Journal of Positive School Psychology http://journalppw.com
2022, Vol. 6, No. 4, 8880 – 8897

ONE STEP FORWARD, TWO STEPS BACKWARD?

An Analysis of the Revocation of Article 370 under Constitutional Law, Federalism and International Law

[1]Purvi Pokhariyal, [2]Aum Kotwal

[1]The founding dean of School of Law, Forensic Justice and Policy Studies. She specializes in the area of Criminal Justice Studies and Justice Education. Professor Pokhariyal holds a Master's degree in law with specialization in Criminal Law and a Doctoral degree in the Constitutional Law. She is the former director of Institute of Law, Nirma University and Ph.D guide of Mr. Aum Kotwal.
[2]Practicing lawyer specializing in constitution matter and working since last nine years in Gujarat High Court. B.A.LLB (Hons.), LL.M (Constitution Law), pursuing PhD from Institute of Law, Nirma University Ahmedabad. Email ID: aumkotwal@gmail.com.

Abstract

This article analyses the legality of the revocation of Article 370, which granted a special status to the state of Jammu & Kashmir, under Indian Constitutional Law and International Law. In doing so, it answers the following questions: what were the special circumstances under which Jammu and Kashmir acceded to India, what were the special circumstances under which Article 370 was formed and how did it place Jammu and Kashmir at a different footing as compared to other states, and what is the position of international law on revocation of autonomous status of Jammu and Kashmir.

It lays down the historical background of the Instrument of Accession and Article 370. It then focusses on Indian federalism and its asymmetric relationship with Article 370. It moves on to analyze the legal issues that have arisen due to and in relation to Article 370 and its revocation as per the principles of Indian Constitutional Law and International Law. It concludes with stating that the dismantling of the special status of Jammu & Kashmir is a blatant violation of the text of the Indian Constitution and the principles of International Law.

Keywords: Jammu & Kashmir, Article 370, International Law, Constitutional Law.

1. INTRODUCTION

"There is no wall between Jammu and Kashmir and India. At the most, you can say it is some kind of movable partition. We can move it on our own. There is nothing coming in the way…" -Former Home Minister Gulzari Lal Nanda

In 2019, the Indian government revoked Article 370 of the Constitution of India which previously granted autonomous statehood to the state of Jammu and Kashmir. Under Article 370, the state of Jammu and Kashmir was allowed to enact and adopt its own Constitution, and it reflected the terms of the Instrument of Accession of Jammu and Kashmir signed between the state's monarch and a dominion of India. The primary intention of the Article was to give primacy to the state's constituent assembly power to legislate and decide upon all matters apart from defense, foreign affairs and communications. Further, the constituent assembly was also empowered to decide upon a potential accession with India.

Thus, it becomes important to examine whether the accession of Jammu and Kashmir with India was complete and absolute? What were the special circumstances under which Jammu and Kashmir acceded to India? What were the special circumstances under which Article 370 was formed and how did it place Jammu and Kashmir at a different footing as compared to other states, if at all? What is the position of international law on revocation of autonomous status of Jammu and Kashmir?

The author argues that autonomous status of Jammu and Kashmir has been gradually eroded ever since the insertion of Article 370, ultimately leading to its revocation in 2019. However, the manner of dismantling the special status of the state through the implementation of the Jammu and Kashmir Reorganization Act, 2019 is violative of constitutional law and international law.

This paper is divided into five parts. Part II focuses on the historical aspect of the Kashmir issue, deliberating upon the circumstances that led to the instrument of accession and the insertion of Article 370. Part III first provides a brief introduction of Indian federalism and then focuses upon its asymmetric relationship with Article 370, prior to the revocation of the said article. Part IV discusses the contemporary legal developments regarding the state of J&K and focuses on the flagrant lacunae present in such legal developments as per Indian constitutional law and international law. It focuses on the three relevant aspects under international law: the instrument of accession as a treaty, the right to autonomy of Jammu and Kashmir, and the right to self- determination. Part V, the conclusion, sums up the findings of this research and states that the revocation of Article 370 is a flagrant violation of Indian constitutional law and international law and has the potential to open doors for removal of Jammu and Kashmir region from Indian territory.

II. Historical Background

The state of Jammu and Kashmir was established as a result of the 1846 Treaty of Lahore. At the end of colonial rule, a massive task was undertaken in the form of princely state integration; approximately 584 states were to be integrated, and the laborious task of negotiations continued.

These states were given the option of remaining independent and retaining their sovereignty, acceding to India, or acceding to Pakistan. Prior to 1947, Kashmir was a princely state ruled by a Hindu king and populated primarily by Muslims. This demographic distribution of the population is due to the strategic geographical location of the city. As a result, the state had a distinct regional identity, as well as a geographical and demographic identity based on religious identity. Perhaps for this reason, the Maharaja of Kashmir desired to retain his powers and remain independent, but when the State of Jammu and Kashmir was attacked by external forces, the Maharaja acceded to India on the terms outlined in the Instrument of Accession.

However, the Maharaja explicitly stated in Clause 5 of Kashmir's Instrument of Accession that the terms of "(the) Instrument of Accession cannot be varied by any amendment of the Act or of Indian Independence Act unless such amendment is accepted by me by an Instrument supplementary to this Instrument." In Clause 7, it was said "nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such [a] future constitution."

The state of Jammu and Kashmir stated before the Constituent Assembly that it was unable to extend the contents of the Instrument of Accession until the State's Constituent Assembly made a decision on the matter. Even after the execution of the Instrument of Accession, the state of Jammu and Kashmir decided to retain its autonomy. As stated in clause 8 of the Instrument of Accession, the ruler of the State of Jammu and Kashmir retained internal sovereignty over the State. The Supreme Court of India reiterated this position in the case of Prem Nath Kaul v. the State of Jammu and Kashmir, stating:

"We must, therefore, reject the argument that the execution of the Instrument of Accession, affected in any manner the legislative, executive and judicial power in regard to the Government of the State, which then vested in the Ruler of the State".

Again, the Supreme Court of India in the case of Rehman Shagoo V State of Jammu and Kashmir said:

"When certain subjects were made over to the Government of India by the Instrument of Accession, the State retained its power to legislate even on those subjects so long as the State law was not repugnant to any law made by the Central Legislature"

It is clearly stated in clause 7 of the Instrument of Accession that the State of Jammu and Kashmir has not committed itself to accepting any future Constitution of India or limiting its discretion to enter into any agreements with the Government of India. This clearly demonstrates the government of Jammu and Kashmir's reluctance to accept the Indian Constitution as the Constitution of their State. Even after its accession to Indian Dominion, the state of Jammu and Kashmir was governed by the Jammu and Kashmir Constitution Act, 1939. The Indian government is powerless to compel Jammu and Kashmir to accept the Indian Constitution because doing so would violate the terms of Kashmir's association with India. While the Indian Constitution made provisions for former British India and other Princely States that joined the Indian dominion, it was necessary to make special provisions for Jammu and Kashmir.

