

- (v) the Interim Government should draw up a constitution for the State for the time being.

The Conference leaders, largely agreed with the views that the State should not be integrated in the territorial jurisdiction of the Union of India or its constitutional organisation. Most of the Conference leaders emphasised that the Muslim majority character of the population of the State, could be the only basis for any durable relations between the State and the Government of India. The Conference leaders evolved several 'basic principles', on which, the Conference leaders claimed, the future relations between the Union of India and the State could be based. The principles underlined:

- (i) the State would not be included in the territorial jurisdiction of the Union of India, nor would it be included in its constitutional organisation;
- (ii) the constitutional relations between the Union of India and the State would be confined to stipulations of the Instrument of Accession;
- (iii) the administrative control over the State armies should be restored to the State Government;
- (iv) the Constituent Assembly of the State would draw up the constitution of the State which would envisage provisions pertaining to the nature of judicial review, the quantum of individual freedom and rights and the related legal guarantees, principles of the state policy and elections to the representative bodies envisaged by the constitutional; and
- (v) the Constituent Assembly of the State would not be vested with any powers to change and modify the existing constitutional relations between the Union of India and the State.

Article 306-A

The Drafting Committee of the Constituent Assembly of

India drew up a separate set of constitutional provisions for the Jammu and Kashmir State. The provisions were embodied in the draft Article 306-A of the Constitution of India. The provisions of the draft Article 306-A were based upon the principles which had been agreed upon in the Conference held in Delhi in May 1949. In September 1949, the draft provisions were sent to the Conference leaders for their consideration. The draft provisions stipulated:

- (i) the provisions of the Constitution of India in regard to the other acceding States would not apply to Jammu and Kashmir;
- (ii) the provisions of the Constitution of India in respect of:
 - (a) territories of the Union of India,
 - (b) Indian citizenship;
 - (c) fundamental rights and related Constitutional safeguards; and
 - (d) the principles of State policy, would be extended to Jammu and Kashmir;
- (iii) the other provisions of the Constitution of India would apply to the State after mutual agreement between the Indian Government and the State Government;
- (iv) the division of powers between the Union and the State would be governed by the stipulations of the Instrument of Accession, and the provisions of Seventh Schedule of the Constitution of India, dealing with division of powers between the Union Government and the provinces and the federating States, would not apply to Jammu and Kashmir.
- (v) Such other subjects as would be agreed upon between the Union Government and the State Government would be transferred to the Union by a proclamation of the President of India;
- (vi) Powers would be vested with the President of

India to modify, restrict or suspend the operation of the provisions of Article 306-A on the recommendations made by the Constituent Assembly of Jammu and Kashmir State.

The Conference leaders had already made up their mind to repudiate the agreement reached with the representatives of the Government of India in May 1949. They referred the draft provisions, envisaged in the draft Article 306-A, to the Working Committee of the Conference to consider it. The Working Committee sat through several sessions and as was expected, rejected the draft provisions. The Working Committee refused to accept that the provisions in regard to Jammu and Kashmir would be transitional in nature and would be subject to the modifications which were brought about by the Constituent Assembly of the State. The Committee disapproved of the application of any provisions of the Constitution of India to the State, except those corresponding to the Instrument of Accession. The Committee expressed fear that the application of the provisions of India, in regard to the Indian citizenship, fundamental rights and related legal guarantees, would prejudice the domiciliary rules in regard to the State-Subjects, in force in the State.

Almost all the Working Committee members disapproved the agreement reached between the Conference leaders and the Central leaders at Delhi in May, and characterised it as a surrender by the Conference leaders on the issue of the freedom of their people which they claimed "was won after great sacrifices and could not be bartered away, by anyone, however high and mighty he was". Evidently, the members of the Working Committee gave expression to the decisions their leaders had already taken.²¹

The Hindu and the Sikh members of the Working Committee watched its proceedings in helplessness. They kept quite out of sheer self-interest for in the decision making clusters of the National Conference they wielded little

influence. Few of the Conference leaders registered their disagreement with the decisions of the Working Committee. Members of the Working Committee, representing the Jammu province, knew well that the people of Jammu would not support any move to exclude the Jammu and Kashmir State from the constitutional organisation of India. But they too concurred with the decision of the Working Committee without any protest.

Sheikh Mohammad Abdullah communicated the decision of the Working Committee to Gopalaswami Ayangar on 12 October 1949. Abdullah informed Ayangar that the Working Committee of the Conference did not approve the Constitutional provisions incorporated in draft Article 306-A. "He informed Ayangar that the Working Committee had disapproved of the application of the Constitution of India to the State except in respect of those provisions which corresponded to the terms of the Instrument of Accession, Abdullah informed Ayangar that the Working Committee expressed fears, that the application of the Provisions of the Constitution of India, pertaining to the Indian citizenship, the fundamental rights and the Directive Principles of the State Policy would prejudice the domiciliary State-Subject Rules. Sheikh Mohammad Abdullah sent an alternative draft to Gopalaswami Ayangar, which stipulated the application of only such provisions of the Constitution of India to the State, as corresponded to the stipulations of the Instrument of Accession". He added a stipulation to his draft, which defined the State Government as "the Ruler of the State acting on the advice of the Council of Ministers appointed under the proclamation of the Maharaja dated 5 March 1948".

The communication from Sheikh Mohammad Abdullah flustered Ayangar, who was confronted with a complete reversal of the stand the National Conference had taken earlier. He had a long meeting with Abdullah and Mirza Afzal Beg. He told the Conference leaders that the draft Article 306-A incorporated provisions, which envisaged a separate

Constituent Assembly for Jammu and Kashmir State, to frame a constitution for its government. He assured them that the State Government would be reserved all the powers, except those transferred to the Union Government by the Instrument of Accession. "However, he told the Conference leaders, that the "Accession of the State underlined that the State would be brought with the broad structure of the imperatives, the Constitution of India envisaged." Ayangar told them that the draft was strictly based upon the stipulations of the agreement with Conference leaders, reached in the Delhi Conference in May 1949, and there was nothing in it which impinged upon the authority of the State.

The Conference leaders, refused to accept any change in the stand the Working Committee had taken on the draft provisions and told Ayangar that they were not in a position to accept any modification of the decision of the Working Committee. They told Ayangar, rather bluntly, that "the State had acceded to India in regard to only three subjects: foreign affairs, defence and communications and retained its independence in all other aspects". The Conference leaders told Ayangar, rather bluntly, that the Muslims in Jammu and Kashmir had supported the accession of the State to India on the understanding that they would be ensured a political organisation, which would give expression to their aspirations. The Conference leaders told Ayangar that since they were responsible to the people, they would not be able to accept the draft provisions embodied in Article 306-A.

Ayangar fumbled. He did not possess the determination to deal with the Conference leaders with any firmness. His outlook was confined to the colonial traditions of the British empire in India which, during his life, he had spared no efforts to serve. Nehru was away in the United States. Ayangar dreaded to antagonise Sheikh Mohammad Abdullah and the other leaders of the National Conference. The Indian leaders, still believed that the National Conference leaders held the key to the plebiscite in the State and therefore, the Government

of India could not afford to estrange them.

Ayangar made a fateful change in the draft provisions of Article-306-A and deleted fundamental rights and the legal safeguards from the provisions of the Constitution of India, proposed to be made applicable to the State. He prepared a new draft, which envisaged the application of only the provisions, of the Constitution of India, pertaining to the territorial jurisdiction of the Union, and the Indian citizenship, to the State. Ayangar wrote to Sheikh Mohammad Abdullah: "I enclose a draft of Article 306-A with the language of it readjusted so as to meet practically all your points". He added, "I do hope you will appreciate the gesture I am making. If you are agreeable to this new draft being substituted for the one of which the Drafting Committee has already given notice, I shall ask the Drafting Committee to give notice of this draft in substitution of the other one. Personally I should like you to move this draft yourself in the House. We shall be there to support you, and I hope the debate would be maintained at such a high level that a report of it when cabled to America, will have an effect on the discussions of the Kashmir problem, that may be there going on which will be of the maximum help to Pandit ji."²²

The Indian leaders had learnt no lessons from the reverses they had faced in the United Nations. How could a debate on the constitutional provisions, which virtually excluded Jammu and Kashmir from the constitutional organisation of India on the basis of the Muslim majority character of the population of the State, help Nehru in his deliberations with whoever he met in the United States of America? In fact, the exclusion of the Jammu and Kashmir from the secular political organisation of India, was a triumph for Pakistan, since the acceptance of the separate Muslim identity of the Jammu and Kashmir tantamounted to the tacit recognition of the League demand for a separate Muslim nation in India. "If Ayangar sought to please Nehru, he should have realised that no one in America would have applauded him for having

framed the draft provisions of Article 306-A and having condemned the people of the State, particularly the Hindus, the Sikhs and the Buddhist minorities, to servitude and suffering. Ayangar had served the State as the Prime Minister to Maharaja Hari Singh for more than six years and he was aware of the intricate balances of community demands, regional pressures and amorphous class interests which characterised the political sociology of the State. He, as well as Nehru, had ample experience of the ruthless severity with which the Conference leaders had sought to reorganise these balances to establish fresh alignments which ensured political precedence for the Muslims.²³

Ayangar wrote to Patel about the modifications, he had made in the draft provisions of Article 306-A. Perhaps, aware of the adverse reaction of the States Ministry, Ayangar claimed that the revised draft provisions did not prejudice the basic ingredients of the draft Article 306-A. Gilding the perfidy he wrote to Patel; "Sheikh Abdullah and two colleagues of his had a talk with me for about an hour and a half this morning. It was a long drawn out argument and, as I told you this morning, there was no substance at all in the objections that they put forward to our draft. At the end of it all, I told them that I had not expected that, after having agreed to the substance of our draft both at our house and at the manner they were attempting to do so. In answer, Sheikh Abdullah said that he felt very grieved that I should think like so but that in the discharge of his duty to his own people he found it impossible to accept our draft as it was." Ayangar wrote to Patel; "I have since thought over the matter and dictated a draft which, without giving up essential stand we have taken in our original draft readjusts it, in minor particular in a way, which I am hoping Sheikh Abdullah would agree to."

