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**ABROGATION OF ARTICLE 370**

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**ABSTRACT**

Not only in India, but around the world, Article 35 A and Article 370 of the Indian Constitution continue to be contentious. It granted autonomy to the State of Jammu and Kashmir in India, which has a federal structure and also has a unitary ethos. Jammu & Kashmir became a hotbed of unrest as a result of this unequal distribution. The author of this essay strives to trace the origins and rationales for these clauses that finally resulted in the current threat, and does not confine herself to a full examination of Article 370, 35A, and its repercussions. Additionally, the paper seeks to unearth and illuminate the rationale for the criticized clauses, which have been mostly obscured by the ensuing mayhem. After recounting the history of Kashmir, the article brings the reader up to date with significant events in the Kashmir chronology.

It was necessary for the founding members of a democratic system of government to manage their interactions while also assuring the seamless operation of internal functions in the early stages of the system. Inconsistency of practises, which developed into traditions, and subsequently into conventions, which would encapsulate the essence of constitutional principles, was viewed as a primary means of ensuring certainty in this process. Traditions and conventions were seen as a means of ensuring certainty in this process. As a result of conventions, the operation of each individual constitutional player was brought into compliance with constitutional principles, giving rise to the name "constitutional convention." According to the Indian Constitutional law framework, conventions with support from judicial precedent come into effect only where there is a gap in the provisions of Constitution and do not supersede the Constitutional provisions. This contributes to the elements that influence the prevalence and

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validity of the norms in the first place. The Indian Constitution grants the Parliament broad powers in relation to the country's territory, and the Supreme Court has affirmed the Parliament's authority to provide some transitional provisions to newly acquired areas under the Constitution. A thorough examination of the nature of constitutional conventions is provided in this study, which also considers how the Parliament has dealt with territory acquisition and retention in the past. This is applied to the case of Jammu and Kashmir in light of the abrogation of Article 370 in order to observe the transmission of sovereignty over the territory, the nature of the transitional provisions granted to the incoming territory, and the time limits associated with those transitional provisions. This work comes to a culmination in the appropriate nature of India's ambitions in obtaining and holding territory, through an Instrument of Accession, constituting a convention from the time of independence till the present.

**KEYWORDS:** Constitution, Conventions, Territory, Instrument of Accession, Abrogation, Article 370.

## **INTRODUCTION**

Article 370 of the constitution of India accords Jammu and Kashmir a unique status in terms of the implementation of legislation, excluding those pertaining to international, external, and defence affairs, property ownership, and citizenship rights. It formed the ground for Jammu and Kashmir's admission to the Indian union at a time when former princely states were given the option of joining India or Pakistan following their independence from British control in 1947. The 1949 amendment exempts Jammu and Kashmir state from the Indian constitution. This Article precludes the State from enforcing even financial emergencies.<sup>2</sup> According to Article 370 of the Constitution of India, subject to Article 1, the state has the authority to have a separate constitution of its own and a flag and to prohibit outsiders certain property rights in the State, which means that the citizens of the State will be subject to rules, laws, and regulations which are distinct from those applicable in the whole of India.<sup>3</sup>

The relevance and importance of the said article is exemplified by the following sentences. On 26<sup>th</sup> of June and 7<sup>th</sup> of August, 1952, Jawaharlal Nehru stated in the Lok Sabha, "With all due

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<sup>2</sup>E.C.S. Wade and G.G. Phillips, *Constitutional and Administrative Law* (A.W. Bradley ed., 9th edn., Longman Publishing Group, 1977) 1, 5.

<sup>3</sup>Adarsh Sein Anand, "Accession of Jammu and Kashmir State - Historical & Legal Perspective" (2001) 43 *Journal of the Indian Law Institute* 455.

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respect to our Constitution, I say that it makes no difference what your Constitution says; if the people of Kashmir do not want it, it will not go there. Because, in any case, what is the alternative? Compulsion and coercion are the alternatives... We have fought the good fight for Kashmir on the battlefield... (and)...in several foreign capitals and at the United Nations, but most importantly, we have fought this struggle in the hearts and minds of the men and women of the State of Jammu and Kashmir. Because, ultimately - and I say this with the utmost respect for this Parliament - the choice will be made in the hearts and minds of the men and women of Kashmir, not in this Parliament, the United Nations, or anybody else." According to the United Front's minimum plan, "respecting Article 370 of the Constitution and the will of the people, the problems of Jammu and Kashmir shall be handled by granting that State's people the highest degree of autonomy." It was released on 5 June 1996.

