

OPINION

KASHMIR'S ACCESSION IS ANALOGOUS
TO THAT OF TEXAS TO THE USA

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On August 15, 1947 India became independent, and in accordance with the Cabinet Mission Plan of May 1946 the State of Jammu and Kashmir, like any other native state, had the option of “entering into a federal relationship with the successor government or governments in British India or failing this, entering into particular political arrangements with it or them”.

Following an invasion of his state by tribesmen from Pakistan, Maharaja Hari Singh sought help from India and signed an *Instrument of Accession* on October 26, 1947, and Lord Mountbatten the Governor-General of India indicated his acceptance in the following words “I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October nineteen hundred and forty seven”.

This *Instrument of Accession* was in no way different from those executed by some 500 others states. It was unconditional, voluntary and absolute. It was not subject to any exceptions. It bound the state of Jammu and Kashmir and India together legally and constitutionally. The execution of the Instrument of Accession by the Maharaja and its acceptance by the Governor-General finally settled the issue of accession of the State of Jammu and Kashmir.

To drive the invaders out of the state now became the task of the Dominion of India and the request and warnings by the government of India to government of Pakistan to deny assistance and bases to the invaders met with no response. India, therefore, decided to lodge a complaint to the Security Council against Pakistan by invoking Article 35 of the Charter of United Nations.

The stand of the Government of India, was reiterated at the floor of the Council by its representative, who said: “We have referred to the Security Council a simple and straightforward issue... The withdrawal and expulsion of the raiders and the invaders from the soil of Kashmir and the immediate stoppage of the fight are... the first and the only tasks to which we have to address ourselves.”

On January 27, 1948, India and Pakistan submitted draft proposals to the President of the Security Council on the appropriate methods of solving the Kashmir dispute. In this proposal India agreed to the holding of a plebiscite in Kashmir as the ultimate determinant of Kashmir's status. The

Indian representative observed on the floor of the Council: “In accepting the accession they (India) refused to take advantage of the immediate peril in which the state found itself and informed the ruler that the accession should finally be settled by plebiscite as soon as peace has been restored.”

In 1949 the Indian Constituent Assembly was coming to the end of its task.

Unlike those from the other states, Kashmir’s representatives made it clear that Kashmir’s association with India would be based only on the terms of the Instrument of Accession. 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.

Thus the question of drafting Article 370 (Art. 306-A in the Draft Constitution) was considered. As Gopaldaswami Ayyangar explained, “In these negotiations it was made perfectly clear by the state government that it was for the Constituent Assembly of the state to frame the Constitution of the state and that in any provision that may be made in the Constitution of India regarding Kashmir, the basis should be the “Instrument of Accession” and till the Constituent Assembly of the state consented to accede in any other subject to the Union, the relationship between India and the state should be limited to the subjects specified in the “Instrument of Accession”.

Article 370 of the Constitution of India covered the case of Kashmir only and gave Kashmir a special status in that the provisions governing the relationship of other part B states did not apply to it.

On May 1, 1951, Yuvraj Karan Singh issued a proclamation directing that “a Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purposes of framing a Constitution for the state of Jammu and Kashmir”.

The elections to the Constituent Assembly were completed by August 1951 and on October 31, 1951 the meeting of the Constituent Assembly was held. In his opening address Sheikh Abdullah, Prime Minister of Kashmir, called it a ‘Day of Destiny’ and informed the Assembly that it shall, while framing the Constitution, deliberate and decide on the constitutional relationship with the Union of India.

The Constituent Assembly of the Jammu and Kashmir state ratified the state’s accession to India on February 15, 1954 after a great deal of debate, discussion and consideration. The debate was free and frank. No one, even the worst critic, has ever doubted the representative nature of the Constituent Assembly. Self-determination is a one-time act – the people of the State through their elected representatives in the Constituent Assembly of the State took a final decision and therefore the question of any further ‘self-determination’ or ‘plebiscite’ does not arise either legally or morally.

The 1954 resolution of the Constituent Assembly was followed by incorporation of Section 3 in the Constitution of Jammu and Kashmir which reads: “The State of Jammu and Kashmir is and shall be an integral part of the Union of India”.

This section is in confirmation and reiteration of the wishes of the people of the state to be an integral part of the Union of India.

It is interesting to note that the accession of Kashmir to India is quite analogous to the annexation of Texas by the United States of America. When Mexico separated from the Spanish Empire and setup, as an independent Republic, Texas was an integral part of the new state. Later, Texas revolted against the Mexican authorities and established itself as an independent entity. The independent status of Texas was recognised by the United States of America and the principal powers of Europe. In 1844, the Government of Texas, threatened by the menace of predatory incursions from Mexico, requested the Government of the United States of America to annex the state.

This proposal was accepted by the American Congress in a joint resolution in March 1845. After this sanction, America sent an army to defend the western frontiers of Texas. The Government of Mexico strongly protested and alleged violation of the rights of Mexico and even the diplomatic intercourse between the two governments was suspended. The Mexican protest evoked the following reply from the Government of the United States of America:

“The Government of United States did not consider this joint resolution as a violation of any of the rights of Mexico, or that it offered any of the rights of Mexico, or that it offered any just cause or offence to its government; that the Republic of Texas is an independent power, owing no allegiance to Mexico, and constituting no part of her territory or rightful sovereignty and jurisdiction”.

[Courtesy: The Times of India, January 9, 1997]