

HISTORIC VERDICT SC verdict on seditious Article 370 is nation's splendid victory

■ PROF HARI OM



The five-judge Constitution bench of the Supreme Court has given its verdict on the petitions challenging the removal of Article 370. CJI Chandrachud said that Jammu and Kashmir is an integral part of India. He said that it is not appropriate to question the Centre's decision. The decision taken by the President is valid.

The Narendra Modi government at the Center took a historic decision on Jammu and Kashmir and abolished the special status of the state. August 5, 2019, Home Minister Amit Shah presented the resolution to remove Article 370 in the House. After the abolition of Article 370 from Jammu and Kashmir, now one country, one flag, one constitution is adopted.

Supreme Court's Historical Verdict on Article 370

■ OMKAR DATTATRAY

At last the wait was over today as the people were anxiously and eagerly waiting for the decision on the abrogation of article 370 and the wait has now ended as the Supreme Court has given a historical and important decision and held the constitutional amendment regarding the abrogation as constitutionally valid and held the 5 August decision as it relates to the annulling of the controversial article 370 as valid ,legal and constitutional .The verdict of the apex court will result in the national harmony and national integration and the PM Modi has rightly commented that the decision of the supreme court is in the national interest .Earlier in September this year the supreme court five judge constitutional bench headed by D.Y.Chandrachud ,had reserved its verdict in the matter .The supreme court gave an important and crucial verdict today on December 11 on the union governments 2019 move to amend article 370 of the constitution .The abrogation ended the special status conferred to the erstwhile state of Jammu and Kashmir .The apex court held the constitutional order that abrogated article 370 as valid and lawful and so decided the constitutionality of the article 370 and held it legal and constitutional and disposed a bench of writ petitions challenging the August 2019 order .It is pertinent to mention here that a five judge constitutional bench presided by the chief justice had reserved its verdict on as many as 23 petitions in the matter on September 5 this year ,after 16 days of hearing .The bench also comprised Justices S.K.Kaul,Sanjeev Khanna ,BR Gavai and Surya Kant.CIJ DY Chandrachud said that Jammu and Kashmir held no internal sovereignty after accession to India .He said there was no prima facie case that the President's 2029 orders were mala-fide or extraneous exercise of the power .While the court said the reorganization of the erstwhile state into union territories in 2019 was a temporary move ,it directed the centre for the restoration of statehood and for the legislative assembly elections to be held up to September 2024.The supreme court said that the article 370 and 35 A are temporary and transitory article and thus there is no wrong in annulling of the article 370 of the constitution .It also said that the decision to abrogate article 370 is the legal integration of the country .The supreme court said that the abrogation of article 370 is fully valid and hence constitutional .The supreme court answered three key questions in government's favor .The apex court said there was no sovereignty for Jammu and Kashmir after its accession to the Indian union ,and the article 370 was a temporary and transitional provision .The supreme court in a 5-0 unanimous ruling upheld the centre's abrogation of article 370 on Monday December 11.Chief justice D Y Chandrachud and justice S.K.Kaul wrote two separate but concurring opinions .The court said that although Maharaja Hari Singh the erstwhile ruler of the princely state ,issued a proclamation that he retain his sovereignty ,his successor Karan Singh issued another proclamation that Indian constitution would prevail over all other laws in the state .This in essence ,had the effect of a merger like every other princely state that joined India ,the court ruled. The court emphatically concluded that Jammu and Kashmir has always been an integral part of India.CJI Chandrachud cited section 3 of the J&K constitution itself ,apart from article 1 and 370 of the Indian constitution .Article 3 of the J&K constitution reads-"The state of Jammu and Kashmir is and shall be an integral part of the union of India. "The state's constitution also provided that this provision cannot be amended .Justice Kaul said that being the only state with its own constitution also does not define a special status. "The purpose of the J&K Constitution was to ensure everyday governance in the state and the purpose of article 370 was to integrate the state with India. Secondly the supreme court held that article 370 is temporary ,transitional provision.CJI Chandrachud took a textual approach and cited evidence of the historical context for the inclusion of article 370 and placement of the article 370 in part XXI of the constitution dealing with temporary provisions .He said that the temporary provision served a purpose in the warlike situation prevailing in the state in 1947.Thirdly,the supreme court upheld both the presidential proclamations of August 2019.Thus the supreme court has today affixed its stamp of approval on the Modi governments decision of august 5,2019 and held that the abrogation of article 370 is lawful ,constitutional and valid and thus has upheld that decision of the government .The supreme court has said that the August 5,2019 order of the government is legally correct and it ensures the full integration of Jammu and Kashmir with India .The 2019 decision of the centre government of abrogating the article 370 is because of the fact that it was a temporary and transitional provision of the constitution and thus the court upheld it .Thus there was no wrong in annulling the controversial article 370.The court also held the bifurcation of the erstwhile state of Jammu and Kashmir into two union territories of Jammu and Kashmir and Ladakh as valid and constitutional .The court has directed the centre government to restore the statehood to Jammu and Kashmir at the earliest .The court also asked the centre government to hold the assembly elections in Jammu and Kashmir upto 30th September 2024.So the verdict of the supreme court is balanced and it is a ray of hope as per the PM Narendra Modi apart from being an epoch making legal decision .All the uncertainty about the abrogation of article 370 has come to an end and the people have got a feeling of relief over the crucial decision of the supreme court .In fact the decision of the supreme court which upheld the centre governments order of august 5,2019 is historical and it has further given strength to the unity and integrity of India and so the verdict will ensure national integration and it has given its approval to the full integration of the Jammu and Kashmir with India and the judgment has fructified the dream of Dr Shyama Prasad Mookerji of frugration Jammu and Kashmir with India. The B-J-P and other nationalist political parties have welcome the supreme court verdict .But as expected the regional parties of NC ,PDP ,Apni party ,DPAP have felt disappointed on the verdict of the supreme court .However people by and large have welcomed the historical verdict.

