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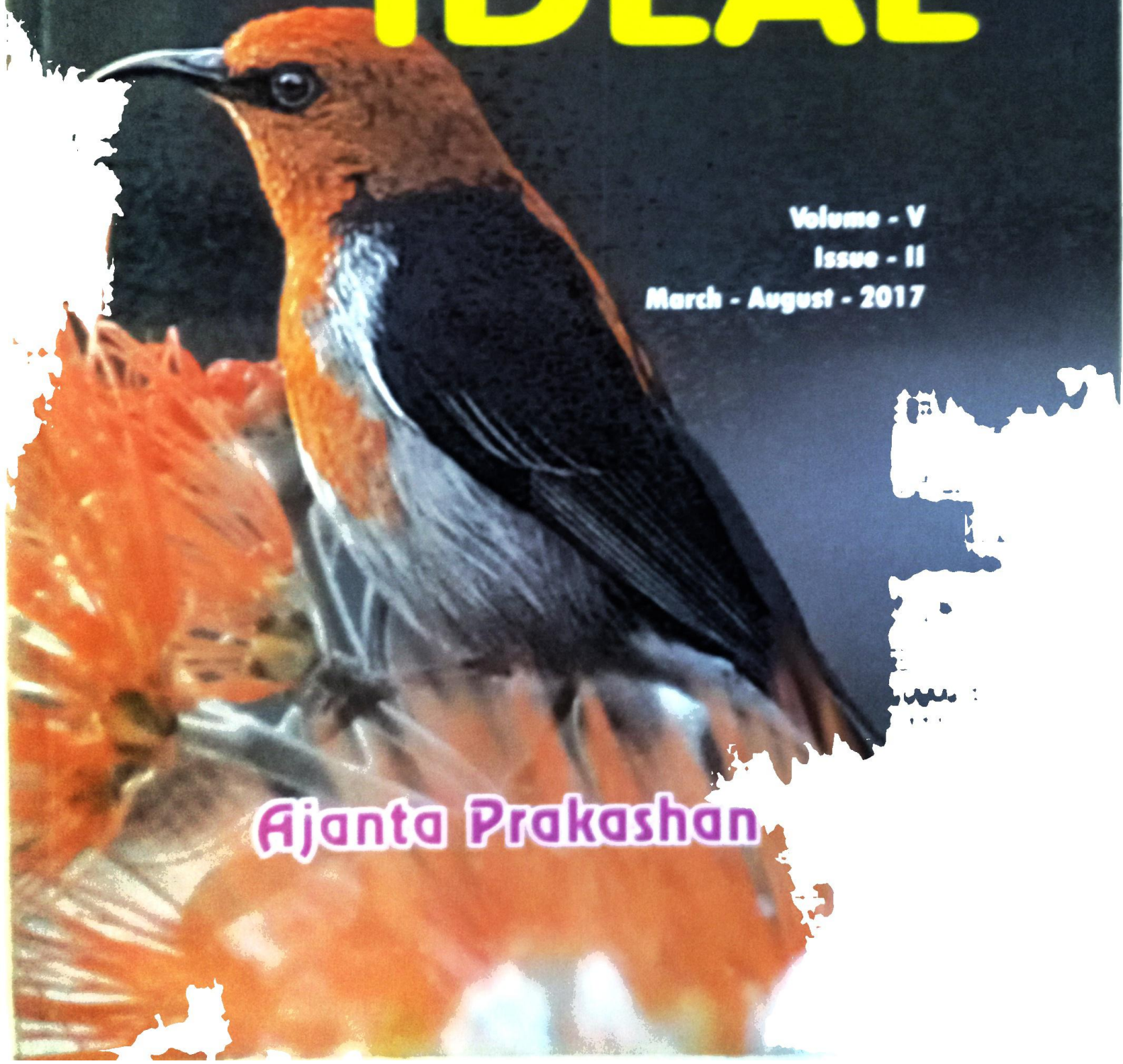
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'आयडिल' या सहाय्यी प्रसिध्द झालेली मते मुख्य संपादक, संपादक मंडळ व सल्लागार मंडळास मान्य असतीलच असे नाही. या नियतकालिकात प्रसिध्द करण्यात आलेली लेखकाची मते ही त्याची वैयक्तिक मते आहेत. तसेच शोधनिबंधाची जबाबदारी स्वतः लेखकावर राहिल.

हे नियतकालिक मालक, मुद्रक, प्रकाशक विनय शंकरराव हातोले यांनी अजिंठा कॉम्प्युटर अँड प्रिंटर्स, जबसिंगपूरा, विद्यापीठ गेट, औरंगाबाद येथे मुद्रित व प्रकाशित केले.

