



KASHMIR ISSUE: HISTORICAL INJUSTICE OR MISGUIDED GEOPOLITICS

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Abstract

The Kashmir region is often dubbed as one of the most militarized places in the world. Two nuclear powers, India and Pakistan, lay claim to the region and have been warring over it since their independence from the British in 1947. Kashmir has always been a controversial region. At one hand where Pakistan lays its claims over Kashmir, on the other hand separatists want a separate nation. A few years back in 2019 a dramatic episode took place when article 370 and 35A; the two significant articles of Constitution were made inoperative abrogating the special status of Jammu and Kashmir. With this revocation came another question whether the step taken by the Central Government is valid or does the revocation of special status accorded to Jammu and Kashmir amounts to cheating on people of Kashmir.

This paper is an attempt to trace the origin of the entire Kashmir controversy, analyze the various claims made in respect of Kashmir and understand the complicated process of revocation of special status of Jammu and Kashmir.

Key Words – Jammu and Kashmir, Militancy, Article 370, Indian Government, Human Rights.

I-Introduction

“Extraordinary beauty can be a curse to the one who possess it. One pays a dear price for fame and fortune.”

- Sandra Brown

This statement of Sandra Brown best describes the situation of Kashmir. Possessor of a divine beauty, Kashmir could never attain peace since Independence. Kashmir has always been a bone of contention between India and Pakistan. Pakistan time and again through militancy, covert war etc. tries to disturb the peace of Kashmir. The recent Pahalgam attack on innocent citizens is yet another proof of it. Military standoff, curfews, firing, ceasefire violation are the common happenings one can witness in Kashmir. We can not name one single reason responsible for chaos and turbulence in Kashmir. If we try analyzing the history there are number of factors that has contributed to the present state of Kashmir. There were some historical mistakes as well as some misguided policies which are responsible for today's turbulent Kashmir.

Kashmir is not only about a land claimed by two nuclear power nations but it also about Kashmiris living in the valley. Military standoff, emergency, killings, brutalities, insurgency, internet shut out all are severally affecting the lives of normal Kashmiris. Kashmir doesn't bleed alone; Pakistan and India bleed with it perpetually. For as long as the Kashmir continues to bleed through militarization, killings, rape, and draconian tactics, the chaos will continue to permeate and affect the lives of the people in the region.¹

A very dramatic episode happened in the year 2019 when the special status accorded to Jammu and Kashmir was revoked. However to understand how this entire thing happened one need to trace back to the year 1947 when the two nations(India and Pakistan) took birth and the entire Kashmir controversy started.

II-Conditions at the time of independence and accession of Kashmir to India

On 15th August 1947 India got independence from the British rule and the two nations (India and Pakistan) were born. At the time of independence there were around 565 princely states. They were given three options:

1. Merge with India
2. Merge with Pakistan 'or
3. Stay Independent.

The charge of integration in India was given to Sardar Patel. V.P Menon who was a civil servant also played a key role in integration of India. Sardar Vallabhbhai Patel was successful in integrating almost all the princely states. However there were three princely states where Sardar Patel faced challenges. The three states were:

1. Princely State of Junagarh
2. Princely State of Hyderabad, and
3. Princely State of Jammu and Kashmir

It's crucial to mention here that the story of Kashmir is not isolated from the other two princely states. All the events are interlinked that ultimately led to Kashmir issue.

Starting from the princely state of Junagarh, the major population of Junagarh was Hindu however the ruler was Muslim. The ruler whose name was Mahawat Khan signed instrument of accession with Pakistan on 15th September 1947. However the population of Junagarh revolted and Indian Government refused to accept the instrument of accession. The ruler Mahawat Khan fled to Pakistan and the Diwan of Junagarh Shah Nawaz Bhutto invited Sardar patel expressing desire to merge with India. However India decided to

¹ Hussain Nadim, 5 Reasons Why Kashmir Matters, The Diplomat, Feb.11,2022 last visited on(02-02-2024), <https://thediplomat.com/2022/02/5-reasons-why-kashmir-matters/>.

have plebiscite and plebiscite was conducted in January 1948 in which 99% votes were polled in favour of India and thus Junagarh became part of India.²

This entire episode of Junagarh gave a kind of assurance to Muhammad Ali Jinnah who at that time was very desperate for territories that just like Junagarh having majority Hindu population merged with India, Kashmir having majority Muslim population will surely merge with Pakistan.

During this time Jammu and Kashmir was ruled by Raja Hari Singh who was indecisive of the fate of the Princely State of Jammu and Kashmir. Ideologically Raja Hari Singh could have remained independent but it was not pragmatic for any princely state to survive between two independent nations. Raja Hari Singh was reluctant to join any of the nations. He feared that if he joined India, Pandit Nehru being a democrat would not allow his authoritarian rule and if he joined Pakistan, his rule will again be snatched as a Hindu ruler in an Islamic State is highly improbable. At one side there was fear of democratization on other side there was fear of Islamization and in the middle was Raja Hari Singh.³

At the same time a person named Sheikh Abdullah returned to Kashmir after studying from Aligarh Muslim University. Despite being a graduate he couldn't secure job in Kashmir as it was a policy to offer decent jobs only to Hindus as the ruler was Hindu. He got anguished at this and launched "Kashmir Chhodo" against the ruler of Kashmir. He was a great orator and by and by majority of the people in the valley became his followers. Sheikh Abdullah had a firm faith in democracy and socialism. It is said that Nehru and Abdullah shared a good bond because of the ideological similarities. Abdullah was a socialist therefore he naturally saw Muslim League with anguish. He always favored Kashmir to be part of India but he was against the authoritarian rule of the king.

