

# CENMUN 2019



# RAJYA SABHA (UPPER HOUSE OF THE INDIAN PARLIAMENT)

The revocation of special  
status to the state of Jammu and Kashmir –  
Past, Present & Future.

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Honourable Parliamentarians, welcome to the monsoon session of the council of states, in essence the Rajya Sabha at CENMUN 2019. After a lot of deliberations on other legislative business and high productivity of the council, the council has decided to hold discussions on the most heated arena of the country in the contemporary times – The erstwhile State of Jammu and Kashmir (which is to be bifurcated into 2 Union territories – Jammu and Kashmir and Ladakh with effect from 31<sup>st</sup> October – the birth anniversary of Sardar Vallabhbhai Patel). The state of Kashmir has been in turmoil since a long time. To add to the border conflicts and extremism, the re-elected NDA government had followed up on its promises, and revoked the special status granted to the state, by diluting Article 370 in the first week of August. Yes, Article 370 had never been scrapped but only diluted. **Moreover the decision to rescind Article 370 is as momentous as the one by the Nehru government to insert it.**

**Before we penetrate deeper into the Agenda, let's make the basic concepts clear.**

### **What was Article 370 (before dilution)?**

Article 370 of the Indian Constitution was a 'temporary provision' included in the Constitution of India under part XXI, which deals with "Temporary, Transitional and Special Provisions". It exempted J&K from the Indian constitution other than in subjects of defence, external affairs and communications, and permitted the state to draft its own constitution. Under Article 370, the Centre has no power to declare financial emergency under Article 360 in the state. It can declare emergency in the state only in case of war or external aggression and can therefore not declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the state government.

### **What was Article 35A?**

Article 35A was introduced into the Constitution through a presidential order of 1954, according to which no one except the permanent residents will be able to settle permanently in the state, acquire immovable property, and avail government jobs, scholarships and aid. Those who emigrated from the state to Pakistan during Partition are considered state subjects for two generations, but those who migrated from other than Pakistan-Occupied-Kashmir (POK) and settled in Jammu and Kashmir, post Partition, are ineligible. The provision mandates that no act of the legislature coming under it can be challenged for violating the Constitution or any other law of the land. The Presidential Order was issued under Article 370 (1) (d) of the Constitution.

It is said that one must learn from history, and whether we learn the event dates or the lessons taught from them is simply upto us. However, history may also teach us a wrong lesson, similar to what we were following until 1991 LPG policy. For such analysis, we need facts, just like the factual historical background of J&K jotted down below since the state's accession to Indian union to its bifurcation into 2 UTs.

## **HISTORICAL EVENTS TAKING PLACE IN KASHMIR POST INDEPENDENCE**

**October 26, 1947**

The Maharaja of Kashmir, Hari Singh, signs the Instrument of Accession with Prime Minister Jawaharlal Nehru whereby Kashmir decides to join India. The first India-Pakistan war breaks out

**April 1948**

The United Nations Security Council (UNSC) calls for a plebiscite in Kashmir. Since Pakistan refuses to withdraw troops, Kashmir is effectively partitioned. Pakistan retains 'Azad Kashmir' as well as Gilgit - Balistan.

**October 17, 1949**

Directed by Nehru, cabinet minister in charge of Kashmir, Sir Gopalswami Ayyangar, drafts Article 370 since Dr. B.R. Ambedkar refuses to do so. India adopts Article 370, conferring special status on J&K

The centre's jurisdiction is restricted to key areas, such as foreign affairs, defence and communications

**Sept.-Oct. 1951**

First election held in J&K. The Sheikh Abdullah - led Jammu & Kashmir National Conference (earlier Muslim conference) wins all 75 seats. UNSC declares that elections cannot be a substitute for plebiscite

**May 1953**

Bhartiya Jana Sangh founder Shyama Prasad Mukherjee arrested by the J&K police while protesting against the state's special status. His death takes place in police custody a month later.

**1953-1954**

Sheikh Abdullah arrested after he dithers over accession to India.

