

CLASS WORK ASSIGNMENT-II



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An Assignment Work On : Article 370: Special Status to Indian State of Jammu and Kashmir

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PREFACE

I have made this project file on the topic entitled as "Article 370; special status to Indian State of Jammu and Kashmir". I have tried my best to elucidate all the relevant details to the topic to be included in assignment. While in the beginning I have tried to give a general view about this topic.

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 Shekhwat, Professor Department of Humanities and Social Sciences who assisted me for the preparation of this topic. I thank him for providing me the information, confidence and the most importantly the track for the topic when ever I needed it.

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Article 370 : Special Status to Indian State of

Jammu and Kashmir

Abstract: Indian constitution is one of the most efficient written constitution that any country has ever produced. It is a mixture of various other constitutions in the constitution making the draft of the constitution because of the diversity India contains inside. Every state in India is unique and has its own diversity. But the most beautiful and the most diverse and focus attracting state is in the Northern and of the special Indian state of Jammu and Kashmir. Article 370 talks about the special status that has been given to the state of Jammu and Kashmir. Article 370 stipulates autonomy for the state of Jammu and Kashmir (J&K). Terms of the Article have remained mixed in controversy owing to unequal dispensation within the framework of free India. The Article is drafted in Part XXI of the constitution. Temporary, Transitional and special provisions.

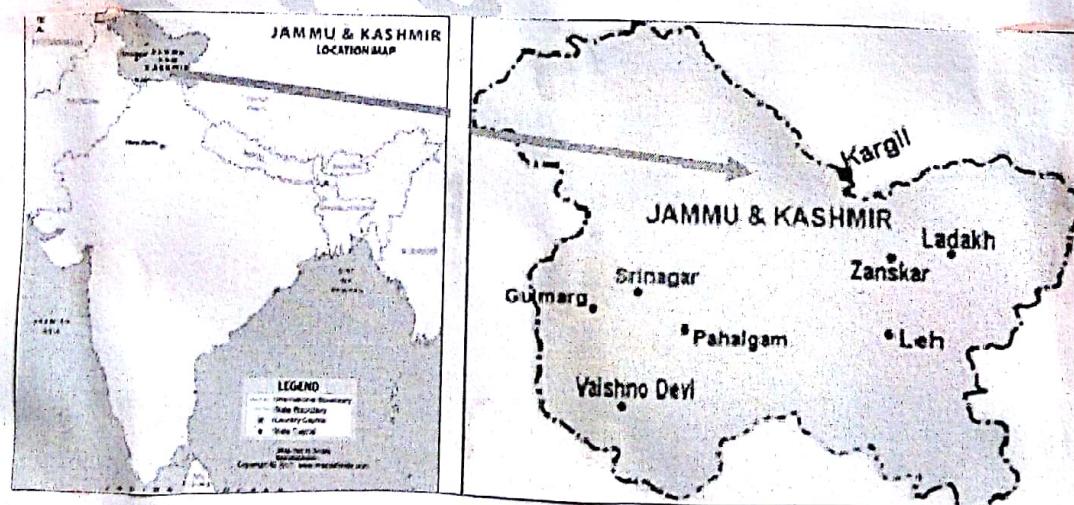
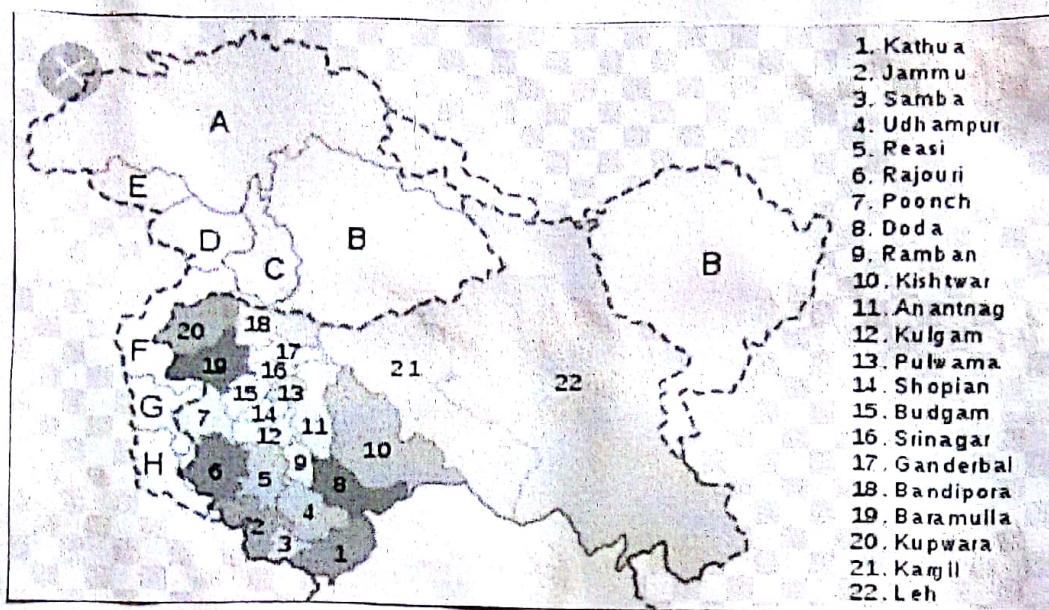
Introduction: The present study is aimed to trace the process of federalization in India and the inclusion of special provisions for the Jammu and Kashmir state embodied in Article 370 of the constitution of India, since Jammu and Kashmir presents a variant of the federal structure in which the Indian 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 structure, as a sub-national identity reveals much and can serve as an indicator for any reconsideration of the federal relations the constitution of India 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 reorganisation of Indian states. However Article 370 overrode the provisions of Article 238 as special stipulations have been controversial right from inception, with Dr BR Ambedkar as the principal drafter of the Constitution, having refused to draft the article within the framework of a free India. The drafting was eventually done by Gopalaswami Ayyangar, who was a confidante of Prime Minister Jawaharlal 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 control of the government of India after the country's 15-month war that began in 1947 to seize sway over that state. Article 370 of the constitution of India is related to the state of Jammu and Kashmir in every sixty eight years old. The constitution came into existence in 26 January 1950 and with it, this phenomenal course of action, each and every Assembly of India were charted in the constituent Drafting Committee and, am contemplations in its the Congress Parliamentary that the redrafting of Constitution of essential. It holds that progressions must be estab - lished on comprehension between all the critical will, genuineness of reason, and a spirit of deal, it isn't difficult to rework from the administration of Article 370 a set up settlement which satisfies the wants of all-inclusive community of Jammu and Kashmir.