The Indian Parliament has some limited authority to make laws in the State pursuant to this Article, which is limited to the items listed in the Union and Concurrent Lists of the VII Schedule that the "President of India declares correspond to the matters specified in the Instrument of Accession [Article 370(1)(b)(i)]." And those legislation shall be enacted only after "consultation" with the incumbent State Government. Second, the Parliament may pass legislation with the "consent" of the current State Government on topics different from those declared by the President<sup>4</sup> and specified by the President in an order [Article 370(1)(b)(ii)].

While the State of Jammu & Kashmir has a constitution of its own, some articles and provisions of the Indian Constitution may be applicable to it, subject to certain "exceptions and modifications indicated in a Presidential order that may be implemented only after consultation with the State Government [Article 370(1)(d)]."<sup>5</sup>

The Article was included into the Constitution of India as a "temporary measure." The Article is only temporary since the J&K Constituent Assembly was particularly empowered to finalize the connection between the State and the Union of India as per the constitution. And any revisions, additions, or exceptions to Article 370 that may become necessary were subject to Assembly approval. Thus, the term 'temporary' does not imply that the Article may be unilaterally amended. Sheikh Abdullah stated in the J&K Constituent Assembly, "I would like to emphasise

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<sup>4</sup>Reg. (Miller) v. Prime Minister, [2020] A.C. 373 : [2019] 3 WLR 589, 604 (39).

<sup>5</sup> B. Shiva Rao, *The Framing of India's Constitution* (Vol. 6, Universal Law Publishing Co., 2015) 950-953.

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that any suggestion of arbitrarily altering the basis of our relationship with India would not only violate the letter and spirit of the Constitution, but would also risk serious consequences for our State's harmonious association with India." The phrase 'temporary' has been employed in this context to reduce the complexity associated with amending the Indian Constitution whenever the need arises to repeal, alter, or expand the scope of Article 370 through an agreement.<sup>6</sup>

As per Article 370(3), the President has the power to declare, by public announcement, that the said article shall stop from being effective or shall remain effective with such exclusions and adjustments. However, the Constituent Assembly's recommendation "must be required." Since the Constituent Assembly ceased to function on November 17, 1956 and ceased to exist completely on January 26, 1957, "any alteration to Article 370 will need resort to Article 368 respecting Constitutional Amendment."<sup>7</sup>

However, under the "Constitution (Application to J&K) Order, 1950", no change to the Constitution applies to J&K until it is extended there by a Presidential Order under Article 370(1), which again requires the "consent of or consultation with the State Government. V.N. Shukla stated that the order would meet legal and political obstacles. The first legal challenge will originate in Kashmir. By repealing Article 370, the door is now open for an open Palestine-style independence fight within Kashmir," he explained. "As in the United States, India will face rising legal challenges and political resistance led by several prominent attorneys. These are likely to be heard by a Supreme Court constitutional bench."

### **HISTORY OF THE CONSTITUTION OF JAMMU AND KASHMIR**

Before we can appreciate the provision of Article 370, it's necessary to grasp its brief history. Following Partition in 1947, Maharaj Hari Singh Ji of J and K took a very long time in deciding whether to join India or Pak. From October 15, 1947 until March 5, 1948, Mehr Chand Mahajan of the Indian National Congress served as Prime Minister. Pakistan invaded Jammu and Kashmir on October 20, 1947, following the Muslim Pashtun tribal men of Waziristan. Maharaja Hari

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<sup>6</sup>Lala Ram v. Union of India, (2015) 5 SCC 813.

<sup>7</sup>S.P. Gupta v. Union of India, 1981 Supp SCC 87. This case revolved around the "practices" in the course of appointment of Additional Judges to various High Courts in conjunction with Independence of Judiciary as a feature of the Basic Structure of the Constitution. The Court looked into Constitutional conventions as the practices involved were spread over a considerable time span and their respective provisions were not completely expounded upon by the respective Constitutional provisions.

