

# **Critical Evaluation of Special Status to State of Jammu and Kashmir under Article 370 of Indian Constitution**

Dissertation submitted to the Lovely Professional University  
Inpartial fulfillment of the academic requirement  
For the award of the degree of  
Master of Laws (LL.M)

Submitted by  
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**Under the Supervision and Guidance of**

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**May 2017**

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## **DECLARATION**

I hereby declare that the dissertation entitled **Critical evaluation of Special Status to State of Jammu and Kashmir under Article 370 of Indian Constitution** submitted to the School of Law, Lovely Professional University for the award of degree of Master of Laws (LL.M) is a record of original and independent research work done by me under the supervision and guidance of Ms.Kanchal Gupta, Assistant Professor, School of law, Lovely Professional University and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship or other similar titles.

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## **ACKNOWLEDGMENT**

Gratitude is a noble response of one's soul of kindness or help generously rendered by another and its acknowledgment is the duty and joyance. Writing a dissertation is one of the most important tasks of any post graduate degree and it is indeed difficult for a candidate to finish it individually and independently without with the help and guidance of one's supervisor as well as without co-operation and support of other concerned people. I am not exception to this rule. I express briefly my debt to all those people who have contributed a lot in completion of this research work. It is however difficult for me to mention about them in words as words are often inadequate to convey the feelings of heart.

It is my proved privilege to express my deep gratitude to my learned supervisor Kanchal Gupta, Assistant Professor, Department of Laws, Lovely Professional University, Phagwara, under whose dexterous guidance and supervision, this dissertation has been completed. She not only guided me all through but also inculcated in me the importance of being a true professional, disciplined, and systematic researcher and taught me the value of time and resource management in life. It was indeed a great learning experience to work under his scholarly supervision.

I am also beholden to the non teaching staff of our Law Department for being extremely cooperative with me. I am grateful to the library staff of Lovely Professional University, Phagwara. I express my thanks to Librarian, who gave their support to collect the data.

My acknowledgment will be incomplete if I do not mention about the unconditional love and support of respected parents and friends who always support and encourage me despite all odds and difficulties in our life.

**KOMICA**

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## **LIST OF ABBREVIATIONS**

APHC	:	All Parties Hurriyat Conference (Kashmir)
AFSPA	:	Armed Forces Special Powers Act
BJP	:	Bharatiya Janta Party
CMP	:	Common Minimum Program
CRPF	:	Central Reserve Police Force (India)
CTBT	:	Comprehensive Test Ban Treaty
DNC	:	Democratic National Conference
GOVT	:	Government
HUM	:	Hizb-ul-Mujahideen
ICRC	:	International Committee of the Red Cross
INC	:	Indian National Congress
ISI	:	Inter-Services Intelligence
IUM	:	Ikhwan-ul-Musalmeen
J&K	:	Jammu and Kashmir
JKLF	:	Jammu and Kashmir Liberation Front
JKDFP	:	Jammu and Kashmir Democratic Freedom Party
LOC	:	Line of Control
NC	:	National Conference
NDA	:	National Democratic Alien
NHPC	:	National Hydroelectric Power Corporation Ltd
NHRC	:	National Human Rights Commission
NPT	:	Non-Proliferation Treaty

OIC : Organization of the Islamic Conference  
PDP : People's Democratic Party  
POK : Pakistan Occupied Kashmir  
RCAAM : Remote Control Air Borne Aerodynamic Module  
SHRC : State Human Rights Commission  
UN : United Nation  
USA : United State of America

## **TABLE OF CASES**

1. Mohammed Maqbool Damnoo Vs State of Jammu and Kashmir, AIR 1972 SC 963.
2. Prem Nath Kaul Vs State of Jammu and Kashmir , AIR 1959 SC 749.
3. Puranlal Lakhanpal Vs. President of India, AIR 196 SC 1519
4. Sampat Parkash VS State of Jammu and Kashmir, AIR 1970 SC 1118.
5. Sheela Barse Vs Secretary, Children Aid Society, AIR 1987 SC 656.
6. State of Jammu and Kashmir Vs. Dr. Susheel Sawhney, AIR 2003 JK83

## **Chapter-1**

### **Introduction**

# Chapter-1

## Introduction

The Constitution of India embodies upon the citizens of India rights and duties which is an integral part of the supreme law of the land. Article 370 of the Constitution determines the relationship of the State of Jammu and Kashmir with the rest of India. By virtue of this Article, special status has been bestowed on the State of Jammu and Kashmir wherein through a temporary provision, special autonomy has been granted. This provision was incorporated in the Constitution as a means for providing the State a breather in the matters of governance and also making the state equipped before it gets integrated to be a part of India. By this provision, the State was entitled to have a constitution of its own; the Centre could involve only in three matters namely foreign affairs, defence and communications. This provision was included in the Indian Constitution with a belief that it will be abrogated in the years to come. But till date this has not been possible and the State remains under a special status.

The article was enacted with a lot of disapproval from the founding fathers of India namely Sardar Patel and Bhabha. As it is a controversial topic involving a region which is an international hotspot and a Muslim-majority state in India.<sup>1</sup>

It took almost five months of discussion between the Prime Minister of India and the Prime Minister of Jammu and Kashmir from the time period of May to October 1949 to reach a consensus on the Article 370. The Constituent Assembly merely put the imprimatur of its approval, on 17 October 1949, to a draft agreed between the Union and the State. Article 370 records a solemn compact. Neither side can amend or abrogate it unilaterally, except in accordance with the terms of that provision.<sup>2</sup>

The reality of 'the special status of Jammu and Kashmir that it is not wrinkled by outflow of time or damage of the elements. It was exposed by conscious executive acts on his advice through one Presidential Order one after another. The State had acceded to India in 1947 in respect only of Defence, Foreign affairs, and Communication. Under the Constitution of India Article 370 explained 6 provision for the State of Jammu and

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<sup>1</sup> Article 370 in the constitution of India , available at : <https://www.quora.com/What-is-Article-370-of-the-Constitution-of-India-1>. (Last visited on 28February2017).

<sup>2</sup>Noorani, A.G., ARTICLE 370 A Constitutional History of Jammu and Kashmir.p.no.2 ,Oxford publisher, India , 7<sup>th</sup> edition , 7 Jul 2011

Kashmir which are following

I, The State of Jammu and Kashmir doesn't need to follow the Constitution of India as they have their own Constitution.

II, The Subject Matters which are mentioned under the Instrument of Accession i.e. Defence, Foreign affairs, and Communications can only be discussed in Parliament Assembly and also if any provision is related to these subject matters and it is necessary to include in it which could extend to the State by the president.

And III, Consent of The State Government must be there to implement any provision of the Indian Constitution.

IV, Jammu and Kashmir's State legislature has power to amend any provision as mentioned in Article 370(2) Acc. to which "if the concurrence of the Government of the State ... 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".

In the V provision Union legislature and The President of India's power to make any provision for Jammu and Kashmir is limited till The State legislature drafted the State constitution under which they mentioned the subject matter which can be given to union legislature and which can be taken by themselves. When constituent assembly prepared the scheme and notified it then the President's power will be ended.

Under the VI Provision Article 370(3) "empowers the president to make an order abrogating or amending it and for this 'the recommendation' of the State's Constituent Assembly, shall be necessary before the President issues such a notification".

Jammu and Kashmir is mentioned among the States of the union in first schedule as article 1 (2) requires. But Article 370(1) (c) says "The provision of Article 1 and of this Article shall apply in relation to that State."<sup>3</sup>

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<sup>3</sup> Noorani, A.G., "ARTICLE 370 A Constitutional History of Jammu and Kashmir, p.no. 6, Oxford publisher, India, 7<sup>th</sup> edition, 7 Jul 2011.

## **1.1 Historical Background of Art -370**

### **1.1.1 Origin of Article 370**

The Constitution of India came into force on 26<sup>th</sup> January, 1950 was result of the inexorable efforts of the makers of our Constitution for more than 2 years. Article 1 of our Constitution defines India as a union of States and union territories as enumerated in schedule -1. At that point of time whole country was divided into two parts i.e. British India and princely States. The Preamble of the Constitution describes India as a sovereign democratic republic.<sup>4</sup>The makers of our Constitution had a tough task to make agreement with the than Rulers for surrendering their unequivocal authority which was reconciled by taking all the political as well as legal recourse available at that time. But, despite all theses hard work three States i.e. Mysore, Hyderabad, and Jammu and Kashmir were resultant to join the republic of India.<sup>5</sup>

### **1.1.2 Event leading to the creation of the State of Jammu and Kashmir**

The **Treaty of Amritsar**, was signed by British East India Company and Gulab Singh Dogra after the first war of Anglo Sikh on 16<sup>th</sup> March 1946.Under Article 1 of the treaty of Amritsar, Gulab Singh was in the possession of all hilly area and for consideration he had to pay Rs. 75 Lakh which was mentioned Under Article 3 of the Treaty accepted by Gulab Singh.

#### **Maharaja Ranbir Singh**

Maharaja Ranbir Singh ruled in Jammu and Kashmir from 1857to 1885 and during his lifetime he hid not allow britishers to set their resident in Jammu and Kashmir.At that time Government of India wanted a full control as well as their resident in The State of Jammu and Kashmir, but Maharaja Ranbir Singh resisted Britishers(at that time Government of India) to take the control of Jammu and Kashmir. In 1885 Maharaja Ranbir Singh died. The British wanted to appoint a Resident in Kashmir because of the

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<sup>4</sup>Pandey .J.N., Preamble, The Constitutional law of India,p.no.730, Central Law Agency, Allahabad, 48<sup>th</sup> edn.,2010.

<sup>5</sup> Lakhnupal.P.L., Essential documents & notes on Kashmir disputes, Delhi, 1958.



activities of Czarist Russia beyond the borders of Kashmir<sup>6</sup>. Maharaja Ranbir Singh had not allowed the British to appoint a Resident during his lifetime

### **Maharaja Pratap Singh**

Maharaja Pratap Singh ascended to the throne in 1885 A.D. despite a short interruption due to his deposition by the Britishers Government in 1889; his reign lasted for about forty years.

When Maharaja Ranbir Singh died, British took advantage of the situation while Pratap Singh was in mourning and dispatched the resident-designate to Mr. T.C. Plowden, in Kashmir. Immediately on his arrival in Jammu, Plowden insisted on seeing the Maharaja, even though it was against Hindu custom for the Maharaja to have any official visitors not because of insistence, the Maharaja consented to see Plowden. At this meeting Plowden announced that the British Government wished to appoint to resident. Pratap Singh, who was in a state of mental depression due to the death of his father, was shocked at this behavior of the British Government. Pratap Singh told Plowden that there was no stipulation in the Treaty of Amritsar of 1846 to this effect but his protest was of no avail. The secretary of State for India had sanctioned this appointment to the Government of India in the following words:

It was decided in 1846 that no any political officer would appoint permanently to reside at the Maharaja's court but in 1873, at the time of Lord Northbrook's Government, there was a necessity to justify the objection decided by Maharaja but as the time passed there was huge change in situations and now importance of political was understood by the Maharaja and also that it was necessity to appoint a political officer in the Maharaja's court.<sup>7</sup>

Thus a Resident in Kashmir was appointed but we shall presently see that this was only the first step in the designs of the British Government in regard to Kashmir. Maharaja Ranbir had started the improvement in the administration. Maharaja Pratap Singh took it further.

The State Civil Procedure Code of 1873 was not complete code; Maharaja Pratap Singh

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<sup>6</sup>Justice A.S. Anand., The Constitution of Jammu and Kashmir, p.no.53, Universal law publishing, New Delhi, 6<sup>th</sup> edn. 2010

<sup>7</sup>Ibid., p.6.

desired to improve it and he was able to do so in 1896 through his Council of Ministers.

Political controversy regarding the morality to act aside, the act was not only a violation of the Treaty of Amritsar, 1846, but also contrary to the solemn promise made by the Queen Empress on her assumption of direct rule in India in 1858, The Queen Empress had declared:

We hereby announce to the native Princes in India that all Treaties and Engagements made with them by or under the authority of Honorable East India Company are by us accepted, and will be scrupulously maintained; and we look for the observance on their part.

We desire no extension of our territorial possessions; and while we will permit no aggression upon Our Dominion or Our Rights, to be attempted with impunity, we shall respect the rights dignity and honor of native prince as Our own; and we desire that they as well as Our Object, should enjoy that Prosperity and that social Advancement which can only be secured by internal peace and good Government.<sup>8</sup>

It is more than clear, that, in the action the British Government took, and they went back on promise. However, beyond protesting, Maharaja had no other course open to him. The action of British Government was an **'act of the State'** and could not be challenged in any court of law.

Of course, **"act of the State"** are not all of one kind. Their nature and consequences may differ in an infinite variety of ways. For instance, 'act of the State' may fix the relations between two States; each of one continues to possess an independent existence. The consequences of such 'act of the State' are entirely beyond the cognizance of the municipal courts, because they have no jurisdiction over Treaty obligations between independent States.

In Kamachee Boye Sahba' case, Lord Justice Kingstown summarized the position very clearly. In this case, after the death of Raja of Tanjore, who was the independent sovereign of an Indian Native State, the East India Company, in 1885 in the exercise of their sovereign powers thought fit to seize accordingly. The Raja had died intestate. The eldest widow of the Raja filed a case in the Supreme Court of judicature at Madras. The

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<sup>8</sup>Justice A.S.Anand., The Constitution of Jammu and Kashmirp.no.60, Universal law publishing, New Delhi, 6th edn.2010.

Supreme Court decreed the widow was entitled to inherit property. An appeal was preferred against the decree by the East India Company. The Judicial committee of the Privy Council reversed the decision observed:

The transactions of the independent States between each other are governed by other laws than those which the municipal courts administer, such courts have neither the mean of deciding what is right nor for enforcing the decision which they make ... The act so done with its consequences, is an act of State, over which Supreme Court of Madras has no jurisdiction.

Thus the Maharaja knew that court would entertain his complaint.

It is sufficient to say that even if a wrong has been done, it is a wrong for which no Municipal Court of Justice can afford a remedy.

The Maharaja did not go to court. He wished to apply diplomatic pressure about there was nobody through whom he could apply the pressure. He did not have any direct connection with Government of India. The only mode between he and Government of India was Resident and to apply pressure through the Resident was out of the question. The only course left to the Maharaja was to wait for a change in his fortune.

The restoration of the authority to the Maharaja remained subject to the following conditions:

The Maharaja was to exercise his power on the advice of the Resident and follow the advice whenever it was offered to him by the Resident;

With the consent of the Residents, The annual budget of the State was to be made and if there is any extra expenditure which is not mentioned in the budget will be clear by the consultaion of the Residents.

No re-appropriation of funds exceeding ten thousand rupees was too be made without the sanction of the Resident.

