

# **KASHMIR**

## **CONSTITUTIONAL HISTORY AND DOCUMENTS**

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## Preface

The volume presents the original documentary sources, both official and non-official, pertaining to the growth of the political institutions and the related constitutional cover the most stormy and the turbulent period of the modern history of Kashmir and bring to light original sources in regard to the administrative structures established by the Dogras and the frames of political control they devised, the Constitutional instruments they evolved for the Government of the State and the incredible operation of the British Colonial Organisation in India. The documents also bring to surface, considerable fact and data in regard to the freedom movement in the State, the evolution of the responsible Government, the transfer of power in India and the political convulsions which stuck the State in the aftermath of Indian independence.

The papers selected for the present volume have been compiled with a view to facilitate in depth studies in the Constitutional History of the State and also presents the readers with ready reference of other relevant sources. Since researches and investigations in the various aspects of the constitutional development of the State, are still to be undertaken, the relevance of the present study is obvious. Most of the documents have been collected from the papers presented in the British Parliament, printed in the Government Gazette and published by the Government of India, or the Government of Kashmir, from time to time. Some of the papers have been collected from the Archives of the different political Organisations which were involved in the politics of the State. Considerable care has been taken to preserve the substantive content of the documents edited for this volume. The Documents included

in this volume pertains to :

- (i) The Dogra administrative system,
- (ii) The operation of Paramountcy,
- (iii) The evolution of the responsible Government in the State,
- (iv) The transfer of power in India and the accession of the State to the Indian Union,
- (v) The Constituent Assembly of the State, and
- (vi) The Constitution of the State.

A special feature of the volume is that a comprehensive survey of the constitutional history is included in it and the reader is provided with a clear perspective of the different trends, the politics in the State assumed. Efforts have been made to present a coherent and conjoint account of the various political developments in the State within which the reader can conveniently place the related documentary sources. The authors have attempted to analyse the situational compulsions which led to various political changes in the State, interpret the judicial processes devised from time to time and locate the directions, the evolution of the various political institutions took. No study of this type has been undertaken in regard to the Government and politics of the State so far and to that extent the present study is expected to fill a long felt gap in the history of the State.

The authors owe a deep debt of gratitude to the Director of Archives and the keepers of the Record Jammu and Kashmir State, Librarian, Research Library Srinagar, Librarian, National Library Calcutta, Librarian, Khuda Baksh Library Patna, and the Superintendent Records, Food Control Department Srinagar. The authors are grateful to Dr. Mohd Yasin Professor and Head of the Department of History, Kashmir University and Late Kh. Abdul Ahad Burza for their guidance. The authors are indebted to Shiban Lal Putu, Rajinder Razdan and Jawahar Lal Bhatt who read through the Manuscripts. The authors are also grateful to Mrs. Sarla Kaul, Miss Santosh Teng and Mr. Ajoy Bhatt for their valuable assistance.

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Authors

## Contents

CHAPTER I	Constitutional History	1
CHAPTER II	British Intervention	16
CHAPTER III	National Movement	71
CHAPTER IV	Constitutional Reforms	92
CHAPTER V	National Demand	117
CHAPTER VI	Constitution Act, 1939	132
CHAPTER VII	Quest for Settlement	142
CHAPTER VIII	Indepent And After	182
	Documents	223
	Index	682

## Constitutional History

After the first Anglo Sikh War, which ended in the defeat of the Sikhs, the British assumed virtual control of the Sikh possessions. By virtue of the Treaty of Lahore which formalised the post-war settlement, the Sikhs ceded to the British, the territories of Jammu, Kashmir, Ladakh with Baltistan and the districts of Hazara and Chamba. The British transferred the territories in independent possession to Raja Gulab Singh of Jammu, a Rajput feudatory of the Sikhs, on the condition that the Raja paid to the Honourable Company one lac of rupees in part fulfilment of the indemnity the British had imposed on the Sikhs and the latter had expressed their inability to pay.

Gulab Singh was a Dogra Rajput of Jammu who joined the Sikh army in the wake of the annexation of Jammu by the Sikhs.<sup>1</sup> A valorous soldier, he did not take long to rise in power and prestige at the Sikh Court. For his active military service and loyal political support, Gulab Singh was given the

<sup>1</sup> K.M. Pannikar, *Founding of the Jammu and Kashmir State*, p. 19.

principality of Jammu in farm in 1820.<sup>2</sup> Two years after, he was awarded the fief in perpetual possession and bestowed with the title of Raja. As ambitious as he was valorous, Gulab Singh settled down to a vigorous policy of consolidation and expansion and in less than a decade he extended his sway over the numerous Rajput principalities spread around his fief. In 1834, he mounted offensive against the Kingdom of Ladakh and brought under his control the territories of Ladakh along with the tribal chieftainships of Baltistan.<sup>3</sup>

Maharaja Ranjit Singh died in 1839. He was succeeded by his eldest son Maharaja Kharak Singh. Kharak Singh was weak and irresolute and the politics at the Sikh Court, which had remained secure under the iron grip of Ranjit Singh, rapidly lost its direction and its stability. Kharak Singh's life was short lived. He died in 1840. After that the empire fell into turmoil. An inconclusive struggle for succession ensued which ultimately broke up the Sikh State. The Dogras, led by Raja Dhyan Singh and his son Hira Singh, were by far the most powerful faction at the Sikh Court. With Gulab Singh, infact, the most formidable feudatory of the State at their back, the Dogras managed to hold the balance at the Sikh Court for some time. However, the Khalsa crumbled under its own weight. The Dogras despised by most of the Sikh leaders for their possessions and fortunes gradually lost ground and were finally liquidated. Dhyan Singh was killed in the blood-bath which started with the assassination of Maharaja Sher Singh.<sup>4</sup> Dhyan Singh's son, Hira Singh, who assumed the wazarat with the help of the army, and strove hard to stabilise the affairs at Lahore, was removed from the scene by the Sikhs a few months after. Gulab Singh alone survived. The astute Raja managed to poise himself on the precarious balance between the warring factions at Lahore. He was not, however, spared and the Sikh troops, more than once, rode in strength to Jammu, to undo the Raja but with sheer diplomatic skill and strategem Gulab Singh kept himself alive and

<sup>2</sup> *Ibid.*, p. 29.

<sup>3</sup> *Ibid.*, p. 74.

<sup>4</sup> Bikarm Jit Hasrat, *Anglo-Sikh Relations*, p. 220.

his possessions in tact.<sup>5</sup>

The British involvement in the Sikh politics intensified as the disintegration sunk deeper in the Sikh empire. They eagerly awaited the separation of the Dogra principalities from the Sikh State, for they rightly assumed that so far the Sikh-Rajput alliance, which the Sikh monarch had forged with great skill, was not broken, the invasion of the Punjab would not be easy.<sup>6</sup> With determined effort they pursued a policy aimed to divide the Sikh State and evidence is available to show that they actively supported the attempts to push out the Dogras from the Punjab.<sup>7</sup> Once that was accomplished, the British knew, they could, and without much difficulty, invade the Punjab. The reduction of the Rajput principalities would follow. They bided time and waited for the opportunity to strike. Meanwhile they commenced their military preparations for the invasion. All over the summer of 1845, the British augmented their strength along their borders with the Punjab, built fortifications, brought up reserves to their advanced positions on the front and reinforced their cantonments at Ferozpur, Ludhiana, Ambala and Kasauli.<sup>8</sup> On the other side of Sutluj, the Sikhs, not oblivious to what happened along their frontiers, continued to fight among themselves. Even after, the Sikh armies crossed the Sutluj in December, 1845, the leaders at Lahore were far from united. Lal Singh, the Prime Minister, refused to take over the command of the troops. The Commander-in-Chief, Tej Singh, a sly and foxy conspirator, who was already in clandestine contact with the British officers and had offered his services to them for any consideration the British would bestow on him, was equally reluctant to lead the Sikh troops. In fact, both the Prime Minister and the Commander-in-Chief, wanted the Sikh armies to be beaten by the British, and secure themselves in their possessions.<sup>9</sup> Gulab Singh confined to his fief, frantically tried to secure his position against

<sup>5</sup> K.M. Pannikar, *Founding of the Kashmir State*, pp 66-72.

<sup>6</sup> M.K. Teng, Introduction, *Kashmir Papers*, XIV.

<sup>7</sup> Bikarm Jit Hasrat, *Anglo-Sikh Relations*, p. 220.

<sup>8</sup> *Ibid.*, p. 250-51.

<sup>9</sup> *Ibid.*, p. 262-63.

the Sikhs whose hostility towards him had abated little and the British whose intentions were still unknown. Many other Court dignitaries also were in secret liason with the British agents and officials and well aware of the fate that awaited there armies, they tried to earn the favour of their enemy in order that they were able to retain their possessions after their State was destroyed.<sup>10</sup> Except for a few men of honour, the Sikh leaders, were involved in the treacherous plot to get their army and the State liquidated and then grab the spoils.

The British mounted their first offensive against the Sikhs two days after the Sikh armies crossed the Sutluj. Khalsa rose to the occasion but treachery took its toll. The Sikhs suffered severe reverses in a number of successive engagements.<sup>11</sup> In the hour of crisis the Sikhs turned to Gulab Singh for leadership and invited him with the control of affairs at Lahore. Once in power, the Dogra Chief sought to secure himself both against the British as well as the Sikhs. He was a shrewd politician and an astute statesman. He was well aware of the fact that the Khalsa was exhausted by conflict and depleted by internecine strife and the Sikhs had lost the capacity to stand against the British. He also realised that the influence, he had wielded in the empire had waned after his brothers had been liquidated. There were few chances for the Sikhs to recover and still less for him to retain his position and power. He could foresee that from the position of authority he was in, he could deal with the British as well as the Sikhs with greater advantage to himself. He still had a huge and lucrative fief, was rich in money and materials and had quite a few powerful legions of hill troops to support him in case he needed to force an issue. He followed a policy of discrete conciliation towards the British, avoided to cause any offence to them, admonished the Darbar for its rash actions and actually pressed it to come to an interim war-time settlement with the British and avoid any further crisis.<sup>12</sup> He left the army to its fate, allowed the traitors Lal Singh and Tej Singh to remain in command of the troops,

<sup>10</sup> *Ibid.*, p. 263.

<sup>11</sup> *Ibid.*, pp. 267-75.

<sup>12</sup> *Ibid.*, p. 276.

in all probability with deliberate intent and remained behind in Lahore almost inactive.<sup>13</sup> Perhaps, he wanted to keep the situation fluid and find a way to secure himself before the fate of the Sikhs was decided. In one respect he showed a remarkable sense of realism.

The last and most decisive battle of the Anglo-Sikh war was fought at Sobraon, a small village on the banks of Sutluj, where the British launched their final assault on the Sikh position. The Sikhs fought valiantly. But the empire had already been sold. Gulab Singh, and the other ministers and military generals were in secret contact with the British and eagerly awaited the destruction of the Sikh army.

Tej Singh, the Sikh Commander-in-Chief, had fled soon after the first assault. He had either by accident or design, sunk a boat in the middle of the Bridge, and had cut off Sikh retreat. Sham Singh Attariwalla had taken over the command, and rallied the soldiers of Gobind not to give up, but die for Khalsa. Lal Singh and his cavalry force were no-where to be seen. He had taken the road to Lahore.<sup>14</sup>

Sobraon was lost and with that the Sikhs lost their freedom. The victorious British armies entered Lahore on 20th February, 1846. After the surrender at Sobraon, the Sikh resistance was practically broken.<sup>15</sup>

The Honourable Company demanded from the Sikhs the entire territory of Jullundur Doab between Sutluj and Bias, control of the two rivers, demobilisation of the Sikh army, and an indemnity of one and a half crore of rupees. In defeat the Sikhs agreed to part with their territories, but Lal Singh, who had assumed the Wazarat at Lahore after the war, expressed the inability of the Darbar to pay the huge indemnity and instead offered the provinces of Jammu and Kashmir with the districts of Hazara and Chamba to the British. Lal Singh wanted to deprive Gulab Singh of his huge fief and at the same time ward off the British demands. The British had however,

<sup>13</sup> J. D. Cunningham, *History of the Sikhs*, Ed. H.L.O. Garret, pp. 420-22.

<sup>14</sup> Bikarn Jit Hasrat, *Anglo-Sikh Relations*, p. 282.

<sup>15</sup> *Ibid.*, p. 284.

their own reasons to refuse to accept the transfer of the territories offered to them.<sup>16</sup> An understanding was reached between the British and Gulab Singh and it was decided that Gulab Singh would be transferred in independent possession the provinces of Jammu and Kashmir and the districts of Hazara and Chamba in lieu of which Gulab Singh would pay one crore of rupees to the Company in part fulfilment of the indemnity, the British had imposed on the Sikhs. By this dubious deal, the British struck a bargain of diplomatic alternatives with the Dogra chief, ensured the redemption of the demand for the war indemnity, alienated the Rajputs from Sikhs and brought the entire tract of the hills running north of the Punjab under the British protection. The terms of settlement between the Sikhs and the British were formalised by the Treaty of Lahore which was drawn up and signed on March 9, 1846. Among other things the Treaty stipulated :

The British Government having demanded from the Lahore state, as indemnification for the expenses of the war, in addition to the cession of territory described in article 3, payment of one and a half crores of rupees; and the Lahore Government being unable to pay the whole of this sum at this time, or to give security satisfactory to the British Government for its eventual payment; the Maharaja cedes to the Honourable Company in perpetual sovereignty, as equivalent for one crore of rupees, all his forts, territories, rights and interests in the hill countries which are situated between the river Beas and Indus, including the provinces of Kashmir and Hazara.<sup>17</sup>

The transaction with Gulab Singh was finalised at Amritsar on March 16, 1846, by a separate agreement with him Article I of the Treaty of Amritsar provided :

The British Government transfers and make over for ever in independent possession, to Maharaja Gulab Singh and heirs male of his body, all the hilly or mountainous country, with its dependencies situated to the eastward of

<sup>16</sup> K.M. Pannikar, *Founding of the Kashmir State*, p. 108.

<sup>17</sup> Treaty of Lahore, Article 4.

the river Indus and westward of the river Ravi, including Chamba and excluding Lahol, being part of the territories ceded to the British Government by the Lahore State according to provisions of Article IV of the Treaty of Lahore dated March 9, 1846 A.D.

Trans-Beas portion of Kulu and Mandi which were included in the territories transferred to Gulab Singh were retained by the British, in consideration of which twenty-five lacs of rupees of the amount Gulab Singh had to pay, were waved off in his favour.<sup>18</sup> The rest of the payment was to be made by the Maharaja into equal instalments. Shortly after the Maharaja took possession of the territories made over to him, he expressed his desire to cede the province of Hazara to the British, an offer which the latter readily accepted, and in return transferred to the Maharaja the districts of Suchetgarh and parts of the districts of Gurdaspur with a small chunk of territory from Kangra which was inhabited by the Dogras.<sup>19</sup>

### THE DOGRAS

Gulab Singh faced considerable difficulty to forge an integrated political structure for the State he had founded. It was no easy task to establish uniform institutions of political control in the State and secure an effective response to his government. The territories transferred to him were extremely heterogeneous and suffered marked disparities in ethnic and cultural patterns, language and economic organisation. The three regions did not share a common history, a mutually inter-acting culture and common language. The province of Jammu to which the Dogras belonged presented few problems and Gulab Singh did not interfere with the traditional frames of social stratification and property ownership. Knit into a strong framework of caste and bound by imperatives which were mainly tribal in character, the Dogra Rajputs did not prove difficult to be dealt with. In fact the existing instruments of social and political control, property relationships and the local rule preferences were used by Gulab Singh as well as the

<sup>18</sup> K.M. Pannikar, *Founding of the Jammu and Kashmir State*, p. 116.

<sup>19</sup> Khushwant Singh, *History of the Sikhs*, p. 58.

Dogra rulers who followed him as the most dependable bases to consolidate their position.

In the province of Kashmir, the Maharaja, however, faced major problems of political organisation and administrative sanction. The more stable political forms established during the Karkotas and after them during the reign of the early Sultans had either disintegrated or been destroyed by the ruling dynasties that followed. An organised administrative organisation did not exist and its place had been taken by agencies of blackmail and oppression. The court grandies, in whose hands the operatives of power lay, used them for personal benefit. The wide spread landed aristocracy which had grabbed almost the entire land in the province, the heirarchy of the village officials, spies, revenue collectors and tax contractors, the vast mass of Karbhanadars, who monopolised the few industries flourishing in the State and the gallaxies of big and small commercial magnates, who in collusion with the State officials, manipulated and maintained a pernicious system of trading, formed the long lines of oppressors who fed on the population of the state.

The administration of Kashmir called forth all the statesmanship of Gulab Singh. In the later days of Sikh administration the affairs of the province had been sadly neglected. The shawl industry, which is the mainstay of the population of Kashmir, was weighed down by heavy and capricious taxation, reckless Governors, especially Sheikh Imam-Uddin had given away much of the land in the valley as rent free concessions, an oppressive system of Begar, or forced labour, made the life of the peasantry miserable, sati and infanticide were common, the hilly areas were infested with robbers.<sup>20</sup>

Gulab Singh settled down to the task of administration with determined effort. He put down rebellion with a strong hand and order was restored in every part of the country. In Kashmir, the Maharaja took immediate steps to restore peace and tranquility. Jagir grants and other concessions in land

<sup>20</sup> K.M. Panniker, *Founding of the Kashmir State* P. 134.

were reviewed, taxes were rationalised and the shawl industry was reorganised. Rationing was introduced in order to meet the usual famine conditions in the province.

The great difficulty that the Maharaja experienced was with regard to Jagir grants. There were no less than 3,115 Jagirs granted in Dharmarth besides numerous alienations of other kinds. A large number of them were unregistered. The Sikh Governors, Sheikh Goolam Mohi Udin and Sheikh Imam-Uddin were extremely lavish in their grants, especially the latter, who for the sake of popularity signed away large tracts of land at the end of the Sikh regime. As soon as the Maharaja took charge of his country he instituted an enquiry of quowarranto. The Jagirdars and other grantees greatly and loudly complained that the Maharaja was resuming their ancient possessions.

Tyler, who conducted an independent enquiry, states that the Maharaja was inclined to be just and reasonable. His point was that people who began as revenue farmers should not claim the land they held in farms to be Jagirs; that grantees who were given one acre should not be allowed to possess two on the same sanad, and that in case of treason, rebellion and gross misbehaviour the Jagirs should be liable to resumption.<sup>21</sup>

The civil administration of the State was entrusted to a council of courtiers each of whom was put incharge a department of the Government. Most of these officers who were called Dewans or Ministers enjoyed varied importance at the court. The Ministers were headed by a senior Minister who had precedence at the court and wielded considerable influence over the Maharaja. The other senior Ministers advised the Maharaja, who in substance retained the power of government in himself, on foreign relations of the State, finances, revenue collection and taxation. Treasury was separately put incharge of a Dewan, while another Dewan supervised the Maharaja's household and private Toshakhana. Another Dewan headed the department of information. The troops remained directly

<sup>21</sup> *Ibid.*, p. 135.



under the command of the Maharaja. The Ministers remained in office at the will of the ruler, and could be dismissed or demoted unceremoniously whenever they incurred the displeasure of the ruler. Functions of the government were neither defined nor demarcated and the business was allocated by the Maharaja himself, arbitrarily and at his will. The hierarchy of the officials which constituted the administrative structures at various levels, was hardly reorganised after he assumed the reins of the government, and continued to be as haphazardly placed as it was before. Even at the lower levels the demarcation of functions was not attempted. The troops were employed to supervise the collection of revenue, the magistrates and petty officials acted as judges, revenue officials were employed to work as spies and report on the affairs of the localities put in their charge, and the tax collectors were frequently put on onerous task of maintaining law and order. Feeding on black mail, because few of them were paid from the State treasury, the officials grabbed much of what was left with the people after the State had collected its share. The administration of justice was entrusted to executive officers, the Maharaja being the Chief Adawlte. He vested in him the power to hear cases in the first instance as well as in appeal against a nazrana of rupee one presented with the petition.<sup>22</sup>

For administrative convenience the Maharaja devided his domains into three provincial divisions, i.e., Jammu, Kashmir and the frontier regions of Ladakh and Gilgit, each division being put under the control of a Chief-Officer whose position was analogous to that of a governor. The officers remained in attendance on the Maharaja at his court.<sup>23</sup> Each division was further subdivided into districts and each of the districts was put in charge of a district officer. Jammu division comprised four districts : Jammu, Jhupal, Kishtwar and Jasrota. The Kashmir province was divided into two major divisions Kamraj and Maraj, each put under the superintendence of a district officer. The frontier regions were divided into two districts: Ladakh, which was put under a local

<sup>22</sup> Drew, *Jammu and Kashmir Territories*, p. 1.

<sup>23</sup> Notes on Jammu and Kashmir, National Archives of India, Foreign, Political A, July 1863, No.73-75.

governor and Gilgit which was put under the administrative control of the commanding officer of the State troops stationed there.<sup>24</sup>

Obviously the authority of the government and the powers of administrations were centralised in the Maharaja, who followed in principle, the pattern of personal rule which his master Ranjit Singh had adopted in the Punjab. The ruler personified the state. He was the source of all authority and the fountain-head of justice. All property belonged to him and in the capacity of the chief land-lord his power to tax, raise revenues and levy forced labour was absolute. Gulab Singh, in fact resumed most of the Jagir grants,<sup>25</sup> awarded before him, by the Sikh Governors, among them particularly by Sheikh Imam-Uddin for political and other reasons.<sup>26</sup>

In one respect, however, the government established by Gulab Singh did not differ in essentials from the oriental despotism which characterised the Princely States in India. Except for conservative reaction and the instruments of political blackmail which the Princes inherited or later devised, they were hardly left with any of the nativity they claimed. They were protected proteges of the British colonialism and their power and position were secured by the Government of India. The sanads, treaties and agreements on which the Indian States' structure was based, were in content, commitments to a subordinate alliance. The Princes had no inherent powers. Gulab Singh realised this clearly and in of his communications to the Governor General, he wrote :

Your honour's gracious letter is a source of extreme joy to me and I sincerely believe that your honour has elevated me to skies. I am ready to sacrifice my life and property as a proof of my obedience to your honour. As it is the duty of the obedient to prove worthy of any test. I am ready for your honour's orders. I am extremely grateful to the gracious British Government for its kindness and favour done to me. Any one who is faithful to the Hono-

<sup>24</sup> *Ibid.*

<sup>25</sup> K.M. Pannikar, *Founding of Kashmir State*, p.135.

<sup>26</sup> *Ibid.*

urable Company has to remain faithful with his heart and soul. As an obedient servant, he has to carry out all orders.<sup>27</sup>

Maharaja Gulab Singh suffered from dropsy and within a few years of his rule his health began to fail. By 1856, his condition worsened. A statesman of great foresight, the Maharaja was well aware of the difficulties that could arise in regard to succession after his death. Two of the Maharaja's three sons were already dead, the eldest having perished with Naunihal Singh, the heir apparent to the Sikh throne, on the fateful day, Maharaja Kharak Singh was cremated and a stone archway gave way and crashed over the funeral procession as it wound its way back to the capital.<sup>28</sup> Ranbir Singh, who alone survived, did not keep good health and the Maharaja was eager to put him on the throne during his life time. He knew that his prestige and his influence with the British, whose confirmation was necessary to sanction the installation of his son, would definitely weigh in his favour. The Maharaja had however, many reasons to be anxious. The British had become aggressive and had subjected him to considerable embarrassment on more than one occasion. Besides, his nephews, Jawahir Singh and Moti Singh, had laid a claim to a large part of the State and contested the right of Maharaja Gulab Singh to have assumed undisputed mastery over the territories of the State which they contended belonged to their father, Raja Dhyani Singh and their uncle Raja Suchet Singh.<sup>29</sup> Though Jawahir Singh had been deprived of his Jagirs in the State in 1852, and Moti Singh confirmed in possession of his Jagir in Poonch, Gulab Singh remained apprehensive of the trouble, the brothers could foment. Accordingly, the Maharaja deputed Dewan Jawalla Sahai to communicate to the Governor-General, his desire to enthrone Ranbir Singh. The Government of India readily agreed to confirm the installation and the succession was smooth. The Government of India awarded a khillat to

<sup>27</sup> F. M. Hassnain, *British Policy Towards Kashmir*, Quoted p. 29.

<sup>28</sup> Khuswant Singh, *History of the Sikhs*, p. 12.

<sup>29</sup> K. M. Pannikar, *Founding of the Kashmir State*, p. 121, Thakur Karan Singh, *Tarikhī Rajgan Janmu wa Kashmir*, p. 176.

the Maharaja. Gulab Singh himself, made out a patta in favour of Ranbir Singh by virtue of which he conferred the title of the Maharaja on him and laid down certain instructions for him to follow. Gulab Singh enjoined upon his son that he should be loyal to the British, keep his army properly equipped, watch the borders, govern his people well and maintain friendly relations with the British.<sup>30</sup>

Ranbir Singh, after he succeeded his father, did not materially change the basic structure of the personal rule his father had established. The Maharaja retained the powers of the government with himself and the different departments remained as usual in charge of the ministers who were appointed by the Maharaja and were responsible to him. An attempt was made by the Maharaja to demarcate the various functions of the administration and separate departmental organisations were established for the army, foreign relations, home affairs and religious endowments. The provincial administration was modified to the extent that resident governors were appointed for the two provinces under whom were placed the district officers who supervised the administration in different districts in each province. The divisional distribution of Kashmir province was abolished and the province was redistributed in districts which were administered by district officers. Chief Courts, presided over by Adwaltees were established at Srinagar and Jammu to hear cases in first instance and in appeal. The Maharaja, also retained the power to hear cases in first instance and in appeal.

The judicial system, even after the appointment of the Chief Courts, was characterised by much abuse. Interference by the officers of every rank in the administration of justice was common and parochial procedures, which were derogatory to any principles of justice, continued to remain in vogue and guide the courts at every level in the dispensation of justice. Describing the judicial system, the Minister in charge of the law and the Courts in the State, wrote to the Government of India, a year after Maharaja Ranbir Singh died :

On taking over charge of the office of Judicial Member

<sup>30</sup> Quoted F. M. Hassnain, *British Policy Towards Kashmir*, p. 37.

of the State Council, I was surprised to find that it was singularly characteristic of the courts to make the most unnecessary and vexatious delays in the disposal of cases and my first duty was to advert on their conduct—in certain cases which came before me in appeal . . . .

The presiding officers of the courts had judicial work performed by their clerks, and it has been with great difficulty that I have partially succeeded in getting them to record their proceedings in their hand. There are still a number of ignorant and illiterate Tehsildars and other officers, owing their employment to strong official influence, who would not and could not carry out my instructions.

I have come across, many criminal trials in which a single line in the form of judgement had never been recorded, while instances have repeatedly come to my notice of courts neglecting the rudest principles of equity and jurisprudence, putting suitors to all sorts of annoyance. . . .

A curious custom prevailed, enabling private persons to make money by laying information exposing the conduct of State servants. Such complaints are called "Khair-khawai" and were entertained by the criminal courts without any reference to the department in which the accused was employed. The officials, in a body, being addicted to misappropriation of money received by them in the course of official duty, easily avoided investigation by bribing the informers, and the Darbar itself, not being well prepared to check corruption, or recover money embezzled by its servants, such misappropriations were committed with impunity, so that at the present day there is hardly an official who, if a proper enquiry was instituted, would not have to account for his misconduct . . . .

Execution of decrees is tedious, and, as no civil case is held to be finally decided until it is confirmed in appeal by the highest tribunal, which generally takes seven to ten years, execution is generally stayed till then.

I will here say a few words regarding the laws in force. There is a Penal Code, but there is no Code of Criminal Procedure.

Similarly, there is a Code of Civil Procedure, but there is

no substantive code of civil law, nor is there any law of limitation. . . .

There is a clause in Penal Code under which a Magistrate could take cognizance of an act or omission not specified therein, if such act or omission appears to him to be objectionable in the cause of society, and he may sentence the accused to a fine of Rs. 25/-. This gives Tehsildars and Revenue officers ample opportunities to punishing people for disobedience of order, contempt of authority, and other supposed offence. . . .<sup>31</sup>

<sup>31</sup> Note on Administration of Justice in Kashmir State, Bhag Ram, Nov. 18, 1889.

## Chapter 2

## British Intervention

The transfer of the territories of Jammu and Kashmir to Gulab Singh in independent position was only a temporary phase in the grand design to subjugate the Rajputs after the Sikhs had been vanquished.<sup>1</sup> The Amritsar transaction was an act which recognised the British ascendance and it is open to question whether the Dogras were preserved any real and substantial quantum of independence and sovereignty. The Treaty bound the Dogras to a subordinate alliance with the British, and the Dogras did not only recognise the British supremacy but also agreed to pay tribute to them, a fact which almost destroyed the technical independence they were presumed to have acquired. By explicit and clearly defined provisions, the British acquired complete control over the external relations of the State, thus extending a political protectorate over the Dogra estates. The Dogras accepted to submit disputes to the British arbitration which arose between them and the Sikhs or any other neighbouring States. The Dogras also

undertook to put their troops at the disposal of the British, whenever the latter were involved in the hills, a stipulation which gave the British vicarious power to determine the disposition of the Dogra armies. The other restrictions which were imposed on the Dogras were that,

- (i) the territories of the State would not be altered without the concurrence of the British ; and
- (ii) the Dogras would not employ in their service any British, American or any European subject, without the permission of the British.<sup>2</sup>

On their behalf the British promised to give aid to the Maharaja to protect his territories from external attack.<sup>3</sup> The Dogras were thus integrated into the broad and complex structure of the British colonial empire in India, and were subjected, more or less, to the same restrictives, as the other Indian States were. All that the Dogras acquired, was a wider orbit of autonomy, the extent of which was also left to be determined by the British. Like the other Indian States, Jammu and Kashmir was also subject to the operation of the British power which was bound by no limits and treaty stipulations. The treaty stipulations with the Princes were legal limitations on the Princes and were often invoked and made use of by the British. The rights and privileges, and sovereignty and power, ostensibly reserved for the Princes, were empty attributes. The Princes were fictitious entities.

So far the British remained preoccupied with the crisis in the Punjab, they left Gulab Singh to himself; but after the final subjugation of the Sikhs and the annexation of their territories, the British lost no time to extend effective political control over the Rajputs. A few months after the Maharaja got the possession of his territories, the Government of India complained to the Maharaja that they had received reports of oppression in the State and had decided to depute Henry Lawrence to make an on the spot enquiry in to the working of the administration of the State and report on the conditions there. Lawrence found

<sup>2</sup> Treaty of Amritsar, Articles.

<sup>3</sup> *Ibid.*, Article.

<sup>1</sup> Ellenborough to the Duke of Wellington, 20th October 1843. *The Punjab Papers*, p. 67.

the allegations false and absolved the Maharaja of the blame.<sup>4</sup> In spite of his findings, however, the British Commissioner did not spare the Maharaja and warned him that the British Government would not "permit tyranny in Kashmir" and in case the administrative set up was not reorganised, "some other arrangements would be made for the protection of the hill people".<sup>5</sup> Lawrence also advised the Governor-General to administer a warning to the Maharaja. In his communication, the Governor-General told the Maharaja that the Indian Government would not hesitate to interfere directly in the administration of the State in case the Maharaja failed to take effective steps to reorganise the Government of the State.<sup>6</sup>

The psychological shock the British delivered to the Maharaja was aimed to score on him the impression that his possessions were an inseparable part of the British empire in India and the orbit of authority he was reserved, was determinable by the British and depended on their goodwill. The British warnings, obviously underlined the establishment of their jurisdiction within the territories of the State, a policy which they had adopted and with over-whelming success, in extending their hold over the many other Indian States. The policies of dual jurisdiction within the same state had been used by them as the most potent instrument of subversion, intimidation and final subjugation of the petty principalities and native States in India. Once the British established a jurisdiction in any State, it was gradually extended to bring the entire administration of the State within its scope.

A more direct suggestion was made to the Maharaja by the British in 1852, when the Government of India proposed the appointment of an "Officer on Special Duty" in the State to look after the European visitors who came to Kashmir in large numbers and whose conduct in the State required supervision.<sup>7</sup>

<sup>4</sup> National Archives of India, Foreign Secret, 28th November, 1847, No. 36-41.

<sup>5</sup> National Archives of India, Foreign Secret, 28th January, 1848, No. 35.

<sup>6</sup> National Archives of India. Foreign Secret, 28th January, 1848, No. 34-A.

<sup>7</sup> National Archives of India, Foreign Political. 14th December, 1852, No. 82 and 83.

The Maharaja strongly refused to countenance any such proposals but ultimately relented and agreed to the appointment of the "British Officer on Special Duty" in the State. The attempt to appoint a British Officer to the State was made to secure,

- (i) the right to administer jurisdiction in the State for which the Treaty of Amritsar did not stipulate any provisions; and
- (ii) the right to define the limits of the authority within which the Ruler of State exercised his authority.

The rebellion of 1857, struck the British hard and in fact, destroyed whatever was left of the Honourable Company. For once the arrogance of the British officials was broken and in desperation they sought to secure, whatever help they could, to save themselves from the catastrophe. Lawrence, who was in the Punjab, received the news that Delhi had fallen to the Indians, on 11th May 1857. Immediately he sent a communication to Gulab Singh seeking his help. At the same time he strengthened the defences of the Punjab, which of course, did not present many difficulties for the indifference the Sikhs exhibited towards the Indian uprising. Without any loss of time, Gulab Singh, who had relinquished his throne in favour of his son, Ranbir Singh, instructed the Maharaja to put his troops in readiness, refuse entry into the State or employment in the State troops to any 'Purbias' and keep a strict watch on the borders. Maharaja Ranbir Singh despatched a force of three thousand troops to assist in raising the siege of Delhi and the Dogras fought well by the side of the British.<sup>8</sup> After the uprising was successfully suppressed the British bestowed a Khilat of a lac of rupees and Jagir in Oudh upon the Maharaja, who very politely refused to receive the grace and with much supercilious demeanour told the British that he had done his duty out of loyalty and good will.<sup>9</sup> Shortly after, Gulab Singh died.

After the mutiny, the British sought to find fresh lines of

<sup>8</sup> Jammu and Kashmir State Archives, No. 175.

<sup>9</sup> P.N. Bazaz, *Inside Kashmir*, p. 39.

approach towards the Indian States, which, they realised, were the citadels of reaction on which the British could fall back in case of need. Their policy with regard to Kashmir was determined by different considerations. With the assumption of the Company's possessions by the Crown, the frontiers of the British empire suddenly stretched all over the entire north of the sub-continent. The imperial expansion, so diverse and expansive, had deep and wide ramifications for the British almost everywhere they were committed. Immediately, the entire Central Asia was brought into the vortex of rivalry for territorial possessions and political influence. The proximity of the Russian borders, the vulnerability of the vast Central Asian belts to a probable Russian advance, the political instability of the Afghans and the other tribal chieftains situated along the borders of India and the competition for economic advantages in these regions, were in fact, the main considerations which determined the policies of the Indian Government with the regard to the Dogras. The Russians actually started a vigorous campaign of consolidation and expansion immediately after the proclamation of the British empire in India. By 1850, they established themselves along the Amu river. In less than four years they subjugated almost all the Caucasian hill tribes. In 1855 they subjugated Tashkand. The annexation of Khojend followed in 1856. Samarkand and Bokhara were annexed by 1858 and Kurgan fell to them the following year. The Russian expansion did not only alarm the British officials, for the fact that the menacingly widening frontier of a hostile power posed problems of security, but it blocked the prospects of any further improvement in trade and commerce with the peoples inhabiting the Central Asian regions particularly Turkestan, with its fabulous wealth and resources. In fact, two important officials of the Indian Government R.H. Davies, Secretary to the Government of the Punjab and Thomas Dougals Forsythe, Commissioner and Superintendent of Jullundhur. Vigorously pleaded for the abolition of the monopoly, the Dogras had, of the trade and commerce across the State borders and the abolition of duties imposed on it by them.<sup>10</sup> The Government

<sup>10</sup> R.H. Davies to Secretary Government of India, 23rd January, 1863, National Archives of India, Foreign Political, May, 1863, November, 9-12.

of India sounded the Maharaja. He refused to yield and offered a reduction in duties levied on goods imported into Kashmir. That did not satisfy the British and in 1867, they appointed a Trade Agent at Leh. The Agent, immediately after having assumed office, advised the Government of India to open fresh trade routes with Turkistan and order the abolition of all levies and restrictions on trade across the frontiers of the State.<sup>11</sup>

Mayo, who succeeded Lawrence in 1869, had no predispositions his predecessor had with regard to the Dogras. He took up the issue of the Ladakh Frontier with the Maharaja. Commerce and trade with the Central Asian States, particularly with eastern Turkistan was uppermost in his mind as it was in the mind of every other British official, directly or indirectly concerned with the northern frontiers. In 1870, the control on the trade across the Ladakh border was wrested away from the Maharaja and a new arrangement was devised to keep the commerce and politics of the frontier under the close watch of the Government of India. By an agreement,<sup>12</sup> which was actually forced on the Maharaja, all levies and duties on trade with Central Asia were abolished. The administration of the trade routes was entrusted to Joint Commissioners, who were appointed by the Government of India and were vested with judicial powers and special authority to control and supervise trade between Central Asia and the British India. The loss in the revenue incurred by the Maharaja was to be compensated by the British Government.

Actually, however, the settlement was a prelude to a long and protracted process of intrigue and intimidation by which the entire northern frontier of the State was finally brought under the effective control of the Government of India. The appointment of the Joint Commissioners in Leh, and the extension of the British control over the Ladakh frontier was a material and substantial change in the political and legal relations that obtained between the Dogras and the British. In fact it was for the first time that effective territorial jurisdiction

<sup>11</sup> Cayley's Report, National Archives of India, Foreign Political A, March, 1969, No. 7.

<sup>12</sup> The Commercial Treaty 1870, Treaties and Documents Relating to Jammu and Kashmir State, Archives Repository, Srinagar.

was assumed by the British in a part of the State. The authority acquired by the British was unfailingly intended to cover the entire frontier of the State.

The same year, Douglas Forsyth was deputed on a commercial mission to Yarkand. He was also charged to investigate into the political and strategic conditions prevailing in the region for reasons of reported Russian activity and Afghan hostility. In 1873, he was sent again. Forsyth succeeded to enter into a trade agreement with Yarkand and secured concessions for the import of British products in Central Asia. A British official designated the "Special Assistant Resident for Chinese Affairs" was appointed to stay in Kashgar. Forsyth, however, warned the Government of India that the strategic passes of Baroghil and Ishkoman which led across the ranges running north of the Dardi principalities of Chitral, Yasin and Gilgit were easy and passable and in case a hostile power came to control them, the Dardi principalities could be lost easily.<sup>13</sup> The Dardi principalities were scattered over the entire country from Anmb to Rondu and included Chitral, Darel, Tangir, Hunza, Nagar, Chilas, Punnial, Yasin and Gilgit. Gilgit was under the Dogras. The safety and security of the Dardi principalities was of vital strategic importance to the British for, from Chitral, Yasin and Gilgit, a close watch could be kept on Russian as well as Afghan movements.<sup>14</sup>

On the basis of these considerations the British commenced a complete reappraisal of the entire frontier policy which inevitably involved a reconsideration of their relations with Kashmir. The British policy, as it took shape assumed three aspects,

- (i) to secure the Dardi principalities under the British control;
- (ii) to eliminate any Afghan influence in the region and frustrate any collaboration between the Afghans and the Russians; and
- (iii) to acquire control over Gilgit.

<sup>13</sup> National Archives of India, Foreign Secret, July, 1877, No. 34-B.

<sup>14</sup> National Archives of India, Foreign Secret Proceedings, July, 1877, No. 35.

A military adventure into the Dardi principalities was impossible, for the British were neither prepared to risk involvement in the sensitive outposts so close to the Russian borders nor were they ready to undertake major military commitments on such a remote front. Lyton struck for a different course. He offered Maharaja Ranbir Singh the money and material to bring the tribal principalities under his control. This would ensure the British, virtual control over the principalities without any major military commitments and any political consequences so far as the Russians were concerned. The proposals to extend control over the Dardi principalities were put forth to the Maharaja by the Governor-General personally at Madhopur in November, 1876.<sup>15</sup> The offer made by the Governor-General was subject to the condition that the Maharaja accepted the appointment of a British Political Officer at Gilgit to report directly to the Government of India on the developments which occurred on the border. The Maharaja was apparently reluctant to accept the appointment of a Political Officer in Gilgit. Finally, however, he accepted the offer, probably in the hope of extending his territories.<sup>16</sup>

The efforts of the Dogras to subjugate the Dardi principalities proved abortive. Hardly equipped with necessary power and prestige, incapable to take any purposeful action and crudely unaware of the cultural relationships and political conditions in the region, the Dogras achieved little. John Biddulph, the British Officer, made the situation more difficult. He bypassed the Kashmir authorities, established direct contact with the tribal chieftains, played one against the other and deliberately created disaffection among the tribal leaders against the Dogras.<sup>17</sup> The active political interest the Dogras took in the region and the indiscriminate intervention in the internal affairs of the tribal chieftainships by the British Officer, turned the tribals against both. The entire frontier erupted alive. Consequently the forward thrust by the Dogras failed. Gilgit

<sup>15</sup> National Archives of India, Foreign Secret, Proceedings, July, 1877, No. 38.

<sup>16</sup> National Archives of India, Foreign Secret, Proceedings, July, 1877, No. 39.

<sup>17</sup> Biddulph's Memo on the Condition of Affairs in Gilgit, 31st March, 1881.

Agency was promptly withdrawn.<sup>18</sup>

The withdrawal of the Gilgit Agency was however, only a temporary phase in the British policy, a prelude, as it proved to be, to the extension of a more effective control over the northern frontiers of the State as well as its administration. Pressure had, in fact, been building up on the Government of India for the reconsideration of its policies towards Kashmir.<sup>19</sup> The Officer on Special Duty in Kashmir insisted on a more drastic line of approach and pleaded for enhancement of his powers. The Government of India, however, bided time. In 1880, the Governor-General sent a stern warning to the Maharaja that his administration was far from satisfactory and the Government of India would intervene if the matters were not set right. In an interview the Governor-General told the Maharaja's Agent :

You know, we have been governing India for the last so many years and consider the Maharaja as a sincere friend. We have never interfered into the internal affairs of the State. But whereas the Maharaja is a Hindu, and the British Government have entrusted the Muslim population of Kashmir to him; and if he neglects to look after his subjects properly, the Government of India will be forced to take up responsibilities of administration upon itself. Tell the Maharaja that if the administration is not set right, the British will intervene.<sup>20</sup>

In 1884, the decision to appoint a Resident Political Officer in the State was finally taken.<sup>21</sup> An indication of what was come was given to the Maharaja by the order of the Government of India, instructing him to conduct correspondence with regard to frontier and other important matters through the Officer on Special Duty. The Maharaja protested and asked permission to conduct correspondence directly with the Governor-General.

<sup>18</sup> Introduction, *Kashmir Papers*, p. XXII.

<sup>19</sup> *Ibid.* p. XXIV.

<sup>20</sup> Jammu and Kashmir State Archives, Old English Records, File No. 835 of Samvat, 1937 (1881).

<sup>21</sup> Ripon to Kimberly, 7th April 1884, National Archives of India Foreign Secret E, May, 1884, No. 354-57

His request was turned down.<sup>22</sup>

Maharaja Ranbir Singh died on 12th September, 1885. On 15th September, the Officer on Special Duty met Pratap Singh and conveyed to him that the Government of India had recognised his accession to the throne. During the same meeting, the Officer on Special Duty told the Maharaja that the Government of India found "the existing conditions of affairs in the state as most unsatisfactory" and in order to help in the speedy reorganisation and reform of the administration, it had decided to appoint a Resident Political Officer in the State.<sup>23</sup>

The Officer on Special Duty explained to one of the members of the Maharaja's Council, who had been sent by the Maharaja to seek clarification about the exact functions of the Resident, that the Resident Officer would leave all the "active work of the administration to the Durbar, while claiming the right to be made acquainted, should he require it with all its details." The Officer on Special Duty told the emissary of the Maharaja that the Resident "would give advice if asked for, and on any point he thought proper unasked; and in this latter case, would expect his advice to be followed."<sup>24</sup>

Maharaja Pratap Singh appealed to the Governor-General to reconsider the appointment of the Resident and give him some time to improve his administration. The appeal was unceremoniously set aside by the Government of India. On 25th of September, Pratap Singh was formally installed the Maharaja. The same day, the Officer on Special Duty assumed the Office of the Resident Political Officer in the State.

On the assumption of the throne, Maharaja Pratap Singh announced a number of reforms. The custom of 'khod-kasht' by which the State formed a part of the village lands was abolished. The custom of 'Leri', according to which the spies and other officials were paid by the remission of rent in land, was also abolished. The practice of requiring every ten houses in the Jammu province to provide one sepoy, forced enlistment and the practice of forcing the families of deserters to provide

<sup>22</sup> Jammu and Kashmir State Archives, 1884, No. 515-B.

<sup>23</sup> St. John to Durand, 16th September, 1885; Dufferin to Pratap Singh, 14th September, 1885, National Archives of India, Foreign Secret E, December; 1885, Nos. 190-240.

<sup>24</sup> Introduction, *Kashmir Papers*, XXV.



substitutes, was also abolished. The taxes on village spies, the 'Harkara' and 'Zillahdars', taxes on the sale of horses and taxes on the carts 'Ekhas' were also abrogated. The practice of collecting custom duties on the import of rice into Srinagar town in Kashmir province was also discontinued.<sup>25</sup> In his proclamation in the open Durbar, the Maharaja promised :

I need not trouble you now with minute details of what I intend to do, but I think I can declare without committing myself to any particular measure the policy and the general principles that will guide me in the conduct of my affairs. I shall adopt such measures as are calculated to secure to my subjects their greatest good and the fullest enjoyment of their rights and privileges, and shall conduct my administration so that the tiller of the soil will enjoy a fair share of the produce of his labour and the manufacturer the fruit of his skill and industry, that every facility will be given to commerce by improving the means of communication and removing unnecessary and vexatious restrictions, that every encouragement will be offered to get all the resources of the country properly developed, that adequate measures will be taken to give my subjects the benefits of sound and useful education, that ample provision will be given for the relief of the sick and the suffering, and that real merit and worth in my subjects will be recognised and fostered without any distinction of race or rank, creed or colour.<sup>26</sup>

Instructions had been given to the Resident by the Government of India, at the time, he assumed his office, to convey to the Maharaja that the Government of India was not satisfied with the administration of the State and warn him that in case effective action was not taken to improve the administration, the Government of India would take such measures as were necessary. The Government of India had underlined certain measures which according to them deserved the first priority. These measures included the abolition of the State

<sup>25</sup> Manifesto read by Babu Nilamber Mookerji in Durbar, 25th September, 1885.

