



ARTICLE 370 - SCRAPPED AFTER YEARS LONG

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Abstract:

Kashmir has always been a disputed state between India and Pakistan. Though both the countries claim its territorial ownership, Kashmir has always been considered to be a part of Republic India. Indian constitution gave special status to Kashmir under Article 370 and Article 35A which was temporary provision since 1949. The centre shall make laws only for defence, communication, ancillary matters and external affairs. The rest of the constitution and other laws will not apply to Jammu and Kashmir without the assent of the state legislature. On 5th August, 2019 the central government scrapped down the Article 370 along with Article 35A revoking the special status of Kashmir. This article details on what is Article 370 and 35A, changes made in the Article, justification of abrogation of the Article, its constitutional validity and international responses on its abrogation.

Introduction:

Article 370- the provision which was mired in controversy for years together because of its lop-sided privilege given to Jammu and Kashmir (herein after J&K) was scrapped after the resolution adopted by both houses of the Parliament, the President issued constitutional order 273 on August 6, 2019. J&K has been enjoying a special status and privileges which guaranteed that J&K would have independence over everything but communications, foreign affairs, and defense. Now, the Government of India has scrapped down such privileges given under Article 370 of the Constitution. Though it is considered as a bold political step, there are some unanswered questions rising from both internal politics and at the international level. This essay details about the international responses and consequences of scrapping Article 370.

What is Article 370 and 35A?

Article 370 is a Temporary provision and status with respect to the State of J&K. The intent of the legislation was to give only temporary special power to the state of J&K and this might be revoked at any time by the Presidential order with the recommendation obtained from the Constituent Assembly of J&K. The President may issue a public notification to declare that this Article cease to be operative with such exceptions and modifications. The power of the parliament, in the said article shall be limited only to the Union or the concurrent list, or whatsoever is mentioned in the Instrument of Accession. According to Article 370 of the Indian Constitution, except for defense, foreign affairs, finance and communications, Parliament needs the state government's concern or approval for applying all other laws. Under Article 370, the Centre has no power to declare financial emergency (Article 360) in the state, and also the parliament cannot increase, reduce or alter the borders of the state of J&K. There is no State list for the State of J&K. Hence, the Jurisdiction of the Indian Parliament in relation to J&K is confined to the matters enumerated in the Union List, and the concurrent list. So, only the residuary powers belong to the Legislature of the State. Hence, the power to make laws relating to preventive detention in J&K is vested only to Legislature of J&K and not the Parliament.

Article 35A was inserted to the Constitution in 1954 after the Delhi Agreement of 1952. This article empowers the Legislature of J&K a carte blanche to define the permanent residents of the State and grants some special privileges to the residents. According to this article, only the permanent residents (person who has been a resident for at least 10 years) can own immovable property in J&K.

Changes Made:

Union government had passed a bill recently, to revoke article 370. In this regard, the Union Minister for Home Affairs, Shri Amit Shah, introduced two bills and two resolutions regarding J&K for reorganization of J&K and to provide political reservation to SC, ST community. The bill was passed with a majority where there was only a little say for the opposition. There was insufficient debate regarding the positive and negative impacts of abrogation of article 370 and the Article was scrapped overnight. President issued a presidential order under article 370(1). The notification uses the words with the concurrence of the Government of the State of J&K, this presumably means the Governor. This order supersedes 1954 order. It means that all the provision which were basis of separate constitution for J&K stand abrogated.¹

Later, a few clauses were added to Article 367 (interpretation). Hence, article 367 was amended for abrogation of article 370. J&K reorganization bill has reorganized the state into (i) the Union Territory of J&K and (ii) the Union Territory of Ladakh. The Union territory of J&K will have a state Legislative Assembly like Delhi and Pondicherry with 107 seats and 24 seats will remain vacant on an account of the fact that certain areas of J&K is still being under the control and occupation of Pakistan while Ladakh would be a Union Territory

¹ <https://www.civildaily.com/burning-issue-reorganization-of-jammu-and-kashmir/>

without Legislative Assembly like Chandigarh and Dadra Nagar, Haweli etc. administered by the President through an Administrator appointed by him, known as the Lieutenant Governor.²

The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of J&K will comprise the remaining territories of the existing state of J&K. Some parts of J&K are under the control of Pakistan and China. The High Court of J&K will be the common High Court for the Union Territories of Ladakh, and J&K. The Schedule lists 106 central laws that will be made applicable to Union Territories of J&K and Ladakh on a date notified by the central government.

Justification for Abrogation:

The Article 370 needed to be scrapped for full integration of J&K into India, as the government felt that J&K had become a foreign policy and international issue instead of the domestic one. The balance was needed to be restored. Article 370 was preventing the development of J&K, where the Outsiders were not allowed to purchase land. Article 370 along with article 35A which defines the permanent residents was against gender justice and equality. Women married outside the state were not allowed to buy property. And also the said article has been modified by presidential order earlier hence the article can be abrogated through presidential order too. Soldiers, IAS officers and others who work in J&K could not even buy a house in the state. Valmiki who were brought to the state in 1957 were not given permanent resident status. It was violating human rights of non – permanent residents.

