



Dismantling the 72 years old Article 370



Evolution of Article 370:

Two months after India got its independence; on 20th October 1947, the princely state of Kashmir was attacked by an

army of tribesmen and Pakistani irregulars. This emergency situation demanded retaliation and the ruler of Kashmir, Maharaja Hari Singh asked India for military aid and in return acceded by signed the Instrument of Accession on 27th October 1947. Control of defence, external affairs and communication of the state was transferred to the Indian govt, the other sectors of governance and functions of the state retained with Maharaja Hari Singh. The instrument of accession contained detailed terms of accession including the restriction on imposing the Constitution of India on the state of Kashmir. In 1950, Jammu and Kashmir was merged as a Part B state along with other princely states in the Indian Constitution. Later it was amended and was included in article 1 as India's 15th state and irrevocably became a part of the Indian Territory. The state of Jammu and Kashmir retained the special status, allowing it to have its own constitution under article 370 of the constitution. In exercise of the power conferred by the Constitution of India under article 370, the President and the Constituent Assembly of the state of Jammu and Kashmir passed series of orders to add provisions in the constitution for the state. Article 35A was introduced in the year 1954, which defined the residents of the state, restricted ownership of immovable

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property for non-residents of the state, decided settlement in the state and employment. The constituent assembly was dissolved in 1957 without recommending the ways to abrogate article 370 and it became a permanent feature of the constitution. In 1974, the Indra-Abdullah accord between the former Prime Minister and Kashmiri politician Sheikh Abdullah strengthen Article 370 by retaining the special status for the state of Jammu and Kashmir although over the years the state is made subject to Indian laws through various amendments in concurrence with the state assembly.

Revocation of Article 370:

However, the Union Home Minister of India Amit Shah on 5th of August 2019 in the Rajya Sabha, introduced a bill to abolish Article 370 of the Indian Constitution which gives special status to the state of Jammu and Kashmir. The Govt also introduced a bill to reorganize the state of Jammu and Kashmir by bifurcating it into different union territories i.e. Jammu and Kashmir as a union territory with legislature and Ladakh as a union territory without legislature. The President of India Dr. Ram Nath Kovind, in exercise of the power conferred on him by Article 370(3) read with Article 370(1), issued a constitutional order superseding the order of 1954, that all the constitutional provisions are now applicable to the state of Jammu and Kashmir and also declared Article 370 as inoperative. Rigorous preventive measures were taken before the declaration of the statutory bill by the Union government. Section 144 of the Code of Criminal Procedure was imposed on the state, which prohibits assembly of four or more people, communication lines were disconnected, even internet and mobile services were suspended in the state. Both former chief ministers, Omar Abdullah and Mehbooba Mufti, were placed under house arrest. Article 370 laid down that except for matters related to defence, foreign affairs, communications and issues specified in the Instrument of Accession of Jammu and Kashmir, Parliament needs the state government's ratification for all other laws. This article, along with Article 35A, created a special set of separate laws for the residents of Jammu and Kashmir, with regard to their citizenship, ownership of property and fundamental rights.

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Article 370 gave the state of Jammu and Kashmir the right to have their own constitution and autonomy over internal matters. The power is vested upon the President of India to decide which provisions and exceptions of the constitution are to be applied on the state of Jammu and Kashmir but only with the concurrence of the state government. Any of these provisions can be amended by the recommendations of the Sadar-i-Riyasat with the advice of Council of ministers, or by the “Constituent Assembly” of that state, which was dissolved in 1957. After BJP govt pulled itself out from the coalition govt with PDP, Jammu and Kashmir had been under Governor’s rule since June 2018. Six month later, the President’s rule was invoked and has an extension till December 2019, which effectively gives the power of the state assembly to the central government. The notification of President’s order uses the words “with the concurrence of the Government of the State of Jammu and Kashmir”. Hence we can assume that it means the Governor, who is now administering the State under President’s Rule, has given his concurrence on behalf of the State government. With these statutory resolutions the Union government has archived three major objectives: firstly it has revoked the special or preferential status given to the state of Jammu and Kashmir and applied the entire constitution on the State and its residents; secondly it has reorganized the state into union territory i.e. Jammu and Kashmir with legislation and Ladakh without legislation) by introducing the Jammu and Kashmir Reorganization Bill; lastly, it has made the state legislative assembly as the competent authority replacing Constituent Assembly to make recommendation to the president’s order to cease the constitutionality of article 370.





Conclusion and Analysis:

In Kashmir, the abrogation is seen as violation of the agreement signed between the state of Jammu and Kashmir and the Union of India in 1950. It's interesting to note that the Instrument of Accession (IoA) was signed between the princely state of Jammu and Kashmir and the Dominion of India. Dominion of India was a political body created through the legislative process of the British Parliament (Indian Independence Act, 1947), in the exercise of its own sovereignty (British Parliament's) and by no legal theoretical standpoint can be called a sovereign entity. Hence, it can be understood that the instrument of accession was signed between two non-sovereign entities. With the promulgation of the Indian Constitution, the Dominion of India was vanquished and the Union of India emerged as the Successor State with full sovereignty. Therefore, the contractual obligations of the Union of India towards Jammu and Kashmir, which by now had lost its autonomy of accession, could only have been claimed in good faith, and the entire basis of claiming them legally stood scrapped. The situation of Jammu and Kashmir and its dynamics with the Indian State are again exclusively matters of policy and politics and there is nothing much the legal system can do about it. Even after 70 years, the political situation was hardly influenced in the positive sense through the provision. Hence, doing away with it or preserving it remained a political choice and not a legal one.



Abhishek Das
on 12 August 2019




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