



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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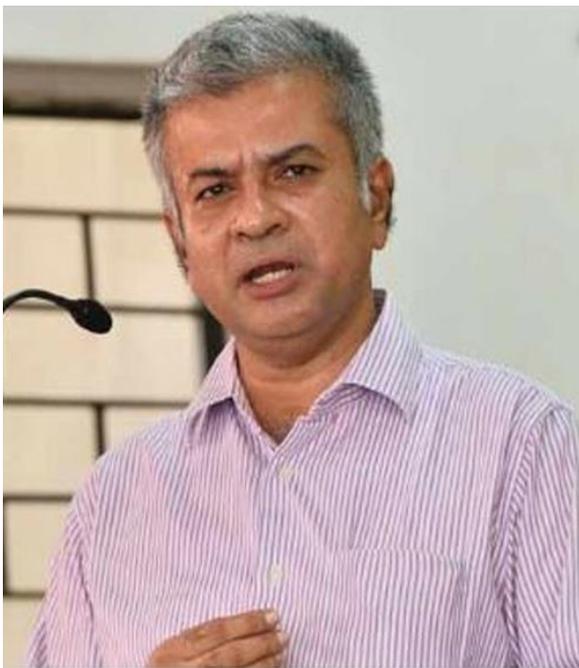
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



“STATE OF JAMMU AND KASHMIR – PAST, PRESENT AND FUTURE WITH RESPECT TO THE CONSTITUTION OF INDIA”

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Abstract

(Catchy opening line) “It’s a new Era for the Jammu and Kashmir and Ladakh. From the Bottom of my heart I want to congratulate.”-PMMODI.**(History)** The origins of Article 370 can be traced Back to the Instrument of Accession signed by the Maharaja of Jammu and Kashmir in 1947, where by the state agreed to accede to India. As part of the negotiations, certain safeguards and provisions were included to protect the rights and interests of the people of Jammu and Kashmir. Article370 was subsequently incorporated into the Indian Constitution in 1954, further solidifying the special status of the state. **(Short explanation)** 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. Article 370 was mentioned in Part XXI of the constitution, which deals With “Temporary, Transitional and special provisions”. **(Research problem)** State of Jammu and Kashmir – past, present and future with respect to the Constitution of India. Originally, this special Status was introduced in Article 306A. Later, this was renumbered to Article 370, but such provision was temporary. It was temporary because the constituent Assembly was given a Choice or right to modify, delete or retain the article and they chose to retain it. Because of this special status, Kashmir maintained a constitution of its own. It could have a flag of its own. **(hypothesis)** Some argue it aimed to integrate Jammu and Kashmir more closely with India, while others suggest it was intended for the development in the region. The powers of the Indian central government Would only applied to external affairs,

defense and communication. Besides Article 370, there was another Article-35A that define permanent residence of Kashmir. It had provisions related to residence, education, job, RTI etc.

KEY WORDS – *Article 370, Constitution, Government of India, Jammu and Kashmir, Special provisions*

INTRODUCTION

Article 370 of the The Indian Constitution was a temporary provision that grants a special status to the State of Jammu and Kashmir. This article was temporary in the sense that the Constituent Assembly of Jammu and Kashmir had the right to modify, delete or retain it, and also it was held to be temporary only till a voting was to be held to ascertain the public wish. Previously known as Jammu and Kashmir (J & K), the region became part of India in 1947, not long after the subcontinent was partitioned following the end of the British administration. A ceasefire line was agreed upon after India and Pakistan went to war over it and came to control separate portions of the area.

The state of Jammu and Kashmir, which is controlled by India, has experienced violence for 30 years as a result of separatist uprising against Indian rule. The state shares its boundary with Afghanistan, Pakistan, and China. Both the nations of Indian and Pakistan moved to assert their respective portion of the original state of Jammu and Kashmir have lived under a distinct set of laws and regulations, including those connected to citizenship, possession of property and fundamental rights, as compared to other Indians.

History of Article 370 of Indian Constitution

After the independence of India in 1947, the former ruler Maharaja Hari Singh of Jammu and Kashmir declared to remain independent from India and Pakistan. However, after this proclamation, Pakistan launched a non-official war to free the region from Government of India. When Maharaja Hari Singh was unable to protect the State, he sought the help from Government of India. The Government of India was ready to help on a condition that Kashmir would accede to India. Hence both the parties signed the Instrument of Accession in October, 1947. According to this treaty, this treaty couldn't be amended without the State's consent and it also specifically protected the right to rectify the application of any further Constitution of

India in its territory.