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Singh asked for military aid from Indian government following the invasion. Government forces from Pakistan began providing assistance to Pashtun tribesmen on 23<sup>rd</sup> October, 1947.

In a letter to the Governor General dated 26 October 1947, the Maharaja Hari Singh of Jammu and Kashmir, sought to accept to join the dominion of India on three grounds: foreign affairs, communications and defence. All princely kingdoms were requested to send delegates for the formation of the Constituent Assembly of India, whose primary task was to take the responsibility of drafting a constitution for the entire country. Additionally, they were encouraged to establish constituent assemblies for their own nations. Whereas the majority of states failed to convene assemblies on schedule.<sup>8</sup>

Prior to the actual accession, an “instrument of Accession” was signed between Jammu & Kashmir and India. Among all the provisions in the “Instrument of Accession”, the following handful are particularly significant. Clause V declared that without the agreement of the State, the Instrument could not be amended. "Nothing in this Instrument shall be interpreted to bind me in any way to adopt any future Constitution of India or to restrict my discretion in entering into agreements with the Government of India according to any such future Constitution," Clause VII said. “Kashmir was then ruled internally under the auspices of its own 1939 Constitution.” And Clause XVII said that "nothing in this Instrument impairs the continuation of my authority in and over this State, or the legitimacy of any legislation in effect in this State at the time."

Thus, Jammu & Kashmir kept a majority of its autonomy, ceding just a few subjects to the Union government at the center while being an integral part of the Union of India. Thus, At this point, J & K held power over citizens' status and a jurisdictional monopoly over civil and criminal affairs. Additionally, by declining to recognise India's future Constitution automatically, it cemented the concept that the State will continue to be ruled under its own constitutional framework. The Indian Constitution was responsible for upholding and regulating this dual system.

The Governor-General accepted the offer on 27 October 1947, subject to certain conditions. On October 30, 1947, Maharaja Hari Singh appointed Sheikh Mohammed Abdullah as Emergency

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<sup>8</sup>U.N.R. Rao v. Indira Gandhi, (1971) 2 SCC 63 (3). The learned Chief Justice, while deciding the role of the Prime Minister after the dissolution of the House of the People, laid down the scope of Constitutional Conventions as measured against the written word of the Constitution and also the role of factual matrix being of prime importance in determining cases of Constitutional importance.

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Administrator of the state of Jammu and Kashmir. Additionally, India reported the Jammu and Kashmir conflict to the United Nations Security Council on January 1, 1948. On March 5, 1948, an Interim Government was constituted, with the Sheikh as Prime Minister. And the Maharaja issued a proclamation establishing a responsible government consisting of a Council of Ministers led by the Prime Minister, tasked with the responsibility of establishing a National Assembly based on adult franchise to write the State's Constitution. Meanwhile, the United Nations Security Council brokered a ceasefire deal between India and Pakistan on December 31, 1948. Approximately 8,000 people were murdered and 1.5 million people were displaced during the crisis.

Over May 15 and 16, 1949, negotiations on Kashmir's future were held at Vallabhbhai Patel's house in New Delhi. Nehru and Abdullah were also in attendance. The primary issues discussed were "the creation of a State Constitution" and "the subjects to which the State should accede to the Union of India." On the former, Nehru stated in a May 18 letter to the Sheikh that both Patel and he agreed that the problem should be decided by the State's Constituent Assembly. "With regards to the Jammu and Kashmir State, it has now been admitted to the Indian Union in three areas: foreign affairs, defence, and communications. It will be up to the State's Constituent Assembly, when formed, to choose which other topics the State may accede to." Article 370 exemplifies this fundamental premise, which has been reiteratively stated throughout.<sup>9</sup>

Mirza Mammad Afzal Beg, Sheikh Abdullah, Moti Ram Bagda and Maulana Mohammed Saeed Masoodi became members of the Constituent Assembly of India on June 16, 1949, and intensive talks over Article 370 started. N. Gopaldaswamy Ayyangar attempted to reconcile Patel and Abdullah. On October 16, an agreed draught was introduced in the Constituent Assembly the next day, but Ayyangar unilaterally revised it. "A small alteration," he conceded in an October 18 letter to the Sheikh. Patel verified it to Nehru upon his return from the United States on November 3. Beg and Abdullah were in the lobby when they learned of the change and rushed to the House. In its original form, the plan would have made it difficult to dismiss the Sheikh in 1953.<sup>10</sup>

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<sup>9</sup>"The Constituent Assembly (Legislative) Debates" Vol. I, 17-11-1947 to 27-11-1947, 209-225  
<[https://eparlib.nic.in/handle/123456789/759937?view\\_type=browse](https://eparlib.nic.in/handle/123456789/759937?view_type=browse)> accessed 20-4-2020.

