

TIF - Article 370, Federalism and the Basic Structure of the Constitution

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Article 370 is a permanent and not temporary provision of the Constitution that assures Jammu and Kashmir autonomy. Its content may have been hollowed out but it remains important for the people of Kashmir. Calls to scrap it are based on a misinterpretation.

The Article 370 debate is back centre-stage. The new Union Home Minister, Amit Shah, has made a detailed statement on Article 370 after his return from Kashmir. In tune with his party's ideological position, he has yet again termed this constitutional provision as "temporary". At the same time he has been candid enough to confess for the first time that most elections in Kashmir had been rigged.

The importance of Article 370 to Kashmir and the significance it holds in our Constitution are issues that need to be constantly reiterated to dispel the considerable misinterpretation and misunderstanding about this provision in the Constitution of India

History of Article 370

The most important feature of federalism in the United States of America (USA) was the "compact" between the

erstwhile 13 British colonies that constituted themselves first into a confederation and then into a federal polity under the 1791 constitution of the USA. In a confederation units do have a right to secede, but in a federation they do not have such a right though in this system they are given a lot of autonomy to operate within their allotted spheres.

Our Supreme Court in *State of West Bengal v. Union of India* (1962) too had attached the highest importance to an "agreement or compact between states" as an essential characteristic of federalism. Since such an agreement was not there in India, it held that India was not a federal polity. Subsequently, this ruling was overruled and federalism was recognized as the basic structure of the Constitution in the *Keshavand Bharti* case (1973) and reiterated in the *SR.Bomma* judgment (1994).

Article 370 of the Constitution of India is an essential facet of our federalism as like in the compact in the US, it governs the centre's relationship with Jammu & Kashmir. The National Democratic Alliance (NDA) government in New Delhi may now want to have a relook at this relationship as the Bharatiya Janata Party (BJP) has consistently maintained that Article 370 has outlived its utility and the time has come for its abrogation. If an NDA government is installed in Jammu & Kashmir in September-October 2019 after elections are held in the state, it would not be difficult to get such a resolution passed by the state assembly.

It is therefore necessary to understand the origin of Article 370, the related constitutional issues such as its temporary status and frequent calls for its abrogation, and the Supreme Court's response to these issues.

Article 370 is nothing but a constitutional recognition of the conditions mentioned in the Instrument of Accession that the ruler of Kashmir signed with the Government of India in 1948. It reflects the contractual rights and obligations of two parties.

At the time of Independence, there were two kinds of territories in India -- one was British India that was under the direct administrative control of the British. The other comprised the princely states that had signed subsidiary alliance treaties with the British and had a British resident posted in the territories. The maharajas, rajas and nizams were still the de jure rulers administering these territories/states. In vital matters of war and peace, these rulers were required to take the concurrence of the British resident.

The Indian Independence Act 1947 divided British India, i.e., the territories under the direct administration of the British, into two countries -- India and Pakistan -- on August 15, 1947. But some 580 princely states that had signed subsidiary alliances with the British also had their sovereignty fully restored to them and given three options -- to remain as independent countries, or join the Dominion of India or join the Dominion of Pakistan. Section 6(a) of the 1947 Act said that this act of joining one of the two countries was to be through an Instrument of Accession. Though no prescribed form was provided, a state so joining under Section 6(2) could specify the terms on which it was deciding to join one of the new dominions. These terms would be those which the ruler of the princely state accepted as matters on which the dominion legislature (Indian Parliament) may make laws for the state. And also with respect to the limitations on the power of the dominion legislature to make laws for the state and exercise executive authority of the dominion in the said princely state.

Thus, the Instrument of Accession was supposed to regulate and govern the distribution of powers between the central government and the concerned princely state.

Technically speaking, the Instrument of Accession was therefore like a treaty between two sovereign countries which had decided to work together. It was just like any other contract between two countries. The maxim under international law which governs contracts or treaties between states is *Pacta Sunt Servanda*, i.e., promises between states must be honoured. If there is a breach of contract, the general rule is that parties are to be

restored to the original position, i.e., the pre-agreement status.

In any talk of abrogation of Article 370, this aspect of international law must be kept in view because if due to the breach of any condition of the Instrument of Accession, the princely state of Kashmir gets its pre-accession status, it will not be in India's interests.

