

Constitutional and Political Intricacies Involved in Abrogation of Article 370

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Abstract

Original Article 370 of the Indian Constitution is temporary, transitional. Special Provision of the State of J&K, This provision grants J&K an autonomous status. In contrast, Article 35A is incorporated into the constitution in 1954, grants special rights and privileges to state citizens. Since its inception, Article 370 has been considered a controversial provision in the constitution. It has been politicized in one or another way. The abrogation of Article 370 cannot be viewed in isolation, as it has proximity with historical, political, and constitutional dimensions. The abrogation of Article 370 is a key issue so far as the autonomy of the people of J&K is a concern. The mode and manner in which Article 370 has been abrogated and the procedure adopted for making Article 370 virtually ineffective is of great concern from the constitutional law point of view. The alarming terrorism in Kashmiris is a persistent threat to the unity and integrity of the nation and Indian democracy. Undoubtedly human rights violation of Kashmiri people through militant has always been an issue of great concern for Indian patriotism. In furtherance to the unity and integrity of the nation and to resolve the issue of Jammu and Kashmir with intent to have uniform opportunities of development, all the states, including Jammu and Kashmir, the Article 370 has been abrogated. Even though this decision was a courageous attempt on the government's part, it is not free from wide controversies. This paper examines the constitutional and political dimensions of the abrogation of Article 370 and its impact on the people of Jammu and Kashmir. The research paper examines the political, social, and legal intricacies, including the logical insight into how abrogation was politically judicious; however, the constitutionality is debatable. Paper squarely covers the historical, political, and constitutional dimensions of the abrogation of Article 370 and examines it from a constitutional point of view. The researchers have pertinently tried to analyze and evaluate the abrogation of Article 370 as a political necessity on the touchstone of constitutional principle and have correlated it with human rights.

Key-words: Jammu and Kashmir, Political, Constitutional, Article 370, Human Rights.

1. Introduction

Article 370 is mentioned in part XXI of the constitution, which deals with "Temporary, Transitional and Special Provisions." Originally, this special status was introduced in Article 306A. Later, this was renumbered to Article 370, but such provision was temporary. It was temporary because the Constituent Assembly was given a choice or right to modify, delete or retain the Article, and they chose to retain it. Because of this special status, Kashmir maintained a constitution of its own. It could have a flag of its own. The powers of the Indian central government would only apply to external affairs, defense, and communication. Besides Article 370, there was another Article-35A that defined permanent residents of Kashmir [1]. It had provisions related to residence, education, job, RTI, etc. The provision provides autonomous status in respect of many matters. On 5 August 2019, the government revoked the State's special status. However, this has been achieved by utilizing Article 370 itself and not repealing it. Clause 3 of Article 370, the president has got the power to decide the fate provided the State's constituent assembly accepts it. "The constituent assembly of the State" was dissolved in 1957, which means there was no constituent assembly present at the time. So, on 5 August 2019, a presidential order was released as general information. The president notified that the word constituent assembly means "legislative assembly of the state," which was an innovative way to bypass the settled procedure. So now, Kashmir will no longer have a separate constitution but the same constitution of India.

2. Literature Review

Various Articles, Journals, and Books have been refereed and utilized during the progress of this research paper. In reality, much research is available regarding the Abrogation of Article 370, as many authors have broadly commented on the various aspects of Article 370. We have gone through a few of the articles, which have great relevance in the findings of our research work. Some of the studies conducted have used empirical, secondary, and surveys of facts [2].

The wonderful and well-thought study by Omair Farooq Khan on his research "Scrapping of the Article 370 and the manifestation of Hindu state" has beautifully highlighted the move of the new government as a step towards the manifestation of the Indians, which belongs to one Group and some lost their rights, which the Constitution of India insured. Another vital source that we used was the Human Rights Watch - "Human Rights Crisis in Kashmir," which interestingly discusses the conflict between the Indian security forces and the Muslim community in J&K since 1980 and the threats

against the Hindu minority. Another important work that came to our attention was Maj. Gen. Sheru Thapliyal's Article "The Untold Story" has helped us in identifying the history and evolution of Article 370 and its impact on India and the people of J & K. The practical aspect by Ayjaz Wani in his paper "Life in Kashmir after Article 370," which was conducted by using primary data by critical analysis of the current situation of the J&K and gave us a clear focus on the grass-root level problems of Kashmiris after the abrogation of Article 370. Finally, the paper by Amitabh Hoskote and Vishakha A. Hoskote, "Seeking legality for the Illegitimate," has broadened our views on J&K and the Politics of Article 370. Article 370 was initially introduced to make people of J&K secure and to provide them the protection of their identity and culture. However, because the power was only in the hands of few influential people, the objective could not be achieved. The special provisions worsened the situation, and separatist tendencies evolved in the State.

