

SC upholds repeal of J&K's special status

The court says President validly exercised power in removing special privileges under Article 370

It seeks restoration of Statehood to J&K 'at the earliest', and elections by Sept. 30, 2024

Decision to carve out the Union Territory of Ladakh is valid, the top court adds

Krishnadas Rajagopal
NEW DELHI

A Constitution Bench of the Supreme Court on Monday unanimously upheld the power of the President to abrogate special status of Jammu and Kashmir under Article 370 of the Constitution, leading to the reorganisation of the full-fledged State to two Union Territories and the removal of its special privileges. The five-judge Bench headed by Chief Justice of India D.Y. Chandrachud confirmed that the President could "unilaterally" issue a notification that Article 370 ceases to exist.

The court held that the President had power to abrogate Article 370 if "special circumstances warrant a special solution".

"The court cannot sit in appeal over the decision of the President on whether the special circumstances which led to the arrangement under Article 370 have ceased to exist," the Chief Justice reasoned.

The court said the President's decision in August 2019 was the culmination of a "gradual and collaborative exercise" spread over the past 70 years between

Key takeaways

Here is what the Supreme Court said in its verdict on the abrogation of J&K's special status.

- Jammu and Kashmir does not have any 'internal sovereignty' different from other States and its status under Article 370 is only a form of asymmetric federalism
- From its historical context, it is clear that Article 370 is only a temporary provision
- The President, in exercise of power under Article 370(3), can unilaterally issue a notification that Article 370 ceases to exist
- When the Constituent Assembly was dissolved, it did not affect the President's power to declare it inoperative



Significant ruling: Senior lawyers, who represented the respondents, react following the SC verdict on Monday. SHIVA KUMAR PUSHPAKAR

the Centre and the State to integrate Jammu and Kashmir with the Union. The objective of the integration process was to make the entirety of the rights and obligations enshrined in the Indian Constitution applicable to the people of Jammu and Kashmir.

Elections to be held

The court declared the Jammu and Kashmir Constitution "redundant" and "inoperative". It accepted the assurance of the Centre to restore Statehood to Jammu and Kashmir "at

the earliest" and directed the Election Commission of India to hold Assembly polls by September 30, 2024. The court found it unnecessary to examine whether the reorganisation of the State into the two Union Territories of Ladakh and Jammu and Kashmir had been even permissible. The Bench further upheld the carving out of the Union Territory of Ladakh from the State of Jammu and Kashmir.

The fact that the abrogation of Article 370 through an executive order by the President happened after

the dissolution of the Jammu and Kashmir State Legislative Assembly by the Governor on November 21, 2018 and the subsequent proclamation of President's rule on December 19 did not deter the court.

"Even if this court holds that the Proclamation could not have been issued under Article 356, there would be no material relief which can be given in view of the fact that President's Rule was revoked in the State of Jammu and Kashmir on October 31, 2019," Chief Justice justified. In his lead judgment, the

Chief Justice, speaking for himself, Justices B.R. Gaval and Surya Kant, said Jammu and Kashmir had divested itself of "any element of sovereignty" after the execution of the Instrument of Accession to the Union in October 1947.

Justices Kaul and Sanjiv Khanna concurred in their separate opinions.

"The State of Jammu and Kashmir does not have 'internal sovereignty' distinguishable from the powers and privileges enjoyed by other States in the country," Chief Justice held.

At most, the special pri-

viliges and even a separate Constitution for Jammu and Kashmir was merely a "feature of asymmetric federalism and not sovereignty".

'Temporary provision'

The court held that Article 370 was only a "temporary provision" to ease the accession of the then princely State to the Union at a time of internal strife and war.

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Verdict is a declaration of hope, says PM

NEW DELHI Prime Minister Narendra Modi on Monday termed the Supreme Court's verdict upholding the abrogation of Article 370 as "historic" and one that "in its profound wisdom, has fortified the very essence of unity that we, as Indians, hold dear and cherish above all else". Taking to X (formerly Twitter), Mr. Modi said: "It [the verdict] is a declaration of hope, progress and unity for our sisters and brothers in Jammu, Kashmir and Ladakh."

Give Statehood, conduct election in J&K: Congress

NEW DELHI The Congress on Monday said the debate on the abrogation of Special Status for J&K under Article 370 has ended as the Supreme Court verdict is now the law, but it demanded immediate restoration of Statehood and holding of Assembly election. It said the judgment has decided mainly issues but left some important issues open. » PAGE 5

