



A Comprehensive study on Abrogation of Article 370: Its Constitutionality, reorganisation and its effects

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Abstract:

The Jammu and Kashmir lies in the extreme north of India. The region is bordered by Pakistan and China. After the instrument of accession was executed, the area, which had previously been ruled as a monarchy by the Maharaja of Kashmir, became a part of India. The state was given a limited amount of autonomy and independence over specific areas of its operations by Articles 370 and 35-A. Part 21 of the Constitution was being drafted to include the temporal regulations of these laws. The state's constitution was distinct. The state was disrupted in the 1980s by insurgency and separatist movements. The parliament has passed legislation to reorganize the state into two union territories, and the president has revoked the state's temporal status through the order. In this article, the constitutionality of the act, order, and executive changes in the region has been studied.

Keywords: Insurgency, Temporal Status, Judicial Interpretations, movements etc.

Introduction

Jammu and Kashmir was a region which was earlier governed as the state for the duration of 65 years from 1954-2019. The region shares the boundary with two of the most aggressive neighbours, and has been a centre of dispute in between India, China and Pakistan. The region was declared as state on 14th May, 1954 after the Presidential Order of 1954 comes into force. Later on in 2019, the parliament has repealed the article 370 i.e., special status of the state. Parliament has passed Jammu and Kashmir Reorganisation Act. Article 370 of Indian constitution was providing special status to the state of Jammu and Kashmir including Ladakh region (now Union Territories of Jammu and Kashmir and Ladakh). Prior to this change there were some special privileges to the earlier existing state and some unrestricted power to state legislative assembly¹. Indian parliament has enacted a new legislation which has dissolved the status of statehood of the state and divided state into two Union territories, as Union Territory of Jammu and Kashmir (with legislation) and Union Territory of Ladakh. The Jammu and Kashmir Reorganisation Act, 2019, the act was assented on Aug. 9, 2019 by the President and was published in the Official gazette of India on the same date. The abrogation of article 370 has led to widespread discussions as to the constitutionality of the new act and the authority of the parliament and the president to abrogate the special status of Jammu and Kashmir. The provision of article 370 has been provided as temporary provision as under the part 21 of Indian Constitution under the heading "Temporary, Transitional and Special Provisions"². The provisions contained in the article 370 are the provisions which distinguished the state from the rest of regions of the nation. While its interpretation along with the article 35-A provided autonomy to the state of Jammu and Kashmir and restricted the authority of

Parliament and central government in regard to the region earlier. The provision starts with the term Temporary provisions with respect to the state of Jammu and Kashmir and then it operates with a notwithstanding clause, (a) The provisions of this article 238 shall not apply in relation to the state of Jammu and Kashmir; (b) The power of parliament to make laws for the said state shall be limited to (i) Those matters in the union list and the concurrent list which, in consultation with the government of the state, are declared by the president to correspond to matters specified in the instrument of accession. The provision in association with the article 35a provided autonomy to the state as article 35A provided that the parliament shall have, and the legislature of a state shall not have, power to make laws with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by parliament; and for prescribing punishment for those acts which are declared to be offences under this part; and parliament shall as soon as may be after the commencement of this constitution, make laws for prescribing punishment for the act referred.

