

A CRITIQUE ON ARTICLE 370 AND SPECIAL STATUS PROVIDED TO OTHER STATES UNDER THE CONSTITUTION OF INDIA

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ABSTRACT

Article 370 of the Indian Constitution specifies the freedom of the state of Jammu and Kashmir (J&K). The terms of the article remain strong in thought because of their uneven moments in the framework of liberal India. This paper analyzes Article 370 and the political legitimacy attached to it, based on four specific discourses. First, section 370 Genesis creates inequality in India. Second, its preservation implies a conflict of interest. Third, Ramification prefers inequality within J&K Fourth, how politicians under section 370 seek limited support. These differences have been explored by incorporating primary and secondary sources and ideas analyzed in different cultures. The type of cases involve multiple views. The interpretive approach places this argument in the larger context of the Continuation or Revocation of Article 370, based on the research question of whether Article 370 worked properly, or exacerbated inequality and accelerated the escalation of the conflict in J&K.

Keywords

Jammu & Kashmir, Politics, Constitution, Conflict, Article 370, Inequality

INTRODUCTION

Article 370 is undoubtedly the most controversial issue of the Indian constitution. It deals exclusively with Jammu and Kashmir State ruled by the Government of India after a 15-month world war in which Pakistan began in 1947 to seize power in the kingdom. Invitation to debate since the passing of this law, Article 370 has been a heated debate since the Constitution came into effect on January 26, 1950. While part of the Indian political party sought exile; In 1999, former Prime Minister Pharaohok Abdullah threatened to rebel if the title was abolished. On January 26, 1950, the Constitution of India came into effect with various provisions - Article 370. The special status conferred by the provinces of Jammu and Kashmir in this paragraph means that its people live under different laws while being part of the Indian Union. Maharaja Hari Singh signed the entry papers on October 26, 1947 when the state entered India. The installation of Jammu and Kashmir was done in the same manner as

other related provinces. But because of the country's evil, JawaharLal Nehru pressured the Maharaja for giving power to Sheikh Abdullah. At the request of Sheikh Abdulla it was decided that the Political Legislature would make the final decision on the matter and that it was done to please the Muslim community in Kashmir. From here the state was given a special status.

The Present study inquiry aims to follow the process of unity in India and the inclusion of special provisions for the Jammu and Kashmir situation contained in Article 370 of the Constitution of India. While Jammu and Kashmir introduced a different part of this structure when incorporating American Indians, the present study is expected to provide a glimpse into the future outbreak of state structures built by the founding Indian fathers. The context of the 370 articles of the Indian constitution.

As per the Indian Constitution Article 370 provides for temporary provision in the land of Jammu and Kashmir to give it a special status and constitutional symbols called freedom. Some of the key features of Article 370 in relation to the situation in Jammu and Kashmir are explained by the following points.

1. The text states that the provision of section 238, which was enacted in the constitution in 1956 at the time of the constitutional amendment showing the incorporation of India, would not include the J&K-state of India.

Dr. BR Ambedkar who chaired the Indian constitutional committee violated Article 370, the matter was referred to Jawaharlal Nehru, in 1949, with Gopal Prime Minister Swami Ayyangar. the Indian cabinet to write Article 370 in the Cabinet. It is also noteworthy that Gopal swami Ayyangar was Diwan's secretary to Maharaja Harris Singh of J&K and Sheikh Abdullah was J&K governor at that time.

3. Section 370 was drafted by constitutional amendment in part XXI under the modified and amended requirements.

4. In the first quarter of Section 370, the national government appoints the nominated President of the J&K Maharaja. This was changed in 1952 to a national government which means that one is accepted by the president when he recommends a legislative assembly such as Sardar-E-Riyasat (presiding) for the term of office.

5. Apart from defense, foreign affairs and communications, all other laws passed by the Parliament of India need to be passed by the national government before it can be enacted. This was explained by a press conference signed by Maharaja Hari Singh When he agreed to join the Indian union in 1947, instead of traveling with Pakistan.

