

PREFACE

I have made this project file on the topics "Article 370 Special status to Indian state of Jammu and Kashmir in special reference of Article 35A" and "Scope of IT professionals in the judicial Services in India". I have tried my best to elucidate all the relevant details to the topics to be included in the report. While in the beginning I have tried to give a general view about these topics.

My efforts and whole hearted co-operation of each and everyone has ended on a successful note. I express my sincere gratitude to Dr. Vibhuti Singh Shekhawat who assisted me for the preparation of these topics. I thank him for providing me the reinforcement, confidence, and the most importantly the track for the topics whenever I needed it.

Saksham

SAKSHAM AGARWAL
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ACKNOWLEDGEMENT

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Secondly, I would like to thank my parents who patiently helped me as I went through my work and helped me to modify and eliminate some of the irrelevant or un-necessary stuffs.

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Saksham

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ARTICLE - 370

Special Status to Indian State of Jammu & Kashmir

Abstract : Indian constitution is a standout amongst the most proficient composed constitution that any nation has ever produced. It is a blend of different constitutions, the Constitution producer's must be extremely judicious while making the draft of the constitution on account of the assorted variety India contains inside. Each state in India is exceptional and has its own particular assorted variety however the most lovely and the most various and center pulling in state is in the northern end of the nation India. Article 370 discusses the uncommon status that has been given to the province or state of Jammu and Kashmir. The purpose for this report is to give overview of Article 370 together with special reference to Article 35-A.

Introduction : The present study is aimed to trace the process of federalization in India and the inclusion of special provisions for the Jammu and Kashmir in constitution of India. Since Jammu and Kashmir presents a variant of the federal structure in which the Indian states were

welded, the present study is expected to provide a perspective for the future evolution of the federal frames which the founding fathers of the constitution of India constructed. In recent years there has been insistent emphasis on the recognition of sub-national diversities of India as components of the Indian federal system. The present study, which is focused on analysis of the constitutional placement of Jammu and Kashmir in the Indian federal structure, as a sub-national identity reveals much and can serve as an indicator for any reconsideration of the federal relations the constitution of Indian embodies.

The Jammu and Kashmir is a landlocked society, lies in the northern part of the Indian sub-continent and is surrounded by snow-capped high mountain chains of Himalaya and Karakoram. Article 370 of the Constitution of India provides special autonomy to the Indian state of Jammu and Kashmir (J&K). The erstwhile Article 238, pertaining to Part B states or former princely states was replaced by the 7th Constitutional Amendment in 1956 after the reorganization of Indian States. However Article 370 overrode the provisions of Article 238 as special stipulations for Jammu and Kashmir. Article 370 have been controversial right from inception, with Dr BR Ambedkar as the principal drafter of the constitution, having refused to draft the article owing its bias and unequal dispensations within the framework of a free India.

The drafting was eventually done by Gopalswami Ayyangar, who was a confidante of Prime Minister Jawahar Lal Nehru and former aide of the Maharaja of Jammu and Kashmir. It was initially meant to be temporary in nature; hence it was included in the temporary and transitional provisions in part XXI (Varshney 1992; Thapliyal 2011). Article 370 is apparently the most combative arrangement of the constitution of India. It deals exclusively with Jammu and Kashmir state that come under the administrative control of the government of India after the country's 15-month war that Pakistan began in 1947 to seize away over that is related to the state of Jammu and Kashmir came into existence in 26 January 1950 and with it, this phenomenal course of action. Each and every course of action were chalked in the Constituent Drafting Committee, and an occasion, in talks in the Congress Parliamentary Party. This area observes that the redrafting of Article 370 and a review essential of the constitution of Jammu and Kashmir. It holds that progressions must be established on comprehension between all the critical social occasions in Jammu and Kashmir. Given the political will, genuineness of reason, and a spirit of deal, it isn't difficult to recoup from the annihilation of Article 370 a set up settlement which satisfies the wants of all-inclusive community of Jammu and Kashmir.

History: India and Pakistan picked up their freedom on 15 and 14 August 1947, individually.

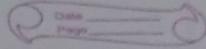
J&K decided to stay autonomous. There was an agreement by Jammu and Kashmir with Pakistan and India that none of them will assault Jammu and Kashmir. While India respected the agreement and worked out limitation, Pakistan assaulted Kashmir in an offer to add it by compel. On 6 October 1947, Kashmir was assaulted by "Azad Kashmir Forces" upheld by Pakistan. To spare Jammu and Kashmir, Maharaja Hari Singh (the then leader of Jammu and Kashmir) decided to consent Jammu and Kashmir to India.

