



## Relevance of the Article 370 in Making Jammu and Kashmir an Integral Part of India

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**Abstract :** The research study is an analysis of the relevance of the Article 370 of Indian Constitution and of the constitutional placement of the state in the federal structure of India. Politics and media have made the issue widely approachable to the politically conscious people to be well aware of the past and present relevance of this Article. The recent debate over the abrogation of Article 370 has drawn a great deal of attention. This study involves the study of the process of constitutional integration of the state into Indian union, its special relationship with the union, the implications of the clause and sub-clauses of the article and an attempt to clarify the overlapping of Article 1 and 370 of the Indian

Constitution. This work has been research is done through field work. A questionnaire was prepared for the respondents. The framers of Indian Constitution gave special status to the state to bring it under its jurisdiction as the state representatives in the deliberation of the Constituent Assembly of India favoured the exclusion of their state from its constitutional organization. But, in globalizing world this is an anachronism, for it distances the people of Jammu and Kashmir from the rest of India and the world. This paper discusses this aspect also.

**Keywords :** *abrogation, Integration, anachronism.*

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### Introduction :

With Jammu and Kashmir's accession to India in 1947, it became necessary to define the constitutional relationship with the Indian Union. This was done by adoption of Article 370 in the Indian Constitution. Article 370 in the Indian Constitution defines the special relationship of the state with the Indian Union. It also defines the mechanism for managing centre-state relations with specific reference to Jammu and Kashmir. Article 1 and the First Schedule of the Constitution govern the state's integration. Article 370 is embodied under chapter XXI labelled as temporary

provisions with respect to the State of Jammu and Kashmir. No other provision of the Indian Constitution has ever evoked so much emotion and passion as Article 370 has done over the last few decades.

Article 370 of the Indian Constitution guarantees special autonomy to the state of Jammu and Kashmir. It has a long and significant historical background. The history of reorganization of the Indian states clearly shows that the reorganization of the state of Jammu and Kashmir is difficult due to the internal and external exigencies in Jammu and Kashmir, which make it a special case, prevents its reorganization, and history both recent and past bear testimony to that (Peerzada 2013). On 14<sup>th</sup> August, 1947 Government of India Act 1935 was adopted. Section 6 of the Act provided that “an Indian state shall be deemed to have acceded to the dominion if the Governor General has signified his acceptance of an Instrument of Accession executed by the ruler” (Swamy 2013). No last date was mentioned in the Act or the Instrument of Accession by which a ruler was supposed to sign the accession deed. The ruler of Jammu and Kashmir, Maharaja Hari Singh did not exercise the option immediately but later, unable to handle the situation and bowing before the wishes of the people, Hari Singh signed the Instrument of Accession. Thus Jammu and Kashmir became legally and constitutionally a part of the Indian Union.

#### **Objectives :**

The main aim and objectives of the study are:

- (a) To analyze Article 370 of the Indian Constitution.
- (b) To examine the factors that led to the rise of militancy and terrorism in Kashmir.
- (c) To suggest inclusive policies so as to bring the militants back to mainstream and thus contribute to national integration.

- (d) To create awareness about Kashmir being an integral part of India and thus emphasize on the unity and integrity of the nation.
- (e) To study the utility and relevance of UN Security Council Resolutions in relation to Jammu and Kashmir in the present scenario.

#### **Hypotheses :**

- (a) Article 370 politically separates Kashmir from the rest of India and is to some extent responsible for the separatist tendency in Kashmir.
- (b) The removal of Article 370 would be unwelcomed by majority of Kashmiris.
- (c) Historically, legally, socially and politically the state of Jammu and Kashmir has been an integral part as well as immutable part of India.

