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Abrogation of Article 370: Kashmiris Perspective

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ABSTRACT
Kashmir has remained bone of contention between India and Pakistan since partition of subcontinent. At the time of partition, the armed revolt liberated a part of Kashmir called Azad Jammu and Kashmir that is under de-facto control of Pakistan while rest of the part is still under Indian illegal control. Incident of 5 August, 2019 suddenly made change in history of Kashmir and pushed Jammu Kashmir into jail by abrogating Article 370.This study tries to explore the shift in Kashmiris' perspectives after scrapping of Article 370.It highlighted the impact of scrapping of Article 370 and role of Indian and Pakistani leadership during this time period. In a shell, it seems Kashmiris perspectives shifted toward wish for independent Kashmir.

Keywords**; Abrogation, Kashmir, Impact, Demographic Change, Kashmiris Perspectives.**

INTRODUCTION

No doubt beauty of Kashmir can't be compared , but unfortunately now the land of Kashmir sees people dying everywhere ,murders in every town and village, people are being picked up and thrown into 6-feet rooms in dark jails , there are cells where hundreds of young men are kept in chains and from where many never seen alive, there are thousands being kidnapped leaving behind women with everlasting wait, number of dead bodies on the roads waiting to be buried in graveyards . After Article 370 Kashmir dispute turned out to be more complicated. Not only it pushed Kashmir into never ending anarchy by changing status of J & K, as well as it produced a polarity in the demographical position in the regions. Abrogation of article 370 (1) has brought economic ruin, political disarray and social improvishment to the valley, apart from heavy loss of life. Furthermore, violent social disruptions in the Jammu and Kashmir and communal polarization that destroyed the cultural and social fabric made the conflict complicated.

Article 35A was a unique clause of Indian Constitution. Although it was a part of Constitution, but did not mention in the bare act. It was not specified after article 35 which was followed by article 36 but could be seen in appendix I of the constitution (Indian Constitution). It was mentioned for benefit of State of Jammu and Kashmir by Presidential Order of 1954.It was basically devised to preserve State Subject Law being defined in Dogra Rule ,notified in 1927 and 1932 (2).The article was not known to public and it came into the eyes when it was abrogated by Indian Parliament on 5th August,2019.An agreement was made in July 1952(Delhi Agreement, 1952) between the prime minister of India of that time, Jawaharlal Nehru, and the prime minister of Jammu and Kashmir (3), Sheikh Abdullah, regarding citizenship law which allowed the state to regulate the rights and privileges of its own permanent residents (All persons born or settled within the State before 1911 or after having lawfully acquired immovable property and resident in the State for not less than ten years

prior to that date. All emigrants from Jammu and Kashmir, including those who migrated to Pakistan, are considered state subjects. The descendants of emigrants are considered state subjects for two generations. President of India of that time codified the agreement, who issued the Constitution (Application to Jammu and Kashmir) Order, 1954 (made pursuant to article 370(1) of the Constitution), which added article 35A to the Indian Constitution (4). It allowed the state of Jammu and Kashmir to define permanent residents of the state and certain "special rights and privileges" attached to such residency, including the power to restrict settlement to the state and acquire immovable property. Text of the Article: '35A. Saving of laws with respect to permanent residents and their rights is;

Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,

(a) Defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) Conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects

- Employment under the State Government; or
- Acquisition of immovable property in the State; or
- Settlement in the State; or
- Right to scholarships and such other forms of aid as the State Government may provide

Shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part (35a).

It provided autonomy to Jammu and Kashmir to have own laws, constitution and flag. Defense, foreign policy, and communication will be in Indian hands. Issues of residence, population, funding will be handled by Jammu and Kashmir. Jammu and Kashmir institution framed in 1956 retained definition of Maharaja Regime of Permanent resident (April, 1927 and June 1932). The Permanent Resident Law prohibits non-permanent residents to settle permanent in the State. It was registered as a discrimination against women of Jammu and Kashmir as was disqualifying them from state subject law (if they marry a non-permanent resident, state subject law will not be applicable). But in 2002 Jammu and Kashmir High Court made a development and held the opinion marrying a non-permanent member will not disqualify them from state Subject Law, but their children will not have succession right (5).

