

# Abrogation of Article 370

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**Abstract:** *This research paper talks about abrogation of article 370 and article 35A of Indian constitution. Article 370 and article 35A talks about special status given to residents of Jammu and Kashmir and who are permanent residents of that state and provide them exclusive rights which are not available to rest Indians. Section 144 of CRPC is issued at the time of security threat at the time of riots. The Jammu and Kashmir Reorganization Act was passed by the parliament, enacting the division the state of Jammu and Kashmir into two union territories to be called Union Territory of Jammu and Kashmir with legislation and Union Territory of Ladakh without legislation. The aim of abrogation and reorganization of these articles were to integrate Kashmir into India so that they can avail the opportunities which are not available to them as they had separate constitution. All the provision regarding the status of Jammu and Kashmir has been written in part XXI of constitution. The objective was to finish terrorism in the country and fulfill the demand of people of Ladakh as they wanted it to be union territory. Paper also talks about history of Jammu and Kashmir, effects of abrogation of article 370 of Indian constitution, what were the effects of amendment, how did world reacted to this amendment and at last what is future and recent development of the state. This great step of repeal of article 370 has been taken by BJP government to unite people. So that people can proudly say India is one. The analysis has been done by the means of secondary data, which means it is not the first hand survey i.e. primary hand survey. The objective of the paper was to know why there was an urgent need to repeal this article.*

**Keywords:** Article 370, Article 35A, Jammu and Kashmir, Ladakh, Abrogation

## 1. Introduction

On Monday 5th August, 2019 Home Minister Mr. Amit Shah on the advice of Honorable President Ram Nath Kovind of India Introduced the Bills in Rajya Sabha for Revocation of Article 370 and Article 35A, which grants special status to State of Jammu and Kashmir, along with the bifurcation of Jammu and Kashmir into two union territories i.e. Jammu and Kashmir with legislation like Delhi and Puducherry and Ladakh without legislation like Chandigarh. Some regional parties like BSP, BJD, TRS and AIADMK extended full support to the resolution and the bill while NDA constituent JD (U) walked out. Bill was passed with the majority of 125 votes. There were only 61 voters who opposed it. Total 4 different bills had been moved and passed in the parliament which dealt with scrapping of Article 370, Re-organization of Jammu and Kashmir provided reservation to economically backward classes and making Indian Penal Code, 1860 effective in the place of existing Ranbir Penal code. It had also claimed that it could not Repeal Article 370 during the Government of Mr. Atal Bihari Vajpayee due to lack of majority in the Lok Sabha, BJP has been opposing it since Jan Sangh Days. In the manifesto of 2014 election one of the party's Agenda was-Return of Kashmiri Pandits to the land of their ancestors with full dignity, security and assured livelihood. Mr. Amit Shah during the Parliamentary debate said that Article 370 didn't help in anyway in the development of Kashmir and more over resulted in discrimination against women. He also said that it will put an end to terrorism and the region will lead to progress on the path of development. Children right to education which was earlier excluded will now be given to residents of Jammu and Kashmir. The two union territories will come into existence on 31st October, 2019, marking the birth anniversary of Sardar Patel. The government of India gave two major reasons for bifurcation of Jammu and Kashmir into two union territories:

- 1) To fulfill the demands of people of Ladakh to give it a status of a union territory.
- 2) To maintain internal security and prevent cross border

terrorism in the state.

## 2. History: How Jammu and Kashmir Ceded to India

The state of Jammu and Kashmir has been an unresolved issue since it has been ceded to India in 1947. The state of Jammu & Kashmir has got its proper shape when it was acquired by Ranjit Singh. He formed the Sikh confederation and evaded Kashmir from the Mughal Empire in early 19th century. The administration of it was given to head of Dogra community.

At the same time base of British East India company was getting stronger. The treaty of Anglo-Amritsar decided the fate of Jammu & Kashmir which was formalized in the year 1846, and it came to be known as princely state. which they sold to Dogra king Gulab Singh for Rs 75 lakh. In 1947 on they divided Indian subcontinent into two i.e. India and Pakistan. Raja Hari Singh was the ruler of Jammu & Kashmir at that time and it was a princely state, such states were given the option either to cede to India or Pakistan or remain sovereign state. Raja Hari Singh decided to be a sovereign state instead of joining two newly independent nations. However this peaceful reign was short lived as the state was attacked by raiders from the neighboring Northwest Frontier Province, supported by Pakistan. Maharaja Hari Singh went prime minister of India to seek help. Jawaharlal Nehru told Hari Singh that he could not help him by sending his military as state is not the part of India. Under these circumstances Maharaja Hari Singh in October 1947 signed the agreement which declared that Jammu & Kashmir is part of India but it will enjoy certain privileges which other states wouldn't be. India will have complete autonomy in the subject matter related to foreign affairs, communication, finance and defense. To ensure that the state enjoys special privilege article 370 was added in the Indian constitution.

