Abrogation and assertion: the fault-lines of the Indian constitution with regards to Kashmir

A, Dyuti (2020) Abrogation and assertion: the fault-lines of the Indian constitution with regards to Kashmir. HAU: Journal of Ethnographic Theory, 10 (3). pp. 758-766. ISSN 2049-1115

This version is available from Sussex Research Online: http://sro.sussex.ac.uk/id/eprint/100738/

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher’s version. Please see the URL above for details on accessing the published version.

Copyright and reuse:
Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

http://sro.sussex.ac.uk
CURRENTS: INDIA’S CONSTITUTIONAL CRISIS

Abrogation and assertion
The fault lines of the Indian Constitution with regards to Kashmir

dyuti a, University of Sussex

In this article I look at the responses of Indians to political events in 2019 regarding the abrogation of Article 370 concerning Kashmir in the Constitution of India and the Citizenship Amendment Act (CAA). The critiques of abrogation as well as of the CAA as put forth by the people of India were based on constitutional grounds, decrying them as inconsistent and in conflict with the basic principles and ambit of the Constitution. I juxtapose these responses with a critique of the Constitution and the sovereignty it offers to India through an engagement with Kashmiri Muslims in Delhi. The anti-CAA protests offered Kashmiris an opportunity to extend their solidarity with Indian Muslims as well as comment on the ambivalent nature of Indian secularism as it is pitched against minorities. However, Kashmiris also offered a structural critique and a rejection of the sovereignty of the Indian Constitution: for while it sanctioned equality and freedom for Indian citizens, it is the basis of oppression and occupation of their homeland.

Keywords: Indian Constitution, Article 370, Citizenship Amendment Act, Kashmir, azadi, India

Figure 1: This image is part of the series titled “Kashmir Siege” by Mir Suhail. Permission granted by the artist.
“Hum kya chahte, azadi; Hindu Rashtra se, azadi; azadi; Fascism se, azadi!” (What do we desire, azadi; from Hindu rashtra, azadi; from fascism, azadi) echoed in different parts of Delhi, India’s capital, in December 2019. Azadi is a Persian word that means freedom or liberty; the term is also used as such in Urdu and Hindi. The protests that emerged across India against the recently passed Citizenship Amendment Act (CAA) saw the repeated use of this slogan, much to the irritation of the right-wing Indian government led by the Bharatiya Janata Party (BJP). I found myself participating in the sloganeering at different sites, absorbing the accumulated anger, and letting out the collective frustration of the moment. The collective chanting of the slogan was a common occurrence across the different protest sites. The sites included Shahseen Bagh, a lower middle-class Muslim neighborhood, and outside the Jamia Millia Islamia University in south Delhi, and Jantar Mantar, a prime spot for protests in the center of the city, among several other sites in Delhi and across the country. The streets at these sites were transformed into places where people recited poetry, sang songs, chanted slogans, made art, or read the Preamble to the Constitution.

The sounds reverberating in the streets of Delhi find their significance in the “most fragrant slogan of azadi” (Parrey 2016) that has been widely used in the Kashmir Valley from the 1980s. Azadi is a cry for self-determination and a blueprint of the desired nation-state of Kashmir (Junaid 2016)—a departure altogether from the purview of the Constitution of India, and one where the legitimacy of the Constitution is questioned. The chants of azadi, in the streets occupied by anti-CAA protesters, are grounded in the capacities of marginalized people to challenge centralized structures of power (Kaur 2013). The slogan is chanted in its many iterations in a question-and-answer format mostly by the political left and feminist civil society groups, as a call for azadi from hunger, capitalism, fascism, sexism, and misogyny, among other issues. Since December 2019 it has become a rallying call for anti-right-wing movements in India, as well as an assertion for Indian citizenship based on the central tenets of the Constitution: equality, fraternity, democracy, socialism, and secularism.

The irony was that in the chanting of the azadi slogan against the CAA, Kashmir had been eclipsed by a “constitutionally limited India” (Parrey 2016). The region had been placed under curfew and a media and communication blackout following the abrogation of Article 370 of the Indian Constitution by the Indian Parliament. However, these events only four months earlier saw little protest by Indians. Instead, there were widespread celebrations across the country. Yet from December that year, during anti-CAA protests, the Kashmir Valley’s slogan, even in its appropriation, came to the rescue of Indians when their right to citizenship was being questioned and threatened (see fig. 1).