<sup>26</sup> Pratap Singh's address to the Durbar, 25th September, 1885.

monopolies, reorganisation of the financial administration of the State, rationalisation of taxes, construction of roads and the removal of the restrictions on emigration.<sup>27</sup> Many of the proposed measures were beyond the power of the Maharaja, for he had hardly the resources to depend upon. The feeble efforts made by him were hardly expected to change the situation materially. In fact, there were many glaring defects, the Dogra administration suffered from. The utmost that the Dogras had achieved was that they had perfected in institution of 'personal rule' they had inherited from their predecessors.

Most of the officials of the Government were incapable, corrupt and devoid of any administrative acumen. The Maharaja was surrounded by an inner coterie of personal advisors among whom sycophants, quacks fortune-tellers rated the first. Credulous, devoid of any political foresight and understanding of the basic issues of administration and purile in his orthodoxy, he could muster little courage to exert himself effectively in the affairs of the Government. The administration thus fell to the lot of the court grandies who hardly made any constructive contribution to the welfare of the State but rapidly sapped the Government of its resources.<sup>28</sup>

In 1886, the Government of India appointed T.C. Plowden, a dihard British bureaucrat and postmaster in intrigue, the Resident Political Officer in the State. Plowden lost no time to undo the Maharaja.<sup>29</sup> He turned his first attention to the Maharaja's Council of Ministers, undermined its solidarity and finally broke it up.<sup>30</sup> Maharaja, after his accession to the throne, had appointed a new council of Ministers headed by one Gobind Sahai. He had also appointed Nilamber Mookerji, a trusted official of his father, the Finance Minister. Mookerji did not get along well with the Chief Minister. Plowden took advantage of the rift and put his weight against Mookerji,

<sup>27</sup> Secretary of State, the Government of India, Foreign Department to Officer on Special Duty in Kashmir, dated August 1, 1884.

<sup>28</sup> Introduction, *Kashmir Papers*, p. XV.

<sup>29</sup> J.C. Bose, *Kashmir and its Prince*.

<sup>30</sup> National Archives of India, Foreign Secret E, Proceedings, October, 1886, No. 275.

openly charging him and the few other Bengali officials, of the rot in the administration of the State. Mookerji could not stand the combined opposition of the Diwan and the Resident, lost his ground and in September resigned from his office. Immediately afterwards, he was externed from the State.<sup>31</sup>

Hardly a month after Nilamber had left the State, the Government of India, obviously on the advice of the Resident, asked the Maharaja to dismiss Gobind Sahai and the other ministers and appoint a new Council with Dewan Lachman Dass, the Governor of Kashmir, as the Chief Minister of the State and his younger brothers Amar Singh and Ram Singh as its members. Lachman Dass was a protege of the Resident.<sup>32</sup> Pratap Singh refused to change the ministry. His relations with his brothers were far from cordial and Lachman Dass did not enjoy his favour. However, when the Government of India posed the alternative to bring in Raja Moti Singh of Poonch, the Maharaja, scared out of his wits, quickly agreed to dismiss Gobind Sahai.<sup>33</sup> In January, 1887, Gobind Sahai was dismissed and Lachman Dass was appointed Dewan.<sup>34</sup> Once in office, Lachman Dass removed whatever opposition he had, and forced out, many of the personal advisers of the Maharaja from their office. The Maharaja reacted sharply which led to the deterioration of the relations between him and his Dewan. The state of suspense was abruptly brought to an end when the Maharaja made a bold move and dismissed Lachman Dass.<sup>35</sup>

Plowden anticipated the dismissal of Lachman Dass and in order to forestall the Maharaja and thwart him from taking any action against his protege, he wrote to the Government of India that it was futile to expect any improvement in the admi-

<sup>31</sup> Plowden to Durand, National Archives of India, Foreign Secret E, Proceedings, October, 1886, No. 275; also, Plowden to Durand October, 1866, Foreign Secret E, Proceedings, No. 439.

<sup>32</sup> National Archives of India, Foreign Secret E, Proceedings, December, 1866, No. 73.

<sup>33</sup> *Ibid.*

<sup>34</sup> Plowden to Cunningham 14th February, 1887, Proceedings March, 1887, Nos. 46-48.

<sup>35</sup> National Archives of India, Foreign Secret E, 66, J.C. Bose, *Kashmir and its Prince*, p. 33.

nistration of the State so far drastic action was not taken by the Government of India. The Resident underlined three alternative courses, the Government of India could take: first, that Amar Singh, the Maharaja's younger brother be appointed the Dewan after an assurance was secured from him that he would carry out the policies laid down by the Government of India; second that a person from outside the State be appointed the Prime Minister, by the Government of India; third, that the existing Council be put under the control of the Resident.<sup>36</sup>

On his part, the Maharaja did not wait and hurriedly despatched a Kharita to the Government of India which envisaged a fresh scheme for the reorganisation of the administration in the State. The Maharaja proposed that a Council, which would consist of a President, Vice-President and a Secretary, with three other members would be constituted by him to assist him in the conduct of his government. The Maharaja would retain all powers in himself and the function of the Council would only be consultative. The Maharaja would himself be the President of the Council and would appoint its Vice-President, the Secretary and the other members. Any removal from the membership of the Council and the replacements made, would be effected by a majority of the members of the Council for reasons which would be put on record. The Vice-President would also be the Prime Minister of the State with executive powers. The Maharaja proposed that Raja Amar Singh would be appointed the Vice-President of the council with Raja Ram Singh and Babu Nilamber Mookerji as its members. Dewan Janki Prasad was proposed to be the third member and also the Secretary of the Council. The Maharaja proposed that Raja Ram Singh would be put in charge of the armed force of the State; Raja Amar Singh would be entrusted with the foreign affairs and the judicial department; Babu Nilamber Mukerji would be put in charge of the revenue department and Dewan Janki Prasad would be put in charge of the remaining departments of the Government.

With regard to the procedure of business in the Council,

<sup>36</sup> Plowden to Foreign Secretary, National Archives of India, Foreign Secret E, Proceedings, March, 1866, No. 108.

the Maharaja proposed,

- (i) that the Council would sit for three days in a week and hold extraordinary meetings on requisitions by the Prime Minister;
- (ii) that the Council would legislate and hear and pass opinion on all subjects that would be presented before the Council by the members;
- (iii) All matters would be decided in the Council by a majority of the votes of its members;
- (iv) that besides the matters which were brought before the Council, the Prime Minister would be empowered to refer to the Council important questions that affected the administration in general. The respective opinions of the members would be put on record and signed; and
- (v) that the Council would frame rules for its guidance which could be repealed and modified by the Council itself.<sup>37</sup>

The Government of India expressed its readiness to accept the scheme of administrative reorganisation presented by the Maharaja, but the Governor-General blankly refused to accept the appointment of Nilamber Mookerji and Dewan Janki Prasad. Lord Dufferin opposed the appointment of Nilamber Mookerji with particular vehemence. In the Kharita to the Maharaja, he wrote :

Nevertheless, I do not desire to raise any objection to the principle of the proposed arrangements. I regard your Highness as the responsible ruler of the State, and I wish to meet your views as far as possible, and to afford you every assistance in carrying them out. If, therefore, your Highness prefers to maintain a Council and to assume the Presidency yourself, I am ready to assent to your views in this matter, and also with regard to the nomination of your brothers and Dewan Janki Prasad. On

<sup>37</sup> Kharita from Pratap Singh to the Governor-General, 13th April, 1888.

one point only I feel that in your Highness's interests I must ask you to modify your proposals. I cannot think that the appointment of Babu Nilamber Mookerji as Revenue Minister would be desirable. I am of opinion that for the charge of the revenue affairs your Highness should secure the services of some thoroughly competent official with practical experience of administration. I also think that at least one other official of similar qualifications should be appointed to direct, either as member of Council or in some other capacity, the judicial and executive branches of your Government. If your Highness can name any Native Officials in the British service who seems to me to possess the requisite qualifications I shall be glad to place them at your disposal. If your Highness cannot suggest any names I shall be ready and willing to make inquiries, and to supply you with the best men available either in the Punjab or elsewhere. I have learnt with pleasure that your Highness has already asked for the services of some four or five officers to be employed in the accounts and forest departments. But Your Highness's government seems to require something more than the loan of a few subordinate officials. What is wanted is that you should associate with your principal officers two to three thoroughly trained and capable persons, who will be able to give Your Highness effective aid in directing and controlling the main branches of the administration. I trust that your Highness will take such steps as may have the effect of strengthening your government from an administrative point of view. I need hardly add that, with regard to this question and to all other questions of importance, Your Highness should freely consult the Resident, who will give you every assistance in his power.<sup>38</sup>

Pratap Singh was allowed to appoint the reconstituted Council. The British were however, far from satisfied with the situation as it was developing in the State and the conditions in the State taken along the frontiers. Intelligence had been

<sup>38</sup> Kharita from the Viceroy to Pratap Singh, 25th July, 1888.

received by them that the Russian interest and activity in the Dardi principalities had increased and the Russians were making efforts to wean away the chieftains from the British and bring them under their own influence. Convinced that the State frontiers could not be neglected any more, the British adopted a policy aimed, in the first instance, to establish direct control over the Dardi principalities and in the second place reduce the Maharaja and assume political precedence in the State. A political Durbar was held by Durand in Gilgit to which all the Frontier Chiefs were invited to attend. The Chiefs and Wazirs and the influential Sirdars were granted subsidies and fixed allowances.<sup>39</sup> Simultaneously the Maharaja was advised to reduce his armed forces which the British felt were larger than any Indian State had British military adviser, assisted by three other officers, was deputed to carry out the reorganisation of the army. A plan to construct important military communications was drawn up. The Maharaja, reluctant to accept the, now balantant interference in his government, could hardly withstand the British pressure.

Towards the close of 1888, the Residency made a startling disclosure that it had come to possess letters of treasonable nature, written by the Maharaja to Tzar, Maharaja Dalip Singh and some other favourites, the Maharaja had in the State.<sup>40</sup> The Maharaja denied having written any of the letters.<sup>41</sup> The Resident, Parry S. Nisbet, who had replaced Plowden and who was a personal friend of the Maharaja, wrote to the Government of India that Raja Amar Singh had testified that the letters were genuine and written by Pratap Singh. In fact, the plot to implicate the Maharaja was well laid out. Closing the trap, Nisbet communicated to the Government of India:

The conclusion, the letters lead me to are confirmed by certain extraordinary acts of the Maharaja in appointing unworthy and incapable persons to important offices of the State ever since I took charge, without consulting

<sup>39</sup> Jammu and Kashmir, State Archives, No. 1091-A of Sambat 1946. (Persian Record).

<sup>40</sup> Nisbet to Durand 27th April, 1889, National Archives of India, Foreign Secret E, Proceedings, April 1889, NO.80.

<sup>41</sup> National Archives of India, Foreign Secret E, April, 1889, No. 89.

the proper counsellor, or, in fact, any one at all. The thing is the Maharaja is timid and a very superstitious man at the entire mercy of a set of unscrupulous scoundrels who take advantage of his fears and imbecility to plunder the state to any extent, and there appear to me weighty reasons for advising the practical setting aside of the Maharaja's authority.<sup>42</sup>

In the whirlwind that followed, Nisbet, in collaboration with his accomplices, extorted from the Maharaja, an edict of voluntary resignation by virtue of which the Maharaja relinquished all the powers of the government for a period of five years.<sup>43</sup> In the edict, the Maharaja was made to state :

In the interests of the 'state' and for better administration of the country, and with a view to remodel it, as near as possible, on the English system, I hereby authorise a Council, the members of which, for a period of five years will conduct all the public affairs of the State.<sup>44</sup>

The Council was to be constituted of his two brothers, two of his ministers Rai Bahadur Pandit Suraj Kaul and Rai Bahadur Bagh Ram and an English member 'specially selected by the Government of India.' The period for which the Maharaja renounced the powers of the government was to commence from the date the edict was signed. The Maharaja was not to interfere with the function of the Council, nor was he to have any voice in the administration of the State, though he would continue to enjoy the honorary rights and the position of the Maharaja. The Council was barred to interfere with the private affairs of the Maharaja, the Palace, the Jagirs and the other grants of movable and immovable property he had

<sup>42</sup> Nisbet to Durand, 27th February, 1889, National Archives of India, Foreign Secret E, Proceedings, No. 80.

<sup>43</sup> National Archives of India, Foreign Secret E, Proceedings, 1890 No.179 and 180.

<sup>44</sup> National Archives of India, Foreign Secret E, Proceedings April, 1889, No. 88; Foreign Secret E, Proceedings, May, 1889, No. 555; Foreign Secret E, Proceedings, September, 1890, No. 179, 180.

made. The Council was also precluded from altering any existing agreements or treaties without the previous approval of the Maharaja and assign Jagir grants or immovable property or make any new rules on these matters without the consent of the Maharaja. The Maharaja reserved the right to appoint one of his brothers, the President of the Council.<sup>45</sup> On 13th March, 1889, the Resident forwarded the edict to the Government of India urging immediate acceptance of the offer the Maharaja had made. Gilgding the perfdy, Nisbet wrote to the Government of India :

I trust this voluntary offer on his part may afford, with further conditions, an acceptable way out of no doubt a very acute difficulty. As the Government of India have carefully refrained as long as was possible from any sort of interference in the direct management in the affairs of Kashmir State, so I think now a direct appeal to do so cannot be ignored, and that there should be no hesitation in adopting the best and most complete measure likely to bring about the reforms necessary.<sup>46</sup>

On 1st April, 1889, Government of India conveyed their decision to the Resident. The Maharaja was divested of all his powers and the administration was entrusted to the Council composed of the Maharaja's brothers and three or four members selected by the Government of India.<sup>47</sup> The Council convened its first meeting on 18th April, 1889, and adopted rules and procedure to regulate the appointments to the Council, distribution of business among the members, conduct of business in its meetings and the procedure of its work. The Council was composed of Raa Ajmar Singh, who was also appointed the Prime Minister, Raja Ram Singh, Pandit Suraj Koul and Rai Bahadur Bagh Ram.<sup>48</sup> The Council laid down

<sup>45</sup> *Ibid.*

<sup>46</sup> National Archives of India, Foreign Secret E, Proceedings, April, 1889, No. 86.

<sup>47</sup> Instructions from the Government of India to the Resident, April 1, 1889. National Archives of India, Foreign Proceedings E, April, 1889, No. 96.

<sup>48</sup> Proceedings of the State Council, 18th April, 1889.

the following provisions ;

- (i) The Council was to be constituted of Raja Amar Singh, Raja Ram Singh, Pandit Suraj Koul, Rai Bahadur Bagh Ram and such other members as were appointed by the Government of India;
- (ii) The members of the Council were to be appointed by the Government of India and were to hold independent charge of their respective departments;
- (iii) Additional appointments to the Council and any vacancies in its membership were to be filled by the Government of India;
- (iv) The distribution of business among the members of the Council was to be regulated by the orders of the Council;
- (v) Subject to the control of the Resident, the Council was vested with all the powers of administration and authority over frontier relations and relations of the State with its dependencies;
- (vi) Legislative and administrative measures were to be taken only after the sanction of the Council;
- (vii) The members incharge of the different departments of administration were vested with the power to prepare the budget estimate of their departments which were submitted to the Council for final sanction and approval;
- (viii) The Council vested itself with the power to veto or alter any order passed by the member in charge of a department and order revision of any proceedings of the department;
- (ix) The Council was vested with the power to make all gazetted appointments in the State; and
- (x) The Resident was vested with power to be the final authority in matters of legislation and administration.<sup>49</sup>

In July, the Council decided to appoint Amar Singh the President of the Council and the executive head of the

<sup>49</sup> Jammu and Kashmir Archives, No. 23 of 1902, His Highness Private Record.

administration.<sup>50</sup> In the capacity of the head of the administration he became the channel of communication between the Council and the Resident as well as with the native States, except in political matters which were conducted through the Resident. He was empowered to call for and examine all proceedings except those of the judicial and revenue courts and refer them to the Council for review. All the official letters from departmental officers to the Resident, were to pass through him and were to be counter-signed by him. All the appointments made by the Council were confirmed by Sanads bearing his seal. He was vested with the custody of all State documents and the authority to sign all orders for the withdrawal of monies from the reserve treasuries after such withdrawals had been sanctioned by the Council. He was also empowered to bestow Khillats, awards and charitable grants within the budget provisions sanctioned, scrutinise grants of Jagirs and Maufis or "submit to the Council any change thought desirable in the terms of the existing Jagirs or Maufis."<sup>51</sup>

#### British Control

The extensive powers of the government vested with the Council and its President, were however, only nominal and the real power lay with the British Resident under whose supervision and control the Council functioned and who was the final arbiter and authority in all the matters of administration.<sup>52</sup> The members of the Council were mere puppets and hardly in a position to accomplish anything except to carry out the whims and the dictates of their benefactors. Both Amar Singh and Ram Singh were, in their attitudes and outlook little different from their brother, who they had helped the British to depose. The other members, though possessed of wider administrative experience and efficiency, followed obediently the instructions given to them by the Resident and his underlings.<sup>53</sup> They owed their position and office to the British :

<sup>50</sup> Jammu and Kashmir Archives, No. 11 of 1896, His Highness Private Record.

<sup>51</sup> Transaction of Business of the Council, Memorandum, 1906.

<sup>52</sup> Jammu and Kashmir State Archives, No.23 of 1902.

<sup>53</sup> Jammu and Kashmir State Archives, No. 616 of 1896.

Is it known to the British Government that the so called Council of Kashmir all strangers to the country except the brothers, has as much power as a parcel of school boys to dictate to their tutor? All that has been done is to transfer the Government of Kashmir from one autocrat to another. In the very Constitution of the Council, that is, rules made for its guidance, it is ordered that their deliberations can be vetoed by the Resident in Kashmir. They are, hence, careful to pass only such resolutions as shall meet with his approval before hand. I have heard from their own lips, in as emphatic manner as could be expressed, that their independence is a farce and their power barely nominal. And, if any body desires it, I can show original documents issued to me, from which it will be seen that the Government of Kashmir by the present Council is nothing short of a myth and delusion.

It is further stated, as matter of congratulation, that there is not even a single European member in the Council, and the Government is carried on entirely by natives of India. Will it be believed that the Maharaja in his letter to the Viceroy, of his own accord, asked for a European member to be nominated to his Council. He very wisely saw that a set of native subordinates appointed by the Government could only be the tool of the Resident. The fact is well known: the Government of the country is vested to all practical purposes in the Resident alone. Indeed it is not possible for any body to set foot in that country without a written permission from him. His will is law, he is king, and has surrounded himself with his own friends and proteges, and turned out many an old and faithful servant of the State. Nobody dare to open his mouth in that country, and if any one is so bold as to raise the most feeble protest, he is threatened with the "most serious consequences. . . ."<sup>54</sup>

After the deposition of Pratap Singh, the Gilgit Agency was

<sup>54</sup> William Digby, *Condemned Unheard, Kashmir Papers* P. 180-81.

re-established and Captain Durand was deputed to take charge of the Agency. He reached Gilgit on 27th July, 1889, and took over the control of the affairs there.<sup>55</sup> Meanwhile, communications between Srinagar and Gilgit were improved and a military road connecting Gilgit with Srinagar was hurriedly built. It will not be out of place to mention here that for years to come the transport on the Gilgit road was maintained by forced labour and thousands of people from Kashmir were commandeered to carry provisions, over the dreary passes, on to Gilgit for the British garrisons stationed there. The Agency soon fell into trouble with<sup>56</sup> the tribal principalities of Hunza and Nagar. The tribals, possibly at the instigation of the Russians, attacked the British positions and drove them out of the fort of Chalt and later Nomal. The British mounted their counter offensive in December, 1891. Hunza and Nagar were captured in two days and the British troops pursued the tribals as far as Misgar punishing them very heavily.

A month after the Maharaja was divested of his powers, he wrote an impassioned letter to the Governor-General of India wherein, he pointed out that he had been made a victim of misrepresentation and false charges had been piled on him to implicate him in a conspiracy against the British Government.<sup>57</sup> The Maharaja openly charged his younger brother of having manoeuvred to forge false evidence against him and hatch a plot to dethrone him. He wrote to the Governor-General:

My chief enemy and in the present circumstances enemy of the State, who has taken a fancy to become the ruler of the Kashmir State, and who envies my position since long time, is, I am sorry to say, my own youngest brother, Raja Amar Singh. It is only now that I have

<sup>55</sup> Captain Durand's Report, National Archives of India, Foreign Secret F, May, 1889, No. 544-58; also Foreign Secret F, October 1889, No. 104.

<sup>56</sup> Gilgit Diaries, September 5, 1891, National Archives of India Foreign Secret F, January 1892, Nos. 220-35.

<sup>57</sup> Landsdowne to Cross, National Archives of India, Foreign Forntier A, January 1892, No. 127; A.G.R. Durand, *Making of a Frontier*, PP. 251-64.

found him out in his true colours, and all doubts as to his ill-motive have been removed. Since the very day I succeeded to the throne, he caused to set afloat all sorts of rumours against me, about my incapacity, insanity etc., etc.<sup>58</sup>

Still labouring under the impression that the powers of the Government would be restored to him the Maharaja suppliantly pleaded for his rehabilitation. He appealed to the Governor-General to give him a fair trial for a period of five years to reorganise the Government of his State. He agreed to the appointment of Pandit Suraj Koul, Pandit Bhag Ram and Raja Ram Singh as his Councillors but he wrote to the Governor-General that he would banish Raja Amar Singh to his Jagirs "with full powers to add or diminish anyone." Concluding, the Maharaja wrote:

If after a fair trial being given to me, I do not set everything (excepting the settlement Department, which is under the guidance of Mr. Lawrence, and which will not be settled within five years) right, and am found not to rule to the satisfaction of the Supreme Government, and my people within the prescribed time, your Excellency's Government is at liberty to do anything that may be considered advisable. In case this liberty is not allowed to me by the Supreme Government, and I have to remain in my present most miserable condition, I would most humbly ask your Excellency to summon me before you and I will be most happy to obey such summons—and shoot me through the heart with your Excellency's hands, and thus at once relieve an unfortunate prince from unbearable misery, contempt, and disgrace for ever.

In his communication the Governor-General told the Maharaja very politely that the Government of India was unable to accept the suggestions made by him. He advised the

<sup>58</sup> Pratap Singh to Landsdowne, May 14, 1889, *Kashmir Papers*, P. 241.

Maharaja to accept the decision of the Government of India with fortitude and forbearance. Ironically enough, the Governor-General wrote to the Maharaja:

What I have said has reference to the past. For the future, let me earnestly entreat your Highness to show to the people of Kashmir, as well as to the Government of India, by bearing in a dignified manner the loss of power which you have sustained, and above all, by not associating yourself with local intrigues and conspiracies, or attempts to obstruct the Government, that you have not entirely lost the qualities of wise and prudent ruler. The settlement announced in Colonel Parry Nisbet's letter of the 17th April to the Prime Minister, is, as I have already pointed out to you, not necessarily a permanent one. Time will, however, be necessary if the finances of the State are to be restored to order, and the results of past maladministration effectually removed. Until this has been done, the present arrangement must certainly remain in force. When these good results have been achieved, it may be possible to give your Highness a larger share in the control of the public affairs of Kashmir. Much would, in such a case, depend upon your own conduct in the meanwhile. You cannot, therefore, govern yourself too cautiously, or be too careful in selecting your associates and confidants.<sup>59</sup>

The British intervention in the government and the administration of the State earned the Government of India considerable censure and disapproval both in India and at home. Most of the Indian Princes expressed concern at the turn the events had taken in Kashmir.<sup>60</sup> More to placate the ruffled tempers in India and at home, the Government of India adopted a measured strategy to rehabilitate Pratap Singh and effected certain changes in the constitution of the Council. In 1891, the Council was reconstituted and the

<sup>59</sup> Viceroy to the Maharaja, *Kashmir Papers*, p. 255.

<sup>60</sup> William Digby, *Condemned Unheard: Amrit Bazar Patrika*, January 30, 1890; *Lansdowne and the Maharaja*, London Times, 7th September 1889.

Maharaja was offered the Presidentship of the Council, which the Maharaja readily accepted. Raja Amar Singh retained the office of the Prime Minister.<sup>61</sup> The reconstitution of the Council was, however, a procedural change and did not materially effect the position of the Maharaja. The Council continued to function under the close scrutiny and strict supervision of the Resident.

In 1896, further modifications were introduced in the procedure of business of the Council. The Maharaja was entitled to receive references made to him by the individual members of the Council for report and disposal. The Maharaja was also empowered to send for proceedings finally disposed of by the members and in case, he did not agree with any decisions taken, refer the cases back to members concerned for reconsideration.<sup>62</sup> Possibly, apprehensive that the Maharaja would use the small measure of initiative given to him to his advantage, the Resident lost no time to tighten his control on the Council and thus circumvent the powers granted to the Maharaja. Orders were immediately issued by the Resident in accordance with which the members of the Council were required to prepare a synopsis of the business conducted by them outside the Council, showing the important cases disposed of by them, the decisions taken by them on the suggestions made by the Maharaja and the *Irshads* issued by him. The orders of the Resident also required that the synopsis prepared by the members were forwarded to him alongwith the proceedings of the Council after the Maharaja had considered them and signed them.<sup>63</sup> The Resident accordingly sent instructions to the Council and wrote:

That his experience during the last four months of the working of the State Council has convinced him that certain modifications, in the system which has prevailed

<sup>61</sup> Papers Relating to Procedure of business in Council, Jammu and Kashmir State Archives, No 49 of 1889.

<sup>62</sup> State Council Resolution, 24th August, 1896, Jammu and Kashmir State Archives, 1889, No 49.

<sup>63</sup> Proceedings of the meeting of Jammu and Kashmir State Council, Srinagar Dated 24 August, 1896. Jammu and Kashmir State Archives, 1889, No. 49.



of late of conducting public business, are necessary if the work is to be carried on in accordance with the orders of the Government of India. In the first place, the Resident considers that all petitions presented to His Highness the Maharaja should be referred by him to the member in charge of the department concerned for disposal and report, if necessary. His Highness would, of course, be at liberty to send for record of a case finally disposed of by the member in charge, and if he saw reason for not concurring in the decision given, to refer the matter to the Council. But the Resident strongly deprecates any interference with the ordinary course of business dealing with cases, as leading to waste of time and to irregularities in procedure. :

The next point in which an improvement on the existing practice is called for, is that the Resident should have more opportunity of observing the inner working of the various departments for this purpose. He is of the opinion that each member in charge of a department should prepare a synopsis of the business conducted by him outside the Council, showing the important matters disposed of by him, the action taken by him on suggestions made on *Irshads* issued by His Highness the Maharaja.<sup>64</sup>

Restrictions were also imposed on some of the prerogatives, which had been reserved to the Maharaja in 1889, and he was barred to award any *khilats* and donations exceeding a value of twenty thousand rupees annually to private persons by direct *Irshad*. The Maharaja was also barred to make any grants of *Nazool* property or any other State-property in *Nazarana* except by a formal resolution of the Council and the concurrence of the Resident. The Resident also tightened his control over the function of the Council by ordering that the members of the Council reserved all questions for the views of the Resident, with regard to which the Council was forbidden to take final action till the Resident had not given his orders. The Resident also ordered that the appointments and dismissals of public servants be strictly regulated according to

<sup>64</sup> *Ibid.*

the procedure laid down and sanctioned by the State Council under its rules. The Council dutifully complied with the instructions of the Resident and passed a resolution giving effect to the orders received from him.<sup>65</sup>

Meanwhile the Maharaja made another of the many representations which he preferred to the Government of India pleading for the restoration of powers to him. In 1905, the administration in the State was reshuffled. The Council instituted in 1889, to run the Government of the State in 1889 was abolished and its powers were restored to the Maharaja. A number of restrictions were however, placed on the Maharaja. The Government of India retained complete control over the finances of the State, the armed forces, taxation, *Jagir* grants, appointments to administrative services and the foreign relations. The powers of general supervision and control the Resident had come to acquire, were left with him unaffected and intact. The restoration of the powers to the Maharaja was subject to the following conditions:

- (i) The Maharaja was to exercise his powers on the advice of the Resident and follow the advice whenever it was offered to him by the Resident;
- (ii) The annual Budget of the State was to be prepared and passed in consultation with the Resident and any expenditure, not provided for in the Budget, was not to be incurred without the approval of the Resident;
- (iii) No reappropriation of funds exceeding ten thousand rupees was to be made without the sanction of the Resident;
- (iv) Each departmental budget estimate was to be submitted to the Minister-in-Charge of the Department, who, after consultation with the Maharaja and the Resident, was to submit it to the Maharaja for his final approval;
- (v) The Ministers were to be appointed after the approval of the Government of India had been secured;
- (vi) The appointment of the Minister-in-Charge of the

<sup>65</sup> *Ibid.*

- Foreign Department of the State was to be made subject to the condition that the person appointed the Minister-in-Charge of the Department was acceptable to both the Maharaja and his Prime Minister;
- (vii) The business of the different departments was to be allocated by the Government of India;
  - (viii) The Maharaja was to have the power to veto or alter any orders passed by the Heads of the Departments and was empowered to call for and revise any proceedings of any department through the Minister concerned;
  - (ix) The Ministers were to have general control of the departments put in their charge and were to be the channel of communication between the departments, the Resident and the Maharaja;
  - (x) The Chief Revenue Officer, the Chief Judicial Officer, the Chief Engineer Public Works, the Engineer-in-Chief Railways, the Settlement Commissioner, the Accountant General, the Superintendent of Customs and Excise and the Director of Sericulture were to be appointed or removed with the concurrence of the Government of India;
  - (xi) The appointments and removals of Gazetted Officers of the State were to be made by the Maharaja on due cause shown;
  - (xii) The rules of business and the "Standing Orders" in force were to be adhered to until any necessity for their modification was shown, with the exception that all matters hitherto referred to Council were to be referred to the Maharaja through the Prime Minister;
  - (xiii) An English translation of the proceedings of the Council, orders of the Maharaja or the Ministers, was to be sent to the Resident in the following matters:
    - (a) Orders which modified the budget finally passed by the Maharaja;
    - (b) Orders which involved alienation of revenue or remission of taxation;

- (c) Orders which involved the appointment and removal of the Gazetted Officers;
  - (d) Orders affecting the Railway Department and the Engineering Department;
  - (e) Orders passed in regard to the Settlement Department;
  - (f) Orders passed on the proposals made by the Sericulture Department;
  - (g) Orders pertaining to the Administration of the Frontier; and
  - (h) the orders issued in regard to annual or periodical contracts given by the State.
- (xiv) The existing arrangements in regard to the allowance enjoyed by the Maharaja from the State revenue was to continue unchanged;
  - (xv) No existing resolution of the State Council was to be cancelled or modified until final orders to that effect were passed by the Maharaja in consultation with the Resident; and
  - (xvi) The powers of the Minister and the Heads of the Departments and the regulation of work between the various departments, defined by the State Council resolutions, were not to be changed until the necessity for such change had been established.<sup>66</sup>

The reorganisation of the government, apparently restored to the Maharaja, the position he enjoyed before he was deposed in 1889. Formally, the Maharaja was returned the powers of the government and administration, but actually the essential control over the affairs of the government was retained by the Government of India and their agent in the State. The powers, the Maharaja was to exercise, were subject to the crippling conditions that he would follow the advice of the Resident whenever it was offered to him. Evidently, the Resident was hardly expected to leave any initiative with the

<sup>66</sup> Note on New Arrangements for the Administration of Jammu and Kashmir, Documents relating to the abolition of the State Council, Jammu and Kashmir State Archives, 1905: File No. 15, of 1905.

Maharaja. Virtually, therefore, the Resident continued to hold the reins of power. The budgetary process the kharita laid down, did not effect the control, the Resident and the Government of India exercised over the finances of the State. The Maharaja was barred from making any changes in the rules of the conduct of business laid down by the State Council. The power to appoint the Prime Minister and the other major officials vested with the Government of India, left in tact the control, the Government of India exercised over the administration of the State.

Raja Amar Singh, about whose continuation in office, there was little doubt, had not given up his efforts to push out the Maharaja. Pratap Singh was heirless and favoured adoption and that sharpened the differences between him and his brother. The British played one against the other. Amar Singh was their protege and their accomplice and in possession of the highest administrative office of the State, he was bound to outweigh the importance of the Maharaja who remained relegated into the background. For obvious reasons the British were in no mood to change the arrangements and in fact, were not prepared to remove Amar Singh from the position of precedence he enjoyed in the State.<sup>67</sup> The Maharaja was bullied and harrassed by both, the Resident and the Prime Minister. Amar Singh spared no effort to undo the Maharaja and assume the throne himself. The Resident and the other British officials goaded him on. In 1892, another plot was hatched against the Maharaja and proceedings were instituted against him with the Resident on the allegation that he had entered into a conspiracy with one Pandit Nabh to get Amar Singh murdered. Letters and a telegram, alleged to have been exchanged between the Pandit and Pratap Singh, were produced before the Resident. The action, however, failed. On his part the Maharaja preferred numerous representation to the Government of India against the Resident and his brother. The government of India, however, ignored his protestations. The Resident, on his part, did not spare the Maharaja. In one of the many insulting letters, the Resident wrote to the

Maharaja<sup>68</sup> :

It is essential that your Highness should recognise the obligations as distinguished from the privileges, of a hereditary ruler. Your Highness had advanced untenable claims to the exercise of unlimited powers as absolute owner of the State, and you have exercised the full powers, in respect to some of the forests. The ruin your Highness has permitted to be wrought in these particular forests must be regarded as an index of your fitness for exercising unrestricted authority. Your Highness does not appear to have learnt that powers entail responsibility. It would be impossible to countenance your dealings with the Kashmir State, with all its wealth and resources, as a toy which your birth-right entitles you to break or spoil at your choice<sup>69</sup>.

In 1908, Pratap Singh wrote to the Government that Amar Singh be removed from his office. The Maharaja suggested the appointment of a British official in his place.<sup>70</sup> The Government of India, shelved the proposal. The Maharaja, however, insisted on the removal of his brother and requested for the permission to adopt a son. The suggestions made by the Maharaja did not find favour with the Government of India. In desperation, the Maharaja wrote to the Resident that he could no longer carry along with his Prime Minister and in case the Government of India did not consider it feasible to replace him, they should proclaim him the Maharaja. He wrote:

If not withstanding his character and selfish ambitions and bad attitude towards me, he is considered indispensable for the State, then the Government may declare him straightway the ruler of the State in place of me and order me

<sup>68</sup> Jammu and Kashmir State Archives, File No. 616, His Highness Private Record, September 4, 1896 ; also file No. 13, 1908.

<sup>69</sup> Talbot to Maharaja January 5, 1889, quoted by F. M. Hassnain in *British Policy Towards Kashmir*.

<sup>70</sup> Jammu and Kashmir Archives, No. 13, 1908, His Highness Private Record.

<sup>67</sup> National Archives of India, Foreign Secret-I, September, 1908, Nos. 27-30.

to clear out.<sup>71</sup>

The Resident gave little consideration to what Pratap Singh wrote. Possibly amused at the distress and discomfiture the Maharaja suffered, and to add insult to injury, the Resident advised the Maharaja to leave the Chief-Minister "free as the Emperor leaves the Prime Minister of England free to perform all the minor duties of a Chief-Minister" and "perform the larger and the more important functions of a Ruler" himself.<sup>72</sup>

Raja Amar Singh died in 1909 and the long feud that had plagued the dynasty after the death of Maharaja Ranbir Singh came to an end. Pratap Singh was left to himself to make the best of the situation and reclaim the authority he had lost. The British, however, snatched the opportunity from his hands and continued to obstruct the Maharaja<sup>73</sup> in the exercise of his powers.

In 1914, the Government of India extended certain concessions to the Maharaja in respect of the financial control they still exercised in the State. The Maharaja was empowered to order the appropriation of the following expenditures without the sanction of the Resident, provided that the appropriation was approved by the Accountant General:<sup>74</sup>

- (a) proposals for non-gazetted appointments below Rs. 100 each;
- (b) proposals to alter the pay of individual appointments within Rs. 100 per month, based upon administrative and financial grounds and not upon personal grounds;
- (c) Proposals within the limit Rs. 5000/- in each claim of all house rents, travelling allowances and charge allowances;

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, Francis Young Husband to Pratap Singh.

<sup>73</sup> Jammu and Kashmir State Archives, Political Department Records, 1914, No. 91/R/215.

<sup>74</sup> Jammu and Kashmir State Archives, Documents relating to the Abolition of the State Council, 1905, also Political Department Records, 1914, No. 108-E.

- (d) Arrear claims within the limit of Rs. 5000/- in each individual claim;
- (e) Extra grants within the limit of Rs. 3000/- for individual specific works and objects;
- (f) changes in sanctioned establishments within the limits of Rs. 3000/-; and
- (g) the proposals for the grant of scholarships in civil, medical and public works, for education in India, upto a limit of Rs. 25/- in each individual case.

In October 1918, Maharaja Pratap Singh made another representation to the Government of India appealing for reconsideration of his case and restoration of the other powers of Government to him. In May 1919, the Government of India agreed to introduce a few more procedural changes in the Government of the State. The Maharaja was permitted to exercise the powers of sanction, veto and revision in all cases within the frame work of the existing rules for the transaction of the State business. The Resident's approval in respect of tendering his advice was to be obtained before the proposals were submitted to the Maharaja; the budget estimates were to be prepared by the Commander-in-Chief and Ministers in consultation with the Accountant General and forwarded to the Chief Minister, who after having consulted the Maharaja and secured the advice of Resident was to submit them to the Maharaja for his final sanction and the fortnightly synopsis of the proceedings and orders, passed by the Maharaja, were in certain cases no longer required to be submitted to the Resident.<sup>75</sup>

In September 1920, the Maharaja again appealed to the Government of India for the restoration of the powers which were still exercised by the Resident. He wrote to the Governor General:

It was in the year 1891 that a Council of administration was constituted with myself as the Resident to administer my States of Jammu & Kashmir. It lasted for fourteen years until 1905, when certain enhanced powers were

<sup>75</sup> Bannerman to the Chief Minister, Jammu and Kashmir, 28th May, 1919.

permitted by His Excellency Lord Curzon, the then Governor General and Viceroy of India, though a number of limitations were placed on my powers. Nearly fifteen years have gone by, and the enhanced powers have been exercised by myself in a perfectly satisfactory manner. In 1914, the Great European war broke out, and the services of a variety of description were rendered by me as a Ruler of my State, which have more than once been recognised and appreciated. During the continuance of war, I did not consider it advisable to place before Your Excellency the present representation. Now that the war is over I feel that I ought to labour under no embargo, reservations and limitations on the full exercise of my hereditary powers as a Ruler of my State. It certainly pains me to reflect that among the big States in India mine is the only case which is an exception to the status and powers which a Ruler of a State possesses. There has never risen an occasion to point out a single instance of abuse or misuse of my powers such as I have possessed hitherto, and pardon my remarking that it is a mystery to me that a Ruler who is fit to wear the Most Exalted Order of the State of India, the Indian Empire and the British Empire conferred on him from time to time within the last 15 years, who has recently been the recipient of the highest degree of L.L.D. conferred on him by the learned board of the Senate of the Punjab University, who is the highest Judicial and Revenue authority in his territories having powers of passing capital punishment independently and whose work of administration should from time to time be commented upon favourably by the paramount power, should for some reason or another unknown to him be constrained to labour under certain disabilities in the performance of his functions, powers and duties as a Ruler of a State second to none in point of importance loyalty and enthusiasm for the welfare of his subjects. Whatever may have been the reasons for imposing restrictions on my rights and powers as a Ruler, I am sure experience will have by now proved that it is high time that restrictions be now removed after my successful career of administering my State for a long

number of years.<sup>76</sup>

The Government of India finally relented and agreed to restore the powers of the government to the Maharaja, provided the Maharaja agreed to give a confidential undertaking that:

- (i) the advice of the Resident would be accepted by the Maharaja whenever it was offered;
- (ii) the Resident would be informed of any important changes made in the existing rules and regulations; and
- (iii) the Resident would be kept<sup>77</sup> informed about the frontiers.

The Maharaja accepted the conditions and agreed to give the confidential undertaking demanded by the Government of India.<sup>78</sup> On 4th February, 1921, Pratap Singh was restored the powers of the government<sup>79</sup>.

The same year, the Maharaja ordered the consolidation of the existing laws and regulations in the State. An important measure, by virtue of which law and procedure with regard to the High Court was regularised, was promulgated by him.<sup>80</sup> Subject to the control and judicial powers exercised by the Maharaja, the High Court existing in the State, was retained as the highest court of appeal and revision.<sup>81</sup> The general superintendence and control over all other civil courts was vested in the High Court and the High Court was empowered to visit and inspect the proceedings of the subordinate courts and give such directions in matters not provided by law as were found necessary to secure the administration of Justice.<sup>82</sup> The High Court was authorised, on its own

<sup>76</sup> Kharita from Pratap Singh to Governor General of India, 18th September, 1920.

<sup>77</sup> Bannerman to the Maharaja, 26th November, 1920, Jammu and Kashmir Archives, No. 104 of 1920.

<sup>78</sup> Maharaja to Bannerman, *Ibid.*

<sup>79</sup> Chelmsford to Maharaja, *Ibid.*

<sup>80</sup> Regulation No. XLVI of Samvat, 1977, Jammu and Kashmir Civil Courts Regulation.

<sup>81</sup> Jammu and Kashmir Civil Courts Regulation, Sec. 3.

<sup>82</sup> *Ibid.*, Sec. 7.

notion or the application of party, to withdraw any proceedings pending in any subordinate court for disposal, provided that such transfers were not effected in cases under sections 24 and 141 of the Code of Civil Procedure.<sup>83</sup>

The High Court was to have a Registrar and was empowered to appoint ministerial officers for the administration of justice and for the exercise of powers conferred on it by the Regulation. Powers were vested with the High Court to suspend or dismiss any ministerial officer from his office.<sup>84</sup> The High Court was also empowered to make rules<sup>85</sup> with regard to the following:

- (a) providing for the translation of any papers filed in the High Court and copying and printing of any such papers or translations, and requiring from the persons at whose instance or on whose behalf they were filed, the payment of the expenses thereby incurred;
- (b) declaring what persons would be permitted to practise as petition-writers in the Courts of the State, regulating the conduct of business by persons so practising, and determining the authority by which breaches of rules under this clause would be tried;
- (c) determining in what cases legal practitioners would be permitted to address the court in English;
- (d) prescribing forms for seals to be used by those courts;
- (e) regulating the procedure in cases where any person was entitled to inspect a record of any such court or obtain a copy of the same, and prescribing the fees payable by such persons, for searches, inspections and copies;
- (f) conferring and imposing on the ministerial officers of the subordinate courts, such powers and duties of a non-judicial or quasi-judicial nature as it found necessary, and regulating the mode in which powers and duties so conferred and imposed would be

<sup>83</sup> *Ibid.*, Sec. 38

<sup>84</sup> *Ibid.*, Sec. 6.

<sup>85</sup> *Ibid.*, Sec. 8.

exercised and performed;

- (g) prescribing forms for such books, entries, statistics and accounts as it deemed necessary to be kept, made or compiled in the subordinate courts or submitted to any authority;
- (h) providing for the inspection of the subordinate courts and the supervision of their working;
- (i) regulating the exercise of the control vested in the High Court by section 35(4) of this Regulation; and
- (j) regulating all such matters as it would deem fit, with a view to promoting the efficiency of the judicial and ministerial officers of the Courts, and maintaining proper discipline among the officers.

The High Court was vested with original and appellate jurisdiction. The Court was vested with the power to remove and to try, as a Court of extraordinary jurisdiction<sup>86</sup> any suit falling within the jurisdiction of any subordinate court in case that was deemed necessary. The High Court was also authorised to grant probates of testaments and administer properties belonging to persons dying intestate.<sup>87</sup> The appellate jurisdiction of the High Court extended to appeals in all decrees and orders of the District Judges or Additional Judges exercising jurisdiction in the first instance.<sup>88</sup>

### REFORMS REGULATION

After the restoration of powers to Pratap Singh, the Maharaja drew up a scheme for the reorganisation of his government and submitted it to the Government of India for approval.<sup>89</sup> The Maharaja proposed the appointment of a Council of Ministers to conduct the administration of the State, the institution of a Legislative Assembly and the constitution of a

<sup>86</sup> *Ibid.*, Sec. 10 (2).

<sup>87</sup> *Ibid.*, Sec. 12.

<sup>88</sup> *Ibid.*, Sec. 4 and 33.

<sup>89</sup> Shri Pratap Reforms Regulation, Jammu and Kashmir State Archives, File No. 13 of 1895.

High court of Judicature. The Government of India, possibly frightened at the prospect of finding a representative political instrument instituted in the State, hurriedly turned down the proposals made by the Maharaja. They however, accepted the part of the scheme which envisaged the reorganisation of the Council and the establishment of a High Court of Judicature. The scheme was embodied in the Sri Pratap Reforms Regulation which was promulgated by the Maharaja in January 1922.

The Reforms Regulation provided for a State Council to aid and assist the Maharaja in the conduct of the government of the State. The Council was constituted of the following members<sup>90</sup>:

1. Commander-in-Chief and the Senior Member
2. Foreign Member
3. Revenue Member
4. Law Member
5. Home Member
6. The Member for Commerce and Industries

Provisions were included in the Reforms Regulation by virtue of which the Maharaja's nephew and the heir-apparent, Raja Hari Singh was appointed the Commander-in-Chief and the Senior Member of the Council. In fact, this was what the Government of India had insisted upon. Hari Singh was secured a position of precedence over the other Members of the Council. The Foreign Member was placed next to him and the other Members of the Council according to their seniority. The Members of the Council were appointed by the Maharaja and remained in the office during his pleasure. Provisions were included in the Reforms Regulation for the appointment of a Secretary to the council and a secretarial establishment to conduct the work of the Council. The Maharaja appointed himself, the President of the Council.

The Reforms Regulation provided for a broad division of the subjects of the government into reserved and non-reserved subjects. The reserved subjects were retained by the Maharaja for his personal discretion and disposal and exercised

<sup>90</sup> *Ibid.*, Order No. 105-C dated 24th January, 1922.

authority with regard to them without any reference to the Council or any other authority appointed by him. The reserved subjects were<sup>91</sup>:

1. Matters bearing upon the relations between His Highness the Maharaja and the British Government and the Feudatory Chief within the State;
2. matters relating to prerogatives, rights, powers, duties or privileges of the Maharaja or his successors;
3. matters relating to the management and control of the household of the Maharaja or his successors;
4. matters relating to the rights, privileges, easements, assignments and gifts and allowances of the Ruling Family; and
5. the matters regulated by treaties or formal agreements now in force or which "may hereafter be entered into by His Highness the Maharaja with the British Government and the Feudatory Chiefs of the State".

The powers to administer the non-reserved subjects were vested with the State Council.

All matters, which, under the existing constitution, require orders of His Highness the Maharaja and cannot otherwise be dealt with by any or any other authority under powers delegated to him by virtue of any law, rule, regulation or practice sanctioned by His Highness, shall in future be submitted to His Highness in the Jammu and Kashmir Council, with the exception of the subjects reserved specially for final disposal of His Highness.<sup>92</sup> The decisions in the Council were to be taken by a majority of the members subject to the concurrence of the Maharaja who reserved the power over-rule any decisions the Council took if he deemed that necessary.

