

A Study on Abrogation of Articles 370 and its impact on Gujjar Tribes Children Education in Jammu and Kashmir.

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Abstract

Article 370 of the Indian Constitution stipulates self-rule for the state of Jammu and Kashmir (J&K). Provisos of the Article have remained stalled in argument owing its unequal special consideration within that the framework of free India. This paper examines Article 370 and the validity of politics attachment to it, based on four exact arguments. First, the Genesis of Article 370 spawns inequality in India. Second, its Retention implies decaying of contentious problems. Third, its Ramifications forge inequality within J&K. Fourth, how Politics over Article 370 only try to find limited leverage from it. These point of view have been examined throughout engagement with primary and secondary sources and views analyzed in different society .The case universe comprises views across a spectrum of opinion. An interpretive move toward classifies this debate in the better context of Continuation or Revocation of Article 370, based on the research question whether Article 370 has worked in the way envisaged, or has aggravated in equality and fuelled development of conflict in J&K..In this study the researcher has tried to find out the impact of Abrogation of 370 on tribes peoples.

Keywords:- Jammu and Kashmir , Article 370 , Gujjars Tribes , Education and Impact.

Introduction:-

The State of Jammu and Kashmir is bestowed among high snow crested mountains, fascinating valleys, fresh streams, speeding up rivers and emerald forests. The state is set apart with diverse ecosystem. In the south lies the Jammu province the lower section of which is really hot in summer and chilly in winters, bearing broadleaved forests at lower altitudes in plains and shiwaliks. The middle part of Jammu region hold up for the most part chirr pine forests where-as the upper reaches are temperate and support luxuriant coniferous forests. The northwest part between Pir Panjal and Zojilla is the Kashmir valley well thought-out “paradise on earth”. This fascinating valley enticing the guests is a museum of nature and scenic attractiveness. To the north east lies the huge landscape of Ladakh bound by snow peaks and friendly people .It is a place of countless attractions. The State of Jammu and Kashmir is having the unending varieties of its landscape, the magical of natural scenery, the vivid cultural life, the matchless glaciers, hastening torrent, sparkling springs, the cold shade of the chinars, wealth of its renowned health resorts and the popular up to date but not the least, its traditional hospitality which explain any tourist. The J&K State lies to the North-west of the country looking similar to a crown on the map of India. It is a border state in the tremendous North of the Indian Union. Nature has been generous an adequate amount of to bestow this state with wealthy forests and tremendous water resources .Its natural vegetation has big variety, ranging from the lush evergreen conifers on the nature slopes at high altitudes to deciduous forests on the southern slopes of the Shiwaliks. The state of J&K comprising the divisions of Ladakh, Jammu and Kashmir has an area of 2.22 lakh Sq.kms together with those parts which are underneath the occupation of Pakistan and china. Out of present area in hand, J & K State has 20230 Sq. Km under forests, which justification for 19.95% of the geographical area of State including Ladakh region and 47.80% excluding Ladakh. As per SFR 2005 and SFR2007 the forests constitute 54% of the part reported for land utilization in J&K as 59% of its geographical area is not capable to support tree growth being under stable snow cover, glacier sand cold desert.

The Special Status of Jammu and Kashmir: Constitution of Jammu and Kashmir

In view of the fact that State of Jammu and Kashmir presents a distinction of the federal constitution in which the Indian States were welded, the dissection of the safe position of Jammu and Kashmir in the Indian federal position, as a sub-national personality, uncovers a large quantity and can serve as a marker for any revaluation of the federal relationships the Constitution of India epitomizes. Sometimes special sub- nation identity given to Jammu and Kashmir raises some genuine questions which had no answers. Clause 7 of the Instrument of Accession itself prohibited the state to follow any expectations laws of India or any future Constitution of India.¹¹ The Constituent Assembly of the State adopted and enacted the Constitution of Jammu and Kashmir on the Seventeenth Day of November, 1956 that came into force on 26th January 1957 duly permitted the Accession in terms of Instrument of Accession in unambiguous constitutional language in the Preamble integration of the State of Jammu and Kashmir to the Indian Union, viz., “in pursuance of the Accession of this State to India which took place on the Twenty-Sixth day of October, 1947, to further explain the open relationship of the State with the Union of India as an integral part thereof.” The Section 3 of the Constitution of Jammu and Kashmir states, “The State of Jammu and Kashmir is and shall be central part of the Union of India.”