Amidst all these events there comes a significant date of 20th October 1947. Inspired by the events of Junagarh' Mr Jinnah under leadership of senior Pak military official Akbar Khan sent convoy consisting of tribals of Waziristan called Azad Kashmir Fauj. Dressed as a common man they marched towards Srinagar from Pak Occupied Kashmir. At that time Raja Hari Singh was having faith in his army. His brigadier Rajendra Singh warned him that fifty to sixty percent of soldiers in army were Muslims and might shift towards rivals on enticement of an Islamic State. However Raja Hari Singh neglected his advice and decided to fight. On 23rd October 1947 Azad Kashmir Fauj reached Uri which is almost 100 Km away from Srinagar. At this time most of the Muslim soldiers of Hari Singh had joined the Fauj. Raja Hari Singh fled to Jammu and called V.P Menon and requested for help. V.P Menon returned to Delhi and discussed the matter with Sardar Patel, Pandit Nehru and Governor General Lord Mountbatten. At that time armies of both the nations were under British control in order to avoid unnecessary wars between the new born nations. Lord Mountbatten refused to give military aid as Jammu and Kashmir was at that time not part of India and any kind of military advance would have amounted to International war. This was also justified

² Nirupama Subramanian, Explained: When Junagadh voted to join India, and Pakistan got just 91 votes' (05-08-2020), The Indian Express (last visited on 30-04-2023), <https://indianexpress.com/article/explained/explained-when-junagadh-voted-to-join-india-and-pakistan-got-just-91-votes-6540331/>.

³ Firdos AB* and Ghulam NN, Constraints in Solving Kashmir Problem, 5 Journal of Political Sciences & Public Affairs (2017) (last visited on 03-03-2024), <https://www.longdom.org/open-access/constraints-in-solving-kashmir-problem-36359.html>.

on the ground that in the year 1945 United Nations was born and Britain was founding member of that. Lord Mountbatten being a representative of Britain shouldn't have supported International war. V.P Menon went to Jammu and told the matter to Raja Hari Singh. Hari Singh agreed to merge with India. In persuading Raja Hari Singh his Prime Minister Meher Chandra Mahajan who later on became third Chief Justice of India, also played a significant role.

It is also significant to mention here the contribution of Brigadier of Raja Hari Singh in saving Kashmir from Pakistan. At Uri there was a bridge that was the only route for coming to Srinagar. Some hours before Azad Kashmir Fauj reached there Rajendra Singh destroyed that bridge because of which fauj could not move forward for two days. But for those two days, history would have been different today. In this attempt Brigadier Rajendra Singh got martyred.

On 24th October 1947 Azad Kashmir Fauj reached Baramulla. On reaching there attackers became violent and barbaric. They murdered lots of people, raped thousands of women including Muslim women. It is said that population of Baramulla was reduced to 1/3rd. The people of Baramulla still remember this event as an event of terrific brutality. ⁴

On 26th October Azad Kashmir Fauj surrounded Srinagar. On the night of 26th October Raja Hari Singh signed instrument of accession. It is important to mention here that some of the people argue that language of instrument of accession was conditional by which Kashmir only gave right of defence, external/foreign relation, communications and other ancillary matters to India but it is humbly submitted here that language of instrument of accession for all the states was same, in fact all were the copies of one original, therefore this argument is fallible.

V.P Menon returned Delhi with instrument of accession signed by Raja Hari Singh. Again Lord Mountbatten again objected in giving military aid. However he was convinced later on and signed instrument of accession on the dawn of 27th October 1947 and accession became final. In the morning Indian army reached Srinagar. Sheikh Abdullah who was in detention was released by Raja Hari Singh owing to pressure of Nehru. It was Sheikh Abdullah and his supporters who welcomed and helped Indian army at that time.

Tensed by the accession of Jammu and Kashmir with India, Jinnah decided to wage a war against India. The army of Pakistan at that time was under the control of British representative General Gracey. He (Gracey) said that he can't do this without permission of his superior Auchinleck. Jinnah met Mr Auchinleck and asked for aid. Auchinleck refused to give aid and said whether or not Jinnah accept, the accession of Kashmir has taken place with India and if war is launched it will amount to International war. Also the armies of both the nations (India and Pakistan) are under British control therefore it will technically amount to war of Britain with Britain.

⁴ Ram Chandra Guha, Bharat Gandhi Ke Baad (Penguin India, New Delhi, 1st edn.2012).

Jinnah then thought of discussing the matter with Lord Mountbatten and Prime Minister Nehru. He invited them to come to Lahore. Sardar Patel disagreed with the idea of going to Lahore as it was Pakistan who attacked and if there is anything to discuss Jinnah should come to India. Because of this disagreement only Mountbatten went to meet Jinnah at Lahore. During this time on 2nd November 1947 P.M Nehru gave a speech in which he said that as soon as the peace prevails in Kashmir plebiscite shall be conducted. Lord Mountbatten had also advised for plebiscite at the time of signing instrument of accession. Through this speech of Nehru the entire controversy of plebiscite came. Probably Mr. Nehru was assured that just like Junagarh the plebiscite of Kashmir will also favor India.

Here in Kashmir war between Indian Army and Azad Kashmir Fauj was going on which continued till 31st December 1948. During the middle of war Pandit Nehru reached United Nations and made a complaint under Chapter VI of the United Nation Charter. On 21st April 1948 United Nations passed a resolution which consisted of three parts.

