
The Legality of the Instrument of Accession of Jammu and Kashmir: A Historical and Legal Analysis

Saba Ghulam Nabi¹, Syed Hamza Mahroof²

1 Research Officer at Center for International Strategic Studies, Azad Jammu and Kashmir.

Email: sabaghulamnabi2016@gmail.com

2 Email: hamii90986@gmail.com

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Abstract

This study critically examines the legality of the Instrument of Accession through which the princely state of Jammu and Kashmir integrated into India in 1947. Signed by Maharaja Hari Singh, this document marked the inclusion of Jammu and Kashmir into the newly independent Dominion of India during the partition of the subcontinent into India and Pakistan. The study explores the historical circumstances surrounding the accession, emphasizing the geopolitical dynamics, external pressure, internal unrest, and specific conditions that influenced and forced the decision of the ruler of the state, Maharaja Hari Singh. The paper analyzes the international legal and constitutional frameworks that governed the accession. Additionally, the study addresses the controversies and legal challenges related to the validity of the Instrument of Accession, including the situation under which the instrument was signed, the promise of an unimplemented plebiscite, and the continuing conflict over the legal status of Jammu and Kashmir. By examining these issues, the study aims to provide a comprehensive understanding of the legal and political complexities surrounding the accession. Employing constructivism and post-colonial legal analysis as its theoretical frameworks, the study contributes insights into contemporary challenges related to conflict resolution, state sovereignty, and international and legal obligations in South Asia, particularly in the context of relations between two nuclear states, India and Pakistan.

Keywords: Instrument of accession, Jammu and Kashmir, State sovereignty, International Law, Plebiscite

Introduction

Among all the princely states of British India, the Instrument of Accession of Jammu and Kashmir remains one of the most debated and political issues in the history of the partition of the subcontinent. Nearly eight decades have passed; still, the legality of the Instrument of Accession continues to shape diplomatic relations, regional security dynamics, and the legal status of Jammu and Kashmir between South Asia's two nuclear-power countries. It has greatly influenced the ethnic issues and national unity of both countries¹.

The partition of the subcontinent in 1947 resulted in the creation of two new states, India and Pakistan. At the time of partition, there were 565 princely states, and as per the Indian Independence Act of 1947, it was decided that states were given the option to accede to India or Pakistan. Among all the princely states, Jammu and Kashmir held a significant strategic geographical location. Due to its strategic location, religious demography, and political circumstances, Jammu and Kashmir occupied a central position among the princely

¹ Rasool, I. (2014). The legal implications of the Instrument of Accession: A critical case study with reference to the State of Jammu and Kashmir. *The IUP Journal of Law Review*, 4(2), 55–66.

states that were given the right to accede to either Pakistan or India.²

The accession of Jammu and Kashmir to India occurred at the time of political turmoil and armed conflict; several controversies emerged regarding the legality of accession, raising questions about whether the established legal principles were used for the accession process and whether circumstances at that time affected the execution and its legitimacy under international law. The more important question is whether the Maharaja of the state, Hari Singh, exercised his authority freely.³

The Kashmir dispute is a major issue between two nuclear powers, which ultimately affects the stability in South Asia. The issue of Kashmir extends beyond territorial disagreements between two neighboring states. It includes political, legal, constitutional, historical, and humanitarian dimensions that continue to impact the domestic and foreign policies of both countries. As two nuclear-armed states, India and Pakistan have repeatedly had military confrontations over Jammu and Kashmir. Subsequently, the legal status of the state of Jammu and Kashmir remains central to understanding the broader regional stability and security environment.⁴

The paper critically examines the legality of the instrument of accession and its implications for the dispute over Jammu and Kashmir. A multi-dimensional approach is used that includes international legal perspectives, political legalities, and historical developments. It also explores the decision of the Indian government before and after the revocation of Article 370 and 35A on August 5 2019, a unilateral action that altered the constitutional relationship between India and Pakistan.⁵

Additionally, the study further explores the ongoing significance of the instrument of accession in shaping the historical evolution of the Jammu and Kashmir dispute and the diplomatic positions adopted by both India and Pakistan since 1947.⁶ It analyses how different interpretations of this accession have influenced bilateral relations and international engagements with the dispute.⁷

The research employs two theoretical approaches: constructivism and post-colonial legal analysis. Constructivism offers a framework for understanding how historical memories, political narratives, and identities shape competing interpretations of the instrument of accession. Post-colonial legal analysis provides an additional perspective by highlighting how legal institutions, administrative structures, and the practice of decolonization affect the instrument of accession of Jammu and Kashmir.⁸

By adopting these theoretical approaches, the study argues that the legality of the instrument of accession cannot be evaluated only through legal doctrine. Instead, it must also be understood within the broader ideological, political and historical contexts that remain to transform the Jammu and Kashmir dispute. The paper also contributes to contemporary academic debates on sovereignty, right to self-determination and conflict resolution in post-colonial societies.

