

LONG DEAD NOW BURRIED- ARTICLE 370 OF THE CONSTITUTION OF INDIA

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Abstract: This paper tries to identify the historical evolution of Article 370 of the Indian Constitution, the situations which led to the insertion of this Article into the Constitution of India. The paper majorly focuses on the recent events which saw this Article being scrapped off from the Constitution in broad day light without consulting the stake holders. The paper will try to bring out how this decision was unilateral and against constitutional provisions and how this move undermines the federal system of government of Indian polity.

Index Terms: Instrument of Accession, Powers of Governor, Dismembering of states.

1. INTRODUCTION

“Divide et impera- it shall be ours”

It was once said that the sun never sat in the British Empire. The Britisher's have ruled over every country on this planet except 22 countries at one point or other¹. Most of the modern day conflicts are the direct by-products of the British Colonization.² For example Sri Lankan Conflict, Palestine conflict³, Sierra Leone Civil War⁴; but the Kashmir conflict continues to be the most complex one. After World War II the economy of British was in shambles, forcing them to leave Indian sub-continent.⁵ But before they left, they created two countries India and Pakistan by the virtue of Indian Independence Act 1947. All princely states were given an option either to join the dominion of India or Pakistan or to remain independent.⁶ The erstwhile state of Jammu and Kashmir chose to remain independent, until Pakistani invasion forced then Maharaja of Jammu and Kashmir to sign the Instrument of Accession on 26 October 1947.⁷ This incident led state being divided into Pakistan Occupied Kashmir, Gilgit-Baltistan and Indian administered Kashmir. The accession was provisional and it was made clear that princely state of Jammu and Kashmir is giving up power only with respect to three subjects, viz. defence, foreign powers and communications.⁸ The Instrument of Accession also added a proviso that it would be submitted to “a reference of the people” after the state is cleared of invaders and it will be the people of Kashmir to decide their fate.⁹ The clause

¹ Jasper Copping, British have invaded nine out of ten countries so look out Luxemborg, The Telegraph, 04 Nov 2012, <https://www.telegraph.co.uk/history/9653497/British-have-invaded-nine-out-of-ten-countries-so-look-out-Luxembourg.html> , (last visited on August 1, 2019)

² Sandra Marker, Effects of Colonization, Beyond Intractability, November 2003, <https://www.beyondintractability.org/essay/post-colonial> , (last visited on August 1, 2019)

³ Richard Gott, The brutal story of British empire continues to this day, 22 July 2006, <https://www.theguardian.com/commentisfree/2006/jul/22/comment.mainsection> , (last visited on August 1, 2019)

⁴ *Ibid*

⁵ Dr John Darwin, Britain, the Commonwealth and the End of empire, BBC, 03 March 2011, http://www.bbc.co.uk/history/british/modern/endofempire_overview_01.shtml

⁶ M.Venkaih Naidu, The unifier of modern India, The Hindu, OCTOBER 31, 2018, <https://www.thehindu.com/opinion/lead/the-unifier-of-modern-india/article25373105.ece> (last visited on August 2, 2019)

⁷ Anil Gupta, Accession of J&K: Breaking myths, 12 December 2018, <https://www.dailypioneer.com/2018/columnists/accession-of-j-k--breaking-myths.html> , (last visited on August 2, 2019)

⁸ Rahul Tripathi, Instrument of Accession: From 1947 till date, The Economic times, Aug 06, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/instrument-of-accession-from-1947-till-date/articleshow/70546147.cms?from=mdr> , (last visited on August 21, 2019)

⁹ J. C. Aggarwal, S. P. Agrawal, Modern History of Jammu and Kashmir: Ancient times to Shimla Agreement, New Delhi Concept Publishing Company, 1995.

