

AN OVERVIEW OF ARTICLE 370 IN INDIAN CONSTITUTION WITH REFERENCE TO JAMMU AND KASHMIR

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Abstract

The Drafting Committee arranged a Draft Constitution containing 315 Articles and 8 Schedules that was considered at awesome length at the Second perusing stage and experienced a few alterations. The Draft Constitution was settled by the Constituent Assembly on 26th November 1949 and came into drive on 26th January 1950. It took the Constituent Get together around three years to outline the Indian Constitution which is the World's longest Constitution. The gigantic endeavors of the Constituent Assembly are recorded in the twelve volumes of Constituent Assembly Debates. The Indian Independence Act 1947 brought forth the two autonomous territories of India and Pakistan and more than 560 odd Indian Princely States got sway and turned out to be totally free. All (generally around 562) Indian States yet three States agreed to either Dominion. The Indian States entered the Constituent Assembly of India on the premise that they would consent to the Union of India by appropriate instruments, and that the inward Constitutions of these States would be encircled by their own Constituent Assemblies. It was however soon understood that, if every Indian State or Union of Indian States was to outline its own Constitution with no direction from the Center, there may be such vast contrasts among them as to bring about a veritable jigsaw perplex.

1. INTRODUCTION

With respect to State of Jammu and Kashmir various challenges emerged, which the Government of India needed to consider painstakingly. Maharaja Hari Singh needed that the increase of the State ought to be in regard of three subjects: Defense, Foreign issues and Communications. The Drafting Committee called attention to that under the arrangements of the Draft

Constitution all States in Part III would acknowledge List I, List II, all arrangements identifying with fundamental rights and the arrangements identifying with High Courts and Supreme Court. Notwithstanding, as to the State of Jammu and Kashmir the Government of India chose that the increase of the State ought to proceed on the current premise until the point when the State could be brought at standard with

different States. For this reason a unique arrangement was made in regard of the State of Jammu and Kashmir [1].

The Ministry of States proposed for thought of the Drafting Committee the accompanying way to deal with this Question:

- 1) Jammu and Kashmir State might be dealt with as a piece of An Indian area and appeared in States determined in Part III of Schedule I.
- 2) An uncommon arrangement might be made in the Constitution such that until the point when Parliament gives by law that every one of the arrangements of the Constitution relevant to the States determined in Part III will apply to this State, the power of Parliament to influence laws for the State to will be restricted to the things indicated in the Schedule to the Instrument of Accession overseeing the promotion of this State to the Dominion of India or to the relating sections in List I of the new Constitution.

Not just in the declaration of the Honorable Minister for States, yet in addition in the delivery of Lord Mountbatten to the Princes, it had been clarified that increase on three subjects did not suggest any budgetary risk with respect to the States and that there was no goal either to infringe on the inner self-governance or the sway of

the States or to chain their watchfulness in regard of the new Constitution. It was against these responsibilities that the State Ministry needed to approach the Rulers for the combination of their States [2].

2. CONSTITUTIONFRAMING OF JAMMU AND KASHMIR

The historical backdrop of the State had created in such a way, to the point that the confining of a different Constitution for the State had turned out to be relatively inescapable. By excellence of the Instrument of Accession the Dominion of India now had locale just more than three subjects, i.e. outside undertakings, barrier and interchanges of the territory of Jammu and Kashmir. Be that as it may, for the inner organization of the State an Interim Constitution for the State of Jammu and Kashmir ended up plainly essential and on fifth March 1948 a national Interim Government was framed. Maharaja Hari Singh by an assertion dated fifth March 1948 likewise pronounced that when ordinary conditions were reestablished in the State a National get together would be appropriately chosen to frame a Constitution for the State. The assignment of embracing the New Kashmir Constitution fell upon the PrajaSabha. Yuvraj Karan Singh, child of Maharaja Hari Singh, designated the power of enactment to the Constituent Assembly of Jammu and Kashmir, which was shaped in September 1951 and took up the assignment of

encircling a constitution for the State on fifth November 1951 [3].

