

Article 370 and Kashmir's Land Reforms*

Prabhat Patnaik

Jammu and Kashmir was the first state in the country to introduce land reforms. There were two components of J&K's land reforms. First, the system of absentee landlordism, that had prevailed during the Maharaja's time was completely done away with. The land of the absentee landlords was taken over without any compensation and simply distributed among the tenants; whoever was cultivating whatever amount of land on the absentee landlord's estate as tenant was simply given ownership of that much of land without having to pay any amount of money for obtaining ownership. Secondly, a land ceiling of 22 $\frac{3}{4}$ acres (182 kanals) was imposed. A household with one adult male at its head could not keep more than this much of land. Ceiling-surplus land was taken over without compensation and distributed among the poor tenants and the landless, again without demanding any payment.

These land reforms were not without their limitations. By the very nature of the legislation, the land reforms brought lesser benefits to smaller tenants. Since they cultivated smaller amounts of land in the absentee landlord's estate, they got ownership rights over correspondingly smaller amounts of land from the estate. And the landless did not get much benefit out of these reforms. Whatever land came their way was ceiling-surplus land, which typically tended to be of poor quality; it was also paltry in amount, since ceiling laws were often circumvented, as the responsibility for implementing land reforms was entrusted not to peasant committees, as in Revolutionary China, but to the state bureaucracy. But even though the benefits conferred by the land reforms were uneven across the peasantry, the land reforms did succeed in breaking feudal landlordism in J&K. And this happened in the early 1950s, with The Big Landed Estates Abolition Act being enacted in 1950 itself.

One of the main reasons why J&K could carry out land reforms that were more thorough-going than anywhere else in India until then (Kerala's land reforms were to be enacted after the Communist government came to power in 1957), was Article 370 of the Constitution, which Amit Shah, ironically, said the other day in parliament, had been an obstacle to "development" in the state!

The Indian Constitution, unlike that of J&K, had included the right to property among the fundamental rights, and when land reform legislations were introduced in U.P., Bihar and Tamilnadu, they were challenged before the High Courts in those three states as violating a Constitutionally-guaranteed fundamental right. The High Court judgements sided with the landlords, and the matter was taken to the Supreme Court.

At this point, as a pre-emptive measure, before the Supreme Court could give its verdict, Jawaharlal Nehru's government introduced the First Amendment to the Constitution, which not only exempted the legislations in those three particular states from judicial review, but, additionally, introduced the Ninth Schedule of the Constitution. All legislations put into the Ninth Schedule were exempted from judicial review.

Even this however was not the end of the matter. In a quite unrelated case that came before it, the Supreme Court ruled in 1954 that in all instances of private property being taken over by the State, compensation had to be paid at "market value", which

meant that for land taken over from the landlords under land reform legislation, the State had to pay compensation at “market value”. Since this put a huge burden on the exchequer, the Nehru government brought in the Fourth Amendment to the Constitution that exempted the State from having to pay full compensation at market value in cases where land was taken over by it. And this amendment too was put into the Ninth Schedule of the Constitution making it immune to judicial review.

One consequence of this long legal tussle was that the takeover of land from the landlords could not be gratis as in J&K; some amount of compensation had to be paid to the landlords even if not at market value. Correspondingly the distribution of land to the tenants too could not be entirely gratis as in J&K. The tenants in the rest of India had the optional right to purchase the land which they had been cultivating as tenants earlier; otherwise they continued as before as tenants, but now to the State which had taken over the land from their erstwhile landlords.

J&K could both take over land gratis and distribute it gratis, because it had its own Constitution whose autonomy was guaranteed by Article 370 of the Indian Constitution, and which did not give this pre-eminence to the right to property. J&K’s land reform measures therefore could be far more thorough-going and comprehensive than in the rest of India, at least in the sense of dispossessing the erstwhile feudal landlords. And J&K remained for long the sole shining example of land reforms among the Indian states until Left governments came into office in some states at a later date and picked up the unfinished agenda of land reforms.

Land reforms in J&K, apart from their impact on the social structure and land distribution, also contributed greatly towards keeping income inequalities in check in that state. Additionally, they also helped to restrict the incidence of rural poverty there. According to official poverty estimates put out by the Planning Commission, among all the Indian states J&K had the lowest proportion of the rural population below the poverty line in 2009-10. Its rural poverty ratio was 8.1 percent; only the Union Territory of Delhi had a marginally lower ratio, 7.7 percent, while the rural poverty ratio for the country as a whole, including J&K, was 33.8 percent. But since Delhi is a gigantic metropolis, its rural areas can hardly be considered typical of India’s countryside, and hence cannot be compared with the rural areas of any state; J&K therefore held the record for the lowest rural poverty.

Interestingly, the rural poverty ratio for Gujarat, the home state of both Modi and Shah, was, according to official figures, 26.7 percent in 2009-10, which is why before Amit Shah pontificates to J&K about its special status coming in the way of its “development”, he should ponder over these figures, all of which are official.

Official poverty figures grossly underestimate the actual poverty ratio; but even if one makes a direct estimate of the proportion of the rural population that cannot access 2200 calories per person per day, the benchmark for rural poverty, the relative positions of the states hardly changes. J&K remains among the lowest rural-poverty-ratio states of the country.

What is true of poverty estimates, also holds if we take a whole range of other social indicators: J&K’s record is among the best among all the Indian states, and this fact owes not a little to the land reforms undertaken in that state, which in turn were made possible by its remaining outside the Indian Constitution under Article 370.

Lest it is thought that J&K had always been a state that was less afflicted by poverty than other Indian states, and that the above relative figures only capture a pre-existing historical reality that has nothing to do with the implementation of land reforms or with Article 370, I should emphasize that J&K had been the site of a highly oppressive feudal regime which, like other feudal regimes, had kept the (mainly Muslim) peasantry in an abject state of poverty and ignorance. Local lore has it that the Maharaja's tax collectors were so ruthless in pursuing their task that when the peasants complained of lack of means to pay the exactions of the state, they would ask the peasants to open their mouths to see if there were any grains of rice sticking to their teeth: if the peasants could afford to eat rice then they could afford to pay taxes, so their argument went.

The transformation of such a feudal economy to one which has among the lowest poverty ratios in the country today is an achievement that may not impress Amit Shah, but it is a considerable one by any criterion; and so is the role of Article 370 in making it possible.

* This article was originally published in the [Peoples Democracy](#) on August 18, 2019.