

REVOCATION OF ARTICLE 370 AND THE FUTURE OF JAMMU AND KASHMIR

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ABSTRACT

BJP government abrogated Article 370 stripping Kashmir from the special status it acquired in the 1950s. The Jammu and Kashmir (J&K) occupied by the Indian military for the last three decades came under strict lockdown after BJP promised move. Indian President issued a Constitutional Order 272 and ransacked the freedom of the Kashmiri people. Abrogation of Article 370 has allowed India to experience demographic invasion in the region with profound implications for the people of J&K. The stripping of the special status of J&K by India also left many questions unanswered. These include the legality of the Kashmir Issue, the legal interpretation of amendments in Article 370, and the reason the Indian SC upheld President Order CO 272 in its verdict in 2023. The paper analyzes the implications of revocation of Article 370 for the future of J&K. Likewise, it examines and analyses the causal relations between the revocation of Article 370 and the demographic invasion by India under the BJP government. Kashmiri people's will and the proximity of geographic areas were not taken into account during the revocation of Article 370. The paper also concludes that although India amended its constitution, the fact is that neither it will change the legality of the issue nor it will change the course of action of the Kashmir people by changing the demographic landscape of the region.

Keywords: Jammu and Kashmir, Article 370, Supreme Court, Demography, BJP, Abrogation

INTRODUCTION

BJP government abrogated Article 370 stripping Kashmir of the special status it acquired in the 1950s (Aamir, 2020). The move was taken after the landslide victory of the BJP in the 2019 election. Cutting the entire story of the abrogation of Article 370, the entire Jammu and Kashmir (J&K) occupied by Indian forces for the last three decades came under strict lockdown (Ahmed & Haque, 2024). Communication channels were blocked and all the human and civil rights of the Kashmiri people were neglected. There were no laws but the Indian law enforcement agencies controlled the region of J&K. (Amin T. , 1995).

Indian President issued a Constitutional Order 272 and ransacked the freedom of Kashmiri. BJP fulfilled its promise to annul said article. But the Kashmiri people never come to their normal life onward. Kashmir has been a disputed region since the division of the Indian subcontinent (Anand, 1964). In

1947, after the British left the subcontinent, India forced then the ruler of Kashmir Maharaja Hari Singh to provisionally annex the State of Kashmir with India without taking the will of the Kashmiri people (Azam, 2020).

Abrogation of Article 370 has allowed India to experience demographic invasion in the region with profound implications for the people of J&K (Agarwala, 2015). The stripping of the special status of J&K by India also left many questions answerable (Aamir, 2020). What is the legality of the Kashmir Issue and the history of Articles 370 and 35-A? What was BJP's rationale for bringing amendments to Articles 370 and 35-A? What is the legal interpretation of amendments in the said articles and why Indian SC uphold President Order CO 272 in its verdict in 2023? What are the implications of abrogation of the said articles for the future of J&K? This study aims to answer the aforementioned questions by using a

descriptive analysis of the case study. It also examines and analyses the causal relations between the revocation of Article 370 and the demographic invasion in J&K by India under the BJP government. The paper in the first part examines the legality of the Kashmir dispute under the preview of Article 370. This section evaluates that people's will and the proximity of geographic areas were not taken into account during the annexation of the region with India. The paper maps and analyses the BJP's rationale behind the revocation of Article 370, and the amendments in the said articles. In the last two parts, the paper examines the recent Indian Supreme Court decision. Indian Supreme Court upheld the constitutional amendments to change the special status of Kashmir and its implications for the future of J&K. In the end, the paper concludes that although India amended its Constitution, the legality of the J&K region will not be changed as well as the demographic landscape.

ARTICLE 370 AND THE LEGAL STATUS OF KASHMIR DISPUTE

The area known as J&K reportedly experienced a nominal ownership transfer on March 16, 1846 (Khaja, 2016). In this deal, which is recorded in a selling agreement known as the "Treaty of Amritsar," the British gave Gulab Singh the territory (Khaja, 2016). Within the context of international law, a relevant query is raised: can purchasing and selling include the people themselves? Therefore, allowing the transfer of their freedoms, dignity, and other inalienable rights without their express agreement? (Khaja, 2016) It is also necessary to take into account the legal ramifications if a subsequent acquirer attempts to further alienate, in whole or in part, the inherited area to a third party without first consulting the impacted population (Anand, 1964). Under such circumstances, it becomes essential to carefully consider the legal and moral implications of such conduct.