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The five-judge constitutional bench heard the petitions against and for the 2019 reforms for 16 days between August 2 and September 5. No less 40 advocates from both sides appeared. There were indications that Chief Justice Chandrachud-headed five-judge constitutional bench would watch, protect and promote further the nation's paramount interests and interests of the marginalised and discriminated against sections of society in J&K, including women, and deliver a judgement that would be rational, national and fair. And, it did exactly that on December 11, 2023. It said the August 2019 action was constitutionally valid and the Union Government didn't went beyond the constitutional confines.

Nation, Parliament Supreme

The fact of the matter is that the meaningful observations made and searching questions put by the Chief Justice and other judges during the course of hearing on Article 370 and J&K's reorganisation had strengthened the belief that the bench would deliver a judgement that recognises the Parliament's legislative domain; that unites, and not divides; that upholds what lays embodied in the preamble of the Indian Constitution; and that enables the government to end the menace of separatism, coupled with the cult of terrorism. The bench did exactly that, notwithstanding some critical comments on the process that the authorities followed. Indeed, the Supreme Court delivered an epoch-making judgement.

The bench's observations that no Constituent Assembly "can have an indefinite life" and "we are...creating a new category (of state), apart from basic structure, and Article 370 belongs to that" were, undoubtedly, very inspiring.

No to referendum

Similarly, it rejected the atrocious suggestion which virtually supported the idea of referendum in J&K. "So long as a democracy exists (in India) as it does, in terms of constitutional democracy, any recourse to the will of the people has to be expressed and sought through established institutions...You cannot envisage a situation like Brexit type referendum...", the Chief Justice had said in unequivocal terms. And, what he said constituted an indication of the direction the bench would like to go to.