During the framing of the Constitution of India, certain important events along with signing the Instrument of Accession such as the ruler's proclamations issued in 1948 and 1949, the establishment of the popular government in Jammu and Kashmir, presence of representatives of J&K in the Constituent Assembly of India and the debates relating to article 370, occurred in the State of J&K.

The event of the ruler's proclamation in March 1948 and November 1949, clearly examined the creation of a Constituent assembly for J&K to enact its Constitution. These proclamations noted that the Constitution of India was likely to circulate and it would also apply to J&K temporarily so that India could govern its Constitutional relationship with the state of Jammu and Kashmir. It was further ordered that the Constitution framed for the State would supersede all the other provisions as when it commenced. In this way, Article 370 was enforced from 26th January 1950 for temporary regulation of the constitutional relation between India and the State of Jammu and Kashmir. The feature of temporary character simply means that it will govern the relationship between the Centre and J&K till the constituent assembly of J&K enacts the Constitution of Jammu and Kashmir.

The Constitution of Jammu and Kashmir was adopted on 17th November 1956 and was effective from 26th January 1957. It was the only state in the country to have its own Constitution and had special status compared to other Indian states. However, Art 370 and its provisions continued to govern the relationship between the State and the Centre. It was also noted that the Constituent Assembly of J&K was not created under Art 370, it just recognises the importance of the constituent assembly as the reflection of the will of the people of Jammu and Kashmir and its special status. In 1947, at the time of Independence the state determined not to link up with either Pakistan or India. The Maharaja requested India's support to preserve his territory and save his people who were killed and looted by the Pakistani militants. The then Prime Minister Jawaharlal Nehru, agreed to Jammu and Kashmir's accession to India. The Maharaja signed the "Instrument of Accession" with particular concessions for the autonomy of the state. This unique status of the State was embodied in Art. 370 of the Indian Constitution.

Special Status of Jammu and Kashmir:

Before the abrogation of Article 370 and Article 35A on August 5, 2019, Jammu and Kashmir had a special constitutional status within the Indian Union. This special status was granted under Article 370 of the Indian Constitution.

Article 370 was a temporary provision that allowed Jammu and Kashmir to have its own constitution and autonomy over internal matters, except for defense, communications, and foreign affairs, which remained under the jurisdiction of the Indian government. The state of Jammu and Kashmir also had its own flag.

Additionally, Article 35A, which was inserted into the Indian Constitution through a Presidential order in 1954, granted the Jammu and Kashmir state legislature the power to define permanent residents of the region and provide them with special rights and privileges. This included exclusive rights to own property and access to government jobs and other forms of government assistance.

The special status of Jammu and Kashmir under Article 370 was a contentious issue, and there were debates about whether it was in the interest of national integration or if it led to a sense of alienation among certain sections of the population. The abrogation of Article 370 and the reorganization of the state into two separate union territories—Jammu & Kashmir and Ladakh— were significant constitutional changes implemented by the Indian government in August 2019.

These changes were aimed at integrating Jammu and Kashmir more closely with the rest of the country and removing the special autonomy that the region had enjoyed for several decades.

- The State of Jammu and Kashmir possess its own constitution apart from the Indian Constitution.
- The state used to follow ‘dual-citizenship’ – Citizenship of Jammu and Kashmir and India.
- The residual power of the state lies with the Jammu and Kashmir legislature and not the Parliament of India.
- Except for defence, foreign affairs, finance and communication, the Indian parliament requires the State government’s consent for applying all the other laws.
- The national emergency proclaimed on the ground of war or external aggression

shall have an automatic extension to the state.

- That the national emergency declared on the grounds of military rebellion shall not have an automatic extension to Jammu and Kashmir.
- The governor of the state is to be nominated only after consultation with the Chief Minister of the state.
- Fiscal emergency under Article 360 of the Indian Constitution cannot be levied on the state.
- Directive Principles of the State Policy and Fundamental duties embodied in the Indian Constitution are not pertinent to Jammu and Kashmir.
- Apart from the President's rule, the Governor's rule can also be enforced on the State for a period of utmost six months.
- The Preventive Detention laws as cited in Art. 22 of the Indian Constitution do not have an automatic expansion to the state.

