

HISTORIC STEP: REMOVING OF ARTICLE 370

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Abstract

Article 370 and 35(A) was removed on 5 August, 2019 which successfully nullified the special status of Jammu and Kashmir. The stage was being set for another tectonic shift: the 'dilution' of Article 370 of the Indian constitution and the bifurcation of Jammu and Kashmir to create two union territories - Jammu and Kashmir and Ladakh. How react various political parties and people of India, Pakistan.

Keywords: Article 370, 35 (A), Jammu and Kashmir, India, Abrogation of Article 370 and 35 (A), Ladakh, Pakistan.

History of Jammu and Kashmir

India got its independence on 15 August, 1947 and on 26 January 1950 the constitution of India came into effect with a unique provision Article 370. According to the Article 370 the people of Jammu and Kashmir will live under a different set of laws while being part of Indian union. Jammu and Kashmir have their own flag and penal code. Article 370 was a 'temporary provision' included in the constitution on October 17, 1949. Article 3 of the Jammu and Kashmir charter itself declared the state to be an integral part of India. In the preamble of the Jammu and Kashmir constitution, not only is there no claim to sovereignty like in the Constitution of India, there is, rather, a definite recognition that the object of the Jammu and Kashmir constitution is "to further define the existing association of the state with the Union of India as its integral part thereof".

Kashmir is in Himalayan region, India and Pakistan went to war over it and each came to control different parts of the territory with a ceasefire line agreed.

Integration was already completed. Article 370 merely gave some autonomy to Jammu and Kashmir, which has been withdrawn.

Mission Kashmir

In the first week of August, there were signs of something happening in Jammu and Kashmir. Additional India troops were deployed, they were around ten thousand. A major Hindu pilgrimage was cancelled; schools and colleges of Jammu and Kashmir were closed. Tourists at that time were ordered to leave. Telephone and internet services were suspended. Regional political leaders were placed under house arrest.

At that time some of experts thought that Article 35 (A) of the constitution would be removed. Article 35(A) gave some special rights to the people of Jammu and Kashmir. But on 5 August 2019, the government of India surprised everyone by saying it was revoking nearly all of Article 370 and 35(A).

By removing Article 370, Prime Minister Narendra Modi and BJP had long opposed Article 370 and revoking it was there in 2019 election manifesto.

Jammu and Ladakh regions

Many local political parties and groups, such as the Kashmiri Hindu organization Panun Kashmir, Jammu and Kashmir Workers Party and IkkJutt Jammu lauded the deletion of Article 370 and 35(A) and the integration of Jammu and Kashmir.

It was seen in TV channels that celebrations took place in Jammu with people distributing sweets, dancing and playing drums.

Representatives of the Kashmiri Hindu Community, who were displaced from the Kashmir Valley as a result of ongoing aggression welcomed the move and hoped that members of their community, numbering between 300,000 and 400,000 people will be able to return.

According to India Today, in the Hindu majority Jammu region, people held widespread "massive celebratory" demonstrations over several days with the distribution of sweets, bursting of firecrackers and dancing.

In Ladakh, the Buddhist organizations celebrated the deletion of Article 370 provisions and making the Ladakh region a separate Union Territory. The people in Leh and Matho celebrated 15 August as a day of "independence from Kashmir" and welcomed their Union Territory status.

In the Kargil region with a Muslim majority, there were protests against the Indian government's move to make it a union territory.

Social media, activism and misinformation

Several human rights activists and world leaders also commented on their social media accounts about the Kashmir situation. On Twitter, the hash tags such as #Kashmir Bleeds became top trends.

According to India Today and other Indian media sources, several fabricated images and videos have appeared on social media such as Face book, Twitter and other platforms. A closer examination of these photos and videos established that these are fabricated misinformation that utilized old photos or videos and the posters misrepresent them to be "current situation in Kashmir".

According to India Today, a portion of the video is truly from Dullbagh Road in Srinagar, but it is unclear if it is a fresh video or an old video clip inserted in. Some Indians assert that parts of this video are from Pakistan-administered Kashmir.

