



ABROGATION OF ARTICLE 370 - A VIOLATION OF DEMOCRATIC ETHOS

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ABSTRACT

Democracy of any country is the general will of the people for which elections are held and the common will of the people is been ascertained. But what would happen if any law is made for a state where the people of that particular state are not been considered but are chained down in a state-wise lockdown with no communication and other facilities. The abrogation of Article 370 has put the entire country in a mood of rejoice except the very state of Jammu & Kashmir. The political leaders of the state has been house arrested, additional security forces are been deployed and a total lockdown of the state is been done (may be to ascertain the will of the people).

In this research paper the author would like to delve into the events and history which led to the invocation as well as the abrogation of the Article 370 which was there as a temporary provision since its inception but survived almost seven decades before an abrogation which seems to be an unconstitutional, anti-democratic and anti-federal move by the government. The authors further attempts to look at the constitutional provisions relating to the abrogation and tries to ascertain why this is unconstitutional and a violation to the democratic ethos of the country.

KEYWORDS: Democracy, Article 370, Unconstitutional, Jammu & Kashmir, Government.

Freedom is a concept evolved all around the world irrespective of the territorial bar. Therefore, it is recognized not only by the international communities but also accepted by the regional governments. In this respect the national governments being a part of international platforms or organizations incorporated the freedom in their political document whatever it is. Article 370 was also incorporated in the Indian Constitution for the purpose of ending the tussle between India and Pakistan but mainly to maintain the freedom of the State of Jammu & Kashmir. Then King Hari Singh played a vital role in protection of the freedom of Kashmiris through the incorporation of this provision in the Indian Constitution. The spirit of the people at that time lies in the King and which was executed in the favor of Article 370 by the King on the behalf of his subject to preserve the culture and heritage of the Jammu & Kashmir with marinating the status of freedom to all of his subject.

Ever since India and Pakistan got independence, the most common issue between the both is – Kashmir. Kashmir is a word by which the Bollywood remembers its location, media remembers its TRP, politicians remembers Article 370 and the general public finally remembers its nationalism. The thing which nobody remembers is the people of Kashmir but they are remembered after events such a terrorist attack in Pulwama when the public finds and harass the kashmiris in every part of India to establish their nationalism.



Kashmir is even worst than places like Syria, Afghanistan and Iran in terms of being a militarized zone. Around 7 lakhs of security personnel are deployed in Kashmir at present and all of them are not on borders to fight the infiltration from Pakistan but to address even more serious issue i.e. the ever increasing militancy in the valley. There are around 70 thousands cases of militancy reported till yet and the loss of lives in the valley is about 41 thousands in the last 27 years which includes 14 thousands civilians, 5 thousands security personnel and almost 22 thousands militants.¹

ARTICLE 370 – A POLITICAL NEED

The status of Jammu and Kashmir has always played a pivotal role in the national politics of the country. Since 1947, when India gained independence, the issue of Kashmir has always been in the political atmosphere of the country. The issue of Kashmir was complex and the issue when combined with Pakistan become even more complex. The present government blames it on the regime of Congress and the policies of Pandit Jawaharlal Nehru for the complex issue of Kashmir.

According to the present government, the issue of Jammu and Kashmir was manhandled by the then political leaders of the country especially those associated with the Congress. The government at every possible opportunity, now and then alleges that the Congress and Abdullah family have always been at the core of the complexity of the Kashmir issue. They accuse the Congress and the Abdullah family for making the issues related to Kashmir more complex so

that they can have an upper hand on the politics of the state of J&K and use it for their personal political gains. The Abdullah family has been at the center of the political set up in the valley and have made it a family business in a dynastic manner. Hence they have so much gains with the complexity of the issue that they never even tries to solve it because if they did so, then their own political career could come to a standstill.

