

ON EXECUTION OF THE INSTRUMENTS OF ACCESSION  
BY THE RULERS OF THE ERSTWHILE INDIAN STATES  
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(I)

Apart from the territory of British India, there were a large number of princely States existing within the Indian territory. As per the provisions contained under section 6 of the Government of India Act 1935 enacted by the British Parliament, the Rulers of the said Princely States could, under compelling situation, accede to British India by executing an 'Instrument of Accession,' subject to its acceptance by the British Monarch. The relevant portion of the said Act is as follows:

*"6.-(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—*

*(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act ; and*

*(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession: .....*"

In terms of the Act enacted by the British Parliament named "Indian Independence Act 1947," on the fifteenth day of August, 1947 in the territory of British India, two "new Dominions" were set up, known respectively as India and Pakistan. Needless to mention that both 'India' and 'Pakistan' were British Dominions. The relevant provisions of the said Act are given below:

*"Indian Independence Act 1947  
1947 CHAPTER 30*

*An Act to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935 which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.*

*[18th July 1947.]*

*BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the*

*authority of the same, as follows:—*

*1. The new Dominions*

*(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.*

*(2) The said Dominions are hereafter in this Act referred to as " the new Dominions ", and the said fifteenth day of August is hereafter in this Act referred to as " the appointed day ".*

*5. The Governor-General of the new Dominions*

*For each of the new Dominions, there shall be a Governor-General who shall be appointed by His Majesty and shall represent His Majesty for the purposes of the government of the Dominion :*

*Provided that, unless and until provision to the contrary is made by a law of the Legislature of either of the new Dominions, the same person may be Governor-General of both the new Dominions.*

*6. Legislation for the new Dominions*

*(1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extra-territorial operation. ....*

*7. Consequences of the setting up of the new Dominions*

*(1) As from the appointed day—*

*(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;*

*(b) 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,.....*

*8. Temporary provision as to government of each of the new Dominions*

*(1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.*

*(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under subsection (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1935; and the provisions of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such, omissions, additions, adaptations and: modifications as may be specified in orders of the Governor-General under the next succeeding section, have effect accordingly: ....."*

In this context the following points are worthy of taking note:

1. Though the Act is cited as the Indian Independence Act 1947, yet nowhere in the entire body of its text the word "Independence" has been used even for once !
2. Under section 1, mention has been made of setting up of two "*independent Dominions*" but not two "independent Countries."

The date fifteenth day of August, nineteen hundred and forty-seven has been referred to as the "*appointed day*" rather than the "independence day."

3. Section 5 provides that for each of the Dominions there shall be a Governor-General who shall be appointed by the British Monarch to represent His Majesty for the government of the respective Dominion.
4. As per the provisions of section 6, the Legislature of the new Dominion shall have full power to enact laws for the respective Dominion.
5. Section 7 has provided that from the appointed day the British Government in the United Kingdom shall have no responsibility towards the government of the territory of British India; and from the appointed day the suzerainty of His Majesty over the Indian States (i.e. the Princely States) shall come to an end along with the relevant treaties existing immediately before the appointed day.
6. Section 8 has directed that the power of making a constitution for each of the new Dominions shall be exercised by the Constituent Assembly of the respective Dominion as its Legislature.

It is pertinent to mention here that the Constituent Assembly has been empowered to make a constitution for a Dominion, but not, repeat not, for any sovereign country, due to the fact that giving such a power to the Constituent Assembly by any sovereign Monarch would have been even theoretically impossible and , therefore, void ab initio in the eye of law !

The Indian Independence Act 1947 took effect from the appointed day, i.e., at the very first moment of the fifteenth day of August 1947. This implies that till the last stroke of midnight of fourteenth day of August 1947 there was a single entity named "British India"; but the moment the date changed to the fifteenth day of August 1947, the colony named "British India" ceased to exist with the creation of two "new Dominions," which were known respectively as "India" and "Pakistan." It is thus crystal-clear that before the date of the fifteenth day of August 1947 there did not exist any territory known as "Pakistan" anywhere under the Sun !