The president of India on 5 August issued the Constitution, 2019, C.O. 272, authorized to article 370(1) of the Constitution of India. Gautama Bhatia, the lawyer stated that this "constitutes the basis for everything that follows." The order specified that, with the "accord of the Government of State of Jammu and Kashmir," "all the foundations of the Constitution, as legislatively modified from time to time, shall apply in relation to the State of Jammu and Kashmir." Moreover, since the government could not directly reckon on article 370(3) to abrogate other articles, it striven to use its powers under article 370(1) to amend article 367, the interpretation clause of the Constitution, so that references to "Government of the State" in article 370 would be construed as the governor of Jammu and Kashmir, and the expression "Constituent Assembly of the State" in article 370(3) will be read as hinting to the current legislative assembly of Kashmir. The order also set forth that it will "supplant the Constitution (Application to Jammu and Kashmir) Order, 1954," effectively abrogating article 35A as well (6).

On the same day a resolution recommending Indian President to abrogate most of article 370 in relation to 370(3) by upper house of parliament (7). On the very next day 6th August

President implemented the recommendation and abrogated article 370.During this time, Jammu and Kashmir Reorganization Act was also under consideration and then it was passed by upper house first and then by lower house of parliament. On August 9, President passed the Act that made BJP mandate in implementation. It was claimed by a blog post and many other analysts that "the goal of this legislation was to reorganize Jammu and Kashmir from being one state—autonomous or no autonomous—into two union territories (units of governance that are always under direct national control). One union territory, which would include the Kashmir Valley, would have a legislature, whereas the other, Ladakh (a mountainous region bordering China that has also seen some border skirmishes), would be without a legislature". On the other side Indian government justified that the revocation was carried out for the "economic development and growth" of the state. The Indian government justified its illegal act by words that Article 370 was the base of terrorism in the state of J&K and had ruined the state structure, ceased its development, stopped the Indian government to provide proper health care and education; therefore, it was the Indian government duty to provide them with all basic facilities so it integrated the region with the rest of India for its betterment (8). Delhi supported its move by asserting that its move has popular support in Jammu, Ladakh and even in most parts of Kashmir.

The move taken enabled Indian government to achieve three main targets: firstly, the preferential treatment accorded to Jammu and Kashmir(J&K) was removed and entire Constitution was applied to Jammu and Kashmir; secondly, Jammu and Kashmir has been bifurcated into two Union Territories –Ladakh without a legislature and Jammu and Kashmir with legislature; thirdly, instead of Constituent Assembly it made the state legislative assembly the competent authority to make the recommendation to the President to declare Article 370 .

Abrogation of article 370 has created a new situation and momentum that could bring different Kashmiri narrative. P Chidambaram, a senior leader of the Congress Party described the abrogation of article 370 as a *"catastrophic step*" and warned that it could have serious consequences. "*You may think you have scored a victory, but you are wrong and history will prove you to be wrong.*

Future generations will realize what a grave mistake this house is making today,"(Chidambaram) (9). Article 370 of Indian Constitution provides Kashmir the "*power to have a separate constitution, a state flag, and autonomy over the internal administration of the state*." Moreover, Article 35-A "*protects the demographic status of the Jammu and Kashmir, which means that a person from other parts of India cannot purchase property in Kashmir*".

