

**Regulation of the Autonomous legal status of Jammu and Kashmir by India and Pakistan from a  
Constitutional perspective**



**A dissertation**

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to the Department of Legal Studies at Central European University, Vienna Austria**

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Date: June 17, 2022

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Signature:

A handwritten signature in black ink, appearing to be 'Shaista Aziz' with a stylized flourish at the end.

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## **List of abbreviations**

<b>J&amp;K</b>	<b>Jammu and Kashmir</b>
<b>IAK</b>	<b>Indian Administered Kashmir</b>
<b>AJK</b>	<b>Azad Jammu Kashmir</b>
<b>KFM</b>	<b>Kashmir freedom movement</b>
<b>GB</b>	<b>Gilgit Baltistan</b>
<b>AJKC</b>	<b>Azad Jammu Kashmir Council</b>
<b>MKA</b>	<b>Ministry of Kashmir Affairs</b>
<b>GOP</b>	<b>Government of Pakistan</b>
<b>GOI</b>	<b>Government of India</b>
<b>JKPP</b>	<b>Jammu Kashmir Peoples Party</b>
<b>BJP</b>	<b>Bhartiya Janta Party</b>
<b>JKLF</b>	<b>Jammu Kashmir Liberation Front</b>
<b>UN</b>	<b>United Nations</b>
<b>UNSC</b>	<b>United Nations Security Council</b>
<b>UNCIP</b>	<b>United Nations Commission for India and Pakistan</b>
<b>LOC</b>	<b>Line of Control</b>

# 1 chapter one: Introduction

## 1.1 Abstract

Over the period of 70 years, the autonomous legal status of Kashmir has been drastically changed across the LOC<sup>1</sup>, however little research has been done to explore the issue through the lens of Comparative Constitutional law. This thesis paper aims at identifying the constitutional and legal methods used by India and Pakistan to legitimize their claims over Kashmir. For this objective, this paper dives into in-depth study of Constitutional developments in Kashmir from Indian Independence in 1947 till 2022 through Inference-oriented small-N studies with classificatory method to investigate and describe the way in which the Autonomous Legal Status of Kashmir has been changed over the years by India and Pakistan.

The paper covers the major Constitutional developments made by both the countries to change the legal status of Kashmir along with the resolutions passed by the United Nations. The paper concludes with the recent incidence of 2019 that degraded Kashmir from an Autonomous State to a Union Territory and 14<sup>th</sup> amendment to the constitution of AJK.

## 1.2 Introduction

### 1.2.1 Problem statement, Research question and significance

The problem of Kashmir's dispute with India and Pakistan started from the Indian Independence of 1947. British India was partitioned into India and Pakistan (east and west) following the success of the Mountbatten plan on 3 June 1947. At that time, Kashmir was a princely state ruled by Maharaja *Hari Singh* who desired to remain independent of the two countries. For this purpose, under Section 7 of the 1947 Independence Act, Maharaja offered the standstill agreement to be signed with both countries via telegram, with Pakistan signing it on 15 August 1947 and India asking for further talks.<sup>2</sup>

Meanwhile, because of the long-term atrocities committed by the Maharaja, an uprising against him had started in Poonch by the locals. They gained control over the district of Poonch. After this victory, the chieftains of the Jammu districts of Muzaffarabad, Mirpur and Poonch proclaimed a provisional AJK government on 24 October 1947<sup>3</sup>.

Thereafter the tribesman from the North-West Frontier entered into Kashmir, resulting in an alarming situation. In response to this India sent its army to Kashmir to help the Maharaja after the agreement is *claimed* to have been made by him on 26<sup>th</sup> October 1947 with India regarding military help on the condition that once the situation gets better, the people of Kashmir will be given an

<sup>1</sup> The LOC (Line of Control) separates the Indian-controlled and Pakistani-controlled portions of the former princely state of Jammu and Kashmir and functions as the de facto border.

<sup>2</sup> See <http://sepur.pl/standstill-agreement-between-kashmir-and-pakistan/>

<sup>3</sup> *Javid Hayat* "Azad Jammu & Kashmir (AJK): Prospects for Democratic Governance Amidst Ambiguous Sovereignty, Absence of Self-determination and Enduring Conflict".

option of a plebiscite and it is for this right that the people of Kashmir are still giving up their lives.<sup>4</sup>

This paper considers the question that 1) How the Autonomous legal status of Kashmir has been influenced over the years across the LOC by India and Pakistan through Legal and Constitutional developments and, 2) Where does the autonomous status of Kashmir stand today.

The thesis paper includes, an overview of the longest dispute in South Asia, which has claimed numerous lives over the years, as well as the UN's position on this issue. By comparing the situation in Kashmir across the LOC, the thesis paints a picture of the eroding special status once accorded to it by both countries, through the lens of comparative constitutional studies, taking into account the Indian and Pakistani constitutions, as well as sub-national constitutions.

Though other researchers have conducted study on the subject from the standpoint of political science or human rights violations in Kashmir<sup>5</sup>, this research paper is unique in that there has been no combined research across the LOC from a constitutional perspective. This paper will provide a legal perspective on the whole picture of the ground reality of the location where Kashmir is claimed to be and where it truly is, i.e., an inalienable component of broader fields of study concerning the Kashmir conflict.

### 1.3 Research Methodology

This research project adopts the inference-oriented, controlled comparisons with the qualitative, small-N Studies and applies the Historical work technique. The Historical work technique focuses on colonial links and identifies normatively dubious legal justifications for constitutional phenomena in order to explain, among other things, current circumstances. The research examines the issue that arose during decolonization, specifically the British plan of independence (Mountbatten plan) which was offered without regard for the potential conflict on the sub-continent.<sup>6</sup>

This research reflects on Article 370 which acted as basis of center-state relationship but was repealed in 2019, reducing the so-called “autonomous state” to a “union territory”.

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<sup>4</sup> See <https://www.bbc.com/news/world-asia-41662588>

<sup>5</sup> Indian administered Kashmir, meager work has been done to trace the situation in both AJK and JK together from comparative constitutional research point of view

<sup>6</sup> Kashmir turned out to be important to both countries after decolonization because of its geographical location and resources and both started the quest to gain control over the region by hook or crook. The seed of Kashmir dispute was sown by British by selling Muslim majority of Kashmir to Hindu Dogra ruler for money. see Adil Najam Dean. (2021, January 6). How a British royal's monumental errors made India's partition more painful. The Conversation. Retrieved April 10, 2022, from <https://theconversation.com/how-a-british-royals-monumental-errors-made-indias-partition-more-painful-81657>

### **1.3 Thesis structure**

This research is intended to aid in the examination of the region's current status. To reach this purpose, the study has attempted to trace the constitutional legal developments along the lines of the historical, legal, and constitutional contexts for the case-in-point that is Jammu and Kashmir (JK) and Azad Jammu and Kashmir (AJK).

Firstly, the research briefly discusses the background of the Legal issue which goes back to the Treaty of Amritsar 1846 and brings to focus the Mountbatten plan of 1947 and the choice given to Princely states. Then the research covers the independent period followed by Poonch rebellion and Tribal invasion. It explains how the contested instrument of accession is claimed to have been signed and the resolutions passed by United Nations. This chapter which forms second chapter of the project ends with explaining the immediate constitutional position of Jammu and Kashmir and AJK after Indian independence.

Secondly, the thesis covers the major constitutional changes introduced in Jammu and Kashmir across LOC and that depict the changes made to its Autonomous legal status over the period of time including the abrogation of Article 370 and explains the current status of Kashmir across the LOC. The project gives the reference to important resolutions passed by the United Nations from time to time in the chapters of the project and ends with a conclusion.



## 2 Chapter two

### Historical background and immediate Constitutional position

#### 2.1 introduction

To comprehend the constitutional developments in Jammu and Kashmir and AJK, one must first understand the historical context of the former princely state of Jammu and Kashmir, the partition of India and Pakistan under the Indian Independence Act of 1947<sup>7</sup>, and the developments that resulted in the current predicament of Jammu and Kashmir across the LOC.

To begin, this chapter is divided into eight sections and discusses the historical context of Jammu and Kashmir, the Indian Independence Act of 1947, the disputed Instrument of Accession, United Nations Resolutions, and the immediate constitutional positions of Jammu and Kashmir and Azad Jammu Kashmir among other topics.

Section 2.2 of the second chapter deals with the historical context of Jammu and Kashmir. Section 2.3 deals with the Mountbatten plan and the federal setup of Princely States. Section 2.4 of the chapter then highlights the independent period of Jammu and Kashmir.

Following the end of independent period of Kashmir, the project highlights the Poonch rebellion in section 2.5, and also explains the tribal invasion followed by the Indian army taking control in Jammu and Kashmir. Section 2.6 deals with the disputed Instrument of Accession and leads to the take of the United Nations on the Kashmir dispute under section 2.7. This chapter ends with the immediate constitutional positions given to Jammu and Kashmir and AJK.

#### 2.2 Historical background of the Jammu and Kashmir

The history of Jammu and Kashmir dates back to Anglo-Sikh war of 1845-46 between Sikh Empire and British East India Company. The Sikh Empire was defeated in this war and had to pay an amount of 7.5 million nanuk Shahe(currency) as war repatriations to East India Company. The defeated Sikh Empire was not in a position to pay the huge repatriations to the British, therefore they ceded the areas of Kashmir and Hazara along with forts, territories, rights and interests in the hilly regions situated between river Beas and Indus to the Company in lieu of indemnity money under the Treaty of Lahore concluded on 9 March 1846<sup>8</sup>.

The Maharaja of Jammu under Sikh empire, Gulab Singh who was also the chief of the Hindu Dogra tribe agreed to pay 7.5 million nanuk Shahe to British East India Company in lieu of Sovereign possession of the areas handed over to British Empire under the supra mentioned Treaty

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<sup>7</sup> Available on [https://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga\\_19470030\\_en.pdf](https://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf)

<sup>8</sup> Please find copy of Treaty of Lahore in annexures below.

of Lahore. Afterwards, a separate agreement known as the “Treaty of Amritsar”<sup>9</sup> was signed under Article 12 of the *Treaty of Lahore*, on 16<sup>th</sup> of March 1846 between Raja of Jammu, Gulab Singh and the British Empire. This treaty dealt with the recognition of British supremacy, the boundaries of areas sold, the sale price, the resolution of bilateral disputes, military alliances, and the yearly tribute to be paid to the British empire, but made no reference to the future, rights, or interests of the Kashmiri people. This arrangement established Gulab Singh as the autocratic ruler of Jammu and Kashmir, which remained a princely state until October 26th, 1947.

The princely states from the view point of Constitutional theory were separate from British India as they owed allegiance directly to British Crown. The relations between the Princely States and British Crown were directly regulated by a political advisor through the Viceroy in his capacity as the representative of King Emperor.<sup>10</sup> The princes were deemed to be a part of Indian Empire because of their acknowledgement (or imposition) of the Paramountcy of the British Crown.<sup>11</sup>

### **2.3 Indian Independence Act of 1947**

The Indian Independence Act of 1947 was passed by the parliament of United Kingdom with the assent of the Royal family received on 18 July 1947. This Act was formulated by the then UK Prime Minister, Clement Attlee and the then Governor General of India, Lord Mountbatten in accordance with the common terms agreed upon by the Indian National Congress, the Muslim League and the Sikh Community that came to be known as the Mountbatten plan of 3<sup>rd</sup> June 1947. This Act provided a framework for division of British India after decolonization into India and Pakistan on the basis of religion and also provided for an arrangement for Princely States. Section 7 of the Indian Independence Act is worth mentioning here, which provided that at the attainment of Independence by Sub-Continent, the arrangements and treaties between British Empire and the Princely states will come to an end.<sup>12</sup>

The Indian Independence Act hence divided British India into India and Pakistan with Pakistan attaining Independence on 14<sup>th</sup> of August 1947 and India attaining Independence on 15<sup>th</sup> of August 1947. At that time there were 565 princely states which were under British suzerainty but were not directly governed by the British government. British government recognized the rights and freewill of such States to choose either of the two dominions or remain independent<sup>13</sup> under fifth provision of the Act which stated that the British suzerainty would be terminated over the princely states on 15<sup>th</sup> of August 1947.

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<sup>9</sup> Please find copy of Treaty of Amritsar below in annexures.

<sup>10</sup> The viceroy was also the Governor General (head of the government) and the surrogate of the ceremonial head of the Indian Empire.

<sup>11</sup> See Lamb, A., 1991. *Kashmir*. 1st ed. Hertingfordbury: Roxford Books, p.4.

<sup>12</sup> See Indian Independence Act 1947, full text available on The National Archives, United Kingdom at [www.legislation.gov.uk](http://www.legislation.gov.uk)

<sup>13</sup> see Hasan 1966, 5 *viceroy Mountbatten, a press conference* on June 4, 1947

Also see Bose 2003, 30, *Kashmir: Roots of Conflict, Paths to Peace*, ““With the lapse of British “Paramountcy” princely states were technically free to accede to either Dominion or to become independent states”.

Under Section 7 of the Indian Independence Act 1947, the Princely States were permitted to enter into a temporary standstill agreement to preserve their relationship with the two dominions until they choose which dominion to join<sup>14</sup>. On 12 August 1947, the Maharaja of Jammu and Kashmir presented a standstill agreement to both India and Pakistan through telegram under this provision. India requested time for further negotiations in response to this request, and Pakistan quickly agreed to sign the agreement, which was signed one day after it gained independence, on 15 August 1947<sup>15</sup>.