The Narendra Modi led present government wanted to eradicate the opportunistic approach of the political leaders of the valley be it Sheikh Abdullah or Omar Abdullah or Sheikh Musseena. To find a permanent solution to the complex issues of Jammu and Kashmir, the BJP always had the intentions of abrogating Article 370 of the Constitution of India, which is the parent provision which grants the special status to the state of Jammu and Kashmir along with Article 35 A of the Constitution of Jammu and Kashmir. Keeping this in mind, the BJP mentioned the abrogation of Article 370 and 35-A in its election manifesto in the 2019 General Elections. This was regarded to be the first strong stance in the history of independent India that a strong step was going to be taken in this regard.

INSTRUMENT OF ACCESSION – HISTORY AND EVENTS

To understand the complex nature and importance of Article 370 with respect to Kashmir and its people, one must traverse through the pages of history and reach the time when it all began i.e. the Partition. At the time of partition, when the new

¹ <https://www.hindustantimes.com/india-news/the-anatomy-of-kashmir-militancy-in-numbers/story-UncrzPTGhN22Uf1HHe64JJ.html>



dominions of India and Pakistan were created through the Indian Independence Act of 1947, there were about 600 princely states ruled by indigenous rulers. The Independence Act abolished the suzerainty of British over these princely states and their sovereignty was restored. The choice was given to them to accede to either of the newly created dominions which was persuaded by both Sardar Vallabh Bhai Patel and Mohammad Ali Jinnah or they can choose to remain an independent state.

Sardar Patel with his strong conviction and diplomacy skills slowly gathered the support of the princely states to come up with India but there were three princely states which were creating hindrance to come with India – Junagarh, Hyderabad and Kashmir. The biggest problem was not Kashmir but Hyderabad because it was an important part of south India situated right in the center of India and was a large state hence at no cost Sardar Patel can leave Hyderabad. Sardar said “An independent Hyderabad will be like a cancer in the belly of India”.² After all Sardar managed to keep Hyderabad with India by successfully dealing with the Nizam of Hyderabad. But the same Sardar was not much interested in Kashmir being the part of India. According to M. J. Akbar, the former Minister of State for External Affairs in the NDA government, India’s Iron Man and its first Home Minister Sardar Vallabhbhai Patel was not so keen to have Kashmir in India because of the Kashmir valley’s overwhelming Muslim population. Sardar Patel felt that it would be far better for the ninety-six per cent Muslim Kashmir Valley

to go to Pakistan.³ Taking into consideration the religion of the populace, geographical proximity, and trade relations, Jammu and Kashmir, with a Muslim majority population, a long shared border, and the numerous trade routes between it and the new dominion of Pakistan, should have acceded to Pakistan.

The most interesting fact is that there was a person who wanted Kashmir to be a part of India and later he played a strong hand in doing this – yes, today’s national villain Pandit Jawaharlal Nehru. Being a Kashmiri pandit himself, Nehru always wanted Kashmir in India. The same thought were of Mahatma Gandhi, who, by keeping Kashmir in India wanted to defeat the Two-nation theory of Mohammad Ali Jinnah. Gandhiji wanted to prove that a Muslim majority state can successfully be a part of the secular India.

During 1940s, there was a prominent leader, Sheikh Abdullah who has friendly relation with Pandit Nehru because of which Raja Hari Singh, the prince of Jammu and Kashmir during the independence in 1947 was insecure and he thought that if J&K went with India, then the powers of the state might be transferred from him to Sheikh Abdullah. To avoid his loss of power, he decided not to go with India but as he himself was Hindu and going with a Muslim Majority state i.e. Pakistan was ethically not suitable. Thus he wanted to keep the state Independent and for this he sent a stand-still agreement to both India and Pakistan and wanted to have a deal that till the time the future of

² <https://scroll.in/article/884176/patel-wanted-hyderabad-for-india-not-kashmir-but-junagadh-was-the-wild-card-that-changed-the-game>

³ Kashmir: Behind the Vale, (Viking, New Delhi, 1991) (p. 102)