² Anand, A. S. (2001). Accession of Jammu and Kashmir State—Historical & Legal Perspective. *Journal of the Indian Law Institute*, 43(4), 455-468.

³ Qadri, N. (2022). Accession to Annexation: A coercive legal measure in UN-Recognized Disputed territory of Jammu & Kashmir. Available at SSRN 4206242.

⁴ Lone, F. N. (2024). Legal Critique of the Accession of Princely State of Jammu and Kashmir to India. *Life, Politics, and Resistance in Kashmir after 2019: A Multidisciplinary Understanding of the Conflict*, 35.

⁵ Rashid, I. (2023). In the State of Jammu and Kashmir, 1947-1952. *The Palgrave Handbook of New Directions in Kashmir Studies*, 315.

⁶ Ashraf, F. (2002). Jammu and Kashmir dispute: Examining various proposals for its resolution. *Published by the institute of strategic studies in Islamabad, Series: Islamabad Papers* (20), 1, 51.

⁷ Majid, B. (2023). From a sovereign state to a Union Territory: A history of the constitutional erosion in Kashmir. *Verfassung in Recht und Übersee*, 56(4), 690–706. <https://doi.org/10.5771/0506-7286-2023-4-690>

⁸ Shah, N. A. (2022). Re-colonization of Jammu and Kashmir and the Right to Self-determination. *International Human Rights Law Review*, 11(2), 186-220.

Objectives

The main objective of the study is to critically examine the legality of the Instrument of Accession of Jammu and Kashmir to India. For this purpose, the research seeks to analyze the political and historical circumstances that led to the signing of the Instrument of Accession and to assess the legal doctrines leading to the accession under domestic and international law.

Additionally, to examine the controversies surrounding the Instrument, including its legal validity, under which circumstances it was signed, and its consequences for the Jammu and Kashmir dispute.

Furthermore, to explore the competing political and legal interpretations advanced by both India and Pakistan and evaluate the impacts of the Instrument of Accession on India and Pakistan since 1947. By adding historical, constitutional, and international legal perspectives, the study aims to provide a comprehensive understanding of the ongoing relevance of the Instrument of Accession in transforming the legal and political status of Jammu and Kashmir.

Research Questions

The study aims to address the following questions.

1. What historical and political circumstances led to the signing of the Instrument of Accession of Jammu and Kashmir?
2. To what extent did military and political circumstances impact the decision of Maharaja Hari Singh to sign the Instrument of Accession?
3. Was the Instrument legally executed before the deployment of the Indian armed forces to the princely state of Jammu and Kashmir?
4. Did Maharaja Hari Singh possess the legal authority to implement the Instrument of Accession while the state was in a military and political crisis?
5. How has the Instrument of Accession impacted the relationship between India and Pakistan?

Theoretical Framework

The research is theoretically grounded in constructivism and post-colonial analysis to highlight the legality of the Jammu and Kashmir Instrument of Accession. These corresponding approaches give a broader analytical framework by highlighting that the instrument of accession is not merely understood through legal doctrine or constitutional interpretation.⁹ Instead, it must be examined with the broader context of history, colonial legacy, international law, and identity.¹⁰

Constructivism emphasizes the role of historical narratives, social constructions, identities, and political discourse in shaping legal interpretations and state behavior. From this angle, the competing claims regarding the Jammu and Kashmir Instrument of Accession are not only based on legal provisions, but are also influenced by historical memories, surfacing political narratives, and national identities. Therefore, the Kashmir dispute represents not only legal disagreement but also a contest over historical legitimacy and political identities.¹¹

Post-colonial legal analysis provides an added analytical perspective by examining how administrative practices, colonial structures, and the process of decolonization transform the circumstances under which the Instrument of Accession took place. The departure of British Colonial rule from the subcontinent left

⁹ Pahuja, S. (2011). *Decolonizing international law: Development, economic growth and the politics of universality*. Cambridge University Press. <https://doi.org/10.1017/CBO9781139048200>

¹⁰ Wendt, A. (1992). Anarchy is what states make of it: The social construction of power politics. *International Organization*, 46(2), 391–425. <https://doi.org/10.1017/S0020818300027764>

¹¹ Wendt, A. (1999). *Social theory of international politics*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511612183>

unresolved constitutional and sovereignty questions that remain to influence the status of the state of Jammu and Kashmir. This perspective highlights that many contemporary disputes related to Jammu and Kashmir are entrenched in the constitutional arrangements and institutional measures during the final phase of British rule.¹²

These composed theoretical approaches enable a brief understanding of the instrument of accession by integrating political, legal, and historical dimensions.