BJP adopted the manifesto of revoking the Kashmir's special status at the time of Modi administration. It abrogated the article 370 and 35A of the Indian constitution and imposed strict curfew in IOK. At the same time, India controlled all communication, civilian movements and political leaders are restricted under house arrest. On August 5, Indian Home Minister Amit Shah introduced in Parliament legislation to abrogate Article 370 and reorganize the J&K state by bifurcating it into two Territories, Jammu & Kashmir and Ladakh, with only the former having a legislative assembly (10). In speech, Shah called Article 370 "discriminatory on the basis of gender, class, caste, and place or origin," and contended that abrogation would spark investment and job creation in J&K. On August 6, Prime Minister Modi declared that "J&K is now free from their shackles," and predicted that the changes "will ensure integration and empowerment''. But, the Indian undemocratic and immoral act of seizing the Kashmiris

autonomy and their identity have given a light to the freedom struggle and became bloodier. It is noticed that at least there are 229 killings during abrogation of Article 370 and 35-A.
On the other side, Pakistan's initial response was limited to telephonic diplomacy. Later, PM Imran Khan visited US and also delivered a speech in UNGA. Pakistan tried to engage countries to highlight the Kashmir issue. As a result, PM of Malaysia, President of Turkey and Foreign Minister of China immensely condemned Indian abrogation of Article 370 and 35-A regarding Kashmir and asked for peaceful solution in the UN General Assembly in September 2019. But these were verbal statements and time needs practical steps.

METHODOLOGY

A survey has been conducted in Kashmir using snowball sampling techniques in different universities of Kashmir. The respondents include both male and female Kashmiri students, between ages of 18 to 30 years. Sample was of 200 students out of which 109 have responded due to unstable internet connections and security issues. A robust examination of relevant materials includes credible journal articles, books, newspaper articles, and internet documents.

Likert scale was used in questioner with 5-points scale (1: Strongly disagree,2: disagree,3; neutral,4: agree,5: strongly agree). To obtain in-depth baseline data for study, the questioner covered all dimensions to know the Kashmiris perspective on dispute after Abrogation of Article 370.The responses were analyzed with utmost care.

FINDINGS AND DISCUSSION

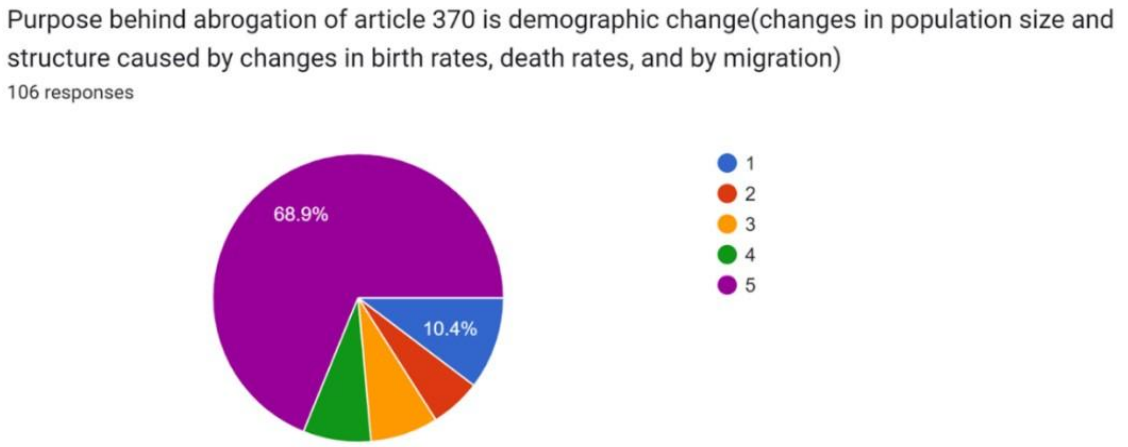
The following sections discuss the findings of the survey

ABROGATION OF ARTICLE 370 AND DEMOGRAPHIC CHANGE

Demographic change affects the living standards of the people living in a state and can influence equilibrium ratio, and demand for basic rights. Kashmir was a densely populated area and Muslims were in majority especially in valley. At the time of partition almost 72.4% population was Muslim and was reduced up to 4.13 % according to a report. History witnesses' efforts of change of demography as more than 500, 00 were massacred and more than 28000 were missing in between 1947-1948.Agrarian Reforms Act 1976 was passed according to which land of Kashmir can be transferred to tillers on certain conditions and for better use of land. Between 2001-2011 growth of Hindu population in Ladakh territory also witnessed demographic change attempts by Indian government. In 2015 a plan was made to set 25000 Hindus in Kashmir.

