EVENTS LEADING TO THE DRAFTING OF THE
CONSTITUTION OF JAMMU & KASHMIR
3.1 The Beginning of a New Era in the History of the State of Jammu & Kashmir

A new era or saga in the history of the State of Jammu and Kashmir began with the accession of Maharaja Hari Singh (son of Raja Amar Singh) in September 1925 after his uncle’s (Pratap Singh) death. The ascent of Maharaja Hari Singh to the throne of the State of Jammu and Kashmir in 1925 witnessed the beginning of certain events that were vital in the development of the constitutional history of Jammu and Kashmir. These various events ultimately lead to the accession of Kashmir with India and the drafting of the Constitution of Jammu and Kashmir. Discrimination against the Muslim population by the State’s Administration resulted in dissatisfaction in the minds of the Muslim majority population. This was further aggravated by the British policy of divide and rule that instigated the Muslim masses against their Hindu ruler. British rule in India also brought with it Western education and the Western concept of freedom and liberty, which to a large extent motivated the leaders of Jammu and Kashmir in their struggle against the Maharaja. They were also motivated and inspired by the freedom struggle that was going on in India. Under these circumstances, the people of Jammu and Kashmir ultimately started

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an agitation with the slogan “State for State’s People” that took shape of a national struggle, which shook the very foundation of Dogra Monarchy.

3.2 THE BIRTH OF THE NATIONAL CONFERENCE AND THE PASSING OF THE JAMMU AND KASHMIR CONSTITUTION ACT 1939

The Muslim Conference had provided the people of Jammu and Kashmir with a platform from which they could ventilate their grievances and make their demands. In order to strengthen and broaden this platform the working committee of the Muslim Conference, on 28th June 1938, passed a resolution suggesting the change of name of the Muslim Conference to National Conference. Certain amendments were made to the Constitution of the Muslim Conference so that Non-Muslims, mainly, Hindus and Sikhs may also participate in the National Struggle.

The newly born National Conference started its movement by observing 5th August 1938 as ‘Responsible Government Day’. The said National Conference organized various meetings all over the State and by these various meetings passed resolutions to overthrow the present ‘Irresponsible Government’ of the Maharaja and establish a responsible government within the State. The said movement was so wide spread that the Maharaja was compelled to issue a proclamation on 11th February 1939.
allowing even more constitutional rights to the people of Kashmir. The salient feature of this Proclamation was that the number of elected members of the Praja Sabha, which was previously 33, was increased to 40. The total number of members being 75, the Praja Sabha now had an elected majority over the previous official majority. However, this minor modification did not satisfy the leaders of the National Conference who demanded for a Constitution for the State that would fulfill all the demands of the people.

Maharaja Hari Singh ultimately had to give in to the demand of the National Conference. On 7th September 1939 the Jammu and Kashmir Constitution Act 1939 [Act XIV of Samwat 1996 (1939AD)] was enacted. This Act was of major importance as it made major alterations in the State’s legislative, executive and judicial systems. The people were guaranteed further liberties and were given more opportunity to participate in the administration of the State. Although the said Constitutional Act of 1939 granted various rights and liberties to the people, the Maharaja did not even partially part with any of his sovereign rights in favour of the Praja Sabha,¹ and continued to be the absolute monarch of the State.² Under the said Act the position of the Maharaja was supreme and all powers of the State ultimately vested in him. His position could well be compared to that

of the King in Parliament in Great Britain. He was the source of all laws and none of his actions could be questioned or judged by any one. His position continued to be supreme within and beyond the territories of the State.

It may be noted that though Maharaja Hari Singh continued to be the undisputed supreme power in Kashmir, he at least attempted to open the State’s administration to the people of Kashmir. During his reign several bills were passed by the Praja Sabha and received Royal Assent and ultimately became law. But over all, these modifications in the State’s administration did not satisfy the people of Kashmir, who were not interested in participating in the State’s administration under such conditions. The demand of the National Conference for a representative government and an elected legislature was not fulfilled by the Jammu and Kashmir Constitution Act 1939.

