

Reshaping Governance: Exploring the Dynamics of Change in Jammu and Kashmir.

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ABSTRACT: In August 2019, Narendra Modi's government revoked Jammu and Kashmir's constitutionally granted autonomy. The decision is being analyzed in the aftermath of N. Modi's triumphant re-election to the post of Prime Minister in May 2019, after completing a first term that began in 2014. The Modi government fundamentally altered the institutional framework of the Indian Republic by taking this step. Jammu and Kashmir went from being a state comprised of three regions (Ladakh, Jammu, and Kashmir) to being divided into two administrative units: on the one hand, the UT of Jammu-and-Kashmir, with an elected assembly; and on the other hand, the UT of Ladakh, without an elected assembly, with both being administratively headed by the Lt. governor. The government of India repealed Articles 370 and 35A of the Jammu and Kashmir Constitution, which ultimately account for the larger socio-political dynamics, and withdrew the state's special status and autonomy. The paper will attempt to investigate the formation of a new governance pattern and the changes that occurred, which resulted in a new centralized and authoritarian power structure.

Keywords: J&k, Government, Constitutional Autonomy, Article 370&35A, Governance,

I. Introduction

Exploring the history of Kashmir reveals intriguing tales. According to legend, the name "Kashmir" suggests a "parched terrain." The Rajatarangini, a key source on Kashmiri history, recounts that the Kashmir Valley was initially a lake. Srinagar, the city, traces its historical connection back to the Mauryan ruler Ashoka, while Jammu was founded by Raja Jambo Lochan around the 14th century B.C. In its heyday, the ancient Greeks and Romans knew of Kashmir Valley, describing it as a picturesque land and a significant center of learning. Geographically, Kashmir has a rich historical tapestry, being connected to Pakistan, India, Afghanistan, the former Soviet Union, and China. Notable rulers include Ashoka (273-232 B.C.), the Kushan dynasty (around 100 C.E.), Mihira-kula (515-550 C.E.), Karkota dynasty (631 C.E.), Lalitaditya (724-761 C.E.), Avantivarman (855-883 C.E.), and a series of rulers up to Bopadeva (1171-1286 C.E.). The Damra dynasty held power from 1286-1320 C.E., followed by Rinchana (1320-1323 C.E.), Shah Mir (1339-1342 C.E.), Shihab-ud-Din (1354-1373 C.E.), and Qutub-ud-Din (1373-1389 C.E.). Sultan Sikander ruled from 1389-1413 C.E., and Sultan Zain-ul-Abidin from 1420-1470 C.E. Mirza Haider Daughlat held authority from 1541-1551 C.E., succeeded by the Chak dynasty (1561-1586 C.E.), the Mughals (1586-1753 C.E.), the Afghans (1753-1819 C.E.), the Sikhs (1819-1846 C.E.), and the Dogras (1846-1947 C.E.).

The status of Jammu and Kashmir has been a contentious issue in global politics since gaining independence. The annexation by Maharaja Ranjit Singh in the early 19th century brought about a significant transformation, leading to the formation of a Sikh union and Kashmir's independence from Mughal rule. The Anglo-Amritsar Agreement of 1846 formalized legal control over the princely state, resulting in Dogra Raja Gulab Singh acquiring it for 75

lakh rupees. This marked a pivotal moment for Jammu and Kashmir, as Gulab Singh consolidated control over the Kashmir Valley and Ladakh Wizarat, which included Baltistan, Kargil, and Leh. These regions were incorporated into the existing governance of Jammu. Under Dogra rule, characterized by strict control, there was an evident disparity in the rights granted to Muslim citizens compared to their Hindu counterparts. P.N. Bazzaz's "Inside Kashmir" portrays the Dogra rule as a Hindu Raj from a bourgeois perspective, emphasizing the unequal treatment of Muslims. With the British exit leading to the division of the Indian subcontinent into India and Pakistan, Maharaja Hari Singh governed Jammu and Kashmir. As a princely state, it had the option to align with India, and Pakistan, or remain independent. Raja Hari Singh's decision to opt for self-governance instead of aligning with the two nations is a significant moment in the region's political history. However, the interim rule faced challenges from individuals in the northwest border region supported by Pakistan. Initially rejected by Prime Minister Pt. Jawaharlal Nehru when seeking assistance, the Maharaja of Jammu and Kashmir ultimately acceded to India on October 26, 1947, through the instrument of accession during an emergency. The state's accession received formal approval from the Constituent Assembly on February 6, 1954. Subsequently, Jammu and Kashmir operated with its constitution, sanctioned on November 17, 1956, and effective from January 26, 1957. The governance structure included a Prime Minister and Sadr-e-Riyasat until 1965. Albion Banerjee was the first prime minister, appointed by the Dogra ruler Maharaja Hari Singh, and was succeeded by nine more prime ministers until independence. An amendment in 1965, known as the Sixth J&K Amendment Act, replaced the existing positions with the chief minister and governor, respectively. Ghulam Mohammad Sadiq became the inaugural chief minister of Jammu and Kashmir and served until December 1971. As per the established agreement, the Indian government has control over three subjects: external affairs, defense, and communication. The Indian government committed to empowering the region's inhabitants to establish their constituent assembly to determine the extent of authority over the state. As a temporary measure, Article 370 was introduced to provide special status, allowing the state to have its constitution and flag, preserving autonomy within India's quasi-federal framework.

