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REVOCATION OF ARTICLE 370- GOOD OR BAD IN LAW?

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ABSTRACT

By his orders on 5 and 6 August 2019, The President revoked Article 370 from the Indian Constitution. Article 370 was intended to provide the State of J&K with special status. Under Article 370, President has got special powers to make the provisions of the Indian Constitution applicable to the State of J&K by his orders time to time. By virtue of Article 370, J&K prior to the revocation of the said article had its Constitution separate from the Indian Constitution. In this article for the next few minutes, we would be discussing about the validity of these two presidential orders and the judgement of the Supreme Court which confirmed the decision of the government. This is going to be a discussion where we would not just interpret the judgement of the Supreme Court but would also endeavor to conclude that up to what extent the judgement holds good, if it is, by the time we end our discussion. But before we proceed to discussion about the validity of the judgement, we would discuss about some basic aspects of Article 370, the aspects like its history and its bare interpretation, and would also try to know whether proper procedure to revoke the said article was followed which has been the major point of controversy ever since the Article 370 has been revoked.

SOURCES OF THE INFORMATION

I would like to thank Anuradha Bhasin for her book "A dismantled state" without which it would not be possible for me to write this Article. Anuradha Bhasin is a journalist based in the city of Jammu. She is an executive editor of "Kashmir times", a newspaper founded by her father Ved Bhasin. Special thanks to the websites of the "The Indian Kanoon" and "The wire" for providing me with relevant information regarding bare wordings of Article 370 and other articles of the Constitution and the associated history behind it, respectively. I am also thankful to the great articles published by "The Indian Express" on the opinions of several highly qualified personalities that helped me a lot in writing this article.

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ARTICLE 370 & THE PROCEDURE FOLLOWED - JUSTIFIED?

"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
 - i. 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
 - ii. 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 Maharaja's 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 (i) 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 (ii) 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”¹

Thus as per Article 370(3) read with its proviso, Article 370 could only be removed with prior recommendation of the constituent assembly of Jammu and Kashmir. Constituent assembly having been dissolved in 1957, it was a question to be addressed as to upon whom the power to abrogate article 370 lies. Consequently, the president on 5 August, 2019 issued an order inserting clause 4 under article 367 of the Indian constitution. Article 367 is the article dealing with the interpretation of the constitution. Article 367(4) substituted constituent assembly with the legislative assembly of J&K. Legislative assembly being dissolved, power was shifted to the governor of the state who is appointed by the central government. Thus in this manner, the government ensured to avoid any kind of legal anomaly may arise in future, and article 370 was consequently abrogated.

Article 367(4) was inserted with the assistance of article 367(1) which is as follows:

"367. Interpretation

1. Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India."²

Thus article 367(1) read with article 372(2) of the constitution confers the power to interpret the constitution with the president.

"372. Continuance in force of existing laws and their adaptation

¹ INDIA CONST. art. 370

² INDIA CONST. art. 367, cl.1.

2. For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.’³

So on the name of interpretation president inserted article 367(4)⁴ by which president boycotted the involvement of constituent assembly altogether in the abrogation of article 370⁵.

However, Supreme Court while giving a nod to the decision of the government in 2023, clarified that article 367 is merely an interpretative clause and cannot be used to amend the constitution, thus article 367(4) is ultra vires article 370. Supreme Court also observed that the rest of the notification applying whole of the Indian constitution to the said State under article 370(1) (d) is justified and does not require any concurrence with the state government. Hence though indirectly whole of the Indian constitution is now applicable to the state of J&K.

“The power under Article 370(3) did not cease to exist upon the dissolution of the constituent assembly of Jammu and Kashmir. When the Constituent assembly was dissolved, only the transitional power recognized in the proviso to Article 370(3) which empowered the Constituent assembly to make its recommendations ceased to exist. It did not affect the power held by the President under Article 370(3),”⁶ the ruling said. Thus Supreme Court said that it was not required on the part of the government or President to make amendment under Article 367. President after the dissolution of Constituent assembly could have unilaterally revoke Article 370. Consequently, the decision of the government was upheld by Supreme Court on 11 December 2023. Though this decision by the Supreme Court is itself debatable, this is discussed later on under ‘Debates over Article 370’ part of this Article.

