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## CONSTITUTIONAL STATUS OF JAMMU AND KASHMIR UNDER ARTICLE 370

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### ABSTRACT

*To understand the constitutional position of the state of Jammu and Kashmir in relation to other states of India, it is necessary to know the historical background and political dynamics of the state. This paper examines the constitutional status of Jammu and Kashmir under Article 370. The study reveals that the state of Jammu and Kashmir is an integral state of India, yet, its status is different from other states and the Constitution of India applies to this state and not the property. -Deprived but by virtue of the Instrument of Accession signed between Maharaja Hari Singh and the then Governor General of India Lord Mountbatten and subject to its terms and conditions. The status of the state is dealt with under Article 370 of the Constitution of India. Article 370 of the Indian constitution gave special status to Jammu and Kashmir, a region located in the northern part of Indian subcontinent and part of the larger region of Kashmir which has been the subject of a dispute between India, Pakistan and China since 1947. Jammu and Kashmir was administered by India as a state from 1952 to 31 October 2019, and Article 370 conferred on it the power to have a separate constitution, a state flag, and autonomy of internal administration. Keywords: Jammu & Kashmir, historical background, Politics dynamics of the state, Article 370, constitution*

### INTRODUCTION

Jammu and Kashmir is an Indian state. It is largely located in the Himalayan Mountains and has a southern border with the states of Himachal Pradesh and Punjab. Jammu and Kashmir has an international boundary with China in the north and east, and the Line of Control divides it from Pakistani-controlled regions in the west and northwest, respectively, of Pakistan Occupied Kashmir (POK) and Gilgit-Baltistan. It has enormous strategic significance for India since it borders two key foreign countries and is adjacent to Central Republican Asian states. The state has a population of more than 5987389 people and an area of 84.471 square miles. It consists of 58 cities and 6758 villages.[1]

Kashmir is strategically important since it is located at the apex of the Indo-Pakistan subcontinent, with Tibet to the east, Sinkiang, a Chinese province, to the north-east, Afghanistan, and Russia and Turkestan a few miles away. The real and prospective importance of Kashmir has piqued the interest of authorities in neighbouring nations. [2]

This land is contested among China, India, and Pakistan. It was once a part of the old Princely State of Jammu and Kashmir, which ruled the more significant historic province of Kashmir. Pakistan, which maintains the territory is disputed, refers to it as Indian-occupied Kashmir or Indian-held Kashmir, although other international organisations, including the United Nations, refer to it as Indian-administered Kashmir. Pakistan-controlled Kashmir is known as Pakistan-occupied Kashmir or POK within India, "Azad" Jammu and Kashmir in Pakistan, and Pakistan-administered Kashmir or Pakistan-controlled Kashmir in general.

Jammu and Kashmir is divided into three regions: Jammu, the Kashmir valley, and the Ladakh area. The summer capital is Srinagar, and the winter capital is Jammu. Although the Kashmir valley is known for its stunning mountain scenery, Jammu's numerous shrines draw a considerable number of Hindu visitors each year. Ladakh is regarded as "Little Tibet" for its secluded alpine beauty and Buddhist culture.

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From 1952 until 31 October 2019, Jammu and Kashmir was ruled as a state by India, and Article 370 granted it the authority to have a distinct constitution, a state flag, and internal administrative autonomy.[3]

Part XXI of the Indian constitution, headed "Temporary, Transitional, and Special Provisions," contains Article 370. It said that the Jammu and Kashmir Constituent Assembly would be given the authority to recommend the degree to which the Indian constitution would apply to the state. The state legislature might potentially repeal Article 370 entirely, in which case the whole Indian Constitution would apply to the state. Following the convening of the state constituent assembly, it suggested the provisions of the Indian constitution that should apply to the state, on the basis of which the 1954 Presidential Order was issued. Because the state constituent assembly disbanded without requesting that Item 370 be repealed, the article was regarded to be a permanent element of the Indian Constitution.[4]

The Government of India issued a Presidential Decree on 5 August 2019, overriding the 1954 order and making the sections of the Indian constitution applicable to Jammu and Kashmir. The ruling was based on a resolution approved with a two-thirds majority in both houses of India's parliament. On August 6, another judgement rendered all of Article 370's clauses ineffective, with the exception of clause 1.[5]

Furthermore, the Jammu and Kashmir Reorganisation Act, 2019, was enacted by parliament, establishing the split of the state of Jammu and Kashmir into two union territories to be known as the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh.[6]

## **POLITICAL DYNAMICS AND MAKING OF THE STATE CONSTITUTION PROCLAMATION BY MAHARAJA SIR HARI SINGH**

In line with Article 8 of the Instrument of Accession, the State Government desired to draught its own Constitution in conformity with the Constitution of India. This is also regarded to be in accordance with the wishes of the people of the state. The Government of India also proclaimed that, notwithstanding the State of Jammu and Kashmir's accession to India by the then-ruler, the future Constitution of the State, as well as its relationship with India, would be decided by an elected Constituent Assembly of the State.

