

Kashmir Before and After Article 370: An Analysis

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ABSTRACT

An attempt is made in this paper to analyse the impact of Article 370 on the Kashmir politics in particular and Indian politics in general. A comprehensive analysis of the political history of Kashmir in particular and India in general under which Article 370 came into existence is also done in this paper. This paper questions the very spirit of Nehru's ideas of nationalism and secularism as he provided a platform for the repression of the minorities in the State of Jammu and Kashmir on the one hand and on the other hand he secured the minorities in the other states of India. The majority communalism and the discrimination against the minorities which has been produced by the provisions of Article 370 during the Nehru's era are duly focused upon in this paper. The violation of the human rights of the minorities due to the failure of the government of J&K and passive attitude of the Central government towards the problem of terrorism and secessionism in Kashmir are analyzed under the lenses of political currents of the voting politics in India. At the end article vividly explains about the new opportunity and avenues that provided to the people of Jammu & Kashmir after the revocation of the Article 370.

The long pending debate over the Constitutional validity or invalidity of the Article 370 is solved with the passage of Jammu and Kashmir (Reorganisation) Bill, 2019 by the Parliament with thumping majority. The Act reorganizes the state into two union territories, namely union territory of Jammu and Kashmir, and that of Ladakh. While the former will have a legislative assembly, Ladakh will be administered by a lieutenant governor alone. The union territory of Ladakh will include the districts of Leh and Kargil, while all other districts will be accorded to Jammu and Kashmir. Out of the six Lok Sabha seats allocated to the state of Jammu and Kashmir, one will be allocated to Ladakh and five will be accorded to the Jammu and Kashmir union territory. The High Court of Jammu and Kashmir will function as the High Court for both the union territories.¹

The Act provides that the administration of the Jammu and Kashmir will be as per Article 239A of the Indian constitution. Article 239A, originally formulated for the union territory of Puduchery, will also be applicable to Jammu and Kashmir. A lieutenant governor appointed by the president will administer the union territory of Jammu and Kashmir, which will have a legislative assembly of 107 to 114 members, with tenure of five years. The legislative assembly may make laws for any of the matters in the state list except "public order" and "police", which will remain as the law-making powers of the union government. A Council of Ministers including a Chief Minister will be appointed by the lieutenant governor from the members of the legislative assembly, with the role to advise the lieutenant governor in the exercise of functions in matters

¹ The bill was introduced on 5 August and passed in Rajya Sabha on the same day and next day it was passed by the Lok Sabha. It received the President's assent on 9 August 2019. The introduction of the bill was preceded by a presidential order under Article 370 of the Indian constitution that revoked Jammu and Kashmir's special status. Jammu and Kashmir Reorganization Act, 2019, "Constitution (Application to Jammu and Kashmir) Order, 2019", egazette.nic.in, accessed: 11-9-2019, 10:30pm.

under the legislative assembly's jurisdiction. In other matters, the lieutenant governor is empowered to act in his own capacity, which will also have the power to promulgate ordinances having the same force as acts enacted by the legislature.²

It becomes pertinent to mention here that division of the state of J&K into 2 Union territories has become a matter of serious debate among the intellectuals and the political parties. The views on the division of state are divided along with the ideological lines and in the some political quarters it has been taken as a challenge to the old image of the secular India.³ On the other hand the division of the state of J&K is welcomed by Buddhist, Sikhs and Hindu minorities of the State who were suffering due to the majority communalism which was created by the provision of the Article 370. Jammu and Kashmir had three distinct areas: overwhelmingly Muslim-majority Kashmir (95% Muslim) with a population of nearly 7 million people, a Hindu-majority (66%) Jammu with a population of 5.35 million people and a 30% Muslim population, and Ladakh, which has sparse population of 287,000 people, a Muslim plurality, or relative minority, at 46%, a Buddhist minority at 40%.⁴

The question and counter questions has been raised into the social and political domains of the national and international politics since the passage of the Jammu and Kashmir (Reorganisation) Bill, 2019. A genuine enquiry and analysis of the socio-historical and political circumstance of the Kashmir in particular and India in general under which the Article 370 was promulgated then and under which it has been kept alive over

² "Jammu & Kashmir Reorganisation Bill passed by Rajya", indianexpress.com › India, accessed: 9-12-2019, 10:00pm.