**February 1954**

The Bakshi Ghulam Mohammad-led regime in Srinagar ratifies the Instrument of Accession after Sheikh Abdullah develops cold feet and is incarcerated.

**November 17, 1956**

The states adopts a constitution defining J&K as a part of India. It comes into effect on January 26, 1957. The UN says this cannot be the final disposition of Kashmir. Govind Ballabh Pant, then Union home minister, declares in Srinagar, the capital city, "Jammu and Kashmir is an integral part of India"

**1965**

Pakistan militants begin insurgency in the Kashmir Valley. Maqbool That and Amanullah Khan launch a plebiscite front - the Jammu and Kashmir National Liberation Front (NLF).

Operation codenamed Gibraltar by Pakistan terrorists leads to full-scale hostilities between India and Pakistan. In January 1966, a historic agreement is signed in Tashkent where both sides agree to revert to the pre- 1965 position.

**1971**

Third war between India and Pakistan leads to the liberation and creation of Bangladesh (erstwhile East Pakistan). Around 81,000 Pakistani soldiers are made prisoners of war.

**July 2, 1972**

Pakistan premier Zulfikar Ali Bhutto and Indian Prime Minister Indira Gandhi sign the Shimla Agreement, whereby the Kashmir issue is to be settled only bilaterally. The ceasefire line is henceforth to be treated as the Line of Control (LOC)

**February 1975**

Sheikh Abdullah returns as CM and remains so till his death in 1982

**1987**

Massive rigging of state assembly polls helps NC leader Farooq Abdullah come to power . It instigates an armed insurgency , led by the Jammu and Kashmir Liberation Front (JKLF) backed by Pakistan-based terrorists

### 1989-90

Soviet withdrawal from Afghanistan frees up a huge cache of weapons and mercenaries ,who find their way into Kashmir. A long cycle of bloodshed begins, leading to militants take aim at anyone close to the establishment; Kashmiri Pandits bear the brunt , over 100 killed in 1990 alone . Next decade sees exodus of 150,000 Pandits

### January 1990

Farooq Abdullah resigns as CM to protest against the killing of Kashmiri demonstrators by CRPF troops at Gawkadal. President's rule comes into force. The Centre imposes Armed Forces Special Powers Act (AFSPA) under Governor Jagmohan

### July 1999

The launch of a bus service between Delhi and Lahore rekindles hopes for India- Pakistan peace. Infiltration by Pakistani militants and soldiers into Kargil puts paid to that hope. Kargil war erupts.

### October 1 , 2001

Suicide attack by Jaish -e- Mohammed militants on the legislative assembly in Srinagar, followed by the attack on Parliament on Dec.13

### 2008

Protests erupt in the Valley over transfer of 99 acres of land to the Amarnath Shrine Board. Violent counter-protests in Jammu when revoked.

### 2010

Unrest in Valley after it is learned that three 'terrorists' killed in a 'foiled infiltration bid' were actually civilians murdered by armed forces personnel

### February 10, 2013

The hanging of Afzal Guru in Delhi for his alleged role in the 2001 Parliament attack sparks protest in the Valley.

### May 2014

PM Narendra Modi invites his Pakistani counterpart Nawaz Sharif to his swearing-in. Later, India scraps talks with Pakistan after its high commissioner invites Hurriyat separatists for consultations . Assembly poll sees 65 per cent voter turnout.

### 2014-15

PDP and BJP come together in an 'antithetical' alliance and Mufti Mohammad Sayeed becomes CM. Narendra Modi and his Pakistani counterpart Nawaz Sharif try to build bridges but NSA-level talks between India and Pakistan fall through again

### April 4 , 2016

Mehbooba Mufti becomes the state's first woman chief minister following a delay of three months of indecision after her father's death.

### July 8 , 2016

Hizbul commander Burhan Wani is gunned down in an encounter with the J&K police, leading to violent protests and the imposition of indefinite curfews

### June 19, 2018

BJP withdraws support to PDP .Mehbooba resigns as CM , Governor's rule imposed

August 5 , 2019

The Modi government scraps J&K's special status granted under Article 370 and bifurcates the state into two union territories : Jammu & Kashmir and Ladakh.

