
REVIEWING THE “ABROGATION OF ARTICLE 370 & SPECIAL STATUS IN JAMMU AND KASHMIR”

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ABSTRACT

The state of Jammu and Kashmir gained particular constitutional rights by Article 370 which distinguished it apart from other Indian states in terms of administration and governance. Unlike other Indian states, it had its own flag, constitution, and administrative system that monitored the majority of day-to-day affairs. This special status encompassed citizenship, property ownership, and even basic rights, all of which were governed by laws significantly different from those governing the rest of India. The provision vitally provided the legislative body of Jammu & Kashmir a greater power simultaneously limiting the Parliament’s capacity to implement regulations for the whole of the state. The condition worked as a mechanism to guarantee that the citizens of the region were to withhold full sovereignty along with any regulations concerning them that would only take effect with their due approval. As a result, the Indian Parliament had little state legislative authority. Subject to certain limitations, the state legislature was empowered to enact legislation pertaining to citizenship, property ownership, and basic rights. Hence, these regions differed from the remaining parts of the country.

In order to understand the repeal of “Article 370”, it is necessary to examine the historical background and how the people of Jammu and Kashmir (J&K) were affected, examining the many opinions held by people in J&K throughout the revocation of Article 370 and acknowledging a wide spectrum of beliefs and experiences. And examining how attitudes towards their unique status and related legal restrictions have changed among J&K residents over the years after independence.

This paper offers a comparative analysis of the repeal of “Article 370 in Jammu and Kashmir (J&K)”. It explores the background history of the abrogation, looks at the legal system and its general complexities, and does a thorough analysis of the effects that followed for the area. The research’s specific goal is to be a useful tool that clarifies the following: The background and importance of Article 370 in J&K, the political and legal

aspects of the abrogation procedure and the complex effects of the repeal on several facets of J&K as a region. This analysis will be valuable for readers seeking to gain a deeper understanding of this complex and significant event in Indian history.

1. CHAPTER 1: INTRODUCTION

Historically, the region of “Jammu and Kashmir” was substantially contrasting the rest of India and in a large view, its geographical, cultural, and psychological factors. ¹Jammu and Kashmir are located in the northern region of the Indian subcontinent. It is 68,000 square miles (180,000 km²) in magnitude. “China's Xinjiang” and Tibet to the north and east, “Afghanistan's Wakhan Corridor to the northwest”, Pakistan's Khyber Pakhtunkhwa and Punjab to the west, and India's Himachal Pradesh and Punjab to the south) are the region's boundaries. Perched in the valleys of the Himalayas, Jammu and Kashmir is a segment of India in South Asia that is both intricate and volatile. It was formerly a princely state that is now split along the Line of Control, with Pakistan claiming the north and west and India controlling the southern part.

²Kashmir's terrain is mainly mountainous. Mainly, it is crossed by the Western Himalayas. The Himalayas come to an end at Nanga Parbat, located along Kashmir's western border. The Indus, Jehlum, and Chenab rivers all pass through Kashmir. The area is divided into three valleys by these river basins, which are spaced apart by tall mountain ranges. The north and northeast of the region, which includes the barren and bleak mountains of Baltistan and Ladakh, were formed by the Indus valley.

The region of Kashmir, situated at the base of the majestic Himalayas, boasts abundant and fertile land that holds immense promise for agricultural endeavours. This bountiful land in Kashmir yields a rich variety of agricultural produce, encompassing essential food staples, a wide assortment of vegetables, and a plethora of delectable fruits. Moreover, Kashmir stands as the leading producer of flowers in all of India, with a particular emphasis on the cultivation of exquisite tulips and the highly esteemed saffrons. Additionally, Kashmir has established a notable presence in the realm of silk and wool production, further showcasing its multifaceted capabilities.

¹“[https://en.wikipedia.org/wiki/Jammu_and_Kashmir_\(union_territory\)#:~:text=The%20southern%20Jammu%20region%20is,flowing%20through%20the%20Jammu%20region](https://en.wikipedia.org/wiki/Jammu_and_Kashmir_(union_territory)#:~:text=The%20southern%20Jammu%20region%20is,flowing%20through%20the%20Jammu%20region)”

²“[https://en.wikipedia.org/wiki/Jammu_and_Kashmir_\(union_territory\)](https://en.wikipedia.org/wiki/Jammu_and_Kashmir_(union_territory))”

³Beyond its agricultural potential, the stunning Kashmir valley also possesses promising prospects in the realms of gas and oil, thereby presenting a diversified scope for economic growth and development. In essence, the region of Kashmir harbours an abundance of resources and opportunities that span across various sectors, rendering it a region of immense significance and potential.

Leaving the topographical structure behind we emphasis presently on how Jammu and Kashmir was granted special autonomy within India in 1949 under Article 370, which also included a separate flag, constitution, and limited central government supervision. Though its complexity and interpretations generated conflicts for decades, this clause was intended to be transitory in order to satisfy concerns over Kashmiri identity and accession.

⁴It's important to note that this special status was a complex and contested issue, with diverse perspectives on its historical context, implications, and eventual abrogation. Examining the repeal of Article 370 requires going all the way back to the beginning. We need to investigate the reasons behind its original construction as well as the intricacies and historical setting. To find the reasons and arguments against and for the repeal of special status in the state.

The primary objective of this investigation is to determine whether the 2019 presidential decree that revoked Article 370 of the Indian Constitution is constitutionally legitimate. Whether the people of Jammu and Kashmir want the state's constitutional relationship with the Union of India to be changed.

What is “Article 370”?

⁵Ayyangar N. Gopalswami was the founding drafter of Article 370. The Article 370 was implemented to grant Jammu and Kashmir a special status and other specific rights allowing it to keep its own separate constitution independent from the Indian constitution. Article 370 of the Indian Constitution grants a large measure of autonomy and power over internal matters to Jammu and Kashmir. It was implemented to keep Kashmir’s native life shielded of

³<https://jkrajbhawan.nic.in/AboutUs.html>

⁴https://en.wikipedia.org/wiki/Article_370_of_the_Constitution_of_India#:~:text=Article%20370%20acknowledges%20the%20special,for%20the%20state's%20permanent%20residents “

⁵<https://pwnlyias.com/article-370-of-the-constitution-of-india#:~:text=Article%20370%20acknowledges%20the%20special,employment%2C%20not%20available%20to%20others>”

discrimination. Due to the special status the local population possessed dual nationality and benefited from specific arrangements. This also led to the state having a distinct flag, constitution of its own and the legislative powers resided with the separate government of Jammu and Kashmir.

⁶While the provisions of Article 370 were put into effect in 1949, Jammu and Kashmir (J&K) acquired a special and contentious stance amid the Indian Union. It attempted to address the region's challenging political and religious circumstances in the years following India's 1947 segmentation. Independent from the Indian Constitution, the constitutional framework of J&K restricted the legality of national legislation. Article 370 of the Indian Constitution was a temporary provision that gave the state of Jammu and Kashmir unique status.

⁷Article 370 was formulated in “Part XXI of the Indian Constitution” under the title “Temporary, Transitional and Special Provisions”. It implied that “the Constituent Assembly of Jammu & Kashmir” would be endowed with authority to endorse the proportion to which the “Indian Constitution” would put into practice to the state. Article 370 has been the domain of quarrel amid the countries of India, Pakistan and China subsequent to the year 1947.

Historical Background:

Maharaja Hari Singh, the then ruler of the State, referred to the situation in the state to the people, as represented in their Praja Sabha, and it was recommended that only on the basis with respect of accepting the Instrument of Accession by the State, and the government recognized that this was conditional on reference to the people, would it be right to hold the state's accession to India. On October 26, 1947, the Maharaja signed an “Instrument of Accession” for the State, which was similar to that executed by governors of various princely states.

⁸But in the case of Jammu and Kashmir, there were certain peculiar features, partial aspects which had been anticipated by the negotiations between certain representatives of the State and

⁶<https://pwonlyias.com/article-370-of-the-constitution-of-india/#:~:text=Article%20370%20acknowledges%20the%20special,employment%2C%20not%20available%20to%20others>”

⁷<https://pwonlyias.com/article-370-of-the-constitution-of-india/#:~:text=Article%20370%20acknowledges%20the%20special,employment%2C%20not%20available%20to%20ot> “

⁸ https://en.wikipedia.org/wiki/History_of_Kashmir

the Government of India. The Government of India made it clear that the accession should be on the terms agreed upon by the National Conference and the State's widely representative institutions and announced that an accession not based on the freely expressed will of the people would not be recognized and accepted.

During the first half of the first millennium, the region of Kashmir flourished as a major centre for Buddhism and then for Hinduism. A number of Hindu kingdoms predominated the region from the seventh to the fourteenth century, which contributed to the expansion of Kashmir Shaivism. The Shah Mir dynasty, formerly referred to as Salatin-i-Kashmir, came into existence in 1339 when Shah Mir was crowned as the first Muslim monarch of Kashmir. From 1586 to 1751, the vicinity was a part of the Mughal Empire after which, it was a province of the Afghan Durrani Dynasty until 1820.

⁹Four centuries of Muslim dominance under the Mughals and the Afghan governance ultimately came to an end in 1819 once the Kashmir Valley had been taken over by the Sikh army headed Ranjit Singh of Punjab, replacing the Durrani Empire of Afghanistan. The arrival of Sikh rulers in certain regions of India, following the Afghan rule, was met with mixed reactions from the population. While some, particularly those who had experienced harsh treatment or discrimination under the Afghans, might have welcomed the change with hope for better governance and religious tolerance, others may have remained wary or neutral, unsure of the new regime's intentions.

While geographically distant from the Sikh Empire's capital in Lahore, Kashmir did experience aspects of harsh rule under Sikh governors. Some policies, like the death penalty for cow slaughter, closure of the Jamia Masjid, and restrictions on the adhan, were viewed as repressive and discriminatory, particularly by the Muslim majority population. Some sources claim that high taxes had caused significant population losses in the countryside.