³ It is pertinent to mention that such a bold step of the Central government to integrate the people of the Jammu and Kashmir with India union that is suffering from the menace of terrorism from a long time is criticized by the political opposition on the pretext of right to freedom expression speech, assembly, human rights and secularism.

⁴ "Jammu and Kashmir(State)-Wikipedia", en.wikipedia.org › wiki › Jammu_and_Kashmir_(state), accessed :9-10-2019, 9:30am.

70 year can help us to find out the answer of many unsolved questions. The first and foremost question is that what is article 370, how and why it has been promulgated, whether it provided a *special status* to the State of J&K in the federal set-up of the Indian Union. If yes: why this privilege has been given only to the State of J&K. Whether there was any political opposition to the Article 370 earlier or not? How the revocation of 370 will impact the State of J&K in particular and India in general.

Article 370 of the Indian constitution bestow special status to Jammu and Kashmir a region located in the northern part of Indian subcontinent which is an integral part of India. The article was drafted in Part XXI of the Constitution: *Temporary, Transitional and Special Provisions*. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether. After consultation with the state's Constituent Assembly, the 1954 Presidential Order was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending the abrogation of Article 370.⁵

The motive of Article 370 has been further strengthen by Article 35A of the Indian Constitution that empowered the Jammu and Kashmir state's legislature to define "permanent residents" of the state and provide special rights and privileges to those permanent residents.⁶ The President Order i.e., The Constitution (Application to Jammu and Kashmir) Order, 1954 – issued by the President of India on 14 May 1954, under Article 370. The state of Jammu and Kashmir defined these privileges to include the ability to purchase land and immovable property, ability to vote and contest elections, seeking government employment and availing other state benefits such as higher education and health care. Non-permanent residents of the state, even the Indian citizens were not entitled to these 'privileges'.⁷

The Presidential order of 1954, officially The Constitution (Application to Jammu and Kashmir) Order, 1954 came into force on 14 May 1954. Issued with the agreement of the State's Constituent Assembly, it was a comprehensive order seeking to implement the 1952 Delhi Agreement. Arguably it went further than the Delhi Agreement in some respects. The effect of the Presidential orders issued since 1954 had been to extend 94 of the 97 subjects in the Union List (the powers of the Central Government) to the State of Jammu and Kashmir, and 260 of the 395 Articles of the Constitution of India.

The provisions implementing the Delhi Agreement were:

- Indian citizenship was extended to the 'permanent residents' of Jammu and Kashmir (formerly called 'state subjects'). Simultaneously, the Article 35A was added to the Constitution, empowering the state legislature to legislate on the privileges of permanent residents with regard to immovable property, settlement in the state and employment.

- The fundamental rights of the Indian constitution were extended to the state. However, the State Legislature was empowered to legislate on preventive detention for the purpose of internal security. The State's land reform legislation (which acquired land without compensation) was also protected.
- The jurisdiction of the Supreme Court of India was extended to the State.
- The Central Government was given power to declare national emergency in the event of external aggression. However, its power to do so for internal disturbances could be exercised only with the concurrence of the State Government.

In addition, the following provisions which were not previously decided in the Delhi Agreement were also implemented: Financial relations between the Centre and the State were placed on the same footing as the other States. The State's custom duties were abolished. After the President order of 1954 many Parliament Acts has been extended to State of Jammu and Kashmir and forty-seven Presidential orders were issued between 11 February 1956 and 19 February 1994, making various other provisions of the Constitution of India applicable to Jammu and Kashmir. All these orders were issued with the 'concurrence of the Government of the State' without any Constituent Assembly. Some of these Presidential orders were issued when the state was under President's rule and had no elected government in Kashmir.⁸

The next question that why the State of Jammu and Kashmir have been given this special status as the other princely states which merged with India after Independence were not given. The first and foremost enquiry is that whether the terms and conditions of the merger of the state of Jammu and Kashmir with Indian union were different from the other Princely states. A cursory glance over the merger of the Princely States with India proved that the merger of the other Princely States was under the same terms and conditions as the J&K was.

