

The Legal Chess Games That Imposed Article 370 in 1949 and its Abrogation in 2019
in the Indian state of Jammu and Kashmir

Vijay K. Sazawal, Ph.D.

International Coordinator, Indo-American Kashmir Forum

5 August, 2019

A 70-year old wrong has been corrected. India, being a nation of laws, provided significant autonomy to the state of Jammu and Kashmir ("State") through Article 370 of the Indian Constitution ("370") in 1949, and retracted the same in 2019 in full compliance with the Constitution of India and the Constitution of Jammu and Kashmir.

There are various stories going around of how BJP/RSS designed and implemented its successful strategy. This is my perspective in a concise format.

SECTION I

The Kashmiri ruling class ("Ruling Class") Strategy – It is important to note that application of 370 to the State was done through legal and constitutional means, meaning that actions undertaken and results thereof had the approval of the Indian Parliament.

- 1946 – India established its Constituent Assembly to draft the Constitution and articles of state-center federation
- 1947 – J&K Acceded to India. Almost immediately Sheikh Abdullah, imposed on the pro-British Maharaja by Nehru as the ruler of the State, demanded special status
- 1949 - Nehru agreed to Sheikh Abdullah's (imaginary) insecurities and accepted his pitch, proposed to the Indian Constituent assembly to put in a temporary Article 370 in the Indian Constitution, respecting Kashmir's autonomy as the only Muslim majority state. The Article required the J&K Constituent Assembly, or its successors, to remove the contingent Article in the foreseeable future
- 1951- J&K formed its Constituent Assembly, dethroned Maharaja and swiftly moved to adjourn (without a recall date)
- 1953 – Ruler of the State, Sheikh Abdullah was arrested for hobnobbing with Americans. His deputy, G M Bakshi, took over the reins of power. Bakshi was seen as more pro-Indian than Abdullah
- 1954 – Bakshi, instead of integrating the State to the Union, used the still legally functioning Constituent Assembly to strengthen State autonomy. He tested Indian resolve by asking India, consistent with the autonomy granted to the State, to have the President of India sign an ordinance that took away some rights of the State subjects. This ordinance became the Article 35A ("35A") of the Indian Constitution. This legal maneuver by the

State was consistent with 370 even though both parties knew that 35A was in violation of the Indian Constitution. In effect, the trap was set by the Kashmiri Ruling Class ("Ruling Class") and India walked right into it.

- 1956 – J&K Constituent Assembly was disbanded without a word about removal of 370. The Ruling Class was smug that 370 had now become permanent under the national laws because the State Constituent Assembly had been disbanded and no future State Legislative Assembly would ever agree to retract 370 given that the Ruling Class wanted to maintain its hegemony and control over Kashmir which was paraphrased as "protecting Islamic identity" of the State. In effect, the Ruling Class became enablers for transforming Kashmir's syncretic Sufi culture into fundamentalist Islamic culture.
- 1957 – The new J&K Constitution, approved previously by the J&K Constituent Assembly, came into force. The State Constitution was patterned after a Socialist-Marxist manifesto with maximum authority to the State giving the State unfettered powers over daily life and liberty of its subjects. State had authority to acquire private land without compensation, and decide on who is or is not eligible to hold public office. The state constitution denied certain protections to minorities - meaning non-Muslims, children and women, and ignored requiring laws pertaining to industrial safety, environmental protection and the right to education. The state constitution gave rise to feudal political architecture in the state run by a few political families leading to massive corruption, growing economic malaise, and public unrest.
- 1957 – Most Indian political parties, aware of how Kashmiri politicians had constitutionally outflanked and outmaneuvered them, put a new spin on the legal status of Kashmir by describing the situation as "an example of Indian secularism and tolerant pluralism." This news further encouraged the Ruling Class to create mayhem and oppress minorities.

SECTION II

The BJP/RSS Counterpunch – The strategy pursued is legal and constitutional all the way

- 2014+ - Lot of legal and constitutional work was done in Modi -1 Government. The key to proactively pursue a change in the status of the State required BJP to be a player in running the State so that appropriate levers could be pulled at the right time. This led to formation of an unholy alliance with PDP but was absolutely critical to the plan.
- June 2018 – PDP/BJP Government dismissed as BJP withdraws support to the coalition, Governor's rule was put in place (6 months). Assembly was not disbanded.
- December 2018 – Governor's rule ended. J&K Assembly, as per rules, was disbanded and President's rule began. Again as per the rules, power of J&K Assembly was transferred to the Indian Parliament (Article 356)

- March 2019 – Jammu and Kashmir SC/ST Reservation Bill (Amendment) was taken up by the Indian Parliament, acting as the legal representative of the J&K State Assembly. (This was a highly tactical move that would tell Modi Government if their strategy would be implementable under Article 356 of the Constitution. That made this “test case” comparable to the designs of Kashmir’s Ruling Class in getting 35A approved by New Delhi 65 years back). The President signed the ordinance and challenges in the Supreme Court (SC) were negated. The BJP/RSS strategy gained traction.
- March 2019 – Given the shortcomings of the State Constitution, the BJP Government had a choice in selecting Bills that would make the State Constitution progressive. The selection of SC/ST reservation bill had the support of non-NDA Parliamentarians who advocate on behalf of SC/ST people (like BSP) that gave BJP its political numbers (then and later) to get the necessary approval in the Rajya Sabha
- August 2019 – Amit Shah moves the Jammu and Kashmir Reorganization Bill, 2019 (“Bill”) to undo 370/35A legally. What was deemed impossible to undo constitutionally by most Indian legal experts, Kashmiri Ruling Class, and by most State subjects, became a reality as both houses of the Parliament gave bi-partisan support in massive numbers to the Bill.
- August 2019 - An almost impossible endeavor, given the legal and political sanctity it had withstood for seventy (70) years, was trashed into dustbins of history. The law will come into effect on October 31, 2019.
- August 2019 – A number of legal challenges were filed by the State Ruling Class and by various Indian NGO’s. SC has stated that it will take these cases (probably bundle them) in due course. SC showed no desire to fast track decisions in this regard.

TAKE-AWAY NO.1: PM MODIJI HAS CHANGED THE COURSE OF HISTORY WITH A DARING STRATEGY AND BY ADHERING TO THE PRINCIPLE THAT INDIA IS A NATION OF LAWS.

TAKE-AWAY NO.2: PM MODIJI HAS DELIVERED MINORITIES OF THE STATE FROM SUBJUGATION AFTER FOR BEING TREATED AS SECOND CLASS CITIZENS. HE STANDS TALL TODAY AS “INDIA’S ABRAHAM LINCOLN.”

XXXXXXXXXX