

ARTICLE 370 – A STUDY

Farhana Sultana

Research Scholar, Department of Political Science

Osmania University, Hyderabad.

Email.ID:- sultanafarhana580@gmail.com

Abstract:-

The Kashmir dispute is obviously not just about the positioning of a line on a map. In the beginning of 1947 it held meanings that went well beyond that and since then it has helped to shape and in turn been shaped by, practically all aspects of the relationship between India and Pakistan.

In order to resolve the Kashmir, issue the four alternative suggested are 1) Considering 2) Devolutionist 3) Decentralizing and 4) Autonomy-inclined solutions without doubt have had the strongest support in western studies of ethno-political conflict.

The State Constituent Assembly, which completed its work in 1956, did not suggest deletion or modification of Article 370, it therefore, became a part of our Constitution and this position was confirmed by the Supreme Court in 1970. The agreement has not brought about any new situation as regards Article 370.

Jammu and Kashmir was the only Indian State that has its own flag. Designed by the government of India, the State flag of Jammu and Kashmir consisted of the native plough on a red background which is a symbol of Labour. The three strips represented the three administrative divisions of the state, namely Jammu, valley of Kashmir and the Ladakh. However, as Article 370 of the Indian Constitution, which was granted Jammu and Kashmir Autonomy, was abrogated in August 2019 by a Presidential order, the flag has lost its official status.

The Historic day of August 5 is etched in the hearts and minds of every Indian. The Parliament of India passed the historic decision to abrogate Article 370. Since then, much has been changed in Jammu, Kashmir and Ladakh. The judicial Court verdict came in December 2023 but seeing the wave of development across Jammu, Kashmir, and Ladakh, the people's Court have given a resounding thumbs up to Parliament's decision of abolishing Article 370 and 35 (A) six years now.

Introduction

Impact of the Revocation of the Special Status of Jammu and Kashmir encompassed six years. Changes in the Politics and Bureaucracy of the region, Priority of counter-insurgency and Counter-Terrorism Operations, new Domicile rules talk of restoration of statehood, Judicial Lethargy and decline in stone pelting among other things are the benefits which are enjoyed by the people of Kashmir due to the abrogation of Article 370.

On October 26, 1947, Maharaja Hari Singh, the last ruler of Jammu and Kashmir, signed the instrument of Accession acceding to the Dominion of India. The Maharaja agreed to allow the Parliament to govern three subjects and limited the union's powers to Foreign Affairs, Defense and Communications. On 26, January 1950, the Constitution of India came into force. Article 370 set three broad frameworks. Broadly, Article 370 stipulated India would not make laws in Jammu and Kashmir outside the scope set out by the Instrument of Accession, without the "Concurrence" of its government. On May 14, 1954, President Rajendra Prasad issued the Presidential order guaranteed territorial integrity to Jammu and Kashmir and introduced Article 35A which conferred special rights to permanent citizens of Jammu and Kashmir. After a Five-year process, on January 26, 1957, the Constitution of Jammu and Kashmir came into force with the declaration – "The state of Jammu and

Kashmir is and shall be an integral part of the Union of India. ¹

On 5, March 1948, Sheikh Abdullah was appointed as the second Prime Minister of Jammu and Kashmir after the accession of Jammu and Kashmir to India, and he succeeded Mehr Chand Mahajan. On 15 and 16, May 1949, Sheikh Abdullah concluded “Delhi Understanding” after meeting Pandit Nehru. Containing the temporary and transient provisions with reference to (W.R.T) under the Article 370 (Part XXI). On 26, January 1950, the Constitution of India came into force. On 31, October 1951, the Democratically elected Constituent Assembly of Jammu and Kashmir met for the first time and enacted the Constitution of Jammu and Kashmir on 17, November 1956, which came into force on 26, January 1957.²

The State Constituent Assembly, which completed its work in 1956, did not suggest abrogation or modification of Article 370, it therefore, became a part of our Constitution and this position was confirmed by the Supreme Court in 1970. The agreement has not brought about any new situation as regards Article 370.³