1. The first part was related to ceasefire, it was agreed that on day both India and Pakistan sign ceasefire agreement the war will be stopped immediately and on the point where war has stopped temporary Line of Control(LoC) shall be drawn.
2. The second part was related to Truce Agreement. According to this Pakistan will first call its army from Kashmir and then United Nations will inform India about withdrawal of Pakistan and after that India will call back its army from Kashmir.
3. The third part consisted of other provisions according to which when the above two conditions are fulfilled and normalcy prevails then plebiscite shall be conducted in Jammu and Kashmir.⁵

Those who argue that India has cheated Jammu and Kashmir by not conducting plebiscite, it is most respectfully submitted that question of plebiscite comes only when above two conditions are fulfilled. Until and unless Pakistan withdraws its army from POK no question of plebiscite could ever arise.

What forced Pandit Nehru to agree to the U.N Resolution could be understood from the reference of Princely State of Hyderabad. In November 1947, Hyderabad had signed a standstill agreement with the Government of India for an year. During this time an organization of radical Muslims called Majlis-e-Ittehadul Muslimeen(MIM) arose which was promoted by Nawab of Hyderabad. It is pertinent to note here that MIM is now a political party from which Lok Sabha M.P Asaduddin Owaisi comes. From MIM an organisation came called Razakar which started persecuting and harassing the supporters of India. Lots of atrocities and gross human rights violation were happening in Hyderabad. What Azad Kashmir Fauj had done in Baramulla, MIM was doing same in Hyderabad. The stand of MIM was that Hyderabad should either merge with Pakistan or stay independent. Looking at the terrible atrocities, Sardar Patel sent army to Hyderabad on 13th September 1947. It is said that Sardar Vallabhbhai Patel had sent army even without consulting Pandit Nehru. On 18th September 1947 the

⁵ Stephen P. Westcott, The Case of UN Involvement in Jammu and Kashmir(29-05-2020), <https://www.e-ir.info/2020/05/29/the-case-of-un-involvement-in-jammu-and-kashmir/>.

army of Hyderabad surrendered. This event is popularly known as Operation Polo. The ruler of Hyderabad reached Security Council of United Nations and complained that India is forcefully capturing its territory. In reply to Security Council, Sardar Patel said that it was Police Action and not Army Action and there is no forceful capture of territory. Sunderlal Commission was appointed to inquire into Hyderabad which provided in its report that almost 20,000 to 40,000 people died in last 9-10 months especially in those 5 days of Operation Polo in Hyderabad. Some newspapers reported the killings up to 2 lakhs.⁶

Due to all these events and deteriorating international image, Pandit Nehru agreed to sign the ceasefire agreement. It is famous in history that army officials requested Nehru that they can capture the whole POK if three to four months are given more to them. However Pandit Nehru declined the request and signed the ceasefire agreement on 31st December 1948. The war stopped and Line of Control was drawn according to which India got 2/3rd of Kashmir and Pakistan got 1/3rd of Kashmir which they call as Azad Kashmir and India calls Pak Occupied Kashmir. This event could be counted as a mistake of Nehru but we have to understand that Nehru was an idealistic man who believed in international clean image. His idealism came in the way of pragmatism which in some way became one of the causes why POK is not a part of India till now.

III-The Journey from 1949 to 2018

At the time of accession of Jammu and Kashmir, Nehru demanded the release of Sheikh Abdullah. As per the demands of Pandit Nehru, Sheikh Abdullah was released and made chief of administration for the emergency period on 30th October 1947. Sheikh Abdullah was directed to create public opinion in favour of India against Pakistan. During this period Constituent Assembly was busy drafting the Constitution of India. Some months before the constitution was finally drafted, in June 1949 a meeting took place between Sheikh Abdullah, Sardar Patel and P.M Nehru which is popularly known as Delhi Understanding. In this meeting it was agreed to make provision in the Constitution of India regarding Kashmir. By special order of the President four persons from Jammu and Kashmir were made members of Constituent Assembly. These members were:

1. Sheikh Abdullah
2. Mirza Afzal Beg (Right Hand of Sheikh Abdullah)
3. Maulana Mohammad Syed Masudi
4. Moti Ram Baigra

⁶ T S Sudhir, 'Exclusive: The real story of how Hyderabad became a part of India in 1948(24-08-2013), India Today, <https://www.indiatoday.in/india/south/story/hyderabad-indian-army-telangana-police-action-independent-india-210562-2013-09-09>.

With common understanding of the Constituent Assembly article 306(A) was enacted in the draft constitution which ultimately became article 370 in the final Constitution which accorded special status to Jammu and Kashmir. The Constitution of India article 370 falls in Part 21 which at the time of enactment known by the name of Temporary and Transitional Provisions. The name of the part changed by way of 13th Amendment Act and then it became Temporary, Transitional and Special Provisions. This was done to give assurance to the Nagaland of its special status. Therefore it is clear that special status given to Kashmir was only transitional and temporary and not permanent as evident from the name of the part itself.

The Constitution of India 1950 article 370 before revocation contained three clauses. Clause 1 of article 370 was divided into four sub clause ; article 370(1)(a) provided that provision of article 238 of Constitution of India shall not apply to Jammu and Kashmir. At that time states were put into 4 types:⁷

Jammu and Kashmir was under Part B. By virtue of article 370, Jammu and Kashmir was given additional benefits. However by virtue of 7th Amendment Act article 238 and Part VII was deleted therefore article 370(1)(a) became of no significance.

