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NAVIGATING THE ABROGATION OF ARTICLE 370: AN ANALYSIS OF THE CONSEQUENCE OF THE REPEALING BY THE GOVERNMENT OF INDIA

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Abstract

In this research paper, we have discussed the consequences of the abrogation of Article 370 of the Constitution of India, which happened on August 5, 2019, on the Union of India and the State of Jammu and Kashmir. Article 370 was the constitutional link that connected Kashmir's distinct identity and autonomy to the Indian Union. The unilateral abrogation of this article saw a range of happenings unfold, including the dissolution of Jammu and Kashmir's Legislative Assembly, the shutting down of communication networks, the intensification of military and paramilitary presence leading to large-scale protests and disturbances and international condemnation. This study will take into account the context, meaning, and histories of Article 370 and eventually the transformation of Kashmir from one of nasty conflict to what has become ultimately an overwhelmingly unsustainable occupation to frame the ideological distance between militant Hindu nationalists on the Indian side and supporters of Kashmiri autonomy. The abrogation was supposed to lead to violence and create mass insurgency within Kashmir, yet the area has not transformed into mass insurgency or even the trajectory of increasing violence portrayed by military forces involved in what has now become a representative of the Indian state. There remains a general belief and impression that the governance of Kashmir is entangled in difficulties and political constraints, and that it remains erected in a terrain of potential thinkable mass resistance as well as in terrains of many contestable and potentially conflicting political strategies of domination and control. This paper highlighted still current sociopolitical dilemmas in Kashmir, and it reflected on the implications these may have for the stabilizing of regional space and the wellbeing of its people based on its findings and conclusions. However, it is unclear when and how the factual parameters of the local parameters will, given the lack of a local and regional discursive and representation-oriented conception, result in changes to the governance of Kashmir's political landscape.

Keywords: Abrogation, Autonomy Constitution, Democracy, Government, Nationalists, Politics

Introduction

On August 5, 2019, the Government of India abolished Article 370 of the Indian Constitution, a contentious clause that governs the relationship between the Union of India and the State of Jammu and Kashmir in a unilateral decision. Article 370 was framed as an interim arrangement that existed between the newly formed Indian state and the princely state of Jammu and Kashmir and would cease to exist

only when the Kashmir problem was satisfactorily settled" and the people of Jammu and Kashmir were given the opportunity to decide for themselves whether they will remain with the Republic or wish to go out of it. (Muzafar, 2024)

With Kashmir unsettled for decades, this interim solution became generally regarded as a "constitutional arrangement" in India's federal parliamentary discourse, irreversibly tying

Kashmir's destiny to India. Thus, Article 370 served as the only legal and constitutional link between the Indian Union and the former state. In the liberal Indian imagination, however, Article 370 was understood to be an example of a "special status" or "autonomy" accorded to a Muslim-majority state in a Hindu-majority country, and it was in opposition to this idea that Hindu nationalist parties have always sought full control over Kashmir, which would result in the abolition of Article 370. (Muzafar, 2024)

When the Indian Parliament was in the process of repealing Articles 370 and 35A, the whole population of Jammu and Kashmir was placed under siege, and there was a total communication embargo, including a lengthy internet blackout. Taking notice of the situation in Kashmir, the United Nations described the internet shutdown as "collective punishment of the people of Jammu and Kashmir." The siege, however, was not new to the Kashmiri people. Kashmir's modern history has been volatile, with mass movements crushed by the state's strength beginning in 1989 with the first armed insurgency and continuing to nonviolent demonstrations throughout the first two decades of the twenty-first century. (Muzafar, 2024)

The scenario in 2019 was unique for a variety of reasons. One, it placed Kashmir squarely in the hands of Hindu nationalists, who have continuously opposed Kashmiri autonomy and advocated the State's "complete integration" into the Union of India. Two, it exposed the region to irrevocable (and now normalized) changes that hampered the possibility of long-term peace and justice in the region. People from various walks of life, including lawyers and politicians, approached the Supreme Court, pleading for the reversal of all such changes, including the revival of "autonomy" and the invalidation of the Presidential Orders passed in 2019 to reorganise the former state into Union territories. (Muzafar, 2024)

