

ABROGATION OF ARTICLE 370: FACTS AND OPINIONS

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Recently, our nation witnessed a historic move by the Union government which was also widely maintained to be a blunder by critics from inside and abroad. This was due to the so-called abrogation of Article 370 and Article 35A of the Constitution of India which provided for special status to the state of Jammu and Kashmir. There are multiple misconceptions among the common masses and the legal luminaries about the issue. The present article aims at answering the factual queries regarding the action of the government and its plausible consequences.

THE PREPARATION-

A few days before the fateful morning, the news highlighted the escalation of defence forces in the 'disturbed' areas of J&K. It was estimated that an additional of 40,000 personnel from Defence and Para-Military Forces were gradually deployed in Kashmir in the last month. The Centre issued warnings for tourists to move out of the Kashmir region, they were provided refunds for already booked tickets, and additional convenience was provided for people trying to move out of Kashmir. Even the schools and colleges of the area were closed, and the Non-Kashmiri students were advised to leave the state. Arrangements were made for them to reach their homes safely. It did not take much time for the media and the public to join the dots and raise speculations regarding the impending action of Modi's manifesto. The abrogation of special status for J&K was one of the major promises of the Modi government in 2019 Elections, and the political pundits were speculating that the Union government is planning to roll it out immediately. The plan of action for the same was laid down with precision by the Union Government and its aides, which came into execution on August 5, 2019.

The evening of August 4th, 2019 was not a comfortable one. The Kashmiris had apprehended what could happen; therefore, people were seen hoarding all necessities like food, medicines, cash, petrol, etc. Huge lines were spotted around ATMs, reminding people of another historic decision or blunder of the Modi government, i.e. the Demonetisation.

At midnight, Section 144 of CrPC was issued, in which, a magisterial order prohibits the assembly of four or more than four persons in a place, which is commonly referred to as a

curfew. Soon after, all communication lines were cut, and the state was left without internet, mobiles and even landlines. There was a total blackout in the state while the only source of communication to them were the loudspeakers circulating the information regarding the declaration of curfew and closing of all public and private institutions. All the prominent leaders, the main stream politicians and the separatists, were put into ‘preventive detention’ by the government, as their presence was likely to cause law and order issues in the state. There has been no news regarding approximately 180 political personalities of J&K since August 5, 2019 when they were detained from their residences, or wherever they were found. Not only in Kashmir, but there was an unrest in the entire country. It shall be an overstatement to call the action surprising or shocking as the public had apprehended it well in advance. There were news reports, comments from political leaders and public response on social media over the issue before the official announcement came out.

THE ROLLOUT-

The President of India promulgated an order on August 5, 2019 named “Constitution (Application to Jammu and Kashmir) Order, 2019” in exercise of the power conferred on him under Article 370(1) of the Constitution under which, the President can make an order to effectuate any change in Article 370 of the Constitution. This order replaced and superseded the Constitution (Application to Jammu and Kashmir) Order, 1954, which was promulgated by the then President, Dr. Rajendra Prasad, which laid down the provision for limited application of the Indian Constitution to the state of J&K. Under this, the fundamental rights were made applicable to the state, while a special provision, i.e. Article 35A was also added to the Constitution. Article 35A gave the state a right to specify who is a ‘Permanent Resident’ of the state. Further, special privileges regarding employment, acquisition of immovable property, settlement in the state and government aid were guaranteed only to the permanent residents of the state. As the order provides for the abrogation of the Presidential Order of 1954, it automatically repeals Article 35A under which the provision was brought into the Constitution.

The new order of the President states the following-

1. The Constitution of India, 1950 shall apply to the state of Jammu and Kashmir in its entirety.
2. Further, the following meanings were added in the interpretation clause under Article 367(4) of the Constitution-
 - Reference to the State government shall mean the reference to Governor of Jammu and Kashmir acting on the advice of his Council of Ministers.
 - The term ‘Constituent Assembly’ shall mean the ‘Legislative Assembly’ of the state.

Therefore, with the promulgation of this order, Article 370 was practically abrogated, needless to mention it has not been actually repealed from the Constitution.

Soon after the order was circulated, the Union Home Minister, Amit Shah proposed two bills in the Rajya Sabha, one, to recommend the President to issue the notification of what has been discussed above, and second, ‘The Jammu and Kashmir Reorganisation Bill, 2019’ under which the state of J&K was converted into two union territories, firstly, the Jammu and Kashmir, with a legislative Assembly, and secondly, the Union Territory of Ladakh, without a legislature. Both the bills were passed in the Rajya Sabha within an hour. The next morning, they were presented in the Lok Sabha and passed with more than two-thirds majority.

As an effect, Article 35A was effectively repealed whereas Article 370 was abrogated in essence. The above mentioned legal changes shall be effected on October 31, 2019 when the Act comes into force.

HISTORY-

The ‘issue’ of Kashmir is older than it appears. It began when the country was about to get its independence and partition was being effected. The 3June Plan of Lord Mountbatten beautifully divided the British Colony into the Dominions of India and Pakistan, by laying boundaries in Punjab and Bengal, based on the religious majority residing in a particular place. However, it did not decide on the fate of Jammu and Kashmir, which was another region with a mixed population of Hindus and Muslims, mainly because it was not a British colony but a Princely State. Therefore, the burden came on the Ruler of the state to decide its fate. While both the countries tried persuading Kashmir to join their Dominions, it decided on to stay separate. Soon after the declaration of independence by the state, the Pakistani

military/tribal militants entered the state and plundered the Kashmir region. Maharaja Hari Singh was forced to take assistance from the Indian government in lieu of which, he was asked to sign an 'Instrument of Accession' to India. After that, the Indian troops were airlifted to Kashmir, and the war escalated. The Pakistani Army also joined the conflict which ended inconclusively when a ceasefire was declared by the UN. As a result of the ceasefire, the border was drawn between India and Pakistan because of which Pakistan continues to occupy some regions of Kashmir, whereas two-thirds of the state was successfully retained by India which forms the part of the Indian state of J&K.