The Reforms Regulation envisaged provisions for the re-constitution of the High Court of Judicature in the State. The

<sup>91</sup> *Ibid.*, Order No. 106-C dated 24th January, 1922.

<sup>92</sup> Order No. 105, dated 24th January, 1922, Sec. 6.

High Court was constituted of Judges appointed by the Maharaja for a term which was also determined by him. Subject to the judicial powers exercised by the Maharaja, the Court was vested with original and appellate jurisdiction in civil and criminal matters which the High Court in the State exercised under Sri Pratap Consolidation Regulation and the Code of Civil Procedure and other laws in force at the time. The general superintendence and control over all other courts in the State was vested in the High Court. The Court was empowered to visit and inspect the proceedings of the subordinate courts and give such directions to them in such matters as were not provided for by law to secure the administration of justice.<sup>93</sup>

Though the Maharaja was restored the powers of the government and a new administrative organisation envisaged by the Reforms Regulation, was inaugurated in the State, the intrigues to undermine his position did not end. Raja Hari Singh, the Senior Member of the Council, who had cultivated the favour of the British officials in the State, strove hard to contain the Maharaja and assume the control of the administration. Hari Singh demanded immediate decentralisation of powers, which he alleged were still centralised by the Maharaja, and the delegation of wider and more effective authority to the council.<sup>94</sup> He wanted to secure the powers of the government for the Council where he enjoyed the dominant position and push out the Maharaja. The Resident and the other British officials, who were indebted to the Raja for numerous favours and personal gratifications, gave him their whole-hearted support. Once again Pratap Singh was driven to the wall. In 1923 the Maharaja was advised by the Resident to relinquish the office of the President of the Council and appoint Hari Singh in his place. Pratap Singh stubbornly refused to countenance the suggestion.<sup>95</sup> On further persuasion, however, the Maharaja agreed to abstain from attending the meetings of the Council except when important matters

<sup>93</sup> Sri Pratap Reforms Regulations, No. IV, 1878.

<sup>94</sup> Jammu and Kashmir State Archives, His Highness Private Record, No. 32 of 1923.

<sup>95</sup> *Ibid.*

were discussed.<sup>96</sup> In 1924, the Maharaja was finally instructed to stop attending the meetings of the Council. Pratap Singh was at the fog end of his life. Like a helpless spectator, he had watched the great tragedy enacted right before him all along his life. Broken and little hopeful that his forty year long struggle would earn him a reprieve in the end, he yielded.<sup>97</sup> A new Constitution Act was promulgated and fresh provisions were made with regard the Council and its function. Raja Hari Singh became the President of the Council and in consequence assumed unrestricted powers of the Government.<sup>98</sup>

In accordance with the provisions of the new Constitution Act the reserved subjects were redefined. The discretion and the initiative of the Maharaja to exercise these powers was, curtailed by the special procedure, laid down for the administration of the reserved subjects. Matters pertaining to the armed forces were to be submitted to the Maharaja by the Commander-in-Chief of the armed forces. Matters pertaining to the other reserved subjects were to be submitted to the Maharaja by the Members of the Council through the Senior Member. The reserved subjects were defined to include:<sup>99</sup>

1. Military;
2. Political matters affecting the peace and the good Government of the State;
3. Treaties and agreements with the British Government;
4. Treaties and agreements with Feudatory Chiefs;
5. Relations between the Maharaja and the British Government;
6. Relations between the Maharaja and his Feudatory Chiefs;
7. Prerogative;
8. Titles;
9. Khillats, Tambols, Vartans and grants at His Highness disposal;

<sup>96</sup> *Ibid.*, Johnwood to Hari Singh, June 8, 1924.

<sup>97</sup> *Ibid.*

<sup>98</sup> Constitution of the Jammu and Kashmir State Council, and Rules of Business, State Council Resolution No. VI, dated 6th February 1924; Resolution No. 111, dated 25th July, 1924.

<sup>99</sup> *Ibid.*, Part II (Reserved Subjects).



10. Reception and entertainment of guests, allocation of Huts, Rest Houses and Guest Houses;
11. Toshakhana;
12. Rakhs and Game preservation;
13. State representatives;
14. Baggikhana, Malmaveshi, Stables, Boats and Motor cars;
15. Jagirs and Muafis;
16. Devasthan and Dharmarth Trust fund;
17. Appeals which lie to His Highness under sections 34, 35, 36, of the High Court Regulation of Sambat 1978 and cases submitted to His Highness for confirmation of sentences under section 38 of the said Regulation;
18. Tasdiq-i-Wasiqajat; and
19. Police special reports such as accidents, riots, arrival and suspicious movements or actions of visitors.

The non-reserved subjects were to be administered by the State Council for which provisions were made by the Constitution Act. The Council was constituted of the following members:<sup>100</sup>

1. Commander-in-Chief, Senior and Foreign Member;
2. Revenue Member
3. Home and Law Member
4. Public Works Member
5. Finance and Police Member
6. Member for Commerce and Industries

Raja Hari Singh was appointed the Commander-in-Chief, Senior and Foreign Member of the Council.<sup>101</sup> Besides the armies of the State, the Senior Member of the Council was put in charge of the foreign affairs, treaties and agreements, relation between the Maharaja with his Feudatory Chiefs, political matters affecting the peace and good government of the State, receipt and despatch of all correspondence between the Maharaja and his officials and supervision of general administration,

<sup>100</sup> *Ibid.*, Sec. 5.

<sup>101</sup> *Ibid.*, Sec. 1.

prerogatives and powers of the Maharaja, the rights, privileges, gifts and allowances of the ruling family; its relations and connections, titles, salutes, ceremonials, tours and special occasions, frontier affairs, Residency and Residency correspondence, Khilats, Tambols, Vartans and grants at the Maharaja's disposal, reception, entertainment of guests, Guest-houses, Toshakhana, Rakhs and Game preservations, state representatives, Baggikhana, Malmaveshi, stables, boats and motor cars.<sup>102</sup>

The Revenue Member was put in charge of land revenue, Jagirs and Muafis, revenue settlement, Co-operative Credit Societies, Agriculture, Horticulture, Veterinary, Devasthan and Dharmarth trust fund, Red Cross and the State property in British India. The Home and the Law Member was entrusted with education, public health and the Jails, Municipalities, Research and Libraries, Archeology and Museums, Manageries, Metereological Department, Judicial Department and Legislature, appeals which lay to the Maharaja from the decisions of the High Court, confirmation of sentences and Tasdiq-Wasiqa-Jat. The Member for Public Works was put in charge of the departments of Irrigation, Roads and Buildings, Electric Department, Mechanical Department, Telegraph and Telephone Departments, Finance, Treasuries, Accounts and Audits, Stamps, Kashmir Valley Food Control, Police, police special reports on riots, arrival and supervision of suspicious movements and actions of visitors, were put in charge of the Finance and Police Member. The Member for Commerce and Industries was put in charge of Forests, Commerce and Industries, Excise, Customs, Stationery, Industrial Education and the Printing Press.

The Constitutional Act also provided for the appointment of a Secretary of the Council. The Secretary was appointed by the Maharaja. The functions of the Secretary were enumerated by the Constitution Act in detail. His functions were:<sup>103</sup>

1. to receive all papers submitted to the Council;
2. to propose and circulate the agenda of business of the Council with the approval of the Senior Member and give notice of the meetings of the Council to the

<sup>102</sup> *Ibid.*, (Distribution of portfolios).

<sup>103</sup> *Ibid.*, Sec 2.

- Members;
3. to return cases to the Members not submitted to the Council;
  4. to record the proceedings of the Council;
  5. to obtain Maharaja's consent for the resolutions of the Council;
  6. to issue to the Members concerned the resolutions of the Council;
  7. to furnish the Members with the printed copies of the proceedings;
  8. to furnish the requisitions made by the Members of the Council;
  9. to supervise the prompt despatch to the Council of reports from departments;
  10. to supervise the working of the office and maintenance of the record;
  11. subject to the appeal to the Council, to supervise and control the office establishment of the Council in the matters of appointment, suspension, leave, punishment and promotions;
  12. to have the seal of the Council, maintain usual office registers, lists of pending references and the registers of the proceedings of the Council;
  13. to furnish copies of resolution of the present and earlier State Council and the copies of the orders of the Maharaja on applications without a reference to the Council; and
  14. to authorise fluctuating expenditure travelling allowances, bills of the subordinate establishments with the allotments provided.

The Constitution Act enumerated in detail the powers of the Council. Subject to the sanction of the Maharaja, the Council was vested with final authority in all matters which could not be dealt with by any Member or any other officer. The Council was also empowered to:<sup>104</sup>

1. frame and pass the annual financial statement before

<sup>104</sup> *Ibid.*, Powers of the Council

- the next financial year, to sanction the re-appropriation of any expenditure from one head to another, and to sanction all extra-grants not approved in the budget;
2. to sanction appointments and removal of gazetted officers, sanction leave, sanction pensions and allowances to them, call for records from any office through the Member-in-Charge and pass orders considered necessary sanction compassionate pensions, allowances for life to employees of the State or their dependents and hold departmental enquiries in the conduct of other officials;
3. to approve progress and other reports submitted by the Members;
4. to sanction acquisition of land under the Land Acquisition Act, over the powers delegated to the Revenue Member and grant of land under the State Waste Land Rules or under the House Building Rules;
5. to settle boundary disputes and questions relating to the Settlement Department over and above the powers delegated to the Member-in-Charge of the Department;
6. to sanction suspension and remission of revenue over and above the power delegated to the Revenue Member;
7. to decide appeals against orders issued by Members of Council in cases which were not included in the list of the reserved subjects;
8. to issue orders for the more efficient organisation and despatch of business in the various departments and make rules to regulate proceedings of any department and to settle matters pertaining to more than one department;
9. to revise orders issued by the Member-in-Charge of a department;
10. to call for and modify any proceedings in any Department and stay the execution of any order pending the final decision of the Council; and
11. to sanction schemes of general reform.

The Constitution Act also laid down rules for the conduct

of the business in the Council.<sup>105</sup> Every case to be submitted to the Council was to be sent to the Secretary of the Council by the concerned Member of the Council. A complete precis of the case was to be drawn up by the Member and he was required to record his opinion and the opinion of the Head of the Department subordinate to him in regard to the case. In every case, which involved financial issue the opinion of the Member-in-Charge of Finance was to be obtained before the case was submitted to the Council. Whenever a proposal was made to sanction, amend or repeal any regulation, law, order or notification, the opinion of the law member was to be obtained by the Member who had initiated the proposal. In every case which effected more than one member of the Council, the Member who submitted the case was to obtain the opinion of the Members directly concerned and the Head of the Departments effected.

Pratap Singh died in 1925. Hari Singh had cultivated the favour and friendship of the British officials in the State and his succession was smooth. During the period he was the Senior Member of the Council, the Raja had with astute understanding of the situation, placated the British officials of the Residency as well as those placed in the Government of the State. He had many reasons to have followed a policy of conciliation towards the British. Pratap Singh was heirless and the succession of the Raja depended upon the good will of the Government of India which could set his claims aside at the last moment. He was aware of the keen interest the Government of India had assumed in the northern frontier of the State after the first World War. He also realised the implications the national movement in India, which, by the time he succeeded to the throne, had entered the most decisive phase of its development.

Hari Singh was an intelligent man. But he was very stubborn. After he was well settled in his position, he gradually began to draw himself out of the burdens which had crushed his predecessor, while he maintained the cctrie of the willy British officials in favour, he assumed direct and effective control of the administration. In November 1925, he repealed the Constitutional provisions made by Pratap

<sup>105</sup> *Ibid.*, Rules for Conduct of Business.

Singh the year before and by a resolution in the Council promulgated new constitutional provisions for the government of the State<sup>106</sup>. In its broad aspects, general frame of the Government, the Constitution Act envisaged, did not differ from the structure, the Constitution Act of 1924, had underlined. The powers of the Government continued to be divided into the reserved and non-reserved subject.<sup>107</sup> The Maharaja retained exclusive control over the powers which were reserved for the personal control of the Ruler under the Constitution Act of 1924, except the following subjects which were transferred to the non-reserved sector :<sup>108</sup>

1. reception and entertainment of guests and management of the rest houses and guest houses;
2. Appeals to the Maharaja from the High Court;
3. Tasdiq-i-Wasiqat; and
4. Police special reports with regard to accidents, riots, arrival and suspicious movements of the activities of the visitors.

The reserved subjects, retained by the Maharaja for his personal discretion and control, included, military, political matters, salutes, ceremonials, frontier affairs, Residency correspondence, khillats, Tombols, Vartans and grant, Toshakhana, Game-Preservation, State Representatives, Baghikhana, stables, boats, motor-cars, Jagirs and Maufis, Devasthans Dharmarth<sup>109</sup>. The procedure for the administration of the reserved subjects was defined by the new Constitution Act.<sup>110</sup> Matters pertaining to the army were submitted to the Maharaja for his commands by the Colonel-in-Command of the Army Staff. Subjects dealt with by the Foreign Department were submitted to the Maharaja for his commands by the Foreign Secretary. All other matters pertaining to the reserved subjects were submitted to the Maharaja for his orders by the State Secretary.

<sup>106</sup> Constitution of the Jammu and Kashmir State Council and the Rules of Business, State Council Resolution, No. 1, 28th November, 1925.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

Civil and criminal appeals and applications and cases for confirmation of sentence of death or imprisonment for life were submitted to the Maharaja for his disposal by the Law Member.<sup>111</sup>

In accordance with the provisions of the Act, the Constitution of the Council was modified and the Council was constituted of the Maharaja and the following members:<sup>112</sup>

1. Members for Revenue
2. Member for Home and Law
3. Member for Finance and Police
4. Member for Commerce and Industry
5. Member for Public Works

The non-reserved matters were dealt with by the Council subject to the final sanction of the Maharaja.<sup>113</sup> The Maharaja himself presided over the meeting of the Council.<sup>114</sup> The quorum of the Council was fixed at four members and the decisions were taken by a majority vote. No resolution of the Council came into force unless it was approved by the Maharaja. In case of decisions which were taken by the Council in the absence of the Maharaja, the decisions were submitted to the Maharaja by the Council Secretary for his sanction. In case the Maharaja disagreed with any decision arrived at by the Council, the Maharaja was vested with the power to call for a meeting on the subject in his presence.

The allocation of the portfolios, provided for under the Constitution Act, 1924, was also altered and the non-reserved subject were redistributed among the members of the Council.<sup>115</sup> The office of the Senior Member of the Council was abolished.<sup>116</sup> The Constitution Act, 1924, provided for a Senior Member of the Council who presided over the meetings of the Council. The Maharaja in the Council retained for his personal control and discretion military affairs, foreign affairs, general adminis-

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

tration political matters effecting the peace and good government of the State. The Revenue Member was put in control of Land Revenue, Jagirs and Maufis, Revenue Settlement, Civil Veterinary, Devasthans and Dharmarth Trust Fund, Road-Cess, Patwar Fund and Chowkidar Fund, State-property in British India. Education, Medical Department, Jails, Municipalities, Research and Libraries, Archaeology and Museums, Manageries, Meteorology, Telegraph and Telephone, Judicial Department and Legislation, Civil and Criminal appeals and application for confirmation of the death sentences and imprisonment for life, Tasdiq-Wasiqajath which required the Maharaja's sanction were entrusted to the Member for Home Affairs and Law. Finance, Treasuries, Accounts Audit, Stamp, Kashmir Valley Food Control, Police and Police Special reports, arrival and reports of the suspicious movements of the visitors and co-operative credit was put in charge of Member for Finance and Police. The Member for Commerce and Industry was put in charge of Forests, Sericulture, and Mulbery Culture, Mineral Survey, Commerce and Industries, Excise, Customs, Stationary, Industrial Education, Printing Press, Agriculture and Horticulture. Roads and Buildings, Electric Department and Mechanical Department, were put in charge of the Member for Public Works.<sup>117</sup>

By assuming the presidentship of the Council, the Maharaja established direct supervision over the function of the Council. The Council retained the powers, it was vested with under the Constitution Act of 1924, with the exception that the powers to sanction appointments and the removals of gazetted officers, to hold departmental enquiries, to grant pensions and allowances, to sanction the acquisition of land over the powers granted to the Revenue Member under the State Waste Land Rules, and to decide appeals against the orders of the Members of the Council, were taken away from the Council.<sup>118</sup> With regard to the revenue appeals the following procedure was laid down:

As regards revenue appeals, applications for review and revision, the opinion of the Law Member shall, where he agrees with the Revenue Member be treated as the decision

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

of the State Council, and the Secretary State Council shall inform the Revenue Member accordingly to enable him to take action. In cases in which the Law Member differs from the Revenue Member the papers shall be submitted to the Council by the Secretary Council with a detailed note for orders.<sup>119</sup>

A significant reform introduced by Hari Singh was the reconstitution and reform of the laws and regulations pertaining to the administration of Municipalities in the State.<sup>120</sup> Provisions were made for the establishment of Municipalities in the two major towns of Srinagar and Jammu, a step which signified a land-mark in the development of local government in the State. The Municipalities, though placed under severe limitations and strict administrative control of the government, were vested with powers with regard to constructions, water supply, sanitation and general welfare of the two townships of the State.

Another measure, the Maharaja adopted and in fact, the one unique in its nature, was the institution of Conferences in which the representatives from the rural areas met the Maharaja once a year, to apprise him of the conditions that prevailed in the villages and the needs and the difficulties the rural population faced.

In order to ensure that the legitimate grievances and needs of the agriculturists who form the vast majority of His Highness, subjects, may receive proper consideration, His Highness instituted the practice of annually inviting representatives from the various rural areas both in Jammu and in Kashmir to a Conference where they can personally acquaint His Highness with their needs and aspirations. Such matters as the opening of general and technical schools in particular localities, construction of roads and bridges, establishment of dispensaries, Post and Telegraph offices, extension of pastures for grazing and other matters, which, though more or less purely of local utility, are nevertheless important for the development of the country and the amelioration of the condition of the

<sup>119</sup> *Ibid.*

<sup>120</sup> A Note on Jammu and Kashmir State, 1927, Chapter, 11, p.4.

rural population, are discussed at these Representatives' Conferences.<sup>121</sup>

In March 1927, the Constitution Act of 1925 was amended by the Maharaja. In accordance with the new constitutional provisions, all the powers of the government were taken over by the Maharaja under his personal control.<sup>122</sup> The Council of the Executive Members was abolished and replaced by a Council of Ministers constituted of,

1. Minister of Foreign Affairs and Trade
2. Minister for Public Works
3. Minister for Revenue
4. Minister for Home and Judicial<sup>123</sup> Affairs
5. Minister for Finance

A Minister-in-Waiting was appointed to function as the channel of communication between the Maharaja and his Ministers.<sup>124</sup> The Ministers were appointed by the Maharaja for such term and on conditions as he determined and as usual they remained in office during his pleasure. The Council was presided over by the Maharaja himself and he distributed the different portfolios among them. He personally determined the functions they were to perform and the ways and means by which the work of the government was co-ordinated. The Ministers were personally responsible to him. The Minister-in-Waiting was not entrusted with the work of any particular department and remained without a portfolio. The matters relating to the State Army were entrusted to a Military Board which was entrusted with the military administration. The Board was to function under the direct command of the Maharaja who was himself, the Commander-in-Chief of the State Armies. The duties and functions of the Board were defined by a separate Regulation. The deliberations of the Board were presented to the Maharaja for his command by the Colonel on the Staff. Certain other matters like the rights and

<sup>121</sup> *Ibid.*, p. 8

<sup>122</sup> Order No.3, dated, 11 March, 1927.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

titles of the Ruler and the Ruling Family, relations with the Paramount Power and the Government of India, treaties, Jagirs and Mauifs were reserved by the Maharaja for his personal disposal. Powers were reserved by the Maharaja to determine the subjects which were placed within the competence of the Council. The power which remained outside the competence of the Council, were submitted directly to the Maharaja for his commands. Matters of legislation and finance were referred to the Council of Ministers for advice. Meetings, where matters pertaining to legislation and finance were discussed, were also presided over by the Maharaja. The decisions of the Council were advisory and subject to the approval of the Maharaja.<sup>125</sup>

In 1928, Maharaja Hari Singh adopted a measure of considerable significance, when by a proclamation, he ordered the reconstitution of the High Court in the State.<sup>126</sup> The proclamation envisaged the establishment of a High Court of Judicature consisting of Chief Justice and two or more judges; one of them, was named the Judge of High Court and the Revenue Commissioner.<sup>127</sup> The Chief Justice and the other Judges were to be appointed by the Maharaja and were to hold office during his pleasure.<sup>128</sup>

Subject to the rules and regulations framed by the Maharaja, the general superintendence and control over all other courts was vested with the High Court and all other Courts were to function in subordination to it.<sup>129</sup> The Chief Justice and the judges of the High Court were empowered to visit and inspect the proceedings of all subordinate courts, and give such directions in matters not provided for by law, as were necessary to secure the administration of Justice. Subject to the sanction of the Maharaja and in consistence with the provisions of Code of Civil Procedure and the Code of Criminal Procedure, the Court was empowered to make rules to regulate its own practice, regulate the practice of the subordinate

<sup>125</sup> *Ibid.*

<sup>126</sup> Jammu and Kashmir Government Notification. Order No. 1, 25th March, 1928.

<sup>127</sup> *Ibid.* Sec. 1.

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.* Sec. II.

courts, provide for the forms to be used in the High Court and the subordinate courts for such proceedings, books, entries statistics and accounts deemed necessary, provide for the inspection of the subordinate courts and the supervision of their work and regulate all such matters as the Court deemed fit to promote the efficiency of its judicial and ministerial officers as well the judicial and ministerial officers of the subordinate courts.<sup>130</sup> In regard to the function of the subordinate courts the High Court was empowered to:

- (1) make recommendations to the Maharaja with regard to the appointment of the District and Sessions Judges, Judges of the subordinate courts and Munsifs;
- (2) transfer and grant leave to judges of the subordinate judges and Munsifs;
- (3) subject to the sanction of the Maharaja, grant leave to the District and Session Judges and transfer them; and
- (4) subject to the sanction of the Maharaja, confer civil and criminal powers on District and Sessions Judges, subordinate Judges, Munsifs, District Magistrates, and other officers exercising judicial powers.<sup>131</sup>

Subject to the sanction of the Maharaja, the High Court was authorised to appoint a Registrar and a Deputy Registrar and such other ministerial officers as were found necessary for the administration by the Court and for the exercise and performance of the powers conferred on the Court. The Court was authorised to determine the salary, allowances, promotions, leave, suspensions and the dismissal of such staff. Powers were vested with the Court to delegate such judicial, quasi-judicial and administrative powers to the Registrar or the Deputy Registrar as it deemed necessary.<sup>132</sup>

The High Court was also empowered to approve, admit and enrol Advocates, Vakils and Attorneys up to the limit fixed by the Maharaja. The Court was vested with the power to

<sup>130</sup> *Ibid.* Sec. 18.

<sup>131</sup> *Ibid.* Sec. 13.

<sup>132</sup> *Ibid.* Sec. 12.

make rules for the qualification and admission of such Advocates, Vakils and Attorneys.<sup>133</sup>

The High Court was vested with original jurisdiction in civil cases of ten thousand rupees or more in value. The Court was also vested with appellate jurisdiction in all civil matters, and for the purposes of all enactments in force for the time being, the Court was deemed to be the highest civil court of appeal and revision. The Court was empowered to hear and decide such revenue appeals as were specified by general or special orders of the Maharaja. The revenue appeals were to be heard by the Revenue Commissioner sitting alone and appeals against his decisions were to be heard by a bench of two other Judges of the Court. The Court was also vested with appellate jurisdiction in all criminal matters and was deemed to be the highest court of criminal appeal.<sup>134</sup> The High Court was vested with the power to try cases for the contempt of the Court.<sup>135</sup>

The Maharaja reserved to himself the prerogative of mercy and pardon and the power to remit, commute and reduce sentences conditionally or otherwise, call for the record of any case or proceeding whether pending or decided by the High Court and pass such orders as were "in accordance with the law and usage of the Realm and consonant with the dictates of justice, equity and good conscience."<sup>136</sup>

<sup>133</sup> *Ibid.* Sec. 19.

<sup>134</sup> *Ibid.* Sec. 6.

<sup>135</sup> *Ibid.* Sec. 20.

<sup>136</sup> *Ibid.* Sec. 23.

## National Movement

The British intervention ended the exclusiveness of the State. Not only did the British aim to reform the administrative structure of the State they also undertook the economic reorganisation of the State. Before they took over the administration of the State, they had advised the Maharaja to introduce reforms in the land tenures, regularise land revenue assessment, and rationalise the taxes on industrial products like Shawl and Silk, reduce duties on imports and exports and abolish the restrictions on commerce and trade.<sup>1</sup> The British were, in fact, motivated by two equally significant objectives. In the first place they sought to consolidate a ring fence of middle class interests around the dynasty which would work as a safeguard for the dynasty as well as a check on its wide and absolute monopoly in property. In the second place the British sought to secure control of the lucrative commercial operations in the State particularly those across the northern frontiers. The British officials placed in the State or around it, had their

<sup>1</sup> National Archives of India, Foreign Department Proceedings, Secret. E, October 1886, No : 725.

own interests to serve and secure advantages and concessions for personal pecuniary benefit. A fresh revenue assessment had already been ordered by the Maharaja under the instructions of the Government of India, and Wingate, another of the many diehard English officials, who was as ignorant about the conditions prevailing in the State as any other Englishman was, was foisted on the Maharaja to report on the revenue administration of the State and process out a fresh assessment.<sup>2</sup> Infact, Pratap Singh had requested Sir Charles Aitchison, the Lieutenant Governor of the Punjab for a qualified native Settlement Officer. Sir Charles had recommended a couple of men and asked the Maharaja to make a selection between them. The Maharaja had then requested Sir Charles to make the selection himself expressing his preference for a Mohamaden Officer in view of the fact the population of Kashmir was mostly Muslim. Sir Charles had then made the selection and forwarded his recommendations to the Government of India for sanction. But Plowden, more to benefit Wingate, by no means an efficient and capable officer, and plague the Maharaja, had manoeuvred to get the Englishman appointed the Settlement Officer in the State<sup>3</sup>. However, before Wingate was able to complete his task he was replaced by a more capable Officer Sir Walter Lawrence. The main features of the new settlement were:

- (i) The State demand was fixed for fourteen years
- (ii) The payment in cash was substituted for payment in kind
- (iii) The use of force and the employment of troops in the collection of State revenues was abolished
- (iv) Beggar in land was abolished
- (v) Occupancy rights were conferred on cultivators in undisputed land
- (vi) The area of land held by privileged holders in excess to the area sanctioned to them was assessed at ordinary rates
- (vii) Waste lands were entered in the Records as the Khalsa, but preferential rights for acquisition of such lands by

<sup>2</sup> J. C. Bose, *Kashmir and its Prince*,

<sup>3</sup> *Ibid.*

- tenants were granted
- (viii) Permanent but non-alienable hereditary rights were granted to those who accepted the first assessment
  - (ix) All land was carefully evaluated on the basis of produce, previous collection and possibility of irrigation
  - (x) The Rasum and other exactions were abolished and the rents and liabilities of the cultivators were defined.<sup>4</sup>

The reorganisation of the administrative structure was, more drastic. Most of the departments were placed under the supervision of British officials who modified the departmental organisation according to the lines laid down by the Government of India.<sup>5</sup> A development of far-reaching import, was the zealous effort, the British Official supported by Christian Missionaries, made to introduce English education in the State. The first school in which English education, according to recognised university syllabii, was imparted, was established by the Missionaries in 1881. English education was introduced in the schools, run by the Government in the State, in 1886. Within a decade a number of schools imparting education in English, were established in the provinces of Jammu and Kashmir. Within one more decade, the schools and the two colleges began to pour out a fairly good number of educated young men.<sup>6</sup>

The vigour and the ruthlessness with which the British reorganised the age old economic and social structure and the administrative and educational system in the State ended an epoch and founded a new generation.<sup>7</sup>

The process liberated hitherto unexperienced stresses and strains and gave rise to a fresh complex of economic and social relations. The most characteristic feature of the new pattern was the consolidation of a middle class flank of vested

<sup>4</sup> Jammu and Kashmir State Archives, No. 66-M of 1922.

<sup>5</sup> Progress of Education in Jammu and Kashmir, p. 122.

<sup>6</sup> M.K. Teng and S. Koul, Ideological Foundation of National Movement in Kashmir, Journal of Political Studies, Jullunder, September, 1971, p. 28.

<sup>7</sup> *Ibid.*



interests in land and trade and the emergence of rapidly widening class of educated young men. Many of the youngmen found their way into the services of the State and thus cast in a new progressive sociological role assumed community leadership.<sup>8</sup> Most of them, however, failed to find any avenues of employment. The agrarian economic frame offered few prospects for the educated people. Except for the indigenous an not so prosperous small industrial establishments, a stable industrial structure did not exist in the State. Barring the township of Jammu, where trade and commerce flourished due to the proximity of the commercial centres in the Punjab, the rest of the province was as poor as the Kashmir province was, where the economic activity centered round small trade in meagre and more often false surpluses in agricultural produce.<sup>9</sup> Imbued by the liberalist tradition, which underlined the English education, and therefore, keen to find a place in the administrative organisation of the State and also because alternative opportunities of advantageous employment, in the other economic avocations were sparse, the educated young men developed a reactionary interest in the administrative services in the State. The State administration however, offered very restricted margin of employment. Most of the offices were filled by the Government of India from among its civil service cadres or filled by the Dogras on political and other considerations.<sup>10</sup> The British officials, who considered the Government in the State as their own preserve and managed to assume positions and roles for their personal benefit or utilised the distribution of employments as an effective instrument of patronage, paid little attention to the difficulties the educated youth faced. The clash of interests was inevitable. A deep sense of resentment was created in the people of the State against the British officials as well as those appointed by them.<sup>11</sup> A number of social and political associations, more important among them being the Dogra Sadar Sabha, the Mahajan

<sup>8</sup> M.K. Teng, *Social Legislation in Kashmir*, M.S. p. 189.

<sup>9</sup> *Ibid.* p. 49.

<sup>10</sup> M.K. Teng and Santosh Koul, *Ideological Foundations of National Movement in Kashmir*, Journal of Political Studies, Jullunder, September, 1971, p. 29.

<sup>11</sup> Resolutions of the Dogra Sadar Sabha, 1912.

Sabha and the Muslim Youngmen's Association, were founded in the State. The objectives which underlined the programme of these organisations reflected the deepening frustration among the youngmen and their earnest desire to assume wider participation in the politics and the administration of the State.<sup>12</sup> The Dogra Sadar Sabha, founded in 1905, voiced disapproval of the domination of the State administration by the India Civil Service cadres. After 1910, the Sabha started a vigorous campaign for the reservation of administrative employments for the people of the State.<sup>13</sup> In Kashmir province the movement evoked greater response from the small Kashmiri Pandit community, which had a long academic and intellectual tradition and which produced youngmen educated in schools at a fairly rapid rate than the other communities in the State did.<sup>14</sup>

The emergence of a stable middle class and the spread of English education in the State had another and a more important aspect. The three provinces which comprised the State had little that was common among them. Kashmir was predominantly Muslim. Ravaged by centuries of oppression and ruin and for most of its history compelled to seclusion by its geographical location, it had settled down into atrophied forms of cultural stratification. Jammu Province, a part of the Sanskrit people of the Punjab, was inhabited by Hindus as well as Muslims the latter forming a majority in the Districts of Doda and Poonch. Ladakh was inhabited by Buddhists with a majority of Muslims living in Baltistan and was ethnically and culturally different from both the people of Kashmir and Jammu. The integration of these territories into a single political entity had obviously an inherent potentiality for conflict and concussion.<sup>15</sup> The early Dogras utilised the precarious balance of the social and cultural contacts, thus created to secure their position and in order to use the hierarchical gradations of these social patterns as instruments

<sup>12</sup> M.K. Teng and Santosh Koul, *Ideological Foundations of National Movement in Kashmir*, Journal of Political Studies, Jullunder, September, 1971, p. 31.

<sup>13</sup> *Ibid.*, p. 31-32.

<sup>14</sup> *Ibid.* p. 32.

<sup>15</sup> *Ibid.*, p. 32.

of political control, contributed, consciously or unconsciously, to the perpetration of these differences and divisions.<sup>16</sup> Alignments were secured by them with agrarian and commercial interests, the social strata with a superior rôle status and the different regional influences. The lower castes among the Hindus were secured by caste approbrium. The same processes were adopted by the Dogras to deal with the Muslims as well, but the Muslims remained impervious to their political persuasion. Partly, it was because the Muslims were not graded into social levels like caste and therefore, no *infra*-instruments of social control could be built among them. Partly, it was because the Muslim middle class interests widespread in the Jammu province than in Kashmir, were not organised and therefore, exercised less influence over the Muslim masses. It was, however, mainly because the Muslim masses, as the predominant majority, bore the brunt of Dogra absolutism and was therefore, far from content with the Dogra rule. Uncared for and neglected the Muslims were isolated and as they turned inwards they fell into conservative extremism.

The middle class movement and the reactions articulately expressed by the middle class intellectuals, could neither rectify nor remedy these ills. The new class actually constituted an inseparable part of the Dogra political and economic frame and was therefore, geared to the perpetuation of these ills. What actually happened was that the middle class leadership broke up into regional and communal factions and liberated reactions which had not been experienced before. The objectives of the various faction were identical because each contested for wider permissibility, more concessions and greater opportunities of employment under the regime. Only the operatives differed. Gradually, however, as the contest among the different factions sharpened, the operatives assumed precedence over the objectives. The Muslim factions, extra-conscious of their rôle as the spearhead of a religious majority ruled by Dogra Rajputs, turned to feed on the seething discontent and distrust in the Muslim masses. As the mass involvement in the Muslim middle class movement increased, the objectives, the Muslim middle factions sought to achieve, were completely

<sup>16</sup> *Ibid* p. 32.

relegated to the background. The movement rapidly widened its scope and soon assumed the expression of an upsurge against the Dogras.<sup>17</sup>

Hari Singh was an intelligent man and perhaps for a while, sensed the danger the widespread discontent among the Muslims posed. On the occasion of his Raj Tilak, he tried to assuage the feelings of the different communities, particularly the Muslims and declared that his government would strictly adhere to a policy of equal protection to all people and remedy the discrimination that any of the communities in the State suffered. A number of concessions were announced under the Raj Tilak Boons,<sup>17</sup> particularly with regard to revenue assessment, grazing fees, cultivation of waste and fallow lands. The concessions with regard to fallow and waste lands were aimed to benefit the small land holders in the State. The reforms, though of considerable merit could hardly remedy the Muslim distrust. The Raj Tilak Boons were by no means radical but nothing short of a drastic transformation of the political and economic structures could restore the Muslims their trust in the Dogra administration. On their part, however, the Dogra had to fulfil their own commitments. They were a part of the complex structure of the Princely States in India. Their discretion was circumscribed as much by the nature of their authority as it was by the interests they were supposed to serve. Beyond the Raj Tilak Boons, the Maharaja could not accomplish much, the Muslim distrust remained unremedied.

The reorganisation of the Government, Hari Singh undertook after his accession, was not in any manner a progressive measure. The Maharaja attempted to re-establish the pattern of the personal rule, the early Dogras had fostered, with absolute control over the government and its operation. To that extent his efforts were to undo what the Government of India had compelled Partap Singh to do. The sole purpose for the promulgation of the constitutional provisions in 1925, and their modification a year and half later, was to secure the centralisation of authority in his person. The constitutional provisions did neither aim at any reform in the State policies nor seek to streamline the processes of the Government. On

<sup>17</sup> Raj Tilak Boons Declaration, 1925.

the contrary the constitutional provisions promulgated by the Maharaja, sought to strengthen the frames which bound the people of the State to servitude. The Conferences of the Representatives were farcical in character for the people on parade at such congregations were the hosts of concession holders, Tazimi Sirdars, Jagirdars, landowners and village headmen who hardly represented anybody in their fiefs and localities. They vied with each other to ingratiate themselves with the Maharaja and his courtiers to secure their interests and earn approval of the oppression to which they subjected their people. The enthusiasm, with which the Conferences were inaugurated, was short lived and within a year they got defunct.

At the political level however, the measures taken by Hari Singh had wide ramifications. The concentration of authority, Hari Singh attempted to achieve, found little favour with either the Government of India or the British Officials in the State. In fact, the British officials were immediately deprived of the close control they exercised over a number of the departments of the State Government. They enjoyed unrestricted power and initiative to manage the affairs of the departments placed under their supervision. Each one of them had become a little despot in himself. Evidently they were indignant at the turn the events took after the accession of Hari Singh. By alienating the support and the sympathy of the Residency and the community of the British officials placed in the State, Hari Singh, perhaps, in wild excitement, pushed himself into direct confrontation with the Government of India. Hari Singh repudiated the secret commitments that his predecessor had given to the Government of India when powers were finally restored to Pratap Singh and he had undertaken that he would take the advice of the Resident in all important administrative matters and consult the Government of India whenever any changes were made in the policies of his Government with regard to the frontiers of the State. The action taken by Maharaja Hari Singh was significant because the repudiation of the commitments given by Maharaja Pratap Singh did not only end the technical jurisdiction the Government of India exercised in the State, on matters not provided for by any treaty or a subsequent Sanad, but brought to surface the fundamental question whether a secret commitment, given by

a Ruler of a Princely State to the Government of India, had any constitutional validity and whether such a commitment, bound a successor to the obligations the commitment imposed. In fact, many of the obligations, Maharaja Pratap Singh had undertaken, had no legal sanctity or constitutional validity and were not in any sense commitments of a constitutional nature. There was, therefore, no ground to admit that the commitments could bind a Princely State perpetually to obligations imposed by the Government of India. Any such precept or process prejudiced the Paramountcy. Maharaja Hari Singh had therefore, a patent right to refuse the concessions, his predecessor had given to the Government of India. The Government of India, was however, hardly expected to surrender, particularly in regard to the northern frontiers of the State, which had assumed fresh importance after the First World War.

#### GRIEVANCES AND COMPLAINTS

Early in 1931, an ugly incident occurred at Jammu which allegedly involved interference by the State Police with the practice of recitation of Khutba after the usual prayers<sup>18</sup> by the Muslims. A few more incidents followed in quick succession. Tension mounted rapidly. The incidents brought the various Muslim interests and factions in the Punjab directly into the vortex of the development in the State.<sup>19</sup> A number of journals, both in vernacular and English, notable, among them being the 'Siyasat' 'Pasban' and the 'Muslim outlook' took up the cause of the Kashmiri Muslims, pleading for their deliverance from the Dorga rulers.<sup>20</sup> Most of these journals and Akhbars were patronised by the British to brow-beat the Maharaja.<sup>21</sup> A number of Kashmir Muslim Committees also sprung up all over the Punjab and a Central Kashmir Committee was constituted at Lahore to coordinate the work of the Committees and cannalise their

<sup>18</sup> Report of the Inquiry into disturbances in Jammu and its environs, 1932.

<sup>19</sup> Ranbir, Jammu, Vol. 3, No. 47, 48 (1927).

<sup>20</sup> *Ibid.*

<sup>21</sup> Rashid Taseer, 'Tehrik Huryat Kashmir' Vern. Vol. I. p. 140.

efforts.<sup>22</sup> The Muslim Youngmen's Association in Jammu was also reorganised. Most of these movements and activities were inspired and guided by Ahmadiya cadres from Qadian.

The Jammu incidents evoked considerable response from the Muslims in the Kashmir province but their reaction was subdued. The apparent calm, however, did not last long. In June, one Abdul Qadeer, an Indian national, who had come to Kashmir with an Englishman, delivered a number of speeches to the Muslim congregations assembled in the Mosque of Shah Hamdan in Srinagar. Speeches were allegedly seditious and Qadeer was arrested. On July 13, while Qadeer's trial was in process at the Central Jail at Srinagar, a scuffle occurred between a huge mob of Muslims, which had collected outside the Jail precincts, and a contingent of Dogra sepoy, specially commandeered to guard the Jail that day. The sepoy opened fire and twenty one people were killed.<sup>23</sup> Riots broke out in Srinagar and the troops were deployed to bring the situation under control. The Muslims in the province rose as one man against the regime, struck work, called themselves off from all business and shopping centres and in sullen resentment settled down to widespread passive resistance.

The Government of India, possibly in haste, threw away its caution and instructed the Resident to inform the Maharaja that the happenings in the State had evoked deep concern all over the country and in view of the 'Propaganda' being worked up on the frontier, at Simla and in India generally the Viceroy desired that the Maharaja requested the Government of India for independent outside assistance for a Commission of Enquiry or at least services of a Mohamadan High Court Judge to add to the existing Committees.<sup>24</sup> The Maharaja had instituted a Commission under the Chairmanship of Sir Barjor Dalal, the Chief Justice of the State High Court to enquire into the circumstances that had led to the Jail firing.<sup>25</sup> The Resident informed the Maharaja that the Viceroy was apprehensive that 'the findings of the present Committee, if local Mohamadans refuse to serve on it, would do little to allay the

<sup>22</sup> *Ibid.*

<sup>23</sup> Report of the Srinagar Riot Committee.

<sup>24</sup> P.N.K. Bamzai, 'History of Kashmir', p. 716,

<sup>25</sup> *Ibid.*

agitation'. The Muslims had, in fact, boycotted the Dalal Commission. In a long, but for all purposes, a wasteful communication, the Maharaja explained to the Viceroy the genesis of the entire crisis and assured him that the situation was expected to come to normal in a short time. The Maharaja, however, refused to accept the suggestions that outside assistance was necessary for an enquiry or a Muslim High Court Judge was needed to be associated with the enquiry in process. The Maharaja informed the Viceroy that the appointment of a Muslim Judge would damage the prestige of the State High Court. On August 1, the Resident conveyed to the Maharaja, the Muslim demand for an impartial British enquiry and advised him to meet a Muslim deputation from the Punjab which had sought to wait upon the Maharaja. The proposals were promptly turned down by the Maharaja.<sup>26</sup>

Maharaja, had by now, sensed the intentions of the Government of India. Intelligence had also reached him that the officials of the Residency and some of the senior British officials in his government including G.E.C. Wakefield, the acting Chief Minister, were deeply involved in the plot to undermine him. Wakefield was dismissed and whisked away across the State borders under close guard. The Englishman had joined the State Government during the reign of Maharaja Pratap Singh and had managed to cultivate the friendship of the Raja and after the latter had assumed the throne, secured for himself the office of the highest executive in the State. The new Prime Minister, Raja Hari Krishen Koul, opened negotiations with the Muslim leaders immediately after he joined the State Government. In the first week of August, the people detained and put under arrest, were released and the troops were withdrawn from Srinagar and the other major towns of the province. An agreement was reached between the Government and the Muslim leadership, which stipulated the suspension of the Muslim agitation on the assurance given by the Government that the Muslim demands would receive consideration of the Government after the enquiry instituted in the disturbances was completed.<sup>27</sup>

<sup>26</sup> *Ibid.*

<sup>27</sup> Agreement between the Government and the Muslim Leaders,

The agreement was, however, shortlived. On September 21, 1931, the Muslim leaders in Srinagar were rearrested. The Muslims swung back into severe and violent reaction. An underground committee called the "War Council" was constituted to direct the agitation and massive demonstrations were once again staged all over the province. The Government struck back furiously. On September 25, the Maharaja promulgated the Burma Ordinance. Regular troops were again called out to maintain law and order. Trouble broke out in the townships of Sopore, Baramulla, Shopian and Anantnag, and at a number of places the troops had to open fire on angry demonstrators.<sup>28</sup>

Three days after, the Government of India delivered a peremptory note to the Maharaja, informing him that the Government of India took a serious note of what was happening in the State.<sup>29</sup> The Maharaja was warned of the possibility of Muslim "Jathas" and volunteers being despatched to the State in support of the Muslims there. The Government of India demanded:

- (i) that definite and immediate steps be taken to remedy the more obvious grievances of the Muslims such as those pertaining to the ban on cow-slaughter, prohibition on Khutba and the Azan;
- (ii) that a British Officer, deputed by the Government of India, be appointed to conduct an independent inquiry into the grievances of the Muslims in the State;
- (iii) that a British Officer of the Indian Civil Services be appointed as the Prime Minister of the State; and
- (iv) that Raja Hari Krishen Koul the Prime Minister and his brother Daya Krishen Koul be ordered to leave the State.

While the Muslim agitation in Srinagar was still in process, trouble broke out in Jammu where a number of Muslim volunteers from the Punjab operated to guide the Muslim movement. Sporadic disturbances occurred all over the districts of Poonch and Mirpur where the Muslim population prepared feverishly

for a major clash with the Government.<sup>30</sup> Meanwhile, information reached the Government that Ahrar volunteers were being organised to be sent to the State in support of the Muslim agitation. The developments in Jammu alarmed the Maharaja. Partly to placate the British and partly to draw out the bulk of the troops from Kashmir to meet the situation in Jammu, the Maharaja suspended the action against the Muslim agitators in Kashmir. On October 5, 1931, the Government announced a general amnesty. The military regulations and the martial law ordinances, imposed on September 25, were withdrawn and the State troops, which were still deployed in Srinagar and the other towns of the province, were recalled. All the political prisoners and the people detained for disobedience and the violation of the military ordinances were ordered to be released.<sup>31</sup> An announcement was made by the Government that the Maharaja would consider the complaints and the grievances of his subjects and would be pleased to receive any memorandum or representation that any class or community of his subjects would prefer to make. Within a few days a number of representations and memorials were submitted to the Maharaja by almost all the communities of the State.

A few days after, the "Ahrar Jathas" crossed into the State at a number of frontier posts in Jammu. The volunteers were organised in the Punjab by the Majlis Ahrar and came from almost all over India.<sup>32</sup> Actually the Ahrars, a nationalist volunteer corps, jumped into the fray, to drive out the Ahmadiyas, who had directed the Muslim agitation in the State and extend their influence over the nascent Muslim movement. The State Government, which could have suppressed the local troubles, was hardly in a position to cope with the situation created by the Ahrar intervention. Riots broke out all over the Jammu Province and in a few days the districts of Mirpur, Poonch and Rajouri were completely cut

<sup>28</sup> Report of L.N. Jardine, Special Minister, on the measures adopted for the restoration of law and order in the Mirpur Wazarat and Rajouri Tehsil.

<sup>29</sup> Command Order, Dated, 3rd October, 1931.

<sup>32</sup> Report of the Inquiry into Disturbances in Jammu and its Environs. L. Middleton, 1932.

<sup>28</sup> P.N.K. Bamzai, "History of Kashmir", p. 718.

