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FEDERALISM UNDER EXCEPTION: A CONSTITUTIONAL ANALYSIS OF THE REMOVAL OF ARTICLE 370

This short article is written by S Keerthana, a student of The Tamil Nadu DR Ambedkar Law University, Taramani, Chennai.

ABSTRACT:

The context of federalism is much complex in the country's governance. This gathers the varied autonomous bodies into a single union umbrella of union/federal. Federalism concentrates upon the unity and distribution or decentralization of power between the national and the states. The citizens of the federal state share will act on the authorities of the two governments whose position and powers are very well defined but they aren't in the watertight containers. The article 370 in the constituent assembly had a significant role to give them a special status due to their historical setback. The abrogation happens to be a concept of being discussed as the constituent assembly declared not to modify the special status without the special constituent assembly. National security laws are general guiding principles to the country's diplomatic, intelligence, military, social and criminal foundations.

KEYWORDS:

Federalism, decentralization, watertight containers, constituent assembly, national security and relations.

INTRODUCTION:

The national laws are the remaining state of the country that ensure the vital part of the country's legal framework is on track. Through the security law the people are in the sovereign state and ensure their rights are not under threat. At the time of the emergence of the national security laws the people are under the safer hand and ensure through the legal framework of the federal state they can act independently free from the political inference, upholding the rules of law, divisions of power supremacy in the constitution. Federalism is a system of government where the multiple levels of governance interconnected to act on their spheres, Indian federalism is a blend of nations diversity and the social reforms enhance quasi- federalism.

The Indian constitution which through the article 370 gives the special status and autonomy to Jammu and Kashmir region was given by India in order to withdraw from the British rule but upon granting the special status they have been subjected to the debates of their laws and their activities taken care by them. The article guarantees the state to have its own constitution and ensure state sovereignty in internal affairs, other than then the defense, communications and foreign affairs. The removal of article 370 led Jammu and Kashmir to the control of the central government in India by the security measures taken to maintain the peace and order of the union territory.

FEDERALISM AND ARTICLE 370:

Federalism is the distribution of powers between the union and the federal which ensures that each government works on their defined sphere without any interference from the other level of government. The demarcation of the powers have been made clearly in the article of the constitution where the overlap among the government will not happen.

Article 370 was a unique feature of India's asymmetric federalism, granting Jammu and Kashmir a special autonomous status to maintain its own constitution, flag, and internal administration. The independence of Jammu and Kashmir happened to be the decision of the landscape during independence where the J&K had the option to either join Pakistan or India, the J&K accepted to join India with some conditions by the Maharaja rules. The article 370 means providing the special privileges to accept the laws of India through the approval of state legislature, which assure the state's autonomy in the federal country.

The abrogations were carried initially with article 35A but the process started to abrogate the full article and the special privileges to the state, the procedure used for the abrogation was through the constitutional framework rather than removing the provision directly. In 2019, the President of India ordered that the J&K is under the articles of Indian constitution where they are under the president rules, which means that parliament has the power to exercise their state legislature. The aftermath of the removal is that the state was considered as the two union territories Jammu & Kashmir and Ladakh were brought under the umbrella of Indian government securities.

THE NATIONAL SECURITY LAW:

The aim of security laws is the protection of national threats. On purposely protecting national security the laws vest unregulated and rampant powers on the investigating agencies to circumvent the procedures framed to protect the citizens fundamental right. Armed Forces (Special Powers) Act (AFSPA), enacted in 1958 to deal with the armed forces used and gave power to the rulers to declare any area as a “disturbed area” where Armed forces can operate more than the police.

The federal states have the possibility where their parliamentarians misuse its power in the systematic way of using the constitutional provisions, the articles of constitution may be in the hands of tyranny when the central government has more powers with the name of national security. The widespread method of misuse in the federal states are the invocation of emergency powers such as the article 356 the presidential rule which eliminates the people's democracy and stops the state legislature from acting in their own ways. The federal parliament may intend to override the state subject laws and may treat the matters as national interest or the residuary powers of the central government. The method by them often steps on the shoes of the financial borrowings of the states might be increasing the tax revenues, withholding of the funds, or not properly addressing the states in their worsen situation. This centralization of powers is an abuse of the federal states ‘checks and balances which is an essential part of federalism which has a negative impact on democracy .

