maharaja, with his prerogatives would not countenance any change, which affected the accession of the State to India.

The Government of India had shown little courage to resist the pressures in the Security Council which had foisted a resolution upon it, envisaging the demilitarisation of the State to hold a plebiscite in order to determine the finality of its accession. Aware of the fact that the National Conference could alone, muster support of the Kashmiri-speaking Muslims in favour of India, they did not dare to displease the Conference leaders.

### **Myth of Autonomy**

Pakistan followed a measured strategy of secretly supporting the Conference leaders in their claim to a separate and independent State. They knew that the demand for the abrogation of the accession to India, which would be a precondition for a separate political organisation for Jammu and Kashmir, would break up the National Conference.

The abandonment of the conference commitment to the accession of the State to India, would tear off the Kashmiri speaking Muslims from India as well as Pakistan, and perhaps, isolate them into a factional force which did not represent the majority of the people of the State. Vague assurances were received by the Conference leaders, through agents working in the State for Pakistan, that Pakistan would be ready to accept the accession of the State on a minimal transfer

of power, limited to defence and foreign affairs, leaving communications as well as the control over the State army, for the State to administer.

On 3 January 1949, only two days after the fighting came to an end in the State the Interim Government submitted a long memorandum to the States Ministry of the Government of India. Interestingly enough, the memorandum was signed, by Sheikh Mohammad Abdullah, and his colleagues in the Interim Government, including Girdhari Lal Dogra, and Sham Lal Saraf.

The Conference leaders wrote to the State's Minister, that since the National Conference would have to seek the support of the Muslims in the State for India in the proposed plebiscite, it would be required to put before them the Conference stand on the future of the State constitution as well as the freedom and independence it would enjoy within the Indian federal organisation. The Conference leaders informed the State's Minister that Pakistan had launched a virulent campaign against Maharaja Hari Singh, who represented autocratic Hindu rule over the Muslims. They pointed out to the State's Minister that the Muslims in Kashmir disdained the Dogra rule and considered it as the symbol of their subjection. They proposed that in order to countermand the propaganda of Pakistan that accession to India would perpetuate the Dogra rule, it would be necessary to remove Maharaja Hari Singh, banish him as well as his Maharani from the State, and to assure the Muslims that the future of the Dogra rule would be determined by the Constituent Assembly of the State.

The Conference leaders noted in their memorandum that Pakistan had offered to the Muslims of the State, complete independence in their internal affairs and assured them freedom to frame a constitution for the State, without any interference from the State of Pakistan. The memorandum noted that Pakistan had offered to vest all powers of the

government with the State, including the powers in respect of communications and the State army. The memorandum noted further that Pakistan had assured the Muslims in the State that powers in respect of only two subjects: foreign affairs and defence, transferred to it, would be exercised by the Dominion Government of Pakistan. The Conference leaders suggested that in order to neutralise the effects of the propaganda of Pakistan, it would be necessary for the Government of India to give an assurance to the Muslims that their internal freedom and internal independence would not be impaired, the control over the State army would be determined by an agreement between the Interim Government and the Government of India and the future constitutional organisation of the State would be finalised by the Constituent Assembly of the State.

For Patel, the proposal made by the Interim Government, were unacceptable. He rejected the proposals made by the Interim Government outright and informed the Conference leaders that the changes, which the memorandum envisaged, impinged upon the stipulations of the Instrument of Accession and the subsequent agreements on which the whole structure of the existing State government and its relations with the Dominion Government were based. He pointed out to the Conference leaders that the issues raised in the memorandum were beyond the powers of the States Ministry and therefore, his ministry was unable to give the memorandum any consideration.

The Conference leaders were flustered by Patel's refusal to countenance, the proposals made by them. They accused Patel of obstructing change, which sought the overthrow of feudalism in the Princely States. Rumours were set afloat by the Conference leaders that Patel supported the perpetuation of the Dogra rule in Jammu and Kashmir to alienate to Muslims of Kashmir from India and to pave the way for the eventual secession of the Kashmir Valley to Pakistan. The Conference leaders mounted a fresh attack on Hari Singh, accusing him

of interfering with the function of the Interim Government to impede the political and economic reforms, the Interim Government sought to undertake in the State.

Sheikh Mohammad Abdullah sent a separate communication to Nehru and informed him that, in case, the proposals made by the Interim Government were not accepted by the Government of India, the National Conference, would be unable to seek the support of the Muslims for India. He insisted upon the removal of Hari Singh, whose continuation as the ruler of the State caused resentment among the Muslims.

