

A STUDY ON THE RELEVANCE OF POLITICAL INSTABILITY UNDER ARTICLE –370, 35-A IN JAMMU AND KASHMIR

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ABSTRACT

Picturesque valleys, a thriving local culture, and some of the most magnificent views in all of India, Jammu, and Kashmir have rightfully earned the sobriquet of “paradise on earth.” For years, the erstwhile state and now union territory has served not only as a perfect shooting location even. Jammu and Kashmir have always attracted creative minds for decades, and this also includes entrepreneurs. Considering how popular Jammu and Kashmir used to be for tourism, business, and cultural activities. But that’s not the case, so what went wrong? The political tension and instability have been the chief factors that have canceled out the development over the years. The spate of internet shutdowns, cellular services blockages, and curfews has also marred the business atmosphere. After the abrogation of 370, With Jammu and Kashmir becoming union territory, there is some hope that direct intervention of the central government will spur on the J&K startup ecosystem and it will get the same boost as the rest of the country. The decision to revoke Article 370 will give more political mileage to the ruling BJP across India. Popular support from various constituencies will also make it an electoral talking point for upcoming state elections and the 2024 Lok Sabha polls. An unsuccessful integration process might have long-term political implications for the BJP since opposition parties may see it as a reason to unite against the ruling party in future state and parliamentary elections. The BJP understands that it has a marginal political presence in the Kashmir valley, where many are opposing the abrogation of Article 370. The two most popular political parties in Kashmir, the National Conference, and the People’s Democratic Party are unlikely to join hands with the BJP after the recent arrest of their top leaders. The possibility of a united opposition in the valley may dampen the BJP’s chances of ruling the new Union Territory. In the worst-case scenario, Kashmir-based parties may also decide to boycott elections to protest the scrapping of Article 370, which may lead to maximum political instability in Jammu and Kashmir in the future.

INTRODUCTION:

While after the abrogation of Article 370 by the Indian government in 2019 the state was divided into two union territories of Jammu and Kashmir and Ladakh. Before it Jammu and Kashmir were given special status under Article 370 of the Indian Constitution. The special status gave the right to the Jammu

and Kashmir government to formulate laws for the state's permanent residents. Non-residents of Jammu and Kashmir were not allowed to buy land or apply for government jobs in the region. Prime Minister-led Bhartiya Janta Party revoked Article 370 on August 5, 2019. The government also separated Ladakh from Jammu and Kashmir and established both the union territories. Internet and cellular services in Jammu and Kashmir were snapped from midnight of August 5, 2019. Internet services in Kashmir have been shut for 198 days, as of February 18, the longest shutdown in the world. The government restored 2G services on January 25, 2020, for whitelisted websites, which does not include social media platforms. Since 2012, since 2012, internet services in Jammu and Kashmir have been snapped 180 times. Article 370 was created with a view that its existence would be temporary. The ruler of Jammu and Kashmir signed the instrument of accession whereby only three subjects were surrendered i.e. External Affairs, Defense, and Communication, by the state to the Dominion of India. The relationship between the state of Jammu and Kashmir and the Union of India is exceptional. The state enjoys a greater measure of autonomy and the power of the Union of India is restricted, as regards other States. The Union of India is incompetent to declare financial emergency and emergency in case of failure of constitutional machinery with respect to the state of Jammu and Kashmir. Only an emergency due to war and external aggression can be declared as it is within the scope of defense as surrendered to the Union of India. Arguments in favor and against on the issue of abrogation, are perfectly balanced. Arguments stating that it was a temporary provision and was subsequently required to be done away with in a few years favored its abrogation. If Article 370 is abrogated, a demand for a plebiscite would be more lethal, as it would have been right to hold a referendum within five years from the date of accession and not after 60 years. This counter view is in favor of those against abrogation. Although there are innumerable views and counter views to this effect, the most significant have been stated above. The Centre's decision to abrogate provisions of Article 370 was unconstitutional since people of Jammu and Kashmir were bypassed one of the petitioners told the Supreme Court, which commenced hearing on a batch of pleas challenging the constitutional validity of the government's August 5 move. A 5-judge Constitution bench headed by Justice N V Ramana was told by the petitioners that any proposal for altering the constitutional status of the erstwhile state should emanate from citizens there and the center's move was violative of the constitution as orders were passed in disregard of the consent of people of Jammu and Kashmir. A number of petitions have been filed in the matter including that of private individuals, lawyers, activists, and political parties and they have also challenged the Jammu and Kashmir Reorganizations Act 2019, which splits J&K into two union territories-Jammu and Kashmir and Ladakh. The record indicates that neither the President nor the Governor held any consultations on the issue either with the public at large or with members of the Legislative Council.

