



ABROGATION OF ARTICLE 370 FROM THE INDIAN CONSTITUTION

Ms. Sunamee Mankar*

ABSTRACT

With many provisions in the constitution of India one of them with its own significance is Article 370 which granted a special status to the state of Jammu and Kashmir. Under this particular article limitations were led down on the jurisdiction of the government of India on the state of Jammu and Kashmir, giving freedom to state of having its own constitution, flag and administration structure with no application of central law in the state which are only applicable to the matters concerning defense and foreign affairs. with such power it was seen that many issues were being faced and future threats were seen to be coming.

In the year of 2019 month of August by our Prime Minister Shri Narendra Modi, a bill was passed in the parliament "The J&K Reorganization Bill" which later on with majority became an act causing to removal of the article 370 from the constitution of India and formation of J&K into two separate union territories. From this removal the government-initiated reforms for the stability being drought in the state regarding its socio-economic status, administrative structure and law implication to the state. with total integration of the region into the union which will provide people with equal rights and opportunities giving them possibilities for increase in their socio-economic status and many educational systems being setup for the upcoming generation. We could see the removal being very beneficial but when we see this subject from the perspective of the older generation, we could observe that the protest the idea of the special status being taken as according to their beliefs the laws and rights in the constitution they made were uniformly made and worked in a way better way than the constitution of India for their region and the way.

Keywords: Jurisdiction, administration, reorganization, constitution, abrogation.

* Student | Symbiosis Law School, Nagpur.

Introduction

The removal of the article 370 from the constitution is a landmark within the history of J&K. this article which provided a special status to the state of Jammu and Kashmir put down an restrain form the integration of it with Indian union so removal of the Article brought a drastic change to the religion as their special status was taken and so were the freedom in accordance to the article.

The reason for the incorporation of this article in the year of 1949 was to provide provision temporarily for the governance of the state within which this article gave the freedom to the state of having its own constitution, flag and administrative structure with restrain on the implication of central laws on the region for all intention to from a proper union and respect the aspirations of people of the state. With years coming the article became a subject for many debates questioning its validity and a need for a total integration of the state to be done within the country with the reasoning given that this article separates the state from the country and affects the welfare of the state.

August of 2019 the government took the decision of removal of this article with the implication of the J&K Reorganization Act, 2019 according to which the region was now formed into two different union territories of the country one being Jammu and Kashmir and other being Ladakh.

Purpose for the Removal of Article 370

The decision for the removal had visibly served many purposes as what the government had in plan –

1. By removing the article, the special status given to the state will be taken followed by the total integration of the state in the union causing for it to remove all the barriers with the constitution and central law implication.
2. Establishment of a proper governance and development reforms to be brought to the state as no administration structure was seen to be found with the special status being given with the authority to make its own law.
3. The security of the country also being the important purpose as the spread of terrorism could be widely seen within the people and for decades it was challenging the security with no proper legislation in the state. With removal of 370 and central law implication it would bring a strengthened control over these issues.
4. With the special status and authority to have its own constitution, flag and administrative system there was lack of equal rights and opportunities being provided to the citizens in the

region the removal ensured that every citizen will be treated equally by the law with equal rights and opportunities being provided to them.

5. With article 370 sperate governance and administrative structure from the center with no coordination from any of the sides causing in socio-economic backwardness and no development within the region with the removal a uniform structure would form which will bring major changes.

The Jammu and Kashmir Reorganization Bill, 2019

In the year of 2019 on august 5 the Jammu and Kashmir reorganization Bill, 2019 was introduced by the home minister Amit Shah in parliament according to which the state of J&K was to convent into two separate union territories, namely Jammu and Kashmir and second Ladakh within which proposal of J&K to have a legislation and Ladakh to not have one was done. This bill gained the voting of 67% of majority in Rajya Sabha and 84% of majority in Lok Sabha in favor to the bill.

