

A YEAR OF ABROGATION OF ARTICLES 370 & 35A: CONDITIONS IN J&K

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Abstract

The affairs of state of the territory of Jammu and Kashmir is not a new thing in the Indian Subcontinent. It was on the August 5, 2019 the country was astonished when the Government revoked the autonomous standing of Kashmir that had been granted to the state by the virtue of Article 370 whereby the state was allowed its constitution, a separate flag, and the state of Jammu and Kashmir could make its own rules relating to permanent residency, marriage, ownership of property, and fundamental rights and revocation of its statehood leading to its bifurcation into two union territories. The nation witnessed heated debates regarding the residents of Jammu and Kashmir questioning their status post the revocation of Article 370.

Introduction

The first anniversary of the abrogation of **Articles 370 and 35A** and the administrative reorganization of Jammu and Kashmir – truly landmark political decisions – year-end stock-taking is being done with a fine tooth-comb.

The Aug 5, 2019 decisions were courageous and pathbreaking since there was a desperate need for them for many years, definitely for the last three decades because of the proxy war that began in J&K. The center of gravity of Pakistan's funded proxy war had always been identified as the 'people of J&K', many of whom openly explicated the '**Idea of Azadi**' (Independence). The idea of Azadi was based upon the belief that J&K was different from the rest of India, turned into a Muslim majority state, and historically not aligned with the country. Pakistan's game plan was flexible; full accession of J&K to it, or chronological through the route of Azadi¹. The idea of Azadi shaped the sentiment of exclusivity which the majority of politicians in J&K further exploited to create the demand for autonomy. Articles 370 and 35A equally contributed to the formation of these sentiments which were completely exploited by anti-national elements.

¹ Syed Ata Hasnain, *A Year After Abrogation of Article 370 and 35A, the Outcomes Are Barely Understood*, THE WIRE, (Aug. 05, 2020, Last Visited: 06:30 PM), <https://thewire.in/security/kashmir-article370-abrogation-success-security>

Successive governments were uncertain about terminating the provisions especially once when the passionate anger of Kashmiri sub-nationalism hit the streets. The complete system in J&K operated outside Indian laws and many of the benefits enjoyed by the rest of the country was unavailable to so many deserving people who were outside the ambit of empowerment, especially in the Jammu division. The power of speech of this significant sub-region continued to be politically and socially muted. The powerful and dominating Kashmiri sub-nationalism was at risk to the conspiracies of external impact from Pakistan, which oppressed every sentiment to run a proxy war for years. The decisions of Aug 5, 2019, struck the root to neutralize that.

What was Article 370?

The Ruler of Jammu and Kashmir signed the instrument of accession whereby only three subjects were surrendered i.e. External Affairs, Defence, and Communications, by the State to the Dominion of India. The relationship between the State of J&K and the Union of India was exceptional. The State enjoyed a greater measure of autonomy and the power of the Union of India was restricted, as regards other States. The Union of India was incompetent to declare financial emergency and emergency in case of failure of constitutional machinery concerned to the State of J&K. The only emergency due to War or External Aggression could be declared as it is within the scope of Defence as surrendered to the Union of India.

The Union Legislature could not legislate on the matters provided in the Union list and Concurrent list which were not under the subjects provided in the instrument of accession. The consultation of the State Government was required in any matter that affects the State. The Union of India had the power to act on an issue independently only if it was somehow related to the three subjects surrendered or those expressly mentioned in the instrument of accession.

Abrogation of Article 370

On August 5, 2019, the Indian government scrapped Article 370, which granted a special status to Jammu and Kashmir. It was decided that the J&K region would be divided into two Union Territories – Jammu and Kashmir, and Ladakh. Ahead of the abrogation of Article 370, the State moved many troops in the region and enforced a strict clampdown.

