

Five Years into the Abrogation of Article 370 and Its Implications

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Abstract

August 5, 2019, was a black day in the history of Sub-continent when India took a unilateral decision to abrogate Article 370 and 35A from its constitution. In the light of Article 370, Kashmir enjoying a special status as it is disputed diversity between India & Pakistan. With its annulment, the special status came to an end. The abrogation of Article 370 also implies the abolishment of Article 35A, thus the non-residents could now purchase property and take up the government jobs in Indian Illegally Occupied Jammu and Kashmir (IIOJ&K). The abrogation has implications for the region; it could lead to gross human rights violations and could lead to violence along the Line of Control.

Keywords: Article 370, Jammu and Kashmir, Article 35 A.

Introduction

August 5, 2019, a black day in the Indian parliament of history – cast aspersion on the biggest democracy of the world as it marked the beginning of a new era for the Indian Illegally Occupied Jammu and Kashmir (IIOJ&K). India decided to dispatch 38,000 troops to the valley of Kashmir in two batches, 10,000 and 28,000, perhaps a pre-emptive move to suppress the masses of their legitimate right for what has been “cooking inside” the Indian parliament - the abrogation of Article 370 and 35A from its constitution. These articles of the Indian constitution give special status and right to the people of Occupied Jammu and Kashmir. The All Parties Hurriyat Conference (APHC) leader Mr. Syed Ali Gilani (late), expressed concerns about an impending genocide in a Tweet, “Indians are about to launch the biggest genocide in the history of Mankind. May Allah protect us”. At the same time, Indian President Ram Nath Kovind put into effect the Constitution (Applicable to Jammu and Kashmir) Order, 2019, replacing the previous 1954 order. This new order proclaimed the application of the entire Indian constitution to Jammu and Kashmir (India Today: August 5, 2019). This order also modified Article 367 of the constitution redefining certain terms and references concerning the state. Now all the 890 central laws are applicable to the region.

With the annulment of Article 370, the special status enjoyed by Jammu and Kashmir came to an end. This decision also restructured the region into two Union Territories: Ladakh and Jammu and Kashmir. The

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decision to revoke Article 370 had long been desired by the right-wing Bharatiya Janata Party (BJP) and was included in their 2019 election manifesto. The BJP's electoral victory in 2019 provided the political momentum necessary for Prime Minister Narendra Modi and Home Minister Amit Shah to implement this decision (BBC News, August 5, 2019).

Professor Harsh V. Pant wrote: *“For many in India, too, this move will be difficult to digest. ... a change of this magnitude challenges our intellectual faculties. But it is also a reality that ... the status quo on Kashmir had become unsustainable long ago (The Diplomat, September 8, 2023).*

Research Question and Methodology

The article attempts to explain Article 30, how has it impacted the status of Jammu and Kashmir as an entity and the Pakistan's subsequent response to the arising complexities. The research is exploratory in nature based on content analysis.

Article 370 Explained:

The Indian Independence Act of 1947 brought forth the Instrument of Accession (IoA), which presented three options to the Princely states: remaining an independent nation, joining the Dominion of Pakistan, or joining the Dominion of India. Initially, Jammu and Kashmir (J&K) chose to maintain its independence and entered into standstill agreements with both India and Pakistan. However, under duress from India, the Maharaja eventually signed the IoA. One of the provisions, (Clause 7 of the so-called Instrument of Accession), stated that *the State of Jammu and Kashmir could not be forced to accept any ... Constitution of India*. Instead, the state was to develop own constitution and determine the limits of additional powers granted to the central government. Article 370 was enforced to safeguard these rights and establish a binding agreement. Neither the central government of India nor the State is authorized to modify or abolish Article 370 unilaterally with the exceptions stipulated within the Article (Irfan 2014).