Jawaharlal Nehru commissioned Gopal Ayyangar (a member of the drafting committee) to write Article 306-A of the Indian Constitution. As a result, the draught Article 306-A was introduced in the Constituent Assembly and later formally added to the Indian Constitution as Article 370. This article was regarded by the people of the Kashmir Valley as a "Article of Faith" that ensured their internal autonomy and Kashmiri identity. This Kashmiri identity was also known as 'Kashmiryat,' a Kashmiri mixed culture that emphasises the brotherhood of the Kashmiri communities. However, it is believed that the proclivity of the majority in the region regards this provision of law as the most significant impediment to the state's integration with India, given the political narrative woven around it.

In accordance with the provisions of Section 6 of the Government of India Act, 1935, with the signing of the instrument of accession, Jammu and Kashmir becomes a legal and irreversible part of India; and the Indian Government was authorised to exercise jurisdiction over the state in the matters to which the instrument was extended. However, Pakistan demanded a referendum on the status of Jammu and Kashmir and thus refused to recognise the state's inclusion within India as valid. In this regard, Justice A.S. Anand stated:

"No one, even the worst critic, has ever doubted the representative nature of the Constituent Assembly. Self-determination is a one time slot the people of the state took final decision and therefore, the question of any further 'self-determination or plebiscite' does not arise either legally or morally. The wishes of the people of the State of Jammu and Kashmir have been reflected in the duly elected Constituent Assembly. The state's accession to India therefore, cannot any longer be questioned or doubted"

As a result, it can be concluded that the state's accession to the Union of India is complete, final, and irreversible, as well as legally and constitutionally valid, because it was ratified by the people of the state through a duly elected Constituent Assembly.

III. Indian Federalism and its Asymmetric relationship with Article 370

3.1 Meaning of Federalism

Federalism has facilitated the expression and protection of various forms of belonging within India, and it has been central to the richness and resilience of India's democracy. In fact, understanding how policies are made and the effects they may have in India's complex multi-

level political and economic ecosystem requires an appreciation for federalism.

Prof. K.C. Whearea defines the concept with reference to the coordination between general and regional governments as “the method of dividing powers so that the general and regional governments are each within a sphere coordinate and independent.”

Whereas, A.V. Dicey, defines the ‘completely developed federalism’ as including the distribution of powers among governmental bodies (each with limited and coordinate powers), along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution.

Federalism, in its most basic form, refers to two tiers or levels of governance between the central government and the constituent units, as well as the division of power within the framework of the Indian constitution. The term federalism invariably includes general features such as "two sets of government constitutionally coordinated, division of powers between centre and units, a federal court as a guardian of the constitution, and rigid constitutional supremacy.".

3.2 Introduction to Indian Federalism

The federal system in India has its origins and mention in the Simon Report of May 1930, which advocates for a federal government in India during the First Round Table Conference of 1930. Following that, the Second and Third Round Table Conferences debated the nature of the Federal Executive and its relationship with the Legislature.

In March 1933, the British Government issued a White Paper proposing a new Indian Constitution based on the principle of diarchy at the Centre and accountable government in the provinces. These provisions laid the groundwork for the Government of India Act of 1935. The principle of dyarchy was retained at the national level under a federal system under this Act, and the provinces were endowed with legal personality at the provincial level. The evolution of India as a federal nation can be divided into two parts: the constitutional and legal provisions separating powers between the centre and the provinces, and the role of the judiciary in upholding those provisions.

According to a cursory reading of Article 1 of the Indian Constitution, 'India' was declared to be a union of states after independence. In State of West Bengal v. Union of India (1962), the Indian Supreme Court emphasised the importance of a "agreement or contract between states" as an essential feature of federalism. Because such an agreement did not exist in India, it was determined that India was not a federal polity. The said observation, however, was overruled in the Keshavand Bharti case (1973) and the SR.Bommai judgement (1994), in which federalism was recognised as a concept of the Indian Constitution. According to the Bommai decision, federalism under the Indian constitution is interpreted as "India is declared to be a quasi-federal constitution." Federalism is regarded as a "essential feature of the constitution." Federalism in India will be a 'Organic Federation' tailored to the needs of the legislature. Federalism in the constitution has different meanings depending on the context.

3.3 Federalism and The Lex Specialis case of Article 370

The part of the Indian constitution containing Article 370 is titled "Temporary, Transitional, and Special Provisions." Article 370 was temporary in the sense that the Jammu and Kashmir Constituent Assembly was given the authority to modify/delete/retain it. The Kashmir Constituent Assembly wisely and correctly decided to keep it. This Article primarily contained six provisions for Jammu and Kashmir, namely:

1) It exempts the state from the provisions of the Constitution governing state governance, and it also allows the state to have its own constitution within the Union of India.

2) The only three subjects in which the Indian Parliament was permitted to exercise legislative powers were defence, external affairs, and communications. Other provisions of the Constitution could be extended to it by the President to provide a constitutional

framework if they were related to the matters specified in the Instrument of Accession.

3) If any other constitutional provisions were to be extended to Kashmir, the State Government's prior approval was required.

4) The mentioned concurrence is provisional and must be ratified by the State's Constituent Assembly.The fifth feature is that the State Government's authority to give the "concurrence" lasts only till the State's Constituent Assembly is "convened". It is an "interim" power.

5) The fifth feature is that the State Government's authority to grant "concurrence" is limited to the time it takes the State's Constituent Assembly to convene. It is a "interim" power.

6) Article 370(3) authorises the President to issue an Order repealing or amending it. However, "the recommendation" of the State Constituent Assembly is also required before the President issues such a notification.

It was also agreed that the residuary powers vested in the Central Government with regard to all States would be exercised, with the exception of the state of Jammu and Kashmir. Furthermore, the powers mentioned in Articles 52 to 62 relating to the President of India should be applicable to the State, as well as the power to grant reprieves, pardons, and remissions. According to the agreement, the State of Jammu and Kashmir would have its own flag in addition to the Union flag, as well as the same status and position in the state. It was established that the Sardar-i-Riyasat (Governor), despite being elected by the State legislature, had to be recognised by the President. The only difference in the case of Kashmir is that Sadar-i-Riyasat will be elected by the State legislature rather than being a nominee of the Government and the President of India. It was also stated that Part III of the Indian Constitution, which deals with fundamental rights, could not be made applicable to the state of Jammu and Kashmir and that it should be included in the state constitution.

The special autonomous status envisaged by Article 370 has been eroded by repeated presidential orders and acts and, as a result, has been on the verge of revocation for some time. In this regard, the three most notable orders and acts are::

1) President’s Order 1954 -

The Constitution (Application to Jammu and Kashmir) Order, 1954 was applicabl to J&K provisions of Part-III of the Indian Constitution that relates to fundamental rights. It introduced Article 35A — which protected laws passed by the state legislature of J&K in respect of permanent residents from any challenge on the ground that they violated any of the fundamental rights. This presidential order also implies application of numerous articles of Indian constitution in the State of J&K with necessary modifications. For instance, Art. 35 A (iii) omits application of clause (3) of Article 16 [‘equality of opportunity in matters of public employment] and clause (3) of Article 32 [remedies for enforcement of rights through an order of Central government to any court}. Another significant aspect of the Presidential Order 1954 is its reference to Article 368 (concerning parliamentary vetting of constitutional amendments), which states that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by Presidential order under clause (1) of Article 370. These provisions aim to bring the state of Jammu and Kashmir up to par with the rest of India in terms of legal protections while also establishing a unique set of exceptions based on the state's social, economic, and political circumstances.