Patel did not favour the changes Ayangar had brought about in the draft provisions. He did not approve of the omission of the fundamental rights and related legal safeguards and the Directive Principles of the State Policy from the

provisions of the Constitution of India, which were proposed to be extended to Jammu and Kashmir. Patel visualised the consequences to which the deletion of the fundamental rights and Directive Principles of the State Policy, from the draft approved by him and his colleagues as well as the Conference leaders, would lead to. "I find" he wrote to Ayangar reproachfully, "there are some substantial changes over original draft, particularly in regard to the applicability of fundamental rights and Directive Principles of State Policy. You can yourself realise the anomaly of the State becoming a part of India at the same time not recognising any of the provisions." Patel pointed out that he did not like the way Sheikh Mohammad Abdullah had wriggled out of his commitments to the fundamental principles, which he had agreed to in a meeting with him and his other party colleagues. "I do not at all like any change", Patel wrote to Ayangar, "After our party had approved of the whole arrangement in the presence of Sheikh Sahib, himself. Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people of course, he owes a duty to India or the Indian Government, or even on a personal basis, to you and the Prime Minister who have gone all out to accommodate him". Patel, categorically refused to recognise the prudence of the changes Ayangar had made in the draft. He wrote; "In these circumstances any question of my approval does not arise. If you feel the right thing to do, you can go ahead with it."²⁴

Ayangar, perhaps, keen to arrive at an agreement with the Conference leaders, lest he fell from the favour of Nehru, ignored the machinations of the Conference leaders, who were actually seeking to shift from one position to another to ensure that the State was not included in the Union of India, particularly in its territorial jurisdiction as well as its constitutional organisation. To his discomfiture, however, the Conference leaders, did not approve his revised draft as well. Sheikh Mohammad Abdullah wrote to Ayangar, that neither he nor his colleagues in the National Conference

would accept the revised draft provisions. The National Conference, Sheikh Mohammad Abdullah informed Ayangar, could not accept any provision of the Constitution of India, except within the framework of the stipulations of the Instrument of Accession. He sent an alternative draft, prepared by Mirza Afzal Beg, to Ayangar. Beg's draft did not envisage the application of any provision of the Constitution of India to Jammu and Kashmir. Sheikh Abdullah wrote to Ayangar that the alternative draft "went far beyond the sphere in respect of which we had acceded to India". Beg hurried to give notice to the Constituent Assembly of an amendment in draft Article 306-A, which in effect, sought to restrict the draft provisions to the terms of the Instrument of Accession.

The provisions of the draft proposed by the Conference had a similar portent. The Conference leaders sought to create a separate State of Jammu and Kashmir on the territories of India, which did not form a part of Indian Union, its territories, its political organisation and its national identity. In accordance with their draft, the relations between Jammu and Kashmir and the Indian Union would be governed by the terms of the Instrument of Accession and since the Instrument of Accession was subject to a plebiscite, the future relations of the State with India would, obviously be subject to the vote of the Muslims of the State.

The Conference leaders were involved in the most subtle and treacherous manoeuvre, which was aimed to use the proposed plebiscite as a lever to pull out the State from India. They presumed that the United Nations resolutions had rendered the Instrument of Accession, accomplished by Hari Singh, into a conditional act and they could force on India, a political settlement, which would ensure the independence of the State, with its borders guaranteed by Pakistan and its western allies. The national Conference leaders, planned to found a second Muslim State in India, which indeed, was more Muslim than the Muslim homeland of Pakistan.

Ayangar met the Conference leaders and tried to persuade them to accept his draft. The Conference leaders refused to relent. Ayangar drew up a fresh draft in consultation with Mirza Afzal Beg. Sheikh Mohammad Abdullah, who had deputed Beg to negotiate with Ayangar, pulled the strings behind the curtain. The revised draft prepared by Ayangar, stipulated:

- (i) no provisions of the Constitution of India would apply to the State, except that the State would be included in First Schedule of the Constitution of India, which defined the territories of the Union of India;
- (ii) the division of powers between the Indian Union and the Jammu and Kashmir State would be determined in accordance with the terms of the Instrument of Accession;
- (iii) the Constituent Assembly of the State would be empowered to recommend to the President of India, the termination of the operation" of the special constitutional provisions pertaining to the State;
- (v) the State Government would be construed to mean the Maharaja acting on the advice of the Council of Ministers appointed under his proclamation dated 5 March, 1948.

The draft provisions drawn up by the Ayangar and Beg were circulated in the Constituent Assembly of India on October 16, 1949. Several members of the Constituent Assembly objected to the definitions of the State Government on the ground that the definition virtually envisaged an Interim Government in perpetuity. They pointed out to Ayangar that the draft provisions excluded all subsequent State Governments, from the ambit of the Constitution of India. Ayangar modified the explanation to redefine the Government of the State," as the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting

on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March 1948."

Ayengar informed the Conference leaders of the change in the definition of the States Government on the morning of 17 October. The Conference leaders reacted sharply against the change in the definition of the State Government and informed Ayengar that they would in no case, accept any modification in the provisions. Ayengar assured the Conference leaders that the revised definition of the State Government was deemed necessary to remove the anomaly in draft provisions of Article 306-A, which envisaged a Interim Government in perpetuity. The Conference leaders, however, refused to accept any change in the definition of the State Government, they had proposed. Beg had surreptitiously, incorporated the explanation defining the State Government in the draft to forge the Interim Government into an instrument of authority which was not subject to any imperatives of authority created by the Constitution of India. Hari Singh was gone. The Interim Government was law unto itself.

The Conference leaders threatened Ayengar that if the changes in the draft provisions were not withdrawn, they would move an amendment, of which they had given notice to the Constituent Assembly. Ayengar was caught in a quandry, but he was unable to oblige the Conference leaders. Ayengar moved Article 306-A for the consideration of the Assembly the next day. "The Conference leaders sulked away and did not join the debate on the draft provisions. They joined the deliberations of the Assembly after Ayengar had already delivered a part of his speech." Inside the House, the Conference leaders sat glumly watching the proceedings in grim silence. After Ayengar had completed his speech, the President of the Assembly "waited for a minute or two for members to rise for making speeches before he put the draft to the House". The members of the Assembly expected the Conference leaders to join the debate on the draft provisions,

which they believed would provide enough proof of the sincerity of the Government of India to accommodate a Muslim majority State, in its federal organisation. No one knew that the Conference leaders, had initiated a process which was aimed to secure a constitutional organisation for the State, independent of the Indian Union as well as the Indian State. "The Conference leaders did not rise to speak and did not move any amendment to the draft. The draft was adopted by the Assembly without any dissent".²⁵

The Conference leaders believed that Ayengar and the other Indian leaders would not dare to disregard their stand on the draft provisions. Angered up by the turn of the events in the Constituent Assembly, Sheikh Mohammad Abdullah sent a sharp rejoinder to Ayengar demanding the repeal of the decision, the Constituent Assembly had taken. He threatened to resign from the Assembly along with the other members representing Jammu and Kashmir, if the Assembly did not revoke its decision on the provisions in respect of the Jammu and Kashmir State. "As I had told you before," Sheikh Mohammad Abdullah wrote to Ayengar, "I stand my colleagues have been extremely pained by the manner in which the thing has been done, and, after careful consideration of the matter we have (arrived) at the conclusion that it is not possible for us to let the matter rest here. As I am genuinely anxious that no unpleasant situation should arise, I would request you to see if even now something can be done to rectify the position." Abdullah warned Ayengar, "In case I fail to hear from you within a reasonable time, I regret to say that no course is left open to use but to tender our resignation from the Constituent Assembly."²⁶

For Ayengar, the communication from Abdullah was a bolt from the blue. "He had gone to the farthest limits to accommodate their views. He could not retrieve the ground he had lost, but it was evident that he could not go any further to appease the Conference leaders".²⁷

The exclusion of the State from the constitutional organisation of India, did incalculable harm to India as well as the Jammu and Kashmir State, and the damage could not be repaired during the years that followed. It led to the communalisation of the society and government in the State, which in the long run prepared the foreground for the consolidation of Muslim separatist and secessionist forces. Ayangar was unable to see beyond his time.

Ayangar wrote to Abdullah that he and his colleagues could take such steps as the rules of the House allowed for any rectification of the draft provisions. But he forewarned them that their resignation from the Constituent Assembly would have serious repercussions in Kashmir as well as in the country as a whole. "I do not consider", he wrote to Sheikh Mohammad Abdullah, "that there is any justification for your entertaining any idea of resignation from the Constituent Assembly. The step, if taken, would produce the most unwelcome and serious repercussions in Kashmir, India and the World, and I must ask you to communicate with the Prime Minister before you decide on anything like it. I shall pass on to him your letter and this reply of mine to it."²⁸

Ayangar wrote to Sheikh Mohammad Abdullah, "It is true that after having unsuccessfully attempted along with Maulana Azad, to persuade you to agree willingly to substitution of the words, "for the time being" for the word, "appointed" I did move the Article with the amendment after obtaining the permission of the President to do so. The whole House accepted this. I am sorry that you could not move any amendment of your own against the one, I moved. There was, however, nothing to prevent you or any of your colleagues from opposing the amendment that I did move, and as a matter of fact, we were looking forward to your making a speech on the whole of the Article and believe the President waited for a minute or two for members to rise for making speeches before he put the draft article to the House."²⁹

The Conference leaders did not resign from the Constituent Assembly. But, after the draft Article 306-A, was adopted by the Constituent Assembly, they set out to wreck the constitutional arrangement envisaged by it. The Conference leaders were opposed to the inclusion of the Jammu and Kashmir State in the territories of the Indian Union and actually visualised a separate territorial and constitutional organisation of the State, which was linked with the Union of India by the Instrument of Accession. They sought to block the passage of the draft article 306-A by insisting upon an Interim Government in perpetuity. In the days that followed, the Conference leaders, spared no efforts to prepare the ground for the exclusion of the State from the territorial jurisdiction of India as well as the provisions of the Constitution of India, extended to the State by virtue of Article 306-A.

State Apart

The draft Article 306-A was renumbered Article 370, at the revision stage. On 25 November, 1949, Karan Singh, the Regent of the State issued a proclamation by virtue of which he ordered that the relations between the State and the Union of India would be governed by the Constitution of India.

