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SPECIAL STATUS TO JAMMU & KASHMIR

Introduction:

Under Article 1 of the Indian Constitution, the State of Jammu and Kashmir (J&K) is a constituent state of Indian Union and its territory forms a part of the territory of India. On the other hand, Article 370 in Part XXI of the Constitution grants a special status to it.

Accordingly, all the provisions of the Constitution of India do not apply to it. It is also the only state in the Indian Union which has its own separate state Constitution—the Constitution of Jammu and Kashmir.

Under the same Part (XXI) of the Constitution, twelve other states of the Indian Union also enjoy special status but only in certain minor matters. On the other hand, the special status enjoyed by the State of J&K (as mentioned above) is unparalleled.

Accession of J&K to India:

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.

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. 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

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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.

Features of J&K Constitution

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. It declares the State of J&K to be an integral part of India.
2. It secures justice, liberty, equality and fraternity to the people of the state.
3. 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. 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. 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. 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.

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7. 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. 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. 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, appellate and writ jurisdictions. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.

10. 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.

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11. 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. 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.

J&K Autonomy Resolution Rejected:

On June 26, 2000, in a historic move, the Jammu and Kashmir Legislative Assembly adopted by voice vote a resolution accepting the report of the State Autonomy Committee, recommending greater autonomy to the State.

The Assembly sought the following:

1. The word 'temporary' in Article 370 to be substituted with 'special'.
2. Only defence, foreign affairs, communications and ancillary subjects to be with the Centre.
3. Article 356 not to apply to J&K.
4. Election Commission of India to have no role.
5. J&K Assembly to have final say on Central role in case of external aggression / internal emergency.
6. No room for All-India Services (IAS, IPS and IFS) in J&K.
7. Governor and Chief Minister to be called Sadar-e-Riyasat and Wazir-e- Azam.
8. Separate charter of fundamental rights for J&K.
9. Parliament's and President's role over J&K to be sharply curtailed.
10. No special leave to appeal by the Supreme Court.
11. No special provisions for scheduled castes/tribes and backward classes.
12. Centre to lose adjudication rights relating to inter-state rivers or river valleys.
13. No jurisdiction of the Supreme Court in appeals from the High Court in civil and criminal matters.
14. Parliament not to be empowered to amend the Constitution and procedure with respect to J&K.



On July 14, 2000, the Union Cabinet rejected as unacceptable the June 26 autonomy resolution of the Jammu and Kashmir Assembly, though at the same time committing itself to a greater devolution of powers to all states. The Cabinet found the June 26 resolution unacceptable because essentially it was a plea for restoration of the pre-1953 status to the state.

The Cabinet was unanimous in its judgement that the June 26 resolution could not be accepted, fully or even partially, because it would set the clock back and reverse the natural process of harmonizing the aspirations of the people of Jammu and Kashmir with the integrity of the nation.

Specifically, about Jammu and Kashmir, the Cabinet wanted the people and the state government to join hands in the endeavor to address the real problems facing the state: to root out insurgency and cross-border terrorism, and to ensure accelerated development.

Abrogation of Article 370:

President issued a presidential order under Article 370 (1) of the Constitution. The Order supersedes the 1954 Order. This effectively means that all the provisions that formed the basis of a separate “Constitution” for Jammu and Kashmir stand abrogated. The Order declares that all the provisions of the Constitution of India, shall apply to Jammu and Kashmir too.

However, some special measures were still needed for the scrapping of Article 370 altogether. Therefore, a few clauses were added to Article 367 of the Constitution.

Article 367 contains “Interpretations”. They contain guidance on how to read or interpret some provisions. The new clauses say, when applicable to Jammu and Kashmir, all references to the ‘Sadar-i-Riyasat’, acting on the aid and advice of the Council of Ministers, will be construed as references to the Governor of Jammu and Kashmir. All references to the State government shall mean “the Governor”.

And most importantly, the reference to the “Constituent Assembly” in a provision to Article 370 (3) has been amended to read “Legislative Assembly of the State”. This is the proviso that says the President can declare that Article 370 is no more operative

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only on the recommendation of the Constituent Assembly. As there is no Constituent Assembly in existence now, there is no body to “recommend” the demise of Article 370. Therefore, the State Assembly has to play that role.

The issuance of the Presidential Order has set the stage for the abrogation of Article 370. Here, the government has made use of the fact that Jammu and Kashmir are under President’s Rule.

Under the Proclamation issued under Article 356 of the Constitution, by which the President takes over the administration of a State, Parliament usually performs the legislative functions of the State Assembly. For instance, when a State is under Central rule, the budget allocations for that State are voted in Parliament in the absence of the Assembly.

The Union Home Minister introduced two statutory resolutions, one, to recommend that the President issue a notification rendering Article 370 inoperative, and two, to accept the Jammu and Kashmir Reorganization Bill. The passage of the former resolution will enable the President to declare that Article 370 has ceased to operate.

The Bill envisages converting Jammu and Kashmir into a Union Territory with a legislature, and carve out Ladakh region as another Union Territory, but without a legislature.

Questions:

1. What are the special provisions of Jammu and Kashmir? Explain.