Abrogation of Article 370 and 35A are also part of this demographic change. Fascist Indian government following Hindutva ideology took an aggressive step and has put up whole effort in implementing its new formed designs to distract Muslim majority composition. Long term objectives of Abrogation are, to disfigure Muslims in the territory, deprived the citizens of their basic rights, crush voice of freedom and so on. New laws provide right of settlement and domicile to non-Kashmiris. Decentralization and Recruitment Act provided students of India studying in Jammu and Kashmir for 7 years, right of domicile and property possession.

October 2020, Union Territory of Jammu and Kashmir Reorganization Third Order, allowed non-Indians with right of property in Jammu and Kashmir region. Aljazeera issued a report on 28, October 2020 that Kashmiris fear the new laws, aimed at land grasp to diminish Muslim majority region, partial autonomy was scrapped in 2019, army and forces were strategically entered and right of buying property on the name of industrial revolution was given to non-Indians.



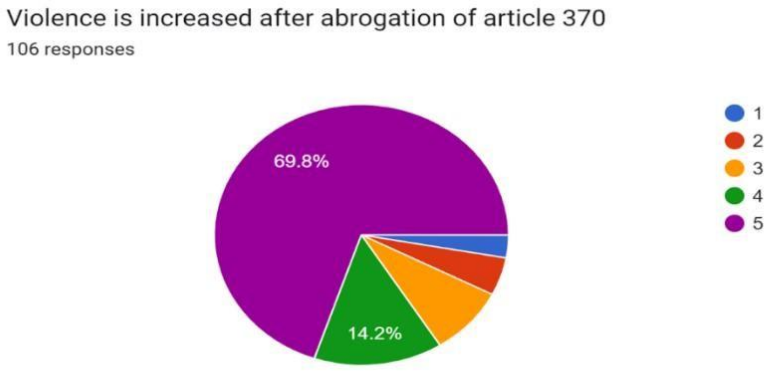
Figures 1: Graphical representation of survey results on the attempt of demographic change, as well as other related questions.

IMPACT OF ABROGATION OF ARTICLE 370 AND 35A

Pre-Abrogation time witnessed cases of violence in Jammu and Kashmir. Indian government entered forces into valley before implementation of new laws, resulted in clashes between forces and natives. Internet and mobile services were being shut downed and leaders were put into jail to stop reaction from Kashmiris. On 5th August new laws being implemented resulted in symbolic and psychological signs. Entrance of forces resulted into stone-pelting incidents. Almost 1900 cases were being reported in 2019.Insurgent activities were held at large scale. Meeting doors were being closed by authorities.

It is being reported that corruption has increased especially in the valley. Local market production is reduced due to many allegations. Industries of handicraft, local wood market has been badly affected due to introduction of new markets by Indians in valley. Hundreds of people lost their jobs due to shut down of local industries and resulted in frustration (Ultimately cause violent activities). Many Kashmiris were associated with tourism industry to keep oil in stove but due to complete lockdown tourists are not allowed to visit valley due to a violent atmosphere. All activities associated with tourism got freeze. Another major darkness is internet blackout that cut out all connections with world community and left Kashmiris alone to cope with impacts of Abrogation of Article 370.

Mosques are closed and Friday prayer is banned in the valley for last 3 years. On October, 2021 almost 44 Kashmiris lost their lives in Shopian district, Srinagar and in other areas of valley. Many leaders have been arrested. Senior leader of JKLF Yasen Malik was put in the jail and on 25th June he has been prisoned for whole life. He wasn't even allowed to speak in the court and court declared life imprisonment claiming his support for terrorists in India and valley. On that day high security was on check and pressed the voice of Kashmiris. On 22nd June, 2022 forces started search operation in Jammu valley and killed 4 freedom fighters Kashmiris.



