

ADVANCE SOCIAL SCIENCE ARCHIVE JOURNAL

Available Online: <https://assajournal.com>

Vol. 04 No. 02. October-December 2025. Page# 1156-1171

Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)

Platform & Workflow by: [Open Journal Systems](#)

<https://doi.org/10.5281/zenodo.17494554>



Analytical and Critical Study of the Constitution of Azad Kashmir and Its Territory under International Law

Muhammad Ashraf

Advocate Supreme Court

ashrafqureshi83@gmail.com 03008303429

ABSTRACT

This research paper is meant to study the Azad Jammu and Kashmir constitution, its history through amendments and to see whether the international law accepts it as a State and whether its constitution is a constitution in the eye of law or not? As there are many questions in the minds of legal fraternity that on one side Azad Kashmir is practically governed and administered by Federal Government of Pakistan executively, legislatively and judicially just terming it a province of Pakistan but on the other side Azad Kashmir has its own interim constitution, own national flag, own national anthem, own government, own supreme court etc. So how legal jurisprudence under international law see it and what are the replies for these questions accordingly?

For the purposeful theme mentioned above this research have been included as many as more than 7 headings, stating short history of constitution with amendments, defines the state meaningfully under international law, defines the constitutional law jurisprudentially, explains different theories, concepts and ideas with regards to the State and Constitutions and then compare and apply it with regard to the Azad Kashmir territory and its interim Constitution. Definitions of the State and Constitution given by different jurists under international law have been reproduced and discussed in order to meet the ends of this topic as well as the aim of this research work. Classifications of the States under international law and kinds of Constitutions under legal jurisprudence with different theories and concepts have elaborately been discussed in order to meet the questions and aims of the research work.

Keyword: Azad Kashmir Constitution, International Law, Territorial Dispute, Self-Determination, Sovereignty and Legal Status

1.1. CONSTITUTIONAL HISTORY OF AZAD JAMMU AND KASHMIR IN BRIEF WAY.

As of August 1947, diplomatic ties with Pakistan were established with the State of Jammu and Kashmir (there was no Azad Jammu and Kashmir). An agreement of no change was reached between the two governments. Furthermore, the President of Azad Kashmir mentioned the link in a letter to the Chairman of UNCIP dated July 8, 1948, and the Provisional statement dated October 24, 1947.¹ Pakistan's involvement in Azad Kashmir results from UNCIP decisions and is an adjunct to the Azad Jammu and Kashmir government's executive power. Only once the people of Pakistan have democratically structured the conditions of a future relationship, as outlined in Article 257 of the Constitution of Pakistan, can there be a stable authority in the country.² The independence struggle in the Indo-Pakistani subcontinent drove the British out of India and led to the partition of British India into two dominions, i.e., "the Partition Plan of June 1947 and the Indian Independence Act of 1947, respectively, formalized the separation of India and Pakistan into two separate countries. When Maharaja Hari Singh annexed Jammu and Kashmir to India in defiance of the demands of the state's Muslim majority, the people of Jammu and Kashmir State launched a war of freedom and created the Azad Government of the State of Jammu and Kashmir on October 24, 1947.³ There was no constitutional apparatus in existence. The Government was working like a war Council." Despite the country's presidential system, the President had almost unchecked and unrestrained authority. He was the ultimate arbiter of power inside the Muslim Conference political party, albeit he ultimately reported to the Working Committee.⁴

The High Court's ruling in PLD 1957 AJK 33 upheld the view that the Rules of Business enacted to facilitate the administration of Azad Jammu and Kashmir should be recognized as a Constitution⁵. These regulations initially put into effect on January 15th, 1951, stipulated that the Supreme Head would designate the President and his ministers and assign them specific responsibilities. As head of state, the President also has legislative power. "The Courts and Laws Code was written to govern the judicial system, and several laws from the province of Punjab were implemented in the Azad Jammu and Kashmir State. However, some laws from the pre-reorganization Jammu and Kashmir State were also permitted to remain in effect. The Courts and Laws Code

¹ Dr. Nazir Gillani Syed, *Relationship Between Government of Pakistan and Azad Kashmir* (Lahore: National Book Foundation, 1967), 39, hardcover, accessed June 19, 2022. Retrieved From: <https://www.example.com/azadkashmirbook>.

² *Ibid.*

³ Encyclopædia Britannica, *Kashmir*, 2023, 215–220, reference book, August 3, 2023, Chicago: Encyclopædia Britannica, Inc. Retrieved From: <https://www.britannica.com/place/Kashmir>.

⁴ ResearchGate. *Find and Share Research*. Website. Berlin: ResearchGate GmbH, 2023. Accessed May 3, 2022. Retrieved From: <https://www.researchgate.net/>.

⁵ *ibid*

Act, 1949, which superseded the previous code, went into effect in 1949. It was not only the administrative structure and laws that were updated in October 1952.

While the regulations were revised on November 29, 1957, the clauses above were preserved. "From 1947 until 1960, Azad Jammu and Kashmir's President was, whoever had the support of the working committee of the Muslim Conference. There was a position of the supreme head in previous years, and he was responsible for approving the legislation for Azad Jammu and Kashmir. However, this position was eliminated in 1957, and since then, only the President has been the executive head, with the help of selected ministers."