This bill became an act with presidents' signature and so the two union territories came into existence on 31 October 2019, which today is celebrated as Unity Day

Provisions in J&K Reorganization Bill

The bill was introduced during 2019 in the parliament of India with the objective of bringing changes with the legislation and provisional structure with its main features being –

“Omission of article 370 of the constitution of India which gave a special status to the state of Jammu and Kashmir after the independence.

Legislation be put down on the two divided union territories one being Jammu and Kashmir and the other being Ladakh.

Implementation of laws which are followed throughout the extent of India on the State of Jammu and Kashmir.

Establishment of high courts with the jurisdiction followed by the whole of India Changes being brought in the administrative structure like the appointment of lieutenant governor was now the authority of center government and parliament.”

On “5th August 2019” this bill was presented in parliament later with positive voting and assent of president came into force on “31st October 2019”

ADVANTAGES OF THE REMOVAL

1. With removal of 370 all the people now are seen equally by the eyes of law with equal rights and opportunities being provided to all.
2. The total integration of the region with the union there was no other flag needed for only the flag of India alone identified their citizenship
3. With many job opportunities opened for the people in the region the economic status improved drastically.
4. Investments from private sectors were now able to invest in the state bringing development to the region which was beneficiary to the people
5. With every one given equal right, right to education was being promoted on a large scale bringing more educational sectors and facilities to the upcoming generation.

DISADVANTAGE OF THE REMOVAL

1. After presidential rule was implicated on Kashmir and the state assembly was disband it was seen that this decision was forced on them as information came out that a lockdown was put all over the region with law makers on house arrest and the internet connection being taken away from them and hundreds of troops preventing them from taking any action.
2. People complained of this being unconstitutional as the actions taken by the government after the implication of J&K Reorganization Act, 2019 were unreasonable and some were unlawful with no information provided to the public.
3. Having lawmakers from Jammu and Kashmir on house arrest while these decisions were made and no state assembly being set for any voting made people angrier to the thought that this decision might not be in their favor
4. Democracy not followed in its true form as per now the region was no longer a state but was divided into two different union territories causing for the federal government having more control over it.
5. This decision was not fully accepted by the people of the region causing for it to bring more political and social crises between the country.

Case Law

1. Anuradha Bhasin V. Union of India (AIR 2020)¹

In this case a writ petition was filed in the supreme court regarding the violation of article 19, a fundamental right of people which provides freedom to speech and expression by the internet connection being cut down in the region of J&K was taken by the people. The court observed that it was unjustified and unreasonable of the government to take the internet down and violation to the right of the citizen.

Recently two of the appellants have withdrawn their appeal in the supreme court with the approval of the Chief Justice of India D.Y. Chandrachud.

There is still a case pending in the supreme court to which the questioned the validity of the removal of the special status of Jammu and Kashmir provided under article 370 of the Indian constitution, in this matter the court is not concerned with the intentions of the government with the decision but for on what basis does the constitution provides and what are the legal grounds on which the appellant have questioned the act.

2. Shah Faesal V. Union of India (Air 2019)²

The case is still pending in the court of law with questions being raised

- Does J&K Reorganization act is violative of article 3 and part III of the constitution of India.
- The use of article 370(1) be used to change the interpretation of article 370.
- Does statutory resolution violate the fundamental right of people of J&K.

Conclusion

The removal of 370 was and is still considered a highly debatable issue. With the special status being taken by the state which allowed them to have their own constitution and jurisdiction. Aspects such as equality, freedom, law and legislation being closely related to this subject.

The people in favor of the removal of the article are with the points that the status given makes inequality within the people and restraining many developments for the region. With implication of central law on the region we could see that many positive aspects have come out of it with rights given to people, development schemes provided and a proper administration system being set down in the state. to the time year we could see that the legislation on the

¹ Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

² Shah Faesal v. Union of India, (2020) 4 SCC 1 (pending case), <https://www.scobserver.in/cases/manohar-lal-lohia-union-of-india-article-370-case-background>.

Jammu and Kashmir has now put down a proper administrative structure, improved socio-economic status and law-making power.

We cannot come to a conclusion of whether the removal was good or bad for the state and its people but it was something required to prevent the future threats for the country all together and maintain the aspect of federalism