In October 1947, the promotion was made by the ruler in support of India in light of specific duties made by Pandit Jawahar Lal Nehru (the then Prime Minister of India). It was in the compatibility of those duties that Article 370 was consolidated in the Constitution.

The Leader of Jammu and Kashmir denoted the instrument of increase whereby only the three subjects were agreed by the state to the territory of India.

- 1) External Affairs
- 2) Defense
- 3) Communications

The state appreciated a more noteworthy measure of self-sufficiency and the power of the Union of



India is confined, as respects other states. The Instrument of Accession for the state of Jammu and Kashmir was signed by Maharaja Hari Singh on 26th October 1947, making the state an integral part of the newly independent India. It also marked the culmination of the longest standing conflict in South Asia. In these the most desperate of circumstances, in an act signifying sheer despondency, the wily Maharaja still managed to insert clauses into the agreement to ensure Indian jurisdiction remain confined to defence, external affairs and communications. Effectively, these clauses were meant as safeguards to his own sovereignty. It also signified in some ways the Maharaja's difficulty in swallowing a situation wherein he not only had to deal with Nehru, Prime Minister of India, but also Sheikh Abdullah, who had consistently opposed him for over twenty years. Despite some opposition from the Constituent Assembly of India, the issue never drew the kind of vehement opposition that would have ensured its timely burial, and ultimately it became the effective precursor to Article 370 of the Indian Constitution. Due to the opposition of Dr BR Ambedkar in drafting the article, owing its bias and unequal dispensation within the framework of independent India's Constitution, the task was entrusted to Gopalswami Ayyangar, trusted by PM Nehru, and a former aide of Maharaja

Text of Article 370:

Part XXI
TEMPORARY, TRANSITIONAL AND
SPECIAL PROVISIONS

370. Temporary provisions with respect to the state of Jammu and Kashmir. (1) Notwithstanding anything in this constitution -

- a) the provisions of article 238 shall not apply in relation to the state of Jammu and Kashmir.
- b) the power of Parliament to make laws for the said State shall be limited to -
 - (i) those matters in the Union List and the concurrent list which, in consultation with the government of the state, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the state to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the state; and
 - (ii) such other matters in the said lists as, with the concurrence of the Government of the state, the President may by order specify.

Explanation : For the purposes of this article, the government of the state means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the council of ministers for the time being in office under the Maharaja's proclamation dated the fifth day of March, 1948.

- (c) the provisions of article 1 and of this article shall apply in relation to that state;
- (d) such of the other provisions of this constitution shall apply in relation to that state subject to such exceptional and modifications as the President may by order specify.

Provided that no such order which relates to the matters specified in the instrument of Accession of the state referred to in Paragraph (i) of sub-clause (b) shall be issued except in consultation with the government of the state.

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

Special Reference of Article 35-A

Introduction: Article 35A of the Constitution empowers J&K legislature to define state's "permanent residents" and their special rights and privileges in public sector jobs, acquisition of property in the state, scholarships and other public aid and welfare. No act of the state can be challenged for violating the Constitution or any other law of the land. It was added to the constitution through a 1954 presidential order under Article 370(1)(d) of the Constitution.

Background: After J&K's accession, Sheikh Abdullah in 1949 negotiated J&K's political relationship with New Delhi, which led to the inclusion of Article 370 in the Constitution. Article 370 guarantees special status to J&K. Under the 1952 Delhi Agreement between Abdullah and Nehru, several provisions of the Constitution were extended to J&K via presidential order in 1954. Article 35A was inserted then.

Why is Article 35A Debated?: An NGO, We the Citizens, challenged 35A in SC in 2014 on grounds that it was not added to the Constitution through amendment under Article 368. It was never presented before Parliament, and the parliamentary route of lawmaking was bypassed. It argues that four representatives from Kashmir were part

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of the Constituent Assembly involved in the drafting of the Constitution and J&K was never accorded any special status in the Constitution. Article 370 was only a 'temporary provision' to bring normality in Jammu and Kashmir and strengthen democracy in the state. Restricting citizens from other states from getting employment or buying property within Jammu and Kashmir is a violation of fundamental rights under Articles 14, 19 and 21 of the Constitution. In another case in SC, Article 35A restricts basic right to property if a native woman marries a man not holding a permanent resident certificate. Her children are denied a permanent resident certificate, thereby considering them illegitimate. The Supreme Court has indicated that the validity of articles 35A and 370 may be decided by a Constitution bench.

