

Abrogation of Article 370 and its impact on the Schooling of Gujjar and Bakarwal Tribe children in Jammu and Kashmir: A Study

Mohd Fareed¹, Mohd Mubariq Mahire²

¹Guest Faculty Department of Geography Govt. Degree College Surankote. (J&K UT).

²Research Scholar Department of Political Science, Jiwaji University Gwalior, (MP).

Abstract

Article 370 of the Indian Constitution stipulates self-rule for Jammu and Kashmir but has remained stalled in argument due to its unequal special consideration. This paper examines Article 370 and its abrogation based on four arguments: its genesis spawns' inequality; its retention implies decay of contentious problems; its ramifications forge inequality within the State; and how politics over it only seeks limited leverage. This study examines the impact of the Abrogation of Article 370 on tribes' people in J&K, using primary and secondary sources and views from different societies.

Keywords: Jammu and Kashmir, Gujjar and Bakarwal Tribes, Article 370, Education, and Impact.

Introduction

The state of Jammu and Kashmir is bestowed with excessively snow-capped mountains, charming denes, sparkling aqueducts, speeding gutters, and emerald timbers. The kingdom is set apart by exceptional surroundings. In the south lies the Jammu fiefdom, the decrease segment of which is truly hot in the summer season and chilly in layoffs, bearing broadleaved timbers at the decrease mound in plains and shiwaliks. The centre part of Jammu area maintains the maximum part of churr pine timbers, while the higher rungs are temperate and aid luxuriant coniferous timbers. The northwest element among Pir Panjal and Zojilla is the Kashmir valley, which nicely allows for "paradise in the world ". This fascinating valley soliciting visitors is a gallery of nature and scenic attractiveness. To the north-east lies the massive geography of Ladakh, bound by snow-capped peaks and pleasant humans. It is a place of innumerable lodestones. The nation of Jammu and Kashmir has the everlasting sorts of its geography, the paranormal of herbal decor, the pictorial inventive life, the peerless glaciers, speeding alluvion, sparkling springs, the cold colour of the chinars, the wealth of its famed health resorts, and the famous up-to-date but no longer the least, its conventional hospitality, which provide an explanation for any sightseer. The J&K kingdom lies to the north-west of the United States of America, searching analogously to a crown on the chart of India. It is a border nation in the incredible north of the Indian Union. Nature has been beneficent enough to bestow this nation with fat timbers and notable water coffers. Its herbal foliage has a huge range, ranging from the plush evergreen conifers on the character pitches at the high mound to the evanescent timbers at the southern pitches of the Shiwaliks. The State of Jammu & Kashmir, comprising the divisions of Ladakh, Jammu, and Kashmir, has a total area of 2.22 lakh sq. km., together with the ones in the corridor, which can be below the province of Pakistan and

China. Out of gift place in hand, Jammu and Kashmir state has 20230 sq. km under forests, which defences for 19.95% of the geographical location of the territory together with Ladakh location and 47.80% banning Ladakh. As in keeping with SFR 2005 and SFR 2007, the forest represents 54 percent of the part pronounced for land software in J&K, as 59 percent of its geographical place isn't always able to guide tree boom being below stable snow cover and glacier beach bloodless wasteland.

Jammu and Kashmir's Constitution and Special Status

Taking apart Jammu and Kashmir's safe position in the Indian federal position as a sub-national personality demonstrates many interesting facts and can serve as a marker for any re-evaluation of the federal relationships the Constitution of India epitomises, given that the State of Jammu and Kashmir presents a distinction of the federal constitution in which the Indian States were welded. The territory of Jammu and Kashmir's designation as a separate sub-nation occasionally prompts certain valid inquiries for which there are no satisfactory solutions. Clause 7 of the Instrument of Accession explicitly forbade the state from adhering to any expectations of Indian law or any future Indian constitution. The Constitution of Jammu and Kashmir was adopted and enacted by the state's Constituent Assembly on the seventeenth day of November 1956. It became effective on January 26, 1957, and it duly permitted the integration of the State of Jammu and Kashmir into the Indian Union in accordance with the terms of the Instrument of Accession, specifically: "in pursuance of the accession of this State to India, which took place on the Twenty-Sixth Day of November, 1956."

According to Section 3 of Jammu and Kashmir's constitution, "The State of Jammu and Kashmir is and shall be a central part of the Union of India." Article 370 can only be revoked if the Jammu and Kashmir Constituent Assembly is called and agrees to recommend it. To put it another way, the President may officially declare that this Article will no longer be in effect, but only on the proposal of the State's Constituent Assembly. This decision will be made based on the advice of the state's constituent assembly. The fact that Article 370's revocation by the Parliament is susceptible to judicial review suggests that this provision is a fundamental aspect of the relationship between the state and the centre.