Reactions of various opposition parties and people

Chief Minister of Jammu and Kashmir, Mehbooba Mufti called it the "blackest day of Indian democracy". She said that the Indian Parliament snatched away everything from the people of Jammu and Kashmir. She tweeted on 4 August 2019 that the resolution of Jammu and Kashmir leadership to refuse two-nation theory in 1947 and align with India had backfired.

Former chief minister Omar Abdullah said that government's move on the Article 370 "unilateral and shocking". He deemed it a "total betrayal of the trust that the people of Jammu and Kashmir had reposed in India when the state acceded to it in 1947".

Asgar Ali Karbalai, former Chief Executive Councilor of Kargil's Hill Development Council, said people in Kargil considered any division of the state on the grounds of "religion, language or region" as undemocratic.

Kashmiri politician Shah Faesal denounced that "This is being seen as the biggest betrayal by the Indian state in last 70 years. It was not possible to reach Omar Abdullah, Mehbooba Mufti, Sajjad Gani Lone or send a message to them. In other districts, curfew is all the more strict. You can say that the entire eight-million population has been imprisoned like never before,"

In an interview with The Guardian, described that the revocation of Jammu and Kashmir's special status was "an insult to the dignity of the people."

Support the decision of government

The member of the Lok Sabha for Ladakh region, Jamyang Tsering Namgyal, praised the abrogation of Article 370 and the future formation of a separate Ladakh union territory. He is hoping the move will support jobs and development. He added "Under Kashmir, our development, our political goal, our identity, our language, all of these got lost; it is because of Article 370. He said that the Congress party is responsible

for that". Jamyang Tsering Namgyal also said that the move had support from all regions of Ladakh, including Kargil.

The move to abrogate Article 370 and set up a union territory in Ladakh was welcomed by the Ladakh Buddhist Association who then organized a thanks giving celebration in Leh on 8 August 2019, which was attended by political and religious leaders. The Buddhist community in Leh and Ladakh settled they have been long uncared for, the revocation and reorganization will help them guide their own destiny.

Ladakh on its 'first independence day, Banners were placed up thanking the Prime Minister Narendra Modi and commemorating the four youth activists who died while agitating for union territory status.

Similar celebrations were also reported in Jammu among the Gujjar Bakarwals, Sikhs, Valmikis and West Pakistan refugees, who were all victims of Srinagar's inequitable laws. The residents of Jammu felt that Jammu was always mistreated for funds and possessions, and they hoped the reorganization would bring in growth. Kashmiri Pandit refugees in Jammu hoped for rehabilitation.

The historian Ramachandra Guha said that the President of India had it seems that acted in "haste" and the revocation is an "arbitrary misuse of state power"

The constitutional researcher A. G. Noorani said that the Indian government's decision to abrogate Article 370 in the course of controversial means was "utterly and palpably unconstitutional", even fake. It is headed for a "showdown in India's Supreme Court".

Nobel laureate Amartya Sen criticized the government and said that he was "not proud as an Indian". He regarded the imprisonment of Kashmiri political leaders as "a classical colonial excuse" to prevent backlash against the Indian government's decision and called for a democratic solution that would involve Kashmiri people.

Indian novelist Arundhati Roy criticized the Indian government in her view piece in The New York Times.

Wajahat Habibullah said the government's decision was a "regressive and unwise" step. The leaders of the Indian National Congress were divided on the revocation of Article 370.

Some Congress leaders such as the Chief Minister of Rajasthan Ashok Gehlot, a congress leader destined the government's arrest of Kashmiri leaders Mehbooba Mufti and Omar Abdullah. Other leaders of Rajasthan Congress and Gehlot's cabinet welcomed the revocation. Chief Minister of Punjab Amarinder Singh, a congress leader also termed the revocation of Article 370 as "totally unconstitutional" and said "this will set a bad example as it would mean that the Centre could reorder any state in the country by simply imposing President's rule." The Punjab chief minister also banned any form of celebrations or protests in his state in matters relating to Article 370, ordering increased security to some 8,000 Kashmiri students studying in Punjab.

Rahul Gandhi criticized the Indian government for eye-catching the Kashmiri political leaders and called the detentions "unconstitutional & undemocratic."