<sup>10</sup>"The Constituent Assembly Debates" Vol. VIII, 27-5-1949  
<[https://www.constitutionofindia.net/constitution\\_assembly\\_debates/volume/8/1949-05-27](https://www.constitutionofindia.net/constitution_assembly_debates/volume/8/1949-05-27)> accessed 20-4-2020.

Article 370 was a derivative of Article 306A of Draft Constitution, which was debated in the Constituent Assembly on October 17, 1949. On 17th October 1949, Gopalswami Ayyengar stated in the Constituent Assembly about Draft 306 that “a war has been raging inside the boundaries of Jammu and Kashmir. The state's conditions remain peculiar and aberrant. With respect to Jammu and Kashmir, we are enmeshed with the United Nations. A portion of the State remains in the hands of insurgents and adversaries. At the moment, the legislature of the State, known as the Praja Sabha, is defunct. Now, if you recall the viewpoints I expressed previously, it is an unavoidable conclusion that, at the time, we can only construct an interim system. Article 306A is a start at establishing such a system.”

On 25 November 1949, Yuvraj Karan Singh issued a proclamation commanding the State's Constituent Assembly to adopt the Indian Constitution insofar as it applied to Jammu and Kashmir in order to manage the State's relationship with the envisaged Union of India. On January 26, 1950, the President issued the first Order according to Article 370, extending to the State some provisions of the new Constitution. The President issued the Constitution (Application to J&K) Order, 1950, on 26 January 1950.

The Constitution (Application to Jammu and Kashmir) Order, 1950, came into force concurrently with the Indian Constitution on 26 January 1950. It enumerated the Indian Constitution's topics and articles that related to the Instrument of Accession, as required by Article 370's clause b(i). It referred to a total of thirty-eight items from the Union List on which the Parliament might pass legislation for the State. Certain sections of the Indian Constitution have been extended to Jammu and Kashmir, subject to the state government's agreement on revisions and exclusions.

On 14 May 1954, the President issued the Constitution (Application to Jammu and Kashmir) Order, 1954, pursuant to the authority provided by Article 370. It succeeded the 1950 Order. It expanded the scope of the Indian Constitution's application in the State, subject to certain limitations. The Jammu Kashmir Constitution was approved on 17 November 1956. However, on 25 January 1957, the state's constituent legislature disbanded itself without advocating either the repeal or change of Article 370.<sup>11</sup>

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<sup>11</sup>The Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272), dated the 5-8-2019.

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## **EVOLUTION OF ARTICLE 370**

The first amendment made to the Article was through the Presidential Order of 1950, in which Article 235 of the Indian Constitution was made inapplicable to Jammu & Kashmir, Article 9 was made partially applicable, and Article 29 was made applicable in altered form. This order was superseded by the Presidential order of 1954 which was issued on the request of the government on 15 November 1952, which replaced the phrase “recognised by the President as the Maharaja of Jammu and Kashmir” by “recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadr-i-Riyasat”. “The amendment was a symbol of abolition of the monarchy from Jammu and Kashmir. The next amendment came in the year 1954 on 14 May which was a comprehensive order seeking to implement the 1952 Delhi Agreement. Debatably it went further than the Delhi Agreement in some respects.”

The following were the points seeking implementation:

1. Extension of citizenship to the ‘permanent residents’ of Jammu & Kashmir formerly they were state topics.
2. Concurrently, the Article 35A was added to the Constitution, authorising the state assembly to act on the privileges of permanent residents with relation to immovable property, settlement in the state and employment.
3. The Central Government was given power to declare national emergency in the case of foreign assault. However, its right to do so for internal disturbances may be employed only with the permission of the State Government.
4. The basic rights of the Indian constitution were extended to the state. However, the State Legislature was empowered to act on preventive detention and the State's land reform law was also safeguarded.
5. The jurisdiction of the Supreme Court of India was enlarged to the State.