Figures 2: Graphical representation of survey results on the impact of Abrogation of Article 370 as well as other related questions.

ROLE OF INDIA AND PAKISTAN SINCE ABROGATION OF ARTICLE 370

Role of Pakistani leadership and Indian leadership is very obvious and important in Kashmir as they call Kashmir juggler vein and Switzerland of India respectively. The Pakistan leaders claim that Kashmir's majority-Muslim area is part of their country and want to resolve the conflict. On the other side Indian leaders claim that Pakistan is supporting terrorism. Both parties defend their objectives and are working accordingly.

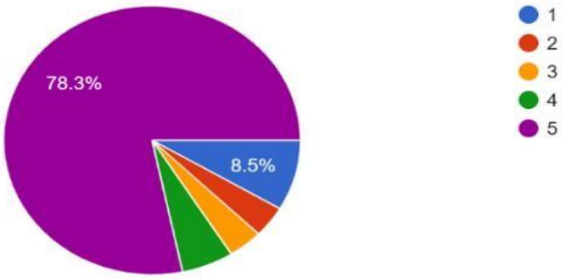
After Abrogation of article 370, Prime minister Imran Khan condemned the step taken by Indian government and called it unconstitutional act and an attempt to create Pulwama like situation. On the very next day announcement was made to end diplomatic ties with India and expelled Indian

High Commissioner to Pakistan. Pakistani PM tried to expose fascist Indian government on international level. OIC emergency meeting was held by Shah Mahmoud Qureshi, Foreign Minister of Pakistan to take rescind action .PM made speech in UNSC and before that held conversation with Donald Trumpet to take case seriously. Leaders tried to build narrative of India as aggressive state through different platforms like media, delegations etc. At the same time Indian leaders were trying to prove its step legal and internal matter. Media channels of India were continuously conducting interviews with politicians, layers and intellectuals to show their bold step, a conflict resolution step. In Kashmir valley suddenly every media channel was shut down by Indian government. But despite political instability, India provided subsidizes to Kashmiri people and worked for betterment of Kashmir. According to few reports Kashmir per capita income is more than Bihar and other areas of India. India made sure no non-Muslim Chief Minister appointment in Jammu to show autonomy.

Unfortunately, Pakistan remains failed to gain enough support from international community. China its strategic partner issued the statements that its internal matter of India and Pakistan and should be solved bilaterally. China didn't neglect its ties with India.US didn't even take the case seriously despite Pakistan's role in Afghanistan and visited India and didn't even utter a single word for Kashmir. Later on Pakistan due to its economic conditions shifted attitude towards India on decreased stage. India's economic and military ties with states overshadowed Pakistan's leader's efforts. Another major drawback of efforts was none of the parties included Kashmiri leadership in talks and decisions. The leadership cloud which was necessary, Pakistan remain failed to build up. According to Kashmiris from both countries' leaders' perspectives, it seems that neither of the nation wants Kashmir to gain its independence.

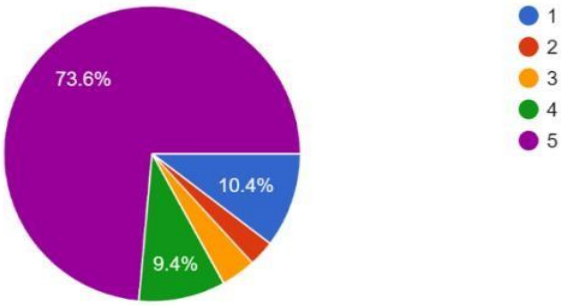
Pakistan and India both are not interested in solving the issue

