

# **An Overview on Article 370**

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## **ABSTRACT**

*Article 370 is an law related to Jammu and Kashmir. It tells us about the provision and rules and regulation changed according to the Indian constitution. The major part of Jammu and Kashmir came to India and thus the war between China, Pakistan and India ended up. Thus Jammu and Kashmir got a special status like the rest of the states have. 370 is an law related to Jammu and Kashmir.*

*Keywords: Provisions, Rules and Regulation, Rights and powers, State constituent assembly, Indian constitution.*

## **OBJECTIVE**

1. To understand the knowledge about article 370.
2. To collect information about article 370 of Jammu and Kashmir

## **RESEARCH AND METHODOLOGY**

For the research methodology researcher use secondary data which is collected from library, newspaper, various websites and articles

## **INTRODUCTION**

Article 370 of Indian constitution of India gave some special rights to Jammu and Kashmir which is the top most part of India. War between China, Pakistan and India has ended. On 31<sup>st</sup> October 2019 the new rule was passed that all the rules of Indian constitution would be applied to Jammu and Kashmir which would include citizenship, ownership of property and fundamental rights. There are two part of India made by British empire i.e. Indian India and British India. "British India was divided into 12 provinces and Indian India was divided into 564 princely states"

## **CLAUSE 8 TELLS US THE FOLLOWING CASES:**

### **A.JAMMU AND KASHMIR V/S PREM NATH KAUL(1959):**

In this case it is explained that the executed instrument did not affect to the legislative, executive and judicial powers in regard of the Indian Government. It is also explained "that the power of maharaja is no way are reduced nor the courts is trying to impose the will on the state but it wanted to establish the relationship that the state would like to have with India by giving powers that are vested in the State constituents assembly.

### **B.JAMMU AND KASHMIR V/S REHMAN SHAGOO (1969):**

"Though certain subjects were given to the Government of India by accession instrument, the subjects does not go against the central legislature."

### **C.JAMMU AND KASHMIR V/S AJAY KUMAR PANDEY (2016):**

The State constituent allowed to transfer of a criminal case from Jammu and Kashmir to the other states but the former judges opposed the petition of State constituent and no such power are there that can take criminal cases of Jammu and Kashmir out of the state. "Section 25 of the code of civil procedure and Section 406 the code of criminal procedure" are the act where you can change state wise but it does not extend to Jammu and Kashmir. If changed it would be breached the article 370.

"ARTICLE 370 IN THE INDIAN CONSTITUTION IS AN ARTICLE OF FAITH AS SUCH THE AUTOMONY OF JAMMU AND KASHMIR UNDER IT SHOULD NOT BE TRIFLED WITH"–  
"JUSTICE RAJINDER SACHAR."

## **"PROVISIONS OF CONSTITUTION OF INDIA AFFECTED JAMMU AND KASHMIR:"**

A. The state is free from other laws of the constitution provided from state government.

- B. The parliament legislative power over Jammu and Kashmir is subjected to external affairs, defence and communication.
- C. If the center wants to increase the the provisions there should be prior permission from Jammu and Kashmir.
- D. After the permission from Jammu and Kashmir the state constituent should give consent to follow the new provisions.
- E. The authority of state government lasts only when the constituent assembly come together.
- F. Only the president has the power to amend or revoke the amendment under section 368 and would be applied through the president.

### LOOPHOLES REGARDING ARTICLE 370 :

- a. Once the president get the approval of State constituent assembly then the president may declare that the notification end to be operative.
- b. Limitation given to the parliament regarding the change in amendment to the provisions in any of the 7 schedules and changes happens then there should be a majority which should not be less than half of the states.
- c. The dual citizenship violates the citizenship act applied in Jammu and Kashmir.
- d. Right To Information Act (RTI), Controller and Auditor General of India(CAG),Prevention of Corruption Act ,Land Acquisition Act and 101 more to go laws which are not considered to Jammu and Kashmir.
- e. Permission has to be taken from State constituent to pass any law or act in Jammu and Kashmir
- f. Any article or law can only be changed or removed by the permission of State constituent assembly.

### OVERCOME ON THE LOOPHOLES IN THE ARTICLE 370 :

As per the loopholes given above all the decisions should not be taken by the State constituent assembly. It should be decided as all other states come together in the parliament and they should take each and every decision. All the rights should be applied to Jammu and Kashmir so that all the crimes can be stopped and people should be knowledgeable about the rights. People should be provided by education facilities so that people will get educated and improve the condition of Jammu and Kashmir. By taking education to those who are illiterate. There should be single citizenship as we have in other states so that everyone should enjoy their individual rights and take advantage of it.

