

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

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**Volume 3 | Issue 3**

**2020**

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## Article 370: What Next for Jammu and Kashmir?

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AVNEET KAUR<sup>1</sup> AND SUMIT SINGH<sup>2</sup>

### ABSTRACT

*Jammu and Kashmir was a constituent State of the Indian Union, its constitutional position, and its relation with the Central Government different from that of the other states.*

*Article 35A was incorporated into the Indian constitution in 1954 by the President Rajendra Prasad on the recommendation of the Jawaharlal Nehru Cabinet. Provision of Article 35A provides Jammu and Kashmir Legislature a complete freedom to decide the permanent residents of the State. It also provides certain special rights and privileges to the permanent residence regarding the acquisition of property in the state, in public sector jobs, scholarships and other public aid and welfare.*

*According to the provisions of Article 370 except for the external affairs, defence and communications the Parliament needs the State government's concurrence for applying other laws. Thus the state's native resides under a separate set of laws.*

*The two characteristic features of the special relations are:*

- 1. The State has a much greater measures of autonomy and power than enjoyed by the other states; and*
- 2. The Centre's jurisdiction within the State is more limited than what it has with respect to the other states.*

*Accordingly, Jammu and Kashmir could have their separate Constitution and Flag.*

*Because of these Special features all the provisions of the Indian Constitution does not apply to Jammu and Kashmir in fact they are applied in a modified form. Article 370 created the unequal provisions for the citizens of the same country residing in the different territories.*

### I. HISTORICAL BACKGROUND OF ARTICLE 370

On November 1, 1858 most of the Indian territories were princely states at the time of Queen Victoria proclamation which effectively said that the queen would govern India. So, the state of Jammu and Kashmir was also a princely state which is governed and ruled

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<sup>1</sup>Author is a student of Delhi Metropolitan Education affiliated to GGSIPU, India

<sup>2</sup> Author is a student of Delhi Metropolitan Education affiliated to GGSIPU, India

by the Dogra lineage under the British crown who were the supreme authority at that time.

On August 1947 during the time of the independence there were more than 562 princely states which existed in India and they were given choice either to stay with the country Pakistan or India or to remain Independent, most of them decided to settle either with India or Pakistan. Princely state like Hyderabad also settled and accepted India as their country, but the king of Kashmir did not show any interest to join either India or Pakistan and there was complete indecisiveness.

In a letter dated 26 October 1947, addressed to the Governor-General, Maharaja of Jammu and Kashmir, Hari Singh, offered to accede to the Dominion of India. On 27 October 1947, the Governor-General accepted the offer with certain stipulations.<sup>3</sup>

On October 1947 after British leaves India, there were three major entities in this subject are Independent Kashmir, Pakistan and India. After the withdrawal of Britishers armed rebellion broke out in Kashmir by the Pakistani tribesmen they invaded Kashmir from the Pakistan border then King Hari Singh of Dogra dynasty wrote a letter to Lord Mountbatten, the Governor-General of India with this letter he attached a signed instrument of accession to India. The Governor-General of India accepted the signed instrument of accession to India and the instrument of accession states that defence, external affairs and communications were transferred to India's government and rest would be ruled by the ruler of Independent Kashmir.

November 26, 1949 India adopted the constitution of India.

January 26, 1950 the adopted constitution came into force or effect and India becomes a Democratic republic. The state of Jammu and Kashmir which became the integral part of union of India on 26 October 1947 through a IOA instrument of accession signed by King Hari Singh has its own constitution and possess right to form their own laws except defence, external affairs and communications. Kashmir has its own law such as inheritance personal law and own penal code, benami transaction and RTI etc.... while several items in the union and concurrent lists applied to the Jammu and Kashmir but Parliament needed the state to ratify them.

It is said that the Article 370 was introduced by Sardar Vallabhbhai Patel in the constitution in 1949 and it enhanced and expanded the state's autonomy as any law passed by Parliament could apply as long as they formed part of the instrument of accessions and only after

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<sup>3</sup> VN SHUKLA'S CONSTITUTION OF INDIA

consultation with the State government.

## **II. ARTICLE 370 OF INDIAN CONSTITUTION OF INDIA -TEMPORARY PROVISIONS WITH RESPECT TO THE STATE OF JAMMU AND KASHMIR**

(1) Notwithstanding anything in this Constitution,--

(a) The provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) The power of Parliament to make laws for the said State shall be limited to-

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

(c) The provisions of article 1 and of this article shall apply in relation to that State;

(d) Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order<sup>2</sup> specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) 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.<sup>4</sup>

The scrapping of Article 370 of Indian constitution is a new step mentioned in the Indian history. It is a historic move in the right direction for the welfare of the state of Jammu and Kashmir. The central government through a notification scrapped the article 370 on 5 August as it's required the immense courage to make such a thing real and it was a historic day for the country and a bright step.

