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THE INTEGRAL INDIA- Article 370

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Abstract:-The PARTITION OF INDIA was one of the enormous devastations in Indian history, which accompanied the formation of two independent dominion countries i.e. INDIA and PAKISTAN. They legally came into the picture on 14-15 August 1947. The territorial conflict between the two-country mentioned above was initiated just after the massive separation as a dispute over the former princely state of JAMMU and KASHMIR. And then came the Article 370 of the Indian constitution into the limelight to provide the deserving status to Jammu and Kashmir again in August 2019 after the partition.

Keywords: -Conflicts, Partition, Constitutional Rights, Caste dispute, Politics.

Objectives of research paper:

1. To study causes of birth of Article 370
2. To study the journey of 370 Article
3. Political impact of 370 Article
4. Impact of Article 370 on Indian Economy
5. Impact of abrogation of Article 370 on Political Stability of India

Method of research paper: HISTORICAL METHOD

Introduction:- The northern part of Indian subcontinent consist of the state Jammu and Kashmir whose most of the part has been the major subject of controversy between INDIA, PAKISTAN and CHINA since 1947; allowing it to have a separate constitution, its own state flag, and autonomy over the international administration of the state. This issue was revoked by the Indian Administration again in August 2019 on an account of resolution in parliament through Presidential order of 1954; specifying the constitution. Since the Assembly begin to subtle itself without recommendation of the ARTICLE 370s abrogation, the article was deemed to have a permanent feature of the Indian Constitution.¹

Article 370 of the Constitution is a 'temporary provision',²

- Grants autonomous status to Jammu and Kashmir
- Under part 21 of the constitution of India which deals with "Temporary, Transitional and Special Provisions". The allocation of article 238 shan't apply to the State of Jammu and Kashmir. The Parliament's power to enact laws and provisions for Jammu and Kashmir will be limited to those, matters on the Union List and the Concurrent List that in debate with the State Government, the President declared, they correlate with the matters designated in the Instrument of Government of accession, the adherence of the State to the supremacy of India as matters with respect to which the Legislature of the Domain can make laws for that State. And other events in these lists, consists with the acceptance of the State Government, the President can identify by order.

The provisions of Article-1 and this article should be applied related to Jammu and Kashmir. Any of the other provisions regarding this Constitution shall appeal to that State subjected to the exceptions as well as moderations that the President may order. Notwithstanding the provisions of the foreign provisions of this article, the

President may declare by public notification that this article will end up being operational or will only be operational with such deviations and qualifications.³ Parliament requires the approval of the government of Jammu and Kashmir to implement laws in the State: eliminate in cases of defence, foreign affairs, finance and communications. Citizenship law, property ownership and fundamental rights of residents of Jammu and Kashmir are different from residents living in the rest of India. According to article 370, citizens of other states cannot buy property in Jammu and Kashmir. As per article 370, the Centre has got no power to proclaim a financial emergency in the state.

It is important to note that Article 370 clearly mentions that Article 1 of the Indian Constitution appeals to Kashmir through Article 370. Article 1 lists the states of the Union. This means that it is Article 370 that holds the state of Jammu & Kashmir to the Indian Union. Abolishing Article 370, which can be done by a Presidential Order, would furnish the state independent of India, unless new uppermost laws are made. Included in the Constitution on October 17, 1949, Article 370 privileged Jammu & Kashmir from the Indian Constitution (except Article 1 and Article 370 itself) and grants the state to draft its own Constitution. It confines Parliament's legislative powers in respect of Jammu & Kashmir. For stretching a central law on subjects attached in the Instrument of Accession, mere "consultation" with the state government is required. But for extending it to other matters, "concurrence" of the state government is obligatory. The Instrument of Accession came into play when the Indian Independence Act, 1947 divided British India into India and Pakistan.⁴

For some 600 princely states whose self-government was restored on Independence, the Act provided for three options: to remain an independent country, join Dominion of India, or join Dominion of Pakistan — and this joining with either of the two countries was to be through an Instrument of Accession. The area was once a princely state called Jammu and Kashmir, but it joined India in 1947 soon after the sub-continent was divided up at the end of British rule. India and Pakistan consequently went to war over it and both came to control different parts of the territory with a ceasefire line agreed. There has been

violence in the Indian administered side - the state of Jammu and Kashmir for 30 years due to a separatist revolt against Indian rule.⁵

Along with the 370, there was another article named ARTICLE 35A of the Indian Constitution that empowered the legislature of Kashmir to specify the “permanent residents” of that state along with all the rights and privileges to those residents. This article was included in the constitution through the presidential order, 1954; issued by the president on 14 may in the same year itself. The Kashmir and Jammu residents were privileged to include the ability to **purchase land and unmovable property, to vote and contest elections, seeking government employment and availing other state benefits such as higher education and health care.** Non-permanent residents of the same state, even as Indian citizen, were not entitled with all these special rights.⁶