The threat had its effect and Nehru, Fearful of the campaign launched by the National Conference against the Maharaja, he convened a meeting in which the State's Minister, Sardar Patel, Maulana Azad and Gopalaswami Ayangar participated. A decision was finally reached to advise Hari Singh to leave the State for some time and entrust his authority to his son, Yuvraj Karan Singh. It was also decided that an assurance would be given to the Conference leaders that the future of the Dogra rule would be determined by the Constituent Assembly.

The Hindus reacted sharply against the attempts to neutralise the accession of the State and subject it to the verdict of the Muslim majority, half of which supported Pakistan and had joined the invading armies to carry death to their doors. They were already antagonised by the Interim Government, which had, right from the time it assumed office, carried on a vilification campaign against them, charging them of having supported the Dogra State. The Interim Government had eliminated them almost completely from the State Government and its decision-making clusters as well as its economic organisation. The Hindus voiced strong disapproval of the removal of Hari Singh from the State, whose presence, they claimed, was necessary for the security of the State and the protection of the minorities, who were devastated by the policies of the Interim Government.

Nehru acted on impulse and fearing that an open expression of Hindu resentment against the Interim Government, would cause embarrassment to the Government of India, he ignored the Hindu protest.

While the Indian leaders decided to remove Maharaja, Hari Singh from the State, Sheikh Mohammad Abdullah threw a bombshell amidst them. In a press conference with Michael Davidson of the influential English newspaper, *Scottsman*, he pleaded for the independence of the State, which he claimed would ensure friendship of the State with both the Dominions, and economic cooperation with them. Sheikh Mohammad Abdullah said: "Accession on either side cannot bring peace". He stated further: "We want to live in friendship with both Dominions. Perhaps a middle path between them, with economic cooperation with each, will be the only way of doing it. But an independent Kashmir must be guaranteed not only by India and Pakistan, but also by Britain, the United States and the other members of the United Nations." Sheikh Mohammad Abdullah made wild claims of having resisted fanaticism and communalism. He claimed to have pleaded with the two Dominions to enable the Muslims of Kashmir to gain freedom from the Dogra rule, before they would take a decision on the accession of the State. He stated: "During the communal rights in the Punjab after partition, we tried in our humble way to stem the wave of fanaticism. That is why I urged we should wait before deciding our affiliations. I pleaded with both the Dominions to help us first to win internal emancipation before asking us to choose. India replied by refusing to make a standstill agreement with the Maharaja, Pakistan did so. When during the crisis India accepted the Maharaja's accession, Pandit Nehru insisted that it was only provisional and people must decide later".<sup>8</sup>

The Press Statement was vicious in content and perhaps, for once, Sheikh Mohammad Abdullah threw away his caution to make a clean breast of how he thought about the future of the State. His press-statement, clearly reflected the fundamental

basis of the Conference outlook, which had abandoned its commitment to Indian unity. His assertion that he had pleaded for the emancipation of the Muslims from the Dogra rule before they would exercise their choice, in respect of accession was a wild claim, because the League as well as the British had insisted upon the reversion of the Paramountcy to the Princes, an arrangement which the Congress had also accepted. In none of the States, which had acceded to the two Dominions, the people's right to determine the accession of their State was recognised. Neither the State Minister, Sardar Patel, nor his Secretary, V.P. Menon, nor even the Viceroy ascertained the views of the people, in their negotiations with the Princes. The Muslims of Kashmir were not different from the rest of the States' people and the lapse of the Paramountcy operated with the same effect on them as it did on the people of the other Indian States.

The demand to seek the liberation of the Muslims from the Dogra rule was an astute move to forestall any attempt Hari Singh made to accede to India. Sheikh Mohammad Abdullah realised that Maharaja Hari Singh would eventually accede to India and so long the initiative remained in his hands, the Muslims would not be able to change his decision. He demanded the freedom of the Muslims from the Dogra rule as a subtle manoeuvre to shift the initiative from the Maharaja to the Muslims, who as he rightly pointed out in his press statement, would opt for independence, if they did not accede to Pakistan.

Nehru had a meeting with Sheikh Mohammad Abdullah a day after the latter's press statement was published in the *Scottsman*. He was, however, unaware of the press statement, Abdullah had made.