The BJP's pact with PDP to form a government was a halfway house. Amit Shah , the recently appointed Union Home minister, began studying problems faced due to the controversial Article 370. Its abolition had been one of the three cornerstones of the ruling BJP and its ideological flagship, the Rashtriya Swayamsevak Sangh (other two being Uniform civil code and Ram Mandir) . With BJP's 303 seat victory in the Lok Sabha election , considering the strong mandate decided to take action on J&K's special status , though the planning had begun long ago and the country's big shots in the political executive and the bureaucracy already at work . Over 45000 paramilitary troopers were reportedly flown into the valley to join the nearly 300,000 army personnel already posted there to guard the borders with Pakistan and counter-terrorism operations. The reason cited for the deployment was to foil cross – border conspiracies and the expected hard political engagement with Pakistan in the near future. But all this now appeared to be a ruse , as everything became transparent on the 5<sup>th</sup> of August , 2019.

### **Now we will look into the events taking place on August 5 .**

As we already know , Article 370 made Kashmir different. Unlike other states, it had its own penal code, and specific laws for transfer of property, inheritance, personal laws , benami transactions , RTI etc. While several items in the Union and concurrent lists applied to J&K , parliament needed the state to ratify them.

### **The 'kill switch'**

Clause 3 of the article stated :

“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 a 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.”

A Constitution order signed by the President could have scrapped the article , but it required the state's constituent assembly (which dissolved itself in 1956 after drafting the state's constitution) to recommend this.

### **First came the presidential order**

Officially called the Constitution (Application to Jammu& Kashmir) 2019, and signed by President Ram Nath Kovind , the order superseded the Constitution ( Application to Jammu & Kashmir Order) 1954 , and included two main points :

It added a clause to Article 367 , which clarified that references to representative of the President , as well as the state government could be construed as references to the Governor of Jammu and Kashmir. It replaces ‘Constituent Assembly of the State’ with ‘Legislative Assembly of the State’

The order will supersede (Application to Jammu and Kashmir Order) 1954, effectively nullifying Article 35A.

The governor is an appointee of the centre and therefore, Parliament now stands for legislative assembly.

### **Then came the statutory resolution**

Amit Shah moved a statutory resolution for the President to issue a notification that would amend Article 370 – using the article’s own clause 3 – to state that all clauses of Article 370 would cease to be operative and all provisions of the Indian constitution will now apply to J&K, irrespective of the state’s own constitution or “any other instrument , treaty or agreement...”

### **Why were these changes essential?**

As per clause 3 , Article 370 could have only been scrapped after the state’s constituent assembly recommended it. Currently , Governor Satya Pal Malik is in-charge of the state , after the ruling coalition of PDP –BJP fell in 2018. Hence , the clause added to Article 367 ensured that the Governor could be counted as the state , on whose recommendation the new presidential order was passed.

### **Jammu and Kashmir (Reorganization) Bill, 2019**

This bill was introduced by Home minister Amit Shah and passed by the Parliament on August 6 , which meant that the state of Jammu and Kashmir will cease to exist and will be bifurcated into two Union Territories — Jammu & Kashmir and Ladakh . The Honourable president of India gave his assent to the bill which will come into existence from 31<sup>st</sup> October. Now India has 28 states and 9 Union territories.

In Rajya Sabha , the BJP might have been 8 seats short of a majority , but the council passed the J&K Reorganization Bill with two-thirds majority. The BJP even had support of hostile political parties such as the AAP , TDP and BSP . Ally JD(U) opposed the bill , but by staging a walkout , it indirectly helped the BJP .

### **Jammu and Kashmir Reservation (2<sup>nd</sup> Amendment) Bill , 2019**

The bill amends the Jammu and Kashmir Reservation Act , 2004. The act provides for reservation in appointment (by direct recruitment ) in state government posts for SCs, STs and socially and educationally backward classes. The bill additionally provides for reservation in appointment and admission in professional institutions for economically weaker sections. This bill is believed to be vital in order to prove the validity of the centre’s moves in future.

