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Revocation of Article 370: A turnover in Kashmir

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ABSTRACT

Kashmir has been talk of an hour from the very beginning and in next 5 years also it shall prevail as the centre of epitome for sure. But even being the most talkative topic Kashmir and its people stay behind the wall and do not get to enjoy their basic rights.

This particular paper analyses certain specific provisions i.e., Article 370 and 35 (A), revocation of both the provisions has created a situation full of risk and the real voice of the people from Kashmir remains unheard. The paper has tried to become a source and has tried to reveal all the genuine facts.

The highlighting point of the research is whether such a change for Kashmir is feasible at this point of time. Basically the normal citizens including the politicians, civilians, journalists, etc in Kashmir are facing a lot of challenges and difficulties. To overcome such a phase many people are working thoroughly to come up with certain solutions to make a smooth flow.

This paper moreover talks about how the real fact gets filtered every time before reaching its prior source. Everything is corrupted to another level and nothing genuine is received by the general public, where as the people of Kashmir are totally dependent on the national media.

The conclusive part of the paper reviews about the situation of Kashmir after one year of revocation of Article 370 from the Indian Constitution. It clearly says their struggle is still the same. With the cases of corona virus rising Kashmir is failing to provide proper facilities to its citizens. Not totally substituting the scenario but if adequate and proper amount of steps are adopted then life of the people can get back to normalcy.

I. INTRODUCTION

Kashmir has been a battle ground for India and Pakistan since 1947 and it is easy to find a number of cases speaking about mass killings, rapes, sexual abuse, disappearance, illegal detention, custodial killings, human right violations and so on.

Unveiling the history of Kashmir, Kashmir being a Muslim majority state was ruled by a Hindu King. And during partition it did not join either of the countries rather decided to be

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independent on its own. Soon after that, the 1st World War broke out and tribal militants were sent by Pakistan to throw off the king but finally an accession was signed by Pakistan to India which eventually ended in territorial division of Kashmir between India and Pakistan. Shortly, there were n-numbers of war, destruction, terror attacks, and numerous killings in different parts of India including India-held side of Kashmir.

In 1948, the United Nations was approached by India under the leadership of Congress Party for over laying a plebiscite where the Kashmir people will have complete rights for deciding their future. But unfortunately, the plebiscite was never arranged and neither did anyone care about the Kashmiris who had always kept on fighting for their land rights.

Nevertheless, a special prerogative was provided to the people of Kashmir by the Indian Constitution through Article 370 and 35 (A) that gave certain amount of privileges such as its own flag, constitution, ownership and property rights and other similar rights except communication, defence and foreign affairs.

But later on, on 5th August 2019 the Indian Government under the rule of Bharatiya Janata Party lead by Prime Minister Shri Narendra Modi revoked the special status which the Indian-administered Kashmir was enjoying since days for which the place went under complete lockdown, all telecommunication were cut down, curfew was imposed and a huge number of Indian troops were deployed.

II. SCENARIO AFTER SCRAPPING ARTICLE 370

Provisions of Indian Constitution Act applies to all the state of India except Jammu & Kashmir, Article 370 falling under Part XXI of the Indian Constitution Act, 1950 gives Jammu & Kashmir a special sovereign status.

In 1947, the provisions were drafted by the then Prime Minister of Jammu and Kashmir namely Sheikh Abdullah appointed by Jawaharlal Nehru and Maharaj Hari Singh.

Article 370 allots the state government special power and the central government has to have the state's concurrence for applying laws except in case of defence, finance and communication and foreign affairs.

On 5th August 2019, government of Modi along with Home Minister Amit Shah made a knife edge situation in Kashmir by revoking two major constitutional provisions i.e., Article 370 & 35 (A) which in turn allows all the citizens of India to buy property in Kashmir and settle down permanently, which has definitely created a house of fear in the people of Kashmir thinking this might lead to transformation of majority Hindu from majority Muslim.

So now on, the provisions of the Indian Constitution will be applicable to Jammu & Kashmir after President Nath Kovind promulgated Constitution Order, 2019 which comes into force “at once”, shall “supersede the Constitution (Application to J&k) Order, 1954.”

“All the provisions of the Constitution shall apply in relation to the state of Jammu and Kashmir,” it said.

