

J&K & ARTICLE 370: POLITY

NEWS: *J&K was promised a plebiscite at the time of accession to India, says Omar Abdullah*

WHAT'S IN THE NEWS?

Article 370 granted Jammu and Kashmir special status, limiting India's legislative powers over the state; it was revoked on August 5, 2019, making J&K fully subject to the Indian Constitution. Omar Abdullah's recent remarks highlighted its historical context and the plebiscite promise, sparking political debate.

Jammu & Kashmir (J&K) Chief Minister Omar Abdullah's Remarks on Article 370 and Plebiscite Promise

Context of the Interview

- Omar Abdullah, the former Chief Minister of Jammu & Kashmir (J&K), spoke in an interview on February 25, 2025, regarding the historical context of Article 370 and the plebiscite promise made at the time of J&K's accession to India.
- His remarks followed an interview given by former Chief Justice of India D.Y. Chandrachud, where Article 370 was termed as “temporary and transitory.”

Article 370 and Its Temporary Status

- Omar Abdullah explained that Article 370 was initially described as “temporary or transitional” because J&K's status was not fully formalized in 1947.
- He linked this status to the plebiscite promise made during J&K's accession to India, arguing that the state's future was intended to be determined democratically.
- He referenced the **Instrument of Accession signed by Maharaja Hari Singh in 1947**, stating that both the act of accession and its conditions should be treated equally.

Post-Abrogation Developments in J&K

- Mr. Abdullah acknowledged that after the abrogation of Article 370 in **August 2019**, the atmosphere in J&K has undergone a significant transformation.
- He observed a **decline in separatist activities**, suggesting that the security situation has changed considerably.
- He pointed out that it was previously unthinkable for **Mirwaiz Umar Farooq (a key separatist leader) to be provided with CRPF security cover**, indicating a shift in governance and security policies.

Criticism and Reactions to Omar Abdullah's Statements

- **Waheed-ur-Rehman Parra**, a political leader, questioned Omar Abdullah's claims, arguing that the current peace in Kashmir is due to:
 - Stringent laws such as **Unlawful Activities (Prevention) Act (UAPA)** and **Public Safety Act (PSA)**

- Increased activities of **National Investigation Agency (NIA)**
- **Dismissals of government employees under Article 311**
- Some critics pointed out that Omar Abdullah's comments could make **Mirwaiz Umar Farooq more vulnerable**, given the sensitive security situation.
- Others highlighted that **many shrines and mosques in Kashmir are also under security cover**, reflecting ongoing security concerns in the region.

Abrogation of Article 370 and 35(A) – August 5, 2019

- On **August 5, 2019**, the President of India issued **The Constitution (Application to Jammu and Kashmir) Order, 2019**, which nullified Article 370 and extended all provisions of the Indian Constitution to J&K.
- This order **superseded the Constitution (Application to Jammu and Kashmir) Order, 1954** and was enforced immediately.
- Following this, the **Jammu and Kashmir Reorganisation Bill, 2019** was introduced to:
 - Reorganize J&K into **two Union Territories**:
 - **Jammu and Kashmir (with a legislature)**
 - **Ladakh (without a legislature)**
 - The **Jammu and Kashmir Reservation (Second Amendment) Bill, 2019** was introduced to extend reservation benefits to the **Economically Weaker Sections (EWS)** in education and government employment.

Historical Background of Jammu & Kashmir's Accession

- **Maharaja Hari Singh signed the Instrument of Accession on October 26, 1947**, following the invasion of Kashmir by Pakistani tribal forces.
- Article 370 was introduced in the **Indian Constitution to govern J&K's relationship with India**, allowing only **Articles 1 and 370 to apply directly to J&K**.
- The **Constitution Order of 1950** defined **38 subjects from the Union List** on which the **Indian Parliament could legislate for J&K**, aligning with the Instrument of Accession.

Key Features of Article 370 Before Abrogation

- Article 370 was part of **Part XXI of the Indian Constitution**, which contained **Temporary, Transitional, and Special Provisions**.
- It was the **foundation of J&K's special status**, granting it a **separate Constitution and autonomous legislative powers**.
- The **Union Parliament's power to legislate on matters beyond defense, foreign affairs, and communications** required **presidential approval**, in consultation with the state government.
- The **revocation process of Article 370 originally required the recommendation of the J&K Constituent Assembly**. However, this condition was overridden by the **Presidential Order of 2019**, making Article 370 defunct.

Article 370 – Temporary provisions with respect to the State of Jammu and Kashmir

(1) Notwithstanding anything in this Constitution,

(a) The provisions of Article 238 shall not apply in relation to the State of Jammu and Kashmir;

(b) The power of Parliament to make laws for the said State shall be limited to

1. Those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
2. Such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify
Explanation For the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharajas Proclamation dated the fifth day of March 1948 ;

(c) The provisions of Article 1 and of this article shall apply in relation to that State;

(d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph 1 of sub clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph 2 of sub clause (b) of clause (1) or in the second proviso to sub clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, 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 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.

Status of Article 35-A

- **Article 35-A was revoked on August 5, 2019**, along with Article 370, as all provisions of the Indian Constitution were extended to Jammu & Kashmir.
- With the extension of **Fundamental Rights**, some discriminatory provisions of Article 35-A became inconsistent with constitutional rules.
- The **President can declare it inapplicable**, ensuring equal rights for all Indian citizens in J&K.

Background of Article 35-A

- **Empowered the J&K legislature** to define “permanent residents” of the state.
- Any law made under Article 35-A **could not be challenged** for violating the Indian Constitution.

Who Were Permanent Residents?

- Defined in the **J&K Constitution** as:
 - A person who was a **state subject on May 14, 1954**.
 - A person who had **resided in the state for 10 years**.
 - A person who had **lawfully acquired immovable property** in J&K.
- The **J&K legislature could alter the definition** with a **two-thirds majority**.
- **Permanent Resident Certificates (PRC)** were issued to those qualifying under these conditions.
- Certain **migrants from Pakistan** who returned under specific conditions were also recognized as permanent residents.

Rights and Privileges Under Article 35-A

Permanent residents had exclusive rights in four key areas:

1. Government jobs in J&K.
2. Ownership of immovable property in the state.
3. Right to settle permanently in J&K.
4. Access to scholarships and financial aid from the state government.

BEFORE		NOW
● Special powers exercised by J&K		● No special powers now
● Dual citizenship		● Single citizenship
● Separate flag for Jammu & Kashmir		● Tricolour will be the only flag
● Article 360 (Financial Emergency) not applicable		● Article 360 will be applicable
● No reservation for minorities such as Hindus and Sikhs		● Minorities will be eligible for 16% reservation
● Indian citizens from other states cannot buy land or property in J&K		● People from other states will now be able to purchase land or property in J&K
● RTI not applicable		● RTI will be applicable
● Duration of Legislative Assembly for 6 years		● Assembly duration in Union Territory of J&K will be for 5 years
● If a woman from J&K marries out of state, she would lose the citizenship of the state		● If a woman marries out of state or country, she will still retain all her rights and Indian citizenship
● Panchayats did not have any rights		● Panchayats will have the same rights as in other states
● Right to Education (RTE) was not applicable		● Children in the state will benefit from RTE

Source: <https://www.thehindu.com/news/national/jk-was-promised-a-plebiscite-at-the-time-of-accession-to-india-says-omar-abdullah/article69263219.ece>