In 1947, Maharaja Sir Hari Singh nominated his former foe, Sheikh Abdullah, as the State's Emergency Administrator. On March 5, 1948, Sir Hari Singh made the following proclamation, prompted by the circumstances and the people.[7]

"In accordance with the traditions of my dynasty I have from time to time, provided for increasing associations of my people with the administration of the State with the object of realising the goal full responsible Government at as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (Act XIV of 1996), established a Constitutional Government with a Council of Ministers, a legislature with a majority of elected members and Independent Judiciary;

I have noted with satisfaction and pride the progress made thus far, as well as my people's legitimate desire for the immediate establishment of a fully democratic constitution based on adult franchise, with a hereditary Ruler from my dynasty as the constitutional head of an Executive accountable to the Legislature. I have already nominated Sheikh Mohammed Abdullah, the popular leader of my people, as the Head of the Emergency Administration. It is now my goal to replace the Emergency Administrator with a popular Interim Government and to provide for its rights, responsibilities and tasks, until the adoption of a genuinely democratic Constitution".

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### **THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1950**

In order to exercise the powers conferred by Article 370(1)(ii), the President of India issued the Constitution (Application to Jammu and Kashmir) Order, 1950, in consultation with the Government of Jammu and Kashmir, which specified the matters over which the Union Parliament would have jurisdiction to make laws for the said State. The Order's subject matter was primarily concerned with the development of the themes already described in the "Instrument of Accession," although significant additions were also made. Two new schedules have been added.[8]

The first schedule dealt with the Union Parliament's jurisdiction over the state and specified the relevant topics in the Union List of the Seventh Schedule to the Indian Constitution. Parliament's authority to establish laws for the State was restricted to the items listed in this schedule. The items were as follows:

- Defence: Entries 1 to 6.
- Preventive Detention for the reasons connected with defence, foreign affairs and the security of India: Entry 9.
- Foreign Affairs: Entries 10 to 22.
- Communications: Entries 25 to 31.
- Trade and Commerce with foreign countries: Entry 41.
- Matters relating to Parliament: Entries 72 to 74.
- Union Executive and Supreme Court: Entries 93 to 96.
- Some other Entries like those of 'Audit of accounts' (Entry 76) and Railways (Entry 22) were applied with modifications.

As a result of the adoption of this schedule, both the Concurrent and the State List became inapplicable to the state of Jammu and Kashmir. Furthermore, anything not included in the First Schedule was solely within the purview of the State. In fact, this meant that the residuary authority, which was vested in the Centre in the case of other Indian states, was to be transferred to the state in the case of Kashmir. The Second Schedule listed the Constitutional provisions that, in addition to Articles 2 and 370, were to apply to Kashmir.

### **THE DELHI AGREEMENT, 1952**

After the State's Constituent Assembly made the aforementioned critical choices, it was determined that the Indian Government's approval was required. As a result, representatives from the Kashmir government met with representatives from the Indian government and reached an agreement.[9]

This arrangement was later on known as the "Delhi Agreement, 1952". The main features of this agreement were:

- In light of the Jammu and Kashmir Constituent Assembly's uniform and consistent position that sovereignty in all matters other than those specified in the Instrument of Accession continues to reside in the State, the Government of India agreed that, while the residuary powers of legislature vested in the Centre in respect of all States other than Jammu and Kashmir, they vested in the State itself;
- It was agreed between two governments that, in accordance with Article 5 of the Indian Constitution, persons who have their domicile in Jammu and Kashmir shall be regarded as citizens of India, but the State legislature was given power to make laws for conferring special rights and privileges on the "State subjects" in view of the "State Subject notifications of 1927 and 1932.
- Because the President of India commands the same level of respect in the State as he does in the other Units of India, Articles 52 to 62 of the Constitution should apply to the

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State. It was also agreed that the President of India would have the authority to grant reprieves, pardons, and sentence reductions, among other things;