Article 370 of the Indian Constitution in its original form was a modified version of the Treaty of Accession signed between the then Maharaja of Jammu and Kashmir and the Indian dominion. With the treaty, the

---

1. It was in the 1930s that the call for purna swaraj or complete freedom in British India came to prominence following the resolution of the Indian National Congress in December 1929 (Sarkar 1983: 284). It signified freedom from colonial rule and national independence.

2. In this article, the use of Kashmir or Kashmir Valley refers to the geographical region situated between the Karakoram and Pir Panjal mountain ranges that falls within the Indian state of Jammu and Kashmir, unless otherwise mentioned.

3. Within the popular media, the rhetoric of abrogation is used to describe the revoking of the special status conferred to the State of Jammu and Kashmir under Article 370 of the Constitution. On August 5, 2019, the President of India on the recommendation of the Council of Ministers introduced a presidential order that extended all the provisions of the Indian Constitution to Jammu and Kashmir and made Article 370 inoperative. The government used legal jugglery to use the powers under Article 370 itself to make it inoperative. The presidential order changed the interpretation of “constituent assembly” of Jammu and Kashmir as “legislative assembly” of Jammu and Kashmir and “Governor of Jammu and Kashmir” as “Governor of Jammu and Kashmir” since the former had proven as a hurdle earlier to make Article 370 inoperative. The use of abrogation here is to acknowledge the rhetoric that informed the position of many of the protesting masses as well as the dominant discourse and language that emerged around speaking on Kashmir.

4. The princely state of Jammu and Kashmir is comprised of Kashmir Valley, Jammu and Frontier Districts. The Kashmir Valley, along with the Jammu region and the Ladakh
Hindu Maharaja handed over a certain part of its law-making power to the Indian state (Ghosh 2019) while exercising internal autonomy until a plebiscite among the Muslim-majority population was possible in the now ex-princely state. The Article was instituted to define the parameters of India’s constitutional relationship with the state of Jammu and Kashmir. Accordingly, only three areas were to be governed by India—defense, communication, and external affairs—and all other matters were to be governed internally by the administration (Agarwal 2015). The article, which was included to avoid a plebiscite in the region, became the basis of the relationship of India with the state of Jammu and Kashmir.5

In this account, I look at responses to the political events in 2019—the abrogation of Article 370 and the passing of CAA—based on constitutional grounds, which decry them as inconsistent and in conflict with the basic principles and ambit of the Constitution. I juxtapose them with responses of Kashmiri Muslims in Delhi, who offer a structural critique and rejection of the sovereignty of the Indian Constitution as being the basis of oppression and occupation in their home state.6

I draw on some of my conversations with Kashmiri Muslims living in Delhi during the protests against the CAA which form the background to these conversations between December 2019 and March 2020. My interlocutors did not argue for the sanctity of the Indian Constitution but reasserted their nonengagement with the Indian state, at the same time articulating their politics of solidarity—in this case, with Indian Muslims. Two main themes came to the fore in these discussions: an ambivalence around secularism and the dichotomy of independence and occupation.

With regard to secularism, I draw on Rajeev Bhargava’s (2013) discussion of the policy of “principled distance” as underlying Indian secularism. In this, secularism advocates for “strict separation at the level of ends: the state has no religious end. At the level of personnel and institutions too separation exists—this is part of what is meant by distance” (Bhargava 2013: 25). In other words, while the state is strictly secular in terms of having no religion and by extension supposedly no religious bias, it permits religious practice within what it designates as the “private sphere.” However, there is a big gulf between the ideal of “principled distance” and practice. In the course of the Indian state’s evolution, while the Constitution has been accessed by people of all communities, religious minorities have been persecuted and subjected to violence and marginalization by the majority, which has taken on a more violent character since the 1980s. Much of the violence has been targeted against Muslims, but marginalization and persecution of low-caste Dalit and Adivasi (tribal community) have also been justified in the name of a high-caste Hindu hegemony (Omvedt 2011).

