

The Abrogation of Article 370 and 35-A in Jammu and Kashmir: A Historical Analysis

TIRTHARAJ BHOI

Sr. Assistant Professor

Department of History, Faculty of Social Sciences

University of Jammu, Jammu-J.K. (U.T.) India

ABSTRACT

This great stride of repeal of article 370 has been taken by BJP government to unite people so that people can proudly say India is one. In this paper the analysis has been done by the means of secondary data. The objective of the paper is to know why there an urgent need to repeal this article has been done through the existing literature. The study was exploring a lot of puzzling questions, starting from the history of Jammu and Kashmir, towards what was the need to incorporate this Article what circumstances led to the introduction of this Article, why this Article has been a controversial subject. Apart from the secondary sources, village survey was done through participant observations. This paper is a part of research project sponsored by ICSSR, New Delhi.

Keywords : Jammu and Kashmir, reorganization, Article 370, Abrogation, President's rule, August 05

INTRODUCTION

Jammu and Kashmir have been integral parts of ancient India and became part of independent India since 1947, with special status under Article 370. Now, it becomes a union territory of India on the 31st of October, 2019. It is a true fact that Jammu and Kashmir has always had a special legacy and very interesting historical facts that make them interesting. A social scientist is expected to understand the past in order to know the present properly, and thus have the ability to predict or plan for the future. There are several studies conducted on issues related to terrorist movement in Jammu and Kashmir. But very fewer amounts of data were connected with the contemporary movement on abrogation of Article 370. The following is a brief evaluation of some of the studies conducted on article 370 and its abrogation. The history of Jammu and Kashmir, effects of abrogation of article 370 of Indian constitution, what were the effects of amendment, how world did reacted to this amendment and at last what is future and recent development of the state. This great footstep of repeal of article 370 has

been taken by BJP government to unite people. So, that people can proudly say India is one. The analysis has been done by the means of secondary data and applied participant observations.

METHODOLOGY

An attempt is made to give an extensive evaluation of existing writings that deals with the abrogation of Article 370 in Jammu and Kashmir. It is focusing on in-depth study of actual condition pertaining in the literatures and in the field. To authenticate the literary sources, the analysis also made to find from the field work applying questionnaire and interview technique. Since, this paper is a part of research project sponsored by ICSSR, New Delhi, and the social sciences methodology has been adopted for the analyses.

RESULTS AND DISCUSSION

Abrogation of Kashmir's Article 370 & 35-A:

It is a historical fact that Kashmir's tyranny and colonial blackmailing started long before the partition of

British India. The region had never been governed by Kashmiri themselves. The *Dogra* rulers did nothing for the development and progress of region and treated people like slaves. So, Kashmiri Muslims are still facing apartheid type situation and feeling insecurity because of removal of constitutional privileges. According to Vaiyapuri Gopalsamy, MDMK-General Secretary, that Indian National Congress deceived the people of Kashmir and failed to fulfil its promise to hold plebiscite in the region. As Prime Minister Jawaharlal Nehru promised a plebiscite in 1947 and forced Hari Singh to sign agreement for annexure of Kashmir with India. Later when Nehru put Sheikh Abdullah in jail and he said that, there is no place either for gratitude or friendship in the dictionary of the Congress. India 's permanent envoy in the United Nation, M. C. Chagla, talked to the UN that three elections conducted in Kashmir amounted to a plebiscite but Congress always betrayed the promise (Vaiko, 2019).

Thus, in continuation of the previous history, the leaders of Bharatiya Janata Party (BJP), since 2014, frequently declared that Jammu and Kashmir's autonomous position has promoted terrorism and separatism in the region and its status is one of reason that has kept the area underdeveloped. Moreover, Home Minister, Amit Shah said that the Article 370 was largely symbolic and liberty for separate state flag and state constitution was not much more than a sheaf of paper. In this manner, BJP action of abrogation of Article 370 is the step towards the complete integration of country and for the promotion of Indianization programme to protect country's boundaries from all the demarcated corners. According to Christophe Jaffrelot, BJP has entered in an era to boost the nationalistic agenda and integrate all areas within the Indian Union. Prime Minister Narendra Modi claimed that the time has arrived that India have to stay with the slogan of "One Nation" is now a ground reality.