The order of the constitution, 1954 issued by President Rajendra Prasad under article 370 along with the support of the Union Government looked after by Jawaharlal Nehru, was act out as a subsequence to the ‘1952 Delhi Agreement’ between Nehru and the Prime Minister of Kashmir, Sheikh Abdullah at that time; which dispense with the extension of Indian Citizenship to Jammu and Kashmir. According to the Constitution of India, Article 370 provides temporary provisions to Jammu and Kashmir, granting its special autonomy. This article states that the ARTICLE 238, which was diminished form the constitution in 1956, when the reorganisation of the Indian states was upto, should not apply to Jammu and Kashmir. Dr Babasaheb Ambedkar, the Constitutional Drafter had already refused Article 370.⁷

In 1949, the then Prime Minister Pandit Jawaharlal Nehru had shown the way to Jammu and Kashmir leader Sheikh Abdullah to consult Dr Babasaheb Ambedkar (who was the law minister) to make a draft of a suitable article; which to be included in the Indian Constitution. 370 by that time were brought forward by Gopalswami Ayyangar. He was the minister without any legal prove in the Union Cabinet of India. He was also the Former Diwan to Maharajah Hari Singh of Jammu and Kashmir. Article 370 was drafted in amendment of the Constitution Section , in Part XXI under Temporary and Transitional Provisions. The original draft states that ‘the government of the state means the person for the time being recognized by the President ; as the Maharajah Hari Singh of Jammu and Kashmir was acting in the advice of the Council of Minister for the time being in office under the Maharaja’s Proclamation dated as the 5th of March, 1948.⁸

On 15th of November 1952, it was replaced with, ‘the government of the states means the person for the time being recognised by the President on the recommendation of The Legislative Assembly of the state as the Sadar-I-Riyasat (now as Governor) of Jammu and Kashmir, acting on the advice of the Council of Minister of the state for the time being in the office. Under Article 370 the Indian Parliament cannot increase or reduce the borders of the state of the country. It was mentioned in the Indian Constitution as a temporary article which can be changed.

It took so many years down the line and now at present they had abolished the temporary phase and claiming to make it as permanent. They are revoking the issue again in 2019. In the first few days of August, there were clews of something afoot in Kashmir. Tens of thousands of additional Indian army units were placed weapons in battle formation, a major Hindu pilgrimage was cancelled, schools and colleges were shuttered, tourists were ordered to rush off, telephone and internet services were dangled and regional political leaders were placed under house arrest.⁹

The main objective was “ONE COUNTRY ONE LAW”. Constitutionally India had always stated that Jammu and Kashmir are an Integral part of India, so why there should be two citizenship like before Jammu and Kashmir were having their own constitution and their own flag. When we say as one country one law ; it indicates that we are trying to bring people of Jammu and Kashmir in the MAINFOLD. Kashmiri girls, prior to abolishment of Article 370 , whenever marries outside the state ; she loses all her rights in the property, but that was viceversa throughout India according to the Indian Constitution. Article 370 **bard** Kashmiri girls from having property rights. Article 370 abolished it and all the rights were given to them because she will now be governed by Indian Laws of the Constitution of India.¹⁰

Jammu & Kashmir and Ladakh. The two union territories would be born on October 31. Many Kashmiris believe that the BJP ultimately needs to vary the demographic character of the Muslim- majority region by permitting non-Kashmiris to shop for land there.

Kashmiris longer have a separate constitution but will have to abide by the Indian constitution much like any other state. All Indian laws will be automatically applicable to Kashmiris. The government says this will bring development to the region.¹¹

Article 370 also bard people buying property in Jammu and Kashmir, but after the abolishment, any citizen can go and purchase property in Jammu and Kashmir. That is going to increase EMPLOYMENT, there will be SICIAL as well as ECONOMICAL development throughout the country and with that there will also be more interaction between the people of Jammu and Kashmir and the rest past of India.; because throughout this 70-72 years what has happened that slowly and gradually the people, they had started to build a mindset that the people of Jammu and Kashmir are different and the Indian people are different. So, Article 370 abolished this thing too. The main objective was to bring them into the mainfold and claim that **the Jammu and Kashmir is the integral part of India.** People they shall be governed by one law. There should be one law.¹²

Article 370 is now history, said "Narendra Modi" (Prime Minister of India). Adding that a new order is in place to eliminate separatism and terrorism. “The abolition of Article 370 is a reality. It is also a reality that it is the people of Jammu and Kashmir who are bearing the brunt of the cautionary measures taken to get away to avoid any improper fallout of this decision,” Modi however, he again added, these are only transient measures till free and fair

elections are held for the Jammu & Kashmir Assembly and peace returned to the troubled nation.¹³

Conclusion: -

In the manner that the government has abolished Article 370, the Indian Constitution has given the rights to the people because **India is a Democratic Country** so we can see how some Indian citizen had gone to the Supreme Court and have challenged Article 370. **“THIS SHOWS THAT DEMOCRACY IS ALIVE IN INDIA”**

Because Democracy is the rule OF THE PEOPLE, FOR THE PEOPLE and BY THE PEOPLE. The Constitution guarantees...

- Social safeguard
- Economic safeguard
- Educational and cultural safeguard
- Political safeguard
- Service safeguard
- Other safeguards

So abolishing Article 370 indirectly is STRENGTHENING the Constitutional rights of the people in Jammu and Kashmir and the opening statement of The Preamble is **“WE THE PEOPLE OF INDIA....”**; it emphasises WE and not **“I”**, just to show and claim that there is **‘UNIVERSITY IN DIVERSITY’**

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