

Abrogation of Article 370 and Article 35A

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Abstract—Article 370 present in Part XXI ,under Temporary and Transitional Provisions of the Constitution of India and was included in 1949 in the Constitution of India as a temporary provision. Article 35A defined special privileges provided to permanent residents of J&K. But in 2019 the government of India decided to remove special provisions granted to J&K incorporated in Article 370 and Article 35A from the Constitution of India. This paper defines Article 370, and Article 35A. This paper aims to study facts about the removal of Article 370 and Article 35A. It signifies the reason why it was necessary to remove Article 370 and Article 35A. Further, this paper describes the process of how Article 370 and Article 35A was removed and the impact of their abrogation.

Keywords— Article 370, Article 35A, Constitution of India, Reorganization of J&K, Bifurcation of J&K

I. INTRODUCTION

Article 370

Article 370 is a constitutional provision under the Part XXI of the Constitution, the article allowed separate Constitution for the state and limited the Parliament's powers to the domains of defence, finance and communications, and external affairs. The article was included in the Constitution on 17 October, 1949. Gopaldaswami Ayyangar, a member of the Drafting Committee of the Constitution and a Union Minister, who drafted the article argued that J&K was not ready for integration because of the "abnormal" and "unnatural" conditions in the area, post-infiltration in 1947. Thus, the article was inserted in the hope that J&K would become a part of the Indian Union, once real peace was attained.¹

The provision has been challenged in the past for the special status that it granted to J&K. Some argued that the repeal of the Act is necessary for full integration of the state in India. Political parties like BJP have always supported repeal of Article 370 to push forward their demand for uniform set of laws that will regulate all the citizens of the country thus, doing away with the special status granted to J&K under the Constitution.

Article 35A

Article 35A was a provision that granted J&K state legislature the right of deciding the "permanent residents" of the state and also conferred upon them special rights and privileges in public sector jobs and scholarships, acquiring property in the state and being eligible for state grants. The provision was incorporated in the Constitution through a special Presidential order in 1954 and was issued under Article 370 (1) (d) of the Constitution which empowers the

President to make certain "exceptions and modifications" to the Constitution for the benefit of permanent residents of J&K.² The provision's legality has been time and again questioned for its lack of parliamentary sanction. It has also been criticized for creating inequality amongst the women of state to marry a man of their choice, because if a woman who was permanent resident married a non-permanent resident man, their heirs would not get the Permanent Resident Certificate (PRC) and were deemed unfit for inheritance. The provision was also discriminatory towards West Pakistan Refugees, Valmiki community settled in J&K. They were not recognized as permanent residents of J&K and were denied all the other rights that accrue to being a resident of the State. It was violation of Article 14, 15(1), 16(1) as well as 19(1)(e) of the Indian Constitution.

II. SCRAPPING OF SPECIAL STATUS

On August 5, 2019, the Union Home Minister of India, Shri Amit Shah announced the abrogation of special status incorporated in Article 370 and Article 35-A of the Indian constitution which granted special status to the state of Jammu and Kashmir. The President of India, Mr. Ram Nath Kovind used his power in Article 370(1) and issued Presidential order named Constitutional (application to Jammu and Kashmir) Order 2019 superseding presidential order of 1954 with immediate effect.³ After passing of presidential order of 2019, article 35A became inoperative and with this separate Constitution of Jammu and Kashmir also became inoperative .

According to clause 3 of the article 370, the President is empowered to declare the article inoperative anytime by seeking due recommendation of the constituent assembly of Jammu and Kashmir. However, the constituent assembly has ceased to exist in the state since 1957. In such a

situation, the government made amendment in article 367 which deals with interpretation of the provisions of the Constitution. In Article 367 clause (4) was added in this article which replaces the word “Constituent Assembly” by “Legislative Assembly”. The Central Government requested Parliament to repeal Article 370 through then Governor of Jammu & Kashmir.⁴ So by this method special provisions of Article 370 was removed. The article 367(4) also states that the all provisions of Indian Constitution will apply to the entire state of Jammu and Kashmir.

Also another significant development took place with the enactment of The Jammu and Kashmir Reorganization Act J&K has been bifurcated into two Union Territories: Jammu & Kashmir with a Legislature, and Ladakh with no legislative body.⁵ The change to Union Territory status will likely give New Delhi more control over local administrative and legislative powers in Jammu and Kashmir, in addition to direct control over the police and protection and maintenance of public order. Amit Shah in his statement said that the state of Jammu and Kashmir would be revived when there would be an appropriate time and a “normal” situation in the state.

III. IMPACT OF SCRAPPING OF SPECIAL STATUS OF J&K

It is to be noted that the article 370 has not been done away with completely, it is still the part of constitution. Instead, the provisions that granted special status to J&K have been done away with, meaning that article 35A has also ceased to operate. With the special status under Article 370 abrogated, J&K have ceased to have its own constitution and flag, all the provisions of the constitution would hereafter would apply to the state. Earlier financial emergency could not be applied in Jammu and Kashmir. Now, the financial emergency can be applied to J&K like any other state. All orders of Supreme Court would be applicable to union territory. The most significant change is that the Permanent Resident Certificate has been replaced by Domicile Certificate. Simple rules have been formulated for issuing domicile certificates. The reservation laws will now be applicable to the J&K.

The abrogation of Article 35A has brought good news for women of J&K who can now marry outside J&K as her heirs would now be given the right to inheritance. The application of Articles 370 and 35A placed restrictions on transfer of land. As a result no large industries could develop in the state. Private investment in developmental works was severely constrained. No major investment in Education, Health or Tourism sectors was possible by the private sector. As a result employment opportunities especially for youth remained restricted. Now with the

abrogation of article 35A these restrictions have been removed which will encourage industry and private investment in J&K. This would spur growth and employment ultimately leading to prosperity for all. Industrialization of the state will increase job opportunities for local youth. 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.

Certain progressive laws were not implemented in J&K, for instance, Protection of Women from Domestic Violence, Right to Education which makes education a Fundamental Right for Children in the age group of 8- 14 years, Prohibition of Child Marriage Act, Juvenile Justice Act etc were not applicable. The Indian Constitution and all the 890 Central laws would be fully applicable to J&K. This has meant the application of 170 more Central laws to J&K, including progressive laws such as the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1954, the National Commission for Safai Karamcharis Act, 1993, the Whistle Blowers Protection Act, 2014, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2007, the National Commission for Minorities Act, and the Right of Children to Free and Compulsory Education Act, 2009.

West Pakistan Refugees (WPRs) settled in J&K were denied all democratic rights. West Pakistan Refugees are now entitled to all democratic rights as citizens of the country. They have been given citizenship rights. The treatment meted out to municipal workers (safai karamcharis) who belonged to Valmiki community in the erstwhile state was equally shameful. They were denied citizenship, access to education, scholarships and government jobs. Now, the municipal workers have become legitimate domiciles in the Union Territory with access to all rights and privileges. Despite having significant population, the Socioeconomically disadvantaged tribal community (ST) had no political reservation (Gujjars, Bakerwals and others). STs will now get political representation through reservation in Legislative Assembly seats. The Scheduled Tribes & other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has been made applicable. This would ensure the protection of rights of Tribal/ST Communities residing in forests.⁶

IV. CONCLUSION

Article 370 was considered as the ‘temporary provision’ when the Constitution was formed. The revocation of special status incorporated in Article 370 and Article 35A has brought justice to women, Valmiki community and West Pakistan Refugees of J&K. Many people have

welcomed the Presidential order in the hope of improved infrastructure and employment opportunities in J&K. It is a step that has opened new vistas **for all round development in J&K.**

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