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ARTICLE 370 OF THE CONSTITUTION-AN OVERVIEW

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Abstract : Indian constitution is a standout amongst the most proficient composed constitution that any nation has ever produced. The purpose for this paper is intended towards investigating or exploring about the article 370 of the constitution, purpose, advantages

I. INTRODUCTION

Article 370 of the Indian constitution gave special status to Jammu and Kashmir a region located in the northern part of Indian subcontinent which was administered by India as a state from 1954 to 31 October 2019, and a part of the larger region of Kashmir, which has been the subject of dispute between India, Pakistan, and China since 1947—conferring it with the power to have a separate constitution, a state flag and autonomy over the internal administration of the state. The article was drafted in Part XXI of the Constitution: Temporary, Transitional and Special Provisions. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether. After consultation with the state's Constituent Assembly, the 1954 Presidential Order was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending the abrogation of Article 370, the article was deemed to have become a permanent feature of the Indian Constitution.

On 5 August 2019, the Government of India issued a constitutional order superseding the 1954 order, and making all the provisions of the Indian constitution applicable to Jammu and Kashmir based on the resolution passed in both houses of India's parliament with 2/3 majority. Following the resolutions passed in both houses of the parliament, he issued a further order on 6 August declaring all the clauses of Article 370 except clause 1 to be inoperative. In addition, the Jammu and Kashmir Reorganisation Act was passed by the parliament, enacting the division the state of Jammu and Kashmir into two union territories to be called Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The reorganisation took place on 31st October 2019.

II.OBJECTIVES

1. To study the purpose of implementing article 370 in the state of Jammu and Kashmir
2. To differentiate the advantage and disadvantage of article 370

III PURPOSE

The state of Jammu and Kashmir's original accession, like all other princely states, was on three matters: defence, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular Saurashtra Union, Travancore-Cochin and Mysore. Even though the States Department developed a model constitution for the states, on 19 May 1949, the rulers and chief ministers of all the states met in the presence of States Department and agreed that separate constitutions for the states were not necessary. They accepted the Constitution of India as their own constitution. The states that did elect constituent assemblies suggested a few amendments which were accepted. The position of all the states (or unions of states) thus became equivalent to that of regular Indian provinces. In particular, this meant that the subjects available for legislation by the central and state governments was uniform across India

In the case of Jammu and Kashmir, the representatives to the Constituent Assembly requested that only those provisions of the Indian Constitution that corresponded to the original Instrument of Accession should be applied to the State and that the state's constituent assembly, when formed, would decide on the other matters. Government of India agreed to the demands shortly before the above meeting with the other states.[note 1] Accordingly, the Article 370 was incorporated into the Indian Constitution, which stipulated that the other articles of the Constitution that gave powers to the Central Government would be applied to Jammu and Kashmir only with the concurrence of the State's constituent assembly. This was a "temporary provision" in that its applicability was intended to last till the formulation and adoption of the State's constitution. However, the State's constituent assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. Thus, the Article was considered to have become a permanent feature of the Indian constitution, as confirmed by various rulings of the Supreme Court of India and the High Court of Jammu and Kashmir, the latest of which was in April 2018. The clause 7 of the Instrument of Accession signed by Maharaja Hari Singh declared that the State could not be compelled to accept any future Constitution of India. The State was within its rights to draft its own Constitution and to decide for itself what additional powers to extend to the Central Government. Article 370 was designed to protect those rights. According to the constitutional scholar A. G. Noorani, Article 370 records a 'solemn compact'. Neither India nor the State can unilaterally amend or abrogate the Article except in accordance with the terms of the Article.

Article 370 embodied six special provisions for Jammu and Kashmir: Central legislative powers over the State were limited, at the time of framing, to the three subjects of defence, foreign affairs and communications.

1. Other constitutional powers of the Central Government could be extended to the State only with the concurrence of the State Government.
2. The 'concurrence' was only provisional. It had to be ratified by the State's Constituent Assembly.
3. The State Government's authority to give 'concurrence' lasted only until the State Constituent Assembly was convened. Once the State Constituent Assembly finalised the scheme of powers and dispersed, no further extension of powers was possible.
4. Article 370 could be abrogated or amended only upon the recommendation of the State's Constituent Assembly it exempted the State from the complete applicability of the Constitution of India. The State was conferred with the power to have its own Constitution.
5. Central legislative powers over the State were limited, at the time of framing, to the three subjects of defence, foreign affairs and communications.