The State of Jammu and Kashmir – A Privileged State: A Brief Appraisal

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Preface

Article 1 of the Indian Constitution states that India that is Bharat shall be Union of states. It means India is composed of States and all the States have equal status. But exceptionally certain States have been given special status under Part XXI of the Constitution under the title "Temporary, Transitional and Special Provisions" (Article 369-Article 392). These provisions relate with special status of certain states such as Jammu and Kashmir, Nagaland, Manipur, Mizoram, Meghalaya, Sikkim, Assam, Arunachal Pradesh etc. for ensuring special protection of the cultural identity, and customs, the original inhabitants and the economic and political interests of these areas.

Special Provisions For State Of Jammu And Kashmir

The State of Jammu and Kashmir has special status vide Article 370 of Indian Constitution. The salient features of Article 370 can be summarized as under-

1) **Separate Constitution-** It exempted the State from the provisions of the Indian Constitution providing for the governance of the States. It is the only State in India having its own Constitution.

2) **Parliament's power** – The legislative power of the Parliament is limited to those matters in the Union and Concurrent List which are declared by the President in consultation with the Government of the State to conform with the Instrument of Accession. It extends to legislate over only the subjects like Defence, Foreign Services and Communications in relation to it. Other Constitutional provisions of the Central Government could be extended to the State only with the concurrence of the State Government. The concurrence was only provisional. It had to be ratified by the State's Constituent Assembly. The State Government's authority to give concurrence lasted only until the State Constituent Assembly was convened. Once the State Constituent Assembly finalized the scheme of powers and dispersed, no further extension of powers was possible.

3) **Abrogation or Amendment of Article 370-** The president is empowered to make an order abrogating or amending Article 370. for this purpose the recommendation of the State's Constituent Assembly shall be necessary before the President issues a Notification. Under Article 368(3) provides that any Constitutional amendment in relation to this state has effect only after the concurrence of the State Government and ratification by the Constituent Assembly. The factor of "concurrence" implies that this State had

agreed to increasingly fall in line with the provisions of Indian Constitution as it is evident from the Order of 1954 and its subse-quent amendments.

Peculiar Circumstances Justifying Special Status of State of Jammu and Kashmir

During the British regime, Jammu and Kashmir was a Princely State ruled by a hereditary Maharaja called 'Maharaja Harisingh. Until 15th August 1947 it was an autonomous state. It did not have international existence. The Maharaja Harisingh did not elect to join either India or Pakistan at the time of transfer of power on 15th August 1947. If the Maharaja had decided to accede to India or Pakistan before 15th August 1947 much of the trouble and bit-terness may have been avoided. But he was fondling with the idea of independent Kashmir. Subsequently, on October 20, 1947 several thousand tribesmen supported by Pakistan army attacked the frontiers of the State. It created chaos in the mind of Maharaja. To save his life by facing with such a serious crisis, he, as a last resort, acceded to the Dominion of India on 26th October 1947 by signing the Instrument of Accession. The Instrument of Accession was accepted by the Governor-General Lord Mountbatten. It was believed that the delay on the part of Maharaja was due to following factors viz. -

- 1) His indecision based either upon disbelief in the reality of changes that were taking place in India or upon a desire to assert independence of Jammu and Kashmir both from India and Pakistan.
- 2) Composition of its population considerably by Muslims and the dangers of a Hindu ruler acceding to Muslim Pakistan and thereby losing his throne or acceding to democratic India thereby losing his power; and
- 3) Geographical contiguity of the State both to Pakistan and India, and yet encircled by none.

One of the leading members of the Constituent Assembly, Mr. Gopaldaswamy Aiyangar stated the following peculiar circumstances necessitated conferring special status to the State of Jammu and Kashmir-

- 1) That there was a war going on within the limits of the State.
- 2) That a cease fire was in operation which was agreed to at the outset of that year.
- 3) That the conditions in the State were still unusual and abnormal and hadn't settled down.
- 4) That a part of the State was still in the hands of rebels and enemies.
- 5) That the Government of India committed an undertaking with the people of the State to provide them an opportunity to decide themselves whether they would remain with the Republic or wish to go out of it.
- 6) For that end (as mentioned earlier) the means of plebiscite subject to its impartiality and restoration of peaceful and normal conditions in the state could be resorted to.
- 7) That the will of the people expressed through the Instrument of a Constituent Assembly would determine the Constitution of the State as well as the sphere of the union jurisdiction over the State.

- 8) That our country was enlarged with the United Nations with regard to Jammu and Kashmir and it was not possible to say when we would be free from this enlargement.

