

PHASES OF ARTICLE 370: ACTION AND REACTION

Swami Raj

Research Scholar, OPJS University, Churu, Rajasthan

ABSTRACT

By forming the Rashtriya Swayamsevak Sangh (RSS) between 1940 and 1944, Indian nationalists in Jammu and Kashmir were able to execute Hindutva theory. After the BJP came to power, Prime Minister Narendra Modi removed Kashmir's special status by repealing "Article 370" on August 5, 2019. According to Modi, his "masterstroke" would turn Muslims from a majority into a minority. The reaction from the population has been very negative, leading to the imposition of a curfew and the suspension of basic human rights in the affected region. In this analysis, we'll go further into the aftereffects of Hindutva ideology and what some are calling "Modi's masterstroke" in the region. A look at how the RSS-backed Bharatiya Janata Party has fared in the Muslim-majority state (BJP). Article 370, included in Chapter XXI of the Indian Constitution, was first inserted in 1949 but was only meant to be a temporary measure. However, in 2019, the government of India chose to eliminate Article 370, a transitory clause in the Indian Constitution. The purpose of this essay was to investigate the evidence surrounding the repeal of Article 370. Thus, this research piece analyzes many facets of Article 370's abolition in order to learn the truth regarding its repeal. This research piece is the first of its kind, and it analyzes the history of Article 370 to determine its origins. In addition, both Article 370 and its supplementary Article 35A are defined in this scholarly work.

Keywords: - Article 370, Jammu and Kashmir, India, Abrogation of Article 370, Union territory

INTRODUCTION

Article 370 of the Indian Constitution provides special status for the state of Jammu and Kashmir on an interim basis. The Jammu and Kashmir Constituent Assembly had the authority to amend, repeal, or keep this article until such time as a plebiscite was held to determine the public's willingness for a rewrite of the constitution. This Article's temporary nature, however, has been the subject of much debate in recent years. The administration and the court have often referred to them as permanent measures. Therefore, the purpose of this essay is to analyze the development of Article 370 and its present status in the Indian Constitution. There were two possible conclusions to the Kashmir conflict. After years of frustration and the failure of several "soft measures," the government finally adopted a hard stance on Kashmir. Second, the rising violence in the Valley was used by the BJP-led government to carry out the wishes of its ideological leader, Shyama Prasad Mukherjee, and get rid of Article 370 and Article 35A. In 1953, Mukherjee was killed while leading a protest against Jammu and Kashmir's special status. He had argued that the state should not be treated differently from the rest of India and that the nation should not have two prime ministers or flags.

Jammu and Kashmir has unique rights according to Article 370 in Chapter XXI of India's constitution. Jammu and Kashmir's growth stalled once Article 370 was applied to the state. Therefore, in October of 2019, after much debate, the Indian government passed an order known as the Constitutional application to Jammu and Kashmir order 2019, which effectively nullified Article 370 of the Indian Constitution and granted Jammu and Kashmir equal status with the other states of India.

The Constitution itself calls this Article [ARTICLE 370 of Indian Constitution] a "temporary provision." This Article is only temporary since the Jammu and Kashmir Constituent Assembly was given the responsibility of finalizing the constitutional connection between the State and the Union of India. The Constitution of India explicitly foresaw the need for a Constituent Assembly to be called for the Jammu and Kashmir region, and it states that the Assembly would have the authority to make any necessary changes to Article 370 or to any other Articles of the Constitution of India that would affect the Jammu and Kashmir region. Therefore, the Article cannot be unilaterally amended, revised, or replaced due to the 'temporary' condition. According to a declaration made by Sheikh Abdullah in the J&K Constituent Assembly, "I will like to make it clear" that any suggestion of changing arbitrarily the basis of our relationship with India would not only constitute a

breach of the spirit and the letter of the Constitution, but it may invite serious consequences for a harmonious association of our State with India. Whenever the need arises to abolish, alter, or expand the scope of Art. 370 by agreement, the word "temporary" has been employed in this context to reduce the obstacle in the way of amending the Constitution of India.