Mr. Kapil sibal had argued before the Hon’ble Supreme Court of India that Article 367 is an interpretative clause and not a clause to substitute definitions and therefore to substitute the whole definition of constituent assembly into legislative assembly is outside the power of article 367.

³ INDIA CONST. art. 372, cl. 2.

⁴ INDIA CONST. art. 367, cl. 4.

⁵ INDIA CONST. art. 370

⁶ THE INDIAN EXPRESS JOURNALISM OF COURAGE, <https://indianexpress.com> (last visited May 27, 2024)

Anuradha bhasin in her book “A dismantled state”⁷ has mentioned about a great talk she had with Krishan Dev Sethi. Sethi saheb has played a very huge role in the history and politics of J&K.

Sethi was clear that any change to article 370 could be made out only with the concurrence of the J&K Constituent assembly and in the absence of which the power could have been transferred to the legislative assembly which did not happen. Secondly, according to Sethi, article 370 was the only constitutional link of J&K to India. Striking it down would sever J&K from India constitutionally. According to him the act of the government was morally and legally wrong and was nothing short of occupation. The second observation was worth mentioning for the purpose of this article and I think readers would be more capable of answering it after having a glare look at the basic history of article 370.

HISTORY BEHIND ARTICLE 370

Maharaja Hari Singh was the Hindu ruler of Kashmir in 1947. In October, 1947 Pakistani aided tribal army infiltrated into the territory of J&K and within 3 or 4 days surrounded the Srinagar.

Maharaja Hari Singh in hurry contacted India for support but India could not assist without J&K acceding to India. As India was still a dominion of British, it might not have directly entered into the battle with Pakistan, without J&K being a part of it, that time as that could have been amounted the International battle started by India, and thus instrument of accession between Maharaja Hari Singh and India was signed. After signing the instrument of accession with India, Maharaja wrote a letter to Lord Mountbatten who was the Governor General to India that time. Some part of letter is as follows:

“With the conditions obtaining at present in my state and the great emergency of the situation as it exists, I have no option but to ask for help from Indian dominion. Naturally they cannot send the help asked for by me without my state acceding to the dominion of India. I have accordingly decided to do so, and I attach the instrument of Accession for acceptance by your government; the other alternative is to leave my state and my people to free booters.”⁸

In his reply on 27 October 1947, Lord Mountbatten responded by letter:

⁷ ANURADHA BHASIN, A DISMANTLED STATE 24 (HarperCollins Publishers India 2023)

⁸ ANURADHA BHASIN, A DISMANTLED STATE 28 (HarperCollins Publishers India 2023)

“It is my government’s wish that as soon as law and order have been restored in Kashmir and her soil cleared of the invaders, the question of the state’s accession should be settled by a reference to the people.”⁹

Thus even Lord Mountbatten was of the opinion that a plebiscite or a referendum should be held as to the accession of J&K after the situation gets normal and Law and order is established. On this condition Lord Mountbatten signed the instrument and India finally entered into the battle with Pakistan. In between pundit Jawaharlal Nehru approached UN Security Council which then established ceasefire and asked India to hold referendum after law and order is established. It all started with Pakistan took back its army.

In Clause 5 of the instrument of accession, Hari Singh said that the terms of “my instrument of Accession cannot be varied by any amendment of the Act or of The Indian Independence Act unless such amendment is accepted by me by an instrument supplementary to this instrument.”¹⁰

In clause 7 Hari Singh said, “Nothing in this instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter any discretion to enter into arrangements with the government of India under any such future constitution.”¹¹

Thus after reading out clause 5 and clause 7 of the instrument of Accession and the letter written by lord Mountbatten to maharaja Hari Singh, it could be said that instrument of Accession was conditional - signed under special circumstances.

Article 370 was nothing but a constitutional recognition to the instrument of Accession and article 370 expressly talks about Instrument of Accession. It was drafted as article 306A which later on became the part of original Constitution as Article 370.

So far as plebiscite is concerned, that never happened.