In addition to the above, we have also referred to various Newspaper Articles for this current research, such as The Hindu, Economic Times, BBC News, First Post, and Business Standard. Different people have widely explained the Article's content 370 and its abrogation with different perceptions. In our current research, we have additionally touched on the legal, constitutional & political aspects and their effect on the overall issue at the international level, which has been untouched by other authors so far [3]. The authors of this paper have focused on critical analysis of the constitutional and legal aspects and their effects on J&K and some international perspectives. Abrogation of Article 370: Historical, Political, and Constitutional Developments shows in Figure 1. Abrogation of Article 370: Constitutional Perspective can be seen in Figure 2.

Figure 1 - Abrogation of Article 370: Historical, Political and Constitutional Developments

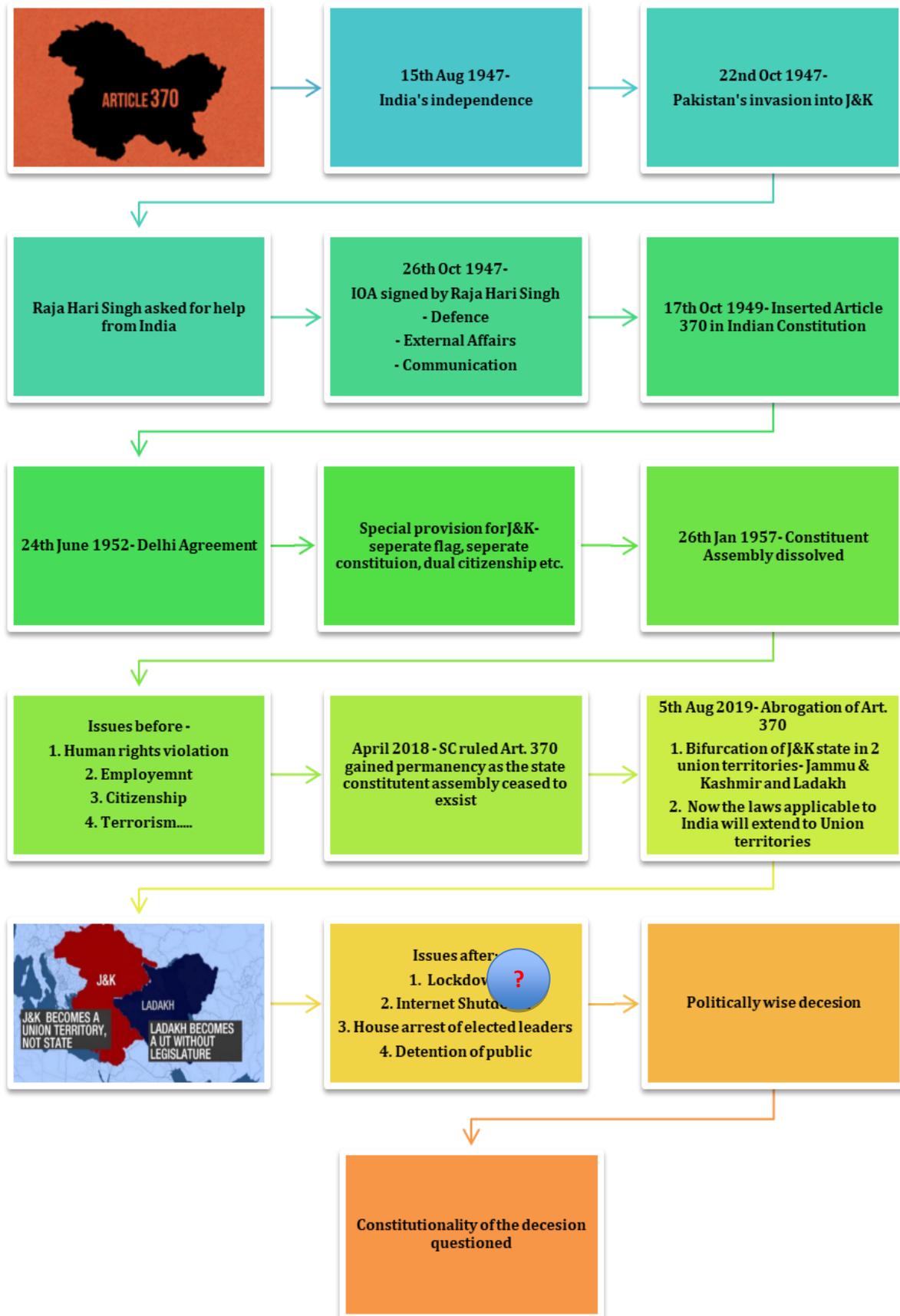
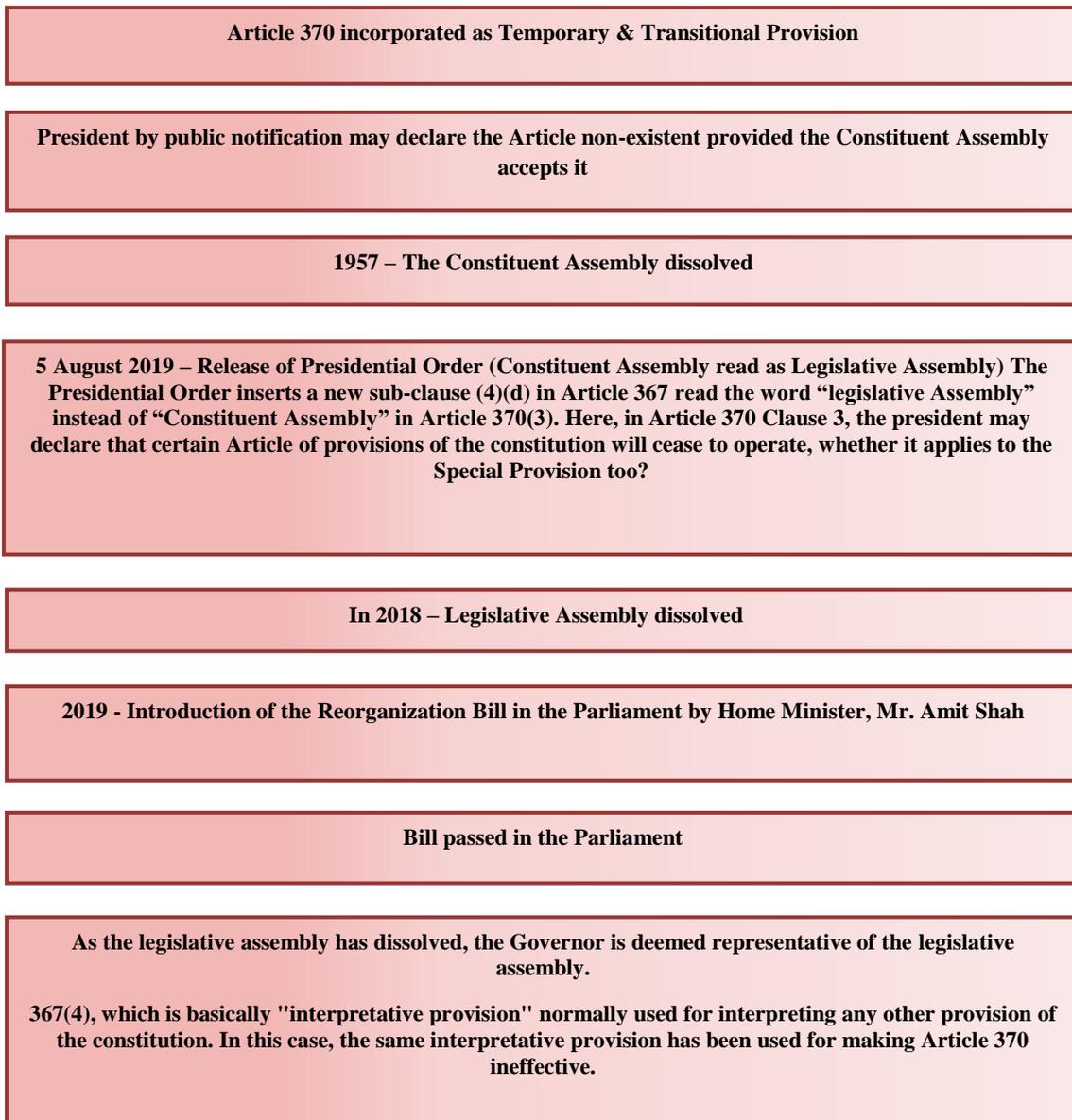