The provisions of the Constitution of India applicable to Jammu and Kashmir were divided into two parts; Article I and Article 370. Article I described the territories of the Union of India and its constitutional jurisdiction. Jammu and Kashmir was listed in the First schedule of the Constitution of India along with the other acceding States and the Provinces of the Dominion of India, which were constituted into the Indian Union.³⁰

Article 370 envisaged an absolute limitation on the application of the provisions of the Constitution of India to the State. The powers of the Parliament to Legislate in regard to Jammu and Kashmir were limited to the subjects declared by the President of India to correspond to the terms of the

Instrument of Accession. The Jammu and Kashmir State was not included in the scheme of the division of powers, between the Union and the States, embodied by the Constitution of India.

Article 370 of the Constitution was included in the temporary and transitional provisions of the Constitution of India. Evidently, the special position the State was accorded to the Jammu and Kashmir State was presumed to be of a temporary nature, and subject to change. Provisions were incorporated in Article 370 by virtue of which the President of India was empowered to;

- (i) transfer powers to the Union in regard to such other subjects in the Union List and the Concurrent List of the Seventh Schedule of the Indian Constitution, which the President specified with the concurrence of the State Government;
- (ii) extend to the State the provisions of the Constitution of India, which were saved application to the State with such modifications and exceptions as the President would specify.

The President was empowered to issue such orders in consultation with the State Government and in case such order related to the matters in the Instrument of Accession, with the concurrence of the State Government. If any such orders which involved the transfer of additional powers to the Union or the application of any further provisions of the Constitution of India to the State, were promulgated by the President before the Constituent Assembly of the State was convened, the consultation and concurrence of the State Government were to be placed before the Constituent Assembly for its approval.

The President of India was also empowered to declare by public notification that the provisions of the Article would cease to be in operation in the State or would be operative only

with such exceptions and modifications as he would specify. All such notifications were to be promulgated by the President on the recommendations of the Constituent Assembly of the State.

An interesting aspect of Article 370 was that it envisaged a Constituent Assembly in the State, with a tenure, which extended at least, till the transitional provisions remained on the statute-book. The fathers of the Indian Constitution reasonably presumed that the temporary provisions envisaged by Article 370, would last for a relatively short duration and their operation would hardly extend beyond the time the Constituent Assembly of the State would take to draft the Constitution of the State. The Constituent Assembly of the State was dissolved in 1957, after it had completed the task of framing the Constitution of the State.

Article 370 did not vest any constitutive powers with the President nor were any constitutive powers vested with the Constituent Assembly of Jammu and Kashmir. The President and the Constituent Assembly were empowered to order that the operation of the provisions of Article 370, would cease or continue with such amendments and exceptions as they would specify. They were subject to the limitations which one placed on the other. As a matter of fact the Constituent Assembly of the State could not be vested with powers to amend or alter the provisions of the Constitution of India.

Provisions to abrogate or amend Article 370 were incorporated in the Constitution of India.³¹ The powers to amend the provisions of the Constitution of India were vested with the Parliament of India in accordance with the procedure laid down in it. Article 370 envisaged no limitation on the powers of the Parliament to amend its provisions or any other provision of the Constitution of India. Even if any such limitation were incorporated in Article 370, there was nothing which stood in the way of the Parliament to abrogate the

limitation as well as the provisions of Article 370.

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CHAPTER - 3

Quest for Independence

After the Constitution of India was brought into force in January 1950, the Conference leaders, who had by now abandoned their earlier commitment to the unity of India, launched a surreptitious campaign to wreck both, the accession of the State to India as well as Article 370. The Conference leaders adopted a three pronged strategy to achieve their objectives: first, they shifted emphasis on their assertion that the accession of the State was subject to the final decision of the Muslims of the State and a settlement of the dispute over its accession could not ignore their aspirations. They claimed that the United Nations resolutions envisaging a plebiscite, to provide the Muslims a choice to exercise the option in respect of the accession of the State, and their right to their choice was neither controverted by the Instrument of Accession, Hari Singh had executed, nor by Article 370. Secondly, they insisted upon the separate Muslim identity of the State, which they claimed could be realised in a separate political organisation independent of the imperatives of the Indian Constitution and governed by a set of political instruments which reflected the aspirations of the Muslims and which were evolved by them. Thirdly, the National Conference initiated a process of the Muslimisation of the State to ensure the communal precedence of the Muslim majority in the government and society of the State.

The enforcement of the Muslim precedence in the government and society of the State led to the devastation of the Hindus and the other minorities. The Interim Government

undertook drastic reorganisation of the property relations in the State, which it alleged, were fostered by the Dogra Hindu rulers to serve the interests of their correlative Hindus. The allegations were, however, unfounded, because the economic organisation of the State, mainly feudal in its content, was dominated by an agrarian oligarchy and assortment of interests, in which the Muslims shared the spoils as much, the Hindus did. The industrial classes in Kashmir, the shawl-wool importers and the commercial magnates who traded in famous Kashmiri shawls were the Kashmiri Muslim Khojas. Silk manufacture was a state monopoly, but the manufacture of all textiles, arts and crafts and forestry were in the hands of the Muslims, who were as close to the Dogra centre of power as the Hindu ruling elite was.

The allegations of the exploitation of the Muslims, the National Conference, levelled against the Dogras, were fundamentally inspired by the Muslim extremism which grew in India with the evolution of pan-Islamic movements after the First World War.

The Interim Government, aimed to dissolve the assortment of middle-class interests, which the Dogras had nurtured by a new class, which was essentially Muslim. Within a few years the new Muslim middle established its domination over the entire economic organisation of the State. When the National Conference, finally repudiated the accession of the State to India and demanded the right of self-determination for the Muslims in the State, the Muslim middle class provided the main support base, for the Muslim secessionist movements, which the Conference leaders spearhead for decades later.

The National Conference leaders unfolded their plans in October 1950. They called into session the General Council of the Conference. The General Council adopted a resolution which issued a directive to the "Supreme National Executive," evidently, the Interim Government, to convene the Constituent Assembly of the State. The Council adopted a resolution

which stipulated. "The All Jammu and Kashmir National Conference" is gravely concerned and cannot any longer afford to ignore the perpetration of these conditions of doubt and frustration. In the opinion of the General Council, time has come, when the initiative must be regained by the people to put an end to this indeterminate state of drift and indecision. The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of people and all the constituents of the State for the purpose of determining the future shape and applications of the State of Jammu and Kashmir. In this sovereign assembly, embodying the supreme will of the people of the State, we shall give to ourselves and our children a Constitution worthy of the tradition of our freedom struggle and in accordance with the principles of New Kashmir".¹

The resolution of the General Council brought to surface, several disquieting developments inside the National Conference. Neither the Instrument of Accession, nor Article 370 of the Constitution of India, which embodied provisions for the Constituent Assembly of the State, vested powers in any subsidiary instruments to determine the disposition of the State in respect of its accession. Evidently, the claim to powers, plenary to the Constituent Assembly, to determine the future of the State amounted to the repudiation of the act of the accession of the State to India, accomplished by Maharaja Hari Singh, as well as the provisions of Article 370, which vested powers with the Constituent Assembly of the State to draft a constitution for its government.

The resolution embodied several questionable propositions:

- (a) the resolution of the General Council suddenly proclaimed the Interim Government as the "Supreme National Executive of the people" and claimed for it the power to convene the Constituent

Assembly of the State and bring to an end, the "indeterminate state of drift and indecision", prevailing in the State;

- (b) the resolution envisaged powers for the Constituent Assembly to determine the future affiliations of the State, which neither the Instrument of Accession nor the Constitution of India vested in it;
- (c) the resolution visualised a separate nation of Jammu and Kashmir, which enjoyed a perpetual right to determine its future affiliations, irrespective of the accession of State to India, the dispute with Pakistan and the inclusion of the State in the territorial jurisdiction of the Indian Union by virtue of Article 370.

The Conference leaders sought to liberate the Interim Government of its provisional mornings and established its preeminence over all other political instruments in the State, including those embodied by the Jammu and Kashmir Constitution Act of 1939, which governed its function. "The Conference leaders sought to vest in the Constituent Assembly, powers which the Constitution of India did not envisage, and thus impart to it, precedence over the constitutional instruments devised by Article 370 of the Constitution of India. They also attempted to place themselves in between India and Pakistan in their dispute over the accession of the State and secure the Interim Government a vote on any settlement which the Government of India reached with the Security council or the Government of Pakistan.

The Conference leaders, indulged in double-talk, which later became the main feature of their political outlook and while on the one hand they accepted that they supported the accession of the Jammu and Kashmir State to India, they proclaimed the Muslims of the State as a Muslim nation in India, which had a right to freedom and choice to determine its future, irrespective of the instrument of Accession, Maharaja

Hari Singh had signed. Many of the Conference leaders openly claimed that the right of self-determination, embodied by the United Nations resolutions, left the choice open for the Muslims of the State to determine its future affiliations and the Muslims would in no case abnegate from the rightful obligation to exercise it. The Conference leaders, accused the Hindu communal forces in India, which sought to merge the State into the Indian constitutional organisation to end the Muslim majority character of its population and bring about its subjection to the dominance of the Hindu majority in India. In closed door meetings, the Conference leaders, claimed that:

- (i) the Muslims of Jammu and Kashmir were a nation and Jammu and Kashmir State had a separate identity, which could not be effected by the accession of the State to India;
- (ii) the Muslims of Jammu and Kashmir had a right to determine the future affiliations of the State and they could opt for independence of the State in place of its accession to India or Pakistan;
- (iii) peace between India and Pakistan could only be ensured by the recognition of the right of the Muslims of the State to determine its future;
- (iv) the Muslims of Jammu and Kashmir did not accept any constitutional arrangement which fettered the freedom of the Muslim nation of Kashmir;
- (v) the inclusion of the State in the territorial jurisdiction of India and the application of the provisions of the Constitution of India corresponding to the terms of the Instrument of Accession, were ultimately subject to the sovereignty of the Jammu and Kashmir State.

The Conference leaders contended that the accession of the State to the Indian Dominion was strictly limited to the delegation of powers to the Dominion Government, stipulated

by the instrument of Accession. The Conference leaders insisted that the accession of the State did not involve the dissolution of its sovereignty which had reverted to it with the lapse of the Paramountcy and merger of its territories in the territories of the Indian Dominion. The Conference leaders refused to recognise that the technical independence assumed by the State with the lapse of Paramountcy had ended with their accession to India. They refused to accept that the accession of the Princely States to either of the two Dominions, entailed the merger of their sovereignty and territories with the Dominion to which they acceded.