Now coming to the statement of Krishan Dev Sethi to Anuradha bhasin according to which the act of the government was nothing short of occupation deserves great importance, considering the conditional nature of the instrument and the circumstances under which it was signed. Even article 370 itself starts with words “Temporary provisions with respect to the State of Jammu and Kashmir”. Taking into account all these things aforementioned it seems like Sethi Saheb was right. Moreover, we would also be discussing on this later under “debates over Article 370”

⁹ ANURADHA BHASIN, A DISMANTLED STATE 28 (HarperCollins Publishers India 2023)

¹⁰ THE WIRE, <https://m.thewire.in> (last visited May 27, 2024)

¹¹ THE WIRE, <https://m.thewire.in> (last visited May 27, 2024)

part of this Article where I would also put my opinion on this. Till then we will get our attention on some different aspects of Article 370.

COMMUNICATION BLOCKADE

“The entire state was impacted by the sudden communication blockade, which was most stringent in Kashmir and five districts of Jammu – Rajouri, Poonch, Doda, Kishtwar, and Ramban – where even phone lines and broadband services were disrupted”¹². Kashmiris were trapped in their own homes.

Whole internet connection was disrupted which eventually brought down the journalism in a state.

Meanwhile the Supreme Court in a writ petition filed by Anuradha Bhasin observed that access to internet and free speech fall within the ambit of Fundamental Rights. It also held that Government cannot impose restrictions on internet or mobility for prolonged periods. Supreme Court ordered government to publicize the restrictions being imposed by the government on the people of state, though that never happened as media was busy in journalism showing everything was normal in the state.

If internet was provided after sometime then speed of the internet became the problem. Till 5 February 2021, if you did not have Wi-Fi, you were restricted to 2G connectivity.

In May 2020, a writ petition was filed before the Supreme Court by the Foundation for Media Professionals seeking restoration of high speed internet. Supreme Court directed government to form a special committee to consider the possibility of providing high speed internet in the state and submit its report to it. Special committee decided the case against the restoration of 4G internet. This judgement provided the decision of the government to deny high speed internet to the people with legality. Thus owing to the judgement of Supreme Court people were denied of high speed internet till 5 February 2021.

DEBATES OVER ARTICLE 370 AND MY VIEWS ON IT

- A. Supreme Court in 1973 in **Keshvananda Bharti**¹³ case held federalism is a part of basic structure of the constitution. It was also held by Supreme Court in **S.R. Bommai v. Union of**

¹² ANURADHA BHASIN, A DISMANTLED STATE (HarperCollins Publishers 2023)

¹³ Keshvananda Bharti v. State of Kerala, AIR 1973 SC 1461

India, 1994¹⁴. Since then it has been reiterated by Supreme Court in number of landmark authorities.

In his article in Indian express on 13 December 2023, Alok Prasanna Kumar¹⁵ criticized the judgement of supreme court on 11 December 2023, in which he said, that, supreme had let down the fundamental principle of federalism by upholding two presidential orders of 5 August 2019. According to him, Article 370 was the example of federal structure of India, thus its revocation was contrary to the principles of federalism.

In my submission this argument does not hold water mainly because of three reasons:

1. There has to be a procedure to revoke Article 370. Article 370 itself provided for the procedure to revoke it under Article 370(3) read with its proviso. That Apart, Article 370 itself starts with words “Temporary provisions with respect to State of Jammu and Kashmir”, and if we take into account the special circumstances under which it was formulated, we get to know that Article 370 was not permanent even though it attained permanency as per the proviso of Article 370(3) after Constituent assembly got dissolved. But despite it having attained permanency it was always intended to be revoked in future.

2. Second important reason why this argument does not sound good to me is that the Indian Princely states that time were not totally independent countries unlike United States of America where some independent states joined together to form federalism. In this manner Indian federal structure is different than American federalism. Princely states were made to join India, and, hats of to the efforts put by Sardar Vallabhbhai Patel and VP Menon, they are now the part of India as per Article 1 of the Indian Constitution. J&K was no different than other princely states.

Petitioners, challenging the revocation of Article 370 before the Supreme Court, had argued that on the terms of sovereignty, J&K was different than other princely states, and J&K retained its sovereignty even after its merger to the Union of India. This contention was denied by Supreme Court, and it held that J&K is given the title of State by virtue of Article 1 of the Indian Constitution.