There is a great deal of disagreement on the sovereignty that the Princely States of the Indian subcontinent obtained when paramountcy expired. However, there is agreement on the recognition that these States had the right to accede, at their will, to Pakistan or India. There are two main requirements for entry: (i) the people's will and (ii) the proximity of geographic areas (Eagleton, 1950). Tragically, it

is seen that during the process of gaining entry into India, there was a glaring lack of commitment to these important criteria (Eagleton, 1950).

The 1947 provisional accession of J&K to India is still doubtful. India is accused of forcing the ruler to submit to its domination. Maharaja Hari Singh lacked negotiating power at that time (Jamwal, 1998). India did, however, allow the accession on the condition that a referendum would be held to affirm, if not scrutinize, the decision (Amin S. M., 2003). India's first plebiscite pledge was officially accepted by Pakistan as the "United Nations Commission for India and Pakistan" (UNCIP). UNCIP has become a legally enforceable requirement (Gauhar, 1966). In 1948, the continued conflict over the disputed territory of J&K led to an armed conflict between the troops of Pakistan and India. Pakistan expressed its concerns. Recognizing the need for immediate action, the UNSC formed UNCIP on January 20, 1948, with the objective goal of unbiasedly reviewing the claims made by both countries. The Security Council then adopted Resolution 47, outlining a series of proposals, on April 21, 1948 (R., 2010). The resolution demanded that Indian troops and tribesmen leave the region. It suggested sending a five-person UNCIP mission to Kashmir to help restore peace and hold a fair plebiscite. It called for the establishment of an interim administration that would represent the main political parties in the territory.

This coordinated effort sought to provide the circumstances necessary for a fair resolution by developing a framework for addressing the many problems underlying the conflict (R., 2010). Simultaneously, during this time, the Indian Constituent Assembly was constituted specifically to draft the country's constitution. But it was becoming more and more clear that India's goals, especially about the plebiscite challenge, did not correspond with the stances that the UNSC was pushing for. A strategic change was made in response to the perceived weakness of the UNSC's position. Likewise, there was no realization to provide the State of "Indian Illegally Occupied Jammu and Kashmir" (IIOJK) people a chance to negotiate the new Indian Constitution.

This change forced India to reevaluate its legal and political strategy, which resulted in efforts to include Kashmir in the Constitution. This bold action

demonstrated a sophisticated approach to protect what was judged essential to the governance and involvement of the people of J&K, ignoring UNSC objections and the fundamental values of the UN Charter (Thapliyal, 2011). At this point, the Indian Constituent Assembly discussed Article 370 in the Indian Constitution as a whole (Thapliyal, 2011). The special conditions surrounding J&K made consideration of this constitutional clause necessary. The territory required particular attention because of India's complex participation in the UN Kashmir dispute. Remarkably, the records of the Constituent Assembly show that this entanglement could be relieved only "once the issue of Kashmir is satisfactorily settled." (Amin T. , 1995) In its original form, Article 370 served as a temporary measure to represent India's involvement with J&K within the parameters of the Constitution. It was a practical reaction to the intricate geopolitical circumstances and reaffirmed India's resolve to handle the Kashmir dispute to comply with international law and constitutional precepts. India described Article 370 as a "temporary provision" and an "interim system" (Agarwala, 2015)."

This constitutional paradigm served as the Instrument of Accession's legal support, purposefully keeping IIOJ&K outside the scope of several Indian Constitutional provisions. Notably, it restricted the legislative power of the Indian Parliament over the State to particular areas, including defence, foreign policy, and communications. This clause required the State government's prior consent before any new "constitutional provisions" or Union authority could be extended to Kashmir. Such extensions required the support of the State's Constituent Assembly, and this agreement was specifically stated to be a stopgap solution. Six months of complex discussions resulted in this agreement demonstrating the seriousness of India and the former State of J&K formed this deal (Agarwala, 2015). As stated earlier, the State could not impose an unlimited extension of the Indian Constitution to IIOJ&K since the State Government's power to grant "concurrence" on issues beyond "the Instrument of Accession" could only endure until the Constituent Assembly gathered (Jammu and Kashmir Constituent Assembly, 1951-1955). The President's power to prolong the matter came to an end when the State's Constituent Assembly approved

the plan and dispersed it (Jammu and Kashmir Constituent Assembly, 1951-1955).