LITERATURE REVIEW

Moonis Ahmar (2017) The gradual weakening of Article 370 from the mid-1950s has cast doubt on New Delhi's assertion that secularism remained a core tenet of the Indian state. When India's 42nd amendment was passed in 1976, the country officially became a secular state. All faiths are tolerated by the Indian government since there is no state religion. However, the concept of Indian secularism is often challenged, whether in the form of religious rioting or accusations that the Indian state, especially under BJP rule, is supporting Hindu nationalism. In this paper, I'll analyze article 370 of the Indian constitution and its consequences for Jammu and Kashmir, as well as the progressive degradation of this provision. The prolonged use of force by the Indian state to suppress public outcry against the abuses of security forces converted the Valley of Kashmir from a paradise on earth into a large-scale prison camp staffed by hundreds of thousands of Indian military and border security troops. In addition, the study will examine the Modi regime's repeated claims that article 370 must be revoked and the unique status granted to J&K must be removed in order to completely incorporate the disputed area into the Indian Union.

Vaishnavi Venkatesan (2020) Since the country's independence, Article 370 and Kashmir-related issues have been of the utmost significance to its daily operations. Since the instrument of admission entered into force in 1947, there have been debates regarding the article. After 72 years of independence, there are many divergent opinions on whether or not it should continue to function. Despite several discussions, meetings, and disputes, little progress has been made on Article 370. Until now, that is. The BJP administration introduced a bill to split Jammu Kashmir and Ladakh into separate union regions in parliament on August 6, 2019, thereby rescinding article 370. The measure had majority support in both chambers and was ultimately approved. Before diving into an analysis of the contents of Article 370, this article will provide a brief background on the law's origins, language, and purpose. Second, this paper will conclude whether or not the repeal of Article 370 was the correct and reasonable course of action. Thirdly, this article will discuss the legal ramifications of revoking Jammu and Kashmir's "special status," focusing on how doing so would alter the existing legal stance and a few significant landmark judgments from the past. Finally, the author of the report will do primary and secondary research to record the ideas and beliefs of individuals in regards to the scrapping of the article.

Pradeep Kulshrestha (2016) The unique status of Jammu and Kashmir as a state is defined in Article 370 of the Indian Constitution. The State of Jammu and Kashmir is granted extensive autonomy under this Article, allowing it, in contrast to the other States of the Indian Union, to establish its own Constitution. The debate over whether or not to include Article 370 began during the fight for independence. Since it had a Muslim majority but was ruled by a Hindu (Raja Hari Singh), the State was a source of tension between India and Pakistan. India, which values secularism highly, insisted that the state be a part of it, whereas Pakistan, which is a Muslim state, claimed it for itself. There was no need in the British-approved partition plan that the Hindu Princely State join India and the Muslim States join Pakistan. Article 370 is the most controversial part of the Indian Constitution since it is the sole legal connection between the Indian subcontinent and the territory of Jammu and Kashmir. Changing this article would need an amendment to the Constitution, which the Parliament has the authority to do. Legal scrutiny will be applied to this proposed Constitutional Amendment because of its potential impact on the balance of power between the states and the federal government.

Shivani Sharma (2020) The Indian constitutional provisions of Article 370 and Article 35A have been the subject of heated debate for decades, not only in India but across the globe as well. In spite of India's federal structure and strong sense of nationalism, it granted the state of J&K significant autonomy. Jammu and Kashmir become a flashpoint because of this unfair distribution of resources. The author of this paper does not restrict herself to a thorough examination of Article 370, 35A and its repercussions; rather, she strives to trace the history and justifications for these clauses that finally lead to the present-day problem. The essay also seeks to unearth the rationales behind the criticized clauses, which are often lost in the chaos that ensued and are the focus of the study. It then uses key events in the history of Kashmir to bring the reader up to date.