2) Presidential Order of December 21, 1964

The Presidential Order of December 21, 1964 made art. 360 [Financial emergency] and art. 356 [State emergency: Power of president to assume power of governance in a state in the event of failure of constitutional machinery in the state] applicable to the state of Jammu and Kashmir. The exercise of powers in times of emergency or exigency is left to the discretion of Sadar-i-Riyasat, as 'Head of State' elected by

the 'J&K Legislature,' according to the constitutional provisions of the state of J&K. The J&K Legislature was not subject to the supervision of the central or union government of India, and in the event of an emergency imposed by financial or external factors, the state constitutional machinery emergency was to be used. However, with this presidential order of 1964, the J&K's distinct constitutional provisions on emergency were made subservient to Indian constitutional provisions by enforcing emergency provisions contained therein.

This presidential order is being contested and resented because it implicitly seeks to confer more centralising power on the union government without the approval of the J&K state legislature. In times of constitutional crisis, the status of the J&K state legislature was subject to central control and supervision. The autonomy and special status granted by Article 370, as restored by the instrument of accession, are once again curtailed. This also undermines the center-state relationship in federalism because it seeks to be a piece of colorable legislative attempts by which the order allows union to do or undo certain legislative acts on the state of J&K that it could not have done directly, rather using the guise of another presidential order to exert its power over the state, where as this could not have been achieved by Union expressly in the face of Article 370 and J&K's special status with the special power of the Union.

3) Presidential Order 1986

On July 30, 1986, the President issued an order under Article 370, extending to Kashmir Article 249 of the Constitution in order to empower Parliament to legislate even on a matter on the State List if a Rajya Sabha resolution was passed.

This presidential order contradicts the earlier historical position of the Nehru-Abdullah Agreement in July 1952, which confirmed that "the residuary powers of legislation" (on matters not mentioned in the State List or the Concurrent List), which Article 248 and Entry 97 (Union List) confer on the Union, will not apply to Kashmir.

Article 249, which gives Parliament the authority to legislate even on matters on the State List if a Rajya Sabha resolution authorises it by a two-thirds vote. However, in its application to Kashmir, this presidential order amended Article 249 so that it effectively applied Article 248 - "any matter specified in the resolution, being a matter which is not enumerated in the Union List or in the Concurrent List." As a result of this presidential order in 1986, the Union or Central Government of India now has the authority to legislate not only on matters in the State List, but also on matters not mentioned in the Union List or the Concurrent List, including the residuary power. In comparison to other states, an amendment to the Constitution would require a two-thirds vote in both Houses of Parliament as well as state ratification (Article 368). Executive orders have sufficed in Kashmir.

Thus, this order significantly altered the relationship between the central or union government of India and the legislative powers of the state of J&K, effectively nullifying the special legislative powers of the J&K Constituent Assembly. This presidential order of 1986 violates the fundamental rent of the instrument of accession as well as the principle of special status and autonomy enshrined in Article 370 of the Indian constitution. This is the most distinctive and centralising exercise of the federal structural scheme between the Union or Central government and the state of Jammu and Kashmir.

4) The Jammu and Kashmir Reservation (Amendment) Bill

The Jammu and Kashmir Reservation (Amendment) Ordinance, 2019 and The Jammu and Kashmir Reservation (Amendment) Bill, introduced by Home Minister, were passed by both Lok Sabha and Rajya Sabha on June 24, 2019, seeking to amend the state's Reservation Act.

The Bill amends the Jammu and Kashmir Reservation Act, 2004, to include people living

in areas adjacent to the international border for reservation in certain state government posts to people from socially and educationally backward classes, such as Schedule Castes and Schedule Tribes, who live in areas adjacent to the Actual Line of Control. Residents of J&K would receive a 3% reservation in jobs and educational institutions, similar to those living along the Line of Control (LoC) who face hardships as a result of shelling from across the border.

This amendment bill and ordinance are based on the reasoning that there have been continuous cross-border tensions affecting people living along the international border, resulting in socioeconomic and educational backwardness, and that there has been a perceived need to treat citizens residing in areas adjacent to the international border and residents residing in areas adjacent to the Actual Line of Control equally. This Presidential Ordinance and Bill are also being challenged as unconstitutional because they violate the fundamental accords of the instrument of accession, special status. Because there has been no consultation, approval, or concurrence with the state legislature of Jammu and Kashmir. This has been accomplished through the circuitous route of using the nominal constitutional authority of the office of Governor, which is in conflict with the federalism principle of distributing legislative power between the centre and the states, and the centre seeking to usurp the power of the state of J&K. Because the governor is the president's representative, he is neither an elected head nor an elected representative of the people. This Bill causes alienation among J&K residents; it is possible that this was not a consultative process. The absence of legislative consent implies the absence of popular or majority consent. This changes the principles of federalism and calls into question the state of Jammu and Kashmir's special status and autonomy.

5) Analyzing the revocation of Article 370

a. Contemporary Legal Developments in J &K

- Constitution (Application to Jammu and Kashmir) Order 2019 – issued by President of India to supersede the 1954 order related to Article 370.

- Resolution for repeal of Article 370 of the Constitution of India

- J & K State Reorganization Act 2019

First, The Constitution (Application to Jammu & Kashmir Order) 2019, superseded the Constitution (Application to Jammu & Kashmir Order) 1954, and included two main points:

- It added a clause to Article 367, which clarified that references to representative of the President, as well as the state government could be construed as references to the Governor of Jammu and KashmirThe order will supersede (Application to Jammu and Kashmir Order) 1954, effectively nullifying Article 35A, which empowered the state to define permanent residents, giving them special rights and privileges.

Second, The Statutory Resolution for repeal of Article 370 of the Constitution of India was passed using Article 370 (3). As per clause 3, Article 370 could have only been scrapped after the state's constituent assembly recommended it. Currently, governor Satya Pal Malik is in-charge of the state, after the ruling coalition of Peoples Democratic Party and the Bharatiya Janata Party fell in 2018. Hence, the clause added to Article 367 ensured that the Governor could be counted as the state, on whose recommendation the new presidential order was passed.

