How Article 370 came about

The government on Monday issued a decree abolishing Article 370 of the Constitution, which gives special autonomy to Jammu and Kashmir. The Article had limited the power of the Parliament to impose laws in the State.
A look at the events that led to J&K receiving special status

November 1, 1858

- Half of Indian territories were princely States at the time of "Queen Victoria's proclamation" which effectively said that the queen would govern India

1947
- During an important year in India's history, Maharaja Hari Singh of the Dogra lineage was the ruler of J&K

Jawaharlal Nehru with Hari Singh during a visit to Srinagar in 1948. ▪ PIB

- Jammu and Kashmir was one such princely State ruled by kings of the Dogra lineage under the British who were the ultimate power

August 1947

- At the time of Indian independence, there were 565 princely States
- The king of the border State did not sign the instrument of accession in favour of either India or Pakistan and remained indecisive

October 1947

- After the withdrawal of the British, barely months after independence, armed tribesmen invaded Kashmir from the Pakistan border. King Hari Singh wrote a letter to Lord Mountbatten, the Governor General of India, seeking help. He attached a signed Instrument of Accession to India
- The Governor General of India signed the acceptance. According to the instrument, defence, external affairs and communications were transferred to India's governance and the rest would be retained by the ruler

March 1948

- Hari Singh made a proclamation to convene a National Assembly and work out a new constitution for the State
- Sheikh Mohammed Abdullah was appointed as Prime Minister of an interim government in the State of Jammu and Kashmir

June 20, 1949

- Hari Singh, through a proclamation, transferred powers to his son Yuvraj Karan Singh Bahadur

Former Indian Prime Minister Jawaharlal Nehru with Sheikh Abdullah, Indira Gandhi and others. ▪ THE HINDU ARCHIVES

November 26, 1949

- Indian Constitution adopted

January 26, 1950

- The Constitution came into effect and India became a democratic Republic

May 1951

- Yuvraj Karan Singh issued a proclamation for the election of a Constituent Assembly in the State. Jammu & Kashmir National Conference (JKNC) won 75 out of 75 seats

August 1953

Prime Minister Sheikh Mohammed Abdullah was dismissed by Karan Singh

August 1953

- Bakshi Ghulam Mohammed was appointed as PM. Sheikh Abdullah was imprisoned

February 1954

- J&K's Constituent Assembly ratified the State's accession to India. The process of integration with India was complete
- Internal administration was retained by the State
- But unlike most of the other princely States, which accepted the Constitution of India in totality, J&K's relationship to India was guided only based on the Instrument of Accession

Trump remark was quick trigger for overnight shake-up

Home Minister had been determined to change the status quo in the State, but U.S. President's statement added a certain urgency to the matter

NISTULA HEBBAR
NEW DELHI

The Union government's move to extend all provisions of the Indian Constitution to Jammu and Kashmir, stripping away certain special privileges of the State and reorganising it into two Union Territories were dictated by domestic and international situations.

According to senior sources in the government, the BJP's ideological imperative of doing away with Article 370 has been always there, but the impetus for it was provided first by Union Home Minister Amit Shah's determination to change the status quo in the State and also events in the past two weeks, after U.S. President Donald Trump publicly said that Prime Minister Narendra Modi had approached him to play mediator for the dispute in the State.

The Union government, of course, denied any such conversation with Mr. Trump, but the realisation in government circles was to do something that would demonstrate that it was irrevocably opposed to U.S. mediation.

"Ever since the BJP withdrew support to the Mehbooba Mufti government and Governor's Rule and then President's rule were imposed in the State, the government took many measures to make a change in the status quo, including setting up an Anti-Corruption Bureau and the raids on Jammu and Kashmir Bank. The biggest move was the conduct of the panchayat elections in the State. There was always a thinking that Article 35A needed to be done away with and a delimitation exercise had to be conducted for the State, something that had been done for the rest of the country," a senior Minister said.

