

### **1.2.8. Special status of certain states**

Article 370 deals with the temporary provisions with respect to the state of Jammu and Kashmir. It grants special status to the state of Jammu and Kashmir.

Under Art 370 of the constitution the State of Jammu and Kashmir enjoys a special status. This is because of certain commitments made by the government of India with the Ruler of state of Jammu and Kashmir at the time of its accession to India. Like India the state of Jammu and Kashmir also become independent on

August 15, 1947 Maharaja Hari Singh initially did not like to become part of India and Pakistan. He thought of Independence. He offered to sign a stand still agreement with both India and Pakistan aimed at continuing the existing relationship pending his final decision regarding the future of the state.

However for variety of reasons the standstill agreement was not signed between Kashmir and India. When the people of the state saw that independence has come in India they raised their head and demanded the establishment of a responsible government. In the absence of “British help which he was hitherto getting to suppress the internal rebellion and external aggression”

In the absence of a formal agreement between India and Maharaja Pakistan interpreted it to mean that Kashmir would ultimately become part of Pakistan. In fact, Pakistan had started putting pressure on the Maharaja to join Pakistan.

The people of the state were tired of uncertainty and even there occurred the ‘Poonch revolt’ against the authority of the Maharaja the Maharaja now realized that he could no longer hold the Kashmiri people in subjugation through reliance on his army and police.

Sec 3 of the constitution of the Jammu Kashmir state says that “ the state of Jammu and Kashmir is and shall be the integral Part of the union of India “Thus at the times of the commencement of the constitution, the position of the state of Jammu and Kashmir was different and therefore Art 370 was inserted in the Indian constitution under Article 370 the president is empowered to issue orders. The president thus acts as legislature in issuing order under this Article.

Although the state of Jammu and Kashmir is a part of the Indian but its status is different than other states in the following respects –

a) The state of Jammu and Kashmir has its own constitution and its administration is carried on in accordance with the provision of that constitution.

- b) The provisions of Art 238 shall not apply to in relation the state of Jammu and Kashmir.
- c) The power of parliament to make laws for the state of Jammu and Kashmir is limited to-
  - i) Those Matters in the union list and the concurrent list, which in consultant of the government of the state are declared by the president to correspond to matters specified in the instrument of cession.
  - ii) Such other Matters in the union and concord lists only with the concurrence of the government of the state, the president may by order specify. This means that on such matters laws can be made only with the consent of the state of Jammu and Kashmir.
- d) The provisions of Article I and this article shally apply in relation to that.
- e) Such of the other provisions of the constitution shall apply to that state subject to such exceptions and Modifications as the president may by order specify. But no such order which relates to Matters specified in the instrument of Accession referred to in paragraph (i) Sub clause (b) shall be issued without the consultation of the state government and matters other than those specified in the Instrument of Accession shall be issued with the concurrence of the state government.

It has been had by the Supreme Court that the president may orders extend certain provisions of the constitutions to that state with such notifications and expectations as he thinks fit.

The president may subsequently make amendments and modifications in such orders.

Provisions extended to the state of Jammu and Kashmir by presidential order – under Article 370, the president from time to time has issued orders extending

several provisions of the constitution (Application to Jammu and Kashmir) order 1950 was issued on Jan.26, 1950. This was superseded by the order of 1954. By this order the legislative authority of the union was extended by the order of 1954.

By this order the legislative authority of the union was extended to Jammu and Kashmir regarding the union and the concurrent lists. This is the order which regulates the constitutional status of that state from time to time the order of 1954 has been amended and several provisions of the constitution have been extended to the state of Jammu and Kashmir. The Main provisions of the order of 1954 are the following-

- 1) The constitution of the state of Jammu and Kashmir shall continue to be operative
- 2) The High court of Jammu and Kashmir shall have all the powers enjoyed by the other High courts in India except that it cannot issue a writ for “any other purpose”
- 3) The jurisdiction of the supreme court extends to that state (except Arts 135 and 139)
- 4) The parliament can make law on all entries (except on Entries 8,9,34,60,79 and 97) in the union list and certain entries in the concurrent list.
- 5) The provision regarding emergency under Art. 352 can be applied to the state only with the concurrence (consent) of that state.
- 6) The provision for imposing the president rule under Art. 356 applies to that state. But Art. 360 relating to financial emergency does not apply.
- 7) The executive power of the union extends to the state of Jammu and Kashmir. The state shall exercise its executive power in accordance with the directions of the centre.

- 8) Provisions relating to the freedom of trade commerce and intercourse. Services and citizenship shall apply to the state.
- 9) Provisions relating to elections apply to the state. The election commission is responsible for holding elections in the state.
- 10) The directive principles of state do not apply to the state of Jammu and Kashmir.
- 11) Under Art. 368 an amendment to the constitution shall not apply to the state until the president by order applies it to the state.

