

TRANSFORMATION OF JAMMU AND KASHMIR: FROM STATE TO UNION TERRITORY AND IMPLICATIONS FOR LOCAL GOVERNANCE

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Abstract

This article examines the historical backdrop and ramifications of the revocation of Article 370 from the Indian Constitution in August 2019. This constitutional provision had conferred special status to the state of Jammu and Kashmir. The historical background of Article 370, examining its inception in relation to the accession of Jammu and Kashmir to India in 1947. The article elucidates the original purpose of Article 370, which was designed as a provisional measure to confer the state with its own constitution and restricted authority in legislative affairs. Nevertheless, as time passed, it evolved into a lasting component of the Indian Constitution, giving rise to ambiguity over the state's affiliation with India. The implementation of Article 35A in 1954, which delineated the privileges of those with permanent residency status, added a layer of complexity to the situation. The following analysis delves into the Jammu and Kashmir Reorganisation Act of 2019, which resulted in the division of the state into two Union Territories, namely Jammu and Kashmir, and Ladakh. This paper examines the changes made to the constitutional framework, executive powers, and legislative body of Jammu and Kashmir subsequent to the process of reorganisation. This study examines the implications of Panchayat Raj Institutions (PRIs) in the Union Territory, with a particular focus on the need of structural changes, the mitigation of violence, and the successful execution of the 73rd and 74th Amendments to enhance the authority of local administration in the area.

Keywords: *Article 370, Transformation, Panchayat, Reorganization, Union Territory.*

Introduction

Article 370, which is included in Part XXI of the Constitution of India, conferred a distinctive identity to the state of Jammu and Kashmir, therefore granting it some exceptional powers. The implementation of Article 370 in the state of Jammu and Kashmir was a significant obstacle to the progress and development of the region. In October 2019, the Indian government made the decision to eliminate Article 370 from the Constitution of India through the utilisation of a presidential order known as the Constitutional application to Jammu and Kashmir order 2019. This action resulted in the removal of Article 370 and the granting of equal status to the state of Jammu and Kashmir, aligning it with other states within India.

History of article 370

During that period, Maharaja Hari Singh, the ruler of the state in question, sought assistance from the government of India in order to save the state from potential assault by Pakistan. The Indian government extended an invitation to Maharaja Hari Singh to integrate his realm into the Indian territory by the formal act of signing an instrument of accession. On the 26th of October 1947, Maharaja Hari Singh signed the Instrument of Accession, so expressing his agreement to join the dominion of India. On the 27th of October 1947, the governor-general of India, Lord Mountbatten, granted acceptance to this accession. However, in 1949, with the adoption of the Constitution of India. The future trajectory of the relationship between Jammu & Kashmir and India remained ambiguous. In order to establish diplomatic ties with Jammu and Kashmir, Article 370 was included into the Constitution of India. The aforementioned article served as a provisional measure, granting Jammu and Kashmir a distinct status by stipulating that the state would own its own constitution, so exempting it from the application of the laws outlined

in the Constitution of India. According to the text, the legislative authority of India is limited to three specific domains, namely foreign affairs, defence, and communications.

According to Clause (3) of the aforementioned article, the removal of Article 370 might be initiated upon receiving a recommendation by the constituent assembly of the state in question. Notwithstanding the implementation of Article 370, the elucidation of the privileges accorded to a permanent resident in Jammu and Kashmir remained ambiguous. On May 14, 1954, President Dr. Rajendra Prasad issued a presidential order titled "Constitution Application to (Jammu and Kashmir) Order 1954," which included Article 35A. This provision delineates the privileges and entitlements of those who have permanent residency status in the region of Jammu and Kashmir. The dissolution of the constituent legislature of Jammu and Kashmir in 1957 occurred without the removal of Article 370. Article 370 was widely recognised as a permanent provision within the framework of the Constitution. In August 2019, the President of India issued a presidential order, superseding the previous presidential order of 1954. This new order, known as the Presidential Order of 2019, led to the introduction of two resolutions by the Government of India in the upper house. The first resolution was the Jammu and Kashmir Reorganisation Bill, while the second resolution aimed to remove Article 370 from the Indian Constitution. Both resolutions were passed by a two-thirds majority in the upper house, resulting in the removal of Article 370 from the Indian Constitution.

The Jammu and Kashmir Reorganization Act of 2019: Transitioning from a State to a Union Territory.