II. Jammu and Kashmir state constitutional and legal framework

On November 17, 1956, Jammu and Kashmir officially adopted and enacted its constitution through the Constituent Assembly, consisting of elected representatives. This action conclusively resolved the dispute over accession, with the representative nature of the Constituent Assembly universally acknowledged. The people of the state, through this elected body, made a definitive decision on the concept of self-determination, rendering any further discussions on 'self-determination' or 'plebiscite' legally and morally irrelevant. The sentiments of the people were unequivocally expressed through the legitimately elected Constituent Assembly, leaving no room for questioning the state's integration into India. The Jammu and Kashmir Constitution, following the 1954 Constituent Assembly report, explicitly declares, "Jammu and Kashmir is and will remain an integral part of India." The use of the phrase 'is and shall be' signifies a commitment to both historical and future ties with India, confirming the steadfast desire of the people to be an integral part of the nation. Section 147 of the Constitution explicitly restricts the authority of the state legislature to make amendments, introduced to prevent the emergence of divisive tendencies in the future. The accession of Jammu and Kashmir to the Union of India is deemed legally and constitutionally valid, having received the endorsement of the state's populace. According to the state constitution, this affirmation is absolute, conclusive, and irreversible, making Jammu and Kashmir an indisputable and irreversible part of India in a legal sense after the formal signing of the accession. However, recent measures implemented by the current BJP government contradict both popular sentiment and the provisions of the Indian Constitution. Despite the constitution, drafted by the constituent assembly and featuring Articles 370 and 35A, which confer special status, being beyond the purview of the amendment procedure outlined in Article 268, the recent actions challenge the established constitutional framework.

ARTICLE 370

The basis for integrating the state into India was laid out through Article 370, authorized by then Prime Minister Sheikh Abdullah and Maharaja Hari Singh, with assistance from N. Gopalswamy Aiyengar. The state was granted special status under Part XXI of the Constitution of India, dealing with temporary, transitional, and exceptional

provisions. This provision became part of the Constitution on October 17, 1949. Despite Sheikh Abdullah's desire for permanence, the central government viewed Article 370 as a temporary measure. Article 370 asserts that Jammu and Kashmir possesses a distinct constitution and is exempt from the Indian constitution. The state has the autonomy to choose its flag, and the residents are not obligated to adhere to Indian national symbols without facing legal consequences. Despite this, the Parliament of India lacks the authority to alter the boundaries of the state, and its policies and obligations do not automatically apply to the region. The state has its laws, mostly applicable, and any implementation of parliamentary law requires the consent of the state assembly. Article 35A, derived from Article 370, empowers the Jammu and Kashmir Assembly to define the permanent residents of the state and delineate their distinctive rights and privileges.

Article 35(A)

The inclusion of Article 35A in the constitution was carried out through a presidential order signed by President Rajendra Prasad, acting on the advice of Jawaharlal Nehru, the leader of the union government. This occurred in 1954 under Article 370 (1) (d), following the Delhi Agreement in 1952 between Nehru and the Prime Minister of Jammu and Kashmir, Sheikh Abdullah. Unlike Article 370, Article 35A has remained unchanged and undiluted over time. The incorporation posed constitutional challenges as Article 368(1) explicitly grants parliament the authority to amend the constitution. However, in this case, parliamentary consent is contingent on approval from the Jammu and Kashmir constituent assembly before enacting laws in the state, leading to a lack of essential parliamentary consent. Article 35A bestows specific rights and privileges on residents of Jammu and Kashmir, including residential, property, and job rights. Residential rights recognize individuals as permanent residents based on certain criteria, and there are restrictions if a woman marries a non-resident. Property and job rights under Article 35A prohibit outsiders from owning property or working in Jammu & Kashmir. However, this has led to disparities, such as the denial of scholarships to deserving Indian refugees and concerns about potential violations of fundamental rights under Articles 14, 19, and 21 of the Constitution.