The Indian leaders, were perhaps unable to perceive the real motives behind the General Council resolutions, and the damage, the duplicity of the Conference leaders caused to the public mind in the State. Whereas the Muslims were gradually awakened to the awareness of a new future, which promised a second Muslim homeland to them in Jammu and Kashmir, after the creation of Pakistan, the Hindus and the Sikhs as well as Buddhists in Ladakh, were quickly led to the realisation of their doom, which a second partition of India would unfold. In the Muslim homeland of Jammu and Kashmir, they would meet no better a fate than the Hindus and Sikhs had met in Pakistan and the occupied Kashmir.

For sometime, the Indian leaders fiddled with the idea of using the Constituent Assembly to controvert the various pressures which were building on the Indian Government in the Security Council. However, the inspiration to convene the Constituent Assembly did not come from them. Indeed, the resolution of the National Conference General Council caused considerable concern to the Indian leaders, and they lost no time to seek a number of clarifications from the Conference leaders in Srinagar. The demand to vest the powers to determine the future of the State in the Constituent Assembly was as preposterous as the claim to a separate nationhood for the Muslims of the State. "The Government of India had strongly resisted all attempts to question the accession of the State to

India and open fresh options for the future disposition of the State except that the act of the accession was subject to a referendum by which, India was committed to ascertain the wishes of the people of the State after the invading forces of Pakistan had withdrawn. This was precisely the ground on which the various proposals made by Own Dixon had been rejected by the Government of India."²

A long correspondence ensued between the States' Ministry of the Government of India and the Interim Government. The Conference leaders informed the States' Minister, Gopalaswamy Ayangar, that the Constituent Assembly of the State would function as a sovereign body, and;

- (i) take a decision on the accession of the State;
 - (ii) determine the future of the Dogra rule;
 - (iii) draft a Constitution for the State Government.
- Ayangar did not question the powers of the Constituent Assembly to determine the future of the Dogra dynasty and draft the Constitution of the State but he expressed disagreement with the Conference leaders on their decision to empower the Constituent Assembly to review the accession of the State to India and the commitments which the Government of India had given in this regard.

Ayangar wrote to the Conference leaders that since the Constituent Assembly would draw up a Constitution for the State, it would be necessary to bring about a uniformity between the Constitution of the State and the Constitution of India. Ayangar urged upon the Conference leaders, that it would also be necessary to extend the application of the Constitution of India to the State with regard to the citizenship, fundamental rights and related legal safeguards, jurisdiction of the Supreme Court of India, the Directive Principles of the State Policy and the powers of emergency arising out of war, internal disturbances and Constitutional breakdown in the State.

The Conference leaders did not approve of the communication of the States' Minister. "They insisted upon the right of the Constituent Assembly of the State to take whatever decisions it deemed appropriate on the final disposition of the State and claimed that both the accession as well as commitments of the Government of India, were ultimately subject to the verdict of the people of the State. The Conference leaders reiterated their earlier stand that the Constituent Assembly would draw up a constitution for the Government of the State and incorporate in it the constitutional guarantees, directive principles of the state policy and emergencies arising out of threat of war and internal disturbance. The Conference leaders emphasised that the Constituent Assembly of the State alone was empowered to determine the final disposition of the State.

Ayengar was agitated by the stand the Conference leaders had taken. They had virtually repudiated their commitment to support the accession of the State to India and sought to link up the institution of the Constituent Assembly with the stipulations of the Security Council resolutions. In a subtle move the Conference leaders aimed to use the Security Council resolution to compel the Government of India to recognise the pre-eminent authority of the Constituent Assembly to determine the future disposition of the State and after that was achieved, opt for independence of the State as a viable alternative to its accession to either of the two contending powers, India and Pakistan. The Conference leaders insisted upon the exclusion of the State from the constitutional organisation of India as a matter of right, which they claimed was neither subject to the stipulations of the Instrument of Accession nor to the provisions of the Constitution of India, embodied in Article 370. The Conference leaders disclaimed the "Paper Accession" accomplished by Maharaja Hari Singh, which they insisted, could only be validated by the approval of the Muslims who formed the majority of the population of the State.

Ayengar did not approve of the Conference stand and informed the Conference leaders, that the Government of India could not accept proposals which contravened the stipulations of the Instrument of Accession and the provisions of the Constitution of India, applicable to Jammu and Kashmir. No sooner than the disapproval of the States Ministry was conveyed to the Conference leaders, they erupted into angry outbursts against the Indian leaders. Sheikh Mohammad Abdullah threatened to resign, in case the State's Ministry persisted in its stand, which he alleged was aimed to reduce the freedom of the people of the State and deny them the right to give themselves a constitution which reflected their aspirations.

The threat upset Ayengar, who sought the help of Maulana Azad and Rajagopalachari to end the tangle. Azad, who had always backed the demand of the National Conference leaders for the autonomy of the State advised Ayengar to act with restraint. On the advice of Azad and Rajagopalachari Ayengar sent a conciliatory note to the Conference leaders, assuring them that the Indian Government would honour their views and appealed to them not to take any precipitate action which would have an adverse effect on the interests of the State. Nehru was in London where he had gone to attend the Conference of the Commonwealth Premiers. He also wrote to Sheikh Mohammad Abdullah and assured him that he did not dispute the right of the people to determine the future shape of the State and its government. "I have no doubt" Nehru wrote to Abdullah, "that the will of the Kashmiri people must prevail in regard to every matter and it is they who will decide ultimately every question affecting the State".

Constituent Assembly

On 30 April 1951, Karan Singh, the Regent, issued a proclamation to order the convocation of the Constituent Assembly of the State. The Assembly, the proclamation stipulated, would be constituted of members, who were elected

by the people of the State on the basis of universal adult franchise and by secret ballot. The proclamation envisaged the division of the State into electoral districts and ordered the appointment of a Delimitation Committee to determine the territorial limits of each electoral district.³

The Delimitation Committee was constituted of five members with a High Court Judge as its Chairman. Justice M.A. Shahmiri was appointed the Chairman of the Delimitation Committee and the four other members were appointed from among the Deputy Commissioners of the Revenue Department of the State Government. For the purpose of delimitation of the electoral constituencies, the Delimitation Committee was instructed to take a population of forty-thousand people or as near as possible, as the basis of delimitation.

The proclamation of the Regent caused concern among the Hindus and the other minorities in the State. The pronouncements and the policies of the Interim Government hardly left them in any doubt about the intentions of the Interim Government. They did not misjudge the double-talk of the Conference leaders, who on the one hand commended secularism to the people in India and on the other hand insisted upon the separate Muslim identity of Jammu and Kashmir. Shahmiri was a suspect in their eyes, so were the other members of the Delimitation Committee. Two major Hindu political organisations, the Praja Parishad which represented the Hindus in Jammu and which was severely critical of the policies, the Interim Government followed, and the Kashmiri Purusharthi Sabha, representing the Hindu and Sikh refugees, who had escaped from the occupied territories of the State and the west Punjab and taken refuge in the State, expressed misgivings about delimitation. The Interim Government had shown little regard for the death and devastation they had suffered, and instead refused to settle them in the State.

The Praja Parishad demanded representation in the

Delimitation Committee. The request was turned down by the Government. The plea made by the Kashmiri Purusharthi Sabha was also ignored by the Government. The Sikhs also appealed to the Interim Government for adequate representation of their community in the Constituent Assembly on the ground that they were not properly represented in the State Legislative Assembly, Maharaja Hari Singh had established in 1934. Their appeal was also turned down by the Interim Government.

The Delimitation Committee acted on the behest of the National Conference leadership. Shahmiri had served Maharaja Hari Singh more faithfully than many of his officers, but he had shifted his loyalties to the Interim Government, after the change over in 1947. He was appointed the Constitutional Advisor to the Interim Government, by Sheikh Mohammad Abdullah for obvious reasons. The other members of the Delimitation Committee were mercenaries of the Conference, who possessed little initiative and independence to influence its function.

The whole State, including the territories occupied by Pakistan, was divided into one hundred electoral districts, each of which was proposed to be represented by one member in the Constituent Assembly. Twenty-five of the seats were reserved for the occupied territories, where the elections were proposed to be held, after the occupation forces of Pakistan were withdrawn.

The Kashmir province was divided into forty-three electoral constituencies and the Jammu province was divided into thirty constituencies. The frontier divisions of Ladakh and Baltistan were divided into two constituencies. The Delimitation Committee gave heavier weightage to the Kashmir province, where each electoral constituency was delimited to represent around forty six thousand people. In the Jammu Province, each electoral constituency represented around fifty six thousand people, thus reducing the weightage of the province

in the Constituent Assembly by three members. Since Jammu was a Hindu majority province, the delimitation of the constituencies ensured heavier electoral weightage to the Muslims in Kashmir. The population of the Hindus and the Sikhs, which was sizable in Srinagar, Baramulla and Anantnag and which could have been delimited in a manner, to ensure a measure of representation to them in the Constituent Assembly, was neutralised by gerrymandering which the Delimitation Committee undertook in disregard of the principles of representative government.

One of the major issues in the controversy between Maharaja Hari Singh and the National Conference leadership, which indeed was the main reasons, that he lost his throne, was that he pleaded for the representation for the minorities in the Constituent Assembly, which he emphasised would follow the pattern of the representation of the minorities in the Constituent Assembly, of India. His contention had genuine basis, because the Congress leadership had accepted the principle of minority representation in the Constituent Assembly of India, since such representation was considered to be necessary to safeguard the interests of the minorities in the future constitutional organisation of India. Out of the 296 members of the Constituent Assembly, which represented the British Indian Provinces, the minorities were represented by 141 members. The representation was scheduled in the following manner:

1. Hindus	:	155
2. Scheduled Castes	:	30
3. Muslims	:	89
4. Christians (Indian)	:	6
5. Backward Tribes	:	5
6. Sikhs	:	5
7. Anglo-Indians	:	3
8. Parsis	:	3

The Princely States were given a representation of 93 seats in the Constituent Assembly.