As a result, J&K citizens are subject to certain organizational rules that come under the J&K constitution, instead of those that fall within India.

6. This Article and Article 5 relating to the repeal of the law of the Indian Parliament in relation to the enactment of national legislation, shall not be amended.

7. The 1952 treaty, Delhi further stated that the state should have its flag above the union flag and they should have the same status.

8. This merger was confirmed by a 1974 agreement between Prime Minister Indira Gandhi and J&K Prime Minister Sheikh Abdullah (appointed by Hari Singh). It was agreed that the head of state called Sardar-Riyasat (or prime minister) would be elected by the state legislature.

9. The agreement opposes the introduction of Section 352, which empowers the president to declare an emergency.

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HISTORY BEHIND ARTICLE 370

After the outbreak of British rule, the Government of Jammu and Kashmir became independent; it was free to accept any Dominions, India and Pakistan, by signing the Instrument of Accession. Maharaja Hari Singh, former governor of Jammu and Kashmir, fled to the Dominion of India by signing the Instrument of Accession on October 26, 1947. So Jammu and Kashmir's entry is undeniable, undeniable and completely legal in Jammu and Kashmir. It became an important part of India. It may also be noted that it was between 15 August 1947 when the State of Jammu and Kashmir came to power in despair and on 26 October 1947 when Maharaja Hari Singh signed the Degree of Accordance with the support of Azad Kashmir Forces with the support of Pakistan. Kashmir for the purpose of forcing the Maharaja to cross Pakistan. The Maharaja was obliged to seek military assistance to India to defend the territory of his Empire. After signing the Power Tool, India regained control of the State and withdrew the attack.¹

Judging by the situation in which the State entered into India, the Government of India assured the people of the State that the Council that elected to consolidate would form the Constitution of the country and determine the nature and function of other provisions of India. Constitution over the State. Section 370 covers this guarantee only. Thus, in the

¹http://darpanonline.org/web-photo/10_41.pdf

introduction of the Constitution only two bodies are used in Article 1 and Article 370 in the Government. The use of other State resources shall be determined by the President in consultation with the State Government. The President issued a Constitution (Request in Jammu and Kashmir), in 1950 in consultation with the State Government of Jammu and Kashmir, outlining the inconsistency of how the Union Parliament could implement the law of the land.

STATEMENT OF PROBLEM

For almost 70 years and still Article 370 still stands. An article once classified as temporary measures has now become one of the hottest issues in the nation. The focus of this program will focus mainly on the reasons and interpretation of Article 370 and the special status conferred on other states. Section 370 is the cause behind the chaos that was part of the J&K Kingdom. The issue of J&K's special position with Section 370 has raised a heated debate. But there are special provisions granted to other states such as Nagaland, Maharashtra and Assam through Section 371.

Argument 1: Genesis of Article 370 created inequality in India

The Production of Accence of Jammu & Kashmir province was signed by Maharaja Hari Singh on October 26, 1947, making the state a part of a new independent India. It also marked the end of the longest war in South Asia. In these cases of deep despair, the wily Maharaja still holds high aspirations to ensure the continuity of Indian security, foreign affairs and the media. Effectively, these clauses were meant as defenses to his Emperigntyi (Akbar 2008: 135).

Argument 2: Retention of Article 370 allowed the contentious issue to fester

Part XXI of the Indian Constitution specifies the independence of the J & Kiv regime (Constitution of India Revised 2015). Article XXI of the Constitution deals with the provision of temporary, temporary and special requirements. Some of these arrangements are also available in tribal areas in India, such as Arunachal Pradesh, Andaman and Nicobar Islands and Nagaland. However the special status given to J&K after the installation was maintained. The obvious reason for this is the ongoing conflict in the UN Security Council between India and Pakistan.

