

THE ABROGATION OF ARTICLE 370

Written by *Kaushal Kasliwal*

3rd year BBA LLB Student, Prestige Institute of Management and Research Department of Law, Indore

ABSTRACT

Article 370 present in Part XXI of the Constitution of India and was included in 1949 in the Constitution of India as a temporary provision. But in 2019 the government of India decided to remove Article 370 which was a temporary provision from the Constitution of India. This research article aimed to study facts about the removal of Article 370. So to study the facts about the removal of Article 370 this research article analyses various aspects of removal of Article 370. At its first of its study, this research article analyses the history of Article 370 as to find out the fact about how Article 370 came into existence. Further, this research article also defines Article 370, and Article 35A as an addition to it. This research article also clearly signifies the reason why it was necessary to remove Article 370. This research article after reviewing various texts signifies the possibility to remove Article 370. Further, this research also in detail describes the process of how Article 370 was removed. Finally after conducting a study of removal of Article 370 this research article studies the impact of the removal of Article 370.

INTRODUCTION

Article 370 present in part xxi of the Constitution of India gave special status to Jammu and Kashmir state because of which this state enjoys special privileges. The application of Article 370 to Jammu and Kashmir state was a major deadlock in the development of this state. So on October 2019 government of India after a long debate removed Article 370 from the Constitution of India bypassing presidential order named as a Constitutional application to Jammu and Kashmir order 2019 and after passing this order the Article 370 was removed and Jammu and Kashmir state was given equal status like other states of India.

HISTORY OF ARTICLE 370

Jammu and Kashmir was a princely state like other state but after the independence of India in 1947, The Jammu and Kashmir state was attacked by forces of Pakistan. So at that time maharaja, Hari Singh who was a maharaja of this state to protect this state from the aggression of Pakistan asked help from the government of India. The government of India asked Maharaja Hari Singh to join the domain of India by signing an instrument of accession. Maharaja Hari Singh on 26th October 1947 signed Instrument of accession and agreed to join the domain of India. This accession was accepted by the governor-general of India Lord Mountbatten on 27th October 1947. But in 1949 when the Constitution of India was adopted. Then the future picture of the relationship of Jammu and Kashmir with India was not cleared. So to establish relations with Jammu and Kashmir Article 370 was inserted in the Constitution of Indiaⁱ. This article was a temporary provision and gave special status to Jammu and Kashmir by stating that Jammu and Kashmir state will have its separate Constitution and the provisions of the Constitution of India will not apply here. This article states that the legislature of India has control over only three subjects named external affairs, defense, and communications. Clause (3) of this article also states that after a recommendation from the constituent assembly of this state the Article 370 can be removed. Despite the application of Article 370, the rights of a permanent resident of Jammu and Kashmir was not cleared. So On 14th may 1954 the president of India Dr. Rajendra Prasad passed a presidential order named Constitution application to (Jammu and Kashmir) order 1954 and included article 35A in it which defines the rights of permanent residents of Jammu and Kashmir. In 1957 the constituent assembly of Jammu and Kashmir was dissolved without removing Article 370. So Article 370 was known to be the permanent provision of the Constitution. On August 2019 president of India by superseding presidential order of 1954 and passed a presidential order of 2019 and after the execution of this order Government of India introduced two resolution in the upper house one Jammu and Kashmir reorganization bill and other a bill to remove Article 370 which was passed by a two-thirds majority in the upper house by this Article 370 was removed from Indian Constitution.

DEFINING ARTICLE 370

1. According to Article 370, the state Jammu and Kashmir have their separate Constitution drafted by its constituent assembly, and this state is governed under this Constitution.
2. The power of parliament to make laws for the state of Jammu and Kashmir is limited to
 - a. Those matters which are in the union list and in the concurrent list which in consultation with the government of the state and are declared by the president of India correspond to matters specified in the Instrument of Accession-
 - b. Such other matters in the state list as with the concurrence of the state and as the president order may specifyⁱⁱ.
 - c. It has been held that the president has the power to vary, amend or modify a Constitutional provision in any way he deems necessary while applying it to stateⁱⁱⁱ. Article 370 empowers the president to modify a Constitutional provision not only when it is applied to that state for the first time, but he may subsequently also make amendments or modifications in such order as earlier issued^{iv}.

DEFINING ARTICLE 35A^v

1. It defines classes of people who are permanent residents of the state Jammu and Kashmir.
2. It confers on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respect to -;
 - (i) Employment under the state government.
 - (ii) Acquisition of immovable property in the state.
 - (iii) Settled in the state or
 - (iv) The right to scholarship and such other forms of aid as the state government may provide.

WHAT WAS THE REASON BEHIND REMOVAL OF ARTICLE 370?