Even Article 370(1) (c) applied Article 1 of the Indian Constitution to the state of J&K.

Article 3 of the J&K Constitution made the State of J&K an integral part of the Union

¹⁴ S.R. Bommai v. Union of India, AIR 1994 SC 1918

¹⁵ THE INDIAN EXPRESS JOURNALISM OF COURAGE, <https://indianexpress.com> (last visited May 27, 2024)

of India, Article 147 of the J&K Constitution prohibited any amendment to Article 3 of J&K Constitution, and J&K Constitution was adopted in 1956 much after Article 370 hence could not be much influenced by circumstances in 1947. These arguments and the Constitution of Jammu and Kashmir show the intention of the State to join with India and clearly establish the fact that J&K did not remain sovereign after its merger and was not totally independent of India prior its merger. It was like any other princely state of India who has decided to join with India.

3. The third important reason is the federal structure of India itself. India is not a federal in true sense rather it would be more accurate to call it a quasi-federal structure having strong center.

The Apex Court in *S.R. Bommai vs Union of India*¹⁶, 1994 had observed which is as follows:

“These provisions show that in the matter of constitution of States, Parliament is paramount. This scheme substantially differs from the federal set-up established in the United States of America. The American States were independent sovereign states.....It is these independent sovereign units which together decided to form a federation unlike in India where the States were not independent sovereign units but they were formed by Article 1 of the Constitution.....”

In ***Union of India v. HS Dhillon***¹⁷ 1971 Supreme Court observed that as per Article 248 read with entry 97 in List 1 in VII schedule of the Indian Constitution, residuary powers are conferred with the Union Government not with states unlike the case of US where residuary powers are conferred with states.

Therefore the quasi federal structure of our Constitution combined with the temporary nature of Article 370 which had to be revoked and the fact that J&K is a State under Article 1 of the Indian Constitution, It can be concluded that by revoking Article 370 no federal structure of India was disturbed.

Though to different aspect, it may have violated the federal structure of India. As A.C. Michael, former member of Delhi Minorities Commission, observed after 2019 changes which is as follows:

¹⁶ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918

¹⁷ *Union of India v. HS Dhillon*, (1971)2 SCC 779

“Through same act, Delhi’s statehood could be withdrawn by putting who is who of India residing in Delhi under house arrest. Same act can be used to bifurcate states under the government of other political parties. A very dangerous precedence set by the present government for future governments. This is an emergency of another kind.¹⁸”

Pratap Bhanu Mehta also said that if the States are declared union territories unilaterally by central government time and again in this manner then one day India will become union of territories and will not be remained a federal structure.

In my submission also abrogation of Article 370 was justified but declaring a state to be a union territory is altogether contrary to the federalism of India. As even the purpose of Union territories existed only at the time of independence when India was divided with having lots of Princely states, therefore, that situation being no more the central government cannot increase the number of Union Territories.

B. These arguments are also answering the question raised by Krishan Dev Sethi¹⁹. According to him the decision of the government was nothing short of occupation.

To reply Sethi saheb we could take the reference of Article 1 of our Constitution read with Article 3 of J&K Constitution read with Article 370(1)(d) further read with Article 370(1)(c).

I would like to argue on the question put forth by Sethi on three different points:

1. Supreme Court, as already mentioned before, has observed that the States are formed by Article 1 of the Constitution. Secondly, J&K is a State under Article 1 of the Constitution by virtue of Article 370(1)(c) which applied Article 1 to the State of Jammu and Kashmir and though the Article 370 is revoked now, still the intention of the framers of Article 370 could be imputed by Article 370(1)(c) that they wanted Kashmir to be considered State under Article 1 of the Indian Constitution.
2. Article 3 of the J&K Constitution made J&K an integral part of the Union of India.

Article 3 is as follows:

“Relationship of the State with the Union of India:

The state of Jammu and Kashmir is and shall be an integral part of India”²⁰

Article 147²¹ of J&K Constitution prohibited any amendment to Article 3 of the said Constitution. Therefore intention of the said State could be imputed by their

¹⁸ ANURADHA BHASIN, A DISMANTLED STATE 32 (HarperCollins Publishers 2023)

¹⁹ ANURADHA BHASIN, A DISMANTLED STATE 30 (HarperCollins Publishers 2023)

²⁰ THE STATE OF J&K CONST. art. 3.