“Reference to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relations to Jammu and Kashmir,” it said.²

Further the state will have a Chief Minister now and most of the major powers will be controlled by the central government. Modi Government has gained mixed reaction from its Indian citizen for such a decision and the government is clearly giving test, whether it can comply towards its words.

After the revocation of Article 370 the people of Kashmir are surviving in a dilemma as they fear their identity and religious status is at stake. The politicians and Indian media play an important role in a normal citizen’s life but wherein over here they were engaged in false statements. Union Minister G Krishna Reddy on 23rd September 2019 said, “around 50,000 temples were closed over the years, of which some were destroyed, and idols were defaced. We have ordered a survey of such temples.”³ But according to Sanjay Tickoo, a prominent Kashmir Pandit leader who heads KPSS (Kashmiri Pandit Sangharsh Samiti) said, there were 4,000 temples in Kashmir on an average.⁴ So, the media gets corrupted at times and the news delivered to the citizens goes through a lot of filtration where as the international media provides real-time information for example, during eid the Indian media showed the festival was celebrated with peace and calmness whereas the real story was totally different which was covered by the international media.

The political leaders of Kashmir were under house arrest, around 4000 people; including journalists, activists and politicians were arrested and in custody, and many civilians were killed using pellet guns. Further, the farmers also expressed their grief for selling their produce

² *Indian Constitution to apply in Jammu and Kashmir: President Order*, India Today, (05 August 2019, 01:22PM), <https://www.indiatoday.in/india/story/indian-constitution-to-apply-in-jammu-and-kashmir-president-order-1577375-2019-08-05>

³ *Article 370 gone, Modi govt draws up plan to reopen 50,000 temples closed in Kashmir*, The Financial Express, (23 September 2019, 06:08PM), <https://www.financialexpress.com/india-news/article-370-gone-modi-govt-draws-up-plan-to-reopen-50000-temples-closed-in-kashmir/1714936/>

⁴ Mudasir Ahmad, *How can Centre reopen 50,000 Temples in Valley, When there are only 4000 in J&K?*, The Wire, (5 October 2019), <https://thewire.in/rights/how-can-centre-reopen-50000-temples-in-valley-when-there-are-only-4000-in-jk>

in the local market which is mostly run by NAFED (National Agricultural Cooperative Marketing Federation of India Limited). Moreover, after the scrapping of Article 370 Kashmir's economy has suffered a loss of Rs 17,878.18 crores or more.⁵

The cell phone services were provided back to the people of Kashmir on 14th October 2019 exactly after 2 months of black out, and internet services were restored on 5th March 2020 after 7 months with 2G speed to access social media but until 17th March 2020.⁶

The court held that, "the right to freedom of speech and expression under Article 19(1)(a), and the right to carry on any trade or business under Article 19(1)(g), using the medium of internet is constitutionally protected."⁷

Ghulam Nabi Azad, a Congress leader said, "we welcome this judgement. This is the first time the SC has talked about how people of J-K feel. I would like to thank the SC for a very historic decision and people from across the country were waiting for it, specially the people of JK."⁸

Right to access internet is a fundamental right and falls under Article 19 of the Constitution and it cannot be abrogated at any cost. The fundamental rights of the Kashmiri people have to be preserved, no matter what the situation is. Just a particular side of the Kashmir is shown by the media house but if a deeper look is taken then the life of the Kashmiri people is at risk and hindered most of the time in some way or the other.

III. A YEAR AFTER REVOCATION OF ARTICLE 370

On 5th August 2020 Kashmir celebrated its one year of revocation of Article 370.⁹ The journey from last a year has been through a rough phase. The scenario of Kashmir after one year is full of terrified silence; there is a high alarm fear within the normal citizens and the ground voice of the Kashmiri people are altered frequently for which the real facts are filtered and remains unheard. The roads are left empty; very few vehicles are visible with prior permission. People are allowed with limited text messages that to over mostly post-paid connections. The challenges are hanging over the head of the people; stepping out for daily ration or hospital is

⁵ *Kashmir Economy suffered loss of Rs. 17,878 cr in 4 months after Article 370 Abrogation*, *The Indian Express*, (17 December 2019, 10:08PM), <https://indianexpress.com/article/india/kashmir-economy-suffered-loss-four-months-after-article-370-abrogation-jk-6172096/>

