

ARTICLE 370, A CRITICAL REVIEW IN PRESENT SCENARIO

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ABSTRACT

Indian Constitution is one of the most proficient written constitution that any country has ever produced. It is a mixture of various other constitutions, the constitution maker's had to be very judicious while making the constitution because of the diversity India contains inside. Every state in India is unique and has its own diversity but the most beautiful and most diverse and focus attracting state in the northern end of the country is Jammu and Kashmir. Article 370 states about the special status that has been given to the state of Jammu and Kashmir.

The motive of this paper is intended toward a lot of puzzling questions, starting from the history of Jammu and Kashmir, towards the repealment process of Article 370 and its constitutional validity and also studying about the impact of this Article 370 after repealment.

KEYWORDS

Article 370, Special Status, Constitutional Validity.

1. INTRODUCTION

'Article 370' of the Indian Constitution is mainly a hot and controversial provision of our Indian Constitution. It has mentioned under Part XXI of our Indian Constitution, which talks about the "Temporary, Transitions and Special provisions", and Article 370 has offered the special status to the State of Jammu and Kashmir.

According to 'Article 370', the State of Jammu and Kashmir enjoys the much developed status then the other Indian States and Central Government has the most limited jurisdiction in comparisons with the other states. Therefore, According to the Article 370 along with the Article 35A, the State of Jammu and Kashmir is not bound with the other provisions and laws of the Constitution of India until those provisions and laws has passed/enforced by the State Legislature Assembly separately including the matter related with Fundamental Rights, Citizenship and Ownership of Property.¹ Therefore, Indians was not allowed to purchase the land ad property in the region of Jammu and Kashmir.

This provision has passed by the Constituent Assembly of the Jammu and Kashmir after the establishment of as a state and recommended that Articles of the Indian Constitutions should be applied to State or revoke the Article 370 altogether. Then after the consultation with the States Constituent Assembly, the 1954 Presidential Order was passed and clarifying that the Articles of the Constitution of India has applied to the State. Since, Constituent Assembly dissolved by itself without recommending the abrogation or repealment of Article 370, the articles was now deemed to have the part of the permanent feature of the Indian Constitutions.²

Now, the President of India; Ram Nath Kovind' have issued a Constitutional order which has superseded the 1954 order and all the provisions and laws of an Indian Constitution applicable and enforceable on the State of Jammu and Kashmir.³ However, the resolution has passed in both the houses i.e., Lok Sabha and Rajya Sabha and he further issued an order on 6th day of August to declare that the clauses of Article 370 will be considered too inoperative except clause(1) of the Article 370.⁴

¹ Article 370 and 35A revoked: How it would change the face of Kashmir. The Economic Times.

² Article 370 has acquired permanent status: SC, The Times of India, and 4th April 2018.

³ K. Ventaramanan (5th August 2019), "How the status of Jammu and Kashmir is being changed", The Hindu.

⁴ President declare abrogation of provision of Article 370, The Hindu, and 7th August 2019.

In this addition, with the 'Jammu and Kashmir Reorganization Bill' the Parliament has divided State of Jammu and Kashmir into two different Union Territories which is Union Territories of Jammu and Kashmir and Union Territories of Ladakh.⁵ This recognition has scheduled on 31st October 2019.

2. HISTORY RELATED WITH THE FORMULATION OF ARTICLE 370

On 26th October 1947, then 'Maharaja Hari Singh' the ruler of princely state of Jammu and Kashmir signed in the presence of 'Pt. Jawaharlal Nehru' an "Instrument of Accession" as the Jammu and Kashmir acceded to the Dominion of India. The Instrument of Accession specified three major subjects on which state of Jammu and Kashmir would have allocate its power to Government of India which are as:-

- a. Foreign Affairs
- b. Defence
- c. Communications.

After that, the then Maharaja has been appointed an interim Government in the State with 'Sheikh Abdullah' as a Prime Minister in the March 1948. Then Sheikh Abdullah and three more other colleagues had joined the Indian Constituent Assembly and negotiated the Jammu and Kashmir special status which leads to the Article 370 and this was the controversial provision which was drafted by Sheikh in July 1949.⁶

Timelines Related With Article 370:-

-The first important timelines related with the existence of Article 370 which is on 26 October 1947 on which date, between Government of India and Maharaja Hari Singh 'Instrument of Accession' has been signed and State of Jammu and Kashmir became the part of India.

-After that on 17 October 1949, Article 370 has been incorporated in the Constitution of India.

-Then, on 26 January 1950 Constitution of India had enforced and it consist two main Articles which is Article 1 and Article 370. 'Article 1' says that Jammu and Kashmir is the part of Indian State and 'Article 370' has the provision of temporary status of Jammu and Kashmir.