106 responses



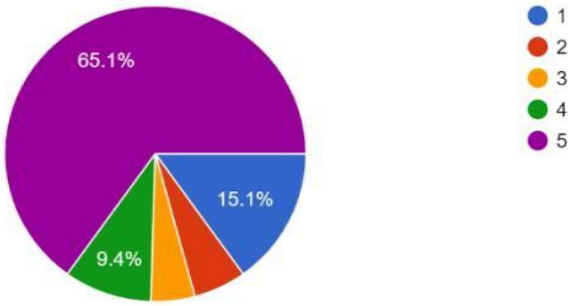
Governments of India and Pakistan speak on behalf of Kashmiri people without taking consent

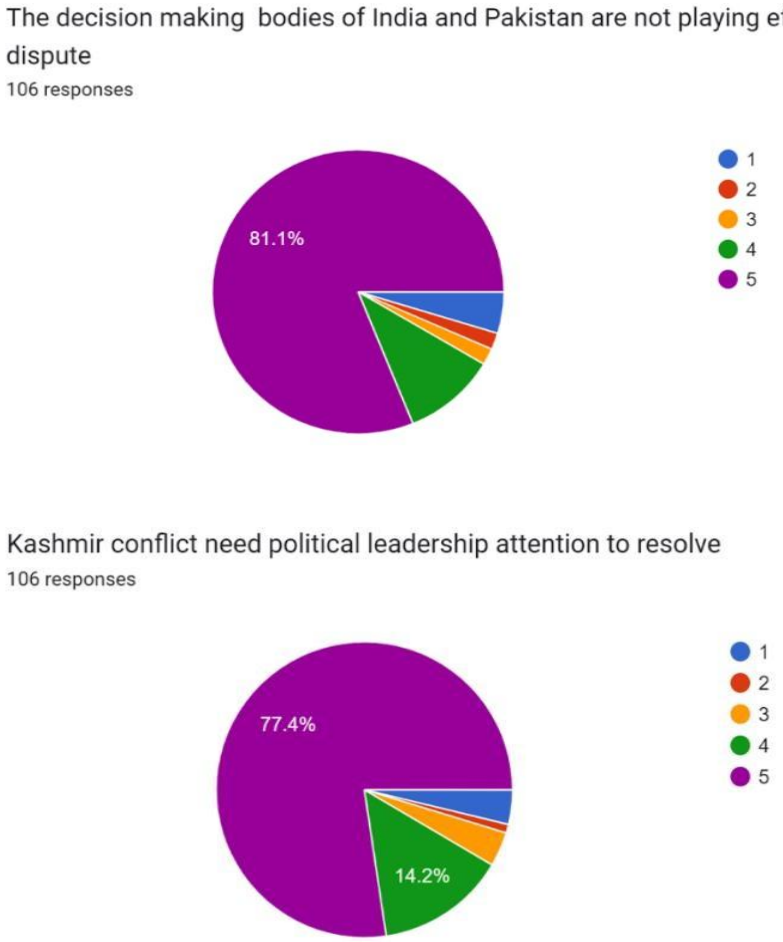
106 responses



India and Pakistan discussing the case since abrogation of article 370 but no result

106 responses





Figures 3 a, b, c, d, e: Graphical representation of survey results on the role of political leadership after abrogation of article 370 as well as other related questions

RESTORATION OF ARTICLE 370

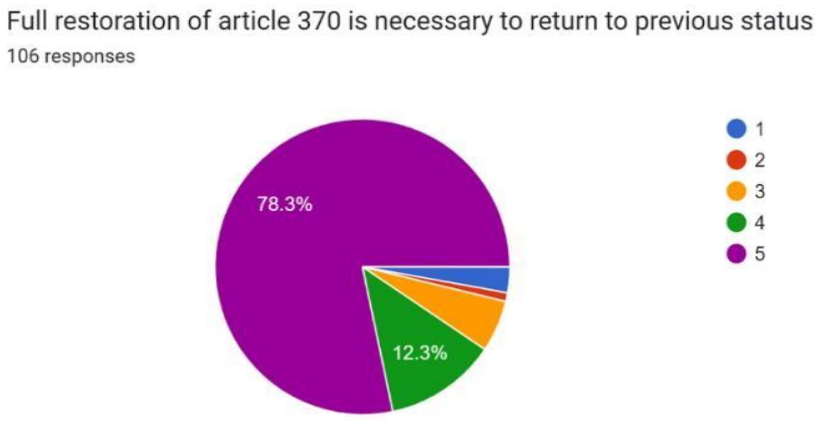
Abrogation of article 370 was basically a step from de-facto to de-jure state. Article scrapping bring an end to autonomy of Jammu and Kashmir and opened a pathway of violence, ideology fall, hurt to sentiments due to political, religious and social lockdown in the disputed region. It led to insecurity among locals, threat against integrity, unity of Muslim community, political instability.