3.3 GROWTH OF THE NATIONAL CONFERENCE AND THE ‘NEW KASHMIR’ MOVEMENT.

The National Conference became a member of the All India Peoples Conference in 1941 and in 1946 Sheikh Abdullah was elected as the President of the All India Peoples Conference. The National Conference,
under the leadership of Sheikh Abdullah, also maintained a close relationship with the leaders of the Indian National Congress. These relationships with the All India Peoples Conference and the Indian National Congress strengthened the National Conference in Kashmir in its movement against the Maharaja. On the other hand, in 1941, Ghulam Abbas revived the original Muslim Conference in Kashmir and started its own agitations. As a result of the joint agitations of the National Conference and the Muslim Conference, the political activity within the State remarkably increased. In 1944, Sir Bengal Narsingh Rao became the Prime Minister of Kashmir. He liberalized the freedom of press in Kashmir, which also had a great impact on the agitations going on in Kashmir.

On 29th and 30th September 1944, the National Conference held its Annual Session, where the delegates approved the ‘New Kashmir’ manifesto. The object of the said manifesto was primarily two fold. First, to frame a Constitution for the State dealing with various aspects, such as, Citizenship, National Assembly, the Ruler, Council of Ministers, Administration of Justice, Local Administration, National Language, etc. Second, to work out a National Economic Plan dealing with production, distribution, transportation, utility services, currency and finance. Under the said manifesto the Council of Ministers would now be responsible to the National Assembly and the Maharaja would be a mere Constitutional
head, practically bereft of all his powers. The declaration to the Naya (new) Kashmir document states that:

"We the people of Jammu, Kashmir, Ladakh, Frontier Districts, illaqs of Poonch, Chinani in general terms called the subjects of Jammu and Kashmir, on complete equality and personal power do hereby unite to save succeeding generations from the deep pit of oppression, poverty, dishonour, superstition and illiteracy and to put them on the path of scientific knowledge and honest labour, under a benevolent government towards a happy and peaceful valley ... to fulfil the objective that we are destined to accomplish in our history so that our country sparkles like a jewel on the snow-white forehead of Asia. We give ourselves this constitution with this endorsement."¹

Under pressure created by the combined agitations of the National Conference and the Muslim Conference, Maharaja Hari Singh, on 2nd October 1944 made a proposal of diarchy. Under the newly proposed plan, the Praja Sabha was to nominate a panel of six members, of whom two members were to be selected as Ministers by the Maharaja holding portfolios determinable by the Maharaja. The Maharaja appointed Mirza

¹ Grim Realities of Life, death and Survival in Jammu and Kashmir – Peoples Union for Democratic Rights, Delhi – Page 54.
Afzal Beg and Captain Wazir Ganga Ram as ministers. The Prime Minister of the State continued to be a nominee of the Maharaja.

3.4 THE 'QUIT KASHMIR' MOVEMENT

The said arrangement of diarchy announced by the Maharaja on 2nd October 1944 did not satisfy the people of Kashmir. Both the National Conference and the Muslim Conference strongly protested against the said proposal and ultimately by 1946, Mirza Afzal Beg resigned from the Cabinet. This resignation gave birth to the 'Quit Kashmir' Movement. The leaders of the National Conference were largely influenced by the freedom struggle going on in India and started the said movement in the same lines of the Quit India Movement. Though the Quit Kashmir Movement was started on the same lines of that of the Quit India Movement, both movements grossly differed. The aim of the Quit India Movement was to drive away the foreign ruler, while the aim of the Quit Kashmir Movement was to drive away the Maharaja of the State of Jammu and Kashmir. Quit Kashmir and Quit India seemed to be unrealistically equated and exploited. Quit Kashmir was against Hari Singh – a patriot par excellence – asking him to quit from his own soil whom he represented as a sovereign and an independent; who never went against his subjects and their welfare; who never was anti-India.¹

For initiating the Quit Kashmir Movement against the Maharaja, on 20th May 1946, Sheikh Abdullah, along with the other leaders of the National Conference were arrested. The arrest and imprisonment of Sheikh Abdullah caught the attention of the people of both Kashmir and India. Maharaja Hari Singh had to face immense public criticism for the arrest of Sheikh Abdullah. Ghulam Abbas, leader of the Muslim Conference, wanted to take political advantage of the fact, that most of the prominent leaders of the National Conference along with Sheikh Abdullah were behind bars and the National Conference was literally unable to operate. Ghulam Abbas approached the Maharaja for the release of Sheikh Abdullah but instead of releasing Sheikh Abdullah, the Maharaja now felt that Ghulam Abbas might now be a threat to him and on 25th October 1946, Ghulam Abbas along with other leaders of the Muslim Conference was also arrested. Though Maharaja Hari Singh tried to crush the Quit Kashmir Movement with an iron hand, the event was of major political importance and the arrests of the prominent leaders of both the National Conference and the Muslim Conference not only aggravated the situation in Kashmir but also caused immense public criticism in both Kashmir and India. The Hindustan Times wrote: whatever the situation, tyranny and repression are no cure for the problem. The State government should know that the times are over when oppression could seek obedience and faith from its subjects.¹

