

Article 370: Its Positive and Negative Aspects After Abrogate

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Abstract: This paper presents an overview on article 370.

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1. Introduction

In October 26, 1947, Maharaja Hari Singh after Pakistani attack on Jammu and Kashmir executed an instrument of accession by way of which he surrendered the jurisdiction of three subjects- Defence, Foreign Affairs and Communication to the Union Govt. Though the format of this instrument of accession was exactly the same as was executed by other heads of the Princely State. All other Princely states merged with the Indian union and adopted the constitution of India but Jammu and Kashmir had its own constituent assembly and hence a separate constitution which was adopted on 17th Nov 1956. But for the intervening period i.e. from the time of execution of the instrument of accession to its consideration by the constituent assembly of the state, temporary provisions had to be made in the constitution of India and this was done by incorporating Article 370.

The sum and substance of Article 370 is that with regard to Jammu and Kashmir in addition to Defence, Foreign Affairs and Communication the union parliament can make laws with regard to the items in the union and concurrent lists but only with concurrence of the state govt. This puts the Jammu and Kashmir state on a special footing while the union parliament has unfettered powers to make laws for all the states in respect of items included in the union and concurrent lists of the constitution. It can do with regard to Jammu and Kashmir only with consent of the state government.

Not long after the special provisions for the state were incorporated to the constitution of India, many lacunae and short comings which the special provisions were fraught with, came to surface. To rectify these short comings Delhi Agreement of 1952 was executed. But the Presidential order came on 14th May 1954. Extending financial integration of the State and other provisions of Indian constitution to the state of Jammu and Kashmir. This order was amended from time to time extending more provisions of the Indian constitution to the state.

The constituent assembly of the state completed the task of framing the constitution in October 1956. On 17th November

the same year it was adopted by the constituent assembly. The constitution of the state declared the state as an integral part of union of India. The executive powers were vested with the Sadar-i-Riyasat, whose office was elective with a term of

Five years. The Sadar-i-Riyasat was to be aided and advised by a councils of members, jointly responsible to a legislature, elected on the basis of the universal adult franchise. The state constitution made provisions for High Court of judicature in the state and incorporated a long list of the directive principles of the state policy.

In May 1957, the integration of the state services with the central service cadres, came up for discussion between the representatives of the Kashmir govt. and the govt. of the state. In pursuance of the agreement the parliament enacted measures to extend the operation of the Indian Administrative Service and the Indian Police Service to the state, ensuring the participation of the state in the All Indian Services.

Jammu and Kashmir is a constituent state of the Indian union, but its constitutional position and its relations with the central govt. somewhat differ from that of other states. Article 370 is a special provision for amending the constitution of India in its application to the state of Jammu and Kashmir. Since Article 370 is the sole repository of the constitutional morality which has been governing the relationship with the state of Jammu and Kashmir, it would therefore, be pertinent to mention the ideals embodied therein. Article 370 of the constitution of India reads as under:

Article 370 temporary provisions with respect to the state of Jammu and Kashmir.

Not with standing anything in this constitution Act, 1947 and they were free to join either of the two independent dominions namely Indian and Pakistan or to remain independent.

The problem of bringing the princely states into an Indian federation, bequeathed to the assembly and the union government by the departing British, was one the British themselves had never been able to solves. As the cabinet mission projected a union of India, embracing both British Indian were also invited to send their representatives to the constituent assembly. The maximum number of seats allotted to the Indian states in the constituent assembly was 93 out of the total strength of 385. By independence Day, all the states except. Hyderabad, Kashmir, Junagadh, and two insignificant

ones, had joined the union, ceding as a minimum their authority over defence, communications and foreign affairs. The covenants establishing the relationship between the union and the various states and unions of states, laid down that the states and unions could convene their own constituent assemblies and frame their own constitution. Though the constituent assemblies came into existence in the erstwhile princely states of Mysore, Travancore and Cochin union and Saurashtra but their functioning lacked direction.

On 25 October 1948, P. Govinda Menon of Cochin State moved in the Steering Committee that the Constituent Assembly should set up a committee to prepare a model Constitution for the State Constituent assemblies to follow. In November 1948, B.N. Rau was chosen to head the committee for preparing a model Constitution for the States. By mid-March 1949, the committee's report in relation to model Constitution was ready. But a conference of the prime ministers of the States and Unions of States with officials of the States Ministry decided on 19th May, 1949 that Constituent assemblies in the various States and Unions should not frame their own Constitutions on the basis of the model prepared by Rau, but that a Constitution for all the States and Unions should be included in a special chapter of the Constitution. Later on, by October, 1949, this scheme had also in turn become obsolete.