The Constitution of India ,article 370(1)(b) provided that Parliament has power to make laws with respect to Jammu and Kashmir of matters provided in Union list and State list which is related with the matters mentioned in instrument of accession Defense, External Relations and Communications. If any question arose whether any matter relates to these three matters or not then that will be resolved by consultation with Jammu and Kashmir. It is provided further that if Parliament desires to make law with respect to J&K on any other matter then with concurrence of state of Jammu and Kashmir Presidential Order has to be there.

The Constitution of India, article 370(1)(c) provided only two articles of the constitution i.e. article 1 and article 370 shall apply to Jammu and Kashmir.

The Constitution of India, article 370(1)(d) if other article have to be made applicable to Jammu and Kashmir then Presidential order will be needed together with:

- a) Consultation of Jammu and Kashmir if matter relates to three matters specified in instrument of accession

⁷ • Part A States – These states were the provinces of former governors of the British raj. They were ruled by the state legislature and by a Governor. This part includes nine states that are listed as follows:- Assam, West Bengal, Uttar Pradesh, Madhya Pradesh, East Punjab, Orissa, Bombay, Bihar and Bombay.

• Part B States- These includes states that were Princely states earlier or groups of Princely states. They are controlled and governed by Rajpramukh. The Rajpramukh is appointed by that President of India and was the ruler of the state. This part contains eight princely states. These states are listed as follows:- Hyderabad, Saurashtra, Mysore, Rajasthan, Travancore – Cochin, Hyderabad, Jammu and Kashmir, Madhya Bharat (central India agency)

• Part C States – This part contains provinces of Chief Commissioners . It also contains some princely States. The Governance and control of Part C states is with the chief commissioner . The chief commissioner is appointed by the President of India. The Part C contains ten states . These states are listed as follows :- Ajmer , Bhopal, Vindhya Pradesh, Tripura , Himachal Pradesh, Bilaspur, Coorg state , Delhi , Kutch , Manipur.

• Part D states – The part D states are looked after by the lieutenant Governor. The lieutenant governor is appointed by the central government . The only area that is in Part D it is the Andaman and Nicobar islands.

b) With concurrence of Jammu and Kashmir if it does not relates to those three matters.

The Constitution of India, article 370(2) provides that if state of Jammu and Kashmir gives concurrence in respect of any of the matter specified above before Constitution of Jammu and Kashmir is drafted, the concurrence will become final only when it is approved by Constituent Assembly of Jammu and Kashmir.

The Constitution of India, article 370(3) provides that article 370 could be removed in part and full only by Public notification issued by the President. However the proviso of the sub clause provides that recommendation of Constituent Assembly shall be necessary before such notification.

It is submitted here that Constituent Assembly of Jammu and Kashmir no longer exists so the question arises how article 370 will be revoked them . Different people have different interpretation for this.

According to A.G Noorani since Constituent Assembly is no longer in existence therefore 370 can't be revoked.⁸ According to another interpretation since Constituent Assembly is no longer in existence there is no need for its recommendation. There is also a group of people which is of the opinion that article 370(3) itself should be amended. Some people also suggest that we can form temporary Constituent Assembly whose only task will be to give recommendation and after that it will get dissolved.

In 1950 first Presidential Order was issued regarding the powers of Parliament. This order was not disputed. In 1951 the Constituent Assembly of Jammu and Kashmir came into existence and on 26th November 1956 the Constitution of Jammu and Kashmir was finally drafted and enforced.

A very significant event took place in J&K in the year 1952 when under the pressure of Sheikh Abdullah Raja Hari Singh was removed and on his place his son Raja Karna Singh was made Sadar-i-Riyasat. However in the year 1953 only, Raja Karna Singh dismissed the government of Sheikh Abdullah on the charges of antinational activities. It is said that behind the dismissal of Sheikh Abdullah, Nehru was the master mind. Pandit Nehru was in those days unhappy with Sheikh Abdullah because of his (Abdullah's) increasing inclination towards Pakistan. Just before a year of dismissal in 1952 Abdullah had signed an agreement with Pandit Nehru popularly known as Delhi Agreement by which Pandit Nehru acceded to some of the demands of Abdullah. For instance Raja of Kashmir will be known as Sadar-i-Riyasat, Prime Minister will be known as Wajir-e-Azam and the demography of Jammu and Pakistan will not be disturbed as a caution for the day of plebiscite. Nehru acceded to most of these demands.⁹

The year of 1954 occupies a significant place in the history of Jammu and Kashmir. A Presidential Order was issued in this year which inserted article 35A in the constitution.¹⁰ In pursuance of this article many of the acts like Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act) Act, 1989 was passed by the Indian Parliament. The Constitution of India, article 35A provides no provision of constitution or

law will be applicable to J&K which is not related to provisions of Jammu and Kashmir. It limits the power of Parliament to make laws with respect to J&K. This means that any of the fundamental right which is not provided by the Constitution of Jammu and Kashmir will not apply to J&K despite it being a Fundamental Right under the Constitution of India. If Parliament wants to enforce those laws it will be through the route of article 370.

The Constitution of India, article 35A also gave power to Jammu and Kashmir to decide its permanent resident. They have fixed the date of 14th May 1954 for reckoning the permanent residency. Property could be purchased in J&K only by permanent residents. All jobs and reservations are also only for the residents of J&K. It is also provided that if women belonging to J&K married outside the valley they will lose their permanent residency and neither they nor their children shall be entitled to any property in Jammu and Kashmir.

