



ABROGATION OF ARTICLE 370 FROM THE CONSTITUTION

By *Pranjali Sharma*
From *Ramaiah College of Law, Bengaluru*

INTRODUCTION:

Our Indian Constitution which came into force on 26th January, 1950, is the supreme law of India. Our Indian Constitution is the longest national Constitution with 448 Articles, 25 parts, 12 Schedules and 5 Appendices.¹ Article 370 of the Constitution had temporary provisions which gave special autonomous status to the State of Jammu and Kashmir, allowing them to have their own Constitution.² This means provisions of the Constitution which are applicable to other states of India will not be applicable to the state of Jammu and Kashmir. This Article was implemented in the late 1947 between Sheikh Abdullah, who was been appointed as Prime Minister of Jammu and Kashmir by the Maharaja Hari Singh and Nehru. Modi Government with the Home Minister, Amit Shah on 5th August, 2019 finally dropped a bomb by revoking Article 370 and Article 35(A) which means all the provisions the constitution shall apply to the state of Jammu and Kashmir and the special status enjoyed by them would be taken away. A lot of tension arose in the State due to this momentous decision; the top political leaders were under detention and the movement was restricted. After the special status was gone from the Kashmir, people from all across the

India were able to buy properties there and could settle there permanently but this fuelled fear in the Kashmiri citizens as they thought that their state would turn from majority Muslim to majority Hindu.³ A lot of protests all around the India happened in regard to the decision which was taken by the Modi government which I will be further dealing with in the paper.

In this paper I will explain how Article 370 and 35(A) got abrogated and its impact on Kashmir, India and Pakistan.

HISTORY:

Kashmir was first called kashyapmar in ancient literature which was corrupted to become Kashmir. It owed its legendary to rishi Kashyap. The state of Jammu and Kashmir acquired its modern shape under, Ranjit Singh. A local chieftain from Dogra community took over the administration of J&K, who expanded it by capturing Ladakh and Baltistan from the Sikh empire. At that time British rule of East India Company was getting stronger, the company challenged the Sikh empire and Ranjit Singh was compelled to sign a treaty of Amritsar in 1809 which was formalised in 1846 after a first Anglo-Sikh war. The Dogra king ruled over the regions of Jammu, Kashmir Valley, Gilgit-Baltistan and Ladakh as dominion of Jammu and Kashmir was been sold to Gulab Singh who was the Dogra king. This arrangement worked till 1947, they faced horrific episodes of violence the British divided Indian continent into India and Pakistan. Maharaja

¹ Indian Constitution Parts and Schedules, https://www.careerpower.in/2019/CTET_2019_SocialStudies_study_notes.pdf

² Explainer: What is Article 370?, August 05, 2019, <https://www.thehindubusinessline.com/news/national/explainer-what-is-article-370/article28822446.ece#>

³Article 370 and 35(A) revoked: How it would change the face of Kashmir, Aug 05, 2019, 06:18 PM,

<https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms>



Hari Singh signed a Standstill Treaty with Pakistan but there was a breach in the agreement as Pakistan launched a non-official war to free the region from Hindu rule in October 1947. Hari Singh found himself helpless as he wasn't able to protect the state and asked Indian Government for help. Indian Government was ready to provide aid but on the condition that Jammu and Kashmir should accede with India, Maharaja agreed with the condition. Indian Government intervened into the matter after the signing Instrument of Accession by Hari Singh on October 26th, 1947. Law granted the permanent residents of Kashmir some special rights. Hari Singh thought of extracting some benefits from the law like denying outsiders the Right of acquiring or owning any property in the state. Initially this step was taken to keep the Britishers away from Kashmir valley. Jawaharlal Nehru agreed with Hari Singh's condition and the matter was been placed in the constituent assembly. Finally, Article 370 was been inserted into the Constitution as temporary, transitional and special provision.⁴

ABROGATION OF ARTICLE 370:

Article 370 of the Constitution gives special autonomous power to the State of Jammu and Kashmir and was drafted under part XXI of the constitution which was temporary, transitional and special provision. The constituent assembly was supposed to recommend the articles of the constitution which was supposed to apply to the state but the assembly dissolved itself without recommending the abrogation of Article 370

which made the Article a permanent feature of the Indian Constitution. Even though the article was a temporary provision, it wasn't been removed due to the lack of good administration and the frequent war happening between India and Pakistan. Jammu and Kashmir enjoyed this special status in various ways like they had a national flag of their own, the citizens of Jammu and Kashmir enjoyed dual citizenship, the term for J&K's legislative assembly is 6 years whereas for other state of India it is 5 years, the orders from the Supreme Court of India is not valid in J&K until the state government approves the order and J&K has its own criminal code which is named as Ranbir Penal Code.⁵

