



A STUDY ON HISTORICAL BACKGROUND OF JAMMU AND KASHMIR AND FORMATION OF THE CONSTITUTION IN THE STATE

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ABSTRACT

Article 370 is seemingly the most combative provision of the constitution of India. It bargains solely with the Jammu and Kashmir State that went under the administrative control of the Government of India after the nation's 15-month war that Pakistan began in 1947 to seize sovereignty over the state. Assaulted by the discussion ideal from its draft organizers, Article 370 has been the subject of warmed open deliberation as far back as the Constitution came into full impact from 26th January 1950. While one segment of the Indian polity has emphatically requested its repeal, some others have intensely restricted this request; in 1999, Farooq Abdullah, the State's then Chief Pastor, even undermined a revolt if the Article were denied. On 26th January 1950, the constitution of India came into drive with a one of a kind provision- Article 370. The exceptional status agreed to the state of Jammu and Kashmir in the article implied that its kin lived under an alternate arrangement of laws while being a piece of the Indian Union. Maharaja Hari Singh marked the promotion papers on October 26, 1947 under which the state acquiesced to India. The increase of Jammu and Kashmir was done on a similar example different states acquiesced to it. In any case because of the mishap of the nation, Jawaharlal Lal Nehru pressurized the Maharaja for giving over energy to Sheik Abdullah. On ask for of Sheik Abdulla it was chosen that the State Assembly will take an official choice on the promotion and it was done to mollify the Muslim society in Kashmir. From here the state was given the unique status. In this paper we will study about the history of Jammu and Kashmir and the beginning of Constitution.

Keywords: *Article 370, Jammu & Kashmir, Human Rights, Instrument of Accession, Corruption*

1. INTRODUCTION

India is a nation of individuals having assorted societies and religions. The general populations of the State of Jammu and Kashmir, otherwise called Koshurs, are no exemption and they have a particular

cultural heritage of their own. Despite the fact that the general populations of the State were initially Hindus, religions, for example, Buddhism what's more, Islam impacted the

State and by and by the State has a Muslim dominant part population. In any case it might be specified that despite the fact that the State has a Muslim dominant part population, most extreme Muslims are living in the Kashmir valley and when all is said in done it is discovered that Jammu has a transcendent Hindu population and Ladakh has a prevalent Buddhist population. All these three sections exhibit three detached characteristics. Their lifestyles what's more, demeanors towards life are very surprising from each other. The antiquated history identifying with the Hindu time of Kashmir isn't clear due to inadequate historical literature and texts. Kalhana's "Rajatarangini" is for all intents and purposes the main wellspring of Kashmir's old history [1]

Kashmir: In the time of Gulab Singh

Maharaja Gulab Singh, amid his short reign of eleven years, in the vicinity of 1846 and 1857, was anxious to build up and solidify his recently obtained kingdom, and could bring every one of the regions of Kashmir under his immediate control. He attacked Tibet and stretched out the border of India to the opposite side of the Himalaya. He was ended up being a fair and solid ruler and was anxious to enhance the state of his subjects. He presented different reforms in the State's administrative, agricultural and revenue system. He likewise presented certain changes in the State's education system.

An incredible history specialist like Sardar K. M. Panikkar who additionally composed a history of Maharaja Hari Singh stated, "In a century fruitless of recorded achievement in India, Gulab Singh emerges a single figure of political eminence."

Kashmir during Maharaja Ranbir Singh

Maharaja Gulab Singh died on 25th Sawan 1914 (1858 AD). He was prevailing by his third child Maharaja Ranbir Singh, two years before his passing, on eighteenth Phagan 1912 (1856 AD). Amid his short rule from 1846 till 1857, Maharaja Gulab Singh was not able to establish an effective administrative system inside the State of Jammu and Kashmir and it wound up noticeably basic for Maharaja Ranbir Singh to completely revamp the States administrative system. To enhance the State's administrative system he partitioned the Province of Jammu into seven 'wazarats' and divided Kashmir into six 'wazarats'. The Province of Jammu was under the immediate administration of Maharaja Ranbir Singh, while the Maharaja through a Governor directed the Province of Kashmir. This may represent the inclination among the general population of Kashmir province that the Maharaja did not view them as "his own". Maharaja Ranbir Singh likewise made some real changes in the State's revenue system. Already revenue was gathered in kind and not in real money. In 1860, Maharaja Ranbir Singh canceled the system of accumulation of revenue in kind in the province of Jammu; however the old system on gathering of revenue in kind, continued

in the province of Kashmir throughout his entire reign, and was later abolished by his successor, Maharaja Pratap Singh.

