CHAPTER-II

ARTICLE 370 AND THE SPECIAL STATUS TO THE STATE OF JAMMU AND KASHMIR

With the Accession of the state of Jammu and Kashmir to India, Jurisdiction in matters of Defence, External Affairs and Communications was transferred to the Government of India and the Union Parliament was given power to make laws for the state for the purposes of those three matters only. The Union Parliament had no jurisdiction in any other matter. The state was reserved powers in regard to all the residuary subjects and the terms of the instrument of Accession were not to be altered by any subsequent amendment of the Indian Independence Act, unless such an amendment was accepted by the Ruler of the State by a supplementary instrument.

Maharaja Hari Singh did not commit himself to accept any future constitution of India. However, he reserved the right to enter into agreements with the Government of India under any future Constitution of India. The Instrument of Accession did not affect the Continuance of the sovereignty of the Ruler in and over the state on the validity of any law in force in the state, same as provided by or under the Instrument of Accession\(^1\). Thus the Accession stipulated a minimal transfer of power to the Dominion Government and the State’s ministry offered Ruler of the state to accept the accession on a basis whereby he would be permitted to retain most of the prerogatives he exercised under the British paramountcy.

Immediately after Accession, the relations of Jammu and Kashmir state with the Indian Union were influenced mainly by two poles of power in the state: the ruler and the popular leader and their mutual relations. The attitude of the centre in turn was influenced by the compulsions implied to its unilateral commitment of plebiscite to determine the future of the state and by its concern over the international opinion in view of the debate on the subject in the United Nations Security Council.\(^2\) So after Accession Sheikh Abdullah and Prime Minister Mehr Chand Mahajan went to New Delhi in order to get a clarification of their roles in the new state government.

In meetings with Jawaharlal Nehru, Sardar Patel and Mr. V.P. Menon, it was decided that the Mehr Chand Mahajan should continue as the Prime Minister and Sheikh Abdullah would be designated as Head of the emergency administration.\(^3\) Accordingly, Maharaja Hari Singh appointed Sheikh Abdullah as
“Head of the Emergency Administration” on 31st October, 1947. Thus was created an unusual Institution in the history of administration, a dual administrative office with Mehr Chand Mahajan as the Prime Minister and Sheikh Abdullah as the head of the emergency administration without precisely defining his powers and demarcating them from those of his Prime Minister, Mehr Chand Mahajan.

In subsequent months, Sheikh Abdullah and Mehr Chand Mahajan reached a modus operandi in which the former assumed responsibility for the administration of Kashmir province and the Prime Minister, Mahajan concentrated on the problems of Jammu province. Within week of Sheikh Abdullah’s appointment as Head of the Emergency Administration, Kanwar Dalip Singh, agent to the Government of India in Jammu and Kashmir State, reported to the states Minister that “His Highness dislikes Sheikh Sahib’s endeavors to try and maintain authority in Jammu without reference to his Highness are merely causing friction and tension”. He (His Highness) expressed his apprehension over the appointment of a Muslim Inspector General (I.G.) of Police, “Which would probably mean that he would be murdered or his authority would be defied with the Connivance of his own men”.

In his reply, Minister for states Sardar Vallabh Bhai Patel said, “We have to be particularly careful until the plebiscite is completed. In order to preserve the state, he emphasized the need for a spirit of accommodations for bearance and statesmanship.” He advised against “Standing on old ideas of dignity and prestige.”

Further on 22nd November, 1947, Mehrchand Mahajan complained to the Minister for states that Sheikh Abdullah had got dictatorial powers “Which are being exercised is a dictatorial manner regardless of all rules and forms of law.” Again on 11th December, 1947, he wrote to the Minister of states that, “The administration here is on Hitlerian methods, I do not wish to be associated with this gangster rule. There is no rule of Law.” He listed the following specific instances:

(i) The High court was not allowed to function. The Chief Justice asked that it should open in Jammu, the order was not carried out. Head of Administration had no power to interfere in the High Court’s business yet he was doing all this.

(ii) Governor of Jammu, a large number of officials and other persons were confined to jail without trial, enquiry and even a remand.
(iii) His Highness passed orders that the officers should move to Jammu (as they did in every winter) but no need was paid to this order.

(iv) His Highness suspected some officers as Pakistanis and retired them. They were reinstated and appointed on senior posts.

(v) Laws were made by Sheikh Abdullah himself.9

Meanwhile the National Conference continued the campaign against Mehr Chand Mahajan. They advised Maharaja Hari Singh through their writings to terminate the services of Mahajan, who draws Rs. 6000/- per month without doing anything. Sheikh Abdullah told in a meeting of the party workers of Jammu that only one of them, He or Mahajan, could stay in the administration. Thus both Mehr Chand Mahajan and Sheikh Abdullah made the issue “A point of Honour.”10

Constituent Assembly

The Central Government of India now decided to take steps to set up a “Stable Government” in the state in place of the dual administration in order to define and strengthen the relationship between itself and the state of Jammu and Kashmir. So Jawahar Lal Nehru wrote to Maharaja Hari Singh on the subject on 1st December, 1947. Gopalaswami Ayyangar also pleaded for the establishment of an Interim Government.11

In most of the states and the Unions of the states the Institution of the Constituent Assemblies did not make much progress, mainly due to the difficult problems of federal integration, the states presented. A standard pattern of federal relations and the division of powers between the states and the proposed Union of India was still to be evolved and in the absence of a uniform pattern of federal relations, the process of Constitution making in the states was difficult. The Constituent Assemblies were instituted only in the Mysore state and two states unions: the states union of Travancore-Cochin and the States Union of Saurashtra.12

However in the state of Jammu and Kashmir, the process of Constitution making was set with many more difficulties. The unsettled political conditions in the state, protracted conflict with Pakistan and the occupation of a large part of the territory of the state by Pakistan and the disputations about the state in the United Nations relegated the convocation of the Constituent Assembly into background.
The Central government held that the government in Jammu and Kashmir should be on the same model as the Government in the state of Mysore. According to the Mysore Model:

(i) The leader of the popular party was to be the Chief Minister.

(ii) The Maharaja was to retain in his own hands certain particular subjects viz. his prerogatives, his privy purse, the constitutional relationship between the Government of the state and the Central Government, appointment of Judges, the summoning and dissolution of the legislature, protections of the legitimate interests of the minorities, conduct of elections, residuary powers, powers to deal with any breakdown of the constitutional machinery, the military etc. and

(ii) The entire machinery was to function as a Cabinet and act in consent with the Dewan.

The Constituent Assembly was to draft a legislation providing for responsible government on the basis of the Mysore Model. Jawaharlal Nehru wrote to the Maharaja Hari Singh: “Sheikh Abdullah should be the Prime Minister and should be asked to form the government and Mehrchand Mahajan as Dewan should continue as one of the Ministers and serve as a link between the Maharaja and the Ministry.”

Sheikh Abdullah, however, did not want the Dewan to function as a link between him and the Maharaja. There upon Gopalswami Ayyangar, who had been entrusted with the responsibility of preparing a draft of the necessary legislations, devised another scheme under which the office of Dewan was to be abolished and Mahajan relieved of his office.

However, Maharaja Hari Singh, insisted on strict adherence to the Mysore Model. He also wanted the Dewan to continue and the Praja Sabha after fresh elections to function as the Constituent Assembly. Ultimately they arrived at a settlement.

During the early phase of the Emergency administrations, Sheikh Abdullah had received wide spread public support in the state, with the exceptions of a relatively small number i.e. Muslim Conference who advocated Accession to Pakistan. This extensive backing was largely the result of the Nationalist success in organizing and running the government during the weeks when the valley was threatened by the tribal invasions. Hindus and Sikhs as well as large number of
Muslims paid glowing tributes to Sheikh Abdullah and the National Conference. The people demanded that emergency administration be changed into a Responsible government and they be given the Right to frame their own Constitution. So forced by the circumstances and compelled by the public, Maharaja Hari Singh issued a proclamation on 5th March, 1948, which replaced the former system by a popular interim Government headed by Sheikh Abdullah as Prime Minister. The proclamation read as:

(i) My Council of Ministers shall consist of a Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal warrant appointed Sheikh Mohammed Abdullah as the Prime Minister with effect from 1st Day of March, 1948.

(ii) The Prime Minister and other Ministers shall function as a Cabinet and act on the Principle of joint responsibility. A Dewan appointed by me shall also be a member of Cabinet.

(iii) I take this opportunity of giving once again a solemn assurance that all sections of my people will have opportunity of service, both civil and military solely on the basis of their merits and irrespective of creed or community.

(iv) My council of Ministers shall take appropriate steps as soon as restorations of normal conditions have been completed to convene a National Assembly based upon adult suffrage, having due regard to the principle that the number of representatives from each voting area should, as far as practicable be proportionate to the populations of that area.

(v) The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing freedom of conscience, freedom of speech and freedom of assembly.

(vi) The National Assembly shall as soon as the work of framing the new constitution is completed, submit it through the council of Ministers for my acceptance.

(vii) In conclusion I repeat the hope that the fraction of a popular interim government and the inauguration, in the near future, of a fully democratic
constitution will ensure the contentment, happiness and the moral and material advancement of my beloved people.\textsuperscript{20}

This proclamation marked the first definite step towards the establishment of a popular ministry and towards the framing of a ‘Democratic Constitution’ for the state. However, the state was still to be governed by the constitutions Act of 1939, pending the framing of a new constitution by the duly elected Constituent Assembly. This proclamation was not willingly made by Maharaja Hari Singh, who deplored the situations and was opposed to the constitutional changes.\textsuperscript{21} This interim government was charged with the task of convening a Constituent Assembly on the basis of adult franchise to frame a Constitution for the state.

\textbf{Jammu and Kashmir in the United Nations}

Immediately after the Indian troops arrived in Jammu and Kashmir, the Government of India requested the Pakistan Government to stop all help to the invading tribesmen. On 28\textsuperscript{th} October, 1947, Jawaharlal Nehru sent a cable to Mr. Liaquat Ali Khan inviting his government’s cooperation in stopping the raiders. Mr. Liaquat Ali Khan in his reply to Jawaharlal Nehru on 30\textsuperscript{th} October, 1947, did not promise the cooperation but alleged. “\textit{Your recent action of sending troops to Jammu and Kashmir in the pretext of Accession has made things infinitely worse. The whole of the frontier is stirring and the feeling of resentment among tribes is intense. The responsibility of what is happening is entirely yours.}”\textsuperscript{22}

Jawaharlal Nehru denied the Pakistan’s charges in his telegram to Mr. Liaquat Ali Khan on 31\textsuperscript{st} October 1947 and appealed him to do his utmost to stop the raids. Indian government repeated her request several times, but to no purpose. The last occasion on which the request was made was on 27\textsuperscript{th} December, 1947. However the situation in the state was getting worse with Pakistan’s continued support to the marauding tribesmen. It was evident that Pakistan government was unwilling to stop assistance to the invaders.\textsuperscript{23}

No agreement on Jammu and Kashmir could take place between India and Pakistan and that the talks between Jawahar Lal Nehru and Mr. Liaquat Ali Khan ended in fiasco. Lord Mountbatten was convinced that nothing substantial would be attained by direct negotiations between the two countries. On the other hand he feared
that a direct war between the two Dominions might break out if no settlement was reached over Kashmir.

So, he advised both Jawaharlal Nehru and Mahatma Gandhi that the matter should be referred to the United Nations. Finally the Mountbatten’s suggestion was accepted and Jawahar Lal Nehru decided to refer the matter to the United Nations on 31st December 1947. It was a tactical mistake on the part of the Indian Government to have referred the matter to the United Nations before freeing the whole of Jammu and Kashmir from the savage raiders. They were still in possession of a larger part of the state’s territory. Besides, by referring the matter to the Security Council, India indirectly became a party to the dispute. But Jawaharlal Nehru in his defense said that the issue was bound to come before the United Nations sooner or later. Had India not taken that step, Pakistan would have brought the issue before the United Nations. Also India was a member of the United Nations and believed firmly in the United Nations Charter. It was wrong to approach the United Nations when it suited our interest and to discard it when it did not conform to our interest.

So in accordance with Article 35 of the United National Charter, the Government of India appealed to the Security Council to ask the Government of Pakistan:

I. to prevent Pakistan Government personnel, Military and civil, participating in or assisting the invasions of Jammu and Kashmir state.

II. to call upon other Pakistani nationals to desist from taking any part in the fighting in Jammu and Kashmir.

III. to deny to the invaders:

(i) access to and use of its territory for operations against Jammu and Kashmir.

(ii) military and other supplies.

(iii) all kind of aid that might tend to prolong the present struggle.

Discussion and debate on the Indian complaint began on 15th January, 1948. The Indian case was presented by N. Gopalswami Ayyangar, India’s Minister without portfolio and a former Prime Minister of Jammu and Kashmir state. He was accompanied and assisted by Mr. M.C. Setalvad, Attorney General of India and
Sheikh Mohammed Abdullah. Where as the leader of the Pakistani delegation was Foreign Minister, Mr. Mohammad Zafrullah Khan, a very competent barrister. He skillfully manipulated the scope of discussion to include the traumatic background of the partition of the Indian subcontinent. This resulted in chain of allegations and counter allegations.

On 15th January, 1948 when the Security Council took up the matter for considerations, Mr. Gopalaswami Ayyangar stated in Security Council: “We have referred to the council a simple and straight forward issue. The withdrawal and expulsion of the raiders from the soil of Kashmir and immediate stoppage of the fight are the first and only tasks to which we have to address ourselves.”

Replying to Mr. Gopalaswami Ayyangar, Mr. Mohammad Zafrullah denied all the charges, brought against the Pakistan Government. Zafrullah Khan made the following counter charge against India.

I. The present conflict in Kashmir had its roots in the events in the Punjab and in India’s stand on the occasion of Junagadh and other states to Pakistan.

II. That India had planned a campaign of genocide, which she was carrying out.

III. That India secured the Accession of Kashmir by force and fraud.

On the other hand, Mr. Ayyangar said that Pakistani officers were “training, guiding or otherwise actively helping raiders who were being allowed to use Pakistan territory as a base of operations.”

During the discussion Zafrullah Khan suggested that the ideal solution of the dispute would be to establish a Joint administration of the two Dominions under the Governor-General of India and Pakistan. Also during interim period the Muslim majority areas should be administered by Pakistan and the Hindu majority areas by India respectively. Finally he suggested that the plebiscite could take place under the supervision of the United Nations organization or under the Commonwealth of Nations.

As a result of these deliberations at United Nations headquarter at Lake success, the Security Council passed a resolution on 17th January, 1948, which was accepted by both India and Pakistan. By this resolution Security Council asked India and Pakistan, “to take immediately all measures within their power (including public
appeals to their people) calculated to improve the situation and to refrain from making any statements and from doing or permitting any acts which might aggravate the situation”.  

But there were fundamental differences between India and Pakistan on two specific points.

- Pakistan demanded that an impartial administration should immediately be established in place of the Sheikh Abdullah’s Government. Needless to say that Indian Government emphatically rejected this demand. India proposed that the provisional Government of Sheikh Abdullah should be converted into a council of Ministers, which should organize elections for the National Assembly and hold a plebiscite under the auspices of the United Nations Commission.

- Secondly Pakistan suggested that the United Nations Commission should conduct the withdrawal of Indian forces from Jammu and Kashmir. But India held that the presence of India troops in Jammu and Kashmir was necessary for the Internal and external security of the state. India would not withdraw her forces from Jammu and Kashmir till Jammu and Kashmir remained acceded to India.

On 27th January, 1948, India and Pakistan submitted Draft proposals to the President of Security Council on the appropriate methods of solving the Jammu and Kashmir Dispute. It was in this proposal that India agreed to the holding of a Plebiscite in Jammu and Kashmir. It was this statement which caused doubts in the mind of the members of the Security Council about the finality and legality of the Accession. The Indian representatives made it appear that the Accession was temporary and that the final status of Jammu and Kashmir was to be determined by plebiscite. Although the legal nature of Jammu and Kashmir’s Accession was the foundation of India’s case, the Indian representative made it appear as if the Accession was conditional. Pakistan has since seized upon and used this point for its benefit in the Security Council.

Pakistan also questioned the legality of Jammu and Kashmir’s Accession to India and the representative nature of Sheikh Abdullah’s administration. However, India accepted only one legal government of Jammu and Kashmir and that was the Sheikh Abdullah’s Government and only this legally constituted Government was entitled to hold plebiscite under the supervision of the United Nations Commission.
India could not accept the Pakistani suggestions which put the aggressor and the aggressed on the same footing.

