

Article 370 : Introduction to Abrogation

(17th October 1949 to 5th August 2019)

Dr. Rachana Srivastava

Associate Professor

AP Sen Memorial Girls College, Lucknow, India

Abstract

5th August 2019 is a historic day in the constitutional history of India when the Union Government took a bold step to scrap a provision which was an obstacle to the unity and integrity of the nation. It has raised curiosity among the masses but becomes a little difficult to grasp for a person who is not aware of the background and history.

This paper on Article 370 of the constitution of India is an attempt to describe the entire issue in simple terms so that even a layman can understand this raging topic. It is broadly divided into 3 sections. The first part is introductory which gives us an insight into the actual circumstances under which special status was accorded to the state of Jammu & Kashmir. It is extremely important as different parties have looked at it from their own angle thereby depriving it of authenticity and objectivity.

The second section deals with the actual happenings in August 2019 leading to abrogation. It covers the constitutional and legal aspects of the issue. Provisions before abrogation and the changes that will take place after the move is depicted in this part.

Lastly, I have tried to analyse this bold decision of the government. Conversion of a full fledged State into Union Territories is historically unprecedented in India. What does it imply and is there something left for the government to do is a pertinent question. My paper deals with the entire issue with utmost transparency, objectivity and non partisan spirit.

Background

Article 370 - the most talked about and controversial article in the Constitution of India - was included on 17th October 1949 with the efforts of Pandit Jawahar Lal Nehru and Sheikh Abdullah on the proposal of N. Gopaldaswamy Ayyangar - the erstwhile Prime Minister of Jammu & Kashmir. After donning multiple shades in the politics of India all through these years, the Narendra Modi government accorded a sudden burial to this 'temporary' provision related to Jammu & Kashmir on 5th August 2019. The end was inevitable as the article was 'Temporary'. But it came as a surprise to one and all as discrete and eerie silence was maintained by the government. All we could notice was deployment of troops, suspension of Amarnath Yatra, vacation of hotels and sudden return of tourists on an advisory by the government claiming intelligence reports of cross border threat. A look at the birth, gradual evolution and sudden demise of Article 370 as well as the future probabilities of the newly formed union territories of Jammu & Kashmir and Ladakh becomes imperative to understand at this stage.

For clarity of concept, let us begin with the contours and census of the various regions of Jammu & Kashmir. Kashmir - the mere mention of the word arouses a mixed feeling of beauty and terror in ones mind. On the one hand it reminds us of the picturesque sight, beautiful landscape snow bound hills, springs lakes and valleys while on the other, a thought of insurgency, cross border terrorism, cold blooded murder, loot, disturbance and turmoil flashes in our minds.

Geographically Pre-independence Jammu & Kashmir had four regions namely- (1) Jammu, (2) Kashmir, (3) Ladakh, and (4) Gilgit, with a total area of 2,22,236 km square.

Post Independence Jammu & Kashmir comprised of mainly three regions - (1) Area with India i.e. Jammu, Kashmir and Ladakh (Total area 1,01,387 km square). (2) Pakistan Occupied Jammu & Kashmir i.e. Mirpur, Muzaffarabad, areas of Poonch, Gilgit and Baltistan. (3) China Occupied Jammu & Kashmir i.e. Shakshgam Valley and Aksai Chin (more than 36,000 km square area occupied in 1962 war) (Total area under Pakistan and China = 1,20,849 km square).

A close look on the area with India reveals that:

Ladakh - Largest part of the state with an area of 59,000 square km, and Buddhist dominated.

Jammu - The second largest part of the state with 27,000 km square and 10 districts.

Kashmir - The smallest part of Jammu & Kashmir. It is densely populated with 10 districts and 15,000 km square area.

People of various identities like Dogras, Gujjars, Pahadis, Shina, Baltis and Buddhists inhabit this state.