<https://uca.edu/politicalscience/home/research-projects/dadm-project/asiapacific-region/indiakashmir-1947-present/> “

⁹ “https://en.wikipedia.org/wiki/History_of_Kashmir “

“<https://jkplanning.gov.in/history.html>”

“<https://uca.edu/politicalscience/home/research-projects/dadm-project/asiapacific-region/indiakashmir-1947-present/> “

At this point, Kashmir had also started to attract European tourists, many of whom complained about the Sikhs' astronomical tariffs and the extreme poverty of the region's large Muslim population. In 1770, the Sikhs got control of Jammu, a state that had been rising since the fall of the Mughal Empire. Maharaja Ranjit Singh eventually captured it completely in 1808. When Gulab Singh was still a young man living in the House of Jammu, he joined the Sikh army and over a period of time gained prominence and authority by standing out during battles. He was crowned the Raja of Jammu in 1822.

¹⁰When the First Anglo-Sikh War began in 1845, Gulab Singh managed to keep himself under the radar until the battle of Sobraon (1846), when he surfaced as Sir Henry Lawrence's appreciated counsel and an influential negotiator. The hill lands between the rivers Beas and Indus were first given to the British by the State of Lahore (West Punjab), in exchange for one crore indemnity; later, the British gave Gulab Singh all of the hilly or mountainous territory in exchange for 75 lakhs. "The Princely State of Kashmir and Jammu", as it was originally known, was created between 1820 and 1858 and brought together a number of regions, religions, and ethnic populations. It was drafted by a treaty and a bill of sale. Ladakh was ethnically and culturally "Tibetan" to the east and its residents followed Buddhism; Jammu, to the south, was home to a mixed Sikh, Muslim, and Hindu society.

The vast majority of people in the densely populated central Kashmir valley were Muslims, predominantly Sunnis, but there was also an obscure but significant "Hindu minority", the brahmin "Kashmiri Pandits". The 1941 British census of Kashmir revealed a stark demographic disparity, with Muslims comprising 77% of the population, Hindus representing 20%, and the remaining 3% consisting of Buddhists and Sikhs. This numerical reality was set against a backdrop of socioeconomic inequalities, where a limited Hindu elite held power over a large and disadvantaged Muslim peasantry for nearly a century. Debt, limited education, and lack of awareness of their rights kept the majority Muslim population in a state of subservience, further exacerbated by the absence of political representation until the 1930s. This complex social dynamic came to a head in 1947 with the impending partition of British India. Hari Singh, the Hindu Maharaja of Kashmir, faced a critical decision as the British withdrew their sovereignty. The demographic composition of his state and the growing political aspirations of the Muslim majority added layers of complexity to his choice. Leaders of the Muslim conference made the

¹⁰ <https://www.britannica.com/place/Kashmir-region-Indian-subcontinent>

suggestion that Maharaja and Maharani should depart the state in order to free the constituent assembly from Dogra dynasty oppression. However, the agreement between the leaders of the Congress and the National Conference did not exclusively declare that Yuvraj Karan Singh would become the state's ruler and that "Maharaja Hari Singh Ji and Maharani Ji" would temporarily evacuate the state and all state matters for an indeterminate period of time.

¹¹The sooner it was realised that the British were going to evacuate India and princely states had to be members of the dominion of Pakistan or that of India. Furthermore, a similar proposition was given to "Maharaja of Jammu and Kashmir", "Hari Singh Ji". But "Maharaja Hari Singh Ji" agreed to a status quo agreement with both "Dominion of India and Pakistan" conclusively giving rise to a means of upkeeping the state of Jammu and Kashmir an independent State. Tragically, the standstill agreement with Pakistan was short-lived, and in early September 1947, local tribal militias from Pakistan, supported by the Pakistan army, conducted significant infiltrations into parts of Mirpur and Poonch district. Maharaja Hari Singh Ji corroborated this in his letter to Lord Mountbatten 7 dated October 26, 1947.

¹²In his letter, Maharaja Hari Singh described in detail the dire situation in Jammu and Kashmir. The maharaja of Jammu and Kashmir demanded military and crucial government supplies from India in his letter. Jammu and Kashmir was a landlocked state located between Pakistan, India, China, and the Soviet Union (then). Prior to 1950, Jammu & Kashmir relied largely on Pakistan in all aspects of its economy. Because there were no direct highways connecting Jammu Kashmir and India at the time, they had to pass through Lahore (Pakistan). In the letter, the Maharaja said several times that he chose a standstill arrangement, which Pakistan approved, and that the Indian government has requested that the matter be discussed. This event demonstrates that the Pakistani government has acknowledged Jammu and Kashmir as an independent country to a great extent. All of these processes were smooth, but Pakistan has an edge over Jammu and Kashmir in terms of military, civil, and political advantages. Pakistan broke the standstill agreement in early September 1947 by assisting local tribal groups in Pakistan.

¹¹<http://gnanaganga.inflibnet.ac.in:8080/jspui/bitstream/123456789/327/1/Nar%20Narayan%20Mahadev%20Singh.pdf>

¹²<http://gnanaganga.inflibnet.ac.in:8080/jspui/bitstream/123456789/327/1/Nar%20Narayan%20Mahadev%20Singh.pdf>

The infiltration was so widespread that the invaders reached the outermost parts of Srinagar. They cut off the whole power supply to Srinagar by capturing control of the Mohor power building, which was later destroyed by similar invaders. This prompted invaders to massacre the native inhabitants who stood in their path. The infiltrators used every method, including motor vehicles, to go to Srinagar via the Muzaffarabad route. They were all outfitted with contemporary weaponry, which no typical tribe would have unless provided by the government. In the last days of 1948, a cease-fire was established under UN supervision. The UN-mandated participation in elections, however, was never carried out, and as a result, relations between India and Pakistan worsened, resulting in hostilities over Kashmir between the two nations in and before 1999. India presently controls a significant portion of the first princely state of J&K, which includes Jammu and Kashmir and Ladakh (both now union territories). Pakistan, on the other hand controls a one-third area of this region which is further divided into two parts namely, Azad Kashmir and Gilgit-Balistan. J&K and Ladakh formed a single state until 5th of August 2019 when the state's status and its restricted autonomy was repealed by the Indian Government.

Chapter 2: Reasoning behind Article 370

¹³Kashmir, was a princely state under the British Paramountcy with a Muslim majority population. In 1947, the then ruler of the state, “Maharaja Hari Singh”, was considering whether to assent to India, Pakistan, or to remain independent. In an effort to delay making a decision, one of his Prime Ministers, Ram Chandra Kak, urged the Maharaja to institute a standstill agreement with Pakistan. This was unacceptable to India - particularly under the influence of Home Minister Sardar Patel - who insisted that a more firm tie with India was in their best interests. This was also the popular sentiment amongst a significant portion of the population - in particular amongst the educated and political leaders.

The Maharaja was slow to take action on this, spending time in negotiations with each dominion. Reports of incidents of violence in Poonch and protests in the valley led to the Maharaja seeking military assistance from India. The Pakistani Government also sought to send support to the Muslim rebels in the Northwest Frontier Province, and tribal groups were

¹³“<https://www.indiatoday.in/news-analysis/story/kashmir-situation-article-370-history-1578495-2019-08-08>”
“<https://www.indiatoday.in/history-of-it/story/article-370-adopted-indian-constitution-jawaharlal-nehru-hari-singh-gopaldaswami-ayyengar-sheikh-abdullah-2476190-2023-12-15>”

spontaneously formed to move into Kashmir - which ultimately led to an invasion. Fearing the inability of his own forces to repel the invasion, the Maharaja signed an “Instrument of Accession” to the Union of India.

This was formalised through the acceptance of the Instrument of accession, and consultative meetings between the Maharaja and political leaders that resulted in the issuing of the J&K Constituent Assembly and subsequent drafting of the state’s own constitution. The Kashmir conflict arose due to an independent decision made by “Maharaja Hari Singh”, who finalised an “Instrument of accession” with the Indian government on October 22nd, 1948, with the aim of joining Kashmir with India. The intention behind this decision was to escalate the internal conflict within Kashmir. However, Maharaja Hari Singh's decision contradicted the desires of the majority of Muslim Kashmiris, who expressed their preference to join Pakistan. The integration policy, which has faced opposition from the majority of Kashmiris, has garnered a favourable response from the Indian government. This can be observed through the enactment of Article 370 in the Indian Constitution, which bestowed a special status upon Kashmir in 1948. Pakistan deemed India's acceptance of Kashmir's inclusion, followed by the implementation of Articles 370 and 35A in the Indian Constitution, as a violation of the Referendum of Louis Mountbatten. Consequently, this resulted in four separate instances of open warfare between India and Pakistan, occurring in 1947, 1965, 1971, and 1999. The state of Kashmir was engulfed in intense turmoil, which compelled Raja Gulab Singh to beseech the Indian government for assistance in maintaining control over the internal conflict that had erupted.

In a bid to address and resolve the escalating dispute, Maharaja Hari Singh and the Indian government signed an arrangement for the instrument of accession. This pivotal agreement interpreted that if India were to successfully quell the conflict, Kashmir would consequently be incorporated into the Indian nation. It is noteworthy to mention that this agreement was notably one-sided, as it did not involve the participation or input of the Kashmiri people, thus serving as a catalyst for the military confrontation between India and Pakistan in 1947 .

¹⁴In the subsequent year of 1948, India surreptitiously embarked on political manoeuvres to exert its control over the region of Kashmir, adopting a strategic measure known as Article 370

¹⁴ <https://www.drishtias.com/pdf/1693343693.pdf>

of the Indian Constitution, which was decreed by the Indian Constituent Assembly. This constitutional provision, implemented in 1948, bestowed unique and exclusive status upon Kashmir. The special status of Kashmir, enshrined within Article 370 of the Indian Constitution, was effectively administered by the Governors of Jammu and Kashmir.

This privileged status allowed Kashmir with the liberty to possess its own flag, constitution, and self-governing institutions, albeit with certain exceptions pertaining to matters concerning foreign affairs, security, and communication. Furthermore, the elevation of Kashmir's privilege was further solidified through the promulgation of Article 35A, which was introduced via an Indian Presidential Order in 1954, commonly referred to as the Order of Constitutional Order No.48, and subsequently integrated as an additional article within Article 370 of the Indian Constitution (Lok Sabha, 2017). It is noteworthy to highlight that Article 35A effectively governs the parameters and outline of citizenship for the people of Kashmir, encompassing their fundamental rights, ownership of property, and administrative status. The Indian government's acceptance of Kashmir's integration, as evidenced by the enactment of Articles 370 and 35A of the Indian Constitution, was perceived by Pakistan as a brazen transgression of the principles outlined in the Referendum of Louis Mountbatten.