When Sheikh Abdullah was dismissed in the year 1953, Congress government was established in Jammu and Kashmir and Bakshi Gulam Muhammad was made the Chief Minister. Congress regime remained in Kashmir up to 1975. Now indirectly Jammu and Kashmir also came under the control of Central Government as in the Centre also Congress was the ruling party. It was the time for Nehru to increase power in Jammu and Kashmir. Sheikh Abdullah was sent to hill station in kodaikanal and was kept in house arrest. Nehru was an idealistic man. It is said that despite having differences with Sheikh Abdullah at that time, he personally bore the expenses of studies of his friend's son (Farooq Abdullah) who was studying medicine in Jaipur.

In the year 1962 we fought a war with China but got defeated. This defeat affected Nehru badly as he considered Indians and Chinese as brothers. At that time Dr. S Rajadhakrishnan was the President of India. He was very rattled with the defeat and bombarded the government with his questions. At the end V.P Menon had to resign. It is said that because of the impact of all these events Nehru died in 1964 due to heart attack. But before dying Nehru wanted to resolve the issue of Kashmir and he had asked Sheikh Abdullah for a meeting but when Abdullah returned from Pakistan to meet Nehru, Nehru had already died. Had the meeting taken place, it is possible that history might have been some peaceful.¹¹ Nehru before dying had also made an amendment in 1954 Presidential order in the year 1964 by virtue of article 356 became applicable to Jammu and Kashmir.

The Constitution of Jammu and Kashmir is a document containing 158 articles 13 parts and 7 schedules. Preamble of Constitution of J&K provides that Jammu and Kashmir is an integral part of India. The Constitution of India, article 3 of the Constitution provides that "The State of Jammu and Kashmir is and shall be an integral part of the union of India". Article 5 provides that "The executive and legislative power of the State extent to all matters except those with respect to while Parliament has power to make laws for the State under the provisions of Constitution of India". The Constitution of Jammu and Kashmir 1956, article 6 to 10 is the most controversial which deals with permanent resident. The Constitution of Jammu

¹¹ Ram Chandra Guha, Bharat Gandhi Ke Baad (Penguin India, New Delhi, 1st edn.2012).

and Kashmir 1956, article 92 provided for situation when Sadar-i-Riyasat by way of proclamation assumes to himself power of state. This can remain for a maximum period of six months. Scheduled Tribes were not given reservation in Jammu and Kashmir. The High Court of J&K could only issue writs in matters of fundamental rights not in other matters. Therefore the power of High Court was limited. The Vidhan Sabha of J&K had 111 seats but elections were done for 87(eighty seven) seats, 24(twenty four) were left vacant for Pak occupied Kashmir (POK). Initially the provisions related to Election Commission were not applicable but it was made applicable by way of 1st amendment Act 1959 in the Constitution of Jammu and Kashmir.

After the death of Jawahar Lal Nehru in 1964, Lal Bahadur Shastri became Prime Minister of India. Number of amendments were made in the Presidential order of 1954 in 1964, 1965 and in 1966. In the year 1965 the term Sadar-e-Riyasat and Wazir-e-Azam was revoked and in its place Rajya Pal and Mukhya Mantri(Chief Minister) was inserted.

After Lal Bahadur Shastri, Indira Gandhi became Prime Minister in the year 1966. Till that time India has seen two wars one in 1962 with China and other with Pakistan in 1965, the economy was shattered because of wars and naxalite activities. In 1969 Elections took place and coalition government was formed with Indira Gandhi as the Prime Minister. However in 1969 Morarji Desai and others took away the support from Mrs. Gandhi. Indira Gandhi called for pre elections in the year 1971. Till that time Indira Gandhi had done bank nationalization.¹² She also got the bill passed for abolition of Privy Purse but it couldn't be enforced because of intervention of Supreme Court.¹³ In the elections of 1971, Indira Gandhi urged people to vote for her as she desires to take bigger steps and mandate is needed for that. In the elections Indira Gandhi won with huge mandate. Then came 26th Amendment Act by which Privy Purse was abolished and all the kings lost their privileges. The impact of abolition of Privy Purse could be seen from heritage hotels which were once the residence of these kings.

In the year 1971 happened the liberation war of Bangladesh. Urdu speaking majority had persecuted the Bangla speaking minority in Pakistan. Number of migrants from now Bangladesh came to India. Indira Gandhi wanted to attack Pakistan but the then Chief Army Staff Mr. Manekshaw said that summers are not suitable for war with Pakistan, let's wait for winters. In December 1971 Pakistan committed a mistake and some of its helicopter attacked Indian territory. India declared war against Pakistan which lasted for 13 days and on 16th December 1971 Bangladesh was born.¹⁴

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Challenged in R.C Cooper v. Union of India, AIR 1970.SC 564.

¹³ H.H Maharajadhiraja Madhav Rao v. Union of India, AIR 1971 SC 564.

¹⁴ How India-Pakistan War of 1971 started, how we won & significance of Vijay Diwas, *The Times of India* (16-10-2022), <https://timesofindia.indiatimes.com/india/how-india-pakistan-war-of-1971-started-how-we-won-significance-of-vijay-diwas/articleshow/96271054.cms>.