## **THE LEGAL TANGLE**

Constitutional experts are divided over the legal validity of this manoeuvring. Some believe that the move was unconstitutional as after the dissolution of the Constituent Assembly in 1956, the power of abrogation of Article 370 vanished. The Supreme court in April 2018 said, though the head-note used the word ‘temporary’, Article 370 was not temporary. In a 1969 case as well , the apex court refused to accept Article 370 as temporary and said it “has never ceased to be operative”. However the top advocates of the Supreme Court believe that any plea against the government’s decision will not be successful as the presidential order does not have technical flaws. Former Secretary

General of the Lok Sabha Subhash Kashyap too subscribes to this view : “ As the state is under central rule , Parliament can be interpreted as the legislature of Jammu and Kashmir. So , no concurrence is required from the state government to make changes.” While the non – existent Constituent assembly of Jammu and Kashmir’s ‘consent’ seemed to have been tackled by the government , constitutional experts have questioned the validity of inserting a new clause in Article 367 as it amounts to a constitutional amendment . It violates Article 368 , which mentions that an amendment to the constitution can be done by introducing a bill in Parliament and getting it passed in both the houses by a majority of two-third of the members present and voting. This specific move seems to all the presidential notification into question and appears to be the cardinal legal flaw.

## **MUST KNOW**

### **Have Articles 370 and 35A been repealed?**

Article 370 hasn’t been repealed; a presidential order has ‘diluted’ its scope , making the Indian constitution and laws passed in Parliament applicable in J&K. However , Article 35A is now void – its provisions resented on the framework of Article 370.

### **What is the current status of Article 370 ?**

It remains ,but is toothless . One of its own provisions – clause 3 – was used to make it inoperative. A statutory resolution by Parliament recommended that the President declare all clauses of Article 370 inoperative in the state.

### **Will J&K have a new Chief Minister ?**

J&K is now a union territory like Delhi or Puducherry. It will have a legislative assembly and the leader of the single largest party or coalition will be chief minister. However , policing will remain with the Union government.

### **Can outsiders now buy property in J&K?**

As it stands now , yes. Article 35(A) ensured only “permanent residents” are entitled to property rights along with other provisions . With the deletion of this article , any Indian citizen from any part of the country will be able to buy property in J&K , take a state government job and enjoy state benefits such as scholarships . Children of a woman marrying outside Jammu and Kashmir will not lose property rights . The centre , however , is believed to be contemplating laws along the lines of those hill states like Himachal Pradesh limiting the types of lands outsiders can purchase . Therefore , it is not that easy as it appears to purchase land in the erstwhile state.

## **RESPONSE FROM J&K**

The recent-most Chief Minister of Jammu and Kashmir, Mehbooba Mufti called it the "blackest day of Indian democracy". She felt that the Indian Parliament snatched away everything from the people of Jammu and Kashmir. In a tweet on 4 August 2019, she said that the decision of Jammu and Kashmir leadership to reject two-nation theory in 1947 and align with India had backfired. Former chief minister Omar Abdullah called the government's move on the Article 370 "unilateral and shocking". He deemed it a "total betrayal of the trust that the people of Jammu and Kashmir had

reposed in India when the state acceded to it in 1947". Asgar Ali Karbalai, former Chief Executive Councillor of Kargil's Hill Development Council, said people in Kargil considered any division of the state on the grounds of "religion, language or region" as undemocratic. Certain religious and political organisations in Kargil, including the Imam Khomeini Memorial Trust, condemned the Indian government for acting "without the consent from the people" and called for a general strike in the Kargil district Kashmiri politician. Shah Faesal denounced the move, saying that "This is being seen as the biggest betrayal by the Indian state in last 70 years. It was not possible to reach Omar Abdullah, Mehbooba Mufti, Sajad Lone or send a message to them. In other districts, curfew is all the more strict. You can say that the entire eight-million population has been incarcerated like never before."