Third, according to the J & K State Reorganization Act 2019, the state has been bifurcated into two Union territories -- Jammu and Kashmir with a legislature, and Ladakh Union Territory without a legislature. Consequently, the Legislative Assembly of the UT of Jammu and Kashmir may make laws for the whole or any part of the union territory with respect to any of the matters enumerated in the state list of the Constitution except the subjects mentioned in entries one and two -- 'public order' and 'police' respectively -- or the

Concurrent List in the Seventh Schedule of the Constitution.

b. Impact of Contemporary Legal Developments in J&K

The legal impact of the said contemporary legal alterations in J & K shall be as follows:

- Law and order will remain with the Centre, which now also has the power to declare financial emergency under Article 360 in the state ,
- Land revenue, including the assessment and collection of revenue, maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues will also come under the purview of the elected government of UT of Jammu and Kashmir.
- Land is under the elected government of the Union Territory of Jammu and Kashmir, unlike in Delhi where the L-G exercises control through the Delhi Development Authority (DDA), a central government entity.
- The Governor of current J&K will be the Lt Governor of the J&K and Ladakh UTs. The UT of Jammu and Kashmir will have a Lieutenant Governor
- J&K to function like Puducherry: The provision of Article 239A applicable to Puducherry UT will be applicable to new J&K Union Territory.
- Tenure of Assembly: New Assembly will have a term of 5 years in place of current 6 years.
- Strength of Assembly: New Assembly will have 107 MLAs. Out of 107 MLAs, 24 seats will be left vacant of PoK region.
- Current Assembly: The outgoing Assembly had 111 members, in which 87 were elected members, 2 were nominated, while 24 seats in PoK were left vacant.
- Nominated members: Under the new law, LG can nominate two women representatives in the J&K Assembly if he/she feels there is inadequate female representation.
- Rajya Sabha seats: Rajya Sabha to continue to host 4 sitting members from the current J&K
- Lok Sabha Seats: Five Lok Sabha seats have been allocated to J&K Union Territory and 1 for Ladakh UT.
- LG can reserve his consent: All the bills passed by the Assembly will be sent to LG for his consent. LG can give his assent, withhold it or send the bill for consideration of the President.
- Parliament to have primacy: If there is any inconsistency, Law by Parliament will prevail over any law passed by the new Assembly.
- Council of minister: CM will have council of ministers consisting not more than 10% of the total members of the Assembly
- High Courts: J&K and Ladakh will continue to have common High Court .The judges of the high court of Jammu and Kashmir for the existing state of Jammu and Kashmir holding office immediately before the appointed day shall become on that day the judges of the common high court.
- All India Services like the Indian Administrative Service (IAS) and the Indian Police Service (IPS), and the Anti-Corruption Bureau (ACB) will be under the control of the L-G and not the elected government of the UT of J&K.
- Ladakh would be a separate Union Territory with no legislature. The Union government will have the law and order powers of policing in the new UTs. Police, law and order, and land in the UT of Ladakh will be under the direct control of its L-G, through whom the Centre will administer the high-altitude region. According to the Act, Ladakh will not have a legislative assembly.
- All Provisions of Indian Constitution to apply in Jammu and Kashmir- The president issued Constitution (Application to Jammu and Kashmir) Order, 2019 which comes into force “at once”, and shall “supersede the Constitution (Application to Jammu and Kashmir) Order,

1954". "All the provisions of the Constitution" shall apply in relation to the state of Jammu and Kashmir, The government has added in the Article 367 of the Constitution a clause 4 which makes four changes. "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.

- The order said references to the person for the time being recognised 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 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.

IV. Constitutional Analysis of the revocation of Art. 370 and the consequent bifurcation of the State

The critiques have pointed out threefold lacunae in the revocation of art. 370 and the consequent bifurcation of the State:

Firstly, the essential part of 370 was the proviso to clause 3. The clause grants the President the power to change or remove parts of Article 370.The proviso stated:

"Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification"

In other words, to change Article 370, the recommendation of the J&K Constituent Assembly had to be made. As a result, in 1957, the Constituent Assembly of J&K was no longer able to perform its function. This has ensued a Long-running debate:

Is Article 370 permanent because there is no J&K Constitution assembly to sign off on its changes?

Is it possible to change it through the Constitution's normal amending process?

Or would a J&K Constitution assembly have to be resurrected in order to do so?

A different path was taken by CO 272. When the President has the power to do so under Article 370(1) , C.O. 272 can take advantage of the same to make changes to Article 370(3). This is done through a third constitutional provision: Article 367.

Article 367 states about how to read the Constitution. Article 370 of the Constitution says that, in the "proviso" to clause (3), the term "Constitutional Assembly of the State" should be changed to "legislative Assembly of the State."

This means that Article 370(1) gives the President the power to modify or change multiple parts of the Constitution concerning J&K. The President must get the approval of the Government of J&K to do this. It says that Article 370 itself can be changed only if the Constituent Assembly agrees.

Under Article 370(1), the power to change a Constitutional provision (Article 367) is given to C.O. 272. Then, C.O. 272 uses that power to change Article 370(3), which does away with the approval from Constituent assembly for any more changes. A legislative resolution then comes about as to why Article 370 should be removed.

The Constitutional Assembly isn't bound to agree with it anymore, so this triggers the resolution. This is based upon one of the most cited cases in this respect: Sampat Prakash vs State Of Jammu & Kashmir . In this case, the petitioner challenged his detention under clause (c) of Article 35. But the SC observed that the point raised on behalf of the detenu was that these two modifications in 1959 and 1964, substituting "ten years" for "five years", and "fifteen years" for "ten years", were themselves void on the ground that the President could not validly pass orders making such modifications under Art. 370 (1) of the Constitution in the years 1959 and 1964.

Wherein clause (c) of Article 35 A proposed that "No law with respect to preventive detention, made by the Legislature of the State

of Jammu & Kashmir, whether before or after the commencement of the Constitution (Application to Jammu & Kashmir) Order, 1954, shall be void on the ground that it is inconsistent with any of the provisions of this Part, but:any such law shall, to the extent of such inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof."

This issue largely contested the bearing of this additional clause of Article 35 A (c) through Article 370. It conferred special status, autonomy to J & K of Indian constitution and on this issue, the SC observed that on the legal ambit of modifications, applicable in Article 370 (1). In law, the word "modify" may just mean "vary", i.e., amend, and when Art. 370 (1) says that the President may apply the provisions of the Constitution to the State of Jammu & Kashmir with such modifications as he may by order specify, it means that he may vary (i.e., amend) the provisions of the Constitution in its application to the State of Jammu & Kashmir. We are, therefore, 'of opinion that in the context of the Constitution we must give the widest effect to the meaning of the word "modification" used in Art. 370 (1) and in that sense it includes an amendment. There is no reason to limit the word "modifications" as used in Art. 370 (1) only to such modifications as do not make any "radical transformation".

The ratio of this case is really important and without exception. It does not exclude any part of art. 370 from its purview and, therefore, even art. 370(1)(c) is subject to it, thereby making the said provision subject to alteration by a presidential order, even if the said order creates a "radical transformation.