-After that on 14th May 1954, the then President of India 'Dr. Rajendra Prasad' passed the Presidential Order which is 'The Constitution Application to Jammu and Kashmir Order 1954' it includes Article 35A which talks about that who can became the permanent citizen of Jammu and Kashmir.

-Then on 17th November 1956, the Constitution of Jammu and Kashmir has come into force and it has also declared that, State of Jammu and Kashmir is an integral part of India. During 1947-1990 there was a lot of changes has occurred in the State of Jammu and Kashmir so that, in 1990 'Armed Forces Special Powers Act' has imposed in the State of Jammu and Kashmir.

-In 2015, 'Bhartiya Janata Party' with the 'Peoples democratic Parties' formulated the Government in Jammu and Kashmir and in 2016, 'Mehbooba Mufti' became the Chief Minister of state of Jammu and Kashmir. But in June 2018 Bhartiya Janata Party has struck down their alliance with the People Democratic Parties and according to the Article 92 of the Constitution of Jammu and Kashmir which has provision that, if state Constitution Machinery do not work efficiently then, Governor Rule will prevail on the State.

3. TO CHECK THE CONSTITUTIONAL VALIDITY OF ARTICLE 370 REPEALMENT

In 1954, Dr. Rajendra Prasad the then President of India passed the Presidential Order i.e., 'The Constitution Application to Jammu and Kashmir Order 1954' through this order, Article 35A and Constitution of Jammu and Kashmir has enforced.

On 5th August 2019, Ram Nath Kovind the present President of India use his legislative power under Article 370(1) and again passed a Presidential Order i.e., 'The Constitution Application to Jammu and Kashmir Order 2019' which has overrule the 'Presidential Order of 1954' and with this replacement Article 35A and Constitution of Jammu and Kashmir also struck down.

During the Presidential Order 2019, the Home Minister of India, Mr. Shah has passed two resolution in which the first one is, 'Rendering Article 370 inoperative' and secondly, 'Jammu and Kashmir reorganization Bill' and Home Minister of India also said that because of Article 370, the State of Jammu and Kashmir is not a full-fledged democratic state and state development is not progressive and related with this subject matter 'Shah' gave an example that 'Ayushman Bharat Scheme' has applicable on the state but any qualified doctor been to Jammu and Kashmir even though he know that a huge limitation has imposed on him.

⁵ 'Article 370 Live News: Lok Sabha passed bill to bifurcate Jammu and Kashmir, a step closer to becoming a law'. 6th August 2019.

⁶ <http://www.google.com/amp/s/map.business-standard.com/amp/about/what-is-article370> (Visited on 3 September 2019).

What Resolution States?**(a) Rendering Article 370:**

When we study the past impact about Article 370 then we discussed about that, why we are not able to struck down the provision of Article 370, so the answer is if article 370 has going to replaced then first to take the permission from Constituent Assembly but the Constituent Assembly has already dissolved in 1957, therefore this was the deadlock. But in 2019 Presidential Order, the deadlock has removed and this 2019 Presidential Order has added Clause (4) under Article 367. Article 367 is an Interpretation Clause of Article 370, therefore Article 367 has stated that the meaning of ‘Constituent Assembly’ which has given under Article 370(3) now known as the ‘Legislative Assembly’.

(b) Jammu And Kashmir Reorganizations Bill:

Under this Bill, Section 3 states that a new territory is being formed which has comprises Ladakh (kargil+Leh) region and, Section 4 states that on the name of Jammu and Kashmir one more Union Territories has being formed.

4. IMPACT AFTER THE REPEALMENT OF ARTICLE 370

Before	After
Dual Citizenship	Single Citizenship
Special Power Has Conferred	No Special Power Given
Article 356 and Article 360 Is Not Applicable	Now Both Articles Are Applicable
Separate Flag	Tricolor Will Be Only Flag
No Reservation For Minorities	Reservation For Minorities
Separate Constitution	Constitution of India Would Apply
If a Woman From Jammu and Kashmir Marriage a Non-State, She Would Property Right	Can Marry State/Non-State Subject Without Losing Property Right
People From Across The Country Could not Buy Land/ Settle In Jammu and Kashmir	Prohibition Have Removed

5. 14 PIL FILLED ON ARTICLE 370 LOCKDOWN IN JAMMU AND KASHMIR

A Total of 14 PIL has been filed over the several aspects on the repealment of Article 370 in Kashmir came up for the hearing before the bench of ‘CJI Ranjan Gagoi’, ‘Justice SA Bobde’ and ‘Justice S Abdul Nazeer’. Supreme Court of India has observed that, ‘If a citizen wants to travel to any part of the country, then nobody cannot stop him to do that. Supreme Court heard a set of petition which has challenging on the abrogation of the Special Status of State of Jammu and Kashmir Under article 370.⁷