Argument 3: Ramifications of Article 370 create inequality within J&K

Although J&K is considered to be an Indian state 15 Alternatively, Sheikh Abdullah considered the issue of temples under temples and amendments to the Constitution, and focused on the validity of the hats. Without regard to the guarantees provided by the Constitution that led to the strict rejection of the institutions used by Abdullah as a basic (unavailable) explanation for his transition from a pro-India position to one of Freedom / Independence. It led to his arrest in 1953, and the ouster of his government - which lasted almost 20 years.

Argument 4: Politics of Article 370 are manifestations of limited political leverage

Due to the nature of the political tax, section 370 receives the attention of various organizations. This can be viewed largely as requests to gain a political base or to create a political space for parties seeking media attention. Alternatively, by looking at Article 370, political parties are trying to change their agendas and diversify their territories. Usually such political statements are made without reference to the fact that J&K did not happen; Jammu has a large Hindu population and Ladakh contains Buddhists and Shia Muslims. The fact that Article 370 is completely inconsistent with J & K's complete integration and the rest of India is often overlooked in political discussions.

LITERATURE REVIEW

1.-Yuvraj Vikramditya Singh:- Daily Excelsior news paper date August 24, 2013:-

Yuvraj spoke to the people about the role of the Dogra rulers in the growth and economic growth of the State Jammu and Kashmir. Yuvraj Singh and said that Maharaja Hari Singh wants all Jammu and Kashmir State is united; it was a great wish the Maharaja. Yuvraj added that we should always remember the work of Maharaja Hari Singh. The Maharaja developed the country's economy. We aim to look at the social role of the Maharaja in our lives. He said the party should establish a modern (new) system of equality and justice as a Maharaja.

2. Mohd Yousaf Dar Ainstead weekly dated 18 August 2013. Tittle Jawaharlal Nehru and Kashmir’:- said Pt. Nehru believed in Socialism, Secularism, democracy and positivism.

Jawaharlal Nehru Supported the Kashmir freedom movement against Maharaja Hari Singh. He urged the Kashmir pundits to oversee Kashmir. Pt. Nehru wanted to form a new political party in Jammu and Kashmir. He supported Sheikh Mohammad Abdullah. Hence the Muslim conference at the National Conference. The National Conference provided the political conditions of Jammu and Kashmir in 1939. Nehru was a staunch supporter of political law. He has supported Quit Kashmir against the reign of Maharaja Hari Singh.

3. Rashmi Sehgal Volume 16 June 2011. (international general of Humanities of social sciences)

People of every state have fought for freedom from 65 years ago. After the controversy over India's growing resilience against Jammu and Kashmir had begun, there was a Jammu and Kashmir decision by Maharaja Hari Singh who was the last ruler of Jammu. The J&K collision began shortly after Britain left. At that time, there were more than 560 world governments under British India. This literature review highlights important related issues such as development, education, economics and socialization by Maharaja Hari Singh during British rule throughout India.

4- Sameer Ahmed Bhatt, Yasir Nazir, Ausif Ali Mir: volume 2 October December 2014- international general at social science and humanities research:-.

The people of Jammu and Kashmir suffered while Dogras was influential. It was because of the evil of the rulers of Dogras. Dogras expressed some inconsistencies. Put on jerseys as Inam passes. Like the art of Kashmir. People were famous but as in this book. Maharaja Hari Singh disappointed the project which led to many people leaving Kashmir.

ARTICLE 370 WITH POSITIVE AND NEGATIVE VIEWS

Article 370 Bandwagon

On December 1, 2013, Prime Minister Narendra Modi (former Prime Minister of Gujarat) stirred up controversy while demanding Article 370. He was speaking at a public meeting in Jammu and surprised everyone and everyone about his departure. A group opinion known for its obvious rebellion. Since the debate, though not at the official level, it has been among the political parties. Notably, Article 370 still holds an ongoing election campaign in

Jammu and Kashmir that began on November 25.

Both Prime Minister Narendra Modi and Union Home Minister Rajnath Singh stressed that they are not starting to write Article 370, and they want the party to focus on issues of governance and development. But training them both like any other camp or campaigning for government has become a problem. In response to the BJP's comments, two major parties in the National Assembly and the Peoples Democratic Party have vowed to swear they will not accept that. Prime Minister Omar Abdullah made a statement in a statement saying the Article 370 dispute would cause the BJP government to lose even before the day PDP founder Evil Mohammad Sayeed addressed the people at the election meeting and said they would do everything to protect Article 370.