The state of Jammu and Kashmir's original accession, like all other princely states, was on three matters: defence, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular Saurashtra Union, Travancore-Cochin and Mysore. Even though the States Department developed a model constitution for the states, on 19 May 1949, the rulers and chief ministers of all the states met in the presence of States Department and agreed that separate constitutions for the states were not necessary. They accepted the Constitution of India as their own constitution.⁹

If the terms and condition of the merger of the State of J&K with the Indian Union were same and why J&K was allowed to have a Separate Constitution and Flag and special legislatures

⁵ "Article 370 of the Constitution of India – Wikipedia", En.wikipedia.org > wiki > Article_370_of_the_Constitution_of_India, accessed: 9-10-2019, 9:35am.

⁶ *Origin of Jammu and Kashmir: Analysis of Article 370 in Present Scenario*. Lex Hindustan. Archived from [the original](#) , accessed: 12-8-2019, 9:30pm.

⁷ "The Constitution (Application to Jammu and Kashmir) Order, 1954" (PDF), accessed: 12-8-2019, 10:00 pm.

⁸ Ibid.

⁹ V.P. Menon, *The Story of Integration of the Indian States, 1956*. Orient Longman, Bombay, Calcutta, Madras, p.400

powers regarding Citizenship of the State.¹⁰ There may be multiple arguments like: Nehru idealism, cold war politics, and the western interests etc, initially but why the condition of the state has been allowed to deteriorate for a long time. The answer is very simple and that is the vested political interests and the inactive role of the Central government over the Kashmir issue. The ruling political parties had preferred to adopt the adhoc measures or rule over the state either by the President Order or by making agreement with the local leaders, instead of searching a long term and permanent solution of the Kashmir problem.¹¹

The next question is that how and why the Article 370 has come to end just within a few days, whether there was any political movement against the Article 370 or not earlier. If there was a political movement against Article 370, then why it took a long time for the Parliament just to pass a Bill which can be passed with a simple majority. These questions probe the further investigation of the political history of Kashmir in particular and India in general.

It is very pertinent to mention that the secularism and socialism have been as projected as the pillar of the democracy in India and the word secularism has been inserted in the Constitution by 42 Constitutional Amendment although originally it was not part of the Constitution. However, the case of Jammu and Kashmir was an exception to the Indian commitment to Secularism and Equality Before the law as the Legislative Assembly of the J&K has been given some exceptional powers regarding the Citizenship.

It is unfortunate to mention that the India's commitment to the uneven secularism has created a problem for the minority communities in the state and the legislative special privileges has been misused by the majority community against the minorities in the State. The soft stand of the Central Government and the fear of loosing of the vote bank of a particularly community by a dominant political party across India has created a confusion that the Kashmir is free for communalism and atrocities against the Kashmiri Pandits.¹²

Under the designed politics the policy of repression and subjugation against the nationalistic was adopted by the Sheikh Abdullah. He made every attempt to convert the State of J&K into a Muslim state and took the benefit of the environment provided by the Cold War politics and soft stand of the Indian government against his communal agenda. But it doesn't mean that there were no opposition to Sheikh Abdullah communal politics and separatism created by Article 370, the voices for the full integration of J&K and abolition of the 370 are

¹⁰ It is also to mention that the Indian state had never taken any military operation to merge the State of J&K with the Indian Union, infact it was the King of J&K who requested the Indian government to save him and his Princely State from the Pathan Invaders who were supported by the Pakistan army. The accession was the voluntary act of the King. Ibid, pp.397-405.

¹¹ The political release of Seikh Abdullah and his associate by the Nehru Government in Kashmir Conspiracy and The formation of Coalition Government with National Conference by the Congress after the revocation of Kashmir Conspiracy Case can be taken as the prime examples of the passive and pragmatic attitude of the central government on the issue of national integration and terrorism in the Kashmir.

¹² It is pertinent to mention that after the Sacrifice of Dr. Shyama Prasad Mukerjee, the supremacy of the Indian Constitution and Indian Flag was established in the State and the requirement of permit for the Indian Citizens to enter in the state of J&K was also abolished. Kuldeep Chand Agnihotri, 2019, Jammu-Kashmir ki Ankahi Kahani (in Hindi) , Prabhat Parkashan, New Delhi, see, (introduction by L.K., Advani)

even older than the merger of Kashmir as Princely state with the Indian Union.