But the Security Council supported the Pakistani stand. Mr. Langenhove presented two draft resolutions simultaneously on 29th January, 1948. The first provided for a plebiscite to be organized, held and supervised under the authority of the Security Council. The second proposal required the Commission to consider its duties which would tend towards promoting the cessation of acts of hostility and violence in Jammu and Kashmir. Pakistan accepted Mr. Langenhove’s proposals but India rejected both the proposals. Here, Mr. Gopalaswami Ayyangar replied that India also stood for a free plebiscite in Jammu and Kashmir but the pressing question before the Security Council was to bring the fighting in the state of Jammu and Kashmir to an end. He insisted the extreme urgency of calling upon Pakistan to withdraw the invading tribesmen from Jammu and Kashmir and bring the hostilities to an end. But this real issue was being clouded by the Security Council.36

However, India’s presentation of its case in the Security Council was tactless. The Indian representative, instead of emphasizing the Pakistani hand in the aggression, continued dilating on the Pakistani complicity and indulged in legal sophistry of differentiating between Pakistan and the invader and failed to secure the sympathy on the Security Council. Also, reference to the promise of plebiscite weakened a strong case, making it appear that the Accession was conditional. There was no provision in the Independence Act of 1947 for a plebiscite and according to the partition scheme, Accession by the Maharaja Hari Singh of Jammu and Kashmir to the Indian Union was legally correct, final and irrevocable.37

On the other hand Zafrullah Khan, representative of Pakistan presented very skillfully and in a very clever manner. Regarding the vehicles, petrol, arms and ammunition, training and uniform, which India alleged were being supplied by Pakistan, Zafrullah Khan’s explanations were interesting if not convincing. The Pakistani vehicles captured by India, bearing Pakistani number plates, were already in Jammu and Kashmir on “legitimate business”. But Pakistan never protested to the Government of Jammu and Kashmir for confiscating Pakistani vehicles in Jammu and Kashmir on “legitimate business.” Regarding the supply of petrol, he said that the Government did not control the supply of petrol, which was done by oil companies.
but at that time both in India and Pakistan petrol was a rare commodity, subject to Government control.\textsuperscript{38}

Concluding his speech in the 228\textsuperscript{th} meeting, Zafrullah Khan demanded the replacement of Sheikh Abdullah’s Government by a ‘Popular Government’ and suggested that everyone who had gone into Jammu and Kashmir should go out, including Sikh bands, Rashtriya Swayam Sevak (RSS) Volunteers, the raiders who entered from Pakistan side and the Indian troops.

In order to replace Indian Army, he suggested four alternatives, first, Joint administration under the Governor-General of India and Pakistan and joint occupation i.e. of pre-dominantly Muslim areas in Kashmir by Pakistan troops and predominantly non-Muslim areas by Indian troops, second, joint occupation in each place, third, occupation by common wealth forces and fourth, administration through the United Nations. Thus Zafrullah Khan’s defence of Pakistan position was brilliant “based on systematic and not overtly scrupulous attacks upon the good faith” of the Indian Government. The trend of discussion that followed the statements of India and Pakistan showed that “India come before the bar with not altogether clear hands”, Pakistan’s viewpoint seemed to have greater impact on the minds of the members of the Security Council.\textsuperscript{39}

\textbf{Sheikh Mohammad Abdullah’s Speech in the Security Council}

It was in an effort to recover the initiative lost to Pakistan that the Indian delegation arranged for Sheikh Abdullah to address the Security Council on 5\textsuperscript{th} February, 1948. The main thrust of Sheikh Abdullah’s speech was to try to bring the debate in the Security Council back to what the Indian delegation considered to be the central issue-the invasion of Jammu and Kashmir and Pakistan’s assistance to the raiders. He also dwelt at length on the circumstances of the state’s Accession to India.\textsuperscript{40} He was highly critical of Pakistan and its leaders contradicting the Pakistan denial that assistance was being given to the invaders, he told the Security Council: “\textit{How am I to convince the Security Council that the denial is absolutely untrue? I am sitting before the Security Council at a distance of thousands of miles from my country. I have fought many battles along with my own men, on the border of Jammu and Kashmir. I have seen with my own eyes the support given by the Pakistan Government, not only in supplying buses but in providing arms, ammunition,
direction and control of the tribesmen and I have seen the Pakistan forces from across the borders”.

He explained that during the tribal invasion of the Jammu and Kashmir in late October, 1947 both the Maharaja Hari Singh and the people of Jammu and Kashmir requested the government of India to accept our Accession. The government of India could easily have accepted the Accession and could have said, “All right, we accept your Accession and we shall render this help.” There was no necessity for the Prime Minister of India to add the proviso, when accepting the Accession that “India does not want to take advantage of the difficult situation in Jammu and Kashmir, We will accept this Accession because without Jammu and Kashmir’s acceding to the Indian Dominion, we are not in a position to render any Military help. But once the Country is free from the raiders, marauders and looters, this Accession will be subject to ratification by the people.” That was the offer made by the Prime Minister of India.

Sheikh Abdullah rejected the idea of an “impartial” administration replacing his own Government and supported the Indian position. Regarding the presence of Indian Army he said, it was “a protective force against the marauders.” Regarding the Joint control of state by India and Pakistan he said it is an unusual Idea. When Pakistan could not achieve through ordinary means, Pakistan wishes to achieve by entering through the back door, so that it may have its armies inside the state and then start the fighting. That is not possible.

Concluding his speech Sheikh Abdullah said: “We are not here to discuss whether or not the Maharaja lawfully became the ruler of the state, whether or not there is moral administration in the state, whether or not the Maharaja is sovereign and whether or not Jammu and Kashmir has legally acceded to India. Those issues are not before the Security Council. The only issue before the Security Council is that Pakistan must observe its International obligations and must not support any outside raiders”.

During his speech in Security Council Sheikh Abdullah was interrupted by Mr. Zafrullah Khan who said that Sheikh Abdullah was a puppet in the hands of Jawaharlal Nehru. Sheikh Abdullah replied he was proud of his friendship with Jawaharlal Nehru.
But neither the reasoned arguments of Gopalawami Ayyangar, nor the passionate appeals of Sheikh Abdullah could move the Anglo-American members of the Security Council. Between 22\textsuperscript{nd} January and 4\textsuperscript{th} February, the Security Council held eight meetings on this matter. A number of draft resolutions were put forward by the members who were greatly in favour of Pakistan. The real issue was being obscured. This attitude of the western powers caused a deep resentment in India.\textsuperscript{46}

According to Sheikh Abdullah, \textit{Napoleon Bonaparte had described the British as a nation of shopkeepers never closing sight of their personal interest. They supported Pakistan because they wanted to use it as a bridge to establish close relations with the oil rich Arab nations.}\textsuperscript{47}

Eventually after long and sustained discussions, the Security Council decided on 12\textsuperscript{th} February, 1948 to adjourn the discussion on Jammu and Kashmir issue. The Indian delegates returned from Lake Success on 12\textsuperscript{th}, February, 1948. On his arrival in Bombay, Sheikh Abdullah told press reporters, “\textit{It is all power politics. There seems to be no place for logic.}”\textsuperscript{48}

Summing up the reaction of India towards the Security Council on the handling of the Jammu and Kashmir question, Mr. Jawaharlal Nehru said in Jammu: “\textit{Instead of discussing and deciding our reference in a straight forward manner, the nations of the world sitting on the Security Council got lost in power politics.}”\textsuperscript{49}

So in the face of these challenges from outside, Sheikh Abdullah and his administration developed a close psychological bond with New Delhi. Whatever the circumstances, Sheikh Abdullah seemed to feel supremely confident about the future of the state union relationship. He expressed his optimism in speech delivered on 19\textsuperscript{th} February, 1948, declaring that he looked forward to the future when Jammu and Kashmir would be confirmed as an “\textit{Independent and integral}” part of the Indian Union.\textsuperscript{50}

Immediately after Sheikh Abdullah’s return to India, Prime Minister Jawaharlal Nehru met with both Abdullah and state Prime Minister, Mehr Chand Mahajan. The latter was told that the Indian government wanted the Maharaja to appoint Sheikh Abdullah as the prime Minister in his place. The reason for this action and its timing has been variously explained. The most widely accepted interpretation is that the Indian government wanted to strengthen its hand in the United Nations
debates by installing Jammu and Kashmir’s most popular leader in the state’s top position. Although unhappy at the instructions, Mehr Chand Mahajan agreed to place the suggestions before the Maharaja Hari Singh and accept his decision in the matter. Maharaja Hari Singh acted promptly and on 5th March, 1948, Jawaharlal Nehru informed the Indian parliament that Sheikh Abdullah had been appointed Prime Minister of Jammu and Kashmir State.

Sheikh Abdullah as the New Prime Minister

The interim government under the Prime Ministership of Sheikh Abdullah was charged with the task of convening a Constituent Assembly on the basis of adult franchise to frame a constitution for the state. Although the Maharaja Hari Singh’s consent to part with his powers averted a constitutional crisis as the Maharaja and the Prime Minister found it increasingly difficult to work together. So the relations between the ruler and the popular leadership were far from cordial.

So Jawaharlal Nehru wrote to Sardar Vallabhbhai Patel in a letter dated 12th May, 1948, “under current of tension between the Maharaja and Sheikh Abdullah” the former according to Jawaharlal Nehru, “is frightfully unpopular not only with the common people but with almost everyone he meets, including foreigners.”

However, Maharaja Hari Singh had his own list of grievances which he continued sending to Patel who wrote about them to Sheikh Abdullah but did not get any reply. The following passage from Sardar Patel’s letter to Jawaharlal Nehru dated 4th June, 1948 gives an idea of some of these grievances and his own views.

“The arrangements regarding reserved and non-reserved subjects to which Sheikh Sahib had agreed in March last are being treated as a nullity and that the presence of the Maharaja and the existence of the reserved subjects are both being ignored. Even the private department of the Maharaja is being interfered with and action is being taken..... I have impressed upon Sheikh Sahib as well as Bakshi the necessity of maintaining the prestige, the rights and privilege of the Maharaja but the manner in which the questions of his Privy Purse, Jagirdars and Commandeering of office accommodation have been dealt with has left on my mind a most painful impression.”

Sardar Vallabhbhai Patel also mentioned that he had sent Draft rules of business to Sheikh Abdullah in April, but despite reminders, had yet not received his
reactions on them. Towards the summer of 1948, the political crisis deepened and it was clear that the Maharaja and the interim Government could not carry on further. Sheikh Abdullah became severely critical of the Maharaja and asked for his abdication. In September, 1948, Sheikh Abdullah sharply criticized the existing constitutional arrangements in the state in a Press Conference in Srinagar.\textsuperscript{56}

**Second Visit of India’s Representatives to the United Nations Organization**

Lord Mountbatten, sensing the hostile mood of the Indian people as well as the Government of India against the maneuverings of the British and Americans of the Security Council, reacted swiftly to the situation. Lord Mountbatten, therefore, advised the British Government to direct their delegate to take a less unfriendly line towards India. The Indian delegation returned to Lake Success for resumption of the debate in the first week of March, 1948. The Security Council resumed its discussion on 10\textsuperscript{th} March, 1948. Speaking in the Security Council, Mr. Gopalaswami Ayyangar again asked that priority be given to the matter of stopping the war in Jammu and Kashmir. Referring to the demand for establishing a “neutral administration” in Jammu and Kashmir, he said: “Any attempt on the part of the Security Council to demand that internal administration of a Sovereign State should be put into the hands of an agency unconnected with the state or any agency which does not command the support of the people of that state, is a proposition which is unthinkable and I would respectfully urge the Security Council not to press that idea on us.”\textsuperscript{57}

He also made it clear that the Indian armed forces could not be withdrawn from the state for reasons of defence against external aggression. In his reply, the Pakistan representative, Mr. Zafrullah Khan, protested against Sheikh Abdullah’s appointment as the Prime Minister of Jammu and Kashmir state in March, 1948. He demanded that Sheikh Abdullah be removed from the position of power and Jammu and Kashmir placed under, what he termed as “Impartial Administration.”

After several meetings a Joint draft resolution was produced by the Security Council on 17\textsuperscript{th} April, 1948. This time sponsored by a majority of the Council members, including China. It constituted the first effort of the Security Council to go ahead despite the complete disagreement between the two parties in their line of approach.\textsuperscript{58}
The draft resolution envisaged a five man commission, which would use its good offices with a view to “the restoration of peace and order and to holding of a plebiscite by the two governments.”

Pakistan was also required to stop any further intrusion of tribesmen into Jammu and Kashmir and to seek their withdrawal from the state. India was allowed to maintain minimum armed forces in Jammu and Kashmir and was asked to secure a coalition government in Jammu and Kashmir comprising of all Major political parties in the state. The Jammu and Kashmir Government was to appoint the plebiscite Administrator only nominally, actually he was to be named by the Secretary General of the United Nations. The plebiscite Administrator was given full freedom to establish contact with the United Nations Commission for India and Pakistan, he also enjoyed freedom to appoint and choose his own staff.

The United Nations Commission was to report to the Security Council whether the plebiscite was carried out freely and impartially or not. Finally, if the local forces found inadequate, the plebiscite Administrator was authorized to arrange for the use of additional forces of either Dominion. Both India and Pakistan expressed their inability to accept the draft resolution of April, 1948. Both governments were prepared to welcome the United Nations Commission and lend in their full support but they refused to commit themselves to the specific recommendations of the resolution.

India rejected the resolution on the plea that the resolution had given enormous powers to the plebiscite Administrator, especially his control over the Jammu & Kashmir state troops and police, prior to the plebiscite and his right of communications with Pakistan, which, according to India was an outside power. India rejected the proposal of withdrawing her forces from Jammu and Kashmir. India held that Jammu and Kashmir was legally a part of India and that she had every right to maintain her forces in Jammu and Kashmir, including in the so called Azad Kashmir, after the ceasefire. India found that the elaborate resolution with its many obligations imposed on her (India) constituted an infringement on India’s sovereignty. In this context Gopalaswamy Ayyangar said that “It tars us with the same brush and makes us look like the co-accused.”
The representative of China stated that he did not know of any previous plebiscite where the safeguards for the freedom and impartiality of it had been so numerous and strict as those provided for in this draft. Despite this, Pakistan objected to the resolution and considered that the measures indicated in the resolution are not adequate to ensure a free and impartial plebiscite.

Thus both countries, India and Pakistan rejected the proposals. But the resolution was passed by Security Council on 21st April, 1948 with Majority vote. The adoption of the resolution by Security Council sent a wave of anger and indignation throughout Jammu and Kashmir State. The National Conference general council was called into session on 22nd, April, 1948, a day after its passage.

The General Council of the National Conference is of the opinion that “the resolution is yet another feature of power politics on which the Security Council has embarked ever since the inception. Right from the time the issue of Jammu and Kashmir was referred to the Security Council some members had been at pains to make Capital out of the issue for their own designs. Some members even suggested that the Security Council should have a direct hand in the administration. The General Council rejects the resolution in toto and calls upon the people to reject this decision. The General Council calls on the popular Government to arm the people and take immediate steps to mobilize the entire nation for this purpose.”

Finally the five members United Nations Commission for India and Pakistan met in Geneva on 15th June, 1948 to prepare its rules of procedure. On 7th July, 1948 the Commission arrived in Karachi thereafter the United Nations intervention entered a new and more active phase. In meeting Zafrullah Khan informed the United Nations Commission to India and Pakistan that three Pakistani Brigadiers had been on Kashmir territory since May 1948, which was the ‘first bombshell.’ This was same Zafrullah Khan who had been vehemently denying in the debates of the Security Council at Lake Success Pakistan’s collusion with the invaders. But now that the Commission was on the spot and the fact could no longer be hidden from the Security Council, he was left with no choice but to admit the guilt. When asked whether the Government of Pakistan had informed the Security Council about the action of its Army, “the Foreign Minister answered in the negative.” This was something which stunned the members.
Further, in his reply to the Commission’s questionnaire, the Foreign Minister of Pakistan admitted that all forces fighting on the ‘Azad’ side were “under the overall command and tactical direction of the Pakistan Army.” Thus the truth which India had been pressing the Security Council to recognize about Pakistan’s actual involvement in the aggression on the state of Jammu and Kashmir was now coming out. However, Zafrullah Khan tried to justify himself and said that was done in self defence from the possible aggression by Indian forces and prevention of the influx of refugees into Pakistan.

The United Nations commission reached New Delhi on 10th July, 1948. The Commission had discussion with Sir Girja Shanker Bajpai (the Secretary General of the External Affairs Department) and Mr. M.K. Vellodi, who had been deputed by the Government of India as Liaison Officer to the Commission and with Indian Army Chiefs, including General Sir Roy Bucher (the Commander-in-Chief of the Indian Army), Lt. General Cariappa and Major General Thimayya (who were in Command of Indian Forces in Jammu and Kashmir). The Government of India presented to the United Nations Commission for India and Pakistan, documentary proof to show that regular Pakistan forces were taking part in the Jammu and Kashmir operations.

Meanwhile fighting in Jammu and Kashmir went on unabated and hence the commission determined to persuade both India and Pakistan to declare an unconditional ceasefire. But as the commission had not till then made known the acceptance by Pakistan of the presence of her troops in Jammu and Kashmir. So Jawaharlal Nehru gave a pointed reply to the Chairman of the United Nations Commission for India and Pakistan: “You talk about a ceasefire but Pakistan does not admit having her own Army in Jammu and Kashmir, It means that a ceasefire would apply only to us.”

After assessing the situation the UN Commission at the end of the 40th meeting adopted a resolution on 13th August, 1948. Since the circumstances had considerably changed, there was marked shift from the 21st April, 1948 resolution. The resolution was divided into three parts. Part I required a ceasefire, non-augmentation of military potential on either side and the maintenance of a peaceful atmosphere under part II Pakistan had to withdraw all her forces, regular and irregular, while India was required to keep sufficient troops for the security of the state including the observance of law and order. Part III provided as follows: “The
Government of India and the Government of Pakistan reaffirm their wish that the future status of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultation with the Commission to determine fair and equitable conditions whereby such free expression of will be assured.”