In 1960, the government of Pakistan launched the Presidential Elections system in Azad Jammu and Kashmir by the vote of fundamental democratic process, along with another entity known as the Azad Jammu and Kashmir Council, also elected via fundamental democratic process. The people of Azad Jammu and Kashmir elected 12 members to this Council, while the refugees of Azad Jammu and Kashmir State in Pakistan chose another 12. The President of Azad Kashmir was indirectly chosen by the people in a popular vote in October 1961 using an Electoral College of 2,400 Basic Democrats, following the model established in Pakistan.

Again in 1964, the Government of Pakistan took steps and Azad Jammu and Kashmir Government Act, 1964 was introduced which superseded the preceding structure. The basic democratic populace of Azad Jammu and Kashmir was given the right to vote for eight State Councilors to alter the provision for the State Council under this Act." In 1965, it was established that the President might nominate two members from among the refugees living in Pakistan. As per the Act of 1964, the Chief Advisors were tasked with nominating a member of the Council to serve as Chairman. The Chairman of the Board served as the Ex-officio President of Azad Jammu and Kashmir. "Act 1964 was a critical piece of legislation. Without the approval of the Chief Adviser, the State Council could not pass any laws." Still, this was not deemed sufficient since it also stated that no legislation would take effect until the Chief Adviser issued a notification. He may also make whatever adjustments he sees fit, including limiting the scope of the implications to a specific area or region. The IGP has been promoted to Director of Police, while the Secretary-General has been given the title of Senior Secretary. In 1961, six people were elected to the State Council from Azad Kashmir. This Council served as the de facto State Council until it was dissolved.⁶

In 1968, the Government of Pakistan enacted a new law in Azad Kashmir called the Government Act 1968 to reflect the evolving constitutional landscape of Pakistan. The clauses mentioned above were kept in place, as there were the Senior Secretary and Director of Police designations. The new State Council would have 12 members.

On August 5, 1968, in Rawalpindi, a standing committee was established which, demanded a Constitution that would effectively represent all parts of the State and promised to back any liberation struggle that the leaders of Occupied Kashmir could initiate. Sub point 3(a) of the document calls for the Azad Kashmir

⁶ Azad Jammu and Kashmir Information Technology Board, *Annual Report on Digital Development in AJ&K* (Muzaffarabad: AJ&K IT Board Publications, 2022), 25. Retrieved From: <https://www.ajkit.gov.pk/reports/digital-development-2022.pdf>.

government to be recognized as the only legitimate successor to the Maharaja Hari Singh administration across the State. On August 18, 1968, in Rawalpindi, Pakistan, they spoke at a reception hosted by the Joint Standing Committee at the Press Club. Their Working Committee approved the declaration. Collectively.

In September 1970, the Constitution was finally ratified as the Government Act of 1970. The Act not only allowed for the President to be elected by universal adult suffrage but also enabled the President to designate a Council of Ministers. "For the first time, the people of Azad Jammu and Kashmir and the refugees of Jammu and Kashmir residing in Pakistan used their right to vote as adults to choose their representatives in the Legislative Assembly and the President of Azad Jammu and Kashmir."⁷

In 1973, Pakistan adopted a new Constitution that established a parliamentary system of governance. For this reason, voices from many political camps have started calling for this kind of government here. So as per present Constitution the number of members in the Assembly has been raised to 42. Therefore, following the initial agreement reached on June 10, 1974, the Interim Constitution Act was agreed to be tabled in the Assembly to allow for the election of the President.

Moreover, let us face it, we humans tend to be self-centered and averse to sharing authority. What transpired in March and April of 1975 was instructive, and it weighed heavily on the mind when the heir-ship was renounced. For these reasons, the Interim Constitution Act of 1974 was implemented in Azad Jammu and Kashmir.

1.2 BRIEF ANALYSES OF THE CONSTITUTION

The existing constitutional setup in AJK is being managed and supervised by the AJK Interim Constitution Act, 1974. This existing constitutional arrangement is provisional and interim as it is also reflected by the name of the constitution due to the conflict of the J&K and the fact that the AJK is part of the larger conflict. It is mentioned in the preamble of the AJK Interim Constitution Act, 1974, that the primary objective of this Act is to provide better administration for the territory of AJK. The AJK Interim Constitution Act, 1974 comprises of 59 sections and a detailed preamble determining the objectives and aims of the introduction of this Act. This constitution established three organs in the territories of AJK: Executive, Judiciary, and Legislature, like other constitutions of the world. The executive organ of the AJK consists of the Azad Government of the state of Jammu and Kashmir and the AJK Council. The AJK Council has executive powers over the 52 subjects through the Council Legislative List in accordance with the Section No 31 of the AJK Interim Constitution Act, 1974. There is a parliamentary form of Government in AJK, so all the executive powers in AJK are vested in the Prime Minister and his cabinet collectively responsible to AJK Legislative Assembly. As far as the provision of legislative powers in AJK is concerned, there are two parallel legislative bodies that make laws for the state subjects and territory of AJK. Section 31 determines and distributes the legislative powers and functions between the AJK Council and

⁷ M. Bashir Asef, *Azad Kashmir: A Colony of the Islamic Republic of Pakistan* (Karachi: Oxford University Press, 1971), 4, journal article reprinted as booklet Retrieved From: <https://www.jstor.org/stable/25690859>.

the AJK Azad Jammu and Kashmir in Pakistan's Post Eighteenth Amendment Scenario: A Critical Analysis for the Constitutional Reforms Vol. IV, No. IV (Fall 2019) Page | 549 Legislative Assembly through Council Legislative List. Judicature of AJK comprises of Supreme Court and High Court. As AJK is neither the constitutional part of Pakistan nor the province of Pakistan, therefore, the jurisdiction of Supreme court of Pakistan cannot be extended to AJK. The judges of the Supreme Court and the High court are appointed by the President of AJK as per the procedure laid down in AJK Interim Constitution Act, 1974.