With regard to the dichotomy of independence/occupation: this tension is rooted in the moment of the promulgation of the Constitution that, on the one hand, conferred on India a status of Sovereign Constitutional Republic. On the other, it subjugated the people of Kashmir through Article 370, albeit promising internal autonomy enshrined in the same Constitution. The abrogation of Article 370, seemingly done within the parameters of the “Constitution” that was being defended by the CAA protesters, put residents of the entire region of Kashmir under a curfew and communication blockade that continues to this day, at the time of writing.7

Valley, together form the contemporary state of Jammu and Kashmir. Cartographically, it lies in the north of India. The Kashmir equates to the Kashmir Valley and is the most attractive and popular part of the state. Kashmir is dually used to refer both to the specific region as well as the Dogra ruled State of Jammu and Kashmir. Historically, Kashmiris refer to the residents of the valley; majority of whom are Muslims. Jammu, its neighboring district, is the plains where Gulab Singh had shifted his base at the time of signing of the Treaty of Accession. Hindus form majority of population in Jammu (Snedden 2015).

5. At the time of signing the Treaty of Accession, both Governor-General Mountbatten and Prime Minister Nehru extended the promise of a “reference to people” of the entire Jammu and Kashmir, to decide whether they wanted to join either of the two newly formed states (Snedden 2015). The promise was backed by a United Nations Security Council Resolution, a promise that has not been fulfilled to this date.

6. While not taking up designated spaces of protests in India, Kashmiri Muslims (residing across the world) took to social media to resist the occupation, curfew, and communication blockade.

7. By the time the piece went into press the nature of the curfew and communication blockade had considerably changed. Even though internet facilities were restored in most parts of the state, the internet speed continued...
These tensions have their genesis in the 1940s and 1950s, as I account for below. This is not to suggest a linear reading of history. Rather it is to trace the process that resulted in the abrogation of Article 370, which, as argued in the paper, formed the bulwark of India’s complicated, albeit constitutionally-approved, relationship with the Kashmir Valley. I see these events—whether they be from the 1940s or from 2019—not as fixed or time-bound but as cascading into each other as people draw upon the past to interpret the present. Following Gilles Deleuze, I understand an event as an “incorporeal, complex, and irreducible entity at the surface of things, a pure event which inheres or subsists in the proposition” (1993: 19). The Deleuzian event fundamentally exists in the process of becoming and is inexhaustible by any particular description or set of descriptions, or indeed time or space, but is experienced whenever the event is actualized.

**Article 370**

The interim years between independence in 1947 and the adoption and promulgation of the Constitution in 1950 were marked by the simultaneous exercise of sovereignty by the Indian state and acquisition of some regions (princely states) without popular consent (Osuri 2017; see also Kaul 2011). Assimilation of many of the princely states proved particularly difficult owing to the religious dynamics of these states. Many had a Muslim ruler with a majority Hindu population, like the princely state of Junagarh, while others had a Hindu ruler with a majority Muslim population, like the princely state of Kashmir. The partition of the subcontinent into India and Pakistan on religious lines and the withdrawal of the British paramountcy that had allowed the princely states to continue their rule as they pleased complicated the situation. The princely states were pressured by national leaders to join either of the two dominions. As a result, these princely states along with territories within British India were disputed between the newly independent and partitioned states that were divided along religious lines—that is, Muslims to East and West Pakistan, and others to India.

In this article, I discuss the complex history of Article 370 in three parts: the circumstances before the signing of the treaty, the Treaty of Accession, and the process of the framing of Article 370.

First, the period between August 1947 (independence) and October 1947 saw the signing of the Treaty of Accession. Until the withdrawal of British paramountcy, an autocratic administration supported by the police contributed to the adherence of the people of Jammu and Kashmir to the Maharaja. The residents were far from unified, having social, cultural, ethnic, geographical, and political differences. With the withdrawal of British rule, three events brought to the fore the unpopularity of the Maharaja and his lack of control over the state. It started with the Muslim anti-Maharaja uprising in Poonch (western part of the state), staged as “no-tax” campaign. The uprising was against the brutal control of the Jammu and Kashmir State Force, by the Muslims from Poonch district who held a strong desire to join Pakistan. Further they were joined by Muslims from neighboring districts of Mirpur who also harbored similar desire to join Pakistan (Snedden 2015: 117). The uprising was combined with interreligious violence in the Hindu-majority province in Jammu (the eastern part) where a large number of Muslims were killed in what “amounted to a form of religious ‘cleaning’ for political ends” (ibid.: 118; see also Naqvi 2016). Consequently, Muslims in the western part (Poonch and Mirpur district) of the state concurrently engaged in similar diabolical acts, resulting in the creation of Azad Kashmir in the areas that pro-Pakistani Muslims had liberated (Snedden 2015: 117). These events highlighted the fact that the Maharaja was not fully in control of his state, which he was expected to deliver via the accession (Snedden 2015: 120), and rendered his authority invalid for many Kashmiris, thereby making the Treaty of Accession itself null and void.