Figure 2 - Abrogation of Article 370: Constitutional Perspective

Abrogation of Article 370



3. History

On 14 August 1947, Pakistan, and on 15 August 1947, India got independence. The princely states had the option to join India or Pakistan or declare themselves as an independent state. Integrating princely State in India was a herculean task. This integration was carried on by Sardar Vallabhai Patel, V.P. Menon, Jawaharlal Nehru, and Lord Mountbatten [4]. Out of 565 states, 552 joined India, and 13 states joined Pakistan. Out of those 552 princely states, India had signed the instrument of accession (IoA) with 549 states, and they became part of India. Three states which did

not integrate with India were Junagarh, Hyderabad, and J&K. However, later on, Junagarh and Hyderabad joined India, but J&K continued as a separate state.

In J&K, the majority population was Muslim, but the Maharaja was Hindu. The Maharaja signed a standstill agreement with India and Pakistan. Meaning he neither wanted to become a part of India nor Pakistan. He tried to keep J&K as an independent state. However, in Oct 1947, Pakistan slowly started sending its army towards Kashmir and began occupying it. Maharaja began to worry about this situation and asked assistance from the Indian Government for India's support [5]. On 26 October 1947, to get India's help in this matter, J&K and India signed an IOA surrendering the three jurisdictions to the Government of India, which are – (1) external affairs, (2) defense, and (3) communications of the J&K. Hari Singh explicitly mentioned under Clause 5 of IoA (Instrument of Accession of J&K State, Clause 5, 1947) that the laid terms of IoA should not be varied by any means of amendment, neither by Indian Independence Act of 1947 nor by the Government of India Act 1935, unless Singh himself approves the said changes. He also mentioned in Clause 7 of IoA that no terms in this instrument could make him approve of any future constitution of India or to change his discretion to step into arrangements with the Indian government under any such future constitution.

Following the outbreak of the Indo-Pakistan War of 1947, on 1 January 1948, India sought a resolution to the Kashmir issue. The United Nations (UN) advised the government of Pakistan to secure the withdrawal from the State of J&K. It also asked the government of India to reduce its forces to a minimum (Security Council Resolution, 1951). In 1949, Karachi's agreement was signed, establishing the cease-fire line called Line of Control (LOC) [6].

3.1. 1949 – Incorporation of Article 370

An invitation was sent to officials of different states to provide their views for making the constitution of India. Every State except for J&K agreed to uniform law in the center and State. Regarding J&K, the assembly officials explicitly mentioned that whatever provisions of the constitution are being applied to the State must be in correspondence with the original instrument of accession. Sheikh Abdullah wanted iron-clad autonomy for J&K, but Dr. Ambedkar was strictly against it, but N. Gopal Swami Ayyangar insisted on inserting Article 306A in the constitution, which later became Article 370 [7].

3.2. Delhi Agreement Took Place in 1952 to Discuss Center-State Relationships

The Provisions Implementing through Delhi Agreement Were:

1. In external aggression, a national emergency can be declared by Govt. of India. However, for internal aggression, the power is vested with state legislatures.
2. Fundamental rights were extended to the State.
3. Supreme Court jurisdiction was expanded to J&K.
4. The power to commute a death sentence will be with the President of India.
5. Head of State would be a person recommended by the State Legislature and approved by India's President, and would be named Sadar-i-Riyasat;

4. Article 35A

Article 35A provides the rights and privileges of residents of J&K, and it also defines the permanent residents of the State. It deals with matters of education, property, job, etc. The privileges mentioned in Article 35A were only for permanent residents of the State. The Constitution of J&K explained the Permanent Resident as a person who was a state subject on 14 May 1954 or a person who has been residing in the State for 10 years and who has legally acquired immovable property within the State. Bypassing the presidential order on 5 August 2019, the special privileges are taken away. All the laws which apply to the rest of the Indian states will apply to J&K also. For example, In J&K, instead of the Indian Penal Code (IPC), the Ranbir Penal code was applicable. However, now after the abrogation, in J&K also IPC will be applicable [8].

5. Special Provision for the State of J&K

Like Article 370, other states also have Special provisions under Article 371 from (A) to (J) of the Indian Constitution.

6. Issues of Article 370 and 35A

1. This Article encouraged separatist tendencies in the people of J&K. They also considered themselves as a different nation and not a part of India.