It was, however, Mr. Trump's statement that added a certain urgency to the matter. Government floor managers were told by Mr. Shah to explore how to get a majority in the Upper House, where the NDA does not otherwise have one. The creeping acquisition of a majority in the Rajya Sabha was under way with the merger of the Telugu Desam parliamentary group in the Rajya Sabha into the BJP (with four out of its six MPs joining the BJP) and the merger of the Indian National Lok Dal group (one MP) and the resignation of two Samajwadi Party MPs, Neeraj Shekhar and Surendra Nagar.

Parliamentary Affairs Minister Pralhad Joshi, and Union Ministers Dharmendra Pradhan and Piyush Goyal and Rajya Sabha member Bhupendra Yadav then worked the phones in the past four days to persuade parties whose ideological position was close to that of the BJP on the issue. Some were told that the matter was about Jammu and Kashmir. NDA allies were also spoken to and whips issued. The weekend saw Law Minister Ravi Shankar Prasad getting ready the drafts of the Bills that were passed on Monday. The Bills were carried with a two-thirds majority in the Rajya Sabha.

"There were credible threats to security as well, which is why everything was kept hush-hush," a Minister said.

The underlying principle behind all this was to shake the post-Independence status quo.

BACKGROUNDER

How J&K's status is being changed

Provisions forming the basis of separate Constitution annulled

K. VENKATARAMANAN
CHENNAI

The special status enjoyed by Jammu and Kashmir under Article 370 of the Constitution was considered temporary, and it will cease to be operative if the President issues a public notification to that effect. However, prior to that, a recommendation is necessary from the Constituent Assembly of Jammu and Kashmir.

As a result of Article 370, Jammu and Kashmir had its own Constitution, and laws passed by Parliament were not be applicable to the State unless the State government gave its concurrence.

The President is empowered to decide what provisions of the Constitution of India would be applicable to the State and what are the exceptions, but with the State government's concurrence.

The Constitution (Application to Jammu and Kashmir) Order, 1954, lists the Articles and provisions that apply to J&K. These special measures can be altered only on the recommendation of the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers or by the "Constituent Assembly" of that State. As of now, there is no "Constituent Assembly".

Jawaharlal Nehru with Sheikh Abdullah. ▪ THE HINDU PHOTO ARCHIVES

This is how the Modi government changed the special status of Kashmir:

- President Ram Nath Kovind issued a presidential order under Article 370(1) of the Constitution. This clause enables the President to specify the matters which are applicable to Jammu and Kashmir. As it can be issued only with the Jammu and Kashmir government's concurrence, the notification uses the words "with the concurrence of the Government of the State of Jammu and Kashmir". This presumably means the Governor, who is now administering the State under President's Rule, has given his concurrence on behalf of the State government.
- The Order supersedes the 1954 Order. This effectively means that all the provisions that formed the basis of a separate "Constitution" of Jammu and Kashmir stand abrogated. The Order declares that all the provisions of the Constitution of India, shall apply to Jammu and Kashmir too.
- However, some special measures were still needed for the scrapping of Article 370 altogether. Therefore, a few clauses were added to Article 367 of the Constitution, which contains "Interpretations". They contain guidance on how to read or interpret some provisions.

The new clauses say, when applicable to Jammu and Kashmir, all references to the 'Sadar-i-Riyasat', acting on the aid and advice of the Council of Ministers, will be construed as references to the Governor of Jammu and Kashmir.

All references to the State government shall mean "the Governor". And most importantly, the reference to the "Constituent Assembly" in a proviso to Article 370 (3) has been amended to read "Legislative Assembly of the State". This is the proviso that says the President can declare that Article 370 is no more operative only on the recommendation of the Constituent Assembly.

As there is no Constituent Assembly in existence now, there is no body to "recommend" the demise of Article 370. Therefore, the State Assembly has to play that role.

The government has made use of the fact that Jammu and Kashmir is under President's Rule, during which Parliament performs the legislative functions of the State Assembly.

Thus, when Union Home Minister Amit Shah introduced two resolutions, one, to recommend that the President issue a notification rendering Article 370 inoperative, and another to accept the Jammu and Kashmir Reorganisation Bill, Parliament was ostensibly acting on the State government/Assembly's recommendation.