Only After the consultation of The Maharaja and Resident,estimation of the budget was to be submitted by the Minister-in-Charge to Maharaja for its final approval.;

The Ministers were to be appointed after the approval of the Government of India had been secured:

A person who was acceptable to Maharaja and Prime Minister was to be appointed of minister-in-charge of foreign department of the State.

The business of different department was allocated by Government of India.

The Maharaja can change or review the orders passed by the Departmental heads throughout the concerned Minister

The appointments and removals of Gazette Officers of the State were to be made by the Maharaja on due cause shown.

After the restoration of his powers, the Maharaja was confronted with new problem. During his deposition, western educated men from neighboring Punjab and other places had been appointed in large numbers to post in the administration. Kashmiris, who had hitherto been excluded from the affairs of the State, strongly resented this new encroachment from outside. Even Dogras now suffered unemployment. As education advanced, this resentment, which had been growing for the past half century became even stronger. The slogan "STATE FOR THE STATE'S PEOPLE" came to be heard everywhere but Maharaja paid little heed to this growing movement. Neither the Maharaja nor his councilor then imagined that this demand of the people would one day lead to strong agitation which would have to be faced by his successor and which would cost him his throne.

### **Maharaja Hari Singh**

Following the death of his uncle Maharaja Pratap Singh in 1925, Maharaja Hari Singh ascended the throne of Jammu and Kashmir. He made primary education compulsory in the State, introduced laws prohibiting child marriage, and opened places of worship to the low castes.

Maharaja Hari Singh was hostile towards the Indian National Congress, in part because of the close friendship between Kashmiri political activist and socialist Sheikh Abdullah and Jawaharlal Nehru. He also opposed the Muslim League and its members' communalist outlook illustrated in their two-nation theory. During the Second World War, from 1944–1946 Maharaja Hari Singh was a member of the Imperial War Cabinet.

### **Instrument of Accession**

On July 5, 1947, the States Department was set up in India to conduct its relation with the Indian States later Lord Mountbatten speaking at a conference of the Rulers and Representatives of Indian States on 25<sup>th</sup> July 1947 said that "the

Indian independence Act releases the States from all their obligations to the crown. The States have completed freedom-technically and legally they are independent.”<sup>9</sup>He also declared that the majority of the States were geographically situated in such a way that they could not make their link with the Dominion of Pakistan, the only alternative left to them was to make link with the Dominion of India . Lord Mountbatten expressly recommended that they should surrender to the Dominion of India three subjects- Defence, External Affairs, and Communication.

The Instrument of Accession was prepared by the States department. The Instrument of Accession provided that the date on which it shall come into force would be August 15, 1947. Hyderabad, Junagadh and Kashmir were the only States which did not sign the Instrument of Accession by August 15, 1947. The effect of the above provision was that those States which did not accede to either of new Dominion by 15<sup>th</sup> August became independent and sovereign. The State of Jammu and Kashmir was one of them.

**Standstill Agreement before** Maharaja could make any decision regarding the Accession of the State they expressed desire of concluding a ‘Standstill Agreement’ with India and Pakistan.<sup>10</sup>The subject matters of Standstill Agreements which were offered to India and Pakistan were different. While offer was made to Pakistan only in regard to State’s communication, supplies, post office and telegraphic arrangements, and nothing else, the telegram which was sent to Government of India was different from the above. It Stated that the ‘Jammu and Kashmir Government would welcome Standstill Agreement with the Union of India on all existing matters with the outgoing British India Government’. Thus, the language of the Standstill Agreement permitted the Indian Government even to use force in the same way as could be done by the British Government under the provision of Treaty of Amritsar, 1846. Pakistan accepted the agreement but India did not respond to that agreement by Government of Jammu and Kashmir.

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<sup>9</sup> Agarwal .H.O.,”Kashmir problem its legal aspect” p.no.12, Central law pub., Allahabad, edn.2010, 2010.

<sup>10</sup> Agarwal .H.O.,”Kashmir problem its legal aspect” p.no.19,Central law pub.,Allahabad,edn.2010, 2010

### **1.1.3 Accession of Kashmir to India**

Jammu and Kashmir became Independence when the rule of Britishers comes to an end. In the first instance there was no coercion or pressure on the maharaja for the Accession of the State either of Dominions. Later, the State was continuously pressurized by the Dominion of Pakistan and its supporters inside the State to accede to it. On September 22, 1947, Convention of Muslim Conference workers formally asked for the State's Accession to Pakistan. The National Conference, another political party of the State was against the Accession of the State to Pakistan. Pakistan in attempt to bring pressure on the maharaja for the Accession to the State with it, intervened by violating the terms of the standstill agreement. It cut off the supplies of essential commodities like food grains, petrol, salt, and sugar.<sup>11</sup>It was like economic blockade.

#### **Tribal Invasion**

On October 20, 1947 several thousand tribesmen supported by Pakistan army attacked the frontiers of the State. The raiders were approaching Srinagar. It was only last resort that the Maharaja approached Indian dominion of the India to accept the Accession.<sup>12</sup>To save his life Maharaja left Srinagar and went to Jammu. He appointed Sheikh Mohammed Abdullah his emergency Minister who advised him to accede to India and ask for immediate military help. Maharaja duly signed the Instrument of Accession which took Jammu and Kashmir and India together legally and constitutionally.

The attainment of Jammu and Kashmir in India might be regarded as what in international law is termed partial succession in view of the fact that a part of the sovereignty of the State came to possessed by the Dominion of India. The State continued to remain independent in all the spheres except those referred in the Instrument of Accession .i.e. Defence, External Affairs, Communication.

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<sup>11</sup> Agarwal .H.O., "Kashmir problem its legal aspect" p.no.33, Central law pub., Allahabad, edn.2010, 2010

<sup>12</sup> Agarwal .H.O., "Kashmir problem its legal aspect" p.no.43, Central law pub., Allahabad, edn.2010, 2010

## **1.2 Role of United Nation on merger of Jammu and Kashmir with India**

When the Constitution was commenced then the Situation of Jammu and Kashmir different therefore Art 370 was inserted to the Constitution; although the State of Jammu and Kashmir is a part of the Indian union but its status is different than other States. Srinagar was totally dependent on the Indian Army for their security. Indian Army had to come on most fronts when The raiding army was disgusted. India filed a complaint against Pakistan for this act then Pakistan after some weeks, Pakistan also complained against India that India was trying to take over the other regions Namely Junagadh and Hyderabad. At that time, The Security Council of the United Nations called both Countries on 17<sup>th</sup> of January, 1948 and ordered them “proceed to the spot as quickly as possible”. On 13 August, 1948 United Nations Passed another resolution which was called as a Cease Fire Order under which directed it under which to stop the rise of armed forces and also to stop and withdraw Pakistani troops, Tribal invaders and other Pakistani combatants from Jammu and Kashmir and the Land which was evacuated would be administered by Local Authorities which has to be checked by United Nations with Indian Military Assistance when it might considered necessary. So for the purpose of peace, law and order, Indian forces were also withdrawn from the state. After above mentioned measures, In another United Resolution which was adopted on 5<sup>th</sup> January 1949 suggestions from people of Jammu and Kashmir were taken for the better future of State. The Functional branch of the 5th January decree reads: “A **Plebiscite** will be held when it shall be found by the Commission that ceasefire and truce agreement set forth in Parts I and II of the Commission’s Resolution of 13 August 1948 have been carried out and arrangements for the plebiscite have been completed”. The objective of these steps had to be indulge those civilians who went away because of disturbances in the state from the attack by Pakistan. Pakistan had occupied maximum area of Kashmir which includes: the Northern Areas, Baltistan and part of Kashmir, At the time of ceasefire in January 1949. After that Pakistan started another military

operation to occupy the rest part of the State on 31 August,1965 which results into 16 days war between India and Pakistan due to which, problems were not to be sorted out in any other way.In September 1965Soviet Union had ended the war with the help of “Tashkent Declaration’.<sup>13</sup>Not any war in between India and Pakistan whether its 1971 war or Kargil war resolve their issues. Because of these problems negative changes were risen up in both Countries and also in Kashmir Valley.Migration from one part to another leads to a great violence in between Hindus and Muslims in 1947.A large numbers of Kashmiri pundits also migrated and some were insisted to run away from the Kashmir Valley, from most of them were started living in refugee camps.

### **1.2.1 Article370 : The unspeakable story**

Lord Mountbatten persuaded the then Prime Minister Jawahar Lal Nehru, to take the issue of Jammu and Kashmir to the UN. This become imperative as Sheikh Abdullah had the ambition of ruling independent Kashmir and had a hatred towards Maharaj and in the offing, influenced Nehru to grant special status to J & K. The reasons spelt out by for special status included occupation of one third of J&K by Pakistan, reference to the UN and plebiscite. The most sinister aspect of proposed Article 370 was the provision that any changes could be brought about in it only by the concurrence of J&K assembly. Nehru’s promise that Article 370 was a temporary provision and will get eroded over a period of time has turned out to be a fantasy. The first thing that Sheikh Abdullah got done was to abolish hereditary monarchy and re-designate him as Sadar-e-Riyasat who was to be elected by the Assembly. The accession of J&K State into Indian Union was approved by J&K Assembly only in 1956.<sup>14</sup>

### **1.2.2 Main personalities behind Article**

**Jawaharlal Nehru was the one who actually wants to Insert Article 370 in Indian Constitution by Hook or Crook and for this object he took the help of sheikh Abdullah.**

**Sardar Patel** was personally not interested to Insert Article 370 because he knew its

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<sup>13</sup> Tondon .M.P., Public international law, p.no.165, Allahabad law agency, Allahabad, edn.17, 2013.

<sup>14</sup> Maj . Gen. Sheru thapliyal, Art 370 : The Untold Story, Indian defence review , Vol. 26.1. pub on 27 December 2014.



consequences but still for Jawahar Lal Nehru he did so

**Sheikh Mohammed Abdullah** Who was arrested by Maharaja under Sedition charges in 1947 and his case was handed by Nehru and he was also arrested when he was also arrested when he tried to enter in J&K under the charges of sedition so to save himself **Nehru arrested Sheikh Abdullah who was his partner for Article 370.**

**Maharaja Hari Singh** who wanted India and Pakistan to entered into a standstill agreement with him where Pakistan Immediately signed it but India had declined it.<sup>15</sup>

### **1.3 Hypothesis**

Jammu and Kashmir is a smoldering topic in India and Pakistan as well as it is an international concern. Indian Government, Supreme Court, Political parties played imperative role for conciliation with Pakistan's Government and with people of Kashmir for maintenance of peace. To pursue research in an organized manner it is always essential to State workable Hypothesis.

Historical background of Jammu and Kashmir and its Accession to India.

Article 370 which gives the Special status to Jammu and Kashmir in Indian Constitution with other special provisions.

Role of political parties for maintaining the peace in the valley (Jammu and Kashmir) and for upgrading the standard of living of people of Jammu and Kashmir.

### **1.4 Research Question**

What is the Historical background of Jammu and Kashmir and its Accession to India?

Why Article 370 has been Inserted in Indian Constitution?

What role is being played by political parties for maintaining the peace in the valley (Jammu and Kashmir)?

What is the role of Indian judiciary and views regarding the special status?

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<sup>15</sup> Parvez Dewan, A history of Kashmir, Manas Publications, edn 7, published on 15 August 2006.

## **1.5 Significance of the study**

The study is an attempt towards bringing out the comprehensive approach toward special status of Jammu and Kashmir. An attempt has been made out to reveal real position of the Jammu and Kashmir. From this study the new things about the State of Jammu and Kashmir have come to the knowledge from this study ethical, social, political, and legal problem has come out.

## **1.6 Scope of the study**

The research to give Jammu and Kashmir a special is a important concept for the study by undertaking the present research. The researcher finds that what is the concept of special status of Jammu and Kashmir and the problems faced by civilians because of Article 370.

## **1.7 Research Methodology**

The present research work is based upon the doctoral method of research. The research has been done by using primary as well as secondary resources. The library is used for completing the present research.

Research Methodology is a way to solve the research problem systematically. The research methodology includes the various methods and techniques for conduction of research. This study is mainly based on the special status of Jammu and Kashmir, Constitutional provisions related to Jammu and Kashmir, newspaper articles, periodicals internet sites, reports, debates, law review, judicial decisions, and commentaries of various authors. Data will be collected from books, reports, internet, political views, books, and judgments. Primary data to that extent of the books will be referred in great depth. Secondary sources such as World Wide Web and Institute of peace and Conflict Studies and articles published therein will also be made use of. Researcher plan to collect the following books by various authors on Jammu and Kashmir would be referred to.

Constitution of India shall be referred.

Various books dealing with never resolving issues of Jammu and Kashmir shall

be referred.

## **1.8 Scheme of Study**

This dissertation shall comprise of the following chapter

**Chapter-1** Deals with introduction and historical background.

**Chapter -2** Deals with Constitutional status of Article 370

This chapter deals with the comparative study of the constitution of India and The Constitution of Jammu and Kashmir.

**Chapter-3** Deals with critical views on political rapacity in Article 370 with positive and negative views.

This chapter deals with the Greed of the Political parties to rule in Jammu and Kashmir by taking the advantage of Article 370 by ignoring the living conditions of the civilians.

**Chapter-4** Judicial prospective of Article 370

This chapter contain role of Supreme Court and High Court for maintaining the peace in the Jammu and Kashmir and also role in providing the social justice to the people of the State.

**Chapter-5** Conclusion and suggestions.

A summary of all that mentioned in the various chapters shall be given. Researcher shall be State his opinion on whether Indian Government on what extent is capable to overcome the problem relating to Jammu and Kashmir and if not what is needed to be done to make it in our favor with its jurisdiction and powers.

## **Chapter 2**

### **Constitutional status of Article 370**

## Chapter 2

### Constitutional status of Article 370

#### 2.1 Introduction

The temporary, transitional and exceptional provision under part XXI of Indian constitution i.e. Article 370 grants special status to state of Jammu and Kashmir under the territory of India, defined under article 1 of the constitution of the India, which is mentioned in First Schedule of The Constitution. In the State of Jammu and Kashmir enjoys the special status under Indian constitution. it was added with the concern that all provision under the constitution of India concerning to the states in the first schedule are not applicable to Jammu and Kashmir. It is the only state in the India which has its own constitution.

Instrument of Accession created the constitutional relation between India and state of Jammu and Kashmir which was executed by the state. According to which any law passed by Indian parliament except in item 36 to 37 in the Union List would be enforceable in Jammu and Kashmir. By this it has been cleared that no concurrent matters of parliament would be applicable to the state of Jammu and Kashmir. There are 22 parts of Indian constitution out of which 9 parts such as Preamble, part II citizenship, part III Fundamental Rights, Part XIII trade and commerce and intercourse within the territory of India, Part XVIII Emergency provisions are completely incompatible to it.<sup>16</sup>

Article 1, Describes that Jammu and Kashmir is the Part of India. Art. 370 provide special status to Jammu and Kashmir. The presidential order on 26 January 1950 made it clear that the legislative authority of the union parliament would tackle with those matters which are agreed and signed in the instrument of Accession.

