

The Echoes of Colonialism: As India Revokes Article 370, Kashmir's Future Remains Uncertain.

Since 1947, relations between India and Pakistan have remained tense over the status of Kashmir. In the aftermath of Partition, India has tried to sustain its complicated relationship with the former Princely state of Kashmir. However, on August 5th 2019, India revoked Article 370, stripping Kashmir of the special status it has held for the past 70 years. This article explores the implications of this decision, international responses, and how this decision will impact the future of Kashmir.

What Does this Mean?

Article 370 symbolised India's relationship with Kashmir. It gave Kashmir autonomy over the internal administration of the state and allowed it to have its own constitution and its own flag. This set the state apart from other Indian states because it allowed the citizens of Kashmir to live under a unique set of legislatures. Article 370 became an official article of the Indian Constitution in 1954 when it was decided that it would not be abrogated under the Presidential Order. Over the past seven decades, India has issued other presidential orders to reduce Kashmir's autonomy and extend the Indian Constitution to Kashmir. Arguably, it is the ability of the presidential orders that have reduced the status of Article 370, to the point of it being completely revoked this year. This was evident in August when another presidential order superseded the 1954 order and reduced the legitimacy of Article 370. Due to this, the new presidential order means that Kashmir's constitution is no longer in effect and the Indian constitution now applies as a single, unifying constitution across all Indian states. Kashmir's self-rule is abolished and those outside of Kashmir will now be able to buy property there because Kashmir no longer has autonomy over the internal administration of the state. To revoke Article 370, India's Home Minister Amit Shah introduced a 'Reorganisation Bill' in the Indian Parliament. The purpose of this bill was to divide the state of J&K into two union territories. Prime Minister Narendra Modi's decision to make Kashmir a union territory brings the state under full control of India. This bill was passed in the Rajya Sabha and the Lok Sabha, but the legality of the decision is still under scrutiny.

Timeline of Events

The decision to revoke Kashmir's special status has not occurred in a vacuum, despite the unexpected announcement on August 5th. A brief account of Kashmir's turbulent history is necessary, in order to understand the events that have acted as a catalyst towards the decision to revoke Article 370.

Kashmir has been a contested state since the catastrophic events of Partition in 1947. With the creation of Pakistan, a Muslim-majority country, Maharaja Hari Singh was undecided on the accession of Kashmir either to India or to Pakistan. The first war for Kashmir began when a rebellion broke out in Poonch. Seizing the opportunity, thousands of Pashtun tribesmen invaded Kashmir to rebel against the maharaja. This resulted in Hari Singh asking India for help and in return, the maharaja had to sign the Instrument of Accession in India's favour, giving them control over Kashmir's communication, defence and foreign affairs¹.

In 1948, the UN suggested that there ought to be a plebiscite, but no agreement was reached between India and Pakistan. The UN later mediated a ceasefire in 1949, known as the Karachi Agreement. The agreement stated that the status of Kashmir would be determined according to the people's wishes. The Indian Constitution was formed in 1950 and came into effect in 1957, with Article 1 stating Kashmir as an Indian State, and Article 370 allocating special status to Kashmir. This special status provided the state with a greater degree of autonomy in comparison to other states in India. However, by 1957 the possibility for J&K to have their promised plebiscite was diminished as J&K fully becomes an integral part of India.

In March 1965, the Constituent Assembly of Kashmir passed the Integration Bill, giving Kashmir the status of being a province of India. This again contradicted the terms set out in Article 370 and ignored the promised plebiscite at the time of Partition. This provoked three months of fighting between India and Pakistan over the Rann of Kutch. Despite a cease-fire taking place in June 1965, by August, Pakistan launched 'Operation Gibraltar' and the second war for Kashmir was officially underway². The conflict was resolved with the signing of the Tashkent Agreement in 1966, supervised by the former Soviet Union.