Kashmir is not decided, the ongoing arrangements of being an Independent state shall continue. Pakistan signed the agreement but India before signing it, invited Raja Hari Singh for negotiation and the meantime Pakistan attacked Kashmir. Raja Hari Singh sought military assistance from India but the Governor General of India contended that it was dangerous to send troops of Indian Army to a neutral state of Jammu & Kashmir unless they first offer to accede to Indian Territory. This led to the signing of the Instrument of Accession on 27th October 1947 between India and Kashmir according to which India joined Kashmir.⁴

Keeping in mind the temporary and provisional accession of Kashmir to India, the Jammu and Kashmir Constituent Assembly drafted a bill which, with subsequent modifications by the Indian government, was finally adopted by the Indian Parliament in 1949 as Article 370. It was the sacred thread which connected India to Kashmir, while ensuring a special status and internal autonomy for Jammu and Kashmir. Indian jurisdiction in Kashmir was limited to the three areas: defence, foreign affairs, and communications. This was confirmed by Sheikh Abdullah in the 1952 Delhi Agreement, and the State was allowed to have its own flag.

As mentioned above, the accession of Kashmir to India was provisional and temporary and when the situation would allow, then a permanent solution would be made. So, Article 370 was always meant to be annihilated when the Kashmiri people

were given their right to self-determination, to be exercised by a plebiscite or a referendum.

The history of Kashmir after accession and the induction of Article 370 is tempestuous and bruised, marked with India's deception, betrayal, rigged elections, installations of puppet governments, vengeful Governor and Presidential rules, and the Kashmiri people's resistance and their fight to realise their right to self-determination. The Indian state, rather than adhering to its promise of carrying out a plebiscite, consistently adulterated the autonomy enjoyed by Kashmir and diluted the provisions of Article 370 plenty of times through a series of more than fifty presidential orders spanning well over half a century. A fact which many Indians doesn't know: till 5 August, 2019, when the "special status" of J&K was removed, as many as 94 of 97 subjects in the Union list were already extended to Kashmir and more than 260 articles of the Indian constitution were applicable in Jammu and Kashmir⁵.

AMBEDKAR'S VIEW ON ARTICLE 370

After the abrogation of article 370 several leaders of the present government attempted to create a narrative that invokes Dr. B.R. Ambedkar to justify the measure of abrogation. Ambedkar has been projected as someone who was pitted against Jawaharlal Nehru. Dr. Ambedkar surely has his disagreement with the policies of Nehru towards the state of Jammu and Kashmir but his portrayal as a

⁴ <https://www.theindiaforum.in/article/article-370-federalism-and-basic-structure-constitution>

⁵ <https://www.groundxero.in/2019/08/26/on-hindutvas-quest-of-kashmir-and-the-politics-of-article-370-part-one/>



staunch opponent of Nehru in the issue of Kashmir.

In his resignation speech as the Union Law Minister in the Interim Parliament on 11th October, 1951, he cited his disagreement with the Nehruvian policy of accession. He argues that “the right solution to the dispute of Jammu and Kashmir is the partition of Kashmir”. He was of the view that the Hindu and Buddhist part to be given to India and the Muslim part to be given to Pakistan. He further said, “or if you like, divide the zone into three parts – the ceasefire zone, the valley and the Jammu-Ladakh region and have the plebiscite only in the valley”.

He had four reason behind his views, the first, given India’s commitment to hold a plebiscite in the state and Pakistan’s belligerent claims on it, “the Hindus and the Buddhists of the valley would be dragged into Pakistan against their wishes” and if the valley choses to be a part of India after the plebiscite, then Pakistan’s claim over it can be debunked decisively.

Secondly, if the pot is kept boiling in the valley, which the policies of Nehru have resulted in, there would be a permanent armed stand-off with Pakistan, which will result in the eating up of the resources that should be rightfully used to improve the conditions of the citizens of India.

