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CAN AJK  
BECOME PART  
OF PAKISTAN?**

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This research examines whether Azad Jammu and Kashmir can legally become part of Pakistan under the existing constitutional framework. It analyzes the powers of AJK and Pakistani institutions, Article 257, and the plebiscite framework governing the future status of Jammu and Kashmir.

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# Abstract

*The constitutional question examined in this article is whether Azad Jammu and Kashmir (AJK) can legally become part of Pakistan under the existing constitutional framework. Using doctrinal legal research based on the Constitution of Pakistan, the AJK Interim Constitution Act 1974, relevant constitutional materials, and the United Nations framework on Jammu and Kashmir, the study finds that AJK cannot unilaterally change its status through its Legislative Assembly, Government, or the Government of Pakistan. Article 1 of the Constitution provides a general mechanism for admitting new States or areas into the Federation, but Article 257 establishes a specific framework for Jammu and Kashmir under which the future relationship with Pakistan depends on the decision of the people of the State. The AJK Interim Constitution likewise provides that the future status of Jammu and Kashmir is to be determined through the freely expressed will of its people under the applicable plebiscite framework. The study therefore finds, first, that AJK cannot separately become part of Pakistan through unilateral constitutional or legislative action; and second, that the future status of Jammu and Kashmir as a whole must be determined according to the will of its people through the applicable plebiscite framework. Any subsequent decision to establish a formal constitutional relationship with Pakistan, including provincial status, would require further constitutional and legislative action.*

## 1. Introduction

### 1.1 Background and Constitutional Context

The constitutional status of Azad Jammu and Kashmir occupies a distinctive position within the legal structure of Pakistan. AJK possesses a functioning institutional order, including a President, Prime Minister, Legislative Assembly, judiciary and other governmental institutions. It also maintains a close constitutional and administrative relationship with Pakistan, including Pakistani responsibilities in important fields. Yet AJK is not presently enumerated as one of the provinces of Pakistan. Its domestic constitutional position is governed principally by the Azad Jammu and Kashmir Interim Constitution Act 1974, while its relationship with Pakistan is also addressed by the Constitution of Pakistan, particularly Articles 1 and 257.<sup>1</sup>

The AJK Interim Constitution itself establishes the unusual nature of this arrangement. Its Preamble states that the future status of the State of Jammu and Kashmir remains to be determined according to the freely expressed will of the people of the State through the democratic method of a free and fair plebiscite under the auspices of the United Nations as

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<sup>1</sup> Constitution of the Islamic Republic of Pakistan, arts. 1, 257; Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble and art. 2.

envisaged in the UNCIP resolutions. It further describes the territories administered as AJK as part of the territories of the State of Jammu and Kashmir that are, for the time being, under that administration.<sup>2</sup> The legal framework therefore distinguishes between the present administration of AJK and the final determination of the status of the State of Jammu and Kashmir.

The Constitution of Pakistan contains a general provision dealing with the admission of new States or areas into the Federation. Article 1 provides that the territories of Pakistan include such States and territories as are or may be included in Pakistan, whether by accession or otherwise, while Article 1(3) provides that Parliament may by law admit new States or areas into the Federation on such terms and conditions as it thinks fit.<sup>3</sup> Article 257, however, establishes a specific constitutional provision for Jammu and Kashmir. It provides that when the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State.<sup>4</sup>

The coexistence of these provisions creates the central constitutional problem addressed by this article. Article 1 demonstrates that Pakistan's constitutional order contains a mechanism for the admission of territory into the Federation. Article 257, however, indicates that Jammu and Kashmir is not to be treated simply as an ordinary territory subject to unilateral incorporation. The question is therefore not merely whether Parliament possesses a general power to admit territory. The question is whether that power can be exercised in relation to AJK independently of the special constitutional framework governing Jammu and Kashmir.

The same problem arises from the powers of AJK's own institutions. The AJK Legislative Assembly possesses substantial legislative authority within the territory, while the Government of AJK exercises executive authority under the Interim Constitution. These institutions nevertheless operate within an expressly interim constitutional arrangement. The Assembly therefore possesses constitutional legislative powers but not unlimited constituent authority over the ultimate status of the State of Jammu and Kashmir.<sup>5</sup>

The judicial position further strengthens this distinction. In *Yasir Bashir v. Saba Yasir*, the Supreme Court of Azad Jammu and Kashmir examined the relationship between Article 1 and Article 257 of the Constitution of Pakistan and the AJK Interim Constitution. The Court expressly held that AJK is presently not constitutionally included in the territories of Pakistan. It further distinguished the territory of AJK from the broader State of Jammu and Kashmir, stating that the latter encompasses AJK, the liberated area of Gilgit-Baltistan and the territories of

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<sup>2</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble. The Act states that the future status of the State of Jammu and Kashmir is yet to be determined according to the freely expressed will of its people through a free and fair plebiscite under United Nations auspices and that part of the territories of the State are for the time being known as AJK.

<sup>3</sup> Constitution of the Islamic Republic of Pakistan, art. 1(2)-(3). Article 1 provides for "such States and territories as are or may be included in Pakistan, whether by accession or otherwise," and empowers Parliament to admit new States or areas into the Federation by law.

<sup>4</sup> *Ibid.*, art. 257. The text provides that when the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State. The provision is reproduced in official parliamentary material.

<sup>5</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, arts. 30-33. See especially the provisions concerning legislative competence and amendment

Jammu, Kashmir, Ladakh and other areas then under Indian administration.<sup>6</sup> The judgment provides direct judicial support for the proposition that AJK and the State of Jammu and Kashmir cannot be treated as legally interchangeable entities.