Ominous, anti-federal

The Supreme Court's J&K verdict has imperilled the rights of States

The Supreme Court verdict upholding the abrogation of Jammu and Kashmir's special status under Article 370 of the Constitution represents not merely judicial deference, but a retreat from the Court's known positions on federalism, democratic norms and the sanctity of legal processes. It is undoubtedly a political boost to the ruling BJP and an endorsement of its audacious move in August 2019 to strip Kashmir of its special status and bring it on a par with other States. However, it is also a verdict that legitimises the subversion of federal principles, fails to appreciate historical context and undermines constitutional procedure. The most potent attack on federal principles is the Court's unconscionable conclusion that Parliament, while a State is under President's Rule, can do any act, legislative or otherwise, and even one with irreversible consequences, on behalf of the State legislature. This alarming interpretation comes close to undermining a basic feature of the Constitution as enunciated by the Court itself and may have grave implications for the rights of States, permitting a range of hostile and irrevocable actions in the absence of an elected body. The government and its supporters have much to cheer about as the Constitution Bench has endorsed its stand and rejected strong arguments from the petitioners, especially the point that the government had acted in a *mala fide* manner by imposing President's Rule preparatory to the intended abrogation of special status without the need to involve any elected representative from J&K.

The government had adopted a complicated process to give effect to the ruling BJP's long-cherished ambition of removing the State's special status. It had gone on to divide and downgrade it into two Union Territories (UT). It began with a Constitutional Order on August 5, 2019 applying the whole of the Constitution to J&K and changing some definitions so that the State's Legislative Assembly could recommend the abrogation instead of its now-dissolved Constituent Assembly, as originally envisaged in Article 370(3). Ultimately, the Court ruled that parts of the August 5 order were unconstitutional as they, in effect, amounted to amending Article 370 itself, which was impermissible; but, in a peculiar twist, it held the consequential notification on August 6 declaring Article 370 as valid and that the President was empowered to do so even without the legal underpinnings of the previous day's notification that sought to bolster the validity of the action. The President could remove the State's special status without any recommendation.

STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

12/24, Muthurangan Muthali St, West Tambaram, Chennai - 600045

<https://www.evastaliniasacademy.in/>

Contact Number - +91-8678969915, +91-9940332851

The Court has reasoned that the Constitution of India has been applied incrementally from time to time even after the Constituent Assembly was dissolved in 1957 and that the removal of special status is nothing but the culmination of the process of its integration. Even if this line of argument is seen as unobjectionable, the idea that in the absence of the Constituent Assembly and in view of the subordination of J&K to the sovereignty of India, there is no fetter on the government's intention to hollow out its residual autonomy is opposed to all canons of federalism and democracy. There is no doubt that J&K is not vested with any sovereignty. The Court says Article 370 represents no more than a form of asymmetric federalism and that additional features – such as having a separate Constitution, residuary power of legislation and requirement of its consent to some legislative subjects before Parliament can make law on them – will not clothe it with sovereignty. All of this is true. But, how this can mean that historical obligations owed to it and promises made by constitutional functionaries can be blown away at the ruling dispensation's whim is beyond comprehension. Forgotten is the fact that the process of integration itself was by and large built on a constant dialogue between Kashmir's leaders and the Union government, the context and conditions in which it acceded to India, the terms of the Instrument of Accession and the progressive extension of constitutional provisions with the consent of the State government over the years.

The Court's failure to give its ruling on whether the Constitution permits the reorganisation of J&K into two UTs is an astounding example of judicial evasion. It is shocking that the Court chose not to adjudicate a question that arose directly from the use of Article 3 of the Constitution for the first time to downgrade a State. The only reason given is that the Solicitor-General gave an assurance that the Statehood of J&K would be restored. It is questionable whether a mere assurance of a remedial measure can impart validity to any action. At the same time, the Court upheld the carving out of Ladakh as a separate UT. On this point, the verdict is an invitation to the Union to consider creation of new UTs out of parts of any State. The Court's position that there is no limit on the President's power or Parliament's competence to act on behalf of the State government and its legislature is equally fraught with danger. In particular, the reference to "non-legislative" powers of the State Assemblies poses a significant threat to the powers devolved to the States. A future regime at the Centre could impose President's rule to carry out extraordinary actions through its own parliamentary majority that an elected government in a State may never do. The view that some of these may be restored by a subsequently elected government or House is of little consolation if actions taken under the cover of President's Rule cause great damage to the State's interests. This is a verdict that weakens institutional limitations on power, and, while rightly upholding Indian sovereignty over J&K, it undermines federalism and democratic processes to a frightening degree.

'Giving Article 370 permanent status will undo efforts to fully integrate J&K with the Union'

The Hindu Bureau

NEW DELHI

The Supreme Court on Monday said an interpretation that Article 370 attained a permanent character after the dissolution of the J&K Constituent Assembly in 1957 would have undone over 70 years of "collaborative" work to integrate the State with the Union of India.

A Constitution Bench headed by Chief Justice of India D.Y. Chandrachud held that Article 370 was intended to "enhance constitutional integration between the Union and the State of Jammu and Kashmir" and not cause any "disintegration". He said the abrogation of Article 370 only made Jammu and Kashmir on a par with the other States. The entirety of the Indian Constitution would now apply to Jammu and Kashmir.