In addition to this, certain provisions which were left not decided in Delhi Agreement were also brought into action like financial and other relations between the State and the Center were placed at the same pedestal as any other States and custom duties of the States were abolished.

Additional Presidential orders were issued between 11 February 1956 and 19 February 1994, making several other parts of the Indian Constitution applicable to Jammu and Kashmir, in

addition to these initial orders, which were issued between 11 February 1956 and 19 February 1994. All of these directives were issued with the "concurrence of the Government of the State," and there was no Constituent Assembly to approve or disapprove of them. Some of these directives, on the other hand, were issued under President's authority or when the state had "no state government at all," as the case may be. According to Cottrell, all of these directives had been issued as updates to the Presidential Order of 1954 rather than as replacements for it, probably because their legitimacy was in question.

### **CONTROVERSIAL STATUS OF JAMMU AND KASHMIR**

There has and always will be a controversy surrounding the process of annexing Jammu and Kashmir to India. According to the United Nations General Assembly Resolutions, for two distinct states to associate, there must first be association as a result of free and voluntary choice by the people of the territory concerned through a democratic process, which was completely absent in the case of Jammu & Kashmir, and the entire accession was based only on the decision of a Ruler.

Second, it should be one that respects the territory's "individuality and cultural characteristics". In this case, the Indian Constitution protects J&K's 'individuality and cultural characteristics'; however, even though it retains some of its sovereignty, it is not truly independent and instead seeks to become a "integral part" of the Indian Union, as defined in its own constitution, with its citizens being Indian nationals.<sup>12</sup>

As a result, it cannot be described as free integration of sovereign nations under international law in accordance with Principle VII, because seeking more integration is not synonymous with being integrated. While both the Instrument of Accession and the Delhi Agreement might be considered "international" instruments, the Resolution also suggests that inhabitants of both regions will have equal status upon integration.

However, as is well known, J&K's permanent inhabitants are immune from Article 14 of the Indian Constitution, and their advantages extend beyond land purchase to include priority for the majority of local government posts and the courts.

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<sup>12</sup>KesavanandaBharati v. State of Kerala, (1973) 4 SCC 225.

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In addition, existing governments are required to recognise a new state's application to become a member of the international community in line with the standards of recognition. Hall and Kelson, on the other hand, claim that recognition is not essential in order to become a member of the worldwide community.<sup>13</sup> The state of Jammu and Kashmir was neither a sovereign independent state nor a Res Nullius capable of being invaded by another in this particular circumstance. In the case, the Jammu and Kashmir High Court observed that, prior to the country's partition, the ruler of the state was subject to the British crown's external sovereignty, with only internal sovereignty remaining until the signing of the instrument of accession with India. This view was also supported by the Indian government. In the aftermath of the execution of the document of accession, Kashmir's accession to India became a legally binding legal fact. The moment Kashmir's ruler signed the instrument of accession in favour of India, the state's constitutional ability to enter into any agreement with a foreign country was terminated. The assumption that India lacks the constitutional right to enter into any kind of agreement with Pakistan upon accession is therefore wrong. On the other hand, it is important to note that neither the Indian government nor the United Nations Commission for India and Pakistan have granted De Facto or De Jure recognition to the Azad Kashmir government that has so far been established in the territory of the state that has been illegally occupied by Pakistan. Even the Pakistani government has not recognised them in an official manner. Because the Maharaja of the state was the only qualified authority to execute the deed of admission, we must assume that he did not have de facto control over the whole state area in accordance with international law.

Additionally, during the British era, Jammu and Kashmir were a princely kingdom controlled by an heir apparent Maharaja. Until 15 August 1947, it was an independent state with treaty-based ties subordinate to the English monarchy. As with other Indian states, it lacked an international presence. At the time of Indian independence, the monarch of the state did not wish to join either India or Pakistan; rather, the ruler of Jammu & Kashmir desired an independent Kashmir and envisioned it as Asia's Switzerland. In this regard, the Hon'ble Supreme Court stated in *Virender Singh v. State of UP* that moral considerations cannot trump the legislative provision, which was enacted in 1947 as a pledge by the Indian government to the state's people to voice their preferences.