During the meeting, Nehru told Abdullah that the Government, of India disapproved of the accusations the National Conference had levelled against Hari Singh. He told Sheikh Mohammad Abdullah that the State of distrust

between the Maharaja and the Interim Government had adversely affected the Indian stand on Kashmir. Nehru apprised him of the decision his government had taken in regard to the removal of Hari Singh and assured him that the Constituent Assembly of the State, would, after it was convened, determine the future of the Dogra dynasty. Giving a resume of his discussions with Abdullah, Nehru wrote to Patel: "I had a long talk with Abdullah last night and again pointed out to him very forcefully how unfortunate and wrong his attitude was in this particular matter and how it was creating difficulties not only for us but for himself. He repeated his old complaints which included the very facts that our intelligence officer has stated." Nehru added: "The consequences are undoubtedly bad and I feel that it is no longer safe for us to allow, matters to drift. You will remember that we discussed this matter fully sometime ago in your house. Gopaldaswami Ayangar and others were present. Ultimately we came to the conclusion that the proper course to adopt was for us to take the attitude that it was for the people of Kashmir in the Constituent Assembly to decide about the future of the Maharaja. But even now it was highly desirable that the Maharaja should take some time of leave and not remain in Kashmir".<sup>9</sup>

Abdullah's press statement administered a shock to the Indian leaders. In consternation Patel wrote to Gopaldaswami Ayangar: "You have probably seen the interview by Sheikh Sahib to Micheal Davidson which was published in the *Scottsman* of 14 April 1949. A vehement exponent of accession of India seems to have been converted to an independent Kashmir. He wants absentee landlords, most of whom have gone to Pakistan to be expropriated. At the same time he has got, according to information brought here by Sethi of the Agricultural Ministry, large tracts of valuable irrigated lands vacant lest non-Muslims should settle down on them, and this is at a time when elsewhere we are asking for every inch of land to be cultivated."<sup>11</sup>

Ayengar too received a jolt by the press statement of Abdullah. He wrote to Patel: "My attention was drawn to this interview earlier in the day. It is a more astonishing performance, Kachru, who is going to Kashmir tomorrow, has just been to see me and I am sending a message through him to Sheikh Abdullah. I have asked him to tell the latter that I condemn the Sheikh's action and that I feel that what he has told Micheal Davidson and what the latter has published will have the most mischievous consequences both in India and abroad. I have asked him to inform the Sheikh that, reading between the lines, I suspect a plan, the first step of which is this blessing by the Premier of Kashmir of the idea of an independent Kashmir and this public expression of his conviction that accession to India will not bring peace, and the first step of which may well be perhaps one of the greatest betrayals in history."<sup>12</sup>

Later events proved that it was, indeed the greatest betrayal in history. The National Conference, drew closer to the idea of independence as pressures increased on India in the Security Council to accept demilitarisation of the State which allowed Pakistan to retain a larger part of its armies in the occupied territories. After India refused to accept demilitarisation on terms Pakistan laid down and the prospects of the plebiscite receded, the National Conference leaders began to canvas support for a third alternative, to secure the state a position of equidistance between the two Dominions.

Kachru conveyed to Sheikh Mohammad Abdullah, Ayengar's displeasure on his Press Conference. Sheikh Mohammad Abdullah who had received unflinching support from Kachru and the All India States' People's Conference during the Quit Kashmir movement, treated him with scant respect. He told Kachru he never meant what he had said in his press statement and he had only done some "loud thinking". Kachru, in accordance with Ayengar's advice, asked Sheikh Mohammad Abdullah to contradict Micheal Davidson's report. To his astonishment, Abdullah refused to retract his

statement. The negotiations for demilitarisation had bogged down to a stalemate because Pakistan demanded, (a) parity in the number of troops retained by the two countries on either side of the case-fire line (b) undisturbed control over the territories under its occupation and (c) the induction of a Plebiscite Administration in the State to implement the United Nations resolutions. The acceptance of the demilitarisation on the terms laid down by Pakistan tantamounted to handing over of the State to that country on a platter. The Conference leaders sought to use the United Nations intervention to prepare the ground for the independence of the State, exactly in the manner, the Muslim League had used the British to divide India to forge an independent Muslim State for the Muslims in India.

