

Analyzing the Necessity of Article 370 throughout the History of Indian Jammu and Kashmir (1949-2019): An Overview at Situation in Jammu and Kashmir through Article 37

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Abstract: *Since the incorporation of Jammu and Kashmir into the Union of India, Article 370 has been a controversial issue in the Indian Constitution. Its implementation in 1949 established a special status for Jammu and Kashmir. However, its necessity and effects are still debated. Furthermore, this debate was exacerbated by the issue of its abrogation in 2019, which had various effects on the state. The purpose of this research paper is to evaluate Article 370 in its entirety. Understanding the need for Article 370, its effects and lastly concluding with the situation post Article 370 after its removal in 2019. For this purpose, the research report has been divided into four chapters. Chapter 1 will set out the historical context and address the following questions: What is section 370 and why was it necessary? Chapter 2 will explain the situation from a political, economic and military point of view. Chapter 3 will explain the removal of section 370 by addressing the following questions: Why was it deleted and how? Finally, Chapter 4 will explain the post-article 370 situation and talk about the security aspect of situation in Kashmir.*

Keywords: Article 370, Jammu, Kashmir, Indian Constitution

Chapter 1

1. Historical Context

India and Pakistan were partitioned in 1947 with borders drawn based on the demographics of the regions. However, this partition did not include the division of Kashmir, which was a princely state under Dogra succession's rule. This state was left out of the division of the British Raj due to its strong loyalty to the British.

Later, a major insurgency and open rebellion broke out in Kashmir, which started in Poonch. This movement gained significant traction and swayed toward Kashmir's integration into Pakistan. The movement attempted to force the then Maharaja, Hari Singh, into submission instead. The Maharaja appealed to the Indian Government for assistance. Signing an Instrument of Accession to India in exchange for aid from the Indian troops. The accession was accepted, and attempts were made to legally integrate Kashmir into the Indian constitution and the state. This resulted in the implementation of Article 370.

What is Article 370?

Article 370 was a temporary special provision which was added to the Indian constitution to provide the state of Jammu and Kashmir with special status and autonomy that was not provided to other Indian states. This provision allowed the region to be governed by its own constitution and government while also maintaining the state as a sovereign part of India. Article 370 prevented the full effect of the Indian constitution. Only Article 1, which marked the territories and states of India, Article 35a which designated the permanent resident of the people and Article 370 itself was in effect as part of the Indian Constitution. This provision prevented Jammu and Kashmir's citizens from

enjoying rights that all Indian citizens enjoyed. Articles such as Article 15^[1], Article 16^[2], Article 19^[3], Article 29^[4] and Article 30^[5].

Why was it necessary?

Article 370 was created out of legal necessity, to legally integrate the technically 'foreign state' of Jammu and Kashmir. This could be best understood through the words of Supreme court Advocate Jai Shankar Agarwala "Article 370 was necessitated to accommodate the then prevailing legal status of the Jammu and Kashmir state in the body of the Constitution of India." ^[6]

Implying that-although the Instrument of Accession was signed, still the state of Jammu and Kashmir could not be technically integrated into India as its citizens never consented or even contributed to the constitution of India. Hence the integration of the state would be undemocratic and unconstitutional in nature, which could have caused a constitutional crisis. Hence Article 370 was created to mediate between the people of Jammu and Kashmir and the Indian constitution.

Chapter 2

Understanding the political situation in Kashmir under Article 370

After the implementation of Article 370 in 1948, Jammu and Kashmir was given a special status which differentiated it from other Indian states. The Article gave Jammu and Kashmir citizens their own flag and citizenship along with a separate constitution that was applicable to its own territory.

An autonomous government with more powers than a regular state in India was formed. The matters of defence,

foreign affairs and communication were the only matters that were decided by the central government of India and the president of India. Matters of the concurrent list such as marriage, education and trade would require the state government's approval rather than the central government. Giving the state the 'residual power' rather than the central government. This power is not provided to other states of India

A constituent assembly was formed to integrate the state into India. Under the recommendation of this assembly, the president of India could dissolve Article 370 and Article 35A. However, the constituent assembly dissolved itself before doing so.

Understanding the Economic situation in Kashmir under Article 370

Under Article 370 subjects of the State of Kashmir could not transfer property other than agricultural land, contracts and torts, bankruptcy, trusts, courts, family and charities had been omitted. Property transfer to non-state subject Indians could not be possible. This provision also prevented the Indian government and businesses from exploiting Jammu and Kashmir's natural resources.

Understanding the Defence situation in Kashmir under Article 370

Initially, under Article 370 all security concerns in the territory of Jammu and Kashmir were administered by the Ministry of Defence. Concerns regarding the maintenance law were later handed over to the local police of Jammu and Kashmir.

