

RESTORATION OF 'STATEHOOD' SANS ARTICLE 370 – WHAT IT MEANS FOR IIOJK?

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(Views expressed in the brief are those of the author, and do not represent those of ISSI)



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Introduction

Following his assumption of the post of Chief Minister after the recent assembly elections, Omar Abdullah met Prime Minister Narendra Modi to persuade him to restore 'statehood' for the Indian Illegally Occupied Jammu and Kashmir (IIOJK).¹ On 5 August 2019, the Indian government - acting illegally and unilaterally - had bifurcated the occupied territory into two parts – Jammu and Kashmir and Ladakh - and made them both 'Union Territory.'

Throughout the election campaign in the run-up to the assembly elections, the issue of restoration of Article 370 and 'statehood' figured prominently. Nearly every party participating in the polls made restoration of both or at least restoration of 'statehood' a part of their election manifesto. While the People's Democratic Party (PDP) of Mehbooba Mufti demanded restoration of both the statehood and Article 370,² the National Conference (NC) made pledges on similar lines as well.³ Interestingly, manifesto of Indian National Congress did mention restoration of statehood but remained silent on

1 "J&K Statehood to Be Restored Soon: Omar Abdullah after "successful" Delhi Meeting', *India Today*, 29 October 2024, <https://www.indiatoday.in/india/story/jammu-and-kashmir-statehood-to-be-restored-soon-omar-abdullah-successful-delhi-meeting-pm-modi-2624978-2024-10-29>.

2 "PDP's J-K Polls Manifesto: Article 370, Diplomatic Talks, Kashmiri Pandits", 26 August 2024, https://www.business-standard.com/elections/assembly-election/pdp-s-j-k-polls-manifesto-article-370-diplomatic-talks-kashmiri-pandits-124082600239_1.html.

3 "Dignity, Identity and Development - The Jammu and Kashmir National Conference Manifesto 2024", 19 August 2024, https://jknc.co.in/wp-content/uploads/2024/08/Final-Meni_compressed.pdf.

the issue of restoration of Article 370 despite the fact that it had criticised the BJP government severely at the time of its revocation in 2019.⁴ The BJP manifesto highlighted the so-called 'benefits' of abrogation of Article 370 five years ago. Though the BJP manifesto did not speak about restoring statehood, Prime Minister Modi during his campaign visit to IIOJK had expressed his intention of restoring statehood saying: "We have said in the parliament that we will restore (the region's) statehood. Only the BJP will fulfil this commitment".⁵ Home Minister Amit Shah, too, made similar promise of restoring the statehood but at the same time warned that Article 370 was 'history' and not going to come back.⁶

Following the elections, the National Conference Chief Minister Omar Abdullah secured the passage of a resolution in the very first Cabinet meeting urging the Union government to restore the statehood of IIOJK.⁷ The issue of restoring Article 370 was left aside for the time being, arguing that this was not possible under the government that abrogated it in the first place.⁸ However, knowing well that it is the demand of every Kashmiri, the newly-formed assembly also passed a resolution asking the Union government to work towards restoration of Article 370.⁹ The assembly resolution drew strong reaction from the BJP as it saw this as an "attempt by INDIA bloc parties to divide India." The BJP also termed the resolution as an insult and disregard for the Indian Parliament and Supreme Court.¹⁰ For UP's Chief Minister Yogi Adityanath, the resolution was an

⁴ "Congress manifesto silent on Article 370 restoration," Times of India, September 18, 2024, <https://timesofindia.indiatimes.com/india/congress-manifesto-silent-on-article-370-restoration/articleshow/113440153.cms>

⁵ "PM Modi in Srinagar Highlights: Statehood Will Be Restored in Jammu and Kashmir, Says PM Modi", *The Hindu*, 19 September 2024, sec. Jammu and Kashmir Assembly, <https://www.thehindu.com/elections/jammu-and-kashmir-assembly/pm-modi-in-srinagar-jammu-and-kashmir-assembly-election-rally-live-updates/article68658653.ece>.

⁶ "'No Power Can Talk Of Autonomy In Jammu And Kashmir': Amit Shah In J&K", *NDTV.Com*, 7 September 2024, <https://www.ndtv.com/india-news/no-power-can-talk-of-autonomy-in-jammu-and-kashmir-amit-shah-in-j-k-6510637>.