#### **Article 370: Implications and Issues**

The text of the Article 370, labelled as ‘temporary provisions with respect to the state of Jammu and Kashmir’, is an enabling provision that allows for the constitutional difference between the state of Jammu and Kashmir and the rest of the territory of Union of India. The implications of the clauses and sub-clauses of this article need to be analysed and comprehended to gain a perspective on the role Jammu and Kashmir has played in its social, economic and political development (Singh 2014). The foremost implication of this article is the legislative exception that it bestows upon the state of Jammu & Kashmir (Lavakare 2005). There are a number of legislations that do not apply to the state since consultation with the State Government failed or there was no concurrence. Some of them are: Indian Penal Code (1860), Prevention of Corruption Act (1988), Human Rights Act. 1993 etc. do not apply to Jammu and Kashmir.

There are certain constitutional provisions that do not apply to the state of Jammu & Kashmir or are applicable in a limited manner, as per the order of the President. Article 31 C is the provision that prohibits challenge on certain grounds to a law passed to effect any Directive Principle of State Policy, has been declared to be not applicable to Jammu & Kashmir. Article 172 which fixed the term of the State Legislatures as five years is not applicable to Jammu & Kashmir, and some others as well. There is an implication surrounding the word “concurrence”. Article 370 is beyond the scope of the power of the Parliament with respect to the State of J&K, and “concurrence” does not even play a role in these (Singh 2014). Contrary to popular belief, the imposition of restriction on non-permanent residents as to the buying of immovable property in the State of Jammu & Kashmir does not emanate directly from Article 370. Article 35 A inserted in the Constitution in 1954, prevents persons who are not permanent residents to own land in Jammu & Kashmir. The next implication that must be analysed is the significance of the word “temporary” as used in Article 370 whose heading reads as “temporary provisions with respect to the state of Jammu and Kashmir”. The Constitution does not provide a life-span for this word. It does not provide any condition upon the happening or nonhappening of which the temporary provisions shall cease to have validity. So, for all practical purposes, the use of the word temporary implies an indeterminate life of Article 370.

Article 370 is the most controversial article of the Indian Constitution. Both B.R. Ambedkar and Sardar Patel opposed Article 370. Dr. B.R. Ambedkar had stated to Sheikh Abdullah on the issue of drafting of Article 370 that “You wish India should protect your borders, she should build roads in your area, she should supply you food grains and Kashmir should get equal status as India (Pathikrit 2014). But Government of India

should have only limited powers and Indian people should have no rights in Kashmir. To give consent to this proposal, would be treacherous thing, against the interests of India and I, as the Law Minister of India, will never do it.” Shyama Prasad Mookerjee, the founding president of BJS the earlier avatar of the BJP was totally against incorporation of Article 370 in the Indian Constitution. Shyama Prasad Mookerjee termed the arrangement under Article 370 as the ‘Balkistan of India’ (Choudhary 2014). Recently, Narendra Modi led government in its first week stirred up controversy when its newly appointed Minister Jitendra Singh, a junior minister in the Prime Minister’s office, made a statement that they are in process of repealing Article 370 and are in talks with the stakeholders. Omar Abdullah tweeted that Jammu and Kashmir will not be part of India if Article 370 is abrogated.

### **Result and Discussions :**

Through this empirical study views of the respondents were recorded which ultimately served the purpose of understanding the past and present relevance of Article 370. The research made us grasp the consequence of Article 370 in the social, economic and political development of Jammu and Kashmir with that of the rest of India.

On the issue of the relevance of the Article 370, 72 per cent of the respondents condemned the article as an impediment to the full integration of Jammu & Kashmir into the Indian Union. The important consequence of the Article has been isolation of the people of Jammu and Kashmir from the rest of India. 22 per cent of the respondents disagreed. They proposed that since Article 370 is the part of Indian constitution it cannot be an impediment in its integration. Article 370 connects Jammu & Kashmir with the rest of India and if it is abrogated, the accession of the state with India will automatically become redundant.