Article 370 of the Constitution

Article 370 was incorporated into the Constitution not as an afterthought, but after careful study by the Constitution-makers. It was a condition of Kashmir's admission to India, and if the accession is sacred, then so is the condition. Kashmir does not seem to desire to join Pakistan. Kashmir debated independence vs accession to India and ultimately chose the latter. Kashmir's accession to India was predicated on keeping its distinct cultural and geographical identity. Article 370 guaranteed the state all of the benefits of independence in Kashmir while retaining the benefits of membership in the greater Indian federation. (Sathe, 1990)

It granted Kashmir the greatest degree of autonomy. The article provides: (I) The Union Parliament shall legislate on topics included in Lists I and III of the Seventh Schedule of the Constitution that correspond to those indicated in the Instrument of Accession signed by the King of Kashmir. The president of India has the authority to identify subjects on Lists I and III that correspond to broad themes mentioned in the Instrument of Accession, although such orders must be issued in 'consultation' with the state governments. (II) The president may expand Parliament's legislative competence in respect of topics in the union and Concurrent Lists of the Seventh Schedule not included in the Instrument of Accession by issuing an order, which can only be issued with the 'concurrence' of the State Government. (III) Article I of the Indian Constitution, which specifies India's territory, and Article 370 apply to Kashmir ipso facto. (Sathe, 1990)

All other articles of the Indian Constitution may be extended to Kashmir by an order issued by the president under Article 370, but only after 'consultation' with the state government of Jammu and Kashmir if it concerns legislative powers of Parliament, and with the 'concurrence' of the state government if it concerns matters other than legislative powers of Parliament. The phrases 'consultation' and

'concurrence' used in Article 370 are crucial, demonstrating the meticulousness with which Jammu and Kashmir's autonomy is preserved. (Sathe, 1990)

Under Article 370, the president issued the Constitution (Application to Jammu and Kashmir) Order 1954, which specified which portions of the Indian Constitution would apply to Jammu and Kashmir, with or without change. This decree was changed from time to time, making more and more articles of the Indian Constitution applicable to Jammu and Kashmir. Article 370 envisions a different form of center-state relationship than the one that now exists between the centre and other states. (Sathe, 1990)

Repeal of Article 370

On August 5, 2019, after deploying troops and canceling a mass Hindu pilgrimage, the Indian government announced dramatic changes to J&K's status, revoking Articles 370 and 35A of the constitution, separating Jammu and Kashmir from Ladakh, and demoting them to union territories, effectively dissolving their state assemblies. Despite being severely eroded since 1954, Article 370 remained an essential symbol of Kashmiri sovereignty, while Article 35A's demographic limits helped maintain Kashmir's distinct cultural character. (Lalwani et al., 2020)

The official abrogation was followed by months of widespread curfew, communications blackouts, and the incarceration of hundreds of state political figures, some of whom are still being held in preventive custody under the Public Safety Act as of this writing. The governing administration said that dramatic action was required to end what the Indian foreign minister termed as the "mess" of Kashmir after forty years of policies that were "visibly not working." (Lalwani et al., 2020)

Nonetheless, six weeks before Article 370 was canceled, regime-linked media praised the government's approach for "the change in the scenario after 30 years due to an iron-fist

policy," implying that constitutional changes would not be matched by changes in operational strategy. The ruling BJP, which won a political mandate in 2019, has long wanted to repeal J&K's special status, claiming that it encourages separatism, militancy, corruption, and underdevelopment. (Lalwani et al., 2020)

The prime minister, home minister, foreign minister, and chief of defence staff all believed that more central government authority might address these issues. An increasingly broken international community, as well as rising nationalism and illiberalism throughout the world, created favourable permissive circumstances. The planned removal of US forces from Afghanistan, improved US-Pakistan ties, and repeated US offers to arbitrate the Kashmir conflict may have sparked a fear of impending regional upheavals, prompting India to advance its political agenda without public discussion. (Lalwani et al., 2020)

Despite considerable criticism, India has borne little penalties for its actions in Kashmir and is unlikely to change direction. Russia has backed India, the US has mostly ignored it, Saudi Arabia and the Gulf states have kept silent, and China's complaints appear to be a formality. Although the current military Sino-Indian border conflict, which began in May 2020, has been linked in part to India's repeal of Article 370, it is mostly due to the change in status of the Ladakh area and India's putative claims to Aksai Chin. (Lalwani et al., 2020)