Second, the Treaty of Accession that formed the grounds for and provided the substantive basis for Article 370 itself is contested. In the Indian framing of history, the treaty once signed gave India a right over the entire region including the two-fifths of the area that is administered by Pakistan. “The insertion of this provision in the constitutional text if only to exclude its own operation, nonetheless drew a legal instrument signed by the two sovereign powers—India and Jammu and Kashmir, inexorably into the domesticating force field of Indian constitutionalism. In doing so it founded the normative framing that continues to dominate to be very slow and inconsistent making accessing the internet itself a task. Further, curfew-like conditions were eased, followed shortly by the nationwide lockdown in light of the COVID-19 global pandemic.
understandings of the legal position of Kashmir in the
Indian public sphere today across all political lines”
(Ghosh 2019).

Third, the creation of Pakistan on religious grounds in
1947 led to uncertainties, distrust, and tensions, largely
between Hindu and Muslim communities across the
sub-continent. Within the constituent assembly, “an un-
derstanding of the [Indian] nation as Hindu at its core
and a concomitant suspicion of Muslims among several
of the assembly’s members had become manifest” (Rai
2018: 206) The Muslim person was viewed with distrust
and suspicion, “looking to enfeeble the state from within”
(ibid.: 206). These tensions manifested in the discussions
within the constituent assembly, where unassimilable
Muslim subjects and Kashmir were used as justifications
for introducing emergency provisions to the Constitution
(ibid.). These restive conditions formed the back-
drop that informed discussions on the status of Kashmir
within the Indian dominion. The future of the princely
state of Kashmir became part of substantive discussions
within the Constituent Assembly in May 1949, following
the first war with Pakistan which led to the signing of
the Treaty of Accession.

On October 17, 1949, Article 370 was added to the
Indian Constitution, conferring a special status on what
became circumscribed as the State of Jammu and Kash-
mir, that included neighboring Ladakh. N. Gopalswami
Ayyangar, who drafted the article, argued that as a re-
sult of the restive conditions in Jammu and Kashmir,
the region was not ready for full integration (Rai 2018).
The war with Pakistan, circumstances of the signing of
the Treaty, popular anti-Dogra (Hindu) sentiments
in the valley, and a growing people’s movement pro-
vided grounds of “exceptional circumstances,” namely
the religious composition of the state, for the justifica-
tion of the special status. Article 370 of the Indian Con-
stitution accommodated the status of Jammu and Kash-
mir based on the terms of the Treaty of Accession of
1947 (Newsroom 2019).

Mridu Rai notes: “In 1947, at the moment of indepen-
dence and also the partition of the subcontinent along re-
ligious lines, India claimed Muslim-majority Kashmir as
its prize; a vindication of its secular credentials and a re-
pudiation of Muslim Pakistan’s ‘communal politics.’ In
the rhetoric accompanying this incorporation, the In-
dian nation valorised its achievement precisely by stress-
ing the Muslim nature of Kashmir and Kashmiris. They
were the nation’s secular blanket” (Rai 2004: 296). In-
dian Muslims were rendered a hyphenated secondary
status; what is more, the onus of proving the secular fab-
ril of the country has historically fallen on Muslims.