Pre-1947, Kashmir was a princely state with a Hindu king and a majority Muslim population. Due to its strategic geographical location, its ruler Maharaja Hari Singh initially decided to remain independent and preferred to sign standstill agreements with India and Pakistan. Pakistan had accepted his proposal and operated the post and telegraph system in Kashmir. But when there was an invasion by the Afridis, tribesmen and army men in plain clothes from Pakistan, Hari Singh sought India's help and India responded that it could send its army only after Kashmir acceded to India. This was a just demand.

Hari Singh, on the advice of Sheikh Abdullah, thus signed the Instrument of Accession on certain terms on 26 October 1947 and Lord Mountbatten as Governor General of independent India accepted it on 27 October 1947 on behalf of the Government of India. The Schedule appended to the Instrument of Accession gave the Indian Parliament power to legislate for Jammu and Kashmir on only defence, external affairs and communications. In Clause 5 of Kashmir's Instrument of Accession, Hari Singh explicitly mentioned that the terms of "my Instrument of Accession cannot be varied by any amendment of the Act or of Indian Independence Act unless such amendment is accepted by me by an Instrument supplementary to this Instrument." Its Clause 7 said "nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such [a] future constitution."

Sheikh Abdullah was a popular leader of Kashmir and the chief of the National Conference. Hari Singh first appointed Sheikh Abdullah as head of the Emergency Council on 30 October 1947 with 22 other officers. Hari Singh then appointed Sheikh Abdullah as his prime minister on 5 March 1948. Through the March 1948 proclamation, Hari Singh also directed that a constitution be framed for his state with adequate safeguards to minorities. Hindus were in minority in his state.

It is a myth that the Congress party was too soft on the issue of Kashmir. As a matter of fact, in the decades that followed, the Congress government at the centre kept Sheikh Abdullah in prison for many years and later also dismissed his son Farooq Abdullah's government. The BJP, on the other hand, was more accommodating. Under Atal Bihari Vajpayee it did form a government in the centre with the National Conference as a coalition partner and also under Narendra Modi a state government with the Peoples Democratic Party. During the tenure of these governments, the idea of abrogation of Article 370 was conveniently forgotten.

Article 370 is ... a tunnel through which the Constitution of India is applied in Kashmir.

The question of a plebiscite in Kashmir also keeps coming up in any discussion on Kashmir. Some people blame Jawaharlal Nehru for agreeing to a plebiscite. As a matter of fact, it was the Government of India's stated policy that wherever there was a dispute to an accession, it was to be settled in accordance with the wishes of the people rather than by a unilateral decision of the ruler of the princely state. India took such a stand as in a few princely states the rulers were Muslims but the majority of subjects of those princely state were Hindus, while in others, like Kashmir, the rulers were Hindus but a large majority of people living in such princely states were Muslims. India's policy was thus consistent with democratic principles and the people's right to self-determination.

Accordingly, in India's acceptance of the Instrument of Accession of Kashmir, Governor-General Mountbatten,

clearly stated "it is my Government's wish that as soon as law and order have been restored in Kashmir and her soil is cleared of the invader, the question of the State's accession be settled by a reference to the people". Thus, India regarded accession as purely temporary and provisional. This was said in the Government of India's White Paper on Jammu and Kashmir in 1948. In a letter to Sheikh Abdullah dated 17 May 1949, Nehru, with the concurrence of Vallabhbhai Patel and N. Gopalaswami Ayyangar (who drafted Article 370), wrote

[I]t has been settled policy of Government of India, which on many occasions has been stated both by Sardar Patel and me, that the constitution of Jammu and Kashmir is a matter for determination by the people of the state represented in a Constituent Assembly convened for the purpose.

Between Nehru and Patel, Nehru due to his Kashmiri lineage was keen to have Kashmir in India. Patel on the other hand was more interested in getting Hyderabad. The BJP, of course, conveniently suppresses this historical fact.

The Instrument of Accession eventually had to be made part of the Constitution of India so that the powers of the Government of India and Parliament vis-a-vis Kashmir are clearly delineated. Article 370 is nothing but a constitutional recognition of the conditions mentioned in the Instrument of Accession that the ruler of Kashmir signed with the Government of India in 1948. It reflects the contractual rights and obligations of two parties.

Article 370 was temporary in the sense that the Constituent Assembly of Jammu & Kashmir was given the right to modify/delete/retain it. The Constituent Assembly of Kashmir decided in its wisdom and rightly so to retain it.