Article 370 not permanent

The question that "how could Article 370, which was envisaged as a temporary provision, be converted into a permanent provision merely by proceedings of the J&K Assembly?", and the observation that "once it is assumed that the Parliament can amend Article 370, then such amendment of Article 370 would be subject to criticism on the ground of morality, but not on the basis of a lack of authority" was yet another very positive and inspiring indication.

The bench also considered two questions. The questions were: "If Article 370 became permanent after 1957, why was it then placed in Part XXI of the constitution which deals with "temporary, transitional and special provisions"? "If it became permanent, does that mean there is a provision of the constitution, besides the basic structure, which lies even beyond the amending power of Parliament"? Sub-clause 3 of Article 370 clearly provides for a process by which it can be de-operationalised; thus, it was very difficult to suggest that "Article 370 has such a permanent character that it can never be amended."

Sovereign is India

So much so, the bench had in unequivocal terms observed that "surrender of J&K's sovereignty to India was 'absolutely complete' with the accession of the former princely state in October 1947"; that "one thing is very clear that there was no conditional surrender of sovereignty of J&K with India"; that "once sovereignty was absolutely vested in India, the only restraint was on the power of Parliament to enact laws (in respect of the state), but one thing is clear; the sovereignty of J&K was ceded completely to the Union of India..." Similarly, the Chief Justice's observation about the same arguments put forth again and again by the petitioner's counsel that the "bench (has) reached a level of mental saturation" and the question that "can the constitution of federating unit rise above the source of federating unit?" had only served to suggest that the nation will win the case and the separatists would lose the case, and lose very badly.

Article 35A took away fundamental rights

And, what was no less inspiring was the Chief Justice's observation on Article 35A. Taking on the petitioner's counsels, the Chief Justice had observed that "by enacting Article 35A, they (in this case the Nehru Government) took away fundamental rights of equality, liberty to practice profession in any part of the country and even granted immunity from legal challenges and the power of judicial review."

We will survive if nation survives

The Chief Justice had made several other observations which clearly suggested that for him and the Supreme Court, the issue of national security was the fundamental issue. "We are conscious of the fact that these are matters of national security. We understand that ultimately, preservation of the nation itself is the overriding concern...let's face it, whether it's a state or UT, all of us survive if the nation survives. If the nation itself doesn't survive, there is no relevance of state or UT...Should we not give that allowance to Parliament to postulate that for a certain period, in the interest of the preservation of the nation itself, in the interest of preservation of the Union itself, we want, for a certain stipulated period, that this particular state (J&K) should go in the fold of UT," the Chief Justice, for example, had observed while endorsing the point of view of the government on the issue of statehood, and not endorsing the arguments advanced by the petitioners' counsels on the same issue.

Besides, the bench didn't make any observation when the Solicitor General told it that "Ladakh will remain a Union Territory" and that it was for the Election Commission of India and J&K's election office to take a decision on assembly elections

Other significant observations

Observations like "Article 370 has self-limiting character" and "this is also very odd to say that you must own a property to 'get permanent resident status' (in J&K as) it would be difficult to get documents of 1927" had further served to reassure the nation that things were moving in the right direction. These observations were made by the Chief Justice and Justice Khanna, respectively, while reflecting on the nature of Article 370 and Section 6 of the J&K Constitution and Article 35A, which doesn't find place in the main body of the Indian Constitution.

SC and disturbed Kashmiri autonomists

But these constitute only a few of several such observations made by and questions put by the apex court during the course of hearing. All of them were inspiring. That perhaps was the reason that frustrated, desperate and out-on-the-

limb Kashmiri separatists and hardcore communalists like Omar Abdullah and Mehbooba Mufti had to invoke God, Lord Ram and Lord Krishna and appealed to them to help them get back Article 370, Article 35A and statehood status and reunite Ladakh with Kashmir: Mehbooba Mufti and Sajad Lone had even gone to the extent of questioning the very credibility of the constitutional bench and its approach.

