Article 370

Indian Constitution is one the most efficient written Constitution that any country has ever produce. It is a mixture of various other Constitutions, the Constitution makers had to be very prudent while making the draft of the Constitution because of the diversity India contains inside. Every State in India is unique and has its own diversity.

But the most beautiful and the most diverse and focus attracting State is in the Northern end of the country India. Article 370 talks about the special status that has been given to the State of Jammu and Kashmir.

It deals exclusively with Jammu & Kashmir State that came under the administrative control of the Government of India after the country’s 15-month war that Pakistan began in 1947 to seize sway over that State. Article 370 of the Constitution of India is related to the State of Jammu and Kashmir is right now over sixty-eight years old.

Article 370 of the Indian Constitution stipulates autonomy for the state of Jammu and Kashmir (J&K). Article 370 have been controversial right from inception, with Dr BR Ambedkar as the principal drafter of the Constitution, having refused to draft the article owing its bias and unequal dispensations within the framework of a free India. The drafting was eventually done by Gopalaswami Ayyangar, who was a confidante of Prime Minister Jawaharlal Nehru and former aide of the Maharaja of J&K. It was initially meant to be temporary in nature; hence it was included in the Temporary and Transitional Provisions in Part XXI (Varshney 1992; Thapliyal 2011).

History

With the end of the British paramountcy, the State of Jammu and Kashmir (J&K) became independent on 15 August 1947. Initially its ruler, Maharaja Hari Singh, decided not to join India or Pakistan and thereby remain independent.

There was an agreement by J&K with Pakistan and India that none of them will assault J&K. While India respected the agreement and worked out limitation, Pakistan assaulted Kashmir in an offer to add it by compel.

On 20 October 1947, the Azad Kashmir Forces supported by the Pakistan army attacked the frontiers of the state. Under this unusual and extraordinary political circumstance, the ruler of the state decided to accede the state to India.

Accordingly, the ‘Instrument of Accession of Jammu and Kashmir to India’ was signed by Pandit Jawaharlal Nehru and Maharaja Hari Singh on 26 October 1947.2 Under this, the state surrendered only three subjects (defence, external affairs and communications) to the Dominion of India.

At that time, the Government of India made a commitment that ‘the people of this state, through their own Constituent Assembly, would determine the internal Constitution of this state and the nature and extent of the jurisdiction of the Union of India over the state, and until the decision of the Constituent Assembly of the State, the Constitution of India could only provide an interim arrangement regarding the state.’

In pursuance of this commitment, Article 370 was incorporated in the Constitution of India. It clearly states that the provisions with respect to the State of J&K are only temporary and not permanent. It became operative on 17 November 1952, with the following provisions:

Article 370 makes Article 1 and Article 370 itself applicable to the State of J&K at once and authorises the president to extend other Articles to the state.

Special Features

In September–October 1951, the Constituent Assembly of J&K was elected by the people of the state on the basis of adult franchise to prepare the future Constitution of the state and to determine its relationship with the Union of India. This sovereign body met for the first time on 31 October 1951, and took about five years to complete its task.

The Constitution of J&K was adopted on 17 November 1956, and came into force on 26 January 1957. Its salient features (as amended from time to time) are as follows:

**1. Integral Part:** It declares the State of J&K to be an integral part of India.

**2. Rights:** It secures justice, liberty, equality and fraternity to the people of the state.

**3. Territory:** It says that the State of J&K comprises all the territory that was under the ruler of the state on 15 August 1947. This means that the territory of the state also includes the area which is under the occupation of Pakistan.

**4. Permanent Resident:** It lays down that a citizen of India is treated as a ‘permanent resident’ of the state if on 14 May 1954

(a) he was a state subject of Class I or Class II, or

(b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for 10 years prior to that date, or

(c) any person who before 14 May, 1954 was a state subject of Class I or Class II and who, having migrated to Pakistan after 1 March 1947, returns to the state for resettlement.

**5. Rights for Permanent Resident:** It clarifies that the permanent residents of the state are entitled to all rights guaranteed under the Constitution of India. But, any change in the definition of ‘permanent’ can be made by the state legislature only.

**6. Directive Principles:** It contains a list of directive principles that are to be treated as fundamental in the governance of the state. However, they are not judicially enforceable.

**7. Bicameral Legislature:** It provides for a bicameral legislature consisting of the legislative assembly and the legislative council. The assembly consists of 111 members directly elected by the people. Out of this, 24 seats are to remain vacant as they are allotted for the area that is under the occupation of Pakistan. Hence, as an interim measure, the total strength of the Assembly is to be taken as 87 for all practical purposes. The council consists of 36 members, most of them are elected in an indirect manner and some of them are nominated by the Governor, who is also an integral part of the state legislature.

