

Article 370: What, Why and How?

Malminderjit Singh and Roshni Kapur

What Has Happened?

On 5 August 2019, the Indian government announced that it is seeking to dilute the special status of autonomy given to Jammu and Kashmir guaranteed under Article 370 of the Constitution of India. Union Home Minister Amit Shah moved two bills and two resolutions pertaining to Jammu and Kashmir in the Lok Sabha, including the bill to repeal Article 370 and the Jammu and Kashmir (Reorganisation) Bill, 2019 intended to bifurcate Jammu and Kashmir into two Union Territories (UTs): one combining Hindu-majority Jammu and Muslim-majority Kashmir into one federally administered territory and the other to carve out Buddhist-majority Ladakh into another territory.

Explaining Article 370

Article 370 is significant as it formed the basis of India's relationship with Jammu and Kashmir. The clause allowed the state a certain degree of autonomy, including its own constitution, flag and the freedom to legislate its own laws. A subsidiary Article 35A had also granted special rights to the permanent residents of Jammu and Kashmir, with respect to employment by the state government, acquisition of immovable property and settlement in the state. , excluding Indians from outside Jammu and Kashmir from any of these activities.

Article 370's origins can be traced back to 1947 when upon independence, India's princely states were given three options- remain independent or join either India or Pakistan. The princely states who opted to accession did so on three matters – defence, foreign affairs and communication. Jammu and Kashmir, which was a Muslim majority state under a Hindu prince Hari Singh, remained independent and entered into a standstill agreement with Pakistan to continue to have control over communication, travel and trade. In the same year, armed tribesmen from Pakistan invaded Kashmir and Singh sought assistance from India. Then Indian Prime Minister Jawaharlal Nehru agreed to assist the prince, but on the condition that he would ratify an instrument of accession (IoA) under which India would control the state's foreign affairs, communications and defence, like it did with the other princely states.

Despite initially allowing the different princely states to have their own constitutions, the rulers and chief ministers of all the states met and agreed in 1949 that these separate constitutions were not necessary and that they accepted the Constitution of India as their own. The Constituent Assembly representatives of Jammu and Kashmir, however, disagreed on this arrangement and requested that only those provisions of the Indian Constitution that corresponded to the original IoA should be applied to the state.

Thus, Article 370 was included in the Constitution when it came into force in 1950 rendering special status to the state and restricted the Indian central government's control of Kashmir. Historically, Jammu and Kashmir provided the original draft of the Article (previously known as Article 306A) to the Indian government. After some discussions and modifications, the article was passed in the Constituent Assembly on 27 May 1949 with the Constitution (Application to Jammu & Kashmir) Order, 1954 later listing out provisions of the Constitution of India that would not apply to Jammu and Kashmir. This 1954 Order had also introduced Article 35A.

The Process

The government's move to remove the special status of the state was initiated on 5 August 2019 when Shah introduced The Constitution (Application to Jammu & Kashmir) Order, 2019 in the Rajya Sabha to supersede the 1954 order. The 2019 Order provided that all provisions of the Indian Constitution will now apply to Jammu and Kashmir, as Article 35A was also removed. The government then removed the special status given to the state by invoking the same Article 370 that had given it autonomy as the 2019 Order was passed invoking the President's power under Article 370(3), which stated:

"Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification."

Since Kashmir is under the President's [rule](#), the need for a modification to Article 370 to be done through a recommendation of Jammu and Kashmir's Constituent Assembly is void allowing the President the right to issue a notification if the resolution is approved by the Lok Sabha. In the Lok Sabha on 6 August 2019, the bills were approved after 370 MPs voted in favour and 70 MPs against.

Changes for Kashmir

With this development, several changes are afoot in the valley territory. While Jammu and Kashmir would have a parliament, Ladakh would be without a parliament. Some union territories like Delhi and Puducherry have their own legislature while others, including Chandigarh, do not have a legislature. It is also not uncommon in India for UTs to become states, but this will be the first time that we would have seen the converse happen. In effect, Jammu and Kashmir has not only lost its special status, it has also been downgraded to a UT. Jammu and Kashmir itself will have a Lieutenant Governor like in Delhi or Puducherry instead of a Governor. On the economic front, it is likely that corporates and individuals from elsewhere will be allowed to buy land in the valley and non-Kashmiris may also get employment there.

.....

Mr Malminderjit Singh is Head of Editorial and New Media, while Ms Roshni Kapur is Research Analyst, at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore (NUS). They can be contacted at malminder@nus.edu.sg and roshni@nus.edu.sg, respectively. The authors bear full responsibility for the facts cited and opinions expressed in this paper.