

Analytical Study on Jammu & Kashmir Current and Future

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Introduction:

Article 35A and Article 370 in the Constitution of India have provided special rights and privileges to the permanent residents of Jammu and Kashmir and grant special status to the State of Jammu and Kashmir. Article 370 was added in the Indian Constitution after the agreement signed between former Prime Minister Jawaharlal Nehru and Maharaja Hari Singh of Jammu Kashmir. In 1952 "Delhi Agreement" was signed between the then Prime Minister of Jammu and Kashmir, Sheikh Abdullah and the Prime Minister of India, Jawaharlal Nehru. The agreement extended Indian citizenship to the 'State subjects' of Jammu and Kashmir. After the Delhi agitation of 1952, the famous 'Article 35A' was added to the Constitution in 1954. As we know that the constitution of Jammu and Kashmir was adopted on 17 November, 1956. According to this constitution, Permanent Resident of the state of Jammu and Kashmir is a person who has a state subject on 14 May, 1954 or who has been a resident of the state for 10 years and has "lawfully acquired immovable property in the state". West Pakistan refugees, as they are known, fled Pakistan due to religious violence triggered by the partition in 1947 and settled in the border district of Samba. Barred from government jobs, admission in colleges and scholarships, welfare schemes, and right to own land, they have been living 'stateless' within India for more than 70 years.

Features of the Constitution of Jammu and Kashmir:

Jammu and Kashmir is the only state that has its own constitution and National Flag in the Republic of India. Constitution of India also applied in this state. Permanent residents of this state get all the Fundamental Rights granted to the citizens of India. In this article we will learn about the main features of the Constitution of Jammu and Kashmir. In September 1951, the Constituent Assembly of the Jammu & Kashmir was elected by the people of the state on the basis of adult franchise to prepare the constitution of the state. Constituent Assembly meets for the first time on 31 October 1951 and took five years to complete its task. The constitution of Jammu and Kashmir was adopted on the 17 November, 1957 and came into force on 26 January, 1957.

- The Constitution declares that the State of Jammu and Kashmir is an integral part of India.
- It provides justice, freedom, equality and fraternity to the people of the state.
- State of Jammu and Kashmir comprises all the territory of that was under the ruler of the state on August 15, 1947. It means Pakistan occupied Kashmir (POK) is also the part of India.
- It lays down that a citizen of India is treated as the permanent resident of the state if on May 14, 1954; he/she....
 - i. Lawfully owns the property in the state
 - ii. Has been living in the state for 10 years prior to May 14, 1954
 - iii. Having migrated to Pakistan after March 1, 1947 but returns to the state for resettlement.
- Kashmir Constitution gives all the rights to the permanent residents of the state but who is the "permanent residents" of the state shall be decided by the State Legislative Assembly only.
- The state has bicameral system. There are 111 members elected directly by the public in the Vidhan Sabha; out of which 24 posts have been kept vacant for "Pak occupied Kashmir".
- It vests the executive powers of the state in the governor appointed by the president for the period of five years.
- Under the original constitution of the state, the Chief of the State was "Sadar-e-Riyasat" (President) and Chief of the government was "Wazir-e-Azam" (Chief Minister). In the year 1965, they were nominated as governors and Chief Minister respectively.
- It establishes a High Court consisting of a Chief Justice and two or more other judges. They are appointed by the President of India in consultation with the Chief Justice of the Supreme Court and governor of the state.
- Since 1964, the President rule has been introduced in the state. Earlier, in the situation of the failure of the state administration, only governor's rule used to impose here.
- "Urdu" will be the official language of the state whereas English can also be use for the official work.
- 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.

On the basis of the above points, it can be said that there are two types of constitutionality in the state of Jammu and Kashmir. At one hand the constitution of India is applicable in the whole state while on the other hand Constitution of Jammu and Kashmir also holds its significance on so many matters. Since this state is integral part of the Republic of India, therefore the Constitution of India has more powers than the Jammu & Kashmir constitution. As Supreme Court of India also said the Jammu and Kashmir will not get any independence beyond the Constitution of India.