Article 13, stated under order 1954 that the expression “commencement of the constitution” and other provision in the constitution which use the same expression the “commencement of the constitution” will construe the same meaning in the

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<sup>16</sup> Available at :<http://www.yourarticlelibrary.com/essay/special-provisions-for-jammu-and-kashmir-provided-in-the-constitution-of-India/24907/> (last visited on : 15 February 2017)

constitution of Jammu and Kashmir.

Article 3, under the Indian constitution there are powers of parliament to form new state and increase or decrease the territory of any state; but in the relation of state of Jammu and Kashmir no such bill shall be introduced in the parliament without the assent of the state legislature.

**Part III on the fundamental rights is made applicable to the state of Jammu and Kashmir with following alterations:**

Article 16(3) prescribes any residential requirement for employment in the state. But in the state of Jammu and Kashmir this provision would not be applied according to this parliament cannot make laws to provide residential requirement in Jammu and Kashmir as a condition of eligibility for employment in it. Jammu and Kashmir State constituent can only make such provisions.

Article 19(f) guarantees the right to develop, hold and dispose the property which was deleted by 42<sup>nd</sup> amendment in the constitution of India, under amendment act 1978, this amendment was not extended to state of Jammu and Kashmir.

Article 31, which guaranteed the right to property, was abrogated from part III of the Indian constitution by constitutional amendment, but it is still retained as the fundamental right of Jammu and Kashmir. There are some minute changes in Article 31A, Article 31C does not apply to Jammu and Kashmir.<sup>17</sup>

Article 35A, of the constitution of Jammu and Kashmir states that:

“Notwithstanding anything contained in this constitution with respect permanent residents and their rights, no present in law force in the Jammu and Kashmir and no law hereunder ordained”in the parliament of state:-

“Specify the classes of persons who are, or shall be permanent residents of the state of Jammu and Kashmir.

Bestowing them special rights and exclusive rights or imposing upon other persons any restrictions as respects:

Employment under state government

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<sup>17</sup> Sathe .S.P. Art 370 and Jammu and Kashmir, Mainstream Vol. XXX no. 26, Delhi, pub. On 25 July 1992

Acquisition of immovable property in the state

Settlement in the state

Right to scholarship and aids provided by state Government shall be void if any provision becomes inconsistency with any provision or with any right provided to the citizens of India.”

Hence privilege to permanent residents of state of Jammu and Kashmir provided by constitution of J&K itself has been protected under this article. Thence non permanent resident of Jammu and Kashmir cannot hold property in the state of Jammu and Kashmir also anyone who is not a resident of Jammu and Kashmir cannot get employment in Jammu and Kashmir.

Article 132 and 133 render jurisdiction to the Supreme Court. Article 132(2) repealed by 44<sup>th</sup> amendment under constitution amendment act 1978 was not applicable to the state of Jammu and Kashmir. It provides that if High Court denies giving a certificate of leave to appeal, the Supreme Court may grant special leave to appeal. Thence, Article 136, which provides for appeal to the Supreme Court by special leave, has not been extended to state of Jammu and Kashmir.

Part VI Articles 153 to 217.219, 221,223.224, 224A and 225 Article 227to 233 and Articles 234 to 237 of constitution of India are not applicable to state of Jammu and Kashmir. Article 222 deals with transfer of high court judges from one high court to high court of Jammu and Kashmir and from high court of Jammu and Kashmir to another high court shall be done after with the consultation with Governor of the state.<sup>18</sup>

Article 250 states that parliament can make laws on matters in the state emergency or while proclamation of emergency , also for its application words also substituted from “ also to matters not enumerated in union list” to “ to any of the matters enumerated in the state list” in its application to Jammu and Kashmir.

Article 253 of constitution of India has given powers to the parliament to legislate for international agreement and treaty. without the consent of the State Government ,Union of India has power under article 253 to apply provision of article 253.

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<sup>18</sup> Sathe .S.P. Art 370 and Jammu and Kashmir, Mainstream Vol. XXX no. 26, Delhi, pub. On 25 July 1992.

Under Article 256, every state shall exercise its executive powers in such a manner that it should not contravene laws made by parliament and empower executive heads of union to give directions to the state government for necessary purpose and for its application to state of Jammu and Kashmir it has been added as clause(2).

Under The constitution ,Jammu and Kashmir has executive power to discharge the duties and responsibilities in relation to state, also state Government on the requisition of union Government acquire or retain property on behalf of union govt on union's expenditure. Also if any of such property belongs to state transfer such property to union it would be as per the terms and conditions of the agreement and The chief Justice of India will appoint an arbitrator who would be observed if there is absence of agreement

Under Part XVIII of the Indian constitution contains Article 352 which deals with the emergency provisions are also implement in Jammu and Kashmir. 42nd amendment of The constitution amendment act 1976, clause (6) has been added which states that no proclamation of emergency can be brought on ground of internal disturbance or imminent danger therefore shall apply to state of Jammu and Kashmir unless: a) state Government has made a request or with its concurrence b) where it has been applied by president directly to that state or with the concurrence of request of that state Government<sup>19</sup>

Article 353 states that during the emergency the union executive power shall be extended to the state under emergency and will also give the directions to the state as their state executive. However the provisions of this Article is not applicable to state of Jammu and Kashmir.

Article 354 and 355 are not applicable to state of Jammu and Kashmir. Article 354 states that the distribution of revenue during proclamation of emergency. Article 355 states the duty of the union to protect state from external aggression and internal disturbance.<sup>20</sup>

Article 356 is applicable to the state of Jammu and Kashmir as it states that failure of constitutional machinery in the state due to which imposition of presidential rule in the

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<sup>19</sup><http://www.yourarticlelibrary.com/essay/special-provisions-for-jammu-and-kashmir-provided-in-the-constitution-of-India/24907/> (last visited on : 18 February 2017).

<sup>20</sup>Available at :<http://www.esamskriti.com/essays/docfile/RMP-Lavakare-F.pdf>



state.

Article 360 deals with the financial emergency which is not applicable to the state of Jammu and Kashmir.

Some of the important provisions has been made applicable to state of Jammu and Kashmir , as during emergency president's rule can be imposed on the state under article 356, also the central Government has power to legislative power in respect of separatist and terrorists activities.

Article 256 obligates the Jammu and Kashmir to practise its executive powers in such a way that it could be harmonious with the union power.

## **2.2 Constitution of State of Jammu and Kashmir, 1956**

“We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves.

**JUSTICE**, social, economic and political;

**LIBERTY** of thought, expression, belief, faith and worship; **EQUALITY** of status and of opportunity; and to promote among us all;

**FRATERNITY**, assuring the dignity of the individual and the unity of the Nation;

**IN OUR CONSTITUENT ASSEMBLY** This seventeenth day of November, 1956 do Hereby Adopt Enact and Give to ourselves this constitution”.

## **2.3 Exceptional features**

### **2.3.1 Separate Constitution**

The Jammu and Kashmir has its own constitution, none other state of India has its own constitution. Its constitution ordained by a separate constituent assembly and came into force on 26<sup>th</sup> January 1957.

### **2.3.2 Jurisdiction of Parliament**

If we compare Jammu and Kashmir with other States then Parliament and union legislature of India exercise very restricted jurisdiction over the matters in the territory of India. Before 1963 parliament had only power to make laws on subject matters of Union List but Now It has power to make laws on subject matters of Concurrent list

which is mentioned under 7<sup>th</sup> schedule of the Constitution of India. Moreover parliament cannot legislate over the preventive detention laws for the state of Jammu and Kashmir.<sup>21</sup>

### **2.3.3 Independence in certain matters**

Consent of state legislature and state executive is mandatory for Any act of union legislature and union executive related to modification of the name or territories or an international agreement which effect any part of the state or territory of state.. Union of India does not have power to set aside the constitution of Jammu and Kashmir.

### **2.3.4 Fundamental Duties, Directive principles and Fundamental Rights**

In summation to other fundamental rights in Part III of Indian constitution Article 19(1) (f) and 31(2) of the Indian constitution are still prevails in the state of Jammu and Kashmir. Part IV i.e. directive principles of state policy also Part VIA i.e. fundamental duties are not applicable in the state of Jammu and Kashmir.

### **2.3.5 High court of Jammu and Kashmir**

High court of Jammu and Kashmir has narrow jurisdiction in comparison to other high courts in India, as it cannot declare any law unconstitutional. Under Article 226 it cannot issue writ except for the enforcement of fundamental rights.

### **2.3.6 Constituted languages**

Part XVII of the constitution of India applies to the state of Jammu and Kashmir only that extent which is related to: i) "official language of the union; ii) the constituted language for communication between one state and another; or between a state and the union; and iii) language of the proceedings in the Supreme Court. Otherwise Urdu is the official language of the state of Jammu and Kashmir, but use of English is permitted for official matters."

### **2.3.7 Procedure for amendment of the state constitution**

According to the constitution of Jammu and Kashmir its constitution can be amended by state legislative assembly passed by not less than 2/3<sup>rd</sup> of its membership, State legislative assembly has no power to amend the matters which explained the

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<sup>21</sup> Bhandari.M.K, "A Constitutional Dilemma", Vol.79, A.I.R. 53, 1992

relationship of Union with State. President's consent is needed in matter when amendment affects the governor's or election commission. Any amendment to the constitution of India can be extended by the assent of the president under article 370(1).

There is still confusion related to the amendment of the article 370, some jurist says it can be amended by procedure laid down in the "article 368 of the constitution or amendment extended under article 370(1)."

### **2.3.8 Miscellaneous**

People of state of Jammu and Kashmir enjoys special status also special privileges related to employment, acquisition of immovable property and other facilities given by the state Governemnt.

Under The fifth schedule of constitution of India administration and power over schedule areas and schedule tribes and in Sixth schedule provides administration of tribble areas, which is not applied in Jammu and Kashmir.<sup>22</sup>

### **2.3.9 Most autonomous state**

"Jammu and Kashmir is acceded state of union of India as per schedule 1 of the constitution of India," though there are some laws of union of India which are applicable to the state of Jammu and Kashmir but it creates very special relationship with India : i) state enjoys special status and autonomy as compare to other states. ii) Central government's role is very limited with respect to other states.

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<sup>22</sup> Constitutional position of Jammu and Kashmir, India , available at: <http://www.legalserviceindia.com/article/l281-Constitutional-Position-of-Jammu-and-Kashmir.html> (last visited on: 27February 2017).

## **CHAPTER: 3**

### **Political Rapacity in Article 370 with Positive and Negative Views**

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### **Political Rapacity in Article 370 with Positive and Negative Views**

#### **3.1 Introduction**

The State of Jammu and Kashmir's problem wholly based upon politics and politics only its politics includes: State government; Central government; Separatist.

In past Jammu and Kashmir had four political areas i.e. Ladakh, Jammu, Kashmir and Baltistan. Ladakh situated on the east side of China, Jammu joined the south side of Himachal Pradesh, Punjab and Pakistan, Kashmir situated on the west side of Pakistan administered Kashmir and Baltistan joined the north border area of Xinjiang and Gilgit Baltistan. Pakistan has control over the territory of Baltistan and a part of Kashmir and one part of Ladakh which is Aksai Chin was to be a part of India which is now under the Control of China. Parts of these regions which are controlled by Pakistan and India is called Line of Control (LOC).

Article 370 gives the special status to Jammu and Kashmir which is itself a temporary. Though people of Jammu and Kashmir has different views for this issue like some Kashmiri Muslims want Independence from India, Some Non Muslims want to be integrated in India and some want to keep Article 370 as it is and want to enjoy the special status. Some Kashmiri Muslims want to be a part of Pakistan because some part of Kashmir is in the possession of Pakistan because of this Muslim leaders started separatist movements with political and Militant. However, in recent years Kashmiri Muslims have been leaning towards being in India due to economic reasons.

Jammu and Kashmir has their own flag which is the native plough in a red background as a symbol of labor and Its three stripes shows the three parts of it which is Jammu, Kashmir and Ladakh.

This is proved by the high voter turnout in the recent by-elections in Jammu and Kashmir which states that civilians are encouraging their democratic politics. Leading

parties also participated in those matters which were taken by the only separatist i.e. Violations of human rights, to open the links with Pakistan and many more. But at the same time, the dichotomy between elections for purposes of governance and those to resolve wider political grievances still remains.<sup>23</sup>

### **3.2 Article 370 Bandwagon**

On December 1, 2013, Prime Minister Narendra Modi (then Gujarat Chief Minister) created a stir when he called for a debate on Article 370. He was addressing a public meeting in Jammu and astonished one and all with the apparent departure from his party's known stand of its outright abrogation. Since then the debate, though not at the official level, is on among the political parties. What is significant is the fact that Article 370 has dominated the campaign that is on for the ongoing elections in Jammu and Kashmir which started on November 25.

Both Prime Minister Narendra Modi and Union Home Minister Rajnath Singh stressed upon not raking up Article 370, asking party cadre to concentrate on the issues of governance and development. But in practice both of them as also all others who are campaigning or campaigning in the state have already made it an issue. In reaction to what BJP is doing two main regional parties National Conference and Peoples Democratic Party have taken it head on swearing that they would not allow it to happen. Chief Minister Omar Abdullah made a statement in an interview that the discussion of Article 370 will be a reason for loss of BJP government in future and also before a day PDP Founder Mufti Mohammad Sayeed address people in a election rally that they would do everything to protect Article 370. It is interesting that by giving such statement, this issue should not be raked up in the elections; the BJP leadership has achieved part of its goal by making it the sole discussion point in the elections. The way the political parties have shifted their focus to Article 370 and engaged themselves with BJP and what they call its "divisive agenda". Article 370 is so heavy on the minds of regional parties that they even forgot to come out with their policy ahead of the first phase of elections. Only Congress managed to do it and those too just two days before the first phase. The issue has occupied the larger

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<sup>23</sup> Rao Nagendra , Jammu and Kashmir: Changed Political Scenario, Journal Vol. 41, Issue No. 20, 20 May, 2006.

space in the election discourse. Both NC and PDP are finding it easy to touch the raw nerve and stonewall the BJP's much ambitious plan of reaching to magic number of 44 in the elections. Both are aware that when it comes to politics, whether people would vote or boycott and the special identity is very close to the hearts of the people. Even those who believe that it is an empty shell and the only solution is in "Azadi" from India, have this feeling that if this Article is touched, it will be a psychological defeat for the people of Kashmir.

