
ARTICLE 370 SHOULD NOT BE REINSTATED: A CASE AGAINST SPECIAL AUTONOMY FOR KASHMIR

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ABSTRACT

The removal of Article 370 in 2019 marked a significant shift in the status of Jammu and Kashmir, aiming to integrate the region into India for peace, development, and security. This decision was made to address longstanding issues of terrorism, discrimination, and lack of economic opportunities in the region. The abrogation of Article 370 allowed for the application of national laws in Jammu and Kashmir, leading to improved security measures and faster anti-terrorism actions. Additionally, the move paved the way for increased development, infrastructure improvements, and economic growth in the region, attracting investments and creating job opportunities. The political stability brought about by the removal of Article 370 aimed to streamline governance and focus on development initiatives in Jammu and Kashmir. Overall, the decision to revoke Article 370 has resulted in positive transformations in the region, enhancing security, stability, and integration with the rest of India. As a result, the reinstatement of Article 370 is deemed unnecessary, as the abrogation has proven to be beneficial for the overall progress and well-being of Jammu and Kashmir.

Introduction

In a revolutionary move on August 5, 2019, the Indian government, led by Prime Minister Narendra Modi, introduced a constitutional amendment that significantly altered the status of Jammu and Kashmir. The amendment revoked the region's autonomous status, bifurcated it into two Union Territories - Jammu and Kashmir, and Ladakh - and curtailed political and civil liberties in the Kashmir Valley. This sudden and far-reaching change has drawn widespread international attention and scrutiny. The move marks a significant turning point in the region's history, comparable to the outbreak of insurgency in 1989 and the nuclear tests conducted by India and Pakistan in 1998. A comprehensive analysis of the factors leading to this decision and its potential implications for the region's future is essential.¹

The Kashmir region's stability is crucial for South Asia's peace and security. The region's unrest, resistance, and violence have intensified over the past decade, yet the international community has largely overlooked the underlying tensions that could lead to shattering consequences

Background

The Kashmir region has a complex history of political instability and conflict, dating back to the 16th century. The region was once a tolerant and diverse society, but has been plagued by violence and political unrest for decades. Kashmir's introduction to Islam was facilitated by Bulbul Shah, a humble and pious friar who impressed the then-ruler, Rinchan. Unlike other regions, Islam spread peacefully in Kashmir, without the influence of conquerors. By the 14th century, Islam had become the dominant religion in the valley. Hindus and Muslims coexisted harmoniously, with mosques and temples built in close proximity. Both communities respected local saints and often visited the same shrines. Tolerant rulers like Sultan Ghiyas-ud-din Zain-ul-Abidin and Akbar promoted religious harmony. However, the Kashmir issue has been a contentious point in India-Pakistan relations since the 1947 partition, with both countries having a bitter rivalry and hostility. The division of British India led to the creation of India and Pakistan, with Kashmir being a problematic region due to its diverse religious demographics. The lingering dispute over Jammu and Kashmir has its roots in the British

¹ Sameer P. Lalwani and Gillian Gayner, *India's Kashmir Conundrum: Before and After the Abrogation of Article 370*, Special Report 473 United States Institute Of Peace, 4 (2020), <https://www.jstor.org/stable/pdf/resrep25405.pdf>.

colonial legacy. When India and Pakistan gained independence in 1947, the British withdrawal left a power vacuum in the region. The Maharaja of Kashmir attempted to maintain neutrality by signing a standstill agreement with both countries, but the region was soon thrust into chaos when Pakistani tribals launched an invasion. India responded with military intervention, resulting in the division of the region into two administered areas: Indian-administered Kashmir and Pakistan-administered Kashmir. This historical backdrop has contributed to the ongoing tensions and conflicts in the region.

The special status of Jammu and Kashmir was enshrined in Article 370 of the Indian Constitution, which granted the region autonomy and a separate constitution. However, this special status has been gradually eroded over the years, and was finally revoked in 2019.