Presidential Power / Order for Jammu and Kashmir

Under Article 370 of Constitution of India, the President had the power of issuing instructions for the application of provisions of constitution of India with the alterations, exceptions and amendments in the provisions of the Constitution of India and this power has been maintained in various cases by the Supreme Court e.g. in P.L Lakhanpal vs. The State of J & K. For the implementation of other provisions of the constitution of India to the state of J & K, the only method available was the Constitutional Application order which was to be done with the consultation and consent of the State Government. The presidential orders, generally speaking, deal with the below subject matters :

- Augmenting the authority of the Parliament to pass laws in the State of J & K out of the union list.
- Exclusion of the state list.
- Laws pertaining to an increase or decrease in the area of the State.
- Making regulations for the return of the permanent population of the state that migrated to

the territories contained in Pakistan under permit for settlement. Providing constitutional protection to the laws in connection with the permanent residents of the state, their unique rights and privileges, occupation under government, purchase of immovable properties, settlement in the state.

- Provision for delimitation of the constituencies of parliament.
- Transfer of magistrates from the High court of J & K or to the said court.
- Provision with regards to decision impacting the disposition of the State of J&K.
- Procurement and requisition of immovable property in the interest of and at the expense of the Union.
- Provisions relating to the usage of official language of the Union and in the trials before the Supreme Court.
- Provisions for declaration of emergency.
- Provisions for non-implementation of the amendments carried out by the parliament of India in the Constitution of India.
- Provisions for Governor and the election commission. In 1954, the Constitutional Application Order 1950 was titled as the Constitutional Application Order, 1954 and its issuance was the initial violation of the Constitutional Autonomy of the State of J&K. It peaked with the issuance of The Constitution (Application to J&K) Order, 2019.

Article 370 itself was utilized to make it feeble after remaining on constitution book for 70 years.

PRESENT: Abolition of Art. 370 and Revocation of the Special Status of Jammu and Kashmir

- The President declared President's rule following the end of the tenure of Governor's rule.
- Using the power under art. 356(1)(b), the president proclaimed that the powers of the legislature of the state shall be exercised by or under the jurisdiction of the parliament.
- With this, the Parliament of India was granted the powers of the legislative assembly of the state of J&K.
- The President issued a presidential order under Article 370 (1) of the constitution. This clause allows the President to define the matters, which are pertinent to Jammu and Kashmir in concurrence with J & K government. The order altered art. 367.
- Article 367 contains directions on how to read or interpret some provisions.
- The revised article proclaims the phrase 'Constituent Assembly of the State' in article 370 (3) must be read to mean 'Legislative Assembly of State'.

- The Government used the power under 370(1) to modify a provision of constitution (Art.367) which then amends article 370(3).
- And this in turn becomes the trigger for legislature resolution 'Resolution for repeal of Article 370 the Constitution of India'.
- As J & K is under the President Rule the concurrence of governor is considered as "Jammu and Kashmir Government".

Abolition of Art. 370 -A Boon:

Advantages –

- a) Better relationship with Indians and Kashmir population:

Article 370's elimination helps the people of Kashmir since it allows them to join the rest of India. Both they and Indians have the right to be a part of Kashmir. They are able to apply for scholarships for school. There are government employments available for them in Kashmir.

- b) One Nation One Flag:

India as a whole is now gathered. There is no distinct constitution for Indians and Kashmiris. Everyone will adhere to the motto "One Nation, One Constitution".

- c) Boost to economic development:

After article 370 was repealed, Kashmiris can work in the India's newly established firms and make good money. Creating more jobs will inevitably lower crime. The Kashmiris will also benefit economically if they sell their lands to the Indians on a leasing basis.

- d) Private investors can invest:

Private business owners can establish factories in Kashmir, creating job for Kashmiris and Indians. The fact that 40% of Kashmiris lack jobs is the main cause of the rise in

crime in the valley. Antisocial acts will decline as private investors begin to meet and invest in Kashmir. Land prices will rise, enabling Kashmiris to make significant gains.

- e) Right to Education and Information:

With the repeal of Article 370, all Kashmiris now have the right to know everything because the nation would be under one flag and one nation. The law now grants Kashmiris the right to receive a quality education from institutions located in the state. There is a 100% possibility that new educational institutions would open in the valley

as a result of investors' investments in Kashmir; this will educate children.

