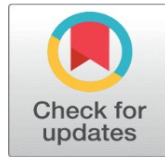
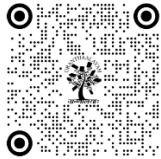


KASHMIR, BEFORE AND AFTER ARTICLE 370

Pratiksha Jha ¹, Dr. Mukul Bihari Verma ²

¹ Research scholar, University Department of Political Science Lalit Narayan Mithila University Darbhanga Bihar, India

² Associate Professor, University Department of Political Science Lalit Narayan Mithila University Darbhanga Bihar, India



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ABSTRACT

The Indian Supreme Court in 2023 had reiterated the government's decision to abrogate article 370. This research paper will attempt to understand the challenges and collective issue related to article 370. This study will also attempt to capture the situation of Kashmir after abrogation of article 370. This paper will examine the effects of the abrogation of article 370 on the Jammu and Kashmir and the country as a whole. It also explores the character and legal nature of article 370.

This paper will attempt to explore and analyse the political, social and economic implication of article 370, and also go on to examine the troubled history of article 370.

Keywords: Article 370, Jammu and Kashmir, Article 35 A

1. INTRODUCTION

On 11th December 2023, the Supreme Court of India in one of its historic hearing endorsed Union government's decision to abrogate Article 370. Article 370 of the Indian Constitution provided special status to Jammu and Kashmir (J&K). On 5th August 2019, the union government abrogated article 370 of Indian constitution. It allowed J&K to have separate set of laws such as Constitution, residents and ownership of property. Article 370(3) of the constitution of India gave power to the "President to repeal or amend article 370 with the consent of Jammu and Kashmir constituent assembly."

By virtue of Article 370 the parliament can only make laws related to communication, defence and foreign affairs. It comes under part twenty first of Indian Constitution titled "Temporary, transitional and special provisions". The title is self explanatory that it will have to go in near future. The Presidential order of 1954 was superseded by the Presidential order on 5th August 2019. The government abrogated Article 370 with two Presidential orders – CO272 and CO 273. The Presidential order CO 272 amended Article 367. Article 367 of Indian Constitution dealt with the Constitution interpretation. According to this order "The phrase 'Constituent Assembly' under article 370 shall be read as 'legislative assembly' of the state." At the time of abrogation, state was under President's rule. Hence, the legislative assembly of Jammu and Kashmir and its governor were replaced with the Parliament and the President. Thus, the President could revoke article 370, after the request of Parliament.

After the abrogation, Union Parliament on August 9, 2019 passed the Jammu and Kashmir Reorganisation Act 2019. This act bifurcated Jammu and Kashmir into two separate Union Territories (UTs). The UT of J&K with legislative assembly like Delhi and UT of Ladakh without legislative Assembly. Ladakh incorporated into Dogra regime in 1846, the General Commanding Zorawar Singh annexed Ladakh in 1834.

The union ministry of Home Affairs passed the Jammu and Kashmir Reorganisation (Adoption of state laws) order 2020, on March 31, 2020. This order abolished total 29 state laws and also altered Jammu and Kashmir 109 laws. The permanent resident of state also amended and those individual who have done their matriculation and senior secondary education exam from Jammu and Kashmir or resided for fifteen years are eligible for domicile benefits. The court of the land agreed that J&K did not have any internal sovereignty and it loosed its sovereignty the day document of accession was signed. The bench stated that article 370 was a temporary provision and election in state should be held before September 2024 and restoration of statehood as soon as possible.

Jagmohan, the former Governor of J&K, in his book *My frozen turbulence in Kashmir* wrote that "Article 370 had formed separatist psyche and it strengthened the subversive elements and above all article 370 was threat to India's unity and integrity. Article 1 of the Indian Constitution stated that "India that is Bharat shall be a Union of state and the territories specified in the first schedule and other acquired territories." The J&K comes on 15th in first scheduled, which means Article 1 of Indian Constitution applies to Jammu Kashmir entirely. The preamble of J&K's Constitution and the Article 3 of it stated "State of J&K is and shall be an integral part of the union of India. By presidential order under article 370, over time, other several subjects and provisions of the constitution of India were made applicable to Jammu and Kashmir.