Methodological Framework

The research employs a qualitative methodology design to examine the legality of the instrument of accession of Jammu and Kashmir and its implications in the broader context of regional politics, state sovereignty, and international law. Given the particular historical and legal nature of the research, the study relies on primary and secondary sources. Secondary sources include academic historical books, peer-reviewed journal articles, reports published by national and international authors, official documents, and scholarly analysis of the Jammu and Kashmir dispute.

An analytical approach has been adopted to highlight constitutional developments and historical narratives. Moreover, the constructivist approach and post-colonial legal analysis are used as its theoretical frameworks. The role of identity and historical narratives and their impact in shaping the political and legal interpretations of the instrument of accession falls under the Constructivist approach. On the other hand, the way the instrument of accession has been influenced by the process of decolonization and colonial legal structures is examined in the context of Post-colonial legal analysis.

In the context of the impact of the instrument of accession on Indo-Pak relations and controversies regarding the legality of the instrument of accession, several key debates have been identified by the study through analysis of relevant legal sources and literature. A comprehensive understanding of the social and political factors along with the formal legal perspectives surrounding the Jammu and Kashmir dispute is facilitated by the integration between the theoretical framework and legal analysis.

Background and historical context

The roots of the Jammu and Kashmir dispute are traced to the Dogra rule established after the downfall of the Sikh Empire. Following the death of Sikh emperor Maharaja Ranjit Singh in 1839, the Sikh empire defeated by the East India Company during the first (Sikh-Anglo War 1845- 1846). The British sold the state of Jammu and Kashmir to Dogra Gulab Singh for seventy-five lakh Nanakshahi under the Amritsar treaty signed on 16 March 1846.¹³

This agreement laid the foundation of the Dogra rule, which sustained until the partition of the subcontinent in 1947. As a result, the historical evaluation of Jammu and Kashmir remained tinged with the political transformation of colonial rule and competing historical narratives, making the history of Jammu and Kashmir more questionable. After taking rule of the state, the Maharaja of the state, Gulab Singh, started discriminative policies against the Muslims, and Muslims launched protests against the brutal policies of the Maharaja. Till the partition, Muslims of Jammu and Kashmir launched several socio-political agitations against the Dogra rule.¹⁴

During the partition of the subcontinent, the whole scenario about the Instrument of Accession starts from the 3rd June 1947 partition plan. The princely states were left to decide which dominion they wanted to join, as

¹² Anghie, A. (2005). *Imperialism, sovereignty byand the making of international law*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511614262>

¹³ Amin, W., & Singh, A. K. (2022). Conflict and Religious Minorities: The Case of Sikhs in Kashmir. *Journal of Global South Studies*, 39(1), 57-94.

¹⁴ Yusin, J. (2009). The silence of partition: Borders, trauma, and partition history. *Social semiotics*, 19(4), 453-468.

per religion, geography, and wishes of the people: “Pakistan or India”. It was also decided that the Muslim-majority states would be included in Pakistan and the Hindu-majority states would be included in India.

Issues occurred in three states: Junagarh, Hyderabad, and Jammu and Kashmir. The population of Junagarh and Hyderabad was Hindu in majority, and their ruler was Muslim. The issue of these two states was resolved, but the case of the Jammu and Kashmir state was different; the majority of the population was Muslim, and the ruler of the state was a Hindu Dogra Maharaja.¹⁵ The people of Jammu and Kashmir wanted to go with Muslim majority Country Pakistan, because of religious and cultural ties, but unfortunately, the state had a unique status because of its strategic location, rich natural resources, and geography; India refused to act upon the partition plan. Regarding the issue of accession of states, two factors were highlighted, which were “geographical compulsions” and “communal majorities”.

After independence, India kept on persuading the Maharaja of the state of Jammu and Kashmir, Hari Singh, to accede to India; Lord Mountbatten played an important role in this aspect. However, Maharaja Hari Singh never gave the green light to accession to India.¹⁶ However, Maharaja Hari Singh initially attempted to maintain the status of the state as an independent state by delaying the accession.