However, over 50 years, a significant change occurred with the promulgation of 47 Presidential Orders, which stretched to IIOJ&K's related 260 out of the 395 Articles of the Indian Constitution, including 94 of the 97 entities on the Union List (Setalvad, 2019). This gradual trend has been seen as an illegal "measured, deliberate hollowing out" of Article 370's requirements. The IIOJ&K is significantly at a disadvantage in comparison to other Indian Union States as a result of this prolonged constitutional integration. Questions concerning the authenticity of Article 370 are raised by this striking divergence from the originally declared "special" and "preferred" status. A thorough investigation of the reasons, ramifications, and effects that have influenced the constitutional framework of IIOJ&K is necessary for understanding this and the constitutional shift.

Therefore, it has been said that Kashmir's accession to India violated the concept of freedom of choice (Anand, 1964). Self-determination is unquestionably a legal need under international law currently, but it's debatable whether or not it has developed into conventional international law (Khurshid, 2016). The ambiguous status of Kashmir has also been exacerbated by India's legal activities following the division, notably in internal legislation (EFSAS, n.d.). By claiming ownership of the disputed area, India has effectively rejected the merits of Pakistan's claim. Indian claims being enshrined in domestic law have contributed to further Pakistan's sense of self-righteousness and impeded the settlement of the conflict. The settlement of the conflict has been negatively impacted by the Indian government's decision to establish the Constituent Assembly and assert its legal claim over IIOJ&K. Unquestionably, its actions have strengthened India's hold over the State. But the way they've happened has called into question India's claim to Kashmir.

REVOCATION OF ARTICLE 370

The Indian Parliament removed Kashmir's unique legal status on August 6, 2019, leaving the citizens of IIOJ&K with an uncertain state of identity and legislation (Lalwani & Gayner, 2020). The Indian government has consistently rejected the fundamental rights of the people residing in IIOJ&K

for about seventy-six years (Azam, 2020). The territorial issue of Kashmir exists between India and Pakistan and it is a prime example of human rights abuses carried out by Indian military personnel. Since the Indian constitution's Articles 370 and 35 (A) were repealed, relations between India and Pakistan over this enduring problem of Kashmir have gotten worse. A statute that gave Kashmir, under Indian administration, unique status has been repealed by India (Azam, 2020).

Using a constitutional order, the Indian President made the momentous decision, thereby ending the exceptional authority that the IIOJ&K has enjoyed for seven decades (Lalwani & Gayner, 2020). This constitutional revision changed the former Princely State's ties with the Indian Union and signaled a turning point in its historical course. The former Princely States had the option to join either India or Pakistan after gaining independence in 1947. Regarding J&K, the foundation for its assimilation into the Indian Union was laid by the framework outlined in Article 370. This constitutional clause since 1949 gave IIOJ&K a special status in recognition of its exceptional circumstances and past (Azam, 2020). It permits the territory under the Indian administration to enact its laws in all areas other than finance, military, international relations, and communications. It restricted foreigners' right to own property in the area and established a distinct flag and laws (EFSAS, n.d.). This implies the people residing in the State are subject to rules that differ from those in the other parts of India.

To uphold the previous requirements of the territory restrictions within Article 370 of the constitution, Article 35A was enacted in 1954 by presidential decree (Azam, 2020). The provision gives the IIOJ&K local assembly the authority to determine who is a permanent citizen of the area (Cheema, 1995). It prohibits foreigners from relocating there indefinitely, purchasing land, working for the local administration, or being awarded scholarships for higher education. Moreover, a significant feature of the legal system in IIOJ&K is the prohibition on property ownership for female citizens who marry non-State persons. This legislative provision (35A), referred to as the "Permanent Residents Law," covers female residents as well as their progeny (Aamir, 2020). The constitutional clause that supports IIOJ&K's unique status, Article 370, has seen

changes throughout time in several areas. But one important part of this legal system, Article 35A, has not been altered (Nawaz, 2017). Critics of Article 35A argue that it upholds discrimination based on gender, especially against married non-resident women. The fact that these women and their offspring are denied specific rights to property in the State serves to emphasize the case. In addition, there has been debate over Article 35A's lack of legislative ratification, with some arguing that it does not have the requisite democratic legitimacy (Cheema, 1995). This legal component reflects the junction of women's rights, regional autonomy, and India's changing constitutional environment, adding a layer of complexity to the larger conversation over the constitutional and legal status of IIOJ&K (Aamir, 2020).

