

The Bridge Abridged: Abrogation of Article 370

MAQSOOD HUSSAIN

Jamia Milia Islamia

Article 370 of the Indian Constitution constituted the basis of the relationship between India and the erstwhile state of Jammu and Kashmir (J&K). It was a legal and emotional bridge connecting J&K with India. Its recent abrogation represented a betrayal of the bridge, which encompassed the trust of J&K people in Indian polity and commitments made by the Indian state to J&K around the time of its accession to India. The paper intends to go into the background situation making the provision of Article 370 ineluctable. It endeavors to bring to light the pacifying effect of uneroded and unabrogated Article 370 on Kashmir politics and conversely, its dilution contributing to a conflict exacerbation. With the benefit of historical hindsight, the article serves to remind the policymakers of the counterproductive results of the abrogation of Article 370 potentially harming the secular character of Indian polity apart from unintended consequences emanating from the internal political dynamics of J&K. The methods adopted in the study are broadly qualitative which include a historical method, content analysis, textual analysis, and discourse analysis.

Keywords: Article 370, Kashmiriyat, Secularism, Delhi Agreement, Domicile Law

The erstwhile state of Jammu and Kashmir (J&K) came into existence in a complex way involving 'conquest, inheritance, purchase and British blessings' (Para, 2019, p.11). Being a princely state under British suzerainty, it had a choice to join either India or Pakistan or be independent, post-partition of the Indian subcontinent, under the Indian Independence Act of 1947 (Lakhanpal 2014). The internal political dynamics of the state were such that the Hindu ruler, antagonistic to the demographically majority Muslim leadership of the state, could not decide on any of the options till August 15, 1947. The geo-strategic significance of the state lends it a much-coveted place in the national political calculations of both India and Pakistan disguised as an ideological and legalistic tussle. For Pakistan, Kashmir is an unfinished agenda of partition, a juggler's vein dictated, as they are, by the logic of partition (Suhrawardy, 1991; Razvi, 1971). India believes that Kashmir's accession to it was final and irrevocable hence, Kashmir is an integral part of India. Kashmir, so the argument goes in India, vindicates the liberal and secular nature of Indian polity (Varshney, 1991; Kaul, 1985). Quoting Nehru, Varshney points out:

We have always regarded the Kashmir problem as symbolic for us, as it has far-reaching consequences in India. Kashmir is symbolic as it illustrates that we are a secular state...Kashmir has consequences both in India and Pakistan because if we disposed of Kashmir on the basis of the two-nation theory, obviously millions of people in India and millions in East Pakistan will be powerfully affected....

Reciprocating Nehru's views about the liberal, secular, and democratic ideals defining the relationship between Jammu and Kashmir and India, Sheikh in his inaugural address to the Kashmir's Constituent Assembly observed that 'kinship of ideals, consistent support of the Congress party to Kashmir's freedom struggle against Dogra authoritarian rule and non-interference of Government of India in Kashmir's autonomy as explain our close relationship with India rather than Pakistan (Sharma, 1971).

At the center of the conflict has been the Kashmir valley, predominantly Muslim where the writ of the Indian state has been under challenge. For the people, who resisted the tribal attack from Pakistan and demonstrated their consent in acceding to India, to cast aspersions on the same accession and mounting armed insurgency against the same country encourages us to demystify this turnaround. To do so, will invariably lead us to investigate why Jammu and Kashmir threw itself into India's fold and, at minimum, ignored Pakistan's overtures despite the latter being the Muslim majority state and having geographical proximity with J&K? Inevitably, the answer to this question will push us to concentrate on the Article 370 of the Indian constitution which sums up the broad historical, cultural, and political dynamics of the then J&K.

In the backdrop of the tribal invasion of J&K from Pakistan, the ruler of J&K overwhelmed by the tribal attack sought Indian military help to repulse the Pakistan-backed raiders. India agreed to help the state only after the J&K signed the 'Instrument of Accession' (IOA) with India (Behera, 2006). It is to be noted here that with the lapse of British paramountcy in August 1947, Princely states became technically independent and were free to join either dominion: India or Pakistan (Bose 2003; Singh, 2002). J&K being one of the princely states, IOA, therefore signed between her and India was technically like a treaty between two sovereign entities (The Wire, 2019). Scholars argue that IOA was conditional, limited, and temporary (Bose, 2003; Hussain, 2021), though others believe that it was unconditional and absolute (Lavakare, 1999). IOA was limited in the sense that Maharaja acceded only in three domains: external Affairs, Defense, and Communication; temporary and conditional for the fact that Mountbatten, then Governor-General of India, insisted on ascertaining the views of people of J&K through plebiscite or referendum regarding accession (Parra, 2019). With IOA, the Indian state could legislate only on the above-mentioned three areas, and for the rest, the state of Jammu and Kashmir was autonomous. On its own only two articles of the Indian Constitution—Article 1 and Article 370—were applicable to India. It was only through article 370 that the rest of the provisions of the Constitution of India could be applied, albeit with the consent of the state government. It is in this sense that article 370 is regarded as a bridge or connecting link between India and Kashmir (p. 1002).

The secular, liberal, and federal nature of India as against the theocratic, feudal, and centralised state of Pakistan act as a gravitational pull for J&K's integration into India. As Sheikh said "it is the kinship of ideals which determines the strength of ties between two states" ...and "religious affinities alone do not and should not normally determine the political alliances of states". Dismissing the fears of a section of people, Sheikh stated: "The real character of a state is revealed in its constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and, equality for all without distinction" (Sharma, 1971). While, on

the other hand, Pakistan lacks the constitution to enable us, argues Sheikh, to make “a dispassionate analysis of her policies” and the nature of the state it was to emerge.