The decision was preceded by the movement of thousands of troops in the region, a terror threat warning and the cancellation of the Amarnath Yatra, a communication blockade and subsequent detentions – but what was missing, and remains missing, was the much-needed dialogue and involvement of the people directly affected by the decision²

With its people under a strict clampdown, prominent leaders under detention, and the suspension of important means of communication, the sense of fear, panic, loss, and uncertainty that Kashmir faced was new yet familiar. The internet shutdown in Kashmir was the world's longest internet shutdown until the internet was restored in January this year. The shutdown not only had made it difficult for Kashmiri people to keep in touch with loved ones, but also posed a significant challenge for them in terms of getting jobs, education, and maintaining their livelihood. It further silenced Kashmiri people and kept Kashmir in the dark, enabling more injustices.

Even during a global pandemic, Kashmir's access to the internet remains restricted to low-speed 2G internet. Meanwhile, the Indian government has maintained its position on the supposed 'normalcy' in the Jammu and Kashmir. It continues to push this narrative amid report after report of human rights violations in the region. A year later, as Kashmir deals with restricted internet access and a global pandemic, we look beyond the supposed normal in the Valley.

What all the people went through – The Sufferings!³

1. Communication Services Suspended

Following the abrogation of Article 370, internet and mobile services were cut off in the Jammu & Kashmir (J&K) region. This communications blockade amid a strict clampdown in the region proved to be a significant challenge for people trying to contact family and friends.

2. Politicians Under House Arrest

Politicians and leaders in Kashmir were put under house arrest soon after Article 370 was abrogated by the Indian government. Politicians like Mehbooba Mufti and Omar Abdullah

² FII Team, *365 Days Of The Abrogation Of Article 370 In Kashmir*, FEMINISM INDIA, (Aug. 05, 2020, 05:41 PM), <https://feminisminindia.com/2020/08/05/a-year-after-the-abrogation-of-article-370-in-kashmir/>

³ *Abrogation of Article 370 led to breakdown of law and order in J&K*, THE HINDU, (Jan. 28, 2020, 01:07 PM), <https://www.thehindu.com/news/cities/Visakhapatnam/abrogation-of-article-370-led-to-breakdown-of-law-and-order-in-jk/article30669954.ece>

were put under house arrest, while Usman Majid from Congress and CPI(M) leader M.Y. Tarigami was detained.

3. People of the Valley Protest

Even under a strict lockdown, Kashmiri people took to the streets to protest the Indian government's decision on Bakrid in 2019. In October 2019, 13 Kashmiri women came out to protest the abrogation of Article 370. They were arrested and later asked to sign bonds assuring not to repeat any at that resulted in "breach of peace".

4. Human Rights Violations in Kashmir

There were multiple reports of human rights violations following the strict clampdown in the valley post the abrogation of Article 370. A probe confirmed that numerous children were detained by security forces post-August 05. A *Washington Post* report stated that people were beaten up and tortured by armed forces in the crackdown that followed the revocation of Article 370.

5. Communications Services Restored, 4G Remains Banned

Mobile services in Kashmir were restored 72 days after the abrogation of Article 370. The initial restoration of the internet in the Valley in January this year limited access to social media, which was later restored in March 2020. But even amid the Covid-19 crisis, access to high-speed 4G internet remains restricted.

6. UAPA Against people

In April, the J&K police booked journalists Masrat Zahra and Gowhar Geelani under the Unlawful Activities (Prevention) Act (UAPA). Earlier, Qazi Shibli, editor of *'The Kashmiriyat'*, was booked under the Public Safety Act days before Article 370 was revoked. Shibli was released in April this year to decongest the prisons to deal with the pandemic, only to be arrested again by J&K police cybercrime division in July.

7. Violence Breaks Out in Srinagar

In May, two militants were killed in a 12-hour long operation by J&K police and CRPF in Nawakadal in Srinagar. The clash led to several homes being devastated in the Nawakadal

area. Residents also alleged that they were beaten up and used as human shields by security forces, that their houses were burned and looted.