The Role of Current Collation Government of P.D.P and B.J.P

Jammu and Kashmir have five political parties including the National Conference NC, the DPP party, the Congress, the Bharatiya Janta Party and the Panthers since 2002, the NCP and Congress are competing and some cannot govern in the state but in the 2014 elections. the BJP and PDP won . . three seats each, meaning conflicts of interest and similarities in the 2014 elections when the PDP won 28 seats followed by the BJP with 25 seats, which clearly shows that people now hold the state with their voting rights.²

Political Measures of Collation Government of BJP and PDP

Efforts have been taken by the Central Government of India to change relations with the neighbors of Pakistan and the State Government is cooperating with the Union Government and following their efforts to cooperate peacefully in Jammu and Kashmir for its better development. It is a result of the political developments in the province that may have resulted in a Government collision that resulted in the opening of new channels in all three regions to improve communication in the State.²⁵

The Security Measures by the Collation Government

The situation in Jammu and Kashmir was better than in the 1990s because the communications government is very active in the security of the people of this situation and

² Bukhari Shujaat., Rising Kashmir; Art 370 a bandwagon, article 4578, published on 27 November 2014.

the people also understand the importance of peace and unity and work with the government to overcome the problems in Kashmir. Other safety and security laws have also been discussed and applied to the State Government. Armed Forces Special Powers Act (AFSPA) .The situation is improving with this action and the Land used by the Army does not determine that a particular State is a State citizen to be returned to them after completing its purpose. as a taxpayer who pays Rent to residents who meet the Market Ratio.³

1991 Kunan Poshpora incident

1993 Lal Chowk fires the Bijbehara Massacre Sopore in a massacre

2000 assassination of Chittisinghpura

2001 Kishtwar massacre

2006 Dodhipora Massacre, and the murder of Doda

Amarnath 2008 land transfer dispute

2009 The rape and murder case of Shopi Bomai Event

2010 Kashmir is chaos

2013 incident of the Ramban shooting Handwara incident

2016 Kashmir unrest⁴

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR)

ORDER, 1954 (Portion dealing with Article 35A)*

After article 35, the following new article will be added: -

"Preservation of laws relating to permanent residents and their rights: - Except as contained in this Constitution, no law exists in the State of Jammu and Kashmir, and no subsequent legislation is enacted by the State Legislature, -

(a) to describe the categories of permanent residents of the State of Jammu. and Kashmir; either

(b) by assigning rights or rights permanently to persons or residents in respect of: -

(i) employment under the National Government;

(ii) acquisition of immovable property by the State;

(iii) the establishment of the State; either

³ Editorial on Kashmir : why AFSPA must go, The Hindu, published on 29October 2011.

⁴ A Chronicle of Important events and dates in J&K's political History,India available at : http://www.jammu-kashmir.com/basicfacts/politics/profile_1991.html.(last visited on 13March 2017).

(iv) the right to education and other relief measures such as the State Government may provide, shall be revoked when the land does not occupy or terminate or exercise the rights conferred upon other Indian citizens by any provision of this Part. "

ARTICLE 370 SCRAPPED : TIMING AND ANALYSIS

The Modi government finally abolished Kashmir's massive bombings today, with Home Minister Amit Shah moving to repeal two key constitutional provisions - Article 370 and Article 35 (A) - that give Jammu & Kashmir exclusive rights in the world.

Other provisions of Article 370 have been reduced over time. To the contrary, Article 35A has thus far remained unchanged.

The protest came at a time of turmoil in a country where the government, at midnight, had put political leaders in custody and blocked their movements. It has also established telecommunications / Internet communication services in the province.

With the situation now on the edge of the knife, here is a big decision to say about the complex situation with the rest of India.