Article 370 provided Jammu and Kashmir with an exemption from full compliance with the Indian Constitution, endowing it with a distinct special status. Under this arrangement, the state possessed the autonomy to establish its own constitution, with central legislative authority limited to defense, foreign affairs, and communication matters. Furthermore, Article 35A of the Indian Constitution vested the Jammu and Kashmir legislature with the power to establish a criterion for permanent residency in the region and delineate the associated rights. According to the

constitution of Jammu and Kashmir, a permanent resident was defined as an individual who either held state-subject status as of May 14, 1954 or had legally resided in the state for a decade and had acquired immovable property there in accordance with the law. The consent of the state government was necessary for extending additional powers. However, the State's Constituent Assembly had to ratify the provisional consent, and once the assembly dispersed, further extensions were not possible. The revocation or amendment of Article 370 required its recommendation. The attempt by India to change the status of Jammu and Kashmir was nullified by the United Nations Security Council, affirming its disputed status. Despite the revocation of Article 370, Jammu and Kashmir remains a disputed territory internationally (M. Zia ud Din:2019). Article 370, initially meant to be temporary, acquired permanent status through court rulings. Consultation with the state government was required for applying central laws on matters covered by the Instrument of Accession, while consent was mandatory for other subjects.

Implications and After Effects of the Abrogation of Article 370:

Due to the annulment of Article 370, the inhabitants of Jammu and Kashmir experienced a military lockdown aimed at quelling widespread protests against what was deemed an unlawful action under both Jammu and Kashmir's own constitution as well as the Indian constitution. Despite the ensuing controversy, India encountered relatively few obstacles not only in rescinding Jammu and Kashmir's autonomous status but also in promptly implementing additional changes in the region. Among these alterations is the contentious domicile law, which permits individuals and their families from outside Jammu and Kashmir to acquire permanent resident certificates, a matter of significant consequence concerning the indigenous people's right to determine their own fate through a plebiscite. In the past, the Jammu and Kashmir Agrarian Reforms Act of 1976 imposed restrictions on land ownership, limiting it to a maximum of twelve and a half acres per individual, with the aim of preventing exploitation. Additionally, the act specified that each family could only hold up to a quarter acre of land for residential purposes. However, the current situation has removed any limitations on the amount of land that corporations can possess. Furthermore, the phrase "permanent resident of the State" has been obliterated from the Jammu and Kashmir Development Act without introducing an alternative provision in order to regulate land ownership, thereby permitting any individual to buy land without such restrictions (The Indian Express, November 18, 2020).

To combat corruption, the lease of government properties for residential purposes was also prohibited under the Jammu and Kashmir

Land Grants Act of 1950, except in some urban areas of Jammu and Srinagar. These restrictions have now been lifted, enabling the leasing of land across the entire state of Indian Illegally Occupied Jammu and Kashmir. Jammu and Kashmir had its own Transfer of Property Act in 1977, but with the removal of Section 139, it has been rendered obsolete. This particular section regulated the transfer of immovable property in Jammu and Kashmir (Greater Kashmir, December 13, 2022).

Following a request from a senior army officer holding the rank of Corps Commander or higher, the government has gained the authority to designate any region in Jammu and Kashmir as strategically essential for the training / operational and requirement of the armed forces.

The Jammu and Kashmir State Human Rights Commission, responsible for human rights matters in the region, has been superseded by the National Human Rights Commission (NHRC). Likewise, there is no longer a Consumer Commission in Jammu and Kashmir, with the State Consumer Disputes Redress Commission (SCDRC) being disbanded due to the repeal of Article 370 (Umer Maqbool, The Wire, last modified April 17, 2020).

Soon after the abrogation of Article 370, the Jammu and Kashmir Right to Information (RTI) Act of 2009 was repealed, leading to the closure of the Jammu and Kashmir State Information Commission (UKSIC).

On June 2, 2020, the Union Territory administration implemented a fresh policy aimed at reviewing content in various media formats, including print and electronic, with the intent of identifying what it perceives as anti-national material.

As far as women's rights are concerned, despite the discussions on Article 35A, the State Commission for Protection of Women and Child Rights (CPWCR) was disbanded following the abrogation of the article (Bare Acts - Live, September 8, 2023).

The education system has experienced significant disruptions as several universities and institutions in the state now fall under the direct authority of the government-appointed Lieutenant Governor (LG). This change has resulted in the replacement of the elected Chief Minister as the chancellor of institutions such as the Cluster Universities in Jammu and Srinagar and Baba Ghulam Shah Badshah University among others. Furthermore, the administrative council headed by the LG is proposing modifications to state laws that were previously restricted under the Jammu and Kashmir Reorganization Act. Additionally, it has also been announced by the Union Territory that civil servants who have reached the age of 48 can be retired, and they may be terminated without the option of a tribunal.