Part–XXI of the Constitution of India, i.e., Temporary, Transient and Special provisions (the term “Special” was introduced in 1962 by 13 Constituent Amendment Act, 1962). Moreover, the short title of Article 370 also reads as “Temporary Provisions with respect to the State of Jammu and Kashmir, furthermore, the provisions of Article 370 was drafted in such a fashion, so that, the President of India along with Government of Jammu and Kashmir was empowered to determine the constitutional relation between India and Jammu and Kashmir and no intervention or approval of Legislature was required. As a result, Article 370 was aimed to be transitory provisions until the situation in Jammu and Kashmir did not normalize and Jammu and Kashmir could not be treated like any other State in India. Thus, the intention of the Constituent Assembly with reference to Article 370 was to provide for a makeshift arrangement for Jammu and Kashmir in the constitution of India.⁴

The Jammu and Kashmir Constitution was adopted on 17, November 1956 and came into force on 26 January 1957. On 27, November 1963, on the floor of the Lok Sabha, Pandit Nehru said that Article 370 has been destroyed. A year later, the then Home Minister Gulzari Lal Nanda again said on the floor of the Lok Sabha on 4, December 1964, that Article 370 is a tunnel to take the Constitution of India to Jammu and Kashmir. The following were the main Provisions of Article 370

- 1) The Indian Parliament will require the approval of the government of Jammu and Kashmir to make any law in Jammu and Kashmir, except in Defense, Foreign and Communications matters.
- 2) The law governing citizenship, Property and Fundamental Rights of residents of Jammu and Kashmir differed from that of people living in other states of India .
- 3) Under this, the Centre did not have the power to declare financial emergency there.
- 4) Due to this section, Laws like RTI and CAG were not applicable in Kashmir.
- 5) Under this, the citizens of other states of India could not buy property in Jammu and Kashmir.
- 6) The citizens of Jammu and Kashmir have had Dual Citizenship. The Jammu and Kashmir has a separate National Flag.
- 8) The Tenure of the Legislative Assembly of Jammu and Kashmir was 6 years and the tenure of the Legislative Assembly of other states of India was five years.
- 9) The orders of the Supreme Court of India we're not valid in Jammu and Kashmir.
- 10) If a woman from Jammu and Kashmir marries a man from any other state of India, her citizenship is lost and if she marries a man from Pakistan, she also gets the citizenship of Jammu and Kashmir.⁵

The constitution of Jammu and Kashmir was drawn out by the Constituent Assembly of Jammu and Kashmir duly elected by the people of Jammu and Kashmir. The people of Jammu and Kashmir well know that the Maharaja of Jammu and Kashmir is acceded with India on 26th October 1947 and the constitution to be drawn out has to be within the scope of Indian Dominion. The People voted for the candidates jointly put up by the National Conference and Congress under the banner of National Conference⁶.

Much before the Jammu and Kashmir Constitution was adopted (1956-57) the then Prime Minister Jawahar Lal Nehru has entered (1952) in an Agreement with Sheikh Mohammed Abdullah, was appointed in (1948) his (Hari Singh) Prime Minister by Maharaja Hari Singh some terms of which later became the part of Jammu and Kashmir Constitution like PRC (State subjects of Jammu and Kashmir, separate Flag for Jammu and Kashmir, But it can also not be overlooked that the people of other Indian states of India never question their leaders for the same, whereas there was more in need for same.