- The Union Government agreed that the State should have its own flag in addition to the Union flag, but the State Government agreed that the State flag would not be a rival of the Union flag. [10]
- There was complete agreement on the position of the Sadar-i-Riyasat; even though the Sadar-i-Riyasat was to be elected by the State Legislature, he had to be recognised by the President of India before being installed as such; in other Indian States, the Head of the State was appointed by the President and was as such his nominee, but the person to be appointed as the Head had to be acceptable to the Government of that State; no person who is not accept.
- In terms of fundamental rights, the parties agreed on certain basic concepts; it was decided that the citizens of the State would have fundamental rights. However, due to the peculiar position of the State, the entire chapter relating to "Fundamental Rights" of the Indian Constitution could not be made applicable to the State, leaving the question of whether the chapter on fundamental rights should form a part of the State Constitution or of the Indian Constitution as applicable to the State.
- In terms of the Supreme Court of India's jurisdiction, it was agreed that, for the time being, due to the presence of the Board of Judicial Advisers in the State, which was the highest judicial authority in the State, the Supreme Court should only have appellate jurisdiction.
- There was a lot of debate about the "Emergency Powers"; the Government of India insisted on applying Article 352, which empowers the President to declare a general emergency in the State; the State Government argued that in the event of war or external aggression, the Government of India would have full authority to take steps and declare an emergency, but the State delegation refused.

### **THE SPECIAL POSITION OF KASHMIR IN THE INDIAN UNION**

With the accession of the State of Jammu and Kashmir to India, the Government of India gained jurisdiction in areas of External Affairs, Defence, and Communications, and the Union Parliament was given the authority to create laws for the State only for those three reasons. In any other topic, the Union Parliament lacked authority. Insofar as the internal administration of the State was concerned, the Ruler retained sovereignty. This was in accordance with Clause 8 of the Instrument of Accession: "Nothing in this Instrument affects the continuing of my sovereignty in and over this State, or unless as provided by or under this Instrument, the exercise of any power, authority and right presently possessed by me as Ruler of this State or the validity of any legislation at present in effect in this State".[11].

The retaining of sovereignty by the States even after completing the Instrument of Accession and acceding to the Dominion in question created much consternation. It was believed that by submitting to a Dominion, the states forfeited their independence entirely. Supporters of this viewpoint contended that the states could not, even in the most restricted sense, remain sovereign following their admission. In the case of Gurdwara Sahib versus Piyara Singh, their Lordship held that just by executing the Instrument of Accession and "ceding some rights with regard to exterior affairs," the State does not lose sovereignty provided its powers with regard to internal concerns remain unlimited.[12]



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Clause (8) of the Instrument of Accession reveals in its opening statement that the instrument did not in any way influence the „sovereignty in and over“ the acceding State of the Ruler. In the case of Prem Nath Kaul vs. State of Jammu and Kashmir, the Supreme Court of India stated that we must reject the argument that the execution of the Instrument of Accession affected in any way the legislative, executive, and judicial power in regard to the Government of the State, which was then vested in the Ruler of the State.[13]

Again, in the case of Rehman Shagoo vs State of Jammu and Kashmir, the Supreme Court of India stated that when certain subjects were transferred to the Government of India by the Instrument of Accession, the State retained its power to legislate even on those subjects as long as the State law was not repugnant to any law made by the Central Legislature, thus holding that the State had concurrent power to legislate even on the subjects transferred to the Government of India.[14]

The judgement in Sayec versus Ameer Rular Sadiq Mohammad also made it apparent that the Instrument of Accession had no impact on making any State a part of the Dominion. These statements have effectively ended the debate.[15]

### **CONSTITUTIONAL STATUS OF JAMMU AND KASHMIR UNDER ARTICLE 370**

Because Kashmir's relationship with India was founded on the Instrument of Accession and was subject to its terms and conditions, Article 370 was introduced to the Constitution to address just the matter of Kashmir. [16]


The Indian Constitution places Jammu and Kashmir in an unusual situation. When India drafted her Constitution in 1949, it was logical for the Government of India's dual approach to be reflected in the position granted to the State of Jammu and Kashmir within the framework of that Constitution.[17]

The act of accession was given unequivocal legal effect by declaring Jammu & Kashmir a part of India's territory under Article 1, but the application of the other provisions of the Indian Constitution to Jammu & Kashmir was placed on a tentative basis, subject to the eventual approval of the State's Constituent Assembly. The Constitution therefore established that the only parts of the Constitution that would apply to Jammu and Kashmir on their own force were Articles 1 and 370. Under Article 370, the applicability of the other Articles was to be established by the President in collaboration with the State Government. Again, Parliament's legislative competence over the State would be limited to items on the Union and Concurrent Lists that relate to topics outlined in the Instrument of Accession. [18]