Secondly, C.O. 272 states that the Government of the State of Jammu and Kashmir has agreed to the plan, which it was bound to. The President has been in charge of Jammu and Kashmir for a long time, but that hasn't changed. So, in fact, the Governor is the one who agrees. This is based upon the case of Mohd Maqbool Damnoo vs State Of Jammu And Kashmir in which the Hon'ble Supreme court upheld replacement of the elected Sadr-e-Riyasat of J&K by a Governor appointed by the Centre. The Court held that the Governor is "head of government aided by a council of ministers". The Court further clarifies that "it is not as if the State government, by such a change replacing the Sadr-e-Riyasat by the Governor would change or transform the democratic nature of Government. The one made irresponsible to the State Legislature". There is no question of such a change being one in the character of the Government from a democratic to a non-democratic system". However, this case's ratio is limited to cases in which only the elected Sadr-e-Riyasat of J&K was replaced by the governor. It did not extend to circumstances in which a complete chaotic makeover of the entire governance system was envisaged.

The assent through the governor faces two big problems in this case. Firstly, the governor, like the president, is the government's representative at the center. Therefore, the central Government is essentially basing the entire amendment on its consent rather than that of the people expressed through an elected legislative body.

However, there is a more important thing to ponder in this respect. The president's rule can operate only temporarily. It must happen only when the state's constitutional machinery breaks down, making it impossible to elect a government. Until the elected Government is back in place, the President remains in charge.

As a result, decisions that last a long time, like changing the entire status of a state, are problematic if they are made without the elected legislative body, but by the Governor.

As the Hon'ble Supreme Court said in D.C. Wadhwa, even perfect adherence to legality, when taken concerning presidential orders might amount to a severe fraud on the constitution. Using the Governor to sign off on a Presidential Order that changes the constitutional character of a federal unit seems to be a dangerous move toward constitutional fraud.

Thirdly, further concern regarding these changes has been put forth in the case of Mhd. Akbar Lone Vs. Union of India & Ors. This is a Writ Petition challenging the validity of the Jammu and Kashmir Reorganization Act 2019. The petitioner argues that the Indian federal scheme – as exemplified by Article 1 and Article 3 of the Indian does not permit Parliament to retrogressively downgrade statehood into a less representative form such as a Union Territory.

Article 3 provides a range of powers involving the inter-se alteration of states, the inter-se alteration of Union Territories. However, it conspicuously does not authorise the degradation of the status of a state into a Union Territory, the petition stated.

Union Territories (with legislatures) have always been the creations of Constitutional amendments, not under the plenary power of Article 3. This is what happened in Pondicherry (Article 239A) and the National Capital Territory of Delhi (NCT) (Article 239AA). Indeed, at the time of framing of the Constitution, the concept of a Union Territory with a legislature did not even exist. Therefore, it is submitted that Article 3 could not have been intended to authorize the degradation of a state into a Union Territory.

Recently, the Central Government announced the intention to provide statehood to the Kashmir region. However, the said restoration shall only be done after the delimitation exercise is complete and also after the Panchayat elections have been completed. This move is contrarty to the tenets of a free and fair election. Firstly, the presidential rules currently employed in the state skews the power dynamic in the state towards BJP and gives them an unfair advantage over the opposition parties. Secondly, delimitation exercise at the verge of statehood is viewed as a weapon to redraw the constituency boundaries, to skew them in favor of Jammu region's Hindu majority and give an unfair electoral benefit to the BJP. In any case, the restoration will not be complete since it is not going to include Ladakh, which has been separated into another Union territory.

In toto, it is clear that although the central Government was correct in stating that art. 370 is liable to be amended even radically. But choosing governor's assent as the way to do it along with post transformational degradation of the state into an Union territory creates significant hurdles for passing the test of legality.

V. Analysis of the revocation of Art. 370 and the consequent bifurcation of the State as per tenets of International law

I. Right to Autonomy and Kashmir

Systems that are characterized as Autonomous can be defined as "areas of a State, generally having some ethnic or social uniqueness, which has been without a doubt separate powers of inner organization, to whatever degree, without being disconnected from the State of which they are part."

Autonomy is characterized as "a gadget to permit ethnic or then again different gatherings that guarantee an unmistakable personality to practice direct control over undertakings of unique worry to them while permitting the bigger population to practice those drives that cover common interests." Autonomy might be allowed under an assortment of legitimate plans, as there exists no consistency concerning the terms and legitimate constructions of autonomy. Making an autonomous system isn't gotten from international regulation, but rather from the state's constitution or legislation. Under broad global regulation, there is, for the most part, no restricting commitment for a state to make or to keep an autonomous regime. Therefore, if explicit arrangements of a constitution or regulation regarding autonomous system are penetrated, the cures are looked for through the applicable domestic system. One special case for this is when an autonomous system is given under a respective deal or a suggestion from an international organization. However, there are harmful results that follow the abolishment of autonomous systems. "An endeavor to cancel singularly an autonomous system will

undoubtedly have grave political resonations . . . be that as it may, legitimately talking, if the

the underpinning of the independence system is exclusively homegrown, the State is as it was expected to notice the injuries of its own general set of laws as respects to protected or authoritative corrections." Because of the absence of general worldwide lawful principles encompassing autonomous systems, Kashmir probably doesn't hold the right to an autonomous system under broad worldwide regulation.

Also, Customary international law does not give the right to Kashmir of an autonomous system. There are a few occasions of autonomous systems all over the planet. For instance, Denmark made an autonomous system for Greenland with the Home Rule Act of 1979, for which extra powers were allowed to Greenland's nearby Government 30 years after it was created. In any case, Customary international law doesn't require a commitment to make or keep up with autonomous systems once the system is laid out. For example, China didn't respect guarantees of independence to Tibet, and neither did Sudan to its southern province.

Nonetheless, Eritrea and Kosovo exhibit that once a state gives up on Customary international law system and disavows it , such abrogation can radicalize what is going on and increase the probability of secession. Accordingly, worldwide regulation permits state to foster autonomous systems, yet international law doesn't give that these autonomous systems are unavoidable. Hence, India did not violate any obligation with Kashmir's autonomous system by eliminating its special security status.

II. Right to Self- Determination, Duty to Protect and Kashmir

The query of the right to self-determination has two limbs- Firstly, whether the right to self-determination has been violated? And secondly, whether the right to self-determination has its roots in the fountain of international human rights law. The right to self-determination has been stated in Article 1 of the UN Charter, sanctioned in 1945, which gives that:

"The purpose of the United Nations is . . . to create well disposed relations among countries in view of regard for the standard of equivalent freedoms and self-determination of people . . . ."

The right to self-determination is likewise cherished in the ICCPR and ICESCR. There are two sorts of self-determination perceived under global regulation: interior self-determination and external self-determination. external self-assurance is a right that, "concerns the global status of a group," explicitly, "the acknowledgment that each individual has the option to establish itself a country state or coordinate into or unite with, a current state." It is generally acknowledged that the external right to self-determination just applies to conditions in which a group is abused or the "mother state's administration doesn't authentically address individuals' inclinations." On the other hand, internal self-determination "signifies just that the states shouldn't, through requests or tension, try to keep individuals from unreservedly choosing its own political, monetary, and social system."