Similarly, Article 35A of the Constitution of India was incorporated much before the Jammu and Kashmir Constitution was adopted. This Article legitimizes any Presidential treatment given to residents of Jammu and Kashmir over the other citizens by the Jammu and Kashmir Constitution / Jammu and Kashmir Assembly and Section- 8 and section -9 of Jammu and Kashmir Constitution are the outcome of the same section-9 of Jammu and Kashmir Constitution are the outcome of the same. Yes, it is an assured fact that in Section 3 of the Jammu and Kashmir Constitution has been very clearly written that Jammu and Kashmir state is and will remain an inseparable part of India.⁷

In many quarters, it is said that Article 370 and Article 35A were conferment of a particular status to the people of Jammu and Kashmir State and to protect that status of the original Kashmir state intent and purpose of integration of state under the Instrument of Accession and the Jammu and Kashmir State Constitution of 1957 is to be maintained. It thus presupposes that according to the status it is the culmination of geographical and historical compulsions that is how one could understand the significance of the Jammu and Kashmir status.⁸

The Special provision of Article 370 has been the biggest huddle for in to the Indian union. That it was incorporated in the Indian Constitution by the Mechanization of two individuals Sheikh Abdullah and Nehru. Nehru had to eat the humble pie when he had to arrest Sheikh Abdullah for his divisive and anti-national stance on August 8, 1953. But he did not let go of his concept of keeping Jammu and Kashmir a separate entity. In 1957, some top leaders of National Conference led by Mr. Qasim split the party and formed a group called Democratic National Conference (DNC).⁹

Some sections both in India and Jammu and Kashmir name Article 370 as the root cause of controversy; some believe that now Article 370 does not have much importance since it is through this Article that many provisions of Indian constitution, many Laws/ Acts of Indian parliament has been extended to Jammu and Kashmir and have become a part of Jammu and Kashmir Constitution are now very much in conformity with Constitution of India, so debates on Article 370 should now end. Rather than that people who made such provisions and made some controversial commitments in 1947/1950s should have been questioned or their "heirs" need to be asked to accept the responsibility.¹⁰

There is nothing in the history of Article 370 to reassure the Kashmiris or Pakistanis that, having already failed. Once to protect Kashmir's autonomy, it would not fail again. It's retention in the constitution, in the absence of stronger guarantees than now exists against its dilution, is no guarantee at all of Kashmir autonomy. National decentralization is offered as a "long term" guarantee; but all recognize that decentralizing India does not now have a powerful constituency to back it and that its achievement at any time in the near future it's bleak at best.¹¹

The Provisions of Article 370 had three main aspects First, India would not make laws in Jammu and Kashmir except for three subjects included in the instrument of Accession. The parliament, could make laws beyond them only with the concurrence of the Jammu and Kashmir Constituent Assembly. Second, no provisions of Indian constitution would be applicable to Jammu and Kashmir except for article 1, which declared India as union of States, and Article 370. The president of India could apply provisions to the Indian constitution in Jammu and Kashmir through an executive order. This would insulate the Constitution of Jammu and Kashmir from the influences of Parliament of India. Third, according to article 370 (3), the Special status of Jammu and Kashmir could not be amended or repealed, unless the Constituent Assembly of Jammu and Kashmir recommend it.¹²

Article 370 has been explained either in a critical or supportive way. This is a special provision made for Jammu and Kashmir in our constitution taking into account the historical and political factors which prevail in the state. It lays down a procedure for the progressive extension to the state of the remaining provisions of the constitution with concurrence of its government. This has been working satisfactorily all these years and several important and necessary provisions have been applied to the state in this manner. There is no reason to assume that further extension of these provisions of the state is ruled out.¹³

In very basic words, Article 370 and 35(A) were like major obstacles. It seemed like an unbreakable wall and the sufferers were the poor and downtrodden. Article 370 and 35(A) ensured that the people of Jammu and Kashmir never got the rights and development that the rest of their fellow Indians got. Due to these Articles, a distance was created between people belonging to the same nation. Due to this distance, many people from our nation who wanted to work to solve the problems of Jammu in Kashmir were unable to do so even if they clearly felt the pain of the people there.¹⁴

Thus, by virtue of Article 370 Parliament can legislate on Jammu and Kashmir on matters other than those mentioned in the instrument but only after obtaining the concurrence of the state of Jammu and Kashmir (emphasis supplied). Thus, Jammu and Kashmir has Special status, unlike the other states in India where Parliament can legislate on its own subject mentioned in the union and concurrent list. Whatever is Critical to note is that today almost all subjects in the union and concurrent list have been extended to Jammu and Kashmir completely eroding the substance of the Article.