<sup>29</sup> *Ibid.*

off from Jammu.<sup>33</sup> The State Government stood by helpless. Finally, a shaken and disillusioned Maharaja, requested the Government of India for help and asked for the British troops to be sent to the disturbed areas to restore law and order. On November 3, 1931, the British troops were despatched to Jammu. On November 7, the Government of India promulgated an ordinance prohibiting the entry of the Ahrar volunteers into the State. Moulvi Mazhar Ali, the Ahrar leader, who had organised the Ahrar agitation was arrested and sentenced to two years imprisonment. On November 12, the Maharaja announced the appointment of a Commission to go into the grievances and complaints of the different communities in the State. Bertrand J. Glancy, a British officer, who had served in the State in different capacities, was appointed the Chairman of the Commission. The same day, the Maharaja ordered the institution of a Constitutional Reforms Conference to examine the feasibility of political reforms in the State. Bertrand Glancy was appointed the President of the Conference as well.<sup>34</sup>

The onslaught of the Ahrars and the events that followed, brought the Maharaja to his knees. The deployment of the British troops was a severe set-back for him. He had stubbornly refused to recognise that as an instrument of the British Colonial Empire in India, his decisions could be independent only to the extent they were in conformity with the interests and the operatives of the Empire. The Maharaja overlooked this historical fact. The British, however, put the heaviest premium on it. When the Maharaja ultimately yielded, much of the ground had slipped out from underneath his feet.

#### Muslim Conference

The Grievances Enquiry Commission was constituted of four non-official members representing the Muslims of Jammu

<sup>33</sup> Report of L.N. Jardina, on the measures adopted for the restoration of law and order in the Mirpur Wazarat and Rajouri Tehsil.

<sup>34</sup> Maharaja Hari Singh's order dated 24th November, 1931.

and Kashmir, the Hindus of Jammu and the Kashmiri Pandits.<sup>35</sup> The Hindus of Jammu withdrew their representative shortly after the Commission started its deliberations after the Muslim representatives insisted that the Hindu Law of Inheritance be taken up by the Commission for consideration.

The lines of approach the Commission laid down for the conduct of the enquiry and the focus of its investigation immediately cleared any doubts about the outcome of the enquiry. With great skill, the British Commissioner manoeuvred to secure the agreement of the other members of the Commission to the broad propositions about the way the Commission would conduct the enquiry and the sphere of State activity which the enquiry would cover. Apparently the enquiry was instituted to locate any communal and regional imbalances in the State and examine the effect such imbalances had on the welfare and progress of the different communities.<sup>36</sup> In reality, however, the Commission concentrated its efforts on the contest between the middle class factions for the concessions and opportunities the regime made available.

Besides the religious rancour and fervent zeal for communal domination, the more sizeable expression, which ultimately went into the making of the minutes of the Commission, was that of the articulate middle class interests embroiled in the struggle for survival. In fact, the British Commissioner took advantage of the manifest conflict which divided the middle class leadership in the State and glossed over the deeper implications of communal and regional imbalances, he was commissioned to locate.

The communal and regional imbalances were, in reality, an expression of the feudal economic and social organization and the hierarchical gradation of castes, creeds and religious denominations. These dissimilarities and gradations formed the ground work on which the regime was based. Bertrand Glancy, in fact, every Englishman, who had an opportunity to serve in any of the Indian States, knew this well and knew also

<sup>35</sup> Commission appointed under the orders of the Maharaja under the Chairmanship of B.G. Glancy to enquire into the grievances and complaints of the people of the State.

<sup>36</sup> *Ibid.*, pp. 1-5.

that not only the Princes but the British as well, were committed to maintain these traditional forms of society. The British Commissioner did not find the conditions in the State worse than those prevailing in any other princely State of India or in any of the British Indian provinces. He struck a balance between the divergent demands made on him and presented a list of recommendations which were neither motivated by any genuine desire to secure political emancipation of the people in the State nor aimed to achieve their economic reconstruction. The main burden that Glancy bore for the Commission, was to confirm the present imbalances and sharpen the conflict between the different communities and the regional denominations in the State.

The Commission did not make any effort to examine the ruthless oppression the Muslim masses in the State were subject to, the crushing demands the State and the interests which fed on it, made on the vast masses of Muslim peasantry and the host of taxes and levies which were extorted from the people of the State, to fill the coffers of the Government. Bertrand Glancy, with deliberate intent, refused to make any reference to the abjectly primitive economic organization of the State, the wide-spread exploitation of the rural population by the landed aristocracy and usury and indebtedness which drove out the sap of toiling masses. The Commission, instead recommended the abolition of the Malikana<sup>37</sup> and the various grazing taxes, relaxation in the rules regarding the cultivation of the State-waste and the right of the land owners to cut walnut, chinar and mulbry trees.<sup>38</sup> The concessions were obviously aimed to benefit the landlords and did not give any relief to the vast majority of the peasants who held land in tenancy or worked on it as landless labourers. The Commission gave scrupulous attention to the question of State services and their distribution among the different communities in the State. The commission noted:

All vacancies in the State services should be properly advertised and practical steps should be taken on the lines indica-

<sup>37</sup> Report of the Grievances Enquiry Commission, p. 51.

<sup>38</sup> *Ibid.*

ted in the report to see that all communities receive their fair share of the government appointments. In the case of local appointments it is recommended that the inhabitants of the district concerned should be recruited as far as may be possible.<sup>39</sup>

In November, 1932, the Muslim leadership called a general convention of the Muslims of the State in Srinagar.<sup>40</sup> On October 16, 1932, the last day of the convention, the Jammu and Kashmir Muslim conference was founded. Sheikh Mohamad Abdullah, who had led the Muslim intellectuals and directed the Muslim agitation, was elected the president of the Conference. The Conference committed itself to:<sup>41</sup>

- (i) Organise the Muslims of the State and secure them their rights;
- (ii) struggle for their economic and cultural betterment; and
- (iii) liberate them from the disabilities they laboured under.

A number of resolutions were passed in the open session of the Conference.<sup>42</sup> These resolutions envisaged the proposals that;

- (i) property should not be confiscated on conversion from one religion to another;
- (ii) the recruitment to the administrative services should be made according to the proportion of the population of the different communities;
- (iii) the land revenue should be reduced;
- (iv) all the communities of the State should be allowed to be recruited to the State army;
- (v) the people of the State should be secured the right to freedom of speech and expression; and
- (vi) all the political prisoners should be released from

<sup>39</sup> *Ibid.*

<sup>40</sup> Civil and Military Gazette, Lahore, 18th October, 1932.

<sup>41</sup> Constitution of All Jammu and Kashmir Muslim Conference, Cl. 2.

<sup>42</sup> Resolutions of the Muslim Conference, 16th, 17th October, 1932.

detention.

By another resolution the Conference gave its Working Committee the authority to convene a meeting of the General Council, whenever that was found necessary, to assess and evaluate the action, the Government had taken on the recommendation of the Grievances Enquiry Commission.

Meanwhile, Raja Hari Krishen Koul had been removed from his office and on the advice of the Government of India, the Maharaja had appointed Colonel E.J.D. Colvin, an Officer of the Government of India, the Prime Minister of the State. Two more officials of the Indian Civil Service had been inducted into the State Ministry and put in charge of the home affairs and finance. Colvin was a committed Civil Service official. In fact, he had been sent to fulfil more than one commission in the State. Besides being deputed to tighten the control over the administration of the Maharaja and stabilize the political situation in the State, he was entrusted with the arduous task of securing British control over Gilgit and the rest of the northern frontier of the State. The fast changing patterns of power relationships in Asia, particularly after the invasion of Manchuria by the Japanese, had given the northern frontier of the State, the importance it never had before. The Russian frontiers which sprawled menacingly close to the borders of the State, continued to pose a serious threat to the British Colonial interests in India. Gilgit and its adjoining territories remained undefended. Colvin succeeded in persuading the Maharaja to handover Gilgit to the British. But sooner than was expected, Colvin stood face to face with another delicate situation. The rebellion and the riots in Mirpur and Poonch were suppressed.

In Kashmir, the widespread eruption of Muslim resentment against the Dogras had also spent itself. Colvin could foresee the probable direction, the different political and communal movements were likely to take after the unrest had percolated down to the mass levels. Glancy had broken up the different movements and geared them to factional interests, but Colvin realised that once the agitation spread down to the masses the movements would out-step the restrictives Glancy had manoeuvred to place on them. He has aware of the necessity

to stabilise the conditions in the State before the prevailing unrest assumed any radical directions and became a threat to both the Dogras and the British. He set out to suppress the Muslims with all his might.

On January 30, 1933, Sheikh Mohammad Abdullah sent a circular to the members of the Working Committee and members of the General Council of the Muslim Conference, inviting them to attend a meeting on March 5, 1933, to consider the steps taken by the Government to implement the recommendations of the Grievances Enquiry Commission, and chalk out a programme of action to secure the implementation of such recommendations with regard to which no measures had been taken.<sup>43</sup> The communication put the Government on guard. The Conference leaders had in the meantime, started a vigorous campaign of meetings and protests against the policies of the Government in regard to the implementations, the recommendations Grievances, Enquiry Commission had made.<sup>44</sup> Colvin had no reason to be fearful of how the agitation took shape, but he hurried to Srinagar and opened negotiations with the Conference leadership. The leaders of the Conference were assured of speedy and more effective measures to remedy the grievances, the Muslims had complained about.<sup>45</sup> For a while Colvin triumphed. Later events proved that the assurances he gave to the Muslim representatives were hardly meant to be honoured and implemented.

On December, 30, 1933, the report of the Franchise Committee, was presented to the Maharaja. The recommendations embodied in the report were accepted and the report was promptly published. The recommendations, made by the Franchise Committee, fell far short of the demands the Muslims had made. The Muslim leaders disapproved of the principals on which franchise had been extended, the representation the Muslims had been given in the Assembly and the powers which

<sup>43</sup> Communication from Sheikh Mohammad Abdullah to the Working Committee of the Muslim Conference, February 7, 1932.

<sup>44</sup> Working Committee meeting of the Muslim Conference dated 8th March, 1933.

<sup>45</sup> Rashid Taseer, *Tahreek Huryat Kashmir*, Vern. p. 299.



the Assembly had been vested with. The minorities also expressed their dissatisfaction on the basic structure, the recommendations of the Franchise Committee laid out, mainly on the ground that the proposed assembly was hardly vested with any substantial powers.

On February 10, 1934, the Working Committee of the Muslim Conference met in Sialkot to consider the report of the Franchise Committee. In Kashmir, sporadic disturbances had been going on for some time in response to the agitation launched by Youngmen's Muslim Association.<sup>46</sup>

There was sharp disagreement in the Working Committee on the agitation in Kashmir and other major issues including the implementation of the recommendations of the Grievances Enquiry Commission and the report of the Franchise Committee. Consequently the Working Committee was dissolved and Chowdhry Gulam Abbas was appointed the sole dictator of the Conference and authorised to negotiate with the Government in regard to the Muslim demands and the recommendations of the Franchise Committee and take such action as he considered necessary. Abbas reached Srinagar and in accordance with the instructions of the Working Committee opened negotiations with the Prime Minister E.J.D. Colvin.<sup>47</sup> Chowdhry Abbas complained to the Prime Minister that the Government had failed to fulfil the assurances given by it with regard to the implementation of the recommendations of the Grievances Enquiry Commission. Chowdhry Abbas also conveyed to the Prime Minister that the Muslims were not satisfied with the recommendations of the Franchise Committee and did not approve of the composition of the proposed Assembly or the representation the Muslims were secured in it. Chowdhry Abbas told the Prime Minister that the Muslims favoured the institution of an Assembly which envisaged some measure of responsibility.<sup>47</sup> Colvin agreed to discuss the issues involved in the implementation of the recommendations of the Grievances

Enquiry Commission, but refused to open up discussion on the constitutional reforms or the recommendations of the Franchise Committee. Choudhry Abbas turned down the offer, gave a call for civil disobedience and boycott of the recommendations made by the Franchise Committee. He was immediately arrested and sentenced to imprisonment for six months. There was a feeble response to his call for civil disobedience. A few days after his arrest, the agitation fizzled out.

<sup>46</sup> *Ibid.*

<sup>47</sup> Choudhry Ghulam Abbas to Hari Krishen Koul, Prime Minister, Jammu and Kashmir State, released to Press by Choudhry Abbas, 27th February, 1934.

## Chapter 4

## Constitutional Reforms

The reasons which motivated the British Government to compel Maharaja Hari Singh to institute an enquiry into the causes of the Muslim unrest, deserve an in-depth analysis and study. One of the major factors, which determined the British policy, was the keen desire of the civil service officials of the Political Department to curtail the powers of the Maharaja and provide for the imposition of political restrictions on his authority. The appointment of the Grievances Enquiry Commission was a subtler offensive, the British launched to undermine the Maharaja but the appointment of the Constitutional Reforms Conference was a direct and more defined effort to cut down the powers of the Maharaja and devise a structure of checks to contain his operatives. B.J. Glancy was secured the position of precedence in the Conference and he took the full advantage of his placement. In fact, he drew up the lines on which the Conference would be organised as well as the rules of its procedure.<sup>1</sup>

<sup>1</sup> Report of the Kashmir Constitutional Reforms Conference, 1932, p. 1-3.

The Conference examined the feasibility of instituting a Legislative Assembly in the State, and the extent of the functions, it would be entrusted with. The Conference represented different regional and Community denominations, and political factions, having contradictory interests and wide divergence of views on constitutional and political issues. The impact of the events which followed the incidents at Jammu and the indiscreet policies, the State Government adopted in the earlier phases of the Muslim agitation hung over the Conference heavily. Tempers still ran high. In an atmosphere pervaded by fear and prejudice the Conference failed to evolve a consensus of opinion and failed to arrive at uniform conclusions with regard to the proposed reforms.<sup>2</sup> In fact, a number of the members, many of whom represented the minorities, expressed misgivings about the institution of a representative assembly in the State and the extension of franchise to the people. Bartrand Glancy, the President of the Conference, had little interest in co-ordinating the divergent views and finding a basis for constructive constitutional reform. The crafty Englishman was particular to devise measures to contain the Maharaja and secure a wider diffusion of the powers which the Maharaja had centralised in himself after the reconstitution of his government in 1926. Glancy aimed to secure the Council, a position of effective and independent authority and provide statutory safeguards against any interference in its function. In April, he prepared a report based on his own formulations. The report was exclusively his handiwork and except for him, it was not signed by any other member of the Conference. The report was read in Urdu at a meeting of the members of the Conference, ostensibly to provide them with an opportunity to suggest modifications and changes in it. A few days after, the report was submitted to the Maharaja. Glancy admitted his inability to bring round the Conference to agree on any accepted formula with regard to the institution of the proposed assembly, its composition and its competence. In his report, Glancy observed:

As regards the first of these questions it will be seen

<sup>2</sup> *Ibid* p. 3.

from the proceedings that there has been some difference of opinion. In regard to the functions of the proposed Assembly something closely approaching unanimity has been achieved. So far as the other main issues are concerned, there has been considerable divergence of views, especially with regard to the composition of the Assembly. This divergence is hardly surprising considering the conflicting interests which different members have represented. There appeared unfortunately to be no hope what-so-ever, attaining any semblance of a unanimous finding on these points, and it was therefore, agreed that there was no prospect of submitting a joint report. The Chairman accordingly forwards his own recommendations, referring, as may be necessary, to the opinions put forward on behalf of various interests; the proceedings recorded will show that the recommendations made, follow in general the joint views expressed, where there has been a consensus of opinion. Where opinions have differed endeavours have been to bear in mind the legitimate interests of all Communities concerned.<sup>3</sup>

The report drafted by Bertrand Glancy envisaged the establishment of a representative assembly, empowered to legislate and exercise a measure of control on the finances of the State.

It appears highly desirable that the subjects of the State should have been given a voice in the administration and in view of the announcement already made by His Highness in this behalf, there would seem to be no room for doubt as to the action which should be taken in this respect. It is recommended that a Legislative Assembly should be established as soon as may be practicable.<sup>4</sup>

In regard to the composition of the proposed Assembly, Glancy recommended that the Assembly be composed of sixty

<sup>3</sup> *Ibid.* p. 3.

<sup>4</sup> *Ibid.* p. 3-4.

members, of whom thirty-three were to be elected, twenty-two nominated and five appointed by the Maharaja. Not less than one third of the nominated members were to be non-officials. Glancy presumed that the elections to the thirty three seats in the proposed Assembly would provide for a clear elected majority and the allocation of a minimum of one third seats to nominated non-officials would secure a proportion of not less than two non-official members to one official member. Glancy noted:

It would seem a fair solution that the total number of nominated members should be equal to two thirds of the number of elected members, namely 22, and that in addition to these His Highness the Maharaja Bhadur should, if he sees fit to do so, appoint his ministers, not exceeding 5 in number, as ex-officio members. The total membership of the Assembly would thus be limited to 60 (33+22+5). In regard to the nominated members, not less than one third should be non-officials, apart from this His Highness should have entire discretion in their matter of nomination. There has been a general consensus of opinion, however, expressed at the Conference that nomination should be so regulated as to provide as far as possible for the representation of interests which are not specially catered for in the elected membership, such for instance as Jagirdars and Commercial interests.<sup>5</sup>

Bertrand Glancy recommended a tenure of three years for the proposed Assembly. It was proposed that the Assembly should meet twice a year, in autumn at Srinagar and in Spring at Jammu. A significantly important recommendation made by Bertrand Glancy was with regard to the office of the President of the Assembly. In unambiguous terms he recommended that the Assembly should be presided over by the Prime Minister or such other Ministers as the Maharaja decided to appoint. With regard to powers and functions of the proposed Assembly, Bertrand Glancy recommended that the Assembly be vested with the power to legislate on all subjects except those

<sup>5</sup> *Ibid.* p. 12.

reserved for the exclusive control of the Maharaja, namely foreign relations and the discipline and control of the State forces. Glancy recommended that limitation be imposed on the introduction of private bills in the Assembly which involved the imposition of disabilities on any class or Community and affected the rights granted to Jagirdars and Pattadars etc, in their Sanads or Pattas. Limitation was also recommended to be imposed on the introduction of private bills in the assembly which sought to effect the religious rites, usages, and endowments and personal laws of any community and no such bills were to be introduced in the Assembly without the prior permission of the Maharaja and unless two thirds of the elected members did not vote for the introduction of such a bill. Glancy also recommended that the limitation be imposed on the introduction of private bills which involved the imposition of fresh taxes or the enhancement or reduction of existing taxes and which stipulated the application of any law to Illaqa and Jagirs where the State laws were not ordinarily applicable. Any such private bills were not to be introduced in the Assembly without the prior sanction of the Maharaja. Glancy recommended that the Maharaja be vested with the power to give his assent to the bills passed by the Assembly. He also recommended that the Maharaja be reserved the power to withhold his assent and refer a bill back to the Assembly for consideration and amendment.

Recommendations were also made by the British Commissioner which sought to reserve the Maharaja, powers to promulgate ordinances for the good government of State in case of emergencies. Such ordinances were to remain in force for six months unless repeated by the Maharaja at an earlier date. Recommendations were also made by virtue of which the Maharaja would be reserved the powers to certify any bill and declare them having been passed which the Assembly declined to pass but which the Maharaja considered necessary for the good government of the State.<sup>6</sup>

Recommendations were also made by the Bertrand Glancy which sought to vest certain financial powers with the proposed Assembly. No taxes were to be imposed and no monopolies

<sup>6</sup> *Ibid.*, p. 4.

were to be granted by the Government without making a reference to the Assembly.

No kind of new taxation should be imposed without reference to the Assembly, the grant of monopolies etc. which amount in themselves to the imposition of new taxation should be treated in the same manner.<sup>7</sup>

Bertrand Glancy made elaborate recommendations with regard to the basis on which the right to franchise would be extended to the people of the State.<sup>8</sup> Glancy suggested that approximately 10% of the total population could form a general basis for franchise. He, however, advised that a special Franchise Committee was needed to be appointed to lay down the qualifications with regard to franchise.

It is generally agreed that the number of voters on the electoral roll should amount approximately to ten percent, of the total population, a ratio which has frequently been adopted as the working rule in British India. In order to achieve this object the appointment of a Franchise Committee or some organisation corresponding thereto will be necessary. Information is unfortunately lacking as to the number of people likely to be entitled to vote if different kinds of qualifications are adopted; the proposals put forward are therefore merely tentative and suggested as a temporary expedient.

As a working basis for the time being, various qualifications have been suggested.

It will be observed from the proceedings that opinions have differed to a marked extent in this respect. For instance, the views given in respect of land revenue qualifications have varied between Rs. 10 payment and Rs. 50 payment per annum; in respect of immovable property between Rs. 500 and Rs. 2000 in value, and in regard to educational qualifications between Middle Pass and graduate standard.

<sup>7</sup> *Ibid.*, P.6.

<sup>8</sup> *Ibid.*, P. 6.

In order to formulate a broad frame work Glancy suggested a number of qualifications which could be laid down to determine the extent of the franchise. These qualifications included:

1. Payment of land revenue amounting to Rs.20 per year;
2. Possession of immovable property, not less than Rs.1000 in value;
3. Membership of a learned profession, such as the Medical or legal profession;
4. The receipt of a Government pension of not less than Rs25 per month;
5. Payment of Municipal taxes not less than Rs20 per year;
6. Enjoyment of titles and the posts and positions of Zaildars, Lumberdars and Safed-Poshes;
7. Assignment of not less than Rs. 50 per year in Jagirs and Pattas; and
8. Education of native standard or of corresponding vernacular standards.

Enumerating the disqualifications pertaining to the Franchise, the British Commissioner recommended the exclusion of the following categories of people from the right to franchise:

1. Women
2. Persons below the age of 21
3. Persons certified as insane
4. Undischarged bankrupts or insolvents
5. Persons convicted by a criminal court, of an offence, punishable with imprisonment for a term exceeding six months
6. Persons who are bound for good behaviour
7. Persons who were not State-Subjects and who were not domiciled in the State for a consecutive period of five years

In regard to the question of State-Subjects, Glancy was not satisfied with the existing definitions of the State-Subjects and recommended the liberalisation of the State-Subjects rules. In

this report he wrote:

It is not within the scope of the Conference to consider the appropriateness of the existing definition of 'State-Subjects' for general purposes. As regards qualification for the franchise, however, though there is every reason for upholding the prior claims of State-Subjects in general, the present definition appears to be unduly rigid, domicile in the State for a thousand years cannot according to this definition qualify a man to become a hereditary State-Subjects. It would seem both unfair and inexpedient to deny the right to franchise to a man who has so far identified himself with local interests as to make his domicile in the State over a consecutive period of five years. As one member of the conference has aptly expressed it, man can beget sons, he cannot beget his ancestors.

The most intriguing suggestions and the most deleterious that Bertrand Glancy made, was with regard to the adoption of separate electorates. Though, Glancy reported that he had found widespread agreement among the parties represented in the Conference, favouring separate electorates, he himself favoured the adoption of the separate electorates and intended to exploit the prevailing communal and regional strains to divide the people of the State on communal and regional lines. The British had utilised the events that had occurred in the State during the year 1931, to undo the Dogra regime. They had, however, never lost sight of the real challenge they faced the danger posed by the elemental upsurge which shook the Dogras and upturned them. In his report Glancy observed:

One important question that arises is whether electorates should be separate or joint. It will be observed that there has been a general consensus of opinion at the Conference in favour of separate electorates. Some members have pointed out that although the establishment of separate electorates has some times been regarded as responsible for increasing communal tension in British India, the acute communal feeling which unhappily prevails in the State at the present time can certainly not be ascribed to

this cause; it has been maintained that in case of Srinagar Municipality the introduction of joint electorates has enhanced the feeling of antagonism and distress between the different communities. It would appear that in the existing state of tension, the institution of joint electorates must be regarded as dangerous experiment. It is obviously advisable at the present to avoid as far as possible all superfluous elements of danger. Separate electorates are accordingly recommended.<sup>9</sup>

The acceptance of separate electorates inevitably led to the contest for wheitage in the proposed legislative assembly. The Muslim representatives claimed twenty five of the elected seats as they formed 75% of the total population of the State. The Hindus claimed two elected members in the proposed Assembly for every one Muslim member. Special claims were made by the Sikhs, Rajputs and the depressed classes. Glancy recommended that special wheitage be given to the minorities so as to bring the number of their elected members to 33 1/3 per cent of the total number of seats in the proposed Assembly leaving the Muslims with a fraction over 60 per cent and the Sikhs and Buddhists just over 3%. He recommended twenty of the elected seats in the Assembly be given to the Muslims, eleven seats be given to the Hindus and one each be given to the Sikhs and the Buddhists. The claims of the depressed classes were over looked on the ground that the depressed classes were recorded in the census as Hindus.

It is not proposed that any elected seats should be reserved for the depressed classes. In the census, the depressed classes are recorded as Hindus, and there appears to be no significant reason for according them different treatment from that received by them in the Punjab, where no special reservation obtained.<sup>10</sup>

Recommendations of the Constitutional Reforms Conference were presented by Bertrand Glancy to the Maharaja in

May, 1932. In pursuance of the recommendations Glancy made, a Franchise Committee was appointed by the Maharaja to report on the quantum and content of the elected membership in the proposed assembly, the determination of the qualifications for franchise and the delimitation of the separate electorates. Sir Barjor Dalal, the Chief Justice of the High Court in the State was appointed the Chairman of the Committee. The Committee was constituted of L. W. Jardine, a civil service official of the Government of India, who had been earlier appointed the special Minister for the riot affected areas in Udhampur and Poonch districts, Thakur Kartar Singh and Sheikh Abdul Quyum. Jardine was appointed the Vice-President of the Committee and the Franchise Officer. In March 1933, however, Jardine was replaced by another retired civil service official of the Government of India Sir Ivo Elliot who was appointed the Vice-President of the Committee and the Franchise Officer. The Commission issued a questionnaire to cover the ground of the enquiry. In Kashmir province evidence was recorded and statements received in autumn of 1932; while in the province of Jammu evidence and statements were received in April, 1933. The Commission invited the major political factions, which also included the All Jammu and Kashmir Muslim Conference, to present their views to the Committee. The Committee submitted its report on 30th December, 1933.<sup>11</sup>

The Franchise Committee recommended the institution of a legislative assembly composed of seventy five members of whom thirty three were elected and thirty were nominated. The Committee recommended that the Maharaja be reserved the right to appoint twelve official members to the Assembly, among whom six would be the Ministers. According to the recommendations of the Committee the other six non-officials were to be appointed on the basis of their expert knowledge in the various spheres of legislation. One official member was to be nominated by the Illaqaadar of Poonch with the approval of the Maharaja. The Franchise Committee did not accept

<sup>11</sup> Report of the Franchise Committee, 1933, p. 1; Jammu and Kashmir Government Gazette, Vol. 46, No. 14, dated, 20th January 1934.

<sup>9</sup> *Ibid.*, p. 9.

<sup>10</sup> *Ibid.*, p. 11.

the recommendations made by Bertrand Glancy with regard to the composition of the Assembly and turned down the suggestion that the elected members and the non-officials should constitute the majority in the Assembly.

With regard to the wheitage given to the different communities the Committee recommended that Muslims of the State be represented by twenty one elected members in the Assembly, the Hindus by ten elected members and the Sikhs by two elected members. The Muslims were recommended to be given a minimum wheitage of 32 members among whom eleven were nominated and twenty one elected. The Hindus were recommended to be given a maximum wheitage of 25 members which included 15 nominated Hindus. The nominated members were to be appointed by the Maharaja. Certain broad lines were laid down by the Committee which were to be kept in consideration while the nominations were made. The Committee observed:

It is not for us to restrict His Highness' freedom of choice in summoning his Councillors by name, but we would respectfully urge, firstly that they should be chosen from those whose actual and historical position in the State is so eminent that they would naturally be members of a second chamber, if such were constituted, secondly that they should not be officials, and thirdly that in order to preserve the balance of the communities, no fewer than five should be Muslims. It would also be advantageous if one State Councillor were a Sikh who could help to harmonize the more purely local views of the representative Sikh members. Fourthly we recommend that in view of their historical position in the State, four of the State Councillors should be Rajputs and four should be Illaqadars or Jagirdars.<sup>12</sup>

The delimitation of the constituencies was recommended to be done on the territorial and communal basis.<sup>13</sup> The entire State was recommended to be divided into 12 rural and 2 urban districts. The urban districts were to include the Jammu

<sup>12</sup> *Ibid.*, para 15.

<sup>13</sup> *Ibid.*, para 8.

city and the Srinagar city and the rural districts were to include the Wazarats of Jammu, Udhampur, Reasi, Kathua, Mirpur, Kashmir north, Kashmir south, Muzaffarabad, Ladakh and Gilgit and the two Jagir Illaqs of Poonch and Chenai. The Committee recommended that two members be elected from each constituency one by the Hindu electorate and other by the Muslim electorate. The Committee also found that Mirpur, northern Kashmir, southern Kashmir and Poonch could also not be made single member constituencies in view of the composition of their population though it would be anomalous to give representation to the minority communities which were almost negligible in comparison with minorities in Jammu, Udhampur and Reasi.

It was decided by the Committee to provide two members for each of these constituencies both to be elected by the Muslim electorates. The Committee also recommended representation for smaller minorities and local interests by grouping them into separate electorates. The Committee noted in its report:

But while we thus provide for the minorities by election or nomination according to their size we must also in fairness to the majority community, be mindful of our principle of giving some weight, though in a less degree to the members of adult male population. We follow the same course of giving an extra elected member for a large group and an extra nominated member for a smaller group, and we propose that where any community has more than 40,000 adult men to each elected member, their would be an additional elected member for each 40,000 and an additional nominated member for part of 40,000 greater than 5000. This scale would give a third elected member both to Kashmir North and Kashmir South, both from Muslim electorate an extra Muslim nominated member to each of the three Kashmir Districts, and an extra Hindu nominated member to Jammu and Udhampur.<sup>14</sup>

With regard to the Sikhs the Committee recommended that separate representation be given to the Sikh community. The

<sup>14</sup> *Ibid.*, para 10.

Sikhs were less localised than certain other minority communities and therefore, it was found difficult to adjust their groups into the scheme of the constituencies proposed by the Committee. The Sikhs were locally distributed in three groups: the Sikhs who inhabited the regions of Mirpur and Poonch, the Sikhs who lived in Muzaffarabad, Baramulla and Utharmachipora and the Sikhs who were scattered all over the State and did not form a separate local group. The Committee came to the conclusion that out of the three Sikh groups, those living in Mirpur and Poonch and those living in Western Kashmir be represented by two members in the Assembly.

Our general method of handling this question of the smaller minority groups would justify us in proposing that three members should be nominated to represent the Sikh groups, but in that case the Sikhs unlike the other communities, would have no elected members. This would on general grounds be an unsatisfactory conclusion, and specially so because the Sikhs have a high percentage of literacy; out of the 12,365 adult males 4,064 are literate. This factor entitles us to recommend that out of three Sikh groups, two (1) Mirpur-Poonch and (2) West Kashmir should each elect one member. The third constituency of Eastern Kashmir and Jammu minus Mirpur will be too large a Constituency in which to arrange an election. So we recommend a nominated Sikh member for that Constituency.<sup>15</sup>

In the final analysis the Committee recommended that in the Jammu city one Muslim member was to be elected by the Muslim electorate and two Hindu members were to be elected by the Hindu electorate. One Muslim and one Hindu was to be elected by the Muslim electorates and the Hindu electorates of Jammu Wazarat. Udhampur Constituency was allotted one Muslim seat and one Hindu seat. In the same manner Reasi and Kathua were given two Muslim members and two Hindu members each. Mirpur, Bimber, Haveli, Mendar and Bagh-Sudhanti were given one Muslim member each and the Sikhs of Mirpur-Poonch one representative. Srinagar City was to be

represented by five Muslim members and two Hindus. each of the tehsils of Pulwama, Anantnag, Kulgam, Handwara, Bugham and Bahramulla were to be represented by one Muslim member. Muzaffarabad was to be represented by one Muslim and one Hindu. The Hindus of Kashmir and the Sikhs of Kashmir were given one member each.

With regard to the Hindus living in the Jagir of Poonch and the people living in Chinani, the Committee recommended that their representatives be nominated to the Assembly by the Illaqadars. The Buddhists of Ladakh and Muslims of Gilgit were also recommended to be represented by nominated members appointed by the Maharaja. In its report the Committee noted:

We have hitherto referred to representation of Ladakh and Gilgit in the same terms as in the case of the other districts, but we feel that it will be impossible to hold elections in these frontier districts until much greater experience of the conduct of elections has been acquired. Those of our witness who have stated that elections could be held now in Ladakh and Gilgit have clearly been speaking without any knowledge of the actual process of election and have made light of administrative difficulties which they have not attempted to example. These difficulties will be considerable in other parts of the State, but in Ladakh and Gilgit the rigours of the climate, the immense area, the wide dispersion of inhabited sites and the extreme difficulty of communications between them make it at present impossible for a limited and entire inexperienced staff to conduct an election. We must therefore recommend that at least until experience of election has been gained the members for Ladakh and Gilgit should be nominated and not elected. Our scale would give one Muslim and one Buddhist member to Ladakh and one Muslim member to Gilgit; but in view of the scattered and diverse population of Ladakh we recommend that two Muslim and two Buddhist members should be nominated for that Wazarat. One of the Muslim members should represent Skardu Tehsil and the other Kargil.<sup>16</sup>

<sup>15</sup> *Ibid.*, para 13.

<sup>16</sup> *Ibid.*, Para 2.



With regard to the right to franchise, the Committee followed, in broad outline, the principles laid down by Bertrand Glancy in his report. The Committee, however, did not agree with Glancy that ten per cent of the people of the State needed to be enfranchised. In its report the Committee observed that the suggestion to enfranchise ten percent of the people of the State was arbitrary and would lead to difficulties. The Committee pointed out that the principles laid down by the Indian Statutory Committee and the Indian Franchise Committee, had in fact, extended franchise to a percentage which varied from 1.1 per cent in Bihar to 3.9 per cent in Bombay, though the people in the Indian Provinces had long experience of elections to the Provincial Councils and the local bodies. Barjor Dalal was not far from what the truth was. In its report the Committee noted :

There is no virtue, whatever, in the ratio of 10 per cent. It is an arbitrary figure which has been suggested as a rough measure of the advance which can be made practically towards adult suffrage in a country where years of experience of a restricted franchise have made some advance possible. It would be entirely against constitutional history to lay so much stress on the total numbers of men, women and children, or in other words to think in terms of adult suffrage, in a country which has never yet had any wide spread electoral system. In the first stage of constitutional progress the chief-element is not the men, it is the constituency.<sup>17</sup>

The Committee recommended that such of the State-Subjects, who had attained twenty-one years of age and belonged to any of the following classes of persons should be enfranchised:

1. Zaildars, Safed-Posh or Lumbardars;
2. Imams of Mosques, Muftis, Qazis Adhishdatas of temples, Bhaish or Granthis of Gurdwaras and Ordained Ministers of the Christian Church;

<sup>17</sup> *Ibid.*, para 6.

3. recognised title holders;
4. retired pensioned Officers, Non-Commissioned officers, soldiers of the State forces;
5. pensioners receiving a monthly pension of ten rupees or more from the state;
6. Doctors, Hakims, Vaidis, Lawyers and School-masters;
7. people holding Middle School Certificates, or certificates of Budhiman, Rattan, Adib, Munshi, Moulvi, Prajana examination or any other higher examination;
8. Illaqadars;
9. Jagirdars, Manfidars, Guzarkars, holding an assignment of not less than 20 rupees per year;
10. occupancy tenants paying a rent of 20 rupees or more per year;
11. owners of land assessed to land revenue of 20 rupees or more per year;
12. owners of immovable property other than land of a value of 6000 rupees or more; and
13. people paying a grazing fees of 20 rupees or more year.<sup>18</sup>

The Committee recommended that women in general be excluded from franchise except in case where any of them had secured the middle examination certificate. The Committee noted:

The same principle leads us to agree with Mr. Glancy that women in general should not be enfranchised. We have a representation from the local branch of the All-India Women's Conference, and sum of Hindu witnesses have favoured women's suffrage. But it is obvious that the majority of the population would not welcome this and we must add the practical consideration that the inclusion of women voters in any large number would increase the administrative difficulties of the first election. At the beginning the most we can do is to admit women who have a sufficient educational qualification.<sup>19</sup>

<sup>18</sup> *Ibid.*, Para 20-24.

<sup>19</sup> *Ibid.*, Para 20.

### Praja Sabha

In April 1934, the Maharaja promulgated the Constitution Act of 1934. The Constitution Act was based on the recommendations made by the Constitutional Reforms Conference and the Franchise Committee. The Act provided for the reconstitution of the government of the State and the institution of a Legislative Assembly. The provisions were envisaged by the Act for the constitution of a Council of Ministers appointed by the Maharaja and responsible to him. Certain powers of the government were reserved by the Maharaja for himself and exclusively for his control. The powers left in the residuum were vested with the Council of Ministers to be exercised by it. The Act laid down the provisions for the organisation of the Legislative Assembly and the procedure of its business. The Act also defined the relationship between the Council of Ministers and the Legislative Assembly and the extent of the over all control, the Maharaja would exercise over both the institutions.<sup>20</sup>

The government of the State was to be conducted in the name of the Maharaja and all powers were to be exercised by him and in his name. All powers, legislative, executive and judicial were declared to have always been possessed by the Maharaja and the provisions of the Constitution Act were not deemed to affect the inherent right and prerogative of the Maharaja to make regulations and promulgate ordinances by virtue of the authority inherent in him.

All powers, legislative, executive and judicial in relation to the State and its Government are hereby declared to be and to have been always inherent in and possessed and retained by His Highness the Maharaja of Jammu and Kashmir and nothing contained in this Regulation shall affect or be deemed to have affected the right and prerogative of His Highness to make and pass Regulations, Proclamations and Ordinances by virtue of his inherent authority.<sup>21</sup>

<sup>20</sup> Constitution Act, 1934, Regulation, No. 1.

<sup>21</sup> *Ibid.*, Sec. 3,

Subject to the inherent powers and the prerogative of the Maharaja, the powers of the government were divided into reserved and the non-reserved subjects. The reserved subjects were delimited for the exclusive and personal control of the Maharaja. The reserved subjects included:

- (i) the Maharaja, the members of his family and the management of his household;
- (ii) the relations, treaties, conventions and agreements between the State and the Crown or the Government of India or the Government of any other State in India or any foreign power;
- (iii) the Gilgit and Ladakh frontiers;
- (iv) the rights of the Illaquadars and the Jagirdars;
- (v) the organisation and control of the State army;
- (vi) the State Departments namely, ceremonials, Toshakhana and State Garages, State stable, Palaces and Palace Guards, reception and Shikarkhana;
- (vii) Dharmarth; and
- (viii) provisions of the Constitution Act.<sup>22</sup>

The non-reserved subjects were to be administered by a Council of Ministers appointed by the Maharaja. The Council was to be constituted of the Prime Minister and such other Ministers who were appointed by the Maharaja. The Prime Minister was the President of the Council. The Council was to hold office during the pleasure of the Maharaja and was responsible to him. The Maharaja was reserved the right to lay down the rules of business in the Council, determine the allocation of portfolios to the Ministers and give directions and issue orders on specified matters of the government.<sup>23</sup>

The Constitution Act envisaged the institution of a legislative body which comprised:

- (i) the Council of Ministers; and
- (ii) the Legislative Assembly.

<sup>22</sup> *Ibid.*, Sec. 7.

<sup>23</sup> *Ibid.*, Sec. 8.

The membership of the Assembly was fixed at seventy five. Thirty three of the members were to be elected for the constituencies specified in the Electoral Regulation promulgated earlier. Sixteen of the members were to be nominated for special constituencies enumerated by the Act and listed in the schedule appended to it. Besides the elected and the nominated members the Assembly was to have fourteen other members who were appointed by the Maharaja and twelve official members who were appointed to the Assembly by virtue of their office and among whom were included the Ministers. The tenure of the Assembly was fixed at three years unless it was dissolved earlier or its term was extended for special circumstances. The Maharaja was reserved the powers to summon and prorogue the Assembly. Ordinarily the Assembly was to meet in two Sessions in a year : in March at Jammu and in October in Srinagar. The Maharaja retained the right to summon the Assembly for ordinary or special sessions at such time and place, he deemed fit.<sup>24</sup>

The Assembly was authorised to make rules for the conduct of its business and the procedure to be followed by it, subject to the rules and the Standing Orders it made the members of the Assembly were ensured freedom of speech. The members were also granted the privilege of immunity from any proceedings in Courts for their speeches or vote in the Assembly. The Assembly was not vested with the power to elect its presiding officer. Instead the Maharaja retained the power to appoint the President of the Assembly.

The Assembly was empowered to legislate on all matters which were not reserved for the personal control of the Maharaja. The President of the Assembly was empowered to refuse leave to move a resolution or ask a question, which in his opinion affected the reserved powers. The Assembly was barred to consider or enact any measure which imposed any disability on any community in the State. Limitation was also placed on the Assembly to consider a resolution or a measure which affected the religious usages, endowments or personal law of any community, unless the previous sanction of the Maharaja was secured and two thirds of the Assembly members of the com-

<sup>24</sup> *Ibid.*, sec. 100.

munity affected gave their consent in writing that the measure be taken up for consideration. The President of the Assembly was empowered to refuse leave for a resolution to be moved if the resolution affected the religious rights, usages, endowments or the personal law of any community.

The Maharaja reserved the powers to suspend proceedings on a resolution or a Bill if he found that the measure would affect the safety and the tranquility of the State. The Maharaja also reserved the power to certify a Bill to have been passed in case the Assembly refused leave to introduce it or refused to vote for it.<sup>25</sup>

With regard to the financial powers of the Assembly, the provision of the Constitution Act were based on the recommendations of the Constitutional Reforms Conference. The Council of Ministers was required to place before the Assembly a copy of the detailed statement of the estimated annual revenues and expenditure along with the statement of revenue and expenditure of the two jurisdictional Jagirs-Chinani and Poonch. The members of the Assembly were granted the right to move resolutions regarding any appropriation of revenue or regarding the statement presented to the Assembly but the resolutions of the Assembly did not effect the statement and the demand for grants. The Council was empowered to take any such action on the resolutions of the Assembly as it deemed necessary. In case of the imposition of any fresh taxes or duties or the alteration of any existing taxes by an ordinance of the Maharaja or a regulation promulgated by him, the Council was required to give each member of the Assembly a copy the Ordinance or Regulation and no imposition or alteration of any taxes could be effected until the Council had taken into consideration the resolutions of the Assembly.

The following financial matters were not open for discussion in the Assembly and the Assembly was not empowered to adopt any resolution on them:

- (i) the expenditure with regard to the reserved subjects;
- (ii) the expenditure obligatory under law;
- (iii) the pensions and gratuities granted by the Maharaja;

<sup>25</sup> *Ibid.*, sec. 26, 27, 28 and 29.

- (iv) interest on loans and sinking fund charges; and
- (v) expenditure classified as political.

Powers were vested with the President of the Assembly to determine whether a financial matter was subject to the vote of the Assembly.<sup>26</sup> No proposals could be made or resolutions moved in the Assembly for the appropriation of any revenues except on the recommendations of the Council. Measures affecting the public revenues or imposing any taxes and duties could also not be introduced in the Assembly without the previous sanction of the Council. The Council was empowered to regulate public debt and public revenue which included the imposition of taxes and duties.<sup>27</sup>

All Bills and measures passed by the Assembly were to be submitted to the Maharaja for his assent. The Maharaja was reserved the right to return a Bill to the Assembly for reconsideration. Provisions were included in the Act according to which the Maharaja could convey messages to the Assembly in person or through the Prime Minister or through the President of the Assembly. The Maharaja was also reserved the powers to promulgate Ordinances. In case of emergencies or where immediate legislation was required in any matter affecting the peace and good government in the State, the Council was authorised to submit to the Maharaja, Ordinances for sanction. Such Ordinances were to have the force of law for six months.

A peculiar feature of the Constitution Act was the overriding powers which were vested with the Council of Ministers pertaining to the organisation and function of the Assembly.<sup>28</sup> The council was empowered to make rules with regard to:

- (i) the term of the nominated members and the manner of filling any casual vacancies among the nominated members;
- (ii) the conditions under which nominations were made and the manner in which they were made;
- (iii) the qualification of the electors, the delimitation of the

<sup>26</sup> *Ibid.*, sec. 39.

<sup>27</sup> *Ibid.*, sec. 41.

<sup>28</sup> *Ibid.*, sec. 15.

- constituencies, and the methods of election for the Assembly;
- (iv) the qualifications of the electors; and
- (v) the disputes with regard to the elections.

The Council was also empowered to make rules for the:

- (i) regulation of the business in the Assembly;
- (ii) the preservation of order in the Assembly;
- (iii) the quorum;
- (iv) prohibition and regulation of the questions asked in the Assembly; and
- (v) prohibition and regulation of the discussions in the Assembly on subjects specified in the rules.

Not only was the Council vested with powers of regulating the organisation and the function of the Assembly, the Council was also vested with power of interpretation of the provisions of the Act and the rules made under the Act. The Council was therefore, secured precedence over every other instrumentality created by the Constitution Act. The Constitution Act read:

If any dispute arises as to the interpretation or the carrying out of any of the provisions of this regulation or the rules made thereunder, the decision of the Council, subject to the provision of the Section 3, shall be final.<sup>29</sup>

An Electoral Regulation<sup>30</sup> was promulgated by the Maharaja which laid down the basis for the delimitation of the constituencies and the qualifications of the electorates. The Regulation was based on the recommendations of the Franchise Committee and envisaged separate electorates. Accordingly no person was qualified to vote in a Muslim constituency if he was not a Muslim, in a Hindu constituency if he was not a Hindu and in a Sikh constituency if he was not a Sikh.

The suffrage was limited to the following classes of State-

<sup>29</sup> *Ibid.*, Sec. 44.

<sup>30</sup> Command order No. P.B. 157, 5th March, 1934.

Subjects who were of more than twenty years in age:<sup>31</sup>

- (i) Zaildars, Safesh-Posh and Lambardars;
- (ii) Imams of Mosques, Muftis, Qazis, Adheshdatas of temples, Bhais and Granthis of Gurdwaras and the Ordained Ministers of Christian Churches;
- (iii) recognised title holders;
- (iv) retired pensioned Officers, Non-Commissioned Officers, and the State-Subjects in the regular armed services of the State or serving in the British armed forces;
- (v) pensioners receiving apension of not less than rupees ten a month;
- (vi) Doctors, Hakims, Vaid, Lawyers and School masters;
- (vii) persons having passed the Third Middle Examination or the Bhudhiman, Rattan, Adib, Munshi Moulvi or Prajna examinations;
- (viii) persons who paid a revenue on land owned by them or rent on land held by them in occupancy or paid grazing fee of not less than twenty rupees per year;
- (ix) Jagirdars, Maufidars or Guzarkhars holding an assignment of not less than twenty rupees a year;
- (x) persons who owned immovable property, other than agricultural land of not less than six hundred rupees in value; and
- (xi) persons who paid income-tax.

Franchise was also extended to Tazimi Sardars, Jagirdars, Maufidars and Mukararidars who held Jagirs, Mukararis and Maufis of not less than five hundred rupees per year, landholders who paid two hundred and fifty rupees land revenue per year and pensioners who received a pension of more than one hundred rupees per year. These electorates were grouped into special constituencies.