## 1.2 Research Problem

The research problem arises from the uncertainty surrounding the legal authority and procedure through which AJK could become part of Pakistan. Political claims that AJK could simply be made a province do not establish whether such action is constitutionally permissible, which institution possesses the necessary authority, or what legal conditions must first be satisfied. The problem is therefore to determine whether AJK can independently alter its constitutional status, whether Pakistan can unilaterally incorporate it, and what the existing constitutional framework requires for any future change in the status of Jammu and Kashmir.

## 1.3 Primary Research Question

**Can Azad Jammu and Kashmir legally become part of Pakistan under the existing constitutional and legal framework?**

## 1.4 Secondary Research Questions

The primary question is examined through eight secondary questions:

1. What is the present constitutional and legal status of AJK under the AJK Interim Constitution Act 1974 and the Constitution of Pakistan?
2. Does the Constitution of Pakistan provide a legal mechanism for AJK to become part of Pakistan, particularly under Articles 1 and 257?
3. Can the AJK Legislative Assembly or the AJK Government unilaterally alter the constitutional status of AJK or declare it part of Pakistan?
4. Can the Government of Pakistan or Parliament unilaterally incorporate AJK into Pakistan or establish it as a province?
5. What is the legal significance of the will of the people of the State of Jammu and Kashmir in determining its future status?

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<sup>6</sup> *Yasir Bashir v. Saba Yasir and others*, Civil Appeals Nos. 299 and 330 of 2018, PLD 2019 Supreme Court (AJ&K) 9 (Supreme Court of Azad Jammu and Kashmir, decided January 10, 2019). The Court held that AJK is presently not constitutionally included in the territories of Pakistan and distinguished the "territory of Azad Jammu and Kashmir" from the "State of Jammu and Kashmir."

6. What role does the applicable plebiscite framework under the AJK constitutional and United Nations framework play in determining the future status of Jammu and Kashmir?
7. If accession to Pakistan were lawfully determined, what constitutional and legislative procedure would be required to establish the resulting relationship?
8. Would becoming part of Pakistan automatically result in provincial status, or would provincialisation require a separate constitutional process?

These questions follow the research framework prepared for this study, which required every major legal proposition to be tested against four issues: what the law permits, what it prohibits, who has legal authority, and what procedure the law requires.<sup>7</sup>

## **1.5 Research Objectives**

The principal objective of the study is to determine, on the basis of the existing constitutional and legal framework, whether AJK can lawfully become part of Pakistan.

The study further aims to identify the present constitutional status of AJK; examine Articles 1 and 257 of the Constitution of Pakistan; determine the constitutional powers and limitations of the AJK Legislative Assembly and Government; determine the role of Pakistan's Parliament and executive institutions; examine the legal relevance of the will of the people of the State of Jammu and Kashmir; distinguish accession, incorporation, integration and provincialisation; and determine the constitutional procedure that would be required if a future relationship with Pakistan were established. These objectives are consistent with the original research guide supplied for the study.<sup>8</sup>

## **1.6 Significance of the Study**

The significance of the study lies in separating constitutional law from political assertion. The proposition that Pakistan can simply make AJK a province assumes the existence of unrestricted constitutional authority. The proposition that AJK can itself declare accession assumes that the AJK Legislative Assembly possesses constituent authority over the final status of the State. Neither proposition can be accepted without examining the constitutional texts governing the relationship.

The study is also significant because it distinguishes between the question of whether AJK can become part of Pakistan and the separate question of whether AJK can become a province. Accession, incorporation, integration and provincialisation are not necessarily identical legal

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<sup>7</sup> Jammu Kashmir Policy Lab, *JKPL Legal Research Guide: Can AJK Become Part of Pakistan Legally? A Constitutional and Legal Analysis*, especially the "Required Analytical Test."

<sup>8</sup> Jammu Kashmir Policy Lab, *JKPL Legal Research Guide*, "Core Objective" and "Required Conclusion."

events. The distinction is expressly required by the research framework and is essential to an accurate constitutional analysis.<sup>9</sup>

Finally, the study contributes to the legal literature on AJK by placing the judicial position of the Supreme Court of AJK alongside the constitutional texts. The Court's express finding that AJK is presently not constitutionally included within Pakistan provides an important judicial basis for examining the proposition that AJK could simply be treated as an existing Pakistani province.<sup>10</sup>

## 1.7 Scope of the Study

The study is limited to the constitutional and legal question of the possible future status of AJK and the relationship between AJK and Pakistan. It does not argue whether AJK should become part of Pakistan, nor does it advocate or oppose provincialisation as a political objective.

The international legal dimension is examined only insofar as it affects the constitutional question. The study therefore considers the UNCIP and United Nations Security Council framework because the AJK Interim Constitution itself expressly refers to that framework. It does not attempt to provide an exhaustive analysis of the entire international law of the Kashmir dispute.<sup>11</sup>

## 2. Methodology

This study adopts a doctrinal legal research methodology. The analysis proceeds primarily from primary legal sources, including the Constitution of Pakistan, the AJK Interim Constitution Act 1974, constitutional amendments, relevant legislation, judicial decisions and United Nations documents. Secondary legal scholarship is used to provide interpretation and contextualisation but does not replace the primary law. This methodological approach follows the research guide prepared for the project.<sup>12</sup>

The doctrinal method is particularly appropriate because the research question concerns legal competence. Whether AJK can become part of Pakistan is not determined merely by political feasibility. It depends upon the legal authority vested in particular institutions and the procedural conditions established by constitutional instruments.

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<sup>9</sup> Ibid., "Important Conceptual Distinctions."