## 2.4 The independent period

With India's independence on 15 August 1947, the Princely state of Jammu and Kashmir<sup>16</sup> became legally autonomous as well, pursuant to section 5 of the Indian Independence Act, which terminated all British Empire agreements in Princely states. This 73-day independence period was critical in shaping the current state of affairs in Jammu and Kashmir due to the fact that numerous political and diplomatic developments occurred at the behest of both India and Pakistan. These developments occurred in defiance of the Mountbatten plan of 3 June, which sought to persuade the Maharaja of Jammu and Kashmir to accede to either side, and the British turned a blind eye to these violations<sup>17</sup>.

Even prior to this phase of independence, political leaders such as Mohammad Ali Jinnah, Gandhi, and Lord Mountbatten traveled to Kashmir to persuade the Maharaja to make a decision by August 15th. However, while the Maharaja desired independence, he was concerned about his position and power in the event of either nation's entry.<sup>18</sup>

## 2.5 Poonch rebellion

The princely state of Jammu and Kashmir, which had a predominantly Muslim population, was ruled by a Hindu ruler who, among other atrocities, levied taxes on everything acquired by Muslim citizens<sup>19</sup>. Since the 1930's, the Muslim population of Jammu and Kashmir have been fighting for political and civic rights that were denied to them under Maharaja's autocratic rule<sup>20</sup>. In June 1947, the Sudhan tribe organized a Muslim revolt for a no-tax campaign against the Maharaja<sup>21</sup>. This

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14 It implied keeping the old arrangements of trade, communications and services to continue till the Leader makes up his mind.

15 See Ibrahim 1990, 48, Kashmir Saga Google Books. 2022. The Kashmir Saga. [online] Available at: [https://books.google.com/books/about/The\\_Kashmir\\_Saga.html?id=PCtuAAAAMAAJ](https://books.google.com/books/about/The_Kashmir_Saga.html?id=PCtuAAAAMAAJ)

16 Please check the map affixed below

17 See Lamb, A. (1998). Kashmir: A disputed legacy. R oxford Books. Pp.121-140

18 See Schofield, V., 2010. Kashmir in Conflict: India, Pakistan and the Unending War, I.B. Tauris. 43, See also Snedden, C., 2012. The Untold Story of The People of Azad Kashmir, C. Hurst & Co. Publishers., 12

19 see Kashmir Life. (2022, March 8). Cashmere's Dogra taxation system. Kashmir Life. Retrieved April 11, 2022, from <https://kashmirlife.net/cashmeres-dogra-taxation-system-issue-50-vol-08-134879/>

20 See Snedden (2012), p.30 and Korbel (1954), p.68 "the autocratic practices of the Raja of Poonch and Maharaja of Jammu & Kashmir through which Muslims, not Hindu or Sikhs, were forced to pay a number of taxes. He states, 'There was a Tirni Tax – 1.4 rupees on every cow and rupees 1 on every buffalo; the Bakri tax of 10 annas per sheep and 4 annas per goat; the chula tax of 8 annas on every hearth; the Widow tax of 4 annas per widow, the Zaildari tax of one and half paisa per rupee, import and export tax 75 per cent on toilet soap and silk; and horse tax – 50 per cent of total purchase price'".

21 The Sudhan clan is the second largest tribe after the Gujjars in AJK and they claim their roots from Afghanistan.

insurrection, came to be known as the Poonch rebellion, became a rallying cry for political liberty, representative democracy, and social justice.

The moment's leaders, Khan Mohammad Khan<sup>22</sup> and World War II veterans from Poonch<sup>23</sup>, desired a peaceful resolution of the demands and invited Maharaja to Rawalkot, where they made their right to democratic and political dissent clear to him, emphasizing the importance of considering the will of the people before joining either of the two countries<sup>24</sup>. However, the Maharaja continued to violate human rights of Muslims, precipitating a strong opposition moment among the Muslim populace.

The massacre of Muslims in Jammu<sup>25</sup> gave hue to this rebellion and it ultimately led to division of Jammu and Kashmir to two parts on October 24<sup>th</sup>, 1947. The Poonch rebels denounced the government of Maharaja two days prior to signing of disputed Instrument of Accession and the independent part came to be known as AJK that established a provisional government of its own<sup>26</sup>

## **2.6 The tribal invasion and Instrument of Accession**

After the rebellion against Maharaja in Poonch resulted in the creation of Azad Jammu Kashmir, the plan, termed "operation Gulmarg" by Indian intelligence officers, occurred on October 21, 1947, near the Domel Muzaffarabad district of Kashmir's shared border with Punjab. Several thousand tribesmen, including the Poonch men, entered Kashmir, supposedly to aid the Kashmiri people in their struggle against the Maharaja<sup>27</sup>. This sad episode symbolized the Muslim subjects' resistance against the Maharaja's atrocities, a sort of internal coup rather than an external attack.

On their route to Srinagar, the invaders reached Baramulla, where they massacred and robbed residents, wreaking havoc and losing the local populace's support and affection.<sup>28</sup> Apart from harming the indigenous Poonch movement, the tribe invasion resulted in critical delays and a poor public image. It breached the cease-fire agreement and hence international law, causing havoc on the Kashmiri people's freedom struggle. The upshot of the move of Tribes men was a change in the balance of power away from Pakistan and toward India.

Another notable impact of tribal attack was the Maharaja's escape to Jammu and subsequent request for assistance from India to combat the invaders<sup>29</sup> however, this did not mean that the

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<sup>22</sup> A member of the Praja Sabha, the then partially elected assembly.

<sup>23</sup> See Lamb, A., 1991. Kashmir. 1st ed. Hertingfordbury: Roxford Books,

<sup>24</sup> Archive.org. 2022. part-ii-kashmiris-fight-for-freedom-vol-2-1947-1978-by-yusuf-saraf directory listing. [online] Available at: <https://archive.org/download/part-ii-kashmiris-fight-for-freedom-vol-2-1947-1978-by-yusuf-saraf/>

<sup>25</sup> See further details of Muslim massacre in Jammu on Wounded Memories by Saeed Asad and Foreword written by Professor Dr. Sabir Affaqi pp-6-8

<sup>26</sup> See Ibrahim 1990, Google Books. 2022. *The Kashmir Saga*. [online] Available

at: [https://books.google.com/books/about/The\\_Kashmir\\_Saga.html?id=PCtuAAAAMAAJ](https://books.google.com/books/about/The_Kashmir_Saga.html?id=PCtuAAAAMAAJ)

<sup>27</sup> Whitehead, Andrew. "The Tribal Invasion of 1947." In *Oxford Islamic Studies Online*. Oxford Islamic Studies Online, <http://www.oxfordislamicstudies.com/article/opr/t343/e0172>

<sup>28</sup> See <https://www.efsas.org/commentaries/22-october-1947-the-darkest-day-in-the-history-of-jammu-and-kashmir/>

<sup>29</sup> See Lamb 1991 "the Maharaja didn't want to join Dominion albeit he was open to negotiating a quantum of power transfer to his subjects".

Maharaja was prepared to cede independence through accession to India.<sup>30</sup> On 24 October, Maharaja dispatched his Deputy Prime Minister, R.L. Batra, to New Delhi to solicit military assistance. Nehru agreed to assist on two conditions: first, that the Maharaja must agree to join India; and second, that Sheikh Abdullah, a close friend of Pt. Nehru, would head the administration. Thus, on October 27, Justice Mehr Chand Mahajan, who had taken an eight-month leave of absence from the East Punjab High Court on the advice of Sardar Vallabhai Patel<sup>31</sup> to serve as Prime Minister of Jammu and Kashmir, flew up to Jammu with Menon<sup>32</sup> to obtain the Maharaja's signature on "supplementary accession documents."<sup>33</sup>

This statement casts serious doubt on the validity and legality of the disputed Instrument of Accession (which, at the very least, omitted any reference to Sheikh Abdullah) for the simple reason that, while R.L. Batra traveled to Delhi to seek military assistance, he did not produce the disputed Instrument of Accession because Maharaja never desired to surrender *independence* to India and would never agree to do so on the condition of Sheikh Abdullah's administration in return as Maharaja always found this idea distasteful.<sup>34</sup> The statement of Mahajan is also challenged by the contrary statement of V.P. Menon who states that they traveled to Jammu on October 26th and acquired the Maharaja's "signed" disputed Instrument of Accession<sup>35</sup>.

The fact is that Maharaja understood that if he accedes to Pakistan, his position will not be saved, and that if he accedes to India, his Muslim majority subjects will not accept the decision. Under this pressure, and with no other options for remaining independent, he preferred securing his own interests by joining India.

The assertion that tribal invasion compelled him to accede to India is refuted by the fact that after September 22nd, steps were taken to strengthen ties with India by equipping the Srinagar airfield with wireless equipment, supplying additional arms and ammunition to Kashmiri forces, and war material being flown to Kashmir. This fact is substantiated by the fact that when the armed forces landed in Srinagar on October 26th to provide military assistance to maharaja, the Patiala forces were already in Kashmir at least from 17<sup>th</sup> of October.<sup>36</sup>

The Indian Governor General Lord Mountbatten agreed to provide military assistance on the basis of an agreement seeking help that would grant authority to Indian government over communications, foreign affairs and defense. Hence the agreement which the Indian authors call "Instrument of Accession" was signed but on the condition<sup>37</sup> that once the normalcy prevails, the

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<sup>30</sup> Lamb, A., 1991. *Kashmir*. 1st ed. Hertingfordbury: Roxford Books, p.134.

<sup>31</sup> The man who played an active role in persuading the Indian states to join the union of India.

<sup>32</sup> Secretary to the government of India in the ministry of the states.

<sup>33</sup> Lamb, A., 1991. *Kashmir*. 1st ed. Hertingfordbury: Roxford Books, p.135

<sup>34</sup> Lamb, A., 1991. *Kashmir*. 1st ed. Hertingfordbury: Roxford Books, p.136

<sup>35</sup> See Chand, M. M. (1963, January 1). *Looking back : The autobiography of mehr chand mahajan, former chief justice of india: Semantic scholar*. undefined. Retrieved April 1, 2022, from <https://www.semanticscholar.org/paper/Looking-back-%3A-the-autobiography-of-Mehr-Chand-of-Chand/181f753d618c5f2803bbc7217eae72aa7eea0c51> , pp. 151-2.

<sup>36</sup> Asad, s., 2022. *Wounded Memories of the Tribal Attack on Kashmir*. [online] Google Books. Available at: [https://books.google.com/books/about/Wounded\\_Memories\\_of\\_the\\_Tribal\\_Attack\\_on.html?id=0pewtAEACAAJ](https://books.google.com/books/about/Wounded_Memories_of_the_Tribal_Attack_on.html?id=0pewtAEACAAJ).

<sup>37</sup> See Hasan 1966, 57 *Mountbatten's reply to the Maharaja's letter on October 27, 1947*

matter of accession will be decided in accordance with the wishes of the people<sup>38</sup> and this was confirmed by the then Prime Minister of India, Pt. Jawahar Lal Nehru in his radio broadcast on 2<sup>nd</sup> November 1947, he confirmed that “we have declared that the fate of Kashmir is ultimately to be decided by the people, that pledge we have given and we cannot backout of, we are prepared when peace and the law and order have been established to have a referendum held under the international auspices like the United Nations”.<sup>39</sup>

The Maharaja had no power to enter into any agreement on behalf of people of Kashmir in accordance with provision five of the *Indian Independence Act* for the fact that his authority came to an end with the end of colonization in India. Moreover, the finality of the disputed Instrument of Accession depended upon the will of the people which Maharaja did not represent and the requirement of which is highlighted by the letter addressed by the Governor General of India to Maharaja which formed an integral part of the disputed Instrument of Accession.<sup>40</sup> Moreover, the narrative of India regarding the signature of disputed Instrument of Accession and landing of Indian forces into Kashmir also adds to the suspicion of the legality of the disputed Instrument of Accession in view of the fact of landing of Patiala forces in Kashmir on 17<sup>th</sup> i.e. even before the tribal invasion.<sup>41</sup>

## 2.7 The United Nations Resolutions

In 1947, India and Pakistan fought their first war over Kashmir, after which, the Indian government, through P.P. Pillai, filed a complaint with the UNSC under Article 35 of the United Nations Charter on 1 January 1948, citing the disputed Instrument of Accession.<sup>42</sup> The Indian government has recommended that the Security Council instruct Pakistan to desist from interfering in the affairs of Jammu and Kashmir. Pakistan responded to this issue by contesting the legitimacy of the disputed Instrument of Accession and asserting that the Kashmir dispute arose as part of a larger Indian strategy to suppress Pakistan entirely.<sup>43</sup>

The UN Security Council passed its first resolution regarding Kashmir dispute on 17<sup>th</sup> January 1948 requiring India and Pakistan to refrain from making any statement and from doing or permitting any acts which might aggravate the situation.<sup>44</sup> UN resolutions were issued against both India and Pakistan, requiring Pakistan to evacuate forces that had entered the Valley for military purposes or otherwise, and India to withdraw troops from Kashmir and maintain "minimal

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<sup>38</sup> See Bose, S., 1997. *The Challenge in Kashmir: Democracy, Self-Determination and Just Peace*, Sage Publications, New Delhi,.

<sup>39</sup> 1948 *white paper*, Pt. IV, No.8.

