

LEGALFOXES LAW TIMES

ABROGATION OF ARTICLE 370 IN LEGAL PERCEPTION

1. INTRODUCTION

Article 370 a 'temporary provision' provides special autonomy to the people of Jammu and Kashmir. According to Part XXI of the Indian Constitution, mentions it as a "Temporary, Transitional and Special provisions" This Article empowers the state of Jammu and Kashmir to have its Constitution, separate flag unlike other states of India. Even to follow the Indian Constitution was not mandatory. As a result, Jammu and Kashmir was entitled to make laws for its state relating to property, citizenship, permanent residents.

India gained independence from the British in the year 1947 and also Pakistan came into existence in the same year. 562 princely states existed during British India. The princely states enjoyed internal autonomy and the British had control over the foreign policy and international relations. After partition, Raja Hari Singh the former ruler of the princely state of Jammu and Kashmir declined to be a part of either India or Pakistan after independence and was willing to be an independent state. In October 1947, when the state was attacked by the Pakistan army Maharaja Hari Singh negotiated a legal document 'Instrument of Accession' and agreed to accede to the dominion of India. Thus, for implementing any laws in the state, the parliament has to seek permission from the J&K assembly. It was adopted and implemented by Sir N. Gopalswami Ayyangar. He mentioned the conditions in which Jammu and Kashmir will be provided with special treatment. The special circumstances may include when

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- when there is a war going on within the limits of the state of Jammu and Kashmir
- at the time of ceasefire going on in the state.
- when the conditions in the state have not settled down completely.
- when a certain part of the state is controlled by rebels or enemies.

The main objective for the incorporation of Article 370 in the Indian Constitution was because of the special circumstance provided by the Kashmir and the state said that special treatment for the state is necessary. The reference made by the state about special circumstances was specified in the case **Sampat Kumar Vs. State of Jammu and Kashmir & Anr.**¹.

2. ARTICLE 35A

In the year 1954 Dr. Rajendra Prasad issued a Presidential Order and there onwards Article 35A came into existence. Article 35A constituted a distinction of people of the Jammu and Kashmir from the citizens of India and the laws which apply to the entire country will not be applicable to the state of J & K in the same manner. It also mentioned the special rights and privileges to the permanent residents of the state of Jammu and Kashmir. It was inserted in the Constitution by the Jammu and Kashmir Order, 1954. It focused on aspects such as the acquisition of immovable property, employment for citizens under the state government, scholarship for students, right to vote, etc. This assistance excluded the outsiders of the state. Thus, permanent residents contemplated that people who are state subject of that state from 14 May 1954 or people residing for 10 or more years or persons who have lawfully acquired a property in the state. It also involves various limitations for permanent residents as when a Kashmiri woman marries a person from another state she will lose her property rights. According to the judgment of the Hon'ble Supreme Court in the year, 2002 held that the Kashmiri women will attain property rights even after marriage but cannot be transferred to her kids. Thus, Article 35A despite various privileges involves drawbacks too.

3. THE VALIDITY OF PRESIDENT RULE IN THE STATE OF JAMMU AND KASHMIR

On June 2018 governor rule began in the state as Article 92 of the Jammu and Kashmir Constitution specifies that in case of failure of constitutional machinery the governor will have a control in the state and in December 2019 President rule also known as state emergency was imposed in the state of Jammu and Kashmir under Article 356 of the Indian Constitution. Article 356 is inspired by section 93 of the Government of India Act, 1935 which provided that if a Governor of a province was not satisfied for the situation arose and contradicts the provisions of

¹ (1970) AIR 1118 (India).

the said Act, the Governor can discharge those functions in this discretion. A state of emergency can be declared under Article 356 on the recommendation of the governor of the state. The Central government takes direct control of the state and the Governor becomes the constitutional head.

Reasons for inflicting President Rule can be:

- The state legislature is inadequate to elect a leader as chief minister
- In case of breakdown of the coalition
- Loss of majority in the state assembly.

These above-mentioned attributes were the leading reasons for the imposition of president rule in the state. Also in the case, Puranlal Lakhanlal Vs. President of India and Ors². The five-judge bench mooted about the president's powers under Article 370. They reviewed the scope of the word 'modify' specified under Article 370. The court also remarked that the president has a total and absolute authority to modify the existing provisions or even amend or add new provisions as the court concede the authoritative power of the president.

4. OUTCOMES OF ABROGATION OF ARTICLE 370

In the year 2019, the Home Minister revoked the article 370 and 35A after the imposition of president rule in the state. Revocation of the Article has constituted an optimistic side for Jammu Kashmir state as well has for the entire nation. The most prominent characteristic lies in the concept of evading dual citizenship from the state. Originally, the persons of the state had to be a citizen of India and citizen of Jammu and Kashmir for being 'permanent residents' for attaining special rights and privileges. But now the notion is no more in existence and the Kashmiri pandit who had fled can return to their state. Another advantage particularizes concerning the Kashmiris that they would now be governed under the Indian Constitution and Indian laws that can aid the benefit of things such as the Right to Information and Right to Education. The conception of one flag and one Constitution will construe integrity among the people in a better manner.

²1961 AIR.1519 (India).

Revocation of Article 370 will also have a greater influence to boost economic development in an overall scenario. This will be a win-win situation for the Kashmiris and the inhabitants of other states of the country as the persons throughout the country can invest in the state of J & K and the commercial cost of the land will tend to escalate making it profitable for the landlords of the state. The opportunity of establishing enormous companies in the state will help expand the employment scope. Education opportunities in the state will also contribute to economic development. These aspects will also tend to mitigate crimes and terrorism.

The Schedule Cast and Schedule Tribe of the in Jammu and Kashmir together form 18% of the aggregate population. Article 370 had devoid the present group of SC's and ST's from the protection under the J&K constitution. But now these complications may not arise as they are safeguarded under the purview of the Indian Constitution.

5. CONCLUSION

The step taken by the Government to repeal the Article was a vital step to integrate the whole country and Article 1 of the Indian Constitution enumerates the term 'Bharat' which makes it clear that it not necessary to treat the state of Jammu and Kashmir or any other state differently. Article 370 created an immense barrier between the Kashmiri people and rest of the population apart from Kashmiris by depriving their rights. After 370 being struck down, it dismissed the special rights and privileges of the state and also treats the individuals of the states uniformly. Parliament is said to be the law maker in the country but in the matter relating to Jammu and Kashmir, the parliament had to take approval from the state legislature to pass any law or ordinance or any act unlike to pass a law in another state which creates differences between the states for its functions. Thus, repealing the Article will provide equal status and equal opportunity to all the citizens and are governed under the Indian Laws.