CONSTITUTIONAL SAFEGUARDS AGAINST THE MISUSE:

The constitution are the fundamental documents of India which governs on the principles of rules of law, separation of powers, and judicial review. The Separation of powers where the powers have been divided between the organs and are not absolute. There are some checks and balances to oversee the

organs of the government. The misuse of powers are through the arbitrary, unreasonable decisions taken by the executive and also the laws made by the legislature are not supported by the people.

1. Protection by separation of powers:

The constitution of India's provisions is not like the other Constitution to follow the watertight compartments, they adopt the separation of powers from USA constitution of Article I, which are written in their constitution but the Indian constitution has the separation of powers with checks and balances.

Article 50: separation of judiciary from executive

“Where the states should ensure that judicial overreach cannot happen in the acts of executive”.

Article 121: Restriction on discussion in parliament

“The legislature of the state does not have the power to question the acts and conducts of the judges in supreme court and high court, the removal is the only power with the President to motion in the house for prayer”.

Article 211: Restriction on discussion in the Legislature

“The state legislature is also obliged not to take any discussion on the judges actions”.

Case Law: Kesavananda Bharati v. State of Kerala¹

This is the case where the largest bench of judges has taken to give the decisions totally. 11 judges have given the verdict stating that basic structure of the constitution cannot be amended even through the article 368.

2. Protection by fundamental rights

The fundamental rights are inherent in nature to the citizens; it should not be violated by anyone of the states as well the governments and their organs in upholding the rights.

¹ AIR 1973 SC 1461 and (1973)4 SCC 225

Article 14: Equality before law

“The state shall not deny the equal treatment of their citizens everyone should avail the opportunities equally”

Article 19: Protection of certain rights regarding freedom of speech, etc.

“The state cannot deny certain fundamental rights which the citizens possess through their rights and are born to India”.

- i. Freedom of speech and expression
- ii. To assemble peacefully and without arms
- iii. To form association or unions
- iv. To move freely throughout the territory of India
- v. To reside and settle in any part of the territory of India
- vi. To practice any profession, or to carry on any occupation, trade or business.

Article 21: Protection of life and personal Liberty

“No person shall be deprived or violated of their except the procedure established by law”.

Case Law Maneka Gandhi v. Union of India²

The court held that the article 21 of the constitution should be enjoyed in such a way that the citizens are not anticipated by the state's procedures.

3. Judicial review:

The judicial review is the basic structure of the Indian constitution which states that, if any provisions or laws made by the legislature is in contravention to the provisions of constitution then such laws or provisions or party will be declared as violating the constitution and held as unconstitutional.

CASE LAW: I C golaknath V. State of Punjab³ The court held that the parliament cannot take away the fundamental rights of the citizens through the constitutional amendments and the amendments under

² AIR 1978 SC 597, (1978) 1 SCC 248,

³ AIR 1643, 1967 SCR (2) 762.

the articles 368 is within the definition of law under article 13(2) of the constitution, which is subject to judicial review.⁴

4. Basic structure doctrine

The doctrine of basic structure is judicial principle where the parliament has the power to amend the condition except the basic features of the constitution and Federalism.

JUDICIAL SCRUTINY ON ARTICLE 370:

The judiciary acts as the constitutional safeguards by exercising the judicial review to strike down the federal laws or the acts that overreact the state sovereignty. Article 370 of Indian constitution has been on the edge of debate and discussion since its enactment, which authorized for the state autonomy of J&K over the internal affairs. Despite these grants the article 370 has been the focal point of every government to bring under the constitution of India through their legal ways.

CASE LAWS:

In Puranlal Lakhanpal v. President of India⁵

The Supreme Court in this case stated that the purpose of implementing Art. 370 was to ensure J&K's special status and grant the President the authority to enforce the Constitution in J&K with the necessary alternatives and modifications as fit right and correct. The judge interpreted that power is extending to the removal of a certain provision of the Constitution entirely, when it happens to the applicability in J&K.