The causes for the delay in accession were mainly that Maharaja Hari Singh wanted to hold his own control over the state as a ruler; religious and ethnic diversity in the state, as Hindus, as well as Muslims Buddhist and Sikhs were present; thus, the independent state factor in Maharaja’s view helped to maintain balance and influence of his Dogra dynasty. Meanwhile, political uncertainty also intensified within the state, particularly in the Poonch region. The area was populated by people who formerly served in the British Army.¹⁷

Political uncertainty, heavy taxation, administrative measures, and discriminatory policies against Muslims during Dogra rule created widespread resentment among the local population against Dogra rule. In response to unrest, the government of the Maharaja imposed restricted measures for the population. These policies contributed to the outbreak of the Poonch revolt.¹⁸

As socio-political instability deepened, the communal violence also spread across the different regions of the state, especially in Jammu, where Muslims were in the majority from mid-September to November 1947. Several historical accounts documented widespread killings and enforced disappearances during this period. These events led to the planned Jammu genocide to convert the Muslim-majority region Jammu into a Muslim-minority region, from almost 66 percent to 31 percent on 6 November 1947. Maharaja forces, Patiala forces, and RSS forces were responsible for this genocide. On Oct 19, 4 villages in Kotli were burnt, and on Oct 20, followed by the Akhnoor bridge incident, in which about 15000 Muslims were forced to leave and were killed at the Akhnoor bridge. Moreover, the Massacre at Kathua of about 8000 Muslims.¹⁹

On Oct 22, the Massacre at Samba took place of about 14000 people, women were taken away, and men were slaughtered. The massacre at Miansohib, where 25000 Muslims were to be sent to

Pakistan, was riddled with machine guns. About 100 were able to escape from this incident.

The Invasion of tribesmen was a decisive factor in this genocide, as Pakistan supported tribesmen, and they were sent to the Muzaffarabad division to help the local people in the revolt. Tribesmen helped the local

¹⁵ Greenberg, J. D. (2004). Divided Lands, Phantom Limbs: Partition in the Indian Subcontinent, Palestine, China, and Korea. *Journal of International Affairs*, 7-27.

¹⁶ Bhat, S. (2017). Jammu and Kashmir on the eve of partition: A study of political conditions. *South Asian Studies*, 32(2), 285–296.

¹⁷ Khan, M. B., Jaffar, S., Muhammad, S., Mukhtar, M. W., Ahmad, W., & Rasheed, B. (2023). Partitioning the subcontinent in 1947: A move of west against the stability of Islam using applicable geopolitical laws. *Russian Law Journal*, 11(1), 157-165.

¹⁸ Ali, R. U. (2009). Planning for the Partition of India 1947: A Scuttled Affair. *Pakistan Journal of History & Culture*, 30(1), 113.

¹⁹ Chattha, I. (2016). Partition, Violence, and Displacement in Jammu & Kashmir. *Revisiting India's Partition: New Essays on Memory, Culture, and Politics*, 143.

population resist the Maharaja forces.²⁰ Maharaja Hari Singh sought military assistance in this situation from the Indian government. According to the Indian government, military assistance was made conditional upon signing the Instrument of Accession of the state of Jammu and Kashmir; after that, the Indian military airlifted to Srinagar on 27 October 1947.

Lord Mountbatten presented the Instrument of Accession to the Maharaja, which was signed by the Maharaja on the condition that when the situation gets normal, the people of the state decide their fate by their wishes. Lord Mountbatten and Nehru were the key figures in implementing the Instrument of Accession with the Maharaja.²¹ While Mountbatten formally accepted the accession on behalf of the Dominion of India, his acceptance was accompanied by a letter stating that once law and order had been restored, the final disposition of the state should be determined in accordance with the wishes of its people. The legal significance of this accompanying letter has since become one of the principal areas of disagreement between India and Pakistan and remains central to scholarly debates concerning the legality of the Instrument of Accession.²²

From the angle of constructivism, these historical narratives show how competing national identities and historical narratives have transformed the interpretation of the Jammu and Kashmir Instrument of Accession. Similarly, post-colonial legal analysis demonstrates that several legal uncertainties surround the accession initiated in the constitutional arrangements created during the British colonial rule and the incomplete process of decolonisation. The departure of the British from the sub-continent left unresolved questions concerning territorial issues, sovereignty, and the constitutional process of the princely states, all of which continue to influence the contemporary debates of the Jammu and Kashmir dispute.

Legal Framework

The legal status of the Instrument of Accession of the state of Jammu and Kashmir occupies the fundamental space in the constitutional and international debates surrounding the Jammu and Kashmir dispute. According to Ijaz Hussain in “Kashmir Dispute: An International Law Perspective,” “the Instrument of accession of Jammu and Kashmir was distinct from many other accessions implemented by princely states during the partition of the subcontinent.

Contrasting several princely states that were fully assimilated into India. It was based upon specific terms and conditions, such as defense, communication, and foreign affairs, while the state reserved autonomy over its internal administration. This transfer of authority subsequently formed the constitutional basis for the special autonomous status under Articles 370 and 35A of the Indian Constitution. The constitutional connection established by the Instrument of Accession remained intact till 5 August 2019. On 5 August, the special autonomous status of the state was revoked, and the state of Jammu and Kashmir was split into two union territories, Jammu and Kashmir and Ladakh.