7¹⁰ of the Instrument of Accession says that Maharaja of Jammu and Kashmir had made it clear at no point in future he shall be forced to accept the Constitution of India. The Instrument of Accession morphed into what was called is Article 370 of the Indian Constitution, originally Article 306A of the draft Constitution.¹¹ The Article was drafted by close aide to the Pt. Jawaharlal Nehru Sir Narasimha Ayyangar Gopalaswami Ayyangar¹² who was of the opinion that conditions in the State of Jammu and Kashmir were not yet ripe for integration and special status is must. Thus erstwhile princely state of Jammu and Kashmir is the only state which negotiated the terms of accession with India. Article 370 was thus enacted on 17th October 1949¹³. The Article was placed under part XXI of the Constitution of India titled Temporary, Transitional and Special Provisions. The bare text of the Article 370¹⁴ reads as that it shall be a temporary provision; the provisions of Article 238 (administration of Part B states) shall not be made applicable to the state of Jammu and Kashmir. The laws made by the Parliament of India can be applicable only to the state of Jammu and Kashmir with the concurrence of State Legislative assembly. The Article can cease to exist only if president declares it so, but with the recommendation of the constituent assembly. Thus by the virtue of this Article, the state of Jammu and Kashmir had its own Constitution. The constitutional arrangement pre-abrogation was such that only two Articles of the Indian Constitution were applicable to the State of Jammu and Kashmir, that is Article 370 itself and Article 1 of the Indian Constitution which defines India.

2. CRITICAL ANALYSIS OF ABROGATION ARTICLE OF 370

On 5th of August 2019, the government of India de-operationalized Article 370 of the Constitution.¹⁵ It was done in totally dubious and unconstitutional manner amidst huge military build-up and total communication black out. The Constitution (Application to Jammu and Kashmir) Order 2019, in essence an executive order, was used to amend the sacrosanct Constitution of India. It was the glaring example of constitutional abuse and executive excess, where democratically elected governments were dismissed and the state was put under the presidential rule for one year. So on the day when this provision was scrapped down, the powers of government in the state of Jammu and Kashmir vested with the governor acting without council of ministers. The Article 370¹⁶ of the Indian Constitution provided that the President may by notification declare the Article to be in-operative but the catch is before the President issues such notification prior consent of the Constituent Assembly is the condition precedent. The Constituent Assembly of Jammu and Kashmir framed the Constitution of J&K and got dissolved on 26th January 1956¹⁷ so the question remains with no constituent and legislative assembly present in the State whose concurrence did President of India sought to scrap the Article 370? The constitutional process was by passed and the “*Constituent Assembly*” was read and made equivalent to “*Legislative Assembly of the State*” which led to short-circuiting the entire Constitutional process in letter and spirit. The appalling part in this entire exercise is that Governor which is the part of executive¹⁸ branch of state government gave the concurrence which is fatal blow to doctrine of Separation of Powers as envisaged by Montesquieu. The legal challenge is whether gubernatorial administrator consent can be equated to the consent of people because no consultation was made with the democratically elected leaders of Jammu and Kashmir let alone its people.

Article 368¹⁹ has proviso which says that no constitutional amendment “*shall have effect in relation to the State of Jammu and Kashmir*” unless applied by the order of the President under Article 370- which requires the

¹⁰ White paper on Jammu & Kashmir, Chapter 1, Doc No 5)

¹¹ October 17, 1949: Special status is born, hindustantimes, Aug 06, 2019, <https://www.hindustantimes.com/india-news/october-17-1949-special-status-is-born/story-7jBc91VIBSW6icN7kTBG4L.html>, (last visited on August 21, 2019)

¹² A.G. Noorani, Article 370 A Constitutional History of Jammu and Kashmir, Oxford University Press, 2011, pg 6-7.

¹³ *Ibid*

¹⁴ INDIAN CONSTITUTION. Art. 370

¹⁵ Faizan Mustafa, Explained: What are Articles 370 and 35A?, the Indian EXPRESS, August 6, 2019,

<https://indianexpress.com/article/explained/understanding-articles-370-35a-jammu-kashmir-indian-constitution-5610996/> (last visited on October 22 2019).