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<sup>13</sup>I.R. Coelho v. State of T.N., (1999) 7 SCC 580.

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Concerning the legality of the instrument of accession, Compel Johnson stated that it is beyond doubt and that accession by state has complete validity both in terms of the British government and M.A. Jinnah's expressed policy statements that Lord Mountbatten's personal letter to Hari Singh that the accession of state has been subject to any dispute; the question should be resolved by reference to the people, and as a result, Pakistan did not recognise the accession of the state.

Pakistan regards this accession as a fraud perpetrated on the state's people by its cowardly ruler with the aggressive assistance of India; however, the same thing was presented by Sir Mohd. Zafarullh Khan, Pakistan's foreign minister in 1951, along with a challenge to the king's authority to sign such documents because he had lost the confidence of his people; however, Pak's statement is completely false and without foundation, as India did not commit any fraud on Kashmir. Moreover, claiming that a ruler of state lacked the authority to sign an instrument of accession is not legally valid, and on the other hand, asserting that Hari Singh lacked the authority to sign an instrument of accession and, as a result, petitioning the Maharaja to establish his right to sign would imply that the government of India was interfering with a state's internal affairs, which is prohibited under international law.<sup>14</sup>

Supporting a referendum in one region of the Indian union indicates the possibility of secession, although the constitution forbids secession in the existing setting of the country. It was a foregone conclusion that the state would be admitted, considering the state's tight political connection with the Indian government. According to current consensus, admission occurred on the state's own volition and not as a result of pressure, coercion, or fraud, as Pakistan claims. It acts as India's title or deed to Kashmir, depending on how you look at it. Previously, the National Conference, a political party in the state, delegated Ghulam MohdSadiq to approach the Pakistan government at the highest level in order to recognise the democratic right of the Kashmiri people to self-determination and to respect the sovereign will of the Kashmiri people on the question of free association with either India or Pakistan, but all efforts were in vain, according to Sadiq, who is now acting head of administration.

As a result, the legitimacy of the document of accession is unquestionable. According to Alastair Lamb, the Maharaja of Kashmir was well within his rights in making the final decision to accede to India, which had nothing to do with communal issues, implying that the state's accession was

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<sup>14</sup>Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184.

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substantially and procedurally correct and complete in accordance with the provisions of section 6 of the Government of India Act, 1935, because by instrument of accession, Jammu and Kashmir becomes legally and irrevocably an integra.

Lord Mountbatten, then-Governor-General of India, stated in a letter to the state's ruler that once law and order were restored in Kashmir, and the Indian government followed their policy, any disputed accession would be resolved through a reference to the people as an extra-legal assurance given by the Indian government.<sup>15</sup>

Now the question arises as to why India expressed such a wish, and perhaps the answer is that the government's policy regarding Kashmir's accession to India has always been to base their political arrangements on popular will, as it favoured plebiscite in Junagar princely state and advised the state of J & K to hold elections to the state's constituent assembly on the basis of adult suffrage as well.

As a result, the J&K Constituent Assembly was established with two primary functions: the first was to create the state's constitution, and the second was to decide on the instrument of accession performed by the state's ruler. This fear over the validity of accession was completely dismissed, and accession was backed by the state's major political party, the National Conference, both in the constituent assembly and outside the house during negotiations with India on the terms of accession. In this approach, the Indian government seeks to explain its position ethically as well as legally, as any such pronouncement had no legal effect on the accession. The union government's commitment may be justified on the basis of doubt over a conflict between the people and the ruler of the state. Thus, in light of the circumstances surrounding the state's accession to India, the government of India decided that the constitution of the state and the authority of the union of India were to be determined by the people of J&K acting via their constituent assembly. While the state's membership to the union of India was validated by the state's constituent assembly, which was legitimately chosen by the people to write the state's constitution. As a result, the state of Jammu and Kashmir is an integral part of India. Additionally, Justice A.S. Anand stated in this regard, "No one, not even the harshest critic, has ever questioned the constituent assembly's representative nature." Self-determination is a one-

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<sup>15</sup>Cristina E. Parau, "Core Principles of the Traditional British Constitutions"  
<[https://www.politics.ox.ac.uk/materials/Core\\_Principles\\_of\\_the\\_British\\_Constitutions.pdf](https://www.politics.ox.ac.uk/materials/Core_Principles_of_the_British_Constitutions.pdf)> accessed.