The SC held that the views of J&K Constituent Assembly was not binding on the President

The argument by the petitioners that Jammu and Kashmir would perpetually retain its special status after the Constituent Assembly dissolved in 1957 without a positive recommendation on whether or not to abrogate Article 370 would only "lead to freezing of the integration contrary to the purpose of introducing the provision".

"If the contention of the petitioners on the interpretation of Article 370 vis-à-vis the dissolution of the Constituent Assembly is accepted then Article 370 (3) would become redundant and the provision would lose its temporary character," the Chief Jus-

tice observed. Article 370 (3) allowed the President to issue a public notification, with the prior recommendation of the Constituent Assembly, declaring Article 370 inoperative.

The court has held that the recommendation of the Constituent Assembly was not binding on the President. "The President has the power to issue a notification declaring that Article 370 ceases to operate without the recommendation of the Constituent Assembly."

The continuous exercise of power under Article 370 (1) by the President indicates that the gradual process of constitutional integration was ongoing. The declaration issued by the President under Article 370(3) was a culmination of the process of integration and as such is a valid exercise of power," the Chief Justice said.

What are FSB's concerns about crypto asset intermediaries?

What are multi-function crypto-asset intermediaries? What does the report say about risk management?

Saptaparno Ghosh

The story so far:

Published last month, the international Financial Stability Board (FSB)'s latest report on crypto-asset intermediaries sought measures to enhance cross-border cooperation and information sharing among local authorities. This is to effectively regulate and address gaps in multi-function crypto-asset intermediaries (MCIs) operating globally. Specifically referring to the FTX collapse in November 2022, it highlights potential risks associated with MCIs that combine different activities within the platform.

How does the report define MCIs?

The report defines MCIs as individual firms, or groups of affiliated firms that offer a range of crypto-based services, products and functions which primarily

revolve around operating of the trading platform. Examples include Binance, Bitfinex and Coinbase. In the traditional financial landscape, the functions are provided by separate entities, instead of the same entity. This prevents conflict of interest and promotes market integrity, investor protection and financial stability.

The primary source of revenue for these platforms are the transaction fees generated from trading-related activities, the traded security here being self-issued crypto assets. Trades from alternative platforms may also indirectly drive additional demand for other services offered by the platform. These may include prepaid debit cards and lending, among other services. This shows that the aspirations of MCIs extend beyond just trading to becoming a "one-stop shop" for crypto-based services.

FSB's report observes that the magnitude of these revenue sources is

unclear because of the limited publicly disclosed information.

What about transparency?

The report observes that most MCIs are not transparent about their corporate structure. Further, they are privately held. Even if they disclose information, the report observes, it is typically for a small part of their business, specific to a jurisdiction. Much of the available information has surfaced through press coverage, court filings and regulatory actions and not public disclosures. The watchdog observed that MCIs failed to create a "meaningful separation" between potentially conflicting business lines, and provide clear account of transactions and activities or audit practices, among other things. The report suggests this could be intentional, to limit understanding of their vulnerabilities, economic models and activities – thus, to

also evade regulatory oversight. Overall, this translates to lowered or non-existent oversight parameters for management of risk and governance frameworks.

Poor risk management, the report says, "may make it easier for insiders to engage in misconduct that magnifies MCI vulnerabilities." The lack of transparency could also mean that risks from lack of effective governance or lack of profitability of the business model would be hidden until the negative shocks fully materialise. In fact, in June this year, the U.S. SEC alleged that Binance misled investors about their risk controls and inflated trading volumes.

What about spillovers?

The report observes that, based on available evidence, the threat to global financial stability and to the real economy from the failure of an MCI is presently "limited." However, recent experience about failure or closure of "crypto-asset-friendly" banks reveal the prevalence of concentrated deposit exposures to firms whose business models rely in some form on crypto assets. In March this year, Silvergate Bank had to wind down its operations and voluntarily liquidate. This was after the FTX collapse and an ensuing loss of confidence (in crypto-assets) that resulted in a 'run-off' (investors moving away from riskier to safer assets).

'70% semiconductor setup costs borne by the government'

Aroon Deep

NEW DELHI

The geopolitical opportunity for India to attract companies and countries looking for resilient semiconductor and electronics supply chains is only going to last "four or five years," and hence it is important to seize the opportunity within this period, Secretary of Electronics and Information Technology S. Krishnan said on Monday.

Mr. Krishnan characterised government subsidies for semiconductor-related assembly and manufacturing facilities as "generous," saying that a bulk of the setup costs were borne by the government.

"Today, with about 50%



[financial] support from the government of India and about 20% subsidy support from the State governments, almost 70% of the cost of the project is really funded by government as a subsidy," he said.

Mr. Krishnan further said that much of these subsidies were disbursed *pari passu*, that is, before production had even gotten under way.