This temporary system was maintained until the Jammu and Kashmir Constituent Assembly decided differently. It would then offer its recommendations to the President, who would either repeal Article 370 or enact any changes proposed by the Constituent Assembly.[19]

The special constitutional position that Jammu and Kashmir enjoyed under the original Constitution (Article 370) has been maintained, so that all provisions of the Indian Constitution relating to the States listed in the First Schedule do not apply to Jammu and Kashmir, despite the fact that it is one of the states listed in that schedule. The Dominion of India acquired jurisdiction over the State in the subjects of Defence, External Affairs, and Communications through the Accession, and the State of Jammu & Kashmir, like other Indian States that survived as political units at the time of the making of the Constitution of India, was included as a Part B State in the First Schedule of the Constitution of India, as it was promulgated in 1950. The category of Part B States was eliminated by the States Reorganisation Act of 1956. [20]

"Parliament may by legislation admit into the Union, or form new States on such terms and circumstances as it sees proper," according to Article 2 of the Indian Constitution. This article gives Parliament the authority to impose unique membership requirements on a state and proposes that Parliament can also confer additional rights and advantages on newly admitted states. Because there is "no idea of equality of status" in India, the words "as it considers appropriate" offer the Parliament freedom to confer a specific status on a State. [21]

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Dr. Shukla says that this Article "gives entire power to the Parliament to confer any status on the recently established states". It was also said that Parliament has the authority to grant special status, although it is difficult to argue that this authority is unqualified or even "full".[22]

The discretion must be utilised in compliance with the Constitution's other provisions. It must be founded on appropriate legal grounds and not be arbitrary. The article may grant the Parliament "full discretion" in admitting or not admitting a new State into the Union, but once accepted, the Parliament's ability to confer special status on that State is subject to the other articles of the Constitution. If there are legal or other relevant circumstances that require a specific State to be granted special status, Parliament has the authority to do so under this article. Because of the "extraordinary condition" through which the State was travelling, Kashmir was granted special status under this article. [23]

Because of its "special status" under Article 370, Kashmir did not accept the Indian Constitution in its entirety and reserved the ability to draught its own constitution, despite the fact that all other part B states had accepted the Indian Constitution in its entirety.[24]

The requirements of Article 370 of the Indian Constitution, which exclusively apply to the issue of Kashmir, imply a partition of sovereignty, which is only feasible if the Indian Constitution is federal in form.

### **ARTICLE 370 OF THE CONSTITUTION OF INDIA**

The Indian Constitution entered into force on January 26, 1950, and Article 370 was intended to cover only the instance of Kashmir. "In light of the specific situation with which the Jammu and Kashmir Government is confronted, we have established special arrangements for the State's continued membership in the Union on the present basis," announced Sardar Patel, India's then-Minister for States, in the Indian Constituent Assembly. The "existing basis" served as the foundation for the "Instrument of Accession," and the "special provisions" were enshrined in Article 370 of the Indian Constitution, which reads as follows: [25] Temporary Provisions for the State of Jammu and Kashmir:

1. Notwithstanding anything in this Constitution,
  - a) The provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;
  - b) The power of the Parliament to make laws for the said State shall be limited to:
    - i. Those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and
    - ii. Such other matters in the aid list as, with the concurrence of the Government of the State, the President may by order specify.
  - c) The provisions of Article 1 and of this article shall apply in relation to that State;
  - d) Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such Order, which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to the matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

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2. If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (i) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.
3. Notwithstanding anything in the foregoing provisions of this article the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly referred to in clause (2) shall be necessary before the President issues such a notification. This article had been explained by Sardar Patel, was a device to continue the existing relationship of the Jammu and Kashmir State with the Union of India.

