BLOGS

Article 370 of Constitution of India: Analysis of the Controversy surrounding Autonomy in Jammu and Kashmir

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Introduction

In August 2019, the Indian government, led by the Bharatiya Janata Party (BJP), made a historic decision to revoke **Article 370 of Constitution of India**, which granted special autonomy to Jammu and Kashmir.

This move hailed as a “correction of a historical blunder,” sparked intense debate and controversy in India and internationally. This comprehensive article will delve into the reasons behind the revocation, the significance of **Article 370**, its legal implications, and the ground realities it has brought about.

Origins of Article 370 of Constitution of India

Article 370 was introduced into the Indian Constitution in 1949, primarily in response to the unique circumstances surrounding Jammu and Kashmir’s accession to India after gaining independence from British colonial rule in 1947.

The then-Maharaja of Jammu and Kashmir, Hari Singh, initially sought to remain independent or join Pakistan. However, the invasion by tribal militias supported by Pakistan forced him to accede to India in October 1947.

To address the distinct circumstances of J&K, **Article 370** was incorporated into the Constitution, providing temporary provisions for the state's governance within the Indian Union. This article recognized Jammu and Kashmir as a "special category" state, granting it considerable autonomy.

Article 370 of Constitution of India

Autonomy

Article 370 granted Jammu and Kashmir substantial independence. The state had its own Constitution, a separate flag, and considerable powers over various aspects of governance, including law, order, and citizenship.

Limited Indian Jurisdiction

Under Article 370, Indian laws were applicable in Jammu and Kashmir only if the state government permitted them. This meant that only certain central laws were applied in the region upon the recommendation of the state legislature.

Special Status

Jammu and Kashmir enjoyed a unique status within the Indian Union, which made it distinct from other states and union territories. **Delhi Agreement (1952):** The Delhi Agreement, signed between Prime Minister Jawaharlal Nehru and Jammu and Kashmir Prime Minister Sheikh Abdullah, clarified the relationship between the state and the Indian Union. It granted J&K greater autonomy while reaffirming its accession to India.

What is the Kashmir Conflict?

Kashmir's Complex History and Dispute

Kashmir, a picturesque Himalayan region, has been a longstanding point of contention between India and Pakistan. Both countries claim the territory as their own. The roots of this dispute trace back to the end of British colonial rule in 1947, when the princely state of Jammu and Kashmir decided to join India. This decision led to a war between India and Pakistan, resulting in a ceasefire line that divided the region into Indian-administered and Pakistani-administered

territories.

Decades of Insurgency and Violence

The Indian-administered part of Kashmir, known as the state of Jammu and Kashmir, **has witnessed three decades of violence and conflict due to a separatist insurgency** against Indian rule. This insurgency, fueled by demands for greater autonomy or even independence, has resulted in a significant loss of life and suffering in the region.

The Significance of Article 370

Granting autonomy to Jammu and Kashmir

Article 370 of the Indian Constitution is a unique provision that grants the state of Jammu and Kashmir a considerable degree of autonomy. Under this article, the state had its own Constitution, a separate flag, and the power to make its laws, except in areas such as foreign affairs, defense, and communications, which remained under the central government's control.

This **special status allowed Jammu and Kashmir** to formulate rules related to permanent residency, property ownership, and fundamental rights, even restricting non-Kashmiris from buying property or settling in the state.

Impact on India's relationship with Kashmir

Article 370 played a pivotal role in shaping India's relationship with Kashmir, mainly since it was the only Muslim-majority region to choose to join India during the partition. The provision symbolized the unique political arrangement between the state and the Indian Union.

Why did the Government revoke Article 370?

BJP's Opposition to Article 370

The decision to revoke Article 370 was a **longstanding goal** of BJP. They argued that this provision needed to be scrapped to fully integrate Kashmir into India, placing it on an equal footing with other states. **The BJP included this pledge in its 2019 election manifesto**, and after securing a massive electoral mandate, the government decided to implement it.

Integration and Economic Motives

Critics of the move have suggested that it could be linked to India's economic slowdown, providing a diversion for the government. Some Kashmiris fear that the BJP aims to change the demographic character of the Muslim-majority region by allowing non-Kashmiris to purchase land there.

Political and Geopolitical Considerations

The move also aligns with Prime Minister Modi's desire to project a **tough stance on Kashmir** and Pakistan. It signals that the BJP government is determined to assert its control over the region and maintain a firm posture in the face of external diplomatic challenges.

Effect of Removal of Article 370 of Constitution of India

Abolishing Special Status

With the revocation of Article 370, Kashmir lost its separate Constitution and is now governed by the Indian Constitution, like other states in the country. This means all Indian laws automatically apply to Kashmiris, and people outside the state can buy property there.

