

Scrapping J&K's special status is the wrong way to an end

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"The special status of J&K was never meant to be permanent, but it should not have been scrapped without wider consultations."

Jammu and Kashmir has been a theatre of muscular Hindutva nationalism, in the early decades in script and since 2014 in performance. Adopting a highly militarist approach to separatism, and shunning political process entirely since 2014, the BJP has now delivered on a promise it has long made, by abrogating the special status that Jammu and Kashmir had enjoyed in the Constitution through a combination of executive and parliamentary measures. Additionally, the State is being downgraded and divided into two Union Territories. The mechanism that the government used to railroad its rigid ideological position on Jammu and Kashmir through the Rajya Sabha was both hasty and stealthy. This move will strain India's social fabric not only in its impact on Jammu and Kashmir but also in the portents it holds for federalism, parliamentary democracy and diversity. The BJP-led government has undermined parliamentary authority in multiple ways since 2014, but the passing of legislation as far-reaching as dismembering a State without prior consultations has set a new low. The founding fathers of the Republic favoured a strong Centre, but they were also prudent in seeking the route of persuasion and accommodation towards linguistic and religious minorities in the interest of national integration. The centralising tendencies increased in the following decades, but Hindu nationalists always argued for stronger unitary provisions and viewed all particular aspirations with suspicion. For them, Jammu and Kashmir's special constitutional status was an impediment, not an instrument, for the region's integration with the rest of the country.

The entire exercise of getting Article 370 of the Constitution effectively abrogated has been marked by executive excess. The first step was to declare by a presidential decree that the 'Governor' — without regard to the fact that he has no Council of Ministers now to aid and advise him — can speak for the State government and give his concurrence to any modification in the way the Constitution of India applies to Jammu and Kashmir. Second, on the basis of this 'concurrence', the latest Presidential Order scraps the previous one of 1954, abrogating the separate Constitution of Jammu and Kashmir. Third, the fact that the State is under President's Rule has been used to usher in a new dispensation under which Jammu and Kashmir becomes a Union Territory with a legislature and Ladakh another such territory without a legislature. In sum, a purported process to change the constitutional status of a sensitive border State has been achieved without any legislative input or representative contribution from its people. The bifurcation of States in the past cannot be cited as a binding precedent as, under Article 3 of the Constitution, the President seeks the views of the legislature of the States concerned, even if concurrence is not mandatory. In the present scenario, J&K has been represented by an unelected Governor appointed by the Centre, while Parliament has ventured to ratify the conversion of a State into two Union Territories without any recommendation from the State.

If there is a legal challenge to these measures, it would centre around whether such far-reaching steps could be achieved in the absence of a representative government by assuming that its gubernatorial administrator is constitutionally capable of using his consent as that of the entire State. Further, there is a self-enabling aspect to the Presidential Order. It performs a hop-step-and-jump feat. It hops over the requirement of the State government's consent by declaring that the Governor is the State government. It steps over the need for aid and advice by the ministerial council by saying the Governor's opinion is enough. And it jumps over the fact that there is no constituent assembly now by merely reading the term as 'legislative assembly', and letting Parliament perform the role of the State legislature. Thus the President's power under Article 370 has been used both to create an enabling provision and to exercise it immediately to modify the Order, thereby dispensing with the role envisaged for the State Assembly. While it is true that in 1961 the Supreme Court upheld the President's power to 'modify' the constitutional provisions in applying them to J&K, it is a moot question whether this can be invoked to make such a radical change: a functioning State has now been downgraded and bifurcated into two Union Territories. It is inconceivable that any State legislature would ever have recommended its own demotion in status.

True, the special status of J&K was meant to end, but only with the concurrence of its people. The Centre's abrupt move disenfranchised them on a matter that directly affected their life and sentiments. Moreover, that this was done after a massive military build-up and the house arrest of senior political leaders, and the communications shutdown reveals a cynical disregard of democratic norms. It appears that the current government values J&K for its demonstrative impact before the rest of the country, as a place where a strong nation and its strong leader show uncompromising political will. But that may have other unintended consequences. Geographically and metaphorically, Jammu and Kashmir is the crown of secular India — a Muslim majority region in a Hindu majority country. Its people and leaders had chosen secular India over Islamic Pakistan, a fact that Islamists never reconciled with. The BJP's adventurous route also has as backdrop an impending U.S. withdrawal from Afghanistan that will trigger an unforeseeable churn in Islamist politics in the region. Islamists have always viewed Kashmir as a component of their global grievances. Whatever its intent in enabling the full integration of Jammu and Kashmir with India, Monday's decision to alter the State's status could have unintended and dangerous consequences.

GS World Team...

Article 35A and Article 370

Why in the discussion?

- Recently, the Government of India has decided to remove Article 370 of the constitution which gives special status to Jammu and Kashmir, and to divide the state into two halves.
- Under this, two Union Territories will be created - Jammu Kashmir and Ladakh. There will be a legislature in Jammu Kashmir, while there will be no legislature in Ladakh.
- This decision of the central government is considered to be historic in Leh-Ladakh. Leaders

- and religious organizations are also welcoming it.
- It may be noted that this article gives special rights to the permanent residents of the state.
- Jammu and Kashmir has been granted special state status by Article 35A and 370 of the Constitution. Discussion was initiated by the Supreme Court to remove or retain this special status.

What is 35A?

- The Jammu and Kashmir Legislative Assembly gives the right to decide the definition of a permanent citizen.
- Article 35A was added to the Constitution in May 1954 by order of the President.

- Only these citizens who have been declared permanent of the state have the right to buy property, to get government jobs and to vote in the assembly elections.
- If the resident of Jammu and Kashmir marries a person outside the state, then he/she will lose this citizenship.
- The order in which Article 35A was added to the Constitution by the 1954 order was passed by the President under sub-section (1) of Article 370.

Article -370

- According to the provisions of Section 370, Parliament has the right to make laws regarding defense, foreign affairs and communication about Jammu and Kashmir

but to implement the law related to any other subject, the Center needs the approval of the State Government.

- Due to this special status, Article 356 of the Constitution does not apply to the state of Jammu and Kashmir.
- For this reason, the President does not have the authority to dismiss the constitution of the state.
- The citizens of Jammu and Kashmir have dual citizenship (India and Kashmir).
- India's Parliament can make laws in a very limited area in relation to Jammu and Kashmir.
- The national flag of Jammu and Kashmir is different. Respecting the national flag of India is not mandatory for the citizens there.

Expected Questions (Prelims Exams)

1. Jammu and Kashmir has been provided the special state status through article-35A and article-370 of the Constitution. In this context, Consider the following statements-

1. Article-35A was added to the constitution by the Order of the President in 1954.
2. According to article-370, the Parliament has the right to make laws on the subjects of defence, foreign affairs and communication of the Jammu and Kashmir.
3. Due to this special status, article-356 doesn't apply to the state of Jammu and Kashmir.

Which of the above statements are correct?

- (a) 1 and 2 (b) 2 and 3
(c) 1 and 3 (d) All of the above

Expected Questions (Mains Exams)

Q. Discuss how relevant is the removal of article 35A and article-370 of the Indian Constitution which provide special state status to Jammu & Kashmir, for Indian Union.

(250Words)

Note: Answer of Prelims Expected Question given on 5 Aug. is 1(d).