2. It encouraged the politicians and other influential leaders to do more and more corruption, hindering development in the State.
3. The economic conditions of the J&K were also affected. They were in a poor state as the State became land of terrorism, which affected tourism, which was the major source of income. The other reason why the State's economic conditions were really poor was that people from outside J&K were not allowed to invest, do any business, or buy property in the State.
4. The wife or widow of the state subject (permanent resident) will acquire her husband's status until she resides in the State. Once she leaves the State for permanent residence in some other state or if a woman marries someone from outside the State, she would lose her citizenship. These provisions did not apply to the men in the State. Hence Article 35 A was not gender-neutral.
5. Another important issue was that it was a significant threat to Indian security as Pakistan promotes terrorist activities. If a citizen marries a Kashmiri girl, he was entitled to citizenship of Kashmir, which was a significant threat.
6. The politicians and other bureaucrats could get away with corruption and other illegal matters because of Article 370 [8].

7. Results and Discussion

7.1. Human Rights and Article 370

J&K's commoner has suffered the most from all these years of political, cultural, and economic conditions. There have been human rights violations before the abrogation of Article 370 and after the abrogation of 370.

7.2. Before Abrogation of Article 370

7.2.1. The Trajectory of Kashmiri Hindus

Many Kashmiri Pandits had to leave Kashmir Valley because of several factors such as land reforms of 1950, violence by the Jammu Kashmir Liberation Front (JKLF), and Islamist insurgents, etc. A lot of Hindus were targeted by Islamist insurgents and forced them to leave Kashmir Valley in 1990. This day is also remembered as the tragic "exodus day." Exodus means a mass departure of

people. Hit lists of Pandits were circulated. Blackout took place, demanding a purge of Kashmiri Hindus. The majority of the Kashmiri Hindus packed their belongings and left Kashmir, and moved to refugee camps. Hindus lost their jobs, home, land, livelihood, etc [9].

7.2.2. Rapes by Militants

Since the government seriously began the crackdown against rebels in Kashmir in January 1990, the violence of the police became widespread. Massive human rights violations were alleged to be done by the Indian army and Parliamentary forces. Despite evidence that the militants had a widespread involvement in rape, the authorities have never investigated them. The ones recorded did not result in criminal prosecutions [10].

7.2.3. Democratic and Citizenship Rights

Article 370, along with 35A, has been much abused by the powerful to deny their rights to people. J&K had refused to enact laws that would extend the applicability of the 73rd and 74th amendments to the constitution, providing for the preservation of women's seats in the Panchayats, thereby preventing women in the State from asserting the right that has become fundamental to the Panchayat Raj concept throughout the country [10]. Another blatant violation is the denial of state citizenship to the thousands of Sikh and Hindu minorities who migrated from Pakistan in 1947 by citing Section 6 of the Constitution of the J&K, which appears to have set the concept of a permanent resident, which affected more than 60,000 refugees from Pakistan who entered in India, neither these people nor their children could obtain citizenship rights, voting rights, or seek admission in various state colleges [11].

7.3. After Abrogation of Article 370

On 5 August 2019, the Indian government revoked J&K's special status. The State went down the Virtual lockdown of the Kashmir Valley, cutting all contact lines and putting elected leaders under house arrest. Disruption of Internet access does not allow citizens to exercise their right to freedom of speech and expression, a fundamental right. Besides, "India's National Commission for the Protection of Child Rights" reported that the use of schools by security forces "violates the spirit and letter of the Right of Children to Free and Compulsory Education Act 2009 (RCFCE Act), as it deliberately interferes with access to education and makes schools vulnerable to attack" [12].

Consensus and mandate of the people were not considered nor taken into account while abrogating the Article. The central government detained several political leaders - J&K chief ministers Farooq Abdullah, Omar Abdullah, Mehbooba Mufti, Shah Faesal, and Ravinder Sharma J&K Pradesh Congress Committee. Also, 2000-4000 people, including government officials, elected members, lawyers, activists, entrepreneurs, and students, were detained. Some of the detainees are held under J&K's Public Safety Act, 1978 (PSA), allowing authorities to jail a person for up to two years without charge or trial. Many people left without basic facilities such as food, water, housing, electricity, etc [13], which is in total breach of social justice standards. Supreme Court has described this detention, including PSA, as a "lawless law" (Jaya Mala vs. Home Secretary, Government of J&K). India is obliged to respect, protect, and uphold the right to health.

This issue of human rights violation needs to be addressed constitutionally to mitigate the justice to the people of J&K [14].