A designation of opposition leaders had attempted to visit on 24 August Jammu and Kashmir to take stock of the location. The delegation was a 12 member team calm of Rahul Gandhi, Ghulam Nabi Azad, K. C. Venugopal, Anand Sharma, D. Raja, Sitaram Yechury, Dinesh Trivedi, Tiruchi Siva, Manoj Jha, Sharad Yadav, Majeed Memon, and D. Kupendra Reddy. However, the team was sent back from Srinagar.

Hundreds of people protested in New Delhi to complain against the Indian government resolution and called it a "death of Indian democracy". The protesters asked Indian government to think again its decision. D. Raja, General Secretary of the Communist Party of India, called the Indian government move "an assault on Indian constitution".

The Tamil Nadu-based regional Dravida Munnetra Kazhagam party leader M. K. Stalin, along with West Bengal-based All India Trinamool Congress party leader Derek O'Brien opposite the revocation. Stalin called the move as "murder of democracy", while O'Brien called it a "procedural harakiri".

Arjun Sharma, a noted casual reporter from Jammu penned in his article that while Ladakh was rejoicing the UT status it got after disintegration of J&K, Jammu was suspicious of whether the perceived inequity towards Jammu will end or not.

The Indian Government right its action by saying that this will help end violence and militancy in the state and enable people to admission government schemes such as reservation, right to education and right to information among other schemes.

The constitutional expert Subhash C. Kashyap, according to BBC News, states that the revocation was "constitutionally sound" and that "no legal and constitutional fault can be found in it".

Former Chief Minister of Haryana, Bhupinder Singh Hooda, supported the government's resolution saying that the Congress party has "lost its way".

Jyotiraditya Scindia, also supported the government's action to remove article 370. He wrote on Twitter, "I support the move on #JammuAndKashmir & #Ladakh and its full integration into union of India.

The Bahujan Samaj Party and its leader Mayawati, as well as Aam Aadmi Party leader Arvind Kejriwal supported the revocation of Article 370. Explaining her decision to support the revocation,

Mayawati stated that Article 370 and 35(A) had caused social, economic and political injustice in Jammu and Kashmir, and the people – including the Buddhists will get the long-pending benefits that were denied to them. She stated, "The Buddhist followers of Ambedkar were feeling happy".

The Telangana and Andhra Pradesh-based YSR Congress Party's parliamentary party leader V. Vijayasai Reddy supported the scrapping of Article 370 and termed the step as a "courageous and daring" step by Amit Shah. The Odisha-based Biju Janata Dal and Tamil Nadu-based All India Anna Dravida Munnetra Kazhagam party also supported the revocation of Jammu and Kashmir special status.

Jamiat Ulema-e-Hind, a prominent Indian Muslim organization, supported the decision to abrogate Article 370 saying that the integration of Kashmir with India is in the interest of Kashmiri people.

Pakistan's response

On 4 August 2020, Pakistan's government released an updated political map which included Pakistan's territorial claims on Jammu and Kashmir, Ladakh, the Siachen Glacier, the eastern banks of Sir Creek, as well as Junagadh and Manavadar in India's Gujarat region. The map also annotated Ladakh's boundary with China as "frontier undefined", whose rank would be formalized by "the sovereign authorities concerned after the settlement of the Jammu and Kashmir dispute." The map was adopted for official use throughout Pakistan. The government renamed the Kashmir Highway, which runs through Islamabad, as Srinagar Highway. On the occasion of the one-year anniversary of the revocation of Kashmir's special status, Pakistan also observed 5 August 2020 as Youm-e-Istehsal ("Day of Exploitation") nationally. Rallies and seminars were arranged to express solidarity with Kashmiris.

Various petitioners in Supreme Court

The Supreme Court of India agreed on 28 August 2019 to hear various petitions which are challenging the abrogation of Article 370 and the consequent division of Jammu and Kashmir into two union territories. It constituted a five-judge bench for the similar.