In relation to self-determination of minorities, Max van der Stoel expressed that secession right to minority bunches on the planet would brief the production of around 2,000 autonomous states. Thus, more prominent accentuation ought to rather be put on inner self-determination to guarantee that public minorities express their full personality and are capable to carry on with total freedom. They should also "accomplish their points, particularly in the social and instructive fields."

It is suspicious that India's repeal of Articles 370 and 35A abused Kashmir's all in all correct to external self-determination. The question of external self-determination applies assuming it is resolved that the current populace is oppressed. This is a questionable position, mainly because the annulment coordinates Kashmir with the rest of India, so the Indian Constitution applies to Kashmir like other Indian states and union territories. However,

potential Kashmiris' on the right track to internal self-determination might be abused under global regulation. It is conceivable that the Muslim majority part in Kashmir will be weakened, and India's political power will be increased in the region. Moreover, presently as a union territory, Kashmir is administered by the Central Government, without its own different overseeing body. Thus, internal and not external self-determination might be involved whenever India eliminated Kashmir's special security status.

Suppose India penetrated Kashmir's all in all correct right of internal self- determination. In that case, this infringement should be offset with India's obligation to safeguard (Duty to Protect) under global regulation, otherwise called humanitarian intervention. The obligation to safeguard enriches states with extraordinary circumspection to go to lengths that could somehow disregard global lawful principles. As the UN Office on Genocide Prevention and the Obligation to Protect expressed, "the obligation to safeguard encapsulates a political obligation to end the most terrible types of brutality such as, persecution." Additionally, the UN has specified that, "the obligation to forestall and stop annihilation and mass barbarities lies first and principal with the State, yet the global community plays a part that can't be impeded by the summon of sovereignty."

Generally applicable to the current Kashmir inquiry is a progression of measures that states can take to forestall barbarity wrongdoings. The Secretary General's report of 2013, Responsibility to protect: State obligation and anticipation, stated that "constitutional insurances, when maintained, can add to making a society based on non-discrimination." Moreover, the report gave that "the dispersion and sharing of force can incite political pluralism, which advances the tranquil conjunction of various interests." The report likewise featured that outrage wrongdoings are bound to take place during an outfitted struggle and concluded that social orders with examples of segregation are risk factors.

"Persistent separation lays out divisions inside society that serve both as a material reason what's more, as an apparent avocation of gathering viciousness. Without group-based segregation, even well-established complaints are probably not going to change into examples of misuse that bring about barbarity wrongdoings."

The report additionally gave that the commission of atrocities is regularly associated with the presence of volunteer army or militia and their ability to perpetrate barbarity violations. Such army might be aligned with the State or a specific populace area.

All the previously mentioned risk elements are available in the Kashmir quandary. Along these lines, one could contend that the degree of contention and segregation present in the Kashmir district empowered India to disavow Kashmir's special security status despite the possible break of Kashmir's on the right track to internal self-determination. India may explicitly contend that revoking Articles 370 and 35A was a universally legitimate demonstration since the atrocities were sufficiently high to legitimize going to protected lengths to guarantee harmony and security in the region. Since states have been granted broad discretion while acting under the obligation to protect, such contentions would undoubtedly get by under international law.

III. Treating Instrument of Accession as a treaty?

As per the terms of the independence and division of India, the Instrument of Accession should direct and oversee the conveyance of abilities between the Union government and the concerned royal state.

The Instrument of Accession was subsequently similar to a "treaty" between two sovereign nations which had chosen to cooperate. It was very much like some other agreement between two nations. The saying under global regulation which oversees agreements or settlements between states is Pacta Sunt Servanda, i.e., guarantees between states should be respected. Assuming there is a break of agreement, the overall guideline is that gatherings must be

reestablished to the first position, i.e., the pre-understanding status. This would essentially return Jammu and Kashmir into an independent state that wanted to remain independent. In any discussion of annulment of Article 370, this part of global regulation should be kept in view. Since, supposing that because of the break of any state of the Instrument of Accession, the regal territory of Kashmir gets its pre-promotion status, it won't be to India's advantage. Additionally, it will also lead to a return to the demand for a plebiscite to determine the correct status of Jammu and Kashmir territory.

The subject of a plebiscite in Kashmir likewise continues to come up in any conversation on Kashmir. Many individuals fault Jawaharlal Nehru for consenting to a plebiscite. In actuality, it was the Government of India's expressed arrangement that any place there was a debate to an increase, it was to be gotten comfortable understanding with the desires of individuals as opposed to by a one-sided choice of the leader of the royal state. India accepted such a stand as in a couple of royal expresses the rulers were Muslims however, most of the subjects of those regal state were Hindus, while in others, similar to Kashmir, the rulers were Hindus yet a larger part of individuals living in such princely states were Muslims. India's arrangement was steady with democratic standards and individuals' right to self-determination.

As needs be, in India's acknowledgment of the Instrument of Accession of Kashmir, Governor-General Mountbatten, obviously expressed, "it is my Government's desire that when peace and lawfulness have been reestablished in Kashmir and her dirt is gotten free from the intruder, a reference to individuals settles the topic of the State's accession". In this manner, India viewed accession as simply brief and temporary. This was said in the Government of India's White Paper on Jammu and Kashmir in 1948. In a letter to Sheik Abdullah dated 17 May 1949, Nehru, with the simultaneousness of Vallabhbhai Patel and N. Gopalaswami Ayyangar (who drafted Article 370), composed

"[I]t has been settled arrangement of Government of India, which on many events has been expressed both by Sardar Patel and me, that the constitution of Jammu and Kashmir is a matter for assurance by individuals of the state addressed in a Constituent Assembly gathered for the reason."

This view is staunchly supported by Jawaharlal Nehru, who supported the demand for a plebiscite and adamantly stated that:

"I say with all respect to our Constitution that it just does not matter what your Constitution says; if the people of Kashmir do not want it, it will not go there. Because what is the alternative? The alternative is compulsion and coercion…"

One of the critiques of such a view is Dr. Babasaheb Ambedkar, who is supposed to have opposed the demand for the plebiscite and refused to have drafted the Art. 370. The said claim erupts from his quote:

"You wish India should protect your border, she should built roads in your areas, she should supply you food, grains and Kashmir should get equal status as India. But Government of India should have only limited powers and Indian people should have no right in Kashmir. To give consent in your proposal, would be treacherous thing against the interest of India and I, as a Law Minister of India, will never do."

However, Numerous historians have debunked the myth of Dr. Ambedkar ever uttering such words since there is no record in constitution assembly debates, collection of his speeches or any other document that proves that Hum actually uttered such words. Instead, the source of this myth is traced back to RSS mouthpiece Tarun Bharat, which had cited the verbal accounts of Balraj Madhok, an RSS veteran, about Ambedkar in 1991 i.e. forty years after forty years Dr. Ambedkar had died. This supposed account has no other basis or backing and perfectly fits RSS agenda of coloring Dr. Ambedkar in this light instead of art. 370 to forward their agenda of art. 370 revocation. This is merely a step in BJP and RSS agenda of creating a Hindu Rashtra. Such agenda was

recently reflected in their actions regarding their attempts to remove Muslim workers from Roorkee village. Therein, Navin Saini, affiliated with RSS stated in unambiguous terms that “They are jihadis, conspiring against us Hindus, it is sad to see that they eat here, but they talk of tearing the nation apart.”