Thirdly, the excessive attention to the issue of Jammu and Kashmir has cornered in policy making, it has led to ignoring of the other urgent and important matters, particularly those arising out from the carving out of East Pakistan. And lastly,

that India has lost enough goodwill, its social capital at the time of Independence, in global forums, due to the foreign policy of the Nehruvian regime in which the issue of J&K featured prominently.⁶

PRESIDENTIAL ORDER OF 1954

After Jammu and Kashmir’s accession to India, Sheikh Abdullah who took over the reins from Raja Hari Singh in 1949 negotiated the State’s political relationship with New Delhi, which led to providing special status through the formulation of Article 370, the subject of intense debate for long. However, under the 1952 Delhi Agreement between Sheikh Abdullah and Jawaharlal Nehru, several provisions of the Constitution were extended to Jammu and Kashmir through the 1954 Presidential Order.

After the Independence and accession of Kashmir, the Constituent Assembly was formed under the leader of Sheikh Abdullah. The Constituent Assembly of Jammu and Kashmir was a body of representatives elected in 1951 to draft a Constitution for the state of Jammu and Kashmir. Till the constitution was still in the making, there was a need to enforce some of the provisions of the Constitution of India to the state of Jammu & Kashmir. For this purpose, the Presidential order of 1954, officially known as The Constitution (Application to Jammu and Kashmir) Order, 1954 came into force on 14 May 1954.

By this order, almost the entire Constitution (including most constitutional amendments) was extended to the state of Jammu and Kashmir. Ninety-four out of 97 entries of the

⁶ Valerian Rodrigues, Ambedkar Chair, Ambedkar University, Delhi, Indian Express, 6 sept 2019.



Union List are today applicable to Jammu and Kashmir. Thus, on 94 subjects Parliament already has the exclusive power to pass laws that will be applicable to Kashmir just like any other state. Two hundred and sixty out of 395 Articles of the Constitution have been extended to the state. Similarly of the 12 Schedules of the Constitution of India, seven have already been extended to Jammu and Kashmir.

The presidential order of 1954 also brought with it Article 35 A to the Constitution of India which has been a topic of debate ever since it has been incorporated. Article 35A, not a part of the original Constitution, was conceived under the 1952 Delhi Agreement entered into by Jammu and Kashmir with India. In other words, it is a byproduct of Article 370 of the Indian Constitution. Thus the purpose of the presidential order of 1954 was to enforce the provisions of Indian Constitution to the state of Jammu & Kashmir.

ARTICLE 35 A – THE CONTINUANCE OF KASHMIRIYAT

Article 35A is a unique provision of the Constitution of India. It is a part of the Constitution, but does not figure in the bare Act! One does not find Article 35A after Article 35 in the Constitution of India. Article 35 is followed by Article 36. But, 35A can be seen in Appendix I of the Constitution. It was conceived exclusively for the benefit of the State of Jammu and Kashmir through a Presidential Order issued in 1954. It empowers the Jammu and Kashmir State Legislature to define the State's “permanent residents” and their special rights and privileges. It was specially devised to save

the State subject laws that had already been defined under the Dogra ruler Maharaja Hari Singh's regime and notified in 1927 and 1932. However, this Article which came into force in 1954 without a place in the bare Act of the Constitution was unknown to the public. It came into limelight only when cases were filed in the apex court challenging its validity, thereby raising an intense debate.⁷

ARTICLE - 35A - SAVING OF LAWS WITH RESPECT TO PERMANENT AND THEIR RIGHTS

Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and law hereafter enacted by the Legislature of the State

- a) defining the classes of persons who are or shall be permanent residents of the State of Jammu and Kashmir; or
- b) conferring on such permanent residents any special rights and privileges, or imposing upon other persons any restrictions, as respects
 - i. Employment under the State Government;
 - ii. Acquisition of immovable property in the State;
 - iii. Settlement in the State; or
 - iv. Right to scholarships and such other forms of aid as the State Government may provide

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part’.