Wide powers for Lieutenant Governor

KRISHNADAS RAJAGOPAL
NEW DELHI

The Jammu and Kashmir Reorganisation Bill of 2019, passed by the Rajya Sabha on Monday, means that the new Union Territory of Jammu and Kashmir would be administered/governed like Puducherry.

The Bill proposes wide powers to the Lieutenant-Governor of the proposed Union Territory of Jammu and Kashmir and makes it the "duty" of the Chief Minister to "communicate" all administrative decisions and proposals for legislation to the L-G.

Moreover, all Central and State laws of J&K would apply to the new Union Territories of J&K and Ladakh. Assets and liabilities of J&K and Ladakh would be apportioned on the recommendation of a Central Committee within a year.

Employees of State public sector undertakings and autonomous bodies would continue in their posts for another year until their allocations are determined.

The police and public order are to be with the Centre.

The tabling of the proposed Reorganisation Bill is also proof that the long reign of the 1954 order has ended. The 1954 order had introduced a proviso to Article 3, namely that "no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State."

A year ago: In this photo dated August 5, 2018, Kashmiri traders stage a protest against a petition to the Supreme Court challenging Article 35A. ▪ NISSAR AHMAD

What the repeal of Article 35A entails

T. RAMAKRISHNAN
CHENNAI

What does Article 35A convey? What does its abrogation entail?

Included in the Constitution through a presidential order of May 1954, the provision is apparently based on the principle of safeguarding the interests of "sons of the soil", apart from drawing strength through Article 370.

An offshoot of the 1952 Delhi Agreement between Jawaharlal Nehru, Prime Minister of the country, and Sheikh Abdullah, Premier of J&K, the provision envisages the creation of a group of persons, "permanent residents" who are entitled to be provided "special rights and privileges" in matters such as employment in the State government and acquisition of immovable property.

In addition to raising the question of the constitutionality of the provision on the ground that the inclusion was not made through a legislative route, critics of the Article often point out how "discriminatory" the provision has been towards women who marry "non-permanent resident-men". The popular interpretation of the law is that such women lose their rights and privileges. Though the Jammu & Kashmir High Court, in 2002, held that the women married to "non-permanent residents" would not lose rights, there have been complaints that there is no change in the position.

How would the status of J&K as a Union Territory (and Ladakh too as a non-legislature UT) affect the governance of these States?

There are two models – Puducherry and the National Capital Territory of Delhi – which can guide the proposed Legislative Assembly of Jammu and Kashmir on becoming a Union Territory. While the former seems to be having no restriction with regard to framing laws on police, public order and land, the latter is specifically barred from making laws on the three subjects. It was through an enabling provision – 239 A – that the Puducherry legislature was formed, whereas, in the case of Delhi, the provision – 239AA – spells out the contours of powers of the legislature and council of ministers.

With regard to Ladakh, where there is no Legislative Assembly, the role of the Administrator or Lt. Governor will be greater than that of J&K. His source of authority is the President.

Kashmiri Pandits hail decision

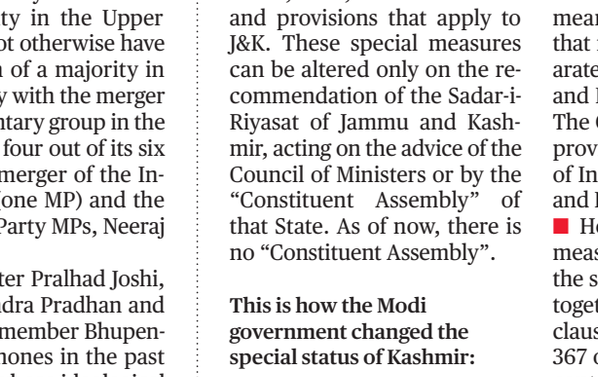
PRESS TRUST OF INDIA
NEW DELHI

Kashmiri Pandits, displaced from the Valley in the 1990s, on Monday hailed the amendment to Article 370 of the Constitution as a "historic event", and hoped it would pave the way for their return to the homeland with honour and dignity.

