
Historical Background

In 1947, at the time of independence, the State of Jammu and Kashmir decided not to join either Pakistan or India. India welcomed this decision, but Pakistan attempted to annex the State militarily. The Maharaja sought Indian help to save his territory and people who were being killed and looted by the Pakistani militants. The then Prime Minister Jawaharlal Nehru accepted Jammu & Kashmir's accession to India. The Maharaja signed the "Instrument of Accession" with certain concessions for the autonomy of the State. This special status of the State was enshrined in Article 370 of the Indian Constitution.

Important Erstwhile Features – Special Status of Jammu and Kashmir by Article 370

- ❑ The State of Jammu and Kashmir had its own Constitution apart from Indian Constitution.
- ❑ This state followed 'dual citizenship'- Citizenship of Jammu and Kashmir and India.
- ❑ The residuary power of the state lied with the Legislature of the Jammu and Kashmir and not the Parliament of India.
- ❑ Except for defence, foreign affairs, finance and communications, the Parliament needed the state government's concurrence for applying all other laws.
- ❑ The state has its own Criminal code titled as Ranbir Penal Code.
- ❑ The national emergency declared in the ground of war or external aggression shall have an automatic extension to the State.
- ❑ The national emergency proclaimed on the grounds of armed rebellion, shall not have an automatic extension to Jammu and Kashmir.
- ❑ The Governor of the State was to be appointed only after consultation with the Chief Minister of that State.
- ❑ Financial Emergency under Article 360 of Indian Constitution cannot be imposed on the State.
- ❑ Directive Principle of Policy and Fundamental duties enshrined in Part IV was not applicable to Jammu and Kashmir.
- ❑ Apart from the President's rule, the Governor's rule could also be imposed on the State for a maximum period of six months.
- ❑ The preventive detention laws as mentioned in Article 22 of Indian Constitution do not have an automatic extension to the State.
- ❑ The name, boundary or territory of the State of Jammu and Kashmir cannot be changed by the Parliament without the concurrence of the State Legislature.
- ❑ The term of other Indian state Legislators is 5 years whereas, for Kashmir, it was 6 years.
- ❑ Article 19(i) (f) and 31 (2) of Indian constitution have not been abolished for this State and 'Right to property' still, stands guaranteed to the people of Jammu and Kashmir.

Article 35A

- ❑ It was added by a 1954 Presidential Order issued under Article 370, the constitutional provision that mediates the relationship between the Union of India and Kashmir.
- ❑ Article 35A of the Constitution provide Jammu and Kashmir Legislature authority to decide who all are 'permanent residents' of the State and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.
- ❑ Article 35A also empowers the State's legislature to frame any law without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution.

Main provisions in Article 35A

- ❑ A person who is not a permanent resident of Jammu and Kashmir can't own property there.
- ❑ Resident of any other state of India cannot become a Permanent Resident of Jammu and Kashmir and therefore cannot cast vote there.
- ❑ It forbids Indian citizens from acquiring immovable properties and can't seek employment in the State.
- ❑ If a girl of Jammu and Kashmir marries a person who does not hold a permanent resident certificate of J&K, then she would lose her property right and their children also become ineligible to claim the property of their mother.
- ❑ This article discriminates with the citizens of India because of the enforcement of Article 35A. As, the people of India are denied with the Permanent Resident certificate of Jammu and Kashmir while the intruders from Pakistan were granted citizenship. Recently, Rohingya Muslims from Myanmar have been allowed to settle in Kashmir.
- ❑ It conflicts with fundamental rights under Article 14, 19 and 21 of the Constitution.
- ❑ Article 35A also adversely affects the economic development of the state.
- ❑ Meritorious students are denied scholarships and they cannot even seek redress in any court of law.
- ❑ Also, the issues regarding refugees who migrated to J&K during Partition are still not treated as "State subjects" under the Jammu and Kashmir Constitution.
- ❑ Article 35A was inserted unconstitutionally, bypassing Article 368 which empowers only Parliament to amend the Constitution.