About Article 370:

Article 370 in Part XXI of the Indian constitution grants a special status to Jammu and Kashmir. It is the only Indian state which has its own separate state constitution. Article 370 came into force since November 17, 1952. In this article we have explained the Rights and facilities to Kashmiri Citizens due to the enforcement of the article 370. Jammu and Kashmir also got Independence from the British rule. But then king of Jammu and Kashmir Raja Hari Singh decided not to join the Indian union and wanted to keep his principality as independent state. Kashmir was invaded by the Pakistan-backed "Azad Kashmir Army on October 20, 1947 and confiscated a part of Kashmir region which is now known as Pakistan Occupied Kashmir (POK). In this situation, Maharaja Hari Singh signed the "Instruments of Accession of Jammu and Kashmir to India" with then PM of India, Pt. Nehru on October 26, 1947. Under this agreement the state surrendered three subjects (defence, communication and external affairs) to the dominion of India. The Article 306A was enshrined as Article 370 in the constitution as a "temporary provision". Sheikh Abdullah did not want that temporary provision and insisted for guarantee of autonomy but India did not accept that. The provisions of the article 370 came into force from 17 November, 1952.

Rights and Facilities to the citizens of Jammu and Kashmir under Article 370

1. Jammu & Kashmir is an integral part of the Indian Union. But its area, name and boundary can't be altered without the consent of the state assembly.
2. According to this article, the central government has to get approval from the state government to implement all other laws except defence, foreign affairs and communication in the state.
3. Jammu and Kashmir has its constitution because of article 370 and its administration is run accordingly not according to the Constitution of India.
4. Jammu and Kashmir has 2 flags; One of Kashmir and another is India's Tricolour flag.
5. The citizens of other Indian states cannot buy any property or kind of any property in this state. It means, the fundamental right to property is still in force in this state.
6. The people of Jammu and Kashmir have two types of citizenship. One is Indian citizenship and another is Kashmiri citizenship. Worth to mention that no other Indian can have two citizenships simultaneously.
7. If a Kashmiri woman marries an Indian, then her Kashmiri citizenship terminates, but if she marries a Pakistani, it does not affect her citizenship status.
8. If a Pakistani boy marries a Kashmiri girl, he gets Indian citizenship too while Indians don't have this privilege.
9. Part 4 of the Indian Constitution (Directive Principal of State Policy) and Part 4A (Fundamental Duties) are not applicable in this State. It means the citizens of Kashmir are not bound to save the cow, maintain the dignity of the women and respect the National Flag of India.
10. One of the most shocking right is that Insulting National Symbols of India (National Anthem, National Flag etc.) in Jammu and Kashmir does not fall under the category of crime.
11. The President of India does not have power to declare financial emergency in the state.
12. Any amendment in the Constitution of India does not apply automatically to Jammu and Kashmir unless a special order of President is not passed.
13. The Central government can impose National Emergency in the state in two conditions only; war and external invasion.
14. The President has no power to suspend the constitution of the state on the ground of failure to comply with the directions given by him.

15. If the national emergency is imposed in the country on the basis of internal disturbance; this emergency is not applicable in the Jammu and Kashmir until it is approved by the state government.

16. The Central Government cannot impose National Emergency in the state on the basis of internal disturbance in the state. The central government must take the permission of state government before doing so.

17. Only the resident of the Kashmir can take selection in the jobs of the state government

It is clear from the facts given above that Jammu and Kashmir is an integral part of the Indian but this state has some special provisions for its citizens which are not enjoyed by the other Indians. The main reasons behind terror and uproar in Jammu and Kashmir are selfish interests of some separatist leaders. These separatist leaders provoke the children of the poor families for terror activities while their children study abroad. Now this is the need of the hour that the people of Kashmir understand the selfish interests of these separatist leaders and re-establish peace and prosperity in this region.