⁷ "Omar Abdullah-Led J&K Cabinet Passes Resolution to Restore Statehood", *Business Standard*, 18 October 2024, https://www.business-standard.com/politics/omar-abdullah-led-j-k-cabinet-passes-resolution-to-restore-statehood-124101800440_1.html.

⁸ "INDIA Bloc to Set aside Restoration of Article 370 for Now: Omar Abdullah", *Business Standard*, 9 October 2024, https://www.business-standard.com/elections/jammu-kashmir-elections/india-bloc-to-set-aside-restoration-of-article-370-for-now-omar-abdullah-124100900692_1.html.

⁹ "J&K Assembly passes resolution seeking dialogue on restoring Article 370", *NDTV*, 6 November, 2024, <https://www.ndtv.com/india-news/j-k-assembly-passes-resolution-seeking-dialogue-on-restoring-article-370-6955191>

¹⁰ "Article 370 will not be restored, JK Assembly resolution attempt to divide India: BJP," *Economic Times*, 7 November, 2024, <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-will-not-be-restored-jk-assembly-resolution-attempt-to-divide-india-bjp/articleshow/115056472.cms?from=mdr>

attempt by the Indian National Congress and National Conference to push IIOJK back into the “flames of terrorism”.¹¹ The question here arises, what is statehood for Kashmir sans Article 370?

What is Article 370?

The history of Article 370 of the Indian constitution goes back to the time of partition when Indian Prime Minister Jawaharlal Nehru pressured Maharaja Hari Singh to accede to India as a semi-autonomous state of the Indian Union. Following Indian occupation of the State of Jammu and Kashmir after the signing of the alleged ‘Instrument of Accession’ by the Maharaja and landing of Indian troops in Srinagar on October 27, 1947, a series of deliberations took place to ‘formalise’ this relationship. It finally culminated in an understanding between the Indian government and Kashmiri leader Sheikh Abdullah to incorporate Article 370 in the Indian Constitution in 1950. The Article 370 envisaged that the powers of Central government were restricted to defence, communications, and foreign affairs. This enabled the Indian occupied Jammu and Kashmir to have its own flag, constitution and the powers to state legislators to introduce or amend laws on all issues except defence and foreign policy. All other powers of the central government could only be implemented in IIOJK if approved by state government which in turn needed endorsement of the state’s constituent assembly. The Indian occupied Jammu and Kashmir was also to have its own Sadar-e-Riyasat in the place of governor, and a Prime Minister instead of Chief Minister. The Article 370 also stipulated that the authority of the state government to approve any change lasted only till the state’s constituent assembly was convened and further extension of powers would not be possible once the state constituent assembly finalized laws and dispersed. Para 14 of the Article 370 also states categorically that it could only be abrogated on the recommendation of the state’s Constituent Assembly.¹²

After finalizing separate ‘constitution’ for the state of Indian Occupied Jammu and Kashmir, the State Constituent Assembly dispersed in 1957 which meant that now no changes could be made regarding extension of Central laws to IIOJK. However, since India was never sincere in its repeated commitments to the people of Kashmir, the ‘special status’ allowed under Article 370 soon came under assault and a steady process of hollowing Article 370 commenced. Over the next 50 years, through 47 Presidential Orders, 260 out of 395 Articles of the Indian Constitution were extended to Indian occupied Jammu and Kashmir, including 94 out of 97 entries on the Union list.

¹¹ “UP CM Yogi Adityanath condemns Congress and NC bid to restore Articles 370, 35A in J&K,” *Times of India*, 8 November, 2024, <https://timesofindia.indiatimes.com/city/lucknow/up-cm-yogi-adityanath-condemns-congress-and-nc-bid-to-restore-articles-370-35a-in-jk/articleshow/115070958.cms>

¹² “Towards Annexation & Indianization of Kashmir in Broad Daylight,” *Kashmir Institute of International Relations*, <https://www.kiir.org.pk/reports/towards-annexation-indianization-of-kashmir-in-broad-daylight-3292>

For example, in 1965, the office of the Sadar-e-Riyast and Prime Minister were replaced with Governor and Chief Minister respectively.¹³

'Statehood' Sans Article 370

As has been mentioned above, in the reckoning of Kashmiris, the Article 370 was the basis of a relationship between India and IIOJK as it granted 'special status' to IIOJK. Due to this, the IIOJK had certain powers which no other entity in the Union enjoyed, such as retaining its own flag and its own 'constitution'. Article 370 also illustrated that the final status of Jammu and Kashmir was not yet fully settled. Among other things, the restoration of 'statehood' without Article 370 would mean application of Indian constitution without IIOJK having 'special status' that also denoted its still 'unsettled' position. Below are some of the points indicating features of IIOJK with statehood without Article 370: -

