

A Critical Study of The Need of Repealing of Article 370 & 35 A of The Constitution of India in The Interest of The Nation



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Abstract

Article 370 of the Constitution of India. Article 370 of the Indian constitution is an article that gives autonomous status to the state of Jammu and Kashmir. The article is drafted in Part XXI of the Constitution: Temporary, Transitional and Special Provisions. Repealing of the Article is the need of the day. Repealing Article 370 is an utmost difficult job or I can say that it is near to impossible till any drastic political upliftment takes place in Indian politics. The Comment of High Court that Article 370 cannot be "abrogated, repealed or even amended" caused much shock to those all over India and even in J & K who want it to be repealed and abrogated in the interest of the nation.

The politicians take the Article 370 of the Constitution of India the root cause of several problems being faced in J & K and in India. Every now and then there are the voices against this Article, but no final solution has been made to it. At the time when the Constitution of India was drafted, it was believed that it would serve only as a temporary and short termed Article, and that later it would be repealed and amended, but nothing like it has happened yet. It has caused much hot controversy among the people over it.

Obviously, as it is stated by most of the thinkers, now the Article 370 has no relevance, and that it is being problematic from various angles, there is an urgent need of its abrogation and amendment.

The paper serves as a mirror to the various positive and negative aspects of the Article 370 of the Constitution of India. The study made with historical approach, gives a sufficient room both to the primary data collected casually through discussions and debates and interview guide and the secondary data collected through the various traditional and modern sources. The study observes all the steps of social research required for a legitimate scientific study and research.

Keywords: Indo-Pak Separation, Kashmir Problem, Rehabilitation, Migration, National Integration, National Peace, Special Status, Privileges, Political Issue, Terrorism, Tolerance

Introduction

The Constitution of India is the soul of the socio-political system of the country. Its provisions envisaged under its articles are meant for the welfare of the nation. Each of the Articles in the Constitution is relevant in itself, but its Article 370 which relates to Jammu and Kashmir is found irrelevant at present for several reasons, and hence, there have recently been cries and voices against its existence and continuance, and for its abrogation and amendment in the interest of the nation and people. No doubt, the people are divided over the issue, still the majority wants it to be amended at the earliest possible in order to safeguard the interests of the nation as a whole.

The Constitution of India on Article 370

370. Temporary provisions with respect to the State of Jammu and Kashmir

1. Notwithstanding anything in this Constitution,
 - (a) the provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;
 - (b) the power of Parliament to make laws for the said State shall be limited to

- (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
- (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify Explanation For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharajas Proclamation dated the fifth day of March, 1948 ;
- c. the provisions of Article 1 and of this article shall apply in relation to that State;
- d. such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government
2. If the concurrence of the Government of the State referred to in paragraph (ii) of sub clause (b) of clause (1) or in the second proviso to sub clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon
3. Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification

Article 370, thus, imparts Jammu & Kashmir a special status and allows certain privileges as well as limitations and restrictions.

The Constitution of India on Article 35A

Text of the Article

"Saving of laws with respect to permanent residents and their rights. — Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State."^[10]

- a. defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or
- b. conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—
- employment under the State Government;
 - acquisition of immovable property in the State;
 - settlement in the State; or
 - right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this part."

Justification of The Topic

Article 370 which allows Jammu & Kashmir the status of being a special state has always been controversial. It was relevant at the time when the Constitution of India was drafted and implemented. It has been the bone of contention between India and Pakistan. At present there are the thinkers and scholars who feel that it is obsolete and so it should be removed from the Constitution for the sake of the political finality of Jammu and Kashmir. The selection of the topic for the study is all justified as it is the demand of time that for the sake of political freedom and peace, Article 370 must be removed. The hot debates on the issue during the last few decades moved the author to make a comprehensive study on the issue and to make suggestions through the study.