About Article 35A:

Article 35A of the Indian Constitution granted many powers to the Jammu Kashmir Legislative Assembly. On the basis of this article the Jammu and Kashmir Assembly has the freedom to decide that who will be the Permanent Residents of the Jammu and Kashmir. Article 35A of the Constitution provides the Jammu and Kashmir Legislature a *carte blanche* to decide who all are 'permanent residents' of the State and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare. It is mandatory according to the provision that no act of the legislature coming under it can be challenged for violating the Constitution or any law of the land.

Provisions in Article 35A

1. A person who is not a Permanent Resident of Jammu and Kashmir can't own property there.
2. Resident of any other state of India cannot become a Permanent Resident of Jammu and Kashmir and therefore cannot cast vote there.
3. It forbids Indian citizens from acquiring immovable properties and can't seek employment in the state.
4. If a girl of Jammu and Kashmir marries to a person who does not hold a permanent resident certificate of J&K, then she would lose her property right and their children also become ineligible to claim the property of their mother.
5. This article discriminates with the citizens of India because of the enforcement of this article 35A. As, the people of India are denied with the Permanent Resident certificate of Jammu and Kashmir while the intruders from Pakistan were granted citizenship. Recently Rohingya Muslims from Myanmar in Kashmir have been allowed to settle.
6. It conflicts with fundamental rights under Article 14, 19 and 21 of the Constitution.
7. Article 35A also adversely affects the economic development of the state.
8. Meritorious students are denied scholarships and they cannot even seek redress in any court of law.
9. Also, the issues regarding refugees who migrated to J&K during Partition are still not treated as "State subjects" under the Jammu and Kashmir Constitution.
10. Article 35A was inserted unconstitutionally, bypassing Article 368 which empowers only Parliament to amend the Constitution.

Set Backs of the Article 35A

- The first argument to remove it is that it was not implemented through parliament. That is Article 35A is void because the Nehru government did not place it before Parliament for discussion.
- Many refugees from Pakistan came to India during the partition of the country. Among them, lakhs of refugees are living in the state of Jammu and Kashmir and they have been given citizenship there.
- Jammu and Kashmir Government, through article 35A denied Permanent Certificate to mostly 80% of the people who are backward and belong to the Dalit Hindu community.

Permanent Resident in Jammu and Kashmir

This issue is in demand which surrounds the Article 35A. The 1956 Jammu and Kashmir Constitution actually defines a Permanent Resident as one who must be a citizen of India and a state subject on 14 May, 1954, or a resident of the state for ten years, and owns immovable

property in the state. Who support this says that it is necessary to protect the demographic profile of the state and according to critics it goes against the spirit of oneness and equality of Indian citizenship.

Present Scenario

The president has incorporated Article 35A, the parliamentary route of law making is bypassed. On the other side if we see that Article 368 (i) of the Constitution empowers only Parliament to amend the Constitution. In March 1961, a five bench Judge of the Supreme Court judgement in Puranlal Lakhanpal vs. The President of India discusses the powers of President's under Article 370 to 'modify' the Constitution. The court observes that under Article 370 of the Constitution, the President may modify an existing provision in the Constitution; the judgement is silent that whether the president can, without the Parliament's knowledge, introduce a new Article. This question remains open. Further, a writ petition filed by NGO the citizen's challenges the validity of both Articles 35A and Article 370. The petition said that Article 35A is against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens". Another petition was filed by Jammu and Kashmir native Charu Wali Khanna has challenged Article 35A for protecting certain provisions of the Jammu and Kashmir Constitution, which restrict the basic right to property if a native woman marries a man not holding a permanent resident certificate. Even her children will also be denied a permanent resident certificate. Therefore, the people filed petition in front of the Supreme Court that due to Article 35A, their basic or fundamental rights were infringed in Jammu and Kashmir State, so the Central Government immediately remove Article 35A that was enforced by the President's order.