With all these events happening, a person in Kodaikanal was perturbed. Sheikh Abdullah came to know that Pakistan which couldn't save even its own territory how could it help him rule Kashmir. He, then in 1972, gave an interview to London times in which he said that talking about plebiscite is outdated and Jammu and Kashmir will ever remain integral part of India. Indira Gandhi understood the indication and called Sheikh Abdullah for meeting. First Mirza Afzal Beg from the side of Sheikh Abdullah and G Parth Sarthi from the side of Indira Gandhi met and then Indira Gandhi and Sheikh Abdullah finally met. Sheikh Abdullah placed certain demands like restoration of name of Sadar-i-Riyasat and Wazir-e_Azam getting the same privileges as in 1953. Indira Gandhi rejected all these demands. Indira Gandhi even said to the extent that even though you have your own flag but if national flag and anthem of India is disrespected in J&K then Central Government will have all the power to control it. Abdullah acceded to all the demands of P.M Indira Gandhi and in 1975 he was made the Chief Minister of Jammu and Kashmir and he remained in power till 1982 when he died.

After the death of Sheikh Abdullah his son Farooq Abdullah became the Chief Minister in the year 1982. In the year 1984 Indira Gandhi also died and Rajiv Gandhi became Prime Minister in her place. From the year 1986 militancy grew in Kashmir. To control the menace The Constitution of Jammu and Kashmir 1956, article 92 was imposed for six months, thereafter article 356 of Constitution of India 1950 was enforced. In the year 1987 elections happened in Jammu and Kashmir. Rajiv Gandhi was having fear that militants may come to power in Jammu and Kashmir, therefore it is said due to huge intervention of Central Government Farooq Abdullah won. After that violent attacks started in J&K and President's Rule was imposed. In the year 1990 AFSPA J&K was passed to control the militant activities. It took ten to fifteen years to regain normalcy. From 2002 things started to become normal. Elections took place in which Farooq Abdullah was again chosen as Chief Minister. In the year 2002 Autonomy Resolution was passed by which conditions of 1953 was restored.

IV-The year 2019 and abrogation of Article 370

Now came the year 2014 in which B.J.P emerged as victorious in Lok Sabha elections and Narendra Modi became the Prime Minister of India. Revocation of article 370 was in the manifesto of B.J.P but for next five years nothing happened. To this Farooq Abdullah said "Even if Modi becomes P.M. ten times, he will not be able to do away with article 370". Again elections happened in 2019 and Narendra Modi led B.J.P again rose to power. At about the same time in Jammu and Kashmir elections took place in which no party secured clear majority. With the support of B.J.P, People's Democratic Party (P.D.P) formed the government in Jammu and Kashmir but this government couldn't survive for long as after some time B.J.P withdrew the support and Satya Pal Malik was sent as Governor of Jammu and Kashmir. On 20th June 2018 Governor Satya pal Malik sent recommendation that government of J&K couldn't be carried out in accordance with Constitution and emergency was imposed under article 92 of Constitution of J&K for six months. Thereafter one day before completion of six months i.e. on 19th December 2018 Governor sent a recommendation that there is no scope of carrying out the government of J&K in accordance with Constitution and on the same day President issued a notification under article 356 by which President's rule was imposed in Jammu and Kashmir.

President's notification under clause(b) declared that the powers of the Legislature of the said State shall be exercisable by or under the authority of Parliament.”¹⁵ The notification under clause(c)(iii) provided that the operation of so much of the first proviso to article 3 of the Constitution as relates to the reference by the President to the Legislature of the State is hereby suspended.¹⁶

Through this Presidential notification Parliament became the Legislative Assembly of State of Jammu and Kashmir. It is important to mention here that article 3 relates to formation of new States and alteration of areas, boundaries or names of existing States under the proviso of which views of affected state has to be taken but the Presidential notification suspended the operation of this proviso of article 3. From this we can say that from this time alone background was being made for revocation of article 370. Revocation of article 370 was not a one day job but the preparations must have been done for long time before. Actually revocation of Article 370 is a longtime dream of B.J.P and like since the time of Shyama Prasad Mukherjee who gave the slogan:

“एक देश-दो विधान, दो प्रधान-दो निशान नहीं चल सकता’।

Thus by President's notification of 19th December 2018 Parliament became Legislative Assembly of State of Jammu and Kashmir. Constituent Assembly had already dissolved in the year 1957. Governor was sent by Centre itself and B.J.P was having full majority in the Parliament, so the ground was set for revocation of article 370. Finally came the historic date of 5th August 2019. On this day a presidential order came, two resolutions were passed and finally Jammu and Kashmir Integration Bill was passed one after the other. The Presidential order dated 5th August 2019 provided:

“This Order which is called the Constitution (Application to Jammu and Kashmir) Order, 2019...shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time”¹⁷

The order further provided under clause 2:

“All the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir.”¹⁸

Further following additions were made to Article 367 which deals with interpretation:

“(a) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State;

(b) references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of

¹⁵ The Gazette of India(19-10-2018), <https://egazette.nic.in/WriteReadData/2018/194042.pdf>.

¹⁶ Id.

¹⁷ The Gazette of India(05-08-2019), available at <https://egazette.nic.in/WriteReadData/2019/210049.pdf> .

¹⁸ Id.

the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;

(c) references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and

(d) in proviso to clause (3) of article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.¹⁹

Thus by this order, presidential order of 1954 was made inoperative(article 35A), all provisions of Constitution of India was made applicable to Jammu and Kashmir and article 367 was amended as to make Constituent Assembly provided under article 370(3) as Legislative Assembly of that State which means the Parliament of India as provided by residential notification dated 19th December 2018.