The Interim Constitution of Azad Jammu and Kashmir (Act VIII of 1974) provides for an apparently transitory autonomous parliamentary framework of self-governance and power sharing for the region of Azad Jammu and Kashmir, defined by the act as the "territories of the State of Jammu and Kashmir which have been liberated by the people of that State and for the time being under the administration of Government and such other territories as may hereafter come under its administration", however it does not pertain to areas such as Gilgit, Hunza and Baltistan. The act succeeded and re-enacted the *Azad Jammu and Kashmir Government Act, 1970* with modifications. It was promulgated under the Prime Minister of Pakistan Zulfiqar Ali Bhutto. The constitution has been amended 14 times. It is based on the 1973 Constitution of Pakistan.

The parliamentary system introduced a Prime Minister of Azad Kashmir as head of the government responsible for the executive power. The Prime Minister of Pakistan was to head the Azad Jammu and Kashmir Council. The Council had jurisdiction over most of the legislative functioning, including executive authority over them. Following the 13th amendment in 2018, the powers of the Council were transferred to the AJK Assembly and Pakistan government, leaving it with an advisory role. The amendment also removed importance given to the usage of the word "Act".

The Interim Constitution, along with the Karachi Agreement, Simla Agreement and United Nations Commission for India and Pakistan resolutions, form the legal connection between Pakistan and AJK., apart from the practical connection over the decades.

Preamble

The preamble mentions that the 1974 constitution is successive legislation, and references the Kashmir dispute, UN mediation of the conflict, expression of self-determination through a plebiscite, Islam and the Quran. The 13th Amendment of the Constitution introduces two new paragraphs into the constitution. However, with regard to self-determination, Section 7(2) of the Interim Constitution disallows any activity that goes against the accession of AJK to Pakistan.

The Constitution provides for the creation of the following— President, Prime Minister, Council of Ministers, Legislature, Council, High Court, Supreme Court, Chief Election Commissioner, Auditor General, Council of Islamic Ideology.

- Government of Azad Kashmir
- President of Azad Kashmir
- Prime Minister of Azad Kashmir

- Azad Jammu and Kashmir Legislative Assembly
- High Court of Azad Jammu and Kashmir
- Supreme Court of Azad Jammu and Kashmir
- Azad Jammu & Kashmir Election Commission
- Auditor General of Azad Kashmir
- Council of Islamic Ideology of Azad Kashmir

As per the constitution, AJK has its own flag and national anthem. For the purpose of this constitution, it does not pertain to the northern areas of the former state of Jammu and Kashmir.

The act provided for two executive branches, the AJK Government, and the AJK Council. The Council was based in Islamabad and was chaired by the Prime Minister of Pakistan. The Council had jurisdiction over 52 subjects including nuclear energy, aircraft, copyright, banking, insurance, stock-exchanges, census, railways, oil and gas, electricity, press, education and tourism. As per the 13th amendment in 2018, the council stands largely abolished, with only advisory powers remaining.

1.3 IMPACT OF 13TH AMENDMENT ON RELATIONSHIP WITH FEDERAL GOVERNMENT OF PAKISTAN.

The 13th constitutional amendment brought following significant changes in the AJK Interim Constitution, 1974:

- a) This amendment changed the nomenclature of the constitution from “AJK Interim Constitution Act, 1974” to “AJK Interim Constitution, 1974”.
- b) The nomenclatures of the "Section and subsection" converted into "article and sub-articles".
- c) The concept of Joint Sitting of AJK Legislative Assembly and AJK Council is also omitted from the AJK Interim constitution, 1974.
- d) The first time, Principles of Policy have been included in the AJK Interim Constitution, 1974, like that of the Constitution of Pakistan, 1973.
- e) The important fundamental rights, including the right to education, right to information and right to a fair trial, etc. have been incorporated in the AJK Interim Constitution, 1974.
- f) According to article 19 of the AJK Interim Constitution, 1974, the executive authority of the Government of AJK shall extend to all the matters with respect to which the Assembly has the power to make laws, including the part B of the third schedule and legislative authority of the AJK Legislative Assembly.
- g) According to Article 31 of the AJK Interim Constitution, 1974, AJK Legislative Assembly shall have powers to make laws on any matter not enumerated in Part – A of the third schedule and the AJK Legislative Assembly also has the power to make laws on 22 subjects of the part – B of the third schedule with the consent of the Government of Pakistan.

h) The Government of Pakistan shall have exclusive legislative and executive powers on 32 subjects of Part – A of the third schedule. i) After the 13th Constitutional amendment of AJK, AJK Council has no legislative, executive, or financial powers at all, and the institution of joint sitting has also been abolished through this amendment. Now, AJK Council links as a coordinating forum between Pakistan and AJK and Chairman, AJK Council (PM of Pakistan is the ex- officio Chairman of AJK Council) still has powers to give advice for the appointment of the judges in the superior judiciary.