⁷ State Subject Definition Notifications dated the 20th April, 1927 and the 27th June 1932



EFFECTS OF ARTICLE 35A

A most prominent feature of the Constitution of Jammu & Kashmir, as distinguished from the rest of India, is the provision for the special treatment of 'permanent residents' of Jammu & Kashmir. The permanent residents are such persons as are declared so by any existing law of the State or by any future law enacted by the Legislature of the State. As stated in the Article, any such law may either confer special rights or privileges or impose restrictions upon the permanent residents with respect to employments under the State Government, acquisition of immovable property in the State, settlement in the State and the right to scholarships and other forms of aid as the State Government may provide.

Such legislation shall be valid notwithstanding that it is inconsistent with the Fundamental Rights conferred by the Constitution of India upon the other citizens of India [e.g. by Articles. 15(1), 16(1), 19(1) (e)-(f) of Part III of the Constitution dealing with the fundamental rights].⁸

ABROGATION OF ARTICLE 370 – A POLITICAL BATTLE

In a momentous decision to confine Article 370 of the Constitution to the dustbin of history and rewrite the political landscape of the country, the BJP-led NDA government on 5th August 2019, revoked the special status granted to Jammu & Kashmir and secured Rajya Sabha's approval for a Bill to bifurcate the state into two Union Territories – Jammu & Kashmir with a legislature and Ladakh without a legislature. This decision of the government has been received with wild

rejoicing in the rest of the country while Jammu & Kashmir remains completely shut down under the heels of the boots of the security forces.

Since the Modi led BJP came to power after the 2014 general election, it was seen as an event of fulfillment of its promises which were due for a long time. It was seen as an opportunity by the supporters of the BJP that the three promises related to the construction of Ram Temple in Ayodhya, nationwide implementation of the Uniform Civil Code and the abrogation of Article 370 will finally see the light of the day because the BJP from its Jan Sangh days has advocated for all these issues with full force and voice. The issue of the Ram Temple sub-judice before the judiciary did not have any scope of any legislative intent by the government at-least till the pronouncement of the judgment which finally came on 9th November 2019 and the issue of the Uniform Civil Code is still a distant dream. So after securing the overhauling response in the 2019 general election winning 303 lok sabha seats, it gave the opportunity and courage to the BJP to go with at-least one of their dream i.e. the abrogation of Article 370.

The question arises that why the other political parties which were in power before 2019 (mainly the Congress) did not have a thought of doing anything in respect of the Article 370. The appropriate reason for this could be the dominance of the Congress over the polity of India for almost six decades. It was a clear that the Congress will not even think of abrogating Article 370 and this could be probably the last

⁸<http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Article%2035A%20of%20the%20Constitution-%20An%20overview.pdf>



thing it can do because this was the very result of their own policies at the time of independence and they have celebrated this all-time long so at-least the leaders of the Congress could not acts against the will of their fore fathers. The only possibility of such an action was coming of a non-congress party to power.

The BJP when came to power from 1998 to 2004 under the leadership of Atal Bihari Vajpayee, could also not move this issue and has to sacrifice it because it has a coalition government with such parties which opposed its stand on this issue. So there was no question to pursue them with this government. What is more important is the fact that Vajpayee's policy on Jammu & Kashmir was far, far removed from the present narrow, sectarian and warped view of the BJP. His policy of Insaaniyat, Kashniriyat and Jamhooriyat stood in direct contradiction to the commitment to abolish Article 370.

When Modi-led BJP came to power in 2014, they did not throw an attempt at this because of the fact that they can pass such a bill from the Lok Sabha where they had enough numbers but the Bill would fail in Rajya Sabha because of their less numbers there. So they waited for the moment when they can secure a majority in both the houses. They had more than 350 members in the lower house where it was cake walk to get the Bill passed and though they did not possess a clear cut majority in the Rajya Sabha, still they managed to get it passed from the upper house also thanking to the circumstances which arose during the voting in the Rajya Sabha.⁹

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<http://164.100.47.5/Newmembers/partymemberlist.aspx>

THE LAST STROKE – A CONSTITUTIONAL CONTROVERSY

What was that special status which was revoked by the central government by abrogating Article 370..... India sent thousands of additional troops to the disputed region, imposed a crippling curfew, shut down telecommunications and internet, and arrested political leaders putting the entire state in a lockdown with all the population of 1.25 crores....this is the special status enjoyed by the state of Jammu & Kashmir and no other Indian state enjoys such a special status. Is this special status going to end someday?