Objectives of The Study

Generic Objectives of The Study

- To go through the Constitution of India and to focus especially on Article 370 in order to interpret it in the present context.
- To spot out the salient features of Article 370.
- To be familiar with the causes that demanded its inclusion in the Constitution of India.
- To learn the consequences that the Article gave.
- To expand the horizon of knowledge, comprehension and understanding the Article 370.
- To brood over whether it's application at present is relevant or irrelevant.
- To find out the causes that demand its irrelevance at present.
- To find out and suggest the steps of the repealing of the Article.
- To suggest the various positive and negative consequences as a result of the repealing of the Article 370.
- To be familiar with the controversial views of the various writers and political thinkers on the issue.
- To classify the literature on the theme as per the requirement of the study.
- To review the literature on the issue available in the various sources.
- To apply the reviews while developing the thought.
- To synthesize the reviews with the contents of the study.

Specific Objectives of The Study

1. To study the provisions of Article 35 (a) and to evaluate its effects.
2. To go through the past of Jammu and Kashmir.
3. To have an idea about the status of Jammu and Kashmir at the time of separation of India and Pakistan.
4. To attempt to learn the situation in Jammu and Kashmir at the time when India got freedom in 1947 and when the Constitution came into existence in 1950.
5. To study Article 370 and its consequences for the sake of its comprehension and understanding.
6. To brood over the constitutional provisions that impart a special status to Jammu and Kashmir.
7. To study and be familiar with the various causes that made it binding to impart the status of a special and separate state.
8. To get lost in why the people make controversy over it.
9. To find out why Article 370 is considered irrelevant at present.
10. To assess the relevance of Article 370 for India at present.
11. To reflect the current socio-political scenario in Jammu and Kashmir.
12. To explore the various negative results of Article 370 in Jammu and Kashmir.
13. To ascertain the procedure of the removal and amendment of Article 370.
14. To explore the impact of Article 370 on national integration and harmony and peace.
15. To make a cause & effect relationship of implementation of Article 370.
16. To explore the possible results that are likely to occur when Article 370 no more finds room in the Constitution of India.

Review of Literature

Rashmi Sehgal (June, 2011) in Kashmir Conflict: Solutions and Demand for Self-determination finds that besides being the longest unresolved dispute in the World, Kashmir is also a nuclear flash-point between two of South Asia's enemy countries, India and Pakistan. India and Pakistan, both nuclear powers have several times engaged in fighting over the Kashmir region. Most Kashmiris, on the other hand have been fighting for their right of self-determination recognized by the UN for many decades. The promise made by the first Indian Prime Minister, Jawaharlal Nehru which is also envisaged in the Instrument of Accession of 1947 to let Kashmiris decide their future through a Plebiscite still eludes Kashmir.

In the past two decades, the region has been witness to a lot of violence which has also strained the relations between India and Pakistan. There have been several rounds of talks on Kashmir between governments of India and Pakistan. Sadly, there has not been any substantial positive outcome in resolving this dispute. The Kashmir dispute has been analyzed several times in terms of its impact, economical or political, on India, Pakistan and also Kashmir. An analysis through a Kashmiri point-of-view as to what the Kashmiris want and how the two decade long

conflict has affected their resolve for self-determination makes for an interesting research.

Amitabh Mattoo (December 6, 2013) in the article entitled 'Understanding Article 370' observed that Article 370 was and is about providing space in matters of governance, to the people of a State who felt deeply vulnerable about their identity and insecure about the future.

The Indian Express (12 October 2015)- Art 370 permanent...cannot be repealed or amended: HC. Article 370 cannot be "abrogated, repealed or even amended." It explained that the clause (3) of the Article conferred power to the State's Constituent Assembly to recommend to the President on the matter of the repeal of the Article. Since the Constituent Assembly did not make such a recommendation before its dissolution in 1957, the Article 370 has taken on the features of a "permanent provision" despite being titled a temporary provision in the Constitution.

The Hindu (October 15, 2015) in Importance of Article 370 observes that Article 370 of the Constitution is the current bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India. With its abrogation being an avowed policy of the Bharatiya Janata Party, the J&K High Court's recent observation that the provision has acquired a state of permanence may cause some disquiet in the party and the government.

Kunal Mukherjee (May 18, 2016) in the article entitled 'Indo-Pak Relations and the Kashmir Problem: From 1947 to the Present Day' observes that the Kashmir problem and the Indo-Pak hostility still remain in contemporary South Asia. The study produces an overview of the ongoing insurgency in Kashmir and has much to reveal the current situation in Kashmir. The author finds that from 1950s to 2015 the conflict in Kashmir has changed its character with the passage of time.

