

Scrapping Article 370 Out of Constitution of India

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ABSTRACT:

On August 05, Article 370 was revoked through a presidential order. Union Home Minister Amit Shah has announced the scrapping of Article 370 of the Constitution, which provides a special status to the state of Jammu and Kashmir.

The bill was introduced in the Rajya Sabha (Upper House) to convert two separate union territories, namely Jammu and Kashmir, and Ladakh. The union territory of Jammu and Kashmir is proposed to have a legislature under the bill whereas the union territory of Ladakh is proposed to not have one. By the end, the bill was passed in both the houses of parliament, Rajya Sabha (upper house) with 125 votes in its favor and 61 against. Next day it was passed by Lok Sabha (lower house) with 370 votes in its favor and 70 against it.

Though the former Prime Minister Manmohan Singh said that the outcome of revoking Article 370 from Jammu and Kashmir is not to the liking of many people of our country. "Its outcome is not to the liking of many people of our country and it's important that voices of all these people be heard and it is only by raising our voice that we can ensure that in the long run, the idea of India prevails.

Keywords:- Revocation, Article 370 & 35 A, Jammu Kashmir, Autonomy.

I. INTRODUCTION

Jammu and Kashmir, state of India, located in the northern part of the Indian subcontinent in the vicinity of the Karakoram and westernmost Himalayan mountain ranges. The state is part of the larger region of Kashmir, which has been the subject of dispute between India, Pakistan, and China since the partition of the subcontinent in 1947.

Jammu and Kashmir enjoyed special status under Article 370 of the Constitution of India, which was drafted by Sheikh Abdullah in 1947, who had been appointed as Prime Minister of Jammu and Kashmir by Maharaja Hari Singh and Jawahar Lal Nehru. Though Sheikh Abdulla wanted that Article 370 should not be temporary provisions of the Indian Constitution. He wanted 'iron clad autonomy' for the state, Which Centre didn't comply with.

II. WHAT IS ARTICLE 370

Article 370 of the Indian constitution is a temporary provision, which provides special autonomous status to Jammu & Kashmir. It is provided under part XXI of the Indian constitution. All the provision which are applicable to other state is not applicable to Jammu & Kashmir. this provision was drafted by Sheikh Abdullah in 1947, who was the prime minister of Jammu & Kashmir. Sheikh Abdullah argued that Article 370 should not be placed under a temporary provision of the constitution. According to this article, except for defense, foreign affairs, communication and finance, parliament need the state government's concurrence for applying all other laws. Thus, 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 another Indians citizen. as a result of this provision, Indian citizens from another state cannot buy land or property in Jammu& Kashmir¹

Article 370 embodied six special provisions for Jammu and Kashmir:

1. It exempted the State from the complete applicability of the Constitution of India. The State was allowed to have its own Constitution.
2. Central legislative powers over the State were limited, at the time of the framing, to the three subjects of defense, foreign affairs, and communications.
3. Other constitutional powers of the Central Government could be extended to the State only with the concurrence of the State Government.
4. The 'concurrence' was only provisional. It had to be ratified by the State's Constituent Assembly.
5. The State Government's authority to give 'concurrence' lasted only until the State Constituent Assembly was convened. Once the State Constituent Assembly finalized the scheme of powers and dispersed, no further extension of powers was possible.
6. Article 370 could be abrogated or amended only upon the recommendation of the State's Constituent Assembly.

ORIGINAL TEXT: -

370. Temporary provisions with respect to the State of Jammu and Kashmir ²

(1) Notwithstanding anything contained in this Constitution,

(a) the provisions of article 238 shall not apply now in relation to the state of Jammu and Kashmir*

(b) the power of Parliament to make laws for the said state shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation: For the purpose of this article, the Government of the State means the person for the time being

¹<https://web.archive.org/web/20130708114220/http://lawmin.nic.in/coi/PARTXXI.pdf>

²https://books.google.co.in/books?id=rY9fAAAAQBAJ&pg=PT259&redir_esc=y#v=onepage&q&f=false

recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March 1948*

(c) the provisions of article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph

(i) of sub-clause

(b) shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph

(ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.³⁴

NOTE: -

* Article 238 was repealed by the 7th Amendment in 1956.

*This was changed via the 1952 Presidential order)

III. ARTICLE 35 A

A 35a was added to the constitution through a presidential order, by the president of India on 14th May 1954 under a 370.A-35a of Indian constitution was an article that empowered the Jammu& Kashmir, which defines " permanent residents" of the state and provides special rights and privileges to those permanent residents.

³https://web.archive.org/web/20131203013102if_/http://164.100.47.134/intranet/CAI/E.pdf

⁴http://jklegislativeassembly.nic.in/Constitution_of_J&K.pdf

Original Text

35 A - “Saving of laws with respect to permanent residents and their rights. — 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 State⁵

(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—

(i) employment under the State Government;

(ii) acquisition of immovable property in the State;

(iii) settlement in the State; or

(iv) 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.⁶

IV. PURPOSE

The state of Jammu & Kashmir’s accession, like all other princely states, which was on three matters: defense, foreign affairs, and communications. all the princely states were invited to Indian’s constituent assembly, to form a constitution for the whole of India.

Though they were also encouraged to constitute assemblies for their own state. most states were unable to set up assemblies in time, but a few states did. even though the state’s department developed a model constitution for the states, in May 1949.