The jurisdiction of Parliament in this context Jammu and Kashmir was unique, with legislative power extending to certain aspects of the Concurrent List but not encompassing preventive detention, which remains under the state assembly. The state enjoys regional autonomy, restricting changes to its name, boundaries, or any international treaty affecting its territory without approval from the State Legislature or State Executive.

Emergency provisions, fundamental duties, directive principles, and fundamental rights are subject to specific conditions in Jammu and Kashmir. Financial emergencies under Article 360 cannot be proclaimed unless initiated by agreement with the state government or subsequently applied by the President at the specific request of the state. The state is exempt from certain provisions of Part IV and Part IVA of the Constitution, receiving protection for fundamental property rights through Articles 19(1)(f) and 31(2).

The jurisdiction of the Jammu and Kashmir High Court is limited compared to other High Courts in India, as it cannot declare a law unconstitutional and is restricted in issuing writs under Article 226. Part XVII of the Constitution applies exclusively to Jammu and Kashmir concerning the official language, allowing for the use of English for official purposes unless otherwise specified by the state legislature, despite Urdu being designated as the official language.

III. Unveiling the Rationality Behind the Transformative Change in State: Exploring the Abrogation of Article 370:

Historical Context:

In the past, the strategic position of Kashmir, sandwiched between India and Pakistan, led to Raja Hari Singh executing an Instrument of Accession, integrating the state into the Union due to the infiltration of tribal groups with involvement from the Pakistani Army. Post-independence, Kashmir's status became a contentious issue between India and Pakistan, providing historical grounds for the revocation of Article 370 and the division of the state into two union territories.

Political Dimension:

The recent move by the BJP-led NDA government to revoke Article 370 and fully integrate Jammu and Kashmir into the Indian Union reflects the party's longstanding political and ideological objectives, as outlined in their 2019 Lok Sabha Election manifesto. The fulfillment of this mission on August 5, 2019, involved imposing governor rule on the state and enacting the Jammu and Kashmir Reorganization Act, leading to the downgrading of its status to two union territories. The change aims to provide New Delhi with comprehensive authority over local administration, legislative powers, police oversight, and public order responsibilities. The government has assured the restoration of "statehood" to the Union Territory of J&K when the situation normalizes.

Integration and Development Outlook:

The transformation has initiated socio-economic progress in the new Union Territories of Jammu-Kashmir and Ladakh, focusing on empowering the population, nullifying unjust laws, ensuring equity, and fostering inclusive development. These changes aim to guide both territories toward peace and progress, marking a significant political and social overhaul since Independence. The government argues that Article 370 impeded economic and social development in the region.

Counterterrorism Measures:

The government's primary justification for ending the special status was to "eliminate the threat of terrorism." Data from the Home Ministry indicates a substantial decrease in terrorism-related incidents, with a 59% reduction in 2020 compared to 2019 and a further 32% decrease until June 2021. The ministry also reported fewer total casualty incidents related to terrorism since August 2019.

Resettlement of Kashmiri Pandits:

Security concerns led to approximately 44,167 Kashmiri migrant families leaving the Valley since the 1990s. The government reported the return of 3,841 Kashmiri migrant youths to Kashmir, with job placements through the Prime Minister's rehabilitation package. Additionally, a comprehensive policy has been outlined to provide residential accommodation for returning migrants.

Industrial Development:

The government emphasizes the promotion of industry, targeting potential investors and supporting existing industries through a business revival package of Rs 1,352.99 crore, as mentioned in the March 2021 session of Rajya Sabha.

Domicile Criteria:

Recent changes have expanded eligibility for domicile status, allowing individuals residing in the Union Territory of Jammu and Kashmir for fifteen years, offspring of central government employees, officially documented migrants, and individuals with education history in the territory to avail domicile status. Husbands of local women married to individuals from outside the state are now eligible to purchase property in the union territory.

Unified Cadre:

A significant development involves the amalgamation of the existing state cadre for All-India Services with the AGMUT cadre (Arunachal Pradesh, Goa, Mizoram, and Union Territories). This aims to address the shortage of All-India Services officers in J&K and Ladakh, providing officers from the AGMUT cadre the eligibility for posting in the Union Territory of J&K and UT of Ladakh.