The special status revoked on 5th August was in respect to Article 370 of the Indian Constitution which says that most of the laws which the Indian Parliament will apply to the state of Jammu & Kashmir, only if the state legislature agrees to them.

5th August saw two bomb shells being dropped on Kashmir – first, that the central government had decided to scupper the essence of Article 370 by a presidential order declaring that henceforth the entire Indian Constitution will apply unconditionally to Jammu & Kashmir. Second, that the state of Jammu & Kashmir as we have known it, will no longer exist. In its place, there will be two Union Territories, one for Ladakh and the other for Jammu & Kashmir.

This can be regarded as a Constitutional Coup because there are no other words to describe the measures taken by the government. Not only the government assailed the sanctity of a provision that was



brought to give legal expression to Jammu & Kashmir in October 1947 but has also driven at stake, the federal structure of the Indian polity by simply abolishing a state of the Union through a central dictate.

Article 370 did not drop from a mid-air, it was a direct product of the solemn bargain or a deal or a promise that the Union Government struck with Maharaja Hari Singh in October 1947. The state of Jammu & Kashmir wanted to remain independent as India until it decided to accede to it, after being attacked by the Pakistan.

The terms of the Instrument of Accession that the Maharaja said, and India agreed – that Kashmir would primarily be acceding in respect of defence, foreign affairs and communication. Article 7 of the Instrument of Accession reads, “Nothing in this instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangement with the Government of India under any future Constitution”.¹⁰

Hence, Article 370 was a carefully drafted and negotiated provision that was intended to cement J&K’s place in the Union on the basis of condition under which it has acceded to India. Article 370 came into being on January 26, 1950 and had provision for the President of India to extend certain provisions of the Indian Constitution to Jammu & Kashmir, with the concurrence of the state government. It also said that they would have to be placed before the Constituent Assembly for such decisions as it may take there on. All this

implies that the state assembly was the final authority as to which part of the Constitution would apply and which not.

Of course Article 370 does have the provision for amendment. Clause 3 of Article 370 states, “Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.”¹¹

The BJP government got around with all this in a two-step process. First, it claimed that the Presidential Order has the power to amend another article of the Constitution i.e. Article 367, and thus inserted into the Constitution, a redefinition of the Constituent Assembly of Jammu & Kashmir, to the effect that henceforth, that expression would now mean the State Legislative Assembly. Having done this unconstitutional jugglery, the government then claimed that since the legislative assembly of the state of J&K is dissolved, and the state is currently under the Presidential Rule, the parliament can act as a substitute for the Legislative Assembly of Jammu & Kashmir as well as for the defunct Constituent Assembly of the Jammu & Kashmir.

This was truly a breath-taking claim as the Constituent Assembly of Jammu & Kashmir adopted the Constitution of J&K

¹⁰ True copy obtained by Venkatesh Nayak from National Archives of India

<https://thewire.in/history/public-first-time-jammu-kashmirs-instrument-accession-india/amp/>

¹¹ Article 370(3), Constitution of India 1950.



in 1956 and formally dissolved itself with effect from January 26, 1957. The language that the Constituent Assembly of J&K choose to describe its demise was a deliberate one. *On 24th January, 1950, “the Constituent Assembly of India in its meeting for the last time has merely adjourned itself sine-die i.e. with no set date for its next meeting.”*

By contrast, the Jammu & Kashmir Constituent Assembly’s resolution on its last day was, *“Today, this historic session ends and with this the Constituent Assembly is dissolved according to the resolution passed on 17th November, 1956”*. The idea clearly was that with the dissolution of the J&K Constituent Assembly, the temporary nature of the Article 370 was rendered a permanent status, since the only body capable of amending it no longer exists.¹²