There are numerous number PIL filled for the different issue against the ‘regressive measures’ in Jammu and Kashmir which are as follows:-

⁷ www.indiatoday.in

- It has been claimed that the decision has taken by the Central Government has violate the Fundamental Right under Article 19 and Article 21 of the Constitution-
The Plea has been filed by the Congress activist ‘Tahseen Poonawalla is listed for hearing before a bench comprising Justice Arun Mishra, M R Shah and Ajay Rastogi. Besides this, a separate petition has filled by Anuradha Bhasin, Executive Editor of Kashmir Times, looking for removal of the restrictions executed on the working of journalists in the state after the scrapping of the provisions of Article 370 is possible to be mentioned for urgent listing in the apex court.
- Sitaram Yechury’s petition on the meeting of his colleague-
The CPIM general secretary has suspected that CPIM member and four-time Kashmir MLA M.Y Tarigami has been illegally detained by the J&K administration. The former MLA couldn’t be contacted since August 4 2019. Yechury also said that Tarigami is unwell and he needs an adequate medical attention. The court has allowed Yechury to visit Srinagar and CJI Rajan Gogoi said that Centre cannot stop any citizen from going anywhere in the country.⁸
- Mohammad Aleem Syed’s petition-
A Law graduate from Jamia Malia University of Delhi filled a petition seeking to meet his family in Anantnag. He has not been able to contact the family members since August 4. The court has allowed him to visit his family in Kashmir and asked the student to file an affidavit after visiting his parents.⁹

Likewise, there were several number of PILs have been filled against with abrogation of article 370.

6. CONCLUSION AND SUGGESTIONS

Jammu and Kashmir was a princely state ruled by then Maharaja Hari Singh when Indian gained independence. It was a Muslim-majority state led by Hindu King, which had his own ambition of leading an independent state attached neither to India nor Pakistan. It remained undecided until October 1947 when Pashtun tribal, joined by the Pakistan army, entered into the valley to dethrone him. Hari Singh has faced rebellion from sections of his own army. It was then that he agreed to Jammu and Kashmir becoming a part of India under the Instrument of Accession to seek its help so that he could keep his throne.¹⁰

As the Indian forces were busy while pushing back the Pakistan army to regain control of the territory they had lost to the enemy, Nehru approached the United Nations Security Council on 1 January 1948 to help resolve the disputes. On his request, the UN has passed a resolution calling for a cease fire and asking Pakistan to withdraw from the territory it had occupied. Pakistan never vacated these areas it had occupied and thus, India never held the plebiscite. India and Pakistan have fought four wars over Kashmir- in 1948, 1965, 1971 and 1999 (the Kargil War).¹¹

So the recent question related with this hot topic is what is Article 370 all about? Article 370 of the Indian Constitution gave special status and treatment to the Jammu and Kashmir and its citizens. Article 370 was incorporated in the Constitution in 1949, two years after the state had acceded to India. It was signed between Hari Singh and Lord Mountbatten, the then Governor General of India, with Nehru’s blessings. Article 360 of the Indian Constitution gives the Centre the right to declare financial emergency in a state, but Article 370 prevented the Centre from doing so in the case of Jammu and Kashmir except during war, external aggression. Therefore, the outcome of the Government while scrapping the Article 370 and Article 35A and taking away the special status for J&K. The scrapping of Article 370 means that one would be able to settle in J&K, take-up a job in the state, buy property there, and enjoy the same laws on property inheritance that citizens in other states do.

⁸ www.indiatoday.in

⁹ Ibid.

¹⁰ www.livemint.com

¹¹ Ibid

SUGGETIONS:

After the analysis of repealment process under Article 370 of the Constitution of India, the researcher has suggested following steps should be taken with respect to changes in Article 370 which are as follow:-

- (a) The State of Jammu and Kashmir has divided into two Union Territories which is Jammu and Kashmir Union Territories and Ladakh Union Territories, but the injustice is that Jammu and Kashmir has formed as an Union Territories with the Legislature and run as a Delhi Union Territories, but Ladakh as an Union Territories formed without legislature which has run like a Chandigarh Union Territories.
- (b) The decision by the Centre to repeal Article 370 and re-organize Jammu and Kashmir with many state leaders under house arrest and through a workable Governor goes against the gain of democracy and constitutionalism. This must be a dark day in the history of an Indian federalism.
- (c) After the repealment decision has come out, the prime minister of Pakistan Imran Khan addressed a joint session of Pakistan's Parliament and said that, these changes will result in another Pulwama-like terror attack, so that this statement of Pakistan PM must be taken into consideration for the future peace in India.