The original draft of Article 370 was given by the Government of Jammu and Kashmir. This was then modified and negotiations were held between the Government of India and the state of Jammu & Kashmir for over five months. Finally, Article 306A (now 370) was passed in our Constituent Assembly on 27 May 1949. N. Gopalaswami Ayyangar, member of the Assembly moved the motion. He also reiterated, "though accession is complete but we have offered to have plebiscite taken when conditions are created for the holding of a proper, fair and impartial plebiscite." He also said if accession is not ratified then "we shall not stand in the way of Kashmir separating herself away from India."

On 16 June 1949, Sheikh Abdullah and three others joined our Constituent Assembly as its members. Our commitment to the plebiscite and drafting of a separate Constitution by Kashmir's Constituent Assembly was repeated by Ayyangar on 17 October 1949 when Article 370 was finally adopted and included in the Constitution by the Constituent Assembly.

Many of us are not aware that, Article 370 has been quite useful for India as this Article itself mentions Article 1 which includes Jammu & Kashmir in the list of Indian states. Article 370 is thus a tunnel through which the Constitution of India is applied in Kashmir.

Court Rulings

Article 370 is the first article of Part XXI of our Constitution and is unique in many ways. The heading of this part is "Temporary, Transitional and Special Provisions." The article exempted Jammu and Kashmir from the Indian Constitution and permitted it to draft its own constitution. It restricted Parliament's legislative powers in respect of Jammu and Kashmir. To extend a central law to Jammu and Kashmir on the subjects included in the

Instrument of Accession, mere “consultation” with the state government is needed but to extend other matters, “concurrence” of the state government is mandatory. There is a huge difference between consultation and concurrence. In the former, discussions would suffice but in the latter acceptance by the other party, i.e., the Government of Jammu and Kashmir, is mandatory.

Article 370 was temporary in the sense that the Constituent Assembly of Jammu & Kashmir was given the right to modify/delete/retain it. The Constituent Assembly of Kashmir decided in its wisdom and rightly so to retain it. The other view was that it was temporary till a plebiscite was held to ascertain the people’s wishes. The Narendra Modi government itself said in 2018 in a written reply in Parliament that there was no proposal to remove Article 370.

The Delhi High Court in *Kumari Vijayalaxmi (2017)* rejected a petition arguing that Article 370 was temporary and its continuation a fraud on the Constitution. The Supreme Court too said in April 2018 that despite the headnote using the word “temporary”, Article 370 was not temporary. The apex court in *Santosh Kumar (2017)* also accepted that due to historical reasons, Jammu & Kashmir had a special status.

In *Prem Nath Kaul (1959)*, a five-judge bench of the Supreme Court observed on Article 370(2):

This clause shows that the constitution-makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Article 370(1) is made conditional on the final approval of the Constituent Assembly of Kashmir.

Kashmir’s Constituent Assembly was thus given the right to take a call on Article 370. The unanimous judgment was authored by Justice PB Gajendragadkar on his behalf and on behalf of Chief Justice of India SR Das, Justices SK Das, KN Wanchoo and Mohammad Hidaytullah. Thus the bench of eminent judges was convinced that Jammu and Kashmir’s relationship with India was to be finally determined by the Jammu and Kashmir Constituent Assembly. But in *Sampat Prakash (1968)*, another bench of the apex court, without even bothering to cite its own 1959 judgment, decided that Article 370 could still be invoked even after the dissolution of Jammu and Kashmir’s Constituent Assembly.

Sardar Patel himself had said in the Constituent Assembly that a “special provision” had been made for the Kashmir in view of the existing relationship of the centre with the state.

The Supreme Court has refused to accept that Article 370 is temporary in nature. A five-judge bench said, “Article 370 has never ceased to be operative”. Thus, Article 370 is a permanent provision. If it is a permanent feature of our Constitution then it cannot be amended and thus can be said to be the part of the basic structure. Under Article 368, Parliament can amend any provision of the Constitution but as per the Keshvanand Bharti judgment, no constitutional amendment can either destroy the Constitution or alter its basic features. Interestingly, those opposed to Article 370 make contradictory arguments-. On the one hand, they argue it was a temporary provision and therefore is no more valid or needed. On the other, they continue to justify repeated use of Article 370 by the Government of India.