On August 5th, 2019 the Union Home Minister, Amit Shah, announced abrogation of Article 370 and Article 35(A) from the Indian Constitution which was a very crucial step dividing the state into two Union territories- Jammu and Kashmir with legislature and Ladakh, with no legislature. This decision by Modi Government was subjected to a lot of criticism by a large section of opposition from different parts of India. Revoking of the article was a tough decision as some parties were in favour and some were in the opposition and weren't favouring the decision taken by the Modi Government. Mass protests was been organised in the different cities of India. Major leaders of the parties were house arrested, there was revocation of internet and telephonic services, public movement was banned, these consequences together threatened the democracy of India. The

⁴ How Kashmir got Article 370: History retold, Prabhash K Dutta, August 8, 2019 12:45, <https://www.indiatoday.in/news-analysis/story/kashmir-situation-article-370-history-1578495-2019-08-08>

⁵ Full text of document on govt.'s rationale behind removal of special status to J&K, AUGUST 05, 2019 13:56, <https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to-jk/article28821368.ece>



Government took this step to correct the historical blunder. It was necessary to scrap Article 370 to integrate Kashmir with the rest of the country as it is an integral part of India playing important role in the preamble of the Constitution.⁶

On August 5th, 2019 Hundreds of people were rounded up and arrested in J&K. All the types of communications were banned in the valley, there was an undeclared curfew in Kashmir which persisted for few weeks. Concertina wires spooled across streets and girded buildings in Srinagar. Ladakh's Kargil district and border districts in Jammu also saw protests against bifurcation. The valley observed civil shutdown. In South Kashmir local residents also spoke of army raids at night. The lockdown and internet ban lead to crippling of business, hinderance to health care accessibility and hushing down the local media. After August 5th, collective prayers at mosques were halted for months and clerks were imprisoned and threatened with arrest if they mentioned Article 370. Local residents faced loss of land and job after the disappearance of Article 35(A). In Ladakh, demands for special protection Under the 6th Schedule of the constitution was been made. The new domicile rules were greeted with protests because they were viewed as inadequate however members of marginalised communities have been benefited from this domicile. The government started taking actions against the pro- India parties who vowed to protect the special status of J&K, 3 former Chief

Minister had been arrested and were released only if they maintained silence on Article 370. Assembly elections were blocked until the delimitation in J&K takes place. Most of the candidates were made to live in villages which were heavily secured by government enclaves, fearing militant attacks and local resentment. Militant violence still continued killing migrants and Kashmiri pandit Sarpanch, grenades were thrown at security forces and fruit Growers were attacked. In the first 6 months of 2020, 118 Militants including top Militant Commanders like Hizbul Mujahideen's Riyaz Naikoo and 26 Security forces were killed nearly wiping out the Militancy in South Kashmir.⁷

Scrapping of Article 370 lead to the following implications: Jammu and Kashmir no longer enjoy special status, the Indian constitutional laws are now applicable to all the residents of J&K, the Directive Principle of State Policy and the Fundamental Rights in the part IV of the Indian Constitution will now apply to J&K, Article 360 which is the financial emergency will now be applicable to J&K, they will no longer have the flag of their own, minorities which are mostly Hindus and Sikhs there will have 16% of reservation, the duration of Legislative Assembly will now be 5 years for them as well, Article 35(A) was nullified, Panchayats will enjoy same power as in other States and citizens of J&K will no longer enjoy Dual citizenship. It has instilled fear amongst the citizens regarding their safety, they also feel the government will take similar kinds of

⁶ Article 370 – Four Months Down the Lane, January 04, 2020 @ 04:12 PM, <https://www.mbarendezvous.com/essay/article-370-four-months-down-the-lane/>

⁷ What exactly did the August 5 decisions achieve in Jammu and Kashmir?, Ipsita Chakravarty, Aug 05, 2020 · 09:36 am, <https://scroll.in/article/969452/what-exactly-did-the-august-5-decisions-achieve-in-jammu-and-kashmir>



action in the other states as well which they find is a threat to the Democracy.⁸