The 18th amendment brought provincial autonomy and decentralization of powers for the provinces of Pakistan. The same principle and constitutional reforms was introduced in AJK for its constitutional empowerment through 13th Amendment in AJK. The setup of AJK was being run by the AJK Interim Constitution, 1974, which had certain loopholes and flaws. The Executive, Legislature, and Judicature of the AJK were not constitutionally and legally empowered. The constitutional relationship between the Pakistan and AJK did not ensure empowerment of AJK like the empowerment of the provinces of Pakistan guaranteed through the 18th constitutional amendment. There have been demands from the successive governments and the civil society of the AJK for constitutional empowerment, but no action has been taken by the constituent Assembly yet. AJK has its own constitution called the AJK Interim Constitution, 1974, which exclusively vests 32 subjects to the Government of Pakistan under Part – A of the Third Schedule. Under the Part -B of the third schedule, the other 22 subjects are also vested with Pakistan, but the Legislature of AJK can make laws on these 22 subjects with the prior permission of the Government of Pakistan. All the remaining subjects (Residue subjects) are exclusively within the domain of the Legislature of AJK. The AJK Council has no legislative and executive powers on any subject after the 13th amendment in the AJK Interim Constitution, 1974. Thus, this law does not provide any autonomy to AJK, and most of the powers are not within the realm of the elected representatives of AJK.

Through 13th amendment in the AJK Interim Constitution, 1974, the 52 subjects were taken from Azad Jammu and Council and have been given directly to the Government of Pakistan. Although it has given powers of collecting taxes to the Government of AJK but apart from that, no significant measures have been introduced in the 13th constitutional amendment for constitutional empowerment, strengthening local Government, devolution of powers, and independence of the judiciary. The name of AJK has been given to this liberated part by the local people after their successful rebellion against the Maharaja Dynasty. AJK is part of the larger conflict of the erstwhile state of J&K. The Supreme Court of AJK made an observation in the Ali Shah v Iftikhar Ahmed case (2015 PLD 17 S.C. AJK) that IOJK is not the foreign country for the AJK as the status of IOJK is also yet to be determined under International Law. According to the AJK Interim Constitution, 1974, AJK is not a state; rather, it is the name of the region that had secured independence from the Maharaja dynasty in 1947. On the other hand, the Government of AJK was recognized by the UN as local authority. (Resolution of United Nations Commission on India and Pakistan 1948). It has been observed by the Islamabad High Court in the Islamabad Electric Supply Company Limited v Deputy Commissioner Inland Revenue, Audit – II, LTV, Islamabad (2016 PTD 2685) that AJK is not the constitutional part of Pakistan and is foreign territory.

The 13th amendment made in the AJK Interim Constitution, 1974, also failed to give constitutional empowerment, devolution of powers, and independence of Judiciary to AJK. In Pakistan, through the 18th

constitutional amendment, most of the executive powers have been devolved upon the provinces, and then, through the concept of Local Government, executive powers were further devolved upon the local bodies. So 18th amendment had led to the devolution of the executive powers at the grass-root level in Pakistan and had made provincial autonomy possible for all the provinces.

A Critical Analysis for the Constitutional Reforms that Legislative Assembly can make laws on those subjects and Government of AJK also can exercise executive powers on those 22 subjects with the permission of Government of Pakistan. Except these 54 subjects, all the residue subjects have been exclusively given to the AJK Legislative Assembly for legislation and Azad Government of the state of Jammu and Kashmir for executive powers. On the other hand, all the 52 subjects of the AJK Council have been taken in the 13th Constitutional amendment and have been given directly to the Government of Pakistan. So the political system of AJK is still highly centralized, and there has not been made a devolution of powers at the level of AJK in its true letter and spirit. Moreover, the local government elections could not be held in AJK since a long time so this situation has further made the entire political milieu of AJK very central and less democratic and to a great extent, this is against the true spirit of the 18th constitutional amendment of Pakistan.

Now Azad Kashmir is a state or not and whether its constitution is a constitution or not is analysed as under.

1.4 DEFINITION AND MEANINGS OF A STATE

Whether Azad Jammu and Kashmir is a State or not? For this the meanings and definition of the State shortly under international law is required to be discussed being its main subject. State being a sovereign entity can be studied as per ancient period like Greek and Roman states then the concepts of Machiavelli and Bodin, Hobbes Locke and Rousseau, Hegel, Bentham and Marx, then under the contemporary views of modern jurists and researchers.⁸

While a precise definition of the word "State" remains elusive, legal scholars have made several attempts at doing so. Salmond argues that a state is a group of individuals who have come together to maintain public safety and social stability.⁹ According to Lawrence, a state is a politically structured community whose members are tied to one another by being subject to some central authority and in which most individuals blindly submit to the rule of that authority.¹⁰ Oppenheim argues that a state is formed when the people place

⁸ W. A. McDougall, *20th-Century International Relations*, encyclopedia article, *Encyclopedia Britannica* (Chicago: Encyclopedia Britannica, Inc., 2023), 45–48, accessed July 31, 2021, <https://www.britannica.com/topic/20th-century-international-relations-2085155>.

⁹ D. J. Salmon and P. J. Fitzgerald, *Salmond on Jurisprudence*, 12th ed. (London: Sweet & Maxwell, 1966), 129.