¹⁶ INDIAN CONSTITUTION. Art. 370

¹⁷ JAMMU AND KASHMIR CONSTITUENT ASSEMBLY, <http://www.jklegislativeassembly.nic.in/debates/debate%20Part%20I.pdf>, (last visited on October 22 2019)

¹⁸ INDIAN CONSTITUTION. Art.153

¹⁹ INDIAN CONSTITUTION. Art. 368

concurrence of State Government and ratification of Constituent Assembly. With no constituent assembly in place it was an absolute constitutional abuse.

The major reasons that were cited for dilution of Article 370 are as follows: that this Article was against the concept of federalism, that this Article was instrumental in fostering separatism, insurgency and militancy in the state, that this provision was against the concept of “*one flag one nation*”, it was an impediment in the development of the state, non – application of Indian Constitution and following Indian laws Right Education Act 2009, Right to Information Act 2005, Prevention of Corruption Act 1988, Prevention of Child Marriage Act 2006 etc., no reservations for SC and ST’s Kashmir, to foster emergence of new political class in Kashmir etc.

To begin to decipher above myths it is to be noted that the state of Jammu and Kashmir is not the only state in India which has been granted special status. Articles 371, 371A- I²⁰ provide special status to following states viz. Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, Goa. In Sikkim laws preceding its accession in 1975 continues to exist. Article 371F (k)²¹ mandates that all laws which were in force in the state of Sikkim shall continue unless repealed by state legislative assembly. One such law is Maharaja Regulation of October 1962 which does not permit buying or selling of property to non – residents.²² In fact to enter the States like Nagaland²³ and Arunachal Pradesh²⁴ inner line of permit is required. The parliamentary laws are not applicable in the state of Nagaland unless legislature by resolution decides so.²⁵ And interesting point is Indian Criminal Laws are not applicable to Nagaland.²⁶ Even at district level state legislature cannot make laws for certain districts (Tusang district) unless approved by the governor on the recommendation of the regional council.²⁷

The state of Jammu and Kashmir was not only state in India to form a constituent assembly to draft separate constitution. There are three other princely states viz., Saurashtra Union, Travancore-Cochin and Mysore which convened their own constituent assembly in order to draft their constitution.²⁸

The Article 370 was intended to be temporary until Kashmir’s Constitution was drafted and the Constituent Assembly of Kashmir has the power to recommend the abrogation of Article 370 to the President. The Constituent Assembly of Kashmir however dissolved itself in 1957 without making any recommendation for amendment or abrogation and for this reason, the Indian Supreme Court has ruled on multiple occasions that Article 370 is now a permanent part of the Indian Constitution since the only body that could have abrogated it has been dissolved without doing so.

It was temporary because when Article 370 was drafted the Constituent Assembly of Kashmir has not met. It was temporary in the sense till the Kashmir’s Constituent Assembly takes view on it, once they take view on it nothing can be done about it because they have finalised the relation with Indian union. Thus the term temporary referred to period till Constituent Assembly was convened. The drafters of Indian Constitution have clearly mentioned time period when they wanted provision to be temporary for example in case of reservation time period of ten years is clearly mentioned, so is five year time period mention in Article 369. In article 370 there is no such time period mentioned.

The question of Indian laws not applicable to the state of Jammu and Kashmir at first place should not have arisen. As of 2019, total of 260 Articles of the Indian Constitution were applicable to the state of Jammu and Kashmir, and rest 130 Articles were identical to the Indian Constitution. Jammu and Kashmir State Reorganisation Act 2019, has retained total of 166 already applicable laws.

²⁰ INDIAN CONSTITUTION. Art. 371

²¹ *Ibid*

²² Asit Jolly, Rights in limbo, India Today, July 1, 2019.

