

A Research Paper on the Genesis, Chronicles, Efficacy, Abrogation and Aftermath of Article 370

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Abstract

Since the jubilant independence of India, the state of Jammu and Kashmir has relished the peerless milieu spanning nearly over seven decades, compared to the other states of the federal republic. What benchmarks have radiated in its character to reaffirm its worth more than mere a political state and making it the lighthouse for major Indian diplomacy, defence strategies and statehood policies. With intention of unveiling the causes, this research paper exclusively deals with the genesis, chronicles, efficacy, abrogation and aftermath of what is long debated part of the Indian Constitution- Article 370.

Keywords: Article 370, Government of India, Jammu and Kashmir, Ladakh, Jammu and Kashmir Reorganization Act 2019.

Introduction

Short after the inauspicious partition of India and newly formed state Pakistan, the prevalent princely states were offered to choose a dominion one or other so the power accession might smoothly take place. Jammu and Kashmir region of "The princely states of Jammu and Kashmir" was the biggest land amasses of India with a Hindu Maharaja named Hari Singh and majority of its demographics in the favour of Muslims. With the micawberish frame of mind, Maharaja had the notion of Independent Jammu and Kashmir state, neutral to both India and Pakistan. Though Mountbatten and others have tried to bring Maharaja to the tables of talk but couldn't succeed due to the evasive sentiments of the latter and his advisers like Ramchandra Kak and Major General Janak Singh who both served as his prime minister at the conclusive hours of division. After the planned invasion from the state of Pakistan broke out on 22 October 1947, coined in the terms of "Tribal Invasion" and liberty movement, the state nearly brought to the verge of extinction and Maharaja with no hope from the skies, finally agreed and signed on the Instrument of Accession. India with a fair tenor and as accordance with Nehru's assurance of plebiscite approached the United Nations which led to United Nations Security Council Resolution 47 of 21 April 1948. The state bestowed its decisive powers of defence, external affairs and communication to be resided with Government of India, which honoured its former assurance to the state with the introduction of Article 370 in its constitution which was enacted on 17 November 1952. The clause enabled the state to have its own Flag, Constitution and special autonomous stature. The state assembly was also vested with the power of marking the extent to which central laws are to be exercised. The President of India issued "The Constitution (Applicable to Jammu and Kashmir) order 1950" notifying the application of the articles of the Indian constitution to their respective limits in the state operations. A sovereign state legislative assembly was also formed to nurture the separate constitution for the state on 31st October 1951 and was granted a term of five years for doing the same. In the 1952, President of India order was published at the request of the state legislative assembly and the monarchic nature of the state was abolished and a new head of state post named "Sadar-I-Riyasat" was established. The Delhi Agreement 1952 between Nehru and the then Prime Minister of Jammu and Kashmir Sheikh Abdullah was inked the same year and elaborated the path for Indian Government and its machine functioning in the state. An extensive constitutional order of the President with the endorsement of Jammu and Kashmir constituent assembly regarding the implementation of the Delhi Pact was issued in 1954 which succeeded its predecessor of 1950. It was specified in its primordial character to serve the constitutional positioning of the state in accordance with the center and union

constitution. Detailed and distinctive constitution of the state of Jammu and Kashmir was approved by the J&K constituent assembly on 17 November 1956 and came into impression on 26 January 1957. However the constituent assembly dissolved itself without its recommendations of repealing Article 370 which made the provision look like permanent feature for the state. Furthermore in 1957, Article 35A was inserted through the Constitution (Application to Jammu and Kashmir) Order by the President of India. According to which no outsider resident was allowed to own assets and possession or get a state job in the state of Jammu and Kashmir. Additionally forty seven orders of the President were also issued to extend the union constitutional provisions running capacity into the state dated between 11 February 1956 to 19 February 1994 creating similarities between both of the scriptures.