Part I of the United Nations Resolution of 13th August, 1948 was significant for India, since it had been emphasizing cessation of hostilities as the first important condition. Part II also was favorable to India as it clearly indicated Pakistan of violating international Law. The United Nations Commission also accepted all the reservations accompanying government of India’s acceptance of the resolution on 20th August, 1948. These reservations were:

(i) The administration by ‘local authorities of the territories to be evacuated by the Pakistan Army should not imply the repudiation of the sovereignty of the government of Jammu and Kashmir over these territories, nor should it be interpreted as affording any recognition to the so called Azad Kashmir government in any way.

(ii) India be permitted to retain forces not only for law and order, but also for the security of the state from external aggression.

(iii) Pakistan should play no part in conducting the plebiscite or in any other matter of internal administration in the state.  

Thus, India accepted the resolution on 20th August, 1948, “animated by a sincere desire to promote the cause of peace and thus to uphold the principles and prestige of the United Nations.”

However, Pakistan did not accept the resolution. This rejection of the ceasefire proposal on the part of Pakistan, relieved India of all moral restraints arising from her promise to the Commission not to alter the situation materially. The Indian Army then undertook operations to clear the state of the raiders particularly in Ladakh and Jammu. It foiled all attempts of the Pakistani forces to grab more territory in the north and north-west. In all these operations the Indian armed forces got spectacular success during the autumn of 1948. Therefore, by realizing that she could not succeed by force of arms Pakistan relaxed here stiff attitude to a ceasefire.
The Commission held further discussions with India and Pakistan with a view to drafting a supplementary resolution on the plebiscite. On 11\textsuperscript{th} December, 1948 United Nations Commission for India and Pakistan presented proposals to both India and Pakistan governments.\textsuperscript{77} In this proposal the Commission reaffirmed its resolution of 13\textsuperscript{th} August, 1948 and also presented certain additional proposals. The future status of Jammu and Kashmir was to be decided by a free and impartial plebiscite in the state. The commission further proposed that after peaceful conditions had been restored, the commission and the plebiscite Administrator would determine in consultation with competent authorities, the final disposition of the armed forces and would supervise the free return of all refugees to their homes. All political and human rights would be guaranteed, in order to carry out a democratic plebiscite and the United Nations Commission itself was to certify whether the plebiscite had been impartial and free.

Finally both the governments accepted the commission’s proposals on 23\textsuperscript{rd} December and 25\textsuperscript{th} December respectively.\textsuperscript{78} After this both the governments of India and Pakistan directed their chiefs of staff to order a ceasefire which came into effect at midnight of 1\textsuperscript{st} January, 1949.

Accordingly, on 5\textsuperscript{th} January, 1949, the United Nations Commission for India and Pakistan adopted the resolution, which was based on the Commission’s proposal dated 11\textsuperscript{th} December, 1948.\textsuperscript{79}

I. The question of the Accession of the state of Jammu and Kashmir to India and Pakistan will be decided through the democratic method of a free and impartial plebiscite. It will be held only when part I and II of the resolution of 13\textsuperscript{th} August, 1948 have been carried out and arrangements for the plebiscite have been completed.

II. The Secretary-General of the United Nations will, in agreement with the commission, nominate a plebiscite administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the government of Jammu and Kashmir. Also the plebiscite administrator shall derive from the state of Jammu and in the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.
III. The commission and the plebiscite administrator will determine, in consultation with the Government of India, the final disposal of Indian and state armed forces, such disposal to be with due regard to the security of the state and the freedom of the plebiscite.

IV. All civil and military authorities within the state and the principal political elements of the state will be required to cooperate with the plebiscite administrator in the preparation for the holding of the plebiscite.80

V. All citizens of the state who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two commissions, one composed of nominees of India and the other of nominees of Pakistan. The commissions shall operate under the direction of the plebiscite administrator. The Governments of India and Pakistan and all authorities within the state of Jammu and Kashmir will collaborate with the plebiscite administrator in putting this provision into effect;

All persons (other than citizens of the state) who on or since 15th August, 1947, have entered the state for other than lawful purpose, shall be required to leave the state.

VI. No restrictions are placed on legitimate political activity throughout the state. All subjects of the state, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the Accession of the state to India or Pakistan. There shall be freedom of the press, speech and assembly and freedom of travel in the state, including freedom of lawful entry and exit. All political prisoners are released. Minorities in all parts of the state are accorded adequate protection and there is no victimization.

VII. At the conclusion of the plebiscite, the plebiscite administrator shall report the result thereof to the commission and to the Government of Jammu and Kashmir. The commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial.81

Thus, the legality of the state’s Accession to India was never questioned by the Security Council or the Commission. In fact, on 4th February, 1948, the United States Representative in the Security Council said: “The External sovereignty of Jammu and
Kashmir is no longer under the control of the Maharaja... with the Accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India, and that is how India happens to be here as a petitioner.”

Also the legal adviser to the United Nations Commission came to the conclusion that Accession was legal and could not be questioned. The commission recognized this position in its report and its two resolutions of 13th August, 1948 and 5th January, 1949, as also the consequential position that Pakistan had no Locus stand in the state except that of an aggressor.82

Similarly, National Conference leaders pledged their support to the accession of the state to the Indian Union, but they refused to accept the secular integration of the state in the federal organization of India. They claimed that Jammu and Kashmir state was a Muslim majority state and as such it could be placed in the Indian political organization only on the basis of communal balances, as a separate and autonomous political entity which did not form a part of the constitutional organization of India. The National Conference leaders gave first formal expression to their outlook immediately after the ceasefire was accepted by India and Pakistan and the fighting was suspended in the state on 3rd January, 1949, two days after the ceasefire came into force, the interim government sent a long memorandum to the states Minister of the Government of India, Sardar Patel. The memorandum was signed by all the members of the interim Government, including Girdhari Lal Dogra and Sham Lal Saraf.83

The Interim government informed Patel that since the National Conference would be required to approach the people of the state to seek their support for India in the impending plebiscite, it would be necessary for the conference to explain its stand to the people in regard to the future constitutional organization of the state and its position in the proposed federal structure of India. The conference leaders pointed out to the states Minister that Pakistan had launched a severe campaign against Maharaja Hari Singh on the ground that the Maharaja represented the autocratic Hindu rule. They affirmed that the Muslims in the state distrusted the Maharaja and considered the Dogra rule as the symbol of their subjection. They proposed that in order to counteract the propaganda unleashed by Pakistan, it would be proper to remove Maharaja Hari Singh, banish him as well as the Maharani of the state from India and assure the Muslims in the state that the future of the Dogra rule would be determined by the Constituent Assembly of the State when it would be convened.84
Sardar Vallabhbhai Patel rejected the proposals outright and informed the interim government that the proposals involved issues which were beyond the competence of the states Ministry and therefore could not be considered by him. The National Conference leaders were flustered by the refusal of the states ministry to continuance of the proposals they had made. Widespread rumours were set afloat by Conference cadres that Sardar Patel supported the perpetuation of the Dogra rule in the state, alienate the Muslims of Jammu and Kashmir and pave the way for eventual cession of the Kashmir valley to Pakistan.

So Sheikh Abdullah promptly wrote to Pandit Jawahar Lal Nehru that in case the proposals made by the interim government were not accepted the National Conference would not be able to secure the support of Muslims for the Accession of the state to India. Inside the state, National Conference leaders launched a frontal attack on the Maharaja. Among the many other allegations they brought against him, they accused him of interfering with the functioning of the interim government and obstructing the political and economic reforms which the National conference leaders proposed to introduced in the state. On 1st March, 1949, Sheikh Abdullah said, “The primary issue before us is that of complete freedom from autocratic rule.”

However, the leaders of the Union government did not appreciate Sheikh Abdullah’s wish to do away with the Maharaja as they felt that the Maharaja had been very generous in coming down step by step from his authority.

The Sheikh Abdullah, however was determined to remove the Maharaja from the throne. So a meeting of the Indian leaders in which Jawaharlal Nehru, Sardar Patel, Maulana Azad and Gopalaswamy Ayyangar participated was convened in Delhi to examine the issues the National Conference leaders had raised. The leaders of the Indian National Congress who had been supporting the movement of the people of state for democratic government, finally decided to advise the Maharaja to leave the state temporarily for some time and entrust his powers to his son Yuvraj Karan Singh. It was also decided that the future of the Dogra rule would be determined by the Constituent Assembly of the state after it was convened.

Thus, the early phase of the politics of the state as part of independent India was polarized between Maharaja Hari Singh and Sheikh Abdullah. Both were deeply conscious of their respective distinct identities. None was enthusiastic about merging
his personality or that of the state in what was often called the national mainstream. The Maharaja, at one stage went to the extent of considering withdrawal of Accession of the state from the Indian Union. Sheikh Abdullah had always maintained that freedom was more important than Accession. Even after securing freedom and Accession to India, he said, in March, 1948, “The loyalty and urges of the people of Jammu and Kashmir were associated with Jammu and Kashmir alone and not with any other Country.” As Prime Minister of the state he maintained that it would adopt a pattern of administration different from what India and Pakistan had done.

Temperamental incompatibility, past bitterness, ideological divergence and differences over share of political power rather than differences on status of the state, once again prevented the Maharaja and Sheikh Abdullah from posing any common threat to the state’s relations with the centre. Moreover, their emotional and political dependence in mutual conflicts as also otherwise, on their patrons in New Delhi- Jawaharlal Nehru in case of Sheikh Abdullah and Sardar Patel in case of Hari Singh helped the Centre to maintain its grip over the state. As none of them could represent the whole of the state, they looked to the bigger power at the centre to resolve their internal feud. Thus Hari Singh- Sheikh Abdullah polarization was however, a peculiar mixture of communal, regional and ideological factors.

While the central leaders were trying frantically to find a solution of the problem in the state and remove the Maharaja, Sheikh Abdullah threw a bombshell in their midst. In April, 1949 Sheikh Abdullah gave an interview to British correspondent, Michael Davidson. According to the report of Michael Davidson, Sheikh Abdullah expressed interest in an independent Jammu and Kashmir as possible solution to the lingering territorial dispute. Portion of the interview recorded by Michael Davidson in the influential English newspaper “Scotsman,” was contained in the following quote “Accession to either side cannot bring peace we want to live in friendship with both the dominions, Perhaps a middle path between them, with economic cooperation with each, will be the only way of doing it. But an independent Kashmir must be guaranteed not only by India and Pakistan, but also by Britain, the United States and other members of the United Nations.”

These remarks produced a major storm of controversy in the Indian press and in political circles. Therefore, Sheikh Abdullah was summoned urgently to New Delhi for consultation with Jawaharlal Nehru and other Central leaders. Subsequently, in a
Press Conference held on 17th May, 1949, Sheikh Abdullah clarified his position with respect to his controversial interview. He opened by emphasizing the strong historical and political links between his state and Indian Union. The National Conference he pointed out had often demonstrated its preference between the two dominions during the past decade. In fact, it had scarified and struggled against heavy odds to join the four million people of the state with the 300 million people of India.

Sheikh Abdullah then proceeded to ask: *Need the National Conference and the people of Kashmir give any further proof of their firmness for the ideal they have chosen for themselves?* Recently, during its Srinagar convention, he reiterated his faith in Accession to India... it is absurd to say that Kashmir still thinks of any other alternative, so far as the question of Accession is concerned. What we want is peace and prosperity of our people. Independence may be and charming idea, but as I have said before, is it practical too? Has it got necessary sanctions and guarantees and can small country like Jammu and Kashmir with its limited resources maintain it? Are all the countries concerned in a proper political temper, at the present moment, to give their willing and sincere assent to it? After a formal declaration, shall we not be making Kashmir a victim of some unscrupulous and powerful country? That will be a gruesome betrayal of the cause we have stood for, for all these years and therefore, these are similar. Other considerations make the alternative of independence not only theoretical and academic, but also meaningless. In that sense and spirit, I have a number of times before discussed this question with several Journalists. It is in this context that those views should be read and discussed.91

Thus the Sheikh Abdullah’s statement to the press on 17th May, 1949 reassured the majority of those who were puzzled and alarmed by the views mentioned to him in the British newspapers columns.

**Removal of Maharaja Hari Singh or End of Hereditary Rule**

Sardar Vallabhbhai Patel invited Maharaja Hari Singh along with Maharaja Tara Devi and Yuvraj Karan Singh to Delhi for consultations.92 They reached Delhi on 29th April, 1949 where Sardar Patel disclosed to the Maharaja that Sheikh Abdullah was insisting upon his abdication. He told that though the Government of India was not prepared to accept his abdication, they would still like him to leave the state for some time temporarily and appoint Yuvraj, the regent of the state in his
absence. Sardar Vallabhbhai Patel told Maharaja Hari Singh that his absence from the state would be in the interests of the state as well as India, particularly in view of the complications which had arisen from the plebiscite proposals then being actively pursued in the United Nations. Maharaja Hari Singh was stunned as he did not expect such advice from Sardar Patel. 

In May, 1949, the premiers of the States took a stupendous decision in a conference at New Delhi, in which the negotiating Committee of the Constituent Assembly participated and entrusted the Constituent Assembly of India, the task of drawing up the Constitution for the states. The state of Jammu and Kashmir did not accept the decision arrived at the Premiers’ Conference and expressed its preference to convene a separate Constituent Assembly to draft a separate constitution for the state. Consequently, a separate meeting was held on 14th May, 1949, in New Delhi between the representatives of the state government and the representatives of the Constituent Assembly in which Sheikh Abdullah, Jawaharlal Nehru and Sardar Patel participated. The deliberations of the conference covered almost all the aspects of constitutional organization of the state and the relations between the state and the Union of India. Jawaharlal Nehru informed the representatives of the state government of the agreement reached with Maharaja Hari Singh and told them that it had been agreed upon that a Constituent Assembly would be convened in the state which would determine the future of the Dogra rule and draw up a constitution for the government of the state.

Jawaharlal Nehru further outlined the broad basis of the constitutional relations between the state and the Union of India and proposed and inclusion of Jammu and Kashmir in the constitutional organization of India with such modification as would suit the specific historical and political antecedents of the state. Central leaders proposed the application of the constitution of India to the state with regard to the fundamental rights, principles of state policy and federal Judiciary. The extension of the Union Jurisdiction to the state with regard to the subjects included in the Central list of the constitution of India which enumerated the powers of the Union legislature was also proposed.

While the state leadership accepted the proposals that the Constituent Assembly of the state would determine the future of the Dogra rule and draw up the Constitution of the state, they did not endorse the proposals for the temporary removal
of the Maharaja and the appointment of a Regent from the ruling family. They insisted upon abdicating of the Maharaja and emphasized that the temporary removal of the Maharaja would not allay the fears of the Muslims in the state, who identified the Dogra rule with their subjection.95

Regarding the Constitutional relations between the state and the Union of India, State leadership refused to accept the inclusion of the state in the territorial jurisdiction and the constitutional organization of India and refused to commit themselves to the acceptance of any application of the constitution of India to the state in respect of the matters which did not correspond to the terms of the instrument of Accession and which had been approved by the interim government. They particularly refused to accept the application of the constitution of India to the state with regard to the fundamental rights, principles of state policy and the federal Judiciary on the ground that the provisions with regard to the fundamental rights and the principles of state policy would be incorporated in the constitution of the state and the extension of the jurisdiction of the federal judiciary, would be unnecessary.

The National Conference leaders expressed strong resentment about the transfer of the state Army to the union and demanded the restoration of the state army to the interim government. They claimed that after the emergency was over and the Indian forces were withdrawn from the state, the state army would take over the defence of the state they complained that during the Dogra rule, the state army had always been a close preserve of the Hindu Rajputs, excluding the Muslims and proposed its reorganization to rectify the deficiency of the Muslims in its ranks.96

The state leadership underlined the following bases for the constitutional organization of the state and its constitutional relations with the Union of India:

(i) that a separate Constituent Assembly would be convened in the state on the basis of universal adult franchise to draw up the constitution of the state.

(ii) that the Dogra rule would be abolished and the Maharaja would be replaced by a Chief executive, who would for the time being be nominated by the Interim Government.

(iii) the powers of the Maharaja, including the powers reserved for the Maharaja; would be transferred to the interim government.

(iv) the residuary powers would be vested with the state government.
the provisions of the constitution of India, except those which were deemed to correspond to the stipulation of the instrument of Accession by the interim government would not apply to Jammu and Kashmir.

(vi) the control of the state over the state army would be restored.

(vii) the existing financial relations between the state and the dominion government would continue.97

However, the central leaders did not approve of the exclusion of the state from the constitutional organization of India and emphasized the paramount importance of bringing the state within the scope of the framework of the rights and legal safeguards as well as the principles of state policy, the Constituent Assembly had devised. Jawaharlal Nehru, told the state leaders that the safeguards for the rights and the principles of state policy had been evolved by the Constituent Assembly with great pride and there could be no reason to deprive the people of the state of the protection, the constitution of India envisaged.

Jawaharlal Nehru stressed that all people of India would be governed by a uniform set of constitutional postulates and people of any province or any acceding state would not be denied any rights and safeguards for equality, liberty and freedom, the objective resolution adopted by the Constituent Assembly embodied.98 The Central leaders did not accept the contention of the state leadership in regard to the state army and explained to them that the Dominion government had assumed exclusive power over the defence of the state and taken over the operational as well as administrative control of the defence forces of the state. They pointed out that the transfer of powers to the Dominion government about the state army had been accomplished by instrument of Accession and the responsibility of the defence of the state rested with the government of India.