Before Independence, administratively India was divided into two parts:

1. British India - Directly ruled by British Crown and
2. Princely States - Indirectly ruled by British Crown

Under Section 7(1)(b) of the Indian Independence Act 1947, British Dominion was divided into Dominion of India and Dominion of Pakistan. After lapse of Paramountcy, more than 550 Princely States regained the position of absolute sovereignty which they had enjoyed prior to the assumption of suzerainty by the British Crown. The rulers of the Indian states thus became unquestionably competent to accede to either of the newly created Dominions of India and Pakistan. With the determined efforts of the then Home Minister Sardar Vallabhbhai Patel, more than 550 Princely States were brought into the Indian fold by signing the Instrument of Accession. Three namely Junagarh, Hyderabad and Jammu & Kashmir remained undecided due to various reasons. Now the unexpected turn of events proved crucial for Jammu & Kashmir.

The First War

In fact, Pakistan army led by Army Officer Akbar Khan and Pathan Tribesmen attacked Kashmir on October 22, 1947. The British had succeeded in forging an uneasy peace with the tribes of the NWFP but after they withdrew, Pakistan incited the tribesmen into launching an attack. By the last week of October 1947, about 5,000 of them had entered Kashmir disguised as goatsmen.

On October 23, the tribesmen transited through Pakistan carrying modern military gear. The first standoff was at Muzaffarabad where they faced a battalion of Dogra troops, capturing the bridge

between Muzaffarabad and Domel, which fell to the attackers the same day. Over the next two days, they took Garhi and Chinari. The main group of attackers then proceeded towards Uri.

At Uri, Brigadier Rajinder Singh, who led Jammu & Kashmir state forces, was killed. The battle at Uri is significant as it helped Maharaja Hari Singh avoid capture and brought the government valuable time to bring in more forces. After the battle, the tribesmen, traveled down the Jhelum river to Baramullah, the entry point into the Valley.

On October 24, the Maharaja made an urgent appeal to the Indian Government. He waited for a response, while the Cabinet's defense committee met in Delhi. V.P. Menon administrative head and secretary of the States department, was instructed to fly to Srinagar on October 25. Menon's first priority was to get the Maharaja and his family out of Srinagar. There were no forces left to guard the capital and the invaders were at the door. The king left the Valley by road for Jammu. On October 26, after a cabinet defense committee meeting the government decided to fly two companies of troops to Srinagar. Menon himself took a plane to Jammu where the king was stationed.

Accession to India

Governor-General Mountbatten had contended it would be the 'height of folly' to send troops to a neutral state without an accession completed 'but that it should only be temporary prior to a referendum.' Neither Nehru nor Sardar Patel attached any importance to the 'temporary' clause, but Menon was carrying a message for the Maharaja: He had to join the Union if he wanted to ward off the invasion. The king was ready to accede. Hari Singh signed the accession letter on October 26, 1947 regretting that the invasion had left him with no time to decide what was in the best interests of his state - to stay independent or merge with India or Pakistan.

Menon returned to Delhi with both the letter and Instrument of Accession. Governor General Lord Mountbatten, on accepting the accession on October 27 expressed a wish: It is my Government's wish that as soon as law and order has been restored in Kashmir and her soil cleared of invaders, the question of the state's accession should be settled by a **reference to the people**. The cabinet defense committee approved the accession, subject to a provision that a referendum would be held in the state when the law and order situation allowed it. Sheikh Abdullah took charge of an emergency administration in Kashmir, Nehru appointed the former Kashmir PM N. Gopalaswamy Ayyangar as a Cabinet Minister to look after Kashmir affairs.

What does the signing of Instrument of Accession on 26th October 1947 by Maharaja Hari Singh and its acceptance by Lord Mountbatten on 27th October 1947 imply? The legal basis as well as the form of Accession was the same as signed by the other States joining either India or Pakistan. Thus the Accession was full and final. By this, the state of Jammu & Kashmir became legally and irrevocably a part of the territory of India and the Government of India was entitled to exercise jurisdiction over the state with respect to those matters to which the IOA extended.

If in spite of this, due to the liberality of the Government of India, an assurance of a referendum had been given, it was completely extra-legal and under no circumstances, could any third party take advantage of it and claim that the legal act had not been completed.

When India made her Constitution in the year 1949, this Act of Accession was unequivocally given legal effect by declaring Jammu & Kashmir an integral part of the territory of India (Article 1), a Part B State and fifteenth state under the First Schedule of the Constitution of India.

By the Accession the Dominion of India acquired jurisdiction over the state with respect to the subjects of defense, External Affairs and Communication. But though the State was included as a Part B State, all the provisions of the Constitution applicable to Part B States were not extended to Jammu & Kashmir. With this background in mind, it would be simple to understand the context.