STATUS OF IIOJ&K UNDER BJP GOVERNMENT

The BJP suggested repealing Article 370 and Article 35A of the Indian Constitution in its party's manifesto before the 2019 election (BJP manifesto 2019: No to Article 370 and Article 35A, 2019). The NDA administration is dedicated to removing any barriers standing in IIOJ&K's way of so-called development, according to the manifesto. Revoking the constitutional articles was just a hoax. According to the BJP platform, Article 35A should be repealed since it impedes the State's growth. As per the manifesto of BJP in 2019, "in the last five years, we have made all necessary efforts to ensure peace in J&K through decisive actions and a firm policy. We are committed to overcoming all obstacles that come in the way of development and providing adequate financial resources to all the regions of the State. We reiterate our position, since the time of the Jan Sangh, to the abrogation of Article 370 (Ahmed & Haque, 2024)."

A further mention of repealing Article 35A of the Indian Constitution appeared in the BJP's manifesto of 2019 (Ahmed & Haque, 2024). As discussed, special privileges and benefits are granted to IIOJ&K's permanent inhabitants under Article 35A. Article 35A is prejudiced as per BJP and its leaders worked to establish exclusive Hindu communities in the area (Hameed, 2020). Prime Minister Modi skillfully guided the BJP to a landslide Win in the 2019 elections to capitalize on revoking Articles 370

and 35-A (Ahmed & Haque, 2024). The election's victory served as a symbol of the public's approval of BJP's policies on IIOJ&K to amend the State's constitution and laws (Azam, 2020). The political climate around these constitutional revisions has been reflected in the national debate as well as in the internal affairs of IIOJ&K. Under the direction of Prime Minister Modi, the BJP has been known for taking a calculated approach to crafting narratives on issues of national security and unity. Furthermore, some have felt that the BJP's political approach has polarizing overtones, especially about the Muslim population.

There have been concerns expressed over the party's stance on religious identity problems and the potential effects on social cohesiveness within the heterogeneous Indian community. Furthermore, the unpredictable component in regional geopolitics has been added by the adjustment of the connection with Pakistan, which was impacted by the changed constitutional situation in IIOJ&K. The changing strategic and diplomatic dynamics between Pakistan and India highlight the complex ramifications of the constitutional amendments that Prime Minister Modi's administration brought about. Ajai Shukla stated, "This is a straightforward pandering to the Hindu-majority electorate in India (Kashmir special status explained: What are Articles 370 and 35A? 2019)." He also stated, "There is a political polarization here with the ruling party trying to pander to its Hindu vote bank and to anything it sees as anti-Muslim (Kashmir special status explained: What are Articles 370 and 35A?, 2019)."

AMENDMENTS IN ARTICLE 370 AND 35A

The text of Article 370 as it is now is necessary to comprehend the legal difficulties. According to Article 370(1)(d), "the State may occasionally apply constitutional requirements, as long as the State's legislature agrees and the President changes the terms by executive order (this was the foundation for the disputed Article 35A)" (Supreme Court of India, 2023). It becomes clear that any changes to Article 370 itself required a recommendation from the IIOJ&K's Constituent Assembly (Shafi, 2022). But in 1957, with the dissolution of the IIOJ&K's Constituent Assembly, a pivotal moment occurred. There is a lengthy and complex discussion over the validity of Article 370 because there is no

appropriate body to grant permission for its change (Verdict on Article 370 ends prolonged row, 2023). The issue of whether Article 370 has truly achieved permanency in the legal structure is at the center of this discussion. The situation has become more difficult due to the dissolution of IIOJ&K's Constituent Assembly, which has led academics, legal experts, and policymakers to discuss possible procedural reforms.

One important question is whether changing Article 370 requires calling for a new IIOJ&K Constituent Assembly or if it can be done via the normal process of modifying the Constitution (Bhasin, 2023). The lack of a definitive agreement on this issue has resulted in uncertainty over the durability and adaptability of Article 370. India's legislative and judicial discussion has revolved around this argument, which captures basic considerations regarding the constitutional procedures and procedural criteria for amending a law. "The IIOJ&K Constituent Assembly must agree for Article 370 to be changed, according to the proviso in Article 370(3) (Kashmir special status explained: What are Articles 370 and 35A?, 2019)."