Efficacy-

The Article 370 along with the constitution of former state of Jammu and Kashmir have lead the many arguable foundations for the state as well as nation, with its most embryonic character of making it distinctive with the fellow states and leading it to its separative and complex properties. The presidential orders regarding the article 370 mention Jammu and Kashmir being a constitutional state of India yet the Parliament can't change its name, boundary or area without the ratification of the state legislative assembly. All the international treaties regarding the subjects of state would also be needed to be verified form the state assembly which was in contradiction of the fellow states of India. The Presidential orders were needed to extend all the amendments caused in the constitution of India. Directive principles of the state (part 4) and fundamental duties (part 4A) were also not been in effect in the state. Since it owned its own constitution, the sixth part of the Indian constitution regarding state legislature had not implied on the state. Constitutional Emergencies declared on the basis of internal conflict were also needed the acceptance of the state assembly to be exercised in the state as well as the President was not empowered to declare financial emergency for the state. President was also not allowed to dissolve the state legislative assembly failing to fulfill His orders. Another criticism for the article 370 was drawn due to it being a hindrance to fifth and sixth

schedule of the Indian constitution which respectively were responsible for the administration and control of Scheduled Areas as well as of Scheduled Tribes and administration of the tribal areas. It was often called the source of social inequality in the region.

Owing to the Sino Indian war of 1962 in which state lost its significant territory of Aksai Chin, Pakistan changing controls of Trans Karakoram Tract with China and Indo Pakistani war of 1965 and 1971 which aimed to precipitate the insurgency in Jammu and Kashmir had strongly influenced Indian sentiments against the special provisions for the state. In 1971 with Shimla Agreement it was mutually decided to discuss the issue with bilateral talks with no third party mediation which could have been a new dawn for the state but it didn't happen owing to many facts. Worsen to this in early 1990s the state fell in the traps of religious militants and the calls for the independent Kashmir for the interests of a few, were made and state observed the migration of Kashmiri Hindus which some argue was with the hidden consent of the state so it might change the demographics in the favour of the plot organizers.

In a historically reckless move the state legislature passed the Jammu and Kashmir Autonomy bill on 26th June 2000 based on the recommendation of state autonomy commission. The Government of India thwarted the plots of foreign actors by declining the demands of the bill. Since 1980 when the Mujahedeen entered in the valley, it has been in chaos and unrest and the Article 370 was considered as a shield to them thus widely criticized in the rest of India and the calls for the abrogation of the same were made from both inside and outside of the state. In 2010 Government of India formed a committee in the headship of Dilip Padgaonkar, Professor M.M. Ansari and Professor (Mrs.) Radha Kumar as interlocutors for the state to examine its autonomous possibilities within the constitutional spheres which provided it's report to union home ministry under the title "A new compact with the people of Jammu and Kashmir" in 2011.

Abrogation and Aftermath-

The First call of the unity with the India in the state of Jammu and Kashmir can be traced back to June 1952 when a group named "Jammu Praja Parishad" which was mostly membered by Hindus submitted a memorandum to the President demanding the complete merger of the state in India and Indian constitution to be applied with all its fold to the state. Ladakh Buddhist Association was also among the first voices that sheered out in favour of integrating the state with India. Shri Shyama Prasad Mukherjee, who founded the Bhartiya Jana Sangh (The predecessor of Bhartiya Janta Party) was among the national icons who laid their lives for the integration of the state of Jammu and Kashmir. Since then it was marked paramount priority in principles of the latter's Party and its heirs. In Modern hours the former Regent Prince of the Jammu and Kashmir Shri Karn Singh also voiced for the review of Article 370.

Since the Bhartiya Janta Party sustained the full majority in the lower house of parliament, it was speculated that it could come up with the inclusive vision for state of Jammu and Kashmir. Shortly afterwards it's second term for the central government started with the same stature, the Union Home Minister on 5 August 2019 brought it to the acknowledgement of Rajya Sabha that President of India has issued "The Constitution Order 2019" (applicable to the state of Jammu and Kashmir only) superseding his prior constitutional order of 1954, nullifying all the state's separative clauses in reference to the federation. Immediately the two flags, two emblems and two constitutions were suspended and the Indian Constitution was brought to the state restoring the glory of the former and latter both. The order construed the phrase Sadar-I-Riyasat to the Governor of Jammu and Kashmir.