The government has asserted that this change will bring development to the region. **Home Minister Amit Shah stated in Parliament that Articles 370 and 35A** (which provided special rights to the state's residents) hindered democracy, fostered corruption, and impeded regional development.

Territorial Reorganization

In addition to revoking Article 370, the Government decided to reorganize **the state into two smaller, federally administered territories**. One combines the Muslim-majority Kashmir region with the Hindu-majority Jammu region, while the other is Ladakh, a Buddhist-majority area with cultural and historical ties to Tibet. This reorganization was a significant structural change in the region's governance.

Legal Implications and Challenges on Removal of Article 370

Constitutional Controversy

The revocation of Article 370 raised constitutional questions. According to the Constitution, any modification of Article 370 required the agreement of the **"state constituent assembly"**.

However, Jammu and Kashmir had been under federal rule for over a year without any consultation of any sort with the state government, and the Indian government has only argued that it had the right to make the changes. The decision of the constituent assembly it was further argued was not binding on the president.

Political Hurdles to Legal Challenges

Opposition political parties can potentially launch legal challenges to the revocation. However, given the emotional and sensitive nature of the Kashmir issue in India, most parties might be reluctant to oppose the move for fear of being branded as anti-India. As a result, the onus of any challenge may fall on individuals or activists.

Legal Precedents pertaining to the Conflicting Status

Prem Nath Kaul v. Jammu & Kashmir (1959)

This case challenged the Big Landed Estates Abolition Act of 1950 because it was unconstitutionally enacted. The Supreme Court upheld the Act and ruled that Article 370 did not limit the plenary legislative powers of the Maharaja.

Sampat Prakash v. Jammu & Kashmir (1968)

In this case, the challenge was against the 1959 and 1964 Presidential Orders made under Article 370(1) that extended the operational period of Article 35(c), which made preventive detention legislation immune to fundamental rights claims. The Supreme Court upheld the Presidential Orders, emphasizing that Article 370 would only dissolve upon the recommendation of the Constituent Assembly.

Mohd. Maqbool Damnoo v. Jammu & Kashmir (1972)

This case challenged the Jammu and Kashmir Preventive Detention (Amendment) Act, 1967, for violating Article 370(1). The Supreme Court upheld the amendment, taking into account the Jammu and Kashmir Governor's concurrence and the changes in the state's executive structure.

SBI v. Santosh Gupta (2016)

In this case, the Jammu & Kashmir High Court's judgment was challenged, which ruled that specific provisions of a central law did not apply to Jammu & Kashmir. The Supreme Court overturned the decision, asserting Parliament's legislative competence over the state and emphasizing the applicability of the Indian Constitution to Jammu and Kashmir.

Dr. Charu Wali Khanna v. UOI (pending)

This ongoing case challenges the validity of Article 35A, which provides for permanent residency laws in Jammu and Kashmir. The petitioners argue that it was introduced illegitimately and discriminates against women.

The Lingering Debate Around Article 35A

Historical Context

Article 35A has been a longstanding subject of legal controversy. This article was added to the Indian Constitution in 1954 through a Presidential Order that empowered the Jammu and Kashmir state legislature to define "permanent residents" and grant them special rights and privileges. These rights include exclusive property ownership and government job opportunities, among others.

Constitutional Challenge

The validity of Article 35A has been challenged on multiple fronts. **Critics argue that it was introduced extra-constitutionally**, bypassing the usual process of constitutional amendments. Furthermore, it has been criticized for gender discrimination as it empowers **Article 6** of the Jammu and Kashmir Constitution, which disqualifies women who marry non-permanent residents from certain privileges.

The legal challenge to Article 35A remains an ongoing and contentious issue. Advocates for its retention argue that it is essential to protect the demographic and cultural character of the region. Conversely, opponents assert that it violates the principles of equality and inclusivity enshrined in the Indian Constitution.

Outlook for the Future

- While the security situation has improved, an estimated 300 militants, primarily local youth, are still active in Kashmir.
- The persistence of militancy is attributed to factors such as a shortage of arms and ammunition due to curbs imposed by the Pakistani army along the LoC.
- Experts believe that the deep-rooted issues and alienation in the region will take time to address, possibly spanning one or two generations before lasting results can be seen.

Conclusion

The revocation of Article 370 in Jammu and Kashmir marks a significant and contentious moment in India’s history. It has far-reaching legal, political, and social implications. While the situation in Kashmir has witnessed significant changes, with a crackdown on separatist leaders, political transformations, and improved security along the LoC, at the same time, continued challenges related to militancy and civilian targeting persist.

While the government argues that the move will bring development and integration, it has also ignited passionate debates about the region’s future and the rights of its residents. The legal challenges ahead will determine the ultimate constitutionality of this decision, while the complex history and geopolitical considerations continue to make Kashmir a flashpoint in the region.