This unilateral and constitutional transformation created significant legal and political debate about whether the post 2019 remain consistent with the real terms and conditions of the Instrument of Accession. As a result, the revocation of the special status of the state introduced a new debate and scholarly discussions concerning the constitutional status of the state of Jammu and Kashmir and the ongoing legal significance of the Instrument of Accession.²³

²⁰ Rahman, A., Jahangir, A., & Gardazi, S. M. F. (2021). The Criminal Acts Perpetrated during Jammu Massacre, 1947: An International Law Perspective. *Global Legal Studies Review*, 6(1), 96-104.

²¹ Zaman, R. (2025). Tracing the roots of Jammu massacre and its impacts on the princely state of Jammu and Kashmir. *International Journal of Advanced Research*, 13(2), 1186–1194. <https://doi.org/10.21474/ijar01/21848>

²² Hussain, I. (1998). *Kashmir dispute: An international law perspective*. Quaid-i-Azam Chair, National Institute of Pakistan Studies, Quaid-i-Azam University.

²³ Akthar, Z. (2023). Genocide in Kashmir: Right of self-determination, UNSC resolutions and holding India to account under international humanitarian law. *Groningen Journal of International Law*, 10(1), 43–72. <https://doi.org/10.21827/grojil.10.1.43-72>

Jammu and Kashmir also acquired an international legal dimension when India referred the Jammu and Kashmir dispute to the United Nations Security Council, which passed a series of resolutions including calling for ceasefire, withdrawal of forces and free and impartial plebiscite to enable the people of the state to decide their future, and these resolutions continue to occupy important place in legal and diplomatic course of the Jammu and Kashmir dispute.

Beyond the question of state sovereignty, the dispute of Jammu and Kashmir has increasingly been examined through the framework of International Human Rights Law and Humanitarian Law. Several International Human Rights Organizations and Human Rights bodies have documented severe human rights violations, including killings, enforced disappearances, use of excessive force and draconian laws, rape, intense restrictions on civil liberties, arbitrary detentions and restrictions on freedom of expression.

As a result, the legal discourse of Jammu and Kashmir extends beyond constitutional questions to include issues related to protection of fundamental human rights under international human rights law.

Thus, India as a signatory to vital Human Rights major instruments such as International Covenant on Civil and Political rights, ICCPR and International Covenant on Economic, Social and Cultural Rights, ICESCR and to fulfill the obligations of these treaties is important for India. According to International Human rights Organizations and scholars, these obligations continue to apply in Jammu and Kashmir irrespective of the disputed status of the region.

The presence of Indian occupational forces in the Jammu and Kashmir region regularly results in eruptions of violence against locals opposed to Indian rule. The unrest after the martyrdom of Burhan Wani in July 2016 further intensified attention towards the Human rights situation in Indian Administrated Jammu and Kashmir, raising considerable concern among International Human rights Organizations.

The constitutional development of Jammu and Kashmir cannot be understood independently of the Instrument of Accession.²⁴ The manuscript recognized the legal foundation upon which

Special autonomous status articles 370 and 35A were incorporated into the Indian Constitution as a mechanism to preserve the autonomous status of the state and constitutional relationship with India. As a result, the revocation of Articles 370 and 35A has been viewed and interpreted by different scholars through contrasting constitutional angles. It comprises a central position in this matter.²⁵ Further, these actions raise certain questions regarding the disputed status of Kashmir in International Law, its legal interpretation, and the international commitments ensured regarding the issue.²⁶

These legal interpretations show that the Jammu and Kashmir dispute cannot be examined solely through constitutional law; rather, it represents a connection of International Law, constitutional law, state sovereignty, and self-determination.

From the perspective of post-colonial legal analysis, the constitutional measures governing the state of Jammu and Kashmir remain to reflect the institutional legacy of British colonial rule and legitimate uncertainties allied with decolonialisation. The transfer of power from the British to the successor dominions left unresolved constitutional questions regarding the status of the princely states, mainly Jammu and Kashmir.

Similarly, from the angle of Constructivism explains how opposite interpretations of legitimacy, sovereignty, and self-determination have been transformed by national identities and political discourse. As a result, the continuing disagreement over the Instrument of Accession of Jammu and Kashmir reflects not only contradictory constitutional interpretations but also competing historical narratives and national identities.

²⁴ Khan, M., & Khan, S. (2019). Demographic changes in Kashmir: A perspective of international law. *Global Legal Studies Review*, 4(1), 12–22. [https://doi.org/10.31703/glsr.2019\(IV-I\).02](https://doi.org/10.31703/glsr.2019(IV-I).02)

²⁵ Ashraf, F. (1990). The Kashmir Dispute: An Evaluation. *Strategic Studies*, 13(4), 61-77.