The Supreme Court of India issued notices to the government of India, seeking a reply to the petitions, in spite of pleas by the government in conflict that the notices could be cited in international forums such as the United Nations against India. The Supreme Court of India ordered the government of India to reply within seven days to a petition seeking an end to the limits on communications as well as other limits in the region.

The Supreme Court had heard the petitions on 30 September 2019. It allowed the central government to submit its replies to the petitions in 30 days and the next date of hearing fixed 14 November 2019. The petitioners wanted the court to issue a ban against reorganization of the state into two union territories but the court declined to issue any order. This means that the two union territories came into existence on 31 October 2019.

It will principally be challenged. However, the Supreme Court believes that Article 370, certainly, give far-reaching powers to the President. It might also take two to three years for a Constitution Bench of the court to make a decision such a challenge.

The possible grounds of challenge could comprise the quarrel that the conversion of Jammu and Kashmir into a Union Territory is in disobedience of Article 3, as the Bill was not referred by the President to the state Assembly. The Indian National Congress party members filed two petitions in the Supreme Court of India, requesting an urgent hearing. One challenged the revocation, while the other challenged the communications blackout and curfew in Kashmir region in which approximately 500 people were arrested, including several Kashmiri leaders.

The Supreme Court rejected the "urgent hearing" request, placing the petitions to its normal proceedings.

The legitimate implication of Instrument of attainment will also be examined by the court. Whether Article 370 was part of the basic arrangement will likely be considered. The use of Article 367 in amending Article 370 will also be examined.

Discussion

This move also fits in with Mr. Narendra Modi desired to show that the BJP is tough on Kashmir and Pakistan. After removing the Article India became stronger in international politics. It was a big step. And Modi and Shah Jodi won. Kashmir will no longer have a separate constitution, but it will have to stand by the Indian constitution much like any other state. By removing the Article 370, all Indian laws will be automatically applicable to Kashmir's and it will help to grow fast like other states of India. By removing the Article 370, people of outside the Kashmir will be able to right to buy property in Jammu and Kashmir.

The government of India also said that it is legally, because according to the Indian constitution, Article 370 could only be modified with the wellness of state government. They also argued it that it needed to be scrapped for integrate Kashmir. But many Kashmiris believe that the BJP ultimately wants to change the demographic character of the Muslim majority region by allowing non Kashmir's to buy land there.

But there has not been much of a state government in Jammu and Kashmir for over a year. In June, India imposed federal rule after the government only had to seek the consent of the governor who imposes its rule. The government said that it is well within its rights to bring in the changes and that similar decisions have been taken by federal governments in the past.

But expert's opinions are sharply divided. One constitution expert Subhash Kashyap told news agency ANI that this order was "constitutionally sound" and that "no legal and constitutional fault can be found in it."

In another constitutional expert, AG Noorani told BBC Hindi it was "an illegal decision, akin to committing fraud" that could be challenged in the Supreme Court. In this way different people have different opinion on removing the Article 370. And in other hand, opposition political parties could also launch a legal challenge.

As we know, Kashmir is an emotive issue, so many of people and political parties would be wary of opposing the move less they be branded anti India.

Conclusion

Article 370 has not been repealed a presidential order has 'diluted' its capacity, making the Indian constitution and laws passed by parliament valid in Jammu and Kashmir. However, Article 35 (A) is now canceled its provision rested on the structure of Article 370. One of its own provisions clauses 3 was used to abolish it. Clause 3 allows India to amend provisions of Article 370. A presidential order on 5 August construes the situation to the constituent assembly as the legislative assembly of Jammu and Kashmir and as the legislative assembly is in deferment and Jammu and Kashmir is under central rule. Parliament is deemed to have implicit the role of the legislative assembly. A statutory resolution by parliament recommended that the president declare all clauses of Article 370 out of action in the state. Jammu and Kashmir now is subject to the Indian constitution and flies the Indian flag.

Jammu and Kashmir is now union territory like Delhi and Pondicherry. It will have a legislative assembly and the leader of the single largest party or alliance will be Chief Minister. However, policing will continue with union government and the Indian panel code will replace the former state's Ranbir penal code. The wonderful journey of Jammu and Kashmir became again in the hand of India.

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