<sup>10</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9. The Court rejected the proposition that AJK's constitutional arrangements had made it constitutionally part of Pakistan.

<sup>11</sup> Jammu Kashmir Policy Lab, *JKPL Legal Research Guide*, "International Legal Dimension."

<sup>12</sup> Ibid., "Methodology" and "Primary Sources."

The analysis therefore applies four tests throughout the article: what the law permits, what it prohibits, who has the authority to act and what procedure must be followed.<sup>13</sup> These questions are applied first to the Pakistani constitutional framework, then to the AJK constitutional framework, then to the relationship between the two, and finally to the international plebiscite framework incorporated into the AJK constitutional order.

The study also uses judicial interpretation where it directly clarifies the relationship between AJK and Pakistan. The Supreme Court of AJK's decision in *Yasir Bashir v. Saba Yasir* is particularly significant because the Court expressly interpreted Articles 1 and 257 together and held that AJK is presently outside the constitutional territory of Pakistan.<sup>14</sup>

## 3. Legal Framework

### 3.1 Article 1 of the Constitution of Pakistan

Article 1 of the Constitution of Pakistan establishes the territorial structure of the Federation. Its relevant language provides that the territories of Pakistan comprise the provinces, the Islamabad Capital Territory and "such States and territories as are or may be included in Pakistan, whether by accession or otherwise." Article 1(3) further provides that Parliament may by law admit into the Federation new States or areas on such terms and conditions as it thinks fit.<sup>15</sup>

The legal importance of Article 1 is that it demonstrates the existence of a constitutional mechanism through which a new State or area may become part of Pakistan. The constitutional order is therefore capable of territorial expansion. There is no general constitutional prohibition against admitting territory that is not presently one of Pakistan's provinces. Article 1 nevertheless establishes a general power. It does not expressly resolve the special position of Jammu and Kashmir. The existence of Article 257 is therefore decisive. An interpretation of Article 1 that allowed Parliament to incorporate AJK without regard to Article 257 would effectively deprive Article 257 of its specific constitutional significance. Article 1(3) also does not state that every State or area admitted into the Federation must automatically become a province. Parliament may determine the "terms and conditions" of admission. This wording is important because it prevents the legal concepts of admission and provincialisation from being treated as identical.<sup>16</sup>

### 3.2 Article 257 and the State of Jammu and Kashmir

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<sup>13</sup> Ibid., "Required Analytical Test."

<sup>14</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9. The judgment directly analyzes Articles 1 and 257 of the Constitution of Pakistan alongside the AJK Interim Constitution.

<sup>15</sup> Constitution of the Islamic Republic of Pakistan, art. 1. The text is reproduced in the official constitutional materials and in the Supreme Court of AJK judgment.

<sup>16</sup> Ibid., art. 1(3).

Article 257 provides:

"When the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people of that State."<sup>17</sup> The provision contains two distinct elements. First, it identifies a decision by the people of the State concerning accession. Second, it provides that the relationship between Pakistan and the State after that decision shall be determined in accordance with the wishes of the people.

Article 257 therefore does not simply declare the State to be part of Pakistan. Nor does it prescribe that provincial status must be the result. Instead, it establishes a constitutional framework in which popular decision precedes the determination of the relationship. The use of the phrase "the people of the State of Jammu and Kashmir" is significant. The constitutional provision does not refer merely to the population of AJK. It refers to the State of Jammu and Kashmir. This distinction is reinforced by the judgment of the Supreme Court of AJK in *Yasir Bashir*, where the Court expressly differentiated between the "territory of Azad Jammu and Kashmir" and the "State of Jammu and Kashmir."<sup>18</sup>

The Court's interpretation is particularly important for the present research because it confirms that AJK cannot simply be equated with the whole constitutional entity contemplated by Article 257. The Court held that the State of Jammu and Kashmir is broader than the territory administered as AJK.<sup>19</sup>

### 3.3 The AJK Interim Constitution Act 1974

The Preamble of the AJK Interim Constitution Act 1974 states that the future status of the State of Jammu and Kashmir remains to be determined according to the freely expressed will of the people of the State through the democratic method of a free and fair plebiscite under United Nations auspices as envisaged in the UNCIP resolutions. It further states that part of the territories of the State already liberated by its people are known for the time being as AJK and that the Act provides for their government and administration until the status of Jammu and Kashmir is determined.<sup>20</sup> This language establishes the interim character of AJK's constitutional system. AJK has governmental institutions, but those institutions exist within a constitutional arrangement that expressly distinguishes present administration from final status.

Article 2 reinforces this distinction by defining AJK as the territories of the State of Jammu and Kashmir that have been liberated by the people of that State and are for the time being under the administration of the Government, together with territories that may later come under its

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<sup>17</sup> Ibid., art. 257.

<sup>18</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.

<sup>19</sup> Ibid. The Court described the State of Jammu and Kashmir as legally, historically, geographically and constitutionally broader than the territory administered as AJK.

<sup>20</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.



administration.<sup>21</sup> The legal significance is substantial. The AJK constitutional order does not present AJK as a separate sovereign State possessing an unrestricted constituent power to determine its final status. Nor does it treat AJK as an already incorporated province of Pakistan. It establishes an interim government for territory that forms part of the broader State of Jammu and Kashmir.

### 3.4 Legislative Competence of the AJK Assembly

The AJK Interim Constitution gives the Legislative Assembly substantial legislative authority. Its legislative power extends to matters within its constitutional competence for the territory of AJK, subject to limitations imposed by the Interim Constitution.<sup>22</sup>

The Assembly's legislative power, however, does not make it the constituent authority of the State of Jammu and Kashmir. The distinction between legislative and constituent power is critical. The Assembly can legislate under the constitution that creates it; it cannot simply enlarge its constitutional competence through an ordinary resolution.

