

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 1099 OF 2019
AND
OTHER CONNECTED MATTERS

IN RE.: ARTICLE 370 OF THE CONSTITUTION

SANJIV KHANNA, J.

A judgment is a decision which gives reasons to arrive at and reach the conclusion. We have two judgments.

2. The judgment of Hon'ble Dr. Justice D.Y. Chandrachud, the Chief Justice, is scholarly and it elaborately annotates the complex legal issues. The judgment authored by Hon'ble Mr. Justice Sanjay Kishan Kaul pragmatically demystifies the factual and legal position. Both judgments are in seriatim and uniformly agree that Article 370 of the Constitution of India was a feature of asymmetric federalism and not sovereignty. Article 370 was enacted as a transitional provision and did not have permanent character. The abrogation of Article 370 does not negate the federal structure, as the citizens living in Jammu and Kashmir do and will enjoy same status and rights as given to citizens residing in other parts of the

country.¹ Paragraph (2) of C.O. 272 by which Article 370 was amended by taking recourse to Article 367 is *ultra vires* and bad in law, *albeit* can be sustained in view of the corresponding power under Article 370(1)(d). Most importantly, Article 370 has been made inoperative in terms of clause (3) to Article 370. Lastly, C.O. 273 is valid.

3. I find it difficult to state that I agree with the reasoning in one and not the other. I, therefore, respectfully concur with the two judgments. However, I would add with particularisation.
4. Dr. Justice D.Y. Chandrachud has elaborately examined and interpreted the power of the President of India under Article 356 of the Constitution of India and disseminated the opinions of Mr. Justice B.P. Jeevan Reddy and Mr. Justice P.B. Sawant in **S.R. Bommai and Others v. Union of India and Others**.² Reference can also be made to **Rameshwar Prasad and Others (VI) v. Union of India and Another**.³ I respectfully agree.
5. I also agree with the observations recorded by Dr. Justice D.Y. Chandrachud taking record of the statement on behalf of the Union of India for restoration of the statehood of the Union Territory of

¹ See Paragraph 5.

² (1994) 3 SCC 1.

³ (2006) 2 SCC 1.

Jammu and Kashmir, while upholding the creation of the Union Territory of Ladakh.⁴

6. Union Territories are normally geographically small territories, or may be created for aberrant reasons or causes. Conversion of a State into Union Territory has grave consequences, amongst others, it denies the citizens of the State an elected state government and impinges on federalism. Conversion/creation of a Union Territory from a State has to be justified by giving very strong and cogent grounds. It must be in strict compliance with Article 3 of the Constitution of India.

7. Mr. Justice Sanjay Kishan Kaul has explained the effect of Article 370(3) and why it continued to operate after dissolution of the Constituent Assembly of the State. I respectfully agree with the detailed reasoning given by Mr. Justice Sanjay Kishan Kaul on this aspect.

.....J.
(SANJIV KHANNA)

**NEW DELHI;
DECEMBER 11, 2023.**

⁴ Mr. Justice Sanjay Kishan Kaul has noted alike.