However, in case of BJP itself it seems to be a calculated move to be "soft" on Article 370, though the party's position vis-a-vis this "core issue" has remained wavering during the last over a decade. What its position was in early 90's, it's not the same today. In January 1992, the then BJP president Murli Manohar Joshi along with Prime Minister Narendra Modi braved to reach Lal Chowk, the city centre of Srinagar to hoist the tricolor. This was only to assert that Jammu and Kashmir was an integral part of India and they had vowed to continue the struggle to get the Article scrapped. Abrogation of this Article was once among three core slogans "Ayodhya, Uniform Civil Code and Article 370" but it went down the radar slowly. In 1998 Lok Sabha elections, its abrogation almost came as a threat from BJP. But in 1999 it was not focused on. Similarly in 2004, the then BJP President Vankiah Nadu while realizing the "Vision Document" maintained that this law was necessary. BJP's state unit with more support in Jammu division has always advocated the complete integration of state with India. But interestingly in 2008 assembly elections, when it released the policy, this issue was missing. Though it benefited from the Amarnath land row, it stressed upon the alleged discrimination with Jammu region. Senior BJP leader Ashok Khujuria was then asked why Article 370 is missing, he shot back saying: "It's immaterial whether there is a mention of Article 370's abolition or not. It is an agenda in our hearts."

This time too it is not known whether the party would forcefully include the issue in the poll manifesto that was not released till these lines were written. However, one thing is clear that BJP is treading on a cautious path keeping in view its ambitious plan of achieving the 44+ mission. Party's strategy is well designed. Even if it is not in a position to get a significant number of seats from Valley, but the euphoria it has created has much more impact than the parties, which are in winning position. Its tacit alliance with at least two parties in North Kashmir and entry of some prominent faces from Valley

has emboldened the party. Making its presence felt in Valley is perhaps the biggest dividend it can count in the recent past. Whether people at large may like it or not, but BJP is on the scene and Prime Minister Narendra Modi's proposed election rally in South Kashmir's Anantnag district also symbolizes its presence. Whether there could be a serious debate on Article 370 is not known, but one thing is clear that PM Modi has forced the NC and PDP to ground their agendas of "Autonomy and Self Rule and embraced Sajad Lone who had talked about something bigger called "Achievable Nationhood". He engaged them in this debate to forget their political bibles.

In order to have maximum seats to occupy the larger political space in the state, the party has cleverly gone low on the contentious issue of Article 370, thus trying if not to earn goodwill but at least not to annoy the people. It is a different issue that if BJP comes to power, how it would proceed. With power in Delhi, this combination could prove deadly in the months and years to come. But one thing is clear that as of now BJP has achieved its goal to make Article 370 a poll issue.<sup>24</sup>

### **3.3 The Role of Current Collation Government of P.D.P and B.J.P**

Jammu and Kashmir consists of Five Political parties i.e. National Conference NC, Peoples democratic party PDP, Congress, Bharatiya Janta Party and Panthers party from which Since 2002 NC, PDP and Congress are highly competitive and others were unable to rule in the State but in the last parliament elections which were held in 2014, BJP and PDP got three seats each which results their collation and result was also similar in the assembly elections in 2014 where PDP got 28 seats followed by BJP who got 25 seats which clearly shows that now people of the State are indulging in the affairs of government by using their voting rights.

#### **3.3.1 Political Measures of Collation Government of BJP and PDP**

Efforts has been taken by the Central Government of India to change the bitter relation with the Pakistan neighbor country and State Government also works in accordance with the union Government and follow their initiatives for the peace

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<sup>24</sup>Bukhari Shujaat., Rising Kashmir; Art 370 a bandwagon, article 4578, published on 27 November 2014.



and harmony in Jammu and Kashmir for its better development. It is the result of the political development in the state which is possible only by the collation of the Government which results to open new ways in all the three regions to improve the connectivity in the State.<sup>25</sup>

### **3.3.2 The Security Measures by the Collation Government**

The present situation of Jammu and Kashmir has been better than in 1990s because the collation government is mainly working on the safety of the people of the state and people also understand the value of peace and harmony and participated with the government to overcome the problems in Kashmir. Special laws for safety and security has also been discussed and applied by the State Government e.g. Armed Forces Special Powers Act (AFSPA). The situation is improved with this act and The Lands which are used by the Army are not on lease actually that particular Land belongs to the Residents of the state which will be returned to them after the completion of their objective as a remuneration State govt paid the Rent to the Residents acc to the Market Rates.<sup>26</sup>

### **3.3.3 Here are the 15 highlights of the CMP:**

1. For the development of their parties in Jammu and Kashmir it is necessary to maintain peace, law and order by both collation partners.
2. Ruling Government should be clear and responsible to work in a Jammu and Kashmir.
3. Collation Government should make efforts to make “Jammu and Kashmir” a moral state rather than a dishonest one.
4. Present Government should make efforts to build a strong economy in Jammu and Kashmir.
5. The Present Government must be accountable under the subject matters of

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<sup>25</sup>Rekha Chowdhary, V Nagendra Rao, Jammu and Kashmir: Changed Political Scenario, Vol. 41, Issue No. 20, 20 May, 2006

<sup>26</sup>Zaman Johar, International Journal of Political Science (IJPS) Volume 2, Issue 3, 2016, PP 22-24 ISSN 2454-9452.

vigilance commission and “Right to information act.”

6. The government should use a meaningful dialogue while speaking in a rally for state’s peace and harmony.

7. Present Government need to check the need to see the concerned areas for the continuance of “Arms Force Special Power Act” in those areas.

9. The Present Government should tried more to talk with the Hurriyat Conference regarding the serious issues of Jammu and Kashmir.

10. TheImmovable property of the residents which are acquired by the security reasons without any lease agreement will be returned to their lawful owners other than that Land which is extremely Important to take it for security requirement and also paid them rents of those immovable property as per the Market Rates.

11. The Present Government should make efforts for the betterment of the refugees of the Pakistan who came in India in 1947,1965 and 1971.

12. The collation Government should also take steps to imrove the living conditions of the western Pakistan refugees.

13. For the People who are residing on the International Borders and on the LOC, The Present Government make provisions.

14. Thegovernment will protectedtheshare of profit which comes from theNational Hydro PowerProject (NHPC) emanating from JammuandKashmir’swater to thestategovernment.

15. All agreements with NHPC will be set aside by Thecollationgovernment.<sup>27</sup>

### **3.4 Army as a part of the State as well as Central Government’s Politics**

#### **3.4.1 The Armed Forces (Jammu & Kashmir) Special Power Act**

An Act to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State of Jammu and Kashmir. It is enacted by

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<sup>27</sup>Zaman Johar, International Journal of Political Science (IJPS) Volume 2, Issue 3, 2016, PP 22-24 ISSN 2454-9452.

Parliament in the Forty-first Year of the Republic of India as follows:-

**“Power to declare areas to be disturbed areas-** in relation to the State of Jammu and Kashmir, the Governor of the State or the Central Government, is of opinion that the whole or any part of the State is in such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary to prevent” -

(a) “activities involving terrorist acts directed towards overawing the Government as by law established or striking terror in the people or any section of the people of alienating any section of the people or adversely affecting the harmony amongst different sections of the people ;

(b) activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India,

the Governor of the State or the Central Government, may, by notice in the Official Gazette, announce the entire or any part of the State to be a disturbed area.”

**Explanation-** In this section, "terrorist act" has the same meaning as in clarification to article 248 of the Constitution of India as appropriate to the State of "Jammu and Kashmir".

**“Special authorities of the armed forces-** Any commissioned officer, warrant officer, non-commissioned officer or any other person of equal rank in the armed forces may, in a concerned area”

(a) “if he is of opinion that it is important to do for the preservation of public order, after giving such due caution as he may think necessary, fire upon or use force, even to the causing of death, alongside any person who is acting in infringement of any law or order for the time being in force in the concerned area ruling out the assembly of five or more persons or the carrying of weapons or of things able to be used as weapons or of fire-arms, bullets or likely to explode substances ;

(b) if he is of view that it is essential so to do, demolish any arms dump, prepared or equipped position or shelter from which armed attacks are made or are expected to

bemade or are attempted to be made, or any arrangement used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders required for any offence;

(c) Arrest, without warrant, any person who has devoted a cognizable offence or against whom a sensible misgiving exists that he has devoted or is about to commit a cognizable offence and may use such force as may be needed to effect the arrest;

(d) enter and search, without warrant, any grounds to make any such arrest as aforementioned or to get well any person supposed to be wrongfully reserved or restricted or any property sensibly suspected to be stolen property or any arms, bullets or explosives substances supposed to be illegally kept in such grounds and may for that purpose use such force as may be essential and seize any such property, arms, ammunition or explosives substances;

(e) stop, search and seize any vehicle or vessel sensibly supposed to be carrying any person who is a proclaimed offender, or any person who has devoted a non-cognizable offence, or beside whom a reasonable doubt exists that he has committed or is about to commit a non-cognizable offence, or any person who is shipping any arms, ammunition or explosive matter believed to be illegally held by him, and may, for that reason use such power as may be essential to consequence such stoppage, search or seizure, as the case may be.”

Any person who is doing investigation under this Act has a power to open any door, lock ups, any other safety box or can also break it if key is not found.

**Arrested persons and detained property to be prepared by the police** – “Any person detained and taken into detention under this Act and every property, arms, ammunition or explosive matter or any vehicle or container apprehended under this Act, shall be completed over to the officer-in-charge of the nearby police station with the least possible delay, collectively with a statement of the conditions occasioning the arrest, or as the case may be, occasioning the capture of such property, arms, ammunition or explosive substance or any vehicle or vessel, as the case may be.”

“Protection of persons acting in good faith under this Act- No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central

Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

**Repeal and saving** - (1) “The Armed Forces (Jammu and Kashmir) Special Powers Ordinance, 1990(Ord.3 of 1990), is hereby repealed.”

(2) “despite such repeal, anything done or any action taken under the said order shall be deemed to have been done or taken under the corresponding provisions of this Act.”<sup>28</sup>

### **3.4.2 Jammu and Kashmir AFSPA, 1990 is an emergency law that gives legal cover to the armed forces operating in disturbed areas from prosecution**

Twenty five years after the Armed Forces Special Powers Act (AFSPA) was implemented in Jammu and Kashmir, the law still remains a bone of contention in the militancy-hit state. Ambiguity shrouds the status of the AFSPA even as several regional parties, including separatists, debate the pros and cons of the law and up the ante against the government which time and again has refused to repeal it.

The government of India should take a call on it immediately and revoke this draconian law, which no civilized country would like to have. This law is horrible and India being a democratic country should not allow its continuation in any part of the country. Jammu & Kashmir AFSPA, 1990 is an emergency law that gives legal cover to the armed forces operating in disturbed areas from prosecution.

### **3.4.3 Armed militancy**

The law was first implemented on July 5, 1990, when the entire law-and-order machinery collapsed in the Valley and normal law was found inadequate to tackle

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<sup>28</sup>The Armed Forces (Jammu & Kashmir) Special Power Act,1958, India, available at:[http://www.satp.org/satporgtp/countries/India/states/jandk/documents/actsandordinances/J&K\\_Specialpoweract.html](http://www.satp.org/satporgtp/countries/India/states/jandk/documents/actsandordinances/J&K_Specialpoweract.html) (last visited on:9 March 2017).

the rising graph of armed militancy. The then state government declared the Kashmir Valley as a disturbed area under section 3 of AFSPA. Later, on August 10, 2001, the J&K government extended disturbed area provision to the Jammu province also.

During his six-year tenure, former Chief minister Omar Abdullah constantly demanded gradual withdrawal of the AFSPA from peaceful areas of Jammu and Kashmir. However, the Indian Army rejected any proposal to withdraw the AFSPA even from Srinagar, Budgam, and Jammu, which usually J&K Police, which is not covered by the AFSPA, protects. The Army argues that the cover provided by the J&K Police and CRPF is just one layer of security and for keeping these districts safe, "area domination" operations by Army columns to keep militants at bay are necessary. These operations, contends the Army, must be covered by AFSPA. Several national political parties, including the Congress and the BJP, also say that the armed forces should have the final say on the issue. Both PDP and BJP - the partners of the coalition government in J&K - have now conceded that they have historically held different views on the AFSPA.

The Common Minimum Program (CMP) of the parties, however, says that the government will examine the need for denitrifying the "disturbed areas" in the state. "This, as a consequence, will enable the Union government to take a final view on the continuation of AFSPA in these areas," the CMP states.

However, senior BJP leader and Minister of State in the Prime Minister's Office, Dr. Jitendra Singh recently created a controversy while saying the last word on AFSPA would come only from the security agencies and not from political functionaries. The reason being that seriously believe the last word on this (AFSPA) should not come from political functionaries, but from security experts and security agencies.<sup>29</sup>

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<sup>29</sup>Editorial, "25 years on, AFSPA remains a dirty word in Jammu and Kashmir", India Today, 9 July 2015.

### **3.4.4 Problem of people of Kashmir with AFSPA Armed Forces (Special Powers) Act, 1958**

To protect Indian Armed Forces special act which is called as a Armed Forces (Special Powers) Act,1958 has been Introduced.This act protects them from Human right violations but Navanethem Pillay,United Nations High Commissioner requested India to repeal this act cause it is criticized by various human right groups.

“All three special laws in force in the state assist the government in protecting the perpetrators of human rights violations from trial, and encourage them to act with impunity. Provisions of the Armed Forces (Jammu and Kashmir) Special Powers Act clearly contravene international human rights standards laid down in the International Covenant on Civil and Political Rights, as members of the UN Human Rights Committee have pointed out. One Committee member felt that provisions of the act – including immunity from prosecution – were highly dangerous and encouraged violations of the right to life”.

On 24<sup>th</sup>September 2013 Acc to, the former Indian Army Chief General, “the state politicians of Jammu and Kashmir are being funded by the army secret service to keep the general public at calm and this activity is there since the partition and the secret service paid a bribe to a politician to bring down the state government which was pushing for AFSPA repeal.”<sup>30</sup>

An officer of the armed forces has power in an area which is declared as disturbed under the Armed Forces Special Powers Act are:

For the maintenance of public order After giving the warning they can fire or use any kind of things which causes even death to the person who are law abiders or provoke others in the disturbed area

They can Demolish any arms or any place which is used or planned to do any offence by the armed person or armed gangs.

Any person who has committed the cognizable offence can be arrested without a warrant or having a doubt on any person or gangs and for this purpose, Army can use force also to arrest that particular person if it is needed.

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<sup>30</sup> Editorial on Kashmir : why AFSPA must go, The Hindu, published on 29October 2011.

To Arrest a person who had committed any cognizable offence or any arms which is wrongfully restrained or any explosive substance, they can enter and search any premise and seize that particular weapon and explosive substance.

Any vehicle can be stop and search if it is taking that person or weapon.

That arrested person will be taken into custody of the nearest police station by the officer in charge without any delay with a report of his arrest.

Army officers cannot be answerable to anyone for their actions which they do under that act and also their will be no prosecution, case or any legal proceeding against them. They have legal immunity for their actions.

Under this Act, a person has right who is acting in a good faith will be protected from any suit or legal proceedings with the exception of the sanction of the Central Government, in exercise of the powers conferred by this Act.