Abdullah's statement chastened no one in the Congress. None of the men in the Indian Government, inspite of their anger against the press interview of Sheikh Mohammad Abdullah, mustered enough courage to face the threat the Conference leaders posed to the State. Perhaps, still in the belief that the removal of Hari Singh, for which the Conference leaders pressed hard, would placate them, the Indian government hurried to dispose off the Maharaja and recognise the undisputed authority of the Interim Government over the State. The Indian leaders ignored completely the remonstrations made by the Hindus and the other minorities in the State against the ravages to which the Muslimisation of the State had exposed them and the dangers which were inherent in the communalisation of the society in the State. The Congress leaders, blinded by their sense of self-righteousness, chastised the Hindus for their inability to recognise the primacy of the Muslims in a state where the Muslims were in a majority. Quite in contrast, however, Nehru and other Congress leaders, rejected outright the Hindu primacy in the Hindu majority States in India and insisted upon the secular integration of the Indian people on the basis of equality, irrespective of religion, caste and creed.

Patel sent a communication to the Maharaja to come to Delhi without any further delay. "I hope Your Highness received message sent by Shanker on my behalf by telegram and through your assistant Private Secretary about necessity of coming as early as possible. I am sorry to note that there had been no response from Your Highness so far. Matters which I propose to discuss with you admit of no delay and I should therefore, be grateful if you come here as soon as possible."

The fateful meeting between Hari Singh and Patel took place in Delhi on 29 April 1949. Maharani Tara Devi was with the Maharaja. Patel apprised the Maharaja of the demand for his abdication, the National Conference had made. Patel told the Maharaja, that though the Government of India had not accepted the demand of the Conference leaders, yet it was found necessary to advise him to leave the State for some time and appoint his son, as the Regent in his place. Patel followed the same practice, the British had adopted to dispossess the Princes in India, whenever the interests of the Paramountcy had so dictated. Patel told Hari Singh that his absence would be in the interests of the State, particularly in the uncertainly the proposed plebiscite had created. Hari Singh was stunned. He emerged out of the meeting distraught and shaken.

Patel assured the Maharaja that his stay outside the State would be a "temporary phase" and he would return to his State after a settlement with regard to the impending plebiscite was finalised. Whatever measure of truth there was in Patel's assurances, the Maharaja had no alternative except to follow his advice. Hari Singh trusted Patel and he put his ship in Patel's hands. Patel drove him straight to the reefs. Hari Singh never returned home.

In distress, Hari Singh wrote to Patel: "I should like to say at the outset that I was completely taken aback by this proposal, but coming as it did from you, in whom I have

since the very beginning placed implicit trust and confidence and whose advice I have throughout followed on the many questions affecting me personally and my State both in the present and in future, I have been able somehow to adjust myself to it. I would not, however, be human if I did not express my sense of keen disappointment and bewilderment at having been called upon to make such a sacrifice of personal prestige, honour and position, when all along I have been content to follow, sometimes even against my own judgment and conscience, the advice in regard to the constitutional position in the State, which I have been receiving from the Prime Minister or yourself, sometimes against arrangements which were agreed to only a few months before."<sup>13</sup>

Hari Singh expressed disgust over the way, he had been subject to censure both inside and outside the State and complained to Patel. "I should" he wrote to Patel, "have had to be driven from position to position—each of which I thought I held on the advice of the State Ministry."

Posterity will alone judge Patel and the other Congress leaders for the fateful decision to remove Hari Singh, at a time, when a new form of Muslim separatism, more dangerous than the Muslim struggle for Pakistan in the British India, had made its appearance in the State. The Muslims in India had sought to separate from India to achieve their nationhood. The Muslims in Jammu and Kashmir, however, sought to separate from India to realise their Islamic destiny.

The later events proved that the Congress leaders, borne down by the burdens of the liberalist traditions, they had inherited from their British master, abandoned their caution out of a rather distorted sense of commitment to freedom. Hari Singh, the Indian leaders felt, was not needed in the sordid drama unfolded by the United Nations intervention. Nor were, perhaps, the Hindus and the Sikhs who had been butchered in the invasion and who were now being ravaged by the Muslimisation of the State, of any relevance to the

crisis.

Hari Singh did not ask Patel whether India would win the Plebiscite after he had left. If he had asked Patel, the bluff would have been called off.