²⁶ Idrees, R., & Jamil, T. (2021). The Indian occupied Kashmir dispute: A legal analysis in purview of United Nations resolutions. *Pakistan Journal of International Affairs*, 4(1), 39–55. <https://doi.org/10.52337/pjia.v4i1.39>

Analysis of the Instrument of Accession

The legal clarification of the Instrument of Accession of the state of Jammu and Kashmir requires analysis of not only the document itself but also the circumstances surrounding it. Contrasting the accession of other princely states that acceded during the partition period, the accession of Jammu and Kashmir was signed during military conflict, political instability, and competing claims over its sovereignty. Therefore, its legitimacy and consequences cannot be measured independently from the surrounding correspondence, mainly the letter written by Lord Mountbatten accepting the Instrument of Accession on behalf of the Indian government.

The letter sent by Lord Mountbatten to the Maharaja in response to his military assistance request clearly mentions that “the government has approved the accession of the state of Jammu and Kashmir however, in the future, when the circumstances are under control, law and order restored and peace is attained, then the final decision will be made according to the wishes of the people of Jammu and Kashmir.” This reference “to the wishes of people” became the most important element in subsequent legitimate and political debates surrounding Jammu and Kashmir dispute.²⁷

This was the main statement which India always used to deny, while Pakistan has consistently argued that this statement of Mountbatten established the commitment to determine the future of the state of Jammu and Kashmir through plebiscite, as per the wishes of the people.

After the ceasefire, and in United Nations meetings, India’s contention was always that Mountbatten’s letter was a separate document towards the Maharaja, while the instrument of accession is itself a separate document. It has nothing to do with it.

The link between the Instrument of Accession and the letter of Lord Mountbatten has remained a subject of considerable scholarly debate; while evaluating these circumstances, Ijaz Hussain explains in his book, “the instrument of accession and Mountbatten’s letter together constitute an international agreement symbolizing the meeting of minds between the parties concerned. These two instruments cannot be separated, as one is related to the other.

From this angle, separating the two documents would overlook the circumstances under which the accession occurred. Thus, without Mountbatten’s letter, the instrument of accession is simply a paper with no legal significance.

The concept of the term “reference to the people” remains central to the Jammu and Kashmir dispute because it raises vital questions related to consent, state sovereignty and self-determination. The argument presented by Pakistan is that the commitment made by the leadership of India made a responsibility to determine the final status of Jammu and Kashmir through a democratic process and with the wishes of the people of Jammu and Kashmir. However, India argued that changing security and political dynamics prevent the implementation of such a process.

After the establishment of a ceasefire under United Nations supervision in 1949, the issue of withdrawal of the forces became one of the main challenges to conducting a plebiscite.

The United Nations appointed Representatives Sir Owen Dixon and General McNaughton to facilitate agreement between India and Pakistan regarding withdrawal of the forces and the conditions necessary for the plebiscite. Pakistan accepted the circumstances, but India never compromised, and hence the plebiscite never took place.

It can be interpreted through the lens of constructivism, highlighting the fact that how both states use the same document to construct their legal stances. Post-colonial legal analysis explains different facts regarding the process of accession and the impact of colonial administrative practices on it.

²⁷ Imtiyaz, S. (2021). Progress Made So Far: A Situation Analysis of Jammu and Kashmir Pre and Post Removal of Article 370.

Controversies Surrounding the Instrument of Accession

The legitimacy of the Instrument of Accession remained one of the most challenged issues in the legal and political history of South Asia. The controversies surrounding the Instrument of Accession are not limited to the legal text of the document only; rather, it evolves broader questions regarding consent, sovereignty, effective authority, self-determination, and the legal results of the decisions taken during the time of conflict.

- One of the primary debate regarding the subject of the legality of the Instrument of Accession of Jammu and Kashmir concern the circumstances under which Maharaja Hari Singh signed the document. The process and circumstances show that the Maharaja of the state signed the document under extreme military and political pressure. However, several other factors draw attention towards the legality of the document. According to the great historian Alistair Lamb, the circumstances under which the Instrument of Accession was signed raised serious questions about whether the Maharaja of the state used real political freedom while signing the document.

The author argues that the Instrument of Accession was executed when Maharaja Hari Singh lost his effective command and control over significant parts of the state and was seeking immediate military assistance to preserve his authority. In these circumstances, when the Maharaja was seeking to preserve his authority, how could he have signed the document?

- Another main controversy relates to the timing of the intervention of the Indian military in Jammu and Kashmir; Pakistan has argued that the forces of India entered the state before the process of accession was legally completed. It raises the question regarding whether military assistance preceded the legal basis upon which it was justified. According to the historical accounts presented by Alistair Lamb, the representatives of Maharaja Hari Singh sought military assistance from the Indian government before formally signing the Instrument of Accession.

