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Article 370 verdict

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Why is in news? ‘Constitutionally valid’: Supreme Court upholds order abrogating Article 370, asks EC to hold elections by Sept next year

The Supreme Court in a 5-0 **unanimous ruling upheld the Centre’s abrogation of Article 370** of the Constitution on 11th December, 2023.

A Constitution Bench led by Chief Justice of India (CJI) D Y Chandrachud upheld the constitutional validity of the two Presidential Orders CO (The Constitution (Application To Jammu and Kashmir) Order) 272 and 273 of August 5 and 6, 2019 respectively.

Through which the entire Constitution of India was made applicable to J&K, and all provisions of Article 370 were declared inoperative.

Key Highlights of the Supreme Court's Verdict:

The court declared the Constitutional order that **revoked Article 370 as valid**.

CJI stated that Jammu and Kashmir held **no internal sovereignty after accession to India**. This implies that the **special status under Article 370 did not grant internal sovereignty** to the region.

The court explicitly acknowledged the **reorganization of Jammu and Kashmir as a temporary measure**.

President's Orders:

SC’s Bench concurred that the **President has the power to make “irreversible changes**, including the dissolution of the State Assembly,” and that the President’s powers are kept in check by “judicial and constitutional scrutiny.”

The court found no prima facie case that the President's orders in 2019 were mala fide (in bad faith) or an extraneous exercise of power.

This suggests that the **decision to abrogate Article 370 was not made with improper motives**.

Reorganization into Union Territories:

While recognizing the reorganization of the state into Union Territories in 2019 as a temporary measure, **the court directed the government to work towards the restoration of statehood**.

The court emphasized that the reorganization was a temporary move, indicating the possibility of revisiting the Union Territory status in the future.

Restoration of Statehood and Elections:

The court directed the government to take steps for the restoration of statehood to Jammu and Kashmir.

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It also **instructed the conduct of Legislative Assembly elections** in the region by September 30, 2024.

Truth and Reconciliation Commission:

Justice Kaul, in his concurring opinion, suggested the **establishment of a Truth and Reconciliation Commission** in Jammu and Kashmir.

This commission would be tasked with **acknowledging and addressing alleged rights violations** in the region, indicating a commitment to justice and reconciliation.

MAP OF UT OF JAMMU & KASHMIR AND UT OF LADAKH



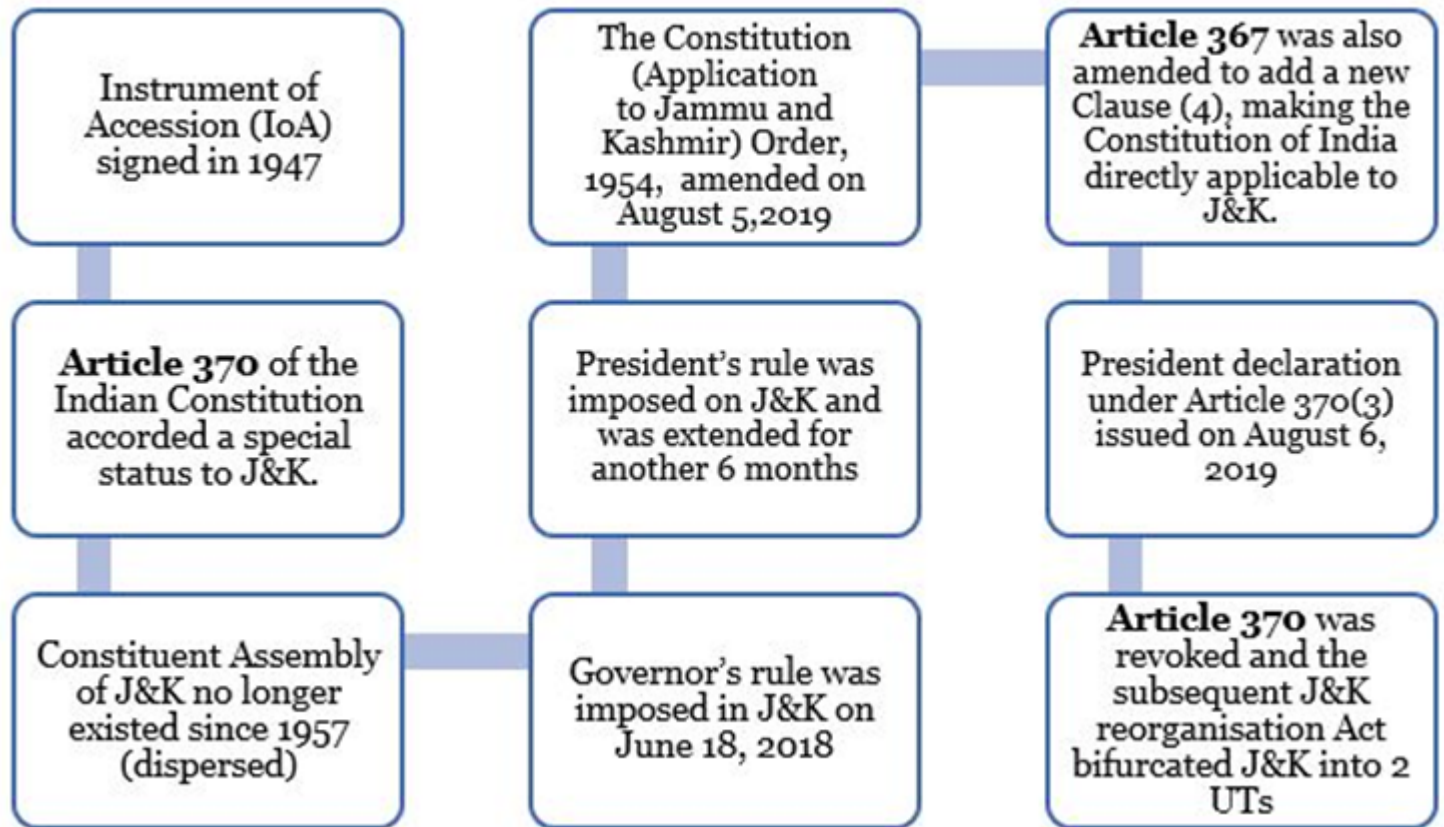
Special Status of J&K:

On 5th August 2019, the President of India in the exercise of the powers conferred by Article 370(1) of the Constitution issued the **Constitution (Application to Jammu and Kashmir) Order, 2019**.

Through this, the Government of India has **made modifications to 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.

Timeline: Special Status to J&K



The order stated that **all the provisions of the Indian Constitution applied to Jammu and Kashmir**.

While the 1954 order specified that only some articles of the Indian constitution to apply to the state, the new order removed all such restrictions.

This in effect meant that the **separate Constitution of Jammu and Kashmir stood abrogated**.

The President issued the order with the “concurrence of the Government of State of Jammu and Kashmir”, which apparently meant the Governor appointed by the Union government.

J&K Constitution:

The **state's own constitution** came into force on **26th January, 1957** under which elections to the state legislative assembly were held for the first time. This constitution also ratified the state's accession to the Union of India.

Section 3 of the constitution says **Jammu & Kashmir is and shall be an integral part of the Union of India**.

Article 370:

The provision of Article 370 was drafted by Sheikh Abdullah.

In the Indian Constitution, it was **included as a temporary provision** that grants special status to J&K.

All the provisions of the Constitution which are applicable to other states are not applicable to J&K except for defence, foreign affairs, finance and communications.

Parliament **needs the state government's concurrence** for applying all other laws.

The state's residents live under a separate set of laws, including those related to citizenship and ownership of the property.

It gives J&K a **unique power** to have a separate Prime Minister, President, flag and constitution.

Due to special provisions attached to this article, it always remains debatable. Those who are against it argue that it hampers integration process of J&K with the rest of the country.

Article 35A:

It came into existence **through a Presidential Order in 1954** and it **gives the J&K assembly the right to decide the definition of Permanent residents of the state** and prevent the people of the other states from buying real estate in J&K.

According to the constitution of J&K, a permanent resident is defined as a person who was a state subject on 14th May, 1954 or who has been residing in the state for a period of 10 years and has lawfully acquired immovable property in the state or migrated from the state after 1st March, 1947 and has gone within the present Pakistani border area but has come back with resettlement permit in the state.

Under this, citizen of any other state can **neither buy property in J&K nor can they become permanent resident** of the state.

The presidential order provided that only the original residents of J&K will have right to scholarships, services, land and settlement.

It stated that if a girl who is a citizen of J&K marries an outsider then she will lose her right to ownership of property. In 2002, the J&K High Court issued an order stating that in such cases, a girl's right will continue for life.

It gives special powers to J&K as a state i.e. the state government has **right to give and abstain privileges to people who migrated** there during independence and other Indian nationals in J&K.

Some experts argue that spirit of Article 35A flows from Article 370 while some other argue that it is not constitutional as it came through a presidential order.

Provisions abolished under Article 370:

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.

Conclusion:

The Supreme Court's verdict not only validates the constitutional order but also outlines steps for the future, including the restoration of statehood, holding elections, and addressing past grievances through a Truth and Reconciliation Commission.