²³ About Nagaland, <https://www.nagaland.gov.in/portal/portal/StatePortal/AboutNagaland/NagalandInfo>, (last visited on August 21, 2019)

²⁴ Divya Sarjotla, How and where to obtain inner line of permit 2019?, budgetwayfarers, <https://www.budgetwayfarers.com/inner-line-permit/> (last visited on October 22, 2019)

²⁵ INDIAN CONSTITUTION. Art. 371A

²⁶ State Of Nagaland vs Ratan Singh, 1967 AIR 21

²⁷ Constitution Society, <https://www.constitution.org/cons/india/p21371a.html> (last visited on November 22, 2019)

²⁸ All you need to know about Article 370, <https://m.dailyhunt.in/news/india/english/hindusthan+samachar+english-epaper-hinsamen/all+you+need+to+know+about+article+370-newsid-129083904>, (last visited on October, 19 2019)

In fact if the laws of Jammu and Kashmir were to be analysed they appear to be far more progressive than Indian laws. The reason that Kashmir state did not want to accept Part III of the Constitution was that at that time right to property was fundamental right. Since right to property was enshrined as fundamental right in the Constitution, the question of compensation to Maharajas and Jagirdars would have come up. The Kashmir agrarian reforms in state did not want to give any compensation to the hereditary rulers.

The state of Jammu and Kashmir already had Right to Information Act 2004, this erstwhile Act was repealed and replaced by 2009 Act which is replica of Central RTI 2005 Act. The RTI Act of Kashmir was progressive in the sense it had fewer exemptions than central law and that repealed Act had a pro-transparency section which set 120-day time limit for the commission to decide on the appeal, however there is no such limit in central law.²⁹

Right to free education in Kashmir was constitutionally protected which provided free education till University level.³⁰

The claim that State has not given reservations to SC/ST is totally false. The state had already had progressive law titled; “Jammu and Kashmir Reservation Act, 2004” which clearly says reservation shall be in proportion to population,³¹ it says reservation shall not be more than 50 %, ³² if the seats are not filled in current year they will carry forward.³³

The words ‘secular’ and ‘socialist’ occurs in the Constitution of Jammu and Kashmir in the year 1956 and same words were added to Indian Constitution in the 1976³⁴. So the people of Kashmir were committed to secularism 20 years before Indian constitution committed Indians to it.

The Government’s claim that women rights will be enhanced also presents a mixed picture. Before 2007 Shariat Application Act was not applicable in the state and Muslims there were governed by Shree Pratap Consolidation laws of 1930’s which made clear if there is conflict between custom and statutory law custom will prevail.³⁵ The Kashmiri Muslims were governed customary laws which were not only at variance with Islamic law but also women centric. In Islam there is no differentiation is made between married and unmarried daughters but under Kashmir’s customary law there was clear cut differentiation between two.³⁶ According to Islamic Law a married daughter shall get half of share, but the married daughter in Kashmir is entitled to equal share as son per customary law. Another example of progressive approach is in Islam adoption is not allowed but customary laws in Kashmir allowed adoption and both adopted daughter and son could begets property.

There is lot furore among feminists as to how Article 35A of Indian Constitution did not allow married women to inherit property if she marries a non- Kashmiri person was solved by Kashmir High Court in the case of *State and others v. Dr Susheela Sawhney and others*³⁷ by striking down the proviso of the state subject law according to which Kashmiri women marrying outsiders would lose their permanent resident status. It is a myth; the true position is if outsider male marries Kashmiri girl this male cannot become permanent resident of Kashmir. Wrong picture has been understood in the sense it is a non- resident who was at disadvantage. Muslim Marriage Registration is not compulsory India but in Kashmir it was compulsory.³⁸

The move is paradoxical because on in-depth analysis it seems it is New Delhi which has seemed to lost power. Centres’ power was disproportionately greater in Kashmir than other states which is now gone. For example by

²⁹ Nidhi sharma, As Jammu and Kashmir becomes a UT, there’s no information on 400 RTI appeals, Economic Times, August 7, 2019, <https://m.economictimes.com/news/politics-and-nation/as-jammu-and-kashmir-becomes-a-ut-theres-no-information-on-400-rti-appeals/articleshow/70577473.cms> (last visited on November 21, 2019)

³⁰ Article 20(a), The Constitution of Jammu and Kashmir, 1956, http://jklaw.nic.in/the_constitution_of_jammu_and_kashmir_1956.pdf, (last visited on November 22, 2019)