With regard to the recruitment of Muslims to the state Army, Jawaharlal Nehru assured the conference leaders that all people in India, including the people in the state would enjoy equality of opportunity guaranteed by the constitution of India and therefore, the Muslims in the state would not suffer any discrimination in respect of their recruitment of the state army.99 After protracted negotiations, an agreement was finally reached between the state leaders and the representatives of the Constituent Assembly which underlined the inclusion of the state in the basic
structure of the Indian constitution and the application of the provisions of the constitution of India to the state pertaining to the territorial jurisdiction of the Union of India, Indian citizenship rights and related constitutional safeguards, principles of state policy and the jurisdiction of the supreme court. It was agreed upon that the Constituent Assembly of the state would be empowered to determine the future of Dogra rule and specify, with the approval of the president of India, any further extension of the provisions of the constitution of India to the state. To avoid any fresh controversy over the agreement Jawaharlal Nehru sent a rejoinder to Sheikh Abdullah, specifying clearly the stipulation in which the agreement was reached.\textsuperscript{100}

It was agreed that Maharaja Hari Singh would in accordance with the agreement reached between him and the government of India, leave the state temporarily along with the Maharani and Karan Singh, the Yuvraj, would be appointed the Regent of the state in his place. However, the removal of the Maharaja, would not form a part of the formal agreement reached between the National Conference and the Central leaders. Another agreement was with regard to the representation of the Jammu and Kashmir state in the Constituent Assembly of India.\textsuperscript{101}

After that Jawaharlal Nehru asked Sardar Patel to communicate to Maharaja Hari Singh the term of the agreement which had been arrived at with the National Conference leaders. Jawaharlal Nehru wrote to Sardar Patel: "I hope that this will be an end to the squabbles that have been going on in public. This has been impressed upon Sheikh Abdullah and I am pointing this out to him again in a separate letter. I take it that the Maharaja and the Maharani will keep out of the state, as agreed upon, for some months. The Bombay house will be at their disposal. It would have been better if they had gone out of the Country for a period, say two or three months, but that is a matter for them to decide. I do not think any period would be fixed for the Maharaja’s absence from Jammu and Kashmir. The matter had better be left vague. The Maharani naturally dislikes intensely the idea of being away from her son. I do not think it is necessary for her to be kept absolutely away and she can certainly visit her son, later form time to time. But for the present, I think it would be to the advantage of all concerned, including the Maharaja and the Maharani, for both of them to stay away for a while. I hope you will explain to the Maharaja and the Maharani as well as the Yuvraj the agreements arrived at between us and sheikh
Abdullah and his colleagues. The written agreement rightly does not say anything about the Maharaja going out of the state. But this was a private assurance given by us and we have naturally to stand by it.”

So under the force of circumstances, the Maharaja Hari Singh was politely told by Sardar Patel to leave the state and appoint his son, Yuvraj Karan Singh as the head of the state. In June, 1949, Maharaja Hari Singh was obliged to leave the state, ostensibly for reasons of health though in reality under the pressure from Sheikh Abdullah’s government, he decided to leave the state “temporarily”. He therefore handed over his powers to his son and heir Yuvraj Karan Singh, as Regent by a proclamation of 20th June, 1949, which reads as: “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 ordinance or remitting, commuting or reducing sentences and of pardoning offenders, shall during the period of my absence from the state be exercisable by Yuvraj Karan Singh Bahadur.”

This Act of Maharaja Hari Singh was the last official act before he left the state, never to return. He did not come back to the state and died in Bombay in April, 1961.

There were two developments in 1949, which served to focus greater attention on the constitutional aspects of Jammu and Kashmir’s relationship with India. The first of these was the establishment of a United Nations sponsored ceasefire on 1st January, 1949 and the subsequent lessening of Indo-Pakistan conflict. The second development involved the Indian Constituent Assembly which, in the summer of 1949, took up the subject of Jammu and Kashmir’s place in the framework of the new constitution.

**State’s Representatives in Central Constituent Assembly**

Under the recommendations of Cabinet Mission plan of 16th May, 1946, the Constituent Assembly met for its inaugural session on 6th December, 1946. In its first year the Constituent Assembly achieved very little progress in drafting a new constitution. This was largely due to the political turmoil and uncertainty surrounding independence and the partition of the sub-continent. In fact, a major proportion of its
time was spent merely trying to resolve the problem or representation and membership in the assembly.\textsuperscript{106}

According to the rules of procedure, membership was to be allotted on a ratio of one representative for one million in population. In the British Indian provinces these representatives were to be nominated by the respective legislative assemblies. As for the princely states, a compromise was agreed upon whereby half of the representatives were to be selected by the state assemblies and the remaining half would be nominated by the rulers.

In case of Jammu and Kashmir state with a population of approximately four million, it meant that two members were to be named by the Praja Sabha and two by Maharaja Hari Singh. This arrangement was never implemented, however, because of the political crisis which culminated in the tribal invasions of the valley in late October, 1947. Indeed Jammu and Kashmir was to remain without representation in the Indian Constituent Assembly for more than two and half years. By the spring of 1949, however, it became evident to central leaders that the seating of Jammu and Kashmir’s representatives could not be delayed any longer. The constitution of India was in the final phase of its making so the question of the princely states and their place within the frame work of the federal union needed to be defined. Since Jammu and Kashmir presented a special problem in this regard, it was felt that discussion could not be undertaken realistically without some form of state participation.

Thus, on 27\textsuperscript{th} May, 1949, N. Gopalaswamy Ayyangar introduced a motion which contained an alternative method of selecting the representatives from Jammu and Kashmir. Under the change of rules for Jammu and Kashmir, he explained that the old Praja Sabha had ceased to function as far back as 1947 and that a new legislative assembly had not been formed due to persisting unstable conditions and the chronic threat of war. Under these circumstances, Ayyangar recommended that all four persons from Jammu and Kashmir be nominated by the ruler on the advice of his prime Minister.\textsuperscript{107}

After a brief debate, the measure was adopted by the members of the Constituent Assembly. The interim government led by Sheikh Abdullah nominated 4 members to represent the Jammu and Kashmir state in the Constituent Assembly of India. The nominations were referred to Maharaja Hari Singh who was staying at Dehradun. In May, 1949 Maharaja Hari Singh deputed the representatives to the
Constituent Assembly of India. Accordingly, Mirza Mohammed Afzal Beg, Maulana Mohammed Syed Masoodi and Moti Ram Baigra led by Prime Minister Sheikh Abdullah took their seats in the Indian Constituent Assembly on 16th June, 1949.\textsuperscript{108}

By this time, ideas concerning the pattern of relationship between the former princely states and the Union had undergone substantial change from that envisaged in the early days of independence. Originally the states had acceded to India in three subjects of Defense, External Affairs and Communications without any other commitment involved. The internal affairs of each state were to be governed by a separate constitution framed by an elected assembly. After a short time, it became obvious that such a proliferation of unregulated character would create havoc in the federal structure. The problem was alleviated only partly by the decision of many smaller states to merge with neighboring states or provinces, thereby reducing the overall number of federal units.\textsuperscript{109}

So in an effect to minimize further the problem of multiple state charters, a committee of the Indian Constituent Assembly was appointed in November, 1948 to frame a uniform constitution for the states. The group headed by B.N. Rao submitted its report containing a model constitution on 22nd March, 1949. The Ministry of state viewed the provision as an unfortunate legacy of the past which should have no place in a democratic set up. Then the Ministry of state discussed the subject with state leaders on 19th May, 1949. The outcome of the conference was an agreement by which the rulers and their representatives agreed that the states constitution collectively should be made an integral part of the Union constitution. It was also agreed that each state should formally ratify, through its respective elected assemblies, the Indian constitution as revised and amended.\textsuperscript{110}

It appears that the Jammu and Kashmir’s leaders were alarmed by the Constituent Assembly’s treatment of the formal princely states and the outlook for their future. Fearing that Jammu and Kashmir could be included as an integral part of the Union in much the same manner as the other states, Sheikh Abdullah demanded that the state be treated as a special case and given the fullest degree of autonomy consonant with the act of Accession.\textsuperscript{111}

Unlike those from other states, Jammu and Kashmir’s representatives, made it clear that Jammu and Kashmir’s Association with India would be based only on the
terms of the Instrument of Accession. It was also made clear that, while the Accession of the Jammu and Kashmir state with India was complete in fact and in Law to the extent on the subjects enumerated in this Instrument, the autonomy of the state with regard to all other subjects outside the ambit of Instrument of Accession should be preserved.\textsuperscript{112} Under clause (7) of the Instrument of Accession, the state did not commit itself to the acceptance of any future Constitution of India, nor fetter its discretion to enter into agreements with the government of India under any such future Constitution. Clause (7) reads: \textit{Nothing in this instrument shall be deemed to commit me in many ways to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.}\textsuperscript{113}

In a letter to Pandit Jawaharlal Nehru Gopalaswamy Ayyangar wrote, “\textit{Sheikh Abdullah has not reconciled himself to this change but we cannot accommodate him.}”\textsuperscript{114} Therefore in a letter to Sheikh Abdullah on 18\textsuperscript{th} May, 1949, Jawaharlal Nehru confirmed: “\textit{It has been the settled policy of the Government of India which on many occasions has been stated both by Sardar Patel and by me that the Constitution of Jammu and Kashmir state is a matter for determination by the people of the state represented in the Constituent Assembly convened for the purpose.”}\textsuperscript{115}

However, the state leadership did not apprise the central leaders of the views till the draft provisions of the constitution of India were drawn up and sent to the National Conference leaders for their approval. Finally the Central Government prepared draft provisions which were based upon the stipulations of the agreement reached in the Delhi conference. The draft provisions were enshrined in draft Article 306-A of the constitution of India.

The Article stipulated:

(i) The provisions of the constitution of India with regard to part B states, would not apply to the Jammu and Kashmir state.

(ii) A Constituent Assembly would be convened in the state to draft the Constitution of the State.

(iii) Provisions of the constitution of India with regard to the territories of India, Indian citizenship, fundamental rights and the related legal safeguards and the directive principles of the state policy would apply to the state.
(iv) The other provisions of the constitution of India would apply to the state with such exception as were mutually agreed upon between the government of India and the state government.

(v) The union would exercise powers with regard to subjects, which were specified by the president of India to correspond with the subjects transferred to the Dominion Government by the Instrument of Accession in consultation with the state government and such other subjects as would be specified by the president of India in concurrence with the state government.

(vi) The president of India would be empowered to modify, restrict or suspend the operation of the provisions of Article 306-A, on the recommendations made by the Constituent Assembly of Jammu and Kashmir state.\(^{116}\)

After a short spell of silence and close door deliberations, the National Conference leaders placed the draft provisions before the working committee of the National Conference. The working committee of the National Conference sat in several sessions to approve it. It resolved that the National Conference could not accept the stipulations of Article 306-A, as a basis for constitutional relations between the state and the Union of India. The working committee disapproved of the preamble to Article 306-A, which stipulated that the provisions of the Article would be of a transitional nature and would be subject to modification by the Constituent Assembly of the state.\(^{117}\) The working committee also disapproved of the application of any provisions of the constitution of India to the state except the provisions which correspond to the terms of the Instrument of Accession. The working committee expressed the fears that the application of the provisions of the Constitution of India with regard to citizenship, fundamental rights and the related constitutional legal guarantees would prejudice the domiciliary state subjects rules in force in the state.

Therefore on 12\(^{th}\) October, 1949, Sheikh Abdullah communicated to Gopalaswamy Ayyangar the decision of the working Committee and informed him that the working committee had disapproved of the draft constitutional provisions embodied by Article 306-A. After this Sheikh Abdullah sent an alternative draft to Gopalaswamy Ayyangar which stipulated the application of only such provisions of the constitution of India to the state, as corresponded to the stipulations of the Instrument of Accession.\(^{118}\)
The National Conference leaders expressed strong reservation about the application of the fundamental rights and related constitutional guarantees and the jurisdiction of the Supreme Court to the state, on the ground that the fundamental rights embodied in the constitution of India, conflicted with the policies of the National Conference committed to radical social and economic reforms.

Gopalawamy Ayyangar labouring under the impression that the conference leaders would accept his proposals if he left out the fundamental rights and related guarantees, drew up a fresh draft, in which reference to the fundamental rights, constitutional guarantees and the federal judiciary was altogether omitted.119

Sardar Patel, apparently, did not favour the modifications, Ayyangar had made in Article 306-A. He did not approve of the deletion of fundamental rights and Directive principles of state policy from the provisions of the Constitution of India, which would apply to the state. Perhaps, Sardar Patel visualized the consequences to which such a course of action would inevitably lead. He wrote to Ayyangar, “I find there are some substantial changes over original draft, particularly in regard to the application of fundamental rights and directive principles of state policy. You can yourself realize the anomaly of the state becoming a part of India and at the same time not recognizing any of the provisions. I do not at all like any change after our party had approved of the whole arrangement in the presence of Sheikh Sahib himself. Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people of Country, he owes duty to India or to the Indian Government or even on a personal basis, to you and the Prime Minister who have gone all out to accommodate him. In these circumstances any question of my approval does not arise. If you feel it the right thing to do, you can go ahead with it.”120

This revised draft of Article 306-A was also rejected by the National Conference leaders. They refused categorically, to accept the application of any provisions of the Constitution of India to the state. Ayyangar, who had served Maharaja Hari Singh, during the most fateful years of the history of Jammu and Kashmir, did not realize the grave consequences of keeping Jammu and Kashmir out of the scope of the rights and related Judicial safeguards the constitution of India envisaged for the Indian people. He was unmindful of the incalculable harm, the fateful change he had made in his proposals, would do to the minorities in the state.
After this Ayyangar made fresh efforts to arrive at an agreement with the National Conference leaders who refused to accept any provisions of the constitution of India, including the provisions which described the territorial jurisdiction of the Union. The National Conference leaders invited to Delhi for discussion where Jawaharlal Nehru distrusted the demand of the National Conference leaders for a separate constitutional organization of the state which did not form a part of the Indian republic and he strongly pleaded with the Conference leaders to abandon their obduracy. He refused to approve of any Constitutional arrangement, which forced the exclusion of the state from the basic structure of the Constitution of India. The National Conference leaders refused to relent and at one stage they broke off the negotiations and threatened to resign from the Assembly. They sulked away closing themselves up in the Kashmir House, the old mansion, built in the Indian Capital, by Maharaja Hari Singh.

Central leaders were caught in between the devil and the deep sea. They could ill afford to estrange the Conference leaders at a time when the United Nations intervention interestingly, invoked by India against the aggression of Pakistan had put the Indian Government on the cross roads. Without the support of the Kashmiri speaking Muslims, who formed the main support base of the National Conference, India had little hope to win the proposed plebiscite in the state.

Jawaharlal Nehru was under pressure of the Security Council to implement the demilitarization of the state to prepare the ground for the induction of the plebiscite administration into the state. So he quietly relented and sent Ayyangar to assure the National Conference leaders that the government of India would not press them to accept the inclusion of the state into the constitutional organization of India.\textsuperscript{121}

Finally, Gopalaswamy Ayyangar drew up a fresh draft in consultation with Mirza Afzal Beg, a close associate of Sheikh Abdullah. The revised draft stipulated:

(i) Article 1 would apply to the state and the state would be included in the territories of the Union of India.

(ii) No other provision of the constitution of India would be applied to the state, except with the approval of the Interim government of the state.

(iii) The division of powers between the Union and the state would be determined in accordance with the terms of the Instrument of Accession.
(iv) The President of India would be empowered to terminate or modify the operation of the constitutional provisions with regard to the state on the recommendation of the Constituent Assembly of the state,

(v) The state government would be construed to mean the Maharaja acting on the advice of the council of Ministers appointed under his proclamation dated 5th March, 1948.\textsuperscript{122}

A last minute controversy cropped up between Ayyangar and the National Conference leaders when the draft Article 306-A, came up for consideration in the Constituent Assembly on 17\textsuperscript{th} October, 1949. The National Conference leaders demanded the inclusion of the provisions in the draft Article 306-A which recognised the interim government of the state as a government in perpetuity. Many prominent members of the Constituent Assembly pointed to Gopalaswamy Ayyangar the anomalous situation, the recognition of a government in perpetuity would create. They advised Ayyangar not to accept the position taken by the Conference representatives. Accordingly, when Ayyangar conveyed his inability to the Conference leaders to incorporate provisions envisaging a government in perpetuity, they reacted in anger. They again sulked away and did not join the proceedings of the Assembly till Ayyangar had delivered half of his speech on the draft Article. Inside the Assembly they sat glum and did not utter a word in support of the draft provisions.