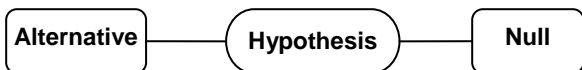
Rashid (March, 2017)-Article 35A of the Indian Constitution is an article that empowers the Jammu and Kashmir state's legislature to define "permanent residents" of the state and provide special rights and privileges to those permanent residents. It was added to the Constitution through a Presidential Order, i.e., The Constitution (Application to Jammu and Kashmir) Order, 1954 - issued by the President of India on 14 May 1954, exercising the powers conferred by the clause (1) of the Article 370 of the Indian Constitution, and with the concurrence of the Government of the State of Jammu and Kashmir.

Suhash Munshi (April 4, 2018) - In the Troubled History of J&K, it is Article 370 That Endures - The Supreme Court observed that article 370, which grants special status to Jammu and Kashmir, had acquired permanent status over years through years of existence, making its abrogation impossible.

Amrita Bhinder (June 21, 2018) in Why We Need To Get Rid Of Article 370 shares that for long now, there has been a concerted effort on both sides of the argument surrounding Article 370. While on the one hand, politicians such as Omar Abdullah, the former chief minister of J&K, believe that Article 370 is

the only constitutional link between the state and rest of India, there are many from across all spectrums who insist that Article 370 has, in fact, prevented the state from truly becoming an integral part of India.

The reviews made above make a clear reflection of the multifaceted picture of Jammu & Kashmir which is the result of Article 70 and 35A. Until these Articles are repealed, there will not be any peace between India and Pakistan, and J & K will continue to burn in the fire of violence and terrorism.



Hypotheses

1. Article 370 is an important Article in the Constitution of India.
2. The flag of Kashmir is different from the Indian flag.
3. Article 35 A is a barrier in the progress of the nation as it prevents the citizens of the other states of India to get the domicile of J & K; it does not allow the girls of Kashmir to marry the men of other states; it does not allow the capitalists and businessmen to invest their capital in J & K.
4. It imparts Jammu and Kashmir the status of being a special separate state with several special powers and privileges.
5. At the time of the Indian independence, it was the need of the day to impart a special status to Jammu and Kashmir.
6. It has ever since been developing enmity between India and Pakistan.
7. Article 370 is no more in the interest of the nation
8. This Article makes India politically weak.
9. The Article is being misused in Jammu and Kashmir in several ways.
10. The Article is responsible for Chaotic political situation in Jammu and Kashmir, terrorism and migration of the Kashmiri Pandits in particular.
11. The Article needs removal from the Constitution.
12. There is a constant growing demand of the repealing, amendment and abrogation of Article 370.
13. There are several reasons for the demand of its amendment.
14. The people including the thinkers and writers are divided over the amendment of the Article.
15. The procedure of the repealing and amendment of the Article is very long.
16. The removal of the Article can result into several advantages, such as, social, political, economic and legal ones.
17. The removal of the Article can bring about national integration and peace.

Methodology

For the purpose of the study and for writing the article on the theme, secondary data through some of the selected reviews were collected. The various sources of the secondary data adopted for the study were-books, journals, magazines, internet sites etc. However, at the same time, unplanned casual discussions with the people capable of discussing the issue of Article 370 were adopted as a source of primary data which helped the author strengthen his

knowledge and understanding of the burning issue of Article 370. In short, both the primary and the secondary data were used for the study.

Sources, Tools & Techniques

Primary Sources & Tools

Unplanned casual discussions with the capable and well-informed people representing the various sections of the society.

Secondary Sources & Tools

Newspapers, Books, journals, magazines, reference books, dissertations, theses, audios, videos and study material available on various internet sites.

Steps Undertaken For Study

1. Selection of the subject and topic.
2. Collection of the literature on the subject.
3. Hypothesis formulation.
4. Review-making of the literature.
5. Content analysis.
6. Collection of primary data.
7. Application of the reviews to the contents of the study.
8. Giving room to the causes and effects of the problem in the study.
9. Interpretation of the cause and effect relationship of the problem.