Reasons for the Abrogation of the Article 370

The geographical and administrative division of state of Jammu and Kashmir was in three units i.e. Kashmir Valley, Jammu and Leach. State had its own legislative assembly with 111 members (including 24 seats of POK). The region has the population of 12,541,302 with Muslim population of 68.31% and Hindu population of 28.45%. State has many languages like Kashmiri, Urdu, Dogri, Pahadi, Hindi and Punjabi. The state is divided in many cultures. The harmony of the state was targeted by the external forces and the internal separatists who started raising demands for the separate Kashmir state and Islamic state. The insurgency initiated in 1980s after the unsuccessful attempt by Pakistan to win the territories of India. The insurgents started targeting non-Muslims and started committing violence against them asking them to leave and vacate the valley. The crime was earlier spontaneous and on lesser scale, but later on taken the form of the organized crime and was started as movement. The insurgents were having different ideology which caused more chaos in dealing with them. There were many groups who were pro-Pakistan and wanted Kashmir to get united with the Pakistan. The group was getting support from the ISI and the military and terror foundations of Pakistan. Apart from them separatist movement was also initiated in the state. Separatists neither wants to be part of Pakistan nor part of India. They were demanding for the separate and Independent Kashmir. They want to create a state on the ground of insurgency. The insurgency has caused disturbances to the internal peace and security of the state. The insurgency has led to mass violence, stone pelting, and commission of various offences in the valley. The political establishments has also led to the disruptions in the fair elections and the regulations in the state. The state of Jammu and Kashmir had unique relationship with the central government or union of India. The state was enjoying a much greater measure of autonomy and the liberty as to its own affairs in comparison to the other states. The centres jurisdiction was limited and very restrictive while in comparison to the other states of India. To curb down all such challenges and the insurgency it was vital to abrogate such hindrances to operate in state⁶. Now the state has been divided into two Union Territories, Jammu and Kashmir UT will be union territory with legislative assembly and UT of Ladakh will be without any legislation⁷. There were several reasons behind this major steps which has caused such steps to be taken by the central government. These reasons are as follows:- 1. Terrorism in the region. The region was suffering insurgent crisis since past 3 decades. The terrorists were attempting to break the state and weaken the hold of the India on the Kashmir and by doing such they were to take control over the region for their illicit means. 2. Separatism movements and their funding were also being the reason for such step. The separatist were spoiling the generations of youth. They were expanding their roots in the valley and asking youths to join them. The status of employment and education was not that good and hence individuals were easily derailed from their normal life. 3. Law and order failure causing internal disturbances. The law and order was a major challenge for the forces deployed. The mass killings, genocides, rapes, religious violence were common in the previous decade. The weak hold of centre was not efficient enough to curb that all down. Youths were engaged in the stone-pelting and bombing sacred places. 4. Slow and inadequate development of the state. The

state was among the least developed regions in the whole country. Being a hilly area the Kashmir was centre of tourism still the state was on the path of progress and was indulge in the terrorism and separatist activities. The industrial growth of the state was limited and the service sector was inefficient. 5. The strategic location against neighbours. The Kashmir shares its boundary with two countries Pakistan and China. India is facing severe boundary disputes with both of them. The region has two international boundaries. The hill top area can be the entry point of many nations apart from these two. Therefore we need to have a better hold on the hills and to check the day to day activities of our war enemies. The Kashmir becomes very essential to be monitored.

Indian Judiciary and interpretation of Article 370

The move on article 370 has initiated a widespread discussions over the constitutionality and the validity of the Order passed and the Act enacted by the parliament. The central government has changed the status of the whole region. This was considered as a major setback in the state. The executive orders were passed to bring changes in the status enjoyed by the region. The executive head had scrapped article 370 and the without wasting any time a bill to divide the region into two union territories was tabled in the parliament. The move was followed with utmost care as to the public peace and order. Many leaders of local political parties were detained, many of them were arrested, and internet connections were scrapped down in the region. The government had promised for better development of the state. Previous verdicts of Supreme Court were in favour of the permanence of the article 370 and its better regulation in the state. In case of P.L. Lakhanpal vs. The state of Jammu and Kashmir¹² had pointed out that the presidential order under article 370(1) could not amend article 1 and the article 370 itself. In case of Khazak Chand and others v. State of Jammu¹³ and Kashmir and others. The court applied the same logic and reasoning. The honourable court in the matters of Sampat Prakash vs. Jammu and Kashmir¹⁴ directed that article 370 requires actions for its abrogation, article 370 will cease to be operative only if the president will issue a direction to that effect on a recommendation made by the constituent assembly of the state. Now in the present situation the constituent assembly has been replaced by the legislative assembly of the state. The legislative was dissolved and governor was in charge of the legislative assembly. So technically he recommended and president has promulgated order for revocation.

Conclusion

The status given to the State of Jammu and Kashmir was temporary and the very purpose of granting this status was to keep it removable. Kashmir was adopted as an integral part of the nation and hereby, the power of parliament extends to change its nature from any state to Union Territory. Prior permission clause of Jammu and Kashmir's constitution has been also fulfilled as the president's Rule was imposed in the state and in such case parliament can exercises the function of state legislature and pass a resolution to this effect. The decision of bifurcating the region of Jammu and Kashmir from the Ladakh has been warmly welcomed by the residents of Ladakh as the territory has been discriminated and suffered a lot because of the politics of the state. The region is completely distinguished in geographical conditions and is high aptitude area. The region's development was widely ignored and no major steps were taken for the development. The region was feeling its existence separate because of the policies of the previous governments. The classification of the region from the rest of the area and developing it as a separate Union Territory has been proven a great decision so far. It will help and aid in developing great infrastructure in the state. The step involves the betterment of the state and its people. The prime concern of every state will be the protection of sovereignty and the public order. Article 370 and the move has prime connection to each other. The legal implication will a must watch in near future, how does the bifurcation and the abrogation results in the advancement of the region including the Ladakh.

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