

**6 August 2019**

**India: Ending Autonomy of Jammu and Kashmir Fans Flames of Existing Human Rights Crisis**

The Indian Government's revocation of the autonomy and special status of Jammu and Kashmir violates the rights of representation and participation guaranteed to the people of Jammu and Kashmir under the Indian Constitution and in international law and is a blow to the rule of law and human rights in the state and in India, the International Commission of Jurists (ICJ) said.

The Indian Government today pushed through a legislative package effectively eliminating the special status accorded to Jammu and Kashmir under Article 370 of the Indian Constitution, which granted autonomy to Jammu and Kashmir and limited the Indian Government's legislative powers in the state. The move was preceded by a communication blackout, arbitrary detention of political leaders, banned movement and meetings of people, and increased military presence, purportedly to quell protests.

"The Indian Government has pushed through these changes in contravention of domestic and international standards with respect to the rights of people in Jammu and Kashmir to participate and be adequately represented, accompanied by draconian new restrictions on freedoms of expression, assembly, and travel, and with an influx of thousands of unaccountable security personnel," said Sam Zarifi, ICJ's Secretary General.

"The legality of the Indian Government's measures to eviscerate Article 370 will certainly be tested before the Indian judiciary, which should look closely at the serious violations of proper legislative and Constitutional processes," Zarifi said. "All eyes are now on the Indian Supreme Court to fulfill its functions in defense of the rights of people of Jammu and Kashmir and the Indian Constitution," Zarifi said.

The procedure adopted to revoke the special status and autonomy of Jammu and Kashmir appears to be incompatible with judgments and observations of high courts and the Indian Supreme Court, who have clarified that the President of India would need the agreement of the government of Jammu and Kashmir to change its status. The amendments effectively render Article 370 inoperative in its entirety, without meeting the Constitutional requirements in spirit.

The revocation of special status of Jammu and Kashmir without agreement from the state government is contrary to the spirit of Article 370, which envisioned that the will of the people would be taken into account in decisions relating to

state's special status and autonomy.

"The Indian Government rushed through the amendments at a time when Jammu and Kashmir was under the direct rule of the Central Government, and the state legislature was dissolved. As the government of Jammu and Kashmir is not empowered to discharge its functions, it has not been consulted, let alone agreed to the revocation," Zarifi said.

"The lack of consultation with the people of Kashmir is all the more troubling because the changes pushed by the Indian Government will materially affect Kashmir's status as India's only Muslim-majority state, including special rights for citizens of the state to own and hold land and seek education and employment," Zarifi said.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) in successive reports in 2018 and 2019 has noted that the region of Jammu and Kashmir, under dispute between India and Pakistan since 1947, has been the theatre of grave human rights violations, including unlawful killings, enforced disappearances and torture, committed with impunity by Indian security forces.

The UN High Commissioner for Human Rights in both reports recommended to the Indian Government to "fully respect the right of self-determination of the people of Kashmir as protected under international law".

The ICJ condemns the legislative steps taken with respect to Jammu and Kashmir, and calls on the Indian Government to implement in full the UN High Commissioner's recommendations, including respecting the right to self-determination of people of Jammu and Kashmir, and to respect, protect and fulfill the human rights of people in Jammu and Kashmir.

### **Contact**

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### **Additional Information**

#### Relevant Constitutional Provisions

A. Article 370 of the Indian Constitution governs Jammu & Kashmir after the partition of India in 1947 and grants special status to the state and limits the Parliament's legislative power in the state. It states:

- 1) the Indian Parliament's legislative powers with respect to Jammu and Kashmir to be limited to matters concerning defence, foreign affairs and communication;
- 2) for all other matters, the Indian Parliament could legislate only with the agreement of government of Jammu and Kashmir.

3) Constitutional provisions other than Articles 1 and 370 to apply as specified by Presidential Orders, with concurrence of the government of Jammu and Kashmir.

B. Under Article 35A of the Indian Constitution, the government of Jammu and Kashmir was empowered to identify a certain category of "permanent residents" in Jammu and Kashmir and afford to them the right of public sector employment in Jammu and Kashmir, the right to acquire immovable property (e.g. land), and the right to scholarships and other forms of aid from the government of Jammu and Kashmir.

### Legislative Instruments

The revocation of the special status and autonomy of the state of Jammu and Kashmir under Indian Constitution was carried out through the adoption of following legislative instruments:

#### A. Presidential order:

1. The Presidential order titled 'The Constitution (Application to Jammu and Kashmir) Order 2019' supersedes the Constitution (Application Jammu and Kashmir) Order, 1954;
2. It states that, "all the provisions of the Constitution shall apply in relation to the State of Jammu and Kashmir...";
3. It amends Article 367 of the Indian Constitution so that reference to the constituent assembly of the state would mean legislative assembly of the state and references to the state government would include reference to the governor of Jammu and Kashmir.

#### B. Statutory resolutions:

1. The Minister of Home Affairs moved for consideration a statutory resolution to render Article 370 of the Indian Constitution inoperative. This resolution has been adopted by both Houses of the Parliament;
2. The Minister of Home Affairs moved for consideration the Jammu and Kashmir Reorganization Bill, 2019 in the Upper House of the Parliament. The resolution was passed.

#### C. Jammu and Kashmir Reorganization Bill, 2019:

1. The Bill reorganizes the state of Jammu and Kashmir into two union territories - union territory of Ladakh comprising Kargil and Leh districts and union territory of Jammu and Kashmir comprising territories of the state of Jammu and Kashmir except for districts of Kargil and Leh;
2. The Bill has been passed by the Upper House of Parliament and the Lower House of Parliament.