

# ARTICLE 370 OF THE INDIAN CONSTITUTION: AN IMPEDIMENT IN THE DEVELOPMENT OF JAMMU & KASHMIR

*By Kosha Doshi*

## ABSTRACT

This essay shows how Article 370 makes a complete mockery of democratic ideas. Article 370 has jeopardized the people's national interest and their general civil, political and economic rights. This has done considerable harm to the state and impeded the process of democratic and constitutional integration of the state. This has bred India's conditions for injustice. The retention implied that contentious issues had festered. Main concern is that Article 370 marginalized the people who live in the state. It has failed to take governance and social inclusion steps.

Article 370 emerged when a question was added, "why, please, this discrimination?"<sup>1</sup> This is why J & K is considered as a separate state and does not provide it with rules for other states. India, which is Bharat, is to be a federation of states.<sup>2</sup> In a special state, J & K will only create inequality that would unconstitutionally weaken it. Through time Article 370 has slowly weakened.

What's taken us from article 370? We've got the mostly violent Kashmir story. They die every day because of the crime prevalent in the valley. Since 1990, J & K has had 45,187 terror fatalities. The worst years were 1991 to 2001, accounting for more than 66 per cent of terrorist deaths until 2019. Surprised how the terms secularism and socialism are not stated in the preamble to the J & K constitution. One of the chief architects of article 370 was N Gopalswamy Ayyangar. Psychological distress had contributed to Article 370.<sup>3</sup> Because of Article 370, Kashmir was underdeveloped otherwise would have led to a floodgate of innovations.

---

<sup>1</sup> Maulana Harsat Mohini, October 17, 1949

<sup>2</sup> Article 1

<sup>3</sup> Union Minister Jitendra Singh

## ARTICLE 370

Under emergency, transitional and special clauses, Article 370 is enacted in Part XXI.<sup>4</sup> Article 370 includes 6 special clauses affecting Jammu and Kashmir. The following are:

- The State shall be excluded from the rules of the Constitution of India and shall have its own constitution.
- The influence of the Parliament over the State applies only in 3 matters – security, foreign relations and communication.
- Where 'constitutional provisions' or powers of union were to be extended to the State, prior state competition was required.
- Competition was purely temporary and had to be approved by a representative assembly of the State.
- The power of the State Government to offer competition shall only last until the constituent assembly of the State is convened.
- The President alone is to issue an order to repeal / amend it.

“Article 370 of the Constitution is an article of trust and therefore J & K's self-regulation should not be fooled under it.”<sup>5</sup> The law in J & K Constitution is drawn from the state subject laws introduced by Maharaja Hari Singh in the early 20<sup>th</sup> century during the Dogra rule. J & K was a princely state until 1947 when it acceded with India using Instrument of Accession (IOA).

For some 600 princely states whose sovereignty on Independence was restored, the Act provided for three options: to remain an independent country, join Dominion of India, or join Dominion of Pakistan — and this union with either of the two countries was to be through an IoA. Though no defined form was given, the conditions under which it agreed to join may be stated by a State so joining. Initially, Raja Hari Singh had decided to remain independent and sign standstill agreements with India and Pakistan and it was actually signed by Pakistan. Yet after an attack by tribesmen and army men, he was seeking support from Pakistan, which in effect was seeking

---

<sup>4</sup> Constitution (Thirteenth Amendment) Act, 1962, S. 2 for 'Temporary and Transitional Provisions'

<sup>5</sup> Justice Rajindra Sachar

Kashmir 's accession to Pakistan. Hari Singh signed the Instrument of Accession on 26 October 1947, and it was ratified on 27 October 1947 by Governor General Lord Mountbatten.

Now starts a new period in Jammu and Kashmir. The Jammu and Kashmir and people of Ladakh have been stripped of their rights. The dreams of Sardar Vallabhbhai Patel, B.R. Ambedkar, and Syama Prasad Mookerjee were fulfilled with the abolition of Article 370. After fruitful discussions and considered options, government finally decided to build two UTs namely Jammu and Kashmir and Ladakh.