- 1- IIOJK will not have its own separate flag and Constitution.
- 2- Statehood without Article 370 would also mean that IIOJK will constantly be under the threat of applicability of Article 3 which gives power to the Union government to redraw state boundaries. With Article 370 gone, India has already divided the state into two Union territories i.e. Jammu and Kashmir and Ladakh. The Union government has also announced that even if statehood is restored, Ladakh would continue to be a Union territory.¹⁴
- 3- Article 35A ensured that the people of IIOJK were the recipients of privileges offered by the state government that included government jobs in the state, scholarships, right to own property etc while denying the similar rights to outsiders. Now non-Kashmiri Indians are also eligible to not only buy property but also apply for jobs and other benefits that were previously reserved only for the Kashmiris.
- 4- Article 35A ensured that the demography of IIOJK remains unchanged by defining who are or are not the state subjects. With statehood sans Article 370 and 35A, the gates of IIOJK are now open for the non-Kashmiri Indians to permanently settle there. This is feared to soon convert the Muslim majority of the state into a minority. Statehood without Article 370 and 35A would simply mean an attack on the very political, cultural, ethnic and religious identity of the Kashmiri people.

¹³ Ahmer Bilal Soofi et al. "The Status of Jammu and Kashmir Under International Law", *Research Society of International Law (RSIL)*, chrome-extension://efaidnbmnnpbpcjpcglclefindmkaj/https://rsilpak.org/wp-content/uploads/2019/08/Legal-Memo-Kashmir.pdf

¹⁴ "What Rights Will Kashmiris Lose after Article 370, Article 35A Are Revoked", *Business Today*, 5 August 2019, <https://www.businesstoday.in/latest/economy-politics/story/what-rights-will-kashmiris-lose-with-the-removal-of-article-370-article-35a-219863-2019-08-05>.

Conclusion

India's actions of 5 August 2019 – aimed at changing the internationally recognised 'disputed' status of IIOJK and altering the demographic structure of the occupied territory - was in violation of the relevant UN Security Council resolutions and international law including the 4th Geneva Convention.

While abrogating Article 370 and 35A, the Indian government made tall claims that this abrogation will usher in a new era of peace and development. Time has proved that all such claims were mere lies as the real agenda of the Indian government was only to further tighten its grip on the occupied territory and turn its Muslim majority into a minority in their own land. India is intent on changing the demographic structure, and erasing the cultural identity of Kashmiris so that it can be made part of the 'Hindu Rashtra' – the ultimate agenda of the Hindutva ideology.

Apart from politically disempowering the Kashmiri Muslims, since the abrogation of Articles 370 and 35A, the number of Indian security forces have swelled up to 1 million¹⁵ which in turn has increased instances of cordon-and-search operations, arbitrary detentions, raids, killings, torture and grabbing of land belonging to Kashmiri people forcefully in the garb of development projects. Seventy percent of contracts for Kashmir's mineral extraction have been given to outsiders which has led to increase in the cost of materials forcing residents to stop their construction work besides being denied employment opportunities. There has also been a sharp decline in the investments in the region from \$102.8 million in 2017-18 to \$ 46 million in 2021-22, thereby economically disenfranchising the Kashmiri people.¹⁶

Given the threat to their historical land-owning rights as well as to cultural identity, the people of IIOJK understandably demand restoration of Articles 370 and 35A. In their reckoning, restoration of statehood without restoration of Articles 370 and 35A would not mean much as the political marginalization and disenfranchisement of the Kashmiri people will remain open. There is no prospect of peace returning to the region as long as justice is denied to the Kashmiris in this blatant manner.

¹⁵ "1 Million Indian troops deployment in IIOJK brazen violation of int'l law: APHC", *Associated Press of Pakistan*, February 23, 2024, <https://www.app.com.pk/kashmir/1-million-indian-troops-deployment-in-iiojk-brazen-violation-of-intl-law-aphc/>

¹⁶ Nisar Ahmad Thakur, "Illusion of peace – Unmasking myth of normalcy in Indian occupied Kashmir", Kashmir Institute of International Relations, <https://www.kiir.org.pk/reports/illusion-of-peace-2483>