Yet how it is recorded in history that on the fourteenth day of August 1947 Pakistan emerged as an "independent country?" The answer to this question is for anyone to guess !

## (II)

However, at the commencement of the fifteenth day of August 1947 the Indian Independence Act 1947 took effect and primarily two incidents happened: First, in the territory of British India two new Dominions known as 'India' and 'Pakistan' came into being; and secondly the suzerainty of the British Monarch over the Indian States, i.e., Princely States, lapsed. By the later, the British protection that the Rulers of the Princely States were enjoying so far in exchange for huge amount of compensation, was abruptly withdrawn.

Although most of the Princely States thus became truly sovereign but simultaneously they also felt threatened and vulnerable due to the absence of British protection and they were left with only two options — either to accede to the Dominion known as India or to accede to the Dominion known as Pakistan, by executing the required Instrument of Accession as per the provision of section 6 of the Government of India Act 1935, since both the new Dominions known as India and Pakistan were British territory. Alternatively, they could also continue to exist as sovereign States depending on their own might.

The Ruler of the State of Jammu and Kashmir, Maharaja Hari Singh, inclined for the second option and chose not to accede to either of the Dominions. But when his State faced military aggression from the neighboring Dominion known as Pakistan, Maharaja Hari Singh approached the authorities of the new Dominion known as India with the plea for assistance. But he was politely informed that it could be possible only after his State acceded to the Dominion known as India. As he was not willing to accede to the Dominion known as Pakistan, Maharaja Hari Singh reluctantly decided to accede to the Dominion known as India in terms of the provisions contained under section 6 of the Government of India Act 1935.

Grabbing the opportunity, the text of an Instrument of Accession was hurriedly prepared without paying much attention to English grammar, which was essential to be adhered to going by the enormous importance of the document named "Instrument of Accession" as per the provision under the Government of India Act, 1935. Identical forms of the said instrument were prepared for both the Dominions with the only exception that in the form intended for accession to the Dominion known as Pakistan, the word "India" was replaced by the word "Pakistan." For ready reference the true copies of two Instruments of Accession are reproduced below, namely, for the State of Jammu and Kashmir for accession to the Dominion known as 'India' as well as for the State of Kalat for accession to the Dominion known as 'Pakistan':

(1)

*"Instrument of Accession of Jammu and Kashmir State  
dated 26 October, 1947*

*Legal Document No 113*

*Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India.*

*And whereas the Government of India Act, 1935, as so adapted by the Governor-General, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.*

*Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshadhipati, Ruler of JAMMU AND KASHMIR STATE, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and*

- 1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu & Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August 1947, (which Act as so in force is hereafter referred to as "the Act").*
- 2. I hereby assume the obligation of ensuring that due effect is given to provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.*
- 3. I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislature may make law for this State.*
- 4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of the State, then any such agreement shall be construed and have effect accordingly.*
- 5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument supplementary to this Instrument.*
- 6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or, if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.*
- 7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or to fetter my discretion to enter into agreement with the Government of India under any such future constitution.*
- 8. Nothing in this Instrument affects the continuance of my Sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority, and rights*

*now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.*

*9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.*

*Given under my hand this 26th day of October, nineteen hundred and forty seven.*

*Hari Singh*

*Maharajahdiraj of Jammu and Kashmir State.*

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*I do hereby accept this Instrument of Accession. Dated this twenty seventh day of October, nineteen hundred and forty seven.*

*Signed by: Mountbatten of Burma*

*(Governor-General of India).*

(2)

#### *INSTRUMENT OF ACCESSION OF KALAT STATE*

*WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as PAKISTAN, and that the Government of India Act, 1935 shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of Pakistan;*

*AND WHEREAS the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of Pakistan by an Instrument of Accession executed by the Ruler thereof:*

#### *NOW THEREFORE*

*I, His Highness Baglar Begi Khan of Kalat (signed) Ruler of Kalat State in the exercise of my sovereignty in and over my said State DO hereby execute this my Instrument of Accession and*

*1. I hereby declare that I accede to the Dominion of Pakistan with the intent that the Governor-General of Pakistan, the Dominion Legislature, the Supreme Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only Dominion, exercise in relation to the State of Kalat (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force, in the Dominion of Pakistan on the 15th day of August 1947 (which Act as so in force is hereinafter referred to as "the Act").*

*2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this My Instrument of Accession.*

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of Pakistan on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of Pakistan.

6. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of Pakistan or to fetter my discretion to enter into arrangements with the Government of Pakistan under any such future constitution.

8. Nothing, in this Instrument affects the continuance of my sovereignty in and over this State, or, Save as provided by or under this Instrument, the exercise of any powers, authority, and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 27th March 1948. Nineteen hundred and forty eight.

Signed by: His Highness Baglar Begi Khan of Kalat

(Ruler of Kalat State)

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I do hereby accept this Instrument of Accession.

Dated this 31st March 1948 Nineteen hundred and forty eight

Signed by: Ma Jinnah

(Governor-General of Pakistan)

## (III)

On executing the said 'Instrument of Accession' by the Rulers of the Indian States and upon acceptance of the same by the Governor-General of the respective British Dominion, the accessions of all such Indian States, who had executed the said 'Instrument of Accession,' to accede to either the Dominion known as 'India' or the Dominion known as 'Pakistan,' was considered complete in all respect. Consequently, the authorities of the Dominion known as 'India' had no more hesitation to counter the military aggression against the State of Jammu and Kashmir as it had by that time purportedly already acceded to the territory of the Dominion known as 'India.'

As per the terms of the 'Instrument of Accession' executed by Maharaja Hari Singh, certain special conditions were to be made in respect of the State of Jammu and Kashmir, which were found to be incorporated in the form of the Article 370 in the Constitution of India.

Furthermore, some privileges were allocated for the said State of Jammu and Kashmir by virtue of a Presidential Order made in 1954 in terms of the provision under the Article 370, which had directed to insert an Article numbered 35A that contained the said privileges, after the Article 35 in the Constitution of India. But for some unknown reason, the said Presidential Order was never led to the insertion of the Article 35A in the bare Act of the Constitution. Thus the knowledge of even the existence of the said Article 35A was kept from the people at large !

The recent executive action undertaken by the Government of India that led to the purported scrapping of Article 370 of the Constitution along with Article 35A that was mentioned in the aforesaid Presidential Order of 1954, has given rise to a tensed situation all over the world. It seems to have become a hot topic of serious discussion !

Under the present circumstances, let us review the facts whether the very inclusion of Article 370 in the Constitution and later on the purported insertion of Article 35A by the Presidential Order of 1954, could be at all legally possible !

And for that we will take a second look, keeping our eyes of mind wide open, at the 'Instrument of Accession' that was executed by the Ruler of the then Indian State Jammu and Kashmir, Maharaja Hari Singh and accepted by the then Governor-General of India, Mountbatten of Burma. In this context, it is to be noted that here 'India' referred to the British Dominion known as 'India.'

## (IV)

First of all, we must appreciate that the sole purpose of executing the 'Instrument of Accession' by Maharaja Hari Singh was to accede his Princely State of Jammu and Kashmir to 'India,' which was one of the new Dominions that was set up under the provisions of the Indian Independence Act, 1947. The mechanism of such accessions was provided under section 5 and section 6 of the Government of India Act, 1935, which had provided that an Indian State could accede to the Federation of India subject to its acceptance by the British Monarch, if the Ruler of the corresponding Indian State himself executed an Instrument of Accession in this regard. The said Federation of India was supposed to consist of the Indian provinces directly under the British rule, called Governor's provinces, and the Indian Princely States that had already acceded to or



would be acceded to the said Federation.

Following the formation of the two new British Dominions known as 'India' and 'Pakistan,' the accession of any Indian State to the 'Federation of India' amounted to its accession to either the new Dominion known as 'India,' or to the other new Dominion known as 'Pakistan;' and evidently Maharaja Hari Singh had intended to accede to the Dominion known as India. But did it legally materialize? Did his State of Jammu and Kashmir lawfully accede to the Dominion known as 'India' in terms of the said 'Instrument of Accession' executed by him on the 26th day of October 1947 ? We will now examine it.