The Jammu and Kashmir Reorganisation Act, 2019

'The Jammu and Kashmir Reorganisation Bill 2019' was that bill by which passes results abolition of Article 370 and Article 35A of the Indian Constitution.

The main features of this Act are:

- ❑ Reorganisation of the State of Jammu and Kashmir:
 - This Act gives provision for reorganisation of Jammu and Kashmir into two Union Territory, i.e., Union territory of Jammu and Kashmir (consists of Kargil and Leh districts) and Union territory of Ladakh (remaining territories of the state of Jammu and Kashmir except for Kargil

and Leh districts).

- ❑ Lieutenant Governor:
 - These two Union territories will be administered by the President, through a Lieutenant Governor (appointed by the President).
- ❑ Legislative Assembly:
 - This Act provides the concept of new Legislative Assembly for the Union Territory of Jammu and Kashmir and says about the various characters of the same.
 - Total number of seats- 107 seats.
 - 24 seats out of 107 seats will remain vacant as their areas are occupied by Pakistan.
 - Seats of Assembly will be reserved for Scheduled Castes and Scheduled Tribes according to their population in Union Territories.
 - Lieutenant Governor can nominate any two members for the representation of women to Legislative Assembly if they are not sufficiently represented.
 - The Assembly term will be of five years and it is mandatory for Lieutenant Governor to summon the assembly at least once in six months.
 - The Legislative Assembly can make laws for any part of Union Territory of Jammu and Kashmir which is related to:
 - ☞ Matters mentioned in State list of the constitution, except "Police and Public Order".
 - ☞ Matters which are in Concurrent list applicable to Union Territory.
 - Parliament has the power to make laws for Union Territory of Jammu and Kashmir.
- ❑ Council of Ministers:
 - The Union Territory of Jammu and Kashmir has Council of Ministers of not more than 10% of members in the Legislative Assembly. The Council of Ministers will advise Lieutenant Governor in the matter of making laws. The Chief Minister has to communicate each and every decision of Council of Ministers to Lieutenant Governor.
- ❑ High Court:
 - There will be only one High Court for both

Union Territory. Union Territory of Jammu and Kashmir will have an Advocate General who will give legal advice to the Government of Union Territory.

- Legislative Council:
 - The Legislative Council of the State of Jammu and Kashmir will be abolished and all bills which are pending in Legislative Council will lapse.
- Advisory Committees:
 - The Central Government will appoint Advisory Committees for various purposes, such as-
 - ☞ Distribution of assets and liabilities of the State into two union territories.
 - ☞ Issue of generation and supply of electricity and water.
 - ☞ Issue of State Financial Corporation.
- The extent of laws:
 - 106 central laws of the Schedule lists will be applicable in both Union Territories from dated which is notified by the Central Government. These include:
 - ☞ The Aadhaar Act 2016;
 - ☞ The Indian Penal Code 1860;
 - ☞ Right to Education Act 2009; etc.

Reorganisation (Adaptation of State Laws) Order, 2020

The issues related to Article 370 and Article 35A were very sensitive and complex issues which were raised in India. It was a historical decision that Indian Government cancelled the special status which was granted under Article 370 to Jammu and Kashmir, which has been a matter of dispute among India, Pakistan and China since 1947.

Highlights of the Order

It amended 109 laws and repealed 29 laws of the erstwhile State and inserted the 'domicile' clause in the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act, 2010.

- The clause for 'permanent resident of the State' under the 2010 Act, has been substituted by 'Domicile' of the Union Territory, according to which a person residing in J&K for at least 15 years will now be eligible to be a domicile of the Union

Territory.