Thus, C.O. 272 employs the authority granted by 370(1) to modify a section of the Constitution (Article 367), which modifies Article 370(3) and eliminates the need for the consent of the Constituent Assembly for any such modifications to Article 370 (The Constitution Order, 2019 C.O. 272, 2019). Consequently, this catalyzes the statutory resolution, which suggests to the President the elimination of the majority of Article 370 (because the consent of the Constituent Assembly is no longer necessary). This is unique. Is it even legal? Article 370(1) is one significant objection (c). According to Article 370(1) (c) (un-amended), "notwithstanding anything contained in this Constitution, the provisions of Article 1 and this Article shall apply about that State (The Constitution of India)." This is very important since it clarifies that Article 1 and "this Article," or Article 370 itself, are not included in the President's authority to change constitutional provisions on IIOJ&K.

When it comes to the "other provisions" contained in the Constitution that can be changed by Presidential Order, 370(1) (d) clarifies things even further (and this is how the current Presidential Order differs from earlier ones, including those that added Article 35A).

Consequently, a Presidential Order like C.O. 272 is unable to change Article 370 directly (the only exception being a clarifying modification, which is not comparable to this one) (Soofi, Aziz, Anwar, Malik, & Khan, 2019). Here's another crucial thing to keep in mind. As required, C.O. 272 states that the State of J&K's administration has given its consent. Thus, in actuality, the governor has given his or her assent (Singh, 2019). Nevertheless, relying only on the governor's approval for C.O. 272 presents two grave issues. First, much like the president, the governor represents the government at the central level. Consequently, Presidential Order 272 is effectively tantamount to the Central Government changing the Constitution with its approval.

But there's a bigger problem than that. President's Rule is just for a brief period. It is only intended to occur in cases where a State's constitutional framework malfunctions and an elected legislature is not feasible. President's Rule is intended to act as a stopgap measure until the return of an elected administration. As a result, irreversible choices made by the governor instead of the democratic legislative assembly, such as altering the State's whole status, are fundamentally problematic. They could be legitimate in the formal sense (Singh, 2019). The main argument is based on two different premises. First off, there are complex constitutional issues surrounding the supplementary amendment of Article 370(3) proviso via the use of Article 370(1) (Bhatia, 2019). The modification of provisions found in Article 370, particularly using an indirect method, necessitates a careful analysis of the guiding legal precedents and norms. Secondly, there is a noticeable issue with using the governor to represent the elected assembly on a topic this important. Given the newfound complexity surrounding democratic procedures and representation brought about by the governor's replacement of the elected assembly, the constitutional validity of this substitute in light of the ongoing constitutional amendments is being closely examined. This two-pronged examination emphasizes how complex the legal and constitutional questions surrounding Presidential Order C.O. 272 are. The continuing conversation about these issues is crucial to understanding the complex aspects of the constitutional amendments and how they will affect

the political system in the region that is impacted (Bhatia, 2019).

OBSERVATIONS OF KASHMIRI LAWYER

The IIOJ&K, on the other hand, claims that the Indian President changed Article 370 and passed CO 272 outside the State Assembly's approval (Bhatia, 2019). Attorney Shakir Shabir filed a case before the Indian Supreme Court contesting the revocation of Article 370. (Kashmiri lawyer challenges Presidential Order on J&K, moves SC, 2019). The argument asserted that before making these drastic modifications, the State Assembly's consent represented the desire of the people. According to the petition, "the action taken by the Union government is reckless, absent of any power or constitutional authority. The lives of millions of the inhabitants of the region of J&K are jeopardized (Kashmiri lawyer challenges Presidential Order on J&K, moves SC, 2019)." Shabir also asserted that the State governor had improperly utilized his powers since he had not contacted the "Council of Ministers," which was made up of elected officials from the previous State. "The decision was taken unilaterally by the Executive, without any consultation with the Legislative Assembly of the State," the petition stated. The petition also apprised the court of the State's current "lockdown" predicament (Kashmiri lawyer challenges Presidential Order on J&K, moves SC, 2019).

IS INTERNATIONAL LAW APPLICABLE?