³¹ Section 3, Jammu and Kashmir Reservation Act, 2004

³² Proviso Section 3, Jammu and Kashmir Reservation Act, 2004

³³ Section 5, Jammu and Kashmir Reservation Act, 2004

³⁴ THE CONSTITUTION (FORTY-SECOND AMENDMENT) ACT, 1976, <http://legislative.gov.in/constitution-forty-second-amendment-act-1976>, (last visited on November 25, 2019)

³⁵ Shariat laws now applicable in Jammu and Kashmir, Outlook, February 9, 2007, <https://www.outlookindia.com/newswire/story/shariat-laws-now-applicable-in-jammu-and-kashmir/449812>, (last visited on November 22, 2019)

³⁶ Nisar Ahmad Ganai, PRIVILEGED POSITION OF DUKHTAR KHANA NASHIN AMONG MUSLIM FEMALE HEIRS IN KASHMIR : AN EMPIRICAL STUDY, Vol. 27, No. 3 (July-September 1985), pp. 387-422, <https://www.jstor.org/stable/43952249?seq=1>, (last visited on November 27, 2019)

³⁷ AIR 2003 J K 83

³⁸ Section 3, Jammu and Kashmir Muslim Marriages Registration Act, 1981

virtue of Article 370 presidents rule could be easily extended to the Jammu and Kashmir as compared to another states. The emergency could be imposed in Kashmir on grounds of internal rebellion also, in addition to external aggression and armed rebellion. Internal rebellion as a ground to impose emergency was deleted by 44th Amendment³⁹ but this was not extended to Kashmir. After 44th Amendment right to life and personal liberty cannot be derogated at all even during emergency but this was not extended to the state of Jammu and Kashmir. The Presidential rule max limit for other states is 3 years but for Kashmir it was 7 years.⁴⁰ After making Article 370 de-operationalized the emergency powers have thus shrank.

In Kashmir apart from restrictions mentioned in Article 19(2) of Indian Constitution there were additional restrictions on freedom of speech and expression. Modification was made under Article 370 which says restrictions which appropriate legislature thinks reasonable. So there was no judicial review of denial of freedom of speech and expression in Kashmir. But now these additional restrictions will cease to exist.

By virtue of Article 370 the centre could with much greater authority and ease exercise authority on subjects listed on State List in Kashmir than it could in any other state. Article 249 of Constitution required resolution of Rajya Sabha must mention an item mentioned in State List but for Kashmir resolution can mention any subject, hence powers of parliament were much wider. Hence in real sense it is special status of Delhi that has been taken away than that of Kashmir because all these years through presidential orders Article 370 had emptied its contents and was much more useful to Delhi than to Kashmir.

3. KASHMIR AUTONOMY DECIPHERED

What is interesting to know is that even when these current moves were announced the Article had already been reduced to an empty shell by subsequent presidential orders since the enactment of Article 370. The fact that plebiscite was first offered in context of Kashmir is an absolute myth, the proposition of plebiscite was first envisaged in the then princely state of Junaghad.⁴¹ Similarly the issue of referendum was already conducted during the time of Independence in North-Western Province and a district in Assam known as Silit (Muslim dominated) which is now part of Bangladesh. Hence the popular notion that idea of referendum or plebiscite was invented specially for Kashmir is bogus.

The argument is put forth that doing away with this provision will put Centre in a better position to deal with problem of terrorism in Kashmir. In reality it was the dilution and destruction of Article 370 which paved way for insurgency in the state. The seeds of insurgency were sowed in late 1970's. Attempts of successive governments in diluting Article 370 eventually resulted in resistance movement in Kashmir.