Women were excluded from the right to vote and only such of them who held the minimum educational qualification of having passed the Third Middle Examination or the examination of Budhiman, Rattan, Munshi, Molvi, Adib or Prajna were accorded the right to vote.<sup>32</sup>

<sup>31</sup> Jammu and Kashmir Praja Sabha Rules, p. I and II.

<sup>32</sup> *Ibid.*, I(d).

The Assembly, envisaged by the Constitution Act was named "Praja Sabha". The machinery to conduct the elections to the Sabha was instituted immediately after the promulgation of the Act. Sir Ivo Elliot was charged with the task of devising the process for the delimitation of the constituencies and the conduct of the elections. The State was divided into constituencies on the basis of separate and special electorates recommended by the Franchise Committee. The number of constituencies was fixed at thirty three. Ten of the constituencies were allotted to the cities of Srinagar and Jammu. Each constituency was put in charge of a returning officer on whom the responsibility of the elections in the constituencies was placed. For the constituencies in the cities the District Magistrates, Assistant District Magistrates and the Presidents of the Municipalities were appointed the returning officers. For the rural constituencies the duties of the returning officers were delegated to the Deputy Commissioners.

The electoral rolls were prepared in accordance with the recommendations of the Franchise Committee.

The rolls for the rural constituencies were prepared by the Tehsil Revenue Officials. For the city constituencies the rolls were prepared by the Municipal Officials. The revised rolls were finally published in May, 1934. The nominations filed were scrutinised in June 1934. Seventy six nominations were accepted for the contested seats. Nine candidates were returned unopposed.

The polling arrangements were supervised by Sir Ivo Elliot. The constituencies were divided into a number of polling areas each of which had a polling station. In all 138 polling stations were established in the twenty three rural constituencies and thirty eight polling stations were established in the ten constituencies in Srinagar and Jammu. The polling was conducted on the special scheme recommended by the Lothian Committee for the British India. The scheme underlined the 'Coloured Box' or the 'Symbol' system under which it was not necessary for the voters, whether literate and illiterate to mark the ballot paper. The system adopted in the State was simple and required the voters to put their ballot papers in boxes marked with definite colours assigned to different candidates. The ballot was secret.

The elections were held on September 3, 1934. Sir Barjore Dalal, the Chairman of the Franchise Committee wrote:

The number of voters at each polling station was in the neighbourhood of 700 in the rural areas. It was feared by the officers on duty that they would not be able to pass 700 voters through between 10 a.m. and 6 p.m. the hours fixed for polling. Their fears proved to be unfounded, thanks to the excellent system of polling. It was found that by 2 p.m. the voting was practically over and stray voters arrived subsequently.<sup>33</sup>

The Praja Sabha was inaugurated by the Maharaja on September 17, 1934 in a Durbar, where the proclamation of the Maharaja was read to the members of the Sabha by Colonel Colvin the Prime Minister of the State. The proclamation read:

For our part we declare the Divine Providence having laid upon us the sacred duty to care equally for all those committed to our guardianship, we can recognize no difference between one person and another or between one class and another. They are all our beloved children, whatever their persuasion or creed, and we desire to protect, foster, guide and advance them by every means in our power.

Out of the great love and affection we bear our beloved subjects, we have called you to do your part in working for the well being of this State. We have appointed your task and indicated the lines of service you can render to yourselves and to your Ruler, whose ordained duty it is to safeguard and promote your best interests. We desire you to enter upon the discharge of your responsibilities in such a way that your behaviour may be an example to others and your achievements at once a model for them to emulate and a monument to your own earnestness and your loyalty to the State that you serve.<sup>34</sup>

<sup>33</sup> Barjore Dalal, Jammu and Kashmir State Assembly, first session, Asiatic Review, New series, Vol. XXXI, No. 105.

<sup>34</sup> Inaugural Address, delivered to the Praja Sabha by Maharaja Harā Singh.

## National Demand

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The political reforms envisaged by the Constitution Act, obviously did not underline any responsibility at any level in the government or provide for any effective participation in the process of the administration. Most of the important powers of the government were reserved by the Maharaja for his personal control. The Council of Ministers, entrusted with the civil administration, was little more than an executive instrument of the Maharaja and functioned strictly under his instructions and according to his will. The members of the Council were appointed by him and were ultimately responsible to him. The Maharaja retained the powers to make rules for the conduct of the business in the Council, determine the allocation of the portfolios and issue directions and instructions to guide its work. The Council, as it was constituted, made up the highest rung in the official hierarchy through which authority filtered down into the various levels of the government.

The Praja Sabha, crippled by being filled with a nominated majority, was given few substantial powers. The Council of

Ministers was vested with the powers to regulate the conduct of the business in the Sabha, determine the quorum of meetings of the Sabha, provide for the preservation of order, regulate the procedure about the questions asked and the supplementaries raised in the Sabha. The Prime Minister was reserved the powers to determine the allotment of time for official and non-official business. The Secretary of the Sabha was required to furnish the members of the Sabha with the copies of the orders of the Prime Minister. The most pernicious imperative, the Maharaja was armed with, and which robbed the Sabha of any purposeful function, was the power to prevent the introduction of any Bill or stop deliberations on any Bill on the ground that the Bill or any of its clauses would effect the peace and tranquility of the State.<sup>1</sup>

In respect of financial matters, the Sabha was virtually powerless. The State Budget was prepared by the Council under the supervision of the Prime Minister. No demands could be made except on the recommendations of the Council.<sup>2</sup> The Prime Minister was vested with the arbitrary authority to determine "whether any proposed expenditure fell within the expenditure charged on the revenues of the State." The Prime Minister, in consultation with the President of the Sabha, divided the Budget heads for discussion and fixed priorities for each. No provisions seeking to impose, increase or decrease any tax; regulate borrowings or guarantee by the Council; amend any law with respect to any financial obligation undertaken by the Council and declare any expenditures chargeable on the revenues of the State, could be introduced or moved into the Sabha without the prior permission of the Prime Minister.<sup>3</sup>

It was not after long that the futility of the reforms came to surface. Obviously, meaningful political reforms, which envisaged the institution of responsible government and the attainment of civic rights could not be based on separate electorates, or communal composition of legislative bodies nor could they be justifiably founded on communal majoritarianism. In fact, the new outlook was given articulate expression at the annual

session of the Muslim Conference held in Srinagar in November, 1935. Many of the leaders of the other communities were invited to attend the session and Choudhry Gulam Abbas, who was elected to preside over the session appealed to the Hindus and the Sikhs to extend their support to the Conference and assured them that the struggle, the Conference led, was aiming at the amelioration of all the people in the State.<sup>4</sup>

On March 29, 1936, the Working Committee of the Muslim Conference met in Srinagar. The Conference appealed to the Maharaja to widen the scope of the constitutional provisions enacted in 1934, which, the Committee stated, had done considerable harm to the development of the representative and responsible administrative institutions in the State. The Working Committee demanded the transfer of effective powers to the Assembly, extension of franchise and the abolition of the separate electorates. The Working Committee took a decision to organise State-wide demonstrations and protest meetings on May 8, in support of the institution of a responsible legislative organ.<sup>5</sup>

Wide-spread protests and demonstrations were organised all over the State on May 8. In most of the protest meetings resolutions were adopted which demanded the reorganisation of the government in the State and the introduction of administrative responsibility in its function. To allay the fears of the government the Conference leaders assured that the establishment of the representative Political instruments was not aimed to prejudice the powers of the Maharaja.

A month after, the Working Committee of the Muslim Conference constituted a sub-committee to guide the movement for constitutional reforms in the State and prepare a memorandum on the basis of the resolutions passed on 8th May. Decision was taken by the Committee to submit the memorandum to the Maharaja.<sup>6</sup> The sub-committee was constituted of Sheikh Mohd. Abdullah, Choudhry Gulam

<sup>4</sup> Presidential Address delivered by Choudhry Gh. Abbas, Fourth Annual Session, 1935.

<sup>5</sup> Resolution of the Working Committee, March 29, 1936.

<sup>6</sup> Resolutions of the Working Committee, Hamdard, Dated 12th June, 1936.

<sup>1</sup> Constitution Act, 1934, Sec. 29.

<sup>2</sup> *Ibid.*, Sec. 36.

<sup>3</sup> *Ibid.*, Secs. 42-57.

Abbas, Mian Ahmad Yar, Mirza Afzal Beg and Raja Mohammad Akbar Khan, a Muslim Conference leader from Poonch. By a resolution, the Working Committee gave a call to the minorities to join the movement for political reforms and assured them that the Conference would consider any safe-guards the minorities considered necessary for their protection.<sup>7</sup>

Within a few days, after the Working Committee meeting, the State Government decided to introduce separate electorates in the Municipal elections also. The elections to the Municipalities had not been affected by the introduction of separate electorates for the Assembly elections in 1934, and the elections at the Municipal level had continued to be based on the principle of the joint electorates. At the time when much of the communal rancour and resentment had died down, the decision of the government came as a rude shock. The Muslim Conference leadership expressed regret and distress at the decision, the government had taken.<sup>8</sup> In 1932, when the separate electorates had been recommended to be introduced in the elections to the legislative bodies in the State, Bertrand Glancy, and L. W. Jarding and after him, Ivo Elliot, had repeatedly assured the Muslim leaders that the separate electorates had been accepted by the Government unwillingly and on the incessant demands, the minorities in the State had made. It was abundantly clear that the British officers were driven by motives other than those suggested by the minority safeguards. The action of the State Government was obviously aimed to carry the process initiated by Bertrand Glancy to its extremes and break up the initiative for effective political performance. In fact, the Government struck to drive deep the communal differences and goad the different communities to consume themselves in internecine strife and communal conflict.

In August, the General Council of the Muslim Conference was convened in Srinagar. A number of decisions were taken by the Council on the Communal situation, the movement for self-government and joint electorates. The Council authorised

<sup>7</sup> *Ibid.*

<sup>8</sup> *Hamdard*, 4th July, 1936, statement of Sheikh Mohammad Abdullah to *United Press*.

the Sub-Committee appointed by the Working Committee in June, 1936, to invite Sardar Budh Singh, Pandit Prem Nath Bazaz and Pandit Prem Nath Dogra, a Hindu Leader of Jammu to participate in the deliberations of the Sub-Committee and associate them with the preparation of the memorandum on responsible government.<sup>9</sup> The Committee was also asked to examine the issues of joint electorates and the adoption of universal adult franchise and present a preliminary report to the Council. Sheikh Mohamad Abdullah was entrusted to find means for the further improvement of the communal relations in the State and explore the possibilities of locating a basis for joint political action.<sup>10</sup>

The minorities, which were equally frustrated with the reforms undertaken by the Government, did not take long to realise the significance of the improvement in inter-community relations in the State. Besides the moderate movement led by the Dogra Sadar Sabha, which was avowedly committed to social and political reform, the elements of Hindu and Sikh leadership in Jammu, inspired by Indian National Congress, had worked tirelessly to build a non-communal political movement for self-determination in the State. Congress committees had sprung up all over the province under the leadership of Lala Girdhari Lal Anand who had joined the Congress movement in 1921, Pandit Trilochan Dutt and Lala Mulak Raj Saraf. A sizable section of the Kashmiri Pandit leadership in Kashmir also supported the introduction of representative and responsible political institutions in the State. In one respect the Hindus and the Sikhs out-flanked the Muslim Conference and established identification of approach with the movement on the national front. The recognition of the fact that the regime and the British colonialism were inseparable and the States people movement was an integral part of Indian, struggle against the British was the most revolutionary aspect of the Hindu upsurge in Jammu. The upsurge accelerated emergency of a non-communal political movement against the Dogras and since the regime was bound by the prescriptives of the paramountcy, it led to a

<sup>9</sup> Resolution of the General Council, No. 3 Muslim Conference, 10-12, August, 1937.

<sup>10</sup> Resolution, No. 3.



direct confrontation between the people of the State and the British power.

In March 1938, the sixth annual session of the Muslim Conference was held in Jammu.<sup>11</sup> It was presided over by Sheikh Mohamad Abdullah. A sizeable section of the Conference leadership favoured drastic changes in the Constitution of the Conference to accommodate within its fold the peoples of other communities in the State. In the Delegates Sessions, Maulana Sayeed Masoodi, a senior leader of the Conference moved a resolution that the Muslim Conference be renamed All Jammu and Kashmir Political Conference.<sup>12</sup> Maulana Masoodi told the Delegates that responsible Government could not be achieved unless the movement for it was supported by all the people of the State. Raja Mohamad Akbar Khan of Pooch supported the resolution.<sup>13</sup> The opposition to the resolution was stiff. A number of delegates from Jammu led by Abdul Hamid Qureshi expressed the fear that the proposed amendments would ultimately damage the interests of the Muslims in the State. The deliberations on the resolutions were stayed. However, in his presidential address to the annual session of the Conference, Sheikh Mohamad Abdullah pleaded strongly for the unification of all people in the State and the amendment of the constitution of the Muslim Conference in order that its doors were open to Hindus, Sikhs and the other people in the State.

It is the first duty of those people who are subject to servitude and suffering to participate in the struggle for responsible government. Who are those people? Not only Muslims, not only Sikhs and Hindus, untouchables and Buddhists but the inhabitants of the State.....  
The responsible government is not demanded for the eighty percent of the Muslim population. The demand is made for all the people in Jammu and Kashmir. In order to secure responsible government it is essential that we invite the

Hindus, Sikhs, Budhists and the Harijans to join us and carry them ahead with us.

Advocating the conversion of the Muslim Conference into a national organisation, Sheikh Mohamad Abdullah said:

Like us, the Hindus and the Sikhs also suffer innumerable disabilities under the present system of government. They too are steeped in ignorance. They too pay taxes. They too face hunger. The institution of the responsible government is as necessary for them as it is for us. Today or tomorrow these people will join us. The main problem with us is how to face forces which impede our progress and stand in our way and thwart our efforts in the unification of the people in the State. To fight that, it is necessary that we change our organisation into a non-communal political organisation and amend its constitution.<sup>14</sup>

A great debate ensued and was carried down to the basic units of the Conference. The elections to the Praja Sabha were held in May, 1937. Two of the nominations filed by the Muslim Conference were rejected. All the remaining seats were captured by the Conference. After the elections, contest in the Conference sharpened. In June, Sheikh Mohamad Abdullah explained the issues involved in a public meeting at Srinagar. He said:

For the last two years, I have put before you the proposals in my two presidential addresses; that the doors of the Muslim Conference should be thrown open to the non-Muslims in the State. The issue has been discussed widely. The discussion has been put off for the next annual session. There are non-Muslims with a nationalistic outlook who are honest and patriotic. They suffer the hardships we suffer and struggle along with us. Their demand that the Muslim Conference be thrown open to them is justified.

<sup>11</sup> Rashid Taseer, *Tahrir Huryat Kashmir*, Vern, Vol. I p. 39.

<sup>12</sup> *Ibid.*, p. 39-48.

<sup>13</sup> Resolutions passed by the General Council of the Muslim Conference in its meeting on 10-12 July, 1936.

<sup>14</sup> Sheikh Mohammad Abdullah, Presidential Address, Annual Session, Muslim Conference, 1936.

Concluding his speech Sheikh Mohamad Abdullah told the people that he would leave the Conference if the non-Muslims were not brought within its fold:

I am convinced that either I must leave the reins of the Conference from my hand or the doors of the Muslim Conference will have to be thrown open to the non-Muslims.<sup>15</sup>

On 26th June, Sheikh Mohamad Abdullah released a long statement to the press which underlined the course of future action for the Conference with regard to Constitutional reforms in the State. In unambiguous terms Sheikh pointed out that the Conference idealised the institution of responsible government in the State in which the administrative organs would be accountable to the State legislature. Since the present Assembly was dominated by official and nominated members any form of responsibility was inconceivable. Sheikh Mohamad Abdullah felt that it was necessary to launch a common struggle for responsible government outside the Assembly, in which people of all religious denominations should participate.<sup>16</sup>

On June 24, 1938, a resolution was moved in the Working Committee of the Muslim Conference, seeking amendment in the Constitution of the Conference to the effect:

- (i) that the name of the Conference be changed; and
- (ii) all the people of the State irrespective of their religion, caste and creed be allowed to join its ranks.<sup>17</sup>

The Working Committee remained in session for four days. Finally on June 28, the resolution was approved by the Committee. The resolution stipulated:

whereas in the opinion of the Working Committee the time has now come when all the progressive forces in the country should be rallied under one banner to fight for the achieve-

<sup>15</sup> Hamdard, 19th June, 1938.

<sup>16</sup> *Ibid.*, 20th June, 1938.

<sup>17</sup> *Ibid.*, 3rd July, 1938.

ment of responsible government, the Working Committee recommends to the General Council that in the forthcoming session of the Conference the name and constitution of the organisation be altered and amended that all such people who desire to participate in the political struggle may easily become members of the Conference irrespective of their caste, creed or religion.

Immediately after the decision on the proposed amendments to the Constitution of the Muslim Conference, the Conference leadership gave a call for demonstrations in support of responsible government. State-wide demonstrations were held on 5th August, 1938. Speaking in a public rally in Srinagar Sheikh Mohammad Abdullah said:

Our experience is that both the Muslims and the non-Muslims are equally shackled in the iron-grip of the autocratic government in the State. Our war is not the war of religions, to secure a few administrative jobs or get a few temples and mosques released from the control of the government or secure a few rights; that will not end the disabilities we suffer from.<sup>18</sup>

Sheikh Mohammad Abdullah moved the following resolution in the meeting:

This general meeting of the people of Srinagar express complete dissatisfaction at the present autocratic government and reaffirms the conviction that the remedy, to all the ills of the people of the State of Jammu and Kashmir, lies in the introduction of responsibility in the government. The meeting appeals to all patriots that they unite for the movement for freedom of their country and prepare for the coming struggle in which, after we are victorious, we will free democracy from its political and economic shackles.

The widespread and vigorous agitation for the institution of responsible government in the State and the expressions

<sup>18</sup> *Ibid.*, 14th August, 1938.

of the fraternal regard, the movement evinced for the national liberation struggle in British India, alarmed the Dogras as well as the British. On August 6, 1938, Sheikh Mohammad Abdullah was ordered by the District Magistrate of Srinagar to desist from making speeches which created disaffection against the government. Similar notices were served on the other leaders.<sup>19</sup> The agitation, however, continued unabated.

On August 27, while the agitation was in progress, the leaders, among whom were Sheikh Mohammad Abdullah, Bakshi Ghulam Mohammad, Khawaja Ghulam Mohammad Sadiq, Maulana Syeed Masoodi, Sardar Budh Singh, Pandit Kashyap Bandhu, Pandit Prem Nath Bazaz and Pandit Shyam Lal Saraf, drafted a joint memorandum on responsible government. The memorandum was called the "National Demand". The next day Pandit Kashyap Bandhu, Sardar Budh Singh and Khawaja Ghulam Mohammad Sadiq were arrested. On August 29, Sheikh Mohammad Abdullah and the other signatories to the "National Demand" were put under arrest. The arrests were followed by massive public demonstrations against the Government. Flustered by the mass upheaval, the Government came down upon the agitators with a heavy hand. The hatchet fell on the Kashmiri Pandits, most of whom were in the employment of the State. A secret circular was issued by the Government, warning the Pandits of severe action in case they or any of their relatives were found to have supported the agitation for self-government. The signatories to the National Demand and the other leaders of the movement were tried and sentenced to various terms of imprisonment. Sheikh Mohammad Abdullah and Pandit Kashyap Bandhu were jailed for six months. Mirza Afzal Beg, and Ghulam Mohammad Sadiq were expelled from the Praja Sabha for a period of five years.

The "National Demand" underlined certain broad principles which the State leaders claimed, could form the basis future constitutional reform in the State.

As is well known there is a nation-wide movement afoot among the people of Jammu and Kashmir State, to bring about a complete change in the social and political outlook

of the people. This movement is not confined to any particular community or section of the public but all classes of people have begun participating in it with fullest consciousness of the issues it involves. But we do make it perfectly clear at the very outset that our loyalty to His Highness' Person and throne is unswerving and needs no reiteration. The ultimate political goal of this movement is the achievement of complete responsible government under the aegis of His Highness the Maharaja Bahadur. But as sponsors of this national movement, we feel that it is our bounden duty to acquaint all our countrymen as also others who are interested in it of the immediate objective we have in view.<sup>20</sup>

The manifesto envisaged the demand that the Government in the State be reorganised to incorporate the principle of administrative responsibility, separate and qualified franchise be abolished and substituted by universal adult franchise and weightage be given to the minorities for their legitimate interests. The manifesto demanded that the people be ensured the basic rights to life, liberty and property, freedom of speech, expressions, and association and the right to legal remedies against any arbitrary action of the State.<sup>21</sup> The manifesto read:

Our cause is both righteous and reasonable and just. We want to be the makers of our own destiny and we want to shape the ends of things according to our choice, of course, under the august patronage of His Highness. This we cannot do, so long as a healthy change is not effected in the present system of Government. We have also come to the conclusion that without such a change it is impossible for the communities individually or the country collectively to progress. We are, therefore, of this firm belief, that the Government of His Highness should, before long, be modelled on the following lines:

<sup>20</sup> *National Demand*, 1938, Published by All India States Peoples Conference, Bombay.

<sup>21</sup> *Ibid.*, National Demand, p. 1-3.

<sup>19</sup> *Ibid.*, 14th August, 1938.

- (a) The present system of administration in the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned;
- (b) The Ministry shall be responsible to the Jammu and Kashmir Legislature and shall have, subject to such responsibility, power to control the expenditure of the revenues of the State and also to make such grants and appropriation of any part of those revenues or of any other property which is at present under the control or disposal of the Council as reserved expenditure, save and except the following which shall remain under the control of His Highness the Maharaja Bahadur:
- (i) Expenditure of the Military Services
- (ii) Expenditure classed as Political and Foreign
- (iii) Payments of all debts and liabilities hitherto lawfully contracted and incurred by His Highness in-Council on account of Government of Kashmir
- (iv) The Dharmarth Trust
- (c) The principle of responsibility to the Legislature shall be introduced in all the branches of administration of the Government subject to general control, reservations and residuary powers vested in His Highness in respect of control of Military, Foreign and Political Affairs etc. provided that the proposal of His Highness for appropriations of any revenues or moneys for Military or other expenditure for Foreign and Political purposes shall be submitted to the vote of the Legislature, but that His Highness shall have power not withstanding the vote of the Assembly to appropriate upto a fixed maximum any sum His Highness may consider necessary for such expenditure;
- (d) The Legislature shall consist entirely of members elected by Constituencies formed on the system of the adult franchise. Provision should be made for the representation of labour, trade, landlords and educational interests in the Legislature by means of election;
- (e) The election to the Legislature shall be made on the basis of joint-electorates! seats shall be reserved for the minorities, and all other safeguards and weightages

- should be guaranteed to them in the constitution for the protection of their legitimate linguistic, religious, cultural, political and economic rights according to the principles enunciated, accepted or acted upon by the Indian National Congress from time to time. In addition to the above the religious rights and sentiments of all the communities should always be respected and not interfered with;
- (f) All the subjects of the State, without distinction of creed and caste shall be admitted for services in all armies of defence and for that purpose His Highness shall be assisted by a Minister responsible to the Assembly;
- (g) No subject of His Highness shall be liable to suffer in liberty, life, property or of associations and free speech or in respect of writing except under sentence by an ordinary court of justice and as a result of lawful and open trial.<sup>22</sup>

In March 1939, the annual session of the Indian National Congress was held at Tripura. A delegation of the State leaders which included Sheikh Mohammad Abdullah, Bakshi Ghulam Mohamad, Pandit Kashyap Bandhu, Pandit Prem Nath Bazaz, and Mulana Sayeed Masoodi, was specially invited by the Congress President to attend the session. Tripura brought the State leaders closer to the Congress. The Congress leaders acclaimed the struggle of the State's people for self-government and extended whole-hearted support to Sheikh Mohammad Abdullah and his colleagues in their quest for freedom. The State leaders participated in a number of closed door conferences, in which Pandit Nehru and other senior Congress leaders and the leaders from the Princely States took part. In fact, the Congress strategy with regard to the political movement in the States was given final shape at Tripura. The Princes were the most delicate and the difficult part of the intricate political organisation, the Congress leaders had to grapple with. The rise of communalism was bound to have its impact on the politics in the States as well, and the Congress

<sup>22</sup> *Ibid.*

leaders were aware of the damage it could cause to the political and constitutional development in the States. The Muslim League had already entered the contest for precedence in the States and the Princes, who were hardly ready to countenance any political reforms in India, were keen to turn to their advantage, the confrontation which the League had forced on the Congress. The Muslim League took its own way to deal with the States. The League had scrupulously avoided to commit itself to any line of action against the Princes and had assumed indifference towards any movement for political reforms in the States. The League had little advantage in extending support to the States People, for the Indian States except Kashmir, had overwhelming Hindu majorities and the League was the least anxious about what happened to them. Any support extended to the States peoples would, on the other hand hit the few Muslim Nawabs, including the ruler of Hyderabad who also ruled Hindu majorities. The League had no reason to antagonise the Hindu rulers and dislodge the Muslim Nawabs but had a vicarious interest in supporting the Maharajas and the Nawabs. It could use them to intimidate the Congress when the time came to balkanise and divide India. As the distrust between the Muslim Conference and the Dogras deepened and the Indian Government gradually wheeled round to support the State Government, the League was driven to the fence. The State leaders clearly saw the identity of the goals they idealised and the ideals the Indian National Congress sought to achieve. The movement in the State represented the upsurge of the people of the State against the servitude the Indian Princedom symbolised, and therefore was a part of the struggle of the Indian people against the British dominance.

On April 27, shortly after the Tripura Congress, the Working Committee of the Muslim Conference appointed a sub-committee to formulate proposals on the resolution, the Working Committee had adopted in regard to the extension of its membership to all the people of the State.<sup>23</sup> The sub-committee was constituted of Bakhshi Gulam Mohamad, Maulana Masoodi and Khwaja Gulam Mohamad Sadiq. Sadiq was appointed the Chairman of the Committee. On

<sup>23</sup> Working Committee Resolution No. 5, 27th April, 1939.

June 10, the sub-committee presented its report to the General Council of the Conference along with the draft of the amendments it proposed in the Constitution of the Conference. The Committee recommended that the Muslim Conference be renamed as "All Jammu and Kashmir National Conference", and the membership of the Conference be opened to all classes of the people in the State, irrespective of their caste, creed and religion. The Committee further recommended that objectives which the Conference sought to achieve, be redefined to cover wider national aspirations, responsible government and the right to freedom.<sup>24</sup> The General Council accepted the recommendations of the Committee and resolved that the recommendations of the Committee be submitted to a special session of the Conference. The next day, the special session of the Conference was convened to consider the report of the Committee and the recommendations of the General Council. The same day, the Conference approved the amendments recommended by the General Council after a long and stormy debate. The President of the Conference was authorised to nominate members from the other communities to the Working Committee and the General Council of the Conference.<sup>25</sup>

<sup>24</sup> The Report of the Sub-committee of the Muslim Conference Working Committee appointed on 27th April, 1939.

<sup>25</sup> Resolution of the Muslim Conference passed in its special session, 11th June, 1939.

## Chapter 6

## Constitution Act-1939

- (i) the Maharaja, his family and his household;
- (ii) external relations, treaties, conventions and agreements between the State and the British Government and the Government of India or with foreign powers or the government of any State in India;
- (iii) matters of Frontier policy including those relating to Ladakh and Gilgit;
- (iv) matters relating to the Jagirs of Poonch and Chinani;
- (v) rights specifically granted to Illaqadars or Jagirdars by their Sanads;
- (vi) Armed Forces;
- (vii) the Departments declared by the Maharaja from time to time to be the Hazur Departments;
- (viii) Dharmarth Trust;
- (ix) provisions of the Constitution Act; and
- (x) such other matters as were specified by the Maharaja.

The Constitution Act provided for a legislative body constituted of the Maharaja and a chamber known as the Praja Sabha. The membership of the Sabha was fixed at seventy-five. Forty of the members were to be elected. The members of the Council of Ministers retained their ex-officio position in the Sabha which they held under the Constitution Act of 1934. The Maharaja reserved to himself the powers to appoint official members and members representing certain special constituencies. The Maharaja also reserved the power to nominate two members to the Assembly for having special knowledge and experience of the subject matter of a Bill pending before the Sabha for the period the Bill remained under consideration of the Sabha.<sup>3</sup>

The tenure of the Praja Sabha was fixed at three years, subject to the condition that the Maharaja could dissolve the Praja Sabha earlier or extend its term in special circumstances. The Maharaja reserved the right to fix the date, not later than six months after the expiry of the Praja Sabha or of its dissolution, for its next session. The Maharaja also reserved

In 1939, the Maharaja ordered the repeal of the Constitution Act of 1934, and promulgated a new Constitution Act for the government of the State.<sup>1</sup> The new Constitutional provisions were aimed to placate the rising temper of the people in the State and their incessant demand for self-government. The broad principles which the Constitution Act underlined did not differ substantially from the provisions of the Constitution Act of 1934 except that the law relating to the High Court was incorporated in the Act and the number of elected members in the Praja Sabha was increased to forty. The Maharaja retained the inherent powers of the prerogative. As a matter of fact, the new enactment did not envisage any devolution of authority, which in effect continued to be centralised in the hands of the Maharaja. The reserved subjects were, however, redefined to include:<sup>2</sup>

<sup>1</sup> Jammu and Kashmir Constitution Act, 1939.

<sup>2</sup> *Ibid.*, Sec. 12.

<sup>3</sup> *Ibid.*, Sec. 14.

the right to summon the Praja Sabha and prorogue it. Communications from the Maharaja to the Praja Sabha could be made by him in person or by messages sent through the Prime Minister or any other Minister and by messages sent through the President of the Praja Sabha. Communications from the Praja Sabha to the Maharaja, could be made by as formal address, preferred through the President of the Sabha after a resolution was moved to that effect and passed by the Praja Sabha.<sup>4</sup>

The Maharaja reserved to himself the power to appoint the President of the Sabha, remove him from office and fix the term of his office. Powers were vested with the Praja Sabha to choose from among its members the Deputy President of the Sabha. The Deputy President was liable to be removed from his office by a resolution of the Sabha passed by a majority of its members. The Maharaja also reserved to himself the power to appoint Under Secretaries, from among the members of the Sabha. The Under Secretaries were to be attached to one or more Ministers and assigned such duties which related to the business in the Sabha.<sup>5</sup>

The Praja Sabha was empowered to legislate for the entire State and for the subjects not reserved for the Maharaja. The Sabha was, however, not empowered to undertake any legislation which affected the religious rights, usages, endowments or personal law of any community without the previous sanction of the Maharaja and no such measure could be deemed to have been passed by the Sabha unless two-third of the members of the Sabha from the community affected, were present in the Sabha and voted in favour of the measure.<sup>6</sup>

The Sabha was subject to a number of severe limitations. They were:<sup>7</sup>

- (i) the Sabha could not deal with and consider any matter which was included in the reserved subjects;
- (ii) in case the Prime Minister of the State certified that

<sup>4</sup> *Ibid.*, Sec. 16 and Sec. 17.

<sup>5</sup> *Ibid.*, Sec. 19 and Sec. 22.

<sup>6</sup> *Ibid.*, Sec. 23 and Sec. 24.

<sup>7</sup> *Ibid.*, Sec. 35.

the introduction of a Bill, discussion on it or an amendment moved to it or a resolution passed on it, was likely to affect the safety or the tranquility of the State, he could direct the stoppage of the proceedings on the Bill;

- (iii) where the Praja Sabha refused leave to introduce a bill or fail to pass it in the form recommended by the Council, the Maharaja reserved the power to declare the provisions of the Bill essential for the good government and tranquility of the State; and
- (iv) The Praja Sabha was precluded to repeal or alter any ordinance, promulgated by the Maharaja.

With regard to finances, the provisions of the Act vested wider powers in the Sabha than the powers which were vested with the Sabha under the Constitution Act of 1934. The Council of Ministers was required to present before the Sabha the Annual Financial Statement of the revenues and expenditure. The "Expenditure charged upon the revenues of the State" and the "Expenditure proposed to be met from the revenues of the State" were to be separately shown in the Financial Statement. The Praja Sabha was empowered to vote on the "Expenditure proposed to be met from the revenues of the State". The "Expenditure charged upon the revenues of the State" included the expenditure on reserved subjects; contribution payable to other Governments; expenditure obligatory under any law; interest on loans and sinking fund charges; expenditure declared by the Maharaja or the Council as political; pensions, grants and scholarships; salaries of the Judges of the High Court and the members of the Board of the Judicial Advisors; salaries of such officers as the Maharaja specified and such other expenditures which were specified so from time to time.<sup>8</sup> The Prime Minister of the State was vested with the final authority to determine whether any proposed expenditure was charged on the revenues of the State. Over-riding powers were also reserved by the Maharaja for himself to authorise such expenditure as was found necessary for the safety and the tranquility of the State. The Council was em-

<sup>8</sup> *Ibid.*, Sec. 41 and Sec. 42.

powered to authorise expenditure of demands, votable by the Sabha, in case the Sabha failed to pass the demands. Bills or amendments, providing for the imposition, increase or decrease of taxes; the regulations of the borrowing of money; grant of any guarantee by the Council; the amendment of any law with respect to any financial obligation undertaken by the Council and for the specification of any expenditure charged on the revenues of the State, could only be introduced or moved in the Assembly after the previous sanction of the Prime Minister had been secured.<sup>9</sup>

All Bills passed by the Praja Sabha were required to be submitted to the Maharaja for his assent. The Maharaja retained the power to give his assent to a Bill or withhold it. In case he refused his assent to a Bill, it automatically fell through. The Prime Minister was empowered to return a Bill for the reconsideration of the Sabha with or without amendments before it was submitted by him to the Maharaja for his assent.<sup>10</sup>

The Praja Sabha was not vested with the powers to make rules for the conduct of its business and procedure. Instead the power to make rules was vested with Council of Ministers.<sup>11</sup> The Council was empowered to make rules with regard to:

- (i) the term of the office of the nominated members of the Praja Sabha;
- (ii) the manner in which persons were nominated to the Praja Sabha;
- (iii) the qualifications for enfranchisement, delimitation of the constituencies, the process and method of the elections;
- (iv) the qualification of the members of the Praja Sabha;
- (v) the determination of the disputes with regard to the validity of elections;
- (vi) prevention of corrupt practices in elections,
- (vii) regulation of the course of business and preservation of order in the Assembly;

<sup>9</sup> *Ibid.*, Sec. 47.

<sup>10</sup> *Ibid.*, Sec. 31.

<sup>11</sup> *Ibid.*, Sec. 12.

- (viii) regulation of question and discussion on any subject specified in the rules;
- (ix) procedure for the presentation of the Budget;
- (x) duties of the Under Secretaries of the Praja Sabha; and
- (xi) the execution of the provisions of the Constitution Act.

The Constitution Act incorporated provisions of the law pertaining to the High Court in the State.<sup>12</sup> The High Court was to be constituted of the Chief Justice and two or more Judges, as the Maharaja would appoint from time to time. The Judges were liable to be removed from their office by an order of the Maharaja, for misbehaviour or infirmity of mind or body. The Chief Justice was placed in a position of precedence over the other judges of the Court. The Chief Justice and the other judges of the Court were entitled to receive such salaries and allowances as were fixed by the Maharaja from time to time. A person could be appointed the Judge of the High Court in case he:

- (i) was a Barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than ten years standing; or
- (ii) held a Judicial office in the State, not inferior to that of a District Judge; or
- (iii) had at least held a Judicial office at least for five years not inferior to that of a subordinate judge or the judge of a Small Causes Court in the State; or
- (iv) was an advocate of the High Court in British India, or a law-graduate of any recognised University in India, who had been practising as an advocate of the High Court or of any High Court in British India for a period of at least ten years.

The original jurisdiction of the Court extended to all cases of which the value was of ten thousand rupees or more. The appellate jurisdiction of the Court extended to the appeals and revisions in civil, revenue and criminal cases with regard to which the Court had competence under any existing law in

<sup>12</sup> *Ibid.*, Sec. 48.



force. The Court was vested with the powers of a Court of Record. It was also empowered to try and punish cases contempt.<sup>13</sup>

Subject to the sanction of the Council the Court was authorised to frame rules to:

- (i) regulate its own practices;
- (ii) to provide for the forms to be used;
- (iii) to promote efficiency of the judicial and its ministerial offices; and
- (iv) to prescribe qualifications for Advocates, Vakils and the Attornies and provide for their removal or suspension from practice.<sup>14</sup>

Subject to the rules made by the Maharaja, the High Court was vested with the power of superintendence and control over all subordinate courts in the State. The Chief Justice and the other Judges of the Court were authorised to visit and inspect the proceedings of all subordinate courts and issue necessary directions to them. The Court was authorised to make rules to regulate the practice of the subordinate courts, provide for the forms to be used in these courts and provide for the inspection of these courts and the supervision of their work.<sup>15</sup>

The Constitution Act provided for the establishment of a Board of Judicial Advisors.<sup>16</sup> The Maharaja retained in himself the highest judicial authority and constituted in himself the highest court of appeal. Obviously, the Maharaja superseded the High Court. The Board of Judicial Advisors was constituted to advise the Maharaja in cases which came up before him in appeal. The institution of the Board did not affect the inherent powers of the Maharaja.

The Board was to be composed of as many members as the Maharaja appointed on it. The term of office of the members of the Board, their salaries and the condition of their service were to be determined by the Maharaja. The Maha-

raja reserved the right to make rules to regulate the procedure regarding the filing of the appeals, the place and period of the sittings of the Board and the hearing of the appeals by the Board.

The new Constitution Act did not envisage any radical reforms in the government of the State. The reforms, evidently, bore the burden of the fast changing political situation in the State. The conversion of the Muslim Conference into National Conference was a favourable, though challenging development. The emergence of the National Conference ended the long contest in the various community movements in the State and portended a joint and secular struggle for political reforms. Obviously, neither the British nor the Dogras could overlook the revolutionary import of these developments, but because of the outbreak of the Second World War, the issues were relegated into the background.

On March 21, 1940, the Muslim League at its annual session in Lahore, adopted the resolution for the division of India and the creation of a separate independent state for the Muslims in India. The resolution for the division of India and the creation of Pakistan brought the simmering communal contest in India to the surface. The attack of the Muslim League, pointed and ruthless, broke up the Indian mind and ultimately drove the Muslims out of a united India. The League resolution had a deep impact on the political movements in the State. The League organised a parallel States' People Organisation "The All India States Muslim League", to co-ordinate the Muslim movements in the States. The meeting of the All States Muslim League was convened in Lahore, during the days the Muslim League was in its annual session. The States Muslim League endorsed the League resolution for the division of India.

The National Conference leadership repudiated the League resolution for the division of India and the separation of the Muslim majority regions. The Conference did not consider it feasible or expedient to accept the League resolution nor did it favour the acceptance of the resolutions of the States Muslim League on the future Constitutional pattern of the Indian States. The Conference leadership rejected the formulations of the League with regard to the constitutional reform in the

<sup>13</sup> *Ibid.*, Sec. 56.

<sup>14</sup> *Ibid.*, Sec. 67.

<sup>15</sup> *Ibid.*, Sec. 64.

<sup>16</sup> *Ibid.*, Sec. 71.

States.<sup>17</sup> Sheikh Mohammad Abdullah attended the session of the States Muslim League as an observer. After he returned to Srinagar he launched a frontal attack on the resolutions of the States Muslim League. He rejected the proposal for the division of the country and the separation of the Muslim majorities and called upon the Muslims in India to join the Indian National Congress, which he declared, was the only representative organisation of the peoples of India.

In the aftermath of the Muslim League session at Lahore a number of Muslim leaders, most of them from Jammu, dissociated themselves from the National Conference. A sizeable section of Muslim Conference leadership had already remained out of the new organisation when the Muslim Conference had been dissolved in June, 1939. The Parliamentary Party of the National Conference in the Praja Sabha also broke up. Chowdhry Hamidullah, who had broken away from the Conference, left the Parliamentary Party with his supporters and formed a separate group in the Sabha. Shortly after, Chowdhry Ghulam Abbas resigned from the Conference. On 13th June, 1941, the Muslim Conference was revived in Srinagar. Chowdhry Ghulam Abbas, Abdul Majid Qureshi, Chowdhry Abdullah Walli and Chowdhry Mohammad Amin pledged their support to the Muslim Conference. In July, Chowdhry Ghulam Abbas was nominated to the Working Committee of the States Muslim League. A few days after, the Muslim Conference declared its acceptance of the League resolution for the division of India and the creation of Pakistan.

The disintegration of the parliamentary party of the National Conference in the Sabha weakened the Conference Party which was left with only ten members after the split. Taking advantage of the situation, the Council amended the rules of procedure of the Sabha and assumed over-riding powers over its function. In the meanwhile severe difference set in between the Conference leadership and the Government on the introduction of the Dev-Nagri or the two-script medium of instruction in the schools and the promulgation of the Arms Act.

In June, 1941, the Working Committee of the National

Conference instructed the members of the Conference Parliamentary Party to resign from the Sabha.<sup>18</sup> The following reasons were listed by the Working Committee for the action it recommended:

- (i) the modifications introduced by the Government in the Rules of procedure of the Praja Sabha which gave arbitrary powers to the Prime Minister;
- (ii) the introduction of the Dev-Nagri script or the two-script medium in the schools; and
- (iii) the special concessions provided to the Rajputs and Hindus by the provisions of the Arms Act.

In the last week of July, the members of the National Conference Parliamentary Party in the Sabha submitted their resignation. The resignation of the leader of the party, Mian Ahmad Yar was accepted forthwith. The resignations submitted by the other members were, however, refused on the ground that fresh elections could not be held due to the situation created by the outbreak of the war.

<sup>17</sup> Rashid Taseer, *Tabreeq Huryat Kashmir*, Vern. Vol. II P. 33.

<sup>18</sup> *Ibid.*, P. 162.

## Chapter 7

## Quest for Settlement

## Cripps Mission

With the onset of the Second World War, the sea which the British Majesty had ruled for a century, rolled up and swept the shores of England. The foundations of the intricate balance of power, upon which the British had poised themselves for a century, crumbled down within a year of the outbreak of the war. The Congress Working Committee met in August, 1940, and offered to help the British in their war effort on the condition that the British Government recognised the right of the Indian people to independence and accepted to set up a National Government in India for the time the war continued. The British turned down the offer. The Viceroy made a significant statement in which he expressed the inability of the British Government to accept the Congress offer on the ground that the British were not prepared to ignore the interests of the minorities in India and the rulers of the Princely

States. The Viceroy stated:<sup>1</sup>

"It goes without saying that they could not contemplate the transfer of their present responsibilities for the peace and welfare of India to any system of Government whose authority is directly denied by large and powerful elements in India's national life. Nor could they be parties to the coercion of such elements into submission to such a government."

Obviously, the British wanted to avoid to make any substantive commitments to the Congress and build up defences to frustrate any efforts, the Congress made to find a settlement of the Indian problem.

In reply, the Congress launched a half-hearted and purposeless civil disobedience movement aimed to register moral protest of the Indian people against the British intransigence. The civil disobedience movement made little impression on the Government of India. Instead, most of the Congress leaders found themselves locked up in jails at the most crucial hour of the history of their country.

The stalemate did not last long. Japan's entry into the war jolted the British out of their complacency. The Congress leaders were equally shocked. Gandhi promptly ordered the suspension of the civil disobedience movement. On March 11, 1942, the British Prime Minister made an announcement in the Parliament that the War Cabinet had decided to send a member of the Cabinet to India with proposals for the solution of the Indian problem. Sir Stafford Cripps was deputed for the task. He reached India on 22nd March.

The proposals which Stafford Cripps brought with him envisaged:

His Majesty's Government having considered the anxieties expressed in this country and in India as to the fulfilment of promise made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible

<sup>1</sup> Statement of the Viceroy, August 8, 1940.

realisation of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, and in no way subordinate in any aspect of its domestic and external affairs.

The operative part of the proposals envisaged:

(a) immediately upon the cessation of hostilities, steps shall be taken to set up in India in manner prescribed hereafter an elected body charged with the task of framing a new Constitution for India;

(b) provisions shall be made, as set out below, for participation of the Indian States in the Constitution making body;

(c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to:

(i) the right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down;

(ii) the signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provisions, in accordance with undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restrictions on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the Constitution it will be necessary to negotiate a

revision of its treaty arrangements so far as this may be required in the new situation.

(d) The Constitution making body shall be composed as follows: Unless the leaders of Indian Opinion in the principal communities agree upon some other form before the end of hostilities.

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the lower house of provincial legislatures shall as a single electoral college proceed to the election of the Constitution-making Body by the system of proportional representation. This new body shall be in number about one-tenth of the member of the electoral college.

Indian States shall be invited to appoint representatives of British India as a whole, and with the same powers as British Indian members.

(e) During the critical period which now faces India and until the new constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain the control and direction of the defence of India as a part of their world war effort, but the task of organising to the full, the military, moral and material resources of India must be the responsibility of the Government of India with the cooperation of the people of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country of the commonwealth and of the United Nations. They thus will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future of India.

Maharaja Hari Singh made certain interesting observations on the Cripps proposals. The position, his State had in India, was different from that the other Princely States had. He visualised the import, the Cripps offer had, and probably saw through the plot the British intended to lay about. Hari Singh, indeed was a part of the Empire, but he, and in fact, none of the Princes would accept liquidation. He stated:

On the part of the States, a considerable factor in the Indian policy and an important party to be satisfied, there has been a tendency even within recent weeks to give prominence to the credo of relations to the Crown. These relations have so far been maintained through and effected by a Department set up by the will of the Crown, the policy and the practice of the Department being determined by the Crown's functionaries. Logically, therefore it would seem that the Princes cannot object to having dealings with a Central Government of India which the Crown may constitute. Nor have they any reason to assume that they would not get a square deal from such a Government. Commenting on the position of the princes, Hari Singh observed:

In promising to support the proposals brought by Sir Stafford Cripps, the Chamber of Princes added the proviso that the support should be without prejudice to the right of individual States to lay their case before him and generally without prejudice to the inherent rights of the States. These rights, it is not easy to define or catalogue, when one considers the effect of the political practice inaugurated in 1860 and since maintained with the aid of 'usage and sufferance'. In any case, there is a poignant irony in the contrast between the Princes' reiteration of the phrase, 'Treaty Rights' and the Viceroy's suggestion that all Princes, for certain purposes, should voluntarily abdicate in favour of the Political Officers accredited to their Courts.'

On 14th April, 1942, Gopalswami Ayangar made a statement in Praja Sabha which sought to clarify the stand, the Maharaja and his Government had taken on the Cripps Mission. Ayangar told the members of the Sabha that the Maharaja disfavoured the division of India and the separation of the provinces or the States on any political or economic grounds. Ayangar told the Sabha that the people of the State would oppose every suggestion and step aimed to break up the country. In fact, the Maharaja took the opportunity to put all doubts at rest about his attitude towards the division of the country and the creation of a separate Muslim State in India. Hari Singh was, indeed the less conservative among

the Princes and felt equally frightened at the overt suggestion Cripps had made with regard to the liberalisation of the government in the States. But he had his own reasons to raise his voice against a possible division of the country. He realised the consequences of the separation of Muslim majority areas and the impact such an eventuality would have on the future on his State. His State had in fact, been marked for inclusion in the Muslim State, the Muslim League proposed to create. He could foresee the danger he would be placed in, if a new dominion, aggressively communal in outlook was established along the borders of his State. His consternation was deeper in view of the composition of the population of his State which was predominantly Muslim.