Arguments in support of this article:

- Tinkering with Article 35A would lead to further erosion of J&K's autonomy.
- Various articles in Constitution provide special rights to states like Nagaland (Article 371A) and Mizoram (Article 371G) based on historical reasons.
- Article 35A protects the demographic status of the Jammu and Kashmir in its prescribed Constitutional form.

Consequences if Article 35A is removed:

- Any adverse order against the provision, could give the Separatists a chance to stoke violence in the valley.
- If Article 35A is scrapped, the extension of the Fundamental Rights and every other provision to J&K through Presidential Orders will cease to apply.
- Only Article 1 and Article 370 of the Indian Constitution will then apply to J&K.

Features of Jammu and Kashmir Constitution:

In September-October 1951, the Constituent Assembly of Jammu and Kashmir was elected by the people of the state on the basis of adult franchise to prepare the future constitution of the state and to determine its relationship with the Union of India. This sovereign body met for the first time on 31 October 1951, and took about five years to complete its task.

The Constitution of J&K was adopted on 17 November 1956, and came into force on 26 January 1957. Its salient features (as amended from time to time) are as follows:

- 1) It declares the state of Jammu and Kashmir to be an integral part of India.
- 2) It secures justice, liberty, equality and fraternity to

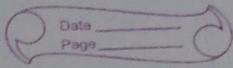
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- 3) the people of the state
It says that the state of J&K comprises all the territory that was under the ruler of the state on 15 August 1947. This means that the territory of the state also includes the area which is under the occupation of Pakistan.
 - 4) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such experimental and modifications and from such date as he may specify;

Bovid that the recommendation of the constituent assembly of the State referred to in clause (2) shall be necessary before the President issues a notification.

Therefore, Article 370 makes Article 1 and Article 370 itself applicable to the state of Jammu and Kashmir at once and authorizes the president to extend other Articles to the state.

- 5) It vests the executive powers of the state in the governor appointed by the President for a term of five years. It provides for a council of ministers headed by the chief minister to aid and advise the governor in the exercise of his functions.

- 6) It establishes a high court consisting of a chief justice and two or more other judges. They are appointed by the president in consultation with the chief justice of India and the Governor of the state. The High court of J&K is a court of record and enjoys original, appellate and writ jurisdictions. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.
- 7) It declares Urdu as the official language of the state. It also permits the use of English for official purposes unless the state legislature provides otherwise.
- 8) It lays down the procedure for its amendment. It can be amended by a bill passed in each house of the state legislature by a majority of two-thirds of total membership of that house. Such a bill must be introduced in the assembly only. However no bill of constitutional amendment can be moved in either house if it seeks to change the relationship of the state with the Union of India.



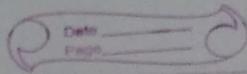
Pros and Cons:

Pros:

- 1) It has preserved and protected the ecology environment and biodiversity in J&K to some extent.
- 2) Government jobs are still available to residence of J&K.
- 3) Local brands are still running due to less competition.
- 4) Maintains the status of J&K with union of India.
- 5) Less population as there are not very much industries i.e. not giving any permissions for opening new business and industries.
- 6) Maintain the inland quality.
- 7) Has to maintain Indian charms over Kashmir in world eye.

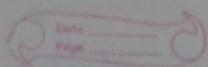
Cons:

- 1) Lack of medical facilities.
- 2) Terrorism in state because of article 370 and because Pakistan claims over Kashmir.
- 3) Lack of basic modern supply like fast speed internet, etc.
- 4) Only muslim can become chief minister of the state.
- 5) Corruption is much more because of special status and laws.



Conclusion : The Article 370 is changeless and won't be annulled according to before judgement of Supreme Court of India. India and Pakistan are guaranteeing over the place. The Article will remain insofar as joined country will constrain India and Pakistan to lead plebiscite in entire Kashmir. We trust that general population of State should choose on the off chance that they might want to remain with India or not. The control and directions which has been given or characterized in Article 370 must be executed legitimately and entirely in province of J&K.

J&K is the most burning issue which should be comprehended however is pending since more than sixty years of freedom because of a few errors committed by the legislators. This is the opportune time to take legitimate choice with respect to the status of Jammu and Kashmir, if appropriate advances are not taken now then it is conceivable that issue will fire up more in coming future and will keep J&K from improvement even the entire world will be developed. Need of plebiscite and re-election of constituent assembly becomes necessary.