<sup>40</sup> Asad, s., 2022. *Wounded Memories of the Tribal Attack on Kashmir*. [online] Google Books. Available at: [https://books.google.com/books/about/Wounded\\_Memories\\_of\\_the\\_Tribal\\_Attack\\_on.html?id=0pewtAEACAAJ](https://books.google.com/books/about/Wounded_Memories_of_the_Tribal_Attack_on.html?id=0pewtAEACAAJ).

<sup>41</sup> See Lamb, A., 1991. *Kashmir*. 1st ed. Hertingfordbury: Roxford Books, pp.154 “The Patiala forces had arrived, it seems, on about 17 October 1947, that is to say *before* the tribal crossing of the Bridge at Domel on 22 October”.

<sup>42</sup> K. Sarwar Hasan 1966 pp. 107-113 Asia Bookroom. 2022. *Pakistan and the United Nations* by K. SARWAR HASAN on Asia Bookroom. [online] Available at: <https://www.asiabookroom.com/pages/books/142034/k-sarwar-hasan/pakistan-and-the-united-nations>.

<sup>43</sup> This statement was given in light of the fact that as per Indian Independence Act, Muslim majority areas had to join Pakistan and the Kashmir situation was compared to the state of Junagarh which had a Muslim ruler with Hindu subjects to which India objected and Kashmir for which India forgot the rules of the Independence Act. See lamb 1991, 165

<sup>44</sup> [online] Available at: <<http://www.un.org/en/sc/documents/resolutions/index.html>



strength" until the plebiscite. While Pakistan complied with the resolution, India has continued to build up its army since then, and Kashmir is now known as the world's most militarized region.

On 20 January 1948, the United Nations Security Council adopted a new resolution establishing a five-member commission called the United Nations Commission for India and Pakistan (UNCIP) to act as a mediator and investigate the Kashmir dispute<sup>45</sup>. On 13 August 1948, the UNCIP adopted its first resolution, which was divided into three sections: ceasefire, truce agreement<sup>46</sup> and determination of the future status of Jammu & Kashmir in line with the free and impartial will of the people.

The second UNCIP resolution, adopted on 5 January 1949, stated unequivocally that the decision to join either of the Countries will be made in conformity with the people's free will by a democratic manner of free and impartial plebiscite. However, the plebiscite was never held, the UNCIP informed the Security Council of its failure to resolve the Kashmir dispute. Following that, the Security Council appointed Sir Owen Dixon to serve as mediator. After extensive research, he proposed<sup>47</sup> a plan that was rejected by both countries for a variety of reasons, the irony being that the Kashmiri people never had a say in any of those arrangements. Any attempt to restrict the Kashmir conflict to the India-Pakistan conflict is a flagrant violation of people's political rights.<sup>48</sup>

Again, on 30<sup>th</sup> April 1951, the Security Council appointed Dr. Frank Graham as UN representative for India and Pakistan to find a way out for Plebiscite but he also failed to find a way for agreement after meeting parties to conflict. The Constituent Assembly of Jammu and Kashmir formed to draft the Constitution in 1954, apart from establishing the shadow constitution that came into force in 1956 and declared Kashmir as an integral part of India, also ratified the contentious Instrument of Accession without having the jurisdiction to do so. In response, the United Nations Security Council adopted two resolutions in March 1951 and January 1957 stating that such representation and participation could not be used to invalidate the internationally supervised Plebiscite and duly rejected the ratification of accession.<sup>49</sup>

## **2.8 Power sharing and immediate constitutional positions of Jammu and Kashmir and Azad Jammu Kashmir**

The Indian Constitution establishes a Union government with greater authority. Since Article 1 of the Constitution refers to India as a 'union of states,' not a 'federation of states,' it precludes states

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<sup>45</sup> See Hussain, I., 1998. Kashmir Dispute: An International Law Perspective, Quaid-i Azam Chair, National Institute of Pakistan Studies, Quaid-i Azam University, Islamabad, 11

<sup>46</sup> (A ceasefire (or truce), is a temporary cessation of hostilities in which both sides agree to halt offensive acts.), see the copy of agreement in chapter 6 under the list of annexures

<sup>47</sup> a)No major changes in the Kashmir situation will occur in the next 6 months, even if nothing is done by the parties or by the Security Council to attempt to reach a solution of the issue;(b)The parties, themselves, must solve the political and territorial problems;(c)The Security Council should concentrate on reducing the armed forces in the area. See <https://history.state.gov/historicaldocuments/frus1950v05/d808>

<sup>48</sup> See Behera 2006, 104 for further details E-ir.info. 2022. [online] Available at: <<https://www.e-ir.info/pdf/81046>

<sup>49</sup> see UN Security Council Resolution No.91 (1951) Document No.S/2017/Rev.I Dated March 30, 1951 and Resolution No.122 (1957) adopted by U.N Security Council at its 765th Meeting on 24 Jan.1957.

from seceding. Although the Indian Constitution includes no mention of federalism, the Supreme Court described it as the Constitution's Basic Structure. Indian federalism (asymmetrical federalism) is based on the concept of holding together, proposed by the Constitution's founders. They wished to avert discord and secessionist tendencies in India, given the country's enormous diversity in terms of language, ethnic origin, religion, and caste.

In 1952, Indian Federalism began as a one-party federalism, with regional leaders gaining influence within the Congress system and the growth of the linguistic autonomy movement demonstrating regional assertiveness over national politics, which solidified the federal spirit established during the Indian Independence period. This phase lasted until 1967, when expressive federalism began. This year saw the formation of numerous regional and anti-congress coalitions in the states, resulting in the emergence of an expressive and directly conflictual federal dynamic between the congress government at the center and opposition party governments in the states.<sup>50</sup>

This phase continued until 1989, when growing political, institutional, and economic factors reshaped Indian politics, resulting in the establishment of a number of regional parties and therefore the multi-party system. Following this phase of federalism, India entered a new age that began in 2014 with the BJP, attaining a majority and assuming the government at the center, thereby renationalizing Indian politics. Under this phase, the BJP inaugurated the 'new fourth party system which allows for the co-option of state-level parties by the BJP, resulting in a new pattern of national federalism affecting Indian political discourse.<sup>51</sup>

The power sharing scheme adopted by India before its Independence under the Government of India Act 1935 with regard to Princely states depended on the matters ceded by the states on entering into federation. The Indian Independence Act, which superseded the preceding Act, had the effect of liberating the princely states and establishing them as sovereign states under International Law, with the option of joining one of the two dominions and thereby entering federation or remaining independent.

The basic system of power distribution was not applied to Jammu and Kashmir due to the Indian Constitution's inapplicability to the state on its own. On 15 August 1947, the Indian (Provisional Constitutional) order 1947 was issued, which replaced section 6 of the Government of India Act with section 6 of the Indian (Provisional Constitutional) order 1947, that provided for the accession of princely states.<sup>52</sup>

With the ratification of the disputed Instrument of Accession, the government Jammu and Kashmir created a constitutional relationship with India based on federal principles that result in a clear

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<sup>50</sup> See Rajni Kothari, "The Congress System in India", *Asian Survey*, Dec., 1964, Vol. 4, No. 12 (Dec., 1964), pp. 1161-1173

<sup>51</sup> See Adam Ziegfeld, "A new dominant party in India? Putting the 2019 BJP victory into comparative and historical perspective," *India Review*, Vol. 19 No. 2, (2020):136-152.

<sup>52</sup> *ibid*



division of authority between the two.<sup>53</sup> In June 1949, the interim government of erstwhile state of Jammu and Kashmir sent representatives to India's constituent assembly, who agreed to an association solely on the terms of the Instrument of Accession, resulting in the adoption of Article 370 of the Indian Constitution, which dealt with the constitutional relationship between India and Jammu and Kashmir and laid the groundwork for the 1950 Constitution (application to Jammu and Kashmir) order.<sup>54</sup>

Thereafter, The Delhi Agreement of 1952<sup>55</sup> was signed between Sheikh Abdullah's Faction and Pt. Nehru, with the sole purpose of outlining the constitutional relationship and power division. Following this agreement, the Constitution (Application to Jammu and Kashmir) Order 1954 was passed to put the Delhi accord into effect. This decree extended the Union's jurisdiction from the original items specified in the Instrument of Accession to all subjects on the Union List, subject to modifications and exceptions.<sup>56</sup>

As a result, a dual polity was established in Kashmir, with the Union government at the federal level and the state government at the state level, with each government paramount at its own level.<sup>57</sup> The institutional instruments that were adopted had a limited and controlled number of power holders. This division of powers scheme provided for the application of the Union's ability to legislate in those issues mentioned in the Union list with modifications and exceptions, as the Indian Constitution's clause dealing with the state list did not apply to the state of Jammu and Kashmir<sup>58</sup>.

To erode the protection afforded by Article 370, the Indian government issued the Constitution (Application to Jammu and Kashmir) Order of 25th September 1963, in collaboration with the elected government of Kashmir, which acted as an extension of the ambit of Concurrent matters over which the Indian government could legislate. A general rule of federation that provides for the application of laws enacted by federal states in areas authorized by the constitution was not applicable to the ties between India and Jammu and Kashmir. The treaties entered into by India pursuant to Article 253 of the Indian Constitution were not directly applicable to Jammu and Kashmir, and the Indian Constitution's power to unilaterally override all powers was not applicable to Jammu and Kashmir because of the terms and conditions under which Kashmir acceded to India.

If we examine Pakistan's federal system, we see that the Muslim League was dedicated to a federal structure even before partition, as seen by their 1940 and 1946 Pakistan Resolutions, which envisioned a Muslim republic with a federal framework. Pakistan accepted the Government of

<sup>53</sup> See Alexandrowicz 1957, 154 Alexandrowicz. (n.d.). *Jammu and Kashmir: A Confederate within a federal system*<https://www.jstor.org/stable/24479424>

<sup>54</sup> See Sharma 1995, 176

<sup>55</sup> See [https://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi\\_agreement\\_1952.html](https://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.html)

<sup>56</sup> Noorani, A., 2022. *Introduction*. [online] Oxford Scholarship Online. Available at: <https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198074083.001.0001/acprof-9780198074083-chapter-1>.

<sup>57</sup> See Loewenstein 1965, pp 18-19

<sup>58</sup> See, for further developments after the agreement <https://kashmirlife.net/delhiagreement-of-1952-explained-118393/>

India Act 1935 with specific revisions as its interim Constitution, inheriting the federal system from British India. Pakistan established a Constituent Assembly following independence, which was dissolved without a Constitutional mandate by the Governor General of Pakistan. Later, the 1956 and 1962 Constitutions, which abolished the federal structure and established a single unitary system with Union Supremacy, were repealed. Although one unit was dissolved, provinces were denied political, economic, and cultural rights, which generated hostility not only between the federation and states, but also within states themselves.<sup>59</sup>

In this context, the 1973 Constitution, established by the country's first directly elected legislature, incorporated a federal framework. This Constitution guaranteed a federal parliamentary republic with provincial autonomy. However, the military dictatorship facilitated more decentralization, and this Constitution was also not implemented in its entirety. The 18th amendment of 2010 rectified this imbalance and is widely seen as a watershed moment in Pakistan's Federalism. It established ownership, involvement in policymaking, and administration of natural resources, diminished the president's power, shifted the focus back to parliament, and granted states autonomy. Pakistan is currently a participative federation with shared ownership of natural resources.

In terms of Pakistan's federal relationships with AJK, the relationship is defined by a variety of interim agreements under which the Pakistani government exercises effective control over AJK even after they establish their own government. AJK's major executive, legislative, and judicial activities are carried out by the AJK Council, which is headquartered in *Islamabad* and is composed of *Pakistani* and AJK officials. The federal government of Pakistan exercises direct authority over defense and international affairs and indirect control over other key matters via the AJK Council and Ministry of Kashmir Affairs, requiring AKJ to rely heavily on the federal government for financial and other assistance.

Finally, looking at the Jammu and Kashmir's immediate constitutional position across the LOC, India's constitutional relations with Jammu and Kashmir did not begin on the same footing as those with other states following the signature of the disputed Instrument of Accession as it required to be initiated by or with the approval of the Legislative Assembly of Jammu and Kashmir.<sup>60</sup>

On October 17th, India took the first step in granting Kashmir a constitutional status, ostensibly but in fact deviating from the precise requirements of the Instrument of Accession, by incorporating Article 306-A, now known as Article 370 of Indian Constitution.<sup>61</sup>

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<sup>59</sup> Sayeed, Khalid Bin. "Federalism and Pakistan." *Far Eastern Survey*, vol. 23, no. 9, [University of California Press, Institute of Pacific Relations], 1954, pp. 139–43, <https://doi.org/10.2307/3023818>

<sup>60</sup> *Journal of the Indian Law institute* Vol.2, No.4( JULY-SEPTEMBER 1960), pp. 519-538

<sup>61</sup> See C.A.D.,Vol.X,No.10 p. 422.

This Article defined India's competences in relation to Jammu and Kashmir and stipulated that the Indian Parliament's competences are limited to the following: a) those entries in the union and concurrent lists of the seventh schedule to the Indian constitution that correspond to the subjects specified in the Instrument of Accession. b) the President, only with the approval of the state government, shall elaborate subjects; and c) additions to which shall be made with the concurrence of the state government. Clause 3 of Article 370 stipulated that any amendment to or repeal of Article 370 may occur *only* upon the proposal of the *Constituent Assembly of Jammu and Kashmir*, via a presidential notification. Additionally, the provisions of the Indian constitution governing the subjects named in the instrument of accession may be extended to the state of Jammu and Kashmir by an order issued by the President in consultation with and with the approval of the state administration.