The third war for Kashmir erupted in 1971 as the Bangladesh nationalist movement demanded regional autonomy for Bengalis. With the help of India, Bangladesh was created, and India would no longer have to fight Pakistan on its Eastern front. The Simla Agreement was signed in 1972 and the Line of Control (LoC) was devised, replacing the 1949 cease-fire line. By 1975, the Kashmir Accord was signed, with special emphasis on Article 370 and Sheikh Abdullah's demand for a plebiscite was dropped.

Unstable governments were in control of Kashmir from the late 1970's until 1989. During this time, militant organisations began to gain prominence in the region. By 1990, insurgency breaks out, resulting in a rise of protests on Kashmiri streets, crack downs by Indian security forces, central rule being declared, and the exodus of the Kashmiri Pandit community³. In 1995, Prime Minister PV Narasimha Rao assures that Article 370 would not be abrogated.

In 1997, the human rights commission began to investigate reports of violations in Jammu and Kashmir. But this was overshadowed by the nuclear tests conducted on behalf of both India and Pakistan in 1998. India conducted the 'Pokhran-II' tests and in response, Pakistan conducted the 'Chagai-I' tests. Nuclear tensions continued to rise to the point of a fourth and

final war between India and Pakistan over Kashmir in 1999. The war broke out due to Pakistani soldiers infiltrating the LoC and the Indian Army mobilized its troops to push them back into their own terrain. The Kargil episode was the closest incident in which nuclear war became a likely possibility⁴.

Since the turn of the millennium, terrorism has risen significantly. India has repeatedly accused Pakistan of supporting terrorist organisations and conducting attacks in Indian Administered Kashmir. India's response has been to launch military strikes against the groups on the opposite side of the LoC. Some of the most notorious attacks include: the shooting of 35 Sikh's in 2000 on behalf of the Lashkar-e-Taiba, the killing of 38 people at the Indian parliament in New Delhi in 2001 by members of the Jaish-e-Mohammed, and the 2008 Mumbai terror attacks in which 12 coordinated terror attacks were conducted by the Lashkar-e-Taiba killing 170 people.

Protests took hold of Kashmir throughout 2010 and violence between the security forces and civilians reached its peak. It was rumoured that Indian forces had in fact killed civilians and not militants as they claimed. On 8th July 2016, leader of the Hizbul Mujahideen, Burhan Wani, was killed by Indian security forces. In the wake of Wani's death, protests erupted to show solidarity with the militant. In response, a curfew was imposed throughout the state. Despite this, tens of thousands of Kashmiris attended Wani's funeral. However, several people were killed as a result of security forces firing at the crowd. This caused a dramatic increase in violent outbursts across Kashmir and it became the "biggest outbreak of protest and violence since 2010"⁵.

Tensions continued to rise throughout 2017 and 2018 with 2018 being one of the deadliest years on record. By December 2018, central rule was declared in the state. In February 2019, 46 Indian soldiers were killed by a suicide bomber in Pulwama. This attack increased tensions between the two nuclear powers and has had a direct consequence on the decisions being made in New Delhi. India carried out numerous strikes on camps across the LoC, and Pakistan captured an Indian Air Force pilot.

Arguably, these are just some of the events that have pressured India into making the drastic decision to revoke Article 370. The decision has not occurred over night, rather, it has been influenced by a "legacy of mistrust"⁶ between India and Pakistan and it seems to have been building up for years with numerous events pushing the decision one step closer. However, to actually carry out the decision seems to be a shock to many people.

Decisions Made

Suspicious started to arise at the beginning of August when students, tourists and pilgrims were advised to flee the area, ahead of the mobilisation of thousands of security forces into

the region⁷. Despite fears that India was about to make a drastic decision, India claimed the mobilisation was supposedly for counter-terrorism purposes. When the decision was announced on August 5th 2019, there occurred a complete communications blockade and a security clampdown throughout Kashmir. Social media accounts were limited, phone lines and the internet were cut off. Indian media outlets had little to no information to report on the situation in Kashmir and outlets such as *Greater Kashmir* have been unable to publish any articles since August 5th 2019. As a result of the curfew, public movement has been extremely limited and political officials have been put under house arrest. It is claimed that phone services and landline services have been restored in recent weeks. However, reports from the region are still very limited.

