

Effect Of Revocation Of Special Status To Jammu And Kashmir Under Article 370 Of Constitution Of India Prof.

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Abstract

Article 370 of the Indian constitution gave special status to Jammu and Kashmir a state in India, located in the northern part of Indian subcontinent, and a part of the larger region of Kashmir, which has been the subject of dispute between India, Pakistan, and China since 1947 conferring it with the power to have a separate constitution, a state flag and autonomy over the internal administration of the state. The government of India revoked this special status in August 2019 through a Presidential Order and the passage of a resolution in Parliament.

The article was drafted in Part XXI of the Constitution: Temporary, Transitional and Special Provisions. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether.

After consultation with the state's Constituent Assembly, the 1954 Presidential Order was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending the abrogation of Article 370, the article was deemed to have become a permanent feature of the Indian Constitution. On 5 August 2019, President Ram Nath Kovind issued a constitutional order superseding the 1954 order, and making all the provisions of the Indian constitution applicable to Jammu and Kashmir based on the resolution passed in both houses of India's parliament with 2/3 majority. Following the resolutions passed in both houses of the parliament, he issued a further order on 6 August declaring all the clauses of Article 370 except clause 1 to be inoperative

A. Introduction

On 5th August 2019, the Union Home Minister of India, Shri Amit Shah announced the abrogation of Article 370 and Article 35A of the Indian Constitution which granted the state of J&K special status. The state is now divided into two union territories Jammu & Kashmir (with a legislature) and Ladakh (with no legislature). This is a very significant step when it comes to managing 'things' in the valley and will have grave consequences for future generations as well. As always, there is a divided opinion. The move came amid mounting tension in the state where the government, in a midnight swoop, had put the top political leadership under detention and restricted their movement. It also suspended telecom/internet services in the state. With the situation now on a knife's edge, here is what the momentous decision would mean for the restive state and for India in general. ¹

B. What Article 370 means

The Article 370 which comes under Part XXI of the Constitution, which deals with "Temporary, Transitional and Special provisions grants J&K a special autonomous status. Constitutional provisions that are applicable to other Indian states are not applicable to J&K. Under this article, the centre needs the state government's concurrence to apply laws except in defense, foreign affairs, finance and communications.²

It means the state's residents live under a separate set of laws, including those related to citizenship, ownership of property, and fundamental rights, as compared to other Indians. As a result of this provision, Indian citizens from other states cannot purchase land or property in Jammu & Kashmir. Under Article 370, the Centre has no power to declare financial emergency under Article 360 in the state. It can declare an emergency in the state only in case of war or external aggression.³

C. Historical evolution of Article 370 of Constitution of India

Under the Indian independence Act, each of the Indian states was given freedom to accede to the dominion of India or to the dominion of Pakistan or declare itself independent. However, soon thereafter, the state of Jammu and Kashmir was attacked

¹ <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms?from=mdr>

² Article 370 of constitution of India.

³ ibid

by Pakistan forces. To protect the state against Pak aggression, the Maharaja of Jammu and Kashmir sought help from India and offered to the governor - general of India to accede to the dominion of India. The offer was accepted by the governor-general with certain stipulations. On October 26, 1947, the Maharaja of Jammu and Kashmir signed an instrument of accession to accede to the Indian dominion. The accession was accepted by the government of India but subject to its confirmation by the people of the state. The people of state confirmed their accession to India through their constituent assembly on November 17, 1957. The state of Jammu and Kashmir was thus declared to be an integral part of the union of India.⁴

When, on November 26, 1949, the constitution of India was adopted, the future picture of the relationship between India the state of Jammu and Kashmir was not clear. Under such circumstances, Article 370 was incorporated which enabled the constitutional position of the state vis-à-vis the union of India to be defines time to time.⁵

D. What Article 35(A) means

Article 35A was incorporated into the Constitution in 1954 by an order of the then President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet. The controversial Constitutional (Application to Jammu and Kashmir) Order of 1954 trailing the 1952 Delhi Agreement between Centre and J&K state, which extended Indian citizenship to the 'State subjects' of Jammu and Kashmir. Article 35A is a unique provision of the Constitution of India though it is a part of the Constitution, but does not figure among the articles of the constitution.

It is not found after article 35 in the constitution but in Appendix I of the Indian constitution.⁶

Article 35A empowers the Jammu and Kashmir State Legislature to define the rights and privileges of State's 'permanent residents' and their special rights and privileges. It was specially formulated to protect the State subject laws that had already been defined under the Dogra ruler Maharaja Hari Singh's regime and notified in 1927 and 1932. Nevertheless, this Article which came into force in 1954 without any presence in between the articles had been

⁴ Kumar Narender, constitutional law of India, Allahabad law agency, 2019,P

⁵ Jain M.P, Indian constitution Law, 1987, 435.