¹⁵Meanwhile, on November 19th, 1956, the Indian Constituent Assembly issued a constitution that definitively declared Kashmir as an integral component of India. Lastly, on January 26th, 1957, the Indian government meticulously devised an official, irrevocable transfer of authority regulation, thereby solidifying its dominion over Kashmir. The bilateral relations between the neighbouring countries of India and Pakistan underwent a significant escalation in tension during the period spanning from 2014 to 2019. This escalated state of affairs was further compounded by the implementation of a policy aimed at revoking the special status accorded to the region of Kashmir, as enshrined in Articles 370 and 35A of the Indian Constitution. For a span of seventy years, these articles had conferred upon Kashmir the authority to possess its own distinct flag, constitution, and self-governing body.

<https://www.indiatoday.in/history-of-it/story/article-370-adopted-indian-constitution-jawaharlal-nehru-hari-singh-gopaldaswami-ayyengar-sheikh-abdullah-2476190-2023-12-15>

¹⁵<https://www.change.org/p/government-of-india-remove-article-370-and-make-j-k-a-normal-integral-state-of-india>

<https://www.csis.org/analysis/indian-revocation-kashmirs-special-status>

The decision to revoke Article 370 was promulgated by the Indian Prime Minister, Narendra Modi, who hails from the Bharatiya Janata Party (BJP), on the 5th of August, 2019. The revocation of the special status of Kashmir has undeniably exacerbated the already fraught relations between not only India and Pakistan but also various separatist groups within the region of Kashmir itself.

This elaborated web of conflicting interests and historical grievances has remained for a relevant seventy-three years. Moreover, the abrogation of Article 370 was motivated by a strong aspiration to foster and enhance economic progress in the region of Jammu and Kashmir. The existence of the special status had noticeably restricted the flow of investment and hindered the overall economic growth in the area, as it had imposed significant obstacles for businesses originating from outside Jammu and Kashmir to establish themselves within the state. Consequently, the government made the decision to cut out these barriers with the intention of attracting substantial investments, engaging the creation of new employment opportunities, and ultimately increasing the overall quality of life for the inhabitants of Jammu and Kashmir. This strategic move was perceived as an indispensable step towards freeing the region from the tight grips of poverty and securing a brighter and more promising future for the residents of the region.

Research Methodology:

The association between Jammu & Kashmir and the Republic of India is governed by Article 370. It safeguards Jammu and Kashmir's autonomy in governance in addition to giving the state that autonomy.

Applying a combination of methods that are both qualitative and analytical, the current research investigates how Article 370 has been revoked in Jammu & Kashmir. The primary goal of this combined strategy is to provide a deeper understanding of the socio-political repercussions, legal mechanisms, and historical background of this significant incident.

The research relies heavily on written sources such as books authored by respected scholars, essays, and articles published in national and international journals and various online platforms containing information on the same subject. Consequently, secondary data formed the foundation of this research.

Chapter 3: Establishment of Article 370 in Jammu and Kashmir

Article 370 was introduced in the Indian Constitution as a temporary provision. This Article embodied the provision of special status to Jammu and Kashmir, and it was drafted in a way that ensures that this special status could never be changed.

¹⁶All the provisions of the Constitution that were appropriate to other states were exempted to J&K unless the J&K government agreed to this. The powers of the state government to decide in these areas were absolute and rigid. The state's own constituent assembly was the only body that could decide or had the authority to amend or abrogate Article 370. So the situation was that Article 370 could never be changed if the state government did not want it to be changed. The President of India could not revoke Article 370 if the state government did not interfere or asked.

He could only do so at the request of the state's constituent assembly otherwise not. So, it was said that the Article, in principle, could be changed at the discretion of the state government and that the provision only existed as long as the state's constituent assembly did not approve of it.

¹⁷But, Article 370 became permanent and it was self-contradictory as it implemented that the state was a part of India, yet, it was not and it mentioned that the article is only temporary, but it was not made so. For other states, the Union territories of India, Article 370 was merely a temporary provision that granted the state of Jammu and Kashmir joined the Union of India. When the Constitution Assembly was dispersed, it effectively became a dead letter. Up until 1965, the state government did ask that the provision be erased, yet, it never was. In *State Bank of India v. Santosh Gupta* (1881) 6 SCC 556 and later the AIR 2017 SC 2420 [*SBI v. Santosh Gupta*], the Supreme Court has held that Article 370 has been eroded/watered down to a great extent and that the Article has lost its efficacy.

¹⁶<https://www.aljazeera.com/news/2019/8/5/kashmir-special-status-explained-what-are-articles-370-and-35>
“<https://www.legalserviceindia.com/legal/article-863-legal-history-of-article-370-and-35a-and-current-status.html>”

¹⁷<https://testbook.com/ias-preparation/article-370-indian-constitution>”

State Bank of India v. Santosh Gupta (1881) 6 SCC 556 “<https://lawtimesjournal.in/state-bank-of-india-v-santosh-gupta-and-ors/>”

As a result of seeking accession, Maharaja Hari Singh established a special relationship with India under which only the areas of defence, foreign affairs, and communications were to be the responsibility of the Dominion of India. After the Instrument of Accession was signed, India established Jammu and Kashmir as a constituent unit of the Union through an appointed/elected Constituent Assembly to frame a Constitution for the State. The Constituent Assembly assembled in 1951 and enacted the Jammu and Kashmir Constitution which, among other minor things, legalised the accession and extended the jurisdiction of the Indian Union to the State.

Abrogation of Article 370 and its political journey

On the 5th of August in the year 2019, an announcement was made by Shri Amit Shah, the Union Home Minister of India, regarding the repeal of Article 370 and Article 35-A of the “Indian constitution”. These articles accorded a unique and privileged status to the state of “Jammu and Kashmir”.

It's vital to take notice of the fact that “Article 35-A” was not originally a segment in the Indian constitution when it was initially adopted in the year 1949. But it was subsequently incorporated into the “Constitution of India” through a “Presidential Order” in 1954, through consent of the State government at that time. This decision holds significant implications for the political and legal landscape of “Jammu and Kashmir”, as it effectively alters the framework within which the state operates. The abrogation of Article 370 and Article 35-A has generated widespread discussion and debate regarding the future of Jammu and Kashmir and its relationship with the Indian government. The implications of this decision reach far beyond the immediate political sphere, as it has the potential to impact the lives and rights of the residents of Jammu and Kashmir. Therefore, it is crucial to closely examine the historical context, legal implications, and potential consequences of this significant constitutional change. The abrogation of Article 370 and Article 35-A has sparked a range of reactions, both within India and on the global stage. The decision has been met with support from some quarters, who argue that it will promote a sense of unity and integration within the country. On the other there are those who view the move as a violation of the rights and autonomy of the people of Jammu and Kashmir. This dichotomy of perspectives highlights the complex nature of the issue at hand and the need for a critical understanding of its various dimensions. In conclusion, the abrogation of Article 370 and Article 35-A of the Indian constitution,

announced by the Union Home Minister of India, Shri Amit Shah, on August 5, 2019, has significant implications for the state of Jammu and Kashmir. The decision to revoke these articles has sparked intense debate and discussion, as it alters the legal and political framework within which the state operates. The ramifications of this constitutional change extend beyond the immediate political sphere, affecting the lives and rights of the residents of Jammu and Kashmir.

¹⁸ “Article 370(3) provides that the President of India has the powers to amend or repeal the Article by issuing a notification, based on a recommendation of the Constituent Assembly of J&K. The President of India signed the Constitution (Application to Jammu and Kashmir) Order 2019, issued on 5th August 2019 regarding Article 370(1), under which all the provisions under Article 4 of the constitution of India would be applicable to Jammu and Kashmir. Jammu and Kashmir Constituent Assembly would be read as Jammu and Kashmir Legislative Assembly. Similar changes to Article 370 have been done in the past as well. Now since the President's rule is in force in the State, implementation of Article 370 would cease to exist when the President of India issues the notification in this regard.” So the President on the recommendation of the Parliament of India declared that as from August 6, 2019, all clauses of the Article 370 shall cease to be operative.

The revocation of Article 370 elicited a wide range of reactions and diverse perspectives across India, which can be analysed from different angles. The abolition of Article 370 is seen as a necessary step to address the problem of terrorism and insurgency in the region. Jammu and Kashmir's special status has allowed separatists to flourish and trigger unrest in the region. Lack of integration with the rest of India hampers the central government's efforts to effectively address these security challenges. By abrogating Article 370, the government seeks to strengthen security measures and improve coordination between central and state agencies to effectively combat terrorism and insurgency.

Chapter 4: What led to the abrogation of Article 370?

Circumstances leading to the abrogation of Article 370

¹⁸ Press Information Bureau, Government of India (August 6, 2019). Ministry of Home Affairs Government of India last accessed 14th Jan 2024

¹⁹The whole move was prompted by three fundamental elements: political, security, and constitutional. The political factor was to find an enduring answer for the Kashmir struggle which had since a long time ago decayed Srinagar-Delhi relations and held the Valley hostage, while improving the probability of Kashmiris living in harmony with themselves and others. The security factor was to solidify Indian authority over the entire region of Jammu and Kashmir, discovering a solution to Pakistan's territorial covetousness, while nullifying the migration of Pakistan-supported aggressive activists into Indian Kashmir.

The constitutional thought was to nullify Article 370 and any extra sacred arrangements/disparities that indicated a partitionist structure in Jammu and Kashmir, restoring a feeling of public solidarity and fairness inside the differing social districts of India. This move was an aftereffect of weighty political pushing that came promptly following the public political race results in Jammu and Kashmir during the time of April-May 2014.