The Interim Constitution also places important matters outside the legislative competence of the Assembly and preserves Pakistani responsibilities concerning the UNCIP framework, defence, currency and external affairs.<sup>23</sup> This allocation of competence further demonstrates that AJK institutions cannot be understood as exercising unlimited sovereign authority.

### 3.5 Constitutional Amendment under the AJK Interim Constitution

The amendment mechanism of the AJK Interim Constitution also contains significant restrictions. Section 33 provides a procedure for amendment, while expressly requiring the prior approval of the Government of Pakistan for amendments concerning specified core provisions, including the provisions relating to the legislative framework and the relationship with Pakistan.<sup>24</sup> This structure demonstrates that even the AJK constitutional order does not permit its institutions to independently redefine the constitutional relationship with Pakistan. Constitutional change is possible, but it must occur according to the prescribed amendment procedure and, in specified matters, with federal approval. The existence of this procedure is important because it distinguishes lawful constitutional evolution from unilateral political declaration. A political

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<sup>21</sup> Ibid., art. 2. The Court reproduced and interpreted the definition of AJK in *Yasir Bashir*.

<sup>22</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, art. 31. The Act sets out the legislative competence of the Assembly within AJK.

<sup>23</sup> Ibid., art. 31(3). The provision reserves matters including responsibilities of the Government of Pakistan under the UNCIP resolutions, defence, currency and external affairs.

<sup>24</sup> Ibid., art. 33. The Act provides that specified constitutional provisions cannot be amended without the prior approval of the Government of Pakistan.

resolution may express a position, but the legal alteration of constitutional status requires the exercise of legally conferred authority through the required procedure.

### **3.6 Constitutional Amendment under Pakistan's Constitution**

Articles 238 and 239 of the Constitution of Pakistan provide the constitutional mechanism for amendment of the federal Constitution. Article 238 permits constitutional amendment by Act of Parliament, while Article 239 establishes the parliamentary procedure and the required voting thresholds.<sup>25</sup>

If AJK were to become a province, the constitutional structure of Pakistan would necessarily have to accommodate the new federating unit. Provincialisation would therefore be distinct from mere admission under Article 1(3). It would require whatever constitutional amendments were necessary to establish the new province's place within the federal system.

### **3.7 The 13th Amendment to the AJK Interim Constitution**

The Thirteenth Amendment to the AJK Interim Constitution is important evidence of constitutional evolution within the existing framework. It substantially altered the institutional balance by abolishing the legislative and executive functions of the AJK Council and transferring those functions within the revised framework to the Government and Legislative Assembly of AJK.<sup>26</sup> The amendment demonstrates that AJK's internal constitutional structure can change significantly without AJK thereby becoming a province of Pakistan. Institutional convergence with provincial arrangements is therefore not equivalent to formal provincial status. This distinction is directly relevant to the research question. The existence of provincial-like powers cannot establish that AJK is already a province. Similarly, the granting of greater legislative authority to AJK does not give the Assembly unlimited power to determine final status.

## **4. Judicial Interpretation**

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<sup>25</sup> Constitution of the Islamic Republic of Pakistan, arts. 238-239

<sup>26</sup> Azad Jammu and Kashmir Interim Constitution (Thirteenth Amendment) Act, 2018. The researcher's source material identifies the amendment as abolishing the former legislative and executive functions of the AJK Council and transferring them within the revised constitutional arrangement.

## 4.1 The Supreme Court of AJK and the Present Constitutional Status

The most directly relevant judicial authority identified in the research is the judgment of the Supreme Court of Azad Jammu and Kashmir in *Yasir Bashir v. Saba Yasir*, reported as PLD 2019 Supreme Court (AJ&K) 9.<sup>27</sup> The case concerned the enforcement in AJK of decrees passed by Pakistani courts, but in resolving that issue the Court examined the constitutional relationship between Pakistan and AJK. It reproduced Article 1 of the Constitution of Pakistan and Article 257 and then considered the relevant provisions of the AJK Interim Constitution.<sup>28</sup>

The Court expressly held that "at present the Azad Jammu and Kashmir is not constitutionally included in the territories of Pakistan."<sup>29</sup> This is one of the clearest judicial statements directly relevant to the question examined by this article. The Court then relied upon the Preamble of the AJK Interim Constitution and emphasized that the future status of the State of Jammu and Kashmir remained to be determined through the freely expressed will of its people under a plebiscite framework.<sup>30</sup>

The Court further explained that AJK is a separate territory and is not presently included in the territory of Pakistan. It stated that if the people of the State of Jammu and Kashmir were to decide to accede to Pakistan under the constitutional framework, the territory of Pakistan could then be extended.<sup>31</sup> This judicial reasoning directly supports the first principal finding of the present study. AJK is not already constitutionally part of Pakistan, and the existing framework does not permit it to be treated as though its final incorporation has already occurred.

## 4.2 AJK Territory and the State of Jammu and Kashmir

Perhaps the most important aspect of the *Yasir Bashir* judgment for this research is the Court's explicit distinction between "the territory of Azad Jammu and Kashmir" and "the State of Jammu and Kashmir."<sup>32</sup> The Court stated that the State of Jammu and Kashmir legally, historically, geographically and constitutionally comprises AJK, the liberated area of Gilgit-Baltistan and the other territories, including Jammu, Kashmir and Ladakh, that are under Indian administration.<sup>33</sup>

For the present research, the significance of this statement is not to adopt every descriptive or political characterization contained in the judgment. Its significance is that the Court itself treated AJK as legally distinct from the broader State of Jammu and Kashmir. That distinction is

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<sup>27</sup> *Yasir Bashir v. Saba Yasir and others*, PLD 2019 Supreme Court (AJ&K) 9. The judgment was decided in January 2019 and concerned Civil Appeals Nos. 299 and 330 of 2018.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid. The Court expressly stated that "at present" AJK is not constitutionally included in the territories of Pakistan.