Under a BJP government, the Indian Parliament ab-
rogated Article 370, on August 5, 2019, stripping Jammu
and Kashmir of its special status as enshrined in 1949.8
In the months leading up to the abrogation, the Jammu
and Kashmir state assembly was dissolved and state elec-
tions were postponed on the grounds of unstable circum-
stances, establishing constitutional grounds for imposing
governor’s rule. The political representatives were placed
under house arrest the night before the announcement of
the abrogation, and the entire Valley was placed under
curfew and internet blackout. The text of Article 370
states that only the Constituent Assembly of Kashmir
can make a recommendation for the abrogation. How-
ever, this text was changed and the abrogation passed
through a Presidential order (Kanjwal 2019). The abro-
gation signaled the final “stretching [of] the short, tight,
skin of the nation over the gigantic body of the empire”
(Anderson 2016: 65). It signified an overt and complete
occupation of Jammu and Kashmir, now redesignated
as Union Territory, via the Indian Constitution.

For many Kashmiris, the Treaty of Accession itself
marked the beginning of India’s occupation and Arti-
cle 370 was merely an eyewash. As a result, the prem-
ises of the Constitution as the foundation of an indepen-
dent India were deemed questionable. Any ambiguities
around Kashmir were crushed in 2019 with the abroga-
tion of Article 370. As one of my interlocutors in Delhi, a
Kashmiri Muslim lawyer, Ahmad,9 explained:

[The] Indian state lost a lot of ground in the ‘90s in
Kashmir. So, there was an understanding here (in In-
dia) in the then government that we need to give
something to Kashmiris to throw some parity. . . .
So, one of the things was autonomy. . . . India played
this narrative for fifteen to twenty years, till now. Like
from the mid-90s to 2019. Because 2019 marked the
official death of this narrative. Iqbal in one of his essays

8. In the intervening years, since the introduction of Arti-
cle 370, there have been several Presidential Orders, is-
sued by the central government changing the status quo
with Kashmir.

9. The names of interlocutors have been changed to protect
their identities.
on Kashmir wrote, where he had said, that Kashmiris had made the Hobson’s choice, it’s all or nothing for them. They are never going to compromise . . . which is true. Even when the autonomy narrative was being played out, no one in Kashmir bought it.

Voted in by a majority BJP parliament, the abrogation was implicitly designed to subvert the Muslim majority into submission (Kanjwal 2019). The abrogation was combined with the abolition of Article 35(A), which had defined permanent residents in Kashmir and conferred on them privileges of employment, acquisition of immovable properties, and settlement. By abolishing special provisions Article 35(A), the door was opened for a possible change in the demographic profile of the state. As Ahmad reiterated, the abrogation and attendant activities signified an overt and complete occupation of Kashmir via the Indian Constitution.

Later in the year, in December 2019, Parliament passed the CAA, which allowed religiously persecuted minorities of all faiths from Pakistan, Bangladesh, and Afghanistan, except Muslims, to apply for citizenship without showing all necessary documents. Following the passing of the CAA, the nation erupted in protests against the subversion of secular principles as enshrined in the Constitution, for the amendment was viewed as yet another Hindu right-wing attack against Muslims (see Sundaram, this issue).

These protests were popularly marked as the making of a people’s constitution. Indians based their opposition to the amendments to citizenship laws on constitutional grounds, calling them inconsistent and in conflict with the basic principles of the Preamble, as a religious community was singled out in matters of Indian citizenship. Kashmiri Muslims did not engage with the protests on the basis of the CAA. The issue was not just an amendment of the Constitution that was required, but its complete overhaul. However, they showed their support in terms of extending their solidarity with the Indian Muslims.

The missing Kashmir question in the Azadi slogan

The road outside Jamia Millia Islamia University just about allows for two-way traffic to flow. But since the attacks on the university in December (see Nizaruiddin, Sundaram, this issue), one side of this two-lane road had been occupied by students and residents of the neighboring areas, mostly from poor working-class Muslim families and students of the university. During the day, the sit-in site was one of slogans, performances, and speeches, with pavements saturated in street art.

In January, I was supposed to meet my interlocutors, Sara and Mohsin, two Kashmiri Muslim students from the university, for a conversation. I navigated my way to find them in a sea of people outside Jamia, trying to steal glances at the street art up as part of the protest. The Kashmiri students presence on that day was to extend their support to protesting Indian Muslims. What drew them to the protest on that day was an address by Dr. Shashi Tharoor, a Member of Parliament from the Congress Party, who a few days earlier in a tweet had argued that the assertion of Muslim identity through the invocation of “la ilaha Illallah” (there is no God but Allah) was an expression of Islamic extremism. The tweet reiterated widespread Hindu nationalist discourse that laid the onus on Muslims to prove their secular credentials if they were not to be dismissed as suspect or separatist, and was part of a multitude of ways in which Muslim identity had been suppressed in and around the Jamia campus. Tharoor’s speech on that day at Jamia instead extolled the contributions of Indian Muslims in the making of the nation-state, India.