On August 5, 2019, the President of India issued a Presidential Order known as The Constitution Order, 2019, in accordance with Article 370. This order extended the applicability of all provisions of the Constitution of India to the State of Jammu and Kashmir. Consequently, the Constitution of Jammu and Kashmir became ineffective as of that date. Currently, the Constitution of India has been extended to include Jammu and Kashmir, similar to its application in all other states within the country. Numerous modifications have been implemented within the Legislative, Executive, and Judicial departments of the Union Territory of Jammu and Kashmir, as per the prevailing circumstances. From the designated day forward, the provisions outlined in article 239A, which pertain to the "Union territory of Puducherry," will also be applicable to the "Union territory of Jammu and Kashmir." Therefore, the Union Territory of Jammu and Kashmir, which has a legislative body, shares similar characteristics and regulations with Pondicherry. The person designated as the Administrator according to article 239 of the Constitution of India for the Union territory of Jammu and Kashmir is often referred to as the Lieutenant Governor.

The Lieutenant Governor assumes the responsibilities formerly held by the Governor of the former state of Jammu and Kashmir. Indeed, the Lieutenant Governor has more administrative power compared to the preceding Governor due to the transfer of some areas, notably Law and Order, from the jurisdiction of the State government. The Legislative Assembly of the Union territory of Jammu and Kashmir has a total of 107 seats, which are filled by direct elections. It is worth noting that 24 of these seats are situated in the Pakistan Occupied Kashmir region. A delimitation commission will be established with the purpose of determining the boundaries of the Assembly constituencies based on the data obtained from the census records. A certain number of seats within the Legislative Assembly shall be allocated for representation of Scheduled Castes and Scheduled Tribes, in accordance with their respective proportions among the overall population. The Legislative Assembly will persist for a duration of five years from its first meeting, unless it is dissolved before to that time. The conclusion of this five-year term will result in the dissolution of the Legislative Assembly. In the event that a provision of a law enacted by the Legislative Assembly pertaining to matters listed in the State List of the Seventh Schedule to the Constitution contradicts a provision of a law enacted by Parliament on the same matter, regardless of whether the Parliament's law was passed before or after the Legislative Assembly's law, or if a provision of a law enacted by the Legislative Assembly pertaining to a matter listed in the Concurrent List of the Seventh Schedule to the Constitution contradicts a provision of any earlier law, excluding laws

enacted by the Legislative Assembly, on the same matter, then, in either scenario, the law enacted by Parliament or the aforementioned earlier law shall take precedence, rendering the law enacted by the Legislative Assembly of the Union territory void to the extent of the contradiction.

Nevertheless, it is important to note that this provision does not impose any restrictions on Parliament's ability to pass legislation pertaining to the same subject area. This includes the power to introduce new laws, make amendments to existing laws, modify their provisions, or even revoke the laws previously enacted by the Legislative Assembly. According to the recently enacted legislation, the composition of the Council of Ministers must not exceed ten percent of the overall membership of the Legislative Assembly. The Chief Minister assumes the leadership role in assisting and providing guidance to the Lieutenant Governor in the execution of their duties pertaining to subjects within the jurisdiction of the Legislative Assembly for lawmaking purposes. Regarding the Judiciary, there have been little changes in the new Act. The High Court of Jammu and Kashmir serves as the shared High Court for both the Union territory of Jammu and Kashmir and the Union region of Ladakh. The incumbent Judges of the High Court of Jammu and Kashmir, who are currently serving in the State of Jammu and Kashmir, will assume the position of Judges in the unified High Court on the designated day. The allocation of expenditure pertaining to salaries and allowances for the Judges of the common High Court must be distributed between the Union territory of Jammu and Kashmir and the Union territory of Ladakh based on the ratio of their respective populations.

The Jammu and Kashmir Reorganization Act of 2019: Implications for Panchayats

Following the amendments made to Article 370 and the subsequent reorganisation of Jammu and Kashmir into a Union Territory, both the central and state governments have shown clear indications of implementing structural reforms to the Panchayat Raj Institutions. These reforms aim to bring them in line with the rest of India and empower them to effectively serve as local governance bodies. On December 4, 2019, Girish Chandra Murmu, the Lieutenant Governor of Jammu and Kashmir, expressed the government's commitment to enhancing the authority and influence of local institutions inside the Union Territory.

The government is now engaged in efforts to efficiently execute the provisions outlined in the 73rd and 74th Amendments of the Panchayati Raj Act. This endeavour aims to enhance the authority and capacity of Panchayati Raj Institutions (PRIs), hence bolstering the democratic framework at the local level. According to Murumu, the devolution of PRIs would be accompanied by enough financial resources to ensure their ability to meet the demands of the population. In October 2019, the first Block Development Council (BDC) election was carried out by the government in the region of Jammu and Kashmir. The election has been officially reported to have achieved an unprecedented turnout rate of 98.3 percent. Nevertheless, many prominent political parties in the Union Territory, including the Congress, National Conference (NC), and Peoples Democratic Party (PDP), opted to abstain from participating in the first election process subsequent to the revocation of the region's special status. Polls are performed throughout the state to elect chairpersons of Block Development Committees (BDCs) in 310 blocks. A total of 1,092 candidates participated in the election process, out of which 27 candidates were chosen without any opposition. Upon the declaration of the results, a total of 217 autonomous candidates were victorious in the election for the position of chairman in the Block Development Council (BDC) in Jammu and Kashmir.

