

## VIOLATION OF RIGHT TO SELF DETERMINATION AND CONSTITUTIONAL MANDATE IN CONTEXT OF REMOVAL OF ARTICLE 370

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**Srishti Jain<sup>1</sup>& Nikhil Mishra<sup>2</sup>**

### **HISTORY**

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The evolution of a man leads to the evolution of the definition of politics, which leads to the creation of a balanced society. Evolution has always been a ladder to climb the peaks of success and when maturation is being graphed history plays a vital role in it. The land better addressed as a “Golden Bird” has been governed by several kings which are also denoted as princely states and whenever pages of history will be turned over we will read about the steps and tactics of each king to enlarge his empire the main field of interest of each king has been to aggrandize his kingdom which also remarks the downfall of his rule and empire. When the focus should be to promote the growth of the whole nation the central idea of every political policy under the throne was to succeed more and more empires covered solely by his crown ship. Where mistakes should be taken as lessons to do good; but history claims that all wrongs were boons for others, to be specific enough the loopholes were plot setters for foreign rulers to dig in the land and centralize their own rule; who were mere traders acted as the sole owner of the nation and caged the golden bird in their foreign policies.

It took years for the bird to encage her wings and fly free and breathe in freedom and cast its self-rule which was eventually provided but at a great cause that was to cut the wings of the bird into two different nations under the ambit of politics and this resulted as blood-shed on a larger scale when nominal heads with power passed the sentence of the division of land into two independent nations. Division of anything gives birth to different perspectives of life and new ideologies which came to be known as “Land of Paradise,” people of the paradise wanted their identity to be sacred and not to be tarnished by annexation. The king of the land with full-fledged rule had a fixed policy to stay sovereign, but this was not for a long duration as border country planned an attack on Kashmir and under pressure to secure the land there was

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<sup>1</sup> AUTHOR, BA-LLB, BABU BANARASI DAS UNIVERSITY, LUCKNOW

<sup>2</sup> CO-AUTHOR, BA-LLB, BABU BANARASI DAS UNIVERSITY, LUCKNOW

a security alliance between Kashmir and India under an instrument of accession which also came with terms and conditions of special status to Kashmir which lead to a backdoor entry of Article 35-A under Presidential Order, 1954.<sup>3</sup>

## DOCTRINE OF SELF DETERMINATION AND KASHMIR

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Kashmir and their rulers have been pioneers to keep their people at preference which gave rise to the ***“Doctrine of Self Determination”***, keen support by the UN’s Charter where every person. Kashmir has been given the right of self-determination as a blunt sword in war as they have been deprived of their rights due to the conflicted relations between India and Pakistan because of political and military dispute and yet there has been no word on the topic of the right to self-determination in Kashmir. India while drafting its constitution was conscious to keep Kashmir and its people into boundaries of protection as Kashmir has been an open bridge for terrorism. Kashmiri’s have always been deprived of their basic rights they demanded to be sovereign but they were getting a bane in form of the boon by namesake Special Status which resulted as an exploitation of their basic Human Rights, exploitation has always been done by the ones who promise to protect: *Armed Forces Special Power Act*<sup>4</sup> or *AFSP Act* has violated every commitment to protect humans and their rights, for decades Armed Forces Special Power Act has committed serious Human Rights Violation on people at Jammu and Kashmir which includes extra-judicial executions, sexual violence and acts done exceeding the boundaries of law and order and infringing ones human rights.

The AFSP Act was formed to keep an eye on the smooth functioning of the Nation and to control military or rebellion against the Nation, as its well said ***“with great power comes great responsibilities”*** in the case of Armed Forces they misused all the powers offered to them under the Special Act as they used violence against the citizens who were not militants but were falsely covered under such false acts and were also killed under custody. According to Pradip Phanjoubam, *“Hegemony counter-hegemony, violence counter-violence, the oppressive cycle of the oppression phenomenon can go on and on”* as there is HR violation faced by ones who possess the power to suppress the one who is inferior to them thus people who namely reside on the land addressed as Land of Paradise but are not guaranteed such

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<sup>3</sup> The Constitution (Application to Jammu and Kashmir) Order, 1954.

<sup>4</sup> Armed Forces (Special Powers) Act, 1958, 1990.

rights by lawmakers, Fundamental Rights are violated every day in the disturbed areas especially in areas of Kashmir. The need of an hour is to look after the proper functioning of the Act and to look after proper Amendments in Armed Forces Special Power Act to ensure that the armed forces do not kill innocent people, without providing due justification, complaints filed under such violations are either rejected or not even filed due to excess use of powers by the armed forces.

## **KASHMIR AND ITS TEMPORARY PROVISION**

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Impunity for human rights abuses is a long-standing threat under the premises of Jammu and Kashmir as they have long experienced the cruel irony of a claim by other democratic governance as under United Nations resolutions, the problem persists. In the era of 1950s to 1960s prominent leaders were in a vote of the free and fair plebiscite and advocated such views in a matter of dispute when it came to Jammu and Kashmir but in the present scenario this rule lost its root and use of power was at topmost priority interpretation of laws and use of majority in the house gave a boon to leaders of the present era to govern over Jammu and Kashmir.