On October 24, the Deputy Prime Minister of Kashmir, Batra, was sent to New Delhi by the Maharaja to seek military assistance from India, upon which the defense committee agreed. Maharaja, with VP Menon, flew to Srinagar on Oct 24 and, as stated by Menon, Srinagar was defenseless, so the Maharaja went back to New Delhi to meet Nehru to seek unconditional military assistance. However, Nehru told Maharaja to fly to Srinagar on the 26 to formally sign the instrument of accession but due to lack of proper landing facilities in Srinagar airport at night it was not safe so Maharaja did not travel to Srinagar on 26 rather on 27 October he flew towards Srinagar and then signed the instrument of accession, However the order was already given to military troops to move to Srinagar. This means troops were present in the capital before the Instrument of Accession became legal.

The historian Lamb argues that the deployment of the Indian armed forces had already been initiated before the Instrument of Accession was signed. The scenario creates doubts about whether accession was a condition for military intervention or whether the military assistance influenced the decision of Maharaja Hari Singh to accede. Controversy therefore erupted over whether the intervention or deployment of the Indian military forces exerted pressure on Maharaja Hari Singh to sign the Instrument of Accession or whether the accession was a free decision made before the intervention of Indian armed forces.

An added debate concerns whether Maharaja Hari Singh possessed significant authority and effective control over the state of Jammu and Kashmir at the time of accession. According to the standard of effectiveness in International Law, claims of authority are generally examined in relation to actual control, the ability of the government to exercise effective power over the state, and administrative authority and control.

Applying these conditions to the time when the Maharaja signed the instrument of accession, it can be noted that none of these conditions were fulfilled. Maharaja was running for his life; he had no control over the territory, the majority was revolting against the Maharaja, and lastly, he had no assurance that his government would last for a long time. While examining all these, this shows that the Maharaja was in no position to declare accession towards India, which automatically illegalizes the instrument of accession.

- The questions of United Nations Security Council's resolutions and Shimla Agreement of 1972 between India and Pakistan remain another debate surrounding the Jammu and Kashmir dispute. Following India taking the Jammu and Kashmir dispute to the United Nations in 1948, several resolutions were passed regarding the withdrawal of troops, ceasefire, and giving the right to self-determination to the people of Jammu and Kashmir to decide their future through a free and impartial plebiscite under the supervision of the United Nations.

Pakistan's stance on it is that the resolutions of the United Nations give an international outline for resolving the prolonged dispute of Jammu and Kashmir.

India presented its stance that the Shimla Agreement of 1972, to which both India and Pakistan agreed, resolved the Jammu and Kashmir issue through bilateral dialogue. On the other hand, on 5 August 2019, India unilaterally revoked the special autonomous status of the state of Jammu and Kashmir.

From this perspective, scholar Ijaz Hussain argued that bilateral agreements cannot automatically extinguish obligations arising under the United Nations framework. The agreement does not remove the relevance of the United Nations resolutions, and both India and Pakistan remain bound by the rules and regulations of the United Nations Charter.²⁸

Thus, it can be said that in case of conflict with obligations under the Charter, the treaty in question is never abrogated. Only the obligations that are contrary to the UN Charter become inoperative. Thus, already present UNSC resolutions for the Kashmir issue are still binding in nature. The Shimla agreement doesn't dissolve the resolutions.²⁹

The instrument of accession has shaped and continues to shape the geopolitical landscape of South Asia. Through the lens of post-colonial legal analysis, it can be examined that bilateral relations are affected by colonial partition. While evaluating on the basis of constructivism approach, it can be stated that diplomatic engagement is greatly affected by identity-driven perceptions.³⁰

The instability and tensions in South Asia have continued to be shaped by the unresolved Jammu and Kashmir dispute, while the May 2025 Pahalgam crisis demonstrates a prime example of it. The Relations between the two neighboring nuclear states are of a fragile nature, as the 2025 crisis, marked by heightened military preparedness and political rhetoric, effectively reflects the whole scenario. The competing legal interpretations of Jammu and Kashmir have held a central position in disputes arising in the South Asia region. The diplomatic engagements and security dynamics have been greatly influenced by unresolved legal ambiguities. One of the most concerning outcomes of the May 2025 crisis can also be elaborated as: political deadlock in a nuclearized region can be quite catastrophic, as limited confrontations can transform into broader regional crises. Domestic political pressure is also a significant factor that plays a very important role in shaping state decisions during the time of crisis.

Thus, the crisis can be taken into account as an important contemporary example demonstrating the fact that how strategic stability and regional peace are greatly affected by the unresolved status of Jammu and Kashmir³¹.