Genesis of Article 370

Article 370 was in fact Article 306-A of the Draft Constitution and was discussed in the Constituent Assembly of India at length by N. Gopaldaswamy Ayyangar who said:

“There has been a war going on within the limits of Jammu & Kashmir”

“The Conditions in the state are still unusual and abnormal”

“We are entangled with the United Nations in regard to Jammu & Kashmir”

“Part of the State is still in the hands of rebels and enemies”.

“At present, the legislature which was known as the Praja Sabha in the state is dead”.

Now, if you remember the view points that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. Article 306-A is an attempt to establish such a system (P 495 CAD).

Article 306-A was amended and passed by the Constituent Assembly on 27th May 1949 to become Article 370. On 17th October 1949, it was included in the Constitution of India.

Part XXI of our Constitution is titled – Temporary, Transitional and Special Provisions. It contains Article 369 to Article 392. Article 370 is outlined as ‘Temporary provisions with respect to the State of Jammu & Kashmir’

Article 370(1) broadly states that the union Parliament has the power to legislate on ONLY those matters in the Union List and the Concurrent List which the President may by order specify in consultation with the Government of the State.

Article 370(2) broadly states that if the Concurrence of the Government of the State (Sadr-e-Riyasat) be given to the President before the Constituent Assembly for the purpose of framing the constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take there.

Article 370(3) provides that notwithstanding anything in the foregoing provisions of this article the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modification 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.

Thus the Constitution, provided that only Article 1 and Article 370 applied of their own force to the state of Jammu & Kashmir. The application of the other Articles was to be determined by the President in consultation with the government of the State.

In pursuance of the provisions under Article 370(1), the President made the Constitution (Application of Jammu & Kashmir) Order 1950 in consultation with the Government of the State of Jammu & Kashmir specifying the matters on which Union Parliament could legislate according to the terms of IOA (Defense , External affairs and Communication).

After this, the Government of India and Government of the State made an Agreement at Delhi in June 1952 as to the subjects on which the Union should have jurisdiction over the State, pending the decision of the Constituent Assembly of Jammu & Kashmir.

The people of Jammu & Kashmir elected a sovereign Constituent Assembly which met for the first time on 31st October 1951. The first official act of the Constituent Assembly was to put an end to the hereditary rule of the Maharajas. Sheikh Abdullah formed an interim Government which soon converted into a full-fledged Cabinet with Sheikh becoming the first Prime Minister of Jammu & Kashmir. (Five years later, Abdullah was dismissed from office and interned on the instructions of Nehru, when he changed his mind to making Kashmir a separate sovereign state altogether. Since then, the body of Kashmir and the soul of the rest of India have cohabited restlessly. Bakshi Ghulam Mohammad was appointed the new Prime Minister.) Hari Singh was forced to abdicate in favour of his son Yuvraj Karan Singh who was later elected by the Constituent Assembly of the State as The Sadr-e-Riyasat. (Constitution of Jammu & Kashmir - 6th amendment Act 1965 removed this anomaly. Now the Sadr-e-Riyasat would be called Governor and he is to be appointed by the President under his hand and seal as in other states).

Jammu & Kashmir Constitution (Amendment) Act 1951 made by the Constituent Assembly of the state gave legal recognition to the transfer of power to the popular government headed by Sadr-e-Riyasat.

Accession Ratified

It also ratified the decision for Accession to India in February 1954. Thus the **reference to the people** was attained and the accession was constitutionally and legally complete as formal Sanction of the people of Jammu & Kashmir was reflected through their democratically elected Constituent Assembly.

The Constituent Assembly ratified the Accession to India as well as the Delhi Agreement Which extended jurisdiction of ALL subjects in the Union List (with slight alteration) to the Union Parliament by the Constitution (App to Jammu & Kashmir) Order 1954 which came into force on 14th May 1954. It superceded the Order of 1950 and contained Article 35-A. This Order was amended in 1963, 1964, 1965, 1966, 1972, 1974 and 1986.