Among the Princes in general, the Cripps proposals created a flutter. The Princes knew that there was hardly any chance for the Cripps Mission to succeed and even if it did, they knew, their position would not be prejudiced, but they were concerned and alarmed about the fact that, whenever the negotiations would be resumed between the British government and the Indian leaders, they would start from where Cripps had fallen off. The Indian States Delegation, after its discussions with Sir Stafford Cripps, adopted the following resolution:

The attitude of the Indian States in general of the Mission of the Lord Privy Seal is summed up in the resolution on the subject which was adopted unanimously at the recent session of the Chamber of Princes. The Indian States will be glad as always, in the interest of the motherland, to make their contribution, in every reasonable manner compatible with the sovereignty and integrity of the States, towards the framing of a new constitution for India.

The States should be assured, however, that in the event of a number of States not finding it feasible to adhere, the non-adhering States or groups of States so desiring should have the right to form a union of their own, with full sovereign status in accordance with a suitable and agreed procedure devised for the purpose.<sup>2</sup>

<sup>2</sup> Jan Sahib of Nawanagar to Sir S. Cripps, September, 10, 1942.

In its resolution the Chamber of Princes had demanded effective protection of their 'rights arising from treaties and Sanads' and guarantees for the sovereignty and the autonomy the States enjoyed.

The other reason for the princes to get alarmed and in fact, the more important one, was the overt suggestion, that Cripps made for the constitutional and administrative reforms in the States. Some of them were avowedly vocal and gave vent to their unwholesome feelings with awkward vehemence. Maharaja Hari Singh was also one of them. The Secretary of the Crown Representative wrote to the India Office:<sup>3</sup>

His Excellency the Crown Representative has little doubt that such concern and misgivings are in fact genuinely entertained by the great majority of Indian Princes, particularly by the more conservative among them, and is not inclined to attach any great importance to such public declarations in the opposite sense as have been made by their Highnesses of Kashmir and Indore. The Princes may to some extent derive comfort and re-assurance from the generous terms in which His Majesty has referred in his message to India published on the 13th June, 1942 to 'their traditions of loyalty and attachment to his Throne' and to their unstinting offers of men and money and personal services for the war. But they are not likely to be reassured by a reference, to the fact that Sir Stafford Cripps offer was in terms withdrawn when the negotiations broke down. The Princes probably feel that should negotiations be resumed in the event of the great political parties in British India showing a more responsive attitude, the Cripps declaration would certainly form the starting point of such negotiations and would be regarded as the minimum measure of concession and advance open to discussion.

In particular, perplexity is expressed in para 11(a) of the Chancellor's letter with regard to the statement made by the Lord Privy Seal in the House of Commons to the effect that he was "certain that this House would

wish the British Administration in India to do all it can to encourage and expedite the development of suitable representative institutions in all Indian States."

Cripps did not offer anything tangible to the Indians. Instead, his scheme envisaged the acceptance of the various communal claims in India for the division of India. One third of the membership in the proposed Constituent Assembly was reserved for the Princes. Joined with communal minorities, vested interests and the fifth column the British had so well planted all over the sub-continent, the Princes, were in effect, vested with the ultimate veto on the future of the Indian Nation. Referring to the problem of the States, the Working Committee of the Congress said in its resolution dated 2nd April, 1942:

The complete ignoring of ninety millions of people in the Indian states, and their treatment as commodities at the disposal of their rulers, is a negation both of democracy and self determination. While the representation of an Indian State in the constitution-making body is fixed on a population basis, the people of the State have no voice in choosing those representatives, nor are they to be consulted at any stage while decisions vitally affecting them are being taken. Such states may in many ways become barriers to the growth of Indian freedom, enclaves where foreign authority still prevails and where the possibility of maintaining foreign armed forces has been stated to be a likely contingency and a perpetual menace to the freedom of the people of the states as well as of the rest of India.<sup>4</sup>

The Cripps Mission was a fake attempt at finding a solution of the political problems in India. In fact, neither the British Government nor the Government of India, was prepared to go as far as Cripps. Congress rejected the scheme. So did the Muslim League.

<sup>3</sup> Letter from Secretary to the Viceroy to the India Office, June, 25, 1942.

<sup>4</sup> Congress Working Committee Resolution, dated 2nd April, 1942.

### Naya Kashmir

In July, 1943, the Maharaja appointed a high power enquiry commission to review the working of the Constitution of the State.<sup>5</sup> Rai Bahadur Ganga Nath, the Chief Justice of the State High Court and the President of the Praja Sabha was appointed the Chairman of the Commission. The Commission was asked to make recommendations to secure 'the safety, integrity and security of the State' and an efficient and progressive character of its administration. It was also asked to recommend measures with regard to:

- (i) the development of the economic resources of the State and its people leading to a higher and healthier standard of life;
- (ii) the increasing representation of the State-Subjects in the administrative services of the Government;
- (iii) the adoption of ways and means to check corruption;
- (iv) the uplift of the rural areas; and
- (v) the economic rehabilitation of the frontier districts of Ladakh and Gilgit.<sup>6</sup>

The Commission invited all political parties in the State to send their representatives to participate in its deliberations. National Conference was also asked to send its representative to participate in the work of the Commission.

In August, the Working Committee of the National Conference considered the invitation of the Government to participate in the deliberations of the Commission. The Committee expressed dissatisfaction with the terms of the reference of the Commission. The Committee pointed out that the terms of reference covered an unnecessarily wide area of investigation and did not include any specific directives for political and economic reform. The Committee concluded that the Conference sought to achieve responsible government under the aegis of the Maharaja and since the terms of reference of the

<sup>5</sup> Command of Maharaja Hari Singh, Dated 12 July, 1943, Government Gazette, dated 15th July, 1943.

<sup>6</sup> *Ibid.*, P. 10.

Commission did not envisage consideration of any such measure, the appointment of the Commission was not a satisfactory solution of the constitutional problem of the State. The Committee however, decided to cooperate with the Commission and send its representatives to participate in its work.

The deliberations of the Commission, were, protracted and irregular as a result of which much of the enthusiasm with which the Commission started, died down. The National Conference recalled its representative from the Commission. Those very days the conference evolved a programme of reform and reconstruction for the State and submitted it to the Commission for its consideration. The Commission, however, found itself unable to accept any of the suggestions envisaged in the programme.

Rai Bahadur Ganga Nath submitted to the Maharaja, a long and detailed report on the social, economic and political conditions of the State. The report described in detail the working of the existing constitutional provisions, franchise and local government. In spite of the fact, that the commission was charged with the task of assessing the utility of the constitutional provisions, the commission confined itself to a survey study and avoided to pronounce any judgement on the organisation of the State Government and its operatives. The Chairman of the Commission remained pathetically apologetic and in effect sought to legitimise the many structural and functional defects in the State Government. In his report Ganga Nath observed:

The Command enjoins us to investigate into the working of the existing constitution with reference to the proceedings of the Praja Sabha and the amount of interest displayed by the State Subjects and the political experience gained by them in relation thereto. From the description of the constitution of the Praja Sabha given in Part two of our report, it will be observed that it has a majority of elected elements and that though it has to face an irremovable executive it still has sufficient powers at its disposal to enable it to make an impression on the executive if it so chooses. These powers follow the same

lines as of any other deliberative assembly, namely; powers of interpellation, power of moving resolutions and passing bills, control over financial matters, and powers of censure. It is true that these powers are circumscribed by certain reserved functions but though, there may be a difference in the extent of these powers there is no difference in their nature.<sup>7</sup>

The one defect the Commission was able to locate in the existing constitutional provisions, was pertaining to the extent of franchise for the special constituencies and with regard to women. The Commission observed:

There are, however, a few defects in the present franchise to which we feel bound to refer. Seven members of special constituencies are elected by 1,204 electors; as against this 33 members of general constituencies are elected by more than two lakhs of the population. This disparity in numbers is in our view unusually striking. The present franchise is based for too much on possession of property, holding of pensions from Government holding offices in villages or having rendered services to Government. While we conclude that there are elements which deserve some recognition we feel that the recognition of these interests should be proportionate to a due recognition of the interests of the general population. The limitation of franchise in regard to women, to those who have passed middle school examination has in our view failed to secure due representation of that important element in the general population, a fact which has been accentuated by the absence of any nomination of a representative of that sex.<sup>8</sup>

With regard to the memorandum submitted to the Maharaja by the National Conference, the Commission made certain interesting observations:

<sup>7</sup> Ganga Nath Commission Report P. 439 MS. No. 605, Archives Repository, Srinagar Government of Jammu and Kashmir.

<sup>8</sup> *Ibid.*, p. 449.

Our attention has also been drawn to the memorandum submitted by the All Jammu and Kashmir National Conference to His Highness containing a draft constitution of the State and an outline economic plan for the development of the State. We are precluded by our terms of reference from expressing our opinion on the bigger constitutional and political issues raised in the memorandum. In our view it is premature to consider and devise the framing of a constitution for the state without knowing exactly what shape or form the discussions on the future constitution of India will take; to ignore those discussions and their bearing on the relationship of this state with the rest of India would be tantamount to losing sight of a fundamental factor in the consideration of the problem. We feel, however, bound to state that the whole basis of this memorandum is vitiated by a characteristic misreading of history and a prejudicial view of existing conditions. The platitudes with which the memorandum has been embellished are hardly conducive to a constructive approach to the problems with which the state is faced, while the final solution of the problem adumbrated in it is marked by a wholly inappropriate vaulting ambition which has patent risks of over leaping itself.<sup>9</sup>

In February, 1944, the programme which the National Conference had submitted to the Ganga Nath Commission, was adopted by it as its Manifesto. The programme was named "Naya Kashmir" and published.<sup>10</sup> In his presidential address to the annual Session of the Conference, Sheikh Mohamad Abdullah said:

The Working Committee of the National Conference which always has its hand on the pulse of the people, feels that at this time when political and economic systems are in the melting pot and ideas of a new World Order are being debated, it too must formulate more correctly its own conception of the New Kashmir it strives to build.

<sup>9</sup> *Ibid.*, P. 455.

<sup>10</sup> Resolution of the Working Committee of the National Conference, dated 20th February, 1944.



The National Conference envisages the future of New Kashmir in both political and economic terms. Towards that end we have drawn up a scheme which politically is based on the democratic principle of responsible government, with the elective principle applied from the Local Panchayat right upto the National Assembly. This is linked with the independence of judiciary and the ultimate responsibility of the executive to the people.

In the economic sphere, we have gone on the principle that planned economy is the essence of progress, and without it there can be no raising of the standards of the masses of the State.

The 'Naya Kashmir' plan envisaged a scheme of constitutional reforms for the State, a bill of rights and a frame of representative political institutions besides a national economic plan and a plan for cultural and educational development. The plan pledged to secure the people of the State, right to equality, right to self-determination, emancipation from oppression, poverty and ignorance and superstition and ensure them participation in the historic resurgence of the peoples of the East and the working masses of the world. The preamble of the plan read:

We, the people of Jammu, Kashmir, Ladakh and the frontier regions, including Poonch and Chinani Ilqas—commonly known as Jammu and Kashmir State—in order to perfect our Union in the fullest equality and self-determination, to raise ourselves and our children for-ever from the abyss of oppression and poverty, degradation and superstition from medieval darkness and ignorance, into the Sunlit valleys of plenty ruled by freedom science and honest toil, in worthy participation of the historic resurgence of the people of the East and the working masses of the World, and in determination to the make this our Country a dazzling gem upon the snowy bosom of Asia, do propose and propound the following constitution of our State.

The Plan embodied a structure of government for the State based on the principle of executive responsibility. The functions

envisaged for the Ruler were those of a constitutional head. The Plan proposed the institution of a political executive constituted of a Council of Ministers which would be headed by the Prime Minister. The Prime Minister and the other members of the Council would be appointed by the Ruler. The administrative powers of the State would be exercised by the Council.

The Plan further proposed the institution of a National Assembly elected by the people of the State, giving one representative to every forty thousand people. The Deputies in the Assembly would be selected on the basis of universal direct franchise and secret ballot. During the transitional period wheritage would be given to Kashmiri Pandits, Sikhs and the Harijans. The Ruler would be vested with the powers to convene ordinary and extra-ordinary sessions of the Assembly, order its dissolution and order fresh elections. The Ruler would also be vested with the power to:

- (i) conduct a referendum on any issue on his initiative or a requisition made by the majority of the members of the National Assembly;
- (ii) declare general and partial mobilisation; and
- (iii) ratify such treaties with the foreign states as were approved by the National Assembly.

In accordance with the plan, the National Assembly would be vested with the powers to legislate on all subjects except those reserved for the Maharaja. The legislative competence of the Assembly would extend to the following subjects:

- (i) representation of the State in its external relations and the conclusion and ratification of treaties;
- (ii) alteration of the boundaries of the State;
- (iii) defence;
- (iv) foreign trade based on state monopolies;
- (v) security of the State;
- (vi) National Economic Plan;
- (vii) administration of banks and industrial establishments;
- (viii) agricultural and trading enterprises;
- (ix) transport and means of communication;
- (x) regulation of currency and monetary credit;

- (xi) state insurance;
- (xii) state loans;
- (xiii) exploitation of the mineral deposits;
- (xiv) forests and river waters;
- (xv) education;
- (xvi) accounting;
- (xvii) labour law;
- (xviii) citizenship and the rights of the aliens;
- (xix) judiciary, legal and civil codes, legal procedure;
- (xx) protection and the development of minorities;
- (xxi) archaeological survey, protection of ancient monuments; and
- (xxii) the residuary subjects.

The plan envisaged an independent judiciary in the State constituted of a High Court with People's Courts at the District and the Tehsil levels. The judges of the High Court would be elected by the National Assembly for a period of five years and the judges of the People's Courts would be appointed by the High Court for a five year term. The People's Courts would be elected by the people's Panchayats for a term of five years. The High Court would be charged with the power to supervise and direct the judicial functions of the other organs of the government.

The most characteristic feature of the Plan was the elaborate enumeration of the rights, the people of the State would be ensured under the constitutional system the Plan provided for. These rights included, the right to equality, the right to freedom of conscience and worship, the right to freedom of speech, the right to freedom of press, right to freedom of 'street processions' and demonstrations, right to privacy of homes and secrecy of correspondence, right to work, right to rest, right to material security in old age, sickness and incapacity, right to education, right to protection of law and the right to move the courts for justice, right to personal property, right of the women to equality of opportunity in all fields of national life and the right to special protection for children and mothers. An interesting aspect of the Bill of Rights, envisaged by the Plan, was the

inclusion of a number of binding obligations to which the people of the State were required to subscribe. These obligations included:

- (i) the duty to defend the Constitution of the State;
- (ii) to carry out the laws of the State;
- (iii) to observe labour discipline, to honestly fulfil social duties and to respect the rules of the community;
- (iv) to work in the State, where work was to be 'an obligation and matter of honour to all citizens capable of work;'
- (v) the defence of the mother land; and
- (vi) compulsory military training and service for all the people of the State.

#### Dyarchy

In 1944, the Maharaja announced by a proclamation that he had decided to appoint two of his Ministers from among the members of the Praja Sabha. The proclamation stipulated that the Praja Sabha would nominate two of its members by vote, one from each province and from each of the major communities represented in the Sabha, to be appointed to the Council. The Ministers were to function as a part of the Council appointed by the Maharaja and were charged to administer matters which were transferred to them. They were responsible to the Maharaja and remained in office during his pleasure. The appointment of the two Ministers from the Praja Sabha was erroneously called dyarchy for actually no sphere of administrative operation was demarcated for the two Ministers, nor were they constituted into a separate structure of political instruments vested with authority defined by statute. Instead the two Ministers were quietly integrated into the Council of Ministers in office. The reserved subjects remained within the exclusive control of the Maharaja and the subjects placed within the administrative competence of the council were administered by the Ministers under the close and strict supervision of the Prime Minister. The structural frame of the Council was compact and closed. The Prime Ministers, who headed the Council were diehard

bureaucrats endowed with little political foresight and were hardly capable of realising the changes that were under way in the country and the consequent necessity to widen the basis of power and authority. Appointed to their office by the Maharaja and dependent upon him they carried out his orders to the best of their capacity.

Praja Sabha nominated Wazir Ganga Ram from Jammu and Mirza Afzal Beg, the Deputy leader of the National Conference Party in the Sabha, to be appointed on the Council of Ministers. Mirza Beg was entrusted with the portfolios of Public Works and Municipalities where as Wazir Ganga Ram was appointed the Minister for Education. No sooner the scheme was implemented than the Prime Minister of the State and the other senior officers, perhaps in crude humour, began to carry the scheme to absurd extremes. The Prime Minister, expeditiously informed the two Ministers that by virtue of being appointed to the ministry they were presumed to constitute a part of the official block in the Sabha and, therefore, were automatically deprived of their right to vote on the floor of the Sabha. Not content with that, the President of the Sabha, by ruling awarded in the Sabha, declared that the two Ministers by virtue of their office were presumed to have lost their elected position in the Sabha. The Maharaja, most probably amused at the mockery the scheme was reduced to, hurried to amend the Constitution Act and reserve the Ministers the grace to retain their representative position in the Sabha and their right to vote.

The entire official block, which included the Prime Minister and the other Ministers, had few illusions about the dual government. Within the structure of the government, the two Ministers were vested with little initiative to influence policy formulation. In fact, the ultimate power with regard to policy decisions continued to remain with the Maharaja and his Council of Ministers. The Council functioned as the instrument to execute the decisions laid down by the Maharaja and the small area of discretions that apparently appeared to be vested with it was subject to the ultimate authority of Ruler. As a matter of fact, the Council of Ministers, constituting the political executive carried out the dictates of the Maharaja and it is here that Maharaja, as well as the members of the Praja Sabha failed to

realise that the extremes, they represented, could not be reconciled.

The dual government was fraught with many inherent contradictions and procedural defects. The two Ministers, appointed to the Council on the mandate of the Praja Sabha, were bound in their responsibility to both the Maharaja and the Sabha. The Ministers, apparently charged to carry out the mandate of the Sabha, were in the effect placed with in the ring-fence constituted of the official block inside the Sabha. In the Council, the two Ministers represented a distinctly different outlook which could by no means be reconciled to the policy lines the other Ministers followed.

Not only were the two ministers denied initiative in the formulation of the administrative policy, they were also deprived of the technical opratives necessary for their function. Beg addressed a number of representations to the Prime Minister strongly pleading for the allocation of a separate secretarial staff for his ministry. In a number of meetings with the Prime Minister, Beg brought it to his notice, that his work was hampered for want of the necessary service staff and the existing process of operating through the Home Secretariat and Revenue Secretariat was obstructive. The Prime Minister turned a deaf ear to the remonstrations Beg made. Beg made several representations to Pandit Ram Chandra Kak also when Kak was appointed the Prime Minister of the State. After protracted negotiations which spread over a number of months,<sup>11</sup> Kak accepted Beg's proposals in principle and offered to bifurcate the Home Secretariat and put one of the wings under the Minister for Public Works and Municipalities. Kak did not implement the proposal. Tired and frustrated the Conference Minister wrote to Kak:

Soon after my assumption of office anomalous position with respect to P.W.M. came to light. Where as every other Minister of the Government has a Secretariat of his own over which he exercises complete administrative control, such is not the case with the P.W.M. He has no secretariat

<sup>11</sup> Mirza Afzal Beg to Pandit Ram Chandra Kak, Dated 21st August, 1945.

attached to him or responsible to him. At present he works through the Home, Revenue and Development Secretariats, none of which is affiliated to him. He hoped that after his appointment by His Highness the consequential changes would be effected by the Government but as things turned out no action was taken. After a thorough discussion with your Hon'ble Predecessor-in-Office who realised the difficulties and recognised the need of a separate Secretariat in the case of P.W.M. the latter sent in a memorandum on 28-12-1944. Prompted by desire, which he was confident, that his other Hon'ble Colleagues shared with him, of making the experiment so graciously introduced by our benign Ruler of associating his subjects with the governance of the State successful, the P. W. M. requested that any possible difficulties in that direction should be forthwith removed. But unfortunately the proposal made no headway until Sir B.N. the former Prime Minister relinquished office.

After assumption of office by you the matter was brought to your notice in verbal discussion and ultimately a written request was made under my No. 215-P/45 dated 21st August 1945, in which the original proposal for creating a small Secretariat was repeated. In spite of repeated requests made verbally to you, no tangible result has followed. On 13th December, 1945, during a personal discussion on the issue you expressed your readiness to make a sort of adjustment by bifurcating the Home Secretariat in two branches—each under H. H. M. and P. W. M. But even this halfway measure, though falling far short of my original request, has not fructified.<sup>12</sup>

The Prime Minister was evasive. In fact, Secretariat was a closely knit bureaucratic organisation committed to the regime. It could not place any operational opportunities at the disposal of the two Ministers. The Prime Minister expressed the inability of the Government to take any purposeful action. In vain and wasteful argument, he wrote to Beg:

<sup>12</sup> Mirza Afzal Beg to Pandit Ram Chandra Kak, Dated 15th January, 1946.

With regard to the question of Secretariat as you are aware, for the last several years, the Secretariats have been of a composite character and each Minister has to deal with several Secretaries and Secretariats.

So long as the, number of Ministers coincided with that of Secretaries, though an anomalous one, it could continue without much difficulty, but with the increase in the number of Ministers its inherent defects became immediately noticeable. When you mentioned the matter to me, I explained how undesirable it would be to create and retrench Secretariats as circumstances necessitated increase or decrease in the number of Ministers, I added that in British Indian Provinces and in certain Indian States Secretariats remained constant while the number of Ministers, varied as circumstances demanded. When the Secretariats were reorganised in 1939 and the posts of Secretaries were made tenure appointments, the allocation of departments among the Secretariats no longer continued to be identical with the portfolios of the Ministers who controlled them. In the circumstances the logical course would have been to combine the Secretariats for purposes of administration though they might continue to function under the Ministers in respect of the performance of their appointed duties. I however, offered, as a purely temporary measure, to place under you the Public Works Secretariat with either the Secretary or the Assistant Secretary. You preferred the Secretary—for all purpose in the same manner as other Secretariats where under other Ministers. You accepted the suggestion but pressed that the establishment in other Secretariats dealing with the departments under you should also be transferred to this Secretariat. This, however, would have meant going back to the system which had been discarded in 1939 after detailed consideration and it was therefore, impracticable when the order was drafted to implement the suggestion made by me, the Chief Secretary informed me that he understood that the arrangement would not be acceptable to you. The only solution, therefore, was the logical one, namely that of placing all Secretariats for purposes of administration under one authority. A proposal was accordingly submitted to Council

and received the support of the other Ministers. Orders have since been passed and your position is exactly that of your colleagues with reference to the Secretariat. Moreover you have Personal Assistant which the other three Ministers have not.<sup>13</sup>

The most serious anomaly which came to surface shortly after the institution of the dual government and which ultimately wrecked it, was the problem of the position, the popular Ministers enjoyed in the Sabha. Beg claimed the right to freedom of speech on the floor of the Sabha and the right to vote against an official measure, whenever that was deemed necessary. A workable arrangement was evolved during the tenure of Sir Maharaja Singh and it was agreed that the two Ministers would retain the right to free expression in the Sabha and also their right to vote against an official resolution. In fact, things moved smoothly in the Sabha and no occasion arose when the two sides had to fall out and confront each other on the floor of the Sabha. In 1945, however, difficulties cropped up again when Pandit Ram Chandra Kak refused to follow the procedure laid down by his predecessors and informed Beg that he would not only expect the two Ministers to vote in favour of every official measure that came up before the Sabha, but he would also expect them to desist from expressing themselves against any official motion tabled in the Sabha. The Prime Minister insisted that the Council of Ministers he headed, should function as a cohesive and compact structure. The two Ministers, he conceded, could dissent from the official policies of the Government in the Council, but once decisions had been taken they were bound to submit to the line laid down by the majority in the Council and support it in the Sabha. The Prime Minister, obviously, had enough logical justification for the stand he took. Any departure from what he required the two Ministers to do in the Sabha, would inevitably lead to the break up of the Council in diametrically opposite factions, each fighting with the other inside the Council and on the floor of the Sabha, a situation

<sup>13</sup> Pandit Ram Chandra Kak to Mirza Afzal Beg, Dated 12th February, 1946.

which no Prime Minister would prefer to preside over. Not only would such an eventuality hamper the conduct of the government, particularly with regard to the administration of the subjects put in charge of the two Ministers but would seriously jeopardise the function of the Council and undo its solidarity and secrecy.

The Prime Minister wrote to Mirza Afzal Beg:

With regard to the question of voting and this applies also to speaking-it is not possible to allow an individual member of the Government to act in a manner which is at variance with the policy of the Government. No Government can satisfactorily be carried on this basis. The position that may arise in case such freedom of action is recognised has only to be stated to demonstrate how untenable it is. For example, if your suggestions were accepted, five members of the Government would on occasion be divided into three units each pulling in a different direction. This you will surely agree would be a Ludicrous and anomalous position which would be fatal to the success of the experiment initiated by His Highness. Every Minister can, of course (as both you and Wazir Gangaram have done repeatedly) advocate and influence policies within the Council.<sup>14</sup>

In spite of the technical reasons the Prime Minister had to persuade the two Ministers to support the Council in the Sabha, he overlooked the fact that his policy would eventually force the two Ministers into helpless subordination in the Council as well as the Sabha. He knew well that the two Ministers, for the object minority they were in, could never alter or influence the policies adopted by the official block. The only course, they were left open, was therefore, to stand by the Prime Minister in whatever he did, a position which they would never be able to accept. Pandit Ram Chandra Kak refused to recognise that the two Ministers were not only

<sup>14</sup> Pandit Ram Chandra Kak to Mirza Afzal Beg, Dated, 14th March, 1946.

the accredited nominees of the Sabha but also the elected representatives of the people who had returned them to the Sabha. The National Conference, which constituted the largest elected group in the Sabha had its own commitments to fulfil. Its nominee in the Council could not abnegate from his rightful function and could not submit to any official decision, which contravened the primary purposes the Conference sought to achieve. The Prime Minister ignored the political implications of the dual government, and in that respect destroyed the little substance the structure still had. Mirza Afzal Beg clarified the issues involved when he wrote to the Prime Minister:

The intention underlying the Proclamation is the effective association of His Highness' subjects in the Government of the State. The direction in the Proclamation that official block in the Assembly was not to participate in the proceedings relating to selection of members to the panel, clearly indicated that officials should not influence the decision of the Assembly. This ensured that the representatives of the people-according to the Assembly-should largely determine the appointment of Ministers. Thus to the advice of Ministers so selected considerable weight attaches in matters of public importance and to my mind this cannot be lost sight of in the disposal of questions pertaining to the administration. An earnest attempt to accommodate their view point should be forthcoming and it cannot be brushed aside totally simply because majority take a different view on any issue before the Council. The position taken that 'If the decision of the majority in the Council goes against the member, he has to accept and endorse the policy of Government', I am afraid, does not strictly stand.

In the appointment of Ministers of Council, as at present constituted, His Highness has adopted two different and distinct methods. Where in the case of Popular Ministers they are elected in the prescribed manner and are eligible for reappointment only if they remain members of the Praja Sabha, such is not the case with other Ministers. That is His Highness' Command. While implementing it, earnest effort should be made by us all to avoid possibilities

which will land the elected Ministers in embarrassments and positions of no-confidence by public. Whoever is appointed as a Popular Minister under the present system must according to the spirit of the Proclamation retain public confidence which can be only retained if the popular view point as expressed by such Ministers is given due weight to. On the contrary; if the decisions of the Council are to be taken by actual voting, the Popular Ministers surely will find themselves in minority in the Council, even if they always vote together. In such a contingency these Ministers have to bear the brunt of public criticism, which the other Ministers can afford to ignore. Should such an issue be an important one, may I ask how these Ministers can continue to enjoy public confidence, especially when you except them not to express even their individual opinion by means of vote on the floor of the Praja Sabha. There have been occasions on which I differed from the view taken by my other colleagues in Council and if I am not even allowed by the Government to vote in favour of that view I feel that it is not only suppression of opinion but will also lead to consequences directly in conflict with the spirit of the Royal Proclamation.<sup>15</sup>

It is difficult to locate the plausible reasons which prompted the Conference leadership to operate dyarchy and accept office under the proclamation. The Conference took some time to realise that dyarchy was organised puppetry and the two representatives of the Praja Sabha were posted in the ministerial column of the Maharaja to serve him, rather than carry out the mandate of the Sabha or implement the policy plans the Conference idealised. Dyarchy did not only operate to contain the Conference Representative in the Council, but scandalised his position in the Sabha.

The Conference representative achieved little while he remained in office, except, of course the handsome honorarium that he collected from the State treasury and pocketed with much impunity. The Government was far from prepared to allow its policy formulation to be influenced by the Ministers

<sup>15</sup> Mirza Afzal Beg to Pandit Ram Chandra Kak, February, 23, 1946.

nominated by the Sabha or permit any change in the ultimate direction its decision making took and the operatives its discretion flowed into.

An oblique warning, cleverly conveyed to the Conference Minister by Pandit Ram Chandra Kak clinched the issue. The Prime Minister informed Mirza Afzal Beg that the Conference representative had been appointed to his office on the support he received from the entire Sabha and therefore he was answerable to all the different groups which constituted the non-official block and was supposed to bear the burden of the entire Sabha for the Maharaja. Perhaps, half-mindful of what responsibility in the legislature entailed the Prime Minister wrote to Mirza Afzal Beg:

I trust that I have made the whole position clear to you. I should like to add that you were selected in consideration of support which members of the Sabha, majority of them widely differing from the policies favoured by your group, gave you. It was and is His Highness's hope and aim and this was generally recognised by the members of Sabha and by the members outside your group who supported you, that the Ministers selected from amongst the members of the Praja-Sabha act in the common interest of all; and by influencing the decision of the Government on the one hand and by explaining to the people the aims and objects of the policies of the Government and the difficulties confronting it on the other, promote an "entente cordiale" which would benefit the State as a whole, I sincerely trust that this hope will still be fulfilled.<sup>16</sup>

The communication conveyed more than what Mirza Afzal Beg could bear. Fantastic and vituperous in content, the communication of the Prime Minister, in effect, reduced the two Ministers to the position of mercenary agents not only of the political factions which they did not represent and lead but also of the official block in the Sabha and the Council of Ministers outside it. Three days after Mirza Afzal Beg received

<sup>16</sup> Pandit Ram Chandra Kak to Mirza Afzal Beg, dated 14th March, 1946.

the Prime Minister minute, he offered to resign and requested to be relieved of his office immediately.<sup>17</sup> On 19th of March, his resignation was accepted.<sup>18</sup>

As the Conference representative withdrew the Government struck back. Shortly after, Beg was relieved of his office, the Government secretly offered the ministerial office to Mian Ahmad Yar, the leader of the National Conference party in the Sabha. Ahmad Yar was a veteran nationalist, who had led the Muslim Conference group in the Sabha before it was converted into National Conference and after that, the National Conference legislative party. However, when dyarchy was instituted he was by-passed by the Conference leaders and Mirza Afzal Beg was nominated for the office instead. Obviously Ahmad Yar did not forgive the Conference leaders for what they had done to him. He accepted the offer made by the Government and joined the Ministerial Council of the Maharaja. The appointment of Ahmad Yar was a debacle for the Conference. Desperate and angry the Conference leaders charged Pandit Ram Chandra Kak of conspiracy to push out Mirza Afzal Beg from the Government and break up the Conference.<sup>19</sup>

The option, the State Government utilised to appoint Mian Ahmad Yar to the Ministerial Council ended the 'entente cordiale' between the Government and the National Conference. The Conference charged the Government of breach of faith. The allegation was not false. The proclamation which envisaged dyarchy was apparently an endeavour to secure the participation of elected representatives in the administration of the State. It did not envisage any political responsibility. It gave no initiative to the Ministers appointed from among the members of the Praja Sabha nor did it vest with them any area of administrative discretion. There was a wide difference between what the Ministers demanded to perform and what the Government permitted them to undertake and it was only inevitable that the conflict ingrained in the

<sup>17</sup> Mirza Afzal Beg to Ram Chandra Kak, dated, 17th March, 1946.

<sup>18</sup> Pandit Ram Chandra Kak to Mirza Afzal Beg, dated, 19th March, 1946.

<sup>19</sup> Khudmat, dated, 19th April, 20th April, 21st April, 1938.

structure come to surface. But the strategy, the Maharaja and his Government adopted to perpetuate the dual government, alienated whatever little favour the Conference cadres still harboured for the Dynasty and the regime. If the Maharaja had not sought to implement a promise which he knew was hollow, perhaps many of the events which led to the "Quit Kashmir" movement and its fateful consequences would have been avoided.

The Government headed by Pandit Ram Chandra Kak, convinced that it had struck a severe blow to the prestige of the Conference and possibly sown dissension among its ranks, overlooked the fact that a potential political movement, represented in the institutions established by the Maharaja was a more secure guarantee to ensure a constructive political development in the State. By the time dyarchy reached its end, the national movement in India had already entered the most decisive phase of its development. The confrontation, which the Government wilfully pushed itself in against the National Conference, actually eroded the ground from under the Dogras. The appointment of Ahmad Yar was political blackmail, duplicity and crude trickery and drove the Government, headed by Pandit Ram Chandra Kak, straight and direct to its nemesis.

#### Cabinet Mission

While the tragic drama, which led to the resignation of Mirza Afzal Beg was being enacted in the State, events of far-reaching importance were taking shape in India. On 15th of March 1946, the British Prime Minister, Clement Attlee, made an announcement in the House of Commons that the British Government had decided to send a high power Cabinet Mission to India to find a solution of the Indian problem. The Secretary of the State for India, Lord Pathic Lawrence, the President of the Board of Trade, Sir Stafford Cripps and the First Lord of Admiralty, A.V. Alexander were appointed on the Mission. The Mission arrived in India on 23th of March, 1946, a week after Mirza Afzal Beg had been driven out of the Government. The members of the Mission conducted extensive discussions with the Indian leaders,

officials of the Indian Government and the representatives of the States. The Mission, finally presented a scheme to the Indian leaders, which it believed, could form a basis for the future constitutional set up in India. The scheme envisaged that:

1. One Union of India would be constituted of both the British Indian Provinces and the Indian States. The Union Government would be vested with the powers to deal with foreign affairs, defence and communications.
2. Residuary powers would be retained by the Provinces;
3. The Indian States would have the option to accede to the union and those States which acceded, would retain all the powers other than those delegated to the Union.
4. The Provinces would be free from groups and each group would be entitled to determine the provincial subjects to be taken for consideration.
5. The Constitution of the Union and the groups would include provisions, according to which any province could, by a majority vote of its Legislative Assembly, call for reconsideration of the terms of the Constitution after an initial period of ten years and at ten yearly intervals after that.

The Cabinet Mission laid down in elaborate detail, the procedure according to which the Constitution would be framed. The Mission proposed the institution of a Constituent Assembly which would represent the Provinces as well as the States. In view of the absence of adult suffrage, widespread differences in the numerical strength of the Legislative Assemblies and the absurd proportions of weightage given to the various communities in these Assemblies, the determination of the composition of the Constituent Assembly proved to be a difficult task. After examining the various alternatives, the Mission fixed the total strength of the Constituent Assembly at 384 members. Each Province was to be allotted the number of the seats proportional to its population, roughly in a ratio of one to a million. The Provincial allocation was to be



distributed between the three main communities, the Hindus, the Sikhs and the Muslims, in proportion to their population. The Chief Commissioners Provinces were to be given four representatives in total. The Indian States were allotted ninety three seats in the Assembly. The exact method of their selection and deputation was to be settled by consultation.

While the Cabinet Mission refused to recognise any contention for the division of India and the separation of the Muslim majority provinces, it did not follow a similar line of approach with regard to the States. The Mission clearly indicated that the British Government would neither retain the powers of Paramountcy nor transfer Paramountcy to the proposed Union. The Cabinet Mission underlined the lapse of Paramountcy and the right of the Princes to accede to the Union or assume technical independence upon the withdrawal of Paramountcy. The Cabinet Mission plan, with whatever merits it had, left the door open for the provinces as well as the States to stumble out of the Union of India.

When a new fully self-governing or independent Government or Governments come into being in British India, His Majesty's Government's influence with these Governments will not be such as to enable them to carry out the obligations of Paramountcy. Moreover, they cannot contemplate that the British troops will be retained in India for this purpose. Thus in logical sequence and in view of the desire expressed to them on behalf of the Indian States His Majesty's Government will cease to exercise the rights of Paramountcy. This means that the right of the States which flow from their relationship with the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the States. Political arrangements between the States on one side and the British Crown and British India on the other will thus be brought to an end. The void will have to be filled either by the States entering into federal relationship with the successor Government or Governments in British India or failing that, entering into the particular political arrangements with it or them.

The Princes were, in fact, invited by the Mission to participate in the negotiations conducted to devise the machinery for constitution making. The Mission discussed various issues with the Chancellor of the Princes, the Nawab of Bhopal and the other rulers among whom were the rulers of Patiala, Bikaner, Nawanagar and Bilaspur and the representatives of the rulers of Travancore, Jaipur and Hyderabad. During their negotiations with the Mission the Princes insisted on the arrangements which would secure them their position and preserve the power and prestige they enjoyed in the British colonial structure. The Princes strongly opposed the British plan to withdraw the protection the Princes enjoyed under the Paramountcy, and vigorously advocated its preservation. They expressed their stubborn reluctance to accept any changes in the relations they had with the Indian Government or introduce constitutional reforms in their States which would impose any limitations on their prerogatives.<sup>20</sup>

The Cabinet Mission Plan, envisaged the institution of an Interim Government which would be constituted with the support of all the major parties in India. Lord Wavell who was entrusted with the task of negotiating a settlement on the Interim Government, held long and protracted discussions with the leaders of the Muslim League and the Congress. The League was dead set to defeat the efforts to carry out the proposals made by the Cabinet Mission particularly those with regard to the formation of the Interim Government.

On 29th July, the Muslim League delivered the first offensive when by a resolution it withdrew the support it had extended to the Cabinet Mission Plan and rejected the possibility of its association with any Interim Government which would be instituted at the centre. By the same resolution the League ignited the power leg it had preserved for years to be used against the Congress at the appropriate time. The resolution called upon the Muslims in India to launch "Direct Action" for the achievement of the Pakistan on 16th of August 1946. That was the beginning of the end.

In spite of the inability of the League to come to an agreement with regard to the formation of Interim Government, the

<sup>20</sup> R.L. Hand, *Freedom Struggle in Princely States*, p.p. 288-95.

Interim Government was formed in September. The League did not join it. Wavell, however called the League leaders to join. Finally, the League accepted to join the Government but refused to change its position with regard to the Constituent Assembly. The Congress leaders asked the Viceroy to secure specific assurance from the League that it would join the Government as well as the Constituent Assembly. Wavell assured the Congress leaders that 'League would come into the Government and the Constituent Assembly with the intention of cooperating.' League joined the Government on October 26. However, when the Viceroy invited the members of the Constituent Assembly elected by the Provincial Legislative Assemblies to the first session of the Constituent Assembly, the League refused to join. The Interim Government met the fate it deserved.

### Quit Kashmir

After the crisis in Dyarchy and the resignation of Mirza Afzal Beg from the Ministry, the State Government gradually stiffened its attitude towards the National Conference. The shift in the policies of the Government, unmistakably reflected the impact, the Cabinet Mission proposals had on the Princes. Sheikh Mohamad Abdullah, the President of the National Conference sent a long telegram to the Mission, stating the principles, which the Conference desired the Mission to adopt in regard to Kashmir. The telegram read:

As President, All Jammu and Kashmir National Conference representing all communities and classes of people inhabiting Jammu and Kashmir State I welcome your visit to our State and hope that it will usher in a new era of freedom both political and economic for four million State people. As Mission is at moment reviewing relationship of Princes with the Paramount Power with reference to treaty rights we wish to submit that for us in Kashmir re-examination of this relationship is vital matter because hundred years ago in 1846 land and people of Kashmir were sold away to servitude of Dogra House by British for seventy five lacs of Sikh rupees equivalent to fifty lakhs of British Indian rupees.

Then Government of Kashmir resisted transfer, but was finally reduced to subjection with aid of British. Thus sale deed of 1846 misnamed treaty of Amritsar sealed fate of Kashmir masses. We declare to world that the sale deed confers no privileges equivalent to those claimed by States governed by treaty rights. As such case of Kashmir stands on unique footing and people of Kashmir press on Mission their unchallengeable claims to freedom on withdrawal of British power from India. We wish to declare that no sale deed however sacrosanct can condemn more than four million men and women to servitude of an autocrat when will to live under this rule is no longer there. People of Kashmir are determined to mould their own destiny and we appeal to Mission to recognise justice and strength of our cause.

Meanwhile tension continued to mount in the State. Stormy protests and demonstrations were organised by the National Conference against the appointment of Ahmad Yar. Appeals and entreaties were made to him to resign from his office and when he did not, he was asked to resign from the Praja Sabha for having lost the confidence of his electors. Finally Ahmad Yar was expelled from the National Conference.<sup>21</sup>

Sheikh Mohammad Abdullah, who had gone to Delhi to attend the meeting of the Standing Committee of the States and People Conference and also to discuss with the Congress leaders, the issues arising out of the Cabinet Mission, returned to Srinagar on 3rd May, 1946. He found Srinagar in a State of crisis. Three days after, Sheikh Mohammad Abdullah lashed out at the Government of the State and accused it of having conspired to scuttle dyarchy and undermine the movement for self-rule in the State. He called upon the people to prepare for the last phase of their struggle against the Dogras.<sup>22</sup> In another speech, which Sheikh Mohamad Abdullah delivered in Srinagar on 10th of May, he delivered a sharper attack on the Dogras.

<sup>21</sup> Khidmat, dated, 21st April, 1946.

<sup>22</sup> Speech delivered in vernacular, Khidmat May 8, 1946.

We have struggled for self-government for the last sixteen years but our protests have been ignored. We have realised the truth now. We are slaves and we have no rights. We have been purchased by the Dogras for a very small sum. In spite of our repeated request that the administration of the country be entrusted to the people, the Government of the State always remained unmoved. The Maharaja issued a proclamation that he would appoint two representatives of the people on his Cabinet. We accepted to work out the spirit of the proclamation and deputed our representative to the Cabinet. Pandit Ram Chandra Kak, however, opened our eyes and made us to see the fraud that had been perpetrated on us.

The Treaty of Amritsar has no legal validity. The Englishmen are preparing to leave India with their bag and baggage. The Treaty has lost its basis.<sup>23</sup>

The speech marked the beginning of the famous "Quit Kashmir" movement. Sardar Budh Singh was recalled to Srinagar from Batote where he was leading the agitation in the Jagir of Chenani, a jurisdictional fief held in perpetual and personal possession by the Raja of Chenani. On 20th May, Sheikh Mohammad Abdullah was arrested while he was on way to Delhi. Within a day, the entire leadership of the Conference was interned. Thereafter, a wild manhunt for the other ranks of the Conference was put into operation. Troops were deployed all over the major towns of the State to maintain peace and order. At many places, they had to open fire to disperse angry demonstrators.

The "Quit Kashmir" agitation and the consequent confrontation between the State Government and the National Conference cadres had many political implications. At the critical time when the future of India was on the anvil, the political upheaval in the State and the bid of the State Government to liquidate the National Conference, the only stabilising factor in the State politics, was bound to effect, the delicate balance of forces, the Congress, made efforts to maintain in the States.<sup>24</sup>

In fact, the Muslim League quickly seized the opportunity. It attacked the National Conference and secretly assured the State Government of its support against the Conference.<sup>25</sup> On June 2, the States People's Conference, Regional Organisations, Regional Councils, Praja Mandals, Lok Parishads and the State Congress branches all over the country, organised protest meetings in support of the people of Kashmir.<sup>26</sup> The President of the States People's Conference, Pandit Nehru, gave a call to collect funds and raise volunteers for Kashmir. Later the General Council of the State People's Conference passed a resolution which expressed solidarity with the people of Kashmir in their struggle for freedom and authorised the President of the Conference to take such steps as he would consider necessary to deal with the situation in Kashmir.<sup>27</sup> On June 13, Nehru issued a statement in which he expressed his resolve to bring about a peaceful settlement of the trouble in Kashmir. The next day, Nehru informed the Maharaja telegraphically, that he had decided to come to Srinagar to help in ending the complicated situation in the State.<sup>28</sup> The Maharaja spurned the offer, Nehru made, and in reply told him that his visit would further complicate the issues and therefore, it would not be advisable for him to come to Srinagar.<sup>29</sup> Nehru sent another telegraphic message to the Maharaja and asked him to reconsider the decision he had taken.<sup>30</sup> Hari Singh refused to yield.<sup>31</sup> On June 16, Nehru wrote a long letter to the Maharaja in which he expressed his anxiety at the happenings in the State. He pleaded for a peaceful settlement of the problems facing the State. He wrote:

I hope to reach Srinagar together with Mr. Asaf Ali, Diwan Chaman Lal and Mr. Baldev Sahai, Ex-Advocate General of Bihar on the 19th evening by car from Rawal-

<sup>23</sup> Statesman 12th June, 1946.

<sup>24</sup> J.L. Nehru, Statement, May 27, 1946.

<sup>25</sup> Resolution of the All India States People's Conference.

<sup>26</sup> Nehru to Hari Singh, 14th June, 1946.

<sup>27</sup> Hari Singh to Nehru dated, 17th June, 1946.

<sup>28</sup> Nehru to Hari Singh, dated, 17th June, 1946.

<sup>29</sup> Hari Singh to Nehru, Telegram, dated, 17th June, 1946.

<sup>23</sup> Translated from vernacular, Khidmat, May 11, 1946.

<sup>24</sup> Statesman, 23rd May, 1946.

pindi. The immediate object of our going there is to arrange for Sheikh Mohamad Abdullah's defence in the trial that has been fixed for June 21. I am much more concerned, however, as I have no doubt, you are also, with the general situation in Kashmir of which this trial is only a part. I should very much like to be of some help in the solution of the problems that have arisen there. My main object in going is to endeavour to do so. I want, as you must also desire, peace and development in Kashmir State. I feel, however, that it will not be possible, to return to normality and peace unless these trials are withdrawn and Sheikh Abdullah and his colleagues are released. Naturally, the present agitation, that is still continuing in some form or other in Kashmir, should also be stopped at the same time. This action will result in a proper and peaceful consideration of various problems which those interested in Kashmir, have to face. I have therefore, requested you in my telegram and I would like to repeat the request here that Sheikh Abdullah and others be released. As you are no doubt aware: Sheikh Abdullah was on his way to consult me here in Delhi when he was arrested. As soon as he is released, we can confer together and endeavour to devise means which lead to a proper settlement.