Highly autonomous State

The limitations of Article 370 on parliamentary legislation being comprehensive to Jammu and Kashmir State and of the various concessions in the country's Constitution as appropriate to the State have created a separate relationship between the Central Government and the State, despite the fact that Jammu and Kashmir is a constituent state of the Union of India as per Schedule 1 of the Constitution of India. The constitutional expert M. P. Jain best summarised it. According to him, "the two main characteristic features of this unique relationship are: (1) The State has a much greater degree of autonomy and power than enjoyed by the other States and (2) Center's jurisdiction within the State is extra restricted than what it has with respect to other States." Jammu and Kashmir is therefore India's most largely autonomous state. It continues to fly its own state flag, which Nehru authorised in the 1952 Delhi Agreement. Along with the Indian National flag, this flag is flown over the state council chamber and on the cars used by ministers. The state also has its own song, named *Qaumi Tarana*, which requires six minutes of singing time and during which top police personnel are supposed to maintain status, according to a local publication, "The Daily Excelsior," of June 24, 2002.

Ajay Kumar Panda v. Province of Jammu and Kashmir 19 July, 2016

For these reasons, the Supreme Court (SC) allowed an appeal to be filed regarding the transfer of a criminal case from Jammu and Kashmir's territory to the subsequent state, where the prior judges had issued a call for concentration on the grounds that there was no legal authority to transfer cases from Jammu and Kashmir to courts outside of the state. Rajinder Sachar, a former chief justice of the Delhi High Court, already warned that the Supreme Court lacked the authority to take such action on the grounds that Jammu and Kashmir's territory was not covered by Sections 25 of the civil code and 406 of the criminal code and that the Kashmir Code of Civil Strategy, which was established in 1977, did not contain such a strategy. It is also clear that the SC has no power to switch cases from one state to another. Moreover, he stated that the decision-making authority in this case had nullified Article 370's mandatory provisions, particularly in light of the assembly of Jammu and Kashmir's specifically stated directive that no court should be permitted to transfer cases from Jammu and Kashmir to another. Jammu and Kashmir's self-rule is governed by Article 370 of the Constitution, which is a confidence article, according to Justice Rajindra Sachar.

It was preferable to speak with Sheikh Mohammad Abdullah in accordance with the government's strategy to win the active collaboration and involvement of all democratic, secular, and progressive forces in the nation. [xxx] Abdullah gave a defence of this arrangement. In his biography, Aatish-e-Chinar, he states: "We only desired that Article 370 be preserved in its original form." No change in our goals, only a shift in our approach, was implied by our willingness to sit down and negotiate. [xxxi]

Obligations and compulsions Under the Constitution, Article 370 The following is stated in the article

(I) The Union Parliament shall pass laws relating to the topics set forth in Lists I and III of the Seventh Schedule of the Constitution and shall maintain contact with the parties named in the Instrument of Accession signed by the Ruler of Kashmir. Subjects on Lists I and III that match broad topics stated in the Instrument of Accession may be chosen by the president of India, but the order identifying such subjects must be made in "consultation" with the state government.

(II) By means of an order that can only be made with the "concurrence" of the state government, the president has the authority to expand the legislative authority of Parliament in relation to union topics and concurrent lists of the Seventh Schedule that were not included in the Instrument of Accession.

(III) Article I of the Indian Constitution, which establishes the boundaries of India, and Article 370 itself directly apply to Kashmir. The Indian Constitution's other articles are all subject to extension. Its own repeal is provided for under Article 370. The article may no longer be in effect or may continue to be in effect with the exceptions and adjustments that the president of India may designate by public announcement. Only on the advice of the state's Constituent Assembly may the president issue such a notification. This clause is no longer valid because the Constituent Assembly no longer exists. The Constitution's Article 368 establishes the authority and process for amending the document. No alteration may be passed in accordance with that without the state legislature, according to Article 368 as it relates to Kashmir. The president may issue an order abrogating or amending Article 370 pursuant to Article 370(3). However, in this case, the state's Constituent Assembly's recommendation became mandatory. Since no constitutional amendment can affect the state of Jammu and Kashmir without being implemented by presidential order, Article 370 cannot be repealed or changed. This is so because the

Constituent Assembly, which was disbanded in 1956 after finishing the state's constitution, must suggest any changes to Article 370.