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time event in which the state's citizens made the ultimate choice; hence, the issue of subsequent "self-determination or plebiscite" does not arise legally or ethically<sup>16</sup>. The people of Jammu and Kashmir have officially chosen a constituent assembly that reflects their preferences. As a result, the state's admission to India can no longer be questioned or denied." As a result, it may be stated that the state's admission to the union of India is full, final, and irreversible, as well as legal and constitutionally valid, having been confirmed by the state's people through a properly elected constituent assembly.

Additionally, Sheikh Mohd. Abdulla, the national conference's head, stated that "Kashmir is to be a shared raj of all communities." Therefore, our first demand is that power be democratically transferred to the people of Kashmir, and then we will decide whether to join India or Pakistan.....he further asserted that if the state's forty lac residents are bypassed and the state declares its accession to India or Pakistan, I will raise the banner of revolt. Naturally, we gravitate toward the dominion that recognised and supported our own yearning for liberty. That is why I am working for a coalition government comprised of Hindus, Sikhs, and Muslims".

Sheikh Mohammed Abdulla stated on 17 February 1958, following his release from detention, that until a final decision on the future disposition of the state is reached, the political insecurity, economic distress, and other mental strains, including misery, that the state's people are currently experiencing cannot be resolved. The final choice about the state's political affiliation belongs to the people, which can be exercised by enabling them to exercise their right to self-determination under the supervision of an independent international authority.

### **POST 1957 JAMMU AND KASHMIR**

#### **TASHKENT DECLARATION, 1966**

This agreement was signed by India's first Prime Minister Lal Bahadur Shastri and Pakistan's President Ayub Khan, in which it was decided that India and Pakistan's ties would be founded on the principle of non-interference in each other's domestic affairs, as specified in paragraph III. That they will oppose propaganda aimed against them while simultaneously promoting propaganda that advances the establishment of cordial ties between the two countries<sup>81</sup>. In 1966, India's foreign minister Sardar Swarn Singh stated in the United Nations General Assembly that

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<sup>16</sup>Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India, (1971) 1 SCC 85 [12]-[14] (Privy Purses case).

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he would "repeat my previous year's statement on the Kashmir issue." As a result, it is vital for me to state unequivocally my government's viewpoint. Legally, constitutionally, ethically, and according to popular will, the state of Jammu and Kashmir is an important component of the Indian union. Participation in the election held there on a recurring basis. He continued by stating that there is no other way to make state people's independence a reality.

### **SHIMLA AGREEMENT, 1971**

The bilateral agreement between India and Pakistan was signed on 2-7-1971, in which both countries pledged that the United Nations charter would govern their relations and that the fundamental issues and causes of conflict that had weakened relations between the two states for the previous 25 years would be resolved peacefully. There will be no third-party intervention in bilateral matters. That they will do all possible to avoid hostile propaganda directed at one another. The line of control established by the cease-fire agreement of 17-12-1971 shall be observed without regard for either side's recognised position, and both parties shall refrain from threatening to use force in violation of this line.

### **KASHMIR ACCORD, 1974**

Sheikh Mohd Abdulla said in January 1972 that he had abandoned hopes of garnering support for independence as an option from Pakistan and that he now regarded the state's future as an autonomous area inside the union of India, a change brought about by the 1971 India-Pakistan war. Prime Minister Indira Gandhi applauded the move, and discussions between Beg and diplomat G. Parthasarathy ensued, resulting in the signing of the Kashmir Accord between the governments of India and the state of J & K. The proposal for a new election in the state was flatly refused. It was decided that the state of J&K, as a constituent entity of India, would continue to be regulated by article 370 of the Indian constitution in its interactions with the union.