The Article has been regarded as a "temporary clause" in the Constitution. The article's transitory character stems only from the fact that the power to finalise the constitutional connection between the State and the Union of India was expressly delegated to the Jammu and Kashmir Constituent Assembly. The Constitution of India clearly envisaged the convening of a Constituent Assembly for Jammu and Kashmir State, as well as providing that any modifications, amendments, or exceptions to Article 370 or any other articles in the Constitution of India in their application to Jammu and Kashmir State were subject to the decision of that Assembly. [26]

As a result, the "temporary" clause does not imply that the article can be unilaterally repealed, changed, or replaced. "I would like to make it clear", declared Sheikh Abdullah in the Kashmir Constituent assembly, "that any suggestions altering arbitrarily the basis of our relationship with India would not only constitute a breach of the spirit and letter of the Constitution, but it may invite serious consequences for a harmonious association of our State with India".[27]

In the present context the term "temporary" has been used so as to minimise the difficulty in the way of the amendment of the Constitution of India, whenever the necessity arises to abrogate, modify or extend the scope of Article 370 by agreement. Since the State of Jammu and Kashmir became an integral part of India after the execution of the Instrument, therefore, clause (1)(c) Article 370 provides for the application of Article 1 of the Constitution of India, which defines the territory of India. The State was shown in the Constitution as a Part B State, but the provisions of Article 238, which generally governed the relationship of a part B States with the Union of India, were not applicable to this State.

This might appear extraordinary, but it is not irregular, for unlike the other Indian States, Kashmir did not accept the application of the Indian Constitution in its entirety. The effect of the application of the present Article (Article 370) has to be judged in the light of its objects and its terms considered in the circumstance of the special features of the constitutional relationship between the State and India. The Constitution makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself "observed the Supreme Court of India. Article 370 is a special provision for amending the Constitution in its application to the State of Jammu and Kashmir. Article 368 does curtail the power of the President under Article 370.[28]

Clause (1)(b) of Article 370 refers to the legislative authority of Parliament over Jammu and Kashmir State. The matters over which the Union Parliament had power to make laws for the State were basically the matters already covered by the Instrument of Accession, defence, external affairs, communications and the like matters. The exclusive Union powers in relation to India generally are set out in enumerated items in List I and it was obviously necessary that the items on that list corresponding to the powers surrendered by the Instrument of Accession should be settled by agreement between the President and the Kashmir Government.

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Clause (b)(ii) provided for the addition to the matters in the instrument of Accession with the concurrence of the Government of the State. This provided for subsequent enlargement of the Union power if this were deemed necessary in the interests of the Union or the State.


After this sub-clause follows an explanation of what the Government of the State meant *viz.* “Maharaja of Jammu and Kashmir acting on the advice of the Council of his ministers”. In 1952 the Constituent Assembly of Jammu and Kashmir, on the recommendations of the Basic Principles Committee, abolished the hereditary ruler ship and substituted in its place an elected head, designated Sadar-i-Riyasat. This necessitated the change of the explanation of what the Government of the State meant. Accordingly, the President of India, on the recommendations of the Constituent Assembly of Jammu and Kashmir, modified the explanation to read for the purposes of this Article, the Government of State means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyast of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office.[29]

This amendment accepted the act of the Constituent Assembly of Jammu and Kashmir abolishing hereditary ruler ship and substituting an elected head of the State. The people of the State were once again reassured that the Government of India would not encroach on State rights. According to clause (1)(c), the only articles of the Constitution of India which applied of their own force to the State are Articles 1 and 370; clause (1)(d) provided that the other provisions of the Constitution of India applicable to the State could be determined by the President of India in consultation with the Government of the State. Exceptions and modifications could be made in the same manner and the provisions could be enlarged too. “Power to modify includes a power to enlarge or add to an existing provision”, held the High Court of Kashmir in the case of Sant Singh v. State, where the question was whether the enlargement of the provisions was valid.[30]

Clause (2) provided that, if the Government of Kashmir recommended to the President of India an enlargement of the powers of the Union Parliament by including matters other than those referred to in the Instrument of Accession, such recommendations should be placed before the Constitution Assembly of the State. Thus, in effect the power to extend the scope of the Union power or otherwise change the basis of relationship of Kashmir with India was vested in the Constituent Assembly of the State. The arrangement made under Article 370 was to continue until the Constituent Assembly of the State made a decision to the contrary.

Clause (3) provided that the Constituent Assembly could recommend the President of India to abrogate, modify or to make it applicable with exceptions. The President could not, however, take these steps without the previous recommendations of the Constituent Assembly of the State. It is seen from the above Article 370, that the State though an integral part of India, had a unique position in the Indian Constitution. At the time of their accession it was made clear to all the Indian States that their internal autonomy would be safeguarded and they would not be obliged to accept the Constitution of India. But whereas other Indian States lost their independence by supplementary Instruments and by agreeing to the settlement of their Constitution position and powers by the Constituent Assembly of India, Kashmir choose to remain a State of the Indian Federation only on the terms and conditions specified in the Instrument of Accession. The State, if it chooses to assimilate its status to that of other Indian States, could do so by a supplementary Instrument of Accession signed by the Sadar-i-Riyasat on the recommendation of the State Legislature. It was, however, not considered expedient to do so as the Kashmir Constitution (1957) has enabled the State to make progress more rapidly than the other Indian States and Government of India realises it.[31]

