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In Depth: Jammu and Kashmir

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Both **Article 370** and **Article 35A** have been subject matters of debates for several years. They've been continuously challenged in the Supreme Court on grounds of being unconstitutional and violating the basic structure of the Indian Constitution. The debate has once again gained ground with National Conference leader and former J&K CM Omar Abdullah calling for a separate PM for J&K.

History of J&K

- The **first formal document of Kashmir** came out through **Kalhana's Rajatarangini**. Both Hindus and Muslims had ruled Kashmir time to time before independence. During Ranjit Singh's rule, even Sikhs also governed this area.
- In 1822, Gulab Singh became the King. Ranbir Singh came to power after the death of

Gulab Singh in 1857.

- **Hari Singh** took the charge of state in 1925. He **was the king of Kashmir when the treaty was signed with India.**

Accession of J&K to India

- **Jammu and Kashmir was one among the 565 princely states of India** on which the British paramountcy lapsed at the stroke of midnight on 15th August 1947 under the Partition Plan provided by the Indian Independence Act.
- The rulers of princely states were given an option to join either India or Pakistan. **The ruler of Kashmir** Maharaja Hari Singh did not exercise the option immediately. He instead **offered a proposal of standstill agreement to both India and Pakistan**, pending the final decision on the state's accession.
- **Pakistan** entered into the standstill agreement but it **invaded the Kashmir** from north with an army of soldiers and tribesmen carrying modern weapons. In the early hours of 24th October, 1947, thousands of tribal pathan swept into Kashmir.
- The Maharaja of Jammu and Kashmir appealed to India for help. He sent his representative Sheikh Abdullah to Delhi to ask for India's help.
- **On 26th October 1947, Maharaja Hari Singh** fled from Srinagar and arrived in Jammu where he **signed an 'Instrument of Accession' of J&K state.**
- According to the terms of the document, the Indian Jurisdiction would extend to external affairs, communications and defence. After the document was signed, Indian troops were airlifted into the state and fought alongside the Kashmiris.
- On 5th March, 1948, Maharaja Hari Singh announced the formation of an interim popular government with Sheikh Mohammed Abdullah as the Prime Minister.
- Subsequently, the Maharaja signed a proclamation making yuvraj Karan Singh as Regent.

Delhi Agreement

- In 1951, the state constituent assembly was elected. It met for the first time in Srinagar on 31st October 1951.
- **In 1952, The Delhi Agreement was signed** between Prime Ministers of India and Jammu & Kashmir **giving special position to the state under Indian Constitutional framework.**
- **On 6th february 1954, the J&K constituent assembly ratified the accession of the state to the Union of India.**
- **The President subsequently** issued the **constitution order under Article 370 of the Constitution** extending the Union Constitution to the state with some exceptions and modifications.

J&K Constitution

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- The state's own constitution **came into force on 26th January, 1957** under which elections to the state legislative assembly were held for the first time. This constitution also ratified the state's accession to the Union of India.
 - **Section 3 of the constitution says Jammu & Kashmir is and shall be an integral part of the Union of India.**

Article 370

- The provision of Article 370 was **drafted by Sheikh Abdullah.**
- **In the Indian Constitution, it was included as a temporary provision that grants special status to J&K.**
- All the provisions of the Constitution which are applicable to other states are not applicable to J&K except for defence, foreign affairs, finance and communications.
- **Parliament needs the state government's concurrence for applying all other laws.**
- The state's residents live under a separate set of laws, including those related to citizenship and ownership of the property.
- **It gives J&K a unique power to have a separate Prime Minister, President, flag and constitution.**
- Due to special provisions attached to this article, it always remains debatable. **Those who are against it argue that it hampers integration process of J&K with the rest of the country.**

Article 35A

- It **came into existence through a Presidential Order in 1954** and it **gives the J&K assembly the right to decide the definition of Permanent residents of the state** and prevent the people of the other states from buying real estate in J&K.

According to the constitution of J&K, a permanent resident is defined as a person who was a state subject on 14th May, 1954 or who has been residing in the state for a period of 10 years and has lawfully acquired immovable property in the state or migrated from the state after 1st March, 1947 and has gone within the present Pakistani border area but has come back with resettlement permit in the state.
- Under this, citizen of any other state can neither buy property in J&K nor can they become permanent resident of the state.
- **The presidential order provided that only the original residents of J&K will have right to scholarships, services, land and settlement.**
- It stated that if a girl who is a citizen of J&K marries an outsider then she will lose her right to ownership of property. In 2002, the J&K High Court issued an order stating that in such cases, a girl's right will continue for life.

- **It gives special powers to J&K as a state** i.e. the state government has right to give and abstain privileges to people who migrated there during independence and other Indian nationals in J&K.
- **Some experts argue that spirit of Article 35A flows from Article 370 while some other argue that it is not constitutional as it came through a presidential order.**

J&K after Accession

- Kashmir at the time of accession got divided into two parts: one part came to India and the other one was occupied by Pakistan. **Despite UN's contravention, there has been no reconciliation between India and Pakistan over Kashmir.**
- **Refugees from Western Pakistan (1947) are still deprived of the fundamental rights and identity in the state.** Such people can vote in Lok Sabha elections but can't vote in local bodies and assembly elections.
- In 1957, about 200 families of the **Valmiki Community** were brought from Punjab to J&K as Safai Karamcharis. They have been given **conditional state subject rights** i.e. they can own property but cannot take up any other job.
- When anti-India protests intensified in 1988, the valley faced curfew many times.
- **In 1989, Pakistan helped in providing weapons to the militants and the terror reached its peak.**
 - Political Instability had reached at such a level that the then Chief Minister Farooq Abdullah had to resign.
- In January 1990 after the death of nearly a hundred people in military firing, there was rapid increase in militant activities.
 - Violence spread throughout the valley.
 - Srinagar's Doordarshan was attacked and its director was killed and then the **attacks against the Kashmiri Hindu community also started.**
 - Due to the attacks, such people left their homes and fled to relief camps. After that, they settled in Delhi or anywhere they found the place. **They have been demanding for their rehabilitation for a long time.**
 - Experts say that people would have not got displaced if the administration would have taken the strict action then.
- **Many steps have been taken for maintaining peace in the state; but political instability, separatism and Pakistan-sponsored terrorism continue to surround the state of J&K.**