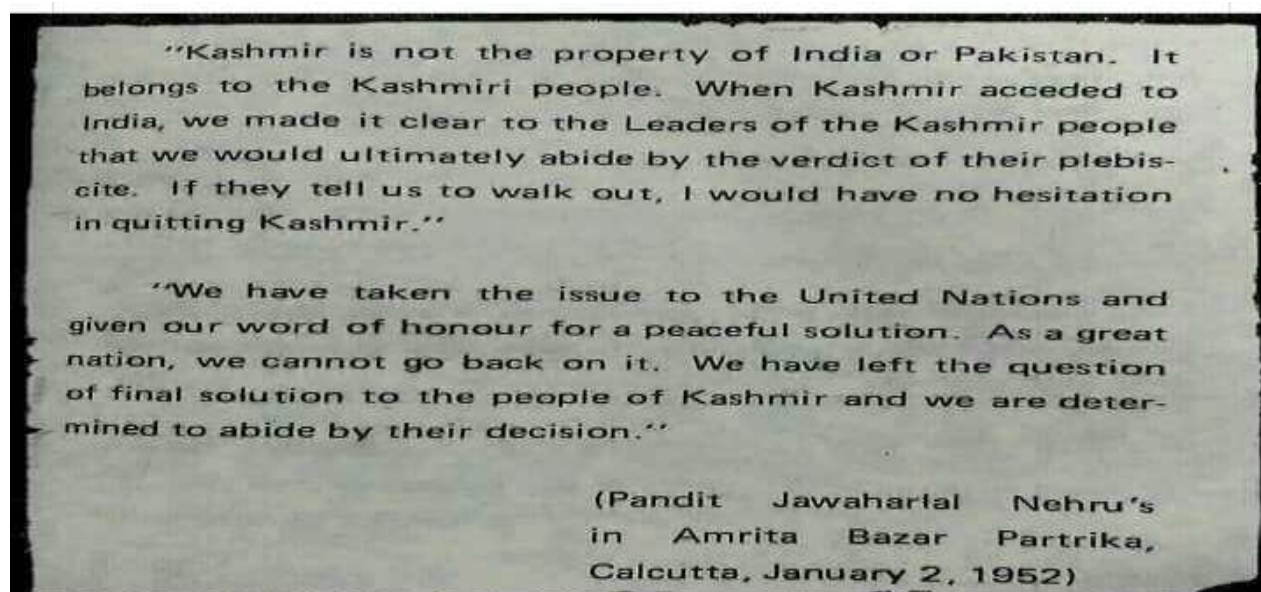
Article 370 can be repealed only if a original Constituent Assembly of Jammu and Kashmir is convened and is willing to advise its revocation. In other words, on the advice of the Constituent Assembly of the State, the President may by public announcement, say publicly that this Article shall cease to be operative but only on the recommendation of the Constituent Assembly of the State. The power of the Parliament to modify the Constitution to abrogate Article 370 is subject to judicial reconsider which may come across that this clause is a basic feature of the relationship between the State and the Centre.

Most Autonomous State:-

Despite the fact that Jammu & Kashmir is a constituent State of the Union of India as per Schedule 1 of the Constitution of India, the limits of Article 370 on Parliamentary legislation being comprehensive to Jammu & Kashmir State and of the several concessions in

the nation's Constitution as the appropriate to the State have formed a on its own relationship between the Central Government and the State. It has been best summed up by M. P. Jain, a constitutional authority. He writes, "The two main characteristic features of this unique relationship are : (1) the State has much greater measure of autonomy and power than enjoyed by the other States and(2) Centre's jurisdiction within the State is extra restricted than what it has with respect to other States."35 In other words, Jammu & Kashmir is the generally autonomous State in India. It still has its own State Flag, allowed by Nehru in the Delhi Agreement of 1952. This flag is hoisted on the State's Council Hall and on the Ministerial vehicles all along with the Indian National flag. Why, according to a local publication, 'The Daily Excelsior' of June 24, 2002, the State also has its own anthem called *Qaumi Tarana*, which takes six minutes of singing time and during which senior police officials are requisite to keep status.