This interpretation was upheld by a Five-Judge Constitutional Bench of the Supreme Court where it held, *“This clause shows that the constitution-makers attached great importance to the final decision of the Constituent Assembly, and the continuance of the exercise of powers conferred on the Parliament and the President by the relevant temporary provisions of Article 370(1) is made conditional on the final approval of the Constituent Assembly of Kashmir.”*¹³

In a recent judgment¹⁴ R F Nariman J. observed, *“Despite the fact that it is..... stated to be temporary in nature, sub-clause (3) of Article 370 makes it clear that this article shall cease to be operative only from*

such a date as the President may by public notification declares and this cannot be done under the proviso to Article 370(3), unless there is a recommendation of the Constituent Assembly of the state of Jammu & Kashmir to do so”.¹⁵

The BJP government after all the assault on the Constitution of India did not stop here. It has one more attack on the democratic ethos of the Constitution which came as a bullet and tore apart the federal character of the Constitution which surprisingly is also the basic structure of the Constitution. The government took the full statehood of Jammu & Kashmir and bifurcated it into two union territories. Article 3 of the Constitution of India empowers the parliament to do so but the proviso to the same article also asks for the Bill to be referred by the President to the State Legislature of the concerned state for expressing its views thereon. This is an essential safeguard to the federalism of India and clearly this was not followed. Sadly or unfortunately this did not happen with the State of Jammu & Kashmir with respect to its bifurcation and being reduced to union territory from a full state hood.

The tactics used by the BJP government and the logic stated thereafter just seems to be dangerous as to how they have provided the prerogatives of a state legislature in the hands of the Parliament. Think of any other state in future with Presidential Rule with a dissolved state legislature, so this can be a new precedent to give away all those prerogatives of that state to the Parliament and then that

¹² Article 370, A Constitutional History of Jammu & Kashmir, A.G. NOORANI

¹³ Prem Nath Kaul (1959),

¹⁴ Petition by Kumari Vijayalaxmi Jha, 2018

¹⁵ <https://timesofindia.indiatimes.com/india/article-370-has-acquired-permanent-status-supreme-court/articleshow/63603527.cms>



state can be bifurcated, abolished and whatever the parliament wants.¹⁶

I find it astonishing that such a kind of unconstitutional and anti-federal moves by the Central Government is been applauded all over country without thinking of the consequences it can lead in the future. Make no mistake in realizing that whatever this government has done and what the Home Minister has unveiled by the abrogation of Article 370, is not just an assault on the unique place that Jammu & Kashmir enjoys in India but on the very federal structure of the Indian Constitution and we all should expect that the Supreme Court in due course will call the government out on this.

CONCLUSION

Even while the core of Article 370 has been eroded, it does of course does have huge sentimental value for the people of Jammu and Kashmir who would view its abrogation with a great deal of unhappiness. In any case it will be violation of commitments given by us to them at the time of accession of Jammu & Kashmir

Article 3 of the Jammu and Kashmir Constitution itself declares the state to be an integral part of India. In the preamble of the Kashmir Constitution, not only is there no claim to sovereignty like in the Constitution of India, but rather there is a categorical acknowledgement about the object of the Jammu and Kashmir Constitution which is *“to further define the existing relationship of the state with the Union of India as its integral part thereof”*.

Thus, due to Article 370 and the decision by the Kashmir’s Constituent Assembly to remain part of the Indian Union, the Jammu and Kashmir Constitution did not proclaim the sovereignty of Jammu and Kashmir. It makes no claim to independent citizenship.

Since Jammu and Kashmir is an integral part of India, keeping in view federalism and the unique history of the state joining the Indian Union, the state has been given some autonomy under Article 370. Article 370 is certainly not an issue of integration; it is an issue of granting autonomy or federalism. Those who advocate its deletion are more concerned with uniformity rather than integration. Uniformity and integration are not the one and the same. Preservation of diversity and granting autonomy indeed lead to lasting integration.

¹⁶ <https://www.youtube.com/watch?v=vt0-sq0gCF0>