Mirza Afzal Beg had informed Ayyangar that he would move an amendment to the draft. However, Ayyangar watched the proceeding with concern as any controversy between the Indian Government and the National Conference leaders in the Constituent Assembly, was bound to have a deep impact on the Indian stand in the United Nations, Jawaharlal Nehru at that time was in the United States and perhaps, he expected the National Conference leaders to make spirited statements in the Indian Constituent Assembly, commending the Accession of the state to India as well as the way Indian Constituent Assembly had accommodated a Muslim Majority state in the constitutional framework it had evolved for the Princely states. As a result the draft provisions of Article 306-A was adopted by the Constituent Assembly on 17\textsuperscript{th} October, 1949 without any dissent.\textsuperscript{123}

Article 306-A was renumbered Article 370 at the revision stage. Jammu and Kashmir state was included in the First Schedule of the constitution of India which
described the territories of India. No other provision of the constitution of India was extended to Jammu and Kashmir. Thus the special provisions relating to the state of Jammu and Kashmir were finally made part of the constitution of India under Article 370. They were incorporated as “Temporary and Transitory provisions.” The future relations of the state of Jammu and Kashmir with Indian Union were to be governed by this Article, which is clearly based on the Instrument of Accession. Article 238 (Article 211 in the Draft Constitution), which governed the relationship between the Union and other part B states, was not applied to Jammu and Kashmir.

The Constitution of India was soon to come into force, so it was necessary to take steps for the enforcement of the Constitution of India in the state of Jammu and Kashmir. Therefore, on 25th November, 1949, Yuvraj Karan Singh acting on the advice of his council of Ministers issued a proclamation that the relations between the state and the Union of India be governed by the constitution of India. The constitution of India superseded and abrogated all other constitutional provisions inconsistent with it which were in force in the state. Thus, we find that the basis of the Constitutional relationship of Jammu and Kashmir with India was changed from those created by the Instrument of Accession to the position under Article 370 of the Constitution of India.

Different Opinions in Constituent Assembly to the Special Status of Jammu and Kashmir

During the debate in Constituent Assembly, Sir Gopalaswamy Ayyangar, acting Minister for external affairs, said that the House is aware, Accession to the Dominion always took place by means of an Instrument which had to be signed by the ruler of the state and which had to be accepted by the Governor General of India. That has taken place in this case. As the House is also aware, Instruments of Accession will be a thing of the past in the new constitution. The states have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of accession for the purpose for becoming units of the Republic, but they are mentioned in the Constitution itself and practically in the case of all states other than the state of Jammu and Kashmir, their constitutions also have been embodied in the Constitution of India. All the states have agreed to integrate themselves in this way and accept the constitution provided.

Here Maulana Hasrat Mohani, member of the Constituent Assembly, interrupted and ask, “why this discrimination, please?”
Ayyangar replied: “This discrimination is due to the special conditions of Jammu and Kashmir. That particular state is not yet ripe for this kind of integration. It is the hope of everybody here, in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other states. This statement by the Senior Cabinet official brought a rousing cheer from the other members of the Constituent Assembly”.

Special circumstances highlighted by Gopalaswamy Ayyangar were as follows:

(i) that there was a war going on within the limits of the state;
(ii) that there was a ceasefire agreed to at the beginning of the year and that ceasefire was still on;
(iii) that the conditions in the state were still unusual and abnormal and had not settled down;
(iv) that a part of the state was still in the hands of rebels and enemies;
(v) that out country was entangled with the United Nation with regard to Jammu and Kashmir and it was not possible to say when we would be free from the entanglement.
(vi) that the Government of India had committed themselves to the people of Jammu and Kashmir in certain respects that an opportunity would be given to the people of the state to decide for themselves whether they would remain with the Republic or wish to go out of it;
(vii) that we are also committed to ascertaining this will of the people by means of a plebiscite provides that peaceful and normal conditions are restored and impartiality of the plebiscite could be guaranteed.

Further, Gopalaswamy Ayyangar briefly described the effect of Article 370 as: “The effect of this article is that Jammu and Kashmir state which is now a part of India will continue to be a part of India, will be a unit of the future Federal Republic of India and the Union legislature will get jurisdiction to enact laws on matters specified either in Instrument of Accession or by latter addition with the concurrence of the Government of the state. It gave India’s president the power to abrogate the
article or modify its provisions, provided he secured the recommendations of the future Constituent Assembly of Jammu and Kashmir state."\(^{129}\)

Also the then Law Minister and the chairman of the Drafting committee Dr. B.R. Ambedkar turned down the Kashmiri leaders demand for a special status and advised that, “You want India to defend Kashmir, feed its people, give Kashmiri’s equal rights all over India. But you want to deny India and Indians all rights in Kashmir. I am a Law Minister of India, I cannot be a party to such a betrayal of national interests.”\(^{130}\) But majority of the members of the Indian Constituent Assembly favoured special status to Jammu and Kashmir and did not pay any heed to the advice given by Dr. B.R. Ambedkar.

Further, Maulana Hasrat Mohani objected to the special treatment given to the state of Jammu and Kashmir and said that the Union Government should grant similar concessions to other states also. He said: “I am neither opposed to all these concessions being granted to my friend Sheikh Abdullah, nor am I opposed to the acceptance of the Maharaja as a Ruler of Jammu and Kashmir…. But what I object to is this. Why do you make this discrimination about this Ruler? If you grant these concessions to the Maharaja of Jammu and Kashmir, you should also…. allow these concessions and many more concessions to Baroda ruler also”. He gave warning in the Constituent Assembly that the “grant of a separate status would enable Jammu and Kashmir to assume independence afterwards.”\(^{131}\) But when Gopalaswamy Ayyangar explained special conditions regarding Jammu and Kashmir, Hasrat Mohani failed to evoke any favourable response.

Prime Minister Jawaharlal Nehru favoured/supported the special consideration that was being given to Jammu and Kashmir and got the thing done through Gopalawamy Ayyangar and the latter having sought Sardar Patel’s cooperation to save Jawaharlal Nehru’s honour. In this context, Veena, Vasudeva rightly quoted the Jawaharlal Nehru’s speech in the Lok Sabha on 24\(^{th}\) July, 1952: “…. The process of integration adopted in the case of other states could not be adopted in regard to the Jammu Kashmir state for a variety of reasons. The question was before the United Nations in a fluid state. Further, we declared even before partition that no step will be taken in the state without the consent and concurrence of the state. Thirdly we have recognized that the position of Jammu and Kashmir was somewhat different from other states for obvious reasons.”\(^{132}\)
Salient Features of Article 370

(i) Article 370 exempted the Jammu and Kashmir state from the application of the provisions of the constitution of India for the governance of the states in part B of its first schedule.133

(ii) The Jammu and Kashmir was saved from the application of part VII of the Constitution134 and was allowed to have its own constitution.135

(iii) The application of the provisions of the Indian constitution and parliament’s legislative power over the state was restricted to three subjects namely Defence, Foreign Affairs and communications. However, the president has the power to extend to the state such other provisions of the Indian constitution and laws relating to the matters specified in the Instrument of Accession. This only requires consultation with the state government since the state has already accepted them as a part of Instrument of Accession.136

(iv) The other constitutional provisions or other Union powers which do not fall within the ambit of instrument of Accession can be extended to the state only after the prior concurrence of the state government.

(v) Article 370 recognised the right of the people of the state to convene a Constituent Assembly of their own to draft the Constitution of the state.137

(vi) It empowers the President to make an order abrogating or amending it. Such notification was again subject to the concurrence of the Constituent Assembly.138

(vii) The powers to amend the provisions of Article 370 were vested with the Parliament of India, which was not subject to any limitation imposed by Article 370 or any other provision of the Constitution of India.

Status of Article 370

Article 370 was placed in the Constitution of India in part XXI called “Temporary and Transitional Provisions”. This implied that the Special Constitutional relationship between the State and the Union of India was to be temporary and transitory. The head note to Article 370 is titled as “Temporary Provisions with respect to the state of Jammu and Kashmir”. By the Constitution (13th Amendment) Act of 1962 w.e.f. 1.12.1963, the title of Part XXI of the constitution
was changed to “*temporary, transitional and special provisions*”. The word ‘*Special*’ is an important addition to the title of this part. From its head note and content analysis, one can only draw an inference that this Article was meant for a limited period of time till it was to be repealed or replaced by an arrangement which would rather have been permanent in nature and character. \(^{139}\)

Article 370 begins with the words “*Notwithstanding anything in this Constitution*”. This shows that Article 370 was a self contained provision and had a specific purpose of its own. \(^{140}\) Thus, this special constitutional status to the state of Jammu and Kashmir was not granted by the Government of India, but was sanctioned by the relevant provisions of the Government of India Act of 1935, the Indian Independence Act of 1947, the Indian, (provisional) Constitution Order of 1947 and the Instrument of Accession. Neither the Maharaja Hari Singh nor those who inherited Power from him were prepared to surrender that status. In this context Sheikh Abdullah said that “*while other princes agreed to the application of the Indian Constitution to their states, the Maharaja of Jammu and Kashmir declined to do so.*” The state, he claimed had a political justification for it." \(^{141}\)

The Constituent Assembly of India or its successor Parliament had no Constitutional rights to abrogate or modify Article 370. This right belonged solely to the constituent Assembly of the state. \(^{142}\) Article 370 limits the power of Parliament to make laws for the state of Jammu and Kashmir in “*those matters in the Union list and concurrent list which are declared by the president to correspond to matters specified in the Instrument of Accession and such other matters in the said lists as, with the concurrence of the Government of the state, the President may by order specify.*” \(^{143}\)

**The Constitution (Application to Jammu and Kashmir) order, 1950**

The new Indian Constitution took effect formally on 26\(^{th}\) January, 1950- a date that was to be celebrated thereafter as Republic Day. Article 1 and 370 were the only Articles in the Constitution which applied by virtue of their own force to Jammu and Kashmir. Article 1 defined the territory of India and specifically included Jammu and Kashmir state within its boundaries. \(^{144}\)

So, in exercise of the power conferred on him by Article 370, Dr. Rajendra Prasad issued a Presidential order, called the Constitution (Application to Jammu and Kashmir) order, 1950. \(^{145}\) This order issued after consultation with the state government, extended a varied list of minor provisions in the Indian Constitution to
Jammu and Kashmir State. This order defined the Jurisdiction of the Parliament and the provisions of the Constitution of India which were made applicable to the state in furtherance of the subjects already specified in the instrument of Accession. Two Schedules were added to this order. The first related to the Jurisdiction of Union Parliament in Jammu and Kashmir and enumerated the suitable entries from the Union list of the seventh schedule of the Indian Constitution, which were made applicable to the state i.e. 1-6, 9-22, 25-31, 72-77, 80 and 93-96. These entries related to Defence, External Affairs, Communications, trade and commerce with foreign countries, matters relating to parliament, Union executive and Supreme Court, audit of the accounts of the Union and ancillary matters. Some of these entries were applied in modified form, such as those relating to Railways (22), Trade and Commerce (41) and Audit (76).

The provisions of the Second Schedule were applied subject to the exceptions and modifications specified in the said Schedule. Parts of the Constitution of India applicable to Jammu and Kashmir state were as follows: Part V, XI, XII, XV, XVII, XIX, XXII and first to fourth and eighth schedules.

These parts related to the Union Executive, Parliament and Judiciary; relations between Union and states; finance, property, contracts and suits; elections; special provisions relating to certain classes; official language; amendment and ancillary provisions in the Schedules etc.

The Second Schedule applied with the following omissions, exceptions and modification etc.

(i) the Fundamental Rights and Directive principles did not apply to the state of Jammu and Kashmir;

(ii) the jurisdiction of Supreme Court was restricted to Original and appellate Jurisdiction under Article 131 and 132;

(iii) the Comptroller and Auditor-General had no jurisdiction in relation to Jammu and Kashmir;

(iv) representatives of the states in the council of states and house of the people were to be chosen by the President in consultation with the State Government;
(v) the legislative relations between Jammu and Kashmir and India were restricted to matters indicated in the First Schedule of this order. The Residuary power of legislation vested in the State;

(vi) provisions with regard to service did not apply to the state;

(vii) provisions relating to elections were to apply only in relation to the elections to the parliament and the offices of the president and vice president of India;

(viii) Emergency provisions did not apply to the state;

(ix) the financial provisions of the constitution did not apply to the state; and

(x) Amendment to Constitution would apply to Jammu and Kashmir state only under an appropriate order of President issued under Article 370(1).

Thus the provisions of the Constitution (Application to Jammu and Kashmir) order, 1950, envisaged a unique Pattern of Constitutional relationship between the state of Jammu and Kashmir and Indian Union. It shows federal pattern as the state had acceded only in specified subjects. The residuary powers of legislation remained with the state. The state list and the concurrent List in the Seventh Schedule did not apply to the state.

However, the reaction of Sheikh Abdullah and his colleagues to the implementation of the new Indian Constitution was from all available evidence, one of total satisfaction. In a speech to the Jammu Bar Association on 5th February, 1950, Sheikh Abdullah told his audience that, “India’s republican Constitution itself has made it clear that Kashmir has an honorable and secure place in India.”

Convening of the Constituent Assembly for the State of Jammu and Kashmir

Constitutional development had been restarted by the turmoil and uncertainty resulting from the long period of conflict with Pakistan and subsequent negotiations. It was considered unwise to postpone the establishment of a State Constituent Assembly indefinitely for two reasons. To being with, laws needed to be enacted to spur basic reforms which were the keys to growth and progress. In addition to this, there was the feeling that the question of Accession should be resolved once and for all. The outbreak of the Korean War in the summer of 1950 increased the sense of urgency. It was feared that, if things remained unsettled, Jammu and Kashmir might became the reluctant victim of cold war maneuvering and International Conflict.
Furthermore, both central and state leaders resented the contrast between the United Nations prompt intervention in the Korean conflict and its hesitation to take similar action against the alleged Pakistan aggression.148

There was little patience left with what was considered to be the ineffectual deliberation of the International organization. The report submitted by Sir Own Dixon,149 the Special Representative of the United Nations Security Council on 15th September, 1950 appears to have been the catalyst for a decision by the Sheikh Abdullah administration. In his report Sir Own Dixon reviewed the various plans he had placed before the government of India and Pakistan. In each case they had been rejected by one or both parties. Therefore, as a last resort, Sir Own Dixon presented a proposal, the broad lines of which called for partition of the country and a plebiscite for the Jammu and Kashmir conducted by a group of United Nations Officers.150 This plan was again rejected by both India and Pakistan governments.

The National Conference convened a meeting of its General council on 27th October, 1950 to consider the report of Sir Own Dixon.151 The General council condemned the Dixon report and declared its various proposals as a clear negation of the right of self determination for the people of Jammu and Kashmir. The General Council observed that the “Dixon report while admitting that the armed intervention of Pakistan constitutes a flagrant breach of international law, accords recognition to the aggressor, firstly as an equal party and then bestows upon him title to possess the fruits of aggression.” The council disapproved the Dixon’s proposals of partition of the state and declared that the “territorial integrity of the State must remain inviolate and that, in determining their future the Unity and the organic homogeneity of the people should not be broken into artificial compartments.”152 It then pointed out that the National Conference leadership could not continue to ignore the conditions of doubt and frustration. In the opinion of the General council, therefore, the time had arrived to put an end to the state of drift and indecision. Therefore General council issued a mandate to the “Supreme National Executive” to convene a constituent Assembly in the State, based upon adult franchise and embracing all Constituents of the state to determine the future shape and affiliations of the Jammu and Kashmir state.153

This resolution of the General council of National Conference was apparently aimed to extent support to the central Government which had rejected the proposals
made by Owen Dixon, the United Nations mediator. However, the National Conference leaders were motivated by their own interests to seek the convocation of the Constituent Assembly and vest it with powers to determine the final disposition of the state.

The National Conference leaders did not favour a plebiscite because they realized that a vote for Pakistan would spell their doom and if the plebiscite turned in favour of India, their endeavors to organise the state into a separate political identity based on the Muslim majority character of its population would fall through. Evidently, they aimed to use the Constituent Assembly to extricate themselves from their commitments to a plebiscite and at the same time secure extra-constitutional guarantees for the separate political identity they envisaged for the state.154

The National Conference leaders sought to vest in the Constituent Assembly powers which the Constitution of India did not envisage for it and thus impart to it, precedence over the constitutional instruments devised by Article 370 of the Constitution of India. They also attempted to place themselves in between India and Pakistan in their dispute over the accession of the state and secure for the interim Government, a vote on any settlement which the Government of India reached with the Security Council or the Government of Pakistan.155

The resolution of the National Conference to Convene the Constituent Assembly was not opposed by the Indian leaders, perhaps they sought to use it to controvert the various pressures which were being building upon the Government of India in the Security Council after it had turned down the proposals made by Own Dixon. However, the inspiration to convene the Constituent Assembly did not come from them. The decision to vest powers to determine the future disposition of the state in the Constituent Assembly was formidable and was bound to cast its shadows on the Accession of the state to India, which the Indian leaders consistently claimed, had been finally accomplished by the execution of the Instrument of Accession. The Government of India had strongly resisted all attempts to question the accession of the state of India and open fresh options for the future disposition of the state except that the act of the accession was subject to referendum by which, India was committed to ascertain the wishes of the people of the state after the invasion was ended.
So a long correspondence ensued between the Centre-State leadership. The National Conference leaders informed the Minister of States, Goplaswamy Ayyangar, that the Constituent Assembly function as a sovereign body and besides taking a decision on the final disposition of the state, determine the future of the Dogra rule and draw up a constitution for the government of the state.\textsuperscript{156}

The states Ministry accepted that the constituent Assembly would be free to draw up a Constituent Assembly would be subject to the accession of the state to India and the Commitments which the Government of India had given in this regard. Ayyangar conveyed to the National Conference leadership that since the Constituent Assembly of the state would draw up the Constitution of the state, It would be necessary to bring about a measure of uniformity in the Constitutional provisions which governed the relations between the Union and the State with the provisions of the Constitution of India which governed the relations between the Union and the other Indian states and the function of their government.