At the time of adoption of Indian Constitution in 1950, the basis of constitution relations between India and Jammu and Kashmir depended upon a) The Instrument of Accession and; b) Article 370 of Indian Constitution. To the application of Article 370 of Indian Constitution, Maharaja of Jammu and Kashmir, who technically ceased to represent the will of people as per sections 5 and 7 of the Government of India Act, issued a proclamation on 25<sup>th</sup> of November, 1949,<sup>62</sup> accepting the application of Article 370 to Jammu and Kashmir. He legally had no capacity to do so because he was no more a Maharaja of Kashmir because by then, the Kashmir had an interim government with Sheikh Mohammad Abdullah as its Prime Minister.

Thereafter, the Constituent Assembly of Jammu and Kashmir was formed in 1951 to act as hand in glove to Indian Government and give Jammu and Kashmir apparently a constitution of its own which in effect was a close copy of Indian Constitution. Article 370 of the Indian Constitution along with the Constitution of Jammu and Kashmir gave it a special status, making it an Autonomous state with its own Constitution, a state flag and autonomy of internal administration.

On the other hand, on 24 October 1947, a temporary administration was established in AJK, with its headquarters in Palandri headed by President Mohammad Ibrahim Khan. The cabinet constituted by the president of AJK aspired to liberate the remaining section of Jammu and Kashmir administered by India<sup>63</sup> and made it clear that the state's Legislative Assembly would not be elected until peace was restored in the state.<sup>64</sup>

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<sup>62</sup> See *white paper on Indian states*, Appendix LIV; En.wikisource.org. n.d. *White Paper on Indian States (1950)/Part 11/Establishment of Constitutional Relationship with Hyderabad State - Wikisource, the free online library*. [online] Available at: [https://en.wikisource.org/wiki/White\\_Paper\\_on\\_Indian\\_States\\_\(1950\)/Part\\_11/Establishment\\_of\\_Constitutional\\_Relationship\\_with\\_Hyderabad\\_State](https://en.wikisource.org/wiki/White_Paper_on_Indian_States_(1950)/Part_11/Establishment_of_Constitutional_Relationship_with_Hyderabad_State).

<sup>63</sup> Institute of Policy Studies. 2022. *Kashmir Brief: Introduction of the Kashmir Issue and its Different Dimensions - Institute of Policy Studies*. [online] Available at: <https://www.ips.org.pk/kashmir-brief-introduction-of-the-kashmir-issue-and-its-different-dimensions/>.

<sup>64</sup> Abdul Aziz Mir "Azad Kashmir government; A chronology". *The Muslim*, Aug. 13, 1996

The International Legal Status of AJK has not been defined so far either by UN<sup>65</sup> or Pakistan. The resolutions passed by UN Security Council and United Nations Commission for India and Pakistan indicate the fact that AJK is neither a Sovereign state nor a province of Pakistan but a local authority<sup>66</sup> to administer the area assigned to it under the ceasefire agreement.<sup>67</sup>

Pakistan's constitutional relationship with AJK is based on the following:

- a) The Karachi Agreement, signed on 28 April 1949, between Pakistan, AJK, and the Muslim Conference, which transferred to Pakistan, matters relating to defense, foreign policy, and negotiations with the UNCIP, as well as coordination of Gilgit-Baltistan-related affairs.
- b) The Interim Constitution of AJK<sup>68</sup> confers sufficient authority to Pakistan in its internal affairs through the Kashmir Council. The Constitutions restrict the Legislature of AJK and the Kashmir Council from passing laws in the above-mentioned areas that under Pakistan's jurisdiction.

Initially, AJK lacked a legal framework or a constitution. The government, which referred to itself as a "war council," operated on an ad hoc basis until 1 January 1949, when India and Pakistan negotiated a ceasefire agreement. Following that, the government codified business standards and delegated legislative and executive authority to the President. The Courts were established in 1948 to administer the legal system, and the former Jammu and Kashmir state code was mostly intact, with certain legislation imported from Punjab. In the following chapter, we will examine the struggle, AJK had to go through, for democratization and to get itself a constitution.

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<sup>65</sup> UNCIP resolution, Aug. 13, 1948, clause A-3 "*Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under surveillance of the Commission*".

<sup>66</sup> See Op.cit Sardar M. Ibrahim Khan, p. 127

<sup>67</sup> See "*the politics of Azad Kashmir*" Rose Leo 1992, Boulder, Colorado; Westview Press, p. 236-237

<sup>68</sup> See <https://law.ajk.gov.pk/assets/lawlibrary/2019-02-13-5c645034ade141550078004.pdf>

## 3 Chapter three

### Major Constitutional developments

#### Introduction

This chapter is divided into four sections that cover the major Constitutional developments in Jammu and Kashmir across LOC right from the decolonization of British India till today. The chapter highlights the erosion of autonomous status of Jammu and Kashmir and AJK under the guise of Constitutional developments initiated at the behest of India and Pakistan respectively.

First section of the chapter deals with the Constitutional making process in Jammu and Kashmir and AJK and the role played by India and Pakistan respectively during the process.

Second section of the chapter covers the major constitutional developments that lead to drastic changes in power sharing pattern drawn earlier with regard to Center State relations and highlights the extension of the jurisdiction of respective parliament(s).

Third section of the chapter covers the recent constitutional developments that shifted the status of Jammu and Kashmir across LOC by Indian government on one hand and through 13<sup>th</sup> amendment to the Constitution of AJK at the will of government of Pakistan on the other hand.

Fourth section ends the chapter with the current status of Jammu and Kashmir and AJK.

#### 3.1 Constitutional making process

This sub-section looks at the constitutional development in Jammu and Kashmir from 1947 to 1957, with a focus on the constitution-making process, and in AJK from 1947 to 1974, with a focus on the initial uncertainty, the framing of business rules, the democratization process, and the enactment of the 1970 Act.

The Constituent Assembly of Jammu and Kashmir was elected by adult suffrage and established in 1951 pursuant to the government of Jammu and Kashmir's resolution of 27th October 1950.

The Constituent Assembly's functions were described by the then Prime Minister of Jammu and Kashmir, a close friend of Pt. Nehru as exceeding what Constituent Assemblies around the world are normally and actually required to do. It was tasked with the responsibility<sup>69</sup>;

- 1) To draft the constitution of the state of Jammu and Kashmir.
- 2) To ascertain the future of the Jammu and Kashmir dynasty.
- 3) To ascertain whether any compensation should be paid in connection with the appropriation of large landed estates in accordance with the Big Landed Estates Abolition Act of 1950; and

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<sup>69</sup> See Jammu and Kashmir Constituent Assembly Debates, Vol. 1 No. 3, pp. 1-27

- 4) To announce the conclusion of the accession process.

From 31 October 1951 to 9 August 1953, the Constituent Assembly met six times. It accomplished little in terms of drafting a constitution for Jammu and Kashmir simply because it was framed with the sole purpose of providing Jammu and Kashmir with a close copy of the Indian Constitution, and approving the Instrument of Accession.

The Constituent Assembly made significant decisions on the following issues:

- 1) It determined that no compensation would be paid for the expropriation of large landed estates based on the Land Compensation Committee's report dated 29th March 1952.<sup>70</sup>
- 2) Hereditary monarchy should be abolished and future heads of the state should be elected.
- 3) The state shall be represented by its own flag.
- 4) It reaffirmed the Instrument of Accession's legality.

As it was necessary for Jammu and Kashmir to obtain India's approval for these decisions due to the consequential changes to the Indian Constitution and the 1950 Presidential Order, a delegation of state leaders led by Sheikh Abdullah traveled to Delhi in July 1952. After a week of negotiations, a compromise was reached regarding the continuation of residuary powers in the state, the state having its own flag, the President's pardoning powers, and the provisions relating to the election of the houses of parliament. Concerning the head of state, it was decided that Sadr-e-Riyasat would be elected by the Constituent Assembly and recognized by the president for a five-year term.

Regarding citizenship, it was determined that while the people of Kashmir are considered to be residents of India under Article 5 of the Indian Constitution, the State of Jammu and Kashmir also has the authority to define its permanent residents and bestow upon them special privileges and rights with regard to property acquisition and employment in the state.<sup>71</sup> This "negotiation" also extended the Indian Constitution's emergency provisions to Jammu and Kashmir, with Article 352 being applicable in letter and spirit and an emergency declared on the grounds of internal disturbance or imminent danger to be declared only at the request of or in agreement with the government of Jammu and Kashmir.

Concerning the Fundamental Rights enshrined in Part III of the Indian Constitution, it was decided that none of them would apply to Jammu and Kashmir due to the state's political and socioeconomic circumstances. Further expansion of Fundamental Rights was agreed to be made after a thorough examination of the situation, and as a result, the Supreme Court's jurisdiction was not extended. The issue of financial integration was deferred for further consideration.<sup>72</sup>

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<sup>70</sup> See Jammu and Kashmir Constituent Assembly Debates, Vol. II, No. 4, pp. 49

<sup>71</sup> JAGOTA, S. P. "DEVELOPMENT OF CONSTITUTIONAL RELATIONS BETWEEN JAMMU AND KASHMIR AND INDIA, 1950—'60." *Journal of the Indian Law Institute*, vol. 2, no. 4, Indian Law Institute, 1960, pp. 519–38, <http://www.jstor.org/stable/43949608>

<sup>72</sup> *ibid*

The negotiation turned “revised Constitutional relations” between India and Jammu and Kashmir was considered by the Constituent Assembly of Jammu and Kashmir from 11 to 19<sup>th</sup> of August 1952 and a motion approving the same was adopted on 21<sup>st</sup> August 1952, irrespective of having no express power to do so.<sup>73</sup> However, this move by the Constituent Assembly sparked widespread criticism and suspicion among the people of Jammu and Kashmir, delaying the implementation of the negotiation.

As a result of this, Sheikh Abdullah, the Prime Minister of Jammu and Kashmir once again began thinking in terms of the state's right to choose between India and Pakistan, resulting in his removal as Prime Minister of Kashmir.<sup>74</sup> Bakshi Gulam Mohammad, who was eager and willing to implement those amendments, was now appointed Prime Minister of Kashmir, ushering in a new era of constitutional relations between Jammu and Kashmir and India, a period that marked a visible shift in India's constitutional relations with Jammu and Kashmir.<sup>75</sup> Under Bakshi Ghulam Mohammad's Prime Ministership, the Constituent Assembly's work was restarted and new committees on fundamental rights, fundamental principles, citizenship, and drafting the draft constitution were formed to make recommendations to the Drafting Committee.

The Basic Principles Committee submitted its report in February 1954, recommending that the Indian Constitution's provisions be extended to Jammu and Kashmir and that the relationship between India and Jammu and Kashmir be clarified through amendments to the 1950 Presidential orders to suit the state's requirements.<sup>76</sup> Similarly, the Advisory committee on Fundamental Rights and Citizenship recommended the Drafting Committee that the Fundamental Rights of Indian Constitution be made applicable to Jammu and Kashmir with suitable modifications. The recommendations of both the committees were adopted by the Drafting Committee unanimously on 6<sup>th</sup> of February and presented its report on 11<sup>th</sup> of February 1954.

Thereafter, the President of India issued The Constitution (Application to Jammu and Kashmir) order of 14th May 1954, superseding the 1950 order. The Constituent Assembly adopted this order on 29 March 1955, with some modifications regarding the jurisdiction of the Parliament of India over monuments and sites, oil fields and mineral resources, covered by the Union List.

This order resulted in the expansion of Parliament of India's jurisdiction by making Parts I, II, and III of the Indian Constitution applicable to Jammu and Kashmir with the modification that territorial integrity was granted to the state, no change in the state's name or boundaries was permitted without the consent of the state legislature, and restrictions under Article 19(3), (4), and (5) of the Indian Constitution could be imposed for the state's security or reasonableness of writ.

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<sup>73</sup> See Jammu and Kashmir Constituent Assembly Debates, Vol. IV, Nos.1-3

<sup>74</sup> See Korbel, J., 1966. *Danger in Kashmir*. Princeton, N.J: Univ. Pr, p.237. n.d. [online] Available at: [https://www.researchgate.net/publication/232902125\\_Kashmir\\_Ripe\\_for\\_resolution](https://www.researchgate.net/publication/232902125_Kashmir_Ripe_for_resolution).

<sup>75</sup> JAGOTA, S.P. “DEVELOPMENT OF CONSTITUTIONAL RELATIONS BETWEEN JAMMU AND KASHMIR AND INDIA, 1950—’60.” *Journal of the Indian Law Institute* 2, no. 4 (1960): 519–38. <http://www.jstor.org/stable/43949608>

<sup>76</sup> See *The Reports of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship*, 1954 pp. 4



Under Article 32 of the Indian Constitution, the Supreme Court's jurisdiction extended to states with concurrent jurisdiction of the High Court of Jammu and Kashmir.

Now, the President of India was to appoint representatives of the people of Jammu and Kashmir to the House of People in consultation with the Legislative Assembly of Jammu and Kashmir. Articles 325-329, which deal with elections, were to be excluded from application to Jammu and Kashmir. This order also provided for the application of Articles 32, 131-34 of the Constitution, which deal with the Supreme Court's original and appellate jurisdiction, with the exception that Indian Parliament's jurisdiction in criminal matters would not be increased without the state Legislature's request.<sup>77</sup>

In terms of administrative relations between India and the state, it was decided that they would be co-extensive with the Union's legislative jurisdiction, but that the state's executive power was not to impair the Union's executive power and in accordance with Indian laws. It also extended provisions relating to trade and commerce, as well as taxation, to the state, and thus effectively provided for the state of Jammu and Kashmir's integration into India, but residents retained special rights and privileges regarding property acquisition in the state.