The nationalist like Pandit Prem Nath Dogra and his colleagues foresaw this imminent danger in the form of despotic rule; hence, they decided to float the alternative political party that should promote nationalistic agenda in Jammu and Kashmir. The Parja Parishad was founded in November 1947, with an objective of full integration of Jammu and Kashmir with the rest of India like any other princely state acceded to India. The leaders of Praja Parishad were considered a threat by Sheikh Abdullah; hence, he put Pt. Prem Nath Dogra and his colleague behind the bar in February 1949. Section 3 of Ranbir Penal Code (RPC), which is known as 'Daffa Tun' i.e. put in lockup without any trial, was slapped on Pt. Dogra. By 1949 Sheikh imprisoned as many as 294 Parishad workers. Dr. Shyama Prasad Mookerjee died under mysterious circumstances on June 23, 1953, after he was kept in Srinagar jail by Sheikh Administration.¹³

The infuriated attempts of the Sheikh Abdullah to promote his communal agenda and discrimination against the people of Jammu and Ladakh region dominated by the Hindus and Buddhists and his urge for Independence during his interviews with the foreign journalists forced the Indian government to doubt the role of Sheikh-Abdullah. On 8 August 1953 Sheikh Abdullah was dismissed as Prime Minister by the then Sadr-i-Riyasat (Constitutional Head of State) Dr. Karan Singh on the charge that he had lost the confidence of his cabinet.¹⁴

Soon Seikh Abdullah was arrested along with 22 supports in 1953 itself for anti-national activities. Before his dismissal, arrest, brief release and re-arrest under the case, the intelligence agency had collected ample proof regarding the Sheikh's links with Pakistan and of his speeches and activities to these affect.¹⁵ Between 9 August 1952 and 29 April 1958 the counsel of government in his several briefs before the court, stated that the accused and their accomplices both inside and outside the state collaborated with Pakistani officials to overthrow the Government with violence. The trials began in 1959 and were heard over several years, when in 1962 the special Magistrate, transferred the case to higher court that all the accused be tried under Indian Penal Code, under sections for which punishment was either death or life-imprisonment. However, Sheikh-Abdullah along with his associate was release by Central government with political negotiation instead of following the legal procedure for his trail.¹⁶

The political release of the Sheikh Abdullah and his coming back to the Chief Minister's Office in 1975 with the Congress Support after Indira-Sheikh accord of 1974 has created a lot of confusion and frustration not only among the nationalistic but also in the Kashmiris, as after the accord Seikh give up the demand of Plebiscite in lieu of people being given the right to self-rule by democratic elected government.¹⁷

In this designed politics the regional political parties in Kashmir engaged to crop from the idea of separatism and a

¹³ "When the first nationalist movement of India in J&K against", www.jammukashmirnow.com > Encyc > March-5-1953-When-the-fir, accessed: 9-9-2019, 9:30pm.

¹⁴ "Kashmir Conspiracy Case – Wikipedia", [en.wikipedia.org > wiki > Kashmir_Conspiracy_Case](http://en.wikipedia.org/wiki/Kashmir_Conspiracy_Case), accessed: 9-9-2019, 9:30pm

¹⁵ IBID.

¹⁶ Ibid.

¹⁷ "SeikhAbdullah", [en.wikipedia.org > wiki](http://en.wikipedia.org/wiki/SeikhAbdullah), accessed: 9-9-2019, 9:30pm.

fuel to separatists was provided by the Pakistan government by giving them financial support, military training and political support at the international level. Simultaneously the soft stand of the Central government to the violent incidents in Kashmir and the lack of comprehensive political and security strategy has provided a breeding ground to the separatists in the Kashmir.¹⁸

The lack of the comprehensive policy and will at the centre resulted into the strengthening of the fundamentalists in the Kashmir valley. It was during the 1987 state elections when various Islamic groups including Jamaat-e-Islami gathered under a single banner and floated a Muslim United Front (MUF). They openly called that they want the political administration of according to Quran; it means that the Indian Constitution and Secularism was not accepted to them. But the MUF couldn't cross the four seats, even though it had polled 31% votes in the election.¹⁹ After losing the elections the fundamentalists alleged that the elections were manipulated by Indian government and the formation of a real democratic government in Kashmir is not possible under the Indian Union.