¹ Grim Realities of Life, death and Survival in Jammu and Kashmir – Peoples Union for Democratic Rights, Delhi – Page 54.
3.5 THE CABINET MISSION, 1946

One event that was going to have immense effect on the future of Kashmir was the independence of India. In September 1945 the National Congress passed resolution for creation of a free United India, who later under undisclosed circumstances conceded to partition of India.\(^1\) Lord Gavel was not in favour of the partition of India and had made efforts to transfer power to a united India under a constitution which would be just to the Hindus and to the Muslims....Had he been supported by the British Government in his effort to find a just solution, it is more than arguable that the partition of India might have been averted.\(^2\) But this was not to be and in 1946 the Cabinet Mission arrived in India. On 19\(^{th}\) February 1946 the British Government decided to send a delegation of three Cabinet Ministers to India to review the situation in British India and consider what would be the future relationship between the Great Britain and British India. The Cabinet Mission was also to consider what would be the future position of the numerous Princely States, collectively referred to as Indian India. The Cabinet Mission arrived in India on 23\(^{rd}\) March 1946. Even though the object of the Cabinet Mission was to make recommendations, it was the duty of the Mission to be fair and just to both the main parties.\(^3\) The Cabinet Mission considered the various claims made by the Indian National

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Congress and the Muslim League in British India, and refused to entertain any representation made by any political group or leader, representing the people of any Princely State. On the arrival of the Cabinet Mission in India, Sheikh Abdullah approached the Cabinet Mission and submitted a Memorandum, requesting the Cabinet Mission to give special consideration to the circumstances in Kashmir, as the people there were trying to bring an end to Monarchy and were demanding Responsible Government in the State. But the Cabinet Mission stuck to its policy of not interfering with the internal affairs of the Princely States and accordingly refused to entertain the memorandum submitted by Sheikh Abdullah.

By a memorandum dated 12th May 1946, in regard to ‘State’s Treaties and Paramountcy,’ it was decided that British India was to be divided into two dominions of India and Pakistan while the sovereignty of the Princely States would revert back to the Rulers of those States. According to paragraph 5 of the Memorandum,

‘the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount power will return to the States.’

On 16th May 1946, the Viceroy accepted the Memorandum submitted by the Cabinet Mission. What was now certain was that British India was to be divided into two new dominions of India and Pakistan. India was to comprise of the Hindu majority areas and Pakistan was to
comprise of the Muslim majority areas. It was also now clear that on the withdrawal of the British from the Sub-continent over 560 Princely States would become absolutely independent and would not form a part of either dominion unless it so desired. Partition of India on the lines of religion was not desirable and Lord Wavell was against it. He made great effort to transfer power to a united India under a Constitution, which would be just to both the Hindus and to the Muslims.¹ Most Congress leaders were strongly opposed to the partition of India. Maulana Azad made vocal statements against the partition and warned Nehru that history would never forgive us if we agreed to partition. He later stated in his autobiography that “partition was a tragedy for India and the only thing that could be said in its favour was that we had done our best to avoid division, but we had failed.”²

3.6 PLAN FOR TRANSFER OF POWER

On 3rd June 1947 the British Government, on the basis of the Memorandum of the Cabinet Mission, announced a plan for the transfer of power. Under the said plan British India was divided into two dominions on the basis of religion, India for the Hindu majority areas and Pakistan for the Muslim majority areas. Over 560 odd Princely States of Indian India, which comprised one quarter of the population and nearly half the area of