8. Judiciary and its Initiative on Jammu and Kashmir

One of the leading and the earliest cases regarding Article 370 is Prem Nath Kaul vs. State of J&K (1959). The Honorable Supreme Court held that the power under Article 370 lies in the hands of the Constituent Assembly to decide the accord whether State intends to established with India.

It was also seen that the exercise of powers has continued on the temporary provisions of Article 370 (1) on the Parliament and the President. There were also limitations on the ultimate approval by the Constituent Assembly in the mentioned matters [15].

In J&K vs. Mubarik Shah Naqshbandi (1971), the Supreme Court held that the autonomy and sovereignty of the State should not be disturbed; the status of State will remain intact as it is. As per Article 35(A), the provision clarifies "the constitutional relationship between the people of the rest of the country with J&K and that the citizens of J&K will have their Sovereign character and constitution which cannot be challenged.

In Sampath vs. State of J&K, 1968, the apex court held that Article 370 should be continued to be used in force, as the main purpose of the inclusion of this Article was to empower the president to exercise his discretionary powers in applying the constitution [16].

9. The J&K Reorganization Act of 2019

The J&K Reorganization Act includes provisions to reconstitute the State of J&K. The State is now divided into two union territories, J&K, and Ladakh, which was the first time that an Indian state was converted to two Union territories.

The Act states that the administration of J&K shall be as provided for in Article 239A, which was originally developed for the territory of the UT of Puducherry. The legislative assembly can make laws for any of the issues on the state list except for "public order" and "police" [17]. The Lieutenant Governor shall appoint a Council of Ministers to assist the Lieutenant Governor in the exercise of duties in matters that fall within the Legislative Assembly's jurisdiction, including the Chief Minister. The Lieutenant Governor is entitled, among other matters, to act in his or her capacity. He would also be allowed to pass laws of the same force as the actions of law-making [18].

Key Changes

1. J&K had a special status. It had its flag and could make its laws, including those related to citizenship, ownership of property, and fundamental rights compared to residents of other Indian states. After the abrogation of Article 370, J & K has become a part of India. All laws applicable to India will now apply to J & K., and they will not have a separate flag.
2. Central Right to Information Act, 2005 (RTI) will also extend to J & K and Ladakh. Until now, J & K was covered by the J & K RTI Act; though it was a strong Act compared to the RTI act 2005, it only allowed the people of State to challenge the court of law against the public authorities (Gaurav Vivek Bhatnagar, 2019).
3. People of J & K had dual citizenship of J & K and India. Now, they have single citizenship.
4. Article 360, which talks about financial emergency, was not applicable in the State. However, now the president could announce a financial emergency in the State.
5. The duration of the Legislative Assembly was six years in J & K, and now it is five years.
6. If a woman of J & K marries someone from outside the State, she will lose her citizenship. Now the situation has changed; even if she marries somebody from an outside State or country, she will not lose her Indian citizenship.
7. Article 35 A prohibited Indian citizens from other states from buying land or property in J & K. But now anybody from all over the country can purchase and acquire property in the State.

8. Earlier, an outsider could not settle in the State, but now the situation has changed people can move to J & K and settle there (Aarti Tikoo Singh, 2019)
9. Indian constitution gave J & K unique status, and it was India's only State to have a separate constitution. After the abrogation, the Indian constitution will apply to J & K.
10. Earlier, the constitutional head was Governor. Now, the head of State is a Lieutenant Governor.
11. Ladakh was a part of J & K. Now, Ladakh is a separate Union Territory without a legislature.

10. Abrogation of Article 370 and Its International Effect

A delegation of Member of the European Parliament (MEP) from the European Union, consisting of 27 MEP's from Italy, Britain, France, Germany, the Czech Republic, and Poland, visited Srinagar on 29 October, almost three months after the repeal of Article 370, to see the situation there. Many non-profit organizations visited the State, including "Women's Economic and Social Think Tank" (WESTT). This visit also provided a better understanding of the cultural and religious diversity of the Jammu, Kashmir, and Ladakh region. There were also many protests in different countries such as Afghanistan, Pakistan, Australia, and Bangladesh, etc. Also, there have been other major protests in the US, Canada, Europe, etc.

Pakistan tried to isolate India with the support of China and other Islamic countries. Pakistan also approached the UN with the help of China, claiming that the people of Kashmir have not been appropriately treated. However, it did not succeed in its claim. Many terrorist attacks also took place since the time of abrogation [19].

In London, England, several demonstrations and rallies were organized. A large number of protesters demonstrated to express their anger outside of the Indian embassy in London. In Toronto, Canada, protesters came down on the streets to support the people of J&K. Similar protests were held in the US also.