The Supreme Court has the power to interpret words used in the Constitution. In fact its decisions under Article 141 are considered binding law. Thus, the Court in its interpretation of “life” under Article 21 held that life means “to live with human dignity”. It even held that the right to privacy is implicit in Article 21. Similarly, it held that the word “temporary” in the heading of Chapter XXI does not mean temporary. Any temporary provision

may indeed be termed as “special”. Thus the word “special” in the heading of this chapter was inserted by the 13th constitutional amendment in 1962. Sardar Patel himself had said in the Constituent Assembly that a “special provision” had been made for the Kashmir in view of the existing relationship of the centre with the state.

In fact, there are temporary provisions in the Constitution such as reservation for the Scheduled Castes (SCs)/ Scheduled Tribes (STs) in Parliament and state assemblies which were initially there just for 10 years. English, for instance, was temporarily permitted as the language of governmental work.

Special Status in the Constitution

Jammu and Kashmir is not the only state, which has a special status accorded to it in the Constitution. Under Article 371A, Nagaland has special status and no Act of Parliament is automatically extended to Nagaland unless its legislative assembly so decides in matters of the religious or social practices of the Nagas, Naga customary law and practices, ownership and transfer of land and its resources. Even the administration of civil and criminal justice of Nagas is exempt from Indian laws. Thus, the Indian Penal Code, the Code of Criminal Procedure etc. do not automatically extend to Nagaland. Moreover, we have another level of autonomy in Nagaland under which even the Acts passed by the state legislative assembly do not extend to Tuensang District of Nagaland. There has to be a Minister of Tuensang Affairs. Thus, there can be autonomy to even certain districts within a state.

Those who think of all states as having just one kind of relationship with the centre are neither aware of Indian diversity nor have they read various provisions of Article 371(A to I) as applicable to states other than Jammu and Kashmir.

Similarly, there is a special status for Maharashtra and Gujarat in Article 371. Under this provision, the President may provide for special responsibilities to the governors of the two states for establishing separate boards for Vidarbha and Marathwada (in Maharashtra), and Saurashtra and Kutch (in Gujarat), and equitable distribution of funds to these areas.

There are special provisions for many other states as well like Assam (Art.371B), Manipur (Art.371C), Andhra Pradesh (Art.371 D&E), Sikkim (Art.371F), Mizoram (Art.371G), Arunachal Pradesh (Art.371H) and Goa (Art.371I). With respect to Sikkim, even the Supreme Court’s jurisdiction has been restricted on issues of treaties.

As an asymmetric federal polity, our Constitution gives varying degrees of autonomy to different states. Those who think of all states as having just one kind of relationship with the centre are neither aware of Indian diversity nor have they read various provisions of Article 371(A to I) as applicable to states other than Jammu and Kashmir. Moreover, the Fifth and Sixth Schedules also give a lot of autonomy to certain areas.

Article 370(3) states:

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. *(emphasis added)*

Article 370(3) can certainly be deleted by a presidential order, but due to the proviso given in this clause such an order is to be preceded by the recommendation of the Constituent Assembly of Jammu and Kashmir. Since the assembly was dissolved on 26 January 1957, one view is that Article 370(3) cannot be deleted and has acquired a permanent status.

The Constituent Assembly of Jammu and Kashmir was convened on 31 October 1951 and after adopting the Jammu and Kashmir Constitution a decision was taken to dissolve it from 26 January 1957. On the other hand, after the signing of three copies of the Constitution of India on 24 January 1950, India's Constituent Assembly was merely adjourned "sine die".

The other view is that Article 370(3) can probably be deleted with the concurrence of the state legislative assembly, which today represents the will of the people through the elected representatives. If we can create an atmosphere of trust between the Kashmir Valley and New Delhi, people may on their own agree to the deletion of Article 370. Winning the hearts of the people should be the first step.

Presidential Orders and the Hollowing Out of Article 370

Over time the frequent use of presidential orders – allowed under Article 370 – to extend the writ of the centre to Jammu and Kashmir has considerably weakened this special provision in the Constitution.

Nehru himself admitted in Lok Sabha on 27 November 1963 that "Article 370 has eroded". India has used Article 370 more than 45 times to extend provisions of the Constitution to Jammu and Kashmir. Even President Rajendra Prasad was not very happy about the frequent use of Article 370 and he wrote a letter to Nehru on 6 September 1952 specifically saying that executive powers should not be used in this manner. As a matter of fact, by the use of mere presidential orders we have almost nullified the effect of the special constitutional status of Jammu and Kashmir.