IV HUMAN RIGHTS

Education and employment rights

The state government officials of Jammu and Kashmir have issued "permanent resident certificates". However, these certificates differ by gender. The certificates issued to females are marked "valid only till marriage", while certificates for males have no such markings. If a woman married to an Indian outside of Kashmir, she was denied a new certificate. These certificates are required by the Jammu and Kashmir state officials from anyone seeking to acquire immovable property, education or employment within the state. Under the state laws, the Jammu and Kashmir High Court quashed the appointment of Susheela Sawhney in 1979 – a Kashmiri-born woman, as assistant professor in the Government Medical College because she was married to a man outside of Kashmir. Numerous other women – such as Sunita Sharma, Anjali Khosla, Abha Jain, Kamla Rani, Reeta Gupta, and others – sued the state government on different but related matters, charging discrimination based on their gender. These cases were reviewed in 2002 by the full bench of the state's High Court, which overturned the past rulings and found that the state has discriminated based on gender. According to Cottrell, the autonomy and special status granted to the state of Jammu and Kashmir makes it possible "for it to have rather lower standards of human rights"

V WOMEN'S RIGHTS

In 2004, the Jammu and Kashmir Legislative Assembly passed the Permanent Residents (Disqualification) Bill – also known as the Daughter's Bill. The new law sought to deprive daughters of the state's permanent residents [note 8] of all their native-born rights and privileges if they marry someone who is not the subject of Jammu and Kashmir. This law applied only to the female descendants of Kashmir subjects, and does not apply to the male descendants.

According to Sehla Ashai, per its provisions, "the women who married non-state subjects [men from other states of India or abroad] could no longer claim state subject status, would thereby lose both preferential treatment in government hiring and the ability to acquire new property in the state". The opponents to this bill argued that this is a "violation of Kashmiri women's fundamental rights under the Indian Constitution" and that the bill discriminated human beings by their gender. The supporters argued that if this bill failed to pass it "would be the end of constitutionally guaranteed autonomy for Jammu and Kashmir" and that the law was created to "protect the ethnic identity of the people of Jammu and Kashmir". The bill was supported by the state-based Jammu & Kashmir National Conference Party and Jammu and Kashmir Peoples Democratic Party, but challenged by the Indian National Congress party. It was reintroduced in J&K legislative houses in August 2004 as an amendment to the state constitution, but it failed to pass the Upper House of the state by the required two-thirds majority.

In 2010, the Permanent Residents (Disqualification) legislation was reintroduced in the state's legislative houses, with support from the two main state-based parties. It again attracted criticism that "such bills have no sanction in the legal and constitutional history of the state or in Article 370

Advantages and disadvantages of article 370

Table 1: Advantages and Disadvantages of article 370

Sl.no	Advantages	Disadvantages
1	Attempts to unite Kashmir with other states of India	Instilled insecurity in the locals as they have to give away their dual citizenship
2	Propagates One Nation One Constitution Slogan	Kashmiri Muslims feel it threatens the state's unity and integrity
3	Open doors for growth and development in	Add on to the political vulnerability and instability in the Valley
4	Private investors can invest and boost the economy of the state	Hampers the delicate relationship with Pakistan. It is like a nail in the coffin
5	Better medical and education facilities can be provided to the residents of the Valley	Implants the seeds of insecurity in certain section of citizens.
6	Central government can curb corruption since it is a UT now.	The implementation of the abrogation of Article 370 is a threat to the democracy. It is an attempt

		to polarize and appease the Hindu population in the valley
7	Authorities are in a better position to curb terrorism and instill peace in the Valley	Safety of Kashmiri girls is questioned. Certain Hindu fascists have threatened to marry girls of the region. This is out rightly sexist.

VI CONCLUSION

The Article 370 is changeless and won't be annulled according to before judgment of Supreme Court of India. India and Pakistan are guaranteeing over the place that is known for J&K however in all actuality it's as yet debated arrive. This Article will remain insofar as joined country will constrain India and Pakistan to lead plebiscite in entire Kashmir not by tuning in to India or Pakistan but rather the voices of Kashmiri individuals. We trust that the general population of J&K should choose on the off chance that they might want to remain with India or not. For that plebiscite should be directed and at exactly that point can some other approaches or moves be made calmly and viably. We need to concede that India's military quality or we can state powerful run without a plebiscite will doubtlessly prompt more bloodshed in the area and monetary ramifications for the entire of India without an assurance that Pakistan won't strike back at a later point in time. The contribution of UN conveyed a global measurement to this contention, a "snare" which would end just when the Kashmir issue is tastefully settled. The control and directions which has been given or characterized in Article 370 must be executed legitimately and entirely in province of J&K. J&K is the most burning issue which should be comprehended however is pending since more than Sixty years of freedom because of a few errors committed by the legislators. This is the opportune time to take legitimate choices with respect to the status of Jammu and Kashmir, if appropriate advances are not taken now then it is conceivable that issue will fire up more in coming future and will keep Jammu and Kashmir from improvement even the entire world will be developed. Need of plebiscite and re-election of constituent assembly becomes necessary.

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