Most importantly, India, especially New Delhi needs to reach out to the youth of Jammu and Kashmir, to persuade them that Article 370 is a "psychological barrier" that must be dismantled to meet their aspirations. The persuasion must be directed to where it matters most in the valley. The sentiment there is that the country's only Muslim- majority state must preserve what remains of its distinctive Political and Cultural identity and its Territorial Unity.¹⁵

India in August, moved an additional 45,000 troops into Kashmir region in apparent preparation for announcing Article 370's repealment. The Jammu and Kashmir government on August 2, issued an unusual and uncommon order cancelling a major annual religious Pilgrimage in the state and requiring tourists to leave the region, purportedly due to "Intelligence inputs of terror threats". These shocking developments reportedly elicited panic among the Kashmiris fearful that their state's Constitutional protections would be soon removed. With this activity taking place, two days later, the State's senior political leaders-including former Chief Minister Omar Abdullah (2009–2015) and Mehbooba Mufti (2016-2018) were placed under house arrest, schools were closed and all telecommunications, including Internet and landline telephone services, were curtailed, but this appears to have been the first- ever shutdown of landline phone networks there.¹⁶

The One Special reason which is special to mention here as to why the Article 370 an Article 35

(A) had to be scrapped and the state reorganized as two union territories was the need to address issues such as Development and Militancy. It was clearly stated in the Parliament that the government was bringing an entire "System of Jammu and Kashmir Development, Employment and Planning. It was also stated that the government would provide benefits of reservation education and jobs to deserving children. It is perceived that because of Article 370, the residents of Kashmir valley were living in Poverty, and did not get the benefits of reservation. It was accepted from all quarters that the expectation of the people of Jammu and Kashmir had gone up and it was government's responsibility to take care of its and fulfil them.¹⁷

The Historic day of August 5 is etched in the hearts and minds of every Indian. The Parliament of India passed the historic decision to abrogate Article 370. Since then, much has been changed in Jammu, Kashmir and Ladakh. The judicial Court verdict came in December 2023 but seeing the wave of development across Jammu, Kashmir, and Ladakh, the people's Court have given a resounding thumbs up to Parliament's decision of abolishing Article 370 and 35 (A) six years ^{now} 18.

Whereas Pakistan's government announced these actions as "Destabilizing". With Jammu and Kashmir in total lockdown, on August 5, 2019, Indian Home Minister Amit Shah introduce in parliament legislation to abrogate Article 370 and reorganize the Jammu and Kashmir state by bifurcating it into two Union Territories, Jammu and Kashmir and Ladakh, with only the former having a legislative assembly. On August 6, after the key Legislation had passed both Parliament's chambers by large majorities and with limited debate, Prime Minister Narendra Modi lauded the legislation's passage, declaring, "Jammu and Kashmir is now free from the shackles" and predicting that the changes "Will ensure the integration and Empowerment". The move also appears to be popular among the Indian public, possibly in part due to a post-Pulwama, post-election wave of nationalism that has been augmented by the country's mainstream media. The Supporters of this move, view this as a long overdue, "Masterstroke" righting of a historic wrong that left Jammu and Kashmir underdeveloped and contributed to conflicts there.¹⁹

To a question as to whether Article 370 can be abrogated. Article 370 was incorporated in the Indian constitution to regulate the relationship between Jammu and Kashmir and the rest of India. It has been a part of the Provision characterized as "Temporary Provision". In any matter, which has to

be applied to the state government. Under Article 370, under the third clause, the President can declare the Article to be inoperative only with the recommendation made by the state's Constituent Assembly. In case, the Article is considered to be temporary then the state of Jammu and Kashmir and the rest of India share a temporary relationship and the abrogation of the Article would take Kashmir's position back as it was in 1947. To empower the enactment of the Indian Constitution in the state of Jammu and Kashmir, the Presidential declaration would have been the way but only with the Consent of the State Constituent Assembly. Which is the absolute authority.²⁰