Article 248 of the Indian Constitution retains the state's residuary power. Additionally, it was decided that parliament will retain the authority to enact laws prohibiting activities aimed at denying, questioning, or disrupting India's sovereignty or territorial integrity, bringing about cession of a portion of India's territory or secession of a portion of India's territory from the union, or causing insult to the Indian national flag, Indian national anthem, or Indian

constitution. Any section of the Indian Constitution that is applied to J&K with adaptation or modification may be changed or repealed by presidential decree according to article 370. However, all those clauses that are imposed without adaptation or modification are irreversible, provided that each individual proposal in this regard is evaluated on its own merits.

### **LAHORE DECLARATION, 1999**

After the Kargil conflict in 1999, Prime Minister Atal Behari Vajpayee of India and Pakistan's Prime Minister Muhammad Nawaz Sharif agreed to share a vision of peace and stability between their countries, as well as growth and prosperity for their peoples. They reaffirmed their commitment to the UN Charter's values and purposes, as well as internationally recognised norms of peaceful coexistence. They reaffirmed both nations' commitment to implementing the Shimla accord in its entirety and resolving all remaining concerns, including Kashmir.

### **PRESIDENTIAL ORDER, 2019**

On 5 August 2019, the President of India issued the Constitution (Application to Jammu and Kashmir) Order, 2019 according to Article 370, superseding the 1954 Constitution (Application to Jammu and Kashmir) Order. Amit Shah, the Home Minister, declared the same in the Rajya Sabha. The ruling declared that from now on, Jammu and Kashmir shall be subject to the articles of the Indian Constitution. This effectively meant that the distinct Constitution of Jammu and Kashmir was repealed. The President signed the order with the "consent of the State Government of Jammu and Kashmir," which appears to signify the Governor chosen by the Union government. Additionally, the Presidential Order of 2019 added a clause (4) to Article 367, with four sub-clauses, titled "interpretations." The term "Sadar-i-Riyasat working with the assistance and advice of the Council of Ministers" shall be interpreted as "Governor of Jammu and Kashmir." The term "State government" refers to the Governor. The word "Constituent Assembly of the State referred to in article (2)" shall be substituted for "Legislative Assembly of the State" in the proviso to clause (3) of Article 370.

According to Jill Cottrell, other Presidential decrees under Article 370 have been issued in similar circumstances since 1954, when the state was under President's administration. In these circumstances, the Union government defined "state government consent" to imply the Governor.

Immediately after the Rajya Sabha debated the Presidential Order 2019, Home Minister Amit Shah filed a resolution urging that the president make an order under Article 370(3) nullifying all sections of Article 370. After both houses of parliament approved the resolution, the President issued Constitutional Order 273 on 6 August 2019, replacing the existing language of Article 370 with the following:

"All provisions of this Constitution, as amended from time to time, shall apply to the State of Jammu and Kashmir, notwithstanding anything to the contrary contained in article 152 or article 308 or any other provision of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom, or usage having the force of law in the territory"

### **UNION TERRITORY OF JAMMU AND KASHMIR**

The Jammu and Kashmir Reorganisation Bill, 2019 was introduced in the Rajya Sabha on August 5, 2019, and proposes to divide Jammu and Kashmir into two different union territories, namely the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh. There would be a legislative branch in the union territory of Jammu and Kashmir, but not in the union territory of Ladakh, according to the proposed legislation. With 125 votes in favour and 61 votes against, the Rajya Sabha had cleared the legislation before the end of the day on Tuesday, March 26. (67 percent ). 370 votes were cast in favour and just 70 votes were cast against the bill in the Lok Sabha the next day (84 percent ). After being signed by the president, the measure was elevated to the status of an Act. The two union zones are scheduled to be founded on National Unity Day, which falls on October 31st this year. Several Lieutenant Governors have been nominated by the President of India, including a Lieutenant Governor for Jammu & Kashmir and a Lieutenant Governor for Ladakh. Lt. Governors were sworn in by Justice Gita Mittal, the Chief Justice of the Jammu and Kashmir High Court, on October 31st, 2019 - first in Leh for the Ladakh UT and afterwards in Srinagar for the Jammu and Kashmir UT — in separate ceremonies. Article 356 of the Indian Constitution establishes President's Rule, which came to an end on October 30, 2019, in the state of Jammu and Kashmir.