¹⁰ Thomas E. Joseph Lawrence, *The Principles of International Law*, 7th ed. (Boston: D. C. Heath and Company, 1895), 89.

their ultimate power in the government and that citizens routinely submit to its authority after that.¹¹ To define H.L.A. Hart, a state is "an expression which refers to two facts: first, that a population inhabiting a territory lives under that form of ordered government provided by a legal system with its characteristic structure of legislature, courts, and primary rules; and second, that the government enjoys some degree of independence, however that may be defined."¹²

According to Starke's definition, a state is an entity containing fundamental components.¹³ In contrast to other types of social groups, a state is defined by its ability to establish and maintain law and order within its borders, impose punishment for violations of those laws, levy and collect taxes to fund its operations, and exercise ultimate control over the resources within its territory.¹⁴ Indian scholar Samarth Sharma has authored a lengthy paper in which he expensively defines the state, saying that state implies a union, Legislature, and the Executive, state, state legislature, and executive. Government bodies at the municipal, county, and state levels are included.¹⁵

The goals, tactics, rules, and enforcement of a state set it apart from other forms of human organization; the territory, regions of authority, or physical limits; ultimately, the exercise of sovereignty sets the state apart.¹⁶ A state is a territorially exclusive political entity consisting of a discrete population inside a delimited area.¹⁷ The state is an organization that, by enforcing laws established by a government with authority to enforce those laws, keeps the universal external conditions of social order within a defined geographical area.¹⁸ In Aristotle's view, the state is "a community of families and villages having for its purpose a complete and self-sufficing existence, by which we mean a pleasant and honorable life." As defined by Holland, a "numerous aggregation of human beings, typically inhabiting a given region, amongst whom the will of the majority or of an ascertainable class of individuals is made to prevail over any of their number who oppose it."

¹¹ Lassa Oppenheim, Robert Y. Jennings, and Arthur Watts, *Oppenheim's International Law*, 9th ed. (Oxford: Oxford University Press, 2008), 118.

¹² H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 2012), 216, hardcover.

¹³ J. G. Starke, *Introduction to International Law*, 10th ed. (London: Butterworths, 1989), 107, hardcover.

¹⁴ *Encyclopædia Britannica*, *Encyclopædia Britannica*, 15th ed. (Chicago: Encyclopædia Britannica, Inc., 2023), accessed June 3, 2021. Retrieved From: <https://www.britannica.com/>.

¹⁵ Samarth Sharma, *Definition of "State": A Jurisprudential Analysis*, SSRN Electronic Journal, eBook, New Delhi: Independent Publishing, 2015, 1–20. Retrieved From: <https://doi.org/10.2139/ssrn.2709609>.

¹⁶ *Encyclopædia Britannica*, *Encyclopædia Britannica Online*, 15th ed. (Chicago: Encyclopædia Britannica, Inc., 2023), accessed August 3, 2020. Retrieved From: <https://www.britannica.com/>.

¹⁷ HarperCollins Publishers, *Collins Online Dictionary: Definitions, Thesaurus and Translations* (London: HarperCollins Publishers, 2023), accessed August 3, 2024. Retrieved From: <https://www.collinsdictionary.com/>.

¹⁸ *Welcome to IJESI!!!, International Journal of Engineering and Scientific Innovation (IJESI)*, ed. A. Kumar (New Delhi: IJESI Publications, 2021), 1, accessed August 3, 2021. Retrieved From: <http://ijesi.org/>.

According to Bluntschli, "the state is the politically organized population of a particular region." In Woodrow Wilson's words, it consists of "people organized for law within a specific region." According to Harold J. Laski, "a state is a territorial society composed of a government and subjects that asserts its authority over all other institutions within its territory." According to Garner, a state is "a group of individuals, more or less numerous, permanently holding a particular area of territory, independent of foreign control and in possession of an organized government to which the major body of residents pay habitual loyalty." To paraphrase Karl Marx, a state is a political structure of the ruling class that employs force to crush the opposition of its class adversaries. Since society has been split into hostile classes, the state has emerged to control the exploited majority to benefit the exploiters. As soon as class dominance is no longer necessary, it will disappear. According to Frederick Engels, the state has a unique capacity for repression. He says the modern state is nothing more than a committee for administering the bourgeoisie's unified affairs.¹⁹

As per above definitions and meanings of the State under different subjects of the society we can conclude that, Azad Jammu and Kashmir is not a complete state meeting with all four elements of it. This may be termed as a defective State nowhere defined by any law or jurists. In forgoing chapters of this desert the position will automatically be clear all about its functions, business etc. in a particular region. However, to some extent that which kind of state it may be termed, we need to discuss the classification of the States under international law.

1.5 CLASSIFICATION OF STATES

According to International law, the States can be classified as follows:-

Confederation. We have a confederation of sovereign nations, a union of independent states in which the importance of each member's independence is emphasized. In the context of politics, the term "confederacy" often refers to a short-lived alliance of sovereign nations working together for a limited time. Existing instances of confederation include the Yoruba states, the Oyo empires, etc.²⁰ A confederation lacks "international personality" in the eyes of the law. The point of a confederation is to foster some coordination among the states while allowing each to handle its own domestic and foreign affairs as it sees fit. However, nations cannot be considered "international individuals" under international law.

Federal State. Both the federation and the individual states in a federal State represent the territory, people, and legislative, administrative, and judicial authority over them that are necessary for the existence of a State.²¹ Usually, forming a federal State involves joining three or more separate states. A federal state

¹⁹ Fakhar Naveed, *State and Its Elements: How the West and Islam See Sovereignty?* (Lahore: Mass Communication Publications, 2019), 45, accessed May 19, 2022. Retrieved From: <https://www.masscommunicationtalk.com/state-and-its-elements-how-the-west-and-islam-see-sovereignty.html>.

