

HUMAN RIGHTS LAW – PROPOSITION

The republic of Indiana is in southern part of Asia. Jamica and Kashimar, located in the northern part of Indiana, is renowned for its stunning landscapes, encompassing the Himalayas and the serene valleys of Kashimar. Known as the "Paradise on Earth," the region boasts a rich cultural heritage, blending Hindu, Buddhist, and Islamic traditions. Article 370 of the Indiana Constitution granted special autonomous status to the region of Jamica and Kashimar, allowing it to have its own constitution and autonomy over internal matters except defense, communications, and foreign affairs. Historically a princely state, it has been a focal point of geopolitical tension between Indiana and Pakistana. In August 2019, the Indiana government revoked its special status, reorganizing it into two Union Territories: Jamica and Kashimar, and Lidak. This change has significantly impacted its political and social landscape.

The Indiana government revoked Article 370 on August 5, 2019, citing several reasons. Key among them were the integration of Jamica and Kashimar with the rest of Indiana to promote unity and national integration, the desire to bring uniformity in laws and governance, and the aim to spur economic development and curb terrorism and separatism in the region. The government argued that the special status hindered economic growth and social progress in Jamica and Kashimar, and its removal would facilitate better governance and investment. Opponents of the revocation of Article 370 argue that it undermines the democratic and federal principles of Indiana by unilaterally changing the status of Jamica and Kashimar without the consent of its people or legislature. They believe this move disregards the historical context and the terms under which Jamica and Kashimar acceded to Indiana, potentially exacerbating tensions and alienating the local population. Critics also fear that it may lead to increased unrest and violence in the region, as well as raise concerns about human rights violations and the suppression of political dissent. A plea challenging the revocation of Article 370 was challenged before the Supreme Court of Indiana and has been already rejected citing separation of power and the government has the right to decide on the policy matters. The SC relied on the fact that the Constitution framers placed Article 370 with the temporary and transitional provisions contained in Part XXI of the Indiana Constitution.

Before revoking Article 370, the Indiana government placed several political leaders in Jamica and Kashimar under house arrest pursuant to the Unlawful Activities (Prevention) Act, 1967, and deployed additional troops to the region. This was done as a precautionary measure to prevent potential unrest and maintain public order amidst the significant constitutional change. Communication networks, including internet and phone services, were also suspended to curb the spread of information that might incite violence. This move aimed to prevent unrest and maintain security but severely disrupted daily life, impacting education, healthcare, and businesses. The restrictions drew significant criticism from human rights organizations and raised concerns about freedom of expression and access to information.

In addition to the house arrests and troop deployment, the Indiana government imposed a curfew, restricted public gatherings, and detained thousands of local residents as a preventive measure. Schools and colleges were closed, and significant restrictions were placed on movement and daily activities to maintain strict control over the region during the sensitive period following the announcement. The measures, particularly the internet ban and detentions, have had a profound impact on the daily lives and mental health of the residents of Jamica and Kashimar. The disruption of communication, education, and business activities has led to economic hardships and psychological distress. These consequences highlight the disproportionate nature of the measures and their adverse impact on civilians.

Since the revocation of Article 370 in August 2019, Jamica and Kashimar has not conducted legislative assembly elections. The region was reorganized into two Union Territories: Jamica and Kashimar, and Lidak, with the former continuing to have a legislative assembly while the latter does not.

The revocation of Article 370 in Jamica and Kashimar has been accompanied by numerous allegations of human rights violations. Reports have highlighted the arbitrary detention of political leaders, activists, and civilians, including minors. Security measures, including curfews and increased military presence, have led to widespread fear and anxiety among the local population. Additionally, there have been concerns about the use of excessive force and restrictions on freedom of expression and assembly, raising significant questions about the protection of civil liberties in the region.