An overview that by the opinion of gazette can declare this particular Article ceased as per recommendations by Constituent Assembly of the State, in accordance with the terms specified the approval for divesting Jammu and Kashmir of its statehood, and thereby significantly curtailing powers vested in hands of the legislature even reducing the decision making power under the scope of administration was sought and very easily given, an issue which required panels or special committees but it was not so and was passed without any serious debate. Article 370 holds unambiguous in highlighting the relation of J&K with India as per the words of Constitution no changes can be made without the consent of assembly, which was dissolved in 1956 under the malice use of amendment power by changing key phrases in Article 367 of Indian Constitution, replacing the “Constituent Assembly” of Jammu and Kashmir which drafted the state constituent and gave a green signal to relation with India with “Legislative Assembly” former exercises constituent powers- *an expression of sovereign authority whereas the latter embodies the power of representative.*

## ARTICLE 370 AND DOCTRINE OF SELF DETERMINATION

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Abrogation of Article 370 removes the Special status which has no part of a democratic discourse on drawing an equal level of the ceiling for people of J&K as per political and economic mainstream of the country rather it has come out to be an articulation of majoritarian will imposed on land with the majority of Muslims.

It is denoted as an earthshaking development when De facto becomes De jure the dramatic scrapping of Kashmir's special status using Article 370 does not change the facts on the ground, but it throws a jaded piece of fiction into the dustbin the fiction where people matter not the land but the act showcases that land matter rather than the people as Jammu and Kashmir no longer stays as a State but is divided into two Union territories as the autonomy of Jammu and Kashmir is concerned as it has less autonomy than a regular state such as Uttar Pradesh or West Bengal which has been under the Centers tutelage, here there are no considerations for the rights of the people of the land which violates their basic Human rights, multiple battles play out in Kashmir simultaneously offering no choice for the people. One at the power and political roles pursue their individual goals vigorously with deadly force where citizens of Kashmir get pummeled among the political parties who have no concerns about people of Kashmir and what they think or what they want? but this is not the question to be asked; the main question that arises is-*weather the people of Kashmir want to be a part of India or not?* this should be a power given to Kashmir rather than Parliament unanimously passing a resolution in 1991 that J&K which also includes the portion held by Pakistan is an integral part of India hereby the will of people of Kashmir as implicit in the Right of Self-determination was not seen into effect which is of grave concern. Crapping down Kashmir's special status is also scrapping down Kashmiri Leaders out of the equation and the real fear in Kashmir is that this step will cause a demographic change and Kashmiri's will be outnumbered by outsiders.

***This conflict between two nations conquering over the Land of Paradise has robbed millions of basic Human Rights of the people of Kashmir and continues to this day to inflict untold sufferings of people here.*** Such acts are a clear violation of the Right of Self Determination which is to be practiced by each individual of a state. In the case of Kashmir Cartography may lie but Topography and Culture geography will reflect the truths no matter

how dark it is. It is the sole identity i.e. KASHMIR the “LAND OF PARADISE” and its people irrespective of the fact what their religion or national identity is they are as whole Kashmiri's. Under the guise of crude nationalist peddled by the boundaries of post-colonial states for internal politicking and international leverage, and this but a blanket of darkness over the history of the people of Kashmir and being stolen from them. The answer to this comes in the same way that every colonized people have survived through ages and beyond: by interpretation and by insurrection.

## THE ROAR OF “AZAADI”

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Precisely the real answer here should always be under the words of an ultimate Right of Self Determination which goes in vain. What Kashmir wants has never been a topic of discussion as their demand to choose their national destiny. They claim that they are not part of any other nationality they have their language that demands separate recognition from Kashmir and their individuals. How can someone from a foreign land under the language and provide employment to the people of Kashmir when they have no idea about the culture they follow how will people of Kashmir hold their faith in such bureaucrats who are not ready to hear the claims of the people, their land which is being foreign to them they are now being the tenants in their own homes. Their claims outcry that- ***“We are not you. We have never been you. We don't want to be you.”*** How can laws be formed when one person and his rights are being infringed they are not laws they are sentences passed by people at the power and to be followed by people with no wish to follow them here there can be no difference seen in federalism and dictatorship. Certain rights are made to assure people that they are secured and they should feel safe, but what happens when the right to choose their representatives is in their hands but the irony is their hands are cuffed which gives them no further say on how their representatives should be or who is going to rule them as they have their mouths sewed which makes them numb when they shout enough they are shot dead this is nothing but their need of Freedom why to focus on the stone in hands of youth and not on the demolishing dreams of their future under the conflicts between two countries he is the one suffering as his Right of Self Determination is locked up his freedom to move is restricted there is no way out he can communicate to the world outside him now look at that stone again it's not justified but it's not only a stone but a piece of broken dreams of freedom he deserved as a citizen.

## CONCLUSION

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Abrogation is just a revision of the policy of the king under the modern era to annex more states which is an appropriate example of excessive use of power by the government majority. What was once suffered by India is now being suffered by Kashmir the only difference here is once the sufferer is now making the other suffer, where history should repeat itself in a positive way we witness the whole negative aspects of ancient times. India has betrayed Kashmir as the journey which started as a promise to protect Kashmir but ended as the devourer of their dignity. India's decision to revoke Article 370 is just another chapter in Kashmir's long history of imperial oppression moreover - *Abrogation of Article 370 is a Constitutional sin as a citizen has absolute right to freely determine their political status and freely pursue their economic, social and cultural development but due to this vicious step 'Self Determination has been brutally murdered.'*

