

Impact of Article 370 on Financial Assistance of Jammu and Kashmir with special reference to First Two Five Year Plans (1951-1961): A Historical Study.

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Abstract

Before the abolition of Article 370 in August 2019, Jammu and Kashmir enjoyed a special status within Indian Union. Article 370 helped Jammu and Kashmir to draw a special attention during the allocation of funds from Centre Government. Apart from this Article the state of Jammu and Kashmir is also treated as a Special Category State which means that it gets the 90% of funds from Central Government as grants and only 10% as loan. While as the case is different with the other states of India which get 70% loan and 30% grants. Before the abolition of Article 370 Jammu and Kashmir the financial ties between the State and Central Government were completely different which are discussed in detail in this research work. Also the grant-in-aid during the first three Five Year Plans was highest as compared to any other state of India.

Keywords: *Article 370, Bakshi Ghulam Mohammad, Constitution, Economy, Financial Integration, Five Year Plan, Jammu and Kashmir.*

Introduction

Jammu and Kashmir is the Northern most state of India sharing its international borders with Pakistan, China and Tibet etc. Jammu and Kashmir acceded with India in 1947. On 26 January 1950, Constitution of India came with a special Article for Jammu and Kashmir and named it as Article 370. By the virtue of this Article the state of Jammu and Kashmir enjoyed a special status till the abrogation of this Article in August 2019. Article 370 does not permit the Non Residents of Jammu and Kashmir to own any property in the State. The state of Jammu and Kashmir is a less developed state as compared to other states of Indian Union. The Economists and Scholars hold Article 370 directly or indirectly responsible for the economic backwardness of the state, because the Article does not permit the property rights for non residents of Jammu and Kashmir, as stated above and at the same time keep the State low at Industrial Sector. The Article also provides some special provisions to Jammu and Kashmir which helps the State to draw some special attention during the allotment of grants from the Union Government. So the current paper discusses the impact of Article 370 on the allotment of Grants-in-Aids for the state.

Defining Article 370

As discussed above Article 370 provides a special status to the state of J&K. It is by the virtue of this Article that the state of J&K enjoys considerable autonomy, which allows it to have its own constitution within the country unlike any other state. So we can say that it is by this distinct feature that J&K enjoys the benefits of political autonomy. Article 370 is drafted in part XXI of the constitution, compilation of laws, which consists of Articles on Temporary Transitions and Special Provisions. When the Instrument of Accession was drafted it was made clear in Clause 7, that the State will have its own rights to draft its Constitution and decide for itself what additional powers to control to extend to Central Government. The Article 370 was designed to protect those rights.[1]

The Article 370 embodied six special provisions for J&K. It exempted the State from the complete applicability of the Constitution of India. The State was allowed to have its own Constitution.

1. Central legislative powers over the State were limited, at the time of framing, to the three subjects of defence, foreign affairs and communications.
2. Other constitutional powers of the Central Government could be extended to the State only with the concurrence of the State Government.
3. The 'concurrence' was only provisional. It had to be ratified by the State's Constituent Assembly.
4. The State Government's authority to give 'concurrence' lasted only until the State Constituent Assembly was convened. Once the State Constituent Assembly finalized the scheme of powers and dispersed, no further extension of powers was possible.
5. The Article 370 could be abrogated or amended only upon the recommendation of the State's Constituent Assembly.[2]

As stated above the J&K in respect of Article 370 has its own Constitution which declares that “We the People of Jammu and Kashmir” which means that the Union Government has limited powers to enforce the Indian constitution in the State. It is because that the Constitutional Provisions which apply to other states of India does not apply to the State of Jammu and Kashmir. With the enforcement of Article 370, the state was allowed to have its own flag, its own constitution, known as the Constitution of Jammu and Kashmir, and its own Anthem (Quami Tarana). Besides other Parliamentary Laws the Indian Penal Code also does not apply to Jammu and Kashmir, which has its own Penal Code known as the Ranbir Penal Code.

Objectives of the Study

The present study has the following specific objectives

- 1) To analyse the impact of Article 370 on the economic development in Jammu and Kashmir.
- 2) To find out the provisions for the allocation of funds for Jammu and Kashmir.
- 3) To have a brief look on the funds allotted to the State during the first two Five Year Plans.

Methodology

In the present study mostly secondary data has been used. Secondary data have been collected from various reports published by the different Departments, like Economics and Statistics Department, Planning and Development Department etc, of Government of Jammu and Kashmir. In addition to this, data have been collected from various journals, articles, news paper archives. During the study of the present study the books of various Economists, who have frequently, wrote on the Economy of Jammu and Kashmir, and were also taken in the consideration. Also the data published by the Planning Commission of India and NITI Aayog was utilised in the present study.

Impact of Article 370 on the Financial assistance to Jammu and Kashmir

It is necessary here to have a brief look on the financial ties between the Union and the State Govt. before discussing the on the financial pattern and financial assistance of Union Government to state of J&K. Without the study of financial relations between Centre and State Government of J&K the study of Five Year Plans is incomplete. The constitution of India makes elaborate provisions in respect of the financial relations between the two. As far as financial relations between the Centre and the State are concerned, it was during the Prime Ministership of Bakshi Ghulam Mohammad that the financial integration between Union and State of Jammu and Kashmir took place. Before 1954, when Sheikh Abdullah was in power, the fiscal independence was rested in the hands of the State Govt. regular financial agreements were made between the Centre and State Government after Bakshi Ghulam Mohammad abolished the custom barriers on 13th April 1954. [3] However the residuary powers of taxation are vested with the State.

Apart from that the Provision relating to the state consolidated fund under Article 266, the state Contingency Fund under Article 267(2), the custody 283(2) thereof, and the public accounts of the State (284). These provisions have been incorporated in the Constitution of Jammu and Kashmir. Section 115, 116, 118 and 119 of the Constitution of Jammu and Kashmir are adaptation of Article 266, 267, 283 and 284 respectively. The object of not applying these Articles to Jammu and Kashmir was to enable the state to provide for these matters in its own constitution since they concern each state individually. It was fully in accordance with the spirit of association of Jammu and Kashmir with India. Further the Provisions of Article 282 of the Indian Constitution, under which the Union and the State Govt. are authorized to make grants for any public purposes, are not applicable to J&K, because of its special accession with India.

Before financial integration of the State few developmental projects were undertook with Central financial assistance in shape of loans. But it was only after 1954, the state of Jammu and Kashmir was put on the preference list of Planning Commission of India, and got substantial financial assistance from the Central Govt. in order to finance its Plan and Non-Plan developmental projects. At the time of first Finance Commission J&K had not surrendered its fiscal independence to the Union Govt. as other states of India did, but the second Finance Commission put the state of Jammu and Kashmir on an equal footing with the other states in the matter of Central Aid. The second Finance Commission recommended grants-in-aid to the states on a much larger scale

than the first Finance Commission because the developmental plans of the various states had not been fully formulated during the term of the first Finance Commission. The state of Jammu and Kashmir received the grants-in-aid of Rs. 3 crore a year as it felt that the state was likely to need assistance both for general purposes and for developmental purposes.

No doubt Article 370 provides a special status to the state of J&K, which help her to draw some special attention during the allocation of funds, but at the other hand it is directly responsible to keep the state low at in industrial development, as the article provides the property rights only to the residents of J&K. It abolishes industrialists, financiers and businessmen to own property in the state. The Central Government remained liberal during the financial assistance to the state and tries its best to promote the economy of J&K. The state receives 90% financial assistance from the Union Government and only 10% in shape of loan during the plan funding.[4]

Falling under SCS the state of Jammu and Kashmir has drawn much attention during the fiscal funding from Union Government, but apart from this the state has not been able to generate efficient revenue from its own resources and has been facing serious financial problems. As the State lacks in major scale industries, a huge increase in unemployment has been witnessed since past two decades. As mentioned earlier the Article 370, under Article 35A of Indian Constitution which allows J&K to define its Permanent Residents, does not permit the non-residents of Jammu and Kashmir to own any type of property in the state. The Article 370 has only benefitted the rich and political influential people of Jammu and Kashmir. This is because; there is not any economic competition in the valley.

During the five year period from 1957-62 Jammu and Kashmir received the highest per capita grant in Aid of Rs. 41.7 which was seven times higher than the average for all States of Rs. 06. J&K received higher Central assistance during first four Five Year Plans. No other State was treated with such a great consideration.[5] According to Dr. Gajendragadkar report of Jammu and Kashmir Commission of Enquiry, the Central assistance during first three Five Year Plans was as under,

Central assistance during first three Five Year Plans for the state of Jammu and Kashmir.

S. No	Plan	Total Exp. (in Lakhs)	C. Assistance	% of Central Assistance
01	1 st FYP (1951-56)	1151.71	1000.0	87%
02	2 nd FYP (1956-1961)	3120.20	2000.0	64%
03	3 rd FYP (1961-66)	6409.34	6200.0	97%
TOTAL	-----	10681.25	9200.0	86.13%

Source: Report of the Jammu and Kashmir Commission of enquiry by Dr. P. B. Gajendragadkar, 1968

As stated above the financial assistance for the state of Jammu and Kashmir before Gadgil Formula was the highest as compared to other states of India. It was not only the highest but was more than double the average for all the States. Jammu and Kashmir got Rs. 117 per head of its population against an average of Rs 57 for all the States. Incidentally the proposed per capita outlay on the Third Plan of Kashmir is also the highest for all the States. Against the all India average per capita outlay of Rs. 91, the per capita outlay in Kashmir's Third Plan was Rs. 141.15 Central assistance forms 83 per cent of this outlay while for all States it is 63 per cent. Again in 3rd Five Year Plan J&K received Rs. 141 per capita outlay against the average of Rs. 91 for rest of the States. During this period J&K also received some specific grants like 60 lakhs for the development of border areas, 70 lakhs for state police, 22 lakhs for border check posts, and 137 lakhs for police operations of one kind or the other. The State also received another special grant for food subsidy which was 6.42 lakhs per annum for first Five Year Plan, 11 lakhs during second Five Year Plan, and 38 lakh for third Five Year Plan.[6]

In a RTI filed on 24-11-2018 to NITI Aayog under RTI Act 2005 by Pranav Tanwar regarding the grant made to Jammu and Kashmir in year 2015-17 and grant made to Himachal Pradesh (sister state of J&K) for the same time period the following replies were received by the applicant[7]

Central Assistance Sanction Scheme for the period 2015-2016 (in Rs. Crore) of J&K

<i>Code</i>	<i>Scheme Name</i>	<i>Grant Release for the period</i>
ACAEAPN	Additional Central Assistance for Extremely Aided Projects	154.9
SA	Special Assistance	1194.84
TOTAL		1349.74

Central Assistance Sanction Scheme for the period 2016-2017 (in Rs. Crore) of J&K

<i>Code</i>	<i>Scheme Name</i>	<i>Grant Release for the period</i>
ACAEAPN	Additional Central Assistance for Extremely Aided Projects	222.34
SA	Special Assistance	1407.30
SAG	Special Assistance-General	800.00
TOTAL		2429.64

While as the following data was received for the same time period for the state of Himachal Pradesh.

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Central Assistance Sanction Scheme for the period 1/04/2015-31/03/2016 (in Rs. Crore) for Himachal Pradesh

Code	Scheme Name	Grant Release for the period
ACAEAPB	Additional Central Assistance for Extremely Aided Projects-Back in Back	36.34
ACAEAPN	Additional Central Assistance for Extremely Aided Projects	495.46
SA	Special Assistance	9.19
SAG	Special Assistance-General	2.75
TOTAL		545.74

Central Assistance Sanction Scheme for the period 1/04/2016-31/03/2017 (in Rs. Crore) for Himachal Pradesh

Code	Scheme Name	Grant Release for the period
ACAEAPB	Additional Central Assistance for Extremely Aided Projects-Back in Back	51.27
ACAEAPN	Additional Central Assistance for Extremely Aided Projects	860.41
TOTAL		911.68

In an interview with Times of India, Arun Shourie said that the per capita central assistance to Kashmir is 14 times bigger than that of Bihar, 11 times that to Tamil Nadu, 6 times than to Assam. According to a annalistic report published in *The Hindu* on 24 July 2016 the state has received 10% of all central grants over the period 2000-16, despite having only 1% of the country's total population while as Uttar Pradesh makes up 13% of the country's total population and has received only 8.2% central grants during the same period. The Special Category States (SCS)¹ get a higher share of central assistance and J&K being one of them is getting highest among all due to its Special Status and Political disturbance. Moreover total assistance to J&K for the period 2002-12 was 24.78% and maximum in case of special and other i.e., 31.93% and during 11th FYP (2007-2012) J&K received at an average of 24.78% of the total central assistance which is more than other Special Category States.[8]

¹Not to be confused with the Special Status State. The Special Category States are different from that of Special Status of any State. Special status to any state is given by the Constitution of India as in the case of Jammu and Kashmir, while as the Special Category is the classification of the Indian states on fiscal basis given by the National Development Council, which is an administrative body of the Government. There are 11 SCS in India viz., Assam, Nagaland, J&K, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Uttarakhand, Tripura, Himachal Pradesh, and Sikkim. The concept of Special Category States was first introduced during 4th Five Year Plan (1969-74) by the then Deputy Chairman of Planning Commission D.R. Gadgil. The SCS receive financial assistance during planning in the ratio of 90-10, i.e., 90% grants and 10% in the shape of loan, while as the general category states receive only 30% of their funds in shape of grants.

Conclusion

Jammu and Kashmir is divided into three regions, Jammu, Kashmir and Ladakh. All the three regions have their own history till the treaty of Amritsar 1846 when all the three regions became on territory known as the princely state of Jammu and Kashmir. So it is necessary to have a brief look on the regional history of these three regions. The financial integration of the state with Indian Union took place in 1954 during the Prime Minister ship of Bakshi Ghulam Mohammad, followed by the regular financial agreements between the Union Government and the State Government of Jammu and Kashmir. After then the State got considerable amount of grants and loans for financing its State Plans. Also the finances of the state of Jammu and Kashmir came within the terms of reference of the Finance Commission and the Planning Commission like other states of Indian Union.

The abolition of customs duty and the transfer of the revenue accruing from income tax and excise duty to the centre resulted in a loss of over Rs. 176.63 lakhs to the states in the financial year 1953-54, which was compensated by the Central Government. Apart from being a Special Category State, Jammu and Kashmir also enjoyed a special treatment while funds were granted from the Centre, because of the Article 370. As far as J&K is concerned 3/4th of the total plan expenditure is met with the help grants and loans received from Planning Commission. As stated above the State received highest number of per capita income during the first three FYP's and also received highest amount of Central Grants as compared to other states of India. Despite all these special treatments the state is still low in economic development.

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