Despite the signing of the instrument of accession and despite joining the domain of India the Jammu and Kashmir state can't become an integral part of India like other states because

Jammu and Kashmir state was given special status by application of Article 370 to this state so this state has its separate Constitution and provisions of the Constitution of India didn't apply here and the legislature of a union of India can't decide for this state except for 3 subjects and union government of India didn't have full access to this state because of which this state remained underdeveloped in comparison to another state of India and the incidents of violent activities were increasing day by day here due to lack of full control and access of union government of India to this state. So for establishing peace, for developing this state, and the most important reason for making this state an integral part of India the union government of India decided to remove Article 370.

IS IT POSSIBLE TO REMOVE ARTICLE 370?

Article 370 can be removed as Clause (3) of Article 370 empowers the president to declare by the public notification that provisions of Article 370 shall cease to exist or may be operated with some exceptions and modifications from the date he may specify. But it requires the recommendation from the constituent assembly of the state^{vi}.

HOW ARTICLE 370 WAS REMOVED?

On 5th August 2019 honorable President of India, Mr. Ram Nath kovind used his power in Article 370(1) and issued presidential order named Constitutional (application to Jammu and Kashmir) order 2019 superseding presidential order of 1954 with Immediate effect . After passing of presidential order of 2019 article 35A became inoperative and with this separate Constitution of Jammu and Kashmir also became inoperative and was finished. On the same day after passing of presidential order 2019, our honorable home minister Mr. Amit shah passed two resolutions in the upper house of parliament with a 2/3 majority. The two resolution were:-

- (1) Making of Article 370 inoperative.
- (2) Jammu and Kashmir reorganization bill.

Jammu and Kashmir reorganization bill states that two union territory will be created which will be -;

1. Leh which will include Kargil and Ladakh.
2. Jammu and Kashmir

Leh union territory will be without legislature and Jammu and Kashmir union territory will have a legislature.

As it was stated earlier in Article 370(3) that to remove Article 370 or to make it an inoperative recommendation from the constituent assembly of the state of Jammu and Kashmir was needed but this constituent assembly was abolished in 1957 so lack of existence of constituent assembly became a hurdle in the removal of Article 370 but this hurdle was removed by presidential order 2019 by amending article 367 which is interpretation clause of Constitution by adding clause (4) in this article which replaces the word constituent assembly by legislative assembly so now there is no need of constituent assembly as it is replaced by the legislative assembly. So by this was Article 370 was removed.

STUDY OF THE IMPACT OF REMOVAL OF ARTICLE 370

Serial number.	CONDITION BEFORE REMOVAL OF ARTICLE 370.	CONDITION AFTER REMOVAL OF ARTICLE 370.
1.	There was the separate Constitution of Jammu and Kashmir state	The Constitution of India will apply to Jammu and Kashmir state like other states
2.	There was a system of dual citizenship	Now there will be a system of single citizenship
3.	There was a separate flag of this state	Now there will be no separate flag
4.	There was no reservation for minorities	Now there will be reservation for minorities
5.	Earlier if women of Jammu and Kashmir marries to the man who is not resident of Jammu and Kashmir then	Now will not have to lose the property if she marries the man who is not resident of Jammu and Kashmir

	she has to lose his share of the property	
6.	Earlier people from other states can't permanently settle here and can't purchase any property of this state.	Now people from other states can purchase a property of this state and can settle permanently here.

CONCLUSION

The decision to remove Article 370 was appreciable and was a major decision taken in the history of Jammu and Kashmir. As After signing of Instrument of accession this state join the domain of India but in reality can't become an integral part of the country because the application of this article to the territory of Jammu and Kashmir separated this territory from the country by providing special status to this state which was also the major reason for making this territory underdeveloped in comparison to other state and was the reason for the increase in the rate of violence in this territory so to develop this state, to establish peace in this territory the removal of Article 370 was necessary. So after removal of this article, this state became an integral part of India as the union government of India gained its full control over the state as the provision which gave this state the special status was not in existence. So finally now we can conclude that the removal of Article 370 was justified and a necessary step.

REFERENCES

ⁱ Narender kumar , constitutional law of India 1176 (Allahabad law agency, 10th ed, 2018).

ⁱⁱ Narender kumar, constitutional law of India 1177(Allahabad law agency, 10th ed, 2018).

ⁱⁱⁱDamno v. state of Jammu and Kashmir, AIR 1972 SC. 963 (India).

^{iv}Sampatprakash v. state of Jammu and Kashmir, AIR 170 SC. 1118 (India).

^v Narender kumar , constitutional law of India 1181(Allahabad law agency, 10th ed, 2018).

^{vi}Constitution of India. Art. 370, cl. 2.