Hari Singh sought an assurance from Patel that his temporary absence from the State would not be construed as a prelude to his abdication. "Sheikh Mohammad Abdullah should be clearly told", he wrote to Patel, "to stop the campaign of villification against me and to abandon all activities, both on his part and that of his followers, aimed at securing my abdication". Patel reiterated his assurance to Hari Singh. He added that the future constitutional organisation of the State would be evolved by the Constituent Assembly of the State, after it was convened." We have made the position quite plain to Sheikh Mohammad Abdullah", Patel wrote", and we hope there will be an end to the derogatory controversies centering round this matter as well as the derogatory references to Your Highness in the press and on the platform in the State. Your Highness will of course, appreciate that the future constitution of the State would be determined by the duly elected Constituent Assembly".<sup>14</sup>

Nehru apprised the Conference leaders of the agreement reached with Hari Singh. While they accepted the proposal that the Constituent Assembly of the State would determine the future of the Dogra dynasty, they did not endorse the removal of Hari Singh on temporary basis. They told Nehru that temporary removal of Hari Singh would not ally the fears of the Muslims, who identified the Dogra rule with their subjection to slavery. The Conference leaders, were perhaps, eager to eliminate the Maharaja, in order to pave the way for the installation of a Muslim as the head of the State, who would do be prepared to act on the behest of the Conference leaders.

### Delhi Conference

While negotiations between the State Ministry and the rulers of the Indian States were in progress, the States Ministry accepted that Constituent Assemblies would be convened in the States to draw up separate constitutions for their governments. The rulers agreed that the Constituent Assemblies of the States would follow a model constitution which would be framed under the aegis of the Constituent Assembly of India to ensure a broad uniformity in the constitutions of the States. "In November 1948, the States Ministry set up a Committee to frame a model Constitution which could be adopted by the States. By that time it became clear that unless proper guidance was given to the States in the matter of constitution-making, there would be so much variation in the pattern of the State constitutions that a veritable jigsaw puzzle would be the result. It was felt desirable that this should be done under the aegis of the Constituent Assembly." The convocation of the Constituent Assemblies in the States proved to be a difficult task and in many States and the Unions of the States, which had been formed by merger of States after their accession to India, the problems of integration were so complicated that Constituent Assemblies were convened in only two Unions of the States, Saurashtra and Travancore-Cochin and the Mysore State. In view of the delay in the convocation of the Constituent Assemblies in the States, the Premiers Conference held in May 1949, decided to entrust the task of the constitution-making in the States, to the Constituent Assembly of India. "In light of these difficulties the entire question was considered in May 1949, at a Conference of the Premiers of the various Unions and the States. This Conference decided not to wait until the Constituent Assemblies set up in all the Unions of the States had framed their respective Constitution. Especially in view of the fact that the guidelines for States could be left to the Constituent Assembly which would in view of the past commitments, function with the consent and concurrence of the individual States."<sup>15</sup>



A Committee was constituted by the Ministry of States, to suggest measures to implement the decision arrived in the Premiers Conference. The recommendations of the Committee were discussed with the Drafting Committee of the Constituent Assembly which finalised the amendments to be made to provide for the Indian States. The draft provisions for the States were then sent to the Constituent Assemblies of Sourashtra, Travancore-Cochin and Mysore and all other Rajparamukhs of the States.<sup>16</sup>

The Rajparamukhs issued the following proclamations accepting the draft provisions:

that the Constitution of India shortly to be adopted by the Constituent Assembly of India shall be the Constitution for.....State as for other parts of India and shall be enforced as such in accordance with the tenor of its provisions. That the provisions of the said Constitution shall as from the date of its commencement, supersede and abrogate all other constitutional provisions inconsistent therewith, which are at present in force in this State."

The proclamations were issued by all Rajparamukhs, including the Nizam of Hyderabad, the Maharaja of Mysore and the Maharaja of Jammu and Kashmir.<sup>17</sup>

The National Conference leaders did not accept the decision arrived in the Premiers Conference. They reiterated their position to convene a Constituent Assembly for the State of Jammu and Kashmir which would draft a separate constitution for the State. Consequently, a separate conference between the representatives of the Government of India and the National Conference leaders was convened in Delhi in May 1949, to finalise the broad basis on which the constitutional organisation of the State would be framed and its position in the federal union of India determined.