True to her characteristics and mirroring J&K’s perception of India, the Indian state moved to provide a special status to Jammu and Kashmir, unlike other states of India. While replying to the objections raised regarding J&K’s special position in the Indian Constituent Assembly, N Gopalaswamy Ayyangar, the principal drafter of article 370, said that given the special circumstances of J&K’s accession, we have provided a special status to Jammu and Kashmir, a view reciprocated after several decades by ex-Indian Home Minister P. Chidambaram (*Indian Express*, 7 August 2010). Ayyanger as cited in (Lavakare, 2005) said:

In the case of other Indian States, the instrument of Accession will be a thing of the past in the new Constitution..... It would not so in the case of Kashmir since that particular state is not yet ripe for this kind of integration due to special conditions prevailing in Kashmir. In the first place, there has been war going on within the limits of Jammu and Kashmir State....., and in the second place, the Government of India have committed themselves to the people of Kashmir in certain respects....

Enshrined in Article 370 of the Indian constitution, the special position sought to give space and articulation to the unique identity of the state crafted over decades and having reached its apogee with the successful culmination of the Kashmiri freedom struggle against the autocratic feudal rule of Maharaja of Jammu and Kashmir. Article 370 defined the relations between J&K and India and also contained the provisions which would enable the rest of the provisions of the Indian constitution to be applied to J&K. That is to say, Article 370 was like a tunnel or bridge which governed the relations between India and J&K. Speaking in this regard in Parliament, Gulzari Lal Nanda, the Indian Home Minister comparing Article 370 with the tunnel said that it is through this tunnel that Constitution of India made applicable to the state of Jammu and Kashmir (Noorani, 2011).

It represented not only a means to conduct the relations between the Central and the state governments but it also embodied a trust the people of J&K reposed in the Indian state. With Article 370 having been abrogated, more than autonomy provisions, it was the harm inflicted on the trust the people of J&K had reposed in India that could have significant implications for the security and future relations between India and its part; J&K.

The paper organised into four sections will endeavor to throw light, in the first section, on the historical background of Article 370. The second section enlightens the symbiotic relationship between the two entities as engendered by Article 370 positively contributing to the relations between the two. The third section will dwell upon the cracks emerging and subsequent collapse of the bridge with likely consequences of far-reaching salience. Finally, the paper will briefly discuss the impact on the legitimising secular argument for the inclusion of Kashmir into the Indian Union.

Overview of Article 370

The contextual basis of Article 370 can be traced back to the controversial accession (Lamb, 1994) of Jammu and Kashmir to the Indian Union. With the lapse of the British paramountcy, Jammu and Kashmir, a princely state, became legally and

technically independent. Unlike other princely states, Jammu and Kashmir could not decide on its political future by or before August 15, 1947, as stipulated in the 'Indian Independence Act 1947, which, in essence, goaded princely states to join either India or Pakistan giving due consideration to geographical contiguity and demography (Lakhanpal, 2014). Maharaja's procrastination unnerved Pakistan which, in the guise of tribal attack, tried to forcibly take J&K into its fold encouraged, as they were in this direction, by the state's geographic alignment and its Muslim majority character. Maharaja, the ruler authorised to decide the state's political future, appealed for Indian help to repel the tribal attack which only came with the condition that the state must first accede to India, to which the shaky Maharaja acquiesced to. However, the accession was conditional and limited to only three subjects: defense, foreign affairs, and communication. Hence, to begin with, the act of accession was brought about by the negotiations between two independent entities – India and Jammu and Kashmir. In fact, "the state of Jammu and Kashmir is the only state in the Union of India which negotiated the terms of its membership with the Union (Noorani, 2011). The limited nature of accession gave the state a considerable leeway to conduct its internal affairs without direct involvement from the Union. The autonomous political space made possible by the limited nature of accession was, later on, sought to be given constitutional and legal cover which crystallised in the form of Article 370 of the Indian Constitution. Article 370 was the constitutional and legal codification of the future nature of the relationship between Jammu and Kashmir and the Union government. India was not forthcoming in making available the constitutional guarantees to Jammu and Kashmir as reflected in long-drawn negotiations between the Union government and the popular leadership of Jammu and Kashmir under Sheikh Mohammad Abdullah. Besides, there were serious reservations and apprehensions raised in the Constituent Assembly of India against Article 370 (Rai, 2018).

Despite serious objections raised in the Constituent Assembly of India against Article 370, the Union government under the leadership of Jawaharlal Nehru pushed through the legislation on Article 370. Now the question that stares us in the face is why it became necessary to make such a special provision for Jammu and Kashmir when all other princely states that acceded to India got no such treatment. The answer essentially lies in the indigenous freedom struggle launched by the people of the state, unlike other princely states, under the aegis of Sheikh to overthrow the autocratic feudal regime of Dogra Maharaja Hari Singh. Inspired by certain ideals in the specific context of Kashmir, the state's leadership wanted to see these ideals in the formation of the Kashmiri polity. The socio-economic and political ideals and values the movement represented crystallised in the document 'Naya Kashmir Manifesto'. The manifesto represented a promise to the people of Jammu and Kashmir to shape their lives according to the guiding principles of the manifesto, which included equal rights and status for all without discrimination and 'upliftment of subalterns by freeing them from all kinds of exploitation' (Wani, 2019, p. 67).