The State Constitution for Jammu & Kashmir was to be framed by its own Constituent assembly. Thus the provisions governing the Executive, Legislature and Judiciary of the state of Jammu & Kashmir were to be drawn up by the people of the State and the corresponding provisions of the constitution of India were not applicable to the state.

For making permanent Constitution for the State, the Assembly Set up several committees. In October 1956 the Drafting Committee presented the Draft constitution which was adopted on 17th Nov 1957 after discussion and finally given effect to from 26th January 1957. So the new Constitution of Jammu & Kashmir came into force in January 1957 and the role of the Constituent Assembly ends. The relevant provisions need mention.

Section (3) of the Constitution of Jammu & Kashmir: The state of Jammu & Kashmir is and shall be an integral part of the Union of India.

Section (5): The executive and legislative powers of the state extends to all matters except those with respect to which Parliament has power to make laws for the state under the provisions of the Constitution of India.

Section (147): No Bill or amendment seeking to make any change in this or section 3 or 5 shall be moved or introduced in either house of the legislature.

Let us now discuss Article 35-A which was incorporated in the Constitution of India by the Presidential Order 1954. In fact Maharaja Hari Singh had passed this law for the first time in 1927, with the aim to restrict inflow of crowds from Northern Province of Punjab into the state. This, reports say, was done on the behest of prominent Kashmiri Hindus. POK still has the law. An offshoot of the 1952 Delhi Agreement between Jawaharlal Nehru - PM of India and Sheikh Abdullah PM of Jammu & Kashmir, the provision of Article 35-A envisages the creation of a group of persons, 'permanent residents' who are entitled to be provided 'special rights and privileges', in matters such as employment in the State Government and acquisition of immovable property. In India this law was enforced on 14th May 1954 in its new form namely Article 35-A. According to Article 35-A all the people who were a state subject in Jammu & Kashmir in 1954 or who have been a resident of the state for 10 years will become permanent residents/ citizens of Jammu & Kashmir. They will be entitled to all the benefits (property, jobs etc.) in the state. Whoever does not fulfill the above criterion will not be called citizens.

Also the Legislative assembly of Jammu & Kashmir reserves the right to amend the definition of permanent residents by a 2/3rd majority at its will.

Implications of Article 370

- Constitutional abuse of Article 370 especially due to Article 35-A, Amendment in Article 368 and Presidential Order 1963.
- Discrimination with Scheduled Caste.
- Misgovernance due to non-implementation of Union Constitution in toto.
- Non Implementation of 73rd and 74th amendments of the Constitution.
- RTE (6 to 14 year children) not applicable to Jammu & Kashmir.
- Several other welfare laws not implemented.
- Poor Investment by private sector in the state.
- No Development and Extreme Poverty.

- No Reservation for OBC's.
- STs have no political reservation.
- Gender Discrimination.
- Discrimination with Jammu and Ladakh on the basis of region.
- Neglect of Refugees as they did not get citizenship till date (They could vote in Lok Sabha Elections but not in Assembly elections)
- Promotes Terrorism - 42,000 innocent people were killed in the past 30 years.
- Promotes Separatism.
- Promotes Nepotism and Graft .
- Anti Women - Girls are deprived of their Jammu & Kashmir citizenship and all rights if they marry an outsider.
- Low rates of property as no one could buy land in Jammu & Kashmir.
- Tourism suffered a setback.
- No PPP model Hospitals.
- No Doctor wants to go there.
- Separate flag, Constitution and Legislative Assembly
- Instead of Cr.PC and IPC, they follow the Ranvir Penal Code.

The BJP had always vowed for Scrapping of Article 370 in its manifesto. In fact Jan Sangh leader Dr. Shyama Prasad Mukherjee laid his life (went to Jammu & Kashmir to hoist tricolour, imprisoned and later died) for this cause. BJP came to power in 2019 with a thumping majority (17th Lok Sabha). Despite warnings and challenges by the local leaders, PM Narendra Modi and Home Minister Amit Shah made the impossible possible. Sudden turn of events (mobilization of troops, return of foreign nationals and tourists from Jammu & Kashmir, suspension of Amarnath Yatra etc.) since August 1, 2019 brought apprehensions in the minds of the people, but with meticulous planning and discrete silence PM Modi and Home Minister Amit Shah abrogated Article 370. Let's have a look as to how it all unfolded.