His executed 'Instrument of Accession' clearly stated the following:

*"Now, therefore, I Shriman Inder Mahinder Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu & Kashmir Naresh Tatha Tibbet adi Deshahhipati, Ruler of JAMMU AND KASHMIR STATE, in the exercise of my Sovereignty in and over my said State do hereby execute this my Instrument of Accession and*

*1. I hereby declare that I accede to the Dominion of India with the intent that .....*"

*4. I hereby declare that I accede to the Dominion of India on the assurance that .....*"

As is crystal-clear from the above, by virtue of the said 'Instrument of Accession,' Maharaja Hari Singh had declared that he acceded to the "Dominion of India," which does not certainly signify the 'new Dominion' known as 'India.' For better comprehension, it is sufficient to point out that the Government of India Act, 1935 provides for the accession of an Indian State to the "Federation of India," and the Indian Independence Act, 1947 provides for a 'new Dominion' to be known as 'India.' No Act mentions anything about acceding to the "Dominion of India," as that would have been absurd and ridiculous !

The accession of an Indian State had to be to the British territory governed by the Government of India Act, 1935 and accordingly the expression "Dominion of India" definitely means a territory. The question is, which territory is indicated by the expression "Dominion of India?" From the fifteenth day of August, nineteen hundred and forty-seven, the earlier British colony named "INDIA" ceased to exist and in terms of the Indian Independence Act 1947, two new British Dominions came into existence, known as 'India' and 'Pakistan' respectively. Thus the new Dominion known as "India" is itself a "Dominion of the United Kingdom" and the British Dominion known as 'India' does not have any Dominion under its own control !

The expression "Dominion of India" does not, and cannot mean the "Dominion known as India." But it has to be a territory under the domination of the "Dominion known as India," to which Maharaja Hari Singh had purportedly acceded to in terms of his declaration contained in the 'Instrument of Accession' executed by him on the 26th day of October 1947. As there was no territory that could be described as 'Dominion of India,' hence, the declaration made by Maharaja Hari Singh in his 'Instrument of Accession' was futile and devoid of any force of law !

Accordingly, the said 'Instrument of Accession' rendered the purported accession of the State of Jammu and Kashmir to the territory of the new Dominion known as 'India' legally impossible ! And there is more to it to gradually unfold.

(V)

Now we will attentively look at the very beginning of the said 'Instrument of Accession':—

*"Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India. ...."*

Hereinabove, the 'Instrument of Accession' asserts that as per the provision of the Indian Independence Act, 1947, *"an independent Dominion known as INDIA"* was set up from the fifteenth day of August, 1947. The entire later part of the said Instrument is founded on this assertion. We, therefore, propose to verify whether the Indian Independence Act 1947 did indeed set up under its provision *"an independent Dominion known as INDIA."*

Section 1 of the said Act provides : —

*"1 The new Dominions*

*(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.*

*(2) The said Dominions are hereafter in this Act referred to as "the new Dominions ", and the said fifteenth day of August is hereafter in this Act referred to as " the appointed day ....." "*

It is thus quite apparent from the above section (1) of the Act that from the fifteenth day of August, nineteen hundred and forty-seven, *"two independent Dominions"* were set up, one known as 'India' and the other known as 'Pakistan.'

Furthermore, subsequently in the Act, the said Dominions were referred to as *"the new Dominions."* Anyone interested can peruse the Act and confirm that nowhere the *'Dominion known as India'* has ever been referred to by the phrase *"an independent Dominion."*

So the legitimate question arises: how the Instrument of Accession could legally contain the statement that *'the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as INDIA...?'*

As the Indian Independence Act 1947 does not provide for setting up of *"an independent Dominion known as India,"* therefore, the presence of the said phrase in the 'Instrument of Accession' made the said Instrument invalid in the eye of law as it amounted to misrepresentation of fact, which is bound to lead to serious consequences.

Though the said expression is not found directly in the Act, yet one has to be extra-cautious to come to a definite conclusion in a haste. Thus, we must carefully analyse the text of the Indian Independence Act, 1947 once again to see if the expression "an independent Dominion" can be

derived from it even indirectly.