HISTORY OF ARTICLE 370

Jammu and Kashmir was a princely state similar to others until it was invaded by Pakistani troops after India's independence in 1947. To defend his realm against Pakistan's assault, the then-maharaja Hari Singh appealed to the government of India for assistance. The government of India requested an instrument of accession from Maharaja Hari Singh, formally incorporating his territory into the Indian subcontinent. On October 26, 1947, Maharaja Hari Singh signed an Instrument of Accession, thus joining the Indian Empire. On October 27, 1947, India's governor-general, Lord Mountbatten, formally recognized this accession. But after the adoption of India's Constitution in 1949. After then, the future of Jammu & Kashmir's relationship with India remained murky. As a result, Article 370 was added to India's constitution in order to normalize ties with Jammu and Kashmir[i]. This article was a stopgap measure that granted Jammu and Kashmir a unique identity by stipulating that the state of Jammu and Kashmir would have its own Constitution and that the laws of the Constitution of India would not apply there. According to this article, the Indian government's legislative branch is responsible for overseeing just three areas: foreign and military policy, as well as media and public relations. Article 370 may be repealed at the suggestion of the constituent assembly of this state, as provided for in clause (3) of this article. In spite of the implementation of Article 370, a Jammu and Kashmir native's rights were not resolved. In order to outline the rights of Jammu and Kashmir's permanent inhabitants, President of India Dr. Rajendra Prasad issued an order on May 14, 1954, titled the Constitution Application to (Jammu and Kashmir) Order 1954, which includes article 35A. The constituent legislature of Jammu and Kashmir was dissolved in 1957 without Article 370 being repealed. As thus, everyone understood that Article 370 of the Constitution was the unchanging law of the land. After the execution of the 2019 presidential order, the Indian government introduced two resolutions in the upper house: one to reorganize Jammu and Kashmir, and the other to remove Article 370 from the Indian Constitution. The latter bill was approved by a two-thirds majority, and Article 370 was thus removed from the Indian Constitution.

ABROGATION OF ARTICLE – 370

On Friday, August 5, 2019, Shri Amit Shah, India's Union Home Minister, announced the deletion of Article 370 and Article 35-A of the Indian constitution, which granted Jammu and Kashmir special status. According to Article 35-A of the Constitution of India, it is the responsibility of the Jammu and Kashmir State Assembly to establish the permanent residents of the state and the rights and privileges accorded to them. In the Indian constitution of 1949, Article 35-A was left out. When the then-current state government of India finally gave its stamp of approval, the document was formally added to the Indian constitution by Presidential Order in 1954.

The Union Minister of Home Affairs tabled two pieces of legislation and two resolutions in Lok Sabha on the topic of Jammu and Kashmir (J&K) on the same day, August 5th, 2019. Here's a rundown of some of them:

1. The 1954 decision on Jammu and Kashmir's inclusion in the protections of Article 370 of the Indian Constitution was overturned this year by an order from India's president. This Order was issued by the President of India in line with Article 370 of the Constitution, with the consent of the Government of the State of Jammu and Kashmir.
2. Article 370 of the Indian Constitution is thus abolished (Second Resolution)
3. Jammu and Kashmir's Reorganization (Reference. Article 3 of the Constitution of India) Bill, 2019

Article 371 makes this possible (3). If the Constituent Assembly of Jammu and Kashmir proposes changing or repealing Article 370, the President of India may do so by sending a notification to that effect. With the signing of the Constitution (Application to Jammu and Kashmir) Order 2019, the President of India made it official on August 5, 2019 that Article 370(1) of the Indian Constitution applies to the state of Jammu and Kashmir. Jammu and Kashmir's Constituent Assembly might be replaced with the Legislative Assembly. Article 370 has been revised in a similar fashion before. When the President of India issues a notification to that effect, Article 370 will no longer apply to the state where it was declared. Following the Indian Parliament's recommendation, President Trump declared on August 6, 2019, that entirety of Article 370 would be null and void.

When Article 370 was repealed in India, it prompted a diverse array of reactions and interpretations. The issue's proponents and detractors:

Proponents

Former Indian Army Lieutenant General Subrata Saha. The decision to remove Article 370 is undoubtedly the finest way to honor the lives lost over the last few decades fighting for Jammu and Kashmir's unification with India.

the HNP (Hindu Nationalist Party) Since Shyama Prasad Mookerjee, the party's ideologue, died in a Jammu and Kashmir jail in 1953 while opposing the state's distinct status and seeking its complete merger with the Union, the abolition of Article 370 of the Indian Constitution has been a main goal of the BJP.