China found India's J&K decision "unacceptable and vacuous." The Chinese Foreign Ministry endorsed their statement by saying that scrapping Article 370 and creating a separate territory of the Union would affect China's territorial integrity and sovereignty. However, India responded strongly by reminding China that India has never interfered with China's internal affairs and reminded them that India's decision on Article 370 is an 'internal' decision.

10.1. Will it Affect the Culture and Jobs of Kashmiris?

People of J&K are nervous about the flooding of people to the State. They fear that they will lose their job opportunities, and the culture will be diluted. Most of the population of J&K depends on state government jobs. There is a fear that people from outside the State will take their jobs, and there will be increased competition. There are concerns about culture and heritage due to outsiders coming into the State, which will increase the unemployment level in J&K. Even though the center has time and again said that this abrogation would not affect the culture of the Kashmiris. However, there is still apprehension that the people from outside the State will destroy their culture [20].

11. Current Scenario

The reorganization bill passed was to have completed two separate union territories. Now the people of India include J&K as well, and they could enjoy the same privileges, rights, and facilities as the citizens of India itself. Now, any Indian citizen can settle in J&K, and there is no restriction on filing RTI. J&K will not have a separate flag anymore, and instead, the National flag will be raised throughout India. The previous constitution of J&K stands abrogated. People from other states are now getting a domicile certificate in J&K. This tells us that the situation is improving, and we can see the changes. The normal functioning of schools, colleges, telephone services, internet services, etc., is normalized. The Internet is restored fully; however, it is restricted to 2G speed only, but all is not hunky-dory yet. Thousands of people who were detained when Article 370 was abrogated are still kept in detention. There are allegations that the administration's corruption has increased after the abrogation. The claim of corruption-free Kashmir has not been fulfilled yet. The Kashmiris often feel like they are treated as second-class citizens because the center is not paying attention to their problems. There is a massive deployment of the military to ensure peace and enhance security measures. The tourism industry still suffers like all the bookings made in the hotels are canceled. Even after encouraging people to come and visit Kashmir, there has been no improvement in the situation [21].

12. Political and Constitutional Complications

Article 370 was contemplated as a tool for the exposed commonality to ensure their culture and identity. At the same time, it was intended to promise independence, build space in the governance, and enable the public to determine their future. However, this raises doubt about relevant

questions on the constitutional and political grounds on the abrogation of Article 370, mainly whether the concurrence of the Legislative Assembly can be equated with Presidential order. Even if the constitutional assembly of J&K cannot be rejuvenated, the vital question is what would be the viable, practical alternative? The only viable, practical alternative was to have a Legislative Assembly of the State; currently, the "Governor's rule" is being operated in J&K, so the possible solution is to either replace the Legislative Assembly through the Governor and then the Governor's position can be replaced through the Presidential order which means the approval to the Presidential order could be considered as concurrence of assembly.

The executive excess has marked the whole approach of getting Article 370 efficiently abrogated. Our constitution rims on the principle of achieving the people's wishes; therefore, it is essential to understand if any decision made would affect the people at large and if it does, then their interest can be amicably represented by the Legislative Assembly as they are their elected representatives. Therefore, the Governor who is politically appointed cannot be equated with the consensus of the people, their mandate, and willingness which can be considered only through their elected representative mainly because the Legislative Assembly of J&K should take the proper decision in concurrence with the Parliament, as it cannot be equated with the Presidential order, it is considered as a supervisory decision where the Legislative Assembly does not take the said decision. It is considered superficial to consider the Governor's consent as consent or approval of the state Legislative Assembly. In addition to this, the detention of the political leaders leads to a procedural lacuna in decision-making. However, it was necessary as safety measures. This decision could have been taken more democratically instead of bypassing the procedure. On the one hand, the decision may be justified that it was a "temporary, transitional, and special provision" under Part XXI. Hence, it can be abrogated and removed at any time based on the circumstances. On the other hand, the word "special" provision suggests it as special protection and. In contrast, the word temporary and transitional provision means that it can be removed any time based on the circumstances, which is a debatable point for academic discussions and judicial interpretations. Since it is a Special provision, Special care and measures could have been taken while repealing the provisions. The main aim was to protect the rights and privileges of the people of J&K.

