



SAMVAAD

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SAMVAAD 2017

**COMPENDIUM ON
ARTICLE 370 OF
THE INDIAN CONSTITUTION**

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Text of the Article

370. Temporary provisions with respect to the State of Jammu and Kashmir

(1) Notwithstanding anything contained in this Constitution,—

(a) The provisions of article 238 shall not apply now in relation to the state of Jammu and Kashmir;

(b) The power of Parliament to make laws for the said state shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

(c) The provisions of article 1 and of this article shall apply in relation to that State;

(d) Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause

(2) shall be necessary before the President issues such a notification.

History of Article 370

Article 370 of the Constitution of India relating to the State of Jammu and Kashmir is now over sixty years old. The provision was drafted in 1947 by Sheikh Abdullah, who had by then been appointed prime minister of Jammu & Kashmir by Maharaja Hari Singh and Jawahar Lal Nehru. Sheikh Abdullah had argued that Article 370 should not be placed under temporary provisions of the Constitution. He wanted 'iron clad autonomy' for the state, which Center didn't comply with.

The first question to be answered, is the rationale behind the insertion of Article 370. Or as the great poet and thinker, Maulana Hasrat Mohini, asked in the Constituent Assembly on October 17, 1949: “Why this discrimination please?” The answer was given by Nehru’s confidant, the wise but misunderstood Thanjavur Brahmin, Gopalaswami Ayyangar (Minister without portfolio in the first Union Cabinet, a former Diwan to Maharajah Hari Singh of Jammu and Kashmir, and the principal drafter of Article 370). Ayyangar argued that for a variety of reasons Kashmir, unlike other princely states, was not yet ripe for integration. India had been at war with Pakistan over Jammu and Kashmir and while there was a ceasefire, the conditions were still “unusual and abnormal.” Part of the State’s territory was in the hands of “rebels and enemies.”

The involvement of the United Nations brought an international dimension to this conflict, an “entanglement” which would end only when the “Kashmir problem is satisfactorily resolved.” Finally, Ayyangar argued that the “*will of the people through the instrument of the [J&K] Constituent Assembly will determine the constitution of the State as well as the sphere of Union jurisdiction over the State.*” In sum, there was hope that J&K would one day integrate like other States of the Union, but this could happen only when there was real peace and only when the people of the State acquiesced to such an arrangement.

The second pertinent question is whether there was opposition from Sardhar Vallabhai Patel? To reduce the Nehru-Patel relationship to Manichean terms is to caricature history, and this is equally true of their attitude towards Jammu and Kashmir. Nehru was undoubtedly idealistic and romantic about Kashmir. He wrote: “*Like some supremely beautiful woman, whose beauty is almost impersonal and above human desire, such was Kashmir in all its feminine beauty of river and valley...*” Patel had a much more earthy and pragmatic view and — as his masterly integration of princely states demonstrated — little time for capricious state leaders or their separatist tendencies.

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But while Ayyangar negotiated — with Nehru’s backing — the substance and scope of Article 370 with Sheikh Abdullah and other members from J&K in the Constituent Assembly (including Mirza Afzal Beg and Maulana Masoodi), Patel was very much in the loop. And while Patel was deeply sceptical of a “state becoming part of India” and not “*recognising ... [India’s] fundamental rights and directive principles of State policy,*” he was aware of, and a party to, the final outcome on Article 370.

[Negotiations Over Article 370](#)

Indeed, the synergy that Patel and Nehru brought to governing India is evident in the negotiations over Article 370. Consider this. In October 1949, there was a tense standoff between Sheikh Abdullah and Ayyangar over parts of Article 370 (or Article 306A as it was known during the drafting stage). Nehru was in the United States, where — addressing members of the U.S. Congress — he said: “*Where freedom is menaced or justice threatened or where aggression takes place, we cannot be and shall not be neutral.*” Meanwhile, Ayyangar was struggling with the Sheikh, and later even threatened to resign from the Constituent Assembly. “*You have left me even more distressed than I have been since I received your last letter ... I feel weighted with the responsibility of finding a solution for the difficulties that, after Panditji left for America ... have been created ... without adequate excuse,*” he wrote to the Sheikh on October 15. And who did Ayyangar turn to, in this crisis with the Sheikh, while Nehru was abroad? None other than the Sardar himself. Patel, of course, was not enamoured by the Sheikh, who he thought kept changing course. He wrote to Ayyangar: “*Whenever Sheikh Sahib wishes to back out, he always confronts us with his duty to the people.*” But it was Patel finally who managed the crisis and navigated most of the amendments sought of the Sheikh through the Congress party and the Constituent Assembly to ensure that Article 370 became part of the Indian Constitution.