The military under Maharaja Ranbir Singh were very much prepared what's more, prepared and took after the design of the British penetrate and dress. The army comprised mainly of Dogras, Dards and Punjabis. Maharaja Ranbir Singh remained a companion of the British and assumed a vital part in smothering the Indian Mutiny, for which the British respected Maharaja Ranbir Singh with the title of Grand Commander of the Star of India [2].

The Reign of Maharaja Pratap Singh

Maharaja Ranbir Singh in the wake of falling badly lapsed on fourteenth September 1885, and was prevailing by his oldest child Maharaja Pratap Singh who raised the position of royalty around the same time. Amid the rule of Maharaja Ranbir Singh the British, in spite of a few endeavors, were not able name a English Resident in the State of Jammu and Kashmir. Taking preferred standpoint of the demise of Maharaja Ranbir Singh, the British, who were still in particular anxious to get a British Resident, posted in Kashmir, and sent Mr T. C. Plowden, the Resident-Designate to Kashmir. Maharaja Pratap Singh, who was still in grieving after the demise Maharaja Ranbir Singh, emphatically contradicted this, be that as it may, futile, and at last a British Resident was named in the State of Jammu and Kashmir. Despite the fact that Maharaja

Pratap Singh was not able keep the British from appointing a British Resident inside the State, still he was a solid and proficient ruler like his antecedents. He too was anxious to enhance the State's administrative, judicial and revenue systems. He took distinct fascination in the State's military and like his dad proceeded to exclude Kashmiris from

both the Army and the civil services. This consider and proceeded with rejection of Kashmiris from serving in high posts of both the military and common administrations prompt the development of dissatisfaction in the brains of the Kashmiri individuals. In 1888, Maharaja Pratap Singh proposed to introduce a new Constitution for the State, which the Viceroy and Governor-General of India did not acknowledge. The arrangement of the new Constitution came into activity in 1889. The Council proposed under the said Constitution completely left out the Muslims. The question of setting up the Council was to decrease the powers of the British Resident and this made much inconvenience the British who wanted the Resident to control the affairs of the State.

Maharaja Pratap Singh's endeavor to control the power of the British Resident in Kashmir caused such a great amount of dissatisfaction in the psyches of the British Government that he was incidentally confiscated of all powers between 1889 and 1905, and all powers were to be practiced by the Council of Rule, subject to the control of the Resident [3].

The Reign of Maharaja Hari Singh

Maharaja Pratap Singh died in 1925 with no beneficiary also, was succeeded by his sibling Amar Singh's just child, Hari Singh. Maharaja Hari Singh was at that point the Commander-in-Chief of the State Army and was likewise a senior member of the State Council. On rising the position of authority Maharaja Hari Singh introduced a series of reforms in the State's economic, social, judicial and education systems.

Amid the reign of Maharaja Hari Singh the Kashmiri Pundits had also started an agitation within the State known as 'Kashmir for Kashmiris'. The demand of the pioneers of the said movement was the recruitment of the informed children of the dirt in Government services, prohibition on the offer of land to outsiders, flexibility of the press, opportunity of affiliation furthermore, get together. On 31st January 1927, Maharaja Hari Singh issued a request characterizing the term 'Mulki', i.e. the State Subjects. The said arrangement gave that the State Subjects would be favored over outsiders in cases of employment in the Government services. The said arrangement likewise gave that outsiders, from now onwards, would be notable purchase immovable property inside the State of Jammu and Kashmir. On twentieth April 1927 the Maharaja issued a notification being No. I-L/84, defining the State Subjects

2. THE GLANCY COMMISSION AND REGULATION NO.1 OF 1934

Maharaja Hari Singh received the demands made in the said memorials and gave them his cautious and thoughtful thought. He set up a commission under the chairmanship of Mr. B. J. Glancy, alluded to as the 'Glancy Commission' to enquire into the grievances of the general population and to make its proposals on the basis of such enquiry. The Glancy Commission presented its provide details regarding 2211d M~ch1932 and made several recommendations mainly on the basis of religion, education and employment in the State services. On the basis of the 1 Jammu and Kashmir: Article 370 of the Constitution of India-Page 15-Prof K. L. Bhatia proposals made by the Glancy Commission, Maharaja Hari Singh signed a notice dated on 10th April 1932 [4].