In 1953 Sheikh Abdullah- a stalwart leader of Kashmir was arbitrarily dismissed by Pt. Jawaharlal Nehru can be termed as beginning of end of special status of Jammu and Kashmir. In 1954 massive omnibus presidential order extended several provisions of Indian Constitution to the state of Jammu and Kashmir.⁴² In 1956 when the state's constituent assembly was dissolved the provisions of Indian Constitution kept on being applied to the state of Jammu and Kashmir by the subsequent presidential orders which is antithetical to the spirit of Article 370 which made concurrence of constituent assembly of prime importance. The words "*consultation*" and "*concurrence*" in the bare text of the provision reinforces the fact of the drafters of the constitution in ensuring the retention of Kashmiri autonomy.⁴³ The framers of Article 370 had given iron clad guarantee to people of Kashmir to protect their special status. The intent was the moment, constituent assembly ceases to exist, there shall be no further laws or provisions applied to state without its concurrence.

³⁹ The Constitution (Forty-fourth Amendment) Act, 1978

⁴⁰ INDIAN CONSTITUTION. Art. 368

⁴¹ Rajmohan Ghandhi, Patel, a life

⁴² (THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954, http://jklaw.nic.in/constitution_jk.pdf (last visited Oct 22, 2019).

⁴³ S P Sathe, Article 370: Constitutional Obligations and Compulsions, Economic and Political Weekly, Vol. 25, No. 17 (Apr. 28, 1990), pp. 932-933

Subsequently in 1964⁴⁴, Article 356 (Imposition of presidential rule) was extended to the State of Jammu and Kashmir. In November 1996, the Constitution of Jammu and Kashmir was changed in order to make an elected “*sadre-riyast*”⁴⁵ as centre appointed governor. In July 1975, presidential order was issued which barred the state legislature to legislate upon governor’s appointment in the state and that the powers of legislature over defining the role of governor were absolutely curbed.⁴⁶ July 1986 another egregious moment in the special status of Jammu and Kashmir, Article 249 (power of Centre to legislate on State list) was extended to the state of Jammu and Kashmir when there was no government in place in the state.⁴⁷ At that time concurrence was given by Jagmohan, then Governor of Kashmir setting precedence for what happened at the time of abrogating Article 370.

In 1959 in the landmark case of Prem Nath Koul v The State of Jammu & Kashmir⁴⁸ the five judge bench held that State Assembly’s concurrence is mandatory. But in subsequent cases Sampath Prakash 1968⁴⁹ and Maqbool Damno 1972⁵⁰ case it was held state legislature can step in place of Constituent Assembly. It is constitutionally dubious as equating state assembly with Constitution making body is fundamental travesty.

So on the day (5th August 2019) when final blow was given to this Article more than three fourths of this provision had been reduced to husk. The evisceration of this Article did not happened out of thin air; every successive government has contributed to it. Thus history is evidence to the fact that history of Kashmir has been moulded time and again to fit the whims and fancies of central government and in this process the autonomy has been corroded.

4. ARTICLE 370 AND INDIAN FEDERALISM

Federalism in practical sense means different kind of units has different autonomy and they come together. The Indian Constitution establishes federal form of government with division of powers between centre and regional governments.⁵¹ Article 1 defines India as Union of States which means constituting units have concession and freedom to determine their relation with centre. India being a diverse country, strict adherence to federalist form of government is not possible, hence Indian Constitution has provisions which are necessary to accumulate diverse aspirations; Article 370 of the Constitution is such provision. So it can be said that flexibility is very much required in order sustain diversity in India, hence asymmetrical provisions were incorporated into the Constitution. These asymmetric provisions of Indian Constitution reflected vision of founding fathers that in order to keep plural diversity intact these provisions are necessary. It is critical to point at this juncture that India is not only country in the world which has asymmetrical provisions, the countries like USA, China, Malaysia etc. too have asymmetrical provisions to incorporate diversity.⁵² The Constitution framers of these countries argue that having asymmetrical provisions is necessary for harmonious existence and such provisions are neither against federal or unitary character of polity. For example China has given Hong Kong⁵³, Taiwan⁵⁴ and Macau⁵⁵ separate flags. In fact there is a constitutional provision propounded by Deng Xiaoping, Leader of the People's Republic of China, which envisages

⁴⁴ *Ibid* at 27

⁴⁵ When Jammu & Kashmir had its own Prime Minister and Sadr-e-Riyasat, The Indian Express, April 15, 2019, <https://indianexpress.com/article/explained/when-jammu-kashmir-had-its-own-prime-minister-and-sadr-e-riyasat-5675554/> (last visited Oct 24, 2019).