The Indian representatives proposed the application of the Constitution of India to the State, except, that (a) the provisions of the Constitution of India with regard to the State governments would not be extended to the State; (b) and the division of powers between the State and the Union would be so devised as to suit the peculiar historical and political antecedents of the State. They proposed the application of the Constitution of India to Jammu and Kashmir, particularly in respect of the territorial jurisdiction of the Union of India, citizenship, fundamental rights and related constitutional guarantees, principles of state policy, union judiciary, the elections and powers to deal with the emergencies, the Constituent Assembly envisaged for India. They further proposed the application of the Central List of the Seventh Schedule of the Constitution of India in which the Constituent Assembly proposed to include subjects over which the Union Legislature would legislate. The Seventh Schedule, proposed to be appended to the Constitution of India, enumerated powers for the Union and States and powers over which the Union and the States would have concurrent jurisdiction.

The National Conference leaders administered a jolt to the Indian leaders, when they expressed their inability to accept the application of any provisions of the Constitution of India to the State. They suggested that Jammu and Kashmir should be placed outside the framework of the Constitution of India, and its relations with the Union should be governed by the terms of the Instrument of Accession, which, in view of the dispute in the United Nations, could not be superseded by any fresh agreements between the State and the Indian Dominion till the final disposition of the State in regard to accession was not determined. They refused to accept the application of any provision of the Constitution of India to the State, which did not conform to stipulations of the Instrument of Accession and which had not been approved by the Interim Government. The Conference leaders, actually insisted upon the acceptance of a separate set of instruments,

independent of the Constitution of India, which would govern the relations between the State and the Union, in view of the separate, social and cultural identity of the State and its history. In effect, they conveyed to the Indian leaders, that the Muslim majority State that the Jammu and Kashmir was, could not form a part of the Indian constitutional organisation.

The Conference leaders reiterated their demand for the restoration of the administrative and operational control of the State army to the Interim Government. They claimed that after the emergency had ended and the Indian armies withdrawn from the State, the State army would take charge of the defence of the State. They sought to convey to the Indian leaders that the deployment of the Indian troops in the State was not a part of the accession and the powers of the Indian Government in regard to the defence of the State, did not extend over the State army. Presumably, the Conference leaders, believed that the Indian troops had been deployed in the State to fight the invasion and after that was achieved, they would be withdrawn and the defence of the State would be entrusted to the Muslim ranks of the State army, which the Interim Government would raise in the meantime.

Sheikh Mohammad Abdullah repeated old allegations that during the Dogra rule, the State army had always been a close preserve of the Hindu Rajputs, excluding the Muslims from its ranks. The Muslims, however, formed almost half the strength of the State army. Besides far larger of their numbers were recruited to the British Imperial Troops. The entire cadre of the Gilgit Scouts was constituted of the Muslims. In fact, the Muslim officers and ranks of the State army, the ex-soldiers of the Imperial Troops and Gilgit Scouts proved the undoing of the Dogra State, as they formed a formidable frontline of the invading armies of Pakistan, which stormed into the State in 1947.

Nehru and the other representatives of the Government of India were flustered by the proposal the Conference leaders

made. They were particularly disparaged by proposals, the Conference leaders made to exclude the State from the entire constitutional organisation of India. They rejected the National Conference proposals outright and insisted upon the inclusion of the State in the constitutional organisation of India, more specifically in respect of the territorial jurisdiction of the Union of India, Indian citizenship, the fundamental rights and the related legal guarantees, federal judiciary, the directive principles of the state policy and the emergencies. Nehru emphasised the necessity of formulating a uniform bill of rights for all the people of India, including the people of Jammu and Kashmir, irrespective of creed and caste. He told the Conference leaders that he would not countenance any situation in which any people in India, would be deprived of their rights and safeguards which the Constitution of India envisaged. "Nehru laid great stress on the application to the State, of the principles of state policy of the Constitution of India, which, he claimed the Constituent Assembly of India had evolved with great pride, and which promised the people of India, social justice, freedom from want, protection against exploitation, education, the eradication off untouchability, protection of children and better standards of life."<sup>18</sup>

The Indian leaders rejected the contention of the Conference leaders for the restoration of the administrative control over the State army to the Interim Government. They told the Conference leaders that the Dominion Government had assumed all authority over the defences of the State and control over the State armies. They pointed out to the Conference leaders that the transfer of the State army to the Dominion Government was accomplished by the Instrument of Accession and the responsibility of the defence of the State rested with the Government of India and not with the Interim Government. They categorically refused to accept the proposals to return the State army to the control of any local government, even after the emergency caused by the invasion was brought to an end.

The Conference leaders, had loudly complained that the Muslims in the State were not recruited in the State army. The allegations were far from true. However, Nehru assured the Conference leaders that all people in India, including the people in the State, would enjoy equality of opportunity, guaranteed by the Constitution of India and therefore, the Muslims in the State would not suffer any discrimination in respect of their recruitment to the State army.