On 22nd April 1934, Maharaja Hari Singh, so as to build up a Legislative Assembly and so as to secure his legislative, executive and judicial powers authorized a Constitutional Act known as Regulation No. 1 of Samvat 1991 (1934 AD). Under the said regulation a Legislative Assembly for the State called the Praja Sabha comprising of a sum of 75 members was constituted. Of the 75 members, 33 members were chosen members of whom 21 members were Muslims, 10 members were Hindus and 2 members were Sikhs. Be that as it may, the privilege to vote was limited to just 3% of ads up to population. Just proficient people having a yearly income of Rs 400/- or on the other hand more were allowed it vote. Ladies and unskilled people were completely suspended from practicing any

establishment. In spite of the fact that the said changes were implied to offer ventilation to the developing dissatisfaction among the Muslim population of Kashmir, the Maharaja kept on being the supreme Monarch exercising all his previous legislative, executive and judicial powers without surrendering any of his past powers. No manage made by the Praja Sabha would be considered to be passed until and unless the Maharaja gives his consent thereto. The said regulation did not fulfill the people groups demand for agent government.

3. THE MUSLIM CONFERENCE AND A DEMAND FOR RESPONSIBLE GOVERNMENT'

Another significant occasion was the development of the Muslim Conference under the President send of Sk. Mohammed Abdullah in the year 1932. Due to the development of the Muslim Conference the general population were currently ready to ventilate and express their grievances in a more sorted out and viable way. The general populations were completely disappointed with the Regulation No. 1 and regarded the Legislative Assembly framed under it as a 'taunt' Assembly. Being completely disappointed with the said Regulation No. 1 the Muslim inference made a quick demand for 'Capable Government', which was there and afterward dismissed by Maharaja Hari Singh. In protest the Muslim Conference called upon the people to observe 'Responsible Government Day'. Sheik Abdullah needed all Muslim and Non-Muslim gatherings to partake in the said

agitation, however the Hindus and other Non- Muslim groups refrained from participating in the said movement [5].

However, Sheikh Abdullah's Muslim Conference was successful winning the help of the mistreated Muslim dominant part population.

Kashmir at Independence

On the eve of India's independence, Kashmir constituted India's biggest Princely State. Despite the fact that every single Princely state hypothetically returned to sovereignty, their genuine decisions were bound to merger with either India or Pakistan (Brass 1994, 216). For most states, for practical and political reasons, independence was never a choice. Some converged to shape bigger combining units while a few sovereigns were permitted to stay main heads sans power. There were in any case, three exceptions to this general example of increase and ingestion. They were Kashmir, Junagadh and Hyderabad.¹⁵ Whereas Junagadh and Hyderabad had Hindu lion's share populations under a Muslim sovereign, Kashmir's Muslim larger part was managed by a Hindu Maharaja. Adding to Kashmir's importance were its adjacent territorial borders with the recently independent states of India and Pakistan and regular boondocks with China and Tibet [6].

4. THE BEGINNING OF A NEW ERA IN THE HISTORY OF THE STATE OF JAMMU & KASHMIR

Another time or adventure in the historical backdrop of the State of Jammu and Kashmir started with the increase of Maharaja Hari Singh (child of Raja Amar Singh) in September 1925 after his uncle's (Pratap Singh) death. The climb of Maharaja Hari Singh to the royal position of the State of Jammu and Kashmir in 1925 witnessed the start of specific occasions that were vital in the development of the constitutional history of Jammu and Kashmir. These different occasions eventually prompt the increase of Kashmir with India and the drafting of the Constitution of Jammu and Kashmir. Segregation against the Muslim population by the State's Administration brought about dissatisfaction in the psyches of the Muslim greater part population. This was additionally irritated by the British arrangement of separation and rule that actuated the Muslim masses against their Hindu ruler. English rule in India moreover carried with it Western education and the Western idea of freedom and liberty, which to a substantial degree motivated the leaders of Jammu and Kashmir in their struggle against the Maharaja. They were additionally roused what's more, enlivened by the freedom struggle that was going ahead in India. Under these conditions, the people of Jammu and Kashmir at last began an agitation with the trademark "State for State's People" that came to fruition of a national struggle, which shook the very establishment of Dogra Monarchy [7].