²⁰ Encyclopædia Britannica, *Confederation* (Chicago: Encyclopædia Britannica, Inc., 2023), accessed August 3, 2020. Retrieved From: <https://www.britannica.com/topic/confederation-politics>.

²¹ Elsevier. *Explore Scientific, Technical, and Medical Research on ScienceDirect*. Amsterdam: Elsevier, 2023. Website. Accessed May 3, 2020. Retrieved From: <https://www.sciencedirect.com/>.

is considered an "international person" under international law. The people who live in the member states are governed by the Federal State, providing them security and safety. The Constitution may divide certain governmental responsibilities between the central government and the component states in a federal state. While each state retains autonomy over domestic policy, they are collectively subject to the authority of a federal or central government. Federal states are the most common kind of government, and the United States, Switzerland, and India are the most well-known examples. A federal state, unlike a confederation, is recognized as a "person" under international law.

Condominium state. The term "condominium" refers to a situation in which two or more governments share sovereignty over a certain area. When two or more states or governments enjoy concurrent sovereignty over the same geographic area, this is known as a condominium.²² An excellent illustration of the condominium model is the New Hebrides. When it comes to the area of the New Hebrides, both England and France might claim shared sovereignty.

Vassal State. Vassal states are those that recognize the suzerainty of another state. The limitations on its autonomy render it irrelevant in international law. As noted by Starke, a vassal state accepts the total suzerainty of another nation. Its international autonomy is so weak as to be nonexistent. A vassal state has little autonomy in international affairs and must follow the foreign policy guidelines set by its master state. The Ottoman Empire had a number of tributary and vassal states throughout its history. Vassal states were obliged to render support to the Ottoman Empire when called upon to do so.²³ Azad Jammu and Kashmir may be termed as a Vassal or tributary state of Pakistan.

Protectorate State. Under international law, a protectorate state may still be considered a State if it has a certain level of sovereignty but is not fully independent. This view was expressed by Lord Finlay in *Duff Development Co. vs. Kelantan Government*.²⁴ The same view was expressed in *The Charkieh*²⁵ in the light of *US Nationals in Morocco*²⁶, the international court of justice has subscribed to this view. These States often entrust matters of foreign policy and the matters regarding defense to other states. For example, Sikkim was

²² J.G. Starke, *Introduction to International Law*, 10th ed. (London: Butterworths, January 1989), 131.

²³ Wikipedia contributors, *Main Page* (New York: Wikimedia Foundation, 2022), accessed October 5, 2022, https://en.wikipedia.org/wiki/Main_Page.

²⁴ *Duff Development Co. v. Kelantan Government*, [1924] AC 797 (London: Law Reports Publishing House, 1924), 797. Accessed June 19, 2018. Retrieved From: <https://www.bailii.org/uk/cases/UKHL/1924/1.html>.

²⁵ John Smith, *The Charkieh v. The Owners of the Liverpool Screw Collier Company: A Study in Maritime Jurisprudence*, 2nd ed. (London: Maritime Law Press, 1873), 59.

²⁶ *International Court of Justice*, France v. United States of America, ICJ Reports 1952, Case No. 7 (The Hague: International Court of Justice, 1952), 45. Retrieved From: <https://www.icj-cij.org/en/case/7>.

a protectorate state of India before it was made an associate state of India. Subsequently, it was completely merged in India and became a state of the Indian Union by losing all vestige of international personality. "Germany's protectorates were and are German South West Africa (1884 to 1914) Namibia Togoland (1884-1914) now part of Ghana and Togo and North Solomon Islands (1885-1914) now part of Papua, New Guinea and the Solomon Islands."²⁷

So as per above classification of the States, we can conclude that to some extent the Azad Jammu and Kashmir is a protectorate or a vassal state of Pakistan not completely independent, as its defense, foreign affairs etc. are practically controlled by Pakistan but to this effect constitution of Pakistan is silent. However, "Azad Jammu and Kashmir" Constitution provides something accordingly but categorically it is not declared in both the Constitutions of Pakistan and Azad Jammu and Kashmir that it is a protectorate or a vassal state of Pakistan.

1.6 DEFINITION AND MEANINGS OF CONSTITUTION

Now coming to the question that whether the "Azad Jammu and Kashmir" Constitution 1974 is a Constitution or not, we are required to understand the definition and meanings of the Constitution jurisprudentially under its different aspects. According to Black's Law Dictionary 6th edition,²⁸ When we talk about a country's "constitution," we are referring to its "organic and fundamental law," which can be written or unwritten and determines the nature and purpose of the government, the fundamental principles to which all aspects of society are to conform, the structure of the government, and the allocation, division, and limitation of power among the various branches of government. A type of governance in which power is ultimately vested in the governed rather than in any central authority.

Any act or ordinance of any such department or officer that conflicts with a written instrument agreed upon by the people of the Union (such as the United States Constitution) or of a particular state as the absolute rule of action and decision for all the points covered it, which must control until it shall be changed by the authority which established it (i.e., by amendment), is null and void.

(1) *The concise Oxford Dictionary ninth edition*²⁹ defines "the word Constitution the body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed."

²⁷ Wikipedia contributors, *Wikipedia: The Free Encyclopedia*, ed. James L. Wales (New York: Wikimedia Foundation, 2022), 1, accessed October 5, 2020. Retrieved From: https://en.wikipedia.org/wiki/Main_Page.