On 5 August 2019 Jammu and Kashmir Reorganization (Amendment) bill was introduced to the Rajyasabha which honored it with more than two third majority in favour (125 Ayes and 61 Nay). A day later

the Lok Sabha also ratified the bill with the two third majority (351 Ayes and 72 Nays). The bill was signed by the President of India on the 9th August 2019 and became effective on 31st October which is celebrated as National Unity Day. The Act bifurcated the geographical identification into two separate union territories namely Union Territory of Jammu and Kashmir and Union Territory of Ladakh. These events draw the major attentions from all related and unrelated to Kashmir. Many countries like Bangladesh, Bhutan, Sri Lanka, Israel, Maldives, Thailand, United Arab Emirates, Afghanistan and Australia have strengthened their adherence highlighting their fact that the reorganization and bifurcation of the former Jammu and Kashmir state was an internal issue of India and expected that government of India will take the necessary and the righteous course about the same. Opposing calls were made by mainly Pakistan and China whose illegal stakes were adversely affected and countries like Malaysia and Turkey joined to follow on an inexpedient path owing to their own interests with the former. A confidential meeting after the decades was also held by the United Nations Security Council on 16 August regarding the same. After few months the central government was criticized by unions and individuals over the excessive lockdown of the state which had made some of the fundamental right inaccessible to the people of the union territories. Much to its legal aspects and challenges the Supreme Court of India have also allowed the petitions on 28th August 2019 challenging the abrogation of article 370 and bifurcation of the state and formed a five judge's bench to look after the matter which would examine its constitutional spheres.

After the much awaited movement the government of India is expected to make bridges shorter among the New Delhi and the union territories of Jammu and Kashmir as well as Ladakh. Though revocation of Article 370 has already made salient features and functioning of the Indian Constitution like reservation for the scheduled cast and scheduled tribes, right to education and right to information accessed by the people of UTs same as the rest of citizens in India enjoys and exercise them, yet it had to focus, plan and execute more government welfare and participative schemes for the concerned people so these might push the integral welfare narrative to the region. Government has also announced a new industrial and tourism policy for the concerned territories. A new Delimitation Commission headed by Honorable Justice (Retired) Ranjana Prakash Desai has also been constituted for the territories which will help planting and strengthening the democratic roots in the core of the state with the rightful possibilities and exercise of election process. The government might also underscore various dimensions and aspects of all sided socio-economic, cultural and political growth into Jammu-Kashmir and Ladakh union territories so it might root out all the delusive state of mind in the citizens.

Conclusion-

From the Independence of state and its union into India, to the fabrication of the newly formed union territory status, the former state of Jammu and Kashmir have observed many uncertainties both from inside and outside. Though the region has been growing peace and prosperity respectively yet it must be brought to the light that it still has to tap its potential. For this all the concerned parties and creative sides need to bring their efforts to help the region reinstating its glory. Abrogation of Article 370 and bifurcation of the former state into union territories would surely help to insure the administrative and security ease of access of all kinds. It would also be an awaiting and marked minute to observe of when the state will be granted the full statehood back as before with its entire corner secured. Many probabilities and happenings would also scrutinize this collective decision and each of our steps now would also hold its value more than ever before but let us not forget how we as a nation have steered successfully through all hardships of the past. As former President Shree Pranab Mukherjee have showed his faith in the future about the region-

"Let Jammu and Kashmir lead the way in the building of a new future for India. Let it set an example to the rest of India and the world by showing how the entire region can be transformed into a zone of peace, stability and prosperity."

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References

- A Constitutional History of Jammu and Kashmir - Abdul Ghafoor Majeed Noorani
- Article 370 and 35(A) revoked: How it would change the face of Kashmir - The Economic Times,5 August 2019
- Integration of the Indian States- Vappal Pangunni Menon
- J&K Delimitation comission proposes sic seats for Jammu,one for Kashmir,earmarks 16 seats for SC ST, December 20,2021
- No problems are ever solved by violence: President Pranab Mukherjee in Kashmir, India Today September 27,2012
- Parliament gives nod for removing Jammu and Kashmir's special status splitting J&K to 2 UTs- The Economic Times August 6,2019
- Wikipedia Page- Article 370 of the Constitution of India
- Wikipedia Page- History of Kashmir

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