2. Jammu and Kashmir Map



3. 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 demoted 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 confirmed, 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 over external affairs and remain confined to defence, communications. Effectively, these clauses were meant as safeguards to his own sovereignty. It also signified in some ways the 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 to its bias and unequal dispensation within the framework of independent India's constitution, the task was entrusted to Gopalswami Ayyangar, trusted by Prime Minister Nehru, and a former aide of the Maharaja,



u. 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 Legislature with respect to which the Dominion may make laws for that 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 recognised 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 such exceptions 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 (ii) 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.

5. 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 determine its future constitution of the state and to prepare the future 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, amended from time to time.
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 the people of the state.
 3. 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 under the state also includes the area which is occupied by Pakistan.
 4. It lays down that a citizen of India is treated as a 'permanent resident' of the state if on

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause 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.

(3) 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 expectations and modifications and from such date as he may specify; provided that the recommendation of the constituent Assembly of the state referred to in clause (2) shall be necessary before the President issues such a notification.

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

14 May 1954 (a) he was a state subject of class I or class II, or (b) having lawfully acquired immovable property in the state, he has been ordinarily resident in the state for 10 years prior to that date, or (c) any person who before 14 May, 1954 was a state subject of class I or class II and who, having migrated to Pakistan after 1 March 1947, returned to the state for resettlement.

5. It clarifies that the state are entitled to all rights guaranteed under the Constitution of India. But, any change in the definition of 'permanent' can be made by the state legislature only.
6. It contains a list of directive principles that are to be treated as fundamental in the governance of the state. However, they are not judicially enforceable.
7. It provides for a bicameral legislature consisting of the legislative council, The assembly and the legislative assembly consists of 111 members directly elected by the people. Out of this, 24 seats are to remain vacant as they are allotted for the area that is under the occupation of Pakistan. Hence, as an interim measure, the total strength of the assembly is to be taken as 87 for all practical purposes, The council consists of 36 members, most of

them are nominated by the Governor, who is also an integral part of the state legislature.

8. 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. The council of members (ministers) is collectively responsible to the assembly. Under the original constitution of J&K (1957), the head of the government were designated as Sadar-i-Riyasat (President) and head of the state was to be elected by the state assembly. In 1965, they were redesignated as Wazir-i-Azam (Prime Minister) respectively. Also the head of the state assembly was redesignated as governor and respectively. The head of the state assembly was to be elected by the state assembly.

9. It established a high court and appointed two or more judges 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 jurisdiction. However, it can issue writs only for the enforcement of fundamental rights and not for any other purpose.

10. It provides for Governor's Rule. Hence, the governor, with the concurrence of the President of India, can assume to himself all the powers of the state government, except those of the high court. He can dissolve the assembly and dismiss the council of ministers. The Governor's Rule can be imposed when the state administration cannot be carried on in accordance with the provisions of J&K constitution. It was imposed for the 1st time in 1977. Notably, in 1964, Article 356 of Indian constitution (dealing with the imposition of President's Rule in a state) was extended to the state of J&K.

11. 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. 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 preserve and protect 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 permission for opening new business and industries.
6. Maintain the inland quality.
7. Has to maintain Indian claims over Kashmir in world eye.

Cons:

1. Lack of medical facilities, no single private hospital in Jammu which include adjoining districts.
2. Terrorism in state Pakistan claims over Kashmir because of 370 and because of internet, 24 hours electricity & water supply like high speed
3. Lack of basic modern facilities
4. Education has suffered a lot.
5. Only muslim can become CM of J&K, no Hindu can become Chief Minister of J&K, no others because of special status and laws.
6. Corruption is much more in J&K than from

7. REFERENCES

1. "International Journal of Law (Article 370 of the Indian Constitution)"
ISSN: 2455-2194
www.lawjournals.org

Swabhi Gupta, Shashi Bhusham Ojha

2. "Article 370 and its implementation"

Tawheeda Nabi, Subaiya Nazir, Shahid Hussain Wani;
www.ijcrt.org

International Journal of Creative Research Thoughts

3. "Jammu & Kashmir and the politics of article 370"

Amitabh Hoskote, Vishaka A. Hoskote

International Journal of social sciences

<http://grdpublishing.org/>

4. "Indian Polity for Civil Services Examinations"
M LAXMIKANTH

8. BIBLIOGRAPHY

1. www.legallyindia.com
2. https://en.wikipedia.org
3. Jammu and Kashmir Constituent Assembly Debates
4. Hindustan Times
5. Akbar, M.J. Clause 7, Article 370 and a Three Nation Theory - In Kashmir : Behind the Veil.
6. The CONSTITUTION OF INDIA (AS ON 31st July 2018) 2018
MINISTRY OF GOVERNMENT OF INDIA
DEPARTMENT OF LAW AND JUSTICE LEGISLATIVE