By the Presidential Order of 1954, almost the entire Constitution (including most constitutional amendments) was extended to Jammu and Kashmir. Ninety-four out of 97 entries of the Union List are today applicable to Jammu and Kashmir. Thus, on 94 subjects Parliament already has the exclusive power to pass laws that will be applicable to Kashmir just like any other state. Two hundred and sixty out of 395 Articles of the Constitution have been extended to the state. Similarly of the 12 Schedules of the Constitution of India, seven have already been extended to Jammu and Kashmir.

Even while the core of Article 370 has been eroded, it does of course does have huge sentimental value for the people of Jammu and Kashmir who would view its abrogation with a great deal of unhappiness.

Surprisingly, the central government has used Article 370 to even amend a number of provisions of Jammu and Kashmir's Constitution though that was not the power given to it under this Article of the Constitution of India. Article 370 had a limited mandate to extend the applicability of the Constitution of India to Jammu and Kashmir. Thus Article 356 (on imposition of President's rule in the states) was extended to Jammu and Kashmir though a similar provision was already there in Article 92 of Jammu and Kashmir's Constitution, which indeed required imposition of President's rule in the state only with the concurrence of the President of India.

To change the provision (in the Jammu and Kashmir Constitution) of the governor being elected by the state assembly, Article 370 was used to convert the position into a nominee of the President. This was an

undemocratic step as governors have proved to be the centre's agents in the state. In fact, ideally, the governor of each state should be elected by the legislative assembly of the state. If he is to be nominated by the centre, the concurrence of the chief minister should always be taken.

To extend President's rule beyond one year in Punjab, we had to bring in the 59th, 64th, 67th and 68th constitutional amendments as Article 356(5) explicitly lays down that President's rule in a state cannot be extended beyond one year unless there is a national emergency or the Election Commission of India certifies that elections cannot be held to the state's legislative assembly. We achieved the same result in Jammu and Kashmir just by invoking Article 370 without any need to amend the Constitution. Similarly Article 249, i.e., the power of Parliament to make laws on entries in the state list, was extended to Jammu and Kashmir without a resolution by the state assembly. It was done just on the recommendation of the then Governor Jagmohan. There is hardly anything in Article 370 today except the shell. In fact, decades ago Gulzarilal Nanda, the then Union Home Minister, had said it had been almost completely emptied. It is more useful for the central government today than for the people of Jammu and Kashmir.

Even while the core of Article 370 has been eroded, it does of course does have huge sentimental value for the people of Jammu and Kashmir who would view its abrogation with a great deal of unhappiness. In any case it will be violation of commitments given by us to at the time of accession of Jammu & Kashmir

Article 3 of the Jammu and Kashmir Constitution itself declares the state to be an integral part of India. In the preamble of the Kashmir Constitution, not only is there no claim to sovereignty like in the Constitution of India, but rather there is a categorical acknowledgement about the object of the Jammu and Kashmir Constitution which is "to further define the existing relationship of the state with the Union of India as *its integral part thereof*". (emphasis supplied). Moreover, the people of the state are referred as mere "permanent residents" not "citizens". Thus, due to Article 370 and the decision by the Kashmir's Constituent Assembly to remain part of the Indian Union, the Jammu and Kashmir Constitution did not proclaim the sovereignty of Jammu and Kashmir. It makes no claim to independent citizenship.

It may be worthwhile to mention here that in the US, there is a concept of dual citizenship, i.e., in addition to citizenship of the US, people also have citizenship of states. Moreover, the US Congress has been given just a few enumerated powers listed in Article 1, Section 8. Other than these powers, all powers and residuary powers are with the provinces or states. The dual citizenship and great autonomy to the states has not in any way affected the integrity of the US.

Article 35A and Permanent Residents

The Jammu and Kashmir Constituent Assembly, while deciding to have Indian citizenship, did lay down that the then existing three classes of state subjects be merged into one to create one category of "permanent residents". Thus every person who was a state subject of Class I or Class II or who after having acquired immovable property in the state and had been ordinarily residing there for a period of not less than ten years prior to enforcement of this provision, was considered a permanent resident under the Jammu and Kashmir Constitution.

Article 35A gives certain benefits to the permanent residents of Kashmir such as in employment in the state government, acquisition of immovable property, settlement in the state and scholarships and other government aid. This was just the continuation of pre-existing laws so that the benefits to which residents of the erstwhile princely state were entitled were not withdrawn with Kashmir joining the Indian Union.

