



Article 370

On 5th August 2019, President of India in the exercise of the powers conferred by Clause (1) of Article 370 of **the Constitution had issued the Constitution (Application to Jammu and Kashmir) Order, 2019**. Through this, Government of India has made modifications in Article 370 itself (**not revoked it**).

With this, the Government of India has dramatically **altered the relationship between the state of Jammu and Kashmir and the Indian Union**.

Background

- On October 17, 1949, Article 370 was added to the Indian constitution, as a '**temporary provision**', which exempted Jammu & Kashmir, permitting it to draft its own Constitution and restricting the Indian Parliament's legislative powers in the state.
 - It was introduced into the draft constitution by N Gopaldaswami Ayyangar as Article 306 A.
- **Under Article 370:** The Constituent Assembly of Jammu & Kashmir was empowered to recommend which articles of the Indian Constitution should apply to the state,
 - The J&K Constituent Assembly was dissolved after it drafted the state's constitution. **Clause 3 of the article 370** gives the President of India the power to amend its provisions and scope.
- **Article 35A** stems from Article 370 and was introduced through a Presidential Order in 1954, on the recommendation of the J&K Constituent Assembly.
 - Article 35A empowers the Jammu & Kashmir legislature to define the **permanent residents of the state**, and their special rights and privileges.
 - **It appears in Appendix I of the Constitution.**

Key Changes

- The Constitution (Application to Jammu and Kashmir) Order, 2019 **has replaced Presidential Order of 1954**.
- Subsequently, **the Jammu and Kashmir Reorganisation Bill, 2019**, passed by Parliament divides the **state of Jammu and Kashmir into two new Union Territories (UTs): Jammu & Kashmir, and Ladakh**.
 - **This is the first time that a state has been converted into a UT.**
 - Of the **six Lok Sabha seats** currently with the state of Jammu and Kashmir, **five** will remain with the union territory of Jammu and Kashmir, while one will be allotted to Ladakh.
 - **The UT of Jammu and Kashmir will have an Assembly, like in Delhi and Puducherry.**
 - Instead of 29, India will now have 28 states. Kashmir will no longer have a Governor, rather a Lieutenant Governor like in Delhi or Puducherry.
- **Status of J&K Union Territory**
 - J&K Assembly will have a **five-year term, not six**, as was the earlier case.
 - **Section 32 of the J&K 2019 Bill** proposes that the Assembly can make laws on any

subjects in the State and Concurrent lists **except on state subjects relating to “public order” and “police”**.

- This is **similar to Article 239 A** of the Constitution that is applicable to Union Territories of Puducherry and Delhi.
- However, **by insertion of Article 239AA** and by virtue of the **69th Constitutional Amendment, the Delhi Assembly cannot legislate on matters in entry 18 of the State List, i.e. land.**
- **In the case of J&K, the Assembly can make laws on land.**
- **The special status provided to J&K under Article 370 will be abolished.**
 - Jammu & Kashmir will **no longer have the separate constitution, flag or anthem.**
 - The citizens of Jammu and Kashmir will **not have dual citizenship.**
 - As the new union territory of Jammu and Kashmir will be subject to the Indian Constitution, **its citizens will now have the Fundamental Rights** enshrined in the **Indian constitution.**
 - Article 360, which can be used to declare a **Financial Emergency, will now also be applicable.**
 - **All laws passed by Parliament** will be applicable in Jammu and Kashmir, including the **Right to Information Act and the Right to Education Act.**
 - **The Indian Penal Code will replace the Ranbir Penal Code of Jammu and Kashmir.**
 - **Article 35A**, which originates from the provisions of Article 370 **stands null and void.**
- Since Presidential Order has extended all provisions of the Constitution to Jammu and Kashmir, including the chapter on Fundamental Rights, **the discriminatory provisions under Article 35A will now be unconstitutional.**

The Need for Changes

- Article 370 was added in the Indian constitution to **provide autonomy to J&K.**
 - However, it failed to address the well-being of Kashmiris who have now endured **two generations of insurgency and violence.**
 - It **contributed to the gap** between Kashmir and the rest of the nation.
- **International events**
 - The situation emerging in the western neighbourhood and the possible **re-ascendance of the Taliban in Afghanistan** call for greater attention and care.
 - More so, the emerging geopolitical dynamics in Afghanistan and the resultant **United States-Pakistan rapprochement** could have potentially led to more heat on the Kashmir situation in the months ahead.

Challenges

- **Constitutional challenges**
 - Presidential order that sought to abrogate of Jammu and Kashmir's special status, according to Article 370 (3) the President would **require the recommendation of the constituent assembly of Jammu and Kashmir to make such a change.**
 - However, **the 2019 Presidential order adds a sub-clause to Article 367, replacing the terms:**
 - **“Constituent Assembly of Jammu and Kashmir” to mean “legislative Assembly of Jammu and Kashmir”.**
 - **“Government of Jammu and Kashmir” to mean “Governor of Jammu and Kashmir acting on the aid and advice of the council of ministers”.**
 - The government sought to dilute the autonomy under Article 370 **without bringing a Constitutional Amendment** that would require a two-thirds majority in the Parliament.

- **This provision is currently under challenge in the Supreme Court on the ground that it added article 35A in the Indian Constitution only through a Presidential Order.**
- **Conversion of Jammu and Kashmir into a Union Territory is in violation of Article 3, as the Bill was not referred to the President by the State Assembly.**
 - In the reorganisation of the state, the Presidential order also requires the concurrence of the government of the state. However, since Jammu & Kashmir is **currently under Governor's rule, the Governor's concurrence is deemed to be the government's concurrence.**
- **Federalism issue:**
 - The **Instrument of Accession** was like a treaty between two sovereign countries that had decided to work together.
 - The **maxim of pacta sunt servanda** in international law, which governs contracts or treaties between states, asks that promises must be honoured.
 - In *Santosh Kumar v. State of J&K & ors* (2017), the **SC said that due to historical reasons, Jammu and Kashmir had a special status.**
 - In *SBI v Zaffar Ullah Nehru* (2016), the SC held that **Article 370 cannot be repealed without the concurrence of the Constituent Assembly of Jammu and Kashmir.**

Possible Consequences

- **Rise in Militancy:** Article 370 was seen by Kashmiris as a marker of their **separate identity and autonomy.**
 - There is a **possibility of widespread protests and violence** as a reaction to the dilution of Article 370.
 - **Terror elements in Pakistan** would find Kashmir to be the most fertile ground for breeding terrorism.
 - The unrest can affect the democratic progress that has been made so far.
- **Out-maneuvering Pakistan:** Pakistan used 370 to wage a **proxy war**, internationalise Kashmir, supporting terrorism, **all that is gone** now.

Way Forward

- A 10-year strategy for **education, employment and employability** should be deployed for uplifting Kashmir.
- The **Gandhian path** of non-violence and peace should be adopted to solve the **legitimacy crisis** in Kashmir.
- The government can mitigate the challenges emanating out of Action on article 370 by launching a comprehensive outreach programme to all Kashmiris.
- **In this context, Atal Bihari Vajpayee's version of Kashmiriyat, Insaniyat, Jamhooriyat (inclusivity culture of Kashmir, humanitarianism and democracy) for Kashmir solution,** should become a cornerstone of the forces of reconciliation in the State.

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