Then Hon’ble Home Minister Mr. Amit Shah then moved two resolutions which had to be passed together as they were interlinked. By the first resolution which was moved under article 370(3) all the clauses of article 370 were removed, only 370(1) now only 370 which read as:

“All provisions of this Constitution , as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of Constitution of Jammu and Kashmir or any law, document, judgment, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.”

As soon as the Constitution of India became applicable to Jammu and Kashmir, article 3 also became applicable the proviso of which requires for the views of State legislature of affected State for alteration of boundaries, names etc. The second resolution came to take this view of Parliament as legislature in relation to Jammu and Kashmir meant Parliament as provided by President’s Order dated 19th December 2018.

Thereafter the bill was passed by both the houses. After that President sent the Jammu and Kashmir Reorganisation Bill 2019 which was presented in the Parliament by Hon’ble Home Minister Mr. Amit Shah.

This bill was presented under article 4 of the Constitution which provides if any bill is passed under this then changes will be made in first and fourth Schedule but it shall not deemed to be Constitutional Amendment. Then the bill was passed by the Parliament on the same day. Some of the main provisions of the bill are as:

1. The State of Jammu and Kashmir was divided into two union territories:

(a) Union territory of Jammu and Kashmir which was constituted under Article 239 A of the Constitution
.(Article 239 A relates to Pondicherry)

¹⁹ Id.

(b) Union territory of Ladakh which was constituted under Article 239 of the Constitution.

2. Ladakh will be a plain union territory having no legislature. Jammu and Kashmir will be a union territory with legislature.
3. Jammu and Kashmir will have four seats in Rajya Sabha as four members from there were already member of Rajya Sabha who have to be adjusted. It was also provided that persons who are already members shall be deemed to have elected from this process.
4. Jammu Kashmir will have five seats in Lok Sabha and Ladakh will have one seat in Lok Sabha.
5. The early composition of Legislative assembly of Jammu and Kashmir was eighty seven(elected) +24(left for POK)+ 2(nominated by Governor if women are not adequately elected. Out of this eighty seven, forty six were in Kashmir, thirty seven were in Jammu and four were in Ladakh. Now Ladakh has been removed, seats left became eighty three. Now these eighty three seats have been increased to ninety. Thus total seats became 114 from 111. These seats have not been increased automatically but power given to Election Commission to decide division of seats after delimitation. After this it is possible that the representation of Jammu may increase.
6. Now S.T and S.C both are given reservations. Earlier reservations were not there for S.T.
7. The total number of ministers, including Chief Minister, in the Council of Ministers shall not exceed 10% of total number of members of Legislative Assembly of Jammu and Kashmir. In this aspect it has followed Delhi.
8. In State service some officials will be sent to Ladakh and some will remain in Jammu and Kashmir. In All India Services we will get an adequate ratio and in accordance with that ratio some officials will be posted in Jammu and Kashmir and some in Ladakh. Division will be done by L.G who will be same person for both U.Ts. Later these services will be merged with AGMUT Cadre(Aruranchal Pradesh, Goa, Mizoram , Union Territory). In future officers belonging to AGMUT Cadre will provide service Ladakh and Jammu and Kashmir.
9. This Act was enforced from 31st October 2019 and from that date 106 Central Law like Indian Penal Code, Right to Information Act etc.were made applicable to Jammu and Kashmir. 164 State Acts were repealed including The Jammu and Kashmir Displaced Persons (Permanent Settlement) Act, 1971 which provided that persons who went to Pakistan but thereafter returned to Jammu and Kashmir with intent to settle permanently can become permanent resident of Jammu and Kashmir. Apart from this 166 State Act were continued which were related to custom and tradition of Jammu and Kashmir like Mata Vaishnavdevi Vishvavidyalaya Act etc. ²⁰

²⁰ The Gazette of India, Jammu and Kashmir Reorganisation Act 2019, (last visited on 05-02-2024

<https://egazette.nic.in/WriteReadData/2019/210407.pdf> .

The Constitutional validity of the Jammu and Kashmir Reorganisation Act 2019 was challenged before Hon'ble Supreme Court which has upheld validity of the Act.²¹

VI- Conclusion

Thus we have seen how the entire controversy of Kashmir arose and how different factors contributed to this controversy. When the special status of Jammu and Kashmir was revoked in the year 2019 a very significant question arose whether the decision is right or not. Will this event be remembered in the history as a forceful acquisition of a territory by India? Is revocation of special status of Jammu and Kashmir a breach of promise made to Raja Hari Singh or it amounts to cheating Kashmiris? Before answering all these questions it is pertinent to understand that pragmatism and not idealism is basis of international decisions. Some people also argue that the language of instrument of accession was conditional and from 1947 onwards India has acted in breach of the conditions of instrument of accession. It is most humbly submitted here that the language of instrument of accession of all the Princely States were same, in fact all were the copies of one original and space was left for filling the name of ruler, name of Princely State and date of accession. Therefore it is fallacious to argue that special arrangements were made for Jammu and Kashmir in the instrument of accession. The matter of Jammu and Kashmir became different by the speech of the then Prime Minister Nehru on 2nd November 1947 in which he declared that after peace prevails plebiscite shall be conducted in Jammu and Kashmir. Lord Mountbatten also at the time of signing instrument of accession had advised for conducting plebiscite and U.N Resolution also provided for plebiscite after Pakistan and India remove their armies from Jammu and Kashmir.