The third question is whether Article 370 has been retained in its organic form? One of the biggest myths is the belief that the “autonomy” as envisaged in the Constituent Assembly is intact. A series of Presidential Orders has substantially eroded Article 370. While the 1950 Presidential Order and the Delhi Agreement of 1952 defined the scope and substance of the relationship between the Centre and the State with the support of the Sheikh, the subsequent series of Presidential Orders have made most Union laws applicable to the State. In fact, today the autonomy enjoyed by the State is a shadow of its former self, and there is virtually no institution of the Republic of India

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that does not include J&K within its scope and jurisdiction. The only substantial differences from many other States relate to permanent residents and their rights; the non-applicability of Emergency provisions on the grounds of “internal disturbance” without the concurrence of the State; and the name and boundaries of the State, which cannot be altered without the consent of its legislature. Remember J&K is not unique; there are special provisions for several States which are listed in Article 371 and Articles 371-A to 371-I.

The fourth question is whether there can be a unilateral revocation of Article 370? Clause 3 of Article 370 is clear. The President may, by public notification, declare that this Article shall cease to be operative but only on the recommendation of the Constituent Assembly of the State. In other words, Article 370 can be revoked only if a new Constituent Assembly of Jammu and Kashmir is convened and is willing to recommend its revocation. Of course, Parliament has the power to amend the Constitution to change this provision. But this could be subject to a judicial review which may find that this clause is a basic feature of the relationship between the State and the Centre and cannot, therefore, be amended.

Article 370 and Gender biasedness

Article 370 is written to be gender neutral, but the definition of Permanent Residents in the State Constitution — based on the notifications issued in April 1927 and June 1932 during the Maharajah's rule — was thought to be discriminatory. The 1927 notification included an explanatory note which said: "*The wife or a widow of the State Subject ... shall acquire the status of her husband as State Subject of the same Class as her Husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.*" This was widely interpreted as suggesting also that a woman from the State who marries outside the State would lose her status as a State subject. However, in a landmark judgement, in October 2002, the full bench of J&K High Court, with one judge dissenting, held that the daughter of a permanent resident of the State will not lose her permanent resident status on marrying a person who is not a permanent resident, and will enjoy all rights, including property rights.

Finally, can the strengthening of separatist tendencies be attributed to Article 370? Article 370 was and is about providing space, in matters of governance, to the people of a State who felt deeply vulnerable about their identity and insecure about the future. It was about empowering people, making people feel that they belong, and about increasing the accountability of public institutions and services. Article 370 is synonymous with decentralisation and devolution of power, phrases that have been on the charter of virtually every political party in India. There is no contradiction between wanting J&K to be part of the national mainstream and the State's desire for self-governance as envisioned in the Article.

Separatism grows when people feel disconnected from the structures of power and the process of policy formulation; in contrast, devolution ensures popular participation in the running of the polity. It can be reasonably argued that it is the erosion of Article 370 and not its creation which has aggravated separatist tendencies in the State. Not surprisingly, at the opposition conclave in Srinagar in 1982, leaders of virtually all national parties, including past and present allies of the BJP, declared that the "*special constitutional status of J&K under Article 370 should be preserved and protected in letter and spirit.*" A review of its policy on Article 370, through an informed debate, would align today's BJP with the considered and reflective approach on J&K articulated by former Prime Minister Atal Bihari Vajpayee. Only then would the slogans of *Jhumuriyat*, *Kashmiriyat* and *Insaniyat* make real sense.