While the speech was largely met with applause, a small group of people objected to the views of Tharoor in his Tweet in their protest. A few Kashmiri students had come out to stand in solidarity with them. The posters carried by Kashmiri students echoed slogans from the Valley, “Tera Mera Rishta Kya? . . . la ilaha Illallah” (How are we related/connected? . . . through our (shared) belief of no God but Allah). Referring to Tharoor’s remark specifically, Sara added:

This is an attack on Muslimness and they need to assert their identity more strongly, who are you to tell us what is extreme and what is not? These sections of the left, the liberals, include certain groups. So, there are these overlapping categories . . . they want to keep out the Muslimness otherwise they will be seen as “inclined to Islam” in a certain sense, which because of Islamophobia they don’t want themselves to be inclined as . . . The first thing that brought us to this was the Muslimness and the second thing was this, when we saw that lal salaam [red salute] was okay, communism was okay, socialism was okay, your liberal slogans of democracy, equality all of them are okay, the moment you hear Islam . . . la ilaha Ill Allah is a problem.
Sara underlined how the use of tweets and actions of the university were part of the structural problem of not letting Muslims have the freedom to express themselves or their beliefs. The conversation that followed was in the context of our location at the protest site. It brought out the structural critique of India’s ambivalence around secularism that manifested and illustrated itself in the occupation of Kashmir, and its relationship with Indian Muslims. For the Kashmiri students, everyday political resistance in India is one of nonengagement. The sovereignty of their nation-state was itself questionable, as they made a sharp critique of India’s claim over Kashmir Valley. As Sara remarks, “I think nonengaging is a very, very conscious political decision.” Nonengagement is a political decision that marks their resistance to the Indian state and its actions in the Valley. It was as if there was a refusal to “accept the definition of political life defined by sovereignty, even as the basis for critique” (Jenning 2011: 52; see Kaur 2013). Mohsin elaborated:

> When we use the word resistance, we mean resisting the Indian state, resisting Indian state’s whatever it does in Kashmir, whatever structural violence. Whatever it does, from structural violence to actual, physical violence . . . We see CAA, NRC [National Register of Citizens] and other things that the BJP government is doing, it is there inherently anti-Muslim, and anti-Islam. So, since if you go back to Kashmir, Kashmir has been showing solidarity with the movement in Palestine, with the movement, any Muslim movement, be it Rohingya [an ethnic group practicing Islam who are refugees from Myanmar] . . . That very idea that brought us, otherwise we are telling you about our nonengagement.

Mohsin highlighted that as Kashmiris resisted the Indian state for the structural and physical violence their shared Muslim identity formed the basis of solidarity. Their position of nonengagement with the Indian state in Delhi developed through a collective deliberation over the years, one that is critical about the oppressive nature of central state sovereign power (see Agamben 1998). In the initial months of his move to Delhi from the Valley in 2014 to study, Mohsin had gathered with a group of Kashmiri students to discuss how they could protest in India. He argued:

> What does our contribution to some like organizing a protest in Jantar Mantar, what does that signify? We are only entrenching the democratic image of India.

While India can claim, if you protest at Jantar Mantar, gives space to these states, whether it be Kashmiris or anyone else we don’t have problems with supporting different ideologies, within the space, they are protesting, we will not nozzle them, we don’t prosecute them. So, these things, those conversations led to this nonengagement.10

Mohsin underlined that their stance of not protesting at the designated sites of protests in Delhi was to not contribute towards reiterating India’s pretense of democracy. However, today, they were extending solidarities with Indian Muslims from the margins, drawing on the larger structural marginalization. In so doing, they interrogated how the Indian state targeted Muslims. By asserting their collective identity, they expressed their grievances against the historical and contemporary suppression of Muslims in the subcontinent.