After making all necessary changes to the shared relationship between India and Jammu and Kashmir, the Constituent Assembly decided to rewrite the Jammu and Kashmir Constitution in its 12th session from 29th September 1956 to 19th November 1956. The Constitution was again modeled after the Indian Constitution, with the exception of the Directive Principles of State Policy. It was enacted on 26th January 1957 and contained 158 sections and six Schedules.

Section 3 of the Constitution is worth noting here, it provided that "the state of Jammu and Kashmir shall be an integral part of India," a provision that was placed beyond the scope of amendment and was not agreed to be incorporated previously under the government of Sheikh Mohammad Abdullah because the Center government desired to take this significant step under the leadership of a Prime Minister who would blindly follow all of India's dictates.<sup>78</sup>

The Constitution as drafted provided for the State to be governed by a Parliamentary form of government, headed by a Sadr-e-Riyasat, elected by the state Legislature and confirmed by the President of India. Apart from being an integral part of the Legislative Assembly, the Sadr-e-Riyasat was endowed with all executive powers not transferred to the Union. He also possessed financial authority.

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<sup>77</sup> Articles 135, 136 and 139 dealing with appellate jurisdiction of Supreme court in other matters were not applicable.

<sup>78</sup> For further details see

<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198074083.001.0001/acprof-9780198074083-chapter-1>



AJK's constitutional development began with its liberation from autocratic rule. Following independence, AJK elected Sardar Mohammad Ibrahim Khan, the Muslim Conference's leader, as President, who was constitutionally responsible for all state affairs through the democratically elected government. However, tensions erupted when Choudhary Ghulam Abbas migrated from Jammu and Kashmir to AJK and assumed the position of supreme head of the Muslim Conference, with the authority to appoint the President and the Council of Ministers, who were collectively accountable to him. Although the Pakistani government recognized his authority, it was not acceptable to a number of political leaders, and thus a mass uprising against the supreme head's undemocratic powers began.<sup>79</sup>

Choudhary Ghulam Abbas, the Supreme Head, had an ideological and political disagreement with Ibrahim Khan, believing that the democratic setup, and thus electoral politics, would divert people and leaders away from the cause of liberation. Apart from that, ethnic and linguistic differences influenced politics, pitting locals and migrants against one another. Meanwhile, the death of Ali Mohammad Jinnah shattered Pakistan's democratic order, resulting in a political scenario dominated by civil and military bureaucracies, with the military eventually seizing power in 1958. Pakistan's transition from democracy to military rule had an effect on the process of democratization in AJK. However, the people of AJK, who had already suffered greatly under Dogra rule, were adamantly opposed to any undemocratic regime.<sup>80</sup>

To address popular demand for civil rights and democratic order, the AJK government revised its rules of business three times in less than eight years with the consent of the Ministry of Kashmir Affairs and Northern Areas.<sup>81</sup> However, the government was unable to devise a workable formula for power sharing between the Supreme Head and the President.<sup>82</sup>

The initiative began in 1950, when the Ministry of Kashmir Affairs promulgated new rules vesting the Supreme Head of the Muslim Conference with complete legislative and executive authority, as well as the authority to nominate the President and Council of Ministers.<sup>83</sup> Again in 1952, the rules of business were revised in an attempt to restore balance of power, but instead, the powers of the Ministry of Kashmir Affairs were expanded and the Muslim Conference's powers were weakened. This revision required that all significant appointments be made following the confirmation of the Ministry of Kashmir Affairs. This revision instilled suspicion in the Pakistani government and sparked unrest, as it reduced the status of the AJK government to that of a municipality, sparking protests and demonstrations throughout AJK.<sup>84</sup>

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<sup>79</sup>See Prem nath Bazaz, pp. 634-635 Prem nath Bazaz. (n.d.). *Struggle for freedom in Kashmir*. by Prem Nath Bazaz. Retrieved April 1, 2022, from <https://www.jstor.org/stable/pdf/45068734.pdf>

<sup>80</sup> See *Status of AJK in political milieu - JSTOR*. (n.d.).<https://www.jstor.org/stable/pdf/42922642.pdf>

<sup>81</sup>It handles the regional affairs of AJK and Gilgit-Baltistan as the territories of Pakistani-administered Kashmir do not have regular provincial status within Pakistan

<sup>82</sup> Mahmud, Ershad. "Status of AJK in Political Milieu." *Policy Perspectives*, vol. 3, no. 2, Pluto Journals, 2006, pp. 105–23, <http://www.jstor.org/stable/42922642>.

<sup>83</sup> See syed Manzoor. H. Gilani *Constitutional Development in AJK Lahore*: National Book Depot, pp. 46-65

<sup>84</sup> Please see Mir Abdul Aziz, *Dictatorship in Azad Kashmir* Rawalpindi 1952.

Another attempt at democratization was made in November 1958 with the third revision of the rules of business, but once again efforts were made to strengthen the Ministry of Kashmir Affairs by replacing the Joint Secretary with a Chief Advisor who was to be appointed by the Ministry of Kashmir Affairs and not by the government of AJK. Though all governmental functions were to be carried out in the name of the President, actual authority was vested in officials of the Ministry of Kashmir affairs.<sup>85</sup>

From 1947 to 1960, there was no adult franchise in AJK, as leaders were appointed by the people, based on their confidence in each candidate in the Muslim Conference's Working Committee. When General Mohammad Ayub Khan assumed power in October 1958, he immediately banned all political activity in Pakistan and AJK. He also dismissed Ibrahim Khan's government and appointed K.H. Khurshid as the new president of AJK<sup>86</sup>. Ayub Khan legitimized his military regime by introducing the concept of basic democracies through the Basic Democracies Act of 1960. This Act provided for the indirect election of the President and the Azad Kashmir Council by members of various local bodies.<sup>87</sup> on the basis of this idea, the Presidential elections were held in 1961 in which both Sardar Ibrahim and Chaudhary Ghulam Abbas were not allowed to participate on the basis of allegations of corruption. This election was conducted by an electoral college comprised of 1200 basic democrats from AJK and 1200 Kashmiri refugees from Pakistan.

Though K.H. Khursheed was appointed President under this concept and remained in good books of the Pakistani government, the bureaucracy refused to abandon the old way of doing things, resulting in intense tension between the Ministry of Kashmir Affairs and the Khurshid administration. In the early 1960's, the government of K.H. Khurshid took the initiative to recognize the Azad Kashmir government as the parallel government for the entire state, but when Ayub Khan and the Ministry of Kashmir Affairs realized that this could result in the secession of AJK from Pakistan's control, he was forced out of office unceremoniously.<sup>88</sup>

For over two decades, the people of AJK have struggled to achieve basic democratic rights, primarily because their leaders have been unable to take effective steps toward democratization due to the Ministry of Kashmir Affairs' unrelenting lust for power, which resulted in the ouster of the first elected President. As a result, the people of AJK and their political leaders decided to resist the MKA's (Ministry of Kashmir Affairs) unwarranted interference in order to establish a workable representative system of government.

On 5 August 1968, an alliance of the leading political parties led by Sardar Ibrahim, Abdul Qayyum Khan, and Mr. Khurshid was formed. The alliance sought to depose the MKA and demanded an elected and accountable government comprised of an elected President and legislature endowed with full legislative and financial authority. From the 27th of December 1968,

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<sup>85</sup> See Syed Manzoor. H. Gilani p. 133 "The rules clearly underline the role of MKA supervision over the Azad Kashmir government in matters of policy and general administration".

<sup>86</sup> he had served as private secretary of Jinnah from 1944-1947

<sup>87</sup> see Syed Manzoor. H. Gilani, *Constitutional development in Azad Jammu & Kashmir* Lahore National Book Depot

<sup>88</sup> see Saraf, M.Y., 1979. *Kashmiris Fight for Freedom (1947-1978)* Volume- 11., Feroz Sons, Lahore.

the All-Parties Kashmir Committee organized a procession in Karachi and violent demonstrations outside the President's office in Muzaffarabad<sup>89</sup>. Throughout Pakistan, a widespread demand for a uniform system of governance was made. This agitation resulted in Ayub Khan's resignation, but General Agha Mohammad Yahya Khan reinstated martial law in Pakistan in 1969.

General Yahya Khan's new regime in AJK had its own agenda. Yahya Khan's regime altered Pakistan's constitution, abolishing the one-unit system and holding the country's first free and fair elections. While the people of AJK demanded an elected government based on adult franchise, the people of Pakistan demanded free and fair elections in both East and West Pakistan.<sup>90</sup>

In 1969, Pakistan's government appointed Abdul Hameed Khan, a retired army general, as Minister of Kashmir Affairs. He assured the political leaders that democratic rule would be implemented immediately in the region. He established an interim government with the mandate to draft a new constitution for AJK and to hold new elections using the adult franchise.

In 1970, following consultation with the people of AJK, the AJK Act of 1970 was introduced, and for the first time, the Legislative Assembly and President of AJK were elected by the people of AJK and migrated Kashmiris in Pakistan. The Assembly thus elected had limited legislative authority; for example, it lacked authority over defense, foreign affairs, currency, and UNCIP resolutions. It did, however, have the authority to remove the President with a two-thirds majority<sup>91</sup>. This Act granted significant autonomy to AJK and also retained the state subject law enacted in 1927, which prohibited non-Kashmiris from purchasing land in Kashmir. Under this Act, AJK gained financial authority, including the authority to collect taxes. One year later, through an amendment, the people of AJK were granted fundamental rights.

With the election of Zulfikar Bhutto as Pakistan's Prime Minister in 1973, a new Constitution was enacted in Pakistan, establishing a parliamentary structure and granting provinces autonomy. In AJK, a new wave of support for a Parliamentary form of government has emerged. The people's demand was backed by a newly formed political party, the Pakistan people's party. The regime changes in Pakistan resulted in a shift in mindset regarding AJK; the then-Pakistani Prime Minister, Zulfikar Ali Bhutto, desired to merge AJK with Pakistan and offered the AJK a proposal to become the country's fifth province; in this attempt, he introduced significant changes in Gilgit Baltistan in order to integrate it with the rest of the country.<sup>92</sup>

On 10 June 1974, the Ministry of Kashmir Affairs announced a new legislative arrangement for AJK. The 1970 Act was amended in 1974 to become the AJK Interim Constitution Act. This Act

<sup>89</sup> See <https://www.ips.org.pk/status-of-ajk-in-political-milieu/>

<sup>90</sup> Mahmud, Ershad. "Status of AJK in Political Milieu." *Policy Perspectives*, vol. 3, no. 2, Pluto Journals, 2006, pp. 105–23, <http://www.jstor.org/stable/42922642>

<sup>91</sup> See 'Azad Jammu Kashmir Government Act 1970' by Syed Manzoor H. Gilani, *Constitutional Developments in Azad Jammu & Kashmir* (1988), as Appendix-VIII, pp.165-204

<sup>92</sup> See Hussain, M. S. (1992, February 1). *History of kashmir : A study in documents 1916-1939*. <https://www.bookdepository.com/History-Kashmir-Mirza-Shafique-Hussain/9789694150307> pp.390

was passed by the AJK Legislative Assembly without much debate after being tabled for ten minutes. It was prepared by the Pakistani government without consultation with the political leaders or government of AJK. The sole purpose of this Act, was to curtail the AJK's powers and strengthen the grip of the Pakistani government on the AJK.<sup>93</sup>

All the business rules, right from 1947-74, were neither prepared nor drafted by the political parties of AJK except for the Act of 1970, and all the constitutional changes undertaken during this period were in form and not in fact because the fact is that the effective power remained with the government of Pakistan.

According to the Interim Constitution of AJK Act of 1974, AJK is a disputed territory with a parliamentary form of government headed by the Prime Minister and the President. It has its own judiciary, consisting of a Supreme Court and a High Court, and the Supreme Court of Pakistan's jurisdiction does not extend to AJK. Pakistan, on the other hand, maintains a de facto relationship with AJK as a result of the 1949 Karachi Agreement, the 1974 Interim Constitution, and UNCIP resolutions.

### **3.2 Extension of the jurisdiction of Parliaments/ changing patterns of power sharing**

This section describes the events in Jammu and Kashmir from 1950 to 1976, including the presidential orders of 1950 and 1958, the abolition of the post of Sadr-e-Riyasat, the delimitation procedure, and the leaders' agreements. It also discusses the formation and empowerment of the AJK council in 1947.

The evolution of constitutional relations between India and Jammu and Kashmir followed a typical federation pattern as the conventional division of powers between India and other states did not apply to the state of Jammu and Kashmir. Under the scheme of power sharing, the State retains the residual powers, as well as the State list and Concurrent list. The future development of their relationship was contingent upon Article 370, which granted special status to Jammu and Kashmir.

The two entered the first phase of their constitutional relationship in 1950, when the Constitution (Application to Jammu and Kashmir) order, 1950 elaborated on the subjects mentioned in the Instrument of Accession<sup>94</sup>. The President of India issued this order pursuant to Article 370, in consultation with the government of Jammu and Kashmir, to define the extension of the jurisdiction of Parliament of India and the application of the Indian Constitution to Jammu and Kashmir.

