

# **The study of the Article 370**

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## **ABSTRACT**

*The Jammu and Kashmir Redistribution Bill was introduced in the Rajya Sabha on 6 August 2019. Under this bill Jammu and Kashmir will cease to be a state. Instead, the state will be converted to two union territories, that of Ladakh and Jammu and Kashmir. Article 370 was the constitutional provision through which the special status that Kashmir has historically held under the Indian Constitution was guaranteed.*

*Article 35A of the Indian Constitution, which stemmed out of Article 370, gave powers to the Jammu and Kashmir Assembly to define permanent residents of the state, their special rights and privileges. The Jammu and Kashmir Constitution adopted on November 17, 1956 defines a 'permanent resident' who has been a resident in the state for 10 years on that date, with a legally acquired property. Non-permanent residents cannot acquire immovable property, get government employment, scholarships or other aid provided by the state government. The unique Article was inserted in the Constitution through a Presidential order in 1954 instead of an Amendment moved through Parliament. This research paper studied the article 370 with 35A with their implications and importance. The data has been collected through secondary data.*

*Keywords: Permanent residents, Indian constitution, Jammu and Kashmir.*

## **INTRODUCTION**

Jammu and Kashmir received special status under Article 370 of Indian constitutional. It was administered by India as a state from 1954 to 31 October 2019. Large part of a region of Kashmir has been the subject of dispute between India, Pakistan and China since 1947.

This article 370 with 35A were included that the residents of Jammu and Kashmir state live under a separate set of laws, including those related to citizenship, ownership of property and fundamental rights, as compared to residents of other Indian states. Due to this provision. Indian citizens from other states could not purchase land or property in Jammu & Kashmir. The Indian Government on 5 August 2019 issued a constitutional order superseding the 1954 order that all the provisions of the Indian constitution applicable to Jammu and Kashmir. Amit Shah, Union Home Minister had announced the scrapping of Article 370 of the Constitution, which provides a special status to the state of Jammu and Kashmir.

## **OBJECTIVES**

1. To study the Article 370 and 35A
2. To understand the implications of article 35A
3. To study the Importance of removal of article 370

## **HISTORY OF THE ARTICLE 370**

In October 1947, the Maharaja of Kashmir, Hari Singh, signed an Instrument of Accession which was specified three subjects on which Jammu & Kashmir would transfer its power to the government of India that is Foreign affairs, Defence and Communications.

In March 1948, the Maharaja appointed an interim government in the state, under the Prime Minister Sheikh Abdullah. In July 1949, Sheikh Abdullah and three other colleagues joined the Indian Constituent Assembly and negotiated the special status of J & K, leading to the adoption of Article 370. This controversial provision was drafted by them.

The Constitution of Jammu and Kashmir Order, 1954 came into force on 14 May 1954. The provisions implementing the Delhi Agreement were:

1. Indian citizenship was extended to the 'permanent residents' of Jammu and Kashmir (formerly called 'state subjects'). Simultaneously, the Article 35A was added to the Constitution, empowering the state legislature to legislate on the privileges of permanent residents with regard to immovable property, settlement in the state and employment.
2. The fundamental rights of the Indian constitution were extended to the state. However, the State Legislature was empowered to legislate on preventive detention for the purpose of internal security. The State's land reform legislation (which acquired land without compensation) was also protected.
3. The jurisdiction of the Supreme Court of India was extended to the State.
4. The Central Government was given power to declare national emergency in the event of external aggression. However, its power to do so for internal disturbances could be exercised only with the concurrence of the State Government.

In addition, the following provisions which were not previously decided in the Delhi Agreement were also implemented

1. Financial relations between the Centre and the State were placed on the same footing as the other States. The State's custom duties were abolished.
2. Decisions affecting the disposition of the State could be made by the Central Government, but only with the consent of the State Government.

## PROVISIONS OF THE ARTICLE 370

- The law of citizenship, ownership of property, and fundamental rights of the residents of Jammu & Kashmir is different from the residents living in rest of India.
- Citizens from other states cannot buy property in Jammu & Kashmir.
- The Centre has no power to declare a financial emergency in the state.

## ARTICLE 35A

It gives the Jammu & Kashmir Legislature full discretionary power to decide who are the 'permanent residents'. Article 35A gives them special rights and privileges regarding employment with the state government, acquisition of property in the state, settling in the state, and the right to scholarships and other forms of aid which provides by the state government and also allows the state legislature to impose any restrictions upon persons other than the permanent residents. To guarantee these special rights and privileges, the Article says no act of the state legislature that comes under it can be challenged for violating the Constitution or any other laws.

## IMPLICATIONS OF THE ARTICLE 35A

Only Permanent Residents are entitled to property rights, employment in state government, participation in Panchayat, municipalities and "legislative assembly elections; admission to government-run technical education institutions; scholarships and other social benefits, voting rights, right to join central services, which was discriminates against the rest of the Indian citizens. This Article has denied all the above-mentioned rights to other various communities. like the Scheduled Caste from Punjab, West Pakistan Refugees, Gorkhas, Women living in living in Jammu-Kashmir for the past six decades.

The Indian Administrative Services (IAS) offices, who retire after working in Jammu & Kashmir for 30-32 years to ensure smooth administration of the state, cannot even buy a house in the state, not can their children study or work in any government institutions of the state.

Due to consistent terrorist activities in the Jammu and Kashmir, the largest number of soldier's attained martyrdom in Jammu & Kashmir out of the 21 Param Veer Chakras awarded to soldiers fighting at the borders, 16 were awarded for fighting at Jammu Kashmir borders, and of these 15 soldiers were from outside the state. However, it is ironical that those who lay their lives to protect the land are not given even a small piece of land, because they are outsiders

No industrialists invest here as they cannot own the land for his factory. which, if allowed, could provide employment to the locals

People from outside Jammu & Kashmir are denied tight to take up any government job, resulting in a serious dearth of qualified experts in professional educational institutions, including medical and engineering colleges. This has a detrimental effect on the quality of professional education and the local students are suffering. Qualified doctors, specialist and researchers from other states do not work in Jammu & Kashmir. There is an acute shortage of doctors in super specialty hospitals and professors in the Medical Colleges.

By removing article 370 and 35A, ensured equality, liberty, and justice for the suffers.

## IMPORTANCE OF REMOVAL OF THE ARTICLE 370

Removal of Article 370 from Constitution of India is benefited, as Jammu and Kashmir is also a part of our country. It also has many other cons as, because of Article 370, there are very less industries, which is directly related to employment. This means that because of this provision, people have to migrate to other states in search of jobs. Due to Article 370, RTE, RTI, CAG and many Indian laws aren't applicable in Kashmir which has a situation of corruption. Following are the important reasons for removal of article 370

- The state will prosper economically and socially.
- Social amalgamation will reduce the threat of militancy.
- Kashmir could be one of the top tourist destination after complete development.
- It is to be good diplomacy to deal with Pakistan over territorial disputes.
- It gives chance to all political parties to rule the state and allow its development.

Thus it makes the people of Jammu and Kashmir feel that they are no different from other citizens of the country and also to make Jammu and Kashmir as developed and prosperous as other states in India

## CONCLUSION

For many Kashmiris, Article 370 was the main justification for being a part of India and by revoking it, the BJP has irrevocably changed Delhi's relationship with the region. Thus Article 370 was introduced in the constitution to preserve the specific terms under which Kashmir had agreed to accede to India. The Indian state must work within the principles of constitutionalism in order to retain legitimacy to rule over the State. To sum up, it is important to restore the "inviolability" of Article 370.

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