

EVOLUTION FROM A DISTINCT STATEHOOD TO UNION TERRITORY

"Jammu and Kashmir has now been completely annexed to India as an Union territory, so now India can assert its head part of its body to be its own. The journey from a distinct state to Union territory is something that needs to be imprinted in the mind of all Indians ,this will allow us to cherish this moment even more. The historic step taken by the Modi government is worth an appraisal. Mistakes or procedural latches in amending article 370 of the India Constitution can easily be pointed out but what matters is that what this historic and bold step is going to render to all Indians."

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The story behind this article is referable to a matter fraught with controversy for the entire world rests back to the time when India was enjoying the initial flavours of its independence. The centre stage of this article relates to the State of Jammu and Kashmir. The Princely State of Jammu and Kashmir (as it was formerly called) was constituted between 1820 and 1858 and was to some extent artificial in composition. It amalgamated disparate regions, religions, and ethnicities : to the east Ladakh was ethnically and culturally Tibetan and its inhabitants practised Buddhism; towards the south, Jammu had a mixed population of Hindus, Muslims and Sikhs; in the heavily populated central Kashmir valley, the population was overwhelmingly Sunni Muslim, however, there was also a small but influential Hindu minority, the Kashmiri Brahmins or pandits; to the northeast, sparsely populated Baltistan had a population ethnically related to Ladakh, but which practised Shia Islam; to the north, also sparsely populated, Gilgit Agency, was an area of diverse, mostly Shia groups; and, to the west, Punch was Muslim, but of different ethnicity than the Kashmir valley.

When India got its independence ,the preponderance of the Britishers over the territory of India ended and so also upon the princely states. In tot there were 562 princely states ,which were left loose ,having the prerogative to join India or Pakistan .Jammu and Kashmir ,largest of those princely states, had a predominantly Muslim population governed by Hindu

Maharaja Hari Singh. Maharaja at first decided to stay independent as he anticipated a dilemma that the state's Muslims would be unhappy with accession to India and the other being vulnerability of Hindus and Sikhs on joining Pakistan.

Various efforts were made to allure Maharaja of Kashmir to join Pakistan. It is believed that in July 1947 Mohammed Ali Jinnah promised Maharaja of every sort of favourable treatment , followed by lobbying of state's Prime Minister by the leaders of the Muslim League party of Mohammed Ali Jinnah. Seeing Maharaja's slight inclination of annexing Jammu and Kashmir with India ,provoked Jinnah , to make his Muslim League Agents to work obscurely in Poonch to encourage the local Muslims to an armed revolt , exploiting an internal unrest regarding economic grievances . The authorities in Pakistani Punjab waged a 'private war ' by obstructing supplies of fuel and other essential commodities to state. Later in September , Muslim League officials in Northwest Frontier Province, along with Chief Minister Abdul Qayyum Khan, assisted and possibly formed a large-scale invasion of Kashmir by Pathan tribesmen .

Maharaja on realising the gravity of the matter, decided to join hands with India ,through the instrument of accession for which Justice Mehr Chand Mahajan, the Maharaja's nominee for his next prime minister, visited Nehru and Patel in Delhi on 19th September 1947, requesting essential supplies which had been blocked by Pakistan since the beginning of September. He communicated about the Maharaja's willingness to accede to India.

However, Nehru, demanded that the incarcerated political leader, Sheikh Abdullah, be released from prison and made a part in the state government, then only he would allow the state to accede. On 29th September 1947 ,the Maharaja released Sheikh Abdullah. Before any further reforms were implemented, the Pakistani tribal invasion brought the matters to a standstill.

The dialogue supra resulted in the participation of Indian troops having air lifted in the early hours of 27th October 1947 and successfully came to the rescue of State of J& K by retaliating Pakistani invasion. However, before the Indian troops invigorated the impugned rescue, the rebel forces in the western districts of Jammu got organised under the leadership of Sardar Ibrahim, a Muslim Conference leader and took control of most of the western parts of the

State by 22 October 1947 so as to form a provisional Azad Kashmir (free Kashmir) government based in Palandri on 24 October 1947. Amidst this conundrum, with the instrument of accession pending, Lord Mountbatten, the then Governor-General of India persuaded Nehru to take the Jammu and Kashmir issue to United Nations, by inclusion of plebiscite in the Instrument of Accession, but sadly this effort was futile and yielded no fruits.