### **Fake encounters**

More than Hundreds of Kashmiri People including women and children has been killed in Fake encounters which was done by Army officers. Indian Army officials have confessed it but Indian Government is still denying it. According to a security person while giving an interview in BBC interview, "fake encounter' killings are those in which security personnel kill someone in cold blood while claiming that the casualty occurred in a gun battle". As per his statement, the Kashmiris are defence officials and "even surrendered militants". Those three persons who were missing in 2010 and when found they were killed by army and according to army those three persons were found with Pakistani currency so they killed them which results the major was suspended and other soldiers transferred. Another example is in 2011, Kashmir Police has charged police official and Jawan to killed a civilian because according to them they were member of lashkar e tayabba but evidence found.

### **Disappearances**

More than thousands of Kashmiris has been disappeared and the accused of this incident is the Indian security forces to torture or extrajudicial killing. The number of woman are now half widows because their husbands has been disappeared and those woman are living in a very poor condition. As per the Human Right activist, about 8000 persons has been disappeared who were in government detention and it could be



possible that those 8000 persons were thrown for mass graves in Kashmir valley.

### **Mass graves**

Human rights activists has found mass graves of 1000 bodies from all over Kashmir. Acc to Human Rights Commision that there are thousands of bodies of bullet-ridden which were buried in unmarked graves.“Of the 2730 bodies uncovered in 4 of the 14 districts, 574 bodies were identified as missing locals in contrast to the Indian government’s insistence that all the graves belong to foreign militants.”As per the data given by Parvez Imroz and his co-workers “the total number of unmarked graves were about 6,000. The British parliament commented on the recent discovery and expressed its sadness and regret of over 6,000 unmarked graves”., a special reporter has warned India on extrajudicial executions, “all of these draconian laws had no place in a functioning democracy and should be scrapped.”

### **Extrajudicial killings**

In 1994, Human Rights Watch gave a report on counter insurgency operation of detainees by indian forces in kashmir and moreover extrajudicial killing was done within hoursand even more strange thing is that these extrajudicial killing are named as a “matter of policy”. As per the report in 1995, “Amnesty International stated that hundreds of civilians had been victims of such killings, which were often claimed by officers as occurring during "encounters" or "cross-fire”. A 2010 US state department report cited extrajudicial killings by security forces in areas of conflict such as Kashmir as a major human rights problem in India.”

### **Torture and sexual violence**

Civilians has been tortured by Army security forces and police .Primary evidence of torture were shoen to Indian Diplomats by the US officials in 2007.Acc to Human rights groups,“150 top officers have participated in torture as well as sexual violence and that the Indian government was covering up such acts.”<sup>31</sup>

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<sup>31</sup>Problem of people of Kashmir with AFSPA ,India , available at : [https://en.wikipedia.org/wiki/Human\\_rights\\_abuses\\_in\\_Jammu\\_and\\_Kashmir](https://en.wikipedia.org/wiki/Human_rights_abuses_in_Jammu_and_Kashmir).(last visited on 7 March 2017).

Beside this many other Indian Armed Forces have reported to be killed by Indian security forces in custody, extrajudicial executions and enforced disappearances and these human right violations are said to be carried out by Indian security forces under total impunity. Civilians including women and children have been killed in "reprisal" attacks by Indian security forces. International NGO's as well as the US State Department have documented human rights abuses including disappearances, torture and arbitrary executions carried out during India's counter terrorism operations. United Nations has raised serious concerns over large scale killings by Indian security forces. Human Rights groups have also accused the Indian security forces of using child soldiers, although the Indian government denies this allegation. Torture, widely used by Indian security, the severity described as beyond comprehension by amnesty international has been responsible for the huge number of deaths in custody. The Telegraph, citing a Wiki Leaks report quotes the "International Committee of the Red Cross (ICRC) that Indian security forces were physically abusing detainees by beatings, electrocutions and sexual interference". These detainees weren't Islamic insurgents or Pakistani-backed insurgents but civilians, in contrast to India's continual allegations of Pakistani involvement. The detainees were "connected to or believed to have information about the insurgents". According to ICRC, 681 of the 1296 detainees whom it interviewed claimed torture. US officials have been quoted reporting "terrorism investigations and court cases tend to rely upon confessions, many of which are obtained under duress if not beatings, threats, or in some cases torture." Amnesty International accused security forces of exploiting the Armed Forces Special Powers Act that enables them to "hold prisoners without trial". The group argues that the law, which allows security to detain individuals for as many as two years "without presenting charges, violating prisoners' human rights".<sup>32</sup>

### **3.4.5 Some of the incidents which are reported but action has not taken by Indian Government against the Army**

1990 Ethnic cleansing of Kashmiri Hindus Gawakadal massacre Zakoora and Tengpora massacre

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<sup>32</sup>Arundhati Roy on "AZADI", Outlook India , 25july 2016.

1991 Kunan Poshpora incident

1993 Lal Chowk fire Bijbehara Massacre Sopore massacre

2000 Chittisinghpura massacre

2001 Kishtwar massacre

2006 Doodhipora killing, And Doda massacre

2008 Amarnath land transfer controversy

2009 Shopian rape and murder case Bomai Incident

2010 Kashmir unrest

2013 Ramban firing incident

2016 Handwara incident 2016 Kashmir unrest<sup>33</sup>

### **3.4.2 Financial Support by Central Govt. to State**

J&K gets 10% of Central funds with only 1% of population

The State has received Rs.1.14 lakh crore in grants over sixteen years. Jammu and Kashmir has received 10 per cent of all Central grants given to states over the 2000-2016 period, despite having only one per cent of the country's population, analysis by The Hindu of Central and State finances shows.

In contrast, Uttar Pradesh makes up to about 13 per cent of the country's population but received only 8.2 per cent of Central grants in 2000-16. That means J&K, with a population of 12.55 million according to the 2011 Census, received Rs.91,300 per

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<sup>33</sup>A Chronicle of Important events and dates in J&K's political History,India available at : [http://www.jammu-kashmir.com/basicfacts/politics/profile\\_1991.html](http://www.jammu-kashmir.com/basicfacts/politics/profile_1991.html).(last visited on 13March 2017).

person over the last sixteen years while Uttar Pradesh only received Rs.4,300 per person over the same period.

Even among the special category states, Jammu and Kashmir receives a disproportionate amount of Central assistance.

The state received Rs.1.14 lakh crore in grants over the sixteen years under review, according to the Union Finance Ministry's data, which is more than a quarter of the Central funds disbursed to the 11 special category states in that period.

"In general, the special category states get a higher share of central grants, and Jammu and Kashmir being one of them will also get such treatment," Tapas Sen, a professor at the National Institute of Public Finance and Policy (NIPFP), and a long-time researcher on state finances, told The Hindu. "But even among them, Jammu and Kashmir is getting a higher share due to its disturbed status and its border with Pakistan."

Experts on the subject also say that this larger share could work as an incentive to ensure that the state remains with India.

### **CAG report**

This seeming imbalance in Jammu and Kashmir's finances — with Central grants accounting for 54 per cent of the state's total revenue and 44 per cent of its expenditure in FY16 — assumes significance in light of the fact that the Comptroller and Auditor General of India in 2015 castigated the Jammu and Kashmir government for the pendency of a large number of inspection reports and observations highlighting "serious financial irregularities" in the state.

"There were persistent errors in budgeting, savings, excess expenditure and expenditure without provision," the CAG report on the State's finances for the year ended March 31, 2014, said. "Anticipated savings were either not surrendered or surrendered at the end of the year leaving no scope for utilising these funds for other development purposes."

The report has entire sub-heads titled 'errors in budgeting process', and 'unrealistic forecasting of resources'.

Apart from the political reasons, there are also some fiscal reasons for Jammu and

Kashmir receiving a larger share of Central grants.

### **Fiscal reasons**

“Service Tax is not levied in Jammu and Kashmir and hence the state does not get a share of the same in the devolution of central taxes to states,” Ranen Banerjee, Leader – Public Finance and Economics at PwC India said.

This has led to a ballooning of Jammu and Kashmir’s share in the total non-plan revenue deficit of all states, Mr. Banerjee said, which has, in turn, meant that the Centre has had to send it more money to finance this deficit.

Another reason lies in the Centre’s treatment of the north-eastern and hilly states.

“Plan Grants were stopped by the Twelfth Finance Commission except for the north-east states and hilly states including Jammu and Kashmir,” Mr. Banerjee said. “Thus, Jammu and Kashmir and other hilly states continue to get the Plan grants while others do not get it.”<sup>34</sup>

However, this aspect does not explain Jammu and Kashmir’s larger share of grants even when compared to other hilly states.

According to the CAG report, 32,625 audit observations containing 8,518 inspection reports pertaining to the period 1998-2014 were outstanding as of March 31, 2014.

“Even though there might be legitimate reasons for Jammu and Kashmir receiving more Central grants, there is no call for such a large number of audit observations and questions lying unanswered with the state government,” another professor from NIPFP said. “Ignoring CAG’s warnings is a sure sign of trouble.”

### **Security Related Expenditure (SRE) Scheme in respect of J&K**

In view of the serious militancy/insurgency in J&K, the Government of Jammu and Kashmir have to incur more expenditure for maintain peace and tranquillity. It has led to an additional burden of its budget. In order to mitigate this problem and with a view

to augment the resources of the Jammu and Kashmir Government to fight the terrorism and contain militancy besides maintain law and order in the State, a separate SRE scheme for Jammu and Kashmir was introduced. It provided for reimbursement of expenditure on police which mainly support the logistical requirements of police force of Jammu and Kashmir and Relief & Rehabilitation of the Kashmiri migrants who have been uprooted from the valley during militancy period.

Under the Scheme of SRE,(POLICE),the expenditure related to carriage of constabulary, material & rent and accommodation hired for SFs. Border Posts, honorarium to SPOs, raising of IR Battalions, constructions of alternate accommodation, airlift charges, security works by Police Department and expenditure on detenues etc. are admissible.

During the financial year 2014-2015(upto 15<sup>th</sup> March)a sum of Rs.287.94 crore has been reimbursed to State Government under SRE(P).

Under the Scheme of SRE (R&R),the monthly cash relief to Kashmiri migrants, ex-gratia payment and pension to widows of the civilians killed in militancy related violence, scholarship to orphans affected by militancy, the expenditure towards PM's Package for return and rehabilitation of Kashmiri migrants etc., are reimbursed to J&K government.

During the financial year 2014-2015(upto 15<sup>th</sup> March)a sum of Rs.160 crore has been reimbursed to State Government under SRE(R&R)

Since inception of the SRE Scheme in 1989,the Govt. of India has reimbursed/released Rs.4735.51 crores under SRE(P) and Rs.2472.45 crore under SRE(R&R) to Government of Jammu and Kashmir upto 15/03/2015.

#### **CENTRAL SCHEME FOR ASSISTANCE TOWARDS**

#### **DAMAGED IMMOVABLE/MOVABLE PROPERTY DURING ACTION BY CPMFs AND ARMY IN JAMMU & KASHMIR. (Reimbursed by MHA)**

1. Presently as per State Government of J&K's Order dated 10th July 1990, ex gratia relief for damage of immovable property (due to bomb blast or other kind of sabotage) is granted equal to 50% of loss or Rs.1 lakh, whichever is less. The present quantum of relief provided by the State Government is inadequate. Accordingly, the Scheme for enhancement of the ex gratia relief has been formulated with the objective to provide

adequate relief for damage caused to the immovable/movable property during action by CPMFs/Army and in which there has been no involvement of the owner/tenant in subversive activities.

2. This Scheme will come into operation with effect from 3rd June, 2010.

3. The amount of relief payable under this Scheme will be to the extent of the total loss/damage assessed by the District Level Committee and subject to an upper ceiling of Rs. 10 lakhs (Rupees Ten lakhs) in total. The ceiling of Rs. 10 lakhs will be apportioned and subject to an upper ceiling of Rs. 7 lakhs in respect of immovable property and Rs. 3 lakhs in respect of movable property respectively. The apportionment is to make provision for loss suffered during action by CPMFs/Army on household goods which includes Refrigerator, T.V., Computer, Laptop, Washing machine, furniture etc., as may be determined by the Assessing Officer. The relief with the ceiling limits of Rs. 7 lakhs and Rs. 3 lakhs towards immovable and movable property would be considered by the District Level Committee based on the certificate received from the concerned Revenue authorities not below the rank of Tehsildar and subject to technical assessment by a Registered Civil Engineer of Government/Public Sector. Relief given by the Government of J&K on this count will be deducted from the final assessed amount.

## **II. CONSTRUCTION OF TWO ROOM TENEMENTS FOR KASHMIRI**

MIGRANTS (Funded by Planning Commission)

- No of flats - 5242 flats
- Project cost - Rs. 385.00 crores

Present Status:

- Construction of all flats completed: 4624 allotted. The process for allotment of remaining flats is in progress.

## **III. CONSTRUCTION OF 200 FLATS FOR KASHMIRI MIGRANTS AT BUDGAM: (Reimbursed by MHA)**

In February, 2004 Government had approved the Construction of 200 flats at Sheikhpora, Budgam district at an expenditure of Rs. 22.93 crore for rehabilitation of Kashmiri Migrants. Construction of 200 flats completed. Flats allotted to 31 local Kashmiri Migrants families who had not migrated from the Valley and migrants on sharing basis who have joined in the Valley under employment component of PM's

Package.

Another 18 flats have also been completed at Mattan and Anantnag. These flats have also been allotted to migrants on sharing basis who have been appointed under employment component of the PM's Package.

#### **IV. PACKAGE FOR RETURN AND REHABILITATION OF KASHMIRI MIGRANTS (Funded by MHA)**

.Due to terrorist violence in early phases, people of Jammu and Kashmir specifically Kashmiri Pandit migrated in other areas, Government provide them financial support on temporary basis till when they would come back in their own State and also on 25-26 of April, 2008, when Prime Minister visited to the state has announced that financial support will be given to them i.e. Kashmiri Pandit if they want to come back to the Kashmir, IN those financial support includes:

##### **Housing**

- Assistance @ Rs. 7.5 lakh per family for repair/reconstruction for fully or partially damaged houses.
- Assistance @ Rs. 2.00 lakh per family for dilapidated/ unused houses.
- Assistance @ Rs. 7.5 lakh per family for purchase/construction of a house in Group Housing Societies for those who have sold their properties during the period after 1989 and before the enactment of "The J&K Migrant Immovable Property (Preservation, Protection and Restraint of Distress Sale) Act, 1997" on May 30, 1997.

##### **Transit Accommodation**

- Government has approved transit accommodation in three sites for those migrant who return back to provide them transit accommodation for the interim period when they undertake the

Reconstruction/repair of their houses. Rental and incidental expenses will also be provided to them who may not be accommodated in transit accommodation

##### **Continuation of Cash Relief**

- Those who migrant to Jammu and Delhi, on return of them to the Kashmir valley will be provided the free ration and cash relief of 5000/- per family for a time period of two



years.