The conflict in Kashmir has resulted in significant human rights violations, displacement, and mental health issues. The region has been a flashpoint between India and Pakistan for over 70 years, and the ongoing conflict has resulted in significant economic and social costs. The people of Kashmir continue to demand a just and peaceful resolution to the conflict, taking into account their wishes and aspirations.

The removal of Article 370 aimed to facilitate Jammu and Kashmir's complete integration into India, promoting unity and access to resources, infrastructure, and opportunities for its residents. This move also sought to enhance national security by curbing Pakistan's alleged support for terrorism and separatism, allowing the Indian government to exert greater control and crack down on terrorist activities. Additionally, the abrogation aimed to end discrimination against marginalized groups, such as women and Dalits, by bringing them under the purview of Indian laws and ensuring equal rights and opportunities. Furthermore, it sought to foster transparency and accountability in governance by subjecting the state to central vigilance and the Right to Information Act, leading to improved administration and answerability. Ultimately, the goal was to boost economic growth by attracting investments, tourism, and job creation, unlocking the region's potential for prosperity.

The Movement to Reinstate Article 370 in Kashmir

Article 370 of the Indian Constitution granted Jammu and Kashmir a unique status, recognizing the region's complex history and territorial disputes with India, Pakistan, and China. Drafted by N. Gopalaswami Ayyangar, a member of the Constituent Assembly of India, this provision

was incorporated into the constitution in 1949 as a temporary measure. Article 370 allowed Jammu and Kashmir to have its own:

- Constitution
- Flag
- Autonomy over all matters, except: Defence, Foreign affairs, Communications

This special status was based on the terms of the Instrument of Accession, signed by Maharaja Hari Singh in 1947. The Instrument of Accession was a historical document that formalized Jammu and Kashmir's entry into the Indian Union, following an invasion by Pakistan. By granting autonomy and a distinct identity, Article 370 aimed to address the region's sensitive political landscape and historical aspirations. However, its revocation in 2019 has sparked ongoing debates and tensions in the region.

The court in various cases has ruled that Article 370 was intended as a “temporary provision” for two main reasons. Firstly, it enabled a smooth transition by establishing a Constituent Assembly in Jammu and Kashmir, which would draft a state constitution. Secondly, it facilitated the state's integration into the Indian Union during a time of conflict and instability in 1947, providing a temporary framework for governance until a permanent solution could be found.²

Ever since the removal of article 370 there has been a notion to reinstate to article 370 largely because of the following reasons:

1. **Autonomy:** Article 370 granted Jammu and Kashmir a significant degree of autonomy, allowing the state to have its own constitution, flag, and laws. The revocation of Article 370 has led to a perceived loss of autonomy and decision-making power.
2. **Identity:** Article 370 was seen as a symbol of Kashmir's unique identity and special status within the Indian Union. Its revocation has led to fears of cultural and political assimilation.

² State Bank of India vs. Santosh Gupta and Another, (2017) 2 SCC 538.; Sampat Prakash v. the State of Jammu & Kashmir, (1969) 2 SCR 365.

3. **Jobs and Economy:** Article 370 provided protection to local jobs and industries, such as the coveted government jobs and land ownership. Its revocation has opened up these sectors to outsiders, leading to concerns about unemployment and economic displacement.
4. **Land Rights:** The article prohibited non-residents from purchasing land in Jammu and Kashmir, safeguarding the rights of local residents. Its revocation has raised concerns about land grabbing and displacement.
5. **Political Power:** Article 370's revocation has led to a perceived shift in political power from the state to the central government, leaving Kashmir's political leaders feeling marginalized.
6. **Historical Significance:** Article 370 was a commitment made by the Indian government during Kashmir's accession in 1947. Its revocation has been seen as a betrayal of that promise.