There was no provision for any Political reservations for the SC & ST. They were denied social justice and equal opportunities. Article 35A was inserted in the constitution without proper discussion and approval in the parliament. There is a fear that Hindu influx in the valley will alter the demography of the valley. But, Hindus of Jammu and Buddhists of Leh have not settled in the valley even after the passage of 72 years. The fear of outsiders is only just a myth. Article 370 had become the cause of dynasty politics in J&K. It was restricting opportunities for the local leader.

Constitutional Validity of Scrapping the Article:

A PIL has been filed in the Supreme Court of India regarding abrogation of article 370 being unconstitutional in nature. There is a colorable exercise of power and there is no legislative accountability, which is unconstitutional. On the account of Article 147, the Legislative Assembly of J&K does not have the power to alter the State's relationship with India. Both the Instrument of Accession and also Article 370 envisage a special autonomous status to the State of J&K which could only be changed upon a recommendation of the Constituent Assembly of J&K. Declaration had been made with the concurrence of the Governor at a time when the State of J&K was under President's rule, and there was no recommendation made by the Constituent Assembly which in itself violates the Article which states that only on the recommendation of the constituent assembly any alterations could be made in the article 370.

Reorganization of J&K into two Union territories is unconstitutional, where the erstwhile state of J&K was markedly different from that of other States. In the case of other states, only the views of their legislatures are ascertained by the President before recommending the introduction of a Bill relating to reorganization of the areas of the state. But in the case of J&K, no such Bill can be introduced in the Parliament unless the State Legislature consents to the same. India is a country which has a basic federal system of democracy. Here reorganizing the State into two Union territories and the action of government has been ascertained without obtaining the will of people through its legislature, government or referendum clearly violates the principle of Democracy which is Federalism. The Follow-up action of reorganizing the state was accompanied by a complete lockdown. It gave no scope to the people of J&K to have any say in the entire exercise. There was a lack of adequate time for debate in the Parliament. Late night arrest of mainstream political leaders in J&K, the prohibition of public gatherings, the shutdown of internet services and even landlines to avoid and control chaos is violation of human rights and right to life.

Domestic and International Responses and Repercussions:

The people of India welcomed this abrogation of Article as it would create more peace within the country. But many people in the Pakistan occupied Kashmir opposed to this scrapping of Article, as Pakistan gave them special powers like that of article 370. But majority of the people gave out a positive signal for revocation of the article 370.

Scrapping of article 370 not only internally but also internationally became a controversial topic on discussion. There raised so many criticisms and oppositions against the act of the Government. China and Pakistan were the most intruding countries in this issue, making it as an international issue by taking it to the United Nations (UN). As a consequence United Nations held a closed door conference at the United Nation Security Council (UNSC). The issue was discussed by all the permanent members of the UN. Finally with a majority, it was decided and concluded that the issue was purely an internal issue of India. Before India's statement, China addressed a press conference after the UNSC closed-door meeting on India's decision on

² <https://www.prsindia.org/node/842987/chapters-at-a-glance>

Kashmir and asserted that the situation in J&K is “serious and dangerous”. The Chinese diplomat, at UNSC said that such unilateral practices [as were carried out by the Indian government] were “invalid”. China also said that India has “violated the bilateral agreement to keep peace in the border areas” by the constitutional amendment.³ Following the same, other countries have also shared their views and opinions on the matter. Few of such countries include the following. The United States has said India’s decision to revoke Article 370, which gave a special status to Kashmir, was the country’s “internal matter” and called for peace in the region. The Maldives backed India on Kashmir, telling Pakistan that New Delhi’s decision to revoke special status of J&K was its internal matter. The Maldives also urged both countries to resolve their differences amicably.⁴

Author’s Views:

In spite of some deviations from constitutional procedure for the Abrogation of article 370, the citizens are very much benefited out of it. J&K will now be under the control of India, whereby it increases the Economy of the country as the property now in J&K can be bought by any Indian citizen. The Political reservations would be given to the backward class people, corruption and other crimes would now be controlled by the Constitution and other special laws prevailing in India. There will not be any differences and barriers between Kashmiris and Indians. The State now coming under the direct control of the country will enhance the administration of the country. Women would be given equal privileges and reservations. The Article being a temporary provision needs to be revoked and is revoked at the right time to bring internal balance within the country of India.

Conclusion:

The act of revoking the article by the ruling government is a very brave and courageous move. This revocation benefits all the citizens of India and also people of J&K who were deprived of Fundamental rights. The UN meeting also stated that the revocation of article benefits the country of India and the act committed by them is absolutely correct despite the allegations framed by China and Pakistan. Tourism, medical and educational value of the state increases with the scrapping of the Article. It also gives major role to Panchayats and Municipalities in future political development of state. Article 370 was the main reason which caused separatism between India and J&K, which is now put to an end.

³ <https://www.indiatoday.in/india/story/kashmir-internal-matter-pakistan-misleading-world-india-at-uns-c-meet-1581600-2019-08-16>

⁴ <https://www.indiatoday.in/india/story/kashmir-is-india-s-internal-matter-maldives-tells-pakistan-1591020-2019-08-24>