



ARTICLE 370 OF JAMMU AND KASHMIR AND REST OF INDIA

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Abstract:

Article 370 was been introduced to the constitution for the purpose of bridging the gap between Jammu & Kashmir and rest of India. After independence to India there were some Princely states which needed to be decided about their existence in India, in that list of Jammu & Kashmir was the one. The accession of those princely states been handed over to the Sardar Vallabhbhai Patel who was then Deputy Prime Minister and as well as Home Minister to India. When he was tackling every princely state fluently with his troops without having any controversies some political issues had risen in between and finally it affected the Jammu & Kashmir state where the situation was out of control and been in the hands of UNO. Now Article 370 is the only constitutional provision that links India with J&K. Now unlike other states J&K constitutional position is different in terms of every aspect , its completely depend upon the “INSTRUMENT OF ACCESSION” which was signed by then and last maharaja of J&K Maharaja Hari Singh where it was accepted by the governor-General of India

Introduction:

According to the constitution of India, Article 370 provides certain provisions to the state of Jammu and Kashmir, granting it special autonomy. The article says that the provision of Article 238, which was omitted from the constitution in 1956 when Indian states were reorganized, shall not apply to the state of Jammu and Kashmir. Dr. B.R Ambedkar, the principal drafter of the Indian Constitution, had refused to draft Article 370 In 1949, the then Prime Minister Jawaharlal Nehru had directed Kashmir leader Sheikh Abdullah to consult Ambedkar (then law Minister) to prepare the draft of a suitable article to be included in the Constitution Except for defense, foreign affairs and communication, all other law passed by the Indian parliament need to be passed by the state government before they made applicable. This was specified in the instrument of accession signed by Maharaja Hari Singh when he agreed to join the Union of India 1947, instead of going with Pakistan. As the result of this, the citizens of Jammu and Kashmir are governed by state-specific law which comes under the constitution of Jammu and Kashmir, instead of those for the rest of India. This article, along with Article 5 that defines the contours of jurisdiction of India Parliament regarding lawmaking for the state, cannot be amended. The 1952 Delhi Agreement also specified that the state should have own flag in addition to the Union flag and they should have the same status. This arrangement was further ratified by the 1974 agreement between the than Prime Minister Indira Gandhi and the than J&K Prime Minister Sheikh Abdullah (appointed by Hari Singh) It was agreed that head of status called Sadar-i-Riyasat (or the Prime Minister) was to be elected by the state legislature. The agreement opposed imposition of Article 352, empowering the President to proclaim general emergency in the state.

Purpose for Analysis:

Jammu and Kashmir is a constitutional state of Indian union but it differs from rest of the other states. Though the constitution has a provision of article 370 it has no jurisdiction like other states in all matters for exercising power through the usage of the article 370 for that purpose it should be in the ambit of provisions that laid down in instrument of accession .According to that constitution can only make changes in three subjects which were surrendered by the state to the dominion they are as follows:

- ✓ External Affairs
- ✓ Defence
- ✓ Communications

Apart from the above subjects central government can't touch any other subjects they are not supposed to be the matter of the center

Detail Explanation:

Article 370 of the Indian constitution deals with the special status given to the state of Jammu and Kashmir. It provides a fairly high degree of autonomy to the state, enable the state to have its own constitution (unique in an Indian context) which permits the state, enable to give some special privileges to its “permanent residents”. One such special privilege is that only a permanent resident can buy land in the state and citizens from other Indian states face some restrictions.

What Is Article 370?

- ✓ Jammu and Kashmir's citizens have dual citizenship.
- ✓ Jammu and Kashmir's flag is different.
- ✓ Jammu and Kashmir legislative assembly term is 6 years whereas its 5 years for the state of India .
- ✓ The order of Supreme Court of India is not valid in Jammu and Kashmir
- ✓ Parliament of India may make laws in extremely limited areas in terms of Jammu and Kashmir.
- ✓ In Jammu and Kashmir, if a woman marries a person of any other states of India, citizen to the female ends'
- ✓ If a woman marries a man in other Indian state, she loses her citizenship. Whereas as if any woman marries a Pakistani, she will be entitled to have a citizen of Jammu & Kashmir.
- ✓ Because of section 370, RTI does not apply in Kashmir, RTE is not implemented, CBI, CAG does not apply, Indian laws are not applicable.
- ✓ Shariat laws are applicable to woman in Kashmir.
- ✓ There are no rights to panchayats in Kashmir minorities in Kashmir (Hindu – Sikh) does not get 16% reservation.
- ✓ Due to section 370, outsider cannot own land in Kashmir.
- ✓ Indian Parliament does not have any major rights over Kashmir it can only control issues of defense international relation and communication.