It is also seen that during the general election of 2019, it was mentioned in the BJP manifesto that party will abrogate Article 370 and 35-A and Jammu and Kashmir will integrate with the rest of India. In this connection, BJP through a series of presidential orders changed the direction of Article 370, and replaced the name of Constituent Assembly with Legislative Assembly in 2018. Thus, on August 5, 2019, Home Minister, moved the bill in the *Rajya Sabha* about the Article 370 and reorganization of the Jammu and Kashmir bill 2019. The superior parliament removed clauses of Article 370 of the Indian Constitution, and mentioned that special status

will be no more applicable in the state. According to Rakesh Mohan Chaturvedi, Kashmir's special status under Article 370 is the real cause of corruption, terrorism, and alienation of the state. On March 8, 2021, the home minister, addressed at the Nehru Memorial Museum, that, the first Indian Prime Minister Jawaharlal Nehru's decision to internationalise the Kashmir issue was his biggest mistake and Himalayan blunder. In the same way, B. L. Santhosh, (General Secretary of Bharatiya Janata Party) also mentioned that the New Delhi's action to roll-back Jammu and Kashmir's special status under Article 370 is the first stage towards correction of previous mistakes of Nehru and it is beginning to finish alienation of the region.

In reality, BJP party fulfilled the desire of its right-wing extremist, Shyama Prasad Mukherjee to abolish Article 370 and Article 35-A without further delay. Mukherjee, died during a protest against the special status of Jammu & Kashmir in 1953, and said that there is no need of two constitutions, two prime ministers, and two flags in one nation (Wani, 2020).

In this background, President of India, Ram Nath Kovind issued Presidential Order on August 5, 2019, which abrogated the legal shelter of Jammu and Kashmir, and repealed Article 370 and 35-A of the Constitution of India. It said, In exercise of the powers conferred by Clause (3) of Article 370 of the Constitution of India, the President on the recommendation of Parliament, is pleased to declare that all clauses of the Article 370 shall be ineffective except Clause (1) thereof, According to Gautam Bhatia, the removal of both articles (Article 370 and 35-A) which constitutes the basis for everything that follows, the order stipulates that, with the concurrence of the Government of State of Jammu and Kashmir, all the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir (BBC News Report, 2019). Moreover, the government used its powers under article 370(1) and amended article 367, which is the interpretation clause of the Constitution and addressed Constituent Assembly of the State under article 370 (3) that it will supersede the Constitution Order, 1954, successfully change article 35-A as well. According to Narendra Modi, the party (BJP) implemented constitutional changes for noble administration, better governance and economic progress of the region (Business Today, 2019).

In the situation, BJP has not only abrogated the Article 370 and 35-A to merge Jammu and Kashmir with

the mainland of India, they also converted its autonomous position into two union territories. So, one union territory, would be Kashmir Valley which will have a legislature, whereas the other, Ladakh (a mountainous region bordering China), would be without Legislative Assembly and it will consist of Kargil and Leh districts. Nonetheless, in the defense of their actions to remove special status of the region, BJP leadership explicitly described that in our constitution the Article 370 was purely temporary provision which was included in the constitution on 17 October, 1949. They viewed that the region is as an essential part of India and refused that Kashmir is a disputed area. So, in support of BJP led Government's action, Army Chief General Bipin Rawat said that after the government's move on Kashmir's status, any local militant picking the gun against security forces will no longer be a militant. The gun and the man will be separated. The man will go to the grave and the gun will be with us.

Security Lockdown and Indefinite Curfew in Kashmir Valley:

After the abrogation of Articles (370 and 35-A) to the Kashmir, a sense of deprivation prevailed in the Muslim majority regions. As federal forces poured into the Muslim majority valley and imposed undeclared curfew to prevent any kind of *eventuality against the August 5, 2019 brutal action*. BJP government put the region under an unprecedented lockdown which is still continued because government has feared that Kashmiris will protest against the revocation of autonomy. The day of revoke was very gloomy and Kashmir seemed quiet and most of areas were deserted. Army troops were in each and every part of the region and common masses were frightened and worried. Thus, the latest action perceived to be naked attack on the integrity of Kashmiri people and they decided to strengthen the resistance towards complete freedom. Since the fifth August, 2019, the government has taken strict action, education institutions closed down (Schools, colleges and Universities) and thousands of people from different professions arbitrarily arrested including students, lawyers, traders, shop owners, and human rights activists.