<sup>30</sup> Ibid.; Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.

<sup>31</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.

<sup>32</sup> Ibid

<sup>33</sup> Ibid

directly relevant to Article 257, which refers to "the people of the State of Jammu and Kashmir," rather than merely the people of AJK. The judicial position therefore supports the researcher's second principal finding: the constitutional question concerning the future status of Jammu and Kashmir cannot simply be reduced to an independent constitutional decision by AJK alone.

### 4.3 Judicial Significance of Provincial Parity

The *Yasir Bashir* judgment also addressed arguments that, following the Thirteenth Amendment, AJK should be treated like a province for particular legal purposes. The Court rejected the proposition that the institutional changes had transformed AJK into a province of Pakistan.<sup>34</sup> This provides an important judicial distinction between functional similarity and constitutional identity. AJK may possess certain powers comparable to those of provinces, but that does not establish formal provincial status. The finding is consistent with the constitutional structure examined above. Provincial status is a constitutional category. It cannot be inferred simply from the existence of an Assembly, executive government, or administrative powers similar to those of provinces.

## 5. Analysis

### 5.1 Can AJK Unilaterally Become Part of Pakistan?

The first substantive question is whether AJK itself can legally alter its status and become part of Pakistan through a unilateral act. The answer is no. The AJK Interim Constitution provides for a government and legislature for the administration of AJK until the status of Jammu and Kashmir is determined. It does not confer upon the Legislative Assembly an unlimited constituent authority to settle the final status of the State.<sup>35</sup>

The Assembly has legislative authority within AJK, but that authority exists within the legal framework established by the Interim Constitution. Its powers therefore cannot be used to bypass provisions concerning the future status of Jammu and Kashmir. A resolution declaring AJK to be part of Pakistan would consequently be politically significant but would not itself constitute completed accession. The distinction is between political expression and legal effect. Where the constitutional framework requires the status of the State to be determined according to a particular legal process, a legislative resolution cannot substitute for that process.

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<sup>34</sup> Ibid. The judgment considered arguments based on the Thirteenth Amendment that AJK should be treated like a province and rejected the proposition that the amendment had made AJK constitutionally part of Pakistan.

<sup>35</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble, arts. 30-33.

This conclusion is also supported by *Yasir Bashir*. The Supreme Court of AJK expressly held that AJK is currently not constitutionally included in Pakistan.<sup>36</sup> The Court therefore recognized a present legal distinction between AJK and Pakistan that cannot simply be erased by an ordinary Assembly declaration. The first finding can therefore be stated simply: **AJK cannot legally become part of Pakistan unilaterally under the existing constitutional framework.**

## 5.2 Can the AJK Government Unilaterally Change Status?

The same reasoning applies to the AJK Government. The Government exercises executive authority under the Interim Constitution, but it does not possess an independent constituent power to alter the final constitutional status of the territory. The executive cannot exercise powers beyond those conferred by the constitutional framework. Because the Interim Constitution treats AJK as part of the State of Jammu and Kashmir whose final status remains to be determined, executive action cannot convert AJK into a province of Pakistan without the constitutional process necessary to establish that status. The AJK Government could participate in a future constitutional process, but it cannot replace the people of the State of Jammu and Kashmir as the entity whose will is identified by Article 257.

## 5.3 Can Pakistan's Executive Unilaterally Incorporate AJK?

The Government of Pakistan has significant responsibilities within the existing constitutional relationship. The AJK Interim Constitution expressly recognizes Pakistani responsibilities connected with the UNCIP resolutions and reserves defence, external affairs and currency from AJK legislative competence.<sup>37</sup> These responsibilities, however, should not be equated with unlimited constitutional authority to alter AJK's status. Pakistan's executive operates within the constitutional structure governing Jammu and Kashmir. The Government of Pakistan therefore cannot, merely by executive action, transform AJK into a province. Any formal territorial incorporation would require the constitutional process prescribed by the Constitution of Pakistan and the special requirements applicable to Jammu and Kashmir.

## 5.4 Can Parliament Unilaterally Incorporate AJK?

This question requires greater precision because Parliament does have express authority under Article 1(3). Parliament may admit new States or areas into the Federation by law on such terms

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<sup>36</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.

<sup>37</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, art. 31(3).

and conditions as it thinks fit.<sup>38</sup> The existence of that power means it would be incorrect to conclude that Parliament has no constitutional role in the incorporation of AJK.

The question, however, is whether Parliament can exercise Article 1(3) without Article 257. The better constitutional interpretation is no. Article 257 is a specific provision dealing with Jammu and Kashmir and provides that when the people of the State decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined in accordance with their wishes.<sup>39</sup>

If Article 1(3) allowed Parliament simply to incorporate AJK without satisfying this special framework, Article 257 would become constitutionally redundant. Constitutional interpretation ordinarily seeks to give effect to all relevant provisions rather than allowing a general provision to nullify a specific one. Accordingly, Parliament is the principal institution capable of giving federal legal effect to a future admission, but it cannot use Article 1 as a shortcut around Article 257.