There are six representatives of Jammu and Kashmir in the Lok Sabha. They are elected directly by the people. The state constitution of Jammu and Kashmir was adopted by the Kashmir Assembly on March 30, 1965 under which the head of the state will be known as the Governor and the Prime Minister as the Chief Minister.

Power to abolish the operation of Art. 370 –

Article 370 (3) provides that notwithstanding anything in the foregoing provisions of this article the president may by Public Notification, declare that the article shall cease to be operative. But the president cannot issue such a Notification without the recommendation of the constituent Assembly of that state.

Act – Constitution of India, 1950

### **1.2.9. Tribal Areas, Scheduled Areas**

The provisions relating to the administration and control of the scheduled areas and scheduled tribes in any state, other than Assam, Meghalaya, Tripura and Mizoram are contained in the fifth schedule to the constitution. The fifth schedule provides that the executive power of the state extends to the scheduled Areas. But the Governor has a special responsibility regarding such areas. He is required to make a report to the president annually or whenever required by the president

annually or whenever required by the president regarding the administration of these areas. The executive power of the union shall extend to the giving of directions to the state regarding the administration of the said areas.

There is as Tribal Advisory Council in each state having scheduled areas, consisting or not more than 20 members as representatives of the scheduled tribes in legislative assembly. A similar council is established for the scheduled tribes in a state which has no scheduled council. The councils shall advice on matters pertaining to the welfare and advancement the scheduled tribes in the state referred to them by the Governor.

Article 244 (1) and 244 (20) of the constitution of Indian enables the government to enact separate laws for the governance and administration of the tribal areas. In pursuance of these articles, the president of India had asked each of the states in the country to identify tribal dominated areas. Areas these identified by the states were declared as fifth scheduled areas such areas have special rights and the governor of the respective states have powers to make regulations for better governance and for protecting the rights of the tribal community.

### **The Scheduled and Tribal Areas Part X**

#### **Article 244 – Administration of scheduled Areas and tribal areas –**

1) The provision of the fifth schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any state other than the states of Assam, Meghalaya, Tripura and Mizoram.

**Article 244 A – formation of and autonomous state comprising certain tribal areas in Assam and creation of local legislature or council of Minister of both there for.**

1) Notwithstanding anything in this constitution, parliament May by law from within the state of Assam an autonomous state comprising (whether wholly or in

part) all or any of the tribal areas specified in part I of the table appended to paragraph 20 of the sixth schedule and create therefore-

- a) a body, whether elected or partly nominated and partly elected to function as legislature for the autonomous state or
- b) A council of Ministers or both with such constitution powers and functions in each case as may be specified in the law.

Any such law as is referred to in this article shall not be deemed to be an amendment of the constitution for the purpose of Art. 368 notwithstanding that it contains any provision which amends or has the effect of amending the constitution.

#### **Administration and control –**

- 1) There shall be established in each state having scheduled Areas in an if the president so directs, also in any state having scheduled tribes but not scheduled areas therein a tribes Advisory council consisting a not more than twenty members of whom, as nearly as may be, three fourths shall be the representatives of the scheduled tribes in the legislative Assembly of the state. Provided that if the number of representatives of the scheduled tribes in the legislative Assembly of the state is less than the number of seats in the tribes advisory council to be filled by such representatives the remaining seats shall be filled by other members of those tribes.
- 2) It shall be the duty of the tribes Advisory council to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the state as may be referred to them by the Governor.
- 3) The Governor May make rules prescribing or regulating as the case may be-

- a) The number of members of the council, the mode of their appointment and the appointment of the chairman of the council and of the officers and servants thereof.
- b) the conduct of its meetings and its procedure in general and
- c) all other incidental matters.

**Law applicable to scheduled Areas –**

- 1) Notwithstanding anything in this constitution, the Governor may by public notification direct that any particular Act of parliament or of the legislature of the state shall not apply to scheduled Area or any part thereof in the state or shall apply to scheduled Area or any part thereof in the state or shall apply to scheduled Area or any part thereof in the state subject to such expectations and modifications as he may specify in the notification and any direction given under this sub paragraph may be given so as to have retrospective effect.
- 2) The Governor may make regulations for the peace and good government of any area in a state which is for that time being a scheduled Area.  
In particular and without prejudice to the generality of the foregoing power, such regulations may –
  - a) Prohibit or restrict the transfer of land by or among members of the scheduled tribes in such area.
  - b) regulate the allotment of land to members of the scheduled tribes in such area.
  - c) regulate the carrying on business as money lender by persons who lend money to members of the scheduled tribes in such area.
- 3) In making any such regulations as is referred to in sub paragraph (2) of this paragraph, the Governor may repeal or amend any act of parliament or of the