In July 1988, a series of demonstrations, strikes and attacks on the Indian government began the Kashmir insurgency, which during the 1990s escalated into the most important internal security issue in India. The voices of protest and resentment against the gruesome violence of terrorists have been not only completely silenced by the terrorists in the Kashmir valley, but the youth and women are also forced to throw stones on the Indian security forces during their search operations.²⁰

The dictates of the terrorist forced the people to shut their shops business and the schools across the valley and even the dress code for the women was decided by them the non-compliance can be punished by the terrorists with the torture and death warrants now in the valley.²¹ The large numbers of people were forced to join the funerals of militants and they were also obliged to shut their business for many days to mourn the killing of these militants.²² The environment of fear-psychos created by the terrorists and their supporters created a

misconception among the common people that the terrorists are ruling the state against the well equipped Indian security forces.²³

The economy of the state was ruined as the business of tourism is impacted by the violence and fear psychos created by the indiscriminate violence of terrorists. The wood industry and the ecology of the state have suffered a lot and area under the forest cover has been decreased to a large extent. The natural resources were getting empty due to the lack of responsible and democratic governance and the smuggling of the rare species and herbs with café of the revival of these resources by the anti-social elements in the state.²⁴

Kashmir, once known for its mesmerizing beauty, peace and tolerance in the world, has been seen as a bloody conflict zone, since 1989. Over the years, a number of Confidence Building Measures (CBMs) were taken by the Central and State government, but all the initiatives failed to bring long-term peace in the region. The government initiatives to have a dialogue with the separatists and peaceful solution of the problems have been derailed by the violence of ultras many times. The experiences of holding talks with the ultras and the separatists by the three Prime Ministers of India had also not yielded any positive results.²⁵

The central government has decided to end the menace of terrorism and secure the future of the people of Jammu and Kashmir by adopting the policy of "nip the evil in bud" and increased the strength of security forces in Kashmir after the Pulwama attack. The security forces are given the emergency powers to deal with the terrorists in the inside and outside of the territory of the state.²⁶

The constitutional or legal illusion of the Article 370 under which separatists and the anti-national forces thought that the case of Kashmir is different from the other states of Indian union and centre can't intervene in the internal matters of the state has been also kaput by the revocation of the article 370 by the Parliament. The Central government took very active steps to derail all the plans of the separatists forces by divided the J&K into 2 Union Territories with the passage of Jammu and Kashmir (Reorganisation) Bill, 2019 by the Parliament. The government move on the Kashmir issue not only showed

18 Editorial, "India revises Kashmir death toll to 47,000". Reuters India. Archived from the original accessed: 8 -5- 2019, "Pakistan supported, trained terror groups: Pervez Musharraf" Business Standard, Press Trust of India, accessed: 28-10- 2019, 9:30pm.

19 "Kashmir insurgency". BBC News. Archived from the original on 22 February 2017, accessed: 21-9-2019, also see: Jeelani, Mushtaq A. (25 June 2001). "Kashmir: A History Littered With Rigged Elections". Media Monitors Network. Archived from the original on 4 March 2019, accessed, 9-9-2019, 10:30am, "Hussain, Altaf (14 September 2002). "Kashmir's flawed elections". BBC News. Archived from the original on 26 February 2017, accessed: 10-9-2019, 10:30am, "How Mufti Mohammad Sayeed Shaped the 1987 Elections in Kashmir". The Caravan. 22 March 2016. Archived from the original, accessed 20-8-2019, 10:00pm.