Turn of Events and Legal Provisions

August 4, 2019

The Media persons ask Governor Satyapal Malik as to whether there is going to be a change in Article 370? Governor diplomatically replied - "As for now I have no such intimation. I can't say anything about tomorrow."

In the night, Governor recommends to the President that Article 370 be scrapped. This recommendation goes to the Union Cabinet.

August 5, 2019

- The Union Cabinet met at 10 am. It approved the recommendation of the Governor and sent it to the President.
- The President issued a public notification under 370(3) extending all provisions of the Constitution to the State of Jammu & Kashmir.

11 am

- The Home Minister came to the Rajya Sabha with a copy of this notification issued by the Ministry of Law and presented 2 statutory resolutions and a Bill.
- He informed the House that the President had used his powers under Article 370 to fundamentally alter the provisions, extending all central laws, instruments and treaties to Kashmir, thereby rendering Article 370 inoperative. While introducing the resolution, Amit Shah Said, "Under Article 370(3), there is a provision that the President, on recommendation of Parliament, has the power to amend or cease the implementation of Act, 370, through a public notification."
- The first resolution was to recommend that the President issue a notification rendering Article 370 inoperative.
- The Second Resolution was to accept the Jammu & Kashmir Reorganisation Bill.
- The Jammu & Kashmir Reorganisation Bill proposed to create two Union territories out of the state of Jammu & Kashmir :
 1. UT of Ladakh (Kargil and Leh Districts) and
 2. UT of Jammu & Kashmir (all other districts of State of Jammu & Kashmir)

Union Territory of Ladakh

- Headed by Administrator appointed by President
- No Legislative Assembly
- One seat in Lok Sabha
- Already formed 30 membered (26 elected, 4 nominated) Ladakh Autonomous Hill Development Council will continue
- Civil Administration of Ladakh will totally be in the hands of the Centre
- Total Population 2.75 lakh
- Main Cities will be Leh and Kargil

Union Territory of Jammu & Kashmir:

- 8th in the list of Union Territories
- Lieutenant Governor instead of Governor
- Article 239-A will be in place like Puducherry
- Tenure of legislative Assembly will be 5 years
- Bills passed by legislative assembly will go to Lieutenant Governor who may sign or send it to the President for assent
- In case of instability in the legislative assembly, parliament will assume power
- Only 10% of the elected members will be made Ministers
- Law and Order will be directly under the Centre.
- For charges of corruption and graft, Central agencies will not require the prior permission of State Government.
- At present, Jammu & Kashmir state legislative assembly has 107 seats including 24 kept vacant for POK. This provision for POK shall continue. But after the delimitation exercise, the legislative assembly will have 114 seats - up by 7 seats (90 + 24)
- LG may appoint two women candidates
- UT of Jammu & Kashmir will have 5 seats in Lok Sabha and 4 seats in Rajya Sabha

- Both UTs to have LG, for now the Governor will continue as both.
- Rajya Sabha passed the resolution rendering Act 370 inoperative by a voice vote.
- Rajya Sabha adopted the Jammu & Kashmir Reorganisation Bill with 125 votes in favour and 61 against.

6th August 2019

The Resolution abrogating special status to Jammu & Kashmir under Article 370 of the Constitution was placed in the Lok Sabha by Home Minister Amit Shah. The Lok Sabha approved the resolution with 351 in favour and 72 against. Similarly The Jammu & Kashmir Reorganisation Bill 2019 was placed before the Lok Sabha and it was passed by 370 votes in favour and 70 against.

- Shivsena, AAP, BSP, BJD, AIADMK, YSRCP supported the move.
- The Bill became law with President Ram Nath Kovind's assent on 9th August 2019.
- The Resolution rendering Article 370 inoperative came into effect immediately.
- The Reorganisation Bill will became operative on 31st October 2019 to mark the birth anniversary of Sardar Vallabhbhai Patel.