There can be no uncertainty in regards to the legitimacy of the confining of the Constitution of Jammu and Kashmir 1957. The privilege to outline a different Constitution for the State was ensured to the general population all through and even Article 370(2) of the Constitution of India 1950 ensures such right. By excellence of the privilege conceived in the Constitution of India 1950 and the Decree of Yuvraj Karan Singh dated first May 1951 a Constituent Assembly that was appropriately chosen based on grown-up suffrage to frame a Constitution for the State. The Constitution (Application to Jammu and Kashmir) Order 1954, which settled the constitutional relationship of the State of Jammu and Kashmir, did not bother the past confirmations as respects the surrounding of the inward Constitution of the State by its own particular individuals. In October 1956 the Drafting Committee displayed the Draft Constitution, which after dialog, was at long last embraced on seventeenth November 1956 and the Constitution of Jammu and Kashmir 1957 was at last offered impact to from 26th January 1957 [4].

3. FEATURES OF THE JAMMU AND KASHMIR CONSTITUTION

The State of Jammu and Kashmir is the main State inside the Union of India having

a different Constitution and offers ascend to an evidently atypical circumstance. Regardless of whether such a constitution can exist inside the system of the Indian Constitution is an easy to refute question and the legitimacy of such a constitution would to a great extent rely on the translation of the different arrangements of both the constitutions read in the light of each other. In any case, keeping in mind the end goal to comprehend the position of the Constitution of Jammu and Kashmir 1957, in connection to the Constitution of India 1950 it is fundamental to think about the striking highlights of the Constitution of Jammu and Kashmir 1957.

A constitution perhaps characterized as a collection of central standards, which manage the activities of a State. Each State must have a constitution. James Bryce says, "The constitution of a State or Nation comprises of those of its tenets or laws which decide the types of government and the particular rights and obligations of it towards its residents and of nationals towards the legislature. It might be portrayed as an essential and incomparable and is particular from a statute. In an unadulterated Federal framework the States or territories are known to have their own constitutions. Despite the fact that it has been held by the Supreme Court of India that federalism conceived in our Constitution is one of its essential highlights and is indestructible, none of the States

have their own different Constitutions aside from the State of Jammu and Kashmir. The striking highlights of the Constitution of Jammu and Kashmir 1957 are [5]:

- **Composed Constitution:** Constitutions of the world are either composed or unwritten. The arrangement of Constitutions as composed and unwritten is informal and is presently thought to be obsolete. Be that as it may, the Constitution of Jammu and Kashmir is a composed Constitution having 158 Sections and 6 Schedules.
- **Somewhat inflexible and mostly adaptable:** A more logical characterization is to group modern constitutions into Flexible and Rigid. The premise of this order lays on whether the procedure of constitutional change is or isn't the same as normal law-production process? An adaptable Constitution is one which is flexible and consequently can be changed effortlessly. An unbending Constitution then again, is one which is extremely hard to change. 3 The Kashmir Constitution is mostly unbending and somewhat flexible.4 Matters identifying with guard, outside undertakings and interchanges alongside those highlights determined in the provision to segment 147 of the

Constitution of Jammu and Kashmir 1957, that is, areas 3 and 5 are thought to be rigid. All different arrangements of the Constitution of Jammu and Kashmir 1957 are thought to be adaptable.

Not hostile to the Constitution of India: the Constitution of Jammu and Kashmir is corresponding to Indian Constitution and not disgusting to the Constitution of India. The Constitution of India accommodates the surrounding of the Constitution of Jammu and Kashmir. It is in congruity with the Constitution of India and is evolved to the point that a conflict appears unlikely. However the Constitution of Jammu and Kashmir creates an oddity as none of the other Indian States have a different Constitution [6].

4. INDO-PAKISTAN DIALOGUE ON KASHMIR

In spite of the fact that the Accession of Kashmir is an issue just concerning India, after the truce and the intercession of the United Nations in 1949, Pakistan has by one means or another figured out how to have something to do with the Kashmir issue and to this India has over and over again obliged. Having very nearly 33% of Kashmir under its occupation and some global help, India has regularly consented to go into discourse with Pakistan; however there was no lawful commitment to do as such.

Simla Agreement 1972-after the thrashing of Pakistan by India in December 1971, President Bhutto and Smt Indira Gandhi following a five day summit meeting at Simla, on third July 1972 consented to an arrangement wherein the Government of India and the Government of Pakistan settled that the two nations put a conclusion to the contention and showdown that have here to defaced their relations and work for the advancement of cordial and amicable relationship and the foundation of solid peace in the subcontinent, with the goal that the two nations may from now on commit their assets and energies to the squeezing errand of propelling the welfare of their kin. In the said assention it was additionally concurred that in Jammu and Kashmir, the line of control coming about because of the truce of December 17, 1971 should be regarded by the two sides without bias to the perceived position of either side. Neither one of the sides might to modify it singularly, regardless of shared contrasts and legitimate elucidations. The two sides additionally attempt to cease from the risk or the utilization of power infringing upon this line. It was additionally concurred that the Heads of the two countries would again meet later on to discover, entomb alia, a last settlement to the Kashmir issue. The Shimla Pact 1972 denoted India's push to present authenticity on existing conditions. In any case it has been said that the harm done by the Tashkent and Shimla

Agreements to the essential and global status of the Kashmir issue is hopeless.