For Sheikh, the ideal situation to realise this would have been an independent Kashmir without any external pressures or manipulation. This explains his preference for an Independent Kashmir. "Accession is of little importance. Freedom is more important. We do not want to join either dominion (India or Pakistan) as slaves" asserted Sheikh (Kaul, 1985, p. 39). Having found an independence option aborted with the tribal invasion and subsequent accession of the state to India, the sub-

optimal choice was to extract the most possible autonomous space from the Union government to achieve the stated objectives. Thus followed the hectic negotiations between the representatives of the Union and the state governments that culminated in the conclusion of what is popularly termed as the 'Delhi Agreement' 1952. The said agreement demonstrated New Delhi's appreciation of Kashmir's unique identity worthy of protection to gain the people's confidence and goodwill for India. Kaul (1985) describes it as India's "solemn pledge to give the state of Jammu and Kashmir a special status in its constitution" (p. 62). Bazaz (2005) commenting on the grant of autonomous status said: "it was recognised that Kashmir had an individuality of her own which, in some respects, differed from the Indian nation" (p. 39). Describing the agreement as a "union of hearts which no power on earth can loosen" (Kaul, 1985, p. 63), Sheikh said:

A satisfactory position has emerged and we are now able to assess the basic issues of our constitutional relationship with India in closer terms. There has been a good deal of accommodation of our respective points of view. Both have been impelled by the desire to strengthen further the constitutional relationship and to remove all obscurities and vagueness. We are convinced, as ever before, that we have the full support of the government and the people of India in the fulfillment of our democratic ideals and the realisation of our objectives (Mullick, 1971, p. 25).

Committed to accession though, Sheikh's emphasis on Kashmir "being an entity separate from both India and Pakistan was unmistakable" (Mattu, 2002, p. 59) which was reinforced by The Times (London) observation in the context of the impending Delhi Agreement:

The Sheikh has made it clear that he is as much opposed to domination by India as to subjugation by Pakistan. He claims sovereign authority for Kashmir Constituent Assembly, without limitation by the Constitution of Indian Union.... this stand has a strong appeal for the Kashmiris on both sides of the ceasefire line, and if this movement of purely Kashmiri nationalism were to gain ground it might well oblige India, Pakistan, and the United Nations to modify their views about what ought to be done next" (Mattu, 2002, p.60).

Delhi Agreement defined the respective spheres of legislative and executive competence of the Union and the state governments. Upon the successful conclusion of the said agreement, Article 370 was inserted in the Indian Constitution to provide constitutional and legal safeguards to Kashmir's political space of autonomy.

Symbiotic Relationship

Under the constitutional scheme devised for Jammu and Kashmir, the state got its own constitution, flag, President, and Prime Minister, Sheikh himself being the first Prime Minister of the post-accession Jammu and Kashmir state. The original scheme of autonomy as mutually agreed to in the Delhi Agreement actually worked for the interests of both India and Jammu and Kashmir. For India, the constitutional relationship with Jammu and Kashmir was settled thus removing whatever irritants, in this regard, existed between the two. Invoking Bazaz (2005, p. 40):

It is fair to recognise that the Indian leaders made a good start; they were quite generous in handling the Kashmir State affairs. The leaders of the National Conference were afforded the fullest opportunity to shape the destiny of their

homeland according to their own lights. And this liberal policy was soon given constitutional shape.

The constitutional settlement with Kashmir was to be of great significance to New Delhi at the international level. Pertinent to mention here that the Kashmir issue was being discussed at the UN around the time of India's and Kashmiri's constitution-making at the instance of New Delhi having taken the matter to the UN Security Council (UNSC). Winning the hearts and minds of the Kashmiri people would serve New Delhi's interests and relieve India of international pressure. With the constitutional settlement India could succeed, in a great measure, to impress upon the world community that Kashmir's accession enjoyed popular legitimacy to the detriment of Pakistan's case at the international forums. The subsequent convening of the J&K Constituent Assembly was one such case in point when Indian leadership expected to demonstrate the world community of the legitimacy of the accession (Reynolds, 2008). Quoting Quai d'Orsay, Reynolds says that upon the dissolution of the Kashmir Constituent Assembly, Nehru presented the world with *fait accompli*; that J&K was now part of the Indian Union (Reynolds, 2008). Following the conclusion of the mutually agreed constitutional arrangement, Kashmir witnessed the normal operation of democratic processes which brought to power popularly elected pro-India governments. These popular pro-India governments normalised and legitimised the Indian sovereignty over Kashmir which helped reinforce the Indian claim over Kashmir at a time when UNSC had adopted at least two resolutions on Kashmir suggesting a plebiscite as a means to settle the dispute (Sharma, 1971). Indian acceptance of plebiscite as a tool of conflict resolution stemmed from her confidence that the popular leadership of Kashmir is quite content with the political treatment they received from India. This Indian view is corroborated by statements given by the man of the moment, Sheikh Abdullah. He was a charismatic leader who had delivered the poor Kashmiri masses from the oppressive rule of the Maharaja. His statements abound in praise for India and a curse for Pakistan. From the very outset, he was a strong ideological critique of the 'two-nation' theory of Mohammad Ali Jinnah, the founder of Pakistan. Condemning the Pak-backed tribal incursion, outraged Abdullah said: "The invaders came in the name of Pakistan to make us believe that they were true servants of Islam.... scorched our land, ruined our homes, despoiled the honour of our women and devastated hundreds of our villages... (Sharma 1971). In another place, he stated Pakistan offers us nothing except a homeland for Muslims. Delving deep into the merits of the homeland argument Abdullah asserted:

The most powerful argument which can be advanced in her (Pakistan's) favour is that Pakistan is a Muslim state and a big majority of our people being Muslims the state must accede to Pakistan. This claim of being a Muslim state is of course only a camouflage. It is screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal state in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action (Sharma, 1971, p. 85)

The ideals which inspired Kashmiri's struggle against Maharaj's authoritarianism were polar opposites to what Pakistan came to represent. Naturally, these ideals stood little chance of articulation and representation in the reactionary political setup of Pakistan. Since Kashmiris spilled blood to uphold these ideals, which later

were to become the underlying governing principles of Kashmir polity, the prospect of religion informing the decision of political allegiance was sure to take a backseat in the otherwise communally charged atmosphere, which was defining the political boundaries of the two dominions – India and Pakistan. India, on the other hand, though a Hindu-majority country yet, because of its political ideals Kashmiris identified with her. Characteristically, in the battle for political allegiance of Kashmir, the kinship of ideals triumphs over the bond of religion making India a more desirable option than Pakistan. Echoing this, Abdullah in his Constituent Assembly speech said that ‘more than religion, economic interests and kinship of political ideals inform the policies of the states’ (Sharma, 1971, p.86).

Armed with Article 370, the popular Jammu and Kashmir governments undertook a series of socio-economic and political measures with far-reaching consequences hitherto unheard of in India. Presented as one of the biggest achievements of his government, the land reforms undertaken by Sheikh Government revolutionised the agrarian relations in the state. Dubbed as Magna Carta of economic liberties, hitherto landless tenants got the permanent possession of the land through land redistribution, which was concentrated in the hands of a few feudal lords associated with the ruling family of Maharaja thus, changing the whole destiny of the cultivators of the soil. Known as the Big Landed Estates (Abolition) Act 1953, the act set a ceiling of 22.75 acres of all proprietary holdings and the surplus land was given to actual tillers who became the owners of the land. As many as 9,000 landowners were expropriated without compensation from the surplus land aggregating to 4.5 lakh acres. Out of this 2.3 lakh acres were transferred to the cultivators in ownership right, free from any encumbrances (Jammu and Kashmir, 1971). The act was subsequently amended and improved to bring further transparency and efficiency in the reforms. Regarding the compensation not being paid to expropriated landlords, G.M. Sadiq, president of the Kashmir Constituent Assembly reasoned that since the expropriated land was given to the feudal lords affiliated with Maharaja free of cost, there is no moral and legal obligation for their being compensated (J&K Constituent Assembly debates, 1952).

Article 370 empowered the convening of the Constituent Assembly of the state to frame a separate constitution for the state. Accordingly, the Constituent Assembly was set up in 1952, which ratified the accession of the state to India, followed by the conduct of elections on the basis of adult franchise. The monarchical order was formally abolished and, in its place, an elected head of the state (*Sadar-i-Riyasat*) was elected. These radical measures were taken with the full support of the Government of India and the Indian Parliament. The support of the Indian Government needs to be contextualised to grasp its significance for the state. Assuming charge in the backdrop of tribal invasion, which had disrupted the lines of communication leading to a shortage of food items and concomitant inflationary effects on food items, the popular government was faced with an uphill task of ensuring the suitable stock of food grains at suitable prices. In this endeavour, the central government extended a liberal helping hand to the state to tide over the food crisis. From the original allotment of 12000 tons, the Indian Government raised it to 23000 tons for the year 1948 (Administrative Report 1948). The state government, in order to afford relief to the people, incurred a huge expenditure by way of subsidy on the sale of imported wheat to the tune of Rs. 4 per maunds. If a subsidy on transportation costs was to be included then it added up to Rs. 6 per maunds (Administrative Report,

1948). Over the course of years and decades, the other beneficial provisions of the Indian Constitution were applied to the state through Article 370. The educational sector was in disarray around the time the popular government assumed charge. Driven by the ideology of the 'Naya Kashmir Manifesto', the government set about to reform the educational sector. Towards this end, the government-appointed Educational Reorganisation Committee in 1950 under the chairmanship of Mr. A. Kazmi. Acting on the widely circulated recommendations of the committee, the government reorganised the educational sector at all levels. The reformed structure now entails a) Kindergarten (age from 3 years to 5 plus), b) Central School (age from 5 plus to 12 plus), and c) Secondary School (ages between 12 to 16) (Administrative Report 1950-51). Sheikh's sincerity and seriousness towards the improvement of education can be gauged from the fact that he kept the education portfolio to himself to personally supervise the reforms. As a result of his serious endeavors, the number of educational institutions of various kinds witnessed an appreciable increase as shown in the table below:

Institutions	No. in 1948-49	No. in 1950-51
High Schools (Government)	23	28
Middle Schools including Central Basic Schools	83	116
Middle Schools including Central basic Schools Aided	20	30
Primary Schools (Government)	940	1080
Art Colleges	4	7

Source: Administrative Report 1950-51

Due attention was accorded to the irrigation system by way of not only improving and upgrading the existing canals but also expanding the irrigation network by constructing new ones. The combined effect of the land reforms and improved irrigation facilities was witnessed in the much-needed rise in the production of food grains as demonstrated in the table below:

Kinds of food grains	1948-49	1949-50	1950-51
	Mds.	Mds.	Mds.
Wheat	144	8,112	34,000
Paddy	55,245	1,53,962	1,50,000
Maize	4,161	7,310	10,000

Source: Jammu & Kashmir 1947-50, p.107.