The Constitution (Application to Jammu and Kashmir) Order, 1950

The Constitution (Application to Jammu and Kashmir) Order, 1950 was promulgated by the President of India in consultation with the Government of Jammu and Kashmir under Article 370(1)(b)(ii). It specified the matters with respect to which the Parliament was to be competent to make laws for the State. It was superseded by an Order of 1954 under the same name which regulates the Constitutional status of the State.

The main provisions of this order are as follow-

- 1) The Constitution of State of Jammu and Kashmir shall continue to be operative.
- 2) The High Court of Jammu and Kashmir shall have all the powers enjoyed by the other high courts in India except that it cannot issue a writ for "any other purpose".
- 3) The jurisdiction of the Supreme Court extends to that State except mentioned under Article 135 and 139.
- 4) The Parliament can make law on all entries in the Union List and certain entries in the Concurrent List and rest of the legislative power vest in the State Legislature. The Parliament has no legislative power vis-à-vis the State.
- 5) The provision regarding emergencies under Article 352 can be applied to the State only with the concurrence of that State.
- 6) The provision for imposing the president rule under Article 356 applies to that State. If the President is satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution of India or the Constitution of the State, he is empowered to declare state emergency accordingly. When a proclamation under Article 356 is in operation, the Parliament becomes entitled to legislate for matters enumerated in the Union List. But Article 360 which speaks of financial emergency does not apply to the State.
- 7) Regarding the executive power, the State has to exercise it in accordance with the directions of the Centre. The Centre can do all those things in the State which it can do in relation to the other States.
- 8) The provisions relating to the freedom of trade, commerce and intercourse, services and citizenship apply to that State.
- 9) The provisions relating to elections apply to the State. The Election Commission is responsible for holding elections in that State.
- 10) The Directive Principles of State Policy do not apply to that State.
- 11) Under Article 368 an amendment to the Constitution shall not apply to the State until the

- President by order applies it to that State.
- 12) The Constitutional provisions regarding to minorities do not apply to the State except for the Scheduled Castes and Backward Classes. The seats are to be reserved in the Lok Sabha for the Scheduled Castes.
 - 13) The provisions relating to Official Language apply to the State only if it relate with
 - a) The Official Language of the Union;
 - b) The Official Language of inter-State and Central-State communication; and
 - c) The language of the proceedings of the Supreme Court.
 - 14) The provisions relating to Fundamental Rights operate in the State with slight modifications such as-
 - a) The power of legislation regarding preventive detention vests not in the Parliament but in the State Legislature;
 - b) The State Legislature has powers to define persons who may be permanent residents of the State and to confer on them any special rights, or impose on others any re-strictions, relating to employment under the State Government, acquisition of property within the State, settlement in the State and right to scholarships provided by the State.

Moreover there are 6 representatives of Jammu and Kashmir in the Lok Sabha. They are directly elected by the people. The State Constitution was adopted by the State Assembly on March 30, 1965 under which the head of the State will be known as the "Governor" and the Prime Minister as the "Chief Minister".

Conclusion and Suggestions

The above discussion shows that the peculiar conditions which were prevalent in the State of Jammu and Kashmir led Government of India and Maharaja Harisingh to take a quicker decision. It was necessary to achieve a golden mean in such circumstances for acceding this State to the Dominion of India. Article 370 has been inserted in the Constitution as the enabling provision and flexible arrangement providing full scope for the application and extension of Central laws to the State. It paved the way for defining the constitutional position of the State from time to time. It empowers the President to adopt the constitutional provisions applied or to be applied to this State to cope with the situations prevailing therein from time to time. The accession of the State to Indian Union is complete, final and irrevocable. The most important thing about this provision is that it paved the way for the government of India to make several laws and provisions of the Constitution applicable to the state beyond the purview and legal framework of the Instrument of Accession. Though the Article 370 was placed in the Constitution as a temporary measure but it continues to serve as an amicable medium for the constitutional integration of the state with the union of India.

Finally in the part of suggestions, it may respectfully be submitted that there is a need to rethink about keeping this Article in the Constitution. It is humbly submitted that, unless it is wiped out, the peoples of the State of Jammu and Kashmir could not feel the spirit of brotherhood and national integration. As its accession to Union of India is complete, final and irrevocable and also having the eligibility of its cessation by the President of India, then why not to think in the direction of its wiping out from the Constitution. For this end, an impartial and transparent plebiscite is suggested along with the consent and concurrence of this State. For convening this step a great deal of caution and care should be taken so as to interests of its people and the edifice of the Indian Constitution both shall be preserved.

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