<sup>93</sup>See <https://refubium.fu-berlin.de/bitstream/handle/fub188/11081/JavaidxDisserationx2014-5.pdf?sequence=1&isAllowed=y>  
*"That when the bill was presented in the assembly, there was a serving Brigadier from the Pakistani Army sitting in the visitor's gallery of the assembly and closely monitoring all assembly members. This fact was well known to every member and no one wanted to be mentioned in the red book of intelligence agencies".*

<sup>94</sup> See white Paper on Indian States Appendix LVI; En.wikisource.org. 2022. White Paper on Indian States (1950)/Part 11/Special Provisions regarding the State of Jammu and Kashmir  
 at:[https://en.wikisource.org/wiki/White\\_Paper\\_on\\_Indian\\_States\\_\(1950\)/Part\\_11/Special\\_Provisions\\_regarding\\_the\\_State\\_of\\_Jammu\\_and\\_Kashmir](https://en.wikisource.org/wiki/White_Paper_on_Indian_States_(1950)/Part_11/Special_Provisions_regarding_the_State_of_Jammu_and_Kashmir).

This order consisted of two Schedules, first one related to the jurisdiction of Indian Parliament in Jammu and Kashmir, enumerated the appropriate entries like 1-6, 9-22, 25-31, 72-77, 80 and 93-96 from the Union List provided under seventh Schedule of Indian Constitution. The enumerated entries contained subjects like defense, communication, trade and commerce, foreign affairs, matters relating to Supreme Court, Parliament, etc. Some entries were made applicable to Jammu and Kashmir in a modified form for instance, those related to audit (76), trade and commerce (41) and railways (22).<sup>95</sup>

The second schedule, contained the provisions of the Indian Constitution that were made applicable to Jammu and Kashmir, along with applicable exceptions and modifications. This order applied the Indian Constitution's V, XI, XII, XV-XVII, and XIX-XXII parts, as well as the first to fourth and eighth schedules, to Jammu and Kashmir. The sections of the Indian Constitution applicable to Jammu and Kashmir concern the Union-State relationship, the official language, the Union Executive, Judiciary, and Parliament, special provisions relating to specific classes, property, contract, finance, and ancillary provisions relating to Schedules.<sup>96</sup>

The order contained following exceptions and modifications:

Part III and IV of the Indian Constitution, which deal with fundamental rights and directive principles, were made inapplicable to the State; only the Supreme Court's original (Article 131) and appellate (Article 132) jurisdictions were applied. Representatives of the State in Parliament were to be chosen by the President of India in consultation with the government of Jammu and Kashmir. The relationship between Jammu and Kashmir and India were to be limited to the matters mentioned in the first Schedule stated above, Article 247 and 252 was not applicable and the residuary powers lay with Jammu and Kashmir. Financial, emergency or service provisions of Indian constitution were not applicable to the State. Election provisions pertaining to the election of the President and Vice President or of Parliament alone did apply to Jammu and Kashmir; and amendment provisions would apply only if the President issued an order to that effect pursuant to Article 370.<sup>97</sup>

On 26 February 1958, the President of India issued another Order, The Constitution (Application to Jammu and Kashmir) Second Amendment Order, extending the jurisdiction of the Comptroller and Auditor General of India to the State and amending Article 92 A of the Indian Constitution, which deals with interstate sales tax and related matters. The State's Constituent Assembly adopted a resolution in this regard on 10th October and 14th November 1956, which had the effect of applying Article(s) 149-151(2) and Item 76 of the Union List to Jammu and Kashmir. Additionally, it amended the relevant sections of the 1954 Constitution (Application to Jammu and Kashmir)

<sup>95</sup> India 1947-50, *select Documents* Vol. I pp. 411-416 n.d. [online] Available at: <https://www.jstor.org/stable/43949608>.

<sup>96</sup> See *Journal of the Indian Law Institute* Vol. 2, No. 4 (JULY—SEPTEMBER 1960), pp. 519-538

<sup>97</sup> Ibid

Order. Furthermore, the order extended the scope of Article 312 (All Indian Services) to the state of Jammu and Kashmir.<sup>98</sup>

Following that, in 1959, the Legislative Assembly of Jammu and Kashmir adopted a resolution recommending the application of the Indian Election Commission's jurisdiction to Jammu and Kashmir and the application of the Supreme Court's jurisdiction under Article 136 dealing with Special Leave Petitions. As a result, the President of India issued an order to that effect.<sup>99</sup> The provisions of the Indian Constitution relating to the imposition of emergency in the event of a breakdown of the Constitutional machinery were also extended to State in 1964, along with the seventh Schedule dealing with concurrent lists, trade and commerce, and certain subjects in the Union List of the Constitution of India's seventh schedule.

In 1965, the Indian government, in order to further erode the status of Jammu and Kashmir, induced an amendment to the Constitution of Jammu and Kashmir<sup>100</sup>, replacing the posts of Sadr-e-Riyasat and Prime Minister with those of Chief Minister and Governor, respectively, to conform to the Indian Constitution. A war between India and Pakistan took place in the same year to which ended with signing of the Tashkent agreement between the two on 10<sup>th</sup> of January 1966 under the mediation of Soviet Union.

In August 1975, the Twelfth Amendment Act amended the procedure prescribed by the Jammu and Kashmir Constitution for the division of the state into territorial Constituencies and the allocation of seats reserved and vacant for the people of AJK.<sup>101</sup> This amendment also provided that if the Legislative Assembly were to be dissolved prior to the expiration of its term and after the Census operation was completed but before the electoral constituencies were readjusted, and if the Governor determined that an election should be held immediately, he could, after consulting the Election Commission of India, direct that elections be held in the state, prior to the delimitation of the territorial constituencies.

Meanwhile on 24 February 1975, Sheikh Mohammad Abdullah's government entered into an agreement with Indra Gandhi, India's Prime Minister, on behalf of the Indian government, called the Indra-Sheikh Accord of 1975, in order to resurrect itself. The Accord sought to resurrect Sheikh Abdullah's government, which in turn agreed to dissolve the front that demanded a plebiscite in Kashmir, rename it the National Conference, and accept the Instrument of Accession's finality.

As a result of this agreement, Sheikh Mohammad Abdullah was elected Congress leader in the state legislature, resulting in the establishment of Sheikh Abdullah's government as Chief Minister of Jammu and Kashmir in March 1975.

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<sup>98</sup> See Ministry of Law: New Delhi, the 26th February, 1958Published in the Gazette of India, Extraordinary, Part II Section 3 (i), No. 19, Dated the 10th February, 1959/Magha 21, 1880 Saka

<sup>99</sup> See *Asian recorder* September 19-25 1959 pp. 2908

<sup>100</sup> sixth Constitution of J&K Amendment Act, 1965

<sup>101</sup> The amendment reduced the number of seats from twenty-five to twenty-four.

Following that, in 1976, the Jammu and Kashmir Constitution was amended, this time amending the law governing the registration of members of the state Legislature. Additionally, it addressed the rules governing the registration of legislators. Again, in March, the Fifteenth Amendment Act amended the Jammu and Kashmir Constitution and empowered the Governor to promulgate ordinances during the state Legislature's session that would be immune from judicial review. The arbitrary power of such magnitude could not be found even in the Constitution of India as it vested Governor with the wide powers to promulgate unjustifiable ordinances without the aid and advice of the Council of Ministers.

In order to institutionalize its relationship with AJK, the government of Pakistan established a new body called The AJK Council. The Interim Constitution Act of 1974 introduced the bicameral system in AJK comprising of AJK Assembly and AJK Council. This system was introduced to provide AJK parity with the system of government in Pakistan. The AJK Council, that became the Upper House consisted of members both from AJK and Pakistan.<sup>102</sup>

By virtue of the AJK Interim Constitution Act of 1974, the Prime Minister of Pakistan becomes ex-officio Chairman of the AJK Council, which has its Secretariat in Islamabad, Pakistan, rather than in AJK. He is not accountable to either the people or the judiciary of AJK. The President of AJK serves as Vice Chairman of the AJK Council and is elected by a majority vote in the AJK Assembly and AJK Council's joint session. While this Council appears to have increased AJK's representation at the federal level in Pakistan, it has actually reduced the autonomy of AJK.<sup>103</sup>

The AJK Council collects revenue taxes from the AJK, with 80% going to the AJK government and 20% retained by the AJK Council as service charges that go to the Council's consolidation fund. Under section 21(7) of the AJK Interim Constitution Act of 1974, the chairman may exercise the Council's executive authority directly or through the nomination of a Pakistani federal minister. The third Schedule to the Act contains a list of 52 subjects on which the AJK Council may enact legislation. It vests the AJK government with extremely limited powers and authority.<sup>104</sup>

The AJK council wields considerable authority over issues such as UNCIP resolutions, minerals, property, police force expansion, newspapers and printing presses, taxes, court jurisdiction and powers, and refugees, among others, over which the AJK government or Assembly has no authority. According to the state constitution, the council's executive authority shall extend to all matters over which the council has legislative authority and shall be exercised in its name by the chairman, who may act directly or through the council's secretariat.

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<sup>102</sup> To be nominated by the Prime Minister of Pakistan

<sup>103</sup> See Snedden, C., 2012. *The Untold Story of The People of Azad Kashmir*, C. Hurst & Co. Publishers., pp. 103

<sup>104</sup> See Abbasi 2011 "A brief look at the territory's Interim Constitution Act, 1974, reveals that all major areas of economic potential fall under the jurisdiction of the AJK Council.....In these areas the Azad Kashmir government has no say in policymaking".

The AJK Council exercises complete control over all powers and responsibilities pertaining to economic prosperity, transparency, and other inescapable challenges that are supposed to be exercised by an area's elected government. In Pakistan, the Minister for Kashmir Affairs also serves as the in-charge Minister of the AJK Council, and the Secretary for Kashmir Affairs also serves as the in-charge Secretary of the AJK Council, giving the Pakistani government a dominant role in power sharing.<sup>105</sup> When the Kashmir council was established roughly three decades ago, it was viewed as a means of enhancing the AJK's prestige. However, no concrete steps toward enhancing AJK's autonomy have been taken. Nonetheless, it sparked a lively debate and generated considerable buzz. People's aspirations for increased autonomy and political prominence for AJK Strangely, neither the ruling party nor the opposition benches introduced an amendment bill in the legislature to revise the current constitutional framework. The system, which was introduced in 1974, is essentially unchanged.

### 3.3 changing Autonomous status

This sub-section covers the developments in Jammu and Kashmir from 1994-2019 and explains the journey from India declaring Jammu and Kashmir an integral part to degrading it to a union territory. It ends with the developments in AJK that took place in 2018 enacting 13<sup>th</sup> Amendment Act.

In 1994, the Indian Parliament adopted a resolution declaring Jammu and Kashmir to be an integral part of India. The resolution stated unequivocally that;

- 1) That the State of Jammu and Kashmir has been and will continue to be an integral part of India, and that any attempt to separate it from the rest of the country will be met with all necessary resistance.
- 2) India possesses the will and capability to resolutely oppose all attempts to undermine its unity, sovereignty, and territorial integrity; and it demands that
- 3) Pakistan must withdraw from the areas of the Indian state of Jammu and Kashmir that they have occupied through aggression; and
- 4) All attempts to meddle in India's internal affairs will be met with vehement opposition.<sup>106</sup>

On 5 August 2019, the Indian government deployed thousands of additional troops, cancelled a major Hindu pilgrimage, closed schools and colleges, and ordered tourists to leave. After seizing weapons from Kashmiri police, arresting political leaders, and placing the entire valley under communication blockade and curfew, India's home minister, Amit Shah, made three separate announcements: that India was revoking Jammu and Kashmir's autonomy under the Indian constitution with immediate effect, partitioning the state, and administering the resulting entities

<sup>105</sup> See AJK Council Legislative list as Annex -G

<sup>106</sup> See [https://www.satp.org/satporgtp/countries/india/document/papers/parliament\\_resolution\\_on\\_jammu\\_and\\_kashmir.htm](https://www.satp.org/satporgtp/countries/india/document/papers/parliament_resolution_on_jammu_and_kashmir.htm)



directly. The Indian government abrogated Articles 370 and 35(A)<sup>107</sup> by issuing the Constitution (Application to Jammu and Kashmir) Order, 2019. This order divided Jammu and Kashmir into Jammu and Kashmir and Ladakh, effectively merging Jammu and Kashmir into one Union territory and Ladakh into another. Additionally, this order voids all laws, civil, criminal, and property, including the Jammu and Kashmir Constitution.<sup>108</sup>

This decision – and the unilateral manner in which it was made – alters the status of Jammu and Kashmir and reflects India's ascendance of militant Hindu nationalism. This is a marked departure from India's ostensibly conciliatory and moderate approach to conflict resolution. The President of India, empowered to issue orders for application of the provisions of Indian Constitution and hence the authority of India to Jammu and Kashmir abrogated the Article which authorized him to do so and while doing so, the Central government kept the state under the emergency and took the unconstitutional move without taking into consideration either the Legislative Assembly of Jammu and Kashmir or the government.

The recent Presidential order cast serious doubt on India's "federalist" nature, which was defined as an integral part of the Indian Constitution's basic structure.<sup>109</sup> Besides it degraded the status of Jammu and Kashmir from an "*Autonomous state*" to a Union territory, a step taken for the first time in entire history of India for the "*development*" of any area. One obvious consequence of revoking Article 370 should be the annulment of all Presidential orders issued by the President of India pursuant to Article 370(1), which would restore Kashmir to the status it had at the time of the disputed instrument of Accession, but India maintains its authoritarian regime and claims the Union territory of Jammu and Kashmir as its "integral" part.