#### Students Scholarships

- Children of migrant families will be provided assistance @ Rs. 750/-per month per child upto the age of 18 years (extendable upto the age of 21 years in exceptional cases).

#### Employment

- Those persons who are unemployed educated, Government will provide them jobs in the State Government and also provide financial assistance to those who want to become self-employed by providing them vocational training.

#### Assistance to Agriculturists/Horticulturists

- One-time financial assistance of Rs. 1 lakh would be provided to those having agriculture holdings. Assistance @ Rs.5,000/- per kanal, subject to a maximum of Rs. 1.5 lakh would be provided for restoration of orchards.

#### Waiver of interest on loans

- Waiver of the interest component of the loans taken by Kashmiri Pandits before migration from the Valley.

#### **VI. CASH AND RATION RELIEF TO KASHMIRI MIGRANTS.(Reimbursed by MHA)**

With effect from 1st July, 2012, the rate of cash relief given to Kashmiri Migrants at Jammu has been enhanced from the existing rate of Rs.1250/- per head per month, subject to a ceiling of Rs. 5000/- per month per family of four or more members to Rs.1650/- per head per month, subject to a ceiling of Rs.6600/- per month per family of four or more members. Kashmiri Migrants at Jammu are also being provided dry ration.

#### **7. EX-GRATIA RELIEF TO THE NOK OF J&K POLICE PERSONNEL KILLED IN TERRORISM RELATED INCIDENTS.(Funded by MHA)**

As per the Government of India order dated 17.5.2001, ex-gratia relief of Rs. 3.00 lakhs (Rupees Three lakhs only) has been provided to the next-of-kins (NoKs) of J&K Police

personnel killed in terrorism related incidents.<sup>35</sup>

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<sup>35</sup>TCA Sharad Raghvan J&K gets 10% of Central funds with only 1% of population, The Hindu (6 OCTOBER 18, 201) available <http://www.thehindu.com/news/national/other-states/JampK-gets-10-of-Central-funds-with-only-1-of-population/article14506264.ece>

## **Chapter -4**

### **Role of Indian judiciary and views regarding the special status**

## **Chapter -4**

## **Role of Indian judiciary and views regarding the special status**

The judicial interpretation must be taken into consideration when there is any ambiguity or breach of any law. Because judiciary is our constitutional framework is the final arbitrator as well as interpreter of any law. So, in this regard three cases require special attention.

**In “Prem Nath Kaul Vs State of Jammu and Kashmir”<sup>36</sup>** Acc to the Constitutional bench of five judges, “Article 370(2) shows that Constitution makers gave great importance to the final decision of power by the Parliament as well as by the President as well as by the President by the temporary provision of Article 370(1) is made conditional on the final approval by the State’s Constituent assembly in regard to the final decision in matter covered by Article 370.”

**In “Sampat Parkash VS State of Jammu and Kashmir”<sup>37</sup>** Other constitutional Bench has contrary views from the above mentioned case Acc to Court “the Article 370 can still be used to make order despite the fact that the State’s Constituents Assembly had already been dispersed”. Following are the three critical views in this judgment:

1. It completely ignored Article 370 (2) which lays down that “the concurrence given by the Government of State before the Constituents Assembly was convened and makes no mention at all to the completion of its work or its dissolution.” But the court also give his views that till Article 370 is not repealed in constituent assembly, it will continue But this is indefensible to say that after the body has been detached the Indian Government will acquired the power by deleting Article 370.

2. The Supreme court further added that abovementioned statement doesn’t mean that Article 370 can be misused by union and the guarantee of Special status as promised by our Constitution makers to the people of Jammu and Kashmir cannot be kept.

Lastly, the court misconstrued the State Constituents Assembly recommendation of 17<sup>th</sup> November 1952, which merely defined in an explanation the Government of State. The court concluded that the legislative assembly had shown its agreement that by continuing work on this Article it can be operative. But the critics contends that the explanation said no more than for the purpose of this Article, the Government of the

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<sup>36</sup>Prem Nath Kaul Vs State of Jammu and Kashmir, AIR 1959 SC 749.

<sup>37</sup>Sampat Parkash VS State of Jammu and Kashmir, AIR 1970 SC 1118.

State means it doesn't and cannot remove the limitation on the Central Government power of concurrence imposed by the clause (2) namely, ratification by the Constituents Assembly.

**In "Mohammed Maqbool Damnoo Vs State of Jammu and Kashmir"**<sup>38</sup>The court further explained in the second case. Here also the first case was not referred. It was a rare site when the Apex court had overlooked the precedent on a particular case. If there can be an overabundance of precedents than the ignorance of a particular precedent can be understood. But, when there is only three on a particular subject, than it cannot be ignored.

**"S. MubarikShah Naqashbandi vs. ITO,"**<sup>39</sup>"it was ruled that the provisions of Article 370 continued to remain in force even after the Constituent Assembly of the State enacted the State's Constitution. Hence, to assault executive orders under Article 370 issued after the Jammu & Kashmir Constituent Assembly was wound up is to be impudent to rulings of the country's judiciary."

#### **PRINCIPLES SET OUT BY JUDICIARY**

The Supreme Court has refused to interpret 'modification' word which is used in Article 370 (1) (d) in any "narrow or pedantic sense". In "Puranlal Lakhanpal V. President of India and Others", Supreme Court observed: "We are therefore of opinion that in the context of the Constitution, we must give the widest effect to the meaning of the word "modification" used in Article 370(1) and in that sense, it includes an amendment. There is no reason to limit the word "modifications" as used in Article 370(1) only to such modifications as do not make any "radical transformation". The J&K court gave its verdict on a petition regarding the applicability of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) in the state". The SARFAESI Act, 2002, enacted and enforced by the Indian Parliament in 2002, empowers banks and financial institutions to recover their non-performing assets without the court's intervention. The High Court said this Act cannot be applied to J&K, but suggested that the state can have its own law on the lines of the SARFAESI Act.

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<sup>38</sup> Mohammed Maqbool Damnoo Vs State of Jammu and Kashmir, AIR 1972 SC 963.

<sup>39</sup> Justice A.S. Anand., The Constitution of Jammu and Kashmir, p.no.109, Universal law publishing, New Delhi, 6<sup>th</sup> edn. 2010

In a judgment that would safeguard the special status of Jammu and Kashmir under article 370, the Jammu and Kashmir High Court in July 2015 said that the “sovereign in character and assembly exercises sovereign powers to legislate law”. The court also said that the “sovereign character” of the state cannot be challenged or abridged.

The division Bench comprises justice Mujaffar hussain attar and Ali Mohammed Magrey also ruled that Art.35 (A) of the Constitution of the India-which RSS and its affiliates view as unconstitutional and want repealed-clarifies the already existing constitutional and legal provision and does not extend something new to the state.

#### **4.1 Abuse by the central government**

Central Government indirectly interfering in the matters of the state because The Chief Ministers of the State from 1953 to 1975 were the nominees of Delhi. The misuse of this article can be seen as this has entitled the executive to surpass the essential procedure of Article 356, in case of Jammu and Kashmir. On the contrary Union legislature had to amend the constitution by four times which results 59<sup>th</sup>,64<sup>th</sup>,68<sup>th</sup> amendments for extend the President’s rule on 11<sup>th</sup> May 1987 to Punjab.<sup>40</sup>The case of gross abuse can be seen on 30<sup>th</sup> July 1986, when the President made an order under Article 370, extending to Kashmir under Article 249 of the Constitution to it was given by the centers own appointee, Governor Jagmohan. So, in the light of above illustrations it is very much obvious to deal with the extent of power in Jammu and Kashmir. The question has become more significant today because the Constituent Assembly of the State had already dispersed. But, the inference which has been drawn by the executive as well as the judiciary that it gives a permanent power to the President. Only State has a power to decided that what subjects should be given to Union. When legislative assembly had finalize the scheme and detached But, inference which has been drawn by the exclusive as well as the judiciary that it gives a permanent power to the President doesn’t seem to be the correct view. It is upto the legislative assembly to decide the subject matters which will given to the Union. Once the State’s Constituents Assembly had ended completely. Moreover, Article 370(3) “empowers the President to make an order abrogating or amending it”. There is a necessity of having the recommendation of State’s Constituents Assembly before President issues such notification. Ayyangar’s incite in the legislative assembly Under Article 370 on 17<sup>th</sup>

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<sup>40</sup>Shyam, Nilotpal, Article 370: A Constitutional Quandary, p.no.180, Indian Bar Review, Vol. XLII (2)2015.

October 1949. is very relevant in this perspective.

“The will of the people through the instrument of the Constituents Assembly will determine the Constitution of the State as well as the sphere of the Union jurisdiction over the State. These clauses provide for the concurrence of the Government of Jammu and Kashmir state. Now, these relate particularly to which are not mentioned in the instrument of the Accession, and it is one of our commitment to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituents Assembly which may be called in the state for the purpose of framing its Constitution.”

## **4.2 The President concluded**

When we explore the history little further, we will find that there was tragic shift of events after Nehru’s bitterness towards Sheikh Abdulla. The Sheikh was imprisoned on 9<sup>th</sup> August 1953 and also removed from the office. On 14<sup>th</sup> May 1954, a Presidential order under Article 370 was issued which sought to implement the Delhi agreement. By virtue of this order, 94<sup>th</sup> and 97<sup>th</sup> Entries in the Union list were extended to Jammu and Kashmir as were of 260 of the 395 Articles of the Constitution. Article 356 was imposed despite the State Constitution having the provisions for the amendment to the State’s Constitution i.e. sixth amendment, which is in violation of Section 147. The centre doesn’t stop itself here. It frequently uses Articles 370 not only 1975 an order was made debarring the State legislature from amending the Constitution (State’s) on matters related with Governor, Election Commission and the composition of the upper house, the Legislative Council.<sup>41</sup>

## **4.3 Abuse by the State Government**

It would be prejudiced to shift all the blame on the centre for the misuse of Article 370 without consider the immunity taken by the State under the garb of this special provision. By the virtue of Article 370 no law can be extended to the State without the

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<sup>41</sup>Shyam, Nilotpal, Article 370: A Constitutional Quandary, p.no.182, Indian Bar Review, Vol. XLII (2)2015.

approval of the State Legislature by an Act of Parliament. But it is bewildering to note that the legislature of the state is more active to legislate more draconian law of Union like National Security Act as Public Safety Act, the Jammu and Kashmir armed forces special powers at and Indian penal code. At the same time their reluctance to adopt laws regarding robust Human Right jurisprudence which will Develop the civilians rights . Jammu and Kashmir is still rules by Juvenile Justice Act 1997 but India Amended it in 2000 and followed the provisions of the “Juvenile justice (Care and Protection of Children) Act, 2000” as required by UN Convention on the implemented the 1997 Act. In the same manner the Parliament for establishment of Panchayati Raj had Introduced 73<sup>rd</sup> and 74<sup>th</sup> amendment. But the State Government refused to give effect to these amendments and election are still held in Present study aimed to trace the process of special status given to Jammu and Kashmir with reference of past and present view as well as problem of citizen of Jammu and Kashmir , also whether are they want any change in regard of special status to their under Jammu and Kashmir Panchayati Raj Act ,1988. Similarly the minorities right are being curtailed under the grab of this article. Under Article 6 Sikhs and Hindus who were migrated to Jammu and Kashmir after 1947 are not recognized as citizens because they were not from the Undivided Kashmir. the Present study aimed to trace the process of special status given to Jammu and Kashmir with reference of past and present view as well as problem of citizen of Jammu and Kashmir , also whether are they want any change in regard of special status to their Re-settlement Act, 1982.

It is also in contravention to the international Human Rights Law which clearly prohibits citizenship based on “Jus Sanguine” i.e. based on nationality of their parents instead of where they are born. In implementing international obligation is a constitutional mandate on the State of Jammu and Kashmir.

***In “Sheela Barse Vs Secretary, Children Aid Society”***<sup>42</sup>Supreme Court directed that international obligation should be incorporated in domestic legislation. The misery does not end here, they also cannot vote in the state assembly elections by the virtue of section 12(b) of the Jammu and Kashmir Representative of People Act, 1957 which disqualifies anyone’s name from the electoral list, who is not the permanent resident of that place.

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<sup>42</sup>Sheela Barse Vs Secretary, Children Aid Society, AIR 1987 SC 656.



It was also claimed that a Kashmiri women who has married a non –Kashmiri cannot inherit his ancestral property as well as she cannot buy any property in the state but mercifully in :

*In “State of Jammu and Kashmir vs. Dr. Susheel Sawhney”*<sup>43</sup>The Jammu High Court in the full bench reference answered the above mentioned assertion in negative. On a similar node, a Kashmiri women marrying a non-Kashmiri cannot get job in the state cannot buy land as well as get a job irrespective of their gender or religion.

Human Rights Commission is the apex body which supervises the implementation of Human Rights standard in India. The National Human Right Commission is the main body along with the different State Human Right Commission in each state. But, unfortunately for many years the state governments try to hide from the jurisdiction of NHRC by invoking special status under Article 370. As the state government always take the plea of having SHRC the jurisdiction over the matters of Human Rights over the State. But, the actual situation is that the SHRC of Jammu and Kashmir is suffering from acute financial shortage and infrastructure problems. The Annual Report 2004-2005 of the SHRC stated that the SHRC was financially “left totally dependent and at the mercy of the government” which endangered of the commission.<sup>44</sup>

#### **4.4 Stone manifesto in Jammu and Kashmir**

It is like a nightmare return to the terrible days of V.P. Singh and Jagmohan. Under the BJP – PDP Combo, the valley has spun out of control. The list of places where violent disturbances have erupted reads like a lesson in the geography of Kashmir. We are back to where we were, 20 years of retrieving Kashmir for India thrown into the dustbin of history.

The worst consequence is the elimination of Mehbooba Mufti as the one mainstream valley open to the otherwise. She was sympathetic to the alienated families. She made a name and reputation by visiting their homes when they lost near and dear ones. That hope started guttering when her father joined hands with the BJP. Then she did the same. It is now extinguished. The worst of the insurgency has shifted to the Mufti

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<sup>43</sup>State of Jammu and Kashmir vs. Dr. Susheel Sawhney AIR, 2003 JK83.

<sup>44</sup> Shyam, Nilotpal, Article 370: A Constitutional Quandary, p.no.186, Indian Bar Review, Vol. XLII (2)2015.

family's fortress of South Kashmir. Indeed, Burhan Wani was killed right there, in Kokoernag. Omar Abdullah was, alas, spot when he tweeted that Burhan Wani will attract more discontents from the grave than he did no social media when alive.