As for the Bahujan Samaj Party (BSP), In regards to Mayawati's Bahujan Samaj Party's support for the Bharatiya Janata Party's efforts to divide Jammu and Kashmir and remove Article 370, the two parties have reached an understanding (BJP).

Arvind Kejriwal, leader of the Aam Aadmi Party, has expressed support for the Central Government's intention to repeal Article 370, expressing optimism that this would lead to "peace and prosperity" in the state.

The study recommends getting rid of Article 370 of the Biju Janata Dal (BJD). As of Friday, August 9, 2019, Jammu and Kashmir is a "integral part of India," according to a statement released by BJD. Article 370 has received support from the Shive Sena, the All India Anna Dravida Monnetra Kazhagam (AIADMK), and the Telegu Desam Party (TDP).

Opponents

The Congress of the Indian Nation (INC) The removal of Article 370 was widely criticized, with many calling it a "catastrophic act" and a "sad day in the constitutional history of India." Congressman Ghulam Nabi Azad said that the government has stripped Kashmir of its "crown" and its unique culture. According to Kapil Sibal, another member of Congress, "We (Congress) won Kashmir and you lost Kashmir."

The DMK harshly criticized the government's decision, calling it a "murder of democracy." The party's leader, MK Stalin, has accused the BJP-led government in Delhi of ignoring the will of the people of Jammu and Kashmir, who back India, in favor of furthering the BJP's ideological goal.

Left Front leaders have also expressed their disapproval. D. Raja, general secretary of the Communist Party of India (Marxist), called this a "regressive step" that would alienate the people of Jammu and Kashmir and described it as an attack on the Constitution.

Mehbooba Mufi, the current and former chief minister of Jammu and Kashmir, has said that the Indian People's Democratic Party (PDP) has broken its pledges to the people of Kashmir. PDP members Nazir Ahmad Laway and Mir Mohammad Fayaz, among the chaos in Parliament, yelled slogans and tore posters. His rough treatment of everyone included ripping the kurta (shirt) off of Laway. Later on, the two were kicked out because they stoked the fires of the rallies by tearing up copies of the Constitution.

Leader in the National Conference and the previous prime minister of Jammu & Kashmir He said the government's decision to suspend Article 370 was "unilateral and worrisome" and a "total betrayal of trust" in Jammu and Kashmir.

Strong opposition to the deletion of Article 370 was also voiced by the Janata Dal, Rashtra Janata Dal, Trinamol Congress, and the Nationalist Congress Party.

It's sad and unnecessary that the administration has gone to such lengths to delete so much of Article 370 of the Constitution "ex-Head of the Research and Analysis Wing, A.S. Dulat, stated. Moreover, the government's decision to revoke the provision raises more serious concerns. In accordance with Articles 370 and 35A of the Constitution, citizens and legal permanent residents were accorded special protection. Numerous amendments have rendered Article 370 meaningless, a fig leaf at best. Over time, with the help of Article 370 of the Constitution, Kashmiris have been integrated into society while preserving their unique culture." Soli Sorabjee, a former Indian attorney general, has said that he does not consider the abolition of

Article 370 to be unlawful. The amendment could not be changed since it was not a component of the Constitution's underlying framework.

However, no piece of legislation can be successfully executed without widespread support and participation from the people before it even becomes law.

ARTICLE 370 ABROGATION REPURCUSSIONS: AN ANALYSIS

Jammu and Kashmir's political leaders of the time were philosophically and morally divided. Unionist politicians in Jammu and Kashmir have long fought for the region's autonomy within the framework of the Indian constitution, while separatists have consistently demanded the region's complete secession from India. The central government arbitrarily decided to abolish Article 370, leading to the arrest of unionist and separatist leaders. It's safe to say that this judgement has had a profound effect on the political climate in Jammu and Kashmir. This is due to the fact that the Unionists' backing of Jammu and Kashmir's continued Indian incorporation was predicated on the protections provided by Article 370. On the other side, unionists have apparently gone insane and may join up with separatists to fight New Delhi. Former prisoner and current house detention prisoner Unionist Shah Faesal has warned that "Kashmiri politicians may now have to chose either to be stooges of New Delhi or separatists" This coming together of Unionist and Separatist interests presents New Delhi with its biggest dilemma in Kashmir in 72 years: the realization that it has no credible friend in Kashmir. Even after 10 months after the removal of Article 370, the outlook for Jammu and Kashmir remains gloomy. National Conference head Hasnain Masoodi warned that things would become worse if New Delhi took any more steps that changed the cultural or ethnic makeup of the valley. Leaders on both sides of the Unionist-Separatist split are expected to fight to keep Article 370 in place once they learn of the plan. (Lok Sabha Lawmaker)

