

The Jammu and Kashmir Reorganisation Act, 2019

Introduction

On the basis of a resolution passed in both the houses of the Parliament, the President issued an order on 6th of August declaring that all the clauses of Article 370 except clause (1) to be inoperative thus effectively ending special rights & privileges upon the J&K permanent residents, to the exclusion of other citizens of India, more specifically with regard to the acquisition of immovable property and appointment to services. On the same day Parliament of India passed the Jammu and Kashmir Reorganisation Act of 2019. President of India assented it for implementation on 9th August 2019. It contains the provisions for the reconstitution of the State of Jammu and Kashmir into two Union Territories, one to be designated as Jammu and Kashmir and the other as Ladakh. The Act came into effect on 31st October 2019. The Legislation abrogated Article 35 A of the Indian Constitution applicable to the State of Jammu and Kashmir. By virtue of the Reorganisation Act, Parliament of India placed J&K State under the direct control and supervision of Central government after splitting it into two Union Territories: the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh.

Chapter 9

Background History

The Instrument of Accession (IOA) that was executed by Maharaja Hari Singh, the then ruler of the princely State of Jammu & Kashmir with Union of India on Oct 26 1947, declaring accession of the state to the India. The IOA gave Indian Parliament the Power to Legislate in respect of Jammu & Kashmir only on the matters of Defence, Communication and External Affairs. Apart from Defence, Communication and External affairs, the IOA mentions ancillary subjects that include elections to Jammu and Kashmir and offences against laws with respect to any of the said matters.

Article 370 was incorporated in the constitution of India Under IOA and gave special status to J&K conferring it with certain powers like

- A. Separate constitution,
- B. State flag
- C. Autonomy over the internal administration of the state
- D. Article 238 of Indian Constitution was not applicable to the State of Jammu and Kashmir whereas it was applicable to all other States of India.

Article 35A of the Indian Constitution was an article that empowered the J&K State legislature to define the status of permanent residents of the State.

The Constitutional safeguards provided under Article 35A were in continuance of the special privileges granted to the residents of Jammu and Kashmir under hereditary State Subject Order of 1927 passed by Maharaja Hari Singh.

The Article was incorporated in the Constitution of India through a presidential order “The constitution order (Application to J&K) 1954, issued by the President of India on 14 May 1954 under article 370.

The J&K Reorganization Act of 2019 came into effect on 31st of October, 2019 and thereupon superseded the Constitution (application to J&K) order, 1954 as amended from time to time.

Article 370, along with article 35A, defined that the residents of J&K State shall reside under a separate set of laws, including those related to Citizenship, Ownership of Property and Fundamental Rights as compared to the residents of other States.

Provisions of The Act

1. Formation of Union Territory of Ladakh

There shall be formed a new territory to be known as the Union Territory of Ladakh comprising the territory of Kargil and Leh Districts of the erstwhile State of Jammu and Kashmir and thereupon the territory shall cease to be a part of Jammu and Kashmir. It came into being on 31st of October 2019.

The UT of Ladakh will be without legislature and under the direct control of President of India and shall be administered through a lieutenant Governor.

2. Formation of Union Territory of Jammu & Kashmir

New Union territory known as the U.T of Jammu and Kashmir, comprising the territory of the existing State of J&K other than the Kargil & Leh Districts. It came into being, on 31st of October 2019.

The UT of J&K shall have a legislative Assembly and shall be under the direct control of president of INDIA administered through a Lieutenant Governor.

The Legislative Assembly of J&K UT shall have 107 seats, out of which 24 shall be reserved for Residents of POJK.

Lieutenant Governor can nominate two women members to the assembly.

The working period for the assembly shall be five years. The J&K U.T shall have Ministerial Council consisting of 8 ministers headed by Chief Minister

There shall be no Legislative Council for the Union Territory of J & K.

3. Reservation

There shall be reservation for scheduled castes, scheduled tribes, OBCs and others as per Central Government's Rules in both the Union Territories.

4. Application of Central Laws

All the Central laws shall now be applicable to both J&K and Ladakh U.Ts. 106 central laws shall become applicable with immediate effect.

5. Common High Court for both Union Territories.

The High Court of J & K shall function as the high court for both the U.Ts.

6. Representation in Parliament

- ☛ Out of the six Lok Sabha seats allocated to the erstwhile state of J & K one will be allocated to U.T of Ladakh and 5 will be allocated to the U.T of J&K.

- ☛ Members of Council of States:

As per the 1st schedule, section:9, UT of J&K shall have four members.