Truth value of the Interpretation

The wrong interpretation of this Article has created many fault lines that are now staring the nation in the face. It is a strange case in the Constitutional history of the India that a very weak Article has been given teeth by the out-of-context connotations that are now posing a challenge to secular nation-building in Jammu & Kashmir. Separatist formations and the so-called mainstream parties based in the Valley are using this article as a tool to propagate their communal agenda and subjecting non-Muslim minorities into servitude of their communal politics. The result has been a demographic change in the entire State with internal displacement of the religious minorities like Kashmiri Pandits in 1990 and the consolidation of the majoritarian communal pockets that fan the air of Muslim separatism. It is a paradox that this Article is being used against the spirit of the Constitution by helping Muslim separatist tendencies to turn Jammu & Kashmir into a State which is against the Constitution.

Analysis of the word “Temporary”

Is it one week, one month, one year or one decade? Judging by the indifference of the National Commission to Review the Working of the Constitution[NCRWC] towards 'Temporary, Transitional and Special Provisions' contained in Part XXI of our Constitution, even half a century would seem to justify the label of 'temporary.'

Sadly, the NCRWC didn't have either the capability to understand the position or the courage to recommend what it should have: abrogation of Article 370 or, in the least, its dilution so as to return to Parliament the constitutional supremacy it merits. After its go-by to a definition of secularism and the enactment of a uniform civil code, Article 370 thus became the NCRWC's third failure.

The Supreme Court of India Opined that:

"The effect of the application of the present article (Article 370) has to be judged in the light of its objects and its terms considered in the context of the special features of the constitutional relationship between [the] State and India. The Constitution makers were obviously anxious that the said relationship should be finally determined by the Constituent Assembly of the State itself..."
(*Prem Nath Kaul vs. the State of Jammu and Kashmir*, AIR 1959 SC 749)

According to Clause (1) (c) of Article 370, the only Articles of the Constitution of India which applied of their own force to the State were Articles 1 and 370; Clause (1) (d) provided that the other provisions of the Constitution of India applicable to the State could be determined by the President of India in consultation with the Government of the State. Exceptions and modifications could be made in the same manner and the provisions could be enlarged too. "*Power to modify includes a power to enlarge or add to an existing provision,*" held the High Court of Kashmir in the case of *Sant Singh v. State*, (AIR 1959 J & K 35), where the question was whether the enlargement of the provisions by the Government of India in consultation with the Government of Jammu and Kashmir. Therefore, the term 'temporary' has been used in Article 370 so as to minimise the difficulty in the way of the amendment of the Constitution of India, whenever the necessity arises to modify or extend the scope of other provisions of the Constitution of India.

Laws for J&K

As a matter of fact, in exercise of the powers conferred by Article 370 (i) (ii), the President of India has issued a number of Constitution (Application to Jammu and Kashmir) orders from 1950 onwards applying various other provisions of the Constitution of India and the laws enacted by Parliament to the State of Jammu and Kashmir. The first such order was made in 1950, which was superseded by the 1954 order. There have been almost 45 amendment orders to the 1954 order till date applying various other provisions of the Constitution of India to the State. A part of the territory of Jammu and Kashmir continues to be under enemy occupation. That was one of the factors debated in the Constituent Assembly of India while enacting Article 370. As I have said above, it is by virtue of this Article that many provisions of the Constitution of India have been extended to the State of Jammu and Kashmir from 1950 onwards. More provisions may be extended by the

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President of India in consultation with Jammu and Kashmir. That is within the scope of Article 370 of the Constitution of India and the Supreme Court of India has said so in absolute clear terms.

Instrument of Accession

Unlike those from the other States, Kashmir's representatives made it clear that Kashmir's association with India would be based 'only' on the terms of the Instrument of Accession. The Constitution of India laid down provisions not only for the former provinces of British India but also for the other princely States as full-fledged constituents units of the Union. In the case of Kashmir, it had to make special provisions to cover that particular case. The basis of the constitutional relationship of Jammu and Kashmir with India was being changed from that created by the Instrument of Accession to the position under Article 370 of the Constitution of India. The temporary nature of Art. 370 arises merely because the power to finalise the constitutional relationship between the State and the Union of India had been specifically vested in the Jammu and Kashmir Constituent Assembly.