Main Features of the Notification Rendering Article 370 Inoperative

- It is not an amendment to the constitution.
- It amended Article 367.
- It came into effect immediately.
- It is a public notification issued by the President and passed by the Parliament.
- Clause (d) states that 'Constituent Assembly' in 370(3) will now be read as legislative Assembly.
- The Order 2019 super cedes Order 1954
- The President has issued this Presidential Order under Article 370 (1) of the Constitution.
- The notification uses the words 'with the concurrence of the government of the State of Jammu & Kashmir.' This presumably means the Governor has given his concurrence on behalf of the State government.
- New clauses say - "Sadar-e-Riyasat" would be construed as 'Governor' of Jammu & Kashmir.
- All references to the State government shall mean 'The Governor'.
- The Government has made use of the fact that Jammu & Kashmir is under President's Rule, during which Parliament performs the legislative functions of the state assembly
- Now only 370(1) will remain. All other clauses of Article 370 have been scrapped.

What does this abrogation denote?

Implication of Abrogation

	Before Abrogation	After Abrogation
1	Double Citizenship	Single Citizenship – Indian
2	Outsider could not buy land in Jammu & Kashmir	Now they can buy land in Jammu & Kashmir
3	Outsiders could not study in Institutions	Now they can
4	Outsiders could not get government jobs	Now they can
5	Tenure of Vidhan Sabha was 6 years	Now 5 years like the rest of India
6	Union parliament had limited powers with respect	Now no restriction

	to legislation	
7	Separate constitution of the state	Constitution of India will be in force
8	Separate flag	Tiranga
9	Governor was appointed	LG will be appointed
10	If Kashmiri women marry outsider (India) they lose citizenship	Now they can marry maintaining citizenship
11	If a Kashmir women marries a Pakistani, he would assume Kashmiri citizenship	This special rights of Pakistanis will end
12	In case of emergency, Governor rule was invoked	Now President's rule under Article 356 would be invoked
13	Hindus, Sikhs and others minorities in Jammu & Kashmir did not get benefits of 16% reservation	Now they will get
14	No RTE, RTI and CAG	Now they will be implemented
15	Ranbir Penal Code was in force	Now Indian Penal Code
16	No outsider could contest or vote	Now any Indian can contest or vote
17	Laws made by Indian parliament not enforced	Now they will be
18	Decisions of Supreme Court not valid	Now they will be valid
19	Financial Emergency couldn't be evoked	Now it can be
20	President could not suspend Constitution of the state under Article 356 immediately. He could do so only after 6 months of Governor's rule, during which period the assembly would remain under suspended animation.	Now he can

Jammu & Kashmir has been downgraded from a State to a Union Territory. What does conversion from full statehood to UT mean?

The Conversion of a state governed by an elected legislature into a union Territory adversely affects a people who had earlier enjoyed the freedom of full democratic participation. In the case of Jammu & Kashmir the centrally appointed administrator – called the Lieutenant Governor - will now have the power to make a wide range of decisions, as opposed to a regular State Governor who must act typically on the aid and advice of the State's Council of Ministers. The total reorganization of a full-fledged state into two UTs is historically unprecedented in India. How is the governance going to be affected is a pertinent question. In fact there are two models - Puducherry and the National Capital Territory of Delhi - which can guide the proposed Legislative Assembly of Jammu & Kashmir on becoming a Union Territory. While the former seems to have no restriction with regard to framing laws on police, public order and land, the latter is specifically barred from making law on the three subjects. It was through an enabling provision 239-A that the Puducherry legislature was formed, whereas, in the case of Delhi, the provision 239-AA spells out the contours of power of the legislature and council of ministers. The Puducherry Model will be followed in case of Jammu & Kashmir.

In respect of Ladakh, where there is no Legislative Assembly, the role of the Administrators or Lt. Governor will be greater than that of Jammu & Kashmir. His source of authority is the President.

The Bill proposes wide powers to the LG of the Union Territories of Jammu & Kashmir and makes it the duty of the Chief Minister to communicate all administrative decisions and proposals for legislation to the LG.

Moreover, all Central and State laws of Jammu & Kashmir would apply to the new Union Territories of Jammu & Kashmir and Ladakh. Assets and liabilities of Jammu & Kashmir and Ladakh would be apportioned on the recommendation of a Central Committee within a year.

Employees of state PSUs and autonomous bodies would continue in their posts for another year until their allocations are determined. The police and public order is to be with the Centre.