## LAW & SOCIAL TRANSFORMATION

Kashmiris lived their lives in perpetual darkness & under security threats over the past 70 years. Finally, there will be a remarkably significant social transformation due to the repeal of Article 370. It had served the purpose of influencing the social, cultural and economic lives of J&K citizens in the following ways before the abolition of Article 370:

- The presence of 370 created a psychological division between people of India and Jammu and Kashmir.
- People from other states have no right to citizenship and voting rights in J & K. When a J & K girl marries a boy from another state who is not a state subject, she loses all of her rights in J & K state. Women's rights are violated ruthlessly under provisions for permanent residents of J & K. <sup>6</sup>
- In the State the income tax cannot be levied. The Urban Land Act, 1976, does not apply to J & K. This caused rich landlords to indulge in poverty-stricken economic exploitation.
- As the RTI Act does not apply in J & K, the appointment of the Information Commission therefore does not provide room for the abuse of powers.
- Democracy will protect the rights of the people and not of the rulers. Better governance was a mirage. It mirrors the rulers' feudalist mentality. Lack of transparency amounts to lawlessness and anarchy.
- Article 370 precludes centralized welfare programs and constitutional protections for the poor from being available to the J&K people. The social cost of article 370 was enormous. Under article 370 the weakest and weaker segments were left voiceless.

---

<sup>6</sup> Section 6 of J & K Constitution



- Progressive measures such as the Mandal Backward Class Report can not be implemented and therefore J & K lacks good industries.
- The presence of ST and SC in J & K is significant, nearly 20 per cent of the state population. 370 Deprived them of direct central aid.
- The recruitment and promotion quotas for SC and ST were made on the basis of the 1961 Census Report and no attempts were made to amend it under Article 370.
- Panchayat 's constitutional empowerments do not extend to the Government.<sup>7</sup>The omission of Panchayats and other autonomous government bodies made it hard to envisage egalitarian society.
- 11% of the population has been disabled and has local disadvantages and no security steps have been taken by the State Government to protect their interests.
- Article 370 triggered the failure to consider the plight of the poor community in the J & K state. Injustice and abuse in regard to the weak would be understatement.
- India has a single citizenship system whereas J & K has dual citizenship that breaches the Citizenship Act.
- Important Indian laws, such as CAG, RTE, etc., were not applicable to J & K due to lack of good governance.
- The Corruption Prevention Act of 1988, the Indian Penal Code, the Domestic Abuse Act, the Religious Institutions Act of 1988, the Forests Rights Act, the Wild Animal Protection Act and the Urban Land Ceiling Act do not apply in J & K. In J & K, CBI has limited jurisdiction too.
- Anti-defection provisions are also weakened in J & K for anti-party activities; Although the minister's quota for different incentives is everywhere at 15 percent, in J & K it is at 30 percent. It leads to profit for the few people running the state when reasons are false.

Article 370 has been consistently misused and exploited to provide for political purposes which are contrary to national interests. Since Article 370 has recently been repealed, it will now allow society to change. The following changes are expected to take place:

- Central government schemes, particularly underprivileged ones, would benefit the State.
- State infrastructure would improve; jobs would come from schemes such as MNREGA.

---

<sup>7</sup> 73<sup>rd</sup> & 74<sup>th</sup> Constitutional Amendment Act

- Investment-driven development will be created through a peaceful climate.
- Growth and development will result in less militant-related incidents.
- This will explore abundant natural as well as artificial capital.
- There should be State growth in all areas leading to foreign investment.
- Law and order would improve as SC's orders in the state will be valid. The parliament could make laws on more topics for J & K's people.
- Sharia law will be repealed and RTI, CAG and Right to Education will be available, which will allow people enjoy better growth fruits.
- The repeal of Article 370 will definitely have minimal terrorism.
- Manufacturing sector will expand, leading to an increase in GDP and revenue, i.e. an increase in net income, production, more employment and employment, indirectly reducing youth terrorist activity.
- Rates of corruption can decrease helping progress in the state.
- Competition will increase, success for students will also boost opportunities for the state.
- Modern basic facilities will become open to all, and medical services will also continue to expand as policy gains power and policies extend to the state.
- This decision could help resettle the devastated Kashmiri pundits back home, which would be a major win.
- No more violence against women who had been stripped of property rights following marriage outside the state.