Numerous protests took place in regards to the abrogation of Article 370. On Friday, August, 9th there was a massive protest in Soura which is in the Northern part of Srinagar's down area where 10,000 people took part. People were seen carrying banners saying 'abrogation of Article 370 is not acceptable for us' which clearly indicated the fact that they were against the decision of the Government to scrap the special status of Jammu and Kashmir. Al Jazeera reported protest claiming thousands of people hit the street. However most Indian channels have appeared to have blacked out the protest, in contrast Asian News International have shared videos of people in Srinagar walking on streets and queuing outside the ATM'S.⁹

The Muslim rights activists including the members of Pakistani-American Community in Washington held demonstration outside the Indian Embassy to protest against the scrapping of Article 370. The protesters raised slogans against India and Prime Minister, Narendra Modi. The slogan read people of Kashmir "deserve independence, deserve their rights and deserve justice." Muslim organizations, including the Islamic Leadership Institute of America, Burma Task Force which is working among Rohingya Muslims, and those representing Palestine

groups, also participated in the demonstration.¹⁰

A section of Punjab farmers union protested against the Abrogation of Article 370 and 35(A). Acting upon the directions given by Punjab and Haryana High Court, protests collapsed by nearly a dozen farmer Union like Bhartiya Kisan Union (BKU). All the protestors according to the plan were supposed to assemble at Mohali from where they were supposed to march towards Chandigarh to submit a memorandum to VP Singh Badnore, who was the governor of Punjab but due to the orders by the Court, protestors were stopped by the police at the district level and restricted them to move to Chandigarh. The protest lasted for around 4 to 5 hours comprising of 8,000 protestors including nearly 500 women. The Pro-Khalistani group Dal Khalsa who were banned have also criticised the abrogation of Article 370 but failed to gather enough support as majority of the people in Punjab rejected Khalistan and have welcomed abrogation of Article 370 and 35(A).¹¹

Indian government-imposed curfew across Kashmir Valley as the authorities captured violent protests by separatist and Pakistan-sponsored groups to observe August 5th which was the first anniversary of revocation of Article 370 and 35(A) from Jammu and Kashmir as a "black day"

⁸ Issues over Article 370 - Pros and Cons, History, February 12, 2020 @ 01:54 PM, <https://www.mbarendezvous.com/general-awareness/issues-over-article-370/>

⁹ Kashmir: Are Foreign & Indian Media Reporting on the Same Place?, Aditya Menon, 10 Aug 2019, 09:30 PM, <https://www.thequint.com/news/india/kashmir-situation-protests-srinagar-media-normalcy-article-370-women>

¹⁰ Article 370 revoked: Muslim rights activists hold protest over scrapping of special status to J&K outside

Indian Embassy in Washington, August 07, 2019 14:29:59, <https://www.firstpost.com/india/article-370-revoked-muslim-rights-activists-hold-protest-over-scrapping-of-special-status-to-jammu-and-kashmir-outside-indian-embassy-in-washington-7123961.html>

¹¹ Punjab farmer unions protest against abrogation of Article 370, Manjeet Sehgal, September 15, 2019 18:28, <https://www.indiatoday.in/india/story/punjab-farmer-unions-protest-against-abrogation-of-article-370-1599434-2019-09-15>



Kashmir has been under lockdown and a communication blockade ever since the revocation of Article 370 of the constitution on August 5th but there were massive protests happening inside Kashmir. New Delhi used some tactics in favour of the movement by systematically striking fear among the leaders and the supporters of separatist cause by unleashing Law enforcement and investigating Agencies. They also broke the organising ability of the separatist, parties and of civil society groups.¹²

Therefore, Repealing Article 370 has led to insecurity in locals, Kashmiri Muslims feel it's a threat to State's integrity and unity, add insecurity in the Kashmir and political vulnerability. But on the contrary, repealing of the Article was necessary to unite the state with other states of India as it propagates one Nation one Constitution slogan. It will facilitate development and growth in the valley as people from all over India will be able to purchase properties in Kashmir and investors will be able to invest ultimately boosting the Economy of Kashmir. Kashmir has become a Union Territory now so ridding of corruption and Terrorism would be an easy task for the Government instilling peace.¹³