On August 5-2019, the Government of India surprised everyone with a bold and momentous decision to abrogate Article 370 of the Constitution; a decision which was subsequently upheld by the Supreme Court of India. Six years down the line, there may be different perceptions about how successful the post 370 era has been in Jammu and Kashmir. There will be many comparisons between now and earlier period, in the context of the Economy, Development indices, quantum of happiness, level of freedom and further aspirations of the people of Jammu and Kashmir.²¹

Chief Justice D.Y. Chandrachud, along with justices B.R.Gavai and Surat Kant, in a 352 page judgement, upheld the abrogation in a roundabout way. It was easy for the judges to rely on the stated provision that it was a temporary measure, and to turn down the weak case put up by the senior lawyer Kapil Sibal another that once Kashmir's Constituent Assembly was wound up in 1956, there was no way to alter Article 370. The other two of the five member benches -Justices Sanjay Kishan Kaul and Sanjeev Khanna give concurring judgments). Surprisingly, Chief Justice Chandrachud and the other chose to argue that Jammu and Kashmir has surrendered its Sovereignty through the instrument of Accession of October 1947 signed by Maharaja Hari Singh, and therefore the social status provision of Article 370 was untenable.

The Argument of the judges that the Constitution of Jammu and Kashmir and Article 370 implied residual Sovereignty is quite curious. Once Jammu and Kashmir had joined the Dominion of India in 1947 and India became a Republic in 1950, there was no question of Separate Sovereignty of Jammu and Kashmir. The issue was the autonomy of the state given India's Federal Structure and not the Sovereignty of the State. The basic tenant of political theory is that Sovereignty is indivisible. Justice Sanjay Kishan Kaul also said that there was an element of internal Sovereignty because the Constituent Assembly of the state was recognized but that the temporary nature of Article 370 had the implication that the internal sovereignty could be derecognised.²²

The Special Article dealing with the temporary provisions with respect to the state of Jammu and Kashmir have since been abrogated. The legal experts have raised a point in this respect relying on the provisions of Article 370 (3) and maintain that in order to give effect to the provisions of Article 370 (3) the recommendations of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification. There was no Constituent Assembly in the State. The consent of the Governor of the State was Considered to be fulfilling the requirement of that clause for the purpose of issue of notification. There is a difference of opinion on this.²³

In its verdict on December 11, the Supreme Court has strengthened the Spirit of "Ek Bharat, Shreshtha Bharath"- it has reminded us that what defies us are the bonds of unity and shared

commitment to good governance. Today the dreams of the people are no longer prisoners of the past but are the possibilities of the future. After all, Development, Democracy and Dignity have replaced Disillusionment, Disappointment and Dependency.²⁴

Impact of the Revocation of the Special Status of Jammu and Kashmir encompassed six years. Changes in the Politics and Bureaucracy of the region, Priority of counter-insurgency and counter-terrorism operations, new Domicile rules talk of restoration of statehood, Judicial Lethargy and decline in stone pelting among other things are the benefits which are enjoyed by the people of Kashmir due to the deletion of Article 370.²⁵

“Kashmir is touching new heights of Progress and Prosperity after reading down of Article 370 locals are able to breathe freely”, Modi triumphantly said. It has been a great victory, or at least the start of a phase of triumphs, against enemies of peace without and within who are also enemies of “Azadi”, the Prime Minister said, employing the word for a purpose exactly opposite to what it has been associated with so far.²⁶