Scrapping of article 370 for Kashmiris is like a nail in coffin. Most importantly it is being considered a threat to democracy, safety of Kashmiris. Question of women security is most important especially in case of marriage with non-locals.

All the points discussed demand restoration of Article 370 for dispute resolution and to end aggression among Kashmiris. Dr.Abdullah Farooq demands sacrifice on the line of farm to get back Article 370.Another Kashmiri leader Mehbooba Mufti warned if Modi wants to keep Kashmir, he must restore Article 370and resolve Kashmir conflict. Kashmir can't be held by a stick or gun or some forceful agendas and example of US in Afghanistan is best to understand the case, despite power US left Afghanistan.

By choosing J&K as the venue for G-20 summit the Government of India has sent a clear message to the international community that normalcy has returned to the Himalayan region and Pakistan sponsored terrorism is on its last legs. The peace has opened up J&K to the world. The Union Territory is fast turning into one of the most developed regions in the world.

After the abrogation of Article 370 -- temporary provision in the Constitution of India -- Kashmir has not witnessed any shutdowns, street protests and stone-pelting incidents. A common man in J&K has heaved a sigh of relief as there have been no disruptions in his life. The elements inimical to peace have been taken care of as their entire ecosystem has been shattered. They have been left with no resources to orchestrate street protests and force people to shut their shops. The strikes and violence have become history.



Figures 4: Graphical representation of survey results on the restoration of Article 370

KASHMIRIS PERSPECTIVE

Indian government has opted hard line approach to crush voice of Kashmiris but it can't be. Many times, in his speeches Kashmiri Huriat leader addressed PM Modi with a verse

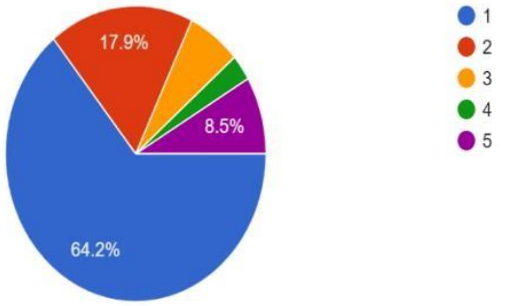
Come here oppressor, challenge your skills
Challenge with sword, I will challenge my liver

And he discussed that it's a Kashmiri movement, Kashmir belongs to Kashmiris. Let it be on Kashmiris to decide democratically. Is it atot-nag, shah-rag or Kashmir an independent state? Kashmiris want independent Kashmir, do whatever they want democratically.

A report of New York Times of Sep 2019 showed that there calls for independent Kashmir are growing. Another report of Aljazeera in 2020 showed that according to a survey in Jammu and Kashmir 90% students of valley polled for independent Kashmir. Prime Minister Imran Khan in Feb 2021 told Kashmiris in Kotli, AJK that "Pakistan *will grant both the people of Azad Kashmir and Indian Illegally Occupied Jammu and Kashmir the right to be part of Pakistan or be a free state, if they so wish*" which means that voice of independent state exists somewhere in both sides of Kashmir. Indian crackdown in Jammu region of Kashmir has led to civil unrest and new calls for a free Kashmir from both India and Pakistan.

