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Abrogation of Article 370

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Why is in news? Should Constitution be amended to make Article 370 permanent, asks CJI

The constitutional validity of the revocation of Article 370, which gave special autonomy to Jammu and Kashmir, is being examined by the Supreme Court.

The petitioners challenging the decision have argued that Article 370 was not a "temporary provision" as it was often called, but a permanent feature of the Constitution that reflected the unique circumstances of the state's accession to India.

About Article 370:

Article 370 is the first article of **Part XXI** of the Constitution - '**Temporary, Transitional and Special Provisions**'.

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 Gopalaswami 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**.

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**.

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.

Reasons for Reorganisation of J&K:

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The Ladakh Division of the State of Jammu and Kashmir is **geographically large but sparsely populated, with a difficult terrain**, and there has been a long-pending demand of people of Ladakh to give it the status of a Union Territory.

The **prevailing internal security situation and cross border terrorism** in the existing state of Jammu and Kashmir.

Provisions under Special status provided to J&K under Article 370 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.

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 it.

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.

Federalism issue: The Instrument of Accession was like a treaty between two sovereign countries that had decided to work together.

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.

Impact of abrogation of Article 370 on Jammu and Kashmir:

According to Centre for Monitoring Indian Economy's (CMIE), **Jammu & Kashmir had the highest monthly average unemployment rate of 15%** between January 2016 and July 2019 among all the states.

The significant move, opens up potential opportunities for development-led economic growth in the Union Territories of J&K and Ladakh.

It would lead to **opening up of institutions of national importance** like IITs, IIMs in the valley. Professors who were not ready to go there as their children don't get admission in schools will settle there.

It will **bolster security in the valley** through timely and swift action.

National Intelligence would strengthen against terrorism through better presence in the valley. However, it will take some time to do so.

Also due to designation as union territory the **state's police will not be answerable to Kashmir-based politicians**. Rather, the police will answer to the centre. This move will help the centre better control violence in Kashmir.

Administrative issues: The downgrading of Kashmir's status from state to union territory has important implications. The new union territory of Jammu and Kashmir will resemble that of Puducherry and Delhi while Ladakh will resemble with others like Andaman and Nicobar.

73rd and 74th amendments pertaining to elections of local bodies **were not applicable** in the state. **Now local participation will increase** in the governance after implementation of these acts.

Many of India's **anti-corruption laws** were not applicable in Kashmir. It is widely recognised that political actors in the state have long been on the payroll of all sides, allowing them to accumulate vast wealth. Now central government can effectively act against corruption paving way for development of the region.

Article 370 had numerous pernicious impacts. Kashmir's citizens **were denied many of the advantages of modern India**. For example, it prevented the implementation of the Right to Education in the valley. It also denied residents of the erstwhile Kashmir the advantages of the system of reservations enjoyed by other disadvantaged caste communities. Now J&K people will enjoy all such rights.

Regional powers: The only countries that have been directly provoked by India's action are Pakistan and China. Pakistan's protest is guided by vested and evil interest to occupy whole region. While China is concerned about its occupied Aksaichin part and CPEC engagement with Pakistan.

Terrorist activities: Although China would not cause much problem, Pakistan would increase its state sponsored terrorism in the valley, supporting anti-Indian elements in the valley. It would lead to violence in the region and may cause rift among India and the people of the valley. With much better control in the valley, Government and security agencies need to act proactively to contain such acts.

Conclusion:

Geographically and metaphorically, Jammu and Kashmir is the crown of secular India. Its people and leaders had chosen secular India over Pakistan.

The new doctrine will have to persuade the majority of the people of Jammu and Kashmir that greater integration with India will provide them with more opportunities, provide more freedom and space, and strengthen their rights much more than the alternatives proposed by other mainstream parties or separatists.

Going forward, India should take the people of J&K into confidence, bring development which includes all sections of society and restore statehood as per its initial promise.