The New Delhi government needed to locate a lasting answer to end the Indian state's conventional vulnerability towards the troublesome region. A decline of the security circumstance and expanding monetary chances furnished the New Delhi with a hopeful situation contrasted with past years to take on the ultimate problems. An extensive examination of the historical and legal challenges that resulted in the 2019 abrogation of Article 370, Krishnadas Rajagopal highlights the legal context surrounding this important determination, demonstrating how various factors contributed to the decision.

²⁰One of the most important legal challenges addressed by Rajagopal, the determination of the legality and constitutionality of the abrogation of Article 370, presents the various legal difficulties associated with this action. Indeed, one such circumstance recounted by the Chief has taken the position that an amendment to an interpretation clause of the Constitution was in fact invalid and unconstitutional; while addressing a separate topic altogether, his perspective illustrates the legal morass that surrounded this decision.

¹⁹ <https://www.legalindia.com/history-of-article-370-of-the-indian-constitution/> <https://testbook.com/ias-preparation/article-370-indian-constitution>

<https://youtu.be/hX6pIQD8CnU?si=ApuyoTtizE1lifki>

²⁰ <https://cjp.org.in/article-370-and-the-hindu-right/>

<https://unfoldlaw.in/article-370-a-timeline/>

<https://youtu.be/hX6pIQD8CnU?si=ApuyoTtizE1lifki>

Moreover, the pivotal role of the "concurrence" of the state government in the abrogation of Article 370 was deemed as a crucial element, underscoring the complex political dynamics that shaped the course of action. The Union's strategic manoeuvre to effectuate the abrogation of the provision through two Constitutional Orders, CO 272 and 273, stands as a clear demonstration of the multifaceted and nuanced approach adopted in this transformative process, showcasing a meticulous attention to detail and legal procedures.

The decision to revoke Article 370 was not merely a unilateral action but rather a carefully orchestrated process that navigated through a labyrinth of legal, political, and constitutional considerations, making it a watershed moment in the annals of Indian history. By dissecting the historical context, legal implications, and socio-political repercussions of this momentous event, this study endeavours to offer a comprehensive and holistic analysis of the diverse dimensions surrounding the abrogation of Article 370, shedding light on the intricate tapestry of factors that shaped this controversial decision and its aftermath. Justice SK Kaul's focus on adhering to established procedures and preventing clandestine alterations sheds light on the careful legal considerations that underpinned this ruling. Also, the choice to abolish Article 370 was also shaped by historical incidents like the addition of the Seventh Schedule in the Constitution, which aided in the assimilation of J&K into India and set the stage for the elimination of Article 370.

Political Factors in concern

The change in the viewpoint of the ruling party at the Centre was a major determinant when one views the intentions behind the abrogation of Art. 370. The Bharatiya Janata ²¹Party (famously known as BJP) in its election manifesto for the 2019 Lok Sabha elections was very clear on its agenda to integrate the State of Jammu and Kashmir with the Union of India. It promised to do so in order to ensure economic development, better governance, social justice and welfare for the people of the state. It was of the view that Art. 370 had led to political violence in the region, and was discriminatory against the residents of J&K. This change in the outlook and the stand of the ruling party could have shown a change in the general viewpoint of the people of Jammu & Kashmir, who have been ruled by Art. 370 for over 6 decades,

²¹ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1694784>
<https://timesofindia.indiatimes.com/india/3-factors-which-helped-narendra-modi-govt-to-abolish-article-370-on-kashmir/articleshow/70549481.cms>

although the same cannot be said definitely considering BJP won 3 out of the 6 Lok Sabha seats from J&K in the 2014 elections. An analysis of the intention behind the move could lead to the conclusion the political mood was right for revocation of the special status, when India as a nation seems to have developed a consensus on the issue. This is a far cry from the situation in 1964 having regard to the Sikri Proposal; which was a proposed attempt to regionalize the Centre-State relationship in India at the behest of the then Prime Minister of India Jawaharlal Nehru had failed due to inherent lack of consensus in the same.

Chapter 5: How did the abrogation of Article 370 impact the political landscape?

The revocation of Article 370 in 2019 brought about a dynamic change in the political scenario of Jammu and Kashmir, triggering a significant transformation that remained across the region. By taking this firm action, the unique status granted to the region under the Indian Constitution was removed, and all constitutional provisions were applied to Jammu and Kashmir without any room for exceptions or modifications as directed by the President. The abrogation of Article 370 represented a momentary departure from the temporary nature of the article, clearly symbolising a permanent and irrevocable transformation in the constitutional structure of the region, with far-reaching implications for its governance and autonomy.

However, the power dynamics between the central government and the state experienced a major shift after this action, as the Chief Justice of India Chandrachud highlighted. This marks a definitive alteration in the authority and influence over the governance of Jammu and Kashmir. The abrogation of Article 370 represented a pivotal milestone in the journey towards complete integration, as it signified the universal applicability of all provisions of the Indian Constitution in Jammu and Kashmir, heralding a definitive and irreversible transformation in the political landscape of the region.

Delving into the trajectory that culminated in this decision and comprehending its far-reaching implications are imperative steps in navigating the intricate dynamics of the Kashmir conflict and its reverberations for the future. The decision to abrogate Article 370 emerged as a bold and contentious step undertaken by the Indian government in the month of August 2019, aimed at fostering a deeper integration of Jammu and Kashmir with the rest of the nation and redressing the longstanding issues prevalent in the region. Despite being positioned as a measure to spur development, attract investments, and bolster security in the area, the move

encountered considerable backlash from various quarters, who perceived it as an encroachment upon the region's autonomy and a challenge to its distinct identity.

²²The intricate political journey that preceded the abrogation encompassed intricate negotiations, extensive consultations, and meticulous legal procedures, wherein the government contended that the removal of Article 370 would pave the way for progress, economic growth, and enhanced security in the region. Conversely, detractors raised valid concerns pertaining to democratic principles, human rights considerations, and the entitlements of the populace in Jammu and Kashmir, underscoring the multifaceted nature of the discourse surrounding this significant decision.

Subsequent to the abrogation, a diverse spectrum of reactions emerged, with some embracing the change as a positive stride forward while others voicing discontent and exhibiting resistance to the altered status quo. The region witnessed a surge in security measures, imposition of communication restrictions, and constraints on movements, fostering an environment fraught with heightened tensions and palpable uncertainty.

The multifaceted ramifications of the abrogation spanning political, social, and economic realms continue to unfold, with stakeholders articulating disparate perspectives on charting the course ahead. The abrogation of Article 370 carries profound implications for the political terrain of India and the region of Jammu and Kashmir, ushering in new prospects for governance structures, developmental initiatives, and peace-building endeavours within the region. Nevertheless, it has also engendered apprehensions concerning the democratic ethos, human rights standards, and the trajectory of the Kashmir conflict, underlining the imperative need to scrutinise these applications and use cases to gauge the repercussions of this monumental decision.

²³Similar actions taken in other regions of the world where special status or autonomy has been removed can be comparable to the abrogation of Article 370. The choice is comparable to those

²² <https://www.deccanherald.com/india/what-changed-in-kashmir-in-four-years-after-abrogation-of-article-370-1243830.html>

<https://timesofindia.indiatimes.com/india/abrogation-of-article-370-what-has-changed-in-jammu-kashmir/articleshow/105911175.cms>

²³ <https://indianexpress.com/article/explained/explained-politics/four-years-after-removal-of-art-370-political-changes-in-jk-8877207/>

<https://timesofindia.indiatimes.com/india/abrogation-of-article-370-what-has-changed-in-jammu-kashmir/articleshow/105911175.cms>

made in areas where there are territorial conflicts, ethnic tensions, and separatist movements.

Examining these analogies and associated ideas can shed light on the consequences of these acts and how they affect stability, governance, and conflict resolution.

Obstacles, Restrictions, and Prejudices:

Article 370's repeal is not without its difficulties, restrictions, and prejudices. Discussions over constitutionality, legitimacy, and the rights of Jammu and Kashmir's citizens have been triggered by the Supreme Court's decision. Concerns exist on how it may affect minority rights, federalism, and democracy in the area. It is crucial to acknowledge these difficulties, obstacles, and stereotypes while considering the choice and its effects. Jammu and Kashmir's repeal of Article 370 generated discussions, debates, and controversies that have altered the political and constitutional landscape of the territory. Although the move was made with the intention of integrating J&K more fully with India, it has raised questions over the region's autonomy, demography, and human rights. Subsequent studies must concentrate on the long-term consequences, results, and implications of this important decision.

The Security Concerns in the frame

The purchase of land and changing the demographics of the state is always a top concern in Jammu and Kashmir. The good part of abrogation is that the state, and now the union territory of Jammu and Kashmir and Ladakh, has the same status as any other state and union territory of India. This means that the people from Jammu and Kashmir and other states are the same in the eyes of the law and no one can transfer or acquire land in Jammu and Kashmir. But this may lead to silent frustration among the people of the rest of India, and some people may still try to change the scene to make it enabling for the transfer and acquisition of land by people from the rest of India. Then there are chances of getting hasty and irrational decisions to pass laws to enable the land transfer and acquisition in Jammu and Kashmir. If that happens, the same would become a cause of another emotional turmoil in the state at some time.

India has deployed a very large number of security forces in Jammu and Kashmir. There were sometimes more security forces than separatist militants in the state. It is estimated to be around 6-10 lakhs of security forces. Anything from the centre used to be a reason to deploy more security forces to the state. An increase in security forces always leads to an increase in

operations and arrests by security forces, which helps in alienating people from the government and can increase local support for the militants. Also, these forces made Article 370 a hollow promise.

The Constitutional Legality

The exercise of the power under Article 370(3) by itself is not unconstitutional. Under clause (3) of Article 370, the President may, by public notification, declare that this article shall cease to be operative, or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification. This action is not in its essence unconstitutional. The Article 370 (3) gives the discretion to the President to decide whether to continue the special status of the State with regard to the Indian Union. This ²⁴power is to be exercised on the satisfaction of the President, independent of any formal or factual situation which may be proved at any later stage, the subjective satisfaction of the President is the fulcrum of Article 370 (3). The proviso further clarifies that before such an order is issued, the entire situation shall be put before the State's Constituent Assembly if in place before a formal decision is taken on the question whether legislative consultation will suffice the requirements of Article 370(1)(d) or whether a Constituent Assembly shall be convened to recommend the abrogation are questions of political jurisprudence. But the requirement brought therein by the statutory Presidential Order dated August 5, 2019 (105 C.O 105) is seeking to replace the theory of the representatives of the State with a fresh consensus of the actual sovereign power i.e. the people. This is evident from the resolution adopted by the two Houses of Parliament and the assent granted thereof by the President.