Correspondingly, in line with changes made to government positions and land ownership, the electoral process in Jammu and Kashmir has been extended to include individuals who were not permanent residents of the region prior to August 5, 2019. Now, Indian citizens are eligible to vote as well as run as candidates in the Assembly elections (Encyclopedia Britannica, September 8, 2023).

Pakistan's Reaction

Pakistan acted promptly to draw global and local focus to the worsening conditions in Kashmir. This matter garnered attention on the international stage, resulting in a confidential session of the United Nations Security Council (UNSC) to address the situation. Consequently, the issue has re-emerged as a global concern. On the home front, a joint parliamentary session was called to deliberate on various approaches. Concurrently, diplomats in Islamabad received briefings and were subsequently escorted to the Line of Control (LoC) to observe evidence of unprovoked firing from the Indian side.

In its press release dated August 3, 2019, the Ministry of Foreign Affairs expressed serious concerns about the continuously deteriorating situation in the Indian Illegally Occupied Jammu and Kashmir (IIOJ&K) (MOFA Government of Pakistan, 2019). The deployment of additional Indian paramilitary forces (38,000) soon after the abrogation of article 370 has caused deep anxiety and fear among the people of IIOJ&K. Furthermore, advisory messages urging tourists, yatis, and students to immediately leave IIOJ&K, along with calls for stocking up on food supplies, heightened apprehensions. It has been speculated that the Indian government may attempt to bring about demographic changes in IIOJ&K which will change the situation on ground. The Indian Army's use of cluster ammunition against civilians in Azad Jammu and Kashmir (AJK) resulted in the martyrdom of two civilians, including a child of 4 years' age and critically injuring more than 10 civilians. Pakistan vehemently condemned these actions as it violated international humanitarian law. Additionally, Pakistan rejected India's self-serving claims of an imminent attack by the terrorists in IIOJ&K to justify its new deployments. This has been seen as Indian tactic to employ baseless allegations as a diversion, and continue with their state-sponsored subjugation of Kashmiri people. Pakistan warned the world community to remain vigilant against any false flag operations by India.

The then Prime Minister firmly reiterated Pakistan's commitment to respond resolutely to any acts of Indian misconduct or aggression, backed by the unwavering support of the entire nation. He instructed the activation of all available diplomatic channels to shed light on the

oppressive policies of the Indian authorities, its ulterior motives, and its human rights violations in the region. Additionally, the Armed Forces were directed to remain vigilant in the face of these developments.

Following the National Security Committee meeting, Pakistan unveiled a series of new measures, which include (Sanaullah Khan, *Dawn*, August 7, 2019):

1. Downgrading ... relations with India.
2. Suspending ... trade.
3. Reassessing existing bilateral agreements.
4. Elevating the matter to the UN, including the UNSC.
5. Observing August 14th in solidarity with the courageous Kashmiris and their just quest for self-determination.
6. 15th August to be observed as Black Day.

Conclusion

Pakistan named the Indian Administered Kashmir from Indian Occupied Kashmir to Indian Illegally Occupied Jammu and Kashmir (IIOJ&K). Indian suppression of the populace in Kashmir will not deter them from their right of self-determination. Kashmiris are illuminating the path of freedom struggle and continue to offer sacrifices with their blood. Kashmiris will not go back on their just demand of free and fair right to self-determination. India has been unable to break will of the people despite its massive use of brutal force. Indian constitutional moves and arrests of the leadership in the Valley will not yield any results. It would rather further alienate them from the Indians and hardened their resolve to achieve their goal. There are significant implications of the revocation of Article 370. This step is in violation of not only the UN resolutions but also the bilateral agreements. The disregard for international obligations could undermine India's credibility specially its inspirations for a global role.

Pakistan will continue to provide diplomatic and moral support to the Kashmiri people. It must highlight issue in international forums and remain vigilant to any false flag operations by India. India's trustworthiness in multilateral and bilateral agreements are now challengeable and Pakistan must emphasize pre-August 2005 status of IIOJ&K which implies reinstatement of Article 370. This should be rather a precondition for dialogue on all issues, particularly the core dispute of Kashmir. Pakistan must also actively engage the international community for its mediation and support on Kashmir dispute. Regional stability has been affected by the tensions arising out of the situation.

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