Hari Singh was humiliated and accused by the Conference leaders of seeking to perpetuate Hindu domination in the State. The Congress leaders, who had recognised the principle of minority representation in the Indian Constituent Assembly as basic to the protection of the minorities, joined the Conference to denounce the Maharaja. The Congress leaders failed to realise that the minorities in Jammu and Kashmir were required to be provided constitutional safeguards the same way, the minorities, including the Muslims, were ensured by the Constitution of India.

The electoral rolls were published on 4 June 1950. Forty-one Revising Registrars were appointed to hear and decide claims in regard to the registration of the voters. All the Electoral Registrars were appointed from the Special Tehsildars, who had been deputed by the State Government to implement the land reforms. Most of the Special Tehsildars were Conference proteges who had earned enough notoriety in the campaign of land grab which the Conference cadres had launched to deprive the Hindus of their landed property. Of the Electoral Registrars, twenty were appointed for the Jammu Province and one each for Ladakh and Kargil districts.

As the elections drew close, the National Conference tightened its hold over the entire election machinery. The parties and candidates seeking election to the Assembly in opposition to the official nominees of the National Conference complained of intimidation and interference by the Conference cadres as well as the State authorities. Most of the candidates charged the National Conference of using force and pressure to drive them out of the contest. The allegations were largely true, and the National Conference cadres, backed by the State administration, spared no efforts, to scuttle the opposition and push out its candidates from the elections and pave the way for the National Conference to establish its sway over the

Assembly. Many candidates in opposition, were administered threats and were compelled to withdraw from the elections. Many of the candidates were bought for a price, made good by the neo-rich lumpeons who formed the fulcrum of the new Muslim middle class, the Conference leaders had forged. Several of the candidates were physically prevented from filling their nomination papers.

In forty-one of the forty-three electoral constituencies not a single nomination paper was filed by candidates other than those nominated by the National Conference. In the two remaining constituencies of Habakadal and Baramulla, nomination papers were filed by Shiv Narayan Fotedar and Sardar Sant Singh Tegh, the former a Hindu leader of Kashmir and latter an Akali Sikh leader, both seeking to secure representation for the small Hindu and Sikh minorities in the Constituent Assembly. However, the two leaders, were not able to stay in the fray for long and withdrew from the elections in protest. Sant Singh Tegh complained of official interference in the elections and of unfair means. The officials of the State administration used force to compel him to abandon the contest. He alleged that the colour of his ballot boxes was changed in his absence and his voters were prevented from attending his election meetings by intimidating them and using force against them.

In the Jammu Province, the Praja Parishad nominated candidates for twenty seven of the thirty electoral constituencies, generally filling nomination papers of more than one candidate for each constituency. Forty-one of the forty-six nominations filed by the Parishad were rejected in all the twenty seven electoral Constituencies on one pretext or the other. In only three constituencies, the Parishad nominations were accepted. On 22 September 1951, the Working Committee of the Parishad adopted a resolution condemning the arbitrary action of the election authorities and gave an ultimatum to the State Government to reconsider the rejection of the nomination papers of the Parishad candidates, failing which

the Parishad threatened to boycott the elections. In a statement issued in the Indian capital, Delhi, on 6 October 1951, Pandit Prem Nath Dogra, the President of the Parishad, accused the Interim Government of having taken several arbitrary measures to pack the Assembly with the nominees of the National Conference. Pandit Dogra alleged that elections in the two provinces were staggered in order to be held on two different dates to provide an advantage to the National Conference. He also alleged that the gerrymandering was used in the delimitation of the constituencies to dilute Hindu majority in many constituencies and turn them into Muslim majority constituencies. In his statement Prem Nath Dogra alleged:⁴

- (i) that the schedule of holding elections in the two provinces of Jammu and Kashmir on different dates, fixed by the election authorities was aimed to provide the National Conference an advantage over the other parties;
- (ii) that the delimitation of the electoral constituencies was undertaken by the Delimitation Committee in a manner, which used gerrymandering to turn many constituencies, where Hindus were in a majority, into Muslim majority constituencies;
- (iii) that forty-one nomination papers filed by the Praja Parishad candidates were rejected by the election authority without any basis, and with a view to ensure advantage to the National Conference candidates;
- (iv) that the official interference in the elections was widespread and the whole machinery of the State administration was being used to help the candidates of the National Conference.

The Parishad leaders met Gopaldaswamy Ayangar and urged upon him to take, effective measures to ensure freedom and fairness in the elections to the Constituent Assembly, which he emphasised, was of crucial importance to the State.

He complained to the State's Minister of the intimidation and pressure, Praja Parishad had been forced to face in Jammu and accused the Interim Government of interference in the elections. He apprised Ayangar of the ways and means, which had been used to reject the nomination papers of the Parishad candidates, by the concerned election officers, on the instructions of the Interim Government. Dogra appealed to the Indian Government to:-

- (i) institute an independent inquiry into the rejection of the nomination papers of the Praja Parishad candidates in the twenty-seven constituencies in which the Parishad candidates had filed their nominations;
- (ii) appoint a judge of the Supreme Court to supervise the elections in the State;
- (iii) adopt measures to prevent the officials of the State Government from working for the National Conference candidates.⁶

The accusations,, the parties in opposition to the National Conference, made against the use of state power in the elections were not false. The National Conference leadership resorted to widespread use of force to intimidate the opposition to drive it out of the elections. Nominees of the opposition parties were administered threats dissuading them from filling their nomination papers, several of them humiliated in open public by slander and harrassment. The Conference cadres supported by desperados, who lay in wait for opportunities to serve their interests, paraded in the townships and the villages, in support of the Conference, piling columny on the candidates in the opposition. The more stubborn of them were subject to physical assault. The independent candidates, some of them backed by pro-Pakistan elements, were bribed and their supporters left high and dry.

Wherever, the Hindus and the other minorities put up candidates in opposition to the nominees of the National

Conference, they were accused of acting on the behest of the Hindu communal forces in India, which aimed to disrupt the secularisation of India, by embroiling Kashmir into communal turmoil. The Praja Parishad was charged of seeking to revive the Dogra rule, to perpetuate the enslavement of the Muslims with the active support of the Hindu communal parties in India. The Hindus in Kashmir, who bore the worst of the repression of the Interim Government for having oppressed the Muslims during the Dogra rule, received the full blast of the Conference anger, when they sought to join the election. Their sizable strength in a number of constituencies, where their population was larger and more compact, was diluted by the delimitation authorities by by gerrymandering. They were denounced as the lackeys of Hindu imperialism in India, who, supported by the Hindu Mahasabha and Rashtariya Swayam Sevak Sangh, were seeking to retrieve the position of power, which they had lost with the fall of the Dogras.

Not only Ayangar, but the other Indian leaders as well, had lost their hold on the political development in the State. No one in the Indian Government had the courage to question the policies, the Conference leaders followed. Ayangar and perhaps, several other Indian leaders as well were aware of the shift in the outlook of the Conference leadership and knew much about the underground manoeuvres to extricate the Conference from its commitments to support the accession of the State to India. Neither Ayangar, nor any other Indian leader, however, made any efforts to deal with any firmness, the drift in which the State was caught.

Instead, the Congress leaders, joined the National Conference to condemn the Praja Parishad agitation and blamed the Parishad of inciting communalism in the State, which otherwise, they claimed, symbolised the traditions of religious tolerance and secularism. "Perhaps, the Indian Government deliberately overlooked the dangerous portent of the ruthlessness with which the Conference leaders sought to pack the Constituent Assembly with their cadres and

supporters”.

After frantic but vain appeals to the Indian leaders, the Praja Parishad leaders finally decided to boycott the elections. The Parishad leaders cabled to Nehru, Gopalaswami Ayangar and Maulana Syed Masoodi, the General Secretary of the National Conference, informing them of the decision of the Parishad to boycott the elections. Masoodi, campaigned for the National Conference. The decision of the Parishad to boycott the elections caused him little discomfort. He refuted the allegations the Parishad made against the Interim Government, and charged the Parishad leaders of opposing the convocation of the Constituent Assembly. Masoodi was an ardent supporter of the separate religious and political identity of the Muslims in the State and was loyally committed to Sheikh Mohammad Abdullah.

Masoodi was one among the few Conference leaders who refused to reconcile with the integration of the State with India. He was jailed in the Quit Kashmir Movement and released from the prison in Muzaffarabad, on 18 October 1947, three days before the invaders entered the town. The events that followed, were beyond his control. The invading armies moved into the Valley almost on his heels. In the crisis, into which the invasion pushed the national Conference, he found himself arraigned in opposition to Pakistan by the sheer force of History and much against his conscience. Had Pakistan not invaded the State, he would have counselled his colleagues to choose for an option, which did not necessarily involve accession to India. He visualised the creation of a Muslim State in Jammu and Kashmir, whether within the Muslim nation of Pakistan or outside it. But he did not envisage the accession of the State to India, after the partition was accomplished. “If the State were not invaded”, Masoodi stated in an interview, many years after the accession of the State to India, “we would have perhaps got time enough to take a dispassionate decision on the affiliations of the State and

avoided the crisis which enveloped the state. We could bring round India and Pakistan to accept a solution which would ensure the people of Kashmir their freedom with the friendly cooperation of both, India and Pakistan”.

Masoodi also supported the precedence of the Muslims majority as a basis of the future constitutional organisation of the State. He also made ceaseless efforts with the other Conference leaders to Muslimise the State and supported Sheikh Mohammad Abdullah in his efforts to isolate the State from India.

After the withdrawal of the Parishad from the elections, only two independent candidates were left in the contest in the two constituencies of the Jammu province, Kahna-chak and Akhnoor. Parishad extended its support to both the independent candidates. The independent candidates, were however, defeated, and the Conference candidates returned from Kahna-chak as well as Akhnoor. Seventy-three of the Conference candidates were returned unopposed to the Constituent Assembly. The victory of the Conference candidates in Kahna-chak and Akhnoor, secured the National Conference all the seventy-five seats in the Assembly. A few days after, in a public congregation in the city of Srinagar, Sheikh Mohammad Abdullah, paraded the elected members of the Constituent Assembly, before thousands of Conference supporters, who had collected to witness the spectacle.