## 3. Article 370 of the Indian Constitution

The Article 370 of the Indian constitution was drafted by

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sheikh Abdullah the prime minister of Jammu & Kashmir who was appointed by maharaja Hari Singh and Jawaharlal Nehru in 1947 with the intent to maintain cordial relationship between India and Jammu and Kashmir .Sheikh Abdullah wanted that provisions of article 370 shouldn't be temporary placed in the Indian constitution and iron clad autonomy for the state where centre didn't comply with. Final draft of the article was made by Gopalswami Ayyangar who was of minister without portfolio in the first cabinet of India; also he was former diwan to the former maharaja Hari Singh. Article 370 came into effect in 1949.

Article 370 of the Indian constitution is a temporary provision which grants special status to Jammu and Kashmir under Part XXI of the constitution of India which deals with temporary, transitional and special provisions, that has been accorded to the state. Under this article the Indian Parliament cannot increase or reduce the borders of the state...all the provisions which are applicable to other states are not applicable to Jammu & Kashmir. For example, till 1965, Jammu & Kashmir had a *sadr-e-riyasat* for governor and prime minister in place of chief minister.

According to this article except for defense, finance, communication and external affairs, parliament needs permission of state government to apply any other laws. The state residents of Jammu and Kashmir live under separate set of laws like those related to ownership of property, citizenship and fundamental rights as compared to other citizens of India. As a result of which other Indian citizens can't purchase land in Jammu & Kashmir. Also centre has no power to declare financial emergency under article 360 of Indian constitution, can only be declared at war times and external aggression. Dual citizenship is allowed to the residents of Jammu & Kashmir only to all other Indians single citizenship is applicable. There is also separate flag for them. Also there is no reservation for minorities and they can't seek right to information .along with this women marrying non- Kashmiri has to leave her property.

Various Indian laws which are applicable to state of Jammu and Kashmir are as follows:

- All India Services Act, 1951
- Negotiable Instruments Act, 1881
- Essential Commodities Act, 1955
- Income Tax Act, 1961
- Border Security Force Act, 1968
- Integrated Goods and Services Tax Act, 2017
- The Central Goods and Services Tax Act, 2017
- The Central Laws (Extension To Jammu And Kashmir) Act, 1968, etc

In 2018, Kumari Vijayalakshmi Jhavs Union of India & Anron 11 April 2017<sup>1</sup>, the Supreme Court has ruled that Article 370 has acquired permanent feature in the Indian Constitution. Similarly in *State Bank of India vs Santosh Gupta*, the Supreme Court gave the same ruling of permanent feature. India needs Jammu & Kashmir government's nod for applying laws in the state except in the case of defense, foreign affairs, finance, and communications. The laws of state in case of fundamental rights, property and citizenship is totally different from the rest of India. The concurrence was only provisional as

ratification of Constituent Assembly is required. This Article can only be scrapped after the ratification of State Constituent Assembly. The state has full legitimate power to make laws in relation to welfare measure, cultural measures, personal law and procedural law.

#### 4. Article 35a of Constitution Indian

This article empowers the state's legislature to authorize define "permanent residents" of Jammu & Kashmir and provide them with notable benefits exclusive only to them. The state of J&K considers those persons as permanent residents who were born before the year of 1911 or those people who own immovable property and residence legally for 10 years prior to the date of claiming citizenship or the emigrants and their descendants for two generations as permanent residents... It confers special rights to the citizens of Jammu and Kashmir and prohibits people from outside the state from purchasing any immovable property in the state. It also allows the state legislature to impose any restrictions up on persons other than the permanent residents regarding the above..

This was added to the constitution of India in 1954 by an order of then President Rajendra Prasad, on the advice of the Jawaharlal Nehru Cabinet. To guarantee these special rights and privileges, the Article says that no act of the state legislature that comes under this can't be challenged for violating the Constitution or any other laws.

Text to Article 35(a) in The Constitution of India

- a) Parliament shall have, and the Legislature of a State shall not have, power to make laws
- b) with respect to any of the matters which under clause ( 3 ) of Article 16, clause ( 3 ) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and
- c) for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub clause(ii).

#### 5. Section 144CrPC

Revocation of Article 370 and 35A in Kashmir Section 144 of CrPC imposed in several areas. On night of August 4th, 2019 orders were passed by the District Magistrate to impose section 144 from Morning 6 A.M. 5th August, 2019. The Mobile phone and Internet Services are shut down and Three Ex CM's of State of J&K were under House arrest as they were asking all political parties to come along as one unit against this step of Central government.