## 5.5 What Does "The People of the State of Jammu and Kashmir" Mean?

The wording of Article 257 requires particular attention. The provision refers to "the people of the State of Jammu and Kashmir."<sup>40</sup> It does not refer specifically to the people of AJK.

This distinction is central to the present research because the question posed is whether **AJK** can become part of Pakistan. The constitutional language does not provide that the people of AJK alone possess the authority to make the decision contemplated by Article 257. The AJK Interim Constitution uses similar language. Its Preamble refers to the freely expressed will of "the people of the State" and to the future status of the State of Jammu and Kashmir.<sup>41</sup> The Supreme Court of AJK has likewise distinguished AJK territory from the broader State of Jammu and Kashmir.<sup>42</sup>

The legal conclusion is therefore that the constitutional framework identifies the State of Jammu and Kashmir, rather than AJK alone, as the relevant entity for the determination of final status.

## 5.6 The Plebiscite Framework

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<sup>38</sup> Constitution of the Islamic Republic of Pakistan, art. 1(3).

<sup>39</sup> *Ibid.*, art. 257.

<sup>40</sup> *Ibid.*

<sup>41</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.

<sup>42</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.

The AJK Interim Constitution expressly refers to a democratic method of free and fair plebiscite under United Nations auspices as envisaged in the UNCIP resolutions.<sup>43</sup> The reference is not incidental. It appears in the Preamble in the provision defining the very purpose and temporary character of the constitutional arrangement. United Nations Security Council Resolution 47 of 21 April 1948 is officially identified as concerning restoration of peace and order and the plebiscite in the State of Jammu and Kashmir.<sup>44</sup> The United Nations record therefore places the plebiscite question in relation to the State of Jammu and Kashmir rather than to AJK as a separate constitutional unit.<sup>45</sup> Resolution 122 of 24 January 1957 similarly concerns the final disposition of the State of Jammu and Kashmir. The official United Nations record describes it in those terms.<sup>46</sup>

The implication for the present research is important. The applicable constitutional and United Nations framework does not support the proposition that AJK alone can hold a separate local vote and thereby independently settle the final status of the State of Jammu and Kashmir. The correct formulation is narrower and more defensible: **the future status of Jammu and Kashmir as a whole is tied to the will of its people through the applicable plebiscite framework.**

This does not require the present study to speculate about the exact contemporary mechanics of a future plebiscite or to assert a precise electoral procedure across territories currently administered by different authorities. The sources establish the relevant legal entity: the State of Jammu and Kashmir and the principle of determination according to the will of its people. The exact operational modalities of a future plebiscite would be a separate question.

## 5.7 Can an AJK-Only Referendum Satisfy Article 257?

The answer, on the sources examined, should be stated cautiously.

An AJK-only referendum could demonstrate the political preference of the population residing in AJK. It could be significant as an expression of local opinion. But the legal materials examined do not support treating such a vote by itself as the final determination contemplated by Article 257.

Article 257 is framed in terms of the people of the State of Jammu and Kashmir.<sup>46</sup> The AJK Interim Constitution likewise refers to the people of the State.<sup>47</sup> The Supreme Court of AJK has expressly distinguished AJK from the State of Jammu and Kashmir as a whole.<sup>48</sup> The United

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<sup>43</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.

<sup>44</sup> United Nations Security Council, Resolution 47 (1948), S/RES/47, April 21, 1948. The official United Nations record identifies the resolution as concerning restoration of peace and order and the plebiscite in the State of Jammu and Kashmir.

<sup>45</sup> United Nations Security Council, Resolution 122 (1957), S/RES/122, January 24, 1957. The official United Nations record identifies the resolution as concerning the final disposition of the State of Jammu and Kashmir.

<sup>46</sup> Constitution of the Islamic Republic of Pakistan, art. 257

<sup>47</sup> Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.

<sup>48</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.



Nations Security Council framework likewise uses the State of Jammu and Kashmir as the object of the plebiscite and final-disposition framework.<sup>49</sup>

Therefore, an AJK-only vote should not be described as automatically sufficient to complete accession to Pakistan under the existing constitutional framework.

## 5.8 What Role Would Parliament Have After a Decision on Accession?

If the relevant constitutional process resulted in a decision of accession to Pakistan, Parliament would become central to the subsequent legal relationship.

Article 1(3) provides the federal constitutional authority to admit new States or areas into the Federation and to determine the terms and conditions of that admission.<sup>50</sup> The provision therefore supplies an implementation mechanism following the satisfaction of the special conditions applicable to Jammu and Kashmir. Article 257, however, does not dictate a predetermined form of relationship after accession. It states that the relationship shall be determined in accordance with the wishes of the people.<sup>51</sup>

The implication is that a lawful decision concerning accession would be followed by a constitutional process establishing the precise form of the relationship. Parliament could therefore play a central role in formalising the relationship, but its action would be part of a sequence rather than the event that replaces the people's decision.

## 5.9 Does Accession Automatically Mean Provincialisation?

No. This is one of the most important distinctions in the research. Article 257 provides that after accession the relationship between Pakistan and the State is to be determined in accordance with the wishes of the people.<sup>52</sup> It does not state that the State must automatically become a province. Article 1(3) similarly allows Parliament to admit new States or areas on such terms and conditions as it thinks fit.<sup>53</sup> The wording permits different forms of constitutional relationship and therefore does not make provincial status the unavoidable consequence of admission.

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<sup>49</sup> United Nations Security Council, Resolutions 47 (1948) and 122 (1957).

<sup>50</sup> Constitution of the Islamic Republic of Pakistan, art. 1(3).

<sup>51</sup> *Ibid.*, art. 257.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, art. 1(3).