International law experts suggest that the repeal of Articles 370 and 35-A might theoretically revive the prospect of a referendum in Kashmir, giving its people the power to decide their fate. The right to self-determination of the area is upheld by the UN resolutions that arose from the original war between India and Pakistan over Kashmir in 1948. These resolutions, which are based on international law, clearly endorse the idea that the Kashmiri people need to be given the chance to vote in a plebiscite and express their political will. Still, it is critical to recognize the differences in viewpoints between international relations specialists and legal scholars. Proponents of India's stance contest the above statement and provide an alternate meaning. This point of view will probably be put up by the official representatives of the government in support of the

constitutional amendments brought about by the removal of Articles 370 and 35-A.

The divergent perspectives about the consequences of these constitutional modifications highlight the intricate legal environment around the Kashmir dispute. The international legal community continues to examine and analyze how international law should be interpreted about the Kashmir issue as long as arguments about it continue (Farrell, 2003). One argument would be that the “1972 Simla Agreement,” which ended the third conflict between India and Pakistan, replaced the UN resolutions with arrangements for the mutual resolution of issues. Legal experts from Pakistan and Kashmir, however, are discussing bringing a case before the ICJ. However, the Indian Government is unlikely to acknowledge ICJ’s jurisdiction in this case. Therefore the court could only be able to answer a petition for a recommendation that is non-binding (Soofi, Aziz, Anwar, Malik, & Khan, 2019).

RECENT INDIAN SUPREME COURT DECISION AND LEGALITY OF DISPUTED TERRITORY

On December 11, 2023, the Indian Supreme Court’s five judges affirmed the annulment of Article 370, a constitutional provision providing special status to the disputed region of J&K (Supreme Court of India, 2023). The ruling emphasized that Article 370 was a provisional or temporary measure, asserting that J&K did not deserve greater, special autonomy status or sovereignty under the Indian Constitution. The court’s orders also underscored the president’s unilateral authority to revoke the State’s special status as the conclusive step in integrating the disputed region into the Indian territorial and constitutional mainstream (Supreme Court of India, 2023).

The Supreme Court ruling determined that J&K did not maintain “internal sovereignty (Supreme Court of India, 2023).” According to the verdict issued by the Indian Supreme Court, “Each state possesses a certain level of autonomy. Nonetheless, this autonomy signifies the asymmetric federal structure of India, not the preservation of sovereignty by States. The unique status bestowed to J&K represented a higher form of autonomy rather than a distinct type (Supreme Court of India, 2023).” India believes that following Maharaja Hari Singh’s

signing of the Instrument of Accession (IoA), J&K became a fully integrated part of India.

The Chief Justice of the Indian Supreme Court proclaimed that, under Article 370’s clause (3), the president of India possesses unilateral authority to revoke Article 370 without requiring the Constituent Assembly’s concurrence (Supreme Court of India, 2023). Clause (3) specifies that the president must consider the Constituent Assembly’s recommendation before issuing such a notification. However, the Indian Supreme Court ruled that the president wasn’t obligated to follow the recommendation of J&K’s Constituent Assembly or consult the legislative assembly as per the Indian Constitution.

The Court sustained that it could review the actions if there was malicious intent on the president’s part. Nevertheless, in issuing Constitutional Orders 272 and 273, which annulled Article 370, the Court found no evidence of such malicious intent by the president (Supreme Court of India, 2023). The judgment determined that Article 370 constituted a facet of “asymmetric federalism” rather than sovereignty. It emphasized that J&K lost any trace of sovereignty following the execution of the Instrument of Accession (IoA) and the proclamation dated November 25, 1949, adopting the Constitution of India.

The verdict clarified that the State of J&K lacked “internal sovereignty,” a distinction from the powers and privileges held by other States within the country (Supreme Court of India, 2023). The Supreme Court of India’s ruling emphasized that when a proclamation under Article 356 of the Indian Constitution is in effect, the Central Government (Federal Government of India) makes numerous decisions on behalf of the States. The verdict stated that not every decision and action taken by the Union executive on behalf of the State can be challenged, as doing so would result in chaos and uncertainty, effectively halting the State administration. The Court clarified that it would only scrutinize the validity of the exercise of power when a petitioner establishes a prima facie case of malice or external influence (Supreme Court of India, 2023).