In addition to already tense relations, the abolition of Article 370 has further exacerbated ties between India and Pakistan. There are now just two alternatives left for Pakistan: either accept or reject India's approach, which has infuriated Pakistan to a great degree. To counter India, Pakistan may either take direct military action or allow Jihadists to infiltrate the country. Given India's security measures and Pakistan's economic woes, a military clash between the two countries is very improbable at this time. Islamabad is hardly likely to sit on its hands and do nothing, given its history of supporting Kashmir's ongoing political and armed separatist struggle despite international pressure. Despite tensions between his country and India, Pakistani Prime Minister Imran Khan led a diplomatic offensive against New Delhi by using anti-India rhetoric at the United Nations and elsewhere.

Media reports indicate an influx of Pakistani militants into Kashmir. Indian Army Chief General Bipin Rawat recently said, "approximately 500 militants are ready to enter into the valley," and this has been verified. Around 250 terrorists, mostly locals, have been tallied by security personnel in the valley. The number of militants killed has remained relatively stable over the last five years, while new members have been recruited to take their place. The situation might be quite different if there were more foreign militants on the ground.

Conflict between India and Pakistan reemerged along the Line of Control after the repeal of Article 370. Whenever Pakistan acts maliciously, the Indian Army's Northern Command responds with "a painful slap in the face," as one commander put it. Following the removal of Jammu and Kashmir's "special status," the Pakistani military launched vicious attacks on security forces and started shelling along the border. A recent report from the Intelligence Bureau suggests that terrorists may be pushed into Jammu and Kashmir with relative ease. There is still a lot of uncertainty and unrest in the Union Territory of Jammu and Kashmir after this recent tragedy (abrogation of Art. 370). There have been new military engagements between China and India as of May 2020, and the Line of Actual Control (LAC) in Ladakh has become a deadlock. It's possible that the tense situation between Pakistan and India, which sees the risk of further growing violence in Kashmir's valleys, may hinder Indian efforts to integrate Kashmir.

The rising militancy in Kashmir has been linked by some Kashmir political experts to the turmoil along the LAC. The increasing tensions with the Chinese army, Pakistan's repeated comments on Kashmir, and the rising dissatisfaction and anger in the Valley are all blamed on the Union government's decision to remove Article 370 in Ladakh. When the status quo in Jammu and Kashmir was upended, many people began to see China as a new player in the conflict. The Chinese representative to the United Nations called the decision to

withdraw Article 370 a "unilateral measure" and said, "Kashmir is a problem left from history whose resolution should be based on UN Security Council Resolutions."

There have been ten months since then. Just what use does this cancellation serve? Although it achieved little of note, it did become a clear cause of restrictions on civil and political rights, further separating the people of Jammu and Kashmir from India. The worst-case scenario is that Jammu and Kashmir becomes a Union Territory controlled by unelected bureaucrats and without an elected assembly for nearly a year.

It will be difficult for citizens to go back to normal until Internet services across the state are restored in their entirety. Complaints that the 2G network cannot keep up with modern needs are common.

LEGAL CHALLENGES BEING CONSIDERED BY INDIA'S COURTS

Legal professionals have predicted that efforts to abolish article 370 would fail. The Jammu and Kashmir government's blessing is uncertain. The state has been under direct presidential authority under article 356 of the Constitution for the last year after the BJP withdrew from an arrangement with a regional party and the governor of the state disbanded the state assembly. One legal expert argues that governors, like presidents, serve as "representatives" of the federal government. Therefore, Presidential Order 272 is the same as the Central Government ratifying a constitutional amendment. Article 370(1)(c) states that "this Article shall apply in reference to that state," meaning that the President cannot use his authority to make changes to the Constitution (as it applies to Jammu and Kashmir) to change article 370. The normal procedure for amending Article 368 would have to be followed.