Timing and International Reaction

The timing of this step also needs a mention. While Pakistan was always a nuisance misusing the special status of Jammu & Kashmir in disrupting peace and order, terror funding etc, other factors also came to the fore. United States of America is interested in withdrawing its troops from war torn Afghanistan with the help of Pakistan. This will affect India in two ways: one, we will be exposed to the Taliban fundamentalism, and on the other Trump may also act under pressure from Pakistan with respect to Jammu & Kashmir. A hint was given when Donald Trump offered to mediate in Jammu & Kashmir issue.

International Circumstances also played their role. India's actions were enabled by the unilateralism in global politics and a decline in multilateral arrangements.

The Government had already tested the United Nation Organization's will and faced no repercussions. In July 2014, the Government declared that the UN Military Observer Group in India and Pakistan set up in 1949, had outlived its utility and asked it to vacate its premises in Delhi. Further, in September 2016, the Government publicly announced it had crossed the LOC to carry out surgical strikes on terror camps in POK post Uri. In February 2019, India announced that it carried out airstrike on a terror camp in Pakistan - all this without any pushback from the United Nations.

International Reactions

- USA termed the decision as India's internal matter.
- China reacted sharply but it was limited to Ladakh. India responded that Ladakh is internal matter of India.
- UAE has hailed this decision.
- Sri Lankan President has welcomed the move hailing that Ladakh has become the first Buddhist dominated region in India.
- Earlier UN Secretary General Antonio Gutress had appealed to both parties to exercise restraint, but refused to comment when Pakistan wrote to them a letter of complaint. He said that issues must be resolved in accordance with Shimla Agreement.
- OIC also did not give a positive response to Pakistan.

In fact Ministry of External Affairs of India had already explained in detail the reasons for revoking Article 370 to most of the countries of the world.

Russia became the first UNSC permanent member to underline that the changes in Jammu & Kashmir have been carried out 'within the frame work of the Indian Constitution'.

Analysis

Critics opine that it was a hasty decision keeping at stake the age old traditions of Democracy, Federalism, Diversity and General welfare. They feel that BJP has demonstrated the possibility of using the inherent flexibility in the federal order to centralize power. Abrogation of Article 370 has been resolved at such a time when the Legislative Assembly is not in place. Governor, on whose recommendation President used his powers to abrogate Article 370, is certainly not an elected representative of the people. What was unbecoming is the unwillingness to enter into consultation with the mainstream political leaders. A decision to cancel Amarnath Yatra and take hard decisions, suspend Internet and Mobile services, and impose endless restrictions on the common man including detention and house arrest of leaders was resorted to by the government on grounds of vitality of national security. When the matter of executive action and restriction was brought to the Supreme Court, it chided the petitioner and gave a big relief to the Union Government.

It is alleged that the entire exercise of getting Article 370 of the Constitution effectively abrogated has been marked by executive excess. The first step was to declare by a Presidential decree that the governor, without regard to the fact that he has no council of ministers to aid and advise him can speak for the state government and give his concurrence to any modification in the way the constitution of India applies to Jammu & Kashmir.

Second, on the basis of this 'concurrence', the latest Presidential order scraps the previous one of 1954, abrogating the separate Constitution of Jammu & Kashmir. Third, the fact that the state in under President's rule has been used to usher in a new dispensation under which Jammu & Kashmir becomes a UT with legislature and Ladakh a UT without legislature. The question arises - is the government capable of making the said recommendation. There is a self enabling aspect to the Presidential Order. It performs a hop-step and jump feat. It hops over the requirement of the state government's consent by declaring that the governor is the state government. It steps over the need for aid and advice by the ministerial council by saying the governor's opinion is enough and it jumps over the fact that there is no constituent assembly now by merely reading the term as legislative assembly and letting Parliament perform the role of the state legislature. Thus the President's power under Article 370 has been used to create an enabling provision and to exercise it immediately to modify the Order, thereby dispensing with the role envisaged for the state assembly. While it is true that in 1961 the Supreme Court upheld the President's power to modify the constitutional provisions in applying them to Jammu & Kashmir, it is a moot question whether this can be invoked to make such a radical change. Would the state legislature ever have recommended its own demotion?

Despite all these doubts, the special status of Jammu & Kashmir was temporary; it was meant to end. BJP has now delivered on a promise it has long made and so the allegation that the party had not informed earlier is baseless.