Chapter 6: Evaluation of the article

At the same time, Article 370 was added in the Indian Constitution, making a unique & temporary provision which gave special autonomy to the state of Jammu and Kashmir. Also, giving power to the state to introduce their own constitution and to the state was drafted and adopted the same are only individual rights within the state where in adherence to the

²⁴<https://clpr.org.in/blog/unraveling-the-supreme-courts-verdict-upholding-the-abrogation-of-article-370/#:~:text=In%202019%2C%20through%20Constitutional%20Orders,Kashmir%20of%20its%20special%20status>

instrument of accession their power to legislate was subject to the will of the people from J&K. The special status also barred non-Kashmiris from purchasing property in the state and all the benefits of the state government were given only to the permanent residents of the state. The loss of special status and autonomy is considered as the main blow to the residents of J&K, since the autonomy and state's own constitution was the reason why integration of Kashmir with India was never quite satisfactory.

The subsequent lack of understanding and awareness which resulted from the codification of Article 370 and the autonomy which the state got has raised it to a level of infallibility, that the people of the state began to believe that it is not only a matter of practice, but the autonomy provisions have become so permanent that they form explicit ²⁵legal ties between India and J&K. The Abrogation of Art 370 is not merely the removal of a few provisions, it has wide and far-reaching implications. It is considered as a death nail to the special status of J&K, ending its autonomy and it makes a complete integration of the state within the territory of India. The abrogation changes the constitutional relationship of the state with the Centre.

It came after the elected government of J&K was dissolved and the state was kept under a governor's rule for several months. Coming down hard against the separatist leaders, one year prior to the abrogation, the centre revoked the semi-autonomous status of J&K and all the privileges under article 35A by an order, the Jammu and Kashmir Reorganisation (Adaptation of State Laws) order 2019. Article 35A was added as a special provision relating to the state of J&K. It empowers the state to define permanent residents of the state and give him special rights and privileges. The abrogation of Article 370 is reflected in its duplication in the Constitution (Application to J&K) Order 2019.

Scope and Outcomes

The last and final amendment is the proviso to Clause 3. This provision is the only exception in the entire scheme of Article 370, and it is still in force. The effects of all the above-mentioned changes have not abrogated it. The provision is that the constituent assembly of the state, before deciding the matters referred to in Clause 3, shall be deemed to be the state government of

²⁵ An analysis of the abrogation of Jammu and Kashmir's special status by Swati Jha International journal of political science and governance-Vol. 5, Iss: 1, pp 279-281
<https://www.scobserver.in/journal/history-in-service-of-the-present-the-article-370-judgement-and-its-discontents/>

Jammu and Kashmir. This actually reiterates the power of the constituent assembly then in existence and contemplates a political settlement regarding the relationship between the state and the Indian Union. The exact implications are remote, and the provision apparently does not clearly lay down the exact scope and the nature of the terms a future political settlement is a speculative subject, and any speculation thereof and effect on the state today is included in this provision or derogates it has to be debated. This provision has come under the scanner time and again, and calls have been made for it to be a part of the constitution of India proper as constitutions have no temporary provisions. But this is a matter which shall refer back to the exact implications of Article 370 and is beyond the scope of this work.

The effects of erosion of legislative autonomy are further aggravated by the mechanism provided for the adoption and application of union laws in the state. The state has a constituent assembly which has functioned as its legislative body. It was on the ²⁶recommendation of this assembly that the Maharaja had issued the instrument of accession, and the matter of the acceptance of the same is still a matter of debate. But long story short, the consensus is that the ratification of the instrument of accession by the constituent assembly is deemed to be final, and the conditions laid down are incorporated in Article 370. Now, the constituent assembly no longer exists, and the power to determine the will of the people of the state has been transferred to the Jammu and Kashmir legislative assembly. So, on the recommendation of this assembly, the president now has the power under Clause 3 to declare that Article 370 shall cease to be operative or shall be operative only with the exceptions and modifications as the union

the government may specify. The latter has the effect of turning the provision of the matter now in the hands of the state legislative assembly to adopt a resolution for the continuance of the provision and the state law. Now, if no effect is given to the concurrent resolution from the state, the earlier provision of the matter has an indirect connotation that the union law will now apply. This is evident from the state president's letter in 1965 to Yashwantrao Chavan. He had called for the continuance of the interstate reciprocal recruitments for the services and posts connected with the union because the matter was now under the scope of the concurrent list.

²⁶ An analysis of the abrogation of Jammu and Kashmir's special status by Swati Jha International journal of political science and governance-Vol. 5, Iss: 1, pp 279-281
<https://www.scobserver.in/journal/history-in-service-of-the-present-the-article-370-judgement-and-its-discontents/>

He was hinting at the possibility that this would now be done under the union UPSC. This was, in fact, clearly explained a few years later by the then CM Ghulam Mohammed Sadiq to N D B Kamath.

As mentioned earlier, every statute that provides an authorization requires an intensity. The intensity of this provision is very high because here the parliament has been given the power to legislate in the matters of the union list and concurrent list, which actually amount to erosion of the autonomy of the state. This is because it is only in case of the non-availability of the said legislation in the state that the union law will apply, and in case the law is not repugnant, the state law will still continue to hold the field. So, the effect of this provision is that the union laws will now apply to the state in all the matters covered by the union and concurrent list. This has the effect of completely erasing the line of control between the legislative powers of the union and state because the state law, in case of a repugnancy as modified or adopted under Article 370, will now be in consonance with the union law on that subject.

Chapter 7: The Special Status of Jammu & Kashmir

²⁷Since the decision of India to become a republic in 1950 and the commencement of its constitution, the relationship of Jammu and Kashmir with the Union of India has been on a peculiar strain. Although the original instrument of acceptance gave a choice for accession to either of the dominions, it was the conferment of powers on the maharaja by the people under the Legislative Act of 1947 to decide the accession which led to subsequent events and the development of a republic as the successor of the Indian dominion. This event of 1950 and the ratification of accession have been the underlying factors which put Jammu and Kashmir on a different footing in relation to other states of the Union of India.

The special status is traced back to the instrument of accession executed in October 1947, Maharaja Hari Singh, ruler of Jammu and Kashmir, sought Indian military help against an intrusion of tribesmen. Though India was ready to extend help at that time, the maharaja signed the document as well as a standstill agreement with Pakistan to maintain pre-existing legal and

²⁷ <https://pwnlyias.com/article-370-of-the-constitution-of-india/>
<https://thewire.in/security/kashmir-article370-abrogation-success-security>
<https://edukemy.com/blog/to-what-extent-is-article-370-of-the-indian-constitution-bearing-marginal-note-temporary-provision-with-respect-to-the-state-of-jammu-and-kashmir-temporary-discuss-the-future-pros/>

constitutional relationship with Pakistan. After the situation quietened, to ascertain the wishes of the people, political affiliation of which was uncertain, the constituent assembly, which came into existence by an election, was a representative of the people and its resolutions were validated by the elected representatives. The state government and the constituent assembly convened in the strength of circumstances proclaimed its desire to remain part of the dominion.

Dynamics with the Indian Constitution

The Government of India Act 1935 (which was the governing document for the British in India at the time) was adopted by the newly independent India and Pakistan as the initial framework for their respective constitutions. The 1935 Act was in force in India until the Indian Constitution was established on January 26, 1950. Since the Maharaja of Kashmir was not inclined to accede to either India or Pakistan, it was suggested that both countries would respect the Maharaja's decision - a conditional accession.

The Government of India, still in existence today, asserts that Kashmir's accession to India is valid because it was in accordance with the Government of India Act 1935. Prior to the independence of India in 1947, British colonial rule allowed for the Princely States to remain semi-autonomous entities under indirect colonial rule. When the British²⁸ decided to leave India, each Princely State was given the choice to join India, join Pakistan, or remain independent. Kashmir was one such of the Princely States.

Chapter 8: Arguments for the abrogation of the Article 370

Abrogating Article 370 is also the first step towards the reorganisation of the state. This provision has given the State of Jammu and Kashmir a separate constitution and a considerable degree of independence in framing its own laws. Due to this, some central laws are not applicable to the state and it is often referred to as autonomy. This arrangement has contributed to a sense of alienation in certain sections of the state and regions, especially in Ladakh and Jammu. The people in these regions are of the opinion that they have been discriminated against by the Kashmiri political elite. Since they see themselves as an integral part of the State of

²⁸ <https://edukemy.com/blog/to-what-extent-is-article-370-of-the-indian-constitution-bearing-marginal-note-temporary-provision-with-respect-to-the-state-of-jammu-and-kashmir-temporary-discuss-the-future-pros/>
https://en.wikipedia.org/wiki/Revocation_of_the_special_status_of_Jammu_and_Kashmir#:~:text=The%20Bahujan%20Samaj%20Party%20and,the%20revocation%20of%20Article%20370.

Jammu and Kashmir, they have not demanded a separate state, but they have often resented the policies which they saw were detrimental to their interests. The Ladakhis and Jammuites see the abrogation of Article 370 as an opportunity to finally escape the hegemony of the Kashmiri political elite.

These are the various arguments for the abrogation of Article 370 in Jammu and Kashmir.

Abrogation of Article 370 would be a step towards the integration of the state into the territory of India. Article 370 had its historical background. It was Sheikh Abdullah who persuaded Pandit Jawaharlal Nehru to grant special status to Jammu and Kashmir, so that it could help in preventing the alienation of the people of the state. But over the years, it has been observed that instead of integrating the state into Indian territory, this article led to the separatism and intensification of Pakistan-sponsored insurgency. This was because Article 370 was the validation of the two-nation theory that the Muslims had a distinct identity and thus needed a special status. This article also created a psychological barrier that the people of Jammu and Kashmir were not truly the citizens of India. And the separatists successfully convinced the people of the state that due to Article 370, the union of India was an occupier and that the people here have yet to decide their future. Thus, the abrogation of this article would remove Pakistan's pretext to meddle into the affairs of the state and help in nullifying the separatism and insurgency.