Referring to the importance of a peaceful settlement of the problems facing the State, Nehru wrote:

The problem of Kashmir is important enough by itself and some of us are intensely interested in it. At the present moment, however, it has additional importance in the whole context of Indian States. The Constituent Assembly is likely to come into being soon and each State and, more especially, the major States, will have to consider representation in this Assembly. You are, I presume, aware of the popular demand put forward both by the Indian National Congress and the All India States people's Conference that representation in the Constituent Assembly should be by means of representatives elected by the people. All these and similar problems have to be faced very soon. It is obvious that the difficulty inherent in these problems will be

greatly increased if the situation in Kashmir is abnormal and the State is in conflict with the popular organisation there.<sup>32</sup>

The letter was delivered to the Maharaja on the morning of 19th May. The same day Nehru reached Kohalla, a border outpost on the Rawalpindi—Srinagar road. Before, however, Nehru could cross into the State borders, the District Magistrate of Srinagar, handed over to him, an order, prohibiting him to enter the State. Barricades were thrown up across the road and a platoon of Dogra troops, with mounted byonets lined behind. Bewildered and outraged, Nehru broke through the barricades and the cordon of the troops.<sup>33</sup> Late in the night, he was put under arrest at Domel, a wayside station on the road to Srinagar, thirty miles inside the border. The news of Nehru's arrest spread like wild fire. Wavell put himself in touch with the Maharaja. The next day, Maulana Abdul Kalam Azad instructed Nehru to return to Delhi. He sent a telegram to the Maharaja urging him to postpone the trial of Abdullah so that Pandit Nehru could return to Delhi where his presence was urgently needed.<sup>34</sup> Hari Singh sent him the following reply:<sup>35</sup>

There is nothing to prevent Nehru from returning whenever he wishes to return. There was never any intention of detaining him here, if he wanted to return. As far as the issue of orders for postponement of case, as suggested by you, is concerned, such course is not possible, as the case is in the hands of independent judiciary. I assure you, my Government will not oppose grant by any court of a reasonable postponement requested by defence. Your telegram to Nehru had been wirelessed to him. Original forwarded by special messenger. All facilities will be provided to enable him to return to Rawalpindi the moment he decides to do so. In fact one of my cars is at his disposal.

<sup>32</sup> Nehru to Hari Singh, Dated, 16th June, 1946.

<sup>33</sup> The Tribune, 21st May, 1946.

<sup>34</sup> Maulana Abdul Kalam Azad to Hari Singh, Dated, 21st June, 1946.

<sup>35</sup> Hari Singh to Maulana Abdul Kalam Azad, Dated, 21st June, 1946.

Subsequently Nehru returned to Delhi.

Inside the State, the Conference leaders were tried for sedition and treason and sentenced to various terms of imprisonment. Slowly the movement was smothered down. For conspiracy to overthrow the Government Sheikh Mohamad Abdullah was sentenced to imprisonment for nine years. In his defence in the court Sheikh Mohamad Abdullah said:

Oppressed by the extreme poverty and lack of freedom and opportunity of the People of Jammu and Kashmir State, I and my colleagues of the Jammu and Kashmir National Conference, many of whom are behind prison bars or in exile today, have humbly sought to serve them during the past sixteen years. We have endeavoured to give faithful expression to the growing consciousness among the people of their imprescriptable rights, aspirations and desire for freedom. This has attracted the penal and preventive provisions of law, where law is not based on the will of the people, it can lend itself of the suppression of their aspirations. Such law has no moral validity even though it may be enforced for a while. There is a law higher than that, the law that represents the people's will and secures their well-being, and there is the tribunal of human conscience, which judges the rulers and the ruled alike by standards which do not change by the arbitrary will of the most powerful. To that law I gladly submit and that tribunal I shall face with confidence and without fear, leaving it to history and posterity to pronounce their verdict on the claims I and my colleagues have made not merely on behalf of the four million people of Jammu and Kashmir but also of the ninety-three million people of all the States of India. That claim has not been confined to the people of a particular race, or religion or colour. It applies to all, for I hold that humanity as a whole is indivisible by such barriers and human rights must always prevail. The fundamental rights of all men and women to live and act as free beings, to make laws and fashion their political, social and economic fabric, so that they may advance the cause of human freedom and progress, are inherent and

cannot be denied though they may be suppressed for a while. I hold that sovereignty resides in the people, all relationships political social and economic, derive authority from the collective will of the people.

In August, the State Government decided to hold elections to the Praja Sabha. The National Conference, which was still reeling under the severe blow, it had received after the "Quit Kashmir" agitation joined the contest.<sup>36</sup> A Central Parliamentary Board was constituted by the Conference to conduct its election campaign. On its part, the Government continued to build pressure on the Conference and undermine its position. Most of the Conference cadres were arrested and imprisoned. In the villages and the towns, the local Election Committees of the Conference, were broken up and their members jailed.<sup>37</sup> Apparently, a logical sequence of what the Government had done to crush the "Quit Kashmir" movement, the policy of the Government to undo the National Conference, was abjectly shortsighted. National Conference was the only stabilising force, in the otherwise a very sensitive and uneven political balance, the Dogras were poised upon, a fact, which the Dogras refused to recognise. The Muslim Conference was committed to the ideals espoused by the Muslim League and supported the partition of India and the separation of the Muslims majority areas into an independent State. The Dogras failed to realise the strategic and political dangers, the State would have to face, in case the League demand for partition was accepted and the Punjab became Pakistan. The conservative sections among the minorities, the petty interests in land and the small political factions, such as the Kisan Conference and the Socialist Party, which survived on State subsidy: could hardly play any effective role in the State politics.

The Muslim Conference had its own problems. In October, the Muslim Conference decided to convene its annual session in Srinagar. The Conference had silently watched the great drama in which the Nationalists had come to a head-on colli-

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

sion with the Government. Within itself, however, the Muslim Conference had broken into factions of diverse loyalties. The Conference had adopted the 'Direct Action' resolution of the Muslim League and appointed an Action Committee, under the presidentship of Moulvi Yousuf Shah to lead the 'Direct Action' campaign. Behind the scene, however, a sizeable section of the Conference leadership had disfavoured the adoption of the resolution. The situation came to a head when the Government refused to allow the Muslim Conference leaders to hold the annual session of the Conference in Srinagar. The Conference leaders launched a feeble agitation which perished out in day.<sup>38</sup>

Chowdhry Gulam Abbas, along with a few more Conference cadres was taken into custody. Chowdhry Hamid Ullah was appointed the Acting President of the Conference. Hamidullah lost no time to accuse Moulvi Yousuf Shah for the debacle the agitation had met. Hamidullah, however, wielded little influence over the Conference cadres and, therefore, could not bring them round to rally again. A long controversy ensued. With that the Conference began to disintegrate.<sup>39</sup>

As the elections to the Praja Sabha drew near, the Government moved surreptitiously to undermine the National Conference. On November 17, the Central Election Board of the Conference was broken up and its members taken into custody. On November 20, Bakhshi Ghulam Mohamad, the Acting President of the Conference issued a statement in Lahore, which called upon the Government to put an end to its repressive policies and allow the conditions in the State to normalise in view of the forthcoming elections to the Praja Sabha. Bakhshi Gulam Mohamad underlined three conditions which were necessary for the settlement of the political crisis in the State. They were:

- (i) immediate release of all political detainees and prisoners;
- (ii) the institution of a Constituent Assembly in the State to frame a new constitution; and
- (iii) the recognition of safeguards for the cultural, religious

<sup>38</sup> Eastern Times, 5th October, 1946; Statesman 27th October, 1946.

<sup>39</sup> Hindustan Times, 3rd November, 1946.

and linguistic interests of the minorities in the State.<sup>40</sup>

The State Government was in no mood to stabilise its relations with the National Conference. It intensified its activities against the Conference. In the last week of November, the Government issued a notification which fixed January 4, the date on which the elections to the Sabha would be held. The nomination papers were scrutinised on 19th December. Most of the nomination papers filed by the National Conference were rejected on one pretext or the other. Eight nomination papers had been filed by the members of the National Conference against Mian Ahmad Yar. All the eight were declared invalid and Ahmad Yar was returned unopposed to the Sabha.<sup>41</sup> The same day Bakhshi Gulam Mohamad denounced the action of the Government and announced the decision of the Conference to boycott the elections.

A day after, the Standing Committee of the States People's Conference met in Delhi under the presidentship of Pattabi Sitaramaya. Pandit Nehru also participated in the deliberations of the Committee. The Committee adopted a resolution to endorse the decision of the National Conference to boycott the elections to the Praja Sabha.

<sup>40</sup> Khidmat, November, 20, 1947.

<sup>41</sup> *Ibid.*, 23-24 December, 1947. see also *Kashmir Demands Freedom and Plebiscite* Published by Sham Lal Konl, office of the Kashmir Publicity Committee, G. p. 11-13.

## Chapter 8

## Independence And After

## Interim Government

In 1947, the British decided to quit India. Along with the other Princely States, Jammu and Kashmir was also released from the operation of the British Paramountcy. The Princes were hardly in a position to retain the technical independence, they achieved. Since, the British were neither prepared to recognise the States as Dominions nor carry out any obligations the Paramountcy entailed, it was clear that the Princes were left with the sole option to accede to one of the two Dominions. Maharaja Hari Singh followed a policy of biding time, and did not accede to either of the Dominions till power was transferred to the Indian hands. It is difficult to locate the political factors which prompted the Maharaja to defer decision on the issue of accession and allow the crucial days to pass by. Much is not known about the course of action, the Maharaja had decided to take, but the circumstantial evidence proves that independence was uppermost in his mind. Hari Singh suffered from an excessive sense of credulity and could not convince himself that

the British would abandon the Princes even if they meant to leave India. To that extent the British officers of the Political Department spared no effort to assure the Maharaja. The Indian leaders exhorted the Maharaja to exceed to the Dominion of India. In June Lord Mountbatten arrived in Srinagar on a visit to the State. He had long discussions with the Maharaja on the issue of accession which spread over for four days. The Maharaja, whose mind was almost made up, seems to have conveyed to the Viceroy his desire to assume independence after the British had left. Mountbatten frankly told the Maharaja that the British Government would not recognise the State as a Dominion and therefore, independence was not a feasible proposition for him to adopt. The Maharaja was assured by the Governor General that so long as he made up his mind to accede to one of the two Dominions before 15th, August no trouble would arise. The Viceroy told the Maharaja that if he acceded to Pakistan the Government of India would accept his decision. Mountbatten knew that the assurance he gave was only formal for it is difficult to believe that he himself or any of the Indian leaders did not know that the accession to Pakistan would be the last act the Maharaja would perform. The Maharaja was however, evasive and avoided to commit himself to any of the alternatives underlined by the Governor-General. Mountbatten sought another meeting with the Maharaja and his Prime Minister on the morning of the day his visit ended.<sup>1</sup> The meeting did not come off. Later Mountbatten invited the Maharaja to come Delhi and finalise a settlement there. Hari Singh did not go.

Those days Pandit Ram Chandra Kak, the Prime Minister for the State attended the meetings of the Negotiating Committee and Sardar Patel took the opportunity to persuade him to advise the Maharaja to join the Indian Dominion. Sardar Patel wrote to the Maharaja as well and expressed his disappointment at the inability of the Maharaja to thrash out the issues with Lord Mountbatten. Sardar Patel almost implored the Maharaja to come down to Delhi for talks with the Indian

<sup>1</sup> V.P. Menon, *The Integration of the Indian States*.

leaders.<sup>2</sup> The Maharaja was not moved.

On 15th August, 1947, the Dominions of India and Pakistan came into being. Maharaja Hari Singh offered to execute standstill agreements with the two Dominions. The Government of India refused to accept the standstill agreement and advised the Maharaja to send his representatives to Delhi, to discuss the implications the agreement involved. The Government of Pakistan promptly accepted the offer. A few days after the agreement was signed, Pakistan changed its mood and launched a calculated campaign to pressurise the Maharaja and isolate him. An embargo was imposed on the transit of all goods moving into the State. The only two lines of communication which linked the State with the outside world ran into Pakistan; the one connected Srinagar with Rawalpindi and the other connected Jammu with Sialkot. Both the routes were sealed. The blockade and the consequent deterioration in the supply of essential provisions scuttled the small and slender economy of the State. In the beginning of September, Pakistan began to nibble at the borders of the State. The Maharaja realised quickly the danger that faced him. Pandit Ram Chandra Kak was dismissed and replaced by Meherchand Mahajan a Judge of the Punjab High Court. On 29th September, Sheikh Mohammad Abdullah was released from imprisonment.

On 22nd October, Pakistan mounted a major military offensive against the State. Large bands of Pakistani irregulars, closely followed by regular troops, entered the State at a number of points all along the border with Pakistan. The invading armies made a frenzied bid to reach Srinagar and Jammu, the two capital towns of the State. The few Dogra battalions posted at the frontiers offered heroic resistance. The attack was, however, sudden and intense and the defences were easily overcome. On 24th October, the Maharaja appealed to the Government of India for help and offered the accession of the State to the Indian Dominion.<sup>3</sup> Three days

<sup>2</sup> Sardar Patel to Maharaja Hari Singh, *Sardar Patel's Correspondence*, p. 33.

<sup>3</sup> Meher Chand Mahajan, *Looking Back*, p. 144.

<sup>4</sup> V. P. Menon, *Integration of the Indian States*, p. 399.

after, the accession was accepted and the Indian troops were air-lifted to Srinagar. With a few days the invaders were pushed back.<sup>5</sup>

Immediately after the accession of the State to the Dominion of India, an Emergency Administration, headed by Sheikh Mohamad Abdullah was appointed by the Maharaja.<sup>6</sup> The Senior leaders of the National Conference were entrusted with the various departments in the Emergency Administration. The Maharaja desired that the Emergency Administration operated in subordination to his ministerial establishment, which though incapable of any purposeful action, was still intact. The powers, the Emergency Administration was supposed to exercise, were not defined. As a matter of fact even the territorial jurisdiction of the Emergency Administration was not clearly delimited and for some time Prime Minister of the State carried the impression that the Emergency Administration had been instituted to operate in Kashmir Province only. He received a jolt when the head of the Emergency Administration despatched an Emergency Officer to take over the administration in Jammu.

It is difficult to explain the reasons for which the Emergency Administration was instituted and the tasks it was expected to undertake. It was a shoddy structure hardly equipped with the power and prestige to face the crisis the State was in. The situation, as it had developed after the invasion clearly indicated that the powers of the Government in the State be transferred to the National Conference. Sheikh Mohamad Abdullah had suggested that the Conference leaders be entrusted with the Government of the State and the existing Ministerial Council be disbanded and in case it was allowed to remain, be diverted of its powers. The Maharaja, however, proved reluctant to part with any substantial measure of authority. However the clash of operation, the dual government involved, did not take long to come to surface.<sup>7</sup>

In November, the Government of India advised the Maha-

<sup>5</sup> Sisir Gupta, *Kashmir-A Study of India-Pakistan Relations*, p. 187-89.

<sup>6</sup> Emergency Administration order No. 176-H of 1947 dated 30th October, 1947.

<sup>7</sup> M. K. Teng and Santosh Koul, *Kashmir Special Status*, p. 36.



raja to appoint an interim government under the leadership of Sheikh Mohamad Abdullah till a model of democratic administrative institutions were evolved. The Maharaja was offered the option to retain Mehar Chand Mahajan as his Dewan. The Maharaja was assured that his Dewan could continue to remain a member of the Council of Ministers and would preside over its meetings.<sup>8</sup> The proposals made by the Government of India did not find favour with the Conference leadership which was opposed to the division of the powers between the Ministry and the Dewan. The elimination of the Dewan, however, brought to surface the necessity to demarcate clearly the authority the Council would exercise and the powers the Maharaja would retain. A more significant problem was the location of the focus of ministerial responsibility in the absence of a representative legislature and the obvious difficulty to determine the positions of precedence.

Gopalaswami Ayanagar, who was now Minister without Portfolio in the Government of India, despatched a fresh scheme to the Maharaja and the leaders in the Emergency Administration. The scheme envisaged.

- (i) An Interim Government, constituted of a Council of Ministers, be set up under the Constitution Act of 1939;
- (ii) Sheikh Mohamad Abdullah be appointed the Prime Minister of the State and the other Ministers of the Council be appointed on his advice;
- (iii) the Maharaja be permitted to retain the power to place restrictions on the function of the Council of Ministers by special directions in respect of certain matters of administration; and
- iv) the Interim Government be made responsible to the Maharaja.<sup>9</sup>

The proposals made by Ayanagar underlined a more compact

<sup>8</sup> Pandit Nehru to Maharaja Hari Singh, *Sardar Patel's Correspondence* p. 804.

<sup>9</sup> Gopalaswami Ayanagar to Maharaja Hari Singh, dated December, 9, 1947, *Sardar Patel's Correspondence* Vol I. p. 108.

and coordinated administrative structure. The interposition of the Dewan between the Council of Ministers and the Maharaja and the inevitable division of the Government into contesting factions, was bound to lead to concussion and clash of functions. Dyarchy carried within itself the seeds of its own destruction. The Scheme was, however, rejected by the Maharaja who refused to accept the removal of his Dewan and demanded the demarcation of a reserved sphere of power for himself. He also proposed the revival of the Praja Sabha and offered to convert it into a Constituent Assembly after fresh elections were held.<sup>10</sup>

The proposals made by the Maharaja were neither appreciated by the Indian leaders nor by the leader of the National Conference. The powers, the Maharaja desired to reserve for him, were, except for a few subjects, of considerable constitutional and political significance and any government deprived to exercise them, was sure to find itself considerably fettered in its operation. The Maharaja had a rightful claim to his person and prerogatives, his family, succession, privy purse and the powers to summon and prorogue the legislature but the other powers of the government decidedly belonged to the sphere, which in a representative form of government, deserved to be determined by the people.<sup>11</sup>

Ayanagar made a few minor modifications to his scheme and agreed to consider the reservation of certain powers for the exclusive control of the Ruler. The wrangle was finally resolved. The Interim Government was instituted by a Proclamation made by the Maharaja on 5th March, 1948.<sup>12</sup> A Council of Ministers with Sheikh Mohamad Abdullah as the Prime Minister was constituted to conduct the administration of the State. The Council was to function on the principle of joint responsibility. The Maharaja promised in his proclamation that on the restoration of peace and normalcy in the State, the Council of Ministers would make arrangements for the convocation of a National Assembly, which would be

<sup>10</sup> Maharaja Hari Singh to Gopalaswami Ayanagar, December, 17, 1947, *Sardar Patel's Correspondence* Vol I. p. 94.

<sup>11</sup> *Ibid.*, p. 94-5.

<sup>12</sup> Proclamation of Maharaja Hari Singh, Dated 5th March, 1948.

charged with the task of proposing a constitution for the government of the State. The deputies to the National Assembly would be elected on the basis of universal adult franchise. In the constitutional structure evolved by the proposed National Assembly, the minorities would be secured special weightage to guarantee them their rights and their due place and position in the State.

The dual government did not taken long to run into trouble. Neither the Maharaja nor the leaders in the Interim Government considered the Ayangar Scheme and, therefore, sound neither of the two sides made any serious efforts to evolve a spirit of compromise. In fact, the two sides in the dual government espoused radically divergent views and followed diametrically different directions. The Conference leadership idealised the complete transfer of power to the political instrument which were answerable to the people, drastic reorganisation in the property relations, particularly in regard to the land tenures and a relatively wider role for the Muslim majority in the State. The Maharaja, however was not, prepared to reframe the existing instruments of social and political control, without finding alternatives which were acceptable to him. The dual government came to a tragic end. The Maharaja sulked away and closed himself in his palace at Jammu, almost indifferent to what the Interim Government did. On their part, the leaders in the Interim Government also, did not follow a policy of sympathy and compromise. Where the Maharaja required to be consulted, he was bullied and where he was needed to be informed, he was ignored. The agreement pertaining to the conduct of the Government was hardly followed by the Interim authority and the reserved subjects were shown scant respect.<sup>13</sup>

Within a few months the crisis deepened. The Maharaja complained to the Government of India about the high handedness of the Interim Government. This hardened the temper of the Conference leaders who had now become severely critical of the Maharaja and openly asked for

his abdication.<sup>14</sup> The State Department made some feeble attempts to reconcile the differences between the Maharaja and the Conference leaders. The efforts proved futile. The stalemate lingered on for some more time. In April 1949, Maharaja Hari Singh was advised by Sardar Patel to leave the State and make his son, Yuraj Karan Singh, the Regent.<sup>15</sup> The Maharaja relinquished his office on 9th June, 1949. The proclamation issued by the Maharaja read:

Whereas I have decided for reasons of health to leave the State for a temporary period and to the Yuvaraj Shree Karan Singh ji Bahadur for that period all my powers and functions in regard to the Government of the State; Now, therefore, I hereby direct and declare that all powers and functions, whether legislative, executive or judicial which are exercisable by me in relation to the State and its Government, including in particular my right and prerogative of making laws, of issuing proclamations, Orders and ordinances of remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the State be exercisable by Yuvaraj Shree Karan Singh ji Bahadur.

#### Constituent Assembly

In January, 1950, the Constituent Assembly of India adopted the Constitution of India. Special provisions were included in the draft for the Jammu and Kashmir State. Provisions of the Constitution of India, pertaining to the princely States, which had acceded to the Indian Union and were listed in Part B of the First Schedule, appended to the Constitution, were not made applicable to the State. The State was reserved the right to institute a Constituent Assembly and frame a separate constitution for its government. The powers of the Parliament to legislate in regard to the State, were limited to the matters

<sup>14</sup> Sardar Patel to Jawaharlal Nehru, 11th May, 1949. Sardar Patel Correspondence, p. 268.

<sup>15</sup> Sardar Patel's correspondence p. 268.

<sup>16</sup> *Ibid.*

which were declared by the President, in consultation with the Government of the State, to correspond to the Instrument of Accession. The residuary powers were retained by the State.<sup>16</sup>

On 27th October, 1950, the General Council of the National Conference adopted a lengthy resolution on the political situation in the State and called upon the Government to order the convocation of a Constituent Assembly. The resolution read:

This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the United Nations to redress the wrongs of aggression of which the people of the State continue to be victims. The failure, in its opinion, is due to the continued concessions given to Pakistan by placing a premium on her intransigence.

The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonising uncertainty. The all Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to ignore the perpetuation 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 the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a constitution worthy of the tradition of our freedom struggle and in accordance with the principles of New Kashmir.<sup>17</sup>

<sup>17</sup> Resolution of General Council of All Jammu Kashmir National Conference, 1950.

On 1st May, 1951, Yuraj Karan Singh issued a proclamation and ordered the institution of the Constituent Assembly.<sup>18</sup> The Proclamation envisaged that Assembly would be constituted of the representatives of the people elected on the basis of universal adult franchise and secret ballot. In accordance with the Proclamation, the State was to be divided into electoral districts each covering forty thousand of population. Voting age was fixed at twenty-one. General elections to the Assembly were held in September, 1951. The Assembly was inaugurated on November 5, 1951.

On 7th November, the Constituent Assembly set up a Basic Principles Committee and an Advisory Committee on Fundamental Rights and Citizenship. The Basic Principles Committee was charged with the task of finalising the principles on which the Constitution of the State would be based. The Advisory Committee on Fundamental Rights and Citizenship was asked to formulate the criteria for citizenship in the State and define the scope and content of the rights, the people in the State, would be given as well as the related legal guarantees the Constitution would envisage to safeguard those rights. In accordance with the special provisions of the Constitution of India pertaining to the State, the provisions of the Constitution of India with regard to citizenship and Fundamental Rights, did not apply to the State. The Conference leaders had their own reservations about the extension of the provisions, embodied by the Constitution of India, with regard to citizenship and Fundamental Rights. They were extremely cautious about the State-Subject Rules promulgated by the Maharaja in 1928, and did not favour any modification in the restrictions imposed on the acquisition of citizenship rights in the State. They were also particular to save the landed estates abolition laws and the liquidation of debt legislation, from the effect of the extension of Fundamental Rights to the State. The Conference leaders were, therefore, desirous of determining for themselves the content of the Fundamental Rights that could be made available to the people of the State.

Meanwhile the Yuraj amended the Constitution Act of 1939,

<sup>18</sup> Proclamation issued by the Head of Jammu and Kashmir State on 1st May, 1951.

incorporating in it the provisions of the proclamation in pursuance of which the Interim Government was constituted and the Constituent Assembly was convened.<sup>19</sup> The enactment, envisaging the amendments, was made by the Yuraj in exercise of the inherent powers, reserved by the Maharaja for himself under the Constitution Act of 1939. The Maharaja exercised all the powers of the government, within the prescriptives of the Paramountcy, which also included powers pertaining to the external relations of the State, treaty rights and territorial jurisdiction. The accession of the State to the Indian Union, however, replaced the different variants of the Paramountcy by the defined pattern of the division of powers between the Union and the States in India, in which the defence of the State, its foreign affairs, communications and other implied powers were transferred to the Indian Government. The technical independence, the State enjoyed in the British colonial structure was quashed, when the Instrument of Accession was signed by the Maharaja and the State became a part of India. Not only was the State brought within the ambit of the territorial jurisdiction of the Union of India, it was also integrated into the constitutional jurisdiction created by the Constitution of India. In effect, the jurisdiction, exercised by the Maharaja, was completely dissolved. The Amendment Act was enacted to incorporate these changes in the Constitution Act of 1939. Accordingly the jurisdiction of the State Government was redefined.

The most significant modification, the Amendment Act made in the Constitution of the State, was the incorporation of ministerial responsibility in the State Government.<sup>20</sup> The inherent powers of legislation and government and the powers of prerogative exercised by the Maharaja were dissolved. The powers of the prerogative were limited to the grant of pardons, reprieves, respites and remission of punishments. The power to promulgate ordinances was also taken away from the Maharaja. Power was vested with the Council to submit to the Maharaja ordinances and promulgations for his assent. The

<sup>19</sup> Act No. XVII of 1951 (S.2001).

<sup>20</sup> The Constitution Amendment Act, 1951, Sec. 2, Substitution of Section 7.

powers vested with the Maharaja were to be exercised by him on the advice of his Council of Ministers. In effect the superintendence, direction and control of the civil government was vested with the Ministry. The Council was constituted of the Prime Minister, who was appointed by the Maharaja and the other Ministers who were appointed by the Maharaja on the advice of the Prime Minister.<sup>21</sup> The powers vested in the Prime Minister to make rules for the business of the Council subject to the sanction of the Maharaja were also dissolved. These powers were vested with the Council and the Council was empowered to make rules with regard to the transaction of its business. Provisions were also made by the Amendment Act for the appointment of the Deputy Ministers to work in such ministries as the Council considered necessary.

Provisions embodied by the Constitution Act of 1939, with regard to the Praja Sabha were repealed, and provisions were laid down by the Amendment Act by virtue of which the Constituent Assembly of the State was to exercise the powers of the Legislative Assembly.<sup>22</sup> The Legislative Assembly was empowered to make rules and standing orders to regulate its procedure and the conduct of business and until such rules were made, the rules and standing orders which regulated the procedure and conduct of the business in the Praja Sabha were to govern the procedure and conduct of business in the Legislative Assembly. The Legislative Assembly was to be presided over by a Speaker who was elected by the Assembly and in his absence by a Deputy Speaker, who was also elected by the Assembly. The Speaker of the Assembly was empowered to exercise the powers which were exercised by the President of the Praja Sabha.<sup>23</sup>

The Legislative Assembly was vested with unrestricted powers to legislate on matters and subjects not placed within the competence of the Parliament of India.<sup>24</sup> The competence of the Legislative Assembly, therefore, extended to all the residuary powers which were retained by the State. The division

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, Sec. 13(2).

<sup>23</sup> *Ibid.*, Sec. 16.

<sup>24</sup> *Ibid.*, Sec. 20.

of powers between the reserved and transferred subjects, envisaged by the Constitution Act, 1939, was abrogated.

The Assembly was also vested with complete powers to control the finances of the State.<sup>25</sup> No revenues and expenditures could be authorised except by the authority of law. All expenditures were made votable by the Assembly and subject to its sanction. The Council was empowered to authorise extra-expenditure over that voted by the Assembly, subject, however, to the sanction of the Assembly. The Constitution Act of 1939 envisaged the classification of expenditure into the "Expenditure charged upon the revenues of the State" and "Expenditure proposed to be met from the revenues of the State". The Praja Sabha was empowered to vote on the "Expenditure proposed to be met from the revenues of the state".<sup>26</sup> The provisions of the Amendment Act redefined the "Expenditure charged upon the revenues of the State" to include:

- (i) allowances of the Maharaja and the other expenditure relating to his office;
- (ii) debt charges for which the State was liable including interests, sinking fund charges and other expenditure relating to the raising of the loans and service and redemption of debt;
- (iii) salaries, allowances and pensions of the Judges of the High Court and the members of the Board of Judicial Advisers;
- (iv) expenditure relating to the Constituent Assembly and its staff;
- (v) sums required to satisfy any judgement, decree or award of any court, arbitral tribunal; and
- (vi) any other expenditure declared by the Amendment Act or any other Act of the Legislative Assembly as "expenditure charged upon the revenues of the State."<sup>27</sup>

The Assembly was empowered to discuss the "expenditures charged upon the revenues of the State" but was not empow-

<sup>25</sup> *Ibid.*, Sec. 31.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

red to vote on them. The powers, vested with the Maharaja and the Council to over-ride the decisions of the Assembly on votable demands, were abolished.<sup>28</sup> All other restrictions, placed on the competence of the Assembly in regard to financial matters and the appropriation of funds, were also abrogated.<sup>29</sup>

The restrictions placed on the introduction of Bills in the Assembly, discussion of the Bills and Resolutions and amendments or Bills with regard to religious rights, usage and all other restrictions on the power of the Assembly to legislate in general, were abolished.<sup>30</sup> The over-riding powers exercised by the Prime Minister and the Council over the conduct of business in the Assembly, preservation of order during the debates, regulation of questions and supplementaries and the procedure of the presentation of the budget, were also extinguished.

#### Sadar-I-Riyasat

In April 1952, the National Conference leaders finally resolved to abolish the dynastic rule of the Dogras. The Conference leaders also formulated the principles, on the basis of which, the proposed Constitution of the State would be framed. Guidelines were also laid down by them with regard to the structure of the government, official language and the flag of the State. Seventy-three of the Seventy-five members of the Constituent Assembly belonged to the National Conference. They were, in fact, returned unopposed to the Assembly. Packed with a preponderant majority of the National Conference cadres, the Assembly immediately settled down to work out the instructions, the Conference leaders laid down. On 10th June, 1952, the Basic Principles Committee of the Assembly submitted an Interim Report recommending the abolition of the Dogra rule.

<sup>28</sup> *Ibid.*, Sec. 32.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, Sec. 21 and 22.

<sup>31</sup> *Ibid.*, Sec. 23.

After due deliberation and careful thought, the Committee is of the opinion that the institution of monarchy is a relic of the feudal system which was based on mass exploitation of the resources of a country and the labour of its people for the self-aggrandisement of an individual and a limited class of associates. As such, the Committee considers the system opposed to the aspirations of the people for an untrammelled democratic order, the spirit of which is surging throughout all countries of the world. It strongly feels that the continuance of a monarchical system would be the imposition of an anachronism particularly when these monarchies are disappearing fast in many parts of the world under the compelling forces of history and social change.

The Committee recommended the replacement of the Maharaja by an executive head who would be elected to his office for a fixed term. The Committee reported:

It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its Head, respectively symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by the people for the maintenance of their rights. The promotion of this vital principle of constitutional progress makes it imperative that this symbol of state power should be subject to the vote of the people. The Committee, therefore, strongly feels that consistent with the democratic aspirations of the people of the State, the office of Head of the State should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity required by democracy, demands that in no sphere of State activity should a citizen be debarred from participating in the progress of his country and the advancement of its ideals and traditions. It is clear that the hereditary principle in the appointment to any office of

power curtails the people's choice and to that extent, restricts their right to elect suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner, the Head of the State will be repository of the unbound respect, confidence and esteem of the people.

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

- (a) the form of the future constitution of Jammu and Kashmir shall be wholly democratic,
- (b) the institution of hereditary Rulership shall be terminated, and
- (c) the office of the Head of the State shall be elective.<sup>32</sup>

Sheikh Mohamad Abdullah explained the decision of the National Conference and said that the hereditary rule of the Dogras was incompatible with democratic principles as well as the aspiration of the people. In the Constituent Assembly he observed:

The Basic Principles Committee has recommended the termination of hereditary dynastic rule and its replacement by a President elected by the people for a limited period and not for life-time. If he does not efficiently discharge his duties during his tenure of office, he will be placed under impeachment. However, the Committee has made the recommendation for the termination of this hereditary rule in the light of the desires of the people who under the guidance of National Conference have sacrificed their lives, have gone to jails and put up in narrow cells inhabited by serpents and scorpions. Hundreds of woman-folk have been dishonoured, hundreds made to crawl on their bellies

<sup>32</sup> Constituent Assembly Debates, III Session, 10th June, 1952.

and thousands rendered martyrs by shedding their blood. It is the saying of leaders that freedom cannot be achieved by requesting but by struggle. Only that nation attains freedom which sheds its blood for this cause. This again cannot be achieved by begging. Freedom can be obtained only when the people of Jammu, Kashmir and Ladakh—nay of the whole State—make sacrifices in the manner in which lakhs of people like Luther have struggled for their liberation. I want to make it clear to you that this issue has not cropped up under some sentiment of vengeance or because the Raja fled at a time when catastrophe came. It is not even because we were imprisoned and now we have gained power so we should wreak vengeance on him. I want to say to the world that sovereignty belongs to the people and not to an individual. Thinkers came on the scene to attain this basic right and effected the transfer of sovereignty to the people. This was not done in view of personal interest. Unless you give sacrifices in this field, you cannot achieve freedom. The representatives of Ladakh, Jammu, Kishtwar, Ramkot, Poonch, Kargil, Bhaderwah and from every nook and corner of Kashmir have assembled in this house to decide the issue on behalf of 40 lakhs people in the light of the recommendation made in its report by the Basic Principles Committee.<sup>33</sup>

On 12th June, the report of the Basic Principles Committee was unanimously adopted by the Constituent Assembly. The same day, Durga Prasad Dhar moved another resolution in the Assembly praying that instructions be given to the Drafting Committee of the Assembly to prepare appropriate proposals for the implementation of the recommendations of the Basic Principles Committee. The resolution read:

This Assembly resolves that the recommendations contained in the Interim Report of the Basic Principles Committee as adopted by the Assembly be implemented and that for this purpose the Drafting Committee be directed to place before

<sup>33</sup> *Ibid.*, 10 June, 1952.

this Assembly appropriate proposals in the form of resolution or otherwise, within a period of one month from the date of passing of this resolution.<sup>34</sup>

The presentation of the Basic Principles Committee report in the Constituent Assembly brought to surface a number of political issues. The abolition of the Dogra rule involved the dissolution of the prerogatives and the powers, the Maharaja was vested with. It also involved the institution of a new executive instrument with defined statutory powers. It was necessary to delimit the quantum of authority the new executive would be vested with and define the lines its power would run through. As a matter of fact, the entire constitutional structure, sought to be devised by the Constituent Assembly, was required to be adjusted within the imperatives of the political structure, the Constitution of India envisaged. Differences had already set in between the two Governments with regard to the plenary powers the State leaders claimed for the Constituent Assembly, the application of the provisions of the Constitution of India with regard to Citizenship, Fundamental Rights, Supreme Court and the Emergency Powers of the President, to the State, and the placement of the State within the framework of political control the Constitution of India envisaged. The Government of India had indicated its preference for a reconsideration of the division of powers between the Central Government and the State and the extension of the provisions of the Constitution of India to the State with regard to Citizenship, Fundamental Rights, Emergency powers, jurisdiction of the Supreme Court, Directive Principles etc. This necessitated a fresh demarcation of the area of autonomy for which the Constituent Assembly of the State would be commissioned to devise statutory provisions. Pandit Nehru observed in the Parliament:

Now this position might well have lasted some time longer, but for the fact that the Constituent Assembly of Kashmir came into existence and came into existence with our goodwill and came with our consent. Now it is sitting down to

<sup>34</sup> *Ibid.*, 12th June, 1952.

draw up its Constitution, it has to be in some precise terms; it cannot be fluid. Therefore, the question arose that nothing should be done by the Constituent Assembly of the State which does not fit in with the Constitution, which in no sense is contrary to it or conflicts with any part of it.<sup>35</sup>

In July 1952, a Conference between the leaders of the two Governments, was convened in Delhi, to find a settlement of the outstanding political issues and formulate principles on the basis of which the Constituent Assembly of the State would proceed on its work. An agreement was finally drawn up by the representatives of the two sides on most of the constitutional problems including those related to the application of the provisions of the Constitution of India with regard to Citizenship, Fundamental Rights, the jurisdiction of the Supreme Court, and the division of powers between the Union and the State. Agreement was also reached with regard to the abolition of the Dogra rule, flag of the State and its official language. It was agreed that the State Government would place the stipulations of the agreement before the Constituent Assembly so that the Constituent Assembly would make the necessary recommendations to the President of India to order the amendments in Article 370 of the Constitution of India. The agreement stipulated:<sup>36</sup>

- (i) that the provision of the Constitution of India with regard to citizenship would be extended to the State subject to the condition that the State Legislature would be reserved the Right to define and regulate the rights and privileges of the "State Subject" of the State with regard to the acquisition of the property and the appointment to the services;
- (ii) that the provisions of the Constitution of India with regard to the Fundamental Rights would be extended to the State;
- (iii) that the provisions of the Constitution of India with

<sup>35</sup> J.L. Nehru, Statement in Council of States, August 5, 1952.

<sup>36</sup> Statement of Sheikh Mohamad Abdullah on Delhi Agreement in the Constituent Assembly, 11th August, 1952.

- regard to the emergency powers of the President of India and the original jurisdiction of the Supreme Court would be made applicable to the State;
- (iv) that the residuary powers would be retained by the State;
  - (v) that the hereditary rule of the Dogras would be abolished and the Head of the State would be recognised by the President of India on the recommendations of the State Legislature and hold office for a period of five years;
  - (vi) that the State would retain its flag but the Union flag would have a supremely distinctive place in the State; and
  - (vii) that Urdu would be the official language in the State.

Immediately after the Delhi Agreement was signed, the Drafting Committee of the Constituent Assembly settled down to formulate proposals with regard to the Dogra rule on the basis of the resolutions passed by the Constituent Assembly in June. The Committee presented its report on August 19, 1952. The report stipulated:<sup>37</sup>

- (i) that the Head of the State would be the person recognised so by the President of India on the recommendations of the Legislative Assembly of the State;
- (ii) that the Head of the State would be designated "Sadar-I-Riyasat of Jammu and Kashmir";
- (iii) that the recommendations of the Legislative Assembly would be made by election;
- (iv) that the Sadar-I-Riyasat would hold office during the pleasure of the President;
- (v) that the Sadar-I-Riyasat would remain in office for a term of five years; and
- (vi) that the Sadar-I-Riyasat would exercise the powers and undertake functions that were exercised by the Maharaja of the State under the Constitution Act of 1939, as amended by the Constitution Amendment Act of 1951 till the Constitution of the State was framed

<sup>37</sup> Report of the Drafting Committee, Fourth Session, 20th August, 1952.



by the Constituent Assembly and the powers of the Sadar-I-Riyasat were specified and defined therein.

The recommendations of the Drafting Committee were accepted by the Constituent Assembly on August 21, 1952. In November, the Constitution Act of 1939, was amended to incorporate the provisions of the resolutions passed by the Assembly. In accordance with the Amendment Act the institution of the hereditary monarchy was abolished. The Head of the State was designated the Sadar-I-Riyasat. All rights, authority and jurisdiction pertaining to the Government and the territories of the State, were vested in with the Sadar-I-Riyasat. The Sadar-I-Riyasat was to exercise his powers on the aid and advice of his Council of Ministers.<sup>38</sup>

The tenure of the Sadar-I-Riyasat was fixed at five years. He was entitled to such emoluments and allowances as the Constitution of the State fixed. Pending the enactment of the Constitution, he was to receive such emoluments and allowances as the Constituent Assembly fixed.<sup>39</sup>

The Amendments Act laid down the procedure for the election of the Sadar-I-Riyasat by the members of the Legislative Assembly. The Sadar-I-Riyasat was to be elected by the members of the Legislative Assembly by secret ballot and with single transferable vote. The Prime Minister of the State was vested with the authority to communicate the decision of the Assembly to the President of India for his recognition. The Amendment Act incorporated the stipulations of the Drafting Committee according to which the person, elected by the Legislative Assembly, was to be recognised by the President of India as the Sadar-I-Riyasat of Jammu and Kashmir State. The Sadar-I-Riyasat before, he entered upon his office, was required to make and subscribe an oath of affirmation to devote himself to the "service and well-being of the people of the State" and to "preserve, protect and defend the Constitution of the State."<sup>40</sup>

The Amendment Act laid down a number of qualifications

<sup>38</sup> Constitution Amendment Act, 1952, Sec. 4.

<sup>39</sup> *Ibid.*, Schedule 1.

<sup>40</sup> *Ibid.*, Sec. 12 and Schedule 1.

for election to the Sadar-I-Riyasat. No person was eligible to seek the election to the office of the Sadar-I-Riyasat unless:

- (i) he was a State Subject of Class I as defined in the State Subject Definition Notification No. I-L-/84 of April 20, 1927;
- (ii) he had completed the age of twenty-one years on the date he filed his nomination papers; and
- (iii) he was eligible for being chosen as the member of the Constituent Assembly.

In the months that followed the Delhi Agreement, the relations between the State leaders and the Government of India deteriorated further. In fact, a tragedy of great magnitude in the outlook of both the Indian leaders and the leaders of the National Conference was, that after the assumption of independence, they failed to adjust their political objectives and coordinate their political operatives. The two sides had found identification in their approaches and objectives about the struggle for national independence. They were, however, not able to evolve a similarity of views and strategies with regard to the politics of the government after the country won freedom. The structural compulsion of the Indian politics overwhelmed the expressions of the historical struggle to which both Pandit Jawaharlal Nehru and Sheikh Mohamad Abdullah were so devoted. The events came to a head in August 1953. On 8th August, the Sadar-I-Riyasat dismissed the ministry headed by Sheikh Mohamad Abdullah. The Sheikh was arrested in the early hours of the morning of 9th August. The same day, Bakshi Gulam Mohamad, the Deputy Prime Minister in the disbanded ministry, was appointed the Prime Minister of the State.

In October, 1953, the Constituent-Assembly was convened to finalise the principles on which the Constitution of the State would be based and consider the implementation of the Delhi Agreement pertaining to the federal relations between the State and Union. On October 20, 1953, the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights were reconstituted by a resolution of the Constituent Assembly. The Delhi

Agreement was referred to the two Committees for consideration. On January 4, 1954, a Joint Sub-Committee was constituted to draft proposal on the implementation of the Delhi Agreement. The Sub-Committee submitted its report with the draft proposals to a joint session of the two Committees on January 22, 1954. On February 3, 1954, Syed Mir Qasim, the Chairman of the Basic Principles Committee and the Advisory Committee on Citizenship and Fundamental Rights, presented the report of the Advisory Committee on Citizenship and Fundamental Rights to the Constituent Assembly.<sup>41</sup> The Committee recommended that directives be issued to the Drafting Committee of the Constituent Assembly, which had also been reconstituted, to frame proposals for the extension of the Constitution of India with regard to Citizenship, Fundamental Rights, powers of President, the Emergency Powers and the jurisdiction of the Supreme Court, to the State of Jammu and Kashmir. In regard to Citizenship, the Committee recommended the application of the Provisions of the Constitution of India pertaining to citizenship with the reservation that any application would not prejudice the existing rules relating to the State Subjects. The Committee proposed that the rules regarding the State-Subjects be redefined and liberalised and the State-Subjects be reclassified into a uniform class of "Permanent Residents". The Committee recommended:

The State having acceded to the Union of India, every State subject and every person having his domicile in the state is a citizen of India under the provisions of the Constitution of India. It is, however, recognised by the Government of India that this position would not affect the existing State Subject definition. While the Committee adheres to principle underlying this definition it feels that the definition should be liberalised in keeping with the changed times. The Committee, therefore, recommends that all the three classes of State-Subject provided in the definition be removed and a uniform class of permanent residents be established.

<sup>41</sup> Report relating to Citizenship and Fundamental Rights, February 3rd, 1954.

Accordingly every person residing in the State who is a State-Subject of Class I or Class II or who after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforcement of this provision shall be permanent resident of the State.

The powers of the State Legislature to define 'permanent residents of the State' in any manner it deems fit and to regulate the special rights and privileges of the permanent residents of the State, should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. The Committee is of the opinion that while adequate provisions to that effect should be incorporated at an appropriate place in the Constitution of India, the provisions of Part II of the Constitution of India relating to citizenship should also be made applicable to the State and care should be taken to protect the special position accorded to the State-Subject to be known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that part to enable these subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbance or in fear of the same, to return to the State under a permit of resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view that the State Legislature should also be competent to make provisions with respect to acquisition and termination of the status of permanent residents of the State and until the State Legislature enacts provisions in that behalf, the existing Ijzatnama Rules should continue to remain in force and the existing procedure for obtaining a State-subject certificate should apply for the purpose of securing a certificate as to the status of a permanent resident.<sup>42</sup>

The Committee further recommended that the provisions of

<sup>42</sup> *Ibid.*

the Constitution of India embodying the Fundamental Rights and the related legal guarantees be extended to the State with modifications and reservations that were deemed necessary in view of the economic reforms the State Government had undertaken and the special rights that were sought to be reserved for the State-subjects. The Committee reported:

The question of evolving Fundamental Rights has been considered and discussed at length by the Committee. It has been recognised by the Government of India that the Fundamental Rights as contained in part III of the Constitution of India, should not come in the way of Land Reforms already introduced by the State or the reforms that might be undertaken by the State in future. This was particularly necessary in view of the fact that the State has not provided for any compensation for the land expropriated under its Land Reforms. The Government of India has also recognised that the special rights and privileges enjoyed by the Permanent Residents of the State relating to acquisition and holding of immovable property and in respect of employment under the State shall be fully safeguarded.

The Drafting Committee presented its report to the Constituent Assembly on February 11, 1954. An annexure, which defined the jurisdiction of the Union was appointed to the report. The annexure embodied the provisions of the Delhi Agreement with the modifications which were introduced in it after the Advisory Committee on Citizenship and Fundamental Rights was reconstituted and the approval of the Union Government was secured. The report, alongwith the annexure was presented to the President of India after it was approved by the Constituent Assembly. On 14th May, 1954, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order, 1954.<sup>43</sup>

The Presidents' proclamation ordered the application of the following provisions of the Constitution of India to the

<sup>43</sup> Constitution (Application to Jammu and Kashmir) order No. C.O. 48, dated 14th May, 1954.