With regard to the developments in AJK during this era, the trajectory of power sharing took a quantum leap forward in 2018 as a result of the changes brought about by the thirteenth amendment to the Interim Constitution of AJK, which amended 30 sections of the said Constitution. This Amendment made significant changes to the 1974 Interim Constitutional Act.

The political parties in AJK boycotted the Assembly sessions, believing that doing so would result in direct ingress from Pakistan and the creation of AJK as a Pakistani province.<sup>110</sup> The population, civil society actors, and the Muslim League Nawaz, on the other hand, welcomed it on the grounds that it would empower the elected government of AJK and regulate the influence of the Kashmir Council. Meaning thereby that, one way or the other, AJK measured this development in terms of ensuring least possible interference by Pakistan.

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<sup>107</sup> Under Article 35(A), the legislature of Indian-administered Kashmir can define the state's "permanent residents" and what distinguishes them. It was applicable to all of Kashmir administered by India, including Jammu and Ladakh.

<sup>108</sup> See details of the event on <https://www.bbc.com/news/world-asia-india-49234708>

<sup>109</sup> See Kesavananda Bharati ... vs State Of Kerala And Anr on 24 April, 1973 <https://indiankanoon.org/doc/257876/>

<sup>110</sup> Mahmud, E (2018) Devolution of Power in AJK. The News, 10 June

### 3.4 Current position current status, Autonomous or not

The protracted armed conflict that exists in Kashmir today has claimed countless lives over the years. India and Pakistan have fought four wars over the Kashmir dispute to date, wreaking havoc on people's daily lives. The Union government has declared Kashmir a "disturbed area" and imposed draconian laws on the poor people of Kashmir, including the Armed Forces Special Powers Act (AFSPA), TADA, POTA, and Public Safety Acts.

As already stated, Kashmir had a special status in the Indian Union from the moment it signed the disputed instrument of Accession. To elaborate on this, the Indian government decided to provide "legal protection" for Jammu and Kashmir's special status and incorporated Article 370 into the Indian Constitution. Though this Article appeared to protect Jammu and Kashmir's special status, but in fact, it was the first step toward violating the terms of the Instrument of Accession, which expressly stated that the Indian Parliament could not further expand its jurisdiction viz-a-viz Kashmir.

Similarly, Article 35(A) of the Indian Constitution was added under the heading "protection of Jammu and Kashmir's special status," enabling the erstwhile State's Legislative Assembly to define its permanent residents and restrict land ownership in the state to those permanent residents in order to protect the state's demography.

On 5 August 2019, the Indian Home Ministry unilaterally issued the Constitution (Application to Jammu and Kashmir) Order of 2019, invalidating the two aforementioned articles, making Kashmir a much less autonomous region than other Indian states. This abrupt decision came as a shock to the trapped people of Kashmir, who have been sacrificing over the period of 75 years almost everything in order to get fulfilled the condition of Plebiscite stipulated in the instrument of Accession and the promises made by Pt. Jawahar Lal Nehru.<sup>111</sup>

The repeal of Article 370, and thus the termination of Jammu and Kashmir's autonomous legal status, snuffed out the last shred of hope for that segment of the Kashmiri people who supported the Indian Union's genuine intentions. It is believed that repealing Article 35(A) is intended to alter the demography of the state, similar to how China altered Tibet's demography. The abrogation of Article 370 not only goes against the long build up anti-colonization credentials build up by India but since it started the Constitutional relationship between Jammu and Kashmir and India and its abrogation ended the Constitutional relationship between the two.<sup>112</sup>

<sup>111</sup> Medha. *The Revocation of Kashmir's Autonomy: High-Risk Hindutva Politics at Play*. German Institute of Global and Area Studies (GIGA), 2019, <http://www.jstor.org/stable/resrep24808>

<sup>112</sup> Tweet of Mehbooba Mufti, former CM of Jammu and Kashmir available on <https://twitter.com/MehboobaMufti/status/1158305801766727682>

Looking at the AJK, its position within Pakistan's federal structure is asymmetrical in terms of autonomy and self-rule within the state. It was treated as a semi-autonomous territory until the 13th amendment. However, the much-anticipated 13th amendment changed the status of Kashmir by granting it limited autonomy. Twenty of the fifty-two subjects previously under the jurisdiction of the Kashmir Council have been delegated to Kashmir's legislative assembly leaving the Council with advisory role. Nonetheless, the federal government in Islamabad retains control over thirty-two Kashmir-related subjects. In comparison to the power-sharing arrangement between the Center and other constituent units, there is a constitutional asymmetry between Kashmir and the federal government. Kashmir is assigned fewer and fewer powers in comparison to the other federating units.<sup>113</sup>

The Assembly of AJK increased from 49 to 53 seats. The Government of Pakistan has exclusive authority to make laws pertaining to the subjects listed in Part-A of the Third Schedule, while the Assembly, *with the consent* of the Government of Pakistan, may make laws pertaining to the subjects listed in Part-B of the Third Schedule. Along with postal services, inventions, and air navigation, the Government of Pakistan is responsible for banking, nuclear energy, corporations, stock exchanges, highways, and customs duties. In the aftermath of the 13th amendment, the legislative powers granted to the Government of Pakistan under Part-A of the Third Schedule provide Pakistan with a greater semblance of legislative authority.<sup>114</sup>

In the run-up to the 2020 elections in Gilgit Baltistan, the majority of national political parties rallied and vowed to grant Gilgit Baltistan full constitutional rights. Meetings between the government and opposition leaders heralded a consensus on granting Gilgit Baltistan provincial status, with some parties adding the caveat that the status would jeopardize the Kashmir dispute's position in international forums such as the UN. The recommendations gained traction after Prime Minister Imran Khan and his ministers, including Minister for Kashmir Affairs and Gilgit Baltistan Ali Amin Gandapur, bolstered and promulgated the idea of Gilgit Baltistan being merged with Pakistan as a fully-fledged federating unit. This elicited a strong response from the governments and political parties in India and AJK.<sup>115</sup>

The fourteenth amendment to AJK's Interim Constitution, passed in December 2020, once again weakened the rights granted to the people of AJK and strengthened Pakistan's hold on the region. The amendment Act amended Article 4 of the Interim Constitution and added a rider to the people's right to association, stating that the right to association is subject to reasonable restrictions imposed by law in the interest of Pakistan's or AJK's sovereignty, morality, or public order.

Additionally, the draft amends Article 31 of the interim Constitution, which expressly prohibits the Legislative Assembly from enacting any law concerning the responsibilities of the Pakistani

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<sup>113</sup> See Hayat, J (2020) *Azad Kashmir: Politics, Polity and Power Sharing*. Karachi: Oxford University Press, 118

<sup>114</sup> See Mughal, J (2018) Who rules AJK? *The Friday Times*, 17 August.

<sup>115</sup> See Mukhopadhyay, A, Khan, S (2020) Pakistan's Gilgit-Baltistan 'province': Will it make the Kashmir dispute irrelevant? DW, Pakistan's Gilgit-Baltistan 'province': Will it make the Kashmir dispute irrelevant? | Asia | An in-depth look at news from across the continent | DW | 13.11.2020

government under UN resolutions relating to AJK, the defense or security of AJK, or any other issue critical to the area it represents and for which only Pakistan can enact legislation.<sup>116</sup>

Additionally, the draft prohibits the Legislative Assembly from enacting legislation on any of the 33 subjects listed in Schedule III of the Interim Constitution. These subjects include, but are not limited to, nuclear energy, foreign affairs, scientific and technological research planning and coordination, banking and insurance, economic coordination, post and telegraph, and the like. Additionally, this draft reserved 12 legislative seats for Indian-administered Jammu and Kashmir. It has proposed that the words "state" be substituted for the words "AJK" in paragraph 17 of the 1974 Interim Constitution. The 14th amendment has caused considerable controversy in AJK and is believed to be aimed at reviving the Jammu and Kashmir Council by increasing the number of seats to 65 and reverting control from the AJK government to the AJK Council.

Therefore, the 1974 interim constitution did not grant autonomy to AJK. The Kashmir Council is endowed with broad legislative authority like the authority to levy taxes, the authority to perform executive functions and the like. The Kashmir Council exercises control over the majority of subjects and has marginalized the AK government's authority over state affairs rendering it "Azad" just in name and not in reality.

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<sup>116</sup> See <https://www.efsas.org/commentaries/14th-amendment-bill-to-1974-interim-constitution-of-so-called-azad-jk-is-subjugation-and-occupation/>

## 4 Conclusion

While the Princely State of Jammu and Kashmir had the option of joining either India or Pakistan or remaining independent during the decolonization of British India in 1947, the AJK declared independence from Maharaja Hari Singh's autocratic rule who signed the disputed instrument of accession with India on certain specific terms. One of the terms stipulated specifically that once normalcy is restored, the issue of accession shall be decided by the people of Jammu and Kashmir.

Though the Maharaja had an interest in joining India because he felt safer with India as a Hindu and was waiting for an appropriate time and occasion which was eventually provided to him by the independence of AJK and tribal invasion. What makes the Instrument of Accession contentious is the Maharaja's inability to represent the will of the people in accordance with Articles 5 and 7 of the Indian Independence Act of 1947 and occupation of Kashmir by Indian forces before the actual signature of Instrument of Accession took place.

India has never intended to grant the people of Kashmir their promised right to plebiscite, and in order to legitimize its relationship with Kashmir, India incorporated Article 370 into its Constitution, which, in addition to establishing a constitutional relationship with Jammu and Kashmir, also *apparently* granted the erstwhile State autonomous rights.

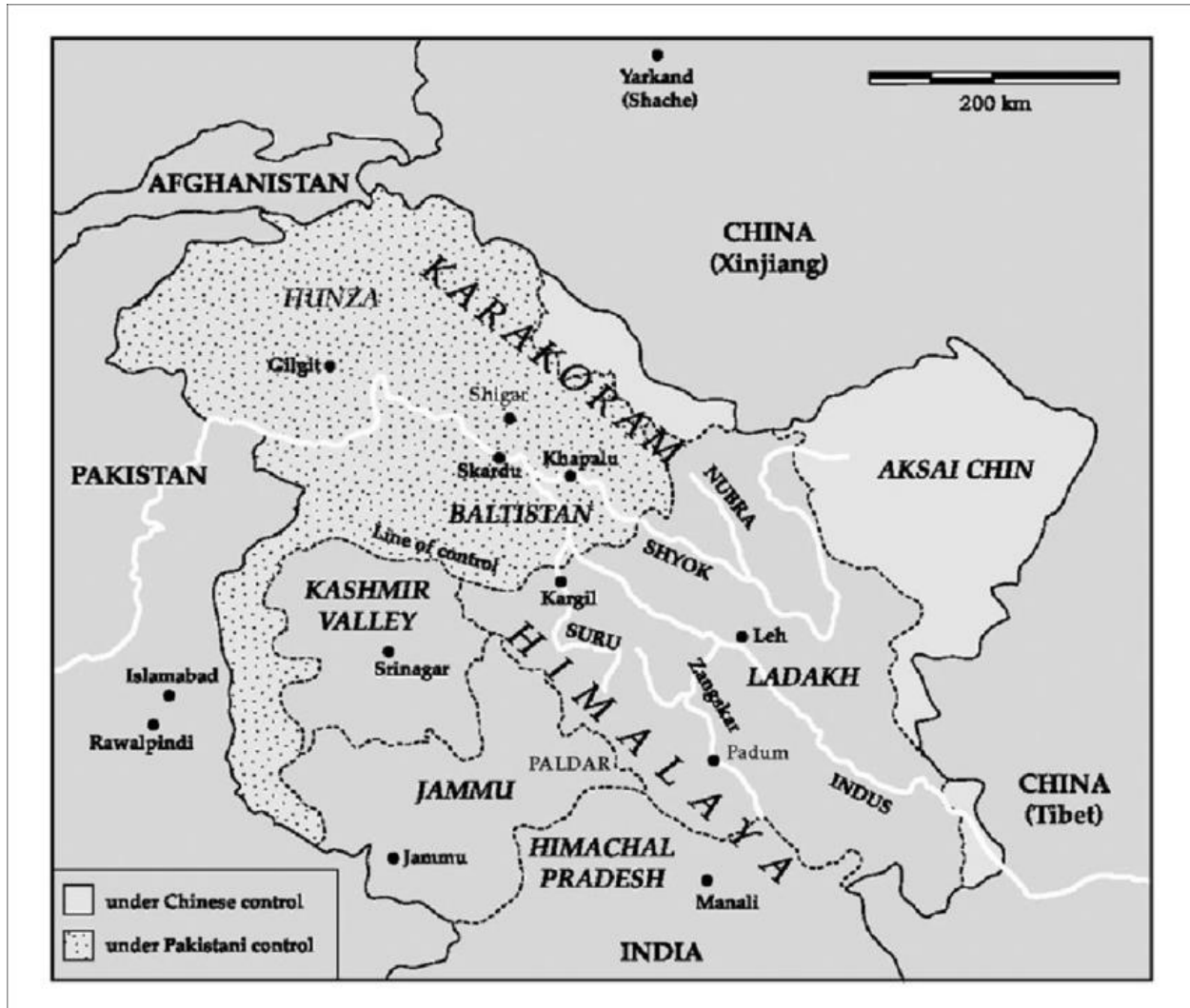
Similarly, though Pakistan while defining its relationship with AJK states under Article 257 that “*When the people of the State of Jammu & Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State*” but the creation of Kashmir Council and Ministry of Kashmir Affairs and Northern Areas makes it clear that the autonomous state of AJK is “*azad*” only in title and not in reality.