2. HISTORICAL BACKGROUND OF ARTICLE 370.

Article 306-A of the Indian Constitution which later became Article 370 was moved on October 17, 1949 by N. Gopalaswamy Ayyangar but this was not a smooth process, Sheikh Abdullah the popular leader of National conference and Kashmir, criticised as he believed that without considering his view and the provision of Article 370 had been changed. It is mentioned in the A G Noorani's book "Article 370 a Constitutional History of Jammu and Kashmir. This book covers wide range of development specially politico- Constitutional in J&K since 1947 to 2010.

Maharaja Hari Singh signed the Instrument of Accession with India on 26 October, 1947. He acceded to India "In the exercise of my sovereignty in and over my said state." The paragraph one of the Instrument of Accession declares that "I hereby declare that I accede to the dominion of India with the intent that the Governor General of India, the dominion legislature, the federal court and any other dominion authority established for the purposes of the dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the dominion, exercise in relation to the state of Jammu and Kashmirsuch functions as may be vested in them by or under the Government of India Act, 1935, as in force in the dominion of India, on the 15th day of August 1947..." on 27 October, 1947 Instrument of Accession was accepted by the governor General of India.

Ministry of states, in July 1949 noted that "The Government of India have considered the matter in its various aspects and are of the opinion that in view of the present peculiar situation in respect of Jammu and Kashmir state it is desirable that the accession of the state should be continued on the existing basis till the state could be brought to the level of other states. A special provision has therefore to be made in respect of this state on the basis suggested above as a transitional arrangement." This was background of the article 370 and its inclusion in the Indian Constitution.

Ayangar who was the member of drafting committee of Indian Constitution, stated on the necessity of Article 370 that "In the first place, there has been a war going on within the limits of J&K. There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on, but the condition in the state are still unusual and abnormal. They have not settled down. It is therefore necessary that the administration of the state should be geared to these unusual condition until normal life is restored as in the case of the other states."

Even Sardar Patel, who played crucial role in integrating India after India's Independence and then home minister declared in the constituent assembly of India that "Given the special problem with which the J&K government is faced, we have made special provisions for the continuance of the state with the union on the existing basis. The constitution Advisor of our constituent assembly, B.N Rau initially proposed the notion for Jammu Kashmir's transitional clause. He inquired "Until we decide the Jammu and Kashmir's final position, is it feasible to have a transitional provision, which keeps the Instrument of Accession alive under the new constitution".

The then ruler of Kashmir Maharaja Hari Singh was also facing conundrum. "Maharaja Hari Singh in Kashmir inherited a unique conundrum, he was a Hindu, but held dominion over a Muslim majority besides, his was the only princely state bordering both India and the newly born Pakistan, giving rise to the possibility of accession to either nation. Further complicating the already tense birth of two nations was Maharaja Hari Singh's open discussion of an independent Kashmir, which only served to confuse and delay the question of the state's accession."

Dr. B.R. Ambedkar was not satisfied on Article 370. He told sheikh Abdullah that "You wish India should protect your borders, she should build roads in your area, she should supply you food grains and Kashmir should get equal status as India, but the government of India should have no rights in Kashmir to give consent to this proposal, would be treacherous thing against the interest of India and I, as the law Minister of India, will never do it." There are large section of people who asked why only issue being made for article 370 but not about article 371A and the like? In other states there was no separate citizenship, Constitution, flag. There is no exclusive vesting of residuary power etc. at the time of Article 370 introduction, in the constituent Assembly, Moulana Hashrat Mohani asked "why this discrimination please?" This clearly shows that now members of Constituent assembly were also doubtful about Article 370.