Post-Article 370: Analysing the Aftermath and Future Prospects

The Supreme Court of India upheld the constitutional validity of the Jammu and Kashmir Reorganisation Act, 2019³, specifically in regards to the creation of the Union Territory of Ladakh. This decision legitimized the separation of Ladakh from the former state of Jammu and Kashmir, recognizing it as a distinct administrative entity within the Indian Union. By upholding this aspect of the Act, the court validated the Indian government's decision to establish Ladakh as a Union Territory, separate from the newly formed Union Territory of Jammu and Kashmir. This move aimed to provide more focused governance and development to the region, addressing its unique cultural, economic, and geographical characteristics. The court's ruling marked a significant milestone in the reorganization of the former state of Jammu and Kashmir, acknowledging the diverse needs and aspirations of its various regions. By recognizing Ladakh's distinct identity and administrative requirements, the judgment demonstrated the Indian government's commitment to tailored governance and regional development.

³ The Jammu and Kashmir Reorganisation Act, 2019, 2019, No. 34, Acts of Parliament, 2019 (India).

Amit Shah, India's Home Minister, revealed significant improvements in Jammu and Kashmir's security situation since the revocation of Article 370 in August 2019. The region has witnessed a substantial decline in terrorism-related cases, with a 70% reduction in overall incidents. Civilian deaths have also decreased dramatically, with an 81% drop, while security forces' fatalities have reduced by 48%. Shah attributed this progress to Prime Minister Narendra Modi's efforts to bring peace and stability to the region. He highlighted the drastic reduction in stone-throwing protests, which have decreased from 2,654 incidents in 2010 to zero in 2023. This indicates a significant improvement in civilian safety, with no civilian deaths reported in 2023 due to stone pelting, compared to 112 deaths in 2010. The government's strict measures against terrorist financing have also contributed to the positive trend. The sealing and freezing of assets, as well as the outlawing of several terrorist organizations, have curbed the spread of terrorism in the region. Jammu and Kashmir has shifted from a terrorism-dominated era to a focus on education, industry, and infrastructure development. The region has witnessed significant economic growth, with investments increasing from Rs 297 crore in 2019-20 to Rs 2,153 crore in 2022-23. An additional Rs 6,000 crore is in the pipeline, indicating a promising future for the region's economy. The government has also prioritized employment generation, filling 34,440 vacancies since the revocation of Article 370. Corruption in appointments has been eliminated, ensuring transparency and accountability in the recruitment process. On Voter's Day, Shah stimulated the youth of voting age and above to actively participate in the democratic process. He recognized the efficacious conduct of panchayat and block development council elections in 2018 and 2019, respectively, which saw high voter turnouts. The government has sanctioned 35,000 local representatives, including panches, sarpanches, and public representatives of local bodies, to work in a democratic arrangement. The Smart City Mission has also seen significant progress, with the completion of 173 projects aimed at improving the region's infrastructure and quality of life. Additionally, 1.45 lakh people in the region have been allocated homes between 2019 and 2024, indicating the government's commitment to providing affordable housing.

Recent Terror Attack in Jammu

On June 9, a devastating terrorist attack occurred in Reasi, coinciding with Prime Minister Narendra Modi's inauguration ceremony. A bus was attacked, which had pilgrims' passengers resulting in the loss of at least 10 lives and leaving 33 others injured. This incident is part of a larger trend of increased terrorist activity in Jammu, particularly in areas south of the Pir Panjal

range. The terrorist attack on the bus carrying pilgrims was a deliberate attempt to send a message that despite the government's claims of success, the situation in Jammu and Kashmir remains volatile and beyond their control. By targeting a bus full of innocent pilgrims, the terrorists aimed to showcase their ability to strike at will and undermine the government's claims of normalcy in the region.

