

LAW CAPSULE

FOR LAW COMPETITIVE EXAMS

LEGAL SYSTEM OF JAMMU AND KASHMIR

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The Indian Independence Act, 1947 adopted the provisions of accession made in the Government of India Act, 1935. It reads as "An Indian State shall be deemed to have acceded to the Dominion if the Governor General has signified the acceptance of an instrument of Accession executed by the Ruler thereof".

Instrument of Accession

Unable to prevent the raiders' advance into Jammu and Kashmir the Maharaja of Jammu and Kashmir, on October 26, 1947 signed the Instrument of Accession. The letter of acceptance of the accession was signed by Lord Mountbatten on October 27 making Jammu and Kashmir integral part of India.

United Nations Resolution

To resolve the difficult situation (war like situation) between India and Pakistan, India approached the Security Council of the United Nations on January 1, 1948. The United Nations Security Council appointed a United Nations Commission for India and Pakistan (UNCIP). The UNCIP adopted a three-part resolution on August 13, 1948.

Part I- Called for cease-fire between the parties.

Part II- Called for Pakistan to withdraw its nationals and

tribesmen and to vacate the territory occupied by it on the soil of Jammu and Kashmir.

Part III- After implementation of the above two parts, India was to withdraw the bulk of its forces from the State leaving an adequate force to ensure that the Government of Jammu and Kashmir maintains law and order and peace.

Constitution of India

In view of the Accession of Jammu and Kashmir to India the Constitution of India provides for a Special Status and protected place under Indian polity under Article 370 of the Constitution.

Constitution of Jammu and Kashmir

In 1951 Constituent Assembly of Jammu and Kashmir was elected by secret ballot. Speaking to the Constituent Assembly of Jammu and Kashmir in 1951 Sheikh Abdullah said, "The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any

unnatural cleavage between religious groups is the legacy of Imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class. In 1956, the Constituent Assembly of Jammu and Kashmir adopted the Constitution of the State, which also declared that Jammu and Kashmir is an integral part of Union of India. The Constitution was enforced on 26th January 1957.

Reaffirming the above in 1975, Sheikh Abdullah and Indian Prime Minister Indira Gandhi concluded the Kashmir Accord with both sides accepting the validity of the Constitution of the State of Jammu and Kashmir and reiterating the status of Jammu and Kashmir as an integral part of Union of India.

Treaties and Agreements between India and Pakistan

Various landmark Treaties / Agreements / Declarations have been made between India and Pakistan to resolve disputes relating to *inter alia*, Jammu and Kashmir. Some of them are briefly enumerated herein below:-

SL. NO.	TREATY/DECLARATION	PARTICULARS
1.	Indus Water Treaty, 1960	The Indus water dispute between India and Pakistan was resolved through the mediation of the World Bank by a treaty between Pakistan and India (1960) known as the Indus Water Treaty. According to this agreement,