India, obtained sovereignty and became absolutely independent. On 17th June 1947 the Indian Independence Act was passed by the British Parliament providing the transfer of power to two newly created Dominions, viz., India and Pakistan; Section 7 of the said Act provided that the Indian Princely State could choose to have had accession with either of the Dominions.¹ The Princely States varied considerably in size, from a few square miles to great States like Baroda, Bhopal, Gwalior, Hyderabad, Indore, Kashmir, Mysore, Patiala Rajputana and Travancore.² Such a situation in the Sub-continent with such a large number of Sovereign States was likely to make the entire Sub-continent unstable, for which it was suggested that the Princely States if the so desired could accede to either of the dominions of India and Pakistan by signing an Instrument of Accession. As sovereignty was to revert back to the rulers of the Princely States, the right to accede with either of the dominions by signing the Instrument of Accession also vested in the ruler and no other. Signing the Instrument of Accession with either of the dominions meant accession of only of defence, communications and external affairs, and each Princely State was to enjoy total internal autonomy. On 29th January 1947, at a meeting of the Chamber of Princes a Resolution was adopted setting out their terms for co-operation.³ However, to strengthen the Sub-continent, Lord Mountbatten,

on 25th July 1947, while addressing a meeting of the Chamber of Princes, requested the Princes to come forward and sign the Instrument of Accession with either of the dominions of India and Pakistan. He advised the princes and their representatives that although legally they had become independent, they should accede to one or the other dominion, keeping in mind the geographical contiguity of their states.¹

Accession to the Indian Dominion was governed by Section 6 of the Government of India Act, 1935. The said Act contemplated a Federal structure wherein the rulers of the Princely States had the sole right to determine the question of accession of their respective States to the Indian Federation and the State Subjects had absolutely no say in the matter. However, the Indian Federation as contemplated under the Government of India Act 1935 never came into existence. Under the Indian Independence Act, 1947, the right of accession with either of the Dominions of India and Pakistan vested solely in the ruler of the Princely State and the State subjects had no say in the matter of accession. Under the said Act there was no provision for conditional accession and that accession was to be voluntary and not under duress. Relevant Sections of the said Act are set out below: -

Section 1. The New Dominions:

Sub-section 1: As from the fifteenth day of August’ nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

Section 7. Consequences of setting up of the new Dominions:

Sub-section 1(b): As from the appointed day the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to the Indian States, all obligations of His Majesty existing at that date towards the Indian States or the rules thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date or in relation to the Indian States by treaty, grant, usage, sufferance or otherwise;¹

The said Acts of 1935 and 1947 are no more on the statutory books of India as they stand deleted and, hence, any argument under the proxy of them is an illegality.² However, the laws made under the Act of 1935, or the orders made under the Indian Independence Act 1947, shall continue to be in force by virtue of Article 372(1) of the Constitution of India 1950.³

Under the plan for transfer of power the Muslim majority areas were to constitute Pakistan and the Hindu majority areas were to constitute India. As far as accession of the Princely States with either of the dominions were concerned, neither the interest of India or Pakistan, nor the distribution of Hindu and Muslim population was of any relevance. Accession of the State was solely the decision of the Ruler of that particular State. On 15th August 1947 the Indian Sub-continent became independent from British rule and in accordance with the Cabinet Mission and the plan for transfer of Power the two new dominions of India and Pakistan were born. Kashmir, peculiarly placed, having common borders with both India and Pakistan and a Hindu ruler, ruling over a Muslim majority population, had three options open, they were, either to accede with India, or to accede with Pakistan, or to remain completely independent. The power to make such decision now vested in only the Ruler of the State and by exercise of such power, Maharaja Hari Singh opted not to accede with either of the dominions and accordingly the State of Jammu and Kashmir became absolutely independent.

3.7 ACCESSION OF THE STATE OF JAMMU AND KASHMIR

The people of Kashmir were so excited by the independence of India that even though most of the leaders of the National Conference and
the Muslim Conference in Kashmir were still in prison, they regained their enthusiasm and made a fresh demand for responsible Government. Now, without the assistance of the British, Maharaja Hari Singh found it difficult to control the agitations that were going on all over the State. The agitations compelled Maharaja Hari Singh to reconsider three alternatives open before him regarding the future of the State and in order to secure the position of the State the Maharaja offered to sign Standstill Agreements with both India and Pakistan. However, a Standstill Agreement was not entered into between India and Kashmir.