- **Incorporation of Jammu & Kashmir**

²⁹The constitutional arrangement of Art. 370 fully supports the view that accession was only a provisional acceptance. This article made the rest of the provisions of the Instrument of Accession apply to J&K only with the concurrence of the state Constituent Assembly. This state's Constituent Assembly has been construed to be the legislative body and government of the state in different periods by various judgments of the Supreme Court, but only the presidential order of 1957 saved its judgement of any dispute with the Union, followed by a law passed by the state replacing the Sadr-I-Riyasat with the Governor, made the actual difference. With the dissolution of this assembly on 21-1-1957, it left J&K in a state of frozen

²⁹https://en.wikipedia.org/wiki/Revocation_of_the_special_status_of_Jammu_and_Kashmir#:~:text=The%20Bahujan%20Samaj%20Party%20and,the%20revocation%20of%20Article%20370
<https://jkrajbhawan.nic.in/AboutUs.html#:~:text=On%20January%2026%2C%201950%2C%20when,Constituent%20Assembly%20of%20elected%20members>

politics and governance. A misconception widely exists that Art. 370 is a gateway between the state and Union and thus its revocation would automatically integrate J&K with the Union, but actually it is a tunnel and has been a beneficial trap for the state's leadership to maintain its separate identity. Revocation of Article 370 has long been opposed because of the uncertain but potential consequence it holds for accession. This could only be settled, with the views of people actually ascertained, aggravated through public demand in the backdrop of contrasting interpretations given by the Union and its appointments in different situations, and the leadership thereof very well wishes to safeguard the same in any such test. Accession is still a contested issue with Pakistan since the King had signed the Standstill Agreement with Pakistan on 12-08-1947 and acceded to it on June 15, 1949, so a referendum is theoretically quite relevant. But besides, if a fair choice is to be given between the past and present situation and those amendments Clause (3) of Art. 370 lying as dormant provision for the Acts and orders passed about specific matters and with the consent of the state, especially quality education, employment, and treatment for its youth, to re-enact them later with slight modification and the article itself, the preference would undeniably be in favour of the latter.

Impact of the disparate constitutional status of J&K on its citizens has been both direct and disastrous. At the time of signing the Instrument of Accession, besides matters specified in the Instrument of Accession, nothing was the governing consideration. But soon, the popular local government headed by Sheikh Abdullah was superseded by a ³⁰nominee chosen by the Maharaja without reference to the people, leading to the spread of discontent and resultant aggression. After the Indian government took issue on the refutation of such a popular government and sought the Maharaja's consent to a referendum or plebiscite to ascertain the will of the people, the Maharaja declined fearing a negative result.

- **Touching upon the regional imbalances**

Therefore, in a regional context, the very practical and far-reaching effect of this provision has been the perpetuation of a special set of privileges in favour of certain sections of the population - determined according to the state subjects rule operative in the State on 14th May, 1954. This has resulted in the exclusion of many persons who migrated to Pakistan from the state in 1947,

³⁰ <https://clpr.org.in/blog/unraveling-the-supreme-courts-verdict-upholding-the-abrogation-of-article-370/>
<https://jkrajbhawan.nic.in/AboutUs.html#:~:text=On%20January%2026%2C%201950%2C%20when,Constituent%20Assembly%20of%20elected%20members>

from the possibility of being considered as state subjects now, and in the misfortune suffered by many others who had to leave the state for Pakistan in crossing the line of actual control in 1948 and 1949, of losing their properties and means of livelihood in the state, and having now no hope of going back there to join the rest of the population of the state in a movement towards equality with the citizens of other states of India. This has also affected the application of the Union laws in the state, because of their being rendered inapplicable to state subjects who are not Indian citizens. If the object is to be to secure the development of a progressive and prosperous community in which there is equality of opportunity for all, it must be recognised that this cannot be promoted under the aegis of a discriminatory status based on the prerogatives of the permanent residents and the conferring of a preferential status by the development of a people of the other part of the State who are also integrated in their outlook aspirations with the rest of the nation.

It is argued that with separate laws than the rest of the country for most economic activities, Article 370 prevented the extension of central laws to the state in the matter. The state government's own official report admits it has stunted its economic, industrial, and social development. By way of just one example, it refers to impediments caused to the development of industry, investment, and employment from 1953 when major central laws like the Companies Act, the MRTP Act, the Industrial Disputes Act, and FERA were applied to the state. Even on issues concerning economic planning, the state government's official position has been that it is not bound by central plans and Planning Commission's assistance has been ad hoc, i.e. it has not contributed to any sustained increase in the investment rate in the state or its growth. Given the special sensitivities of J&K, it being a conflict state and having suffered strife and warfare, the arrangements and requirements in other special category states and areas, for example NE states, are no longer very different from what is to be found in J&K. If we compare who have been the greatest beneficiaries of special central assistance programs for underdeveloped areas, the disadvantaged regions within the special category states, or the areas of J&K, it is clearly, instead of being disadvantaged vis-à-vis the rest of the country, J&K has been treated differently even in comparison to others in similar circumstances. The continuance of Article 370 has politically and economically enervated the state.

Chapter 9: Arguments against abrogation of article 370

Argument against the abrogation of Article 370 is based on very sound legal principles. The

impregnable edifice of this Article is constructed on the basic voluntary scheme of accession coupled with solemn constitutional guarantees by the state of J&K. These ensure preservation of the identity of the people of the state. The specific terms of the promise as set out in the Instrument of Accession form the foundation on which this Article became a part of the constitution and continued to be operative.³¹

The future of the state was declared to be ultimately decided by the state's constituent assembly which was to be convened in terms of the already mentioned UNCIP resolution of August 13, 1948. Now the constituent assembly has performed its historic task and the people of the state have to validate the action of this assembly through the instrument of a referendum. This being the constitutional position, the changes brought out by the presidential order and the legislative resolutions are devoid of meaningful content. A government spokesperson while explaining the nature of the changes has admitted that the state will continue to be treated as a special category state. The only substance of the changes is a process of erosion of the autonomy of the state culminating in its virtual merger with the Indian Union. This is an exercise in gradual integration and not an alternative to the idea of plebiscite and the future freedom of the state.

- **Safeguarding the Kashmiri Identity**

³²Withdrawal of Article 370 would mean that the people of the region would lose their special status and laws which protected their rights. The revocation of this article of the Indian Constitution came with a Presidential order on August 5, 2019. Legally and constitutionally, Article 370 granted an exception to Jammu and Kashmir from the rest of the provisions of the Indian Constitution. It limited the power of the Indian Parliament in respect of J&K. Any other state of India has its own separate constitution, but that is created by the state itself. J&K'S constitution was created on the basis of Article 370 and it could not be amended easily. It was considered by the residents of the area as an attempt to change the demographic of the Indian-administered state. Economic provisions under the protection of this article were drafted to secure the economic interests of the state. Because of all these special provisions, as stated by the Supreme Court in the judgement of Prem Nath Kaul V. State of J&K, Secession is perhaps

³¹<https://economictimes.indiatimes.com/news/politics-and-nation/sc-commences-hearing-on-pleas-challenging-abrogation-of-article-370/articleshow/72454345.cms?from=mdr>

<https://www.indiandefencereview.com/news/article-370-the-untold-story/>

³² <https://www.indiandefencereview.com/news/article-370-the-untold-story/>

<https://academic.oup.com/book/26414/chapter-abstract/194811629?redirectedFrom=fulltext>

the most debated and yet the most undefined word in the political history of the world. It means areas breaking away from an existing state and becoming a separate and independent state, joining another state. Now it has to be made clear what act really constituted the secession. Under the dynamics of international law, agreements between the two parties and decisions that cause a change of territory and affect the separate political existence of a state are considered to be acts of secession. Step by step, Article 370 acted as the bargaining chip between the nation and the state. National interest and necessity favoured the absorption of the state into the Indian Union. This was apparent during the 1965 war with Pakistan, when the J&K High Court in a PIL raised the question of why Article 370 was not abrogated. Upon reflection, the state had deviated from these special provisions, which were tantamount to a test of autonomy or self-determination. This was a time when, under President Sheikh Abdullah, the state had its first MLA elections and he had made a culmination of a seventy-five-point program.

- **Autonomy and Self- Governance**

This section propounds an extensive discussion on the existing autonomy and self-governance framework in Jammu and Kashmir and its comparison with the federalism in the Indian Union. It also aims to determine whether the Jammu and Kashmir autonomy is in consonance with the federal governance framework and the extent to which its lacking can be made up for. To form a fair and reasonable legal opinion on the constitutional evolved state of autonomy in Jammu and Kashmir, it is necessary to move beyond the black and white text of the constitutional provisions. Autonomy or self-rule generally indicates the right or capacity of a constituent unit or a federal state to determine the laws and policy within its own jurisdiction. D.D Basu³³ describes it as a state that has acquired true autonomy when it has the right to change its constitution in its own way without reference to any other authority. Lord Halisham described autonomy within a unitary state in *R v Jordan*. In an ideal world, a local authority would have power to do exactly what it liked, with the confidence that indirect interference from the central

³³ <https://academic.oup.com/book/26414/chapter-abstract/194811629?redirectedFrom=fulltext>

https://main.sci.gov.in/pdf/LU/article_370.pdf

<https://www.isas.nus.edu.sg/wp-content/uploads/2024/01/ISAS-Insights-740-ISAS.pdf>

<https://www.isas.nus.edu.sg/papers/abrogation-of-article-370-an-analysis-of-the-supreme-court-verdict/>

https://www.business-standard.com/india-news/all-you-need-to-know-about-article-370-before-sc-s-verdict-on-monday-12312100090_1.html

<https://www.livemint.com/news/india/article-370-verdict-live-updates-supreme-court-jammu-and-kashmir-abrogation-of-article-370-11702255028529.html>

government would be exercised only in the last resort and in a manner of which the local authority could approve. Yet the world is not ideal and often the local authority's view of the last resort does not commend itself to the central government. Autonomy is both a constitutional and political concept, and its success depends more on the political accommodating of the powers within the constitution. A mere constitutional conferment of power does not ensure a successful exercise of autonomy, as seen in the case of Punjab, the imposition of President's rule and central direct rule carried out in an extra-constitutional manner significantly eroded the autonomy of the state.