Constitution. It is also to be remembered that the Constitution of J&K was adopted on 17 November, 1956 and came into force in 1957 much after Article 370 therefore it could not be said to have been much influenced by the circumstances under which instrument of accession was signed. Hence intention of the State of J&K could be easily imputed by their Constitution.

3. Article 370(1)(d) provided president with power to apply any provision of the Indian Constitution to the State of J&K. This further shows the authority of India over the territory of J&K.

Therefore, conjoint reading of these three arguments we can easily conclude that incorporating the territory of J&K within the territory of India was neither morally wrong nor was it unjustified. It did not amount to occupation as was said by Sethi saheb.

Some people might argue on clauses 5 and 7 of the instrument of accession (already mentioned in the beginning of this article) and say that instrument of accession was temporary and the power to amend it or vary it was kept by maharaja Hari Singh in his hands which shows the intention of the State of J&K to not join with India anyhow permanently. But I would argue with those people because clauses 5 and 7 of the instrument of accession merely provide for an example of asymmetric federalism and nothing more than that.

- C. At last the third objection which is raised against the judgement of the Hon'ble Supreme Court of India is the most important out of all objections that is the objection against the procedure followed in revocation of Article 370 which though was declared not justified or rather not necessary even by Supreme Court but ultimate decision to revoke Article 370 was upheld. That sounds crazy, I know.

A great Constitutional giant as was declared by Supreme Court of India, Fali S. Nariman said the presidential notification of 5 August unconstitutional as proper procedure was not followed, and that the proper procedure would have been to amend the Constitution, he added. He further said that a dissenting opinion in Supreme Court would have been more helpful to people to understand Article 370 better.

Even Krishan Dev Sethi believes that proper procedure was to obtain recommendation from the Constituent assembly of J&K prior such order by president. According to him, in the absence of constituent assembly that power could have been transferred to the legislative assembly.

²¹ THE STATE OF J&K CONST. art. 147

Unilateral revoking Article 370 and declaring it Union territory was totally unjustified to various people.

First we need to look at what Supreme Court said on this point, which is as follows:

“Since the Constituent Assembly of Jammu and Kashmir had not yet been constituted when the Constitution of India was adopted, the proviso to Article 370(3) merely encapsulated the ratification process as decided by the Ministry of States. The words ‘recommendation of the Constituent Assembly referred to in clause (2) shall be necessary before the President issues such a notification’ as it appears in the proviso to Article 370(3) must be read in this context. Thus, the recommendation of the Constituent Assembly was not binding on the President to begin with.”

The Supreme Court here made error in interpreting Article 370(3) read with its proviso by saying that the procedure provided under proviso to Article 370(3) is merely to ratify the notification of the President as that the Constituent Assembly had not been constituted when the Constitution was adopted. Supreme Court here imputed intention of the framers of the Constitution regarding Article 370 on the formation of Constituent Assembly, or in short it confused their intention with the formation of the Constituent Assembly itself. The Proviso providing procedure to revoke Article 370 was the part of Constitution at the time when it was adopted on 26th November, 1949, therefore, it was intended to be followed immediately after the Constitution had the revocation of Article 370 been sought by the President at that time. Merely the fact that Constituent Assembly was absent does not change the situation. These are two different things.

The Apex court in **Shah Bhojraj Kuverji Oil Mills and ginning v. Subhash Chandra Yograj Sinha**²² (1961) has observed that the main function of the proviso is to qualify, or to create an exception, to the main enactment and the proviso is not interpreted as a general rule. Thus in this manner, proviso creates an exception to the general enactment which, but for the proviso, would have been included in the general enactment.

Thus it could be said that merely because of the procedure given under proviso has become impossible to follow, the general enactment cannot be said to be including the proviso within itself because the proviso is intended to create an exception to the general rule.

²² Shah Bhojraj Kuverji Oil Mills v. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596

Then should we conclude that Article 370 can never be revoked as even the Supreme Court in 2018 observed that because of the dissolution of Constituent Assembly Article 370 has attained permanency?