Double Charge

The Constituent Assembly commenced its first session on 31 October 1951. Maulana Masoodi was elected the pro-tem Chairman of the Assembly. Masoodi was also returned unopposed to the Constituent Assembly. The next day, Gulam Mohammad Sadiq was elected the President of the Assembly.

The first session of the Assembly was inaugurated by Sheikh Mohammad Abdullah, on 5 November 1951. In his inaugural address, Sheikh Mohammad Abdullah stated:

"You are the sovereign authority in this State of Jammu and Kashmir, what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation embodied ably in the American and French Constitutions, is once again given shape in our midst."

He added further:

"We should be clear about the responsibilities that this power invests us with. In front of us is the decision of highest national importance, which we shall be called upon to take. Upon the correctness of our decision depends not only the happiness of our land, and people, now, but the fate as well of generations to come."⁸

Sheikh Mohammad Abdullah listed the basic decisions the Constituent Assembly would have to take, as follows:

- (i) frame the constitution of the State;
- (ii) determine the future of the Dogra rule;
- (iii) examine the issue of the compensation for landed estates, appropriated in consequence of land reforms legislation; and
- (iv) determine the final disposition of the State in respect of accession.⁹

Sheikh Mohammad Abdullah observed that the Constituent Assembly would be guided by "highest principles of democratic constitutions of the world"; equality, liberty and social justice. "The rule of law as understood in the democratic countries of the world should be cornerstone of our political structure. Equality before the law and the independence of judiciary from the influence of the executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed; freedom of the press and of opinion would also be features of our constitution".¹⁰ Referring to the federal relations between

the Jammu and Kashmir State and Union, Sheikh Mohammad Abdullah said: "The Constitution of India has provided for a federal Union and in the distribution of sovereign powers, has treated us differently from other constitutional units. With the exception of the items grouped under Defence, Foreign Affairs and Communications in the Instrument of Accession, we have complete freedom to frame our constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our people, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union."¹¹

Sheikh Mohammad Abdullah rejected the Dogra rule as an institution, "incompatible with the spirit and needs of modern times which demand an egalitarian relationship between one citizen and another". He said: "The supreme task of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence monarchies are fast disappearing from the world picture as an anachronism. In India too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of them exercise the limited authority of the Constitutional heads of States".¹²

The Interim Government sought to legitimise the land grab, which the National Conference had undertaken in the garb of land reforms, to disinherit the Hindus of the landed property they possessed, by seeking a decision on the question of compensation to be paid to the land owners, for the land acquired from them. Sheikh Mohammad Abdullah stated in his inaugural address that the Constituent Assembly, being

the repository of the trust of the nation, would determine whether compensation would be paid, for the proprietary rights in land extinguished by the land reform legislation. He observed "our land to tiller policy brought light to the dark houses of the peasantry, side by side, it has given rise to the problem of the landowners demand for compensation. The nation being the ultimate custodian of all wealth and resources; the representatives of the nation are truly the best jury for giving a just and final verdict on such claims".¹³

Sheikh Mohammad Abdullah finally unfolded the mind of the National Conference leadership on the issue of accession. He stated categorically that the final decision of the accession of the State lay with the Constituent Assembly, which being the representative body of the people of the State, would determine the future affiliations of the State. Sheikh Mohammad Abdullah, in effect, aimed to establish:

- (i) the accession of Jammu and Kashmir to India by Maharaja Hari Singh, who had executed the Instrument of Accession was a conditional act, which created a transitional relationship between the State and the Dominion of India for the time being;
- (ii) the Constituent Assembly alone, would take a decision on the accession of the State;
- (iii) the repudiation of the finality of the Instrument of accession signed by the Maharaja, opened a fresh, choice for the Constituent Assembly to determine the options it would exercise in respect of the accession of the State.

In unambiguous terms, Sheikh Mohammad Abdullah, claimed the right of the Constituent Assembly, to exercise the options, which the Cabinet Mission Plan envisaged for the Princely States. His claim repudiated (a) the entire process of the transfer of power in India, (b) the lapse of the Paramountcy the British exercised over the States and (c) the consequent

process of accession of the States to either of the two Dominions, by virtue of the Instruments of Accession, the Princes signed.

Sheikh Mohammad Abdullah dwelt upon the advantages and disadvantages of three options open for the Assembly to adopt. "As a realist", he said, "I am conscious that nothing is all back or all white, and there are many facets to each of the propositions before us." Evidently Abdullah felt less convinced of the sincerity of purpose with which India had, in spite of the partition, forced on it by Muslim separatism, adopted secular integration of its people, on the basis of the right to equality, as the fundamental principle of its political organisation. He made no reference to the death and destruction, the partition had brought about and the devastation which the invasion had wrought in the State. Not the principles, but political expediency he pointed out, should be the guiding factor, to determine the merits of the accession of the State to India, and called upon the Assembly to go the way, the balance tilted. He told the members of the Assembly that the Indian Constitution embodied "secular democracy based upon justice, freedom and equality which provided the Muslims of the State the guarantee of their security in future." He pointed out that the Interim Government had undertaken reforms, which would not have been possible in "landlord-ridden Pakistan." He accepted that the economic prospects of the State were closely bound with India. "Potentially" he told the Assembly, "we are rich in minerals and the raw materials of industry; we need help to develop our resources. India being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here—for instance sugar, cotton, cloth and other essential commodities from India".

For Sheikh Mohammad Abdullah, the whole struggle of the States People's Conference, of which, the movement of freedom in the State, was an inseparable part, was of no consequence to the accession of the State. Nor were the Hindus

and the minorities, who had played the most factoral role in the struggle against the British colonial empire and resistance against the invasion in 1947, of any consequence to the accession of the State. The Conference leaders ignored the bloody battles the State troops and the Indian army had fought to save the State from the avalanche which had descended upon it during the dark hours of the night of 21 October 1947, and which rolled over almost half of the State. Jammu and Kashmir was not rich in minerals; mountaineous and rugged, it was a deficit State, which had lived in the poverty of its resources. For the traditional shawl and silk industries, it had always depended on the import of shawl wool from Western Tibet. For whatever it produced, its exports of handicrafts and fruits depended upon the trade in the Punjab.

Sheikh Mohammad Abdullah proceeded further to apprise the members of the Constituent Assembly of the merits and demerits of the accession of the State to Pakistan. Intriguingly he stated that Jammu and Kashmir was geographically contiguous to Pakistan and more dependable roads and waterways of the State led into Pakistan and not India, which would hamper trade and commerce of the State. Sheikh Mohammad Abdullah made ravageous remarks against India, when he said that communalism posed a threat to the Muslims in India and if India turned into a religious state in future, the interests of the Muslims would be jeopardised. "Certain tendencies have been asserting themselves in India, which may in future convert it into a religious State wherein the interests of the Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance".¹⁴

With unabashed self-conceit, Sheikh Mohammad Abdullah said that Pakistan was a Muslim State and a large majority of the people of Jammu and Kashmir were Muslims who had a sentimental feeling for a Muslim commonwealth.

Enumerating the demerits of the accession of the State to Pakistan, Sheikh Mohammad Abdullah pointed out that Pakistan was a feudal State, economically backward and politically retrograde and oppressive. Besides, the accession of the State to Pakistan would affect the future of the one million non-Muslims of the State as there was no place for them in Pakistan. "Any solution" Sheikh Mohammad Abdullah said, "which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group".¹⁵

Examining the alternative of independence of the State, Sheikh Mohammad Abdullah made certain interesting observations which had a sinister import. The third course open to use has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland".¹⁶ The inaugural address delivered by Sheikh Mohammad Abdullah was motivated by considerations other than those, the National Conference leaders professed, and literally embodied an assurance to the Muslims in Jammu and Kashmir as well as in Pakistan that the National Conference would opt for a choice, which was not necessarily be based upon the accession of the State to India. The inauguration of the Constituent Assembly marked the beginning of a new Muslim movement in Kashmir, for the creation of a Muslim State, inside or outside Pakistan. In the secular political organisation of the Hindu dominated India, a Muslim State could not survive.

The claim, made by Sheikh Mohammad Abdullah, that the Cabinet Mission plan envisaged the accession of the States to either of the two Dominions or opt for independence was contentious and a distortion of history. The Conference leaders read the events which had led to the partition of India, in their own way. The Cabinet Mission did not propose the division

of India and the creation of Pakistan. Nor did it visualise any alternatives to the accession of the States to recognise their independence. The Cabinet Mission Plan envisaged a united India of which the Indian States, would constitute an integral part. The accession of the States to the proposed federation of India, was inevitable with the transfer of power in India to a federal government, mainly because the British left no one in doubt, at least, not the Princes, that the Paramountcy would end and with it would come to a close, the relations subsisting between the States and the British India and as a necessary sequel the Princes would have to negotiate agreements with the Indian Union in respect of defence, communications, supplies, airways, currencies and imports and exports of goods and commodities and finances. For the States, the accession, whatever its terms, was inescapable.¹⁷

The Partition Plan envisaged by the 3 June Declaration of 1947, too, did not envisage independence of the Indian States. The Partition Plan, later embodied in the Indian Independence Act of 1947, provided for the lapse of the British Paramountcy. The dissolution of the Paramountcy liberated the States from the protection of the British empire, but they were vested with no more powers than they exercised under the Paramountcy. No State assumed independence after the Paramountcy was withdrawn and the British Government categorically declared that the States would neither be recognised as Dominions of the British empire nor as independent States.¹⁸

The future of the Indian States, after the partition was accepted, was not confined only to the rights and obligations of the Paramountcy, which were extinguished with the dissolution of the British empire in India. Nor was it confined only to the alternatives, the British sought to secure the Princes. The States were crucial to the unity of India, after the Muslim majority regions and provinces of Pakistan, were separated from it. The partition did not envisage the division of the States between India and Pakistan, nor did it visualise the separation of the States from India.