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SCOPE OF IT PROFESSIONALS

In The Judicial Services In India

Abstract : Technological developments in the field of Information and introduction of Computers have made a turning point in the history of human civilization. Computers as well as electronic communication devices such as facsimile machines, electronic mail, video conferencing, provide the ability to process large volumes of data with speed and accuracy, exchange of useful information between different locations and support higher quality of decision making. While the Information Revolution arrived in India some years ago, automation has not transformed all facets of life in equal measure. The problems faced by courts, judiciary and public seeking justice in terms of backlogs, delays and expense are well known. While there are many dimensions to these problems, improvements in operational efficiency, coordination, accessibility and speed which IT and its professionals could bring about can contribute significantly towards improvement and alleviation of difficulties. Massive problems need appropriately large commitments and major initiatives if a significant dent is to be made. IT has resulted in enhanced efficiency, productivity and quality of output.

Issues with the Indian Judicial System:

According to the World Bank, "although India's courts are notoriously inefficient, they at least comprise a functioning independent judiciary". A functioning judiciary is the guarantor of fairness and a powerful weapon against corruption. But people's experiences in fall far short of this ideal.

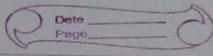
Corruption in the judiciary goes beyond the bribing of judges. Court personnel are paid off to slow down or speed up a trial, or to make a complaint go away. Judges are also subject to pressure from above, with legislators or the executives mis-using their power to influence the judiciary. Citizens are often unaware of their rights, or resigned, after so many negative experiences. Court efficiency is also crucial, as a serious backlog of cases creates opportunities for demanding unscheduled payments to fast-track a case.

- 1.) Judicial Backlog: Indian courts have large backlogs having more than 3.2 crore cases.

For instance, the Delhi High Court has a backlog of about 466 years according to its chief justice. This is despite the average processing time of 4 minutes and 55 seconds in the court. In Uttam Nakate Case, it took two decades to solve a simple employment dispute. However it needs to be mentioned that concept of backlog doesn't describe the actual

reason for many cases lying in the courts. The largest number of cases that are actually pending in the Indian courts are that of minor motor vehicle cases, petty crimes such as stealing, abusing, insult, slap, etc.

- 2) Corruption: Like the other pillars of democracy, the executive and the legislative, the judiciary too engages in corruption. There has not been established any system of accountability. In the case of judicial processes, even the media is unable to give a proper and clear picture of the corruption scenario. As per the constitutional provision, there is no provision yet for registering an FIR against a judge who has taken bribe without taking the permission of the chief justice of India.
- 3) There are large number of vacancies in trial courts. It is an established fact which the Govt. of India accepts that there is 40% shortage of judicial staff. Opposition and ruling party's corrupt politicians profit from the delays in the system.
- 4) In the recent past, there have been many debates around all over the nation regarding the Collegium system and the new system that government wants to introduce for appointment of judges. But none seems to be transparent enough to make the

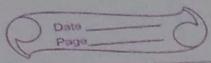


selection process of judges clear and understandable to the common public. All democracies are moving towards open government. Further, the right to know is a part of freedom of speech and expression and present secretive system violates this fundamental right.

- 5) Another drawback that arises from the above stated drawbacks is the under trials of accused.

Precisely for those who have committed a crime, it is OK, but it is unfair for an innocent to spend more time in jail just for waiting for his trial. The Indian jails are full of people under trials; they are confined to the jails till their case comes to a definite conclusion. Mostly, they end up spending more time in jail than the actual term that might have been awarded to them had the case been decided on time and assuming it was decided against them. Under trials are not guilty till convicted.

- 6) For any judiciary to be successful, it is necessary that the general public must know the mechanics of judiciary. The society must participate in the court proceedings. However, it is duty of public as well to make sure that they are participative enough to have the knowledge related to the judiciary.



2) Tele-Justice: Tele-justice involves use of IT services. It includes a simple telephone call, using satellite technology to communicate between people, using video-conferencing equipment. With tele-justice, the accused can now be present in a court through a video link, established on ISDN lines, between prison and the court. Today, Indian states including Maharashtra, Andhra Pradesh, Tamil Nadu have already introduced tele-justice. There are risks attached to transporting convicts from prison to the courts. In addition, there are also costs in form of deployment of policemen, security charges and transportation. Tele-justice yields considerable savings on these fronts.