The states Minister proposed the application of the Constitution of India to the state in regard to citizenship, fundamental rights and related legal guarantees, the principles of state policy, the jurisdiction of the federal judiciary and the powers of the Union Government to deal with emergencies arising out of war and internal disturbance. But National Conference leaders did not approve it.\textsuperscript{157} In a speech to a National Conference workers convention, in early December, 1950, Sheikh Abdullah explained that:

Fundamental decisions with stupendous implications such as the question of paramount accession of Jammu and Kashmir to India, as well as whether the state was to remain a Constitutional monarchy or became a democratic republic, could not be taken by the National Conference alone, but by a freely elected Constituent Assembly representing the entire people of the state. The National Conference’s policy of accession to India was clear, he added, with India alone could they prosper and progress. But they were to abide by whatever decision the Constituent Assembly took on this issue.\textsuperscript{158}
Attitude of Pakistan and United Nations organization to the Constituent Assembly

Government of Pakistan immediately protested the National Conference’s plan to convene the Constituent Assembly on the ground that it would prejudice the current negotiations taking place in Jammu and Kashmir.\textsuperscript{159}

Similarly the United Nations Security Council also registered its displeasure by passing a resolution on 30\textsuperscript{th} March, 1951, calling the decision inconsistent with previous agreement between India and Pakistan to conduct a plebiscite.\textsuperscript{160}

The administration of Sheikh Abdullah refused to be deterred by the signs of opposition from abroad. However, the National Conference reiterated their earlier stand that the Constituent Assembly would draw up a Constitution for the government of the state and incorporate in it the Constitutional provisions for citizenship, fundamental rights and the related Constitutional guarantees, directive principles of state policy and emergencies arising out of threat of war and internal disturbance.

The National Conference leaders emphasized that the Constituent Assembly of the state alone was empowered to determine the final disposition of the state. So Ayyangar along with Maulana Abdul Kalam Azad and C. Rajagopalachari hurried to assure the National Conference leaders that they had no disagreement with the views, the National conference leaders held.

Meanwhile Jawaharlal Nehru wrote to Sheikh Abdullah from London (where he had gone to attend the conference of commonwealth premiers) and assured him that he did not dispute the right of the people to determine the future shape of the state and its government. I have no doubt that the will of Kashmiri people must prevail in regard to every matter and it is they who will decide ultimately every question affecting the state.\textsuperscript{161}

As a result Yuvraj Karan Singh as a Constitutional Head of the State issued a proclamation on 1\textsuperscript{st} May, 1951 for the convening of the Constituent Assembly for the State of Jammu and Kashmir to decide the future Constitution of the state.

I Yuvraj Karan Singh, do hereby direct as follows:\textsuperscript{162}

(i) A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the state of Jammu and Kashmir;
(ii) For the purpose of the said elections the state shall be divided into a number of territorial constituencies each containing a population of 40,000 or as near thereto as possible and each electing one member. A delimitation committee shall be setup by the Government to make recommendations as to the number of constituencies and the limits of each constituency;

(iii) Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a state subject of any class, is not less than twenty-one years of age on the first day of March, has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is of unsound mind or has been so declared by a Competent Court, shall be disqualified for registration;

(iv) The vote at the election shall be direct and by secret ballot;

(v) The Constituent Assembly shall have power to act notwithstanding any vacancy of the membership thereof;

(vi) The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business.

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation. Meanwhile at international level efforts to solve Jammu and Kashmir problem were continuing and after a series of discussion the United States and Great Britain submitted a draft resolution and other slightly modified resolution. This resolution reaffirmed the two original resolutions of the Commission and appointed Dr. Frank Graham as representative.\(^{163}\)

The adoption of the Anglo-American resolution by the Security Council led to an outburst of anger and indignation in Jammu and Kashmir State. Huge demonstrations expressing anger against the sponsors of the resolution were held in Srinagar, Jammu and other big town and cities of the state. Voicing the sentiments of the people of Jammu and Kashmir, Sheikh Mohammad Abdullah stated: “The draft resolution on Jammu and Kashmir sponsored by the U.K. and U.S.A……. leaves little doubt that certain basic assumptions fundamental to a peaceful and democratic settlement have been sought to be negative. These basic assumptions are in relation to
the (1) sovereignty (2) security (3) territorial integrity and (4) the popular democratic set up of the state of Jammu and Kashmir. The resolution suggests the appointment of a Mediator who will develop into a Military Commanding Administrator and become in the final phase even an arbitrator. The very concept of such an authority-wielding person foisted on the state is repugnant to the dignity for a democratic sovereign state.”

In the context, Sheikh Abdullah declared, “We could not permit the fate of four million people to be decided by 3rd person.” Similarly Jawaharlal Nehru said, “No organization and no country have any business to interfere with what is done in Jammu and Kashmir by India or the Jammu and Kashmir people.”

Further, the annual session of the National Conference held in Srinagar during the first week of June, 1951, in a resolution passed unanimously supported the state government in its determination to convene the Constituent Assembly. Here Sheikh Abdullah expressed his gratitude to the government and people of India for their support and encouragement. He declared that “with the active support and goodwill of the Indian people, I have no doubt that our expectations which flow from our relationship with India have been fully justified.” The atmosphere of good feeling and cooperation between the National Conference and the Indian government was enhanced by the presence of Prime Minister Jawaharlal Nehru who attended the party session as its special guest. In his address to the delegates the Prime Minister reaffirmed his government’s position, acknowledging the right of the people of Jammu and Kashmir “to make it known how they felt, what they wanted and how they proposed to work for it.”

**Constituent Assembly Election**

The elections to the Constituent Assembly were held in terms of the proclamation, in September, 1951. Foreign correspondents and observes flocked to the state to witness the elections to this important body. The elections were conducted by an Election Commissioner appointed by the Yuvraj Karan Singh. The Constituencies were delimited on the basis of one member to 40,000 people. The delimitation Committee created one hundred constituencies for the entire Jammu and Kashmir state. Out of this 25 seats were arbitrarily earmarked for 37 percent of population living in 40 percent territory of state in Pakistan Occupied Kashmir (Gilgit
and Baltistan included)\textsuperscript{169} and these have never been filled up till now. The franchise was based on universal adult suffrage and people were assured of a free and fair exercise of their vote.

The elections were unprecedented in the nature. All the 75 seats were won by the National Conference candidates. Seventy three members of the Assembly were elected unopposed. The remaining two contests in Jammu were also won by the National Conference. The nomination papers of the candidates of Praja Parishad were rejected by the Government. The total number of rejections was 14 and about 11 withdrawals.\textsuperscript{170}

This newly elected Constituent Assembly held its first meeting on 31\textsuperscript{st} October, 1951 at Srinagar. Sheikh Abdullah called this Day as the “\textit{Day of Destiny, a day which comes only once in the life of nation}.” He called the Assembly a ‘\textit{Sovereign Authority}’ and told the members that whatever they decided had “\textit{the irrevocable force of Law}.”\textsuperscript{171} He proposed the name of Ghulam Mohammad Sadiq who was unanimously elected as the Permanent President of the House.\textsuperscript{172}

The Constituent Assembly of Jammu and Kashmir was given the authority not only to frame the Constitution for Jammu and Kashmir, but to give concurrence in matters of application of Indian Constitution and extension of the jurisdiction of the Indian Parliament to Jammu and Kashmir. The further progress in the development of Constitutional relations between Jammu and Kashmir and India was subject to the recommendations of the Constituent Assembly.

Sheikh Abdullah, the then Prime Minister of the state in his opening address to the State Constituent Assembly on 5\textsuperscript{th} November, 1951 outlined the four great task before it.\textsuperscript{173}

(i) To frame a Constitution for the future governance of the State of Jammu and Kashmir.

(ii) To determine the future of Royal Dynasty of Jammu and Kashmir.

(iii) To determine whether any compensation should be paid for the expropriation of the big landed estates in pursuance of the Big landed Estates abolition Act, 1950.

(iv) To declare its reasoned conclusions regarding accession.
Regarding the first task i.e. Constitution making Sheikh Abdullah observed we shall naturally be guided by the highest principles of democratic constitutions of the world. We shall base our work on the principle of equality, liberty and social justice which are an integral feature of all progressive constitutions. Referring to the placement of the state in the Indian federal organization and the relations between the state and the Union, he said: “You are no doubt aware of the scope of our present constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and Government is available to us in unstinted and abundant measure. The Constitution of India has provided for a federal Union and in the distribution of Sovereign powers has treated us differently from other constituent units with the exception of the items grouped under Defence, External Affairs and Communications in the Instrument of Accession, we have complete freedom to frame out constitution in the manner we like. In order to live and prosper as good partners on a common endeavour for the advancement of our people, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genesis of our people, we may also, by suitable constitutional arrangements with the Union, establish our right to seek and compel federal cooperation and assistance in this great task, as well as offer our fullest cooperation and assistance to the Union.”

After this Sheikh Abdullah took the most important issue of the accession of the state and described the merits and demerits of the states accession to India or Pakistan or of having independent status. The Cabinet Mission Plan has provided for three Courses which may be followed by the Indian States when determining their future affiliations. A state can either accede to India or accede to Pakistan but failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our state. He told the Constituent Assembly that it was the “Kinship of ideals which determined that strength of ties between two states.” He said that the Indian National Congress had consistently supported the cause of “States people and freedom” and the Indian constitution idealised the objectives of secular democracy based upon justice, freedom and equality which provided the Muslims of the state the guarantee of their security in future. The national movement in our state naturally gravitates towards those principles of secular democracy.”
He further pointed out that the interim Government had undertaken land reforms which would not have been possible in the “land lord-ridden Pakistan” and the economic prospects of the state were closely bound with India. Potentially, he told the Assembly we are rich in minerals and in the raw materials of industry, we need help to develop our resources. India being more highly industrialized than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which would not be practical for us to produce here for instance, sugar, cotton cloth and other essential commodities can be got by us in large quantities from India.

Regarding the merits of accession to Pakistan he said that more dependable roads and waterways of the state led to Pakistan not India, which would hamper trade and commerce of the state. He also expressed his fears that Communalism posed a threat to the Muslims in India and if India turned into a religious state in future the interests of the Muslims would be jeopardised. He said that Pakistan was a Muslim state and a large majority of the people of the state was Muslims.

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

Examining the alternative of Independence of the state, Sheikh Abdullah observed, that “we have to consider the alternative of making ourselves an eastern Switzerland, of keeping aloof from both states, but having friendly relations with them.\textsuperscript{177} This might seem attractive in that it would appear to pave the way out of the present deadlock. To us, as a tourist country it could also have certain obvious advantages. But in considering independence we must not ignore practical considerations”. Firstly it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries. Secondly we must have the goodwill
of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression?

I would like to remind you that from 15th August to 22nd October, 1947, our state was independent and the result was that our weakness was exploited by the neighbour with whom we had a valid standstill Agreement. The state was invaded where is the guarantee that in future too we may not be victims of similar aggression? Thus the inaugural address delivered by Sheikh Abdullah brought to surface the divergently different views the Conference leaders harboured about the accession of the state and the Constitutional relations between the state and the Indian Dominion.

However, the Cabinet Mission did not propose the division of India and the creation of two dominions—India and Pakistan, nor did it visualise any alternatives to the accession of the states, which recognized their independence. The Cabinet Mission plan envisaged a United India of which the Indian states formed an integral part. Similarly, the partition of India, envisaged by the Mountbatten Declaration of 3rd June, 1946, did not envisage independence of the Indian states. The partition plan, later embodied in the Indian Independence Act provided for the withdrawal of the British paramountcy. The dissolution of the paramountcy liberated the Indian states from the protection of the British crown but it did not vest them with any more powers than they exercised under the paramountcy.

The future of the states was of crucial importance to the unity of India. The All India Congress Committee unequivocally repudiated the claim of any state to assume independence. The Muslim league took the stand that paramountcy reverted to the states after the transfer of power, leaving them free to take any course of action they preferred in their relations with the two dominions.

However, both the viceroy and British government refused to accept the position the league adopted. Lord Mountabatten gave rebuff to the league, when he addressed the princes on 25th July, 1947 and told them plainly that they could not escape integration with the rest of India and the British Government would neither be prepared to offer aid nor accept the Independence of any state. “My Scheme” Mountbatten told the princes, “leaves you with all practical independence you can possibly use and makes you free of all those subjects which you cannot possibly
manage on your own. You cannot run away from the Dominion Government which is you neighbour any more than you can run away from subjects for whose welfare you are responsible.”

The National Conference leaders perhaps refused to Countenance the fact that the Constituent Assembly had been instituted by an Instrument created by the Constitution of India. They claimed that the Assembly was brought into being by the interim Government, with inherent and original powers derived from the people of the state, who did not form a part of the people of India. The National Conference leaders, in effect, sought to vest in the Constituent Assembly of the State, a separate charge, which was independent of the Constitution of India. This undermined the accession of the state to the Indian Union. The Doctrine of double charge accosted the Government of India with another situation, which was more anamolous. In case a separate charge was recognized in the Constituent Assembly of the state, the competence of the Union and the applicability of the Constitution of India would be simultaneously limited to the terms specified by the Constituent Assembly of the State, a position which the National Conference leaders were seeking to establish. Any such position would not only exclude the Jurisdiction of the Union in regard to the State, but close forever the possibility of modifying the provisions of the Constitution of India in regard to the state. The recognition of any inherent powers in the Constituent Assembly of the state would also destroy the precedence of the Constitution of India over the provisions of the Constitution of the state.

In view of the fact that the original jurisdiction of the Supreme Court of India was not applicable to the state, the conflicts which involved Constitutional procedure, were bound to arise and prove catastrophic and ultimately lead either to the termination of the special provisions envisaged for the state or the disintegration of the federal relations between the state and the Union.182

Accordingly on 7th November, 1951, the Constituent Assembly set up three Committees to examine various aspects of the Constitutional organization of the state and report to the Constituent Assembly. These were:

(i) The land compensation committee, for recommending the desirability or otherwise of payment of compensation for land expropriated under the provisions of the Big landed Estate Abolition Act, 1950.183
(ii) The Basic principles Committee, for framing a constitution for Jammu and Kashmir

(iii) The Advisory Committee for the application and enforcement of fundamental rights and for the determination of matters relating to citizenship.\textsuperscript{184}

The members of the land Reforms Committee were unanimously of the opinion that no compensation should be given to landlords. The Constituent Assembly accepted this recommendation.\textsuperscript{185}

\textbf{Reinforcement of the State Union Link}

Although the 1\textsuperscript{st} January, 1949 ceasefire had formally ended over hostilities between India and Pakistan, tension in the subcontinent remained high. There were repeated instances of infiltration and small scale clashes along the ceasefire line.\textsuperscript{186}

United Nations Security Council, also continued to adopt resolution on the Jammu and Kashmir issue, which according to the Indian viewpoint, revealed an aggravating lack of sympathy and understanding for its position.

In addition to these two familiar factors which bound India and the state closer together, a new element was introduced in the form of the Korean War. Although there were much dissimilarity between the conflict in Korea and conditions in Jammu and Kashmir, Sheikh Abdullah and his colleagues began to fear that their state might became the next battleground in the cold war.

On several occasions Sheikh Abdullah expressed his administrations anxiety on this particular point. In a statement issued on 20\textsuperscript{th} January, 1951, Sheikh Abdullah rejected the idea proposed at a meeting of Common Wealth Ministers for transferring Supreme authority in Jammu and Kashmir to a plebiscite administrator. He declared: "After the bitter and gruesome experience of Korea, it is legitimate for the people of the state to fear that the planting of another Macv Arthur on the tender soil of Jammu and Kashmir would reduce the state to a bitter object of International Controversy".\textsuperscript{187}

Thus Korean War was an important factor in the establishment of the state constituent Assembly in order to resolve the question of Jammu and Kashmir’s future affiliation and status once and for all. It also helped to reduce the attraction of
Independence as an alternative. In a question and answer period before a group of college students from Bombay on 13th May, 1951, Sheikh Abdullah rejected the idea of an Independent Jammu and Kashmir as impossible and impracticable in the current international context. For the people of the state to think in terms of independence with five powers surrounding them and looking at them with mixed motives would be suicidal, pure and simple, he said.\(^{188}\)


Thus external forces were very effective in pushing Jammu and Kashmir into a closer relationship with India while number of domestic developments succeeded in pulling the state into a tighter orbit. To begin with, Jawaharlal Nehru and other Indian leaders continued to repeat their assurances regarding the right of Jammu and Kashmir’s population to settle the question of their own future as soon as peace and stability had been restored.