The Muslim League insisted upon the reversion of the Paramountcy to the Princes and their right to opt for choice in respect of accession or the independence of the States. However, the British government accepted that the Princes were free to accede, or enter into such agreements among themselves as they chose, but the British categorically refused to recognise the States as British Dominions or countenance their independence. Mountbatten gave a rebuff to the League, when he addressed to the Princes on 25 July 1947, and told them plainly that they could not escape integration with the rest of India and the British government would neither be prepared to offer aid nor accept the independence of any State. "My scheme leaves you with all practical independence you can possibly use and make you free of all those subjects which you cannot possibly manage on your own. You cannot run away from the Dominion government which is your neighbour any more than you can run away from subjects for which welfare you are responsible".¹⁹ The borders of Jammu and Kashmir were contiguous to India and the State could not escape the consequences which naturally emanated from the lapse of the Paramountcy. A larger frontier of the State was contiguous to Pakistan, which had destabilised the adjacent Muslim majority districts of Poonch and Mirpur in the Jammu province and Muzaffarabad in the Kashmir province, to cause considerable concern to the State authorities. The borders of the State run along the Wakhan Valley of Afghanistan till almost its confluence with the west of Sinkiang. In the east the State was rimmed by Tibet. The British empire in India had forged the northern frontier of the State from the Dardic dependencies of Jammu and Kashmir, Chitral, Yasin, Darel, Ishkoman, Tangir, Hunza, Nager and Puniel, spread around the Gilgit Agency in the west to the Salt Lakes of Aksai-Chin in the east, with assiduous commitment to the defence of their empire in India. For India the disintegration of the northern frontier of the State, would be the greatest disaster.

India was an important factor to determine the future of

the States. The rulers of the States could not visualise their future in isolation from India. The Indian States were not subject to partition; neither the Muslim rulers nor the Muslim subjects of Indian States were enjoined to opt for Pakistan by the Partition Plan or the India Independence Act.

The Conference leaders added a fresh dimension to the accession of the States, by claiming independence for the State or its right to accede to Pakistan, after it had acceded to India. The fact that the Muslims constituted a majority of the population of Jammu and Kashmir, did not create any special conditions for which they could claim the right under the Partition Plan or the procedure laid down by the Indian Independence Act, to accede to Pakistan or assume independence.

Maharaja Hari Singh exhausted the alternative available to him under the Indian Independence Act of India, when he acceded to India. The Indian commitments to the Security Council were not pronounced on behalf of Jammu and Kashmir State, but on behalf of the Government of India. The Government of India offered to hold a referendum in the State to ascertain the wishes of the people of the State in regard to accession, but it consistently refused to accept any instrumentalities for such a referendum which repudiated the accession of the State to India. The investiture of authority in the Constituent Assembly of the State, which was independent of the Constitution of India, virtually, repudiated the accession of the State to India and prejudiced the position India had taken in the Security Council.

A more involved aspect of the address Sheikh Mohammad Abdullah delivered to the Assembly, was his assertion that the Constituent Assembly of the State would exercise power:

- (i) to revoke the accession of the State to India;
- (ii) to accomplish the accession of the State to Pakistan;
- (iii) to secure the State independence.

The leaders of the National Conference sought with calculated purpose to neutralise the fact that the Constituent Assembly had been instituted by an instrument created by the Constitution of India. The process, which had commenced with the accession of the State, and extended upto the convocation of the Constituent Assembly of the State, emanated from the Instrument of Accession, which by virtue of its provisions, integrated the sovereignty and the authority of the State with the sovereignty and the authority of the State of India. The stipulation of the Instrument of Accession, that Hari Singh did not bind himself to any future Constitution of India, except by agreement with the Indian Dominion, retained to him the powers to convene a constitution-making body to frame a constitution for the State, which his Regent Yuvraj Karan Singh did, when he ordered the convocation of the Assembly. But the Instrument of Accession did not vest in Hari Singh, any authority to empower the Constituent Assembly to undo any terms of the Instrument of Accession, rescind the act of accession, or perform a fresh act of accession to the Dominion of Pakistan.

The Instrument of Accession created the powers, by virtue of its terms, which vested authority in the ruler, not to accept any future Constitution of India, except by subsequent agreements with the Indian Government. The Proclamation of the Yuvraj assumed meaning and legal validity only within the ambit of the Instrument of Accession.

If the State had not acceded to India, the Proclamation of the Yuvraj would not have the meaning and the legal sanction, which formed its basis. The terms of the Instrument of Accession were incorporated in the Constitution of India, by virtue of:

- (i) the Instrument of Accession;
- (ii) Article I of the Constitution of India;
- (iii) Article 370 of the Constitution of India;
- (iv) the Proclamation of the Regent of the State issued on 25 November, 1949.

The Proclamation of the Regent envisaged the acceptance by the ruler of the State of the Constitution of India, according to which the relations between the State and the Indian Union would henceforth be governed. The Constitution of India envisaged the extension of its provisions to the Jammu and Kashmir State within its provisions embodied in Article I and Article 370. The Proclamation superseded and abrogated all constitutional provisions in force with State, inconsistent with the Constitution of India.

The claims of the Conference leaders that the Constituent Assembly of the State had plenary powers, drawn from the State, who were not a part of India, even after the State had acceded to the Indian Dominion, tantamount to a virtual declaration of the independence of the State, which Sheikh Mohammad Abdullah, contended, was reflected in the authority of the Constituent Assembly. The Conference claim to a separate and independent charge for the Constituent Assembly, was the first act of the Interim Government, to formalise the independence and sovereign authority of the State of Jammu and Kashmir which the Muslim majority of its population held in independence possession.

The doctrine of Double Charge, the Conference leaders, evolved, had several implications:

- (i) it repudiated the Instrument of Accession signed by the ruler of the State;
- (ii) it envisaged powers for the Constituent Assembly, which were not derived from the Constitution of India or the Instrument of Accession, but were vested in it by the people of the State, who formed an independent identity separate from the people of India;
- (iii) it underlined an independent State of Jammu and Kashmir of which the constitutional instrument: the Constituent Assembly, would exercise power to accede to Pakistan or assume independence;

- (iv) the Union of India was left with no remedy in case the Constituent Assembly of the State violated the Constitution of India.

On 7 November 1951, the Constituent Assembly constituted several committees to examine various aspects of the constitution of the State and submit their reports to the Assembly for its consideration. Among the Committees constituted were the Basic Principles Committee, the Advisory Committee on Citizenship and Fundamental Rights and the Drafting Committee. Mirza Afzal Beg who moved the resolution for the appointment of the Advisory Committee on Citizenship and Fundamental Rights, told the Assembly that the Committee would report on citizenship of the State and the fundamental rights which would be incorporated in the Constitution of the State and the rights, the people of the State would be secured would be designed in accordance with the rights which were incorporated in the constitutions of other democratic countries. He made no reference to the fundamental rights enshrined in the Constitution of India.²⁰

The Constitution of India embodied the right to equality and the right to protection against discrimination on the basis of religion, caste, place of birth, sex and colour, the right to freedom of faith and the right to property. The Constitution of India underlined the secular character of the State and its government in India and right to constitutional remedies for all people against the State, in case of discrimination on the basis of religion. The Conference leaders did not support the secular equality of the people of the State as the basis of its government nor did they favour the incorporation of the right to freedom of faith and right to protection against discrimination on the basis of religion in the constitution of the State. The Conference leaders were committed to the Muslimisation of the State, and the establishment of the precedence of the Muslim majority in its government, society and economic organisation. They visualised secularism in terms of the

religious injunctions of Islam which they claimed, guaranteed protection for the minorities.

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CHAPTER - 4

The Minorities

The Hindus, the Sikhs and the Buddhists, constituting the non-Muslim minority in the State, including the Hindu Sikhs who had taken refuge in Jammu and Srinagar in 1947, constituted about 39 per cent of the population of the State. The National Conference, after it was saddled in power, lost no time to virtually exclude the Hindus and the other minorities from the government of the State, its economic organisation and its social ethos. Right from the time, the Emergency Administration was constituted, the Conference leaders and cadres, unleashed a virulent campaign of persecution against the Hindus, who were accused of having exploited the Muslim masses during the Dogra rule and having opposed the Muslim struggle against the Dogras to protect their vested interests.

After the Interim Government was instituted, and the Conference leaders secured undisputed mastery over the government of the State, they initiated several measures, which has a devastating effect on the Hindus and the other minorities.

- (i) A widespread land-grab was put into operation by the Conference cadres, under the cover of land-reforms, to dispossess the Hindus of their land.
- (ii) All interests in property, industry, trade and commerce, transport, etc., were extinguished in the name of nationalisation of property, ostensibly to establish a class-less society, but in reality to exclude the Hindus and the other minorities from industry, trade, transport and commerce and forge

a new, politically motivated Muslim middle class.

- (iii) An undeclared moratorium was placed on the entry of the Hindus and the other minorities into the employment of the State, ostensibly to rectify the communal imbalances alleged to have been fostered by the Dogra regime to promote the interests of the Hindus.
- (iv) The moratorium was extended to the admission of the Hindus and the other minorities to educational institutions, grant of scholarships and nominations to institutions of higher and technical education outside the State.
- (v) Hindus and other non-Muslims were removed from any responsible positions, which they held, to exclude them from all decision-making units of the State Government.
- (vi) Islam was virtually recognised as the official religion of the State and all rational commitment to secularism was interpreted in terms of the principles of religious tolerance Islam enshrined.

In less than a decade, over which the Interim Government ruled, the Hindus and the other minorities were reduced to the position of a subject population. The Interim Government, exercised absolute authority in the absence of any constitutional guarantees, the people of the State were secured against arbitrary exercise of state power, discrimination on the basis of religion, ideologically motivated cultural aggrandisement and social persecution. The National Conference visualised secularism in terms of the religious injunctions of Islam, which embodied protection for the non-Muslims in a Muslim state. The Interim Government legitimised the enforcement of the precedence of Muslims in the government and society of the State as an essential aspect of the liberation of the Muslims from the Dogra rule. The National Conference claimed that reorganisation of the government and society in the State, could not be visualised except in terms of the Muslimisation

of the State, which they claimed, would ensure the secularisation of the State and provide a guarantee secularism in India, where the Hindus formed a dominant majority of the Indian population.

The Cabinet Mission plan had offered to the Muslim League, the organisation of a Muslim State in India, which would be independent from the rest of the country, except in respect of defence, foreign affairs and communication, almost similar to the Muslims State, the National Conference leaders, carved out in Jammu and Kashmir by virtue of Article 370. The Muslim in India, used the Cabinet Mission plan to consolidate the movement for Pakistan in the Muslim majority provinces, as well as the Hindu majority province of Assam, which the Muslim League claimed for Pakistan on the basis of its geographical contiguity to the Muslim majority province of Bengal.