For the sake of argument, let us assume that maybe while drafting the common format of the 'Instrument of Accession,' the phrase *"an independent Dominion"* was derived from section 1(1) of the Indian Independence Act, 1947 namely,

*"(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."*

At first glance, it is quite straightforward: since two independent Dominions, namely, India and Pakistan were set up, hence each of the two Dominions got to be "an independent Dominion." The plural form of *"an independent Dominion"* is certainly *"independent Dominions."* It is as simple as that ! Then what is the point of trying to make an issue when there is none?

In this context, it maybe humbly ventured that in that event the said Dominions should have been subsequently referred to in the Act as *"independent Dominions"* instead of *"new Dominions."* Nevertheless, the argument proffered above would have been absolutely correct had it been the case of setting up of *"two independent Countries"* instead of "two independent Dominions."

But it is a rule of English grammar that prevented the British Parliament from writing the phrase *"an independent Dominion."* We will come to that next.

## (VI)

It was just impossible for the British Parliament to write the expression *"an independent Dominion"* anywhere, including the Indian Independence Act 1947, because such an expression would have been a meaningless combination of words. As per the rule of English grammar, conjoining contradictory terms is prohibited and such terms are mutually exclusive. As the expression "independent Dominion," conjoins two contradictory terms "independent" and "Dominion," therefore, these two terms are mutually exclusive, i.e., an expression can contain either of the two terms singly, but not together successively. Thus if a territory is "independent" it cannot be a "Dominion" at the same time i.e. simultaneously under someone else's domination, and if it is a "Dominion," it cannot be an "independent" territory as well ! This means that India could have been correctly described only either as "an independent Country" or as "a Dominion," but not as *"an independent Dominion"* under any circumstances. This is the reason why the said expression *"an independent Dominion"* is absent in the Indian Independence Act, 1947. After all let's not forget even for a moment that London, the seat of the British Parliament, is also the Capital of English Literature !

In view of the above discussion let us now try to justify the presence of the expression *"two independent Dominions shall be set up in India, to be known respectively as India and Pakistan,"* in the same Indian Independence Act, 1947. A little focus of mind will at once reveal that while *"an independent Dominion"* is impossible both physically as well as grammatically, *"two independent Dominions"* is perfectly normal. It conveys the fact that although the Dominion known as India and the Dominion known as Pakistan are (mutually) independent, they are both Dominions (of the United Kingdom); which means, India is independent of Pakistan and Pakistan

is independent of India, but both of them are Dominions of the United Kingdom. Thus the use of the expression "*two independent Dominions*" can never lead to the phrase "*an independent Dominion*"!

We can, therefore, safely conclude that the 'Instrument of Accession' that was purportedly executed by Maharaja Hari Singh, the Ruler of the Princely State of Jammu and Kashmir, contained *inter alia* two expressions that do not stand the test of legal scrutiny:

1. "Dominion of India," does not point towards the Dominion known as India, and
2. "an independent Dominion" is an impossible description of the "Dominion known as India."

But the accession of an Indian Princely State to the Federation of India (which had to be a British territory) could only be possible provided it complied with Section 6 of the Government of India Act, 1935:

*"6.-(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors —  
(a) declares that he accedes to the Federation as established under this Act, ....."*

But we have clearly seen that neither the "*Dominion of India*," nor "*an independent Dominion known as India*" was lawfully established under the Indian Independence Act, 1947.

Hence, it legally invalidates the 'Instrument of Accession' executed by Maharaja Hari Singh and is, therefore, liable to be *void ab initio* and inoperative without having any force of law.

The implication of this finding is the hard fact that the Princely State of Jammu and Kashmir did not at all accede to the Dominion known as India ! Consequently, it never legally formed a part of the said Dominion.

And under these circumstances, it is evident that the very purported inclusion of Article 370 in the Constitution and Article 35A that was purportedly created by a Presidential Order made in the year 1954 dealing with special privileges to the "State of Jammu and Kashmir" were just meaningless, impossible, and illegal acts to perform by the Legislature. The reason being, the Indian Princely State of Jammu and Kashmir legally did not to accede to the Dominion known as India, and it thus remained a sovereign territory !