Call for Abrogation

In 2014, as part of Bharatiya Janata Party manifesto for the 2014 general election, the party pledged for integrating the state of Jammu and Kashmir into the Union of India. After winning the elections, attempts were made by the party along with RSS party for abrogation of Article 370. Also, Congress leader Karan Singh, son of Maharaja Hari Singh, has, opined that an integral review of Article 370 is overdue and, to be worked with the State of Jammu and Kashmir.

However, in October 2015, the High Court of Jammu and Kashmir has ruled that the Article 370 cannot be "abrogated, repealed or even amended." It explained that the clause (3) of the Article conferred power to the State's Constituent Assembly to recommend to the President on the matter of the repeal of the Article. Since the Constituent Assembly did not make such a recommendation before its dissolution in 1957, the Article 370 has taken on the features of a "permanent provision" despite being titled a temporary provision in the Constitution.

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Facts and Figures

1. According to the Constitution of India, Article 370 provides temporary provisions to the state of Jammu and Kashmir, granting it special autonomy.
2. The article says that the provisions of Article 238, which was omitted from the Constitution in 1956 when Indian states were reorganized, shall not apply to the state of Jammu and Kashmir.
3. Dr BR Ambedkar, the principal drafter of the Indian Constitution, had refused to draft Article 370.
4. In 1949, the then Prime Minister Jawaharlal Nehru had directed Kashmiri leader Sheikh Abdullah to consult Ambedkar (then law minister) to prepare the draft of a suitable article to be included in the Constitution.
5. Article 370 was eventually drafted by Gopalaswami Ayyangar
6. Ayyangar was a minister without portfolio in the first Union Cabinet of India. He was also a former Diwan to Maharajah Hari Singh of Jammu and Kashmir
7. Article 370 is drafted in Amendment of the Constitution section, in Part XXI, under Temporary and Transitional Provisions.
8. The original draft explained "the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948."
9. On November 15, 1952, it was changed to "the Government of the State means the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadr-i-Riyasat (now Governor) of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office."
10. Under Article 370 the Indian Parliament cannot increase or reduce the borders of the state.

Points of Conclusion

Article 370 of Indian constitution has been a subject of debate since long time now. There was a prize that was awarded to Sheikh Mohammed Abdullah for Integrating Jammu and Kashmir with India and this award has proved to be a debacle thanks to the irrationality of this law and its incompatibility with political and legislative structure of India. India is a diverse nation closely knit by the federal laws which provide uniform treatment to all regions and further promote the sense of integrity amongst all regions.

However J&K today stands alienated from the great Indian story due to the existence of article 370. The constitutional History of J&K is much more than simply setting forth the outlines of the state government. And when it is explained Vis-à-vis Article 370 of the Indian Constitution, it assumes more color & significance.

In fact, people in Kashmir live a life that is completely different from other Indians as don't enjoy the same rights and safeguards that their fellow Indians do. The major effect of this clause falls on the secular character of Indian union. Kashmir is a Muslim dominated state however has sizeable population of Hindus and Sikhs.

In the past, there have been numerous incidents of communal violence which led to migration of Hindus to other parts of the nation. Further, Jammu and Kashmir has been a hotbed for corruption and autocratic rule by the state governments thanks to the greater power they enjoy. The economic prosperity of the people has also been affected as the state has limited revenue sources and the major aid which comes from the union government goes into law enforcement bodies. Having said all this, one would only recommend for the abolition of the special status awarded to the state. But the issue is not simple enough as any attempt to modify or delete the article would lead to problems that go beyond political landscape.

But at the same time, the people of Kashmir wouldn't be able to prosper until they are fully integrated with the nation. But before attempting such amendments Indian government needs to win the faith of Kashmiris who have been victims of the cross border politics of India and Pakistan.

Topics worth Discussion

These are a few topics that should be looked upon while deliberating upon the topic. They by no means encompass debate in committee. They're merely certain pointers to kick start research in a certain direction.

- The clear significance of the word "Temporary"
- Article 370- Isolating the states from the rest?
- Clear distinction of reservation policies for men-women and backward classes
- Measures to incorporate peaceful execution of the plan