



ALTACIT GLOBAL
Attorneys-at-Law

CHENNAI

3rd Floor, 'Creative Enclave',
148-150, Luz Church Road,
Mylapore,
Chennai - 600 004.
Tel: +91 - 44 - 2498 4821

BANGALORE

Suite 920, Level 9,
Raheja Towers,
26-27, M G Road,
Bangalore - 560 001.
Tel: +91 - 80 - 6546 2400

COIMBATORE

BB1, Park Avenue,
48, Race Course Road,
Coimbatore - 641018.
Tel: +91 - 422 - 6552921

EMAIL

info@altacit.com

WEBSITE

www.altacit.com

ARTICLE 370



**Lakshminarayanan Alaguraja
Advocate**



ALTACIT GLOBAL
Attorneys-at-Law

CHENNAI

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ARTICLE 370 - Temporary provisions with respect to the State of Jammu and Kashmir.

Article 370 of the Indian constitution, which is of a temporary nature, grants special status to Jammu and Kashmir. Under Part XXI of the Constitution of India, which deals with “Temporary, Transitional and Special provisions”, the State of Jammu and Kashmir has been accorded special status under Article 370. Even though included in 1st Schedule as 15th state, all the provisions of the Constitution which are applicable to other states are not applicable to J&K.



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Historical aspect

When India and Pakistan gained their independence on 15 and 14 August 1947, respectively; J&K chose to remain independent. There was an agreement by J&K with Pakistan and India that none of them will attack J&K. While India respected the agreement and exercised restraint, Pakistan attacked Kashmir in a bid to annex it by force. On 6 October 1947, Kashmir was attacked by "Azad Kashmir Forces" supported by Pakistan. To save J&K, Maharaja Hari Singh (the then ruler of J&K) chose to accede J&K to India.

In October 1947, the accession was made by the ruler in favour of India in consideration of certain commitments made by Pt. Jawahar Lal Nehru (the then Prime Minister of India). It was in the pursuance of those commitments that Article 370 was incorporated in the Constitution.



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VOL. XXIV. NO. 295

NEW DELHI: TUESDAY, OCTOBER 28, 1947.

PRICE TWO ANNAS

KASHMIR ACCEDES TO INDIA

PLEBISCITE SOON ON TROOPS AND ARMS FLOWN TO SRINAGAR RULER'S DECISION

CONTACT WITH RAIDERS
NEAR, BARAMULA

MORE REINFORCEMENTS
BEING DISPATCHED

Indian, Army troops came in
contact yesterday afternoon with
the invading raiders at a point
near Baramula, according to in-
formation received in New Delhi.
In response to the appeal made by
the Maharaja of Kashmir detachments
of Indian troops left Delhi by plane
early yesterday morning and arrived
at Srinagar shortly after 9 a.m. Be-
sides R.I.A.F. transports, a number of
civil aircraft were commandeered to
fly men and ammunition for the pro-
tection of Srinagar. The whole move-
ment of troops was undertaken at
short notice and the first squadron

SHEIKH ABDULLA TO
FORM INTERIM GOVT.

UNION TROOPS RUSHED FOR
PROTECTION OF STATE

(By Our Special Representative)

NEW DELHI, Monday.—In view of grave emergency the
Maharaja of Kashmir has acceded to the Indian Dominion. In a
letter to Lord Mountbatten he declares that "the other alternative
is to leave my State and my people to freebooters." He adds: "This
alternative I will never allow to happen so long as I am the Ruler
of the State and I have life to defend my country."

The Maharaja has also stated that he has decided to invite



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The Ruler of Jammu and Kashmir signed the instrument of accession whereby only three subjects were surrendered by the State to the Dominion of India.

4.External affairs

5.Defense and

6.Communications

The State enjoys a greater measure of autonomy and the power of the Union of India is restricted, as regards other States.



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Text of Article 370

- (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 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 that State; and*
 - (ii) *such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.*



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- (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 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 (1) 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 of the State referred to in clause (2) shall be necessary before the President issues such a notification.



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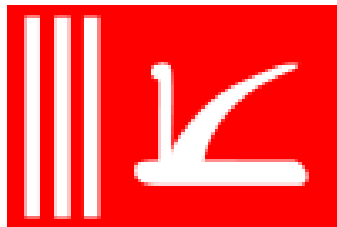
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Special features

Separate Constitution: J&K is the only state in India which has a Constitution of its own. The Constitution of J&K was enacted by a separate Constituent Assembly set up by the State and it came into force on 26 January 1957.





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Emergency Provisions

The Union of India has no power to declare Financial Emergency under Article 360 in the state. The Union can declare emergency in the state only in case of War or External Aggression. No proclamation of emergency made on the grounds of internal disturbance or imminent danger thereof shall have effect in relation to the state unless (a) it is made at the request or with the concurrence of the government of the state; or (b) where it has not been so made, it is applied subsequently by the President to that state at the request or with the concurrence of the government of that state. In December 1964, Articles 356 and 357 were extended to the state.



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Fundamental Duties, Directive Principles & Fundamental Rights

Part IV (Directive Principles of the State Policy) and Part IVA (Fundamental Duties) of the Constitution are not applicable to J&K. In addition to other fundamental rights, Articles 19(1)(f) and 31(2) of the Constitution are still applicable to J&K; hence the Fundamental Right to property is still guaranteed in this state. In the Indian Constitutional history only one Fundamental Right has been added so far and that is Right to Education. this right too is not extending to J&K.



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High Court of J&K

The High Court of J&K has limited powers as compared to other High Courts within India. It can't declare any law unconstitutional. Unlike High Courts in other states, under Article 226 of the Constitution, it can't issue writs except for enforcement of Fundamental Rights.





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Official Languages

Provisions of Part XVII of the Constitution apply to J&K only insofar as they relate to (i) the official language of the Union; (ii) the official language for communication between one state and another; or between a state and the Union; and (iii) language of the proceedings in the Supreme Court.

Urdu is the official language of the state but use of English is permitted for official purposes unless the state legislature provides otherwise.



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Miscellaneous

Certain special rights have been granted to the permanent residents of J&K with regard to employment under the state, acquisition of immovable property in the state, settlement in the state, and scholarship and other forms of aid as the state government may provide.

The 5th Schedule pertaining to the administration and control of Schedule Areas and Scheduled Tribes and the 6th Schedule pertaining to administration of tribal areas are not applicable to the state of J&K.



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Autonomy in certain matters

Any action of the Union Legislature or Union Executive which results in alteration of the name or territories or an international treaty or agreement affecting the disposition of any part of the territory of the state requires the consent of the State Legislature or the State Executive (as the case may be) to be effective. The Union has no power to suspend the Constitution of J&K.



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Procedure for Amendment of State Constitution

- The Provisions of the State Constitution (except those relating to the relationship of the state with the Union) may be amended by an Act of the Legislative Assembly of the state passed by not less than two-thirds of its membership.
- If such amendment seeks to affect Governor or Election Commission, it needs President's assent to come into effect. No amendment of the Constitution of India shall extend to J&K unless so extended by an order of the President under Article 370(1).



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