To the query over whether the Article 370 politically separates Kashmir from the rest of India. 58 per cent of the respondents advocated that the exclusion of the Jammu & Kashmir from the constitutional organization of India has isolated the state from mainstream of the political development. In due course of time it has pushed it into a separate orbit of political operatives isolating it from the rest of the country. 36 per cent of the respondents favoured the Article 370 as a bridge that connects Jammu & Kashmir to India and brings it into the Indian political arena. There are some other states besides Jammu and Kashmir which too have exclusive Constitutional provisions. On the issue over the rise of militancy and terrorism in India 54 per cent of the respondents proposed that due to the provisions of Article 370 merging of Jammu & Kashmir into Indian Union has been delayed and, taking advantage of it, Pakistan is propagating separatist movement and terrorism in the state. Therefore, territorial boundaries are endangered. The dissatisfaction of basic and standard needs among them has led to rise in terrorism to the some point, while 42 per cent of the respondents proposed that since the state of Jammu & Kashmir has special privileges and status through article 370 guaranteed by the constitution of India, which other states of India do not have, gives no cause for agitation to the people of this state that can give rise to militancy and terrorism in India.

On the question whether the abrogation of the Article 370 is best suited for federal structure of the Indian union, 56 per cent of the respondents proposed that the powers which are reserved for Jammu and Kashmir include the subjects in the union list and the concurrent lists (unlike in context of other states of India) in relation to the state along with all other residuary powers, including the subjects in the state list. The state has much greater measure of autonomy and power than other states and centre's jurisdiction within the

state is more limited than what it has with respect to other states. On the opinion over the abrogation of the Article 370, 64 per cent of the respondents proposed that the Article can be abrogated without any constitutional burden. The Article predetermined that India's President needed to consult the state Constituent Assembly before abrogating it. The Constituent Assembly of the state was a temporary arrangement with its main task being the ratification of the Instrument of Accession. It was disbanded in 1957 thus invalidating this clause (Teng 1990). While 18 per cent of the respondents proposed that Article 370 can be revoked only if a new Constituent Assembly of Jammu & Kashmir is convened and is willing to recommend its revocation. Of course, Parliament has the power to amend the Constitution to change this provision. But this could be subject to a judicial review which may find that this clause is a basic feature of the relationship between the State and the Centre therefore, cannot be amended.

On the opinion over whether the abrogation of the Article 370 would be unwelcomed by the majority of Kashmiris, 36 per cent of the respondents advocated that to preserve the state's so called 'Kashmiriyat' culture, people of the state would not welcome any tampering with the special provisions of Article 370 of the Indian constitution. They will not let go the position of being the most subsidized state of India and will even want more autonomy to stop the ongoing insurgency whereas 44 per cent of the respondents advocated that today the general sentiment in the country is that Article 370 is doing no benefit to the people of Jammu & Kashmir. It has just become a barrier in the path of development of the state and the country. On the evaluation over the role of central government in respect of Jammu & Kashmir Indian media have reportedly been glorifying the efforts of central government in sending army and other para military troops in Kashmir to protect it from the

internal and external threats since its integration into Indian union. Separatism has grown among the people who feel disconnected from the structures of power and the process of policy formulation which the central government has with respect to other states.

Over the involvement of United Nations in the matter of the Article 370, 18 per cent of the respondents stated that it would be positive. Its involvement would give a proper and acceptable solution relating to the matters of Article 370 which would shape the relations between Jammu & Kashmir and the rest of India. 52 per cent of the respondents stated that it would act as a hindrance, since the matter of Article 370 is an internal affair of the Indian Union.

From the data collected 30 per cent of the respondents felt that it would make no difference to India as India is a fast emerging economic power and no external interference even that of UN could make any difference to the unity and integrity of the nation.

82 per cent of the respondents were against the idea of plebiscite in Jammu & Kashmir as it is an integral part of India and there was no need to take any opinion of the people on this issue. Although 8 per cent of respondents felt that plebiscite should be held in Jammu & Kashmir similar to recent referendum in UK but all of them agreed that majority of people would vote in favour of integration of Jammu and Kashmir with the Indian Union.