In brief, the method to change the identity of J&K was a delicate issue, being sensitive Border States. This decision was taken without consent and mandate of the people who usually reflect through their representative. Similarly, no representative contribution or legislative input was taken from its people. In interpreting the word temporary and transitional compared to Special provision, the former speaks about having a "time being" effect. The latter focuses on special protection.

Looking closely, we get to know that abrogation was not made without any special care and caution. The mode of making this provision ineffective was not an apt model because many political leaders were detained during and after the abrogation of this provision, which is hard for the people of J&K to digest. Many political leaders were put under home arrest by the central government, which hugely raved the doubt amongst the people of J&K on the undemocratic process of the government, as it was not in line with our democratic tenets of the constitution. It could have been more democratic if the consensus of the Legislative assembly had been taken into consideration, which would not have raised the doubt about the justifiability of this decision. The spirit of the democracy portrays that in the democratic facet of the government, the decisions are taken in a mutual understanding; however, this principle was somehow diluted and not followed in letter and spirit.

In the interpretation of Article 370 Clause 3, the president may declare that certain Article of provisions of the constitution will cease to operate. The question is whether such ceasing applies to the Special Provision too? Whether these provisions can be taken so casually by declaring Article 370 as inoperative? However, it can be taken in cases of normal provisions existing in the constitution in some scenarios, which is considered special provisions even if they were temporary and transitional. Here, the exercise of power by the president can be regarded as executive excess. It was contrary to the rational decision-making of the settled practice of law. In making existing Article 370 ineffective indirect mode has been employed, where the provision of interpretation of Article 367(4), which is basically "interpretative provision," is generally used for interpreting any other provision of the constitution. However, in this case, this was used for making Article 370 ineffective. The question is whether it can override the actual provisions in the constitution and make it inoperative? As Article 370 is a Special provision in the constitution, therefore, whether this interpretative provision can supersede the existing Constitutional provision. Hence, this procedure was constitutionally correct or by spirit.

The main essence of the whole issue is the constitutional and political intricacies involved in the abrogation of Article 370 in the Constitution of India, and it is a political and international reflection of the same. Firstly, the complications are mainly because the consensus and mandate of the people were not taken into consideration. Secondly, the interpretation provisions were used to make Article 370 ineffective and whether the interpretative provisions can replace the existing constitutional provisions, thirdly, whether the Presidential order is equated with the State Legislative Assembly. Fourthly, whether Article 370 was made ineffective by employing unsettled practice. Given this abrogation and considering the law and order and situation in the State, many people were detained; they again raised the voice about the violation of their freedom of speech and expression on

account of poor internet speed. The question of law involved in the issue is that an interpretative clause supersedes the constitutional provision in such a casual way.

13. Conclusion

Although this is a politically wise decision; however, the constitutionality of the same is questionable for academic debate and judicial interpretation. The constitution is considered the paramount law of the country; therefore, while repealing the constitution's provisions in many of the judgments, the procedure adopted for it is a matter of concern from an explanatory point of view. Abrogation of article 370 is a tough political decision that shows a strong commitment to take such a tough decision in the overall interest and unity and integrity of the nation, which being a very sensitive issue, the center has shown political commitment to dispense justice to the people and establish equality in all the spheres. The reason behind this is to settle this escalated issue of J&K. Some decisions are politically correct and required to be taken in furtherance to equality, the justness of the society, and upholding the unity and integrity of the nation.

The decision taken has to a larger extent impacted on the federal characteristics, more particularly in a special state like J&K. It has been criticized as political deceit of IoA or by way of interpreting the provision of Article 35A and Article 370 amounts to be constitutional dishonesty by making more instability in the State of J&K, or it could even affect the federal characteristics of this country because the autonomy of the State has been compromised. The federal characteristics have been diluted as the approval of the legislative assembly was not taken into consideration during the entire procedure. Preventive detention should not be used to jail dissenters and curb dissent. Some decisions are politically correct but constitutionally is questionable. This politically correct decision was taken in the interest of integrity and sovereignty of the country, such as the Kashmir issue would have remained as deadlock for several years. Therefore, in such a backdrop and to settle the issue for once and all the political representatives means the parliamentarians in the center would decide. The credibility of the decision was also questioned at the national and international levels. The abrogation of Article 370 cannot be used as a precedent for other states. It should not be considered as a universal perception as well from a constitutional perspective. The mode and manner in which the abrogation of Article 370 was done has been criticized as a conflict of constitutional interest and political interest and has thereby disturbed the trust and federal character of the constitution, which may also result in everlasting damage to the tradition of constitutional propriety and political consequences arising out of it.

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