Government disconnected all types of communication links, mobile network, WhatsApp, internet, landlines and Instagram), prevented socio-political movements and arrested popular Kashmiri leaders. Some have been released and many pro-Pakistan *Hurriyat*

leaders including Syed Ali Shah Galleeni, Mirwaiz Maulvi Mohammad Farooq, and Yaseen Malik are in custody. It has shown that federal government nerves breakdown because they curtailed Kashmiri's ability to share personal news to each other including call to doctors, order supplies, business deal, social talk, family discussion, information about exams and term papers etc. People directly are the victim of traumato-genic events which ultimately leads to symptoms of psychological distress. Through in 2019, approximately 9,000 Kashmiri people have reported disappearances (missing), displacement, and exposure to crossfire, ballistic trauma, round-up raids, torture, rape, arrests and kidnappings. The United Nations High Commission for Human Rights (UNCHR) 2019-2020 report mentioned that it was estimated that around 5000 people were held under the Armed Forces Special Powers Act (AFSPA, 1990) and the Jammu and Kashmir Public Safety Act (PSA, 1978).

In this concern, Amnesty International also highlighted the Indian situation that after repeal of Article 370 and 35-A, the people of Kashmir have been living through a telecommunications blackout. It is regrettable that the region has been converted into world's "largest prison" because the people of Kashmir are being denied access to basic amenities, including medicines. In the contemporary situation, Kashmir is victim of word Genocide; in the occupied territory as a national, ethnic, racial and religious group of people face grave threats to their lives, way of living and livelihoods; from a murderous, misogynistic, and xenophobic regime. There is a Genocide Alert, proclaiming that the situation in Indian Occupied Jammu & Kashmir has crossed the ten stages of the genocidal process (Qureshi, 2019).

The State of Jammu and Kashmir, while under President's rule, witnessed unprecedented and potentially historic changes that fundamentally redefined its constitutional relationship with the Union of India. Broadly, these landmark changes include the effective abrogation of Article 370 of the Constitution of India and the reorganization of the State of Jammu and Kashmir into two Union territories, Jammu and Kashmir and Ladakh, thus, bringing to an end the special status of Jammu and Kashmir under the Constitution of India. This paper outlines the legal measures adopted to effectuate these changes and then proceeds to examine their constitutional validity. The paper contends that the Legislative Assembly of the State can be construed to mean the Constituent Assembly of the State thereby

keeping the mechanism for the abrogation of Article 370 alive. The paper also lays down a legal standard for the kinds of decisions that may be taken by the President and the Parliament during the operation of President's rule and argues that the actions of abrogating Article 370 and bi-furcating the State of Jammu and Kashmir are unconstitutional when tested against this standard (Mahajan, 2020).

Singh provides the autonomy to state in their governance but also protects such autonomy of the Jammu and Kashmir. Now on 5 August 2019 Article 370 was abrogated by Presidential order without taking concurrence of said constituent assembly of state which had been dissolved long ago and without taking any such recommendations of state government. The procedure to amend or to abrogate the Article 370 is not followed properly rather it is done in a shady manner. Though the laws of the land need not to be static but in this case, there seems no such demand of the time (Singh, 2020). Ayjaz Wani, in his report analyses insights gathered by the author from different sections of the Kashmir public regarding the impact of the abrogation of Article 370 on their lives. Medha, in her paper entitled "The Revocation of Kashmir's Autonomy: High-Risk Hindutva Politics at Play" focuses on the wider ideological context of Hindu nationalism that has spurred this decision in order to assess the move's far-reaching implications for Indian democracy and peace in South Asia (Medha, 2019). Malhotra, argued that If indeed the abrogation of Article 370 will bring economic gain to Kashmiris including Sikhs community, the government's "development" approach now, must not ignore the economic hardships of micro-minorities like the Sikhs and remaining Pandits (and, of course, the majority Kashmiri Muslim community) at the expense of the migrant Pandit community, which already receives government benefits disproportionately (Malhotra, 2019).