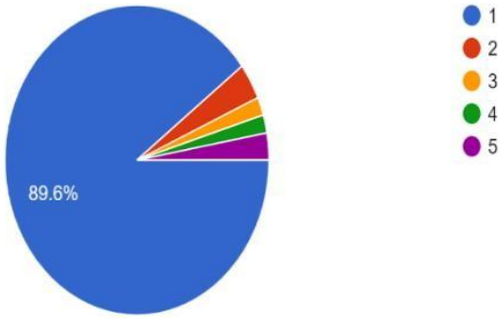
Kashmiris want accession with India or Pakistan because they can't survive as independent nation

106 responses



All of Kashmir should become part of India

106 responses



All of Kashmir should become part of Pakistan

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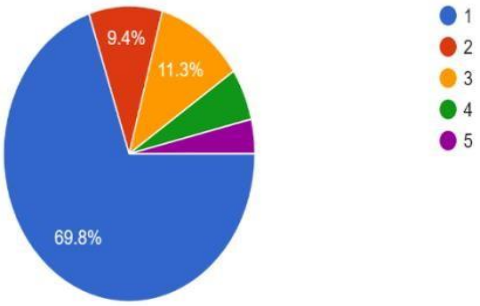

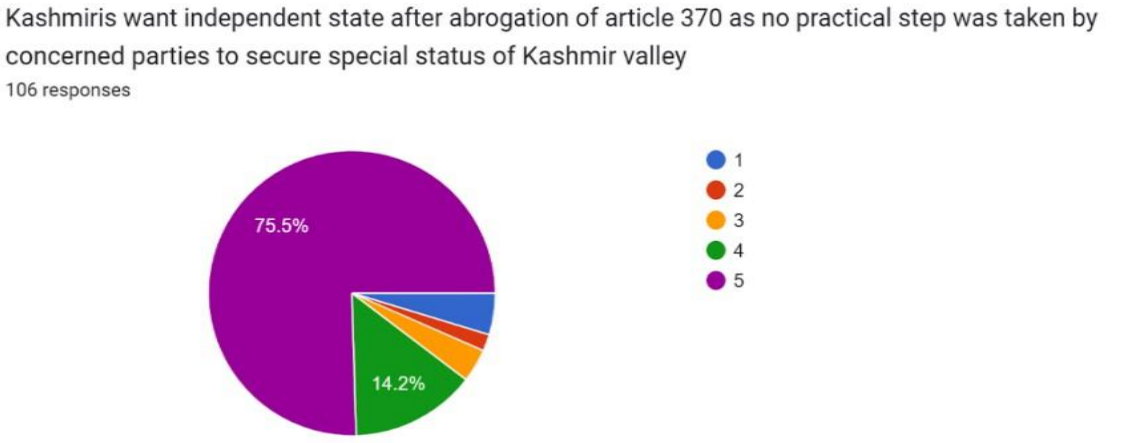

Figures 5 a, b, c, d: Graphical representation of survey results on the Kashmiri Perspectives regarding resolution of dispute as well as other related questions

CONCLUSION

The people of Indian Occupied Jammu and Kashmir are isolated from the rest of the world. The darkness, whose end nobody knows, is the longest in the history of Indian occupied Kashmir. By ending the special status provided by Article 35-A and 370, India has cleared its intention towards Kashmir. Any future act in the state will severely impact right of plebiscite. If attempt to hold a referendum will be made, will allow Hindu/non-Kashmiri majority to vote. India's attempt to host G20 summit in Indian held Kashmir will affect Kashmir dispute and will be a deliberate attempt to hoodwink the international community. If India-held Jammu and Kashmir will be picked as one of the venues then it would be the first time that the disputed region will host an international event. It will provide a pathway for other states to use disputed territories for such summits that will affect status of such territories.

RECOMMENDATIONS

1. International community need to check out the situation and pressurize the Indian government to restore Article 370.
2. A commission need to be formed including Pakistani, Indian and members from both sides of Kashmir to end violence in the region.
3. Only option to resolve the dispute is plebiscite. The final decision must be according to the results of plebiscite.

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