Accession and provincialisation must therefore be treated as separate legal stages. Accession concerns the decision to enter into a relationship with Pakistan. Provincialisation concerns the constitutional form that relationship ultimately takes within Pakistan's federal structure.

## 5.10 What Would Provincialisation Require?

If provincialisation were ultimately chosen, the constitutional structure of Pakistan would have to be amended to accommodate AJK as a federating unit.

Articles 238 and 239 establish the general constitutional amendment mechanism.<sup>54</sup> The precise amendments would depend upon the final constitutional arrangement, but they would necessarily need to address the new province's position within the Federation. Provincialisation would therefore raise questions of legislative powers, executive authority, federal representation, financial arrangements and the application of the constitutional framework governing the provinces.

The transition would consequently be more extensive than simply adding the name "AJK" to a list. It would involve placing AJK within the institutional architecture applicable to a Pakistani province.

## 5.11 Does the 13th Amendment Make AJK a Province?

No. The Thirteenth Amendment significantly changed the institutional distribution of powers in AJK. It abolished the legislative and executive powers previously exercised by the AJK Council and transferred functions within the revised constitutional structure to the AJK Government and Legislative Assembly.<sup>55</sup>

Those reforms increased institutional autonomy and produced greater parity with provincial arrangements in certain respects. They did not, however, alter Article 1 of the Constitution of Pakistan to place AJK among the provinces, nor did they produce the final status contemplated by Article 257. The judicial reasoning in *Yasir Bashir* reinforces this point. Arguments that the post-Thirteenth-Amendment arrangement meant AJK should simply be treated as a province were rejected.<sup>56</sup> The legal distinction is therefore clear: **provincial-like powers do not create provincial constitutional status.**

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<sup>54</sup> Ibid., arts. 238-239.

<sup>55</sup> Azad Jammu and Kashmir Interim Constitution (Thirteenth Amendment) Act, 2018.

<sup>56</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9.

## 6. Findings

### **Finding 1: AJK Cannot Legally Become Part of Pakistan Unilaterally**

AJK cannot legally become part of Pakistan through a unilateral act of the AJK Legislative Assembly, the AJK Government, or the Government of Pakistan under the existing constitutional framework. The AJK Interim Constitution does not confer upon AJK institutions the unilateral constituent authority to settle the final status of the State, and the Supreme Court of AJK has expressly held that AJK is presently not constitutionally included within the territories of Pakistan.<sup>57</sup>

### **Finding 2: The Future Status of Jammu and Kashmir as a Whole Must Be Determined According to the Will of Its People Through the Applicable Plebiscite Framework**

The future status of Jammu and Kashmir as a whole must be determined according to the will of its people through the applicable plebiscite framework. Article 257 of the Constitution of Pakistan refers to the people of the State of Jammu and Kashmir, while the AJK Interim Constitution expressly refers to the freely expressed will of the people of the State through a free and fair plebiscite under United Nations auspices.<sup>58</sup>

### **Finding 3: Parliament Has a Role in Implementing a Future Constitutional Relationship**

Parliament possesses constitutional authority under Article 1(3) to admit new States or areas into the Federation and determine the terms and conditions of their admission. This authority would become relevant after the constitutional conditions concerning Jammu and Kashmir had been satisfied. It does not, however, permit Parliament to bypass Article 257.<sup>59</sup>

### **Finding 4: Accession Does Not Automatically Mean Provincialisation**

A decision to accede to Pakistan would not automatically establish AJK as a province. Article 257 leaves the resulting relationship to be determined in accordance with the wishes of the people, while Article 1(3) permits terms and conditions of admission to be established by law. Provincialisation is therefore a separate constitutional question.<sup>60</sup>

### **Finding 5: Provincialisation Would Require Further Constitutional Action**

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<sup>57</sup> *Yasir Bashir v. Saba Yasir*, PLD 2019 SC (AJ&K) 9; Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble and relevant institutional provisions.

<sup>58</sup> Constitution of the Islamic Republic of Pakistan, art. 257; Azad Jammu and Kashmir Interim Constitution Act, 1974, Preamble.

<sup>59</sup> Constitution of the Islamic Republic of Pakistan, art. 1(3).

<sup>60</sup> *Ibid.*, arts. 1(3), 257.

If provincial status were ultimately selected, further constitutional and legislative action would be required, including the amendment process applicable to the Constitution of Pakistan. The precise institutional settlement would need to provide for AJK's position as a federating unit within Pakistan.<sup>61</sup>

## 8. Conclusion

This article examined whether AJK can legally become part of Pakistan under the existing constitutional and legal framework. The analysis proceeded from the Constitution of Pakistan, the AJK Interim Constitution Act 1974, constitutional amendments, judicial interpretation and the applicable United Nations framework.

The first conclusion is clear: **AJK cannot legally become part of Pakistan unilaterally under the existing constitutional framework.** Neither the AJK Legislative Assembly nor the AJK Government possesses an independent constitutional authority to finally alter the status of AJK. The Government of Pakistan likewise cannot transform AJK into a province through unilateral executive action. Parliament has constitutional authority concerning the admission of new States and areas, but that authority must be exercised consistently with Article 257 and cannot substitute for the special constitutional framework governing Jammu and Kashmir. This conclusion is supported directly by the Supreme Court of AJK. In *Yasir Bashir v. Saba Yasir*, the Court held that AJK is presently not constitutionally included in the territories of Pakistan and distinguished the territory of AJK from the State of Jammu and Kashmir.