Such evident islamophobia within the BJP and RSS groups has taken a firm hold over its members that they have begun to rewrite history regarding art. 370 to suit their agenda. While misquoting Dr. Ambedkar is a glorious example of such a tradition, another instance that needs to be quoted in this regard is that of silence of Dr. Shyama Prasad Mukharjee on the subject of art. 370. Dr. Shyama Prasad Mukharjee, an ideological father figure within RSS circles, was a member of the constitution assembly while art. 370 was being discussed. However, he did not object to the said provision. He even chose to remain silent when other assembly members, such as Jaspat Kapoor, a Hindu nationalist, expressed chagrin at the discrimination being propelled by the special treatment of Jammu and Kashmir within Indian federal structure.

Contrary to the creation of Hindu Rashtra Agenda of RSS and that of unreliable claims made by Tarun Bharat, Dr. Ambedkar has actually expressed support to the viewpoint of plebiscite and even to the viewpoint of division of Jammu and Kashmir if the need arises post the plebiscite decision.

Some critiques have stated that the Vienna convention on law of treaties takes into account subsequent agreements in consideration for treaty interpretation. Thus, it is valid to state that the plebiscite demands backed by UN resolutions and India's White Paper on Jammu and Kashmir were superseded by provisions for the bilateral resolution of disputes set out in the 1972 Simla Agreement, which brought the third war between India and Pakistan to an end.

However, The Shimla agreement almost finished in a halt on the Kashmir issue. Whenever the two chiefs prevailed regarding tracking down another dialect and another standpoint, which empowered them to arrive at an arrangement profoundly unique in character. In Jammu and Kashmir the 'line of control ' coming about because of the truce on 17 December 1971 will be regarded by the two sides without bias to the perceived positions of one or the other side. Neither one of the gatherings would look to modify this position singularly regardless of their shared contrasts. Also, lawful understandings and every one of them would abstain from the danger or, on the other hand utilization of power disregarding this line. The Agreement also expressed that the delegates of the different sides would meet to examine the modalities for the foundation of a strong harmony and normalisation of relations, including Jammu and Kashmir's last settlement. Separated from these particular conditions on Kashmir, the general arrangements of the Simla Understanding, which would apply to the Kashmir question, also incorporate the Article on reciprocality, which ties the different sides "to settle their disparities by tranquil means through respective discussions". The different sides settled on a truce on Kashmir in any case, set out to work for a super durable arrangement of the issue. By eliminating the issue from global reconnaissance, both the nations consented to a freezing of the whole issue. Due to such kind of freezing, the Shimla agreement cannot be deemed an appropriate subsequent agreement capable of overriding previously existing interpretations.

VI. Conclusion

The tumultuous and violent history of Kashmir has always created a unique problem for the Indian state. Not only has the special autonomy granted to the state has divided it from the rest of India but the differential treatment has been source of resentment for Indian citizens towards residents of state of Jammu and Kashmir. Accordingly, the central Government has made gradual progress in eroding the autonomy of the state and bringing it at par with the rest of the country. However, The Presidential Order C.O. 272 which was supposed to work as a final solution to the problem, in itself has serious legitimacy issues

in accordance with the international law. Although the said order and consequent revocation of art. 370 is legitimate and within powers of Indian Government as per autonomy principle and Duty to protect, it fails the test of international law when it comes to treating the instrument of accession as a treaty. This has opened doors for reversal of its entry into the Indian state and reverting it back to an independent sovereign nation. Therefore, the change concluded in the structure of territory of Jammu and Kashmir has created serious challenges for Indian federalism. To revitalize Indian federalism, it is essential to understand the significant role art. 370 has played in strengthening Indian Federalism. The autonomy granted to it has been contrary to the idea of uniformity but has had a significant impact for the purpose of long-term integration as could be evinced from the presidential orders. It could also be stated that as after the removal of the Special Status under 370 the entire provision is not removed as it could derive the link from it to Sch-1 entry 15. Furthermore, it is important why the region was divided into two 'union territories' as the centre wanted to retain the dominance it had earlier of the presidential orders but as it could not it deemed fit to make it union territories to retain the power the centre had before, with the calls of restoring the status of State things would be different and centre would lose its powers it had before under 370 'presidential powers' and currently as union territory. The federal relation are likely to remain skewed and it is less likely that the centre will forego its powers in the state. In essence, the tonic of Presidential Order C.O. 272 has acted as a disease plaguing the sacred structure of Indian federalism, which needs to be treated immediately.

Reference

[1] Sakal Bhushan (2018, April 25) A dilution that falls short of the law, The Hindu, https://www.thehindu.com/opinion/op-ed/a-dilution-that-falls-short-of-the-law/article29425212.ece.

[2] This revocation was further extended through Jammu and Kashmir Reorganization act, 2019 that divides the Indian-administered state into two Indian-administered union territories, Jammu and Kashmir, and Ladakh. See The Jammu and Kashmir Reorganization Act, 2019, sec.3, Act No. 34 of 2019 (India); Jammu & Kashmir ceases to be a state; two new UTs come into being (2019, October 31) The Times of India https://timesofindia.indiatimes.com/india/jk-ceases-to-be-a-state-two-new-uts-come-into-being/articleshow/71827979.cms.

[3] The Jammu and Kashmir Reorganization Act, 2019, sec.3, Act No. 34 of 2019 (India).

[4] AIR 1959 SC 749 (India).

[5] AIR 1960 SCI (India).

[6] S.P. Jagota (1960), development of constitutional relations between jammu and kashmir and india, Journal of the indian law institute, vol. 2, no. 4, 519-538.

[7] MEA (2002) J&K is and shall be an integral part of India, The Statesman https://www.mea.gov.in/articles-in-indian-media.htm?dtl/15748/JK+is+and+shall+be+an+integral+part+of+India.

[8] Louise Tillin (2002). Indian Federalism (2nd edition) Oxford University Press, 346.

[9] K.C. Wheare (1963), Federal Government (4th ed.) Oxford University Press 11.

[10] A.V. Dicey (1908) Introduction to the Study of the Law of the Constitution (7th ed.) Macmillan 245.

[11] Sethi, R. R. & Mahajan, V. D. (1956) Constitutional History of India (2nd ed.) S. Chand & Co., Delhi.

[12] Id.

[13] S.R. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3) (India).

[14] Brig Anil Gupta (2017, Aug 02) Genesis of Articles 370, 35A & Delhi Agreement, Daily Excelsior https://www.dailyexcelsior.com/genesis-articles-370-35a-delhi-agreement/.