Mehbooba Mufti had, among other things, said: "Fortunately, we still have some faith in the Supreme Court of this country: I want to appeal to people that the country believes in the principle 'Raghukul reet sada chali aayi, pran jaye par vachan na jaye'. I am not talking about those who kill in the name of 'Jai Shri Ram' and lynch in the name of 'Jai Shri Ram'. I am talking about those of the majority community people who believe in 'Ramchandra ji', his vachan (promise) that 'Raghukul reet sada chali aayi, pran jaye par vachan na jaye' so I think that 'vachan' is on trial today in the Supreme Court...It is not just a legal issue for me; it is an emotional issue for the people of J&K...Now the Supreme Court has to decide whether they want to play the role of Lord Krishna or Dhritarashtra. If they want to play the role of Krishna they have to see whatever wrong things happened with us after the abrogation of Article 370. If they don't see this then like Drishtrashtra they have covered their eyes."

Omar Abdullah had, inter-alia, said: "We are fighting and we are there with a hope for justice. We have not left any stone unturned; we engaged the best lawyers and their performance was appreciated by all...Win or loss is in the hands of God. A human being can only try and we did not leave any stone unturned. Now, we should pray to God to give us success."

As for Lone, he, inter-alia, had said: "I am disappointed, not because of J&K, but partly because of the judiciary. This is the highest pedestal of the judiciary and if it asks a question and the answer is the same and as ambiguous and evasive as it was four years ago, then I think it is a matter of concern...No timeline was given by the BJP-led Centre regarding restoration of statehood or holding the assembly polls in J&K and even the arguments presented were political and not legal. 'These are very specious, fallacious arguments' and I hope and pray that legality prevails, justice prevails and as has been apparently observed in the highest court, constitutional challenges are decided on the basis of what is written in the constitution and not on the basis of these other arguments that are political in nature."

Spurious, untenable arguments

That the nation would win hands down and the separatists would suffer a humiliating defeat had also become clear from the arguments the petitioners' counsels, including Kapil Sibal, Gopal Subramaniam, Rajeev Dhavan, Dushyant Dave, Zaffar Shah, Shekhar Naphade, Sanjay Parikh, PC Sen, CU Singh, Nitya Ramakrishnan, Menaka Guruswamy, Gopal Shankarnarayan and Manish Tiwari, had advanced. The reason: Their concept of India and on India; their concept on state and of state; their concept of nation and on nation; their concept of sovereignty and on sovereignty; their concept of internal autonomy and on internal autonomy; their concepts of secularism, federalism and democracy and on secularism, federalism and democracy; and their concept of border and on border were all flawed and divisive. So much so, one of the petitioners' counsels invoked Bengal partition in 1905 and the Indian Councils Act of 1919, and the Government of India Act of 1935 to make his point as far as reor-

ganisation of J&K was concerned.

Lord Curzon had partitioned Bengal on communal lines in 1905 to pit Muslims against Hindus and the 1919 and the 1935 Acts were passed by the British Parliament also to pit one Indian community against another and sowed seeds calculating to breaking India into smithereens.

The truth, in short, is that their whole approach was highly communal, divisive, and not holistic. That it was so could be seen from the fact that not even one petitioners' counsels even once referred to the aspirations, needs and compulsions of the Hindu-majority Jammu province and three out four regions of Ladakh (Leh, Nubra and Zaskar) -- all overwhelming Buddhist. They only considered over 99 per cent Muslim-dominated Kashmir the sole factor in the region's socio-religious and political situation. They were so biased, irrational and undemocratic.