The opposition to this assertion of Muslimness came not only from political parties—of all leanings—but also from students managing the protests as well as the university administration. Any attempts at asserting their Muslim identity via slogans were shut down by the organizing committee. In the days following the attacks on the University, walls inside the University that bore the slogans “la ilaha Ill Allah” and “Allah-hu-Akbar” were painted over. These acts of assertion were seen as stepping outside the given mandate of “secularism.” Muslims continue to be seen as suspect citizens and need to prove their secular credentials, even by sections of the liberal, secular-left Indians (mainly from Hindu communities) who continued to reiterate Muslims’ secondary position in the nation (Amin and Mushtaq 2019).

After Tharoor had left the stage, the audience resumed chanting the azadi slogan loudly. The basis of solidarity was with the assertion of their collective Muslim identity. When the call for azadi to uphold the idea of India and its Constitution started, we (Kashmiri students and I) left the site to continue our conversation inside the university. Leaving was an act of rejecting the same Constitution that upholds the occupation.

Standing at the corner of the road outside Jamia Millia Islamia, the Kashmiri students not only extended solidarity with the Indian Muslims but also brought out the inherent ambivalence of Indian secularism and

---

10. This was seen in only a few groups, mostly undergraduate students, from Delhi University, protesting against the communication blockade.
the dichotomy of independence/occupation. These tensions are part of an ongoing “constitutional crisis” that has its seeds in the foundation of the independent Indian nation-state (see Koselleck 2006). These, as I have argued through a tracing of history, were not brought up for the first time in 2019, but made apparent as a consequence of several political acts of ruling governments since independence.

As argued by Rai (2018), during the drafting of the Constitution, there was no clear discussion about the definition of secularism. It was expressed in the form of “principled distance” (Bhargava 2013). Inclusion of Kashmir, on the one hand, provided grounds for the vindication of India’s secular credentials. On the other hand, the partition of the subcontinent on religious lines rendered the Muslim citizen-subject suspicious in the eyes of independent India where they were always having to prove their secular and therefore patriotic credentials by muting and suppressing their Muslim identity.

Conclusion

The year 2019 saw a “constitutional crisis” in India marked by many events, especially in the second half of the year, which brought to fore underlying dynamics in the relationship of the state with the citizens. In this article, I have used the abrogation of Article 370, the Citizen Amendment Act, and the political responses to them to reflect on this constitutional crisis. I have tried to bring out the assertion of Muslim identity that came together during the anti-CAA protests in mainland India as a challenge to top-down understandings of secularism and Hindu identity as well as the sanctity of the Constitution.

The nation-state establishes legitimacy by marking certain minorities as illegitimate, as seen in the passing of the CAA and the abrogation of Article 370. These events are a strident rearticulation of the foundational paradox of the Constitution. As Rai asserts, Kashmir forms the basis of the “paradox of a secular provision by a purportedly secular state opening the doors to a politics of religion” (Rai 2018: 205). The region makes visible the continuing coloniality of the postcolonial Indian nation-state and of minorities of all persuasions.

This coloniality is reflected in the political actions of all political parties in government since independence that have successively eroded Kashmir’s autonomy. As a slogan calling for azadi was being made in the streets of Delhi drawing on the tenets of the Constitution, a state lay occupied not just by the military but also through the same (amended) Constitution. Article 370 was instituted into the Constitution and marked a constitutional occupation in the 1940s. Its latter-day abrogation in a sense took off the mask of “autonomy”; it also laid bare the dynamics of occupation. What was independence for some became a life under occupation for others when borders became heated terrain. This oppressive regime was patently extended to all Muslims in the subcontinent, with Kashmir exemplifying the strongest and longest traits of the occupation. As Ahmad remarked, “[T]he Indian Constitution cannot save them (Indian Muslims). Indian Constitution is the blueprint of Hindu state.”

References


Dyuti a is a PhD Researcher with the Department of Social Anthropology at the University of Sussex. Prior to that she worked as a researcher and activist on a number of issues such as Dalit and Adivasi access to public entitlements, and access to justice and gender justice. She previously did her MPhil (Sociology) at the Delhi School of Economics.

D.yuti a
School of Global Studies
University of Sussex
Falmer, Brighton BN1 9SJ
UK
D.Ailawadi@sussex.ac.uk