After the war was over, the issue of accession came into limelight. Maharaja Hari Singh had demanded that the accession to India shall later be subjected to a plebiscite and the decision of the process shall dictate the fate of the state. Another specification of the Instrument of Accession of J&K was that, unlike other states, it was not absolute. It ensured that the autonomy of the state remains intact. Article 370 was the source for the same. It provided that the Constitution of India shall not apply in its entirety to the state and other laws of the land can also not be made applicable without the consent of the state legislature. The Article categorically states that it is a 'temporary provision', which speaks for the intent of the legislature. This provision was supposed to be temporary, but how was it supposed to be removed? Some state that it was to be removed after the plebiscite, which was promised. Others propose that it should have been done steadily and not at once.

Another provider of the separate-hood for J&K was Article 35A of the Constitution which was added in the year 1954, providing that the state legislature shall have the right to define permanent residents of the state. They were given special privileges which hindered the citizens from the rest of the country in many aspects. Further, the state made its own Constitution, which came into effect in the year 1956. The state has its own laws for most subjects. An example of this is the penal law of the state by the name of Ranbir Penal Code. It is a choice placed upon the state government to make any law of the Parliament applicable on itself.

The provision had been discussed and debated again and again as to whether such provisions should be put to rest. But, no government could ever take any action in this regard as it was apprehended to have major repercussions on every level, be it the local people, the politics, the international relations or the regional peace. But, the Modi government risked it all, with a pre-mediated plan to cover almost all aspects of the possible fallout.

THE DREADED CONSEQUENCES-

Most people around us are saying that it was a master move of the Modi government and we must give it to them for planning it to perfection on all fronts. No major international reaction was seen on something which might have been termed as a major human rights violation. This probably is owed to the Modi government's aggressive focus on international relations. Today, most nations have side-lined themselves by claiming it to an internal matter of India. Pakistan is definitely an exception to this, who is trying to project it as an escalation of the tensions in the sub-continent, but it is nothing less than a victory for the government as this decision wasn't majorly challenged by any sovereign.

What remains debatable is the consequence of this on the common population of Kashmir. The pro-government thinkers call it a historic move and the opening of an ocean of opportunities for the state to develop at par with other states of the country. It was also lauded as it now allows the policies of the central government to be made applicable in the state. Thirdly, another set of beneficiaries in this are specifically for the Kashmiri women who marry outside the state. Earlier, they would lose their permanent resident status on marriage outside the state, i.e. their rights as a Kashmiri also vanished. This disability will be done away with, now. Fourthly, the government is projecting it as a move that will increase economic opportunities for the people of Kashmir as they aim to make the valley investor-friendly. More jobs will be created in the valley and overall development of the state will take place.

But, this seems far from true, according to the people who belong to the region. In all technicalities, the way Article 370 and 35A were shown as the barriers in the development of the region and the people, is definitely not true. J&K is not the poorest state of the country, neither is it the home to the largest unemployed population, but the states like Bihar, Uttar Pradesh and Jharkhand are, where there is no special status. Then, why's the centre not being able to develop the mentioned states. Also, what hinders the investors from investing in the state is not the special status, but the insurgency, the disruptions and the instability of the state. And, the situation doesn't seem to get better anytime soon there. The communication clampdown is the biggest issue of concern for the majority of the critics of the move. It seems to be an apparent human right violation that people cannot communicate with anyone, for almost a month now, in the 21st century. The comments from various political leaders like, 'Now, our boys can get Kashmiri women', also target the most vulnerable part of this war-zone, the women. Peace and stability in the region are what everyone wishes for, and if this

move can make the situations better, then why not? But- will it? Can it? The least that the citizens wish is that it doesn't get worse from here.

MURDERING THE CONSCIENCE?

This action of the government is being called the 'backdoor entry' into Kashmir. It is widely criticised for pulling it in a manner that is a clear suppression of democracy. The law provides that Article 370 was a temporary provision, and it had to go, sooner or later. Yes, but- was this the best means to do that? An unsettling aspect is the fact that the decision was 'imposed' on Kashmir rather than taking the people of Kashmir in confidence. The use of Article 370 to remove itself is what has caught the national and international eyes. The misreading of Article 367 facilitated the imposition of the new system which seems to be wholly uncalled for. The state was put under a Presidential Rule deliberately by the government while implementing the decision. It's been more than a year since the last government disintegrated, but there have been no elections. The dots seem to join themselves. Even though the requirement of the law was taken care of with precision, this has definitely thwarted the essence of our democracy. A decision concerning the lives and identities of 1.25 crore humans was taken without having a dialogue with them. It probably is impractical at this point of time to have a dialogue directly with the common public, but, their political leaders could have been taken in confidence. Currently, there is no government in the state; there is no representation, but, there are political parties, regional and national. They could have been involved on behalf of the population which could have established the belief of the common masses in this. This seems absolutely impossible considering the political decisions, this and all others, are taken for political advantages and not for the benefit of the public.

To conclude, a slogan of Shri Atal Bihari Vajpayee, the only political leader who thought for Kashmir beyond 'ours or theirs', comes in our minds, "*Insaniyat, Jamhuriyat, Kasmiriyat*" which meant 'Humanity, Democracy, and the sanctity of the people of Kashmir'. These three necessities were highlighted by him in order to strive for peace in J&K. Ironical how the people claimed to be his successors couldn't stand up to his ideals.