History of Article- 370:

At the time of independence, it was argued that Kashmir was not ripe enough for integration and felt a need to keep it exempted from the basic fundamental rights. This was the main reason for the insertion of Article 370. The provision was drafted in 1947 by sheikh Abdullah, who had by then been appointed Prime Minister of Jammu & Kashmir by Maharaja Hari Singh and Jawahar Lal Nehru. Sheikh Abdullah had argued that Article 370 should not be placed under temporary provisions of the constitution. He wanted "Iron Clad Autonomy" for the state, which centre didn't comply with. According to this article, except for defense, foreign affairs, finance and communications, parliament needs the state government's concurrence for applying all other laws. Thus the related to citizenship, ownership of property, and fundamental rights, as compared to other Indians. As a result of this provision, Indian citizen from other states cannot purchase land or property in Jammu & Kashmir. Under Article 370, the centre has no power to declare financial emergency under Article 360 in the state. It can declare emergency in the state only in case of war or external aggression. The union government can therefore not declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the state government.

Temporary Provision: The Article came with a tag that said it was temporary, giving hope that the state would also be integrated with time; however the day sadly has not yet come. The main clause for repealing this article was when there would be real peace and also when the people of the state approved of this arrangement.

Special Provision: Along with Article 35A of the Indian constitution, it allows the state to prefer the J&K "citizens" for, Employment under the state government, Acquisition of immovable property in the state, Settlement in the state, Rights to scholarships and such other forms of aid as state government may provide.

Pros & Cons:

- ✓ The major advantage which resident of J&K enjoys, is that no outsider is allowed to purchase land in J&K. This is a big advantage as it protects land of people from outsider like rich businessman.
- ✓ It's not easy for outsider to operate their business here. This Helps local residents in making more profit. It also reduces competition.
- ✓ It has contained population blast in J&K. Except the city of Jammu, there is very less population in other areas.
- ✓ It has contained prices of real estate. If Article 370 is removed then the price of property will go very high.i.e.- normal home which now costs Rs. 70 Lac will then cost Rs. 1 crore approximately.
- ✓ It has preserved and protected the ecology, environment and Bio diversity in J&K to some extent.
- ✓ Government jobs are still available to residents of J&K.
- ✓ Local brands are still running here due to less competition.
- ✓ Maintains the status of J&K with union of India.
- ✓ Less crime rate & traffic.
- ✓ Less population, as there are not very much industry.
- ✓ Maintain the in land quality.
- ✓ Helps to maintains India's claim over Kashmir in world's eye.

Cons:

- ✓ Lack of Medical sfacilities. No single private hospital is there in Jammu which includes adjoining districts.
- ✓ Terrorism in state is because of 370 and because of Pakistan's claim over Kashmir.
- ✓ Lack of basic modern facilities like High speed internet, 24 hours water supply.

- ✓ Less competition makes the progress of students slow and dull.
- ✓ No opportunity for state student's to appear in other state exams.
- ✓ No industrial sector available.
- ✓ Jammu is always ignored in comparison to Kashmir just because it's a international issues.
- ✓ It has hindered the progress of our state to a large extent.
- ✓ Only Muslim can become chief Minister of J&K, no Hindu can become CM of J&K.
- ✓ It has reduced the participation of non Muslim community in politics and other spheres.
- ✓ Education has suffered a lot due to this.
- ✓ Less GDP as well as revenue.
- ✓ Less jobs and unemployment are the major problems due to this article.
- ✓ Lack of control of Government of India and their policies on our state.

The Repealing of the Article 370:

The Article states under the clause 3 that the president may declare this Article shall cease to be operative by public notification, after that recommendation of the constituent assembly of Jammu & Kashmir and is willing to recommend its revocation.

Conclusion:

Article 370 should be removed by the government so that more people outside from Kashmir can buy land over there and more people would be able to set up industrial units over there which in turn would give rise to employment and if Article 370 is removed then India can control the matter related in all aspects which would help to establish peace and economic growth of the state

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