The Indiana government justifies its actions in Jamica and Kashmir by emphasizing the need to maintain law and order, ensure national security, and facilitate the region's development. Officials argue that the preventive detentions, communication restrictions, and increased military presence were necessary to prevent potential violence and unrest following the revocation of Article 370. The government also claims that these measures are temporary and aimed at stabilizing the region, thereby creating a conducive environment for economic investment, improved governance, and the eventual restoration of democratic processes. They assert that the steps taken will ultimately lead to long-term peace and prosperity in Jamica and Kashmir.

The Indiana government has undertaken the demolition of properties belonging to alleged terrorists and their sympathizers in Jamica and Kashmir as part of its counter-terrorism strategy. Officials argue that these demolitions are aimed at dismantling the infrastructure supporting terrorism and sending a strong message against harboring militants. The government contends that such actions are necessary to break the cycle of violence and disrupt the networks that facilitate terrorist activities. However, these demolitions have been controversial, with critics arguing that they may violate due process, property rights, and could potentially lead to further alienation of the local population.

Opposition parties and human rights organizations have criticized the demolition of properties belonging to alleged terrorists in Jamica and Kashmir, contending that it circumvents due process and undermines the rule of law. They argue that such actions deprive individuals of their right to a fair trial and legal recourse, potentially leading to arbitrary punishment and abuse of power. Critics assert that these demolitions violate principles of natural justice and property rights, and may further exacerbate grievances among the local population, fuelling resentment and radicalization. They call for transparency, accountability, and adherence to legal norms in counter-terrorism operations to uphold fundamental rights and prevent abuses.

A renowned Human Right Activist Ashok has filed a plea before Supreme Court of Indiana citing measurements taken by the government of Indiana before and after revocation of Article 370. He argues that the measures taken post-abrogation constitute severe human rights violations. The prolonged internet ban infringed on the freedom of speech and expression, access to information, and the right to education and health services. The Universal Declaration

of Human Rights (UDHR) and ICCPR guarantee these rights, and their suspension raises serious ethical and legal concerns. The detention of political leaders and activists without formal charges or transparent legal proceedings is seen as a violation of the right to liberty and security of person, as well as the right to a fair trial. These detentions are perceived as an attempt to suppress dissent and political opposition, undermining democratic principles and the rule of law. The demolition of properties belonging to minorities when they commit crimes raises issues of collective punishment and discrimination. Such actions are often perceived as targeting specific communities, exacerbating communal tensions and fostering a sense of injustice. The measures, particularly the internet ban and detentions, have had a profound impact on the daily lives and mental health of the residents of Jammu and Kashmir.

On the other hand, government of India argued that the abrogation of Article 370 and subsequent measures were crucial for integrating Jammu and Kashmir into India and ensuring national security. The region has been a hotspot for terrorism and separatist activities, and the abrogation aimed to curb these threats. The internet ban was implemented to prevent the spread of misinformation and coordination of violent activities by insurgents. In such a volatile environment, stringent measures, including temporary restrictions on communication, can be justified to maintain law and order. The detention of political leaders and activists was seen as a preventive measure to avoid incitement of violence and ensure a smooth transition post-abrogation. These actions are viewed as temporary and necessary to stabilize the region. While human rights are paramount, international law allows for certain restrictions under specific circumstances, such as threats to national security and public order. The International Covenant on Civil and Political Rights (ICCPR) permits temporary derogations of certain rights in times of emergency, provided these measures are proportionate and non-discriminatory. The Indian government contends that the measures in Jammu and Kashmir fall within these permissible boundaries, given the region's unique security challenges.

The matter has been placed before the Supreme Court of India for final hearing on following issues.¹

¹ The Supreme Court of India is not bound to follow the previous judgment on this particular issue.

- 1-Whether the Internet ban by the Indiana government is lawful?
- 2-Whether the demolition of the property without trial amounts to violation of Rule of Law?
- 3-Whether the house arrest of political leaders and curfew imposed by government is lawful?

1- All the laws of Indiana are similar to that of India.