Ajay Kumar panda v. Province of Jammu and Kashmir 19 July, 2016: SC for this circumstances permitted the appeal to of exchange of a criminal case beginning the territory of Jammu and Kashmir to the next state in which the previous judges called concentration to that under law have no such order to exchange cases from Jammu and Kashmir to the courts exterior state. Previous Delhi high Court chief justice Rajinder sachar called notice to that SC has no such power to do as such on the basis that the ability to switch over the case starting with one state then on to the subsequently as given in section 25 civil course of action and section 406 of code of criminal system does not stretch out to the territory of Jammu and Kashmir, nor do the Kashmir code of civil strategy, 1977 contains such plan which is evidently an infringement of Article 370.He in addition included that seat controlling for this situation has invalidated the obligatory arrangement of Articles 370 especially when the assembly of Jammu and Kashmir has uniquely given that no court should have the ability to exchange case from Jammu and Kashmir to the next."Article 370 in the Constitution is an Article of confidence and accordingly the self-rule of Jammu and Kashmir under it ought not to be fooled with" - JUSTICE Rajindra Sachar.



In pursuance of government's policy to secure the active co-operation and involvement of all democratic, secular and progressive forces in the country it was desirable to have a dialogue with Shiekh Mohammad Abdullah.[xxx]Abdullah justified this agreement . He says in his biography Aatish-e-Chinnar: We only wanted Article 370 to be maintained in its original form...our readiness to come to the negotiating table did not imply a change in our objectives but a change in our strategy.[xxxi]

Article 370: Constitutional Obligations and Compulsions

The Article provides:

(I)The Union Parliament is to legislate on such matters in List I and List III of the Seventh Schedule of the Constitution as keep up a correspondence with those mentioned in the Instrument of Accession signed by the king of Kashmir. The president of India can identify subjects on Lists I and III which correspond with broad subjects mentioned in the Instrument of Accession but the order of the president specifying such subjects must be made in 'consultation' with the state government.

(II) The president can extend the legislative power of Parliament in respect of subjects in the union and Concurrent Lists of the Seventh Schedule not included in the Instrument of Accession by an order, which can be made only with the 'concurrence' of the state government.(III) Article I of the Constitution of India, which defines the territories of India, an article370itself apply to Kashmiri so facto. All other articles of the Constitution of India may be extendedArticle 370 provides for its own repeal. The president of India may, by

public notification, declare that the article shall cease to be operational or shall be operative with such exceptions and modifications as he may specify. The president can issue such notification only on the recommendation of the Constituent Assembly of the state. Since the Constituent Assembly no longer exists, this provision has become inoperative. Due- Article 368 of the Constitution, powers and procedure for amendment of the Constitution have been provided.* Article 368 as applied to Kashmir provides that no amendment passed in accordance with that without state Assembly. Article 370(3) empowers the president to make an order to abrogate or amend Article 370. However, the recommendation of the state's Constituent Assembly was made obligatory in this regard. Article 370 would not be abrogated or amended since no constitutional Amendment can have effect in relation to the state of Jammu and Kashmir unless applied by order of the president under Article 370. This is because amendment to Article 370 requires recommendation of the Constituent Assembly which was dissolved in 1956 after it completed drafting the State's Constitution

Education

“..Education is a liberating force and in our age it is also a democratizing force cutting across the barriers of caste and class, something out of inequalities imposed by birth and other circumstances...”

(Indira Gandhi)

Education as a resources of advancement of capacity, well –being and opportunity is uncontested and more so among communities on the periphery. Marked improvements in access and to some extent in quality of education in tribal areas have occurred and stem from various government and non-government initiatives. However, the number of out-of-school children continues to be numerous millions mostly due to lack of proper infrastructure, teacher absenteeism and attitude, parental poverty, seasonal migration, be short of of interest and parental motivation etc.