The Bharatiya Janata Party (BJP) secured triumph in 81 out of the 310 blocks. The National Panthers Party successfully secured victories in an additional eight seats. The individuals who were elected as panches and sarpanches in the village panchayats during the last quarter of 2018 have been chosen as representatives for the intermediate level of the panchayats, known as Blocs, in the elections conducted in October 2018. Nevertheless, the electoral processes conducted in 2018 for the village panchayats and in 2019 for the Block Panchayats fail to effectively address the challenges encountered by the Panchayati Raj Institutions (PRIs) in the region of Jammu and Kashmir. Two structural features must undergo a significant transformation in order to modify their inherent functions. It is essential to prioritise the reduction of all forms of violence in order to

enable the representatives of the panchayats to do their duties without experiencing fear or stress. Furthermore, it is essential to enforce all the requirements outlined in the 73rd and 74th amendments in relation to Panchayati Raj Institutions (PRIs), ensuring that these organisations are adequately equipped with both functions and funding. The absence of these processes poses significant challenges for the effective functioning of PRIs as local government entities.

Conclusion

The removal of Article 370 from the Constitution of India in October 2019 marked a significant turning point in the history of Jammu and Kashmir. This article, which had granted special status and privileges to the state, had long been a source of debate and contention. The accession of Jammu and Kashmir to India in 1947, followed by the insertion of Article 370 in the Indian Constitution, had created a unique relationship between the state and the Indian Union. The reorganization of Jammu and Kashmir into two Union Territories, Jammu & Kashmir and Ladakh, brought about profound changes in the governance structure of the region. The legislative, executive, and judicial branches were reconfigured, and the role of the Lieutenant Governor assumed significance. Additionally, the extension of the 73rd and 74th Amendments of the Panchayati Raj Act aimed to empower grassroots institutions, such as Panchayati Raj Institutions (PRIs), to function effectively and strengthen local governance. While the changes brought by these historic developments are significant, there are challenges to be addressed. The region must strive to reduce violence and ensure the safety of representatives in PRIs, enabling them to carry out their functions without fear. Moreover, the full application of the provisions of the 73rd and 74th Amendments, along with the allocation of sufficient functions and funds to PRIs, is essential for their effective functioning as institutions of local governance. The journey of Jammu and Kashmir from a state with special status to Union Territories is an evolving narrative, and the future holds both opportunities and challenges. The commitment to empowering grassroots institutions, coupled with a focus on peaceful governance, will play a pivotal role in shaping the destiny of this region and its people.

Reference

1. Noorani, A.G.. Article 370: A Constitutional History of Jammu and Kashmir. India, OUP India, 2014.
2. Akbar, M. J. (2002). Clause 7, Article 370 and a Three Nation Theory. In Kashmir: Behind the Vale (First ed., pp. 135-137). New Delhi: Roli Books. Bhattacharjea, A. (1994).
3. Kashmir: The Wounded Valley. Delhi: South Asia Books. pp. 181 Chengappa, R. (2014, June 15)..
4. India, Government of India. (n.d). Constitution of India. Retrieved January 15, 2017, from <https://india.gov.in/my-government/constitution-india/constitution-india-full-text/>
5. Joshi, A. (2014, June 1). What's the Politics behind Article 370. The Sunday Tribune, p. 9
6. Wani, Aijaz Ashraf. "Article 370: a Constitutional History of Jammu and Kashmir." Race & Class 56.2 (2014): 93–95. Web.
7. MAHIRE, MOHD MUBARIQ. "ABROGATION OF ARTICLE 370 IN JAMMU AND KASHMIR: A STEP TOWARDS HUMAN CATAclysm." EDUCATION AND SOCIETY (2023): n. pag. Print.
8. Rather, Tariq. "Abrogation of Article 370 of the Constitution of India: Socio-Economic and Political Implications on Jammu and Kashmir." SSRN Electronic Journal (2020): n. pag. Web.
9. Wani, Aijaz. "Article 370 and 35A: Origin, Provisions and the Politics of Contestation." Serena Hussain (ed) Society and Politics of Jammu and Kashmir Palgrave Macmillan (2021) (2021): n. pag. Web.