The article 370 was so long active from past 70 years and the question is how long it is supposed to be staying active? It's a temporary special status given by our government to the region of Jammu and Kashmir for a very short period of time and not supposed to be staying active for such a long period of time.

In earlier times no political party had a strength to make the right decision because all they care about is their party being safe from a people's perspective so that it took many years to make this happen and now Jammu and Kashmir is an integral part of India just like other union territories like Pondicherry etc.... Now there are two union territories, one is Jammu and Kashmir and another is Ladakh. They should emerge with lots of opportunities for the people of both the union territories. I support the union territory of Ladakh as their problem was entirely different from Jammu and Kashmir issues. The living standards of Kashmir people became more prosperous and wealthy even USA underwent changes 400 years back after colonisation by Britain and now become one of the strongest countries in the world.

According to Article 370 clause (3) it stated that this provision can cease to exist through a Presidential order in consultation with the constituent assembly of Jammu and Kashmir. The constituent assembly can take this decision mutually but in the current situation there is no state government in Jammu and Kashmir exists so that the power of state government got transferred to the Parliament. The Parliament can take a decision after the President's order to scrap the Article 370.

The article 370 of Indian constitution never gave the Kashmir people a freedom. It only created selfish leaders who created a terror-filled society and robbed Kashmir youth of opportunity. The scrapping of article 370 of Indian constitution means there will be no separate flag for Jammu and Kashmir and also no separate constitution for Jammu and Kashmir and there will be no dual citizenship and the RTI will also be applicable over Jammu and Kashmir. Later the financial emergencies were not applicable but now it will be applicable to the Jammu and Kashmir also. The women marrying to non-Kashmir's would lose

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<sup>4</sup> The Constitution of India

their property rights but after removal of article 370 the women marrying non-Kashmir's would retain their property rights in Jammu and Kashmir.

Kashmir is not just property issue and its is not just a piece of land for us as Kashmir has got some special status or provision which was temporary in nature due to its historical problems. The article 370 was formulated for a medium of keeping Kashmir connected to India but now the its must to remove the special status as it was done to counter the terrorism . It was a decision with a lot of sensitivity for the people of Kashmir.

As it was done in complete secrecy so that no unlawful activity was taken place and it may increase violence in the region of Jammu and Kashmir or in any part of the country. It was done just to maintain law and security among nation.

### **III. REVOKING ARTICLE 370: RIGHT OR WRONG?**

The basic rule for making an amendment or modification of a constitution provides that- An amendment made to the constitution does not automatically apply to the state of Jammu and Kashmir. It can apply only with the concurrence of the state government, and when the President issues an order under Article 370. Sampat Prakash Vs. State of Jammu and Kashmir<sup>5</sup> Article 370 authorizes the President to modify a constitutional provision not only when it is applied to the state for the first time, but even subsequently after it has been applied.

The government used the same Article 370 to repeal the special status granted to the Jammu and Kashmir. Article 370 Clause (3) provides that 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.<sup>6</sup>

At the time of making such notification no Constituent Assembly exist because of the presidential rule and those powers of the Constituent Assembly were transferred to the Parliament of India. Parliament of India declared the Article 370 null and void. This means the separate constitution of Jammu and Kashmir ceases to be in operation.

#### **(A) WHAT DOES THAT MEAN?**

**Revoking** Article 370 means-

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<sup>5</sup> AIR1970 SC1118:91969) 1SCC562

<sup>6</sup> The Constitution of India

- No special status
- No dual citizenship only single citizenship
- Tricolour will be the only flag
- Children of J&K will benefit from Right to Education
- Article 360 will be applicable.

**(B) ADVANTAGES:**

The decision will maintain that condition in Jammu and Kashmir would improve and there is a win win situation.

Now the company would come and make investment in Jammu and Kashmir

There would be enhanced education opportunities and enhanced employment or more job opportunities.

This would lead to economic development in Jammu and Kashmir.

**IV. CRITICISM:**

In my opinion that Kashmir natives should be the ones to decide whether or not the outsiders should be allowed to buy property in Kashmir as Himachal Pradesh and Uttarakhand and some of north east states enjoy this right, so should Kashmir for the very same reason in addition to that for the preservation of the Kashmir culture and beautiful Kashmir valley.

The native of the Kashmir is totally blackout of communication services and also natives of Kashmir have no idea what is going on in their native place.

The Kashmir natives were not asked before taking such steps.

Here we want to integrate the Kashmir with India but if we look practically Kashmir will not be integrated with India until or unless the local or natives of Kashmir want to be integrated.

**V. CONCLUSION**

The decision of the government was right and also well executed in a way that made it possible also it can be argued that it was morally wrong but not democratically and I don't think this bill would have been possible or passed for another 70 years if government consulted with the Kashmiri politicians.

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