8. Curfew Imposed Ahead of August 05

The J&K authorities, fearing protests, imposed a curfew in Kashmir ahead of the first anniversary of the abrogation of Article 370. According to officials, the curfew was imposed to 'prevent violence' by people planning to observe the first anniversary of the abrogation of Article 370 as 'black day'.

Positive Growth: Development

The first time after seven decades, many villages have access to the electricity and the Indian Constitution and all the 890 Central laws are fully applicable to J&K. This has meant the application of 170 more Central laws to J&K, including progressive laws such as the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1954, the Whistle-Blowers Protection Act, 2014, the National Commission for Safai Karamcharis Act, 1993, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2007, the National Commission for Minorities Act, and the Right of Children to Free and Compulsory Education Act, 2009⁴.

The first of these is the rehabilitation of the Kashmiri Pandits, who were hounded out of the Valley 30 years ago by militants. In the year gone by 4,000 of them have got jobs in the UT and many others are listed for employment. Also, over 20,000 refugees from West Pakistan, who were treated as aliens in their own country and denied all rights, have been given domicile rights and financial assistance of Rs 5.50 lakh per family.

The treatment meted out to around 10,000 municipal workers in the erstwhile state was equally shameful. They were denied citizenship, access to education, and jobs. Now, the municipal workers have become legitimate domiciles in the Union Territory with access to all rights and privileges, and the Dalits and the tribal communities have got their due, as in other states.

⁴ *Explained Ideas: Has abrogation of Articles 370 and 35A helped the people of J&K?*, THE INDIAN EXPRESS, (August 7, 2020 08:24 AM), <https://indianexpress.com/article/explained/explained-ideas-has-abrogation-of-articles-370-and-35a-helped-the-people-of-jk-6541655/>

The J&K government has also initiated a massive recruitment drive to fill up 10,000 vacancies in the local government; another drive to fill up 25,000 posts is in the pipeline. Also, on the anvil are revised rules to enable the hitherto disadvantaged groups like Scheduled Tribes, OBCs, and economically weaker sections to get employment.

The decision to make Ladakh a separate Union Territory has been hailed by the people of the region. It seemed inevitable because of the discrimination suffered by the region at the hands of the political leadership of the erstwhile state. The Union government has initiated innumerable measures to put Ladakh on the road to development. This includes work on massive infrastructure projects in both the UTs. Other measures which have ensured mainstreaming of the region are the enforcement of the Right to Information Act, 2005, direct supervision of the Central Vigilance Commission concerning anti-corruption cases, and the setting up of the 18th Bench of the Central Administrative Tribunal (CAT) for the UTs of J&K and Ladakh.

Recently, the Central Government has sanctioned the Development Package of Rs. 80,000 Crore for Jammu and Kashmir.

Looking at the changes brought about in the past 12 months, it is obvious that the Union government has pulled out all the stops to ensure that everyone living in the two Union Territories would get a sense of the egalitarian principles that are firmly embedded in India's Constitution. These developments extend to a wide range of issues like social and political equality, education, jobs, reservations, and other rights enjoyed by the underprivileged in the rest of the country.

Known as heaven on earth, Kashmir is no more the land of stone-pelters, but of those who are dreaming and aspiring high for their better future. For decades, voices of Kashmiri people were silenced amid sounds of blasts and gunshots but now the whole picture is under transformation. The residents can fulfill their dreams and show their talent to the outside world while becoming part of mainstream India.

Conclusion

However, the real measure of the progressive efficiency of complete security is the success gained against networks that actually ran and possibly are partially even now running J&K. Substantial benefits of good governance will flow in the time. What we should be

concerned about is the future of politics in the Union Territory, the meeting of minds of the people of Jammu and Kashmir regions, the creation of conditions for the return of the Kashmiri Pandits with dignity and honor, and the promotion of the aspirations of the youth. When conditions improve in the domain of physical security, automatically freedoms will progressively restore and people will have more to aspire for. However, the process towards that will be a difficult path due to J&K's geostrategic location which gives rise to geopolitical trends against India's interests.