3. ARTICLE 370 AND KASHMIR

Col. (Dr) Tej Kumar Tikoo(Retd). Kashmir: It's Aborigines and their exodus stated that "Article 370 also has been misused by surversives to attain their goal by creating mindset of alienation." The popular saying was that "Article 370 is a matter of faith", but it is using by people with separatism mindset because it created psychology of separatism among Kashmiris, along with the emotional and psychological barriers between Kashmiris to rest of India. Wrongly got inculcated in Kashmiris mind that they are not a part of large Indian Identity, this notion was largely manipulated by Pakistan and separatist lobby, narrative that Article 370 is a shield that protects and preserves the Kashmiri cultural entity rejecting that India is a country which has multi-ethnicity, diversity that respects all cultures and people with different religious and cultural background living on this land peacefully since ages.

In the parliamentary debate of November 27th, 1963, Prime Minister Pandit Nehru stated that "Article 370 is not a permanent part of the Constitution." and "there is no doubt that Jammu and Kashmir is fully integrated." This statement of Prime Minister clearly explained that article 370 is not permanent it will be removed and Jammu and Kashmir was and is as much a state of Indian Union as any other Indian states. This article defines Jammu Kashmir relationship with India. The "Delhi Agreement" of 1952, took place between Jawaharlal Nehru and sheikh Abdullah. This agreement was struck for enhancing relationship between the union and the state.

The Home Minister Amit Shah, while speaking in parliament told that when "The proper moment arrives, the J&K will award full statehood again. As the decision for union territories after article 370 abrogation was for the maintenance and preservation of public order. The potential deadly civilian unrest and terror attack was reason behind the rearrangement of J&K. The government supported its actions of abrogating article 370 by describing it as a threefold problem, first one is article 370 was a block prevents Kashmir to connect and bring closeness to the rest of India, next is article 370 was a source of separatism and extremism in the valley and last one is this article provided Pakistan to gain a base in valley. Kashmiris regarded it as the greatest obstacle between state and India. There was no minorities reservation available for minorities in state. Hence, no reservation existed in Jammu and Kashmir. Under Article 35A of the Indian constitution, the state's assembly can define "Permanent residents" of the state. Under this provision the residents of Jammu and Kashmir had exclusive rights and benefits, which make Kashmiris different from other Indian citizens. This article was added in constitution by the constitutional order of president, 1954. This article was often criticized for being discriminatory. Only permanent resident can buy land in state, cast vote and apply for government jobs. Even the west Pakistani refugees, who migrate during partition was not given their rights even after seven decades.

Article 370 created emotional, legal and constitutional obstacle between union of India and Kashmir. Article 370 has been misused by different political party since beginning, to allure their voters in the name of Article 370 and to appease vote bank various political parties used Article 370 as tool to achieve their objective. The exodus of Pandits from Kashmir in 1990s was somehow related to the same separatist fanatical mindset that advocated the freedom of Kashmir from Indian Union. This mindset considered Pandits as spy of India, largely seen as India's presence in Kashmir and we have above explained how Article 370 was misused by some people. According to Ministry of Home affairs, till 2021, "As many as 520 migrant candidates have returned after abrogation of Article 370 and they have get jobs under the rehabilitation

package." Now Kashmir Pandits have a ray of hope for their homecoming as this abrogation pave way for Pandits returning to the valley in near future.

4. BEFORE AND AFTER ARTICLE 370.

Article 370 allows Jammu and Kashmir to framed policies independently and only after the concurrence with state, central government policies could be implemented. Due to Article 370, central vigilance commission and Right to information cannot be applied to J&K. Hence, there was lack of transparency which is base of parliamentary form of government, and government was not responsible for transparency and accountability. On October 16, Sardar Patel wrote to Aiyangar about fundamental rights and directive principles of state policy would not applicable to Jammu and Kashmir. Patel was worried that these basic characteristic of our constitution which is not just essential but necessary for our democracy would not applicable to a state. He wrote "you can see the paradox of the state joining India without acknowledging these provision." It was impacting the Relationship between India and Kashmir, but it poses threat to national security, as Pakistan's sponsored terrorism Caused separatism in valley. This Article has been prevented marginalised group such as Dalits, Scheduled tribes and women to take advantages of central governments schemes. Parliament has restriction to make laws for J&K. Under this Article special power was exercised by J&K such as separate constitution, dual citizenship, separate flag. Article 35 A was introduced through the order of the president in 1954 under Article 370. It was later added to Indian Constitution and was not initially part of the original constitution. It defined the "Permanent residents" of J&K and also empowers special rights to citizen of J&K.