The court highlighted that the petitioners contended that the president could not unilaterally exercise powers in the absence of the constituent assembly of the State. However, the bench disagreed with this

perspective, stating, “I am unable to agree with this view (Supreme Court of India, 2023).” It explained that when the constituent assembly ceased to exist, only the assembly’s power to make a recommendation ceased, rendering the proviso to Article 370 irrelevant. The main provision, granting the president the power to issue a declaration, persisted. The court argued that adopting the petitioners’ stance would imply that Article 370, initially designed to be temporary, would cease to be so after the Constituent Assembly’s dissolution, which contradicts the intended purpose of Article 370 (Supreme Court of India, 2023). The court emphasized that States had “no constitutional guarantee” safeguarding them against Parliament’s authority to modify their boundaries. It further stated that “under the Constitutional setup, States have no independent or standalone sovereignty (Supreme Court of India, 2023).”

DEMOGRAPHIC INVASION

The revocation of Articles 370 and 35-A finally provided the BJP with the necessary approvals to grant legal sanction to the decades-old brutal genocide of the Kashmiri Muslim populace. It also allowed the BJP to eliminate any remaining chance of negotiating with Kashmiri freedom fighters. In the days leading to the annexation, a massive influx of troops occurred. Kashmiri leaders were detained and put under house arrest. The region witnessed an unprecedented communication blackout including the suspension of internet services imposed to suppress dissent. This abrupt decision transformed one of the world’s most brutal occupations into what is now termed settler-colonialism. It was not fundamentally different from the Israeli occupation of the West Bank, to initiate a ‘demographic invasion’ in the Muslim-majority valley.

However, experts argue that this was not a peripheral disruption in India’s “seamlessly” functioning democracy. Instead, it had been in progress for years and was inherently embedded in the ruling party’s vision of Hindu India (Bano, 2023). According to experts, this action is perceived as an effort to alter the demographic composition of the J&K region. They express skepticism about the viability of this process, citing the region’s inadequate infrastructure as a primary obstacle. One of the conspicuous consequences of India’s swift ‘saffronisation’. It was

a notable surge in violence in Kashmir, a trend that had been diminishing until Narendra Modi assumed power in 2014. The ‘zero tolerance’ policy appears ineffective, and currently, Kashmir stands as the sole part of India without a democratic setup running the region’s affairs (Rao, 2021).

The annulment of Article 370, justified on the grounds of curbing “terrorist” elements, has faced criticism in the international community. Most countries acknowledge the changes as India’s “internal matter” and urge dialogue between India and Pakistan to resolve disputes and differences. The narrative propagated by India as well as former US President Trump termed J&K as an internal matter. The argument is made that there is nothing legitimate about perpetually restricting the civil liberties of a population. The assertion is that trust cannot be built through the display of national chauvinism and military intervention in democratic spaces. The militarized peacekeeping in Kashmir is deemed no different from other forceful military interventions (Rahman & Muneer, 2020). Under the BJP’s leadership, the decision was made to eliminate Article 370, portraying it as a supposed favor granted to the Muslim population of Jammu and Kashmir.

A strategic move for demographic alteration in the region, the J&K Reorganization Order 2020 aimed to facilitate the settlement of Hindus in the area. This involved modifying the domicile law, and granting permanent residence status to those who had lived in J&K for 15 years, studied for 7 years, or appeared in 10th/12th exams in educational institutions (Rao, 2021). According to media reports, the government of India has issued 3.4 million domicile certificates. Consequently, non-Kashmiris now can acquire land, and property, and apply for jobs in the region. The annulment of Article 370/35A paved the way for Indian settlers to migrate to J&K. It was a replica of Israeli settlements in the West Bank and other areas, designed to bring about demographic change (Mahajan, 2023).

The Modi-led government established a delimitation commission for J&K to allocate more assembly seats to the Hindu minority in contrast to the Muslim majority. The commission, as it is termed, submitted its recommendations, suggesting an addition of six seats for the Jammu region and one seat for Kashmir (Rahman & Muneer, 2020). Additionally, it proposed the redrawing of five out of eight assembly

seats in Srinagar, including the division of the Habbakadal area for three seats, facilitating a seat for Kashmiri Pandits. This proposal would increase the seats in the Jammu division from the current 37 to 43 and in Kashmir from 46 to 47. The clear intention is to use delimitation to decrease the representation of the Muslim majority population. The aim is to augment seats for the Hindu minority to install a Hindu Chief Minister. (Indian govt website declares Muslim-majority IIOJK 'predominantly Hindu', 2021).