Effective counter

On the contrary, the country's top law officers, including Attorney General R Venkataramani, Solicitor General Tushar Mehta and Additional Solicitor General KM Nataraj; Kamn Agarwal, Additional Advocate General, J&K; and the counsels of other respondents such as senior advocates Harish Salve, Rakesh Dwivedi, Mahesh Jethmalani, V Giri, Binal Jad and Gurukrishna Kumar interpreted the relevant laws in the manner they should have been. Their approach was both constitutional and nation-centric and humane. They put forth their arguments in a very effective manner to highlight the baneful influence of Article 370 and Article 35A on the state polity and on the country's polity. They highlighted the sufferings of women of J&K, Hindu and Sikh refugees from Pakistan, refugees from PoJK and Kashmir - all victims of Article 370, fanaticism and the politics of exclusiveness. Besides, they called the bluff of the petitioners' counsels and put the concepts of sovereignty, federalism, secularism and democracy in right perspective and defended the August 2019 reform scheme in a very effective manner.

Nation's splendid victory

Indeed, the Supreme Court's verdict would go down in the history of integration of states as a crowing triumph of the suffering nation and a humiliating defeat of separatists of all varieties. And, the full credit goes to Prime Minister Narendra Modi and Home Minister Amit Shah, who had the will and the capacity to do what they did on the eventful August 5-6, 2019. What the Narendra Modi Government did in August 2019 and what the constitutional bench did on December 11 must be construed as a floral tribute to Dr Shyama Prasad Mookerjee The Martyr: The landmark judgement would certainly help the Union Government check fissiparous tendencies in different parts of the country and further protect and promote the nation's sovereignty.

No wonder then that the nation hailed the SC's verdict as its splendid victory and defeat of separatists and half-separatists in Kashmir and their ultra-secular supporters outside Kashmir:

Kashmiri reaction

That the votaries of greater autonomy, self-rule and dialogue with Pakistan, including Omar Abdullah, Mehbooba Mufti, Sajad Lone, Ghulam Nabi Azad and others of their ilk, were religiously bound to denounce the SC's verdict was a fore-gone conclusion and they did it. Hence, it is hardly necessary to reflect on what they said. Suffice it to say that they are in a state of shock as the SC put stamp on the Modi Government's reform scheme.

Bridging Gaps for a Healthier Tomorrow: Celebrating Universal Health Coverage Day

Theme 2023: ‘Health for All: Time for Action’

■ DR NEHA CHOUDHARY



Historical Perspective:

The concept of Universal Health Coverage (UHC) has deep historical roots, evolving alongside the progress of societies and their recognition of the fundamental right to health. Although the idea of providing healthcare for all has been present in various forms across cultures and civilizations, the modern understanding of UHC gained prominence in the 20th century.

The groundwork for UHC was laid after World War II when the international community recognized the importance of access to healthcare as a basic human right. The United Nations' Universal Declaration of Human Rights in 1948 explicitly acknowledged the right to a standard of living adequate for health and well-being, setting the stage for broader discussions on healthcare access.

The importance of primary healthcare as a means to achieve health for all and address the social determinants of health was also emphasised in the Alma-Ata Declaration of 1978. This declaration marked a global commitment to equity in health and laid the foundation for subsequent initiatives promoting universal coverage. The World Health Organization (WHO) has played a crucial role in advocating for UHC, providing technical assistance and guidance to countries striving to establish inclusive health systems.

Significance of December 12th - Universal Health Coverage Day: 12th, December 2012, saw a historic unanimous resolution passed by the United Nations, emphasizing the importance of UHC. This resolution urged governments around the world to commit to providing affordable, quality healthcare to all. It is the annual rallying point for the growing movement for health for all.

By designating Universal Health Coverage Day, the global community aims to raise awareness about the importance of UHC and mobilize collective action towards its achievement. It serves as a moment for reflection on progress made, challenges faced, and the ongoing commitment required to ensure that everyone, regardless of their socio-economic status, has access to essential healthcare services.

Understanding Universal Health Coverage:

Universal Health Coverage envisions a world where everyone, regardless of their socio-economic background, has access to the healthcare they need without facing financial hardships. It encapsulates a comprehensive range of health services, including preventive, promotive, curative, and rehabilitative care. UHC is not just a goal; it is a commitment to building resilient health systems that leave no one behind.