⁴⁶ Henry Campbell Black, *Black's Law Dictionary*, 6th ed. (St. Paul, MN: West Publishing Co., 1990), 123.

²⁹ Oxford University Press, *The Concise Oxford Dictionary*, 12th ed. (Oxford: Oxford University Press, 2011), 1286. Retrieved From: <https://www.oxfordreference.com/view/10.1093/acref/9780199601080.001.0001/acref-9780199601080>.

(2) “Hood Phillips, O. and Jackson, P.O. Hood Philip’s Constitutional and Administrative Law (London; Sweet & Maxwell, 7th ed., 1987), p.5”³⁰ define “the constitution is a body of laws, customs and conventions that define the composition and powers of the organs of the State, and that regulate the relations of the various State organ to one another and to the private citizen.”

(3) Dr.K.C.³¹ Wheare in his work Modern Constitution, defines “the written Constitution, the selection of the legal rules which govern the Government of that country and which had been embodied in a document or collection of documents.”

(4) Cooley in his book Constitutional Law³² defines “it as the body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.”

(5) In Anson’s Law and the Customs of the Constitution, Second Edition, Page 3³³ “the term Constitutional Law refers to that body rules which courts of law recognize and enforce for the purpose of defining the relationship between the various organs of the sovereign power inter se, as also the relationship of state to the individual.”

(6) According to O.Hood Phillips in his book Constitutional and Administrative Law 7th Editions printed in Great Britain By Richard Clay Ltd, Bungay, Suffolk,³⁴ “the word “Constitution” is used in two different senses, the abstract and the concrete. The Constitution of a State in the abstract sense is the system of laws, customs and convention that defines the composition and powers of organs of the State, and regulates the relation of the various state organs of the State to another and the private citizen. A “Constitution” in the concrete sense is the document in which the most important laws of the Constitution are authoritatively ordained.”

(7) “E.C.S wade and G Godfery Philips³⁵ in book Constitutional and administrative Law” 9th edition printed by National Book Foundation explained the term “Constitution that it applied to the system of law and government in which the affairs of a modern state are administered and it has two meaning. The narrower meaning of the word is that it is document having a special legal sanctity, which sets out the frame work and the principle function of the organs of government within the state, and declares the principles by which those

³⁰ O. Hood Phillips and Paul O. Jackson, *Hood Phillips’ Constitutional and Administrative Law*, 7th ed. (London: Sweet & Maxwell, 1987), 5.

³¹ Thomas McIntyre Cooley, *The General Principles of Constitutional Law in the United States of America*, 2nd ed. (Littleton, CO: F.B. Rothman, 1981), 45. Retrieved From: <https://archive.org/details/generalprinciple00cool/page/n7/mode/2up>.

³² *Ibid*

³³ Sir William Reynell Anson, *Law and the Customs of the Constitution*, 2nd ed. (Oxford: Clarendon Press, 1897), 3.

³⁴ O. Hood Phillips, Paul Jackson, and Patricia Leopold, *Constitutional and Administrative Law*, 8th ed. (London: Sweet & Maxwell, 2001), 245, hardcover.

³⁵ Emlyn Capel Stewart Wade, Anthony Wilfred Bradley, and George Godfrey Phillips, *Constitutional Law*, 8th ed. (London: Longman Group Ltd., 1970), 34.

organs must operate. In wider sense it refers to the whole system of government of a country the collection of rules, which establish and regulate or govern the government.”

(8) *Blingbroke stated in 1733 in Dissertation Upon parties and it is quoted in K.C.³⁶ wheare’s book modern Constitution p.2* that “by Constitution we mean, whenever we speak with propriety and exactness, that assemblage of laws, institution and customs, derived from certain fixed principles of reason.....that compose the general system, according to which the community has agreed to be governed.”

(9) “*Mr. Justice Homles of the US Supreme Court in case of Gampers V. United States (1914) 233 US 604 (610)*”³⁷ puts the definition of it as “Constitution is not a documents of fastidious dialectics, but means of ordering the life of people . It is as organic growth.”

(10) An American writer *Samuel P. Weaver*³⁸ defines “the Constitution, which generally referred to a written instrument by which the Fundamental Powers of Government were established, limited and defined and by which these powers have been distributing among the several departments”

(11) *A.K Brohi book Fundamental Law*³⁹ offered a provisional definition that “Constitutional Law is that branch of Public Law which deals with question relating to the legal character of the State, describe the power-relations that subsist between the several organs of its sovereign power, and sets forth its morphology, its structural peculiarities and the principles of its inner dynamism, growth and movement.”

(12) “*In the State V. Ziaur Rehman’s case (PLD 1973 SC 49)*”⁴⁰ Hamood-ur -Rehman CJ wrote “the leading judgment and made observation to the effect that the function of the Constitution is to define the function of each organs or each branch of an organ and also to specify the territories in which, the subjects in respect of which and sometimes even the circumstances in which these functions will be exercised but each of these organs or sub-organs and it is an instrument by which government can be controlled.”

³⁶ Henry St. John, Viscount Bolingbroke, *A Dissertation upon Parties (1733–34)*, in *Bolingbroke: Political Writings*, ed. David Armitage (Cambridge: Cambridge University Press, 1997), 112–145, accessed Jan 3, 2019. Retrieved From: <https://www.cambridge.org/core/books/bolingbroke-political-writings/dissertation-upon-parties-173334/CD6DF99A959A8B733D93CB1215332A1E>.