[15] Dr. Javid Iqbal (2018, August 18) President's Order 1954, Greater Kashmir,

https://www.greaterkashmir.com/news/opinion/presidents-order-1954/.
[16]
[17] S. Javed (2014, March 31) Jammu & Kashmir - Article 370, Peace Kashmir, http://www.peacekashmir.org/jammu-kashmir/political-article370.htm
[18] Editorial (2019, March 16) How J&K Presidential Orders have worked, why move faces challenge, Indian Express https://indianexpress.com/article/explained/how-jk-presidential-orders-have-worked-why-move-faces-challenge-5634728/.
[19]
[20] IANS (2019, June 06) Article 35A inserted by Presidential Order, can be struck down, IANS https://www.business-standard.com/article/news-ians/article-35a-inserted-by-presidential-order-can-be-struck-down-ians-exclusive-119060501128_1.html.
[21] 1969 AIR 1153.
[22] Dr. Bashir Ahmad Veeri (August 28, 2018), Some questions concerning Article 35-A, Greater Kashmir, https://www.greaterkashmir.com/news/opinion/some-questions-concerning-article-35-a/
[23] Similar issue is raised in the case of Shakir Sabir Vs Union of India & Ors , in which challenge is made to the validity of the C.O 272. This case currently sub judice before the Hon'ble Supreme Court. For details, See Livelaw (09 Aug 2019), Kashmiri Lawyer Moves SC Challenging Presidential Order Under Article 370 On J&K Special Status LIVELAW NEWS NETWORK, https://www.livelaw.in/top-stories/kashmiri-lawyer-sc-challenging-presidential-order-article-370-jk-special-status-147076
[24] 1972 AIR 963.
[25] D.C. Wadhawa v. State of Bihar, 1987 AIR 579.
[26] National Conference Leaders Approach SC Against Presidential Order On Article 370, J&K Bifurcation [Read Petition], LIVELAW NEWS NETWORK10 Aug 2019, Writ Petition (civil) No . 2019, In Supreme Court of India, Writ Petition Original Civil Jurisdiction filed under Article 32 of Indian constitution
[27] https://www.livelaw.in/top-stories/national-conference-leaders-sc-presidential-order-article-370-bifurcation-jk-147092
[28] BHARAT BHUSHAN (18 June 2021), Are moves afoot to restore statehood in Jammu and Kashmir?, Caravan Magazine
[29] https://caravanmagazine.in/commentary/jammu-kashmir-statehood-elections-bjp-centre-gupkar-alliance
[30] YASH GHAI (2000), INTERNATIONAL CONFLICT RESOLUTION AFTER THE COLD WAR (Paul C. Stern & Daniel Druckman eds) Oxford University Press 484.
[31] Yoram Dinstein (2011) Autonomy Regimes an International Law, VILL. L. REV., vol. 56, 437.
[32] Gita Howard (2021) India's Removal of Kashmir's Special Protection Status: an Internationally Wrongful Act? U. Miami Int'l & Comp. L. Rev., vol. 28, 493.
[33] Yoram Dinstein (2011) Autonomy Regimes an International Law, VILL. L. REV., vol. 56, 438.
[34] Gita Howard (2021) India's Removal of Kashmir's Special Protection Status: an Internationally Wrongful Act? U. Miami Int'l & Comp. L. Rev., vol. 28, 493.
[35] Yoram Dinstein (2011) Autonomy Regimes an International Law, VILL. L. REV., vol. 56, 440.
[36] Gita Howard (2021) India's Removal of Kashmir's Special Protection Status: an Internationally Wrongful Act? U. Miami Int'l & Comp. L. Rev., vol. 28, 493. Id.
[37] U.N. Charter art. 1, ¶ 2.
[38] International Covenant on Civil and Political Rights ("ICCPR") art. 1, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171.
[39] International Covenant on Economic, Social, and Cultural Rights ("ICESCR") art. 1, Dec. 16, 1966, S. TREATY DOC. NO. 95-19, 993 U.N.T.S. 3 [hereinafter ICESCR].
[40] Salvatore Senese (1989) External and Internal Self-Determination, SOC. JUST. Vol. 16, 19..

[41] Milena Sterio (2018) Self-Determination and Secession Under International Law: The Cases of Kurdistan and Catalonia, AM. SOC. INT'L L. vol. 22 . Id.
[42] Kalana Senartne (2015), Internal Self-Determination in International Law: A Critical Third-World Perspective, ASIAN J. OF INT'L L. vol. 3, 305.
[43] Sikander Shah (2007), An In-Depth Analysis of the Evolution of Self-Determination under International Law and the Ensuing Impact on the Kashmiri Freedom Struggle, Past and Present, N. Ky. L. Rev. 29 vol. 34.
[44] U.N. Secretary-General, Implementing the Responsibility to Protect, ¶ 10(b), U.N. Doc. A/63/677 (Jan. 12, 2009). Id.
[45] U.N. Secretary-General, Responsibility to Protect: State Responsibility and Prevention, ¶ 35, U.N. Doc. A/67/929 (July 9, 2013).
[46] Id. at ¶ 39.
[47] Id. at ¶ 20.
[48] Id. at ¶ 23.
[49] Vienna Convention on the Law of Treaties (1969), art.26, 1155 U.N.T.S. 331.
[50] Faizan Mustafa (2019, July 03) Article 370, Federalism and the Basic Structure of the Constitution, The India Forum, https://www.theindiaforum.in/article/article-370-federalism-and-basic-structure-constitution.
[51] Jon Lunn (2019, August 08) Kashmir: The effects of revoking Article 370, UK Commons Library https://commonslibrary.parliament.uk/kashmir-the-effects-of-revoking-article-370/ Id.
[52] Pratik Tembhurne (May 10, 2019) History, Kashmir Article 370 And Dr. Ambedkar: A Fact-check, Youth Ki Aawaz https://www.youthkiawaaz.com/2019/05/article-370-and-dr-ambedkar-a-factcheck/Id.
[53] Id.
[54] S. pal (Apr. 09, 2022) Influenced by 'Kashmir Files', Hindutva Workers Threaten to Remove Muslims From Roorkee Village, The Wire https://thewire.in/communalism/roorkee-ground-report-kashmir-files-communal-hindutva
[55] Shamsul Islam (10 Aug 2019) While RSS maligns both Nehru & Sardar Patel on Article 370, why is the Congress silent?, Sabrangindia, https://sabrangindia.in/article/while-rss-maligns-both-nehru-sardar-patel-article-370-why-congress-silent
[56] S. Pankaj (09 June 2021) How Prime Minister Jawaharlal Nehru Ousted Dr. B.R. Ambedkar from the Cabinet, The Dharma Dispatch https://www.dharmadispatch.in/history/how-prime-minister-jawaharlal-nehru-ousted-dr-b-r-ambedkar-from-the-cabinet-the-full-story The Dharma Dispatch
[57] Zubeida Mustafa (1972), THE KASHMIR DISPUTE AND THE SIMLA AGREEMENT, Pakistan Horizon, Vol. 25, No. 3, THE SIMLA ACCORD, at 45. Id.