²⁸ Hussain, I. (1998). *Kashmir dispute: An international law perspective*. Quaid-i-Azam Chair, National Institute of Pakistan Studies, Quaid-i-Azam University.

²⁹ Lamb, A. (1991). *Kashmir: A disputed territory*. Rexford Books.

³⁰ Syed, K., & Khan, I. (2021). Articles 370 and 371 of the Indian Constitution in the context of Kashmir. *Social Sciences & Education Research Review*, 4(1), 286–294. <https://doi.org/10.36902/sjesr-vol4-iss1-2021>

³¹ Mehmood, A. (2025). The 2025 India–Pakistan conflict: From Pahalgam to Operation Bunya nun Marsos. *Social Science Review Archives*. <https://doi.org/10.70670/sra.v3i2.766>

Conclusion and Future Endeavors

The Instrument of Accession remains one of the most vital and contested documents in the history of South Asia. Since its signing in October 1947, challenging interpretations of its consequences, validity, and conditions have shaped the legal and political dimensions of the Jammu and Kashmir dispute. India considers this document a legally binding document that recognized the relationship between India and Jammu and Kashmir; in contrast, Pakistan continues to question its legality by highlighting the surroundings and circumstances, the principle of self-determination, and unresolved commitments associated with the Jammu and Kashmir dispute.

The interpretations of the Instrument of Accession remain deeply affected by historical developments, historical circumstances, legal and international debates, and competing narratives of sovereignty.

The study further explains that the Jammu and Kashmir dispute signifies the connection between domestic constitutional and international law, and post-colonial political realities. The involvement of the United Nations Security Council resolutions, the principle of the right to self-determination, and constitutional developments reveal that the question of accession has remained linked to broader issues of legitimacy, sovereignty, and consent.

The study also finds that the abrogation of the special autonomous status of Jammu and Kashmir under Article 370 in 2019 introduced constitutional and demographic transformation. The government of India introduced these transformations as development for the state, but in reality, these are strategic steps to change the identity and demography of the region. While Pakistan opposes this unilateral move. These narratives and interpretations demonstrate that the legal debate surrounding Jammu and Kashmir remains unresolved and continues to impact regional politics between India and Pakistan and the security of South Asia.

Moreover, the paper highlights the political and historical controversies along with the legal imperatives. The issue cannot be studied just through a single legal lens; all the factors, including political interests and historical developments, have effectively influenced the complexity of the dispute. The relevance of the Jammu and Kashmir issue has been reinforced in international debates due to recurring regional crises. Conclusively, it can be said that mistrust and stability in South Asia are greatly impacted by the nature of the instrument of accession.³² Therefore, the issue should be approached with effective diplomatic engagement and legal analytical measures.

The theoretical approach adopted in this study further contributes to the understanding of the complexity of the prolonged Jammu and Kashmir dispute. From the perspective of post-colonial legal analysis, the dispute of Jammu and Kashmir cannot be detached from the broader challenges created during the process of decolonization. The transformation from British colonial rule to a free state created unresolved questions concerning sovereignty and the status of the princely states.

From the perspective of constructivism, the study highlights the importance of narrative reconciliation and dialogue between the two parties.

It also demonstrate theta political identities, national narratives, and historical memories influence the interpretations of the legal documents and territorial claims. Despite similar historical events, the Instrument of Accession of Jammu and Kashmir has developed different interpretations and meanings within India and Pakistan narratives.

The study concluded that the resolution of Jammu and Kashmir requires an approach beyond competing historical narratives, and a focus on legal clarity, dialogue, and respect for the aspirations of the people of Jammu and Kashmir.

As far as future endeavors are concerned, diplomatic measures are essential. Both India and Pakistan, with Kashmiri representatives, should engage in meaningful dialogue. An impartial and independent legal

³² Cheema, A., & [Author initials/name incomplete]. (2025). India–Pakistan relations post-Article 370: Security implications and diplomatic tensions. *Journal of Political Stability Archive*, 3(3), 57. <https://doi.org/10.63468/jpsa.3.3.57>

assessment of the Instrument of accession should be encouraged to determine its validity. It could help in clarifying the legal status of the princely states. The case of the legality of the Instrument of accession and the Jammu and Kashmir dispute requires active participation of the Kashmiri people as well as respect for human rights and a multi-pronged approach, which involves legal clarity.

To resolve the prolonged Jammu and Kashmir dispute, the resolutions of united nation Security Council should be implemented to uphold the right to self-determination of the people of Jammu and Kashmir. According to United Nations resolutions, a free and impartial plebiscite should be conducted under the supervision of the United Nations. This would bring peace between the two nuclear states, India and Pakistan, respect the aspirations and rights of the people of Jammu and Kashmir, and also contribute to peace and stability in South Asia.