Chapter 10: Legislative Process for abrogation

Earlier in this essay, it was discussed whether Article 370 has been deleted or abrogated. It has been concluded that the Presidential Orders have erased only the special status of J&K, as conferred by Article 370, and eroded its autonomy. The actual abrogation or deletion in Article 370 is to be done by the legislature. The legislative process for abrogation can be initiated only by the request or consent of the Constituent Assembly of the State. Since the Constituent Assembly has ceased to exist, calls for its dissolution by a resolution of the State Legislative Assembly in 1957 and, thereafter, the J&K Constituent Assembly cannot be revived. The only available body today to give the requisite consent is the State Legislative Assembly. It is essential that the State Legislative Assembly represents the will of the people. This can be ascertained by free and fair democratic elections.

Only after the constituted authority of the State has given its consent, can further steps be taken to delete Article 370. In the alternative, since the dissolution of the Constituent Assembly, there have been suggestions that the President of the State can give the ³⁴requisition or consent on the recommendation of the State Government, such recommendation being made by a resolution of the State Legislative Assembly. The recommendation of the Constituent Assembly in clause (3) of Article 370 would, in this case, have to be construed as a recommendation of the constituted authority of the State. This is so because the reference to the Constituent Assembly was in the context of the future recommendations of the Constituent

³⁴https://www.business-standard.com/india-news/all-you-need-to-know-about-article-370-before-sc-s-verdict-on-monday-123121000090_1.html
<https://www.livemint.com/news/india/article-370-verdict-live-updates-supreme-court-jammu-and-kashmir-abrogation-of-article-370-11702255028529.html>
<https://pib.gov.in/newsite/PrintRelease.aspx?relid=192487>

Assembly with reference to the power of the Union to legislate for the State. An election to a fresh Constituent Assembly for the purpose of recommending the abrogation of Article 370 is not necessary. Once the consent of the Constituted Authority of J&K has been obtained, it is a simple procedure of further Presidential Orders to abrogate Article 370. This would be regarded as an implementation of the will of the people of the State, as represented by their elected representatives, and would therefore be a truly democratic mode of abrogation.

- **Constitutional Amendments**

It has been argued that Article 370 only allows for the abrogation of the article with the consent of the constituent assembly. Since the constituent assembly is no longer in existence, it has been argued that the clause has lapsed, rendering the article permanent. However, this argument is flawed. The Supreme Court has held in more recent times that a constituent assembly is not a continuing body and has a limited tenure. Thus, the Indian Parliament, being the current representative body of the Indian people, can substitute for a constituent assembly of J&K. This would enable the Parliament to abrogate Article 370. Another argument against the abrogation of Article 370 is that it has become a part of the basic structure of the Indian constitution and is therefore beyond the amending power of the Parliament. This argument has been based upon the historical and political significance of the article, which is said to be the final and irrevocable pact between the state of J&K and the union of India. However, it is quite clear that the basic structure doctrine was never intended to be used as a tool for the preservation of individual articles of the constitution. The doctrine operates at a much higher threshold. Moreover, it would not be difficult to argue that the article is no longer tenable given the current situation of the state and its relationship with the union.

- **Parliamentary Sanction**

³⁵It will be mandatory to look into the proceedings of the Indian Parliament in both houses before the abrogation took place. Both houses of Parliament passed the Reorganisation bill before the President issued the constitutional order to abrogate Article 370. The question arises whether the bill which was passed is mandatory to alter the special status of Jammu and

³⁵<https://www.thehindu.com/news/national/full-text-of-document-on-govts-rationale-behind-removal-of-special-status-to-jk/article28821368.ece>
<https://verfassungsblog.de/the-constitutional-siege-on-article-370/>
<https://www.lexology.com/library/detail.aspx?g=525ab9d5-f69f-463d-9558-555d7d4e9633>

Kashmir. The answer is no; Constitutional amendment is not mandatory either in Article 370(1) or in any other provision to alter the legal effects of Article 370 Clause (3). The text of Article 370(3) and its marginal note make a clear distinction between the President being able to issue such notification and the manner in which the Constituent assembly may recommend abrogation or amendment of provisions of Article 370. This section of Article 370(3) empowers the President to issue a notification for the abolition or modification of any provision of Article 370 given the concurrence of the constituent assembly of the state. But before such a recommendation might come from the constituent assembly, an elected government from the state expressed its willingness for greater integration with India to achieve equal status and equal law and at the same time it conveyed that the special status might have to go.

- **Legal Complications and Judicial Review**

In spite of the completeness with which the Union government acted to bring about a change, judicial review of Article 370 is likely because of its past and the political fallout. The government and the media have made numerous statements about its unconstitutionality and/or permissibility of the State government's consultations. At no stage, it will be possible to circumvent the need to show that it is within the central government's legislative competence. Petitions in this respect will have to be dealt with at the threshold. The Supreme Court will, in the ordinary way of things, be the first forum, and the rough and ready assumption is often that the court finds ³⁶against the government, appealing to protect the individual citizens civil rights, or in political cases showing itself to be the conscience of the nation.

It is doubtful, however, that any part of the J&K Reorganisation Bill will be struck down on the grounds that it is beyond the legislative competence which the Union government purports to exercise under relevant articles of the Constitution. By multiplying the constitutional instruments through which political change can be given legal form, the Union government tries, if not always to avoid basic issues, then to give them a different appearance by changing the legal context. This is precisely what has been done by political change in Kashmir. Challenged on its constitutionality, having regard to the limits imposed on its legislative competence by Article 370, it must go to Article 3. And the answer can be that it is being told

³⁶ <https://academic.oup.com/book/11019/chapter-abstract/159379480?redirectedFrom=fulltext>
<https://www.greaterkashmir.com/op-ed-2/pre-and-post-abrogation-of-article-370/>
<https://thediplomat.com/2020/08/a-year-after-article-370s-end-a-dangerous-silence-in-kashmir/>

that the issue is about changing the legislative arrangement between Jammu & Kashmir and the Union. High political and judicial considerations of what can be done in the national interest with an intransigent article in its way can be left to another place and time.

Chapter 11: Effect of Abrogation of Article 370

With the increase in the application of central laws to the state, the erosion will further follow as these laws will inevitably begin to cover issues previously governed by laws enacted by the state legislature. This occurred in the enforcement of the Prevention of Terrorism Act 2002 and The Central Vigilance Commission (Amendment) Act 1998, which were implemented in J&K through presidential orders. The former was given a state-specific adaptation and the latter was brought in to prevent corruption in state decision making. Any changes in the governance of the state can only be justified as a necessity for the integration of the state into the union.

Presidential notifications under Article 370 have transformed the relationship of the state to the Union from the one of a special position as held under Article 370 to an ordinary state. This was most evident in the extension of the Indian Constitution in its entirety which took out the temporary character of Article 370 which required the concurrence of the State's constituent assembly to implement any changes. Articles 5, 6, and 7 of the Constitution (Application to Jammu & Kashmir) Order 1954 announced the extension of Indian citizenship to the permanent residents of the state, thereby abrogating the state's separate citizenship. This further serves to show that the special position held has already been maximally eroded.

Transformations In Governance

³⁷After the abrogation of Article 370, a number of far-reaching consequences are likely to take place. Some of the most poignant changes will be in the sphere of governance and administration. At the same time, a number of socio-political implications will come about. Some of these changes may be positive in nature while others may not be viewed as positive. Finally, while it is not possible to predict the future, an abrogation of Article 370 will serve as a turning point in J&K's economic and infrastructural development.

³⁷ <https://thediplomat.com/2020/08/a-year-after-article-370s-end-a-dangerous-silence-in-kashmir/>

Changes in Administration

³⁸On August 5, 2019, the government of India enacted legislation to abrogate the special status of Jammu and Kashmir by repealing Article 370 and Article 35A of the Indian Constitution. The state of Jammu and Kashmir is now to be reorganised as a Union Territory to be directly governed by the Union Government of India. This marks a significant departure from the semi-autonomous status enjoyed by Jammu & Kashmir with respect to the governance of its internal affairs since acceding to India in 1947. This section will analyse the changes in governance and administration between pre and post abrogation of Article 370 with reference to Indian constitutional law.

The Constitution of Jammu and Kashmir is derived from the Jammu and Kashmir Constitution Act 1939, which later received presidential assent in 1956 to provide for some amendments to the Indian Constitution to reflect J&K's special status. With the abrogation of Article 370, the special status of J&K has been removed and the Constitution of India is now applicable to the whole of the J&K region. Any provision of law in force in the state of Jammu and Kashmir immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution of India, shall cease to be effective and void. This necessarily means that the entire body of laws in J&K will be brought in line with Indian Law. This process has already begun with modifications made to the Article 35A which sought to prevent non-natives of J&K from acquiring immovable property in the state.

Socio-Political Implications of the abrogation

³⁹The widespread discontent among sections of the population in Jammu and Kashmir is very much anticipated in a stricter sense. As a precautionary measure to this, the government has already evacuated the Amarnath Yatris and tourists from the state, and reports are that there might be deployment of extra troops in the valley. The recent history of the state is witness to various long and short periods of curfews and restrictions for the maintenance of law and order.

³⁸<https://www.deccanherald.com/india/what-changed-in-kashmir-in-four-years-after-abrogation-of-article-370-1243830.html#:~:text=of%20Article%20370-,%20The%20August%205%2C%202019%20momentous%20decision%20also%20marked%20a%20drastic,the%20abrogation%20of%20Article%20370>

³⁹<https://www.deccanherald.com/india/what-changed-in-kashmir-in-four-years-after-abrogation-of-article-370-1243830.html#:~:text=of%20Article%20370-,%20The%20August%205%2C%202019%20momentous%20decision%20also%20marked%20a%20drastic,the%20abrogation%20of%20Article%20370>.