Tribal Gujjars of Jammu and Kashmir :-

The history of settlement of various tribes and civilizing groups in the State of Jammu and Kashmir is a record of constant impulses of immigration from the north-west, west, east and south. Various races, ethnic groups and religious waves have entered and influenced the

region. In the present situation Kashmiri Muslims and Gujjar Muslims are the two numerically strong ethnic groups in the Jammu and Kashmir State. Whereas sufficient literature and information is available about the Kashmiri Muslims, very little is known about the Muslim Gujjars. They are a nomadic peasantry living on lofty mountain slopes near alpine pastures and in high altitude valleys. They rear buffaloes, sheep and goats and do a little grain farming particularly of maize on these slopes and in valleys. The Gujjars' physical characteristics, language, manners, customs, dress, social group and economic activities are quite distinct from other racial groups of the State. They have long beard and wear big turban and have not adopted the Kashmiri way of life maintaining their separate ethno-cultural identity from other ethnic groups. The Muslim Gujjars of the Jammu and Kashmir State maintain common collateral ancestry with the Gujjars living in other parts of the Indian sub-continent. They are quite similar in ethnicity, language, customs, behaviour and culture to Gujjars in Rajasthan, Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Gujarat.

Kashmir:- A Coup against the Constitution and the Kashmiris:-

The PUCL condemns the abrogation of key portions of Article 370 of the Indian Constitution and the bifurcation of the State of Jammu and Kashmir and captivating away its statehood. While the exploit by itself is deceitful, the manner in which it was done is even more so. All the constitutional provisions, procedures, safeguards and values have been disregarded. What pains us most is that this change of status of the erstwhile state of Jammu and Kashmir, was carried out with stealth, totally unilaterally, without even talking or consulting the people of Jammu and Kashmir, even as part of Government tokenism. PUCL, in particular, strongly condemns the premeditated and sinister manner by which the Government of India has gone about arresting at mid night of Sunday, 4-5th August, 2019 important leaders of political parties in Jammu and Kashmir, including former Chief Ministers Omar Abdullah, Mehbooba Mufti and others, soon after airlifting over 35,000 troops and suddenly and abruptly asking all Amarnath Yatis and holiday visitors to leave the state creating acute sense of fear and panic. At the same time, the Government in a concerted manner, also shut down all communication and telecom services to and from the valley, in

actual fact ghettoizing the entire state into a state of forced silence, while also imposing clampdown in the state preventing pressure group of people, thereby creating chaos, distress and disruption of normal life. Students from other states were asked to leave Kashmir while Kashmiris outside the state keep on to live in panic unable to communicate with their families in the Valley.

In the early hours of 5 August 2019, the authorities in Indian-administered Jammu and Kashmir (J&K) State imposed a curfew on the entire territory of J&K and deployed several thousand Indian army troops and J&K police across all 22 districts without any prior announcement. In addition, on the evening of 4 August 2019 the Indian government imposed a over-blanket communication blockade across J&K. People woke up the next day with the entire region being under a military and communication come down hard on. At around noon on 5 August, the Indian government, led by the Bharatiya Janata Party (BJP), introduced a bill in the upper and lower houses of the Indian parliament to abrogate Article 370 of the Indian constitution. Article 370 had guaranteed 'special status' to J&K State since 1949 and prevented any person who did not have a state subject official document from acquiring immovable belongings in J&K. The abrogation of Article 370 by the Indian government is inconsistent with prior rulings by the Supreme Court of India, which stated that Article 370 could not be abrogated without the consent of the J&K State's Legislative Assembly.¹ A majority of Indian parliamentarians voted in good turn of the BJP's choice to repeal Article 370 and to pass a second piece of legislation, the Jammu and Kashmir Reorganisation Act of 2019, which lead to the split of the existing state of J&K into two Union Territories, Ladakh and J&K, under direct be in command of New Delhi. This move is part of the Indian government's plan to make sure the complete annexation of J&K, in a belief that such developments would show the way to an end of the decades-long clash. This pivotal constitutional modify was preceded by mass panic and tension in the Kashmir valley. The reports of additional troop deployment, the leaking of numerous government orders suggesting a "deterioration of law and order situation in the near future in Kashmir" and asking domestic tourists and Amarnath pilgrims "to leave Kashmir immediately" added to the extremely tense situation. What follows is a prejudiced summary of the main human rights violations that have been reported since 5 August 2019. Due to the ongoing communication

obstruction over the entire Kashmir valley, no information could be obtained from remote districts, including in South Kashmir, and little has nothing is known about the circumstances in these region.