Contested Positions

According to the 2011 census, Kashmir's Muslim population was at 96.4%. This would suggest that the decision to revoke Article 370 would not be received with open arms. If anything, the decision will alienate the Muslim population and remove any autonomy that had previously been granted to them. Nonetheless, there have been varied reports in response to the decision.

Across India, a sentiment of celebration was echoed in the streets, supporting Modi's nationalist stance and the fact that he has lived up to his campaign promises since 2014. Also, part of Modi's campaign and manifesto for a second term included decisions concerning Kashmir's future and with his landslide majority win, this support base is difficult to ignore⁸. Modi's support base also sees this move as a positive push for more inclusive times, particularly the right-wing Hindu nationalist audiences and the Kashmiri Pandits. Those in support of Modi's actions believe Kashmir should not have its own independent laws separate to those of India. Further, Modi and his government justified the decision, claiming that it is a way to move forward and help end violence in the state. By bringing Kashmir under India's control and eradicating its autonomy in favour of the Indian constitution, India claims Kashmir will have better access to education among other things.

Whereas others have used what platforms they have, primarily Twitter⁹, to oppose the situation. Using the hashtag #StandwithKashmir and #KashmirBleeds those following the situation claimed it was a complete disregard for democracy. For them, the Indian government bypassed the opinion of Kashmiri's, in favour of self-interested motives. Also, before being put under house arrest, where she remains today, Mehbooba Mufti described the decision as "the darkest day in Indian democracy". Mufti believes "India has failed Kashmir". Pakistan's Foreign Minister Shah Mahmood Qureshi Tweeted "India in its war frenzy is not only sabotaging regional peace but also committing gross human rights violations along the LoC". President of Azad Jammu and Kashmir, Masood Khan, has also urged the United Nations to "ask India

to stop war-mongering and military build-up”. Khan expressed his concern that India is trying to trigger mass killings in Kashmir.

Other reactions have included Amnesty International forming an online petition stating, ‘Let Kashmir Speak’. This is a public outcry to lift the communications blockade in Kashmir and let the people form their own opinion on the matter. The events that have occurred in recent months are not isolated incidents of human rights abuses. Rather, since the insurgency began in 1990 and the Armed Forces Special Powers Act (AFSPA) was brought into effect, human rights abuses have occurred throughout Kashmir. This includes, extra-judicial killings, rape, torture, enforced disappearances and more¹⁰. Therefore, for organizations such as Amnesty International, Human Rights Watch and others, “the world needs to know what’s happening”¹¹. Also, demonstrations have taken place across the world in the UK, U.S., Australia, Germany, South Korea, Canada and more, in uproar against the decision.

Some have argued the purchasing of property is one of the motivations for the revocation, to alter the demographic landscape of the region¹². India has responded to such allegations by claiming that it is a spreading of fake news and misinformation. Indian media outlets such as *India Today* and *The Hindu* have even accused the BBC of encouraging propaganda and facilitating fabricated information.

What Does the Future Hold?

It is only natural, if the outcome has violent repercussions, this will draw negative attention to India. All indicators suggest that the decision has not been received unanimously, therefore conflict is inevitable to arise both at a grassroots level through physical violence, and at a political level through a war of words between the nuclear powers. If tensions continue to rise between India and Pakistan, this will not only have implications for South Asian security, but also for other Asia-Pacific states including New Zealand and it will also impact trade negotiations and India’s economic relationship to other states.