State:

1. Provisions pertaining to the Union and its territories with the exception that the powers of the Parliament to increase and diminish the area of the State or alter its name be subject to the consent of the State Government.
2. Provisions pertaining to the citizenship subject to the condition that 'Permanent Residents' of the State who had migrated to territories under the occupation of Pakistan but returned to the State for Settlement, were reserved the right to acquire Indian citizenship on a 'permanent return' issued to them under the authority of any law made by the legislature of the State and that the State Legislature was reserved the right to define the 'Permanent Residents' and confer on them special rights or privileges or impose on other persons restrictions in regard to the settlement in the State, employment in State service and the grant of scholarships and other aids provided by the State Government.
3. Provisions pertaining to Fundamental Rights with reservations and exceptions in regard to right to personal liberty, right to freedom, and right to property.
4. Provisions with regard to Government of India with the exceptions that:
  - (a) the representatives of the State for the House of the People were to be appointed by the President on the recommendations of the State Legislature;
  - (b) the powers of the Parliament to extend the appellate jurisdiction of the Supreme Court were limited to the extent that any such extension could only be made on the request of the State Legislature.
5. Provisions of the 'Union List', except Central Bureau of Intelligence and Investigation, Preventive Detention, Courts of Wards, High Court and extension of its jurisdiction, trading and other corporations, Weights and Measures, Mines, Mineralogy, regulation of labour, safety in mines and oil fields, Ancient Monuments, Census, interstate migration, elections to the Parliament, Election Commission, Audit and Accounts, etc.

6. Provisions with regard to administrative relations between Centre and States with certain reservations.
7. Provisions with regard to official language of the Union to the extent of the official language for communication between the States and the Union, official language for communication between the States and the Union, and the proceedings of the Supreme Court.
8. Provisions pertaining to the proclamation of emergency caused by war and external aggression.
9. Provisions pertaining to the amendment of the Constitution of India with the exception that such amendments would be effective in relation to the State only after their application was extended to the State by an order of the President in accordance with the provisions envisaged by Article 370.

The application of the provisions with regard to the Citizenship, Fundamental Rights, the jurisdiction of the Supreme Court and the Emergency powers of the President of India, to the State, necessitated consequential amendment in the existing, constitutional provisions in the State. On 8th April, 1955 the Jammu and Kashmir Constitution Act of 1939 was again amended to incorporate in it, the changes brought about by the President's Order of 1954.<sup>44</sup> The Amendment Act was given retrospective effect and was deemed to have come into effect from May 14, 1954, the day, the Presidential Order was promulgated.

The provisions of the Constitution of India, with regard to citizenship were incorporated in the Constitution Act of 1939. A subsidiary jurisdiction was created by the Act and the State-Subjects were redefined into a uniform class of 'Permanent Residents'. The classification of the State-Subjects provided for by the State-Subjects Rules was consequently abolished. The "Permanent Residents" were defined to include:<sup>45</sup>

- (i) State-Subjects of Class I or Class II as defined in the State-Subject Notifications of 1927 and 1928;
- (ii) persons who had acquired immovable property in the

<sup>44</sup> Constitution Amendment Act, 1955 (2011).

<sup>45</sup> Jammu and Kashmir Constitution Amendment Act, 1955, Part A.

- State in pursuance of 'Ijzat-Nama' Rules in force in the State and had ordinarily been residing in the State for not less than ten years before the promulgation of the Presidential Order, 1954; and
- (iii) State-subjects of Class I and Class II who had migrated to Pakistan after March, 1947, but had returned to the State under a "Permit of Settlement" in the State issued by any law made by the State Legislature.

The State Legislature was reserved the right to define the "Permanent Residents" and confer on them special right or privileges or impose on other persons restrictions in regard to employment in the State, settlement in the State, and right to scholarship and other forms of aid provided by the State Government. The State Legislature was empowered to make laws with regard to the acquisition of the status of "Permanent Residents" in the State and until the State Legislature enacted such provisions, the existing "Ijzat-Nama Rules" were to continue to remain in force.<sup>46</sup>

Provisions were made by the Amendment Act, by virtue of which the Board of Judicial Advisors was abolished. The Board had, in fact, become redundant after the appellate jurisdiction of the Supreme Court of India was extended to the State. The High Court of the State was invested with the highest judicial function in the State in all matters of original and appellate jurisdiction. The Court was vested with original jurisdiction to hear all cases of which the value exceeded twenty thousand rupees. Under the Constitution Act of 1939, the High Court was empowered to hear cases, the value of which exceeded ten thousand rupees. The High Court was also vested with the advisory jurisdiction which had been reserved for the Board of Judicial Advisors under the Constitution Act of 1939. The Court was empowered to give advice to the Council of Ministers on any question of fact or law.<sup>47</sup>

Another major change, the Amendment Act incorporated in the Constitution Act of 1939, was that pertaining to the immunities and privileges of the Legislative Assembly and the

<sup>46</sup> *Ibid.*, Sec. 5-A (b).

<sup>47</sup> *Ibid.*, Secs. 6, 9, 10 and 11.

members of its Committees. The immunities and privileges of the Assembly continued to be governed by the Constitution Act of 1939, made for the Praja Sabha and its Committees. In accordance with the provisions of the Amendment Act, the Legislative Assembly and its Committees were granted all such privileges and the immunities as were enjoyed by the members of the Parliament of India in accordance with the provisions of the Constitution of India.<sup>48</sup>

#### Constitution of Jammu & Kashmir

The Constituent Assembly of the State completed its work in November 1956. On 17th November, the draft constitution was finally approved by the Assembly. It was brought into force on 26th of January, 1957.<sup>49</sup>

Within the scope of the provisions of the Constitution of India pertaining to citizenship, the Constitution of the State classified the people of the State into a special category of "Permanent Residents".<sup>49</sup> The classification was based on the provisions of the Jammu and Kashmir Constitution Amendment Act of 1955, by virtue of which the Jammu and Kashmir Constitution Act of 1939, was amended and provisions with regard to the 'Permanent Residents' of the State were laid down. The "Permanent Residents" were defined to cover the people of the State, who were born and were residing in the territories of the State, when it was founded by Maharaja Gulab Singh in 1846, the people who settled in the State later but before 1885, the people who settled in the State under special permission before 1911, and the people who took permanent residence in the State and acquired immovable property under the 'Ijzat Nama Rules' before 14th May, 1944. The Legislature of the State was vested with the power to bring any section of the people living in the State within the ambit of the definition of the "Permanent Residents". The State Legislature was also empowered to confer on the 'Permanent Residents' any special rights and regulate and modify

<sup>48</sup> *Ibid.*, Sec. 4.

<sup>49</sup> Constitution of Jammu and Kashmir, sec. 1.

<sup>50</sup> *Ibid.*, part III.

any special rights and privileges enjoyed by them.

The Constitution envisaged a parliamentary government for the State. The State Government was to be headed by the Sadar-I-Riyasat, who was elected by the State Legislature and confirmed by the President of India.<sup>51</sup> The qualifications, which were required to be fulfilled by a candidate for the election to the office of the Sadar-I-Riyasat, were laid down by the Constitution. No candidate could be nominated for the election unless he was a "Permanent Resident" of the State, was more than twentyfive years in age and was qualified to be elected to the Legislative Assembly. The tenure of the Sadar-I-Riyasat was fixed at five years and he remained in office during the pleasure of the President of India. The Sadar-I-Riyasat was to receive a salary of 5,500 Rupees per month, besides other emoluments and allowances. The salary and other emoluments were to be charged on the Consolidated Fund of the State. On the assumption of his office the Sadar-I-Riyasat was required to make and subscribe an oath of affirmation to devote himself to the service and the well-being of the State and to "preserve, protect and defend the Constitution and the law".

The executive powers of the State, which extended to all matters not transferred to the Union, were vested with the Sadar-I-Riyasat. The Sadar-I-Riyasat was to exercise his powers himself or through his officers in his name. He was empowered to appoint the Prime Minister of the State and on his advice the other members of the Council of Ministers. He was vested with the power to allocate business among the Ministers in the Council and make rules for the convenient transaction of the business of the government. He was also vested with the power to appoint the Advocate General<sup>52</sup> of the State and the members of the Public Service Commission.

The Sadar-I-Riyasat was an integral part of the State Legislature. He was vested with the power to summon, prorogue and dissolve the Legislative Assembly. He was empowered to address the two houses of the Legislature and send

<sup>51</sup> *Ibid.*, Part V.

<sup>52</sup> *Ibid.*, Sec. 42.

messages to them. He was empowered to nominate eight members to the Legislative Council from among the economically and socially backward sections of the society or from among people who had special knowledge and practical experience in art, literature, science, social service and cooperative movement. All Bills passed by the Legislature were required to be submitted to him for his assent.

The Sadar-I-Riyasat was vested with the power to promulgate Ordinances during the recesses of the Legislature, if he was convinced that the circumstances warranted immediate action. The Ordinances promulgated by the Sadar-I-Riyasat had the same effect, the acts of the Legislature had.<sup>53</sup>

The Sadar-I-Riyasat was vested with certain financial powers as well. He caused the State Budget to be laid before the Legislative Assembly. Demands for any grants could not be made except on his recommendations. The statements for supplementary grants and additional expenditure were also caused to be laid before the legislature by him.

The Sadar-I-Riyasat was also empowered to grant pardon and relieve, and suspend, remit and commute sentences awarded to persons convicted of offences against any law relating to matters over which the executive powers of the State extended.

The model of the parliamentary government which the Constitution embodied, carried the principle of responsibility to its technical extremes. The Constitution provided for the institution of a Council of Ministers headed by the Prime Minister and charged with the function to aid and advise the Sadar-I-Riyasat in the exercise of his powers.<sup>54</sup> An absolute limitation was imposed on the Sadar-I-Riyasat, which stipulated that he would exercise his powers only on the advice of his ministry.<sup>55</sup> Formally, the Prime Minister and the other Ministers were appointed by the Sadar-I-Riyasat and remained in office during his pleasure. In actual practice, however, the Council constituted an independent political instrument which was installed in office by the party, which

<sup>53</sup> *Ibid.*, Sec. 91.

<sup>54</sup> *Ibid.*, Sec. 35.

<sup>55</sup> *Ibid.*, Sec. 35(2).

commanded the majority in the legislature and remained in office so far the majority continued to support it.

As the constitutional head, the Sadar-I-Riyasat possessed the right to be informed of all the decisions of the Council with regard to the administration and the process of legislation. He was secured the right to call for any information from the Council. To preserve the principle of collective responsibility, he was empowered to return decisions taken by the Ministers to the Council, in case he felt that the decisions deserved to be considered by the Council. The functions were enumerated by the Constitution and guaranteed to the Sadar-I-Riyasat.<sup>56</sup> However, he could hardly put them to any purposeful use. He functioned under a severe limitation and could hardly face his Ministry with the powerful determination, the prestige of prerogative, conferred on a Constitutional head in a parliamentary structure.

In one respect the Sadar-I-Riyasat was vested with powers, which under the Constitution of India, any State governor was not given. The Constitution of the State envisaged provisions by virtue of which the Sadar-I-Riyasat was empowered to declare a state of emergency in the State in case of constitutional breakdown.<sup>57</sup> Under the provisions of the State Constitution, the Sadar-I-Riyasat was vested with the powers to assume to himself the powers of the Government and legislation if he found that the Government of the State could not be conducted in accordance with the Constitution. The Sadar-I-Riyasat was empowered to suspend the operation of the provisions of the Constitution, wholly or in part, to give effect to the proclamation of the emergency. The Sadar-I-Riyasat was, however, not empowered to assume the powers of the High Court of the State or suspend the provisions of the Constitution pertaining to the High Court. A specific limitation was placed on the powers of the Sadar-I-Riyasat by virtue of which he was bound to declare a state of emergency only with the concurrence of the President of India.

Ordinarily, the proclamation of emergency was to remain in force for six months after it was issued. No express limi-

<sup>56</sup> *Ibid.*, Sec. 44.

<sup>57</sup> *Ibid.*, Sec. 92.

tation was placed on the powers of the Sadar-I-Riyasat to reimpose emergency after it had ceased to be operative. Every proclamation of emergency was required to be laid before each house of the legislature as soon as it was convened. Where the Sadar-I-Riyasat assumed to himself the powers of legislation, any law made by him during the period of emergency, was to remain in force for two years after the emergency ceased to operate.

The Constitution provided for a bicameral legislature empowered to make laws on the subjects reserved for the State Government.<sup>58</sup> The lower house i.e. the Legislative Assembly was composed of hundred members chosen by direct election on the basis of universal adult franchise. The Council was constituted of indirectly elected representatives and elements which gave measured weightage to functional groups, local bodies, economically and socially backward sections of the society and other unorganised social interests. Twentyfive of the seats in the Assembly were reserved for the territories of the State under the occupation of Pakistan. The occupied territories however, were not included in the delimitation of the constituencies and members of the Assembly for these seats were not to be elected till the occupied areas were liberated. The reserved seats were not to be taken into account for the reckoning of the total membership of the Assembly. Special weightage was given to the Scheduled Castes and women. Of the thirtysix members the Legislative Council had, eleven members were to be elected by the Legislative Assembly from each of the two provinces from among the residents of the State, at least one being elected from the district of Ladakh and Skardu. One member, for each of the two provinces, was to be elected by the electorates constituted of the members of the Municipal Councils, the Town Area Committees and the Notified Area Committees in each of the two provinces. Two members, for each of the two provinces were to be elected by the electorates constituted of the members of the Panchayats and such other local bodies in each of the two provinces as the Sadar-I-Riyasat specified. Eight of the members were to be nominated

to the Council by the Sadar-I-Riyasat to give special representation to backward classes, and the persons who had to their credit outstanding contribution in arts, literature, science and social service.

The State legislature was empowered to legislate on all subjects placed within the jurisdiction of the State Government. The legislature was also vested with the power to control the finances of the State. No taxes were to be imposed without the approval of the Legislature and no expenditures undertaken without its sanction. The estimates of the receipts and expenditures were to be laid before the legislature for its approval. Since the Constitution envisaged a parliamentary government, the legislature exercised complete control over the executive function of the State. The Constitution clearly underlined collective responsibility and the subservience of the Council of Ministers to the Legislative Assembly.<sup>59</sup> The State Legislature was also vested with the powers to amend the Constitution of the State, subject, however, to the limitation that the Legislature could not initiate any amendments in regard to the provisions of the Constitution of India applicable to the State, the provisions of the Constitution of the State confirming the accession of the State to the Union, provisions which defined the powers reserved for the State and the provisions dealing out the procedure of the amendment of the State Constitution.

The Constitution recognised the pre-eminence of the Legislative Assembly over the Council.<sup>60</sup> The powers vested with the Council were mostly revisory. In matters of legislation, Bills rejected by the Council or retained for more than three months, were deemed to have been approved by the Council in case they were passed by the Assembly a second time. The Assembly was reserved the ultimate veto on any modifications and amendments made by the Council to any Bill considered by the Council. In financial matters the Council did not enjoy any substantial measure of powers. All money Bills were to be introduced in the Assembly. Money Bills passed by the Assembly and sent to the Council for consideration

<sup>58</sup> *Ibid.*, Sec. 36.

<sup>60</sup> *Ibid.*, Sec. 75.

were to be approved by the Council in fourteen days failing which the Bills were deemed to have been passed by it.

A noteworthy feature of the Constitution was the inclusion of the provisions for an independent judicial structure with the High Court at the apex.<sup>61</sup> Express provisions with regard to the appointment, tenure and the removal of the judges of the Court were included in the Constitution to secure the independence of judiciary.

The Court was reserved the jurisdiction which the High Court of the State exercised before the Constitution was enforced. Subject to the general provisions of the Constitution and the law for the time being in force, the original and appellate jurisdiction, the High Court exercised at the time the Constitution came into force, was preserved. In addition to the original and the appellate jurisdiction the Court retained, the Constitution explicitly vested the Court with the powers to:<sup>62</sup>

- (i) transfer cases to itself from the subordinate courts;
- (ii) superintend and control the subordinate courts;
- (iii) control its own staff; and
- (iv) exercise the powers of the Court of Record.

A significant aspect of the powers vested with the Court was that regarding the enforcement of the Fundamental Rights.<sup>63</sup> The High Court was empowered to issue writs and orders in the nature of Habeas Corpus, Mandamus, Prohibition Qu-Warrants and Certiorari for the enforcement of the Fundamental Rights, provided for by the Constitution of India and made available to the people of the State by the Presidential Proclamation of 1954. The power of the Court to issue writs was not confined to the enforcement of the Fundamental Rights only. The Court was vested with the power to issue writs and orders for other purposes also. Whenever, the High Court found that any person within its jurisdiction acted in a way not authorised by law or violated the rights of the citizens, the Court was empowered to issue orders for remedies and redress.

<sup>61</sup> *Ibid.*, Sec. VII.

<sup>62</sup> *Ibid.*, Sec. 102.

<sup>63</sup> *Ibid.*, Sec. 103.

Provisions were also included in the Constitution for the statutory regulation of the public services in the State.<sup>64</sup> The State Legislature was empowered to regulate by law, the recruitment of the public servants as well as determine the conditions of service of the civil service cadres. To secure the immunity and independence of the public services from influence and favouritism, and ensure the recruitment of capable and efficient officials, the Constitution provided for the appointment of a Public Service Commission. The members of the Commission were to be appointed by the Sadar-I-Riyasat.<sup>65</sup> Their tenure was fixed at five years. The members of the Commission were barred to accept any office under the State Government after their retirement. The members were liable to be removed from their office by the Sadar-I-Riyasat on grounds of misbehaviour, after the High Court of the State, on a reference, made to it, had recommended their removal. The members were also liable to be removed from their office by the Sadar-I-Riyasat in case they were declared insolvent or took any other employment or got interested in any agreement involving the Government of the State or the Government of India and earned profits of such an agreement or were considered to be unfit to continue in office due to infirmity of body or mind.

The Commission was vested with the power to advise the State Government on:<sup>66</sup>

- (i) all matters relating to the method of recruitment to public services;
- (ii) the principles to be followed in making appointments, promotions and transfers from one service to another and on the suitability of the candidates for such appointments, promotions and transfers;
- (iii) all disciplinary matters affecting the public servants including the memorials of petitions relating to such matters; and
- (iv) any other matter specifically referred to the Commission by the Sadar-I-Riyasat.

<sup>64</sup> *Ibid.*, Part IX.

<sup>65</sup> *Ibid.*, Sec. 128.

<sup>66</sup> *Ibid.*, Sec. 133.



The Legislature of the State was empowered to extend the scope of the function of the Commission to matters in respect of the services of the State and matters pertaining to services in the public institutions such as the local bodies or public corporations. A limitation was placed on the competence of the Commission as the State Government was empowered to make provisions for the reservation of the employments in favour of any class of "permanent Residents", not adequately represented in the services of the State. The Government was not required to consult and seek the advice of the Commission in the recruitment of any such classified services.

The most characteristic feature of the Constitution was the comprehensive and radically progressive list of the Directive Principles of State Policy, it embodied.<sup>67</sup> The inclusion of the Directive Principles in the Constitution was modelled after the Directive Principles of State Policy enumerated in the Constitution of India. The Principles were an innovation, which the framers of the Constitution adopted, to place a greater premium on political obligation and describe a wider sphere of State activity. Section 13 of the Constitution laid down:

The prime objective of the State consistent with the ideals and the objectives of the freedom movement envisaged in "New Kashmir" shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice—social, economic and political—shall inform all the institutions of the national life.

A distinctive feature of the Directive Principles was that the principles were committed clearly defined ideological objectives. The Principles unambiguously stipulated that the State would promote the welfare of the people by establishing a "socialist order" of society. Section 14 of the Constitution read:

The State shall develop in planned manner the productive forces of the country with a view to enriching the material and cultural life of the people and foster and protect:

- (i) the public sector where the means of production are owned by the State;
- (ii) the cooperative sector where the means of production are cooperatively owned by individuals; and
- (iii) the private sector where the means of production are owned by an individual or corporation employing labour provided that the operation of this sector is not allowed to result in concentration of wealth or the means of production to the common detriment.

The Constitution of the State, therefore, envisaged a readjustment in the economic structure at its base. On the one hand the principles provided for the State ownership of a portion of the means of production and on the other, they put a heavy embargo on private ownership by stipulating that the operation of the private sector was not allowed to result in the concentration of wealth or means of production. As a matter of fact the framers of the Constitution sought to provide for the structural reorganisation and the functional reorientation of the entire economy of the State. They voted for the drastic regulation of the prevailing property relationships.

The Directive Principles also included provisions regarding social legislation, social security and social insurance. The state was to ensure:

- (i) the right to work with payment in accordance with its quality and quantity, and a minimum wage established by law;
- (ii) just and humane conditions of work leisure, social and cultural opportunities and emancipation from abuse, economic necessity and compulsion to enter unsuitable avocations and employments;
- (iii) adequate maintenance in old age, sickness, disablement, unemployment and undeserved want;
- (iv) medical aid;
- (v) free education upto the university standard within a period of ten years from the commencement of the Constitution, compulsory education for children, facilities for adult education and part-time technical and professional training;

<sup>67</sup> *Ibid.*, Part IV.

- (vi) for women equal pay for equal work, maternity benefit and medical care, maintenance in abandonment and protection against discourtesy, defamation, hooliganism and other forms of misconduct;
- (vii) equality of women in all social and political matters;
- (viii) special care for the socially and educationally backward sections of the people, promotion of their educational material and cultural interests and protection against social injustice;
- (ix) promotion of the health of the people by public hygiene and prevention of disease;
- (x) development of agriculture and animal husbandry;
- (xi) organisation of the village panchayats into self-governing units;
- (xii) separation of the judiciary from the executive and the establishment of humane, cheap, certain objective and impartial judicial system; and
- (xiii) elimination of superstition, ignorance fanaticism, communalism, racialism and backwardness.

Provisions were included in the Constitution according to which it could be amended.<sup>68</sup> A Bill to amend the Constitution could only be introduced in the Legislative Assembly. To pass through, an amendment Bill required the affirmative vote of two-thirds majority of the total membership of both the houses of the State Legislature. Express limitation was imposed on amendments which affected the accession of the State and the provisions of Article 370 or sought to change the division of powers between the Government of India and the State or sought to change the procedure laid down for the amendment of the Constitution. No amendment Bill pertaining to these subjects could be introduced in either of the two houses of the State Legislature.

#### Amendment

In October, 1959, the Constitution was amended to incorporate the changes affected by the Presidential Order

of 1959, by virtue of which the provisions of the Constitution of India, pertaining to the conduct and control of the elections to the two houses of the State Legislature, were extended to the State. The Amendment Act repealed the provisions of the Constitution of the State with regard to the elections to the State Legislature and vested the powers to conduct and control the elections, in the Election Commission of India.<sup>69</sup>

In April 1965, the Jammu and Kashmir Sixth Amendment Act was passed and the Constitution of the State was again amended. In accordance with the provisions of the Amendment Act, the nomenclatures of the Sadar-I-Riyasat and the Prime Minister were abolished and replaced by those of the Governor and the Chief Minister. The procedure laid down by the Constitution for the appointment of the Sadar-I-Riyasat, was also done away with and replaced by a simpler process in accordance with which the Governor was to be appointed directly by the President of India by warrant under his hand and seal.

<sup>68</sup> Jammu and Kashmir Constitution, First Amendment Act, 1959, No. XIX 1959 dated 13th October, 1959.

<sup>70</sup> Jammu and Kashmir, Sixth Amendment Act, 1965, dated 10th April, 1965.

<sup>68</sup> *Ibid.*, Sec. 147.

## Index

### A

- Abbas, Chowdhry Ghulam, 119,  
140, 180
- Abdullah, Sheikh Mohamad, 89,  
119-126, 129, 140, 153, 172, 173,  
176, 178, 184-187, 203, 496, 521,  
523, 525, 529, 511, 545, 546, 587.
- Accession, 183
- Accounts and Audits, 59, 207.
- Administration, 1, 9, 13, 17, 33, 36.
- Advisory Committee on Funda-  
mental Rights and Citizenship,  
191, 202, 204, 205, 607, 615, 616.
- Advocate General, 211, 491, 493
- Aghans, 20, 22
- Afridis, 539, 540
- Agriculture, 39
- Ahmadyar, Mian, 167
- Admadiya, 80, 83
- Ahrars, 83
- Alexander, A.V., 168
- All India Women's Conference, 131,  
152, 153, 172, 173, 190

- All India States Muslim League, 139,  
140, 457, 458, 465
- Amar Singh, Raja, 29, 32, 34, 35,  
41, 47, 49
- Amendment Act, 194, 209, 220, 221,  
495, 581, 679
- Amrit Bazar Patrika, 274
- Anantnag, 82, 105
- Arms Act, 141
- Armed Forces, 133
- Article-370, 200, 220
- Asif Ali, 175
- Ayangar, Gopaldaswami, 146
- Azad Kashmir, 530
- Azan, 82

### B

- Bakshi, Ghulam Mohamad, 126,  
127, 129, 130, 180, 181, 187, 601  
602
- Baltistan, 75
- Baramulla, 82
- Baroghil, 22

- Basic Principles Committee, 191, 195-199, 203, 577, 602, 615
- Beg, Afzal, 158, 160, 166, 168, 516, 518, 519-521
- Begar, 72
- Bengali, 28; officers, 247
- Bihar, 106, 366
- Bills and Resolutions, 195
- Bill of Rights, 156
- Board of Judicial Advisors, 135, 136, 138, 194, 425, 427, 456, 457, 619, 621
- Board of Trade, 168
- Bombay, 105, 366
- British, I, 3, 5-7, 11, 12, 16, 18, 23, 24, 71, 121, 136; Administration 149; Crown, 170; Districts, 263, 265; Empire, 20; Government, 21, 92, 133, 472, 473, 556; India, 40-42, 59, 99, 115, 126, 137, 170, 172, 526; Indian Members, 145; Intervention, 40-42, 71, 257; Officials, 71, 73, 78; Officer on Special Duty, 19; Paramountcy, 182, 228; Policy towards States, 71, 72, 92, 285; Prime Minister, 143, 168; Provinces, 169, 366; Resident, 230, 233-236, 263, 264; Troops, 84
- Buddhists, 75, 100, 105, 123
- Budh Singh, 121, 174
- Butter Committee, 334
- C**
- Cabinet Mission, 169-171, 496, 497, 531, 536
- Cabinet, Indian, 143
- Census, 207
- Central Asia, 20, 21
- Central Bureau of Intelligence, 207
- Central Government, 146
- Certiorari, 216
- Chamber of Princes, 148, 464, 475, 482, 525
- Chief Courts, 13
- Chief Justice, 68, 137, 139, 150
- Chief Minister, 27, 28, 221
- Chief Commissioner's Provinces, 170
- Chlasi, 22
- Chinani, 103, 105, 134, 154
- Chitral, 22
- Chowdhry Hamid-ullah, 140, 180
- Chowdhry Abdullah Walli, 140
- Chowdhry Mohamad Amin, 140
- Civil and Criminal Jurisdiction, 280, 282
- Civil Courts, 296
- Civil Disobedience, 143
- Civil Law, 15
- Civil Procedure, 298, 302
- Civil Service, 143
- Code of Criminal Procedure, 14, 52, 56, 68
- Colonel Nisbet, 11, 278
- Colvin, E.J.D., 88, 90
- Congress Working Committee, 12, 142, 459-461, 465, 468; Kashmir, 121
- Congress President, 129
- Commissioner of Inquiry, 80
- Commonwealth, 144
- Communal Imbalances, 85
- Constituent Assembly, 199, 495, 534, 548, 549, 587; of India, 189-201, 205, 206, 208, 221, 495, 616, 617
- Constitution, 150, 201, 210, 215, 621; Council, 37, 263, 302-310, 314-319, 679
- Constitution Act, of 1924, 59-65; Act 1925, 63-66, 69; Act 1934, 108-113, 116-118, 133, 157, 180, 387; Act of 1939, 108, 117, 132, 134, 139, 141, 186, 191-194, 201, 202, 208, 209, 211
- Constitution Amendment, 201
- Constitutional Reforms Conference, 84, 92, 95-100, 346-368

- Council, 30, 34, 59, 62, 68, 284, 289, 290, 294, 295
- Council of Ministers, 27, 41-44, 54, 55, 66, 67, 108, 109, 112, 113, 117, 136, 186, 187, 202, 388, 390, 426-428, 489, 631, 632.
- Councillor, 102
- Court of Record, 138
- Court of Wards, 207
- Cripps, Sir Stafford, 142, 143, 147, 149, 461-464, 467, 470-471, 475, 476
- Cripps Mission, 142, 143, 461, 462, 468, 469, 473, 475, 476, 478; Viceroy on, 143; Proposals, 144-149; Maharaja Hari Singh on Cripps, 145, 146
- Crown, 20, 109, 144, 146
- Crown Representative, 470
- D**
- Dalal, Barjore, 81, 387
- Dalal, Commission, 81
- Dalip Singh, 32
- Darel, 22, 23
- Daya Krishen Koul, 82
- Delhi Agreement, 201, 204, 587, 606.
- Delimitation of Constituencies, 102, 162
- Dev-Nagri, 140, 141
- Dewan Lachman Das, 28
- Dewan Janki Prasad, 28, 29.
- Dhar, Durga Prasad, 577
- Dharmarth, 58, 59, 109; Trust, 128
- Dhyan Singh, 12
- Direct Action, 171
- Directive Principles, 199, 218, 219, 625
- District Magistrate, 69, 115, 126
- District and Sessions Judge, 69, 666
- Disturbances in Kashmir, 90
- Diwan, 28
- Dogra, 16-23, 27, 74-77, 122, 139, 173, 529; Rulers, 79, 195; Administration, 24, 26
- Dogra Sadar Sabha, 74, 75, 111, 121
- Douglas Forsythe, 22
- Dominion, 183; of India, 184, 185
- Drafting Committee, 198, 202, 203, 207
- Durbar Proclamation, 243, 244, 247, 607, 615
- Durand, H.M., 258, 261, 279
- Dyarchy, Kashmir Government, 157-159, 163-168, 498, 503, 507, 516, 518-524
- E**
- Education, 73, 156, 219
- Election, 141; of 1934, 115, 116; of 1937, 123, 139, 140, 150, 179, 676; State Legislature 221; Constituent Assembly of State, 549
- Election Rules, 397, 400
- Electrorate, 99
- Electoral Regulation, 110, 112, 113, 390
- Electoral System, 490, 491
- Election Commission, 207-221
- Emergency Administration, 185-187
- Emergency Powers, 199, 204, 208
- Emigration, 27
- Empire, 3, 18, 145
- English, 72, 80-85, 263; officials, 72; Education, 73, 74
- Equity, 70
- Equality of women, 220
- European, 17, 18, 37; Visitors in Kashmir, 278, 280
- Expenditure, 194
- F**
- Federal, 552
- Ferozpoore, 3
- Feudal Anarchism, 554
- Feudalism, 557, 559

Feudatory, 2, 57; States, 265  
 Finance, 215, 667  
 Financial 27; matters, 426-428:  
   business, 452-454; departments,  
   454; integration, 594  
 Finance Minister, 27  
 First Regular Settlement, 72  
 First World War, 79  
 Food Control, 59  
 Forests and River Water, 156  
 Freedom, 546  
 Franchise, 490  
 Franchise Officer, 101, 364  
 Franchise Committee, 89, 91,  
   101-105, 114-116, 363-368, 370-  
   371, 379-383, 385-387  
 Frontier, 133; of British India, 229;  
   Illaqas, 368  
 Fundamental Rights, 191, 199, 200-  
   207, 216, 592, 593, 608, 612

**G**

Gazetted Officers, 44, 45  
 General Council, 548  
 General Elections, 191  
 Gilgit, 11, 22-24, 32, 38, 105, 109,  
   133, 150; Agency, 20-24  
 Gopalaswamy, Ayangar, 146, 186  
 Governor, 8-10, 221; Kashmir,  
   277  
 Governor General, 11, 12, 18, 23,  
   24, 38, 39, 228; in Council, 262,  
   263  
 Government, 8-11, 18, 27, 31, 37, 61-  
   64, 625  
 Government of India, 557, 673  
 Government of India Act, 1935,  
   458  
 Grievances and Complaints, 79  
 Grievances Inquiry Commission,  
   84-85, 90-92  
 Gulab Singh, 1-8, 11-13, 17, 19,  
   228  
 Guzar khwars, 107

**H**

Hamidullah, 140  
 Handawara, 105  
 Hari Krishen Koul, 81, 88  
 Hari Singh, Maharaja, 56, 62, 68,  
   78, 92, 145, 146, 177, 182, 184,  
   189, 262, 263, 368, 463, 538, 541-  
   547  
 Harijans, 123, 155  
 Harkara, 123, 155  
 Head of the State, 538, 554, 577-  
   580, 585, 594  
 High Court, 51, 52, 56, 59, 68-70,  
   137, 138, 156, 194, 207, 213, 216,  
   217, 296-299, 325, 334, 425, 427,  
   429, 430, 491, 604, 660-666  
 Hindus, 75, 76, 100, 102, 105, 107,  
   121, 123, 141, 401; India, 460,  
   559; Constituency, 113; of  
   Jammu, 85; of Kashmir, 105;  
   Law, 85  
 Hira Singh, 2  
 His Majesty's Government, 143-145,  
   148  
 Home Affair, 58, 160  
 House of Commons, 471  
 Hyderabad, 130, 529

**I**

Ijzatnama Rules, 205, 209, 210,  
   608, 618  
 Illaquadars, 102, 107, 109  
 Immovable Property, 107  
 Indian Army, 398  
 Indian Constitution, 557  
 Indian Dominion, 183, 184  
 Indian Muslims, 560  
 Indian National Congress, 129, 459,  
   461, 465, 468, 657  
 Indian Province, 161  
 Indian States, 18, 20, 85, 130, 144,  
   145, 147, 149, 161, 169, 170, 477,  
   479, 481, 482, 525, 526, 529, 531;

State's Delegation, 147, 481, 482  
 Indian Statutory Committee, 106,  
   170  
 Indian Union, 144, 189, 530, 538  
 Indus, 6  
 Instrument of Accession, 190, 541-  
   543, 587, 588  
 Interim Government, 171, 172, 182,  
   186, 188, 192, 193, 544, 546  
 Interim Report, 195, 577, 578  
 Internal Autonomy 557  
 Ishkoman, 22  
 Iqbal, Sir Mohamad, 336, 338, 340,  
   342

**J**

Jagirs, 8, 9, 36, 58, 114; Illaqa,  
   103  
 Jagirdars, 78, 96, 107, 109, 114, 399,  
   400  
 Jammu, 25, 75, 83, 154, 198, 265,  
   368; Riots, 80  
 Jammu and Kashmir, 16, 17, 66, 73,  
   122, 178, 189, 221, 365, 539, 552,  
   553, 557, 617; Muslims 87;  
   Muslim Conference, 101; State  
   128; National Conference, 90,  
   365  
 Janki Prasad, 30  
 Jasrota, 10  
 Jawahar Singh, 12  
 Jhupal, 10  
 Jinnah, M.A., 438, 456  
 Joint Commissioner for Ladakh,  
   21  
 Judiciary, 156, 556  
 Judicial Advisor, 135, 209; Depart-  
   ment, 59; Member, 13; System,  
   13, 14; Officer, 137  
 Judicature, 54  
 Jurisdiction, 18, 19, 281

**K**

Karan Singh, Yuvraj, 189, 191  
 Kargil, 105, 198

Karkhandars, 8  
 Karkots, 8  
 Kangra, 7  
 Kasauli, 1  
 Kashmir, 1; 5, 6, 8, 13, 21, 154; 155,  
   198, 497; Districts, 103; Govern-  
   ment, 533; Jammu, 75; Muslim  
   Conference, 534; Province, 75;  
   State, 176, 263; Socialist Party,  
   537, 538  
 Kashmiri, 154; Pandits, 75, 85, 121,  
   126  
 Khaikā, 2, 4, 5, 72  
 Khillats, 36, 57, 59  
 Kisan Conference, 179, 526  
 Kishtwar, 198

**L**

Labour law, 156  
 Lachman Das, 28  
 Ladakh, 1, 10, 21, 105, 109, 133,  
   150, 153, 198, 214  
 Lahore, 4-7  
 Lala Muluk Raj Saraf, 121  
 Lala Girdhari Lal Anand, 121  
 Lal Singh, 345  
 Land Reforms, 206, 551, 558, 611  
 Land owners, 78, 558  
 Land to Tiller, 551  
 Law, 58, 625  
 Lawyers, 107, 114  
 League, 171  
 Legal Jurisdiction, 280  
 Legislative Assembly, 35, 53, 93, 94,  
   108, 109, 111, 115, 133, 141, 169,  
   193, 194, 201, 202, 211, 212, 214,  
   215, 578, 579, 603, 604  
 Legislature, 59, 389, 417, 625  
 Leh, 21  
 Leri, 25  
 Local Administration, 492  
 Lothian Committee, 115, 143, 145,  
   538, 539  
 Ludhiana, 3

## M

Madhopur, 23  
Magistrate, 15  
Maharaja, 7-13, 18, 21-23, 33, 34, 57, 59, 72, 78, 92, 95, 96, 108, 110, 127, 128, 261, 262, 264, 534, 535, 547, 554  
Mahayan Sabha, 74, 75  
Majoritarianism, 118  
Mandi, 7  
Manibesto, 153  
Masood, Maulana Sayeed, 122, 125, 129  
Megh, 372-374  
Meher Chand Mahajan, 186  
Memorial, 83  
Meteorological Department, 59  
Mian Ahmadyar, 120, 141, 167, 168, 173, 181  
Middle Class, 73, 75, 76  
Military Board, 67  
Military Service, 128  
Mires, 207  
Ministers, 1, 10, 166, 167  
Ministry, 43  
Minority 90, 121  
Mirpur, 369, 370, 374  
Missionaries, 73  
Monopoly, 20  
Mosques, 106, 114  
Moti Singh, 12, 28  
Moulvi, Mazhar Ali, 107  
Moulvi Youssuf Shah, 180  
Mountbatten, Lord, 183, 186  
Multis, 106, 114  
Mukararies, 114  
Municipalities, 59, 66, 98, 100, 159, 214  
Muslim, 24, 72, 76, 81, 101, 401, 559; Block, 560; Culture, 337; Demands, 82, 89; Distrust, 76, 77, 86, 106; of Kashmir, 557; leadership, 81; Majority, 147; Movement, 82; State, 559; Unrest, 79  
Muslim Conference, 84, 87, 119,

120, 122, 124, 125, 131, 139, 140, 179, 180  
Muslim India, 458-460  
Muslim League, 130, 139, 140, 146, 149, 150, 175  
Muslim State, 146, 147  
Muslim Youngmen's Association, 75, 80

## N

Nagar, 22, 38  
National Assembly, 146 154, 155, 156, 187,  
National Conference, 47, 110, 130, 132, 139, 150, 154, 164, 167, 171, 174, 179, 180, 185, 190, 191, 197  
National Demand, 117, 126  
National Economic Plan, 155  
National Flag, 193  
National Movement, 71  
Native States, 263  
Nawab of Bhopal, 171  
Nawanagar, Jam Sahib, 469  
Naya Kashmir, 150, 153, 155, 157, 548, 549, 551, 552, 603, 604  
Negotiation Committee, 183, 184 186  
Nehru, J.L., 129, 175, 177, 178, 181, 199

## O

Officer on Special Duty, 18, 24, 25  
Official Language, 208  
Organisation, 8  
Orders and Ordinances, 547

## P

Palaces and Guards, 109  
Pakistan, 139, 140, 171, 179, 184  
Pandit Kashyap Bandhu, 126, 128, 129  
Pandit Prem Nath Bazaz, 126, 127, 129  
Pandit Ram Chandra Kak, 159, 162, 163, 166-168, 174, 183

Pandit Sham Lal Saraf, 126  
Pandit Suraj Kouli, 34, 35  
Pandit Trilochan Dutt, 121  
Panchayat, 214  
Paramountcy, 170, 171, 172, 182, 534, 535  
Parliament of India, 193, 210, 619, 623  
Pasban, 79  
Pattadars, 96  
Peasantry, 8  
Penal Code, 14, 15  
Permanent Residents, 201, 204, 206, 208, 209, 210, 211, 218  
Personal Rule, 1, 13, 27  
Plowden, 27, 28, 257  
Political Conference, 122  
Political officers, 146  
Poonch, 28, 81, 82, 83, 88, 103, 104, 126, 133, 154, 198, 350, 369, 370, 374  
Population, 72  
Powers of the Council, 307, 315, 316  
Praja Sabha, 107, 108, 110-112, 114, 116, 117, 132, 133, 135-137, 141, 151, 157, 166, 167, 179, 180, 187, 193, 194-195, 210, 401, 498, 504  
Pratap Singh, 25, 31, 51, 53, 56, 62, 72, 81, 249, 250, 257, 258, 285, 289, 294; Administration, 231, 236, 237, 239, 240, 244, 246, 249, 250-253; Administrative Reforms, 237, 242, 246; Deposition, 275; Succession, 230, 232-239, 244; Restoration of Powers, 43-49, 285, 289, 294, 295  
Pratap Reforms Regulation, 53, 56  
Preventive Detention, 207  
President, 29, 36, 111, 336  
President of India, 201, 204, 206, 208-211, 219, 579, 593, 629, 631  
Presidential Order, 209  
Prerogative, 108, 109, 132  
Prime Minister, 30, 34, 81, 82, 88, 90, 109, 118, 134, 136, 141, 157, 158, 160-166, 183, 187, 193, 195, 212, 368, 421, 429, 430-432, 453, 457, 546, 631  
Princes, 463, 464, 469, 470, 473, 480, 525, 526, 529  
Princely States, 77, 79, 143, 148, 171, 182, 183, 192  
Proclamation, 191, 547  
Proclamation of Emergency, 208  
Prohibition, 215  
Provincial Councils, 106  
Punjab, 11, 19, 20, 31, 36; High Court, 184  
Punjabi 263  
Public Service Commission, 603, 670, 672  
Public Works, 67, 159, 161  
Punnial, 22

## Q

Quadian, 80  
Quit India, 182  
Quit Kashmir, 172, 179, 181, 529, 530-532, 533  
Quo Warranto, 216.  
Quest for Settlement, 142

## R

Rai Bahadur Bagh Ram, 34, 35  
Rai Bahadur Ganga Nath, 150-154  
Rakhs, 57  
Raja Amar Singh, 202  
Raja Dhyan Singh, 2  
Raja Mohammad Akbar Khan, 120, 121  
Rajput, 1, 3, 6, 7, 16, 17, 100  
Rajouri, 83  
Ram Chandra Kak, 159, 164, 166, 168, 498, 503, 507, 516, 518, 519, 521  
Ram Singh, 28, 29, 34  
Ranbir Singh, 12, 13, 19, 23, 25  
Ravi, 7  
Rawalpindi, 176-178

- Reasi, 130  
 Red Cross, 59  
 Reforms Conference, 363, 365  
 Reforms Regulation, 53-55, 58  
 Regional Organisation, 175  
 Regulation 387, 389  
 Representatives Conference, 67  
 Research, 59  
 Reserved Subjects, 303, 304, 308, 314, 315, 317, 388, 389  
 Resident, 25, 26, 29, 35, 242, 246  
 Resident Political Officer, 25-26, 45  
 Residuary Powers, 165, 591  
 Residuary Subjects, 156  
 Resolution, Muslim Conference, 124  
 Responsible Government, 119, 120, 121, 124, 129, 545  
 Retired Officers, 107  
 Revenue, 15; Commissioner, 68-70; Member, 59; Officials, 45  
 Riots, 58, 80  
 Rondu, 22  
 Royal Commission, 550-554  
 Royal Dynasty, 551  
 Rule, 7, 10  
 Rules of Business, 309, 319  
 Ruler of State, 489, 499  
 Rulers of States, 525  
 Ruler in Council, 367, 535  
 Sadar-i-Riyasat, 195, 197, 201, 202, 203, 211-215, 217, 585, 599, 600, 602, 623, 629, 630, 631, 632, 633, 634, 637, 638, 658, 659, 667, 679  
 Samarkand, 20  
 Sands and Pattas, 96  
 Sardar Budh Singh, 120, 126  
 Sardar Patel, 188  
 Scheduled Caste, 214  
 Second World War, 139, 142  
 Secretariat, 161  
 Secretary of the Council, 59  
 Secretary of State, 267  
 Senior Member, 56, 57  
 Separate Electorate, 99, 100, 120  
 Separation of Judiciary, 120, 398, 400  
 Settlement Officer, 72  
 Shawl and Silk, 71  
 Sheikh Abdul Quyum, 101  
 Sheikh Immam-udin, 8, 9, 11  
 Sialkot, 90  
 Sikhs, 1-6, 12, 19, 100, 102-104, 121, 123, 155; Court, 2; of Kashmir, 105; Representation in Assembly, 103, 104  
 Siyasat, 79  
 Skardu, 214; Tashil, 105  
 Socialist Party, 179, 180  
 Sopore, 82  
 Standing Committee, 181  
 Standing Officers, 44  
 Standing Order, 110  
 Standstill Agreement, 538, 539  
 State, 4, 8, 9, 10, 14; 625, 634, 679; Accession, 556, 559; Army, 6, 7, 109; Budget, 116, 118, 212; Conference, 175; Council, 58-60, 64-66, 251, 253, 282, 292; Department, 189; Forces, 107; High Court, 81; Insurance, 156; Legislature, 205, 207, 215, 217, 220, 221, 618; Policy, 78, 79, 560  
 State-Subject, 74, 75, 98, 99, 191, 200-202, 208, 323, 324, 379, 380, 549, 560, 607, 624  
 State People's Conference, 120, 173, 175, 176, 181, 496, 526  
 Statutory Commission, 366  
 Srinagar, 26, 82, 83, 95, 100, 103, 104, 120, 173, 175, 177, 183, 184  
 Srinagar Riots, 80  
 Suchet Singh, 12  
 Supreme Court, 199, 200, 203, 209, 605

- T  
 Tombols, 57, 59  
 Tangir, 22  
 Tasdiqi-Wasiqajat, 58, 59  
 Tazimi-Sardars, 78  
 Tehsildars, 14, 15  
 Temple, 114  
 Territories, 16  
 Titles, 58  
 Toshkhana, 9, 57  
 Town Area Committee, 214  
 Trade, 12  
 Travancore, 171  
 Treaty of Amritsar, 6, 16, 17, 173, 174  
 Treaty of Lahore, 1, 6, 9  
 Treaty Rights, 146, 225  
 Treaties, 470, 471  
 Tripura, 129  
 Turkistan, 20, 21, 109  
 Tzar, 32  
 U  
 Udhampur, 103, 104  
 United Kingdom, 144  
 United Nations, 145  
 Union, 552; Government, 169; of India, 170, 172; List, 207  
 V  
 Vaidis, 107, 114  
 Vakiis, 70, 138  
 Vice-President, 29, 100  
 Viceroy, 50, 80, 81, 142, 146, 172  
 W  
 Wakefield, 81  
 War, I-5  
 War-Cabinet, 143  
 War-Council, 82  
 Wavel, Lord, 171, 172  
 Wazarat, 5, 105, 368  
 Wazir Ganga Ram, 158  
 Y  
 Yarkand, 22  
 Youngmen's Muslim Association, 90  
 Yuvraj Karan Singh, 189, 191  
 Z  
 Zaildars, 114  
 Zillahdars, 26, 98, 160