However, it was reported that celebrations had taken place in Jammu with people distributing sweets, dancing and playing drums. Representatives of the Kashmiri Hindu community, who were displaced from the Kashmir valley as a result of on-going violence welcomed the move and hoped that members of their community, numbering between 300,000 and 400,000 people will be able to return. The day of 15 August was marked by Ladakh as its 'first independence day'. The BJP meanwhile was in raptures. 'Ab desh mein ek vidhaan, ek samvidhaan aur ek nishaan (One legislation, one constitution and one flag in the country now)' ran the slogan in its party offices.

## **KASHMIR TODAY – AFTER REVOCATION OF SPECIAL STATUS**

The dilution of Article 370 has done away with all the erstwhile state's special powers, including that of the state legislature to draft its own laws on all subjects other than communications, foreign affairs and defence. Gone also are J&K's own constitution, flag and the Ranbir penal code. The bifurcation will result in two Union territories – Jammu and Kashmir and Ladakh. Jammu and Kashmir will be a Union Territory with legislature, though there will be a few changes, thus not making it an exact structural copy to that of Delhi, whereas Ladakh will be a Union Territory without legislature, directly under the control of the union government. Notwithstanding the legislature in the UT of J&K, Policing will remain with the central government. Both the newly created UTs will have a common high court. Existing law and procedure for practice in High court will remain the same. 108 central laws will be applicable for both UTs while 164 state laws would be repealed and 166 state laws will continue to prevail.

The J&K administration imposed a total shutdown on telecommunications (except for those handling the situation) and an indefinite curfew. Internet was turned off and landlines too were severed. Thousands of paramilitary forces, most of whom were flown in by the IAF aircrafts in several waves, fan out into the streets to enforce the curfew. There is restriction on movement for ordinary citizens. The government has massively used the provision of preventive detention to detain various people who were suspected to cause unrest, due to which a few compare the situation in Kashmir today to be similar to the internal emergency of 1975-77. Former chief ministers Omar Abdullah and Mehbooba Mufti, who were under house arrest were taken into custody. Many leaders of the All Parties Hurriyat Conference (APHC) were also detained.

Rohit Kansal, the PS and spokesperson of the J&K government adds significantly that there has been no reports of major injuries and deaths since the decision of the centre to revoke J&K's special status. The administration also acknowledges many incidences of protest of various kinds, but specifies that most of it were in Srinagar, whose population of 1.8 million accounts for only 17 percent of the valley's inhabitants – and that much of rural Kashmir has been free of incident. Though the lockdown is eased in some places in the Kashmir valley and Jammu, situation still remains distressed in some parts of Kashmir valley. The curfew has been withdrawn from a few, as well as re-imposed citing expected violence. Meanwhile, more than half of the police stations have relaxed curbs on day time movement. The

government claimed it had made provisions to keep hospitals running as well as ensure supply of food and other essentials. Restrictions were also placed on media movement, though the government held daily press conferences to control the narrative. Leaders from out were not allowed to enter Kashmir and sent back from Srinagar airport, a few examples being the deputation of opposition leaders led by Rahul Gandhi and Ghulam Nabi Azad. Shah Faesal was apparently detained by Indian security forces on August 14, 2019, leading to a statement by over 100 people associated with Harvard University (his alma mater) condemning the detention and calling for the release of Faesal and other Kashmiri leaders. Shehla Rashid was booked under sedition law for her social media posts alleging Human rights violation in Jammu and Kashmir, though she was granted an interim protection from arrest by the Delhi High court. Faesal and Rashid moved the SC, challenging Abrogation of Article 370 and the bifurcation of the state. SC on August 28 said that it will hear the petitions filed in relation to abrogation on Article 370 starting from the first week of October. The ruling has effectively shut the door on all those fighting for the valley to merge with Pakistan or demanding azadi.