In a series of terror attacks in Jammu and Kashmir, militants targeted four locations in Reasi, Kathua, and Doda districts over four days, resulting in the deaths of nine pilgrims and a CRPF personnel. Seven security personnel and several others were injured in the attacks. Two alleged Pakistani terrorists were killed in a subsequent encounter in Kathua. In subsequent attacks, militants targeted a joint military-police check post in Bhaderwah and a search party in Gandoh, injuring seven security personnel. These incidents have raised concerns about the ongoing security challenges in the region.⁴

Mr. Shah said the government, led by PM Modi, is working hard to stop terrorism in Jammu and Kashmir “Reiterating the zero-tolerance policy against terrorism”. He told the security teams to work together quickly to make sure the risky places are safe. He assured the citizens by mentioning that things are getting better in Kashmir because there are fewer terror attacks now. This is shown by the many tourists coming to visit. Lastly, he praised the security groups and the Jammu and Kashmir officials for managing the elections well, due to which a large population exercised their right to vote.

Why article 370 should not be reinstated?

Following are the reasons why article 370 should not be reinstated:

1. Security: The central government argues that removing Article 370 has helped in better coordination among security forces and more effective counter-terrorism measures. It argues that removal of Article 370 has allowed the Indian government can directly implement security measures in Jammu and Kashmir. This means faster decisions and

⁴ Desk, N.N. (2024) *'Fight against terror in Jammu and Kashmir in decisive phase': Amit Shah, NDTV.com*. Available at: <https://www.ndtv.com/india-news/amit-shah-jammu-and-kashmir-in-twin-meetings-amit-shah-takes-stock-of-j-k-situation-amarnath-prep-5907226> (Accessed: 04 July 2024).

actions against terrorism, which can help prevent attacks like the recent pilgrim's attack.

2. **Development:** It is believed that the abrogation has paved the way for increased development in the region, including better infrastructure and economic opportunities. The region can now avail more investment from other parts of India and abroad. This can lead to better roads, schools, hospitals, and jobs for the people living there.
3. **Legal Integration:** The move is also seen as a step towards legal uniformity across India, allowing for the application of national laws in Jammu and Kashmir. With Article 370 gone, laws made by the Indian Parliament are now applicable in Jammu and Kashmir just like they do in other states. This makes things simpler and gives residents the same rights as other Indians. The state can now exercise its fundamental rights in true sense. The constitution enshrines the principles of "Justice, Liberty, Equality, Fraternity"⁵ with each words having meaning in greater sense which till now was not know to the people of Jammu and Kashmir.
4. **Political Stability:** Supporters of the abrogation argue that it will lead to greater political stability and integration within India since the change aims to bring more stable governance to Jammu and Kashmir. It is faithfully hoped that this will make the region's politics less complicated and more focused on development.

Conclusion

From the viewpoint of the author, reinstating Article 370 is not advisable. The abrogation of this article has brought Jammu and Kashmir closer to experiencing true freedom. Despite being part of India from the beginning, J&K faced persistent terrorism since India's independence in 1947. The region saw its people being manipulated into violence against their own countrymen, fuelled by divisive religious agendas seeking to assert dominance over J&K.

The removal of Article 370 is seen as a crucial step towards liberty for J&K. Since its repeal, there has been a reported 70% reduction in terrorist activities. Laws that apply to the rest of India are now enforceable in J&K, which diminishes the power previously held by ineffective

⁵ INDIA CONST. pmb1.

or corrupt local authorities. Notable improvements in infrastructure, tourism, and healthcare are just a few indicators of the positive changes following the abrogation.

Since the abrogation of Article 370, Jammu and Kashmir have undergone significant transformations. The security situation has improved, contributing to stability and peace in the region. Developmental initiatives have accelerated, bringing about progress that had been stalled for years. Educational institutions like schools and colleges are experiencing fewer closures, allowing for uninterrupted learning. Economic activities have also seen a positive shift, with businesses facing fewer shutdowns due to political strife. These developments have been instrumental in fostering a sense of normalcy and integrating Jammu and Kashmir more closely with the rest of India.