The second conclusion is that **the future status of Jammu and Kashmir as a whole must be determined according to the will of its people through the applicable plebiscite framework.** Article 257 refers to the people of the State of Jammu and Kashmir, not merely the population of AJK. The AJK Interim Constitution expressly refers to the freely expressed will of the people of the State through a free and fair plebiscite under United Nations auspices. The United Nations Security Council framework similarly refers to the plebiscite and final disposition of the State of Jammu and Kashmir. The implication is that an AJK-only constitutional declaration cannot be treated as the final legal settlement of the status of Jammu and Kashmir. The constitutional question is broader than the territory presently administered as AJK.

The third conclusion is that **Parliament of Pakistan would have an important role in the implementation of any future constitutional relationship.** Article 1(3) provides Parliament with authority to admit new States or areas into the Federation and determine the terms and conditions of admission. This provision establishes the federal mechanism through which a future relationship could be given legal effect but does not itself remove the conditions imposed by Article 257.

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<sup>61</sup> Ibid., arts. 238-239.

The fourth conclusion is that **accession and provincialisation are legally distinct**. Article 257 does not prescribe provincial status as the automatic consequence of accession. It states that the relationship between Pakistan and the State shall be determined in accordance with the wishes of the people. Thus, even after a lawful decision on accession, the constitutional form of the resulting relationship would remain a separate question.

The fifth conclusion is that **provincialisation would require further constitutional action**. If provincial status were ultimately selected, the Constitution of Pakistan would have to be amended as necessary and the appropriate legislation would have to establish the new unit's position within the Federation.

The principal legal findings can therefore be stated in their simplest form. **First, AJK cannot legally become part of Pakistan unilaterally under the existing constitutional framework. Second, the future status of Jammu and Kashmir as a whole must be determined according to the will of its people through the applicable plebiscite framework.**

The question of provincialisation belongs to a later constitutional stage. It should not be treated as an automatic consequence of either the present constitutional relationship or a future decision on accession. The constitutional significance of the findings lies in their rejection of both unilateralism and simplification. AJK cannot simply declare itself a province of Pakistan, and Pakistan cannot simply treat AJK as though it were already constitutionally incorporated. At the same time, Pakistan's Constitution contains a legal mechanism capable of accommodating a future relationship with a State or territory through accession and parliamentary action. The applicable constitutional provisions must therefore be read together.

The legally defensible conclusion is consequently not that accession is categorically impossible, nor that provincialisation can be accomplished by ordinary political action. Rather, the existing law creates a conditional constitutional framework in which the will of the people of the State of Jammu and Kashmir is foundational, the institutions of Pakistan have a subsequent constitutional role, and provincialisation, if ultimately selected, would require further constitutional restructuring.

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## Research Materials

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*AJK in Pakistan*. Legal research memorandum prepared pursuant to the JKPL Legal Research Guide.

## Appendix A. Research Questions and Answers

### Research question

### Answer established by the research

Can AJK legally become part of Pakistan under the existing constitutional and legal framework?

Not unilaterally under the existing framework

What is the present constitutional status of AJK?

AJK is presently not constitutionally included within Pakistan and operates under the AJK Interim Constitution

Does Pakistan's Constitution provide a mechanism for territorial admission?

a Yes. Article 1(3) gives Parliament power to admit new States or areas into the Federation

Does Article 257 create a special condition for Jammu and Kashmir?

Yes. It links the future relationship with Pakistan to the decision and wishes of the people of the State of Jammu and Kashmir

Can the AJK Assembly unilaterally declare AJK part of Pakistan?

No

Can the AJK Government unilaterally alter AJK's final status?

No

Can the Government of Pakistan unilaterally make AJK a province?

No

What is the relevant popular-will framework?

The will of the people of the State of Jammu and Kashmir through the applicable plebiscite framework

Is an AJK-only vote automatically sufficient?

No such conclusion is supported by the constitutional and UN framework examined

Does accession automatically create provincial

No

**Research question**

**Answer established by the research**

status?

What would provincialisation require?

Further constitutional and legislative action, including the applicable constitutional amendment process

## Appendix B. Principal Findings

**Finding 1:** AJK cannot legally become part of Pakistan unilaterally under the existing constitutional framework.

**Finding 2:** The future status of Jammu and Kashmir as a whole must be determined according to the will of its people through the applicable plebiscite framework.

**Finding 3:** Parliament would have a central constitutional role in implementing any future relationship with Pakistan after the relevant conditions concerning accession had been satisfied.

**Finding 4:** Accession to Pakistan would not automatically make AJK a province of Pakistan.

**Finding 5:** Provincialisation would require a separate constitutional process and the necessary constitutional and legislative changes.

## Appendix C. Constitutional Sequence Identified by the Study

The legal framework examined in this study does not support a sequence in which the AJK Legislative Assembly simply declares AJK a province and Pakistan then treats the matter as constitutionally settled. The sequence identified by the research is fundamentally different. AJK cannot unilaterally alter its constitutional status. The future status of the State of Jammu and Kashmir is linked to the will of its people through the applicable plebiscite framework. Following a lawful decision concerning accession, the constitutional relationship with Pakistan would then have to be established through the competent federal constitutional and legislative institutions. If provincialisation were ultimately selected as the constitutional form of that relationship, further constitutional restructuring would be required.

The sequence may therefore be expressed as: **determination of the will of the people of the State of Jammu and Kashmir concerning accession → determination of the resulting Pakistan–Jammu and Kashmir relationship → federal constitutional and legislative implementation → provincialisation only if selected as the resulting constitutional arrangement.**



The study deliberately does not claim to determine the detailed operational mechanics of a future plebiscite across territories presently under different administrations because the sources examined establish the relevant legal entity and popular-will principle but do not provide a contemporary electoral map or complete procedural design for such a future process.