The Role of Community Medicine:

In our pursuit of UHC, the role of community medicine becomes paramount. Community medicine serves as the bridge between healthcare providers and the communities they serve, focusing on preventive measures, health education, and community-based interventions. By addressing the unique health challenges within specific populations, community medicine plays a crucial role in



ensuring that the benefits of universal health coverage reach every corner of society.

Barriers to Achieving Universal Health Coverage:

- Financial Barriers:** Many individuals, especially those in low-income or marginalized communities, struggle to afford essential healthcare services. Implementing effective strategies to eliminate financial obstacles, such as out-of-pocket expenses, is crucial for UHC's success.
- Geographical Disparities:** Remote or underserved areas often lack access to basic healthcare facilities, making it essential to bridge these gaps and ensure equitable distribution of health resources.
- Health Workforce Shortages:** In many regions, there is a shortage of trained healthcare professionals, including doctors, nurses, and community health workers. Strengthening the healthcare workforce and ensuring their equitable distribution is vital for providing comprehensive health services to all.
- Infrastructure and Technology Gaps:** Access to modern healthcare infrastructure and technology is unevenly distributed globally. Addressing these gaps requires investments in healthcare facilities, telemedicine, and digital health solutions to reach populations in both urban and rural settings.
- Health Education and Awareness:** Lack of health education and awareness is a significant barrier to achieving UHC. Many communities may not be well-informed about preventive measures, early detection of diseases, and the importance of seeking timely medical care. Education campaigns are essential to empower communities to make informed health decisions.

Opportunities in Achieving Universal Health Coverage:

- Technological Advancements:** Rapid advancements in technology, including telemedicine, mobile health applications, and electronic health records, present opportunities to overcome geographical barriers. These innovations can improve healthcare delivery, especially in remote areas.
- Collaboration and Partnerships:** Global collaboration and partnerships among governments, non-governmental organi-

zations, academia, and the private sector can amplify efforts to achieve UHC. Shared knowledge, resources, and expertise can address challenges more effectively and promote sustainable healthcare systems.

3. Community Engagement: Empowering communities to actively participate in their healthcare decisions is a key opportunity. Community-based initiatives, health education programs, and involving local leaders can enhance awareness and encourage proactive health-seeking behaviours.

4. Innovative Financing Models: Exploring innovative financing models, such as social health insurance, public-private partnerships, and outcome-based funding, can help mobilize resources efficiently. These models can contribute to sustainable funding for health systems.

5. Preventive Healthcare Strategies: Prioritizing preventive healthcare measures can reduce the burden on healthcare systems. Investing in vaccination programs, health screenings, and health promotion can lead to early detection and management of diseases, preventing long-term healthcare costs.

6. Policy Advocacy and Reform: Advocating for supportive health policies and reforms is essential. Governments and policymakers play a critical role in creating an enabling environment for UHC by implementing regulations, allocating budgets, and fostering a health system that prioritizes accessibility and quality of care.

Global Solidarity:

Universal Health Coverage Day is a reminder of the global solidarity required to achieve this ambitious goal. It calls for collaborative efforts among governments, healthcare professionals, academia, and the private sector to overcome the barriers preventing millions from accessing essential health services.

A Call to Action:

As we mark Universal Health Coverage Day on December 12th, 2023, let us renew our commitment to building a world where health is a right, not a privilege. Let us advocate for policies that strengthen health systems, allocate resources wisely, and prioritize the most vulnerable among us. It is only through collective action that we can make significant strides towards achieving health for all.

Conclusion:

Universal Health Coverage is not just a concept; it is a shared responsibility that requires dedication, innovation, and collaboration. This Universal Health Coverage Day, let us amplify our efforts to ensure that no one is left behind in the journey towards better health and well-being. Together, we can build a future where universal health coverage is not just an aspiration but a reality for every individual, in every community, and across the globe.

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