Besides the political agitations going on within the State of Kashmir, the Maharaja had to face other obstacles, such as the ‘Poonch Revolt’, which was caused by Pakistani infiltrators. Now without the support of the British, Maharaja Hari Singh found it difficult to tackle such situations and had to look else where for military assistance. India and Pakistan were both eager to take any advantage that might arise from the problems faced by the Maharaja in keeping Kashmir independent. Pakistan, was trying its best to persuade the Maharaja to accede to Pakistan, for which both persuasive and coercive means were being use by Pakistan. For Kashmir this was a time of chaos and confusion and as a result of enormous political pressure, Maharaja Hari Singh, on the advice of his Prime Minister, released Sheikh Abdullah from prison on 29th September 1947.
The Maharaja faced further problems when thousands of Tribesmen backed by Pakistan entered Kashmir on 20th October 1947. The Dogra Army and the National Militia, set up by the National Conference, tried in vain to hold back the infiltrators who were both well equipped and well organized. On 25th October 1947 Maharaja Hari Singh appointed Sheikh Abdullah as the Emergency Administrator of Srinagar and for his own safety took refuge in Jammu. Under these circumstances, Sheikh Abdullah advised Maharaja Hari Singh to sign the Instrument of Accession with India in exchange for military assistance. On the advice of Sheikh Abdullah and left no other alternative, Maharaja Hari Singh reluctantly wrote to Lord Mountbatten, the Governor-General of India, expressing his eagerness to accede to India. The Maharaja wrote as follows — “With the conditions obtaining in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the Instrument of Accession for acceptance by your Government”.

The instrument of Accession signed by Maharaja Hari Singh on 26th October 1947, was identical to the Instruments of Accession signed by some 560 rulers of other Princely States. But in the case of Kashmir the

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signing of the Instrument of Accession gave birth to several controversies. The main reason for controversy was Lord Mountbatten’s reply to Maharaja Hari Singh’s letter where he wrote to the Maharaja that, “In the special circumstances mentioned by Your Highness, my Government has decided to accept the accession of Kashmir State to the Dominion of India. It is my Government’s wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of the State’s accession should be settled by a reference to the people”.¹ According to many critics this stipulation rendered accession conditional. But according to Sheikh Abdullah, “The Instrument of Accession signed by Hari Singh was the same as those signed by the rulers of other Princely States. According to it, once accepted, accession was full, final, unconditional and irrevocable”.² According to the former Chief Justice of India Mr. M. C. Mahajan, “The Indian Independence Act 1947 did not envisage conditional accession... The Dominion’s Governor General had the power to accept the accession or reject the offer but he had no power to keep the question open or attach any conditions to it...”³ However Pakistan was not pleased with Kashmir’s accession to India, “We do not recognize this accession. The accession of Kashmir to India is a fraud, perpetrated on the people of Kashmir by its cowardly Ruler with the aggressive help of

Indian Government". However recognition by either Dominion was not required for the legality of the accession. The accession of the States was purely a matter between the State’s Ruler and the concerned Dominion. But Pakistan recognized the authority of the Maharaja while entering a Standstill agreement with Kashmir, and hence, had no right to question the Maharaja’s authority while signing the Instrument of Accession with India.

It has been pointed out in an article written by Pandit Deendayal Upadhyaya on September 12, 1960 as follows- “The question of accession has been long ago and finally settled. We cannot reopen it. If Pakistan wants to question the right of the Maharaja to sign the Instrument of Accession or of the Constituent Assembly of J & K State to ratify it, we can as well question the right of Pakistan as a separate entity. Pakistan was created under the Indian Independence Act. The same Act put an end to the paramountcy of the then British Government and left the Maharaja of Jammu and Kashmir like any other prince sovereign in his own right to decide the future of the State”. The signing of the instrument of Accession was a perfectly lawful and valid act. According to Dr. A. S. Anand, former Chief Justice of India, the accession of Jammu and Kashmir to the Union of India is legal and constitutional, which has been ‘ratified’ by the people of

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the State. It is therefore complete, final, legal and irrevocable.¹ The accession of the State was complete in law and in fact on the date when the Instrument of Accession was executed.² The legality of the accession was later confirmed by the Supreme Court in the Case of Virendra –vs- State of Uttar Pradesh where it held that- the act of acquisition by the Instrument of Accession by the Ruler and its acceptance by the Governor-General are both Acts of State and whose competency no court can enquire.³

After the signing of the Instrument of Accession it fell upon the Indian Government to defend the State of Jammu and Kashmir from the Tribal invasions. Indian troops were deployed in Kashmir. The Indian army on entering Kashmir realized that the Tribal Invaders were not only well equipped and well organized, but were also receiving full support from Pakistan. India tried its level best to rid Kashmir of the infiltrators but when some portions were still under the control of the enemy, Pandit Jawaharlal Nehru, on the advice of Lord Mountbatten lodged a complaint against Pakistan to the Security Council under Article 35 of the Charter of Unions.