Considering the geopolitical, domestic and international interests involved in the abrogation of Article 370 the Government could not possibly take the leaders into confidence before taking this bold decision. The Valley would have gone into flames had the Government taken the proper legislative route and the situation would have turned uncontrollable. 70 years had passed by - a time too long for something temporary to become permanent – more so when it was a threat to the national security, integrity, unity and sovereignty of a nation. The Supreme Court's comments on the petition against restrictions reflects that it has indirectly endorsed the Government's hasty decision.

If we consider the ground reality in the state of Jammu & Kashmir due to Article 370, these can be no two thoughts in hailing the abrogation. 41,000 soldiers and innocent people laid their lives, there was a constant fear of attack from Pakistan, Infiltration and Terrorism kept our security personnel on their toes, Drug trafficking and smuggling was rampant, social life and education was marred by fear of sudden curfews, detention and terror. Women suffered the most. Young boys and girls were lured into stone pelting. Tourism- the main industry suffered a setback leading to poverty. Lack of industries raised unemployment. In short life in Jammu & Kashmir was miserable and people had considered it as their fate. Absolutely no mingling with the outside world impoverished their minds.

Conclusion

Scrapping of Article 370 was the only solution to unite Jammu & Kashmir with the rest of India and end the innumerable miseries of the people. But no Government could muster enough courage to do the needful. It needed immense political will with national interest on top of the priority list to take such a bold decision. The BJP and Narendra Modi Government actually delivered. A strong mandate in the 17th Lok Sabha Election helped them fulfill their promise.

But this is not the end. The litmus test of the Government will come forth when the curfew has been relaxed, leaders have been released from house arrest and troops have been withdrawn. The reason is that Pakistan will leave no stone unturned in destabilizing India. We can rest on our valiant Army's shoulders in facing all such challenges.

As for the Government, scrapping of Article 370 will be completely attained only when Jammu & Kashmir is brought to the mainstream in true sense of the term. Full focus should be on development of the State. In fact it is not only the Government but all the citizens of India who should try their best in extending a helping hand to their estranged brethren and cooperate with the Government in whatever ways they can. In the wake of false propaganda, people of Jammu & Kashmir consider India to be their enemy. It is now up to our Government to win their hearts by providing them extreme love and affection betraying their fears and engaging relentlessly in the overall development of the erstwhile state.

Suggestions

People are skeptical about the quantum of changes they will have to face as a result of this move. Two steps need to be taken.

One: They should be made aware that India has used Article 370 at least 45 times to extend provisions of the Constitution of India to Jammu & Kashmir. By the Presidential Order of 1954, almost the entire constitution was extended to the state including most Constitutional Amendments. 94 of 97 entries in the Union List and 26 out of 47 items in the Concurrent List had been extended to the state. 260 out of 395

articles were applicable in Jammu & Kashmir besides 7 out of 12 schedules. So things will almost be the same after abrogation. In fact, in certain ways, Article 370 had reduced Jammu & Kashmir's powers in comparison to the other states. So the people are not expected to notice massive changes in their day to day lives.

Two: The Government of India should strive to hold free and fair elections in the state as early as possible. In this way the biggest fear, of autocracy by the union, of the citizens will be allayed. They will get to choose their representatives in a democratic manner. Majority of the citizens hope and long to lead a peaceful life in the valley, at par with their brethren in other parts of India.

Lot has been achieved, lot needs to be achieved.

References

1. Victoria Schofield: Kashmir in Conflict.
2. PM Bakshi: The Constitution of India.
3. A Appadorai & MS Rajan: India's foreign policy and relations.
4. DD Basu: Introduction to the Constitution of India.
5. The Hindu - August 6, 7 and 8.
6. K Venkatraman: The forms of federalism in India. 11th August. The Hindu.
7. Editorials in Dainik Jagran.
8. Wajahat Habibullah: Kashmir has been cut to the quick. 7th August. The Hindu.
9. How Article 370 came about. 6th August. The Hindu.
10. Luv Puri: The new facts on the ground for Kashmir. 7th August. The Hindu.
11. Louise Tillan: The fragility of India's Federalism. 8th August. The Hindu.
12. Amitabh Mattoo: Piecing together Kashmir's audacious roadmap.