Since the consenting to of Simla Arrangement different summits have been held amongst India and Pakistan with any expectation of genially settling the contrasts between the two countries. The different summits quickly are as per the following:

- **1972; Simla:** Indira Gandhi and Z. A. Bhutto marked The Simla Pact. It was consented to maintain the Line of Control and settle debate by guarantee transactions. Bhutto gives private affirmations of making the Line of Control the universal outskirts.
- **1987-New Delhi:** General Zia-ul-Haq and Rajiv Gandhi consent to deescalate pressures and pull back troops from the fringe.
- **1989-Islamabad:** Rajiv Gandhi and Benazir Bhutto concur not to assault each other's atomic establishments. A concurrence on Saichen is stillborn.
- **1997-Male:** I. K. Gujral and Nawaz Sharif consent to continue talks and set up a hot line amongst Delhi and Islamabad.
- **1999-Lahore:** A. B. Vajpayee and Nawaz Sharif sign the Lahore Declaration to increase endeavors to determine debate, including Kashmir, and diminish danger of

inadvertent or unapproved utilization of atomic weapons.

However the gathering at Agra in the year 2001 between A. B. Vajpayee and President ParveezMusharaf was a worthless endeavor between the two pioneers to set up peace in the sub-mainland. The India-Pakistan Summit fizzled on the grounds that the two sides couldn't concede to the substance of a joint articulation. According to outside service representative, "Despite the fact that the initiation of the procedure and start of the adventure has occurred, the goal of a concurred joint explanation has not been reached."Ultimately no understanding was agreed upon.

5. POSITION OF PAKISTAN OCCUPIED KASHMIR

With respect to domains of the State of Jammu and Kashmir under the control of Pakistan, alluded to as Pakistan Occupied Kashmir, it might be noticed that the Government of India did not surrender the said regions to Pakistan. They were involved by Pakistan by power India still claims back the territories of Pakistan Occupied Kashmir. Parliament embraced a determination on 22nd February 1994, re-confirming that Pakistan must empty the territories of the Indian State of Jammu and Kashmir, which they have involved through animosity. So-called Pakistan Occupied Kashmir or Azad Kashmir contains fundamentally of five locale, Muzaffarabad,

Bagh, Rawlakot, Kotli and Mirpur. Other than these five locales the domains of Gilgit and Baltistan that were kept under the immediate control of Pakistan were given over to China by Pakistan in 1963. Schedule I of the Constitution of India 1950, portrays the region of the State of Jammu and Kashmir as the region, which quickly before the beginning of this Constitution, was included in the Indian State of Jammu and Kashmir [7].

Area 4 of the Constitution of Jammu and Kashmir 1957 further depicts the region of the State. As indicated by Section 4, the domain of the State should contain all regions, which on the fifteenth day of August 1947, were under the sway or suzerainty of the Ruler of the State. At the end of the day according to the arrangements of the Indian Constitution and the Constitution of Jammu and Kashmir, the State additionally incorporates the regions under the control of Pakistan and also the regions gave over to China by Pakistan in 1963. Therefore, the domain incorporates the region of the State at display held by tribesmen and which isn't true under India's control. 3 It is fascinating to take note of that despite the fact that the regions of Pakistan Occupied Kashmir were involved path in 1948, the Constitution of Pakistan 1973 did exclude the State of Jammu and Kashmir inside her regional points of confinement. Rather, Article 2575 of the Constitution of Pakistan 1973, states

that: "When the general population of the State of Jammu and Kashmir choose to agree to the Pakistan, the relationship of Pakistan and that State should be resolved as per the desires of the general population of that State." In the light of these arrangements of the Constitution of Pakistan 1973, the Chief Justice of the High Court of Azad Kashmir, the Hon 'ble Mr. Equity Abdul Majeed Mallick on eighth March 1993 was satisfied to observe¹ that the Northern Areas don't frame a piece of the domains of Pakistan as characterized in the Constitution of Pakistan 1973, and in this manner these territories are a piece of the State of Jammu and Kashmir. The said choice clears up the position of Pakistan-possessed Kashmir with Pakistan and is of some centrality to India concerning the Kashmir issue.