20 "Stone pelting in Kashmir – Wikipedia", en.wikipedia.org > wiki > "Stone pelting in Kashmir, Toy guns, covert cops: Jammu and Kashmir Police plants its men among stone pelters to catch real culprits in action - Firstpost". www.firstpost.com, accessed: 10-09 -2019, 10:00am

21 "Kashmir women forced to wear burqas - Irish Times ", www.irishtimes.com, also see: "Kashmir women face threat of acid attacks from militants" www.independent.co.uk. 10-09 -2019, 10:10am

22 "Taking steps to prevent militants appearing at funeral of their ", www.indiatoday.in, also see: "Cops seek to ensure low-key funeral of terrorists in J&K", timesofindia.indiatimes.com., "Terrorist threats against opening schools, shops in Kashmir ", www.indiatoday.in, accessed: 10-09 -2019, 10:30am

23 "How terror in Kashmir has gone from bad to worse", www.businesstoday.in, also see: "Kashmir's disturbing new reality the young militants of Kashmir", www.hindustantimes.com, accessed: 10-09 -2019, 10:30am

24 "Article 370 revoked: How Articles 370, 35A killed Jammu & Kashmir's economy", www.businesstoday.in, also see: "Impact of terrorism on Jammu & Kashmir's ecology and economy", www.efsas.org, 'Impact of terrorism on Jammu & Kashmir's ecology ... Insurgency in Jammu and Kashmir – Wikipedia" en.wikipedia.org, accessed: 9-07-2019, 10:30pm.

25 " what is the Vajpayee doctrine on Kashmir that Mehbooba ..", www.indiatoday.in , accessed: 11-09-2019, 1:00 pm., also see: "Vajpayee's 'insaniyat' remark wasn't one-off, his team worked", theprint.in > Opinion, 11-09-2019, 1:30pm "Manmohan Singh calls for a fresh beginning in Kashmir", www.indiatoday.in, " Kashmir dialogue must, but solution 'within Constitution': PM", www.afternoonvoice.com, accessed: 12-09-2019, 10:30pm.

26 "Pulwama to Surgical Strike 2: Production houses put up tough fight for film titles", www.indiatoday.in, also see; "19 minutes, 12 jets, a big target: This is what the IAF did in Pakistan while you were asleep", economicstimes.indiatimes.com, accessed: 9-9 2019, 10:30 am, "Balakot airstrike – Wikipedia", en.wikipedia.org, "After Pulwama attack, Modi govt gives emergency powers to armed forces", economicstimes.indiatimes.com > News > "Defence Pulwama terror attack: Security forces given free hand, says", www.business-standard.com > Economy & Policy > News, accessed: 12-09-2019, 10:30pm.

that India will no longer tolerate the terrorism and anti-national forces within or outside its territory but it also proved that the Central Government is committed for the fast growth and development of the region which is suffering due to the Article 370 and terrorism from long time.²⁷

What will Change in J&K now

After Kashmir's special status is gone, people from anywhere in India will be able to buy property and permanently settle in the state. The constitution of India will be implemented in the J&K without any exception; all the laws passed by the Parliament there before and after the re-organisation of the state will be implementable to the J&K. Ladakh region is also being given the status of a Union Territory, without legislature.²⁸

The state will witness a fast growth as foreign direct investment and the entrepreneurs from the other states of India will enter freely in the market of J&K. It will enhance the spirit of multi-culture as now people from other states will be able to purchase property and have their residents in the J&K. The region will come under the direct administration of centre which will not only help to improve the position of law and order but it will be congenial to the establishment of the permanent peace in the state.

Conclusion

The revocation of the Article 370 is a strong step by the Central government which is done through the legitimate procedure of the Constitution and it will help to end the illusion of the special status and legislative privileges of the state of Jammu and Kashmir against the Parliament of India. It will help the all-round development of the state as the new avenues of investment and development will be open by the foreign direct investment and the central government projects for which Article 370 was creating the political hurdles. Moreover, it will help the inclusive development as the regions with minority communities will not be discriminated by the government while distributing the development grants, as it was done by the earlier state government.

²⁷ "Revocation of the special status of Jammu and Kashmir", en.wikipedia.org › wiki, also see: Removing Article 370, 35A key steps in fulfilling Sardar Patel's. www.indiatoday.in › India, accessed: 30-08-2019: 10:00am.

²⁸ The Constitution (Application to Jammu and Kashmir) Order, 2019 comes into force "at once", and shall "supersede the Constitution (Application to Jammu and Kashmir) Order, 1954, the presidential promulgation says: "All the provisions of the Constitution shall apply in relation to the state of Jammu and Kashmir."