Further, a session of the Constituent Assembly was held at Jammu in the spring of 1952. It met to consider the reports of three sub-committees set up in the previous session. Here on 24th March, 1952, Mirza Afzal Beg, the Chairman of the Basic principles Committee said that Jammu and Kashmir would be constituted into an “autonomous republic within the Indian Union, with a separate President, National Assembly, Judiciary, Regional autonomy and separate citizenship.” In other words state should form a Republic within Republic of India. The Assembly adopted the principle of abolition of monarchy and to have an elected Head of the state.\(^{189}\)

However, the Constituent Assembly did not take any decision with regard to the accession, but set up a “Drafting Committee” for drafting the constitution for the state.\(^{190}\) Thus the basic principles committee and the Advisory Committee maintained that the constituent Assembly of Jammu and Kashmir was fully competent to decide on the relationship of the state of Jammu and Kashmir with Indian Union. On 25th March, 1952 Sheikh Abdullah said that, “The Constituent Assembly possessed and unquestionable right to decide future of the state, which if would exercise to the fullest measure. Suppose for the sake of argument that the people are not satisfied with this accession. The position that would follow would not be that, as a matter of course, Jammu and Kashmir becomes a part of Pakistan. No, that would not happen. That cannot happen legally and constitutionally. What would happen in such an eventuality would be that the state would regain the status which it enjoyed immediately preceding the accession”.\(^{191}\)
The Constitutional development in Jammu and Kashmir deepened the distrust in the Jammu province further. For the first time internal problems in Jammu and Kashmir state moved into the political spotlight. The mounting opposition to the Sheikh Abdullah’s administration had great impact on the Kashmiri leaders’ attitude towards India.

Praja Parishad, a newly formed political party, organized a meeting in November 1951 under the Presidentship of Prem Nath Dogra. They discussed all the four issues outlined by Sheikh Abdullah during Constituent Assembly debate. He argued that there was no need for a separate state Constitution, as there could be no better constitution than that of India.192

As to the fate of the royal dynasty Prem Nath Dogra had some particularly bitter words to say about Sheikh Abdullah administration and its treatment of the Maharaja. He disputed Sheikh Abdullah’s contention that Maharaja Hari Singh had lost the confidence of all the people in the state. Except for the National Conference, Dogra claimed, all the people had full confidence in the Maharaja. The treatment being meted out to his Highness was based on a spirit of revenge, the Praja Parishad leader charged.193 Praja Parishad opposed the decision of National Conference of not giving Compensation to Landlords. The Praja Parishad favoured the transfer of land to the tillers, Dogra insisted in his speech, but it also stood for proper compensation to the expropriated landlords in line with the provisions of the Indian constitution.

Finally, Prem Nath Dogra took the important issue of Accession. He argued that limited accession to India was impractical and ‘suicidal’ for a state that depended for security as well as for economic and social welfare, on Indian support. It was Praja Parishad’s view that the state’s best interest lay in complete and unconditional accession to India. Its leadership favoured the application of the Indian constitution to Jammu and Kashmir in the same manner as in other Indian states. They opposed the separate flag and separate constitution for Jammu and Kashmir because these would encourage fissiparous tendencies by keeping alive a feeling of separation. For the future safety and security of Jammu and Kashmir with which the safety and security of India was linked, it thought it essential that the state should be brought fully under the constitution of India by repealing Article 370 of the Indian Constitution.194
The Praja Parishad at the state level and the Bhartiya Jana Sangh at Central level demanded the total integration of the state with India. This campaign produced an atmosphere of tension. One incident at an official function of the Gandhi Memorial College in Jammu on 15th January, 1952 sparked the crisis. Some students protested on hoisting of state flag along with the flag of the country, as a result several of them were arrested. This led to a student demonstration of sympathy which was broken up by the police who arrested number of students. The arrest, in turn served only to provide agitation on an even larger scale than before. On 29th January, 1952 three students of Gandhi Memorial College went on a “fast unto death”. This led to the arrest of number of Praja Parishad leaders including its President Prem Nath Dogra. However, the students were released later. In this context Bakshi Ghulam Mohammed declared in a press conference that we have decided to deal directly with the Praja Parishad organization which is using the students for its own ends.

Subsequently it transpired that these leaders had taken no active part in the demonstrations and through the intervention of the Indian States Minister N. Gopalaswami Ayyangar, Sheikh Abdullah released them.

The Praja Parishad campaign had achieved increasing support among the Hindu population of Jammu Province. Sheikh Abdullah viewed the success of the party’s opposition tactics as an assault not only upon his administration’s integrity but also upon the principle of state’s autonomy, the right of the people of Jammu and Kashmir to guide and shape their own destiny. This aspect of Sheikh Abdullah’s guiding political philosophy had been overshadowed for many years by the external threat and the struggle in defense of state’s accession to India. Apparently for first time, Sheikh Abdullah began to realize the magnitude and potential implications of the Praja Parishad campaign for complete integration of the state into the Indian Union.

Sheikh Abdullah, however remained deeply disturbed by the intensity of the agitation. On 29th March, 1952, in a speech to the State Constituent Assembly Sheikh Abdullah declared that, on domestic issues neither the Indian parliament nor any other parliament outside the state had jurisdiction over Jammu and Kashmir.

Therefore in April, 1952, Jawaharlal Nehru sent Gopalaswamy Ayyangar to Jammu to make an assessment of the situation on the spot and help in the restoration
of normalcy there. In Jammu number of delegates representing Hindus and Sikhs of both the provinces and the Buddhists of Ladakh met him. They told Minister of states that they did not approve of the autonomous constitutional position for the state because such a loose relationship between the state and the Union, would eventually led to the cessation of the state from the Indian Union. The interim Government had right from its inception, vigorously reorganized property relations in the state to ensure Muslim dominance over its economic organization. It had followed a persistent policy of excluding the minorities from the administrative organization of the states. So the Hindus and the other minorities favoured the application of the constitution of India to the state in its entirety.\(^{201}\)

After this, Ayyangar apprised the National Conference leaders of the concern of the Government of India about the developments in the state. He told them that the Government of India would not be able to support the demand of the autonomy of the state which was based upon communal preferences. He advised the National Conference leaders not to get committed to theocratic ideals and instead adopt policies which aimed at the integration of the various communities in the state on the basis of equality and Justice. He further asked to release the Parishad leaders and other students to restore normally in the province. The release of the leaders had a soothing effect on the ruffled tempers in the province.

However, Ayyangar’s mission administered a jolt to the National Conference leaders, who had received unquestioned support from the Government of India in whatever action they had taken in the state.\(^{202}\) So the Muslim leaders of the National Conference expressed strong resentment against Ayyangar’s visit to the state and charged the Government of India of interference with the internal affairs of the state. They claimed that the Muslims in the state had supported the accession of the state to India on the condition that Jammu and Kashmir would preserve its separate political identity and the Muslim majority character of its population.

Also this interference provoked Sheikh Abdullah to make a speech at Ranbir singhpura on 10\(^{th}\) April, 1952 in which he criticized India for communalism and warned against applying the Indian Constitution to Jammu and Kashmir in all respects.\(^{203}\) The speech caused uproar in the Country. The unique and alarming thing for many Indians was the transformation in Sheikh Abdullah’s general altitude towards accession. It was a change of tone rather than substance that appears to have
generated the controversy. For many years Sheikh Abdullah had favoured and urged his many followers to support the state’s links with India. His last and most categorical public endorsement of accession to India was in the inaugural address to the state constituent Assembly on 5th March, 1951. He had never expressed serious doubts about the wisdom of Jammu and Kashmir’s final accession to the Indian Union. But by this speech it was clear that Sheikh Abdullah’s altitude towards accession had cooled as a result of increasing pressures for integration. He was no longer enthusiastic about the prospect of confirming and making permanent the provisional relationship between the state and the centre.

Further in another speech on 18th April, 1952 at Hazaratbal Sheikh Abdullah pointed out that any attempt to apply the entire Indian Constitution to the state might ultimately weaken “Indo-Kashmir relations.”

A more clear exposition of the National conference outlook was made by Sheikh Abdullah in the Constituent Assembly on 25th April, 1952. He said that the constituent Assembly had the unfettered right to:

(i) determine the final disposition of the state in regard to accession.
(ii) determine the future of the rule of the Dogra Dynasty.
(iii) frame the constitution of the state on the matters not transferred to the Union by virtue of the Instrument of Accession.
(iv) determine the relationship between the state and the Union of India.

Further on 10th June, 1952, the Basic principles committee submitted an interim report to the Constituent Assembly which recommended that the basis of the political setup of the state should be fully democratic. The ‘hereditary rulership’ should be abolished and instead there should be an elected Head of the state to be designated as ‘Sadar-i-Riyasat’. It also submitted a resolution that the state should have its own flag. It should be rectangular in shape and red in colour with three vertical strips of equal width next to the white plough in the middle with its handles facing the strips.

As a result on 12th June, 1952, the report of the Basic principles Committee was unanimously adopted by the Constituent Assembly. The resolution of the Assembly stipulated that:
(i) the Head of the state would be elected by the legislative Assembly and after having been elected recognised by the president of India;

(ii) the Head of the state would hold office for a period of 5 year;

(iii) the Head of the state would be designated as the Sadar-i-Riyasat;

(iv) the method of election, qualification and other matters pertaining to the office of the head of the state would be prescribed in the state constitution;

(v) the sadar-i-Riyasat would exercise such powers as were vested in him by the state constitution; and

(vi) the Constituent Assembly would in due course provide a suitable remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of Sadar-i-Riyasat.\textsuperscript{207}

But the Central government did not approve of the proposal the Constituent Assembly of the state made with regard to the replacement of the Ruler of the state by a President of the state who was elected in a manner the National Conference had prescribed. So central leaders told state leaders that only changes in the Constitutional organization of the state which the Constituent Assembly proposed, would inevitably involve the integration of the state in the Constitutional structure of India, in order that the instruments created by the Constituent Assembly did not conflict with the imperatives, the Constitution of India envisaged.

In the face of growing crisis, the Central government in June, 1952, summoned Sheikh Abdullah to New Delhi for Consultation. Consequently a Kashmiri delegation headed by Mirza Mohammed Afzal Beg and including Durga Prasad Dhar and Mir Qasim arrived in New Delhi on 17\textsuperscript{th} June, 1952 and immediately started discussion with Prime Minister Jawharlal Nehru. On 17\textsuperscript{th} July, 1952 Sheikh Abdullah joined the talks along with Bakshi Ghulam Mohammed, Khawaja Ghulam Mohammed Sadiq and Maulana Mohammad Sayeed Masoodi, which also included a number of Indian politicians representing opposition parties.\textsuperscript{208} By now Jawaharlal Nehru was disillusioned about the United Nations and had abandoned his hope to get the invading armies of Pakistan evacuated from the parts of the state occupied by them. He had painfully realized that the negotiation for truce and demilitarization had ultimately led to the consolidation of the Pakistan’s hold on the territories of the state which fell on the other side of the ceasefire line. Both the central and state
government’s after mutual understanding reached an agreement on 24th July, 1952 known as Delhi Agreement. The main features of the Delhi Agreement were:

I. **Residuary powers:** The Residuary powers of Legislature vested in the state of Jammu and Kashmir where as in other states of India vested with the centre.209

II. **Citizenship:** It was agreed that in accordance with Article 5 of the Indian Constitution, persons who had their domicile in Jammu and Kashmir shall be the citizens of India, but the state legislature was given power to make laws for conferring special rights and privileges on the ‘state subject’, more especially in regard to the acquisition of the immovable property, appointments to services and like matters. The state legislature was also empowered to make Laws for the ‘state subjects’ who had gone to Pakistan on account of the Communal disturbances of 1947, in the event of their return to Jammu and Kashmir.

III. **Headship of the State:** The following arrangement was mutually agreed upon with regard to the position of the Sadar-i-Riyasat:

(i) the head of the state shall be the person recognized by the President of the Union on the recommendation of the legislature of the state;

(ii) he shall hold office during the pleasure of the president;

(iii) he may, by writing under his hand addressed to the President, resign his office;

(iv) subject to the foregoing provisions, the Head of the state shall hold office for a term of five years from the date he enters upon his office.

IV. **Fundamental Rights:** It was agreed that the Fundamental Rights which are contained in the Constitution of India could not be conferred on the residents of the state of Jammu and Kashmir in their entirely because of the different political situation in the state and because of the Socio-economic policies of the State Government under the Naya Kashmir programme. It was agreed that there was a need for providing suitable modifications, amendments and exceptions, as the case may be in the chapter of Fundamental Rights in order to harmonize those provisions with the pattern and principles of Naya Kashmir programme. However, the main point that remained to be determined was
whether the chapter of Fundamental Rights should form part of the Constitution of Jammu and Kashmir or that of the Union Constitution.\textsuperscript{210}

V. \textbf{Supreme Court:} It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in article 131 of the Constitution of India. The appellate Jurisdiction of the Supreme Court in Civil and Criminal matters was not agreed to. It was further agreed that the Supreme Court should have jurisdiction in regard to fundamental rights which are agreed to by the state. It was recommended on behalf of the Government of India that the Advisory Board in the State, designed as “\textit{His Highness’s Board of Judicial advisors}” should be abolished and the jurisdiction exercised by it should be vested in the Supreme Court of India. The state Government felt that this would need a detailed examination and consequently it was agreed that it should have time to consider it further.\textsuperscript{211}

VI. \textbf{Emergency Powers:} Regarding the ‘Emergency Powers’ the Government of India insisted on the application of Article 352, empowering the president to proclaim a general emergency in the state; the state government argued that in exercise of its powers over defence (Item 1 on the Union List), in the event of war or external aggression, the Government of India would have full authority to take steps and proclaim emergency but the state delegation was however, averse to the president exercising the power to proclaim a general emergency on account of internal disturbance. In order to meet the view point of the state’s delegation, the Government of India agreed to the modification of Article 352 in its application to Jammu and Kashmir by the addition of the following words: but in regard to internal disturbance at the request or with the concurrence of the Government of the state. Both the parties agreed that the application of Article 356, dealing with suspension of state Constitution and 360, dealing with financial emergency was not necessary.\textsuperscript{212}

VII. \textbf{National Flag:} The Union government agreed that the state should have its own flag in addition to the Union flag, but it was agreed by the State government that the state flag would not be a rival of the Union flag. It was also recognized that the Union flag should have the same status and position in Jammu and Kashmir as in the rest of India, but for historical reasons
connected with the freedom struggle in the state, the need for continuance of the state flag was recognized.

VIII. President of India: As the President of India commands the same respect in the state as he does in the other units of India, Article 52 to 62 of the Constitution relating to him should be applicable to the state. It was further agreed that the power to grant reprieves, pardons and remission of sentences etc would also vest in the president of India.

IX. Conduct of Elections to the Houses of Parliament: Article 324 of the Indian Constitution was already applicable so far as it related to elections to the parliament and to the offices of the president and vice president of India.213

X. Financial Integration: It was recognized that it would be necessary to evolve some sort of financial arrangement between the state and the union. In view of the far reaching consequences involved therein, it was agreed that a detailed and objective examination of this subject would be necessary.

The facts analysed above make it clear that the State of Jammu and Kashmir enjoyed, a special position in the Union of India and this position of the state has been permitted by Article 2 of the constitution itself.

Commending these decisions to the Constituent Assembly, Sheikh Abdullah made the following observations: “A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in clear terms. There has been a good deal of an accommodation of our respective points of view. Both, the representatives of the Government of India and the Kashmir Delegation have been impelled by the desire to strengthen the future existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support of the Government and the people of India in the fulfillment of our democratic ideals and the realization of our objectives.”

Sheikh Abdullah further stated: “This goodwill and amity, I am sure, will result in the consolidation of freedom and democracy in our Country. I may, however, emphasize that the Supreme guarantee of our relationship with India is the identity of the democratic and secular aspiration, which have guided the people of India as well as those of Jammu and Kashmir in their struggle for emancipation and before which all Constitutional safeguards will take a secondary position…. It is, of course, for the
The Assembly may agree to continue this relationship on the present basis or extent its scope as it might like and consider feasible and proper in the course of framing the constitution for the state.

This agreement was discussed in the Lok Sabha on 7th August, 1952 and although some members criticized such aspects of the agreement as special rights for permanent residents of Jammu and Kashmir and elective headship of the state, the House adopted a motion approving all the steps taken so far in the matter.

On 14th August, 1952, Sheikh Abdullah wanted the Assembly to consider the agreement. Here, one member Mubarak Shah said that “his faith in India has been strengthened after the agreement.” However Mir Qasim maintained that “we have acceded to India with a definite purpose (Naya Kashmir) unless this purpose is achieved, we will stick to it.”

Finally constituent assembly adopted a motion of approach on 21st August, 1952. But in spite of all these discussions and decisions in the Jammu and Kashmir Constituent Assembly, the implementation of the agreement was not forthcoming. This aroused suspicion in the minds of the public about the intentions of the leaders of the government. Instead, fresh intelligence reached the government of India that Sheikh Abdullah was no longer inclined to propose Karan Singh as the first president of the State, but he was fast preparing to install a Harijan Hindu, a member of the Constituent Assembly, who also had been elected uncontested, the Sadar-i-Riyasat of the State. Jawaharlal Nehru, who felt severely sore over the developments in the State, conveyed to the conference leaders that the government of India would recognize no one else except Karan Singh, the Sadar-I-Riyasat or the president of the state and if the conference leaders were not prepared to accept that the government of India would not allow the termination of the Regency of Karan Singh.

On 19th August, 1952, the Drafting Committee of the Constituent Assembly of the state presented its report to the Assembly on the future of the Dogra rule and the replacement of the Maharaja by a President of the State, designated ‘Sadar-i-Riyasat’.

This report was accepted and finally the resolution was passed by the Jammu and Kashmir constituent Assembly on 21st August, 1952. The Head of the state was

Constituent Assembly which is seized of these matters to determine the extent and scope of the state’s accession to India.”
designated as the Sadar-I-Riyasat. He was to be elected by the state legislative Assembly for a period of five years from amongst the persons who were ‘State subject of class first.’