Disadvantages of Abolition of Article 370:

- a) Only a small portion of Kashmir believes it to be unlawful. The decision has been equated to fascism:
According to Kashmiris who categorically deny knowing that the Indian Government intended to repeal Article 370. Separately this was withdrawn without the J & K government's consent and without warning. On Augustth5, 2019 the internet was shut off, hundreds of troops were summoned, landlines were disconnected and even Kashmiri lawmakers were placed under house arrest. The Kashmiris were abruptly forced to accept this decision after being locked inside their homes.
- b) Many proclaim it as unconstitutional; it was comparable to dictatorship:
The people of Kashmir believe that their demands are being ignored. The imposition of Article 370 was considered unlawful, and thus amounted to deceiving the Kashmiris. The leaders were not even paying attention to the democratically elected J&K law makers. Article 370 was eliminated from the constitution during a time when there was no state assembly. It is considered cheating because the public was informed that 10000 troops had been sent to Kashmir valley because there was possibility of a terrorist attack.
- c) Jammu and Kashmir no longer have the status of a state, instead it is now considered to be Union territory.
Jammu and Kashmir previously had a special status that was lowered as a result of Article 370. However it is now descended to a status below normal and has been designated as Union territory.
Union territories have significantly lower levels of democracy than regular states, and as a result, the federal government now will have much more power over the territory.
- d) Not all choices can be made by the elected state government:
The Kashmiris would be able to choose the state administration after Art. 370, but their rights will not be the same as they were.

Jammu and Kashmir Reorganization Act, 2019

It is an act formed by the Indian Parliament where the state of Jammu and Kashmir was bifurcated into two Union Territories- Jammu & Kashmir and Ladakh.

- The Union territory of Jammu and Kashmir has a legislative assembly.

- Whereas the Union territory of Ladakh doesn't have a legislative assembly and is administered by lieutenant Governor alone.

The Union territory of Ladakh will include the districts Leh and Kargil, which in effect ceased to be part of existing state of Jammu and Kashmir.

Representation in the House of People: Out of six Lok Sabha seats in the state of Jammu and Kashmir five remained with Union Territory and one went to Ladakh.

The election commission may conduct Lok Sabha elections for the both union territories as per allocation of seats specified in the Delimitation of Parliamentary Constituencies Order, 1976 as amended by this Act.

Union Territory of Jammu And Kashmir

Jammu and Kashmir Legislative Assembly will have a tenure of five years unless its dissolved. Provisions contained under Article 239a of the Constitution, that are applicable to Puducherry shall be applicable here as well.

The number of seats in the legislative assembly of Jammu and Kashmir will be increased from 107 to 114.

The High Court of existing state of J&K is common for the two Union Territories. The new Assembly shall have reservations for scheduled castes and tribes.

Legislative Powers of Union Territory of Jammu and Kashmir:

The Legislative Assembly may make laws for the whole or any part of the Union territory with respect to any matters enumerated in the state list except on the subjects "Public Order"

Conclusion

The reorganization of Jammu and Kashmir into a Union Territory in 2019, marked by the abrogation of Article 370, fundamentally transformed the region's legislative landscape. The revocation of special autonomy dismantled the unique constitutional framework that had set Jammu and Kashmir apart for decades. With the introduction of the Union Territory status, the governance structure underwent a paradigm shift, aligning it more closely with the constitutional principles governing other states and Union Territories in India.

The appointment of a Lieutenant Governor as the head of the Union Territory administration, replacing the earlier system, emphasized a shift towards a more centralized governance model.

The dissolution of the Jammu and Kashmir State Assembly and the establishment of separate legislative assemblies for Jammu and Kashmir and Ladakh further underscored the restructuring of legislative powers.

Crucially, the move placed Jammu and Kashmir under the direct jurisdiction of the Indian Parliament, allowing it to legislate on matters that were previously within the exclusive purview of the State Assembly. This change aimed at fostering uniformity in laws and policies across the nation, promoting national integration and dismantling the special privileges that had characterized the region.

In conclusion, the reorganization of Jammu and Kashmir into a Union Territory was a historic step that brought about a significant realignment of legislative powers, erasing the distinctiveness that the region had maintained for years. The intent behind these changes was to promote greater unity within the Indian constitutional framework and to integrate Jammu and Kashmir seamlessly into the broader governance structure of the country.