Fig:1 Hindu temple and tombs of the kings from inside the walls – Jammu, Kashmir.

According to reports, the Supreme Court of India is now hearing 14 cases related to the state of Jammu and Kashmir. It's clear that Article 370 and Jammu and Kashmir's unique status are at the heart of many of the petitioners' most heated arguments. Other petitions "seek an end to restrictions on travel and communication imposed in the Kashmir valley" and are now being reviewed by the Supreme Court. The petitions contesting the legality of India's decision to abolish Jammu and Kashmir's special status under article 370 will be heard by a five-member panel, the Supreme Court of India said this week.

The Supreme Court of India accepted a petition from a state political party challenging the "Presidential Rule" imposed in the state and the "abrogation of provisions" on September 16, 2019, according to news reports, but it has refused to accept any new petitions challenging the order related to Article 370. After a panel of three judges heard many petitions relating to the state, the chief justice said, "We advise Jammu and Kashmir to make the very best effort to ensure that normal life returns."

This week, on October 1, 2019, the Supreme Court commenced hearings on the aforementioned matter, but gave the federal government 28 days (until November 14, 2019) to answer to all petitions related to Jammu

and Kashmir. A number of petitioners have raised concerns about this, since October 31 is the state's deadline for reorganization. A petitioner's attorney once said, "the process is irreversible and the petitions must not be made infructuous."

EFFECT OF ARTICLE 370 IN THE SOCIAL, CULTURAL ANDECONOMIC LIFE OK KASHMIRIS

1. Citizenship in India is a single system, although in Jammu & Kashmir, residents have dual citizenship with the state and India.
2. Citizens of Jammu and Kashmir are also Indian people, however citizens of the rest of India are not eligible for citizenship in Jammu and Kashmir. In Jammu and Kashmir, they are denied both the ability to own property and the right to vote. All of a girl's rights in Jammu and Kashmir are forfeited if she marries a male who is not a subject of the state.
3. The State does not even allow the wealth tax. Although the Urban Land Act of 1976 is in effect across the rest of the nation, it does not apply in Jammu & Kashmir. As a consequence, the Valley's impoverished and Indian people, who are not State subjects, are economically exploited by wealthy landlords from the Valley's dominant group since they are unable to get loans from banking institutions.
4. With Article 370 in place, there is now a significant emotional divide between the people of India and those of Jammu and Kashmir. Just having Article 370's unique status for the State present is enough to bring back the specters of the two-nation idea.
5. Neither the complainant nor the public body is compelled to furnish the requested information since the Jammu and Kashmir RTI laws does not allow for the institution of an Information Commission. If, however, it can establish better laws and avoid the imposition of unfair laws and judgments by the Centre, then its autonomy would be justified. In contrast, the State's Right to Information Act is a flagrant abuse of the sovereign authority it holds in every respect.
6. In theory, a State's autonomy should look out for the people of that State rather than the rulers who govern over them. In the State of Jammu and Kashmir, good government is an illusion whose veil its own people are unable to dispel. It's a window into the feudal worldview of Jammu and Kashmir's ruling elite. When people aren't held responsible, it leads to chaos and lack of order.

CONCLUSION

Removing the protections provided by Article 370 of the Indian Constitution for the people of Jammu and Kashmir has caused political unrest and may have an effect on the region's demographics. The removal of Article 370 stripped the people of Jammu, Kashmir, and Ladakh of their right to practice their ethnicity and their ability to hold onto their jobs and their homes. If Article 370 were to be repealed, the people of Jammu and Kashmir would still have a long way to go before their grievances would be addressed in accordance with the law and the constitution. The long-standing dispute in Jammu and Kashmir may be settled as a result of shifting public opinion in India and elsewhere. Eliminating Article 370 was a bold action that would go down in Jammu and Kashmir history as a watershed moment. As The special status granted to Jammu and Kashmir as a result of this article's application to the territory of Jammu and Kashmir separated it from the country, hindered its development relative to other states, and contributed to an uptick in the rate of violence there after the Instrument of Accession was signed.

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