⁶ Dr. Preeti Sharma, Sheila Rai, Article 35 A & its implication: A Quest of stability in Jammu and kasmir,Jetir, April 2019,p 472.

bizarre to the public of India right before the petitions raised in the Supreme Court of India challenging its constitutional validity Article 35A allows the state legislature to define the Jammu and Kashmir's permanent residents.⁷

E. What will happen to Kashmir now?

After Kashmir's special status is gone, people from anywhere in India are able to buy property and permanently settle in the state. This has fuelled fear in the mind of Kashmiris they think it would lead to the state's demographic transformation from majority Muslim to majority Hindu A separate Union Territory will be created for Jammu & Kashmir with legislature, Amit Shah has revealed via a notification. "Keeping in view the prevailing internal security situation, fuelled by cross-border terrorism in the existing state of Jammu & Kashmir, a separate Union Territory is being created", the notification said.

Under the notification, the Ladakh region is also being given the status of a Union Territory, without legislature. "The Ladakh division has a large area but is sparsely populated with a very difficult terrain. There has been a long-pending demand of people of Ladakh to give it a Union Territory status to enable them to realise their aspiration", it said. Following Amit Shah's proposal, President Ram Nath Kovind promulgated Constitution (Application to Jammu and Kashmir) Order, 2019, stating that the provisions of the Indian Constitution will henceforth be applicable to J&K.⁸

The Constitution (Application to Jammu and Kashmir) Order, 2019 comes into force "at once", and shall "supersede the Constitution (Application to Jammu and Kashmir) Order, 1954". The presidential promulgation says: "All the provisions of the Constitution shall apply in the relation of J&K the references to the person for the time being recognised by the president on the recommendation of the Legislative Assembly of the State as the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the state for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir", said the order. It added: "References to the Governor of Jammu and Kashmir shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Minister."⁹

⁷ Ibid.

⁸ <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-and-35a-revoked-how-it-would-change-the-face-of-kashmir/articleshow/70531959.cms>

⁹ Ibid

F. Implication of revocation of Article 370

1. J&K will no longer enjoy special status now
2. The Indian Constitution laws will be 100 percent applicable to all residents of Jammu & Kashmir.
3. Part 4 of the Indian Constitution, the Directive Principle of State Policy and Fundamental Duties will now apply to the state of J&K
4. There will be no separate flag for J&K now
5. Article 360 (Financial Emergency) of the Indian Constitution will now be applicable
6. Minorities (Hindus & Sikhs) will have 16% reservation now
7. Right to Information & Right to Education will be applicable now
8. The duration of the legislative assembly will now be five years instead of 6
9. Article 35A will be nullified. A woman from J&K can still retain her rights and citizenship even if she marries someone out of the J&K state
10. The Panchayats will enjoy the same powers as in other states.¹⁰

G. Advantages of revocation of Article 370

1. Finally, it is One Nation One Constitution. This will instill the feeling of unity among all citizens of India.
2. It will open doors for private sectors to invest in J&K. This will boost the economy of the state.
3. There will be the scope of other job opportunities now apart from tourism.
4. The centre will be able to provide better medical facilities to citizens of J&K now.
5. Appropriate measures to control corruption can be taken now by the central government.
6. Authorities are in a better position to curb terrorism now¹¹

H. Disadvantages of repealing of Article 370

1. Kashmiri citizens will no longer have dual citizenship, which is not going down very well with many locals.
2. How the article 370 was revoked has strained the already delicate relations of India with Pakistan.

¹⁰ <https://www.mbarendezvous.com/general-awareness/issues-over-article-370>

¹¹ *ibid*

3. There were several presidential orders issues under Article 370. Repealing it just like that will create practical difficulties and political vulnerability.
4. Overall it has instilled fear among a section of citizens about security. Many dread that the way Article 370 was revoked, the government might take similar actions in other states and people will have no say. It is a threat to our democracy.
5. Certain sections of the society have started threatening that they can now marry Kashmiri girls since they can now marry outside of J&K state without losing their citizenship. This is sexist and is a threat to the safety of women in Kashmir.¹²

I. Conclusion:

Article 370 is the bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India. It has been described as a tunnel through which the Constitution is applied to J&K. India has used Article 370 at least 45 times to extend provisions of the Indian Constitution to J&K. This is the only way through which, by mere Presidential Orders, India has almost nullified the effect of J&K's special status. By the 1954 order, almost the entire Constitution was extended to J&K including most Constitutional amendments. However, abrogating the article altogether may threaten the peace in the state which is already a hotspot of conflicts and militancy. It will completely change the relationship between the state and the rest of India. It will also clear the path for abrogating Article 35A which would allow Indian citizens to purchase land and settle permanently in J&K. Thus, the move is bound to have a significant impact on the demography, culture, and politics of J&K.

¹² ibid