A year after the revocation of Article 370, Pakistan Government made a new policy to deal with the Kashmir issue. A new map was been published showing J&K as part of India and Ladakh as the part of Pakistan. Foreign minister Shah Mehmood Qureshi spoke about the Imran Khan government's resolve

to alert the world to Kashmir's bitter reality and give the world a demand to force India to mend its ways. A lot of people in Pakistan felt it was the state's inability to do anything meaningful to help Kashmiris. They felt cheated and suddenly found themselves in a corner from where they cannot regain the space on the issue that has obsessed the country. Pakistan is unable to respond forcefully, they feel years of proxy war have failed. Recently the Financial Action Task Force knocked on Pakistan's doors that the Army re-arranged things, the Lashkar-e-Tayyaba camp have moved towards Neelum and Jhelum valleys and this has been happening even before the end of Article 370. The firm march of the Hindutva agenda in India and the confidence adds to the complexity. In Pakistan the political forces are weak to change any bilateral ties with India. The most important element here is that for both Pakistan and India, Kashmir isn't the main concern but is the ideological divide which took place in 1947 and it keeps on sharpening with time. Therefore, until and unless there is a political force in the country, the Kashmir war will not end even though it has been slowed down.¹⁴

The decision of Modi Government to scrap the article is mainly a domestic and international decision of India with implications on how J&K should be governed. Even if some people in India is labelling the revocation as murder of Democracy, there is an assurance of a pushback from the members of the

¹² Long before revoking Kashmir's autonomy, India had a ready plan to quell protests, Riyaz Wani, December 3, 2019, <https://qz.com/india/1760086/modi-shahs-plan-to-stop-kashmir-protests-after-article-370-move/>

¹³ Advantages and Disadvantages of Article 370, February 12, 2020 @ 06:53 PM,

<https://www.mbarendezvous.com/general-awareness/advantages-and-disadvantages-of-article-370/>

¹⁴ Pakistan's Plans for Kashmir Have Become More Quixotic Than Ever, Ayesha Siddiqi, 11/AUG/2020, <https://thewire.in/south-asia/pakistan-kashmir-policy-india-article-370-china>

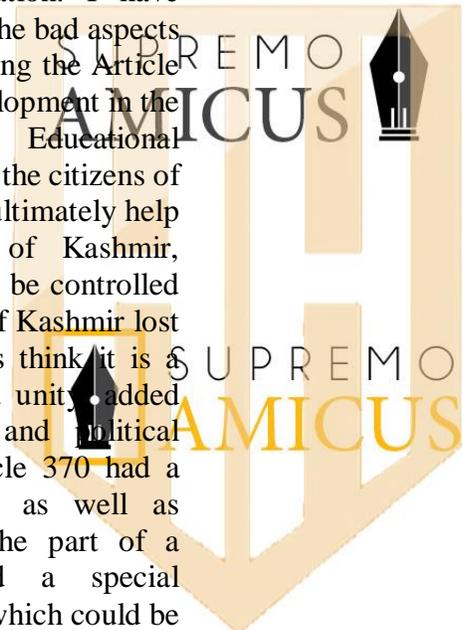


committee of Human Rights in J&K. The rest of the world doesn't have much say on this as this is entirely a domestic issue and there is a fallout in the international sphere. By making J&K a Union Territory, law, order and defence will be in the hands of Delhi which will make activities more effective and terrorism will come down.¹⁵

J&K permanently. The Centre's action expressed unethical use of power. The Situation could have been easily handled using logistic and diplomatic approach.

CONCLUSION:

There were various impacts of removing Article 370 from the Constitution. In my opinion, any kind of decision faces both appreciation and criticism and both should be equally taken into consideration. I have mentioned both the good and the bad aspects in the paper. Like how removing the Article will facilitate growth and development in the valley, better Medical and Educational facilities would be provided to the citizens of J&K, investors investing will ultimately help in boosting the Economy of Kashmir, Terrorism and Corruption will be controlled but on the other hand people of Kashmir lost their dual citizenship, citizens think it is a threat to State's integrity and unity added insecurity in the Kashmir and political vulnerability. Removing Article 370 had a significant impact on India as well as Pakistan. Article 370 was the part of a temporary, transitional and a special provision of our Constitution which could be deleted or retained as per the decision of the State Assembly. The state of J&K now shares a constitutional relationship with the rest of India but the decision hampered the peace of the state which was already on the place of conflict. Abrogation of Article 370 lead to the abrogation of Article 35(A) due to which citizens of India could but land and settle in



¹⁵ Opinion | Global fallout of govt's move to scrap Article 370, Gautam Bambawale, 05 Aug 2019, 11:27 PM,

<https://www.livemint.com/opinion/columns/opinion-global-fallout-of-govt-s-move-to-scrap-article-370-1565027036771.html>