Occupation law was placed into effect which gave superior power to defence forces in both matters of security and development. All counterinsurgency and riot control efforts and punitive campaigns were undertaken by the Indian Armed forces. This made the Indian Armed forces a part of the executive branch while not being answerable to the Judiciary branch of the government.

Chapter 3

Why was Article 370 removed?

After 65 years of autonomy the Indian government deemed Jammu and Kashmir mature and prepared to be a part of the Union government of India. Through a series of acts [7] the Indian parliament had been preparing Jammu and Kashmir for its integration into to the Union of India. While the Indian security forces stabilized the state and provided an environment where development could be possible. Furthermore, Article 370 itself had started to restrict the potential of the state, preventing it from achieving development at the scale of the rest of India.

How was article 370 removed?

The removal of Article 370 started with the President's 'Constitutional Order 2019' on 5 August 2019 which amended Article 370 to add specificity to the procedure of removal of Article 370. This order allowed the president to remove the article based on Jammu and Kashmir governor's recommendation. Later on the Jammu and Kashmir Reorganisation Bill, 2019 Bill was passed and accepted by both Rajya Sabha and Lok Sabha. The bill granted statehood to the union territory of Ladakh and formed the union territory of Jammu and Kashmir with the legislature.

Chapter 4

How is the situation post Article 370 in Jammu and Kashmir?

After the removal of Article 370 The territory gained a status of a standard similar to any other state in India. The removal also allowed Kashmir citizens to buy, sell and lease land as well as invite foreign and domestic investors into state which theoretically improved the states development. However due to the COVID 19 pandemic it is not reliable to measure such development as the effects of Article 370 cannot be differentiated from COVID 19 pandemic.

This is not the case with security in Kashmir. The insurgency in Kashmir required a consistent counter-insurgency response maintained by the Indian security forces in order to offer this consistency the kinetic [8] aspect of the region was always treated as a separate issue. In this area, the security forces made great efforts in subduing the militancy and pacifying the population. A clear case of this can be seen in figure1 (See below)

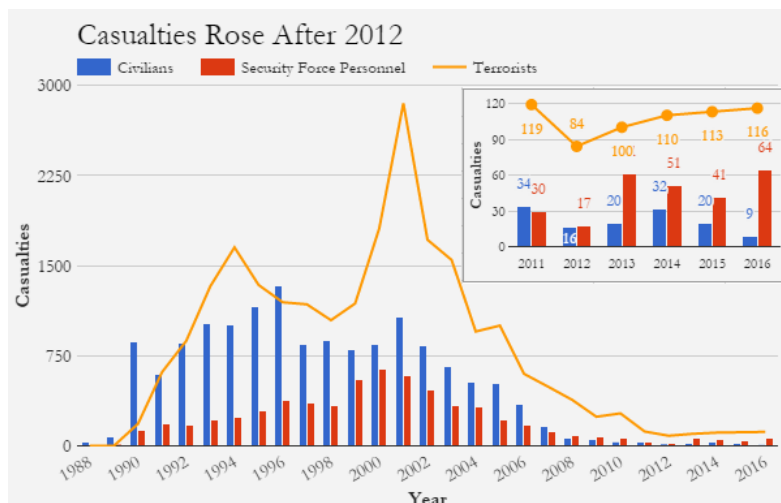


Figure 1

Figure 1 is a histogram that shows a comparison of civilian, security forces and terrorist (militant) casualties over time. This data and its trends also show the shifts and effects of tactics utilized by both the militants and the security forces. In the period 1990-2000. Heavy civilian casualties can be seen while security force casualties have been significantly low, this shows that the militants employed pure terrorism tactics (greater focus on disrupting normalcy) rather than attack military installations during that period (this trend changes by 2011 most likely to alienation among local citizens). Another trend the data shows is the decline in activities from the year 2002 to 2016. Meaning that the conflict will soon cease to exist.

In conclusion, this data shows that soon the conflict in Kashmir will end and the prospect of a peaceful and developing Jammu and Kashmir will start growing

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Source 3

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Source 4

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Source 7

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Source 8

Book-US Army Field Manual 3-14 Insurgencies and Counter-Insurgency 6th edition

[1] Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

- [2] Article 16 Equality of opportunity in matters of public employment.
- [3] Article 19 Six basic freedoms are subject to reasonable restrictions.
- [4] Article 29 Protection of language, script and culture of minorities.
- [5] Article 30 Right of minorities to establish and administer educational institutions.
- [6] "Article 370: A Short History of Kashmir's Accession to India | Economic and Political Weekly." *Economic and Political Weekly*, 6 Aug. 2019, www.epw.in/engage/article/article-370-short-history-kashmirs-accession-india.