JUDICIAL CASES

In this photo, "**Prem Nath Kaul Vs State of Jammu and Kashmir**"⁵ According to a judge of the Constitution Bench, "Section 370 (2) shows that the makers of the Constitution are important to the final decision of Parliament and the President.

In "**Sampat Parkash VS State of Jammu and Kashmir**"⁶ Some of the constitutional terms of the Bench have conflicting views from the above account "The 370 Court can still be used to make the order even though the Union's Constituents Assembly is repealed". The following are three critical views of this decision. He has totally disregarded Section 370 (2) stating that "treaties awarded to the State Government before the incorporation of the Union Council and that does not mean that they will be terminated or terminated." However, the court also ruled that up to Article 370 could not be officially terminated, it would be discussed but this would mean that after the body was dissolved the Government of India would regain power by removing Article 370.

⁵ Prem Nath Kaul Vs State of Jammu and Kashmir, AIR 1959 SC 749.

⁶ Sampat Parkash VS State of Jammu and Kashmir, AIR 1970 SC 1118.

"To **Mohammed Maqbool Damnoo Vs Jammu Province and Kashmir**"⁷ The court also explained the second case. Here again the original case has never been transferred. It was refreshing when the Apex court ignored the pre-trial hearing. If there is an earlier fracture than the ignorance of a particular layer it can be understood. However, there are only three in a certain topic, rather than being ignored.

"**S. MubarikShah Naqashbandi and the ITO,** " ⁸" it was decided that the provisions of section 370 continue in force even though the Governing Body makes the Constitution of the country. "

Conclusion

Article 370 has been thought of as a tool for vulnerable people, who are unsure of the protection of their identity and culture. In the same sense it was intended to ensure independence to create an administrative space and to equip people to find the places they wanted to go. As can be seen in the above discourses, this transfer of power is focused on collecting only a few. The basis of a given freedom is challenged by the lack of accountability in public life. In the context of the great Indian state, be it the refugees of Pochch, Mirpur and Muzaffarabad, or the Kashmiri Pandits case in exile, the state has failed to provide a resettlement program (Asia Center for Human Rights; Economic Times 2016). A case of excessive discrimination may not have a basis that is inconsistent with any reason provided by Article 370 or its representatives. Instead of letting people decide for their own future and future, this article exposes itself to this important reason for its inclusion, and it is broken without qualmsxxi (Asia Center for Human Rights n.d). The argument is that it is the erosion of Article 370 and not its explosive creation. It is these factors that make the strong case of section 370 withdrawal taken at very high levels without delay and collision.

REFERENCES

- Sathe .S.P. Art 370 and jammu and Kashmir, Mainstream Vol. XXX no. 26, Delhi, Pub. July 25, 1992.

⁷ Mohammed Maqbool Damnoo Vs State of Jammu and Kashmir,AIR 1972 SC 963.

⁸ Justice A.S.Anand., The Constitution of Jammu and Kashmir,p.no.109, Universal law publishing, New Delhi,6th edn.2010

- Shyam, Nilotpal, Article 370: Constitutional Quandary, Indian Bar Review, Vol. XLII (2) 2015.
- Shyam, Nilotpal, Article 370: Constitutional Quandary, Indian Bar Review, Vol. XLII (2) 2015.
- London .M.P., International Public Law, Allahabad travel agency, Allahabad, edn.17, 2013.
- Zaman Johar, International Journal of Political Science (IJPS) Volume 2, Complaint 3, 2016, PP 22-24 ISSN 2454-9452.
- <http://ikashmir.net/article370/index.html>
- <http://www.legalserviceindia.com/article/1281-Constitutional-Position-of-Jammu-and-Kashmir.html>
- <http://www.yourarticlelibrary.com/essay/special-provinces-for-jammu-and-kashmir-is-provided-in-the-constitution-of-india-24907/>
- https://en.wikipedia.org/wiki/Special:WhatLinksHere/Politics_of_Jammu_and_Kashmir
- http://www.jammu-kashmir.com/basicfacts/politics/profile_1991.html