3) Procedural aspects: The most significant impact of technology with regard to the judicial process has been in the domain of procedure. Investigative agencies have increasingly come to rely on forensic techniques such as analysis of fingerprints, voice, handwriting, social communication for evidence gathering.

A trial court of Haryana convicted three law students in Sonipat for blackmailing and gang-raping a junior from their university. The conviction was done by relying on the extensive and detailed WhatsApp conversation between rape victims and the law students.

4) Technology and Alternative Dispute Resolution:

The objective of alternative dispute resolution mechanism as the phrase itself suggest is to resolve disputes of all sorts outside the traditional legal mechanism i.e. courts/judicial system. There is a broad spectrum ranging from the purely consensual mode of resolution to an executive procedure like arbitration, conciliation or negotiation, through a combination of some techniques.

Online Dispute resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes. It involves creation of a virtual replica of physical setting and conduct proceedings by using various means for information exchange - e-mail, SMS, grid computing as well as video and tele conferencing. It is efficient, economical, non-confrontational, requires less physical meeting.

5) Websites:

Every court can have its own website giving information like location, jurisdiction, cause lists, judgements and facilities for litigants, etc. Website can be hosted at the servers of NJC.

Most importantly, all these technologies needs to be created, deployed, operated, maintained by skilled IT professionals to gain fruitful results and improve efficiency and effectiveness of Indian Judiciary.

Solutions from IT and IT Professionals:

Recently, there has been a tremendous interest in major initiatives in IT at the national level. A task force set up by the Prime Minister has drawn up 108 recommendations with the objective of developing India into an "IT Superpower". Further, computer usage has made sufficient inroads into judicial system of India.

i) E-Courts Mission Mode Project:

The E-courts project was established in the year 2005. According to the project, all the courts including taluka courts will get computerized. As per the project in 2008, all the District courts were initialized under the project. Now the establishment work is going on taluka courts. The project also includes producing witnesses through video conference. Filing cases, proceedings, and all other details will be in computers.

Ever since NTC took up computerization in Supreme Court in 1990, many applications have been computerized which have impact on masses, i.e. litigants. Following are some of the applications which have been successfully implemented at Supreme Court and 18 High Courts and these applications have either direct or indirect impact on the masses.

(i) List of Business Information System (LOBIS):

It is about scheduling of cases to be heard by the courts on the following day. It enabled the Registries of Supreme court and high courts in eliminating manual process of Cause list generation thus any manipulation by vested interests. These databases contain details of fresh cases, disposed and pending cases. It is the backbone application of every court.

(ii) Filing Counter Computerization:

In the Supreme Court of India and all high courts fresh cases are filed only before the computerized Filing Counters. As the advocates stand in queue for filing cases before the counters, the data entry operator enters preliminary details required for registration such as party names, advocate details, etc. The computer terminal at the query counter is used to attend to the queries of the litigants on the spot. The defects, if any, are listed out and handed over to the litigants / advocates for rectification. Time limitation is also checked by the system automatically.

Challenger to the use of Information Technology

Many deep-seated challenges must be overcome before the use of ICT can be truly transformative. Often cited is the level of resistance judicial cultures express towards externally imposed change. Quite logically, those required to make change are also those who may have the most to lose in the short-term by doing so.

It is also difficult garnering the levels of political support judicial reforms require to be effective because the judiciary is such a highly politicized apparatus, efforts to fundamentally transform the system will require the support of a vast number of stakeholders.

The low level of technological literacy which exists among India's judges is also problematic. Not only will members of judiciary be open to new ways, they will also have to be diligent in adopting a new skill set in which they may be more than a decade behind in acquiring.

Online case-filing services may unintentionally, due to cost or lack of awareness, erect barriers to justice for individuals who traditionally remained outside of the sphere of access.

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Conclusion: The use of technology in the judicial process has increased tremendously. Indian judicial system has come a long way since the first initiative for the computerization of Courts was taken in 1990. Its advantages have been clearly felt as it has become easier for judges, lawyers as well as litigants to participate in the process of law. It has considerably reduced the delay in various aspects of the judicial process and brought down the amount of backlog of cases.

However, there remain plenty of hurdles that have to be overcome so that judiciary can function to its true potential. Till now Supreme court, High Court and high court benches have been fully enabled with IT infrastructure but at the District level it is in the infancy stage. More than 2.79 crore cases are pending at district and subordinate courts. It is the need of the hour to expedite the process of computerization in Indian Judicial system.

Huge responsibility lies with IT professionals for fast, secure, effective implementation of information and communication technologies to working of Indian Judicial system getting evolved.

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