⁶ Zulfikar Majid, *Article 370: Jammu and Kashmir netizens can now access social media after 7-month ban*, *Deccan Herald*, (04 March 2020, 07:43PM), <https://www.deccanherald.com/national/north-and-central/article-370-jammu-and-kashmir-netizens-can-now-access-social-media-after-7-month-ban-810499.html>

⁷ *Anuradha Bhasin v. Union of India*, [WP(C) 1031/2019]

⁸ Ghulam Nabi Azad, *Terms Supreme Court's Order on Internet Restoration in J&K as Historic*, (10 January 2020, 05:48 P.M), <https://www.news18.com/news/politics/ghulam-nabi-azad-terms-supreme-courts-order-on-internet-restoration-in-jk-as-historic-2453171.html>

⁹ *Express Web Desk, Jammu & Kashmir News highlights: BJP celebrates first anniversary of revocation of Article 370*, *The Indian Express*, (06 August 2020, 06:52P.M), <https://indianexpress.com/article/india/jammu-kashmir-article-370-live-news-updates-6538800/>

a big deal and so is travelling from one place to another.

But nevertheless a new outlined plan has been empowered by the administration of Jammu and Kashmir to the people of Kashmir through the newly constructed panchayats. Some major initiatives took place in Jammu and Kashmir. Meanwhile there were 354 state laws out of which 164 laws are repealed, 138 laws are modified and 170 central laws are applicable. Fortunately, there is an increase of about 262% in the minority scholarships and to uncouple corruption 5 corporations have been set up.¹⁰ For sure the educational system and other sectors are developing but it is just a matter of time.

The year 2020 has been a shock for the entire nation due to Covid-19 or the Corona Virus. With the rise in cases the hospitals in Kashmir are falling short of beds and there is no accommodation for the patients. Videos are ruling the social media platform visualising patient's helplessness for running out of medicines and other facilities. The Srinagar District Administration had shared a video over tweeter that read as follows, "The Covid-19 situation in Kashmir has got to point where hospitals are running out of space. Here's Dr @naveednazishah putting it into perspective

– throwing light on what has gone wrong and what needs to be done| DDMA Srinagar presentation @listensahid @drsamiarashid (sic)."¹¹

Kashmir has been under lockdown long before this pandemic and the mobile service including the internet connectivity keeps on fluctuating every time which makes the situation difficult to handle at times. The people of Kashmir are asked to stay indoors and not step out until unless that is required. Yet, there is a situation of startle that the patients might die due to lack of medical facilities.

IV. CONCLUSION

Kashmir being a heavenly place is always at the verge of war, the fear of flower is always blooming, civilians are under constant watch, continuous lockdown and what not!

Sadly, Kashmir is open for outsiders/tourists but closed for Kashmiris. Basic rights of the people are violated in the name of government policies. The idea behind throwing Kashmiris out of Kashmir is left unheard to the general public. Indian media is the only way through

¹⁰ Zee Media Bureau, *Jammu and Kashmir: What has changed in one-year since abrogation of Article 370*, ZEENEWS, (05 August 2020, 05:03PM), <https://zeenews.india.com/india/jammu-and-kashmir-what-has-changed-in-one-year-since-abrogation-of-article-370-2300815.html>

¹¹ Nazir Massodi, *With Covid Beds Running Out In Srinagar, An Admission From Officials*, NDTV CORONAVIRUS, (21 July 2020, 03:00PM), <https://www.ndtv.com/srinagar-news/srinagar-coronavirus-cases-with-hospital-beds-running-out-in-srinagar-admission-from-administration-2266276>

which real stories can reach the public but meanwhile the real essence of journalism is fading away. Many politicians are blocking the ways for which the real news is not reported. The freedom of Kashmir was scrapped midnight without even bothering about Kashmir's opinion. For the next few days the Modi government was appreciated for such a major decision but any one was least bothered to hear the real voices of the Kashmiris. But eventually many disturbing videos were shared over social media that revealed the real stories for which people started becoming aware of the real happenings. But eventually many people stopped keeping themselves updated with the Kashmir news due to so much of confusion. The Indian media is biased somehow and somewhere.

It is high time to get back things to normalcy and truth shall prevail amidst thousands of different news, opinions and the basic fundamental rights should be granted and enjoyed by the people of Kashmir.