If we come to the argument of conducting plebiscite in the State of Jammu and Kashmir then we have to understand the circumstances under which P.M Nehru promised for conducting plebiscite. Sheikh Abdullah who was having the support of people was Nehru's friend and a socialist who hated Muslim league therefore it is very likely that majority of votes would have been polled in India's favour. Coming to the resolution of U.N, it is important to mention here that United Nations prescribed certain conditions which have to be fulfilled first before plebiscite is conducted. Firstly Pakistan has to withdraw its army from the territory of Kashmir and the United Nations will inform India of Pakistan's withdrawal after which India will take its army back. Only when these conditions have been fulfilled, plebiscite could be conducted. Looking at the present circumstances and notorious image of Pakistan it is highly unlikely that Pakistan will ever withdraw its army so taking about plebiscite is futile. Therefore it is totally fallacious to say that India has broken its promise of conducting plebiscite made to the people of Jammu and Kashmir.

Now coming to those who blame Pandit Nehru for Kashmir controversy, it is true that Pandit Nehru had made certain mistakes like if would have waited for three-four months before signing of ceasefire agreement PoK would have been ours. But we have to remember that 'To err is Human'. No one is infallible; any person sitting on such higher authority was bound to commit some mistakes. Also we have to remember that any person's decision is highly influenced by the ideology to which he belongs. P.M Nehru was an idealist and

²¹ Haji Abdul Gani Khan and anr. v. Union of India and ors, WP(C) 237/2022).

these decisions were ideologically correct but they somewhere fail pragmatically. Also we should not forget the contribution of Pandit Nehru after the death of Sardar Patel who guided the future course of India including Jammu and Kashmir.

Coming to the debate over the revocation of special status of Jammu and Kashmir, some of the people claim that this event shall be remembered as an event of great regret as people of J&K were cheated by taking away their special status. It is most respectfully stated that idealism can never fulfill the demands of international affairs. Unification of Germany and Italy was not all peaceful but no one today says that it was wrong. A very interesting event happened in U.S.A, the country which carries the flag of federation and democracy throughout the world. Texas and some other States wanted to separate from U.S.A and since America is a federation it is written that if any country wants to separate it can. But the Supreme Court of U.S.A said that there is a question of interpretation and held that any State can separate only when no condition is left to stay together and when no condition to stay together is left is a matter which has to be decided by Court itself. Texas is still a part of U.S.A and no one says that Supreme Court of U.S.A did something wrong. We can take instances from India as well, no one today says that we did something wrong with Junagarh by rejecting its instrument of accession with Pakistan or that India forcefully acquired Hyderabad. Lakshadweep is a part of India just because we reached half an hour before Pakistan and hoisted our flag there. No one says there was something wrong in that. All the events have to be judged from the circumstances from which they happened. The decisions which may appear wrong and hasty today might appear right in the long run. Similar is the case with abrogation of article 370.

Kashmir controversy is also a story of unsung warriors of history like Brigadier Rajendra Singh who lost his life in saving Kashmir. If he hadn't destroyed the bridge connecting to Srinagar, it is highly probable that Kashmir today would have been part of Pakistan. Another name from the history is of V.P Menon who worked tirelessly in integration of India and accession of Jammu and Kashmir as well. Who can forget the name of our Iron man Sardar Vallabh Bhai Patel.! It was because of Sardar Patel's vision and pragmatism that integration of India was possible. His carrot and stick policy proved life saving for India.

Amidst all these chaos, who are really forgotten are the common people of Jammu and Kashmir who have been suffering since independence. Curfews, internet shut down, firing, stone pelting are daily parts of their lives. A nation can be strong only when every State of it is strong. The aim is not only to keep Jammu and Kashmir as integral part of India but to develop it like any other State of India. Following suggestions would be helpful in promoting development in the newly formed territories of Ladakh and Jammu and Kashmir:

Firstly, people in the two aforesaid territories remain in constant fear because of militancy and army presence. Although keeping army there is a necessity but steps should be taken to make people feel safe in the territory. Indian Army should try to win the confidence of people. This will be beneficial to people and the army alike.

Secondly, due to continuous internet shut students are suffering the most. Their education is being hampered. In some cases internet shut out is necessary but they should not be adopted as a routine. Only in extreme cases internet should be shut down. New technologies could be adopted through which leaving the necessary academic websites all other apps and websites are blocked.

Thirdly, what is worst affected by terrorist activities is the economy of Jammu and Kashmir. Government should take steps to promote economy of Ladakh and Jammu and Kashmir. More industries should be opened, incentives should be given to people to start their own business, and more job opportunities should be created.

Fourthly, many of the people have lost their homes in Jammu and Kashmir because of militancy and terrorist activities like Kashmiri Pandits. Attempts should be made to rehabilitate these people as losing his home is one of the saddest things for any person.

Fifthly, attempts should be made to connect Jammu and Kashmir with the rest of India. Student's enclave should be conducted; tourism sector in Jammu and Kashmir should be promoted so that people of Jammu and Kashmir may develop the feeling of belongingness with the rest of India.

Sixthly, programs, debates, road shows should be organized in order to remove from the mind of people all the confusions and misconceptions regarding abrogation of article 370.

The Kashmir issue is still a double edged sword. If Centre tries to force people living there, there will be fear of revolutionary activities and if Centre ignores the valley there is fear of militancy and terrorism. Road is not easy ahead. Centre has to take every step cautiously taking into account the welfare of people living in the valley. No matter what separatist claims are; Kashmir was, is and will be the integral part of India and what is to be remembered is India has 28 States and 8 Union territories including Jammu and Kashmir.