At last, the constituent assembly of India adopted a new article, i.e. article 238 of the Constitution, which applied, with certain minor exceptions, the constitution of the provinces to the states. Patel summed up the reasons behind this change. As... the states came closer to the centre, it was realized that the idea of separate constitutions being framed for the different constituent units of the Indian union was a legacy of the ruler's polity and that in a people's polity there was no scope for variegated constitutional patterns.

The absorption of the former princely states in the Indian constitutional structure came to its triumphant ending on 26 November 1949, the day the members of the constituent assembly signed the completed constitution.

It was agreed between states and union of states and union government that the acceptance and the ratification of the Constitution of India shall be made by the Rajpramukh or the ruler, as the case may be on the basis of the resolution to be adopted by the constituent assembly of the union (of states) or the state concerned where such a body existed.²³ In those states and unions which the constituent assemblies had not yet come into existence, the Rajpramukh or the ruler was to accept the constitution. Thus, by November 1949, the rulers and Rajpramukhs had issued proclamations making the constitution of India operative in their states.

In his whole process of integration of princely states with India and Kashmir was the only state which chose to act differently. Unlike all other princely states which decided to adopt the Indian constitution as a whole and merged themselves full in the national mainstream, the state of Jammu and expressed its inability before the constituent assembly to extend

the constants of the instrument of accession till the constituent assembly of the state had taken a decision in the matter. The merger of Junagarh state and later Hyderabad were also different in the process of accession with the union.

No provisions regarding minorities apply to the state except those for the scheduled castes and backward classes; seats are to be reserved in the Lok Sabha for the scheduled castes.

An amendment made to the constitution under Art. 368 does not take effect in the state unless applied by presidential order art. 370.

Directive principles of state policy do not operate in the state. Fundamental rights operate in the state with slight modifications, some of the important ones being.

The power of legislature, notwithstanding any fundamental right, has power to define persons who may be permanent residents of the state and to confer on them any special rights, or impose on others any restrictions, as respects employment under the state government, acquisition of property within the state, settlement in the state and right to scholarship provided by the state. The government of India issued a constitutional order on 5th August 2019 to abrogate the article 370. The states of Jammu and Kashmir divided in two union territories. i.e. Jammu and Kashmir and Ladakh the reorganization took place on 31 Oct. 2019.

A. *Positive Aspects after article 370 Abrogate*

- The government of India take decision to revoke the article 370 it would be stability access market and also be helpful for gaining investment in many sectors like, tourism, agriculture and among others.
- The integration of states very helpful for development of J & K. The opening of educational institutions like IIT, AIIMS, and get better educational facilities.
- The government also give new projects like rail line pipeline etc. which is helpful for state developments
- The end of discrimination against women on property rights after marrying of outside the state.
- It also helpful for improving the development of Jammu and Kashmir the corruption in also eliminated from the State.

B. *Negative aspects*

- The proper restrictions are put in the place for buying of property in state to protect of the ecology.
- The industrialist take time to open industry in state feels that state is safest for us
- The valley peoples are attachment with special status it should be removed it also be negative impact on emotional integration of people
- The central governments give funds properly and do not gives the pockets of few peoples.
- The main Kashmiri political leaders like a vilion whose leadership have been the link between states People since many years.

2. Conclusion

The article 370 abrogated a welcome changes as well the state have also an industrial development and large number of investment in the state. The unemployment of youth also be end in the state and works on towards the development. They would to decentralization of power and also be better government. This will be helpful for overall development of Jammu and Kashmir.

References

- [1] Chaman Lal Gupta, "Article 370 integrations in states."
- [2] A.S. Anand, "The Constitution of Jammu and Kashmir."
- [3] Dogra, P.C, "Genesis of Article 370 and its after effects."
- [4] Jain M. P., "Historical Development of law in India."
- [5] Lavakare, "Arvind the truth about article 370."
- [6] Teng, Mohan Kirshan, "Article 370."
- [7] Tikoo, Tej Kumar, "Impact of Article 370."
- [8] Jamwal, Shailender Singh "J & K State's Accession to the India."
- [9] Noorani, A. G (2012) "Article 370: Law and Politics."
- [10] www.kashmircaselaw.com