The removal of Article 370 by India has acted as a spark, intensifying the already tense relations between India and Pakistan. Pakistan severely and swiftly responded to this move by halting diplomatic relations and disconnecting trade. This response showed the strong resistance of Pakistan to what it saw as an unlawful and unilateral attempt by India to alter the current state in Kashmir. Security concerns were raised by the escalated tensions, especially in the unsettled territory of Kashmir, where the situation deteriorated by a following crackdown. The removal ended any chance for fruitful negotiation about the Kashmir issue, driving both states further from an amicable resolution.²⁷

Foot Notes:

- 1) www.Scobserver.in
- 2) Abhinav Gupta, “The Story of Jammu and Kashmir and Interpretation of Article 370 of the Constitution of India”, *Global Journal of Human-Social Science: An Arts and Humanities-Psychology*, Vol-21, issue-15, 2021, PP.4 &19.
- 3) Sanjay Prakash Sharma, “Kashmir and the UNO”, (RBSA Publishers, Jaipur), 2004, P.161.
- 4) Abhinav Gupta, “The Story of Jammu and Kashmir and Interpretation of Article 370 of the Constitution of India”, *Global Journal of Human-Social Sciences An Arts and Humanities-Psychology*, Vol-21, issues-15, 2021, P.19.
- 5) <https://www.khanglobal.com/blog/what-is-article-370/>
- 6) Daya Sagar, “Jammu and Kashmir-1994-Accession and Events There After”, (Kashmir Study Center, New Delhi), 2014, P.52.
- 7) PP.74.
- 8) Prahalad Rao, “Jammu and Kashmir-The Truth of the Matter”, Blue Rose Publishers, Noida, Uttar Pradesh, (2019), PP.162-163.
- 9) Prahalad Rao “ Jammu and Kashmir-The Truth of the Matter”, (Blue Rose Publishers, Noida, Uttar Pradesh), 2019, P.158.
- 10) Daya Sagar, “Jammu and Kashmir-19947-Accession and Events There After”, Jammu and (Kashmir Study Center, New Delhi), 2014, P.63.
- 11) Robert G. Wirsing, “ India, Pakistan and the Kashmir Dispute”- *On Regional Conflict and its Resolution*, (Palgrave Macmillan Publishers, UK), P.227.
- 12) www.scobserver.in (Supreme Court Observer).
- 13) Sanjay Prakash Sharma, “Kashmir and the UNO”, (RBSA Publishers, Jaipur), 2004, P.161.
- 14) *The Hindu*, December 12,2023, P.9.



- 15) <https://cjp.org.in/article-370-and-the-hindu-right/>
- 16) Sushmita Khandri, Amulya k. Tripathy, "India Pakistan Peace Process"-Under Vajpayee, Manmohan and Modi, (Thomas Press India Limited) ,2023, PP.158-159.
- 17) Prahalad Rao, "Jammu and Kashmir-The Truth of the Matter, Blue Rose Publishers Noida, Uttar Pradesh), 2019, PP.162,163.
- 18) *The Hindu*, December 12,2013, P.9.
- 19) Sushmita Khandri, Amulya K Tripathy, "India-Pakistan Peace Process"- Under Vajpayee, Manmohan and Modi', (Thomas Press India limited), 2023, P.161.
- 20) <https://www.legalserviceindia.com>
- 21) *The Deccan Chronicle* August- 6, 2024, P.1.
- 22) *The Deccan Chronicle*, December 14, 2023, P.2.
- 23) Prahalad Rao, "Jammu and Kashmir-The Truth of the Matter, Blue Rose Publishers, Noida, Uttar Pradesh), 2019, PP. 65-66.
- 24) *The Hindu*, December 12, 2023, PP.9.
- 25) <https://en.wikipedia.org/wiki/370>
- 26) *The Deccan Chronicle*, March 8,2024, P.8.
- 27) Aqsa, Nelofar Ikram, "Revocation of Article 370 and its Impact on Indo-Pak Relations, *Global Journal of Humanities and Social Sciences Research*, Vol 3, No 2, 2024, P.6.