An agreement was reached in the Delhi Conference, which envisaged the inclusion of Jammu and Kashmir in the constitutional organisation of India. The agreement stipulated that the provisions of the Constitution of India in respect of the territories of the Union, citizenship, fundamental rights and related safeguards, principles of state policy, the jurisdiction of the federal judiciary and emergency powers, would extend to the State, subject to the modification that no such provision would impinge upon the domiciliary rights envisaged by the State-Subject rules in force in the State and the economic reforms the Interim Government would undertake. The agreement further stipulated that the State army would be merged with the Indian defence forces. In regard to the division of powers between the Union Government and the State, the agreement stipulated that the Union would exercise powers in regard to the subjects transferred to the Dominion Government by virtue of the Instrument of Accession and such other matters as would be transferred to the Union by the decision of the Constituent Assembly of the Jammu and Kashmir State after it was convened.

Hardly had the conference concluded, the National Conference leaders raised fresh controversies, in respect of several stipulation of the agreement. Nehru was dismayed. However, he clarified the position of the Government of India and wrote to Sheikh Mohammad Abdullah:<sup>19</sup>

<sup>19</sup> "1. In the course of talks at Sardar Patel's residence on

15 and 16 May 1949, between some of my colleagues and me and you and your colleagues, important issues raised by you in regard to the future of Jammu and Kashmir were discussed.

2. Among the subjects that were discussed were: (i) framing of the Constitution of the State; (ii) the subjects in respect of which the State should accede to the Union of India; (iii) monarchical form of government in the State; (iv) the control over the State Forces; and (v) the rights of the citizens of the State of equality of opportunity for service in the State army.
3. As regards (i) and (ii) it has been settled policy of the Government of India, which on many occasions has been stated both by Sardar Patel and me, that the Constitution of Jammu and Kashmir State is a matter for determination by the people of the State represented in a Constituent Assembly convened for the purpose. In the special circumstances of the State of Jammu and Kashmir the Government of India have no objection to the Constituent Assembly of the State considering the question of the continuance of the association of the State with a constitutional monarchy.
4. In regard to (ii) Jammu and Kashmir State now stands acceded to the Indian Union in respect of three subjects, namely foreign affairs, defence and communications. It will be for the Constituent Assembly of the State, when convened, to determine in respect of what other subjects the States may accede.
5. Regarding (iv) Both the operational and administrative control over the State Forces has already, been with the consent of the Government of Jammu and Kashmir, taken over by the Indian Army. The final arrangements in this connections,

for the duration of the present emergency, including financial responsibility for the expenditure involved, were agreed to between us on 16th instant.

6. As regards (v) the citizens of the State will have equality of opportunity for service in the Indian Army. Under Article 10 of the draft of the new constitution as passed by the Constituent Assembly of India, equality of opportunity for employment under the State, including employment in the Indian Army, is declared to be amongst the fundamental rights of all Indian citizens.

Shortly after the Delhi Conference, Nehru visited Srinagar, where he had further discussion with Sheikh Mohammad Abdullah on the position of the State in the federal organisation of India. Nehru assured Sheikh Mohammad Abdullah that in the division of powers between the Union and Jammu and Kashmir, the State would be ensured complete autonomy and the Union Government would exercise authority in respect of the subjects mentioned in the Instrument of Accession i.e. defence, communications and foreign affairs. He assured Abdullah that the future constitutional organisation of the State would be evolved by the Constituent Assembly of the State which would be convened by the Interim Government on the basis of universal adult franchise. He told Abdullah that the future of the Dogra rule would also be determined by the Constituent Assembly.

Sheikh Mohammad Abdullah again raised the issue of the State army and the recruitment of Muslims in its ranks. Nehru assured the Conference leaders that in the recruitment to the State troops, which had been taken over by the Indian army, no one community or people would suffer discrimination on the basis of religion, caste and place of birth. Nehru explained to the Conference leaders that the Jammu and Kashmir State was a part of the territories of India and therefore, it has to be included in the territorial jurisdiction of the

Indian Union, the Constitution of India created. He told the Conference leaders that the people of the State could not be excluded from the Indian citizenship, nor could they be deprived of the rights and related legal safeguards, the Constitution of India enshrined. He restated the stand of the Government of India, that it was necessary to empower the Union to deal with emergencies arising out of war and rebellion as well as internal disorder, in all the erstwhile princely States, which had acceded to India in view of the dangers, the unity of the country faced. Nehru told the Conference leaders that such powers assumed by the Government of India, in respect of the States were implied in their accession to the Dominion of India.