India’s turbulent relations with its closest neighbour, Pakistan, can impact other neighbouring states including China. China is no stranger to being involved in the Kashmir dispute as we saw when it gained control of the Aksai Chin territory. In 2018, reports hinted at China potentially mediating between India and Pakistan to relieve tensions. However, in the past China have maintained a neutral position on the matter and believe the issue should be resolved bilaterally. If they were to get involved, this could once again bring Kashmir under the spotlight of the world stage. Also, if other states are under the impression that India has disregarded the opinion of millions of people this may influence international relations, as well as set a poor example for the human rights agenda. Therefore, such a bold move might not set the best example for other nearby states such as Myanmar, Sri Lanka and Nepal.

Other states, including Australia, respect that the situation is an issue to be resolved bilaterally between India and Pakistan. At an event hosted by the New Zealand High Commission, Australian High Commissioner to India, Harinder Sidhu explained Australia understands the situation to be an internal matter¹³. Both the UK and the U.S. have previously encouraged India and Pakistan to conduct bilateral talks. For example, in July 2019, U.S. President Donald Trump offered to mediate between India and Pakistan if necessary. In August 2019, British Prime Minister Boris Johnson also discussed the situation in Kashmir with Prime Minister Modi and conveyed “the issue of Kashmir is one for India and Pakistan to resolve bilaterally”¹⁴.

The legal loopholes that were utilised in this decision-making process are beyond the scope of this article. However, at the time of writing, the Supreme Court of India has agreed to hear petitions that challenge the decision¹⁵. If the outcome of the hearing finds India’s actions to be undemocratic, or worse, illegal, this will contradict India being the world’s largest democracy. This will make it difficult for states such as Australia, the UK and the U.S. to remain neutral on the matter, despite economic and trade relations. Only time will tell if India and Pakistan will once again be pushed to the brink of war. However, protecting human rights and supporting the views of the civilian population should be very carefully considered by India, before it makes another watershed move.

Notes

¹ Bose, S. (1996) *The Challenge in Kashmir*. pp. 27.

² Behera, N.C. (2016) "The Kashmir Conflict: Multiple Fault Lines" in *Journal of Asian Security and International Affairs*, 3 (1). pp. 41-63.

³ Duschinski, H. et al. (2018) *Resisting Occupation in Kashmir*. pp. 172.

⁴ Ganguly, S. (2016) *Deadly Impasse*. pp. 48.

⁵ House of Commons (2019) “Kashmir: January 2019 Update”. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7356> 11 Apr 2019.

⁶ Schofield, V. (2003) *Kashmir in Conflict*. pp. 243.

⁷ Jenkins, L. (2019) “Thousands of Tourists Flee Kashmir After Security Alert”, *The Guardian*, 4 Aug 2019.

⁸ BBC News (2019) “Article 370: The Indians Celebrating Kashmir’s New Status”, *BBC News*, 5 Oct 2019.

⁹ Twitter Posts (2019);

<https://twitter.com/mehboobamufti/status/1158257894149615616?s=12>

<https://twitter.com/smqureshipti/status/1157615745666338816?s=12>

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¹⁰ International Peoples' Tribunal on Human Rights and Justice in Indian Administered Kashmir (2009) "Buried Evidence". <http://www.kashmirprocess.org> 28 Feb 2019.

¹¹ Amnesty International (2019) "Let Kashmir Speak". <https://www.amnesty.org/en/get-involved/take-action/let-kashmir-speak/> 25 Oct 2019.

¹² BBC News (2019) "Article 370: What Happened with Kashmir and Why it Matters", *BBC News*, 10 Oct 2019.

¹³ The Economic Times (2019) "Article 370 Abrogation", *The Economic Times*, 3 Sep 2019.

¹⁴ UK Government Press Release (2019) "PM Call With Prime Minister Modi". <https://www.gov.uk/government/news/pm-call-with-prime-minister-modi-20-august-2019> 25 Aug 2019.

¹⁵ Rajagopal, K. (2019) "Kashmir: Five-judge Supreme Court Bench to Hear Pleas Challenging Abrogation of Article 370", *The Hindu*, 20 Sep 2019.