The Hindus in Kashmir, where the rigour of Muslimisation was more pronounced, protested against the disastrous effects, the enforcement of the precedence of the Muslim majority in the government and society of the State, had on their community. The Hindus, conveyed to the Congress leaders, among them, Nehru as well, that the Muslimisation of the State had generated a rapid growth of Muslim separatism in the State. The Hindus conveyed to the Government of India that the Muslimisation of the State would eventually lead to the destabilisation of the minorities not only in Kashmir, but all over the State. The Congress leaders ignored the protest.

In the Jammu Province and Ladakh, the protest of the Hindus and the Buddhists assumed a more organised and forceful expression. In Jammu, the Praja Parishad organised public opinion against the policies of the Interim Government and demanded the integration of the State in the constitutional organisation of India. The Praja Parishad claimed that the exclusion of the State from the constitutional organisation of India on the basis of its Muslim majority identity had led to

the consolidation of communal and separatist forces in the State. The Parishad blamed the National Conference of seeking to forge a separate political identity of the State which did not form a part of the Indian political culture, with its basis in the Indian renaissance and national unity. The Parishad leaders, demanded the application of the entire Constitution of India to the State which alone, the Parishad leaders stressed, would promote the growth of democratic institutions in the State and check the separatist and isolationist trends, which the policies followed by the Interim Government had generated.

The pronouncement of the National Conference leaders in the Constituent Assembly and outside it, estranged the Hindus and the other minorities further. In the Kashmir Province, the Hindus, already facing destabilisation, received a fresh jolt, when the Conference leaders sought a fresh vote for the Constituent Assembly on the accession of the State. They were unrepresented in the Constituent Assembly and the few of the Hindus, who were returned to the Constituent Assembly unopposed, acted as the stooges of the Conference. Kashyap Bandhu, who had played a memorable role during the war years, in forging a secular movement for reform in the State and who was one of the signatories to the National Demand, was dumped by Abdullah in the Department of Rural Uplift, where he actually faded away into oblivion. Jia Lal Kilam was appointed a Judge of the High Court of the State and silenced. Budh Singh, the veteran Sikh leader, Sham Lal Saraf and Durga Prasad Dhar, ministers in the Interim Government, meekly followed the policies of the Conference, which were mainly devised by Sheikh Mohammad Abdullah, Afzal Beg and Maulana Masoodi, with the help of several Muslim bureaucrats in the State Government, most of whom were renegades, who had opposed the Conference in its struggle against the Dogras as well as its decision to support accession to India.

Gradually the support-base of the National Conference among the Hindus and the other minorities narrowed,

eventually leading the Conference leaders to depend upon the Kashmiri-speaking Muslims in the Valley and the contiguous districts of the Jammu Province. The Praja Parishad gathered wide-spread support among the Hindus and the other minorities in Jammu, and in due course of time assumed the leadership of the Hindu protest against the policies of the Interim Government.

In January 1952, the students of the local Government College in Jammu staged a demonstration protesting against the hoisting of the flag of the National Conference on the building of the College. The students complained that the National Conference flag was a party flag and therefore, it could not take the place of the national flag or the flag of the State. The students' protest infuriated the Conference, leaders who had the intelligence that the demonstrations organised by the students, was inspired by the deep resentment among the Hindus of Jammu against the Interim Government. The National Conference had, in order to promote its ideological commitment to the separate political identity of the State, demanded people's allegiance to "one leader, one party and one programme, almost on the pattern of the party dictatorship which characterised State controlled regimes. With the loyalty of the Muslims ensured on the basis of the promise to create a Muslim State of Jammu and Kashmir, which did not form a part of the Muslim commonwealth of Pakistan and which was placed outside the Hindu dominated secular State of India, the Conference leaders, could not garner the support of the Hindus and the other minorities, except by neo-fascist means to uphold the supremacy of Sheikh Mohammad Abdullah, the National Conference and the programme of 'Naya Kashmir'.¹

The Hindu opposition to the National Conference, the students protest in Jammu symbolised, marked the beginning of protest against the policies of the Interim Government. The State administration came down upon the students agitation with a heavy hand. "The students retaliated by proceeding on

hunger strike. The situation worsened and the protest demonstrations organised against the action of the government turned violent. At a number of places, the police resorted to firing. The situation deteriorated further and the army was called out to quell the disturbances. A seventy-two hour curfew was clamped on the Jammu city. "The Interim Government blamed the Praja Parishad of having instigated the agitation. The Parishad denied having any hand in the demonstrations and demanded the institution of an independent enquiry into the causes of the disturbances. Several leaders of the Parishad, including the President of the Parishad, Pandit Prem Nath Dogra, were arrested."

The Conference leaders claimed with impunity, that Jammu and Kashmir was a Muslim majority State and the Muslims had extended their support to Join India on the terms they determined and in case the Hindus did not support them, the Muslims would have no alternative but to part from India. The National Conference commitment to the Muslim nation of Kashmir, had ultimately come to its inevitable end: conflict with the Hindu commitment to national integration of the Jammu and Kashmir State with India.

The Hindu reaction and the agitation in Jammu was received by the Conference leaders as an affront. They accused the Hindus and the other communities of seeking to re-establish their dominance over the State with the Hindu communal forces in India, to destroy its secular character which they claimed was partly based on the recognition of the Muslim minority character of the Jammu and Kashmir, and its separate political identity. Using the Parishad agitation as a level, the Conference leaders went as far as to declare that the demand for the integration of the State into the Indian constitutional organisation, would not be acceptable to the Muslims, who had acceded to India to protect their freedom, when Pakistan sought to snatch it and who would not hesitate to reconsider their decision to support India, if the Indian people sought to snatch their freedom.

The pro-Pakistan elements, the words of intelligence agents of Pakistan operating in the State and a large section of Conference leaders and cadres, who had opposed the accession of the State to India, joined by the Muslim bureaucracy in the State government, launched a calculated campaign to illustrate the irreconcilability of the separate Muslim identity of Jammu and Kashmir with the Hindu dominated India, amply proved by the Hindu agitation in Jammu. The appeal went home, for the separate Muslim state of Jammu and Kashmir could neither be reconciled with the secular political organisation of India, nor be acceptable to the Hindus of India.

The communal polarisation which the Interim Government fostered in the State, caused considerable anxiety to the Congress leaders, who realised the danger in the alienation of the major communities in the State and the advantage Pakistan and the pro-Pakistan Muslim elements in the State could take of any Muslim distrust which grew in consequence. Their efforts to assuage the deep distrust among the Hindus and the other minorities was feeble.

In fact, the Indian leaders denounced the Jammu agitation and accused the Praja Parishad of playing in the hands of the enemies of the State. They did not muster courage to tell the Conference leader that they could not carry the Hindus and the other minorities with them in their endeavour to reorganise Jammu and Kashmir into a Muslim State. Obviously, the Hindus and the other minorities were not prepared to accept a separate political identity of the State which was placed outside the constitutional organisation of India and which was based upon the communal precedence of the Muslim. The Hindus, the Sikhs and the Buddhists had fought for the freedom of India, shoulder to shoulder with their fellow countrymen, opposed the partition and paid for their patriotism, more heavily than their Muslim campatriots, in the war of resistance against Pakistan in 1947.

They were unable to gauge the implications of the shift in

the outlook of the National Conference leadership, which had now become far too pronounced to be ignored. They were still guided by the conviction that the National Conference commitment to support the accession of the State to India, would lead them to victory against Pakistan. Perhaps, they were unaware of the political developments, which had followed the United Nations intervention and its impact on the Conference leaders. They were also unaware of the confabulations between the senior leaders of the Conference and the United Nations delegates sent to Kashmir on different conciliatory missions, including the members of the United Nations Commission for India and Pakistan. Durga Prasad Dhar, the Deputy Home Minister in the Interim Government, a left intellectual, shared his confidence with the Czech representative, Joseph Korbelt nominated by India on the United Nations Commission to India and Pakistan. Neither he nor the Government of India knew of Korbelt's connections till he defected to the west. And for whatever information the Indian Government had about the events in the State, they failed in their courage to confront the Conference leaders with any firm disapproval.

The shift in the policies of the Conference leaders which was formalised with their pronouncements in the Constituent Assembly, percolated down to the rank and file of the Conference and its impact spread out to the Kashmiri-speaking Muslims, almost all over the State. The message of the Conference leaders was clear and simple. The Muslim majority State of Jammu and Kashmir could not be integrated into the Hindu dominated India, and therefore, the Muslims of Jammu and Kashmir had chosen to opt for a separate political identity of the State, which was placed outside the constitutional organisation of India, and which was ensured guarantees by third states, including the United States, Britain and Pakistan, besides Russia. The implications of the demand for the separate Muslim identity of the State were wider; the proposition that the Muslim majority character of the State required to be

protected from the Hindu majority of India, was identical to the Muslim League demand for a separate state for Muslims in India to protect them from Hindu dominance. The National Conference sought to create a second Muslim State to save the Muslim nation of Kashmir from the dominance of the Hindu majority in India.

Basic Principles Committee

The Basic Principles Committee of the Constituent Assembly presented its report on 24 March, 1952. Afzal Beg, the Chairman of the Committee, unfolded the scheme of autonomy, the National Conference visualised for the State. The report envisaged that:

- (i) Jammu and Kashmir would not form a part of the Indian constitutional organisation and no provisions of the Constitution of India except those corresponding to the terms of the Instrument of Accession, would be applied to the State;
- (ii) the State would be constituted into an "autonomous republic within the Indian Union, with a separate President, National Assembly, Judiciary, regional autonomy and separate citizenship;"
- (iii) the State would have its own Bill of Rights, which would be included in the Constitution of the State and which would be based upon the special features of Jammu and Kashmir and its special needs.

The proposals of the Basic Principles Committee deepened the distrust of the Hindus and the other minorities in the State. Reconstitution of the State into an autonomous republic with its separate President, a separate National Assembly and a separate citizenship, evoked severely adverse reaction from them in the Jammu Province. The Hindus in Kashmir, alarmed by the proposals of the Basic Principles Committee, beseeched the Congress leaders to put a check on the separatist outlook of the National Conference, which was using its