The plan and proposal of incorporating article 370 in the Constitution Of India cropped up in late 1947 which was the brainchild of Mohammed Sheikh Abdullah, who had been appointed as the Prime Minister of Jammu and Kashmir by the Maharaja, which was endorsed and supported by Pandit Jawaharlal Nehru. Sheikh Abdullah ,being envious of the Maharaja and being blind with the dream of ruling an independent Kashmir induced Nehru to give special status to the state of Jammu and Kashmir by hook or crook. For this he had his own reasons; those being occupation of one-third of Jammu and Kashmir by Pakistan, reference to UN and plebiscite.

The plan and proposal for incorporation of article 370 was accomplished and it was drafted by N Gopaldaswami Aayyengar, former Diwan to Maharaja Hari Singh and subsequently a member to the Constituent Assembly, after Dr B R Ambedkar refused to draft the same and was brought into floor in the constituent assembly, and was passed. Dr Ambedkar was of the opinion that limited application of the laws made by the parliament for the state of Jammu and Kashmir would only lead to problems. Then after consultation with the State's constituent assembly, the 1954 presidential order was issued. This article was contemplated in Part XXI titled as Temporary, Transitional, and Special Provisions, being the last article to be incorporated in the Constitution Of India. The accession of Jammu and Kashmir into the Indian Union was approved by the J&K Assembly only in 1956.

Article 370 embodied six special provisions for Jammu and Kashmir as below:

- 1.It exempted the State from the complete applicability of the Constitution of India. The State was allowed to have its own Constitution.
- 2.Central legislative powers over the State were limited, at the time of framing, to the three subjects of defence, foreign affairs and communications.

3. Other constitutional powers of the Central Government could be extended to the State only with the concurrence of the State Government.

4. The 'concurrence' was only provisional. It had to be ratified by the State's Constituent Assembly.

5. The State Government's authority to give 'concurrence' lasted only until the State Constituent Assembly was convened. Once the State Constituent Assembly finalised the scheme of powers and dispersed, no further extension of powers was possible.

6. The Article 370 could be abrogated or amended through a public notification by the President, only upon the recommendation of the State's Constituent Assembly.

So what can be inferred from the requisites contained under the article 370 is that this article shall cease to operate or shall be operative only with such exceptions and modifications from the specified date if any such proposed recommendation is referred to the State's Constituent Assembly, prior to any notification pertaining to such recommendation is issued by the President.

In the intervening night of 4-5th August the government issued a Presidential notification revoking the (Application to Jammu and Kashmir) Order, 1954 which introduced article 370 in the Constitution Of India , and replaced it with "The Constitution (Application to Jammu and Kashmir) Order ,2019". This abrogation of article 370, *inter alia*, caught the citizen of the valley and the citizen of the country quite unaware and endorse triggered deliberation as to the tenability and justification of the said step of the Government.

Justifiability of advent of The Constitution (Application to Jammu and Kashmir) Order, 2019

In the backdrop of the insurgency persisted from the inception of Jammu and Kashmir State it cannot be denied that though special status had been conferred to Jammu and Kashmir it failed to ensure all-round progression in terms of socio -economic condition in true spirit. The basic objective for which special status contemplated that was defeated in passage of time and that special status remained only in letter and not in spirit. The entire State was

embroiled in the grief of losing their near and dears repeatedly by the terrorists encouraged from across the border. The off-springs of the denizens were often deprived of the facilities in terms of regular schooling, opting for choicest profession like singing and acting, making entry into the defence of country out of patriotism were bridled. Thus, now it is aptly inferable how the special status has helped state to grow in fact with this it has not grown but rather has gone deep into the backlash all negativities. In this cusp a real citizen or patriot must be seized by the thoughts to have a review of the impugned special status good health of the state and the country as a whole. Thus in my view the architect of a new India by way of revoking article 370 coupled with carving out of two Union Territories, has rightly and firmly given the proper shape to our country which will remain in golden letters in the history.

If we think of the flip side of revocation of article 370 without taking recourse to the consent of Constituent Assembly and by not adhering to the requisite procedure for amendment to the Constitution of India it may be required to be brought under the scanner. However, taking the gravity of the state of the State of J&K embroiled in the turmoil of bloodshed for last 72 Yrs., the said procedural lapses purportedly needs no focus for the greater interest of the country. If before doing away with article 370 which was in vogue hitherto, would have been presented for discussion on the floor and debate would have erupted amongst all stake holders; the situation must have been tensed and National resources must have been drained out in order to maintain tranquillity of the country. As such an initiative of abrogation is a welcome state and may be considered as prudent one for the interest of the country.