**8. Executive Powers:** It vests the executive powers of the state in the governor appointed by the president for a term of five years. It provides for a council of ministers headed by the chief minister to aid and advise the governor in the exercise of his functions. The council of ministers is collectively responsible to the assembly. Under the original Constitution of J&K (1957), the head of the state and head of the government were designated as Sadar-i-Riyasat (President) and Wazir-i-Azam (Prime Minister) respectively. In 1965, they were redesignated as governor and chief Minister respectively. Also, the head of the state was to be elected by the state assembly.

**9. High Court of J&K:** It establishes a high court consisting of a chief justice and two or more other judges. They are appointed by the president in consultation with the Chief Justice of India and the Governor of the state. The High Court of J&K is a court of record and enjoys original, appelate and writ jurisdictions. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.

**10. Governor’s Rule:** It provides for Governor’s Rule. Hence, the governor, with the concurrence of the President of India, can assume to himself all the powers of the state government, except those of the high court. He can dissolve the assembly and dismiss the council of ministers. The Governor’s Rule can be imposed when the state administration cannot be carried on in accordance with the provisions of the J&K Constitution. It was imposed for the first time in 1977. Notably, in 1964, Article 356 of the Indian Constitution (dealing with the imposition of President’s Rule in a state) was extended to the state of J&K.

**11. Official Language:** It declares Urdu as the official language of the state. It also permits the use of English for official purposes unless the state legislature provides otherwise.

**12. Procedure for Amendment of State Constitution:** It lays down the procedure for its amendment. It can be amended by a bill passed in each house of the state legislature by a majority of two-thirds of the total membership of that house. Such a bill must be introduced in the assembly only. However, no bill of constitutional amendment can be moved in either House if it seeks to change the relationship of the state with the Union of India.

Problems

* Only a permanent resident can buy land in the state and citizens from other Indian other state face some restrictions.
* It is not easy for outsider to operate their businesses here.
* This help local resident in making more profit.it also reduces competition.
* Outsider is not allowed to make any kind of construction in J&K which contains prices of real estate if Article 370 is remove than the prices of property will go very high. i.e. a normal home which now cost RS 70 lakh will then cost Rs 1 crore approximately

Pros

1. It has preserved and protect the ecology environment and biodiversity in J&K to some extent.
2. Government jobs are still available to residence of J&K.
3. Local brands are still running here due to less competition.
4. Maintains the status of J&K with union of India.
5. Less crime rate and traffic but terrorist is high which is the main negative issue.
6. Less pollution as there are not many industries i.e. not giving any permission for opening new business and industries.
7. Maintain the inland quality.
8. Has to maintain Indian claims over Kashmir in world eye.

Cons

1. Lack of medical facilities, no single private hospital in Jammu which include adjoining districts.
2. Terrorism in state is because of 370 and because Pakistan claims over Kashmir.
3. Lack of basic modern facilities like high speed internet, 24 hours electricity and 24 hours of water supply.
4. Less competition makes the progress of student slow and dull that means grow and development is low.
5. No opportunity for state student to appear in other state exam.
6. No industrial sector is available.
7. Jammu is always ignored in comparison to Kashmir just because it’s an international issue.
8. It has hindered the progress of our state to a large extent.
9. Corruption is much more in J&K than from others because of special status and laws. Only Muslim can become chief minister of J&K, no Hindu can become chief minister of J&K.
10. It has reduced the participation of non-Muslim community in politics and other fares.
11. Education has suffered a lot due to this.
12. Less GDP as well as revenue i.e. net income is less, growth is less, less jobs and unemployment are the major problem due to this Article. Due to this youth can more participate in terrorism.
13. Lack of control on government of India and their policy on our state.
14. The main problem is gender base, many claims to have a negative thought about the Article 370 as it disqualifies women from the state of property rights.
15. However, it is less known that the Article, itself was gender neutral but the definition of permanent resident in the state constitution based on the notification issued in April 1927 and June 1932 during the Maharaja rule was thought to be discriminatory.

Conclusion

J&K is the most burning issue which should be comprehended however is pending since more than Sixty years of freedom because of a few errors committed by the legislators. This is the opportune time to take legitimate choices with respect to the status of Jammu and Kashmir, if appropriate advances are not taken now then it is conceivable that issue will fire up more in coming future and will keep Jammu and Kashmir from improvement even the entire world will be developed. Need of plebiscite and re-election of constituent assembly becomes necessary.