The chief ministers and the rulers of all the state agreed to accept the constitution of India as their own constitution, they believed that the separate constitution for every state is not necessary. the state elects their constitution assemblies and suggests few changes which were accepted. all the subjects available for the legislature by the central and the state government was uniform across India.⁷

But, in case of Jammu and Kashmir, the representative of the constitution assembly requested that the only those provision of the Indian constitution that corresponded to the original instrument of accession should be

⁵http://www.jklaw.nic.in/constitution_jk.pdf

⁶http://jklegislativeassembly.nic.in/Costitution_of_J&K.pdf

⁷<https://www.questia.com/read/98974904/the-story-of-the-integration-of-the-indian-states>

applied to the state.

According to the article 370 was incorporated into the Indian constitution, which stipulated that the other powers which are provided to the central government should be applied to Jammu & Kashmir only with the concurrence of the state's constituent assembly. it was the temporary provision.

V. THE AUTONOMY OF JAMMU AND KASHMIR

Indian's constitution is a federal constitution in Indian constitution legislation is divided into a 'union list', a 'state list', and a 'concurrent list'. the ninety-six subjects of the union list, includes defense, military and foreign affairs, major transport systems, commercial issues like banking, stock exchange, and taxes, are provided for the union government to legislate exclusively. the sixty-six subject of state list includes prisons, agriculture, most industries, and certain taxes, are available for the state to the legislature. the concurrent list, on which both the center and state may legislate includes criminal law, marriage, bankruptcy, trade union, professions and price control.⁸

In case of conflicts, the union legislation takes precedence. the 'residual power', to make laws on matters not specified in the constitution, rest with the union.

In case of Jammu and Kashmir, the concurrent list and the union list were initially limited to the matters ceded in the instrument of accession; later, they were extended with the concurrence of the state government. the residual powers continued to rest with the state rather than the union.

According to the State Autonomy Committee, ninety-four of the ninety-seven items in the Union List applied to Jammu and Kashmir; the provisions of the Central Bureau of Intelligence and Investigation and preventive detention did not apply. Of the 'Concurrent List', twenty-six of the forty-seven items applied to Jammu and Kashmir; the items of marriage and divorce, infants and minors, transfer of property other than agricultural land, contracts and torts, bankruptcy, trusts, courts, family planning, and charities had been omitted - i.e., the State had exclusive right to legislate on those matters. The right to legislate on elections to state bodies also rested with the State.⁹

VI. REACTIONS

- In the lead-up to the move 35,000 paramilitary troops were deployed to Indian-administered Kashmir. then, a warning was issued to annual Hindu pilgrims and tourists citing a terror threat and imminent attacks by

⁸https://en.wikipedia.org/wiki/Article_370_of_the_Constitution_of_India#Autonomy_of_Jammu_and_Kashmir:_Structure_and_limitations

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militants. by imposing the curfew, the internet and phone services were blocked.¹⁰¹¹ Former Jammu and Kashmir chief ministers Omar Abdullah and Mehbooba Mufti were put under house arrest. While an autonomous status granted by Article 370 has been denied by the Indian Home Minister Amit Shah without the consent of the state legislature,¹² many of the Kashmiris who are affected by that decision are under a communication blackout imposed by the ongoing security lockdown.¹³

- Prime Minister Narendra Modi, while addressing the nation on 73rd Independence Day, questioned, “Those who supported Article 370, India is questioning them, ‘If this was so important then why was this Article not made permanent in 70 years?’” “After all, those people had huge mandates and could have easily removed its temporary status,” he added.

- Stop terror to start talking: India to Pak after United Nations Security Council (UNSC) meeting on J&K UNSC feels India, Pak should avoid unilateral action on J&K: China

- The Supreme court refused to pass an immediate order to the Centre to lift the restriction, including on communication services, in the region imposed after the revocation of article 370.

- Pakistani protestors attacked Indians outside the Indian embassy in London on Independence Day over the revocation of Article 370 in Jammu & Kashmir. Four people were arrested for affray, obstruction of police and possession of an offensive weapon, police said. A photograph showed police carrying away a large curved knife from one of the protestors.

- After the revocation of Article 370, Pakistan ended Samjhauta Express Service permanently, also the India-Pakistan bus service has been suspended too. Speaking on Pakistan’s decision to suspend bilateral trade with India, Federation of Indian Export Organisation (FIEO) Director General Ajay Sahai said the decision will hit Pakistan more badly. “The suspension of trade relations will hit Pakistan more badly as India is less dependent on Pakistan while the latter is more,”.

VII. CONCLUSION

Jammu and Kashmir have three distinct areas:

- Hindu-majority Jammu,
- Muslim-majority Kashmir, and
- Buddhist-majority Ladakh.

¹⁰<https://www.theguardian.com/world/2019/aug/06/india-kashmir-pakistan-will-go-to-any-extent-to-protect-kashmiris-special-status>

¹¹<https://www.bbc.com/news/world-asia-india-49294301>

¹²<https://www.aljazeera.com/news/2019/08/india-revokes-kashmir-special-status-latest-updates-190806134011673.html>

¹³<https://www.forbes.com/sites/mwani/2019/08/06/kashmir-blackout-and-article-370-revoked/#59d0be5b6083>

Violence and unrest persisted in the Indian-administered Muslim majority areas and, following a disputed state election in 1987, an insurgency persisted in protest over autonomy and rights. The Bhartiya Janata Party came to power in the 2014 Indian general election and five years later included in their 2019 election manifesto the revocation of Article 370 of the Constitution of India, in order to bring Jammu and Kashmir to equal status with other states.