The new land laws implemented by the union government in Jammu and Kashmir are cataclysmic, as they seek to upend a legal structure that emerged out of one of the most successful land reforms in South Asia. The earlier land order is considered one of the main reasons for the lower levels of poverty in the region and sustaining a distinct political, economic, and cultural milieu within Jammu and Kashmir.

These new laws, therefore, do not merely affect land transactions but can potentially alter the basic social structure of Jammu and Kashmir. The union government is steamrolling its project that started with the unilateral abrogation of Article 370 and 35-A in August 2019. The state was bifurcated into two union territories which came into existence on 31 October 2019, through the Jammu and Kashmir Reorganizations Act (9JKRA), 2019. This act is quite exhaustive in its scope and objectives, which is being slowly but persistently implemented in the erstwhile state of Jammu and Kashmir. Among other things, this act allowed the union government to independently amend the provisions of different acts applicable in the state, including itself, for one year since its implementation. The union government exploited this provision to introduce a slew of measures, including the rules of conduct of business within the newly constituted union territories, the domicile law for jobs, and the land laws. This undemocratic exercise of power becomes more problematic when one realizes the profundity of the changes that these laws aim to bring in the political structure, cultural and socio-economic structure of the erstwhile state. Journalists reporting from Kashmir have always worked under immense pressure, facing intimidation, assaults, and arrests. The latest media policy, announced by the Kashmir administration in May 2020, is a continuation of measures taken to curtail the free flow of information in Kashmir after the abrogation of Article 370. Its larger aim is to make media a mere carrier of the news that the government intends to disseminate, and to prevent it from peddling fake news and indulging in anti-national activities.

WAR, MILITANCY AND POLITICAL INSTABILITY: AN INSURGENT ERA

This research will help how the state of Jammu and Kashmir has been affected by conflict as well as political instability. After the 1987 elections, through National Conference and Indian National Congress formed an alliance and remained in power, there were many parties like the Muslim United Front and Jammu and Kashmir Liberation Front which propagated communal hatred, in the same way, the other political parties started influencing Hindus and Sikhs of Jammu and Kashmir and Ladakh region because the government failed to provide necessary opportunities and security to the locals, this led to an increase in inequality within the valley. On the other hand, the cold war came to an end leaving the Afghan rebels no work, Kashmir shared a border with Pakistan and Afghanistan, now Pakistan started sponsoring the youth to take training from the Afghan rebels, and to some extent, Pakistan helped these rebels to create militancy in the valley, these all things led to the exodus of Kashmiri Pandits in the region. The instability was evident when parties in Jammu and Kashmir refused to participate in the parliamentary election of 1989; National Conference was an exception so it won all three seats. After 1989, the demonstrations of freedom started; in 1990 the Legislative Assembly got dissolved leading to Presidential rule till 1996. During this period the Pak-Taliban sponsored militancy spread to a large extent, the Indian army also gave deterrent responses which led to many Human Rights violation cases, these all-identity politics and global intervention that led to AFSPA hampered state's tourism and state's economy but tensions de-escalated when prime minister Narasimha Rao in 1995 made a statement in parliament that Article 370 will not be abrogated and that he wanted President's rule to end.