But the picture is not yet over.

## (VII)

Following the setting up of the new Dominions, the Rulers of a number of Indian Princely States had opted to accede to the new Dominion known as Pakistan by executing the same format of the 'Instrument of Accession.' For example, the 'Instrument of Accession' purportedly executed by the Ruler of Kalat State, clearly stated the following:

*"NOW THEREFORE*

*I, His Highness Baglar Begi Khan of Kalat (signed) Ruler of Kalat State in the exercise of my sovereignty in and over my said State DO hereby execute this my Instrument of Accession and*

*1. I hereby declare that I accede to the Dominion of Pakistan .....*

*4. I hereby declare that I accede to the Dominion of Pakistan on the assurance that..."*

To begin with, it is amusing to note the grammatical construction of the phrase *"I, His Highness Baglar Begi Khan of Kalat (signed) Ruler of Kalat State....,"* in which a first-person and a third-person are standing face-to-face in stunning bewilderment ! However, His Highness Baglar Begi Khan of Kalat had more than once declared that he acceded to the *"Dominion of Pakistan,"* which is an absurd territory itself just like the *"Dominion of India."*

Furthermore, the said 'Instrument of Accession' began with the following assertion:

*"WHEREAS the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as PAKISTAN, ....."*

This asserts that as if under the provision of the Indian Independence Act 1947, Pakistan was set up as an "independent Dominion known as PAKISTAN," just like the same impossible territory "independent Dominion known as INDIA," that we have already seen earlier.

Accordingly, following the same line of reasoning advanced in the case of Maharaja Hari Singh, it is evident that the Ruler of Kalat State too did not execute any valid Instrument of Accession that was mandatory under section 6 of the Government of India Act 1935. Since in law an irregularity maybe regularized but illegality remains illegal, so the said legally invalid 'Instruments of Accession' remained invalid even after their purported acceptance by the Governor-General of the respective Dominion either known as India or Pakistan.

It is to be further noted that the format of all the 'Instruments of Accession' meant for accession to the Dominion known as India, was identical with that of purportedly executed by the Ruler of the Indian Princely State of Jammu and Kashmir; and the format of the said Instrument of Accession purportedly executed by the Ruler of the Indian Princely State Kalat was identical with the format of all the 'Instruments' meant for accession to the Dominion known as Pakistan.

In view of the facts discussed hereinabove, all such "Instruments of Accession" executed by the Rulers of the Indian Princely States on or from the appointed day i.e. the fifteenth day of August 1947, are liable to be discarded by law as invalid, inoperative and null and void !

The inference is crystal-clear — not a single Indian Princely State did or could, in reality, accede to either the Dominion known as India or the Dominion known as Pakistan, in terms of the said 'Instrument of Accession' purportedly executed by the Ruler of the respective Princely State !

It maybe of course asked: in that case what is the present status of those large number of Princely States? Well, till the appointed day i.e. the fifteenth day of August nineteen hundred and forty-seven, they were all under British Monarch's suzerainty. But following the setting up of the

new Dominions, his suzerainty over the Indian States lapsed by the operation of section 7(1)(b) of the Indian Independence Act 1947, which stipulated:

*"7 Consequences of the setting up of the new Dominions*

*(1) As from the appointed day—*

*(b) 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,....."*

It implies that on the fifteenth day of August 1947, after reluctantly coming out of the British Monarch's suzerainty, all the said Indian Princely States became truly sovereign countries, which they were previously not. Since the adopted mechanism of accession by executing the Instrument of Accession under section 6 of the Government of India Act 1935 was legally untenable, therefore, in the eye of law the legal status of the said Princely States did not change at all. This means that within the territories of India and Pakistan there are still lurking more than six hundred and sixty independent sovereign countries !

This certainly leads to the Big Question:

HOW THE POLITICAL MAPS OF INDIA AND PAKISTAN MUST LEGALLY BE DRAWN  
EXCLUDING THE TERRITORIES OF HUNDREDS OF PRINCELY STATES ?