Article 35A is the consequence of the autonomy given to Jammu and Kashmir under Article 370.

Article 35A also lays down that any law dealing with definition of “permanent residents” or above-mentioned benefits shall not be invalid on the ground that it is inconsistent with or takes away or abridges any rights conferred on other citizens of India. Such an exemption from fundamental rights is also there in our Constitution in the form of Article 31B. Thus any law that is included in the IXth Schedule cannot be challenged on the ground that it violates fundamental rights. There are some 285 laws that have so far been included in the IXth Schedule.

Article 35A is the consequence of the autonomy given to Jammu and Kashmir under Article 370. It is the continuation of the pre-independence definition of permanent residents. In many states, there is reservation on the basis of domicile in educational institutions. Article 35A was certainly not passed as per the amending process outlined in Article 368. It was inserted by a presidential order on the explicit recommendation of Jammu and Kashmir’s Constituent Assembly. Any challenge to it may open a Pandora’s box about the validity of several other presidential orders.

The BJP makes lot of hue and cry about Article 35A being inserted into the Constitution without following the procedure of passing a constitutional amendment under Article 368. But there are other amendments that have similarly been carried out through presidential orders under Article 370. Thus the Constitution (Application to Jammu & Kashmir) Order, 1950 did amend Article 368 itself. It inserted a further proviso in Article 368, (which like Article 35A is not printed in the text of the Constitution of India) which lays down that no constitutional amendment shall have effect in relation to the state of Jammu & Kashmir unless applied by an order of the President under Clause (1) of Article 370.

Article 370 is not only part of the Constitution of India but is part of the federalism that is the basic structure of the Constitution.

Thus for any constitutional amendment to be applicable to Jammu & Kashmir, we need to follow the process under Article 368 plus have an order by the President. Moreover, the President can pass an order only in consultation with the state government. Therefore, it is not right to say that Article 35A is the only amendment to our Constitution that had been passed without following the amendment process under Article 368.

Similarly, while no word can be replaced in the Constitution without a constitutional amendment, yet the expression “Maharaja acting on the advice of council of ministers” was replaced first by the expression “Sadr-e-Riyasat of Jammu and Kashmir” and subsequently by “the Governor”. Indeed, Article 370 is a self-applying Article of the Constitution and applies *ex proprio vigore* (meaning “of its own force”) without having to depend on any other Article for its enforceability.

In fact, Article 370 is not only part of the Constitution of India but is part of the federalism that is the basic structure of the Constitution. Accordingly, courts have upheld successive presidential orders under Article 370. Certain benefits had been given to the permanent residents so that the wealthy from outside Jammu and Kashmir do not exploit the state’s resources, including by purchase of land, to their own benefit. Since Article 35A predates the basic structure theory of 1973, as per *Waman Rao (1981)*, it cannot be tested on the touchstone of the basic structure.

Certain types of restrictions on the purchase of land are also there in several other states like Arunachal, Nagaland, Himachal Pradesh, and Manipur etc. Land laws of several states are also discriminatory and do not treat women equally with men. In many states, daughters do not inherit agricultural land in the presence of sons. These laws also discriminate between married and unmarried daughters and sisters. But still there is need for improvement in the rights of Kashmiri women who marry outside Kashmir. Under Article 35A, children of Kashmiri women marrying outside Kashmir do not have the same rights that are available to Kashmiri men marrying outside. Article 35A does need a relook in this respect. The India of 2019 is entirely different from the

India of 1947. The pre-Independence laws that are discriminatory to women and others cannot be continued anymore.

Prior to the 2019 Lok Sabha elections, the central government used Article 35A to extend reservation benefits to the SCs, STs and OBCs and those who live along the international borders. Parliament has since endorsed it, though it may not be strictly speaking in consonance with the text of Article 370 since the state government was not consulted.

Conclusions

Since Jammu and Kashmir is an integral part of India, keeping in view federalism and the unique history of the state joining the Indian Union, the state has been given some autonomy under Article 370.

Article 370 is certainly not an issue of integration; it is an issue of granting autonomy or federalism. Those who advocate its deletion are more concerned with uniformity rather than integration. Uniformity and integration are not the one and the same. Preservation of diversity and granting autonomy indeed lead to lasting integration.

(The views expressed here are personal.)

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