BURNISHED LAW JOURNAL

## CASES, INCIDENTS AND STATISTICS

Ajay Kumar Pandey v. State of Jammu and Kashmir<sup>8</sup> - In this case an exception was made in which the Sc allowed a criminal case for moving from J & K to a court outside the state. Yet it was earlier held that it did not have the power to pass cases. Under normal circumstances, Section 25 of the Civil Procedure and Section 406 of the Criminal Procedure Code required cases to be transferred but this provision did not apply to Jammu and Kashmir and was deemed to be inapplicable. Article 370 was the catalyst that stopped this from occurring. Kashmir Code of Civil Procedure, 1977 has no such clause and thus transfers in the state of Jammu and Kashmir could

---

<sup>8</sup> 19<sup>th</sup> July, 2016

not be given in specific cases. It can be seen that Article 370 was breaching fundamental laws and rights. Previous transfers of cases were stopped which could potentially cause judicial obstruction.

Vipul Kaul incident - Vipul a 13-year-old boy, a resident of J & K suffered from multiple illnesses. He was alive because his family provided him with medicine which cost them a lot. The family submitted a petition to the J & K government in 2001 for support of some amount. They were assured by the government but the assistance ultimately stopped due to change of government. The home ministry intervened and the government was advised to restore the assistance. They wrote that they were under no duty under Article 370 to force the orders of the home ministry. A 13-year-old 's life was in danger only because of this illegal article 370. Because they used Article 370 as a tool and as a play card to their advantages, basic values of social justice were unavailable to them.

Protection of Human Rights Act, 1993 inapplicability in J & K – In one instance, Mohan Lal was subjected to barbaric torture and eventual death. When attempting to intervene the National Human Rights Commission (NHRC), J & K cited Article 370 and refused to participate in the proceedings. The misuse of Article 370 has been evident in numerous cases, these events were of grave concern as they triggered many deaths of custodians and unlawful encounters but Article 370 has always served as a shield covering the historical blunder. Since 1989 more than 41,500 people have lost their lives in J & K because of militancy. <sup>9</sup>

## CONCLUSION

Article 370 has served as a major obstacle between the Kashmiri people's relationship with the Indians. Persons were stripped of their privileges in the name of this article which are protected by the constitution. Due to weak state administration Kashmir faced problems. The special-status provision has done more harm than good. Now, because of the scrapping of Article 370, J & K is fully brought under Indian union which will help in the proper administration of the State. J & K has always been an integral part of India this momentous decision to no longer grant it a special status has given an opportunity to put back J & K's socio-economic goodwill.

---

<sup>9</sup> Amit Shah in Lok Sabha 2019



For a stable country, every state like J & K must be a full part of the national mainstream. Nobody else has a greater interest in peace and prosperity than an ordinary Kashmiri, having endured three decades of violence. Doors to private investment in J & K will be opened which in turn will increase growth capacity. Increasing investment will increase job creation and development of the state's socio-economic infrastructure. Opening up land purchases will attract investment from private individuals and foreign corporations stimulating the economy.

## BIBLIOGRAPHY

- J & K & the politics of Article 370: Seeking legality for the illegitimate by Amitabh Hoskote, Vishakha Hoskote
- Article 370: a constitutional history of J & K by A G Noorani
- International Journal of Law- Article 370 of Indian constitution: A study in specific reference to legal dimensions & implications
- International Journal Of Creative Research Thoughts (IJCRT) – Article 370 & its implementations
- Article 370 of the constitution of India: Need parliamentary Debate by Tarunjoyti Tewari
- Article 370: Advantages and Disadvantages – a research paper
- The real face of Article 370 of Constitution of India by Daya Sagar
- Economic Times
- The Times of India
- Indian Express

## WEB REFERENCES

- Jstor
- [www.researchgate.net](http://www.researchgate.net)
- [www.thehindu.com](http://www.thehindu.com)
- [scholar.google.com](http://scholar.google.com)
- [books.google.co.in](http://books.google.co.in)