Analysis of this case: -

The issue on the interpretation is that the President has power to remove the current provisions in the constitution through the legislature bill to any part of India, the learned judge is permitting the President to change the part or whole provision of the constitution, where the facts are in the denial to be assigned to the parliament. The union of India however declined the watertight compartments of the functions of three organs, the fundamental doctrine which is the division of powers are not necessarily to adhere to this entirely. Through this which strongly assures the constitutional framework to act smoothly without

⁴ <https://www.centurylawfirm.in/blog/judicial-review-in-india/>

⁵ 1961 AIR 1519, 1962 SCR (1) 688, AIR 1961 SUPREME COURT 1519

any overriding effect of the organs. This does not imply or give the legislature the sole authority to change the provisions; the executive has the power to check the provisions on the legislative branches through the various interpretations. The legislative laws always permit the provisions to be attached to the constitutional framework without the outreach of the policies.

S.R. Bommai Vs. UOI⁶, the theory of separation of powers has been declared as the basic structure and fundamental factor of the Indian constitution. The court ruled the same verdict in the well known case of **Keshavananda Bharti v. State of Kerala**⁷ that the legislature is a supremacy with authority to amend the provisions of the constitution indulging fundamental rights without changing the finest framework of the constitution.

AMENDMENT OF CONSTITUTIONAL PROVISIONS:

The assembly through which the constitution worked is way has driven the legislature to amend the provisions of Indian constitution. They have a strong determination through the debates that constitutional provisions are not a exotic laws to be amended easily.

However, in the above case of **Puranlal Lakhanpal v. The President of India** states that the President indulges an unwavering authority for changing any Article of the Constitution. The power of the president has an impact not only on the parts of J&K but also changes the article.

ARTICLE 370 BEFORE THE ABROGATION:

The state of Jammu and Kashmir has the special status with separate Constitution and the laws accordingly only the military securities were given from India. However, on August 5, 2019 the President reviewed the special status to Jammu and Kashmir by the removal of Article 370, which states that the state can hold a separate Constitution and flag, with their own legislature apart from the defense affairs. The legacy of the six years had been turned down by this abrogation which happened due to the disturbance of peace and prosperity which are ultimately a text of economic congestion, often the security issues, political restraints as well.⁸

⁶ 1994 AIR 1918, 1994 SCC (3) 1

⁷ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225

⁸ <https://offbeatresearch.com/2026/01/revisiting-jammu-kashmir-six-years-after-the-revocation-of-article-370/>

Recent case on the abrogation of the article 370:**IN RE: Article 370 of the constitution ⁹**

The supreme court of India, after the long bench in this case they formed the five -judge bench to decide upon the abrogation of article 370 and they unanimously upheld the constitutional validity of the article and removed the special status to Jammu and Kashmir. The court further held that the article 370 was a temporary which was being given to the state during the long back in order to protect with the moving economic and political contraction they cannot grant the permanent status to the state. And with the provisions of the article 370(3) were the President as the power to declare the certain provision to be inoperative, even when the constituent assembly was absent in the words of written and the president as autonomous power to act on the situation which are constitutionally valid.

SUGGESTIONS:

1. Judiciary applied the Strict interpretation through the constitutional assembly debates and its sources and ensures the follow-up of doctrine of proportionality.
2. The judicial scrutiny should be beyond and to be on the forward of procedural safeguards and the grounds of detention.
3. The parliament powers should be curtailed to the Protection of Fundamental Rights under Article 21.
4. The legislature should ensure the laws on security to be clear and precise with the statutory definitions.
5. Managing the parliamentary and the parliamentarians powers through the special committee or bodies in order to maintain them in constitutional ideas and eventually review the non misuse of the national security laws in federalism .
6. Every Federal law made by the parliament should be in consultation with the state legislature.

⁹ . 2023 INSC 1058

CONCLUSION:

To conclude, the first and foremost setback to national security is the misuse of the laws by the authorities in their defined sphere. The removal of Article 370 is a remarkable constitutional and federal movement in India's legislative and national security framework. The federalism given in the national security is not to degrade or dissolve the supremacy of the Indian constitution but on the other hand they were designed to be the strength of the federal government. Through this abrogation the article 370 which affirmed the constitutional uniformity by extending the parliament power to the Jammu and Kashmir this assured the cooperative federalism by ensuring standard legislative powers, consistent security and uniform rights and duties for all the citizens. In the national security context, the extension of central security laws which are being dealt with coherently to upgrade the terrorism, insurgency, and cross-border which are the national threats. However, the contrast of the application of national security laws in the post-abrogation has increased their concerns on the misuse of the powers of the legislators. The constant degradation of national security without judicial oversight may risk the trust of the public and which will impact on the principles of federalism, eventually constraining the civil liberties of the citizens.

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