Findings

1. Kashmir problem and the Indo-Pak hostility still remain in contemporary South Asia.
2. Article 370 of the Constitution is the current bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India.
3. Article 370 imparts a special status to Jammu and Kashmir.
4. Article 370 has always given rise to hot and violent controversy resulting into enmity between India and Pakistan.
5. Kashmir is also a nuclear flash-point between two of South Asia's enemy countries, India and Pakistan.
6. The Kashmir dispute is the longest unresolved dispute in the world.
7. The Kashmiris demand their right of self-determination recognized by the UN.
8. The roots of the Kashmir dispute lies in the promise made by the first Indian Prime Minister, Jawaharlal Nehru to let Kashmiris decide their future through a Plebiscite which still eludes Kashmir.
9. The dispute has turned ' the heaven upon earth' into an ever burning place with violence alongwith terrorism.
10. In order to resolve the dispute and in order to bring about peace in the valley, there have been several rounds of talks between governments of India and Pakistan, but in vain.
11. The insurgency in Kashmir is still on move with an unseemingly result.
12. The period from 1950s to 2015 the conflict in Kashmir has changed its character with the passage of time.
13. Article 370 of the Constitution of India, which grants special status to Jammu and Kashmir, had acquired permanent status over years through

years of existence, making its abrogation impossible.

14. Article 370 of the Indian Constitution is responsible for the tragedy of Kashmir.
15. The only hope for the long -Kashmir dispute and problem lies in a settlement between India and Pakistan on the Four-Point Formula.
16. Most of the Kashmiris are in favour of self rule, but they are divided on it, and so they throw themselves into the fire of violence.
17. Controlled politics is there in Kashmir.

Steps for Repealing The Article

Step 1

Constituent Assembly of J&K should recommend its revocation to President of India.

Step 2

Under Clause 3 of Article 370 , President of INDIA may declare this article shall cease to be in operation by then .

Advantages of Repealing The Article

Economic Advantage

1. People from other parts of the country will be able to own land in the state of J&K.
2. Business persons will start investing in this state which will lead to development and progress
3. GDP of J&K will rise significantly in contrast to current trend which is very low
4. Revenues will rise
5. Tourism sector will get a huge boost

Social Advantage

1. Education sector will increase as private companies will invest in the field of education.
2. Employment will whoopingly rise in the state and thus, youth will not deviate towards stone-pelting.
3. Currently J & K is suffering badly with scarcity of medical facilities and there is no single private hospital available there. So, this problem will be solved.
4. Migration will take place and thus, competition will rise in the state and religious discrimination may come to an end.
5. As people from different religions, places, creed will be there then Political Scenario will definitely change as it is a need of hour.
6. People of Kashmir lack the basic modern facilities like high speed internet connectivity 24 hours electricity, 24 hours water supply etc. This situation will change.

Legal Advantage

1. After repealing it, the orders of Supreme Court will be equally valid on the state of J & K as to any other state of India
2. Power given to J & K by Article 370 along with Article 5 will break the contours of jurisdiction of Indian Parliament
3. Laws passed by the Legislator of India will be equally applicable on J&K without any mandatory passage of it by its state assembly.
4. RTI(Right to Information) will be applicable on it.
5. RTE (Right to Education) will be implemented.
6. J & K will come under the purview of CBI and CAG.
7. National emergency (under article 352), State emergency (under article 356) and. Financial

emergency (under article 360) will be applicable to J & K like any other state of India

Political Advantage

1. J & K will have same flag as that of India
2. J & K may have CM of any other religion in addition to Muslim as political scenario will change
3. Policies will not only be Muslims oriented and minorities will also be uplifted

In a nutshell, finally it can be laid down that the removal of the Article 370 and 35A from the Constitution is the utmost need of the day, and that in the interest of the nation it must be abrogated, repealed, amended and removed from the Constitution of India

Conclusion

Through the available literature and primary data collected casually through debates, discussions and information supplied by the small groups of the people living in the locality of the author, the study arrives at the conclusion that Article 370 of the Constitution of India was once significant under the impact of circumstances when the Constitution was written immediately after the separation of India and Pakistan in 1947, but now when it is being misused creating nuisance in the country, it is all irrelevant. Its amendment is essential, though the process of amendment is tediously long. The demand for its removal from the Constitution is desirably genuine.

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