Hussain, analyze how the decision striped off the special status that the erstwhile state of Jammu and Kashmir enjoyed. It also analyses the consequences from the abrogation of Article 370. It tries to highlight the meaning of autonomy in the context of Jammu and Kashmir (Hussain, 2021).

Bupinder Singh Bali brings a unique blend of personal insight and meticulous research to this compelling narrative. Drawing from his own experiences and those of his community, Singh paints a vivid and poignant portrait

of the challenges faced by Kashmiri Sikhs amidst the backdrop of simmering tensions and existential threats. From the turbulent events of Partition to the ongoing unrest in the region, "Those Who Stayed" chronicles the journey of a micro-minority grappling with issues of identity, survival, and the pursuit of a secure future. Through a deft combination of personal anecdotes, survivor testimonies, and historical analysis, Singh sheds light on the often over looked narrative of the Kashmiri Sikhs, offering readers a deeper understanding of their social, cultural, and economic struggles. The book explores key historical events such as the Kabali raids of 1947 and the targeted killings in Chithisinghpura and Mehjoor Nagar, providing invaluable insights into the complex dynamics of Kashmir's sociopolitical landscape. Additionally, Singh addresses the impact of significant developments like the abrogation of Article 370, offering readers a timely and thought-provoking examination of contemporary issues. "Those Who Stayed" is not merely a historical account; it is a testament to the resilience, courage, and humanity of the Kashmiri Sikh community. Through its pages, readers will embark on a profound journey into the heart of Kashmir's Sikh heritage, gaining a deeper appreciation for the untold stories that shape our understanding of this complex region (Bali, 2024).

Conclusion:

The people perception may be different towards the abrogation of Article 370 which is shown in the above discussion, but the decision of Supreme Court is highly respectable. A five-judge Constitution bench, presided by Chief Justice of India D.Y. Chandrachud and comprising Justices S.K. Kaul, Sanjiv Khanna, B.R. Gavai and Surya Kant, also directed the Centre for the restoration of statehood and for Legislative Assembly elections to be held. The development approach is the first priority of the government which is been seen in the field, such as railways line connection to Srinagar from Jammu and others parts of India. However, after the removal of article 370, Jammu and Kashmir will exist with a Legislative Assembly without special powers and these union territories will stay without full autonomy and state will stay under the New Delhi's direct rule. The recent parliament election result of 2024 is another positive response of the people of Jammu region, which shown that they are satisfied with the decision of government.

REFERENCES

- Bali, Bhupinder Singh (2024). Those Who Stayed; the Sikhs of Kashmir, Manjul Publishing House, Bhopal.
- Hussain, S.A. (2021). Abrogation of Article 370 and Its Consequences: - An Analytical Study. *Internat. J. Creative Res. Thoughts*, **9**(4) : 1505-1510.
- Lalwani, S. P. and Gayner, G. (2020). India's Kashmir Conundrum: Before and After the Abrogation of Article 370. *United States Institute of Peace*, **473** : 1-23.
- Mahajan, K. (2020). The Abrogation of Article 370 and Bifurcation of Jammu and Kashmir- A Bridge Too Far. *Indian J. Constitutional Law*, **9** : 106-124.
- Malhotra, K.K. (2019). On the Other Side of Exodus: The Case of the Kashmiri Sikhs. *Centre for the Advanced Study of India (CASI), University of Pennsylvania*, 1-14.
- Medha (2019). The Revocation of Kashmir's Autonomy: High-Risk Hindutva Politics at Play. *German Institute of Global and Area Studies*, **5** : 1-12.
- Singh, N.N.M. (2020). *Abrogation of Article 370: An Analysis*. L.L.M Dissertation, Alliance University Bangalore, 1-61.
- Vaiko, V. Gopalsamy, (2019, August 5). *Indo-Asian News Service*. New Delhi, 15:03 IST.
- Wani, A. (2020). Life in Kashmir after Article 370. *ORF Special Report*, **99** : 1-15.