On 7th August, 2019 the Indian parliament has passed Jammu and Kashmir bifurcation bill and scrapped Article 370. This heralds a historic beginning of a new chapter in the lives of the people of Jammu and Kashmir. If one excludes the cross border terrorism that the state has suffered there are several positive developments that have happened in the state during the last seven decades but unfortunately they have been for obvious reasons overshadowed. Jammu & Kashmir's state GDP is US \$20.7 billion in 2017-18 and in 2018-19 it grew by 11.7%. The key industries of the state are tourism, handicrafts, sericulture, handloom, food processing, agriculture and allied activities like Horticulture and floriculture. The state is the largest producer of saffron and 2nd largest producer of wool. Willow trees in the state are famous for willow cricket bats across the world. 7,00,000 families comprising 3.3 million people are engaged in horticulture industry in the state. Jammu and Kashmir recorded \$ 196.4 million worth of exports in 2018-19 registering a growth of 32% over the previous year. The Jammu and Kashmir saw the highest monthly average employment rate of 15 per cent between January 2016 and July 2019. This is double the nation-wide figure of 6.4 per cent. The people of the state are skilled weavers and designers of textile products. The state has an industrial policy that offers attractive incentives along with a single-window clearance mechanism. Land is allotted at concessional rates in industrial areas, on lease for 90 years. The cost of setting up operations is comparatively lower than other states. There are 53 industrial estates and 32,226 small scale units with an investment of over US \$793 million in the state. Jhelum River, Indus, Twai, Ravi and Chenab rivers flow through the Kashmir valley. Jammu and Kashmir is home to several Himalayan glaciers. The state has potential to produce 20,000 megawatts of hydel power though it currently produces only 2,439 megawatts. Jammu and Kashmir state has enormous potential but due to historical and political reasons the state's performance was much below its potential in various sectors. Similarly, the argument that Article 35A prohibits outsiders from setting up industries in Jammu and Kashmir as they cannot buy and own the land is not a valid one since the state in any case has an industrial policy that enables people to acquire land on long term lease to set up the industries. Considering its rich resources, the state has to prepare a long term strategy backed by market friendly policies to catapult its position to the top 10 states in the country from its current ranking of 22 (2016-17) in a decade's time frame. In order to achieve this target, the state should focus on Horticulture, floriculture, handicrafts, sericulture, handlooms, food processing, Tourism, renewable energy and agro based industries.

Needless to mention that the state should preserve its resources and therefore design the policies that are eco-friendly and sustainable for a green and colourful Kashmir. Indian railways have already initiated Kashmir Railway Project (KRP) to connect Kashmir with the Himalayan foothills as an alternative and reliable (rail) transport system to the state. The centre should step up its capital expenditure towards building a robust infrastructure in the state and support industrial growth by developing more clusters for handicrafts and handlooms under its central government schemes like- Scheme of Fund for Regeneration of Traditional Industries (SFURTI) through MSME Ministry so that self-employment and entrepreneurial activities pick up

momentum in the state. Let us hope the coming decade will usher in a new era in Jammu and Kashmir and the state will prosper with peace by preserving its eco-system. The abrogation of Article 370 has come as a ray of hope for nearly 21,000 families who migrated to India from Pakistan after partition. Now, things are all set for a change after the Parliament voted to strip Jammu and Kashmir of the special status it had been enjoying for decades.

Conclusions:

It can say that the matter is sensitive and requires participation of several stakeholders and requires a larger debate. On the other side it is necessary to provide confidence to the residents of J&K that any alteration in status quo will not take away their rights but will boost Jammu and Kashmir's prosperity and it will open doors for more investment, new opportunities, new employment etc. No doubt the Article 35A that was incorporated about several decades ago requires a relook.

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