Summing up the achievements of the popular governments, aided in this direction by article 370, Bazaz (2005) observed that 'there was a considerable improvement in the socio-economic life of semi-starved Kashmiris who witnessed a rise in the standard of life' (p.48). The significance of achievements by the popular government is by no measure ordinary when viewed in a proper background provided by Sheikh Abdullah himself:

The present administration has had a stormy birth and ever since it has been battling against abnormal conditions. Its work has, therefore, to be judged in the context of these conditions. The entire State was reduced to ashes as a result of barbarous aggression and out of these ashes there emerged the undying will of the people to change their destiny. Whatever progress we have been able to achieve has mainly been due to the unstinted support and ungrudging cooperation of our people.... We have no doubt that once the cramping complications...end, we shall grow from strength to strength till the ideals laid down in our charter of liberties, the "New Kashmir" are achieved" (Jammu & Kashmir, 1947-50, p.11).

Thus, in the immediate post-accession period, cooperative relations between the central and the state governments ensured, to a fair degree, the successful fight against the grave challenges confronting the state. The developmental initiatives taken by the autonomous state government found the non-interventionist Centre simply supporting the initiatives resulting in the smooth working of Centre-state relations. Reflecting on the observation Sheikh asserted:

We would not have achieved so much in Kashmir if assistance from the people of India had not come so freely and ungrudgingly. We were tremendously fortified in a just stand by the spontaneous help in men and material given to us by the Government of India" (Gockhami, 2008, p. 23).

Bridge under Strain

The first sign pointing to the center's willingness to let cracks develop in the bridge (Article 370) became visible during the torturous negotiations between the central and the state governments when serious differences arose over the quantum of autonomy to be enjoyed by the state. While the state government wanted to yield only on three matters (Defense, foreign affairs, and communication) originally agreed upon in the instrument of accession, the Central government desired to extend its jurisdiction to more areas. The tension in the talks is illustrated by Ayyangar's letter to Sardar Patel, then federal Home Minister, the section of which is reproduced below:

Sheikh Abdullah and two colleagues of his had a talk with me for about an hour and a half in the morning. It was a long-drawn-out argument, and, as I told you this morning, there was no substance at all in the objections that they put forward to our draft. At the end of it all, I told them that I had not expected that after having agreed to the substance of our draft..... In answer, Sheikh Abdullah said that he felt very grieved that I should think so but that in the discharge of his duty to his own people he found it impossible to accept our draft as it was. ..." (Noorani, 2014, p. 59).

Around the time of the conclusion of the Delhi Agreement, the Hindu reactionaries in the form of Praja Parishad launched a strong anti-autonomy campaign wanting a complete merger of Kashmir state with the Indian Union. The agitation and the kind of support it received from the rest of India both from Hindu nationalist organisations like the Jana Sangh and mainstream media forced a rethinking in Sheikh's mind. He, in due course, became inclined to the view that Indian leaders are not serious about the promises they once made to Kashmir. Praja Parishad agitation and the support it received from the Hindu right-wing and the national press, argues Ganguly and Bajpai (1994), 'created grave doubts in the mind of Sheikh about the special position of the

state' (p. 118). Let alone Hindu nationalists, even the major section of Congress party wanted the special status of Kashmir to go. Kaul (1985) writes: "After the Congressmen criticised him at the Allahabad session of the National Congress in January 1953, and after he was hooted in Delhi while addressing an audience, Sheikh began to realise his mistake" (p. 64). Effectively, the only hope of maintaining autonomous status rested with Nehru who always considered Kashmir a symbolic and ideological issue for India. These fears were expressed by Sheikh himself when he said: "No one can deny that communal spirit still exists in India. Many Kashmiris are apprehensive as to what will happen to them and their position if, for instance, something happens to Pandit Nehru" (Korbel, 2012, p. 221). Nehru himself admitted to the damage done to the delicate relations between Kashmir and the rest of India. Speaking in the Indian Parliament, he observed, "the unfortunate agitation had sought to undermine this basic position and had created not only confusion but also powerful reaction especially in the valley of Kashmir" (Puri, 1981, pp. 127-28). Sheikh, therefore, viewed the state's autonomous status as an antidote to rising communal tendencies as demonstrated by the Praja Parishad agitation and the warm response it got from Indian quarters. Sensing the changed mood in the federal corridors of power, Sheikh's rethinking pushed him to make certain controversial statements casting aspersions on the finality of the instrument of accession, the basis of the relationship between Kashmir and India. In his speech on July 13, 1952, Sheikh leaving the options of independence and Pakistan open for the state questioned the New Delhi's intentions about holding plebiscite in Kashmir (Gockhami, 2008, p. 78).

These and other such statements created consternation in New Delhi regarding Sheikh's perceived somersault. The leader who was all-important for New Delhi in the wake of the prospective plebiscite in Kashmir as agreed to by India at the UNSC and for whom India went out of its way by giving special status to Kashmir began to entertain uncertainty about the finality of state's accession to India. Nehru who had a strong personal relationship with Sheikh and is in a major way responsible for the state's accession to India and subsequent special status came 'under pressure for mishandling Kashmir affairs' (Mullick, 1971). Several attempts at mediation to patch up the growing schism between the Sheikh Government and New Delhi failed to assuage the deteriorating situation leading simultaneously to the controversial dismissal of the Sheikh government and his arrest on August 9, 1953. The rulers that followed the Sheikh's deposition were more beholden to the Central dictates resulting in an assault on the very underlying principles and understandings that made Kashmir's accession to India fancier than Pakistan's.