Tough action against militants and terrorists is, of course, warranted. But only as a supplement to a political and diplomatic process. The 1990s wave of militancy started abating only when Prime Minister P.V. Narsimha Rao in 19995 pledged the "sky as the limit" for Jammu and Kashmir autonomy and offered elections as the way forward. Atal Bihari Vajpayee signaled, "Insaniyat" and "Kashmiriyat" and allowed the Huuriyat to meet with their Pakistani patrons both in India and in Pakistan. Former Prime Minister of India Manmohan Singh sent in intercutors, even as he engaged as never before the Musharraf and his envoys.

Under Prime Minister of India Narendra Modi, all that has been ended. There is no political process in the valley. The Hurriyat stands boycotted. The PDP stands dominated. The National conference and the Congress stand discredited. The BJP, without a single seat in the valley rules the roost. The militancy is now not Pakistani-driven but principally indigenous. Yet, Pakistani infiltrators are pouring in while the Army and the CRPF blame each other for the alarming increase in domestic and outside militancy. There is no political process, nor a diplomatic process. Pakistan has been prohibited from engaging with the Hurriyat. In consequences, the dialogue with Pakistan has been stranded. In the absence of dialogue and engagement, slogans of 'azadi' have again begun renting the air. Umar Khalid and Anirban are arrested and charged with sedition, but there are too many slogan-mongers in Kashmir itself for any action to be taken against them. So, scapegoats are found in Jawaharlal Nehru University. Our worst apprehensions of the opportunistic alliance between the BJP and the PDP are being realized.<sup>45</sup>

Mode's cohort may wander the valley at will but while they have guns in their hands, they do not have the will of the people behind them. Before the situation deteriorates any further, the state government should resign, governor's rule should be imposed for a short while and fresh elections held. Dialogue with the discontents and dialogue with Pakistan should constitute the theme of the election campaign. That would induce a measure of calm, which would instill a measure of hope. The ordinary Kashmiri might

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<sup>45</sup> M. Najeeb Mubaarki, Stone Manifesto, Outlook, National Opinion published on 25 JULY 2016.

be reassured that India wants Kashmir's, and not just Kashmir.

Burhan wani's voice found resonance because he articulated the grievances of many Kashmiris. Their apprehensions had been stoked when the PDP did what neither the National Conference nor the Congress would dream of doing – allying with the BJP. They have watched with alarm as the hindutva madness seizes the genetic plains, and Kashmiri students – even those who pledge and proclaim their loyalty to India are prosecuted. The BJP and its parivar ignore this ground reality. With their grip firm on the levers of political power in the valley, they ride roughshod over the people. They lord it over their realm, not for the people but in spite of them.

### **Understanding Army-people ties is more important than engagement with separatists**

Political parties including the separatists who always demanded a permanent solution, has completely forgotten the incident when Security forces killed Burhan Wani who was the leader of Hizbul Mujahidin and also injured more than hundreds of people by using pellet guns which results protest done by the civilians. Political Parties including PDP,NC and the Hurriyat always take advantage of the sensitive situation created by the protesters who always wanted to live a normal life and wanted to save their valley by risking their own lives.<sup>46</sup>

Political Parties should take initiative to protect the children who are being used as revengeful things by the violent protesters .People who are aware of these facts, take steps to save the valley from the dishonest protesters.

Civilians has been harassed by the security forces which created a widening gap day by day in between security forces and civilians,Because of this instead of respective people of Kashmir Started hating them so the Central and state Governments has to take initiative to fill the gap between security forces and the people. the CRPF and the army uses the force which is dangerous and harmful for the People so there is necessity to make the Good relations in between forces and the civilians so that both can cooperate with each other which would be helpful to overcome from the critical situation in the Kashmir valley.

There is not any shortcut method to overcome from the problem of kashmir,so the

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<sup>46</sup> <http://www.dnaIndia.com/analysis/editorial-dnaedit-army-people-ties-2248235> (last visited on 20March 2017).

Central Government and other political parties like BJP should talk politely with the separatists i.e. Mirwaiz Umar Farooq and the other Hurriyat factions and also make them understand that with the limited provisions of the constitutions, Kashmir Problem can never be ended, but these parties are actually afraid to lose their seats from the State that is why they don't take initiative. On the other side Separatist by taking advantage of this situation, trying to create a political space for themselves. Actually they wanted a trilateral talks in between India, Pakistan and the Kashmir groups.

The Central Government and The State Government which is the PDP-BJP coalition should get better the relation of Army and the civilians which can be done by forming army-civilians committees in every town so that civilians would feel safe and secure in the valley. Both Governments also do check and posts on these committees so that it work smoothly on daily basis. If the relation between Armed forces and civilians get better than Kashmir can tremendously overcome this critical situation but it doesn't mean to include the separatists in this work because they are hopeless minority but they should also be heard when they want to talk.

#### **4.5 Human rights abuse**

In Jammu and Kashmir, Human right abuses are unstoppable which includes mass killings, fake encounters, torture, rape, sexual abuse to control of freedom of speech which is done by none other than The Indian Army, CRPF, BSF and other militant groups and the blame was imposed to Pakistan for abusing Human rights in the State of Jammu and Kashmir and in Answer Pakistan is blaming India for the violation of LOC. As per the Diplomatic cables, "ICRC had briefed US officials in Delhi in 2005 about the use of torture from 2002-2004 by security forces against hundreds of detainees suspected of being connected to or having information about militants".<sup>47</sup> Kashmiri Hindu Pandit who comprised of 3% of total population of Kashmir valley has wiped by Jammu Kashmir Liberation front. As per the Asia watch "The militant organizations forced the Hindus residing in the Kashmir valley to flee and become refugees in Delhi and Jammu. There is controversy regarding whether pandits left due to fear of violence or were encouraged by the government to leave in order to undermine the support for militant movements". Kashmiri militants are assisted and supported by ISI. The "Jammu and Kashmir Liberation Front" & "Hizbul Mujahedeen" were the head of these groups. The

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<sup>47</sup> Arundhati Roy, frontlines of revolutionary struggle, The Pioneer, 22 October, 2010.

violence against the Kashmiri Pandits were continued till the majority of them had been evicted out of the Kashmir valley but some separatist leaders are completely contrary to this statement.<sup>48</sup>

In a 1993 report, Human Rights activists Said, "Indian security forces assaulted civilians during search operations, tortured and summarily executed detainees in custody and murdered civilians in reprisal attacks". As per the Report civilians are targeted by the militants less than the Armed forces. Civilians were Raped by Armed forces in a daily basis to "punish and humiliate" the communities. As per the Report given by the US state Department in 2010, "the Indian army in Jammu and Kashmir had carried out extrajudicial killings of civilians and suspected insurgents". Not only armed forces but separatists and insurgents also killed and abused the civilians which is described by this report. According to The Indian Army, "97% of the reports about the human rights abuse have been found to be "fake or motivated" based on the investigation performed by the Army". And in another report given by the US State Department said, "Indian authorities use Armed Forces Special Powers Act (AFSPA) to avoid holding its security forces responsible for the deaths of civilians in Jammu and Kashmir."<sup>49</sup>

#### **4.5.1 Jammu and Kashmir High Court on Pellet Gun Use**

The High Court of Jammu and Kashmir has ordered a report from the central department of on the handling of "lethal" weapons by "untrained personnel" indicating its disapproval of the use of pellet guns by security personnel.

"Pellet is a round ball loaded with lead. If it penetrates the eye, which is a water ball, damage is done. Can't you use other methods like water, tear gas? This (pellet gun) has proved to be lethal." stated the court report. "These are your people. They have anger. They are protesting. That does not mean you should render them disabled. You have to protect them. Hope it (use of pellet guns) is reviewed," a division bench comprising Chief Justice N Paul Vasantha Kumar and Justice Muzaffar Hussain Attar said while hearing a PIL. The court also asked the government to consider means of crowd control that do not involve pellet guns.

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<sup>49</sup>HR abuse in Jammu and Kashmir  
: [https://en.wikipedia.org/wiki/Human\\_rights\\_abuses\\_in\\_Jammu\\_and\\_Kashmir](https://en.wikipedia.org/wiki/Human_rights_abuses_in_Jammu_and_Kashmir)  
(last visited on 20 March 2017).

The court also observed that the untrained security personnel who were allowed to use pellet guns, caused high number of injuries to the civilians. The comment was made in light of the CRPF DGP's statement that 114 companies of the other force had to be called away mid-training to help control the situation in Kashmir. The bench stated, "What one understands is those who are using them are not trained. It becomes lethal when handed over to a person who does not know how to use it. Ensure it is used only by trained personnel but we are not approving it." Consequently, the court ordered the assistant solicitor general of India to give a report on the handling of pellet guns which is used by the security forces. "Maximum people have suffered eye injuries. People have also suffered injuries on vital body parts. File a response because the question does arise about the handling of these guns," the bench said. The bench urged immediate action to the state government to again provide mobile phone services in the Valley citing adverse impacts on the quality of life in the Valley.<sup>50</sup>

#### **4.5.2 Prime minister's warning to stone pelters**

Prime Minister Narendra Modi sent another warning to the people "instigating the youth in Kashmir" saying they have to answer to them as well. Underscoring the need for unity at such times on his monthly radio programme **Mann ki Baat**, PM Modi said "All parties are united on Kashmir. They sent a message to the world, to the separatists and reached out to the people of Kashmir." Equating it with the passing of the GST bill in the assembly, PM Modi said, "It is the view of all of us, of 125 crore people from a pradhan of a village to the Prime Minister, that if any life is lost in Kashmir, whether of any youth or any security man, that loss is ours". The Prime Minister further said "Ekta" (unity) and "Mamata" (love) could be the twin mantras for addressing the Kashmir problem. "From the interactions I had with all parties on Kashmir, one thing emerged, which can be put in simple words as Ekta' and Mamata. These two things were the basic mantra." In the light of positive messages, the Prime Minister gave this to trouble-makers in the state when Pakistan Prime Minister Nawaz Sharif appointed 22 legislative members to convey and highlight this issue to world capitals. Pakistan was blamed by India of fueling the unrest in Kashmir, where nearly 70 people have died and 5,000 have been injured since the death of Hizbul Mujahideen

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<sup>50</sup><http://thewire.in/54361/jammu-and-kashmir-hc-asks-centre-for-report-on-pellet-gun-use-urges-restoration-of-mobile-phone-services/> (last visited on 22 March 2017).

terrorist Burhan Wani on July 8. Investigators say around Rs. 24 crore has been pumped into the Valley - much of it routed through functionaries of pro-Pakistan separatist groups.<sup>51</sup>

#### **4.6 Deletion of Article 370**

In Jammu and Kashmir, People were thing that Government of the State and civilians are privileged because of some special rights given to the State in October 1947 by the Indian Nation so that civilians can be protected from the violation of human rights which is done by Pakistan. This kind of nature of the State Government had tolerated by the Central Government. The strategy is to take the public vote bank in a state under which by its own Constitution's Preamble, has not to declared itself at as 'secular'. Have an aversion to this limited position of the Jammu & Kashmir State as a whole has long and often come from its Jammu and Ladakh regions. Jammu and Ladakh region has their own culture. But these areas were dominated by Sheikh Abdullah who was the leader of the Kashmir valley and ruled it till it become the part of the India. This is the only reason for Jammu and Ladakh to separte from Kashmir valley with taking the advantage of Article 370 and Ladakh wanted a Union territory for its region. Those Kashmiri Pandits who went away from Kashmir Valley in 1989-90 also wanted another geographical territory for themselves without taking the advantage of Article 370. Actually the true Indians doesn't want this provision that they cannot buy a immovable property from any other state where they can get settle because in whole country Constitutions provision are not same. Only Kashmir civilians has the special benefits ,this is the reason they differentiate themselves from Indians and called themselves Kashmiris. Though BJP is only political party who wants to delete Article 370, but it too late to be migrant away from its previous stand on the issue. A large section of the valley doesn't want to remove Article 370. The reasons are :Firstly, The issue raised by A.G. Noorani earlier. He wondersthat BJP is aware of the fact that what would be the effect on Article 1 of the Indian Constitution with removal of Article 370 Because Under Article 1 Jammu and Kashmir can be included only with Article 370 and if Article 370 is removed that how Jammu and Kashmir will be included in the territory of India? The replied given by some scholars is that if the Article 370 is removed than Article 1 can be amend by the parliament. Actual problem is the wording

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<sup>51</sup>Man ki baat available at :<http://www.ndtv.com/India-news/on-mann-ki-baat-pm-modi-warns-those-instigating-trouble-in-kashmir-1451257>( last visited on 22 March 2017).

which is mentioned in Article itself which states that the “Article can cease to be operative only if so recommended by the Constituent Assembly of Jammu & Kashmir State. Since that Constituent Assembly was dissolved in November 1957 but its existence not removed from the Constitutional text till date, its recommendation for axing Article 370 is impossible in practice”.<sup>52</sup>

In recent past about the legality of the deletion of Article 370 from Indian Constitution. The first view is that Article 370 can be abrogated on mere executive order of the president but it needs concurrence of the Constituent Assembly of the State. This view is based on plain reading of Article 370(3), because, long ago it has been settled by Hon’ble Supreme Court In **“Puranlal Lakhanpal Vs. President of India”**<sup>53</sup> That the word “modification” as used in Article 370 is wide enough to cover the word amendment within its meaning. The judicial decision suggests that the concurrence of the state government is necessary i.e. the Governor as the Constituent Assembly is already dissolved. This view suggests that the concurrence of state government (especially Council of Minister) is of permanent importance in adopting this process for the amendment of Article 370. The other extreme view is that Article 370 also starts with non- obstante clauses as that of Article 368.

Article 370 can be amended by the parliament by procedure prescribed under Article 368. But, which may be subject to judicial scrutiny on the ground that article 370 is the basis of the state and centre relationship in the case of of special status given to Jammu and Kashmir with reference of past and present view as well as problem of citizen of Jammu and Kashmir , also whether are they want any change in regard of special status to their.

A suggested solution to this obstacle is an amendment of the Indian Constitution under Article 368 to remove the stipulation therein that the recommendation of the Constituent Assembly is necessary to remove the Article. However, because of a Constitution Order of the President under Article 370, any amendment under Article 368 affecting Jammu & Kashmir demands issuing of a Presidential Order under Article 370. This, in turn, means that a constitutional proposal to axe the mention of the

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<sup>52</sup><http://www.dnaIndia.com/India/report-watch-jk-cm-mehbooba-mufti-loses-cool-when-asked-about-kashmir-unrest-2248777>( last visited on 24March 2017).

<sup>53</sup>Puranlal Lakhanpal Vs. President of India AIR 196 SC 1519.



Constituent Assembly from Article 370's wording would require the State's concurrence under clause (1) (d) of the existing Article. Such concurrence from either the State Government or the State Legislature appears almost impossible to procure as long as the Kashmir Valley rules the State.

