

Article 370: The Source of Injustice in Jammu and Kashmir

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Abstract

Article 370 of the Indian constitution gives special but temporary status to the state of Jammu and Kashmir, allowing it to have a separate constitution, a state flag and autonomy over the internal administration of the state. Along with this, Article 35A empowers the Jammu and Kashmir state's legislature to define "permanent residents" of the state and provide special rights and privileges to them. It was added to the Constitution through a Presidential Order on 14 May 1954, under Article 370. Many argue that Article 370 is for the betterment of the people of the state - safeguards the rights, helps preserve the Kashmiri culture and is thus the epitome of power sharing and democracy. This academic article will look into how instead Article 370 is centred around inequality and socio-economic injustice and also forces the people of Jammu-Kashmir to lead a substandard life.

Article 370 (1) states that "the power of Parliament to make laws for the said State shall be limited to (b) such other matters in the said Lists (Union and Concurrent) as, with the concurrence of the Government of the State." This means that any law made by the supreme law-making body of the country, that is, the Parliament, is not applicable to the state of Jammu and Kashmir until it is accepted and passed in the Constituent Assembly of the state. If we further simplify it, laws of the 'Indian' government can't be implemented in one of the integral parts of 'India' without the permission of a handful of political leaders of the state. Thus, it gets very clear that when the people of the rest of India are taking benefits of the welfare schemes and the laws made for their betterment, the people of Jammu and Kashmir are constantly getting deprived of all of these.

According to the 2011 census, the literacy rate of Jammu and Kashmir is 68%, 6% lower than India's average of 74%. RTE 2009, that is, Right to Education (Article 21-A), which is a fundamental right elsewhere in India, is not applicable in Jammu and Kashmir as the legislators of the state don't feel the need to do so. One of the important factors for increasing the literacy level is the Mid-Day Meal Scheme of Indian Government, due to which many economically weaker families send their children to school, is not implemented properly. This is evident from the one lakh rupees penalty slapped by the Supreme Court in 2018.

In the sector of higher education, the number of quality government institutions with respect to the state's population is too low. Along with this, the restrictions on country's reputed private universities in the state forces the students to study and live far away from their families in other states. The most unfortunate is for the students who can't afford to move out and thus puts an end to their education.

Jammu & Kashmir, among all the states, is ranked third highest in the unemployment rate index for the month of January 2019. Its unemployment rate is at 17.1%, which is more than double the national unemployment rate of 6.9 % according to the Centre for Monitoring Indian Economy (CMIE) data on unemployment. One of the major reasons for this is the lack of job opportunities available for educated youth in the state. The number of unemployed youth has been increasing with every passing year

(Jammu and Kashmir Economic Survey 2014-15). When youth of the country everywhere is contributing towards making India one of the fastest developing nations, non-applicability of the PPP (Public Private Partnership) model under the 'special status' provision prevents the Jammu-Kashmir's youth to take part in that. Absence of popular private companies of the country directly affects the life of state's people.

Jammu and Kashmir ranks second in receiving most funds from the Indian government. But despite of this, the state remains highly underdeveloped. According to a survey, people of Jammu and Kashmir are the worst victims of corruption. The Centre for Media Studies (CMS) in its annual corruption study – CMS India Corruption Study 2017- has placed Jammu and Kashmir as one of the top five most-corrupt states. It was among top corrupt states in 2005 also. Further the study says that more than 33 percent respondents stated that state government was not 'committed at all' towards reducing corruption in public services. The behavioural pattern of the state leaders too indicate the same as the study. Taking advantage of the Article 370, the legislators prevent the 'Prevention of Corruption Act' to be enacted in the state. Along with this, the strongest tool of the common man to detect corruption, that is, the central government's Right to Information Act too is not present for the people. These creates a huge question mark on the intention of the state's political leaders.

One of the worst sufferers of the 'special' status are the women and the Dalits. The definition of the permanent resident reduces them to second class citizens within their own state. For instance, if a Kashmiri woman marry someone who is not a permanent resident of the state, she loses all rights of Permanent Resident. Not only she, but also her husband and children are disbarred from acquiring the state subject status. Her children neither can inherit her property, nor get entry into government colleges, nor get government jobs — and most importantly can't vote. But it is not the same for a Kashmiri man. The belief is that culture of Jammu-Kashmir needs to be preserved, and for that only Kashmiri women are made the scapegoats, that is, discouraged from crossing the cultural threshold. Even the landmark judgement of the High Court in the case of *Jammu-Kashmir State Vs Dr Susheela Sawhney* in October 2002 couldn't improve the condition. It held that the daughter of a permanent resident of Jammu and Kashmir will not lose her status as a permanent resident upon her marriage to a person from outside the state. Also, this law contradicts the Preamble of J&K constitution which provide for equality as well as Section 19 of J&K Constitution which provide for equal opportunities for both men and women. One of the most surprising as well as unfortunate fact is that most of the 'celebrated' feminists of India don't even mention or talk about this clear violation of basic rights. Even the Kashmiri leaders which include one the former Chief Ministers, in the name of protecting the 'special character' of the state, challenged the High Court decision by introducing the Jammu and Kashmir Permanent Resident Status (Disqualification) Bill, also called the Women Disqualification Bill in the Jammu-Kashmir Assembly twice in 2004 and 2010.

In one of the major sanitation crisis in 1957, the state government led by the then 'Prime Minister' of Jammu and Kashmir, Bakshi Ghulam Mohammad, took the decision to bring in *safai karamcharis* (sweepers) from Punjab and relax the norms of Permanent Residents in order to provide them land for settlement. But the rules were relaxed only to the point of the community members getting appointed as sweepers. In simple terms, it meant that the next generations were neither eligible to get into higher professions nor get promotion being a sweeper even if they were qualified. They were even denied the Schedule Caste certificates by the state under which they could have at least availed the benefits of schemes of the Central government. Also, due to the lack of certificate, they neither get loans in order to better their lives, nor do they have any voting right in the local and assembly elections, even after more than 60 years of service to Jammu and Kashmir.

It is not that the Constituent Assembly can't modify or change the definition of Permanent Resident. Section A of Article 9 in the Jammu - Kashmir Constitution clearly mentions that the Assembly is having the right of "...defining or altering the definition of, the classes of persons who are, or shall be, permanent residents of the State". But lack of intention leads to creation of different virtual barriers.

Injustice and inequality is at the core of the 'special' status, both with respect to people of other states as well as within subjects of the state. In conclusion, it can be stated that there are numerous opinions on whether Article 370 along with 35A provides Jammu and Kashmir a special status or not, but it surely makes the state 'specially' challenged.

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