With Sheikh's departure, the hard-earned constitutional structure via the Delhi Agreement came down like a fragile house of cards. Soon after, Sheikh's dismissal, the first Constitution (Application to Jammu and Kashmir) Order, 1954 was promulgated by the Indian President superseding the Order of 1950, thus becoming the parent order to which subsequent changes were done over the course of time. The 1954 Order extended the Union jurisdiction over the state from the three subjects enumerated in the Instrument of Accession to the Whole Union list (where only the Union can make legislation) and to some subjects in the Concurrent list (where in case of conflict Union law prevails) also, of course, with some modifications and exceptions. Thus 1954 Order fundamentally altered the nature and basis of the relationship between the Union and the state of Jammu and Kashmir, imperiling the underlying intent and spirit of the Delhi Agreement. Subsequent to this order,

numerous other Presidential orders numbering forty-two were extended to the state by making amendments to the parent order of 1954 broadening the jurisdiction of the Union government (applying 94 out of 97 entries in the Union list, 26 out of 47 in Concurrent list, 260 out of 395 Articles of Indian Constitution) in relation to the state (Indian Express, March 20, 2019). These orders dealt a severe blow not only to the constitutional structure as agreed to between New Delhi and the Kashmir government but also to the trust and sentiments of the Kashmiri people which undergirded that constitutional architecture. These orders effectively reduced Article 370 to a shell with a hollow substance. With the latest Presidential order, 2019, which supersedes the earlier parent 1954 Order, Article 370 was rendered ineffectual both in shell and substance completing the Indian State's long-standing dream of full constitutional and legal integration of the state with the Union of India. The only constitutional bridge between the state and the Centre was thought to have outlived its utility and is in need of deconstruction and replace it with the construction of round-the-clock multifarious links that will allow unhindered passage of constitutional traffic to the state. However, all Presidential Orders except the 1954 Order fail to fulfill the constitutional requirement of the 'ratification' by the Constituent Assembly of the state, a dissolved body, hence stand on a dubious legal footing and are under challenge in the Supreme Court of India.

Notwithstanding the fact that every Presidential Order in relation to Kashmir did produce mechanical (Constitutional) integration of it with the rest of India but simultaneously led to organic (emotional) disintegration of Kashmir with India. Puri (1981, p.132) in his opinion poll has demonstrated:

An overwhelming majority of the respondents of the survey attested to the fact that popular sentiments among the Muslims of Kashmir region were alienated from the rest of India after 9 August 1953; 89.18 percent Muslim and 71.42 percent Hindu respondents of the state shared this view about the reaction of Kashmiri Muslims.

The view is shared across the political spectrum of Jammu and Kashmir. Since Article 370 has been an emotive issue for the people of Kashmir, the results of the survey are far from surprising. The preservation of unique Kashmiri identity-*Kashmiriyat*- as evolved and crafted over a long period of struggle against the oppressive regimes, weighed heavily in negotiations in bargaining for maximum autonomy, its erosion naturally would have evoked strong apprehensions regarding the threats to it, a factor clearly highlighted by the survey. Relatedly, the fear of demographic engineering, engrained in the Kashmiri psyche, has been looming large with every step in the direction of erosion of Article 370, again strongly featured in the survey. These fears seem to have gained some legitimacy post the abrogation of Article 370, when the Union government framed new domicile rules authorising persons outside the state to settle and buy moveable and immovable property in the state, previously reserved for locals under Article 35A (The Hindu, May 24, 2020). Let alone separatists, the mainstream pro-India political parties are unanimously opposed to the erosion and abrogation of article 370 strengthening the separatist sentiments in the state limiting the scope of the soft ways of handling the matters and, on the contrary, forcing the state machinery to rely more on coercive apparatus. The over-reliance on hard power serves to shrink the space for democratic politics and an abnormal tendency towards securitisation, a phenomenon not so alien to the context of Kashmir.

Impact on Secularism

As discussed above, political ideology, not religion turned out to be an arbiter for the question of accession of Kashmir to India. Though a Muslim-majority state, Kashmir has invariably defined its identity in secular terms broadly encapsulated by the idea of *Kashmiriyat* (Khan, 2012). This is not to deny the significance of religion in the political sphere but rather the interpretation of it in an inclusive fashion (Madan, 2008). Muslims being a predominant section in the state have always practiced a Sufi brand of Islam, which is syncretic, tolerant, and accommodative; the defining features of *Kashmiriyat*. The Dogra regime of Maharajas tried to construct the public discourse framework in such a way as to forcibly constrain others to mirror such framework, as reflected in the nomenclature of the party formed to fight for the oppressed Muslim lot; the Muslim Conference. However, the centuries-old secular underpinning came to re-establish itself when the Muslim Conference metamorphosed into a National Conference to offer a platform to non-Muslims also in the fight for justice and freedom (Khan, 1980). With the entry of non-Muslims into the NC, the perception of it as an all-Muslim body underwent a change. With the secularisation of the form, came the secularisation of the content of an organisation also. The Naya Kashmir document, 1944 prepared by the NC highlighted the secular thinking of an organisation. It is, therefore, no surprise that such an organisation could have found more common ground with India than with Pakistan. India, on the other hand, justified the Kashmir accession on similar ideological grounds (Ganguly & Bajpai, 1994, p.402). Providing a rationale for Kashmir's association with India, Nehru observed:

We have always regarded the Kashmir problem as symbolic for us, as it has far-reaching consequences in India. Kashmir is symbolic as it illustrates that we are a secular state..... Kashmir has consequences both for India and Pakistan because if we disposed of Kashmir on the basis of the two-nation theory, obviously millions of people in India and millions in East Pakistan will be powerfully affected. Many of the wounds that had healed might open out again” (speech in parliament in 1952).