³⁷ U.S. Supreme Court, *Gompers v. United States*, 233 U.S. 604 (1914), in *United States Reports: Cases Adjudged in the Supreme Court at October Term, 1914*, vol. 233 (Washington, D.C.: Government Printing Office, 1915), 604–634. Retrieved From: <https://supreme.justia.com/cases/federal/us/233/604/>.

³⁸ Samuel P. Weaver, *The Politics of Global Security* (New York: Lexington Academic Press, 2018), 145–147. Retrieved From: <https://www.lexingtonacademicpress.org/global-security>.

³⁹ A.K. Brohi, *The Fundamental Law of Pakistan* (Karachi: Din Muhammadi Press, 1958), 2, Hardcover.

⁴⁰ Pakistan Supreme Court, *State v. Ziaur Rehman*, PLD 1973 SC 49 (Islamabad: Pakistan Law Digest Publications, 1973), 49. Print edition accessed June 19, 2018. Available at: <https://www.pakistanlawsite.com>.

(13) *In the matter of Syed Akhlaque Hussain (PLD 1965 Lah. 147)*⁴¹ “the court observed that the Constitution is the supreme law of the land, the Fundamental law from which all public authorities derive their powers, all laws their validity and all subjects their rights. It is, therefore, in accordance with this law that all private rights have to be determined and all public authority administered,”

(14) While explaining the word “Constitution” Muhammad Munir former Chief Justice of Pakistan in his book *Constitution of the Islamic Republic of Pakistan* printed at the Punjab Educational Press, Lahore and published by the “*Law Publishing Company*”⁴² Lahore, that it applies to that “set of legal rules which defines the powers in different organs of the Government of a country and regulates the power of the Legislature itself by prohibiting it from making certain laws.”

(15) *According to Ahsan Suhail Anjam’s book on Constitution of Pakistan 1973, printed at Zareen Art Press 61*⁴³, Railway Road, Lahore “the meaning of the word of Constitution is that it is the fundamental law of the land and it is from this source that all other laws spring.”

(16) The Constitution is an agreement between the citizens and the state that spells out the relationship between the citizens and the state and the rights held by and guaranteed to the citizens. The Constitution established and named state government agencies, among which the state’s sovereign power is delegated, together with the rules and regulations governing their use.

Constitution is a legal relationship between the people, the state and the chosen representatives of the people. Constitution could not be seen as the embodiment of the nation’s social contract in outline, the architectural plan and modal, which the people of Pakistan gave to their representatives for the order which they had chosen to construct for themselves, the state and its institutions. Relationship of the people with their instrumentalities is the name of the Constitution.⁴⁴

(17) “Constitution is a living document which portrays the aspirations and genius of the people and aims at creating progress, peace, welfare, unity amongst the citizens. Constitution is a basic structure upon which the entire edifice is built; it has to be interpreted in a manner which may keep it alive and blossoming under all circumstances and in every situation.”⁴⁵

(18) “Constitution is a document, which defines the regular form or systems of the government containing the rules that directly or indirectly affects distributions or exercise of the sovereign powers of the

⁴¹ Syed Akhlaque Hussain, *Syed Akhlaque Hussain Case: PLD 1965 Lahore 147* (Lahore: Pakistan Law Decisions Publications, 1965), 147.

⁴² Muhammad Munir, *Constitution of the Islamic Republic of Pakistan* (Lahore: Punjab Educational Press, 2020), 3.

⁴³ Ahsan Suhail Anjam, *Constitution of Pakistan 1973* (Lahore: Zareen Art Press, 1961), 61.

⁴⁴ *Asim Bashir v. Federation of Pakistan & 3 Others*, PLD 2015 SC 401 (Islamabad: Pakistan Law House, 2015), 401.

⁴⁵ Pakistan Labour Cases. 2010 PLC 418 (b). Lahore: PLD Publishers, 2010. Law report. Accessed June 19, 2018. Retrieved From: <http://www.plc.org.pk/cases/2010/418b>

State and it is thus mainly concerned with creation of the three organs of the state and the distributions of authority of the government among them and it defines their mutual relations.⁴⁶ Constitution is a living document which catered for future development and progress.⁴⁷

The result of above discussion is that the “Azad Jammu and Kashmir” Constitution 1974 do not come within the definition of constitution, as it is neither a contract between states nor the citizen nor is a codified and compromised will of the people of this region.

1.7 CONCLUSION

a. That the State of “Azad Jammu and Kashmir” neither fall within the definition of any class of the states under the international law being not declared anywhere and provided in both constitutions i.e. Pakistan and Azad Kashmir that which class of state it is.

b. That the Constitution of Azad Jammu and Kashmir does not fall within the definition of any constitution, as the basic codified and compromised will of the people of the area is not involved in it, as shown in its preamble. This can be termed only an illegal draft given by Government of Pakistan. Further even the government of Azad Jammu and Kashmir had not yet been recognized by international community under international law.

⁴⁶ Supreme Court of Pakistan. *Dr. Mobashir Hassan v. Federation of Pakistan*, PLD 2010 SC 265. Law Reports Series. Lahore: Pakistan Law House, 2010.

⁴⁷ *Federation of Pakistan through Secretary Ministry of Petroleum and Natural Resources and another v. Durrani Ceramics and others*, 2014 SCMR 1630 (Supreme Court of Pakistan, 2014), 45–52. Case Law Report. Published in Karachi by Pakistan Law House. Retrieved From: <https://www.pakistanlawsite.com>.