China does not appear to be concerned about the changing status of the Kashmir Valley, which is the primary aim of Article 370's removal. Pakistan's condemnations and warnings look empty, but any kinetic challenges whether conventional or asymmetric will surely cause anxiety. The worldwide COVID-19 epidemic has helped to push Kashmir off the international radar, and political developments such as domicile legislation and delimitation are moving ahead. (Lalwani et al., 2020)

After-Abrogation Situation

So far, the two extreme paths predicted following the repeal of Article 370 have not materialised. Kashmir has neither descended into a mass violent insurrection or a slaughter, as Pakistan Prime Minister Imran Khan predicted, nor has Indian Home Minister Amit Shah's promise that everything is "completely normal" been supported by on-the-ground facts. The notion that governance and economic developments, which were not going well even before the COVID-19 crisis, would soothe a resentful and alienated Kashmiri Muslim population contradicts decades of experience and compelling evidence that functionalist improvements alone cannot reconcile with the psychological distance of the Kashmir Valley's social identity. (Lalwani et al., 2020)

At the same hand, the notion that Kashmir may explode in all-out violence ignores India's tried-and-true violence management system of strengthened border control, a large security grid, and a thick surveillance network that keeps political pushback to a minimum. Kashmir's future is more likely to fall somewhere in the middle of these two extremes. One possible scenario is "old wine in a new bottle," in which, following the health crisis and reshuffling of the local political leadership deck, Kashmir could open up and return to its natural equilibrium with a New Delhi-backed political leadership, a nepotistic and cronyism political economy fuelled by central funds, and a heavy-handed surveillance and state security force presence. (Lalwani et al., 2020)

However, such an indirect rule is unlikely to be lasting. Either stagnant growth and dysfunctional administration, combined with festering political grievances, appear likely to catalyze resurgent mass resistance, or the principal-agent dilemma will play out as Kashmiri political leadership seeking political survival begins to work at odds with New Delhi, as the Peoples Democratic Party and the

National Conference had done before them. (Lalwani et al., 2020)

An alternative scenario is that the more ambitious political plan will effectively establish a type of democratic government for Kashmir's Muslim majority. Delimitation that gerrymanders more assembly seats for the BJP-dominated Jammu, as well as a domicile act that facilitates rapid demographic shifts in key regions, could allow the BJP to consolidate ostensible democratic political control of the entire territory without the need for a coalition partner to ensure more direct rule. However, if no structural adjustments or changes in political devolution or power sharing are implemented, this technique is likely to exacerbate the valley's population's social gap within a few months or years. An increasingly alienated and dissatisfied youth bulge might revive armed or quasi-violent rebellion, which India would be compelled to contain by continued intense security operations and repeating restrictions on civil freedoms. (Lalwani et al., 2020)

Conclusion

In conclusion, the abrogation of Article 370 was highly impactful in terms of the anticipated consequences of conflict between the Government of India and the people and government of Jammu and Kashmir. This was a unilateral action from the Government of India when it made the decision to face the possibility of conflict with the abrogation of Article 370, thereby discarding the promise of Regional Autonomy established under Article 370. The abrogation of Article 370 caused serious ramifications on the status of Jammu and Kashmir as a whole: the abrogation of Article 35A, the bifurcation of Jammu and Kashmir into two Union Territories, unrest and a long communications blackout, and a lot of global condemnation and protest. The Indian authorities claimed that three years after the abrogation Jammu and Kashmir by no means had a reversion to mass violence and insurgency but it can absolutely be determined

that Jammu and Kashmir was nowhere close to a state of 'normalcy'.

Similarly, continued governance and economic difficulties raised by not just but a collection of concepts from predecessors, the hurdles of political maneuvering to facilitate governance, the three-year anniversary also consists of an uncertainty among actors for the stakes in Kashmir's future: whether to re-generate mass resistance; or not; or to deal with the politics of Jammu and Kashmir that are focusing on centralising it; and whether to negotiate bilateral and international relations. Regardless, the postponement of the aftermath of reformation of Article 370, it will, eventually, reflect accordingly, in stabilisation and upliftment of the people's well beings.

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