Section 144 of CrPC is issued in urgent cases of security threat or riot and bars the assembly of five or more people in an area where it has been imposed. The notification is issued by the District Magistrate of the area. The section also empowers the authorities to block internet access. According order issued by the government, "there shall be no movement of public". When there is threat of breach of public peace or internal disturbance, Section 144 CrPC is put into effect. Under this section, all civilians are barred from carrying of weapons including, sharp-edged weapons or

firearms in public places except for police or paramilitary or security forces. This section can be imposed not more than 2 months. However, if the state government considers it necessary for preventing danger to human life or for preventing a riot, this particular section can also be extended up-to Six months from the initial date of order. The punishment for unlawful assembly is up-to threeyears.

## 6. Effects of Abrogation of article 370

- 1) After abrogation no special powers will be given to the residents of Jammu and Kashmir.
- 2) After the reorganization any one can purchase immovable property like land and can migrate in Kashmir and Ladakh.
- 3) People of Jammu and Kashmir have to give away their dual citizenship as India follows the concept of single citizenship.
- 4) Women needn't to give away their immovable property after marrying to non-Kashmiri. They can retain their property.
- 5) Article 360 of financial emergency will be applicable to them.
- 6) 16% reservation will be given to minorities of the residents living there.
- 7) There will be no separate flag for the residents of Jammu and Kashmir. They will have flag of tri-color of India and general elections will take place once in every five years.
- 8) Now the laws like Right to information will be available to them.
- 9) The Central government will also have the power to deploy and control the police forces directly.
- 10) There will be application of central laws in the territories of J&K and Ladakh.
- 11) The article 356 of the Indian constitution would be applicable in the J&K. It means the governor rule is replaced by the president rule in the state.
- 12) All the provisions of the article 370 of Indian constitution are null and void except clause 1 of the article 370 of Indian constitution.
- 13) After the repeal of article 370, the total assembly seats would reduce to 83 because 4 seats of Ladakh region would be slashed.

## 7. Effects of Amendment

- a) Article 370 still finds its place in the Constitution of India and hence it is not abrogated, but only amended, but with no powers.
- b) Article 35A in Appendix I of the Constitution which was inserted with wide powers given in Article 370(1) become inoperative since the source i.e. Article 370(1) from which it was made itself was deleted.
- c) Clause (2) and (3) of article 370 of Indian constitution has been considered as null and void except clause (1).

## 8. How did the World React

This action taken by BJP government and divided the state Jammu and Kashmir into two union territories. India has witnessed different reactions from all over the world.

Majority of the people happily welcomed this decision of the central government, while some people opposed this and said that they are hurting the sentiments of residents living there. Pakistan and China opposed this and said that centre shouldn't have taken this decision. Replying to this comment Rajesh Kumar, spokesman of ministry of external affairs said that recognition bill 2019 passed by government in parliament on 5 August, 2019 related to Jammu and Kashmir was internal matter, if they are not entering in their internal affairs they also didn't have any right to interfere in their personal matters. This issue is a legacy of history between India and Pakistan, which is also the consensus of the international community.

## 9. Recent Development and Future of the State

On 5<sup>th</sup> of August 2019, the parliament passed a number of bills to abrogate Article 370 and 35-A, to bifurcate Jammu and Kashmir from Ladakh. The main aim was to provide reservation to those economically backward and replacing of Ranbir Penal Code by Indian penal code, 1860. These changes which have been made in the state have drawn multifaceted criticism from student bodies and pressure groups across the nation who believe this would end up alienating the Kashmiris further but when we carefully examine it, it is a calculated step to ensure equity to them and to every Indian, as they have certain special powers. Residents of Jammu and Kashmir will be benefitted by various social welfare schemes earlier which they were deployed of like right to education, laws like right to information will be available to them. Women can retain their property with them even after marrying to non-Kashmiri. Multiple job opportunities will be provided by the state which will enable them to live a safe and dignified life and lastly being a union territory would mean their security will rest in the hands of the centre. This move has sent a strong message across the border that unlike Pakistan, India is capable on all fronts to deal with its internal issues without seeking the aid of external powers. This exercise of power shows that India is sovereign which means independent from other countries. Though this move has been questioned by many as it wasn't discussed with much people but with the passage of time we will come to know whether step is proved to good or not. Hope Jammu and Kashmir prospers in each and every aspect.

## 10. Conclusion

This is big victory for the whole nation. Now we Indians can proudly say that from Kashmir to Kanyakumari, India is one. This step taken by government in parliament will truly remove terrorism and unite Kashmiris with Indians. We can also say that it the best and bold decision taken by the government. It's our duty to make Jammu and Kashmir feel safe and secured. The valley which is described as heaven of earth has no investment or industrial development because of terrorism which has created fear among investors. Hence, it can be said that removal of Article 370 can bring peace and order in the state and can bring feeling of nationalism among Kashmiri people. Let's hope that the government could cherish the idea of development of 'Jannat'.