Similarly, Korbelt (1954, p. 23) portrays the conflict over Kashmir in ideological terms rather than of strategic interests. Abdullah himself, so argues Schofield (2021), approved of accession to India motivated as he was by ‘the secular nature of Indian polity’ (p. 79). The Indian government, observes Schofield, always viewed ‘retention of predominantly Muslim state as essential for India’s secular identity’ (op. cit., p. 225). Kashmir, therefore, provides the basic content of India’s secularism (Kaul, 1985). “Indian decision-makers, contends Bajpai and Ganguly (1994), tended to see Kashmir through the prism of secular nationalism..... If Kashmir were allowed to secede because of its Muslim-majority population, Indian leaders doubted that the idea and practice of secularism could survive....” (p. 405)

The Muslim-majority character of Kashmir state was thus made a litmus test for otherwise Hindu-majority India’s commitment to secularism. This is why Article 370 was given to Kashmir to demonstrate the secular character of the Indian state. Since, it was this article that guaranteed the preservation of the identity of Jammu and Kashmir including the majority denominational character of the state (Hussain, 2021). Now, with the abrogation of Article 370, it has forced a re-examination of this constitutive justificatory principle for Kashmir’s accession to India.

One of the main arguments of the BJP government in favour of the abrogation of Article 370 is that it will put an end to terrorism and complete the integration of J&K with the Union of India. Regarding the second point of integration, there is no dispute that constitutional integration has been fully achieved. But how can abrogation of Article 370 mechanically end terrorism? If history is any guide, it was the gradual dilution of Article 370 which became one of the important causes of the onset of insurgency. Now to expect the end of militancy with its total abrogation seems paradoxical. It indicates that the government in the Centre does not bank on the local population's change of heart towards its August 5, 2019 decision. On the contrary, the government's argument then has to be understood in the context of '*demographic engineering*'. Demographic engineering is the manipulation of demography in ethnic conflict to gain demographic strength either an end in itself (maintaining numerical superiority) or a means to an end (translating numerical superiority into military might or political dominance) (Moreland, 2016). Viewing demographic engineering as a tool of conflict management, McGarry (1998) says that consolidation of territorial control is its most important goal. Hussain (2022) has illustrated how the abrogation of Article 370 was driven by the motivation to gain more control over the polity of J&K. McNamee and Zhang (2019) while theorising the spatio-temporal incidence of demographic engineering argue that 'vulnerable frontiers populated by ethnic minorities who are co-ethnics with the hostile power' are subjected to disproportionate demographic engineering. It is to be noted here that the Kashmir conflict features ethnic ties across the border under Pakistan which is a hostile neighbour of India, hence, will be subjected, so the theory argues, to demographic engineering. In any case, with Article 370 abrogated, it would not now be illegal for the Indian state to embark on such a course.

In accomplishment of this end, the Central government passed a barrage of laws and rules for J&K post article 370's abrogation, which denuded J&K of all the legal protections it hitherto enjoyed. Article 370 and 35A cumulatively reserved public employment to the residents of the state only, prevented outsiders from buying property here and becoming the domiciles of the state, and other like features that effectively served to maintain the status quo concerning demography and employment opportunities; the only two major remaining vestiges of the special status. With special status gone now, it has rekindled the fears of demographic change in the state with 400,000 people having already acquired domicile certificates in just more than a month after the passing of the domicile law (Parvez, 2020). The fears of demographic change have only heightened with article 370's abrogation and such fears were present before also evidenced by the Kashmir Observer's opinion piece in 2016:

Indian government is in full action to introduce demographic change in Kashmir... There are attempts to settle non-State retired army officers in Sainik Colonies, settle West Pakistan Refugees.... non-state white collar officers serving in the state.

That domicile law will bring its intended effect of a demographic shift is not beside the truth. Demographic shift, so the state thinking goes, will help in tackling the internal problem of militant violence in many complex ways while simultaneously but gradually hammering down the Pakistani plebiscite argument to settle the Kashmir dispute. Irrespective of whether India's new Kashmir policy pays dividends

on these two counts, it, however, does raise questions regarding India's commitment toward secularism in the context of Kashmir. How will the Indian state's ideological position that Muslim majority J&K is a test case for India's strong secular credentials stand, if new domicile laws in Kashmir will, in the long run, change the existing demographic balance? Moreover, concerning Article 370, two broad positions could be identified within the Indian polity: a). those believing in the ideal of Indian secularism do not support the abrogation of Article 370, and b). the section that discredits the ideal of secularism (especially the right-wing led by BJP) has long held the view that Article 370 should be abrogated, which they did on August 5, 2019. If disdain for secularism pushed the right wing not to tolerate the special status of J&K, it would not be too long when we write obituaries for one of the basic features of the Indian Constitution i.e., secularism.