Schooling /Education

*"...Education is a liberating force, and, in our age, it is also a democratising force cutting across the barriers of caste and class, something out of inequalities imposed by birth and other circumstances."
(Indira Gandhi)*

There is no debate about the value of education in enhancing one's capacity, wellbeing, and opportunities, especially in communities on the periphery. Numerous government and non-government initiatives have resulted in notable improvements in educational access and, to some extent, quality in tribal areas. However, there are still a lot of kids who aren't in school, mostly because of poor infrastructure, absenteeism, poor attitudes from teachers, parental poverty, seasonal migration, a lack of interest and parental motivation, etc.

Gujjar tribes of Jammu and Kashmir

The State of Jammu and Kashmir has experienced constant immigration impulses from the north-west, west, east, and south throughout its history of settlement by diverse tribes and civilizing populations. The area has been impacted by numerous racial, ethnic, and religious waves. The two Muslim ethnic groups with the largest numbers in Jammu and Kashmir State at the moment are Gujjar Muslims and Kashmiri Muslims. While there is a wealth of literature and information about the Muslims of Kashmir, very little is known about the Muslim Gujjars. They are a nomadic population that inhabits valleys at high altitudes and towering mountain slopes close to alpine pastures. On these mountain slopes and in the valleys, they rear cattle, especially buffaloes, sheep, and goats, along with a small amount of crop production, primarily maize. The Gujjars are extremely different from other racial groups in the state in terms of their physical qualities, language, manners, customs, clothes, social group, and economic activity. They keep their distinct ethno-cultural identity from other ethnic groups and have long beards and large turbans, but they have not assimilated the Kashmiri way of life. The Gujjars living in various regions of the Indian subcontinent have collateral ancestry with the Muslim Gujjars of Jammu and Kashmir State. They are quite similar to Gujjars in Rajasthan, Punjab, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, and Gujarat in terms of race, language, customs, conduct, and culture.

A Revolution Against the Constitution and the Kashmiris in Kashmir

The PUCL denounces the splitting of the State of Jammu and Kashmir, which revokes its statehood, and the repeal of significant provisions of Article 370 of the Indian Constitution. While the exploit itself is dishonest, the way it was carried out is far more so. All of the constitutional safeguards, procedures, provisions, and principles have been ignored. The fact that this change of status for the remainder of Jammu and Kashmir state was implemented covertly, entirely unilaterally, without even speaking to or consulting the local population, even as a symbolic gesture by the administration, hurts us the most. Particularly, PUCL strongly denounces the Government of India's premeditated and nefarious methods for detaining key political figures in Jammu and Kashmir at midnight on Sunday, August 4, 2019, including former Chief Ministers Omar Abdullah and Mehbooba Mufti, shortly after airlifting over 35,000 troops and abruptly ordering all Amarnath Yatris and vacationers to leave the state, inciting a sharp sense of fright. The government simultaneously shut down all communication and telecom

services in and out of the valley, effectively ghettoising the entire state into a state of forced silence and enforcing a clampdown in the state to stop pressure groups of people from organising, resulting in chaos, distress, and disruption of daily life. While Kashmiris living outside the state continued to live in fear and were forbidden from communicating with their families in the Valley, students from other states were asked to leave Kashmir. The Jammu and Kashmir (J&K) State government, which is controlled by India, abruptly deployed thousands of Indian army soldiers and J&K police officers throughout all 22 districts early on August 5, 2019, imposing a curfew across the whole state.

Furthermore, the Indian government imposed an extensive communication blockade in J&K on the evening of August 4, 2019. The following morning, everyone awoke to find the entire region under military occupation, with communication severely hindered. On August 5, at midday, the Bharatiya Janata Party (BJP)-led Indian government submitted a bill to repeal Article 370 of the Indian Constitution in both the upper and lower houses of the Indian parliament. Since 1949, Article 370 has given the J&K State "special status" and prohibited anyone without a state-subject official document from obtaining moveable property there. According to earlier decisions by the Supreme Court of India, Article 370 could not be repealed without the approval of the Legislative Assembly of J&K State. The Indian government's decision to do so is in conflict with those earlier decisions.

The Jammu and Kashmir Reorganisation Act of 2019 was passed with the support of the majority of Indian lawmakers, who supported the BJP's decision to repeal Article 370 and create two Union Territories, Ladakh and J&K, that would be directly under Delhi's control. This action is part of the Indian government's strategy to fully annexe J&K, with the hope that such moves will pave the way for the resolution of the long-running conflict. Mass terror and tension in the Kashmir Valley preceded this crucial constitutional amendment. The already tight situation became much more tense with rumours of extra force deployment, multiple government orders that suggested a "deterioration of law-and-order situation in the near future in Kashmir," and requests for domestic tourists and Amarnath pilgrims to "leave Kashmir immediately." The main human rights breaches that have been reported since August 5, 2019, are summarised in the biased list that follows. Since no information could be gathered from remote districts, including South Kashmir, due to the ongoing communication obstruction over the entire Kashmir valley, little is known about the conditions in these areas.