IV. Reorganization of State: Union Territories of Jammu and Kashmir and Ladakh

The concept of 'Union Territory' is unique to India and was initially introduced in the States Reorganisation Act of 1956. This term refers to territories either too small for autonomous status or significantly distinct from

neighboring states in terms of economy, culture, or geography. Such territories are directly administered by the Central government. The State Reorganisation Commission drew inspiration from the governance of "major and minor provinces" in the late 18th century. Originally, the Constitution classified territories into four types: Former British India provinces (Part A), princely states (Part B), chief commissioner provinces (Part C), and the Andaman and Nicobar Islands (Part D). The foundation for Union Territories was laid under Part D during the state reorganization.

The Union Territory of Jammu and Kashmir, like other state legislatures, now has a five-year term, reduced from six after the elimination of the Legislative Council. The number of seats filled through direct elections is 107, set to increase to 114 after a delimitation exercise. This restructuring occurred without a state assembly in J&K, facilitating constitutional reforms by New Delhi. The Constitution (Application to Jammu & Kashmir) Order, 2019, issued by the President, replaced the 1954 order linked to Article 370. A resolution proposing the abrogation of Article 370 and the introduction of the Jammu & Kashmir (Reorganisation) Bill, 2019, was presented. Article 370(3) empowers the President to modify or revoke any article through a notification, subject to a recommendation from the Constituent Assembly. The Constitution (Application to Jammu and Kashmir) Order 2019 extends all provisions outlined in Article 4 of the Indian Constitution to Jammu and Kashmir. Under the President's rule, the President declared on August 6th, 2019, that all clauses of Article 370 would cease to be effective.

On the other hand, the Union Territory of Ladakh, historically significant and constituting approximately 60% of the former state of Jammu and Kashmir, emerged without a legislature. It comprises two districts—Kargil and Leh—with a Buddhist majority exceeding 70%. Ladakh stands as the first Indian Union Territory with a Buddhist majority, strategically linking Central Asia, South Asia, and China. The region faces challenges such as limited livelihood opportunities, inadequate infrastructure, poor communication, underdeveloped market facilities, and high unemployment. As a Union Territory, Ladakh will now be governed by national oversight bodies such as the National Commission for Scheduled Tribes (NCST), ensuring the well-being of the tribal community.

V. Transition in Jammu and Kashmir: Key Changes

The revocation of Article 370 signifies a shift for Jammu and Kashmir, moving from a special status to a standard one. All previously exempted laws are now enforceable under the Indian Constitution, simplifying the process of declaring a state of emergency. Numerous crucial aspects have undergone substantial changes:

1. No Separate Constitution: Jammu and Kashmir no longer maintain an independent constitution, aligning with the constitution of India.
2. No Separate Citizenship: All inhabitants of Kashmir and Jammu are now recognized as citizens of India, with dual citizenship no longer applicable.
3. Fundamental Rights for Residents: Individuals in Kashmir and Jammu can now avail themselves of all fundamental rights enshrined in the Constitution of India.
4. Nomination of Kashmiri Migrants: The Lieutenant Governor can nominate two members from the Kashmiri migrant community to the state Legislative Assembly, with one reserved for women.
5. Jammu and Kashmir Flag: The privilege of having a state flag is withdrawn; residents are now obligated to display only the Indian flag.
6. National Anthem: Jammu and Kashmir must abandon their state anthem and adopt the National Anthem of India.
7. Legislature Working: The Jammu and Kashmir legislature no longer has the right to pass bills independently, aligning with other state legislatures.
8. Application of Indian Laws: Around 106 central laws now apply to Jammu and Kashmir without requiring prior permission from the state government.
9. Geographical Changes: Jammu and Kashmir becomes a union territory with a legislature, while Ladakh becomes another union territory without a legislature.
10. Ownership of Property: All Indian citizens can now engage in property transactions in Jammu and Kashmir.

VI. Conclusion: A Bold Step Towards Integration

This transition from state to union territory represents a bold step, facilitated by the BJP government with a full majority in the Lok Sabha. While the abrogation of Article 370 is expected to foster growth and development, it is crucial to recognize that resolving the Kashmir issue extends beyond this constitutional change. A holistic approach, focusing on democratic governance, policy implementation, and schemes to win the trust of the inhabitants, is essential. Effective policy implementation is key, and the world can now hope for a peaceful and prosperous Kashmir and Jammu.

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