### **Conclusion :**

The study is focussed on the analysis of the relevance of Article 370 of the Indian Constitution and of the constitutional placement of Jammu & Kashmir in the Indian federal structure, as a sub-national identity, which reveals much and can serve as an indicator for any reconsideration of the

federal relations the Constitution of India embodies. Jammu and Kashmir has been governed by two sets of constitutional provisions.

In reality, the position that the Jammu & Kashmir has secured in Indian Constitution by virtue of Article 370, emanates from the provision underlined by Article 1. It applies to the state by itself and brings the state within the limits of the territories of the Union and the ambit of its jurisdiction. Article 1 is an independent constitutional instrument and thus, instruments created by Article 370 depend upon the provisions of Article 1. In case Article 370 is abrogated, the applicability of Article 1 will not be affected. In such an eventuality the Jammu & Kashmir will be immediately placed, at par with the other states of the Indian Union. Article 1 accomplishes the accession of the erstwhile Indian States to the Indian Union. The State of Jammu & Kashmir became an integral part of the State of India, when it acceded to the Dominion of India by virtue of the Instrument of Accession.

The Preamble of the Indian Constitution proclaims the Union of India as being "Secular", the corresponding Preamble of the Jammu & Kashmir State Constitution does not acknowledge that the State is "Secular". In order to permanently and justly settle the issue of Kashmir, abrogation of Article 370 should be immediately followed by re-organization of the state into four distinct entities, Jammu, Ladakh, Panun Kashmir and Kashmir. The territory would also be converted into an economic zone attracting the best of Indian industrial talent, especially high technology. Kashmiri language, culture and traditions would be preserved within this territory, which would integrate with the rest of secular India at much faster pace than the remaining portion of the valley. It would be the only effective means for India to regain the foothold it lost decades ago in the valley.

In the light of the above discussion, the ultimate goal of the Indian government should be to bring Jammu & Kashmir within the mainstream of the Indian Constitution without Article 370. Public Interest Litigation should be taken to the Supreme Court to permit the purchase of immovable property in Jammu & Kashmir. There should be equal economic development of Jammu, Kashmir and Ladakh region. The Government should examine the historical mistakes that were made and that included rigged elections and the denial of basic political rights. The whole Federal structure of India needs to be overhauled without giving preferential treatment to any state.

The repealing of Article 370 has been a poll promise of the BJP. It also opposed the special status for a long time and had earlier claimed that it could not repeal the Article 370 during Vajpayee government due to lack of majority. However, the purpose of BJP would be served, even if it tables the bill seeking abrogation of the Article 370. The process needs to be accelerated so that the ultimate objective of complete integration is achieved.

#### **References :**

##### **Books :**

- Lavakare, Arvind (2005). *The Truth About Article 370*. Mumbai : Rambhau Malghani Prabhodhini.
- Teng, Mohan Krishen (1990). *Kashmir: Article 370*. New Delhi : Anmol Publications.

##### **Journals :**

- Chowdhary. Rekha (2014). "BJP's Response to Article 370: from Mukherjee to Modi". *Rising Kashmir*.
- Pathikrit (2014). 'The Fallacy of Article 370 and Why it Deserves to be Abrogated'. *One India News*.
- Singh, Akansha Sunil (2014). 'Implications of Article 370: Impediments to Solving the Jammu and Kashmir Crisis'. *Ilnejournal*, p. 6-7
- Swamy, Anshuman (2013). 'Process of Constitutional Integration of Jammu and Kashmir'. *The Inquisitive Meridian*. Volume I. Issue 2, ISSN 2347-6257, p. 2-3, 5-6.

##### **Magazine :**

- Peerzada. Haifa (2013). 'Reorganization of the State of Jammu and Kashmir'. *The Globalised Post*.

##### **Links :**

- <http://thegwpost.com/2013/09/16/reorganisation-of-the-state-of-jammu-and-kashmir> (retrieved 10.09.2014).
- <http://ikashmir.net/article370/doc/article370.pdf>. 09.2014 (retrieved 07.10.2014).
- <http://www.dailypioneer.com/columnists/ope/good-governance-t-to-most-iss.html> (retrieved 10.10.2014).