Blockade threatens the right to health:

Even though the Indian government's attempts to tout the fictitious long-term economic "the advantages of the abrogation of Article 370" have directly resulted in violations of the local population's impeccable health, Locals reported a lack of baby formula and other medications four weeks after the crackdown began. The J&K Department of Information and Public Relations acknowledged that baby formula was now available after being unavailable for two days, despite the fact that the government had denied that such a catastrophe was taking place. The availability of medicines, according to chemists, was running low. Several patients who were receiving life-saving care were reportedly denied access to ongoing medical procedures and actions, endangering their lives. After drafting those statements, the police quickly imprisoned him. According to international news sources, doctors at Srinagar's tertiary care facilities are under tremendous pressure to conceal the true number of casualties. Even the deceased's flesh and blood were added to their death certificates. Due to the state's loss of all the privileges of authority bestowed upon it by the democratic prior administration at the time of the nation's independence, the current condition of affairs in the state was in danger. If we want to know how the

state is doing, we should conduct a survey that compares it to all the other states. For instance, the literacy rate in the state is not as low as it is in comparison to other states. All of the other states are both underdeveloped and developing. Therefore, it might not be a way to help the state develop but rather a way to lose something unexpectedly.

Results:-

“The Gujjar and Bakerwal tribes are an assortment of nomads, semi-nomads, pastoralists, and agro-pastoralists who move around the state of Jammu and Kashmir.”

Several tribal members have given up their heritage of a "moving life" for a relatively quiet and sedentary way of life due to prejudice and a lack of government interest. The tribal people have put up a lot of fight to prove that having a reserve is a fundamental right and not just a state-granted privilege. Despite playing a crucial part in the Amarnath Yatra, Gujjars and Bakerwals are not given any credit for it. The aforementioned discussion leads to the conclusion that the Gujjar and Bakarwal Tribe communities have numerous issues as a result of the repeal of Article 370, including the fact that their only sources of revenue are their livestock and agricultural land. The primary issue was that the Gujjar and Bakerwal families' students were upset by the abrogation of Article 370. They didn't arrive at the school in a proper manner because regular classes couldn't take place due to the abolition of the special status of Jammu and Kashmir. One thing to keep in mind is that the people of Jammu and Kashmir will have extremely challenging living and educational conditions if the current scenario in this area continues. The people of Jammu and Kashmir were a quiet and flourishing state prior to the scrapping of Article 370. We all know the definition of democracy: "Democracy is of the people, by the people, and for the people". However, the valley and Pir Panjal regions have varied weather. We complied with every directive from the central government, but those directives were in line with the opinions of the state's citizens. For the past 2.5 months, all communication has been banned. Businessmen and students are concerned about their futures. The local community's right to worship was negatively impacted by ongoing restrictions. Authorities only permitted prayers in the area's modest mosques on August 12 in honour of the Muslim holiday of Eid, which forbade people from congregating in large numbers in Srinagar and neighbouring districts. The armed forces forbade prayers at all 11 mosques in Heff-Shermal Village, a terrorist stronghold in the Shopian province. On the first day of Eid, a harsh curfew was in force until late in the afternoon, with scarcely any movement of individuals. The Jamia Masjid Mosque in the city's centre and the Hazratbal Mosque in Dargah, two of the Kashmir valley's most important mosques and two of its holiest, have both been forbidden by J&K authorities from holding Eid prayers.

References:-

1. (26 September 2019). FIDH-International Federation for Human Right Update on human rights violations in Indian - administration Jammu and Kashmir.
2. Hassan, K. W. History Revisited: Narratives Political Changes in Kashmir(1947-1990)u. Working Paper, Institute for Social and Economic Change, Bangalore.
3. S.P.Sathe. (1990). Article 370: Constitutions and Compulsions. Jstore , 25, 932-933.
4. Tawheeda Nabi,Subayia Nazir,Shahid Hussain Wani. (2018). Article 370 and its implementations. International Journal of Creative Research Thoughts , 6 (2), 743-750.
5. Umer Jan Sofi. (2014). Educational Status of Tribals of Jammu & Kashmir: A case of Gujjar and

Bakarwals. International Journal of Social Science , 275-284.

6. Warikoo, K. The GUJJARS. J&K Academy of Arts , Culture and Languages Srinagar/ Jammu, Jammu, India: World Express.
7. Wikipedia.in