As I have already said that Article 370 was never intended to be permanent and had to be revoked because of which the exact procedure would have been to repeal the proviso to Article 370(3) by Constitutional amendment as was also observed Sir Fali S. Nariman.

This was all what we observe Prima facie but, with due respect to Sir Fali S. Nariman, I would like to argue on the point of procedure as well because to my personal opinion not much is done wrong by the Supreme Court, and my arguments stand on the points given below:

1. The words used in the proviso to Article 370(3) are “recommendation of the Constituent Assembly of the State shall be necessary...”²³, thus the word recommendation is used in the said proviso.

Merriam-Webster defines the word recommendation as “the act of recommending”²⁴. It further defines the word recommend as “present (something) as worthy of acceptance or trial”²⁵, thus recommendation is worthy of acceptance thereafter and not mandatory.

Collins dictionary also defines it as “...suggestions or advice on what is the best thing to do”²⁶.

Therefore it can be said that only recommendation could have been given by the Constituent Assembly under proviso to Article 370(3), which is different than concurrence which means those recommendations were not mandatory in nature.

2. Article 370(1)(d) provided President with power to apply provisions of Indian Constitution to the State of J&K with such exceptions and modifications as he may specify in such order.

Thus this provision is giving powers to President to modify the Constitution to apply its provisions to the State of J&K, Supreme Court has held this number of times that the modification includes amendment which means that President can even amend the Constitution by notification in so far it is to do with the territory of J&K. The words of

²³ INDIA CONST. art. 370. cl. 3

²⁴ MERRIAM-WEBSTER, <https://www.merriam-webster.com>

²⁵ MERRIAM-WEBSTER, <https://www.merriam-webster.com>

²⁶ COLLINS DICTIONARY, <https://www.collinsdictionary.com>

the Supreme Court in **Puranlal Lakhanpal vs The President of India and others, 1961**²⁷ are worth mentioning, which are as follows:

“Thus in law the word “modify” may just mean “vary”, i.e, amend; and when Article 370(1) says that the President may apply the provisions of the Constitution to the State of Jammu and Kashmir with such modifications as he may by order specify it means he may vary (i.e., amend) the provisions of the Constitution in its application to the State of Jammu and Kashmir. We are therefore of opinion that in the context of the Constitution we must give the widest effect to the meaning of the word ‘modification’ used in Article 370(1)(d) and in that sense it includes an amendment.”

This judgement by Supreme Court was also followed in **Sampat Prakash v. State of Jammu & Kashmir & Anr, 1969, SC**²⁸.

Therefore, The President has clear power to amend the Constitution to apply its provisions to the State of Jammu and Kashmir. But in the beginning I had said that Article 367 cannot be used to amend the Constitution which was even said so by the Supreme Court in the present case, that is equally true even now as it is different than merely applying certain provisions of the Constitution to State of J&K.

3. The third reason why I am not in the favor of this argument is that the procedural defect ought not to be allowed to rescind the whole decision altogether which is otherwise justified.

At last the Supreme Court judgement may be unjustified or irregular on this point but I do not think it unconstitutional.

All these three reasons aforementioned are to be read conjointly, not separately.

Again the views are personal; rest is up to the reader to think about it.

CONCLUSION

Except in so far the declaration of a State to Union Territory and the procedure not being followed is concerned, rest of the presidential order applying all provisions of the Indian Constitution as per Article 370(1)(d) to the State of J&K and revoking Article 370 was

²⁷ Puranalal Lakhanpal v. The President of India, AIR 1961 SC 1519

²⁸ Sampat Prakash v. State of Jammu & Kashmir, AIR 1969 SC 1153

justified. Even if we talk about the President declared the said State to be a union territory then that may be against the principles of federalism but, it is humbly said that, that is altogether different from revocation of Article 370 and Article 35A. Hence it does not automatically vitiate the judgement given by Hon'ble Supreme Court of India. So far as the procedure is concerned, even great Constitutional jurist Fali S. Nariman declared the judgement by Supreme Court on 11 December 2023 unconstitutional but to me at best it could be irregular or unjustified not unconstitutional. I am in the favor of the judgement, and we all should embrace it with both hands.

At last, I never intended to hurt the sentiments of anyone but if I did by mistake then I'm humbly apologized for that.