

J&K-Special status- Review of Indian Constitution



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"Constitution is for a real union of the Indian people, built on the basic concept of sovereignty of the people, to ensure them Justice. That is the real spirit of the Constitution"

Special Status to J&K:

1. Part XXI of the Constitution of India, which deals with “Temporary, Transitional and Special provisions”.
2. Article 370- Special status has been given to Jammu & Kashmir.
3. Article 370 made Jammu and Kashmir a country within a country, with its own flag, emblem, constitution and Sadr-i-Riyasat (Prime Minister).

HISTORICAL ASPECT:

1. J&K chose to remain independent at the time of India, Pakistan Independence.
2. An agreement was entered by J&K with Pakistan and India that none of them will attack J&K. While India respected the agreement and exercised restraint, Pakistan attacked Kashmir in a bid to annex it by force.
3. On 6th October 1947, Kashmir was attacked by “Azad Kashmir Forces” supported by Pakistan. To save J&K, the then ruler Maharaja Hari Singh chose to accede J&K to India.
4. In October 1947, the accession was made by the ruler in favour of India in consideration of certain commitments made by Pt. Jawahar Lal Nehru (the then Prime Minister of India). It was in the pursuance of those commitments that Article 370 was incorporated in the Constitution.

What is Article 370?

- Temporary provision in the Indian Constitution.
- The Ruler of Jammu and Kashmir signed the instrument of accession whereby only three subjects were surrendered by the State to the Dominion of India.
 1. External affairs
 2. Defense and
 3. Communications
- The State enjoys a greater measure of autonomy and the power of the Union of India is restricted, as regards other States.
- The Union of India is incompetent to declare financial emergency and emergency in case of failing of constitutional machinery with respect to the State of J&K.
- Only emergency due to War or External Aggression can be declared as it is within the scope of “Defense” as surrendered to the Union of India.

Contd.

- The Union Legislature can not legislate on the matters provided in the Union list and Concurrent list which are not in accordance with the subjects provided in the instrument of accession.
- The consultation of the State Government is required in any matter that affects the State.
- It can be said that the Union of India has the power to act on an issue independently only if it is somehow related to the three subjects surrendered or those expressly mentioned in the instrument of accession.

Special Features

Separate Constitution

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

Jurisdiction of Parliament

- Limited jurisdiction in case of J&K as compared to other states.
- Till 1963, Parliament could legislate on subjects contained in the Union List, and had no jurisdiction in case of Concurrent List under 7th Schedule of the Constitution. But now, the Parliament has power to legislate not just on subjects contained in the Union List but also on some of the subjects of Concurrent List.
- Residuary powers, unlike other states, rest with J&K.
- The Parliament has no power to legislate Preventive Detention laws for the state; only the state legislature has the power to do so.

Autonomy in certain matters

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

Emergency Provisions

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

Fundamental Duties, Directive Principles & Fundamental Rights

- Part IV (Directive Principles of the State Policy) and Part IVA (Fundamental Duties) of the Constitution are not applicable to J&K.
- Part III- (Fundamental Rights) In addition to other fundamental rights, Articles 19(1)(f) and 31(2) of the Constitution are still applicable to J&K; hence the Fundamental Right to property is still guaranteed in this state.

High Court of J&K

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

Official Languages

- Provisions of Part XVII of the Constitution apply to J&K only insofar as they relate to,
 - (i) the official language of the Union;
 - (ii) the official language for communication between one state and another; or between a state and the Union; and
 - (iii) language of the proceedings in the Supreme Court.
- Urdu is the official language of the state but use of English is permitted for official purposes unless the state legislature provides otherwise.

Procedure for Amendment of State Constitution

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

Demand for Abrogation of Article 370

Arguments for Abrogation of Article 370:

- It has created certain psychological barriers. It is the root cause of all the problems in J&K.
- It is this Article 370 which encourages secessionist activities within J&K and other parts of the country.
- It was a temporary arrangement which was supposed to erode gradually.
- It acts as a constant reminder to the Muslims of J&K that they have still to merge with the country.

Thank You