The Global Kashmiri Pandit Diaspora (GKPD), a body representing the community across the world, said the decision cemented the territorial, political and cultural unity of the Indian Union.

"August 5, 2019 will go down in the history of the country as a day that has put the lasting seal on the sovereignty of Parliament over the entire Indian Union," it said in a statement.

"The draft Bill presented by Home Minister Amit Shah in Parliament vindicates the ideals of our great leaders like Syama Prasad Mookerjee, Deendayal Upadhyaya, Atal Bihari Vajpayee and others who dedicated or sacrificed their lives for the integrity and sovereignty of India," the GKPD said.



Cause for joy: The Kashmiri Hindu Sabha of Telangana activists celebrating the repeal of Article 370, in Hyderabad. ▪ K.V.S. GIRI

The statement said the community was relieved that its identity, culture and symbols of heritage have found full protection under the Union Territory dispensation. "With this move, the Government of India will be able to bring Jammu and Kashmir nearer to the rest of the nation," said Manoj Bhan, president of the Jammu and Kashmir Vichaar Manch.

The community hopes the government will chalk out a plan for its return to the Valley soon, he said.

Move sparks fears in the northeastern region

SPECIAL CORRESPONDENT
GUWAHATI

The Centre's move to revoke Article 370 has triggered apprehensions in the northeastern States enjoying similar constitutional safeguards. The Constitution bestows special provisions under Article 371A for Nagaland, Article 371B for Assam, Article 371C for Manipur, Article 371F for Sikkim and Article 371F for Mizoram.

Former Mizoram Chief Minister Lal Thanhawla said the move by the BJP-led National Democratic Alliance was a "red alert" for the people of the northeast.

"It has become a threat to States like Mizoram, Nagaland and Arunachal which are protected by the Constitution. If 35A and 370 are repealed, Article 371G safeguarding the interests and existence of lesser tribals of Mizoram will be under severe threat," he said.

The Mizo National Front government chose to adopt a "wait and watch" policy but NGOs such as the influential Young Mizo Association – which has spearheaded a movement against the Centre's bid to push the Citizenship (Amendment) Bill – said any move to "tamper with" Article 371G would be opposed to the hilt.

The Neiphiu Rio-led coalition government in Nagaland, in which BJP is a partner, chose not to react. Neither did the Naga Students' Federation.

'Minorities undermined'

"This is something undermining the minorities in India. I think this is very undemocratic. People in Nagaland would be particularly worried as a settlement of the Naga political process is long overdue," said Chuba Ozukum, president of Naga Hoho, apex body of all Naga tribes. The "political process" is a term used for the peace talks between New Delhi and the Isak-Muivah faction of the extremist National Socialist Council of Nagaland that fought a secessionist battle with the armed forces until declaring a truce in July 1997.

Sajjan Jindal

Business leaders say investment will see a boost

PIYUSH PANDEY
MUMBAI

Several chieftains of India Inc. have come out in favour of the Union government's decision on the abrogation of Article 370.

Sajjan Jindal, chairman of JSW Group, tweeted, "I have always believed that Article 370 should be abolished – its existence was a result of unfortunate politicisation of the Kashmir Valley."

Harsh Goenka, chairman of RPG Enterprises, said, "I have absolutely no doubt that this landmark decision will spur investment but only when the unrest settles down. Not only will employment be created, tourism will see the good days once again."

Manoj Gaur, chairman of Jaypee Group told *The Hindu*, "Every citizen of Jammu and Kashmir will reap benefits of this in the next 10 years."

Ashish Chauhan, MD & CEO Bombay Stock Exchange, said,"This has been a historic day of great importance for India. A long standing issue is in the process of being resolved today. It is time to re-integrate Kashmir into India in a true sense."

Abhishek Lodha, MD & CEO Lodha Group said, "Great move. If the nation is integrated and strong, prosperity will follow."