Article 360 which is financial Emergency was not applicable to J&K, No right to Information, Right to education, no right and Reservation for religious minorities such as Sikhs and Hindus, also Indian from other states cannot buy property in J&K and if women from J&K Married into other states, cannot buy property in J&K and if women from J&K married to other Indians except Kashmiris, she would loos her citizenship of state hence, she got no right which she enjoyed earlier. After Article 370 revoked all above Special powers terminated. Now after article 370 revoked, forest Right Act, the right to fair, whistle blower act, scheduled cast and scheduled tribe prevention of atrocity act have implemented in J&K. the tourism sector has increased after Article 370 abrogation. In 2022, the UT of J&K was visited by 1.62 Crore tourists. It is largest number of tourists ever since 75 years of independence.

The Professor Emeritus at the University of Delhi, Dr. Mahendra Pal Singh stated on the interview of Supreme Court Observe that "The Supreme Court has done the right thing." On the question of Supreme Court's verdict on Article 370. According to Honourable Home Minister Amit Shah, post abrogation of Article 370 and 35 A, "70% decline in terrorism related incidents, 81% reduction in civilian deaths and 48% decline in deaths of security personnel and zero incidents of organised stone pelting in 2023 and zero organised strikes took place."

5. ARTICLE 370 AND INDIAN FEDERALISM.

Article 370 was an example of Asymmetric federalism. The asymmetric federalism in Indian Constitution recognises the vast diverse nature of this country. Federalism is division of both legislature and executive power between Union and regional government. It also defines as sharing of political and Constitutional power. According to Riker (1975), "federalism is a result of rational bargain for political and economic gain."

We often hear this statement that J&K's special status is an example of Asymmetric federalism. In simple terms Asymmetrical federalism is a flexible type of centre that allows separate set of power to some states. Supreme Court in its verdict acknowledge that in Indian Constitution there are specific arrangements to particular states, and Article 371 A to 371 P which are specific arrangement for particular states, are feature of Asymmetric Federalism. The article 370 which allowed J&K to have separate set of law and it's also example of Asymmetric federalism. The judgement asserts that "The difference, however, remains one of degree and not of kind. Different states many enjoy different benefits under the federal set up but the common thread is federalism."

6. CONCLUSION

Article 370 was virtually disrespected to our Constitution. Article 370 somehow assumes that Indian Constitution is not liberal, humanistic and inclusive. It also not enlightened enough to afford protection to social, religious, cultural, educational and linguistic rights of the Kashmiri Muslims, and they could be only protected by separate constitution and

article 370. Its somehow bring disgrace to the Indian Constitution and place insecurity among Indian Muslims as their rights are protected by Indian Constitution. Over the years, Article 370 has been exploited by vested interests. It strangled the very idea of India, and created hurdle for development and economic advancement of J&K. It was a hurdle in decentralisation of power that other Indian states enjoyed. It prevented common Kashmir to emerged with the mainstream India as it provided separate flag, dual citizenship and only serves the interests of 'elites.' by abrogating Article 370 in 2019, the union government denounced the politics of separatism. It brings equality and removed unfair and unjust law. The recent development and investment in J&K manifests that forthcoming days surely bring more growth, finances, equality and allowed people of J&K to lead a dignified and quality life like their fellow Indians.

7. RECOMMENDATIONS

Groundwater is a main source for drinking and domestic purposes in study area. So based on the findings of this study we recommend that: community must not depend totally on ground water as main source for fluoride, and community in study area should be use other sources for fluoride intake to obtain on daily required amount of fluoride for protection the health.

CONFLICT OF INTERESTS

None.

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