#### **4.6.1 Views of Constitutional Experts**

Many legal experts are of the view that abrogating the provision would put the accession of the state to India in jeopardy. Because the nature of the accession of Jammu and Kashmir into the Union of India is completely another matter from the merger of all other small and big states. More over there is a debate over whether Article 370 is a part of basic structure of the Constitution and whether it can be amended.

According to Constitutional expert Rajiv Dhavan, "The Article 370 can't be abrogated because the governments do away with it, the very basis of accession will be in jeopardy. But he asserts that accession of J&K to India is permanent".

According to a report in the Hindustan Times newspaper former Jammu and Kashmir high court chief justice BA Khan, too, agrees with Dhavan. He says "If Article 370 was abrogated, then technically and legally the foundation of Jammu and Kashmir's accession to India would cease to exist."

According to former Union Law minister Shanti Bhushan, under Article 368 of the Constitution, the Parliament has the power to amend the Constitution. But in view of the Supreme Court's ruling in the **Kesavananda Bharati case**, Parliament can't amend the basic structure of the Constitution. According to him obtaining the opinion of the Supreme Court is a must before going ahead with the abrogation of Article 370. There are doubts over whether Article 370 is a part of the basic structure of the Constitution or not.<sup>54</sup>

As per the above mentioned analysis its still not clear that the amendment would give any positive result or not. Only the State Government has power to act on a relationship between Article-370, Union of India and State affairs. And if there is any dissimilarity on any issue in between state and union government, the outcome would

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<sup>54</sup>Abrogation of Article 370 , India , available at: <http://www.news18.com/news/India/abrogation-of-article-370-a-very-complex-affair-say-legal-experts-690866.html> (last visited on 24 March 2017).

be the endless existence of Article.

## **Chapter -5**

### **Conclusion and Suggestions**

## **Chapter -5**

### **Conclusion and Suggestions**

#### **5.1 Conclusion**

The Article 370 was clearly meant to be a temporary provision included in the Constitution to provide for the specific requirements of the concerned times immediately after India's independence and the state's accession to India.

The presence of this statute is utilized by Pakistan and its intermediaries in the valley to taunt at the very idea of 'India being one from Kashmir to Kanyakumari'. It has also kept alive the two-country hypothesis.

Political and social parties continue to use the Kashmir issue as only a means to their ends. Instead of empathetic support mere paperwork and tabloid, attention is the norm of the day. When people of such organizations or even political affiliations reach out to help and solve the problem instead of using it to better their goodwill, the people of Kashmir valley will not only respond with kindness but also rise with a new confidence to overcome conflict.

Whether or not the government can go ahead and amend constitutional provisions now is an ongoing debate but we must not overlook that the framers of the constitution, as well as the then Maharaja Hari Singh giving his assent, were both well-aware and well-focused to make article 370 only as a mere temporary part of the constitution.

No nation can progress with a few parts staying in conflict perpetually and after 68 years of struggle and strife faced by Indians in Jammu and Kashmir; it is the time we stand in unity not for legal papers or articles but for human betterment and brotherhood.

The word AZADI has been used in the State since 25 year, the continuous

demand of the people of the valley has taken a shape of huge problem. The people of Kashmir have made it clear once again, as they have done year upon year, decade upon decade, grave upon grave, that what they want is Azadi.

While we criticize the incidents took place in Kashmir like attacks on unarmed protestors by Armed forces or on Ambulance and Hospitals by Police or to blinding the teenagers by using pellet guns so we must make it clear that the Real Debate is for the violation of Human rights of the civilians by the security forces in Kashmir, so these Violations are unexpected and cannot be avoid because as we all know that those civilians are fighting just to save their valley. Civilians of Kashmir has no any concern of rule of law or about their violation of Basic Human Rights actually they have concern only for their 'Azadi'. For 'Azadi' they prepared themselves to face every consequence whether to face bullets or stones, or to death or to confinement in the most densely militarized zone in the world or to take pellet guns on their eyes. Actually they are ready to take the arms, to fight for their justice by knowing that at the end they will have to die young.

Indian Government has only a temporary law and order problem given by some people who changed from time to time. Kashmir is actually become a sandwich in between two countries i.e. India and Pakistan who has nuclear weapon and if both countries has started the war then ultimate sufferer would be the Civilians of Kashmir that is why the whole world concerned it.

Honesty is the best thing if we really want to stop this killings, sexual harassments, torture, extra judicial killings, Fake encounters, to stop the blood loss of the Kashmiri civilians. We should have a honest conversation. It does not matter about the different views or opposing each other the thing which matters is Azadi: What is the mean of azadi to Kashmiri civilians? Why it cannot be discussed? Can Kashmiris's rights be denied at any cost? Are the Armed forces prepared to take the blood of thousands of ordinary people of their conscience? Is the presumed "consensus" in India on the subject of Kashmir real or manufactured? Does it matter? In truth, it shouldn't. What matters is what Kashmiris want and how to arrive at that consensus in the most peaceful, democratic and informed way possible. We have to find a new imagination. This applies to everybody, on all sides of the dispute. Something beautiful could come of it. Why not? Why ever not? For the solution of this problem we need to think clearly,

Speak fearlessly for the things which we don't want to hear.

Jammu and Kashmir is the land of Kashmiris. Two allied powers India and Pakistan are forcing people of Kashmir to surrender them as there is only a greed for land rather than interest of people. Kashmir is the property and home of Kashmiris. India should let the Kashmiris live peacefully and the way they want rather than forcing them to be part of India and calling the Union of India. Same on the side of Pakistan, Pakistan should let the Kashmiris to live with their secular mindset, because neither India nor Pakistan have inherited right over Jammu and Kashmir.

## 5.2 Suggestions

**One,** Article 370 cannot be removed in overnight, but its removal is essential for peace and security in Kashmir as well as for the development of the people of the state so for this aspect Government should take initiative step by step and also educate them that Article 370 is actually an obstruction for their growth.

**Two,** There should be no restrictions on Media work which depict the true picture of Kashmir and also there should be circulations of Kashmir newspapers in whole India. The Tribune has made a recent entry. It is important to indulge media in these issues then only people would be aware of the situation in the Kashmir.

**Three,** If Government introduce Panchayat system which is the basis of democracy then only grassroot level of Kashmir can be strong.

**Four ,Civil Strife** From potentially being one of the most dangerous disputes in the world which in the worst-case scenario could trigger a nuclear conflict the recent warming of relations between Delhi and Islamabad has led to less saber-rattling over the Kashmir dispute.

The number of inhabitants in the Indian-directed condition of Jammu and Kashmir have 60% strength of Kashmiri Muslims.

**Five,** the youth of Jammu and Kashmir feel disaffection from the Delhi though Delhi trying to upgrade the status of people of Jammu and Kashmir but with

Guns it is not possible., their day to day issues are worsen by high unemployment with these evils suffocate their dissent.

**Six**, the fact is nowadays there is less rebellion in jammu and kashmir as compare to 1990s and 2010, but the people of jammu and kashmir are under the shadow of two dreadful laws AFSPA and jammu and kashmir distribution area act, these to acts make people sick as there is illegal detention, illegal arrests , rapes , just because there acts empowered not to be heard in any court of law as AFSPA gives special powers to Army acts on suspicion too, due to which there is human rights abuse, mass killings which can only be stooped by limiting the unlimiting powers of jammu and kashmir.

**Seven**,the survery report of human right commission revealed that around 47000 peaple were killed , 97000 chiledrn are orphan , 32000 women are half widows and widows, no records of these death have been ever found army only says that they were militant but only 10000 militant are supported in azad kashmir where from the rest of 37000 militant came fron? Army have no answer of this question. The insurgency today is led by four main groups: Lashkar-e-Taiba, Hizbul Mujahideen, Harkatul Mujahideen and the Jammu and Kashmir Liberation Front. India and Pakistan have nothing to do with violence and disturbance in the jammu and kashmir they just have their talks and discussions, meetings , they accept the kashmir with this situation of jammu and kashmir , there is back to back operation by Pakistan army and india army but what positive result they have got donot have any answer from either side.

**Eight**, Political and social parties continue to use the Kashmir issue as only a means to their ends. Instead of empathetic support mere paperwork and tabloid, attention is the norm of the day. When people of such organisations or even political affiliations reach out to help and solve the problem instead of using it to better their goodwill, the people of Kashmir valley will not only respond with generosity but also rise with a new confidence to overcome strife.

**Nine**, Prime Minister Prime Minister Narendra Modi sent another warning to the people "instigating the youth in Kashmir" saying they have to answer to them as well. Underscoring the need for unity at such times on his monthly radio programme Mann

ki Baat, PM Modi said "All parties are united on Kashmir. They sent a message to the world, to the separatists and reached out to the people of Kashmir." Equating it with the passing of the GST bill in the assembly, PM Modi said, "It is the view of all of us, of 125 crore people from a pradhan of a village to the Prime Minister, that if any life is lost in Kashmir, whether of any youth or any securityman, that loss is ours". The Prime Minister further said "Ekta" (unity) and "Mamata" (love) could be the twin mantras for addressing the Kashmir problem. "From the interactions I had with all parties on Kashmir, one thing emerged, which can be put in simple words as Ekta' and Mamata. These two things were the basic mantra."The Prime Minister's message to trouble-makers in the state - on a platform for positive messages -- comes a day after Pakistan Prime Minister Nawaz Sharif stepped up the offensive on Kashmir, nominating 22 parliamentarians as special envoys to be dispatched to world capitals to highlight the issue. India has accused Pakistan of fueling the unrest in Kashmir, where nearly 70 people have died and 5,000 have been injured since the death of Hizbul Mujahideen terrorist Burhan Wani on July 8. Investigators say around Rs. 24 crore has been pumped into the Valley - much of it routed through functionaries of pro-Pakistan separatist groups.

Whether or not the government can go ahead and amend constitutional provisions now is an ongoing debate but we must not overlook that the framers of the constitution, as well as the then Maharaja Hari Singh giving his assent, were both well-aware and well-focused to make article 370 only as a mere temporary part of the constitution. No nation can progress with a few parts staying in conflict perpetually and after 68 years of struggle and strife faced by Indians in Jammu and Kashmir, it is the time we stand in solidarity not for legal papers or articles but for human betterment and brotherhood.

## **BIBLIOGRAPHY**

### **PRIMARY SOURCES (LEGISLATIONS)**

The Constitution of India

Article 370: A Constitutional history of Jammu and Kashmir

The Constitution of Jammu and Kashmir

Public International Law

The Armed Forces (Jammu & Kashmir) Special Power Act, 1958

### **SECONDARY SOURCES (BOOKS)**

Agarwal .H.O., "Kashmir problem its legal aspect" , Central law pub., Allahabad, edn.2010, 2010.

Bhandari.M.K, "A Constitutional Dilemma", Vol.79, A.I.R. 56, 1992.

Bukhari Shujaat., Rising Kashmir; Art 370 a bandwagon, article 4578, published on 27 November 2014.

Editorial, "25 years on, AFSPA remains a dirty word in Jammu and Kashmir", India Today, 9 July 2015.

Justice A.S.Anand., The Constitution of Jammu and Kashmir , Universal law publishing, New Delhi, 6<sup>th</sup> edn.2010

Lakhanpal. P.L., Essential documents & notes on Kashmir disputes, Delhi, 1958.

Maj . Gen. Sheru thapliyal, Art 370 : The Untold Story, Indian defence review , Vol. 26.1. pub on 27 December 2014.

Noorani, A.G., ARTICLE 370 A Constitutional History of Jammu and Kashmir. ,Oxford



publisher, India , 7<sup>th</sup> edition , 7 Jul 2011

Pandey .J.N., Preamble, The Constitutional law of India, Central Law Agency, Allahabad, 48<sup>th</sup> edn.,2010.

Rao Nagendra , Jammu and Kashmir: Changed Political Scenario, Journal Vol. 41, Issue No. 20, 20 May, 2006

Sathe .S.P. Art 370 and jammu and Kashmir, Mainstream Vol. XXX no. 26, Delhi, pub. On 25 July 1992.

Shyam, Nilotpal, Article 370: A Constitutional Quandary, Indian Bar Review, Vol. XLII (2)2015.

Shyam, Nilotpal, Article 370: A Constitutional Quandary, Indian Bar Review, Vol. XLII (2)2015.

Tondon .M.P., Public international law, Allahabad law agency, Allahabad, edn.17, 2013.

Zaman Johar, International Journal of Political Science (IJPS) Volume 2, Issue 3, 2016, PP 22-24 ISSN 2454-9452.

## **OTHER SOURCES INTERNET**

<http://ikashmir.net/article370/index.html>

<http://www.legalserviceindia.com/article/I281-Constitutional-Position-of-Jammu-and-Kashmir.html>

<http://www.yourarticlelibrary.com/essay/special-provisions-for-jammu-and-kashmir-provided-in-the-constitution-of-india/24907/>

[https://en.wikipedia.org/wiki/Special:WhatLinksHere/Politics\\_of\\_Jammu\\_and\\_Kashmir](https://en.wikipedia.org/wiki/Special:WhatLinksHere/Politics_of_Jammu_and_Kashmir)

[http://www.jammu-kashmir.com/basicfacts/politics/profile\\_1991.html](http://www.jammu-kashmir.com/basicfacts/politics/profile_1991.html)

[http://www.satp.org/satporgtp/countries/india/states/jandk/documents/actsandordinances/J&K\\_Specialpoweract.html](http://www.satp.org/satporgtp/countries/india/states/jandk/documents/actsandordinances/J&K_Specialpoweract.html)

<http://www.epw.in/journal/2006/20/commentary/jammu-and-kashmir-changed->

political-scenario.html#sthash.EI6URMmX.dpuf.

[http://www.jammu-kashmir.com/basicfacts/politics/profile\\_1991.html](http://www.jammu-kashmir.com/basicfacts/politics/profile_1991.html)

[http://www.satp.org/satporgtp/countries/india/states/jandk/documents/actsandordinances/J&K\\_Specialpoweract.html](http://www.satp.org/satporgtp/countries/india/states/jandk/documents/actsandordinances/J&K_Specialpoweract.html)

<http://www.news18.com/news/india/abrogation-of-article-370-a-very-complex-affair-say-legal-experts-690866.html>

[http://jklaw.nic.in/the\\_constitution\\_of\\_jammu\\_and\\_kashmir\\_1956.pdf](http://jklaw.nic.in/the_constitution_of_jammu_and_kashmir_1956.pdf)

<https://www.quora.com/What-is-Article-370-of-the-Constitution-of-India-1>

<http://www.indiandefencereview.com/news/article-370-the-untold-story/>

[https://en.wikipedia.org/wiki/Human\\_rights\\_abuses\\_in\\_Jammu\\_and\\_Kashmir](https://en.wikipedia.org/wiki/Human_rights_abuses_in_Jammu_and_Kashmir)

<http://www.dnaindia.com/india/report-watch-jk-cm-mehbooba-mufti-loses-cool-when-asked-about-kashmir-unrest-2248777>