⁴⁶ A.G. NOORANI, ACCORD & DISCORD, FRONTLINE, VOLUME 27, Issue 6, March 26, 2019, (last visited Oct 25, 2019). <https://frontline.thehindu.com/static/html/fl2706/stories/20100326270608500.htm>

⁴⁷ Luv Puri, The Jammu and Kashmir Reorganisation Bill: A cure worse than the disease, (Frontline, September 27, 2019), <https://frontline.thehindu.com/cover-story/article29381575.ece>, (last visited Oct 22, 2019).

⁴⁸ 1959 AIR 749

⁴⁹ 1970 AIR 1118

⁵⁰ 1972 AIR 963

⁵¹ MP Jain Indian Constitutional Law, 7th Edition, Lexis Nexis

⁵² Gazala Peer and Javedur Rahman, Revisiting the Special Status for Jammu and Kashmir An Unpleasant Autonomy, Economic and Political Weekly, Vol. 47, Issue No. 23, 09 Jun, 2012

⁵³ Rory Boland, What Country is Hong Kong Actually In?, tripsavvy, <https://www.tripsavvy.com/what-country-is-hong-kong-in-1535874> (last visited on October 21, 2019).

⁵⁴ Rory Boland, Is Macau Part of China, tripsavvy, <https://www.tripsavvy.com/is-macau-part-of-china-1535534> (last visited on October 21, 2019).

⁵⁵ <https://www.britannica.com/place/Taiwan>, (last visited on October 21, 2019).

there will be Mainland China and at the same time Hong Kong and Macau would retain their own economic and administrative systems.⁵⁶

The precedence that this move has set up is totally disastrous, never in the history of the world has been the state reduced to a union territory that too when elected government is not in place. This move puts statehood of Indian States in potential danger. For the sake of argument let's assume this move is beneficial, then also it requires the Jammu and Kashmir Reorganisation Bill 2019 needs to be referred and discussed by State legislature which was never done. As mentioned earlier no concurrence of state assembly was sought. It is highly conceivable that no state legislature would have allowed its own demotion in status. History has it states who do not give concede powers to the units and don't believe in federalism their secessionist activities rise, in federation it is imperative that states are satisfied.

CONCLUSION

The use of Article 370 itself to de-operationalize itself is constitutional sleight of hand as it was executive branch which was used to amend Indian Constitution. Kashmir is at critical juncture in its history and it is high time we read its history rather than swallowing myths, facile arguments and propaganda. The central government has to win the hearts and minds of Kashmiri people and convince that their best interests will be served under Indian democracy. Abrogation of article 370 has further alienated people of Jammu and Kashmir from India.⁵⁷ Also with Article 370 of Constitution being abrogated, the question remains this was not only provision in Indian Constitution which gave it asymmetry, does this mean that in order to retain the pure federalist form of polity in India, the time has come to be done away with those other provisions as well. Given the history and bloodshed in Kashmir from past 70 years the special status accorded to the state of Jammu and Kashmir should not only ought to respected, but the Indian being largest democracy in the world should have refrained from employing unconstitutional tactics to encroach upon the autonomy of the state of Jammu and Kashmir. The government should have worked within the principles of constitutionalism in order to retain legitimacy to rule over the State. To sum up, it is important to restore the "inviolability" of Article 370.

⁵⁶ Hong Kong and China: One Country, Two Systems, Two Identities, *Global Societies Journal*, 3, http://gsj.global.ucsb.edu/sites/secure.lsit.ucsb.edu.gisp.d7_gs-2/files/sitefiles/Yip.pdf, (last visited on October 21, 2019).

⁵⁷ *Ibid* at 28