As indicated by Amanullah Khan, author of the Jammu and Kashmir Liberation Front, Kashmir's first activist gathering, the main arrangement is for the isolated Jammu and Kashmir State, including Gilgit-Baltistan, to be brought together under worldwide supervision in peaceful stages. It must be made a free nation with a vote based, elected and common arrangement of Government. He additionally states, following 15 years, let there be a choice managed by the UN or some other global association in which the Kashmiris will decide if independence ought to be given to it or whether it ought to end up some

portion of India or Pakistan. That prominent decision must be acknowledged by India, Pakistan and the Kashmiris as a last settlement. ¹ According to Khan Races are held consistently in POK and there is a chosen President and Prime Minister, a Supreme Court, High Court, Election Commission, Legislative Assembly and Public Service Commission's? An ex-President of Azad Kashmir has portrayed the Government of Azad Kashmir as an "administration of Azad Kashmir by Pakistanis for Pakistan. However there are sure flaws in the race laws. Keeping in mind the end goal to challenge races in POK one needs to pronounce in composing that he supports increase to Pakistan. The Decree expresses, "No individual or political gathering in Azad Jammu and Kashmir should be allowed to spread against the state's increase to Pakistan." On the other turn so as to challenge decisions In the Srinagar Assembly the one needs to announce his steadfastness to the Indian Constitution. As such one needs to acknowledge Kashmir as an essential piece of India. It ought to be noticed that for the domains under the control of Pakistan, twenty-four seats in the Legislative Assembly are kept empty and are not be considered for retribution the aggregate enrollment of the get together [8].

6. CONCLUSION

It is concluded that the public opinions gathered in the State of Jammu and

Kashmir mirror that an extensive level of the populace, which has settled on independence, has picked pre-1953 status as a moment alternative. Despite the fact that there was no provision in the survey for giving second alternatives, this most sudden occasion has tossed light on the main conceivable and sensible answer for the Kashmir issue. The demand for independence is out of disappointment, which has been sustaining in the brains of the general population for quite a while. On the off chance that the disappointment can be expelled, at that point consequently the demand for independence would vanish. With a specific end goal to evacuate this disappointment, certain rights and benefits should be given to the general population of the State. The survey demonstrates that Pre-1953 status is their elective demand. Be that as it may, aimlessly returning to pre-1953 status would not illuminate the Kashmir issue as preceding 1953 the general populations of the State were disappointed and there was bedlam and turmoil in the State. The Government of India needs to discover and actualize an extraordinary status that will fulfill the general population of the State. This new status may vary from Pre1953 status or the unique status by and by appreciated by the general population of the State.

REFERENCES

[1]. Mitra, Subrata Kumar (2006), The Puzzle of India's Governance:

- Culture, Context and Comparative Theory, London: Routledge, ISBN 0-415-34861-7
- [2]. Ramusack, Barbara N. (2004), The Indian Princes and Their States, The New Cambridge History of India III.6, Cambridge, England: Cambridge University Press, ISBN 0-521-26727-7.
- [3]. Metcalf, Barbara D.; Metcalf, Thomas R. (2006). A Concise History of India (2nd ed.). Cambridge University Press. ISBN 978-0521682251. .
- [4]. Thomson, Mike (September 24, 2013). "Hyderabad 1948: India's hidden massacre". BBC. Retrieved September 24, 2013. . Noorani, A.G. (Mar 3-16, 2001). "Of a massacre untold". Frontline 18 (05). Retrieved 8 September 2014. . Gandhi, Rajmohan (1991). Patel: A Life. India: Navajivan. p. 292.ASIN B0006EYQOA.
- [5]. Choudhury, Salah UddinShoaib (8 October 2010). "Pakistani rogue policy on Kashmir". Sri Lanka Guardian. Retrieved 29 May 2013.
- [6]. Durrani, Atiq (4 February 2013). "PAK-INDIA Dialogue: Single-Point Agenda: KASHMIR". PKKH. Retrieved 18 August 2013.
- [7]. Kashmir policy: an overview by Shamshad Ahmad[dead link], Dawn 5 August 2004
- [8]. Nick Easen CNN (24 May 2002). "CNN.com – Aksai Chin: China's disputed slice of Kashmir – 24 May 2002". CNN. Retrieved 2. February 2010.