Kashmiri was also badly afflicted with the insurgency and human rights violations in Jammu and Kashmir, so they wanted and demanded better conditions for themselves which was evident from their participation in assembly elections and parliamentary elections of 1996. But again, due to the Kargil war 1999, the relations between India and Pakistan and the Lahore declaration lost impetus. After 2004, Indo-Pak relations stabilized as Indian Prime Minister Manmohan Singh met Pakistan's President General Pervez Musharraf. Though there existed clashes between armed forces and militants, that didn't take place on a large scale. Also, the GDP of Jammu and Kashmir took a significant growth from 2004 to 2011, but things after 2008 were changed. In 2008 happened the Amaranth land dispute where the government of India agreed with the government of Jammu and Kashmir to transfer 99 acres of land to Amar Nath Temple, the PDP did not agree to this and broke the coalition leading to coming down of the government in Jammu and Kashmir, also the calls for the abrogation of Article started taking place all across the nation, youth in Jammu and Kashmir also started to resort towards militancy, corruption increased in the valley and financial irregularities were also observed. When Narendra Modi came to power in 2014, he wanted to develop relations with Pakistan which was evident when he called Pakistan's Prime Minister to his oath ceremony and his surprise visit to Pakistan. But terrorist attacks and the killing of army men in the valley and the situation after 2016, escalated tensions in the valley to a large extent, due to which the Governor's rule was imposed after November 2018, after the Pulwama attack calls for abrogation increased vehemently across the nation. Some scholars analyze that the abrogation of Article 370 is linked with Americans leaving Afghanistan leading to recognition of the Taliban in Afghanistan, the Modi government predicted that America would be withdrawing from Afghanistan completely which it did in March 2020 by signing a pact with the Taliban. The 2008-10 experience shows that instigators work towards the creation of triggers. The army has the patience because it is not deliberately drawn into a response. The CRPF which deals with mobs as the first responder has its task cut out. Both forces have new challenges in South Kashmir, with mobs confronting and challenging them at encounter sites in urban areas. The army and police have both issued warnings against a concentration of people at encounter sites but if the history of resistance is anything to go by these are likely to go unheeded. The sacrifice of a couple of lives in firing by security forces in the form of intifada and suicide terror forms a part of the strategy of the anti-national elements. Infact, that is exactly how the instigators with the security forces responded just as in 2010. A government in place would help to a great extent especially if the development agenda is pursued vigorously. Jammu and Kashmir are almost the only part of India where demands for democracy and human rights and protest against corruption and administrative injustices were branded as treason. If a deliberate experiment had been launched, under controlled and most favorable conditions, with Kashmir as a Laboratory, to implement a textbook model of terrorism, it could hardly have improved upon the present situation. Subjugated, humiliated, tortured, and killed people of Kashmir have been living through sheer hell for decades. Security concerns are amongst the dominant themes in the minds of people living in Kashmir. This owes to the fact that death, injury, destruction of property is the notable feature of life here due to conflict, disturbances, and turmoil for the last 18 years.