The journey of erosion of the so called “special autonomous status” of Jammu and Kashmir began with the Constitution (Application to Jammu and Kashmir) Act of 1950 and ended till the Constitution (Application to Jammu and Kashmir) Act of 2019 that rendered an “Autonomous state” to a Union territory. Similarly in AJK, the process of depowering the region started in 1952 when the rules of business were revised in an attempt to restore balance of power, but instead, the powers of the Ministry of Kashmir Affairs were expanded and the Muslim Conference's powers were weakened, and continues till today with recent 14<sup>th</sup> Constitutional amendment to the Interim Constitution of AJK which revived the powers of Kashmir Council rendering the AJK less autonomous than a municipality.

The study demonstrates how power sharing between India and Pakistan, on the one hand, and the princely state of Jammu and Kashmir across the LOC, on the other, began with government(s) of India and Pakistan having fewer powers and has transitioned to a point where both Jammu and Kashmir and AJK are striving to achieve basic civil and political rights, with India and Pakistan grabbing the majority of critical power, respectively.

## 5 Annexures

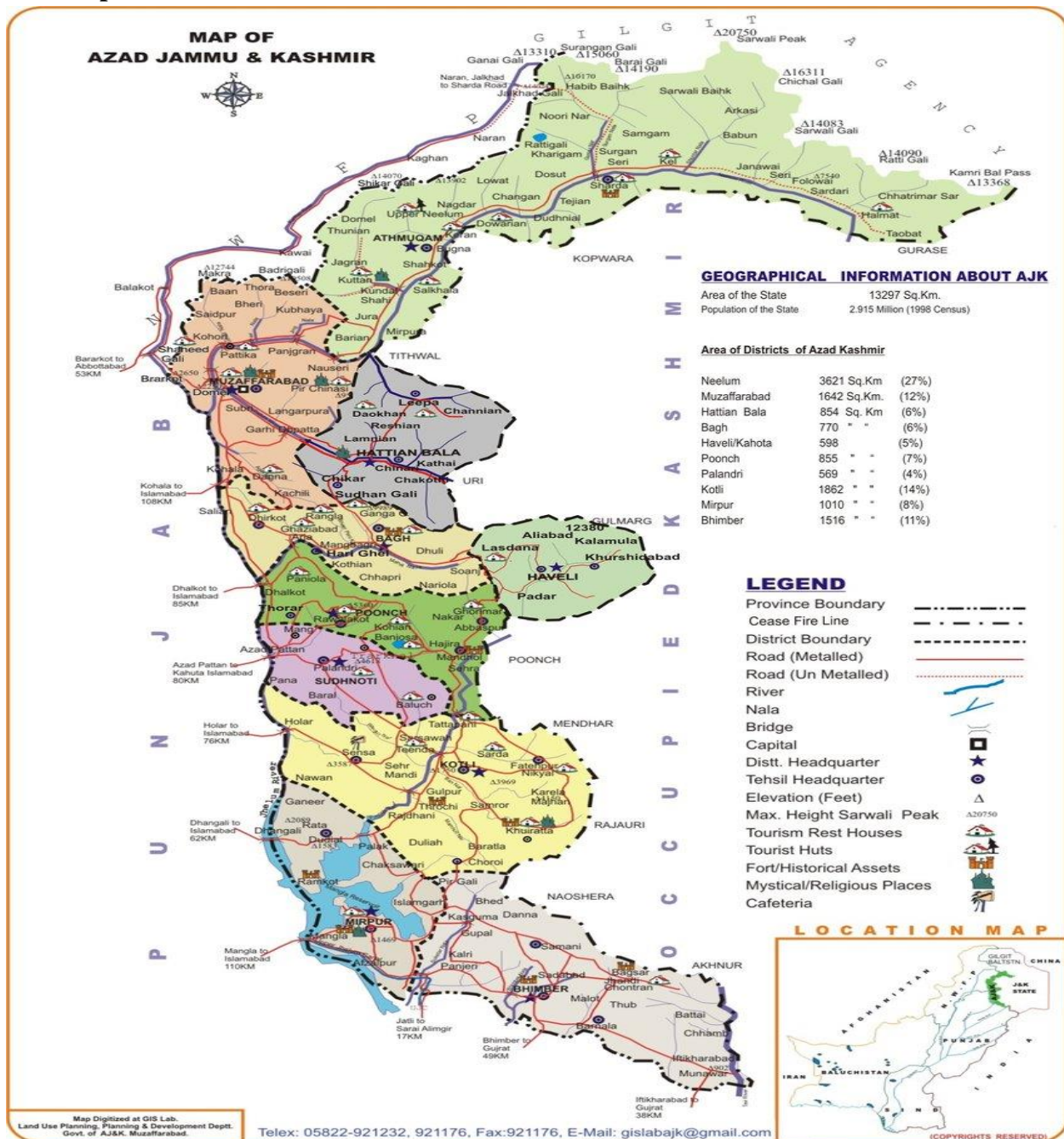
### 5.1 Map of Jammu and Kashmir



**Explanation;** The area in the map with dots consists of Azad Jammu and Kashmir and Gilgit-Baltistan Currently under the control of Pakistan. The light grey area in the map such as Aksai Chin and the territory acceded by Pakistan to China in 1963 are under the control of China and the rest of area with dark grey shade is under the control of India. The Princely state of Jammu and Kashmir shared borders with India, Pakistan, China and to some extent with Afghanistan as well.



## 5.2 Map of Azad Jammu and Kashmir



**Explanation;** The map shows the territory of Azad Jammu and Kashmir that gained independence from the autocratic rule of Maharaja Hari Singh on 24<sup>th</sup> of October 1947 and is currently under the control of Pakistan.

### 5.3 Treaty of Amritsar 1846

#### Text of Treaty of Amritsar 1846

March 16, 1846

The treaty between the British Government on the one part and Maharajah Gulab Singh of Jammu on the other concluded on the part of the British Government by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under the orders of the Rt. Hon. Sir Henry Hardinge, G.C.B., one of her Britannic Majesty's most Honorable Privy Council, Governor General of the possessions of the East India Company, to direct and control all the affairs in the East Indies and by Maharajah Gulab Singh in person - 1846.

##### Article 1

The British Government transfers and makes over forever in independent possession to Maharajah Gulab Singh and the heirs male of his body all the hilly or mountainous country with its dependencies situated to the eastward of the river Indus and the westward of the river Ravi including Chamba and excluding Lahul, being part of the territories ceded to the British Government by the Lahore State according to the provisions of Article IV of the Treaty of Lahore, dated 9th March, 1846.

##### Article 2

The eastern boundary of the tract transferred by the foregoing article to Maharajah Gulab Singh shall be laid down by the Commissioners appointed by the British Government and Maharajah Gulab Singh respectively for that purpose and shall be defined in a separate engagement after survey.

##### Article 3

In consideration of the transfer made to him and his heirs by the provisions of the foregoing article Maharajah Gulab Singh will pay to the British Government the sum of seventy-five lakhs of rupees (Nanukshahee), fifty lakhs to be paid on or before the 1st October of the current year, A.D., 1846.

##### Article 4

The limits of territories of Maharajah Gulab Singh shall not be at any time changed without concurrence of the British Government.

##### Article 5

Maharajah Gulab Singh will refer to the arbitration of the British Government any disputes or question that may arise between himself and the Government of Lahore or any other neighboring State, and will abide by the decision of the British Government.

##### Article 6

Maharajah Gulab Singh engages for himself and heirs to join, with the whole of his Military Forces, the British troops when employed within the hills or in the territories adjoining his possessions.

##### Article 7



Maharajah Gulab Singh engages never to take to retain in his service any British subject nor the subject of any European or American State without the consent of the British Government.

#### Article 8

Maharajah Gulab Singh engages to respect in regard to the territory transferred to him, the provisions of Articles V, VI and VII of the separate Engagement between the British Government and the Lahore Durbar, dated 11th March, 1846.

#### Article 9

The British Government will give its aid to Maharajah Gulab Singh in protecting his territories from external enemies.

#### Article 10

Maharajah Gulab Singh acknowledges the supremacy of the British Government and will in token of such supremacy present annually to the British Government one horse, twelve shawl goats of approved breed (six male and six female) and three pairs of Cashmere shawls.

This Treaty of ten articles has been this day settled by Frederick Currie, Esq. and Brevet-Major Henry Montgomery Lawrence, acting under directions of the Rt. Hon. Sir Henry Hardinge, Governor-General, on the part of the British Government and by Maharajah Gulab Singh in person, and the said Treaty has been this day ratified by the seal of the Rt. Hon. Sir Henry Hardinge, Governor-General. (Done at Amritsar the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-six, corresponding with the seventeenth day of Rubeel-ul-Awal (1262 Hijree).

(Signed) H. Hardinge (Seal)

(Signed) F. Currie

(Signed) H.M. Lawrence

Source: <http://www.kashmir-information.com/LegalDocs/TreatyofAmritsar.html>

## 5.4 Instrument of accession 1947

Text of Instrument of Accession October 26, 1947

Instrument of Accession executed by Maharajah Hari Singh on October 26, 1947

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 Deshадhipati, Ruler of Jammu & 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

Maharajadhiraj of Jammu and Kashmir State.

## 5.5 TRUCE AGREEMENT

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their Representatives and the Commission.

### A.

(1) As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

(2) The Government of Pakistan will use its best endeavor to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

(3) Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

### B.

(1) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II A2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission.

(2) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

(3) The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

### C.

(1) Upon signature, the full text of the Truce Agreement or communique containing the principles thereof as agreed upon between the two Governments and the Commission, will be made public.

### PART III

The Government of India and the Government of Pakistan reaffirm their wish 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.

The UNCIP unanimously adopted this Resolution on 13-8-1948. Members of the Commission: Argentina, Belgium, Colombia, Czechoslovakia and Uganda.

## 5.6 Bibliography

### Journals and E-books

- 1) Politics of Power-Sharing in Disputed Territories: A Case Study of the 13<sup>th</sup> Amendment in the Constitution of Azad Jammu and Kashmir  
<https://journals.sagepub.com/doi/full/10.1177/00219096211052267>
- 2) Self-determination: what lessons from Kashmir  
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/iicl31&div=4&id=&page=>
- 3) India's removal of Kashmir's special protection Status, An international wrongful Act  
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/miaicr28&div=20&id=&page=>
- 4) Status of AJK in Political Milieu  
[https://www.jstor.org/stable/42922642?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/42922642?seq=1#metadata_info_tab_contents)
- 5) The 14<sup>th</sup> Amendment Bill to the 1947 interim Constitution of so-called Azad Jammu and Kashmir reeks of subjugation and occupation  
<https://www.efsas.org/commentaries/14th-amendment-bill-to-1974-interim-constitution-of-so-called-azad-jk-is-subjugation-and-occupation/>
- 6) Kashmir and Article 370: A look at the cases in Supreme Court and where do they stand - Hindustan Times  
<https://www.hindustantimes.com/india-news/kashmir-and-article-370-a-look-at-the-cases-in-sc-and-where-do-they-stand/story-SLNajzn1cL3JNXuHH4eVdO.html>
- 7) India's Commitment of Plebiscite for the People of Kashmir  
<http://www.na.gov.pk/en/print.php?content.php&id=85>
- 8) Article 370: Going back 72 years in history - Hindustan Times  
<https://www.hindustantimes.com/india-news/article-370-going-back-72-years-in-history/story-Zed1cdCvbuopLu6RbtGt0J.html>

9) Laws recently passed by Parliament extended to Jammu & Kashmir - The Economic Times  
<https://m.economictimes.com/news/politics-and-nation/centre-notifies-implementation-of-11-central-laws-in-jammu-kashmir-changes-made-in-10-state-acts/articleshow/78516880.cms>

10) India lodges protest with Pakistan over 'AJK Constitution Act  
[https://www.business-standard.com/article/news-ians/india-lodges-protest-with-pakistan-over-ajk-constitution-act-118061101339\\_1.html](https://www.business-standard.com/article/news-ians/india-lodges-protest-with-pakistan-over-ajk-constitution-act-118061101339_1.html)

11) AJK history, Azad Jammu and Kashmir, official portal  
<https://www.ajk.gov.pk/history>

## **Books**

Ankit, R., 2016. *The Kashmir conflict*. 1st ed. 2 park square Milton Park Abingdon: routledge Taylor and Francis group,.

Hussain, S. (2021). *Kashmir in the Aftermath of Partition*. Cambridge University Press (Virtual Publishing).

Bose, S., & Jalal, A. (2021). *Kashmir and the future of south asia*(1st ed.). Taylor and francis.

Manski, W., & Yousuf, M. (2022). *Kashmir after 2019* (1st ed.). Sage publications.

Hussain, A. (2019). *The making of modern kashmir* (1st ed.). Taylor and francis.

Snedden, C. (2021). *Independent Kashmir* (1st ed.). Manchester University Press.

Sofi, W. (2021). *Autonomy of a state in a federation*. Palgrave Macmillan.

Widmalm, S. (2014). *Kashmir in Comparative Perspective*. Taylor and Francis.

Teng, M., Bhatt, R., & Kaul, S. (1999). *Kashmir constitutional history and documents* (2nd ed.). Jay Kay book house.

Snedden, C. (2012). *The untold story of the people of Azad Kashmir*. Columbia University Press.

*Kashmir: a disputed legacy, 1846-1990* / Alastair Lamb

*The Kashmir Dispute: 1947-2012* Noorani A.G.