5. THE BIRTH OF THE NATIONAL CONFERENCE AND THE PASSING

OF THE JAMMU AND KASHMIR CONSTITUTION ACT 1939

The Muslim Conference had given the people of Jammu and Kashmir with a platform from which they could ventilate their grievances also, make their demands. Keeping in mind the end goal to reinforce and widen this platform the working committee of the Muslim Conference, on 28th June 1938, passed a resolution suggesting the change of name of the Muslim Conference to National Conference. Certain revisions were made to the Constitution of the Muslim Conference with the goal that Non-Muslims, mainly, Hindus and Sikhs may likewise take an interest in the National Struggle.

The newly born National Conference started its movement by watching fifth August 1938 as 'Capable Government Day'. The said National Conference sorted out different gatherings everywhere throughout the State and by these various meetings passed resolutions to overthrow the present 'Flighty Government' of the Maharaja and build up a mindful government inside the State. The said movement was so across the board that the Maharaja was constrained to issue a proclamation on eleventh February 1939 permitting considerably more constitutional rights to the people of Kashmir. The salient feature of this Proclamation was that the number of chose members of the Praja Sabha, which was beforehand, was expanded to. The aggregate number of members being, the Praja Sabha now had a

chosen majority over the previous official majority [8]. However, this minor adjustment did not satisfy the leaders of the National Conference who demanded for a Constitution for the State that would satisfy every one of the demands of the people.

Maharaja Hari Singh at last needed to yield to the demand of the National Conference. On the September 1939 the Jammu and Kashmir Constitution Act 1939 Act XIV of Samvat 1996 1939AD was established.

6. ABROGATION OF ARTICLE 370 OF THE CONSTITUTION OF INDIA

The State of Jammu and Kashmir makes the most of its unique status by ethicalness of Article 370 of the Constitution of India 1950. Article 370 is contained in Chapter XXI, managing Temporary, Transitional and Special Provisions. The very head note of Article 370, which peruses, Temporary Provisions concerning the State of Jammu and Kashmir and the Heading to Chapter XXI is demonstrative of the 'temporary' idea of Article 370. It is evident from the Heading and Head take note of that the provisions of Article 370 were intended to be temporary and that there is no Constitutional certification that the said provisions will keep on being in drive uncertainly. In actuality the Heading and the Head note show that the provisions were presented for a particular reason and a particular period. Article 370 is an independent article and the power to nullify or repeal Article 370 is contained in Article

370 itself [9]. Article 370(3) states as takes after:

Notwithstanding anything in the prior provisions of this article, the President may, by public notice, proclaim that this article should stop to be agent or might be agent just with such exemptions and changes and from such date as he may determine;

Given that the suggestion of the Constituent Assembly of the State alluded to in Clause (2) might be essential before the President issues such a notice.

It is fascinating to take note of that Justice Sarkaria depicted as appalling and risky the demand of the annulment of Article 370 at this stage.

Nonetheless, it has been called attention to that the reason for fuse of something in the Constitution require not generally be the reason for continuation of it. From the opinions assembled in Kashmir it creates the impression that nobody has settled on annulment of Article 370 of the Constitution. Be that as it may, it might be noted from the opinions accumulated from the rest of India that half of the general populations have decided on annulment of article 370 [10].

7. INDEPENDENCE OF KASHMIR

The independence of Kashmir is the most vocal demand inside the valley. It is very evident that under the provisions of the

Constitution of India 1950, read with the Constitution of Jammu and Kashmir 1957, independence of the State of Jammu and Kashmir is a difficulty. Be that as it may, under the acknowledged standards of universal law the right of self-assurance might be practiced for making the State of Jammu and Kashmir independent. Regardless of whether this right of self-assurance is to be practiced by war or by tranquil means should rely on the general population of the State. There are various illustrations where this right has been effectively worked out. In our own sub-landmass Bangladesh has effectively surrendered from Pakistan and has existed as an independent country for over a fourth of a century. The opinions gathered demonstrate that 85% of the general populations in the State of Jammu and Kashmir are supportive of independence of the State.

8. CONCLUSION

In this paper we studied, Kashmir appreciates an exceptional status contrasted with alternate states of the Union of India. The unequal treatment of the States is one of the essential purposes for the Kashmir issue. Article 370, which was a temporary provision, could have been annulled long back. A few provisions under the said Article 370 were likewise passed in consequent years for Assam, Nagaland, Mizoram and some different States including Sikkim which having their short life have been excluded. However, the provisions identifying with Kashmir are as yet held. Although Article 370 was

consolidated just as a temporary measure, progressive governments have thought that it was important to prop it up to serve their own partisan interest. Obviously, the sudden annulment of Article 370 of the Constitution of India 1950 would cause a gigantic measure of social and political turmoil.

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