There is no strategy to restore the mainstream politics space. The only official reference to politics relates to Panchayat. From making visible the Panchayat leaders to empowering Panchayat to hold block-level elections. One can see that the Panchayat leaders are being propped up as the real representatives of the people. While it is important to boost grassroots politics in Kashmir, this cannot be a substitute to ensuring politics at higher levels. In any case in the absence of a vibrant mainstream space, the panchayats cannot be made fully functional. A comparison between the 2011 and 2018 Panchayat elections in Kashmir clearly makes the point. While there was keen competition and massive participation in the 2011 Panchayat elections, in 2018 many of those elected were returned unopposed; many Panchayats were left vacant for want of contestants. For many years, Kashmir has been governed differently than other parts of India, and the government's decision to revoke parts of Article 370 of the Constitution is widely seen as a blow to Kashmir's special status. India's governing Bharatiya Janta Party has deep roots in a Hindu Nationalist ideology and one of its campaign promises during the election this year had been removing the special status of Jammu and Kashmir, which is predominantly Muslim. A sense of panic has spread across Kashmir as millions of residents woke up to deserted streets. Relatives of Kashmiris who could be reached by phone said that many people were fearful about stepping outside and were waiting in their homes for news about what was going to happen next. Many Kashmiris had feared that the Indian government, led by Prime Minister Narendra Modi, would either remove their region's special status or turn Kashmir into a federally ruled territory. Separatist groups, including some that are armed and maintain links to neighboring Pakistan, have been chafing for independence from India for years. Analyst says that any step that reduces Kashmir's autonomy could demoralize the Kashmir public further and provoke an outburst of serious violence. The Pakistani Foreign Ministry condemned the Indian announcement as a violation of United Nations resolutions, saying in a statement that 'Pakistan will exercise all possible options to counter the illegal steps. Politicians across the political spectrum urged the Pakistani government to come up with a strong, swift, and effective diplomatic response. For the early few days of abrogation, the authorities in Kashmir had been issuing satellite phones to senior police officers so they could communicate in case the cell phone network was disrupted, which happened around midnight, according to widespread news reports. The authorities had also restricted the movements of prominent Kashmiri political leaders, including Omar Abdullah and Mehbooba Mufti, according to many reports in the Indian news media. For decades, Kashmir has been plagued by turmoil. When India and Pakistan won independence from Britain in 1947, Kashmir originally opted to remain a small independent state. But militants from Pakistan soon invaded Kashmir, leading to seek protection from India. Kashmir agreed to be part of India only under certain conditions that guaranteed its autonomy, which was protected by Article 370. India and Pakistan then fought several wars over the area and today most of Kashmir is administered by India and Military standoff between India and Pakistan culminated in a dogfight between India and Pakistani warplanes. Pakistan shot down and captured an Indian pilot, who was soon handed back to India. Many Kashmiris were skeptical of those claims and wondered if there was another explanation for the sudden troop buildup in the region, already one of the most heavily militarized areas in the world. Many residents are now

panicking, people are hoarding supplies, and causing shortages of medicine and baby food, many fuel stations ran dry as thousands of people lined up through days and nights to fill their cars with gas. All the hotels were empty. Germany, one of the few Western countries that had earlier removed restrictions on travel to the region, issued a travel advisory asking its citizens to avoid the valley. Britain, Australia, and Israel issued similar warnings. Along the Line of Control, both sides have been building up their troop levels. Later, Pakistani officials accused India of using cluster bombs along the border and killed two civilians and wounded eleven on the Pakistan side. India denied it used cluster bombs, which have been criticized across the world as being dangerous to civilians.

Also, tourism which was thought to be the backbone of Jammu and Kashmir has been drastically affected by the evolution of the armed conflict and political instability. The state which was favored situation of the tourist till 90s has been deserted on the tourists for a very long time. Terrorism also causes cancellation and withdrawal of travel plans to certain destinations; though indicate the tourism industry as extremely indestructible. The negative news by most of the International and National news channels makes it unthinkable for people around the world to visit Jammu and Kashmir and keep a positive image alive media and officers of the travel industry must cooperate and closely work together. In addition, the local tourism industry could try to implement common marketing strategies such as incentive airline tickets or hotel rate discounts to promote the destination and to limit the impact of militancy. The various operations and tactics meant for the control of these street protests resulted in the loss of more than one hundred people and injuries to thousands of people. The pellet guns along with the lastly inducted PAVA shells and in addition to this, Tear Gas Shells and Lathi Charge, etc were some of the strategies that were used by the Security Forces for controlling the protesting mobs. In the lead-up to the move, India sent thousands of additional troops to the disputed region, imposed a crippling curfew, shut down telecommunications and internet, and arrested political leaders. The move has worsened the already-heightened tensions with neighboring Pakistan, which downgraded its diplomatic relations with India. India and Pakistan claimed Kashmir in full but rule it part. The nuclear-armed neighbors have fought two of their three wars over the disputed territory. A rebellion in Indian-administered Kashmir has been ongoing for more than 30 years.

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