Right to health threatened by blockade:-

Despite the Indian government's endeavour to promote the imaginary long-term economic "benefits of the revocation of Article 370" the numerous restrictions forced in J&K have led to immediate Violations of the local population's spot on to health. Four weeks after the fire up of the crack down, local residents reported a shortage of essential medicines, and baby formula. While the government denied that such the tragedy was unfolding, the J&K's Department of Information and Public Relations admitted to having made baby formula accessible after it was in scarcity for two days. Chemists reported that they were running out of medicine stocks. A medical doctor reported that some patients, who were undergoing critical treatment, did not have admittance to ongoing medical procedures and action, threatening their lives. He was jailed by the police shortly after he prepared those statements. International media news have suggested that there is immense pressure on doctors working in tertiary care hospitals in Srinagar to hide the actual statistics about casualties. The own flesh and blood are even being unexploited to death certificates of the deceased. The present situation in the state are danger mood, because the state lost all the dignities of power that had been gifted by the demprated earlier government at the time of independence of the counrty. If we think about the progress in the state than we should make a survey that survey tell us about all states eg, Literacy rate is not low as for concerned as the other states. All the other states are not developed, but also in developing position. So it may be not a solution of the state, s development process but a unexpected lost to it.

Results:-

Gujjar and Bakarwal tribes represent a group of nomads, semi- nomads, pastoralists, and agro- pastoralists who traverse from side to side the state of Jammu and Kashmir

In front of discrimination and government lack of concern, several members of the tribe have sacrificed their tradition of a 'moving life' for a relatively peaceful and sedentary

lifestyle. The tribals have been struggling hard to verify that reservation is their legitimate right and not a privilege extended by the state. Although Gujjars and Bakarwals play a pivotal role in Amarnath Yatra, there is no recognition of their role. From the above discussion it is concluded that by the abrogation of article 370 the Gujjar Tribe community face many problems such as the income of the Gujjar Tribes is only their animals and agricultural land. The main problem is that the students of Gujjar families are disturbed by the abrogation of 370. They cannot come to the school properly because the present situation of Jammu and Kashmir is not suitable for regular classes in the school. If the present situation remains unchanged in this region then the education and other living way is so difficult for the Jammu and Kashmir peoples. Before this article 370 Abrogation the peoples of Jammu and Kashmir are a silent and developing state. Democracy means **“By the people, for the people”**. But the conditions are different in the valley and Pir Panjal regions. We accepted all the order of the central Government, but those ordered are in accordance to the views of the peoples of the state. All the communications are blocked for two and half months. Students and business men are in fear for their future time. Ongoing restrictions also had a negative impact on the local community's right to worship. On the occasion of the Muslim festival of Eid on 12 August, authorities barred people in Srinagar and in various other districts from gathering in large numbers and allowed prayers only in small mosques in the region. At Heff-Shermal Village in Shopian, which is considered a militant stronghold, armed forces prohibited prayers at all 11 mosques in the village. A strict curfew remained in place until late afternoon on the first day of Eid, with hardly any movement of people. J&K authorities have also prohibited Eid prayers at major mosques of the Kashmir valley, including two of the holiest, the centrally located Jamia Masjid Mosque and the Hazratbal Mosque in Dargah.

References:-

1. (26 September 2019). *FIDH-International Federation for Human Rights Update on human rights violations in Indian - administration Jammu and Kashmir.*

2. Hassan, K. W. *History Revisited: Narratives of Political Changes in Kashmir (1947-1990)*. Working Paper, Institute for Social and Economic Change, Bangalore.
 3. S.P.Sathe. (1990). Article 370: Consistutions and Compulsions. *Jstore* , 25, 932-933.
 4. Tawheeda nabi, Subayia nazir, Shahid Hussain Wani. (2018). Article 370 and its implementations. *International Journal of Creative Research Thoughts* , 6 (2), 743-750.
 5. Umer Jan Sofi. (2014). Educational Status of Tribals of Jammu & Kashmir: A case of Gujjar and Bakarwals. *International Journal of Socical Science* , 275-284.
 6. Warikoo, K. *The GUJJARS. J & K Academy of Arts , Culture and Languages Srinagar/Jammu, Jammu, India: World Express.*
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