### “THE NEW ENACTMENT ACT OF JAMMU AND KASHMIR (2019).”

*“An act to provide for the reorganization of the state of Jammu and Kashmir and for matter connected therewith or incidental thereto”*

Source: [http://en.m.wikipedia.org/wiki/Jammu\\_and\\_Kashmir\\_Reorganisation\\_Act,\\_2019](http://en.m.wikipedia.org/wiki/Jammu_and_Kashmir_Reorganisation_Act,_2019)

Citation	:	Act no. 34 of 2019
Considered by	:	Parliament of India
Enacted by	:	Rajya Sabha
Enacted on	:	August 5 <sup>th</sup> 2019
Enacted by	:	Lok Sabha
Enacted on	:	August 6 <sup>th</sup> 2019
Assented to	:	August 9 <sup>th</sup> 2019
Signed on	:	August 9 <sup>th</sup> 2019
Signed by	:	Mr. Ram nath kovind (President of India)
Effective	:	October 31 <sup>st</sup> 2019

## LEGISLATIVE HISTORY

Bill citation	:	Bill no. XXIX of 2019
Bill published	:	August 5 <sup>th</sup> 2019
Introduced by	:	Mr. Amit shah
First reading	:	August 5 <sup>th</sup> 2019
Second reading	:	August 6 <sup>th</sup> 2019

## AMENDS

ARTICLE 370

ARTICLE 35 A

STATUS : In force

Jammu and Kashmir have three distinct areas

- 95% of Muslim with a population to almost 7 billion people.
- 66% of Hindu majority with 5.35 million people of population.
- 30% of Muslim society and Ladakh with 2,87,000 people Muslim or relative minority at 46% a Buddhist minority at 40% .

Source : [http://en.m.wikipedia.org/wiki/Jammu\\_and\\_Kashmir\\_Reorganisation\\_Act,\\_2019](http://en.m.wikipedia.org/wiki/Jammu_and_Kashmir_Reorganisation_Act,_2019)

## THE OATHS, CHANGES AND CONSTITUTION :

Article 5 can take decision regarding all the matters in case of executive and legislative power except the matters of which the decision are taken under the provision of the constitution of India. The constitution was adopted on 17<sup>th</sup> November 1956 and come into force on 26<sup>th</sup> January 1957.

SOURCE: [https://en.m.wikipedia.org/wiki/Constitution\\_of\\_Jammu\\_and\\_kashmir](https://en.m.wikipedia.org/wiki/Constitution_of_Jammu_and_kashmir)

*a. 4 oaths Minister of Home Affairs Amit Shah presented in parliament:*

- To remove article 370 from the law of Jammu and Kashmir.
- Jammu and Kashmir is a union territory and not yet became a state and Ladakh would be a separate union territory.
- The special rights would be removed from the law of Jammu and Kashmir.
- Political years would be 5 instead of being 6 till now.

*b. MAJOR CHANGES DUE TO ARTICLE 370:*

- People can purchase land.
- Jammu and Kashmir has two flags one of their own and the other one of India.
- Dual citizenship is replaced by single citizenship and enjoy citizenship rights.
- People from other regions can also vote from Jammu and Kashmir with all voting rights.
- Any individual can have a Government job in Jammu and Kashmir.

## C. EXPLANATION OF THE CONSTITUTION :

The constitution explains us that the people of Jammu and Kashmir having solemnly resolved in trying to achieve something. The constitution is acquired on 26<sup>th</sup> October 1947, it shows the relationship between Indian union and the integral part thereof and to secure to ourselves. An integral part means Jammu and Kashmir is the part of India. **JUSTICE** - to all in social, political and economical. **LIBERTY**-Everyone has the freedom of thought, expression, belief, faith, and worship. **EQUALITY**- in men and women, in work, and standard of living. **FRATERNITY** - assure the dignity of individual. On 27<sup>th</sup> November 1956 the constitution got adapted, enacted and followed by everyone.

## **PRESIDENTIAL ORDER OF 2019 :**

On 5<sup>th</sup> August 2019 Home minister Amit shah announced in Rajya Sabha. The bill became act after signing by president of India. It includes all the provision from Indian Constitution. The order passed in the year 1954 state that only specific laws and articles from Indian constitution are applicable to Jammu and Kashmir. But from 5<sup>th</sup> August 2019 all the restrictions of old order are remove and all the new rules are instantly applied.

The two union territories i.e. Jammu and Kashmir and Ladakh come together on 31<sup>st</sup> October 2019 and celebrated National Unity Day. Both the Union territories now have their C.T.Governers appointed by president of India and swear by Justice Gita Mittal. The operation of Union territories are controlled by Central Government.

## **CONCLUSION**

The Article 370 has removed a major barrier between Kashmir and Indian people. Many people can now enjoy their political, social and economical rights in their state. The Jammu and Kashmir state would get their special status and their flag. Once the Article 370 is removed all the problems are solved. Now people can start their own business and purchase land in the state of Jammu and Kashmir and all the products and technology would be reached to people. The rate of crimes and terrorism will be reduced and the state will be a safe state. This Article was the only reason of the separatism between India and Jammu and Kashmir which now has been ended up. Now the further actions are depended on people to co-ordinate with each other or to remain as they were earlier.

## **REFERENCES AND BRIBLOIGRAPHY**

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