 Accordingly, on 14th November, 1952, Constituent Assembly at Srinagar elected 21 year old Yuvraj karan Singh to the office of Sadar-i-Riyasat or Head of the State. His election was formally recognized by the President of India and incidently it brought to an end the century old Dogra rule. So, Jawahar lal Nehru wrote to Yuvraj Karan Singh which read as follows: “I congratulate you on the high honour that has been conferred upon you by the people of Jammu and Kashmir state on your election as Sadar-I-Riyasat. I would like to congratulate the people of the state also on their wise choice. This puts a great responsibility upon you, for you have not merely to follow an established convention but rather to help in making conventions for the future. You know how dear the future of the state is to me. It is dear to me because of my own intimate relationship with Kashmir and it is dear to me also because of the numerous ties that bind the state to India. Out future is linked together and we have to face good fortune and ill fortune alike together. A new chapter opens now in the Jammu and Kashmir state though it is new but a continuation of old but in a different form. The processes of life, whether of an individual or a nation, are both a continuous and a continuous change. I earnestly hope that changes that have been brought about in the Constitution of the Jammu and Kashmir state will lead to the greater prosperity and happiness of the people of the state and will bring them even closer to India, of which they are such an intimate part. To you, who have to shoulder this burden and this responsibility at such an early age I send all my good wishes and my affection”.

 Having accomplished the removal of Maharaja Hari Singh from the scene, no further action was taken by the state government with regard to other provisions of the Delhi Agreement particularly the transfer of control of the state telegraphs and telephone department and the extension of the jurisdiction of the Supreme Court.

 Sheikh Abdullah instructed the drafting committee of the Constituent Assembly to go ahead with its work, without giving it any direction to incorporate the stipulations of the Delhi Agreement in the draft proposals, the committee evolved. Instead Sheikh Abdullah advised the drafting committee to re-examine the political issues about which a settlement had been reached at Delhi and then report to the
working committee of the National Conference. To neutralize the political arrangements arrived at Delhi further, Sheikh Abdullah sent several drafts which he had asked his close associates, both inside and outside the National Conference to prepare, to the Drafting Committee for its consideration. Most of the drafts, underlined the repudiation of the Delhi Agreement, total exclusion of the state from the political and Constitutional relations between the state and the Union to the terms of a bilateral political commitment between the interim Government and the Government of India, which would not be subject to any instrumentalities created of the Constitution of India.\textsuperscript{223}

There was a serious rift in the cabinet itself. The difference of opinion reached a peak when Sheikh Abdullah instead of implementing the agreement started advocating secession, which would make Kashmir an ‘Independent state’.\textsuperscript{224} The people of the state were quick to perceive the danger of such a course for they had seen that the tribal attack in 1947 which had caused much devastation was a direct consequence of Jammu and Kashmir’s isolated position.

After the congressmen criticized him at the Allahabad session of the Indian National Congress in January, 1953 and after he was hooted at Delhi while addressing the audience, Sheikh Abdullah began to realize his mistake. Though Jawaharlal Nehru wrongly supported him, he had to admit that the Jammu people were suffering from certain economic hardships. So government of Jammu and Kashmir set up an enquiry commission under the chairmanship of Justice Janki Nath Wazir to report the working of land reforms in kandi, drought stricken area, on functioning of government controls and on measures to rehabilitate ex-servicemen and refugees.\textsuperscript{225}

However, Jawaharlal Nehru analyzed him well in a letter to Maulana Azad on 1\textsuperscript{st} March, 1953: “I fear that Sheikh sahib’s mind is so utterly confused that he does not know what to do. All kinds of pleasures are being brought to bear upon him and he is getting more and more into a tangle. There is nobody with him who can really help him much, because he does not trust anyone fully, and yet everyone influences him….My fear is that Sheikh Abdullah in his present frame of mind, is likely to do something or take some step which might make things worse”.\textsuperscript{226}

Between 1\textsuperscript{st} and 3\textsuperscript{rd} May Sheikh Abdullah met Adlai Stevenson for three days of talks, including a seven hour conversation on the last day at which no one else was
present. At once rumours of Anglo-American support for Jammu and Kashmir’s Independence filled the air, so much so that government of India had to clarify on 10th July, on the eve of the Karachi round of Indo-Pak talks that the Independence of Jammu and Kashmir was neither on the agenda nor an option which Delhi was ready to consider. But undeterred by this statement, Abdullah said in his Martyr’s Day Speech of 13th July that: “Kashmir should have the sympathy of both India and Pakistan…..It is not necessary that our state should become an appendage of either India or Pakistan”. This was the straw which broke Jawaharlal Nehru’s patient back.227

In May, 1953 Jawaharlal Nehru visited Kashmir and wanted to end the state’s crisis.228 He told Sheikh Abdullah that the central Government had no intention of interfering with the internal affairs of the state so long as the state was apart and parcel of India. However, he emphasized that the central Government did not approve of the separatist trends which had grown in the National Conference and the state Government. Jawaharlal Nehru re-emphasized the need to integrate the state into the Constitutional organization of the India and extend the application of the constitution of India to the state in respect of citizenship, fundamental rights, the jurisdiction of the Supreme Court of India and the Division of powers between the Union and the state on the basis of Delhi Agreement. He condemned the independence of the state as an extremely dangerous proposition. He conveyed to Sheikh Abdullah that he would prefer to hand over the state to Pakistan on a platter rather than support its independence and allow it to be turned into international intrigue and endanger both India and Pakistan.229

Bakshi Ghulam Mohammad and Ghulam Mohammad Sadiq apprised Jawaharlal Nehru of the deep division in the National Conference leadership on a number of basic issues involved in the Constitutional relationship between the state and the union. They informed Jawaharlal Nehru that they on their part supported a more integral relationship between the state and the union and readjustment in the centre-state relations.230

After Jawaharlal Nehru’s departure, the distance between the National Conference leaders and the Central Government widened rapidly. Sheikh Abdullah and his associates in the conference did not hide their feelings that the support which Praja Parishad movement had received was aimed to destroy the autonomy of the
state, which they claimed was the guarantee of secularism in the state. After this Maulana Abul Kalam Azad visited the state in June but the deadlock between Sheikh Abdullah and Central leadership could not be resolved. On 12th June, 1953 Sheikh Abdullah speaking before a mass rally at Jamia Masjid on the eve of Jamat-ul-vida (last Friday) said that, “At present, the atmosphere in Kashmir is grim and suffocated”.

In the course of his speech Sheikh Abdullah accused that some of party members are violating the party decisions and appealed to people not to be frustrated by the unrealistic rumours let loose by some interested elements. Difference of opinion and growing rift between Sheikh Abdullah on the one hand and on the other hand among the members of the working committee of National Conference could no longer remain a secret. Bakshi Ghulam Mohammad emphasized that leadership of National Conference had failed to solve the difficulties of people.

Bakshi Ghulam Mohammad, Deputy Prime Minister and Ghulam Mohammad Sadiq, President of Constituent Assembly, in a series of speeches delivered at Badgam, Shopian and Kulgam openly criticized the idea of Independent Jammu and Kashmir and held that an Independent Jammu and Kashmir would become a seat of international intrigues. Bakshi Ghulam Mohammad praised India for her approach towards Jammu and Kashmir and her stand for rendering voluntary help. We went on to say, “We cannot back out of what we held so long and so dear”.

These differences led to the ouster and arrest of Sheikh Abdullah. On 7th August, 1953 his 3 cabinet colleagues, out of four, sent a memorandum to the Prime Minister and a copy to the Sadar-i-Riyasat. They accused Sheikh Abdullah of high handed policies and ignored the view point of his colleagues. Also of making arbitrary decision and an action in a way which goes contrary to the principles of uniform policy. On 8th August the Sadar-i-Riyasat and Prime Minister discussed the situation in the light of the memorandum submitted by the cabinet members and expressed his concern at the differences which existed in Sheikh Abdullah’s cabinet. Sadar-i-Riyasat suggested that an emergency meeting of the cabinet should be held at his residence this evening so as to explore the possibilities of securing a stable unified and efficient government.
However, Sheikh Abdullah refused to attend meeting and went to Gulmarg to attend the scheduled meeting to discuss the Gulmarg Development Project with Chief Engineer and others. In the deadness of night Sadar-i-Riyasat concluded that the present cabinet cannot continue in office any longer and dissolved the council of ministers headed by Sheikh Abdullah. The order issued by the Sadar-i-Riyasat was served to Sheikh Abdullah in the early hours of 9th August, 1953 at Gulmarg. He was arrested and flown to Central Jail, Jammu. Mirza Afzal Beg and several other associates were also arrested.

Thus ended the career of Sheikh Abdullah, the man of masses the hero of Quit Kashmir, the speaker of the will masses, the lion of Kashmir though temporarily.

1 Instrument of Accession, Clause 4, 7 and 8. Teng, Mohan Krishan; Kaul Bhat, Ram Krishen; Kaul, Santosh, op.cit., p.542.
3 Mahajan, Mehr Chand, Looking Back, op.cit., p.156.
4 Kaul Bhatt, Ram Krishan, op.cit., p.167.
7 Ibid., p.88.
8 Ibid., p.96.
9 Ibid., p.113.
11 Das, Durga, Sardar Patel’s Correspondence, op.cit., p.110.
12 Teng, Mohan Krishan, Kashmir Article 370, Anmol Publication, New Delhi, 1992, p.46.
13 Das, Durga, Sardar Patel’s Correspondence, op.cit., pp.115-117.
14 Ibid., p.105.
15 Ibid., p.110.
16 Ibid., pp.115-118.
19 Ibid., p.102.
22 Ibid., p.71.

Misra, K.K. *op.cit.*, p.91.


Bamzai, P.N.K., Kashmir and Power Politics from Lake Success to Tashkent, Metropolitan Book, Delhi, 1966, p.144.


Chopra, Surendra, *op.cit.*, p.43.


Bamzai, P.N.K., Kashmir and Power Politics from Lake Success to Tashkent, *op.cit.*, p.150.


Lockwood, David Edson, *op.cit.*, p.130.


Das, Durga, Sardar Patel’s Correspondence, *op.cit.*, p.188.

56 Kaul, Santosh, Kashmir’s Constitutional Status, Anmol Publications, New Delhi, 1999, p.29-30
58 Lars Blinkenberg, India-Pakistan. The History of Unsolved Conflicts, Dansk Udenrigspolitisk institutes, Munksgaard, Denmark, 1972, p.121.
59 Misra, K.K., op.cit., p.106.
60 Ibid., p.106.
61 Ibid., p.108.
62 Lars Blinkenberg, op.cit., p.122.
63 Bamzai, P.N.K., Culture and Political History of Kashmir, op.cit., p.785.
64 Lars Blinkenberg, op.cit., p.122.
66 Ibid., p.16.
68 Chopra, Surendra, op.cit., p.6.
69 Bamzai, P.N.K., Kashmir and Power Politics from lake Success to Tashkent, op.cit., p.154.
70 Ibid., p.155.
71 Chopra, Surendra, op.cit., p.60.
72 Bamzai, P.N.K., Kashmir and Power Politics from lake Success to Tashkent, op.cit., p.158.
74 Bamzai, P.N.K., Kashmir and Power Politics from lake Success to Tashkent, op.cit., p.159.
75 Lars Blinkenberg, op.cit., p.128.
76 Bamzai, P.N.K., Kashmir and Power Politics from lake Success to Tashkent, op.cit., p.160.
77 Lars Blinkenberg, op.cit., p.131.
78 Misra, K.K., op.cit., pp.119-120.
80 Ibid., pp.19-20.
82 Ibid., p.8.
83 Teng, Mohan Krishan, op.cit., p.48.
84 Ibid., p.49.
85 Ibid., p.50.
86 Quoted by Vashisth, Satish, Sheikh Abdullah then and now, Sahita Prakashan, Delhi, 1968, p.69.
87 Puri, Balraj, Jammu and Kashmir, Triumph and Tragedy of Indian federalization, op.cit., p.86.
88 Ibid., p.86.
89 Ibid., p.86.
90 Lockwood, David Edson, op.cit., p.122.
In part B of the first schedule were listed the erstwhile princely states, which had acceded to the Dominion of India but which had not merged with any province or had not been reorganized into centrally administered Areas. Hyderabad, Jammu and Kashmir, Mysore, Madhya Bharat, Patiala and East Punjab states Union, Rajasthan, Saurashtra, Travancore-chochin and Vindhya Pradesh were included in part B of the First Schedule. Article 238 governed the relationship between the Union and Part ‘B’ states and this Article was not applied to the state of Jammu and Kashmir. This article was repealed by the constitution (7th Amendment) Act, 1956 w.e.f. 1-11-1956. Part ‘B’ states thus put themselves on a par with Part ‘A’ states. Part ‘A’ states consisted of Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, the Punjab, the United Province and West Bengal.

Teng, Mohan Krishan, op.cit., p.73. A Separate part, Part VII was included in the Constitution providing for the internal Constitution of all these states. Provisions of part VII provided that Part VI of the Constitution, which envisaged provisions for part A states corresponding to Governor’s provinces, would also apply to the part B states, subject to certain modifications and exceptions. Each of the states was to have a democratic government with a council of ministers functioning in responsibility to a legislature constituted in the same manner as in the part A states.

Article 370 (2), Constitution of India.

Article 370 (1)(b)(1), Constitution of India. These broad subjects included some twenty minor items. These underwent change in description and arrangement in List I and List II of the Seventh Schedule of the Constitution of India.

Article 370 (2) of the Constitution of India.

Article 370 (3) of the Constitution of India.

Sharma, S.K., op.cit., p.18.


Article 370, Constitution of India.

Article 1, Constitution of India.

White paper on Indian States, op.cit., Appendix-50, p.378

Ibid., p.378


The Hindustan Times, New Delhi, 10th October, 1950, p.1.

Sir Own Dixon was an Australian High Court Judge, arrived in the Indian subcontinent on 27th May, 1950. He left for Europe on 24th August, 1950 and submitted his report to the Security


151 Hindustan Times, New Delhi, 28th October, 1950, p.1.


153 Teng, Mohan Krishan, op.cit., p.79.

154 Ibid., p.80.

155 Ibid., p.81.

156 Ibid., p.81.

157 Ibid., p.82.


159 Hindustan Times, New Delhi, 23th October, 1950, p.1.


161 Teng, Mohan Krishan, op.cit., p.82.


165 Abba, F.A., op.cit., p.119.

166 Ibid., p.119.


168 Bamzai, P.N.K., Cultural and Political History of Kashmir, op.cit., p.804.

169 Khushwant Singh, op.cit., p.115.

170 Bamzai, P.N.K., Cultural and Political History of Kashmir, op.cit., p.804.


174 Teng, Mohan Krishan, op.cit., p.89.

175 Ibid., pp.89-90.

176 Ibid., p.91.

177 Ibid., p.92.


180 Resolution of the All India Congress Committee, Delhi, 14-15 June, 1947.

181 Address of Lord Mountbatten to special meeting of the Chamber of Princes, 25th July, 1947, Kashmir’s Accession to India, op.cit., pp.3-6.

Jammu and Kashmir Constituent Assembly Debate, Volume 1, 6<sup>th</sup> November, 1951, p.33.
The Hindustan Times, New Delhi, 14<sup>th</sup> May, 1951, p.1.
Anand, A.S., <i>op.cit.</i>, p.123.
The Hindustan Times, New Delhi, 11<sup>th</sup> November, 1951, p.4.
The Hindustan Times, New Delhi, 12<sup>th</sup> November, 1951, p.4.
Bamzai, P.N.K., Cultural and Political History of Kashmir, <i>op.cit.</i>, p.806.
Jana Sangh launched by Shyama Prasad Mookerjee in 1951, 1<sup>st</sup> National Committee of Jana Sangh met from 21<sup>st</sup> October, 1951.
Kaul, Pyarelal, <i>op.cit.</i>, pp.60-61.
Bazaz, Prem Nath, The History of Struggle for freedom in Kashmir, <i>op.cit.</i>, pp.569-570.
Bamzai, P.N.K., Cultural and Political History of Kashmir, <i>op.cit.</i>, p.806.
Teng, Mohan Krishan, <i>op.cit.</i>, p.100.
<i>Ibid.</i>, p.100.
Ranbir Singhpura, a small town was located in Jammu province, only 4 miles from the Pakistan border, Bamzai, P.N.K., Cultural and Political History of Kashmir, <i>op.cit.</i>, p.806.
Vasudeva, Veena, <i>op.cit.</i>, p.45.
Teng, Mohan Krishan, <i>op.cit.</i>, p.132.
Anand, A.S., <i>op.cit.</i>, p.123.
Teng, Mohan Krishan, <i>op.cit.</i>, pp.104-105.
Kaul Bhatt, Ram Krishen, <i>op.cit.</i>, pp.201-202.
Sharma, S.K., <i>op.cit.</i>, p.39.
Anand, A.S., <i>op.cit.</i>, pp.125-126.
Sharma, S.K., <i>op.cit.</i>, p.39.


Teng, Mohan Krishan, op.cit., pp.115-116.


Bamzai, P.N.K., Cultural and Political History of Kashmir, op.cit., p.808.

Teng, Mohan Krishan, op.cit., p.118.


Quoted by Akbar, M.J., op.cit., p.149.


Teng, Mohan Krishan, op.cit., p.119.

Abba, F.A., op.cit., p.128.