- If a person has studied for a period of 7 years and appeared in class 10th or 12th examination in an educational institution located in the Union Territory of Jammu & Kashmir will also be considered as the domicile of the Union Territory.
- Someone who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants).
- Children of Central government officials, All India Services, PSUs, autonomous body of Centre, Public Sector Banks, officials of statutory bodies, Central Universities, recognised research institutes of Centre who have served in Jammu & Kashmir for a total period of 10 years.
- Children of such residents of Jammu & Kashmir who reside outside Jammu & Kashmir in connection with their employment or business or other professional or vocational reasons but their parents fulfil any of the conditions provided.
- Tehsildar shall be the competent authority for issuing the domicile certificate, as opposed to Deputy Commissioner.
- Section 5-A states that the domiciles will be eligible for the purposes of appointment to any post carrying a pay scale of not more than Level 4.
- The Level 4 post comprises positions such as gardeners, barbers, office peons and waterman and the highest rank in the category is that of a junior assistant.
- The reservation for domiciles would not apply to Group A and Group B posts, and like other Union Territories, recruitment would be done by the Union Public Service Commission (UPSC).
- Centre has repealed the Jammu & Kashmir Civil Services (Special Provisions) Act.
- The order also amended the Jammu and Kashmir State Legislature Members' Pension Act, 1984 which fixes the pension for former legislators and councillors.
- The notification scraps all pension benefits such as car, driver, accommodation, phones, electricity, medical facilities and rent-free accommodation to former Jammu & Kashmir Chief Ministers.

- ❑ The order has also made amendments to the Public Safety Act (PSA) 1978 by removing a clause that prohibited Jammu & Kashmir residents booked under the Act to be lodged in jails outside.
- ❑ It changes the criteria for appointing the PSA advisory board on the recommendation of a search committee headed by the Chief Secretary instead of the Chief Justice of the Jammu & Kashmir High Court.
- ❑ The advisory board has a crucial role to play in release of detenus under the PSA.
- ❑ It also bars sitting High Court judges to be made part of the board without the Chief Justice's consultation.
- ❑ The order also scraps a clause that deals with the power to regulate place and conditions of detention.

The Jammu and Kashmir Reorganisation (Amendment) Bill, 2021

The Jammu and Kashmir Reorganisation (Amendment) Bill, 2021 was introduced in Rajya Sabha. It amends the Jammu and Kashmir Reorganisation Act, 2019. The Act provides for the bifurcation of the state of Jammu and Kashmir (J&K) into the Union Territory of J&K and Union Territory of Ladakh. The Bill repeals the Jammu and Kashmir Reorganisation (Amendment) Ordinance, 2021.

Key features of the Bill include:

Application of provisions on elected legislatures:

The Act provides that Article 239A of the Constitution, which is applicable to the union territory of Puducherry, shall also apply to the union territory of J&K. Article 239A provides for the constitution of a union territory of Puducherry with:

- (i) a Legislature, which may be elected, or partly nominated and partly elected, or
- (ii) a Council of Minister.

The Bill states that in addition to Article 239A, any other provision of the Constitution which refers to elected members of a legislative assembly of a state and is also applicable to the union territory of Puducherry, will apply to the union territory of Jammu & Kashmir.

Merging of administrative cadres:

- ❑ The Act specifies that the members of the Indian Administrative Service, the Indian Police Service and the Indian Forest Service serving in the state of Jammu & Kashmir would continue to serve in the two union territories, based on allocation decided by the central government. Further, in future, postings of officers in the two union territories would be from the Arunachal Goa Mizoram Union Territory (AGMUT) cadre. The AGMUT cadre covers the three states of Arunachal Pradesh, Mizoram and Goa, as well as all the Union Territories.
- ❑ The Bill amends these clauses to provide for the merger of the officers in the existing cadre of Jammu & Kashmir with the AGMUT cadre.

The state of Jammu and Kashmir is an integral part of India. The state has been given some autonomy under Article 370 in the view of federalism and its unique history of the state joining the Union of India. Article 370 is not the issue of integration but that of granting autonomy or federalism. In order to overcome all the other legal challenges, the Indian Government rendered Article 370 as 'inoperative' and it still has its place under the Constitution of India.