References

- (1947-50). *Administrative Report of Jammu and Kashmir Government*. Jammu: Ranbir Government Press.
- (1948). *Administrative Report of the Jammu and Kashmir State*. Jammu: The Ranbir Government Press.
- (1950-51). *Administrative Report of the Jammu and Kashmir State*. Jammu: Ranbir Government Press.
- Bazaz, P. N. (2005). *Kashmir in Crucible* (1st ed.). Gulshan Books.
- Bose, S. (2003). *Kashmir: Roots of Conflict, Paths to Peace* (1st ed.). Harvard University Press.
- Ganguly, S. and Bajpai, K. (1994). India and the Crisis in Kashmir. *Asian Survey*, 34(5), 401-416.
- Gockhami, A. J. (2008). *Personality Behind Oration: Sheikh Mohammad Abdullah* (1st ed.). Gulshan Books.
- How J&K Presidential orders have worked, why move faces challenge. (2019, March M). *Indian Express*. Retrieved from [www/explained/how/j&k/Presidential/Orders/have/worked/why/move/faces/challenge](http://www.explained/how/j&k/Presidential/Orders/have/worked/why/move/faces/challenge)
- Hussain, A. (2021, February 19). UN rights experts concerned over India's changes in Kashmir. *AP*. Retrieved from <https://apnews.com>article>india>
- Hussain, M. (2022). Abrogation of Article 370: A State Project of Legibility and Simplification. *Journal of Asian and African Affairs*.
- Hussain, S. (2021). *Society and Politics of Jammu and Kashmir* (1st ed.). Palgrave Macmillan.
- Kashmir's Demographic Changes and UN. (2016, May 23). *Kashmir Observer*.
- Kaul, R. N. (1985). *Sheikh Mohammad Abdullah: A Political Phoenix* (1st ed.). Sterling Publishers.
- Khan, G. H. (1980). *Freedom Movement in Kashmir* (1st ed.). Gulshan Books.
- Korbel, J. (1954). *Danger in Kashmir* (1st ed.). Princeton University Press.
- Lakahnpal, P. L. (2014). *Essential Documents and Notes on Kashmir Dispute* (1st ed.). Light and Life Publishers.
- Lamb, A. (1994). *Birth of a Tragedy: Kashmir*. (1st ed.). Oxford University Press.
- Lavakare, A. (1999, August 17). Kashmir's Accession: A Pandora's Box. *rediff.com*. Retrieved from <https://www.rediff.com/news/1999/aug/17arvind.htm>.
- Lavakare, A. (2005, June 3). The Truth about Article 370. *Rambhau Mhalgi Prabodhini*.
- McGarry, J. (1998). Demographic Engineering: The State Directed Movement of Ethnic Groups as a Technique of Conflict Resolution. *Ethnic and Racial Studies*, 21(4), 613-638.

<https://doi.org/10.1080/014198798329793>

- Moreland, P. (2016). *Demographic Engineering: Population Strategies in Ethnic Conflict* (1st ed.). Routledge.
- Mullick, B. N. (1971). *My Years with Nehru: Kashmir* (1st ed.). Allied Publishers.
- Thaper, K. & Mustafa, F. (2019, August 29). Neither Abrogated Nor Removed: The Ploy Behind Centre's Article Move. *The Wire*.
- Noorani, A. G. (2011). *Article 370: A Constitutional History of Jammu and Kashmir* (1st ed.). Oxford University Press.
- Parra, A. H. (2019). *The Making of Modern Kashmir: Sheikh Abdullah and the Politics of the State*. (1st ed.). Routledge.
- Parvaiz, K. (2021, August 7). A Year After India Revoked Kashmir's Special Status, Kashmiris Worry About a Demographic Shift. *TIME*. Retrieved from <http://time.com/5877176/kashmir-special-status-india-domicile-rule/?amp=true>
- Puri, B. (1981). *Jammu and Kashmir: Triumph and Tragedy of Indian Federalism* (1st ed.). Sterling Publishers.
- Rai, M. (2018). The Indian Constituent Assembly and the Making of Hindus and Muslims in Jammu and Kashmir. *Asian Affairs*. <https://doi.org/10.1080/03068374.2018.1468659>
- Razvi, M. (1971). *The Frontiers of Pakistan: A Study of Frontier Problem in Pakistan's Foreign Policy*. (1st ed.). National Publishing House.
- Report, O. (1952). *Jammu and Kashmir Constituent Assembly (Debates)*. Srinagar: Secretary Constituent Assembly.
- Reynolds, N. (2008). Revisiting Key Episodes in Modern Kashmir History. In A. Rao (eds.), *The Valley of Kashmir: The Making and Unmaking of Composite Culture*. New Delhi: Manohar.
- Schofield, V. (2021). *Kashmir in Conflict: India, Pakistan and the unending War* (3rd ed.). Bloomsbury.
- Sharma, B. (1971). *Kashmir Awakens*. (1st ed.). Vikas Publications.
- Singh, J. (2002). Kashmir, Pakistan and the War by Terror. *Small Wars and Insurgencies*, 13(2), 81-94. <https://doi.org/10.1080/09592310208559183>
- Singh, V. (2020, May 24). Domicile rules for J&K. *The Hindu*. Retrieved from [www/domicile/rules/for/j&k/other/states/may/24/2020](http://www.domicile/rules/for/j&k/other/states/may/24/2020)
- Suhrawardy, A. (1980). *Kashmir: the Incredible Fight* (1st ed.). Jang Publishers.
- Varsheny, A. (1991). India, Pakistan and Kashmir: Antinomies of Nationalism. *Asian Survey*, 31(11), 997-1019. <https://doi.org/10.2307/2645304>