3.8 UNITED NATIONS ON THE ACCESSION OF KASHMIR

The United Nations Security Council passed four resolutions on Kashmir.¹ The first two resolutions were not of much importance. The first resolution of January 1948 simply directed the two Governments of India and Pakistan to take certain measures to improve the situation in the Kashmir valley. The second resolution passed on 17th April 1948 recommended the setting up of a five-member Commission “to proceed to the subcontinent and there place their good offices and mediation at the disposal of the Governments of India and Pakistan”. The said Commission consisted of representatives from Argentina, Belgium, Columbia, Czechoslovakia and the United States and visited India and Pakistan in July 1948. However, after approaching the Security Council there were prolonged deliberations between India and Pakistan, which ultimately culminated in the next two resolutions: The United Nations Commission for India and Pakistan Resolution of August 13, 1948 (S/1100, Para 75) and The United Nations Commission for India and Pakistan Resolution of January 5, 1949 (S/1430, Para 143). Even though accession was not conditional and the legality of the Accession of Kashmir with India was not the issue before the Security Council the Indian representatives agreed to a plebiscite in Kashmir in order to determine the future status of the State. Hence the said two resolutions of the Security Council contained a

provision for plebiscite as a legal solution for solving the Kashmir issue. Between 1947 and 1953 the conditional accession was kept alive in India, Pakistan, and in Jammu and Kashmir, as well as in the UN.¹

The United Nations Commission, consisting of representatives of Argentina, Belgium, Columbia, Czechoslovakia and the United States, visited India and Pakistan in July 1948 and put forward its proposals on August 13, 1948.² The United Nations Commission for India and Pakistan Resolution of August 13, 1948 consists of three parts; Part I, which proposes a Cease-fire, Part II, which proposes a Truce Agreement and Part III, which proposes a Plebiscite. Part III states that: “The Government of India and the Government of Pakistan re-affirm that the future status of the State 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 consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.”³

The United Nations Commission for India and Pakistan Resolution of January 5, 1949 is supplementary to the Commissions resolution of

August 13, 1948 and mainly deals with the method to be adopted for the implementation of the plebiscite. Article 1 of the Commissions resolution of January 5, 1949 states that: "The question of accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite." The Commission's resolution of January 5, 1949 further states that the plebiscite will be held when the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of August 13, 1948 have been carried out and peaceful conditions have been restored in the State.

Many critics have pointed out that approaching the United Nations on the Kashmir issue on 1st January 1948 was a blunder on the part of the Indian Government. According to Jagmohan the case got enmeshed in international power politics. At every stage, India faced rough weather. And Kashmir became almost a permanent item on the agenda of the United Nations. According to M. C. Mahajan the Instrument of Accession is "India's title deed to Kashmir". It has been pointed out that the Instrument of Accession did not give to the Dominion of India any power to barter the

* Former Chief Justice of India.
future of the State.\(^1\) Hence how the question of accession could be re-
opened before the Security Council and how the Indian representatives 
agreed to a plebiscite for the determination of the fate of Kashmir has 
drawn much criticism. The later chapters of this research deal with the 
legality of holding a plebiscite in Kashmir. However, recently Kofi Annan, 
United Nations Secretary General, made a statement that the Resolutions of 
the United Nations on Kashmir were not enforceable.\(^2\) According to him 
the UN resolutions are no longer implementable obviously because it was 
the entire State of Jammu and Kashmir, including the areas of Pakistan 
occupied Kashmir and areas given by Pakistan to China, which was 
acceded to India and unless all those areas were restored to India, the 
precondition of holding a plebiscite under UN resolutions, is even 
otherwise impracticable and un-implementable.\(^3\) This statement makes it 
clear that presently the United Nations have nothing to do with the Kashmir 
issue.


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