The situation that the state might experience in the days to come might resemble the emergency days. Repeated assertions by various political leaders that everything will be alright will experience an acid test as to whether the decision was indeed right and good. The high possibility of mass agitation is very much real, and considering the attitude of various leaders of the state and house arrests of some, there might be detention of various political leaders. It would not be very odd if there is a complete internet and phone blackout for some period. All these incidents might lead to regression in the way of living of people in the state trying to cope with these abrupt changes. The most evident implication could be the sense of betrayal which might prevail amongst a large section of society in Jammu and Kashmir, be it Kashmiri Muslims, Kashmiri pandits, or even the Muslims of Jammu or Buddhists of Ladakh, who might perceive this as an act of cheating with them. This may not go well for a government which has been harping on the slogan of *Insaniyat*, *Kashmiriyat*, and *Jamhooriyat* for Kashmir, and one can hardly ignore the resolution passed by the Jammu and Kashmir Constituent Assembly at the time of adopting accession to India, which says that any sort of change in the relationship of the state to India should come through the expression of the people of the state through the same assembly. The revocation of Article 370 and downgrading the state to union territory status seems in total disregard to the essence of this resolution. Abrogation of Article 370 has diverse socio-political implications for Jammu and Kashmir state, which do not simply end at approving a decision long demanded by various communities of people in the rest of the Indian Union. The scrapping of this provision by Presidential Order has come through the Jammu and Kashmir Reorganisation Bill and not only revokes the special status given to Jammu and Kashmir, allowing its own constitution, a separate flag, and autonomy to decision making, but also downgrades the status of the state by converting it into a central state/Union Territory.

Chapter 12: Economic and Infrastructural Boom in Jammu and Kashmir

⁴⁰Ever since the special provisions were granted to the Jammu and Kashmir state, it has purportedly been receiving more than 10% of the overall public expenditure with only 1% of the nation's population. This situation has not only increased the dependency of the state on the central assistance but has also over the period of time fostered corruption and inefficiency in the utilisation of these funds led to lopsided development. Now, with the UT serving only, all funds for the development will be allocated from the centre, freeing it from the state's

⁴⁰ <https://ijrpr.com/uploads/V5ISSUE3/IJRPR23428.pdf>

previous practice. This is evident from the infrastructure status of Ladakh and Jammu regions, which despite becoming part of the state of Jammu and Kashmir post-independence, continued to lag behind on various fronts. An analysis of the state of Jammu and Kashmir's economy, as well as the level of poverty in the last 60 years, compared to what it could have been, is the best measure of the lost opportunity of equal growth and development due to Article 370. Data from 1951 shows J&K's relative rank near to Bihar on poverty and per capita income, despite having a natural advantage in the form of plentiful water resources due to the state having full control over its water resources and power. These conducive climatic conditions and access to many other natural resources and huge central assistance should have resulted in better income and low poverty, but Article 370 prevented the state from realising the same. This is because not only did the centre have limited jurisdiction of planning and development in the state, but the subsequent state laws and denial of domicile and limited benefit laws didn't allow people from other areas of India to add to the state's resource of human capital. Now, with these barriers gone, we can expect people from the rest of India to invest in the state and lead to an improvement in its resources and capital. But given that the state has suffered due to Article 370, it seems more appropriate to refer to it as a lost opportunity. The most beneficial infrastructure projects key to the economic growth and social welfare of Jammu and Kashmir revolve around the construction of new roads for improved connectivity, state-of-the-art healthcare facilities, modern educational institutions, and basic amenities. New bus stands across the State save transport costs. The construction of new highways and the broadening of the existing ones improve connectivity and means of transporting goods and people.

In this way, tourism is incentivised and trade promoted. Freshly built hospitals, health care centres, and other healthcare facilities with modern technology and qualified staff ensure the general well-being of the population. Moreover, the government has raised funds to build more schools and colleges in the area. With travel restrictions potentially eased, J&K's breathtaking landscapes and rich cultural heritage are attracting a growing number of visitors. Streamlined regulations and potentially simplified land ownership processes could be contributing factors in this growth. This bodes well not just for tourism itself, but also for associated industries like hotels, transportation, and local crafts.

⁴¹In fact, newly constructed housing colonies ensure the working force has a place to stay.

⁴¹ <https://ijrpr.com/uploads/V5ISSUE3/IJRPR23428.pdf>
<https://www.earlytimes.in/newsdet.aspx?q=349516>

Fewer labourers are necessary to come from outside the State now. The education sector is another beneficiary of the development push. By improving the infrastructure of schools and colleges, the government aims to provide high-quality education to the youth. This empowers the younger generation and opens doors to a brighter future.

The changes in Jammu and Kashmir's constitutional status in 2019 have sparked significant economic shifts in the region. Proponents argue these modifications have opened doors for investment and revitalised the local economy. This is seen in the increased interest from businesses, leading to potential job creation and a rise in overall economic activity.

Another potential benefit is the closer integration of J&K with the broader Indian economy. The removal of certain barriers could facilitate the smoother movement of goods, services, and investments. This, in turn, could lead to increased trade and collaboration, fostering the establishment and expansion of businesses within the region. Overall, these developments suggest the possibility of a brighter economic future for Jammu and Kashmir.

In contrast, India and China have had similar border disputes involving the status of territory – in this situation, Jammu and Kashmir versus Aksai Chin. China is concerned about the impact of the Ladakh reorganisation for its claim to Aksai Chin, citing that it is the Galwan Valley region where Chinese and Indian forces clashed in conflict in June 2020. This resulted in 20 Indian soldier fatalities and an unknown number of Chinese casualties. However, the position of the Chinese Ministry of Foreign Affairs is that they do not recognize the Ladakh Union Territory, consider its laws to be illegal, and support Pakistan's claim to all of Jammu and Kashmir. Despite this, China's official position is rather neutral, and it has not made any immediate policy changes in its relations with India. Bilateral relations, on the other hand, have been mixed. Pakistan was quick to condemn the Indian action on Article 370 and has sought to rally international support against it.

There were fears of military action to retake Azad Kashmir or even the Siachen Glacier, which could escalate to a nuclear level. Although Pakistan has disavowed this, the situation still remains dangerous. In addition to downgrading bilateral diplomatic ties and expelling the Indian High Commissioner, Pakistan has announced a number of unilateral actions, including suspension of bilateral trade, stopping the Thar Express railway service, and stopping Pakistani airspace and land being used for Indian transit to Afghanistan. This has resulted in a situation

where both sides use the Line of Control as a weapon of first resort, and currently, there is almost daily cross-LoC shelling with significant loss of life.

Geopolitical dynamics

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United Nations and Human Rights Organisation

⁴³It is well known that the history of Jammu and Kashmir has been distressing with violence and political instability. With the presence and question of Articles 370 and 35-A, it was perceived that certain levels of autonomy were granted to the region in respect to the dispute. It was thought that altering these articles would mean the change would increase the probability of human rights violation in the region of Jammu and Kashmir. This move to abrogate Articles 370 and 35-A has caused concerns to be raised and responses to be made that there is a

⁴² <https://journals.sagepub.com/doi/abs/10.1177/00219096231192318>

⁴³ <https://scroll.in/latest/987324/j-k-un-experts-say-article-370-move-affects-rights-of-minorities-india-rejects-concerns>

probability of increased levels of violence and political instability in Jammu and Kashmir. The people of Jammu and Kashmir are also granted special privileges and immunity status with these articles, from rights to property, education, employment, and the prevention of outsiders to settle in the region. It is said that removing the articles would significantly alter the demographic, changing the Muslim majority population and denying the people of Jammu and Kashmir their rights and privileges. All of these factors led to the United Nations and human rights organisations expressing their concerns of the effect of said change on the people of Jammu and Kashmir and their human rights. India's abrogation of Articles 370 and 35-A certainly caught the attention of the United Nations and other well-known human rights organisations. Their concerns were centred on the impact of such a move on the region of Jammu and Kashmir and its people. International human rights law predetermines general agreements as to the levels of protection needed for rights. It creates mechanisms for protection and promotion of these rights, as well as monitoring violations and providing measures and resources to prevent further violation of such rights. According to international human rights law, the notion of change can violate human rights. If a state is to make a change to its legal framework, policies, or tradition, it must be certain that such a change does not increase the probability of human rights violation and put preventative measures in place to ensure the safety of its people.

Chapter 13: What was the public opinion surrounding the abrogation of Article 370?

⁴⁴The repeal of Article 370 in Jammu and Kashmir has had a significant influence on public sentiment and the ground situation in the area. The enthusiasm and expectation for this historic occasion cannot be overstated. People across the country, particularly in Jammu and Ladakh, are ecstatic with the decision to abolish J&K's special status. The government's courageous action has inspired hope and confidence in the people, who feel it would pave the path for regional growth, peace, and harmony.

Since Article 370 was repealed, the situation in Jammu and Kashmir has changed dramatically. Security personnel have been deployed to preserve law and order and safeguard the safety of

⁴⁴<https://www.thehindu.com/news/national/article-370-abrogation-case-the-hindus-detailed-coverage/article67204414.ece>

https://reliefweb.int/report/india/we-are-being-punished-law-three-years-abrogation-article-370-jammu-kashmir?gad_source=1&gclid=Cj0KCQjw8pKxBhD_ARIsAPrG45kr78hSFa3aER3j4jI45QBm0daO-vwsqj81dt8HhLWllbz1BnRjkzEaAsCnEALw_wcB

the citizens. There is a renewed sense of excitement and energy in the air as the area prepares for a new chapter in its history.

The government's attempts to restore normalcy in the region are admirable, with a variety of development initiatives underway to improve people's lives. Public opinion in Jammu and Kashmir has been mixed, with some favouring the repeal of Article 370 and others concerned about the repercussions. However, it is worth noting that the majority of people are optimistic about the future and feel that this choice will result in beneficial improvements. Many people have praised the government's efforts to empower the local populace via different social schemes and initiatives.

The repealing of Article 370 drew a variety of comments from major political personalities. Mayawati, for example, spoke in favour of the revocation, citing the social, economic, and political inequalities that have persisted in Jammu and Kashmir as a result of Article 370. She went on to suggest that repealing Article 370 would allow people in the region, especially Buddhists, to get access to benefits that had previously been denied to them. Notably, Mayawati emphasised the delight voiced by Ambedkar's Buddhist followers upