

Abrogation of Article 370: A Look Back At Its Origin and Aftermath

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Abstract

This paper primarily focuses on the revocation of Article 370 by the Modi Government on 5th August 2019 by using Majoritarian power. In order to pre-empt any backlash, the authorities put the entire region under strict lockdown and imposed a complete communication blackout including suspension of internet, mobile and landline phone services. The abrogation of Article 370 turned out to be against the very spirit of the Indian constitution, principles of humanity and the democratic norms at a broader level. The mission of the abrogation of Article 370 was in fact mentioned in the manifesto of BJP since 1980. This paper is divided in two parts. In the first part this research paper will try to focus on the situation before the revocation of Article 370 of Indian Constitution which gave a special status to Jammu & Kashmir state. In the second part this research paper deals with the effects of revoking this article 370 and the problems and prospects arising due to the change. This research paper addresses the issue through constitutional, social and political analysis of the facts and examines the challenges arising from the situation. This study is a critical and theoretical analysis to understand the actual myth and reality.

Keywords: Jammu and Kashmir, Article 370, Political Parties, Abrogation of Article 37

Introduction:

Regarding Kashmir, a poet has said that if there is heaven on earth, then it is in Kashmir, but after independence and partition, Kashmir, which is called the heave of the earth, has become a disputed region for many reasons. Kashmir is a Himalayan region that both India and Pakistan say is fully theirs. Each country lays claim to Kashmir due to nationalism and the controversial politics of the region conflicting ideologies and the refusal of either party to compromise have stymied efforts to reach a solution. The Pakistan sponsorship of terrorism in Kashmir disrupts the democratic process in the region.

Kashmir, due to its long history of political and social disturbances has got a special status under Article 35A, which was enforced through a Presidential order in 1956 and Article 370 which was a bargain with the first Prime Minister of the State, Mr. Sheikh Abdullah. Due to these provisions, the status of Kashmir as an integral part of India has been controversial. Kashmir has since long seen a wave of mass human rights violation, whether it be the exodus of Kashmiri Pandits from the state of terror attacks.

History of Occupation and Conflict

- Great Britain controlled India from 1612 until 1947 under Britain Rule, Kashmir was a princely state - it was directly ruled by a maharaja that answered to the British.
- 1947 - India gains independence from Britain. The independence agreement partitions India into two nations, India and Pakistan the Maharaja of Kashmir accedes his province to India, prompting war between India & Pakistan.
- 1948 - UN Security council passes resolution 47, mandating a ceasefire along the line of control (LOC) and paving the way for a potential plebiscite.
- 1957 - India declares all of Kashmir a state of the Indian Union.
- 1965 - Alleged infiltration attempts by Pakistan instigate a second Indo-Pakistani war in Kashmir.
- 1989 - Militancy in the region escalates.
- 1999 - Pakistani forces cross the LOC & India responds by declaring war.
- 2005 - India and Pakistan agree to a new ceasefire.
- 2015 - PDP Joins hands with BJP to form State Govt.
- 2018 - J&K put under Governor's rule in June after BJP pull out from the coalition with PDP. Six months later,

Presidents rule is imposed & it is extended till Dec. 2019.

Geography

- Bordered by Afganistan, Pakistan, India and China
- contains about 85,000 square miles of land
- Mountainous, sparsely populated region
- varied climate due to elevation
- most populated area it is the vale of Kashmir, on the Indian side.
- Kashmir was divided into three regions one controlled by India, one controlled by Pakistan and a small area controlled by China.
- The Whole of Gilgit, Mirpur, Kotti and a part of Poonch came into the possession of Pakistan, leaving behind only 143.30 sq.km on the Indian side.

Disputed Area

The disputed areas of the region of Kashmir, India claims the entire erstwhile princely state of Jammu & Kashmir based on an instrument of accession signed on 25th October 1947 by Maharaja Hari Singh. Pakistan claims all areas of the erstwhile state except for those claimed by China.

China claims the Shaksham valley & Aksai Chin.

What Is Article 370

Article 370 (came into effect in 1949) of the Indian constitution gave special status to J&K and conferred on it the power to have a separate constitution, a state flag, and autonomy of internal administration. Article 370 was drafted in part XXI of the Indian const. titled "Temporary, Transitional and special provisions".

As a result, J&K could make its own rules relating to permanent residency, ownership of property and fundamental rights. it could also bar Indians from outside the state from purchasing property or settling there.

The provision was drafted in 1947 by Sheikh Abdullah who had by then been appointed prime-minister of J&K by Maharaja Hari Singh & Jawahar Lal Nehru.

Further in 1954, by an order of then President Rajendra Prasad on the advice of Jawaharlal

Nehru Cabinet Article 35A was inserted which provided special rights & privileges to the citizens of J&K.

Abrogation of Article 370

By the prudent order, on 5 August 2019 at around 11:30 in the Rajya Sabha, that Union home minister Amit Shah Announced the proposal to revoke Article 370 and 35A in J&K under the supervision of Prime Minister Narendra Modi.

A Separate Bill - the J&K Reorganisation Bill 2019 was introduced to bifurcate the state into two separate union territories of J&K (with legislature) to Ladakh (without legislature).

J&K Reservation (second amendment) bill 2019 was also introduced to extend the reservation for economically weaker sections (EWS) in educational institutions & government jobs in J&K.

"Article 370(3) provides President of India has the powers to amend or repeal the Article by issuing a notification, based on a recommendation on constituent assembly of J&K. The President of India signed the constitution (Application to J&K) order 2019, issued on 5th August 2019 regarding Article 370(1) under which all the provision under Article 4 of the Constitution of India would be applicable to J&K. J&K constituent assembly would be read as J&K Legislative assembly. Now since Presidents rule is in force in the state, implementation of Article 370 would cease to exist when President of India issues the notification in this regard. So the President of the recommendation of the Parliament of India declared that as from August 6, 2019, all clauses of the Article 370 shall cease to be operative.

The abrogation of Article 370 received multiple reactions and diverse opinions across India which can be analysed in two folds - Proponents and opponents.

Proponents

Subrata Saha Lieutenant General of India Army (Retired) said, "The decision of abrogation of Article 370 is perhaps the finest tribute to the thousands of security forces, political leaders/workers, journalists and innocent civilians who has lost their lives for the cause of integration of J&K with India.

Bhartiya Janata Party (BJP): Revoking Article 370 has been a key part of the BJP's care agenda.

Bahujan Samaj Party (BSP): Mayawati has extended its support to the BJP on the scrapping of Article 370 and bifurcation of J&K.

Biju Janata Dal (BJD): was also in favour of revoking Article 370 and said "Today J&K has become an integral part of India".

Other parties like Telegu Desam Party (TDP), All India Anna Dravida Monnetra Kazahagam (AIADMK), Shive Sena also extended their support on scrapping of Article 370.

AIADMK - A Navaneethakrishnan said he welcomes the statutory resolutions & the bills. "There is nothing to worry," he said.

Telegu Desam Party - Prayed for the peace and prosperity of the people of J&K.

Opponents

Indian National Congress (INC) termed the revocation of Article 370a 'catastrophic step, and marked it a black day in the constitutional history of India. Congress leader Kapil Sibal said, "We (Congress) won Kashmir & you lost Kashmir."

People's democratic Party - PDP Chief & former J&K Chief Minister Mehbooba Mufi said "India has failed Kashmir in keeping its promises". PDP members Nazir Ahmad Laway & Mir Mohammad Fayaz shouted slogans and tore posters. Lawey even tore the "Kurta" he was wearing.

National Conference leader Omar Abdullah said, "betrayal of trust" of the people of J&K.

Janta Dal (United) - K C Tyagi, Nitish Kumar, JP Narayan, Ram Manohar Lohia and George Fernades said Article 370 should not be revoked.

Rashtriya Janta Dal opposing the move, Manoj Kumar Jha of RJD said the abolition of Article 370 was not possible to execute in this lifetime.

Nationalist Congress Party NCP MP Vandana Chavan on Monda criticised the "method" adopted by the central Govt. to push through its decisions on J&K in the Rajya Sabha and said her party will abstain from voting.

Trinamool Congress said that Govt. has committed "procedural Harakiri" by scrapping the provision which gave special status to J&K.

Left front leaders also expressed their opposition. CPI General Secretary D. Raja said, the "regressive step will further alienate the people of J&K and CPI (M) termed it as "attack" on the constitution.

Advantages of Scrapping Article 370

President Ram Nath Kovind, in his independence day speech, expressed confidence about the new and bifurcation benefits of the state of J&K. The changes made in J&K and Ladakh will enable people to use and enjoy the same rights, privileges and facilities as their citizens in the rest of the country. J&K has also become the largest Union territory in India in terms of the area while Ladakh has become 2nd largest union territory after it comes into force with the abrogation of Article 370, the tenure of the J&K state assembly has now become five years as in other parts of the state which till now had a special status with 6 year tenure.

Better relationship with Indians and Kashmiris

Kashmiris can be part of India, and Indians can be a part of Kashmir. They can apply for educational scholarship. They can get government jobs there in Kashmir.

One Nation and one Flag There is no separate constitution for Kashmiris and Indians. All will follow the slogan one Nation, one constitution.

Chances of economic development are high now.

After the removal of article 370, people of Kashmir can earn well by working in the upcoming companies set by the Indians. Increasing jobs will automatically reduce crime. People of Kashmir can sell their lands on lease to the Indians, which further will act as an economic gain for the Kashmiris.

Private investors can invest in buying land and setting up industries that will open job opportunities for Kashmiris and Indians. 40% of the Kashmiris are jobless, which is the primary reason for increasing crime in the valley. After the private investors start investing in Kashmir, the anti-social activities will reduce. Prices of lands will increase, which will help Kashmiris to make good profits.

Right to education and information

All the Kashmiris have the right to education with the removal of article 370. As the country

will be a part of one nation, one flag, new Kashmiris have the right to know everything.

Terrorism and Corruption

Central Govt. can curb corruption since it is a UT now. Authorities are in a better position to curb terrorism and instill peace in the valley.

Disadvantages Of Scrapping Article 370

Kashmiris feel that it is illegal. This decision can be compared to Fascism:

Kashmiris can be compared to Fascism: Kashmiris clearly say that they were not even aware that the Indian government was planning to remove article 370. Separately this has been removed without taking permission and without informing J&K Govt. Internet was turned off on 5th August 2019, hundreds of troops were called, landlines were turned off, and even Kashmiri Politicians were kept on house arrest. The locals of Kashmir was locked up in their homes, and then suddenly, this decision was imposed on the Kashmiris. Having dissolved the State Assembly of Jammu and Kashmir and imposed President's rule there in Kashmir, this decision was taken.

It is similar to dictatorship as it was unconstitutional

The Kashmiris feel that nobody is paying heed to what they want. The Indian leaders are not even listening to the democratically elected politicians of J&K. Imposing article 370 on Kashmir was unconstitutional, and this amounts to cheating with the Kashmiris. The decision of removing 370 from the constitution was taken when the state assembly was not existing. It is considered cheating as people were told that 10k troops were brought there in Kashmir valley as there were chances of a terrorist attack.

The status of J&K has been removed, and it has been declared as union territory

Earlier, Jammu and Kashmir has a special status that has been reduced after article 370. But now, it has gone below the normal state and has been declared as a union territory. The democracy of a union territory is much lower than a normal state, and the central government will have much more control over the state now.

The elected state government cannot take all the decisions of their own

After article 370, the Kashmiris can elect the state government, but their rights will not be the same now. Democracy will be reduced now in J&K. The people of Kashmir are not accepting the decision wholeheartedly, which in the long-term will give rise to other political and social conflicts. This decision will not come into actualization until the people of Kashmir wants to integrate with the Indians.

The fact that curbing provisions are already available in IPC 1860¹.

It is evident from the law of land that discrimination among men and women were available since its beginning, a bare reading of Article 15 (1) of the Constitution of India shall suffice the statement².

Conclusion

People of Jammu and Kashmir have been deprived from their special privileges guaranteed under Article 370 of the constitution of India, and its revocation has ushered political instability and may cause demographic change in the state. Abrogation of Article 370 robbed ethnic identity, employment and property rights of the people of Jammu, Kashmir and Ladakh. Though, revocation of Article 370 shattered the last hopes and aspirations of the people of Jammu and Kashmir, still there is a long way to go to reach out the solution of their problems legally and constitutionally. Development of public opinion within and outside India can be substantive for resolving the long term dispute of Jammu and Kashmir. There can be a possibility to acquire the special status again with the change of god at the centre, as India has been historic brand ambassador and defender of democratic values and means. Moreover, there is a need to build trust, and confidence among the people of Jammu and Kashmir. Let us not forget that there were several Indian leaders, time and again who initiated peace processes to restore peace, stability and development in the state, like Atal Bihari Vajpayee (the Former Prime Minister of India and leader of the BJP) who believed that the state of Jammu and Kashmir must be looked

through the principle of Insanyat (Humanity),
Jamhooriat (Democracy) and Kashmiriyat
(Values of Kashmir).

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