Under Article 370 (1)(ii), the President of India in consultation with the Government of Jammu and Kashmir, issued “The Constitution (Application to Jammu and Kashmir) Order, 1950” specifying the matters on which the Union Parliament would be competent to make laws for the State. This Order was to govern the constitutional relationship of Kashmir with India after the Indian Constitution came into force on January 26, 1950. Once, Article 370 became

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applicable and enforceable there is no question of it having ceased to apply only because Article 394 was subsequently deleted. The provisions of the article continued to remain in force and effective even after the Constituent Assembly at the State enacted the Constitution of the State.[32]

Article 246 has been applied only with some modifications to the State of Jammu and Kashmir. As a result, the State Legislature of J&K has a residuary power of legislation over matters, which may not be enumerated in the State list or the concurrent list; the only limitation is that it must not be written the exclusive jurisdiction of Parliament.[33]

### **CHANGE OF STATUS OF JAMMU AND KASHMIR**

The Jammu and Kashmir Reorganisation Bill, 2019, was introduced in the Rajya Sabha on 5 August 2019 by Home Minister Amit Shah to convert Jammu and Kashmir's status as a state to two independent union territories, named Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The bill proposes that the union territory of Jammu and Kashmir have a legislature, whilst the union territory of Ladakh do not. [34]

By the end of the day, Rajya Sabha had passed the measure with 125 votes in favour and 61 votes against (67%). The bill was enacted the next day by the Lok Sabha with 370 votes in favour and 70 votes against (84%).[35] The bill became an Act after it was signed by the president.

The two union areas were established on October 31, 2019, which was designated as National Unity Day. The President of India nominated a Lieutenant Governor for the Union Territory of Jammu and Kashmir, as well as a Lieutenant Governor for the Union Territory of Ladakh. On October 31, 2019, both Lt. Governors were sworn in by Justice Gita Mittal, Chief Justice of the Jammu and Kashmir High Court, first in Leh for the Ladakh UT and subsequently in Srinagar for the Jammu and Kashmir UT. [36]

On the night of October 30, 2019, President's Rule under Article 356 of the Indian Constitution came to an end in the state of Jammu and Kashmir. President's Rule is inapplicable and unnecessary in a union territory because the union area is already administered by the national government. The President issued an order declaring that he will control the union territory of Jammu and Kashmir directly until the union territory's legislative assembly is formed. [37]


### **CONCLUSION**

The study reveals that the State of Jammu and Kashmir is an integral State of India, but its status differs from the other States, and the Indian Constitution applies to the State not proprio-vigore, but by virtue of the Instrument of Accession signed between Maharaja Hari Singh and then Governor General of India, Lord Mountbatten, and subject to its terms and conditions. The state acceded to India while under siege from tribal forces backed by Pakistan. The Constitutional Orders of 1950 and 1954 serve as the foundation for India's constitutional ties with Jammu and Kashmir. The situation of the state has been dealt with under Article 370 of the Indian Constitution, and any amendment will be made only under clause 1 of the Article. 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 article 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.

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9. Supra note 1 at 105. The Kashmir delegation was headed by Mr. M.A. Beg, the then Revenue Minister.
10. Throughout India there is only one flag and Kashmir is the only State which has its own flag in addition to the Union flag.
11. Supra note 30, clause 8.
12. AIR 1913 Pepsu 1.
13. AIR 1959 SC 749.
14. AIR 1960 SC 1
15. All ER 326 (1952) 1.
16. The Constitution of India, 1950, art. 370 was added as temporary provisions with respect to the State of Jammu and Kashmir. The Constituent Assembly of the State of Jammu and Kashmir, declared that, as from 17 November 1952
17. The Constitution of India, 1950, art. 370. Thereby implies, that once India has accepted the Instrument of Accession, it cannot revoke its acceptance except by the procedure established by law.
18. The Constitution of India, 1950, art. 253.
19. The Constitution of India, 1950, art. 370(2).
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23. Supra note 63 at 422.
24. Supra note 30 clauses (7) and (8) of Instrument of Accession permitted it.
25. The words „Special“ was added by the Constitution (13th Amendment) Act, 1962.
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27. The Constitution of India, art. 370 (1) (a).
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