The announcement of the revision of the electoral roll has sparked significant concerns among various segments of the population in both Kashmir and Jammu. There is widespread apprehension that this move is an endeavor to introduce a demographic shift in the electoral landscape. The apprehension within the broader population is that extending voting rights to non-J&K residents could lead to the assembly being controlled by outsiders (Khan, 2020). The concern is that this number might increase substantially, reaching 50 lakh (5 million) or even 1 crore (10 million). The distinct identity of J&K is facing a direct assault. Following the constitutional change, the region was bifurcated into two federally governed union territories. The announcement permitting outsiders to participate in the upcoming polls has raised anxieties not only in Kashmir but also in the predominantly Hindu region of Jammu. This move is seen as a deliberate attempt to alter the electoral demography of the region. It is evident on the surface due to the demographical changes being implemented in a rather quick manner (Iqbal, 2023).

IMPLICATIONS FOR THE FUTURE OF JAMMU AND KASHMIR

The consequences of the abrogation of Article 370 and 35-A are both intricate and diverse, giving rise to numerous apprehensions about the future of the region. The situation in Kashmir necessitates the attention and concern of the international community. Achieving peace and stability in the region requires genuine diplomatic endeavors that prioritize human rights and the aspirations of the local population. Concerning the economic impact on Kashmiris, the revocation of the special status has resulted in approximately 500,000 job losses. The Kashmir Chamber of Commerce and Industries (KCCI) has approximated that the business

community in Kashmir incurred losses of around Rs 40 billion, contributing to an unfavorable situation for the business sector. Article 370 was the main cause of the State's economic underdevelopment. The reality appears to be more intricate and varied and quite the opposite of the government's claims. The modifications resulting from the abrogation have introduced substantial challenges, affecting not only the economy but also various other facets of life in the region.

Examining the historical phases of the Independence movement, it's evident that the will of Kashmiris remains resilient. The movement is anticipated to gain momentum, particularly with an enhanced armed struggle seen as a last resort against Indian brutality. India's objectives appear contrary to the autonomy and rights of the people in J&K. The persistent state of complexity for Kashmiris is likely to elicit a comparable response. UN resolution 3314 prohibits States from engaging in military occupation, and resolution 1514 grants the oppressed the right to resort to armed struggle against the oppressor.

Kashmiris are carefully assessing the situation, contemplating an impactful response. The independence movement in Kashmir rests on two pillars: a political struggle and an armed struggle. The people of Kashmir are considering both options, recognizing the importance of each. The future of the political struggle hinges on new developments, where subordinated regions can gain a favorable position through political processes. This involves interactions between dominant and dominated regions through voting, with the degree of autonomy gradually shifting from the dominant to the dominated entity. The Indian attempt to alter Kashmir's demography aims to prevent local people from achieving political autonomy through the electoral process.

In this context, the armed struggle becomes relevant, explained well by the New Wars theory. This theory illustrates how contemporary conflicts involve armed struggles with all stakeholders participating. It employs arms to create space for political discussion. The armed struggle for independence aligns with resolution 1514(XV), legitimizing it in every sense. Such use of force should be the last resort, to be considered if India remains obstinate and fails to

create an environment for peaceful talks, leaving Kashmiris with no alternative.

CONCLUSION

The concluding remarks are that the BJP's move in 2019 to eliminate the special status of J&K was to gain domestic political mileage. In pursuit of legitimizing India's illegal occupation of the region, the BJP has distributed thousands of domiciles to the non-Kashmir to ensure the plight of the Kashmiri people. The efforts remained unsuccessful so far as the Kashmiri people were determined to gain independence from India. The paper also concludes that the legality of J&K is still questionable. From the Indian perspective, Kashmir is now an integral part. In this regard, the Indian Supreme Court upheld the BJP's government decision to revoke the Articles under discussion. But the fact is that such an effort would not uproot the Kashmiri people's effort to acquire and attain self-determination and their born struggle to gain independence. The paper concludes that UN resolutions are still relevant to resolve the issue of J&K. The issue can be resolved as per international law but Indian efforts are against the very spirit of the International norms and regime toward conflict resolution. Indian efforts for demographic invasion of the region are fruitless as it would not underestimate the struggle put up by Kashmiri people since the subcontinent partition.

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