## KASHMIR AND THE WORLD

On July 22, US President Donald Trump offered to mediate in Kashmir for the first time. Later on, he reiterated his offer a few more times. The US, New Delhi suspects, was playing the Kashmir card in lieu of Pakistani assistance in getting its troops out of Afghanistan before the US elections in November 2020. There was thus certain urgency with the government to push the dilution through. Pakistan claims IOK to be an internationally recognized disputed territory. Days before and after the dilution, heavy shelling along the LOC was stepped up, with the Indian army using 155 mm Bofors howitzers, among the rare instances of the use of this heavy calibre across the LOC since the 1999 Kargil War. Indian army claimed that 5 men of the Pakistan Border Action Team, or BAT, had been shot dead in the Keran sector and asked Pakistan to take the bodies back. After the dilution process began in the parliament, Indian Foreign minister S. Jaishankar briefed convince them of the soundness of the Indian position. Pakistan condemned and rejected the Indian government's action and vowed to exercise "all possible options" to counter India's "illegal" and "unilateral" step, with Pakistan Prime Minister Imran Khan along with other ministers also threatening over a nuclear war. While Pakistan's shrill response found no global echo, the UN on August 6 urged both the countries to exercise restraint. Pakistan suspended all bilateral ties with India the very next day. To Pakistan, PM Modi has made it clear that the unfinished business of Partition is no more about Jammu and Kashmir but Pakistan-occupied Kashmir (PoK), as the union minister for defence Rajnath Singh recently emphasised. India has also specified that any future attempt by Pakistan to engage with India on the status of Jammu and Kashmir would be rebuffed as the state's integration with the Indian Union was irrevocable. India has signalled to Pakistan that J&K's integration with India was irrevocable and non-negotiable. Many countries like Russia and UAE supported India and acknowledged the Kashmir move to be a 'internal matter'. International leaders including Donald Trump have been told firmly by Modi that Kashmir's status is India's internal matter, that its relations with Pakistan on the subject were a bilateral issue and that it would not entertain any international mediation.

## WHAT NEXT?

The next step is likely to be delimitation of the J&K legislative assembly, where the seats are heavily skewed in favour of the valley than Jammu who has a greater population and size. With the passage of the Unlawful Activities (Prevention) Amendment Bill, the central government will go for a massive crackdown on separatist elements, who will no more have the cover of the state laws. BJP party line adopted to explain how Article 370 had stifled Kashmir's development, kept people backward and only made certain political families prosper. It's worth noting here that while economic

growth in the state has been fitful and per capita income below national average , the poverty rate in J&K was half the national average and the state's human development index was above the national average . The valley has been numbed by the move and the presence of security forces in such huge numbers . Security forces on the ground fear a volcano of violence is waiting to erupt. Some Kashmiris also sense this move as a loss of identity.

Kashmir's economy has been hit hard with every sector downsizing and suffering huge losses. Former J&K Finance minister feels that though businesses cite bar on purchase of land by outsiders and the security threat as major deterrents , the problem has been Kashmir's 'disputed' tag by the UN. Also since years, there has also been a near – absence of the Central Public Sector Enterprises (CPSEs) in the state . Of the 339 CPSEs in India , only 3 are in J&K. The government is endeavouring to attract FDIs and private investments in the state, and a talk of holding a business summit in November have also been initiated. But Business houses are likely to hold back big-ticket investments until there is a definite sense of political stability in Kashmir. Empirical evidence also suggests very little correlation between what is announced and what finally gets implemented on the ground. Employment remains key and an announcement has been made that 50,000 vacancies for government posts will be filled up soon. More than Article 370 , the bigger concern for people is whether the Apple plucking season will proceed unhindered. Despite the dilution of Article 370 , security officials feel it to be extremely difficult to resettle Kashmiri Pandit refugees immediately in the valley , given the hostility and terrorists in the lose . August 5's decision might polarize the state even further along regional and religious lines.

Amit Shah directly reached out to the people of Kashmir and said "Give us five years , and we will make Jammu and Kashmir the most developed state in the country ....I want to tell the youth of Kashmir valley : have faith in the Narendra Modi government . Nothing negative will happen." But convincing the people of Kashmir to trust the Home minister's words will be no easy task . For now , given the massive incarceration of Kashmiri leaders , the silence of the valley is deafening. But this silence of the valley cannot be taken as given or eternal. Hence we all are here , in this august council of states , to analyse the past and what lies on the ground in the erstwhile state , thus discussing prudential points and arguments ,and making the present better with a 'Naya Kashmir' , ensuring the best for the future.

**BEST OF LUCK !**