The Conference leaders presented a demeanour of calm satisfaction with the discussion Nehru had with them, but underneath the surface, they harboured deep distrust about the outcome of the Delhi Conference. They bided time and waited for Hari Singh to leave the State. Hari Singh was the Rajpramukh of the State and Abdullah was apprehensive of his willingness to enter into any agreements with the Government of India to accept the extension of the Constitution of India to the State.

Nehru apparently content with the settlement he had reached with the Conference leaders, informed Patel to apprise Hari Singh of it. At no stage in their confabulations with the National Conference leaders, did the Congress leaders consult Hari Singh about the arrangements made with the Conference leaders about the future constitutional organisation of the State. Nor were the minorities, the Hindus, Sikhs and the Buddhists, who harboured serious doubts about the policies of the Interim Government and strongly opposed the exclusion of the State from the Constitutional organisation of India, taken into confidence by them. Nehru wrote to Patel: "I hope that this will be an end to the squabbles that have been going on in public. This has been impressed upon Sheikh Mohammad

Abdullah and I am pointing out to him again in a separate letter". He added: "I hope you will explain to the Maharaja and the Maharani as well as the Yuvraj, the agreement arrived, at between us and Sheikh Abdullah and his colleagues. The written agreement rightly does not say anything about the Maharaja's going out of the State. But we have naturally to abide by it."<sup>20</sup>

Due to the turbulence that followed the accession of the State and the long conflict between Hari Singh and Interim Government, Jammu and Kashmir remained unrepresented in the Constituent Assembly of India. The States were allotted 93 seats in the Constituent Assembly out of which Jammu and Kashmir was allotted 4 seats. The Interim Government wanted to nominate all the four representatives without taking into consideration the minorities and their interests. Hari Singh disagreed. He was finally persuaded to nominate the representatives of the Interim Government to the Assembly. The Interim Government nominated Sheikh Mohammad Abdullah, Mirza Afzal Beg, Maulana Masoodi and Moti Ram Baigra. Hari Singh was in Dehradun and the nominations were sent to him for his approval. The nominees of the National Conference joined the Constituent Assembly of India on 6 June 1949.

The Conference had triumphed. Both Beg and Masoodi were proteges of the Conference loyal to Abdullah. They were not committed to the unity of India. Moti Ram Baigra, an obscure Hindu political activist, who was thrown into prominence by the upheaval caused by the invasion in 1947, had little acumen to influence his colleagues.

On 9 June 1949, Maharaja Hari Singh announced by a proclamation his decision to leave the State and appoint his son, Yuvraj Karan Singh the Regent of the State. Soon after Hari Singh left the State, the leaders to the National Conference, who were now in complete control of the Government of the State, prepared ground to repudiate the agreement they had

reached with the Congress leaders in May. Several closed door meetings, in which Muslim leaders of the Conference alone were invited to join, were convened in Srinagar to reconsider the terms of the agreement the Conference leaders had accepted. "Most of the meetings were secretly organised, and were confined to the Muslim leaders of the Conference, the Hindus and Sikhs being excluded. Prominent and influential Muslims who had opposed the accession of the State to India and senior Muslims officers of the State Government, who had opposed the National Conference, were specially invited to attend these meetings. Many among them were in clandestine contact with the Azad Kashmir authorities on the other side of the cease-fire line and worked for the intelligence agencies of Pakistan.

The opinions expressed in these meetings reflected many disquieting trends. The trends indicated:

- (i) that the National Conference leadership should not oppose the proposed plebiscite in the State and accordingly should not accept the inclusion of the State into the territorial jurisdiction of India;
- (ii) that India was dominantly a Hindu majority State and the Muslims of Kashmir would lose their identity if the State was integrated into the constitutional organisation of India in which the Hindus would always enjoy dominance;
- (iii) that the Muslims majority character of the State should not be impaired and the only safeguard to protect it would be to keep the State out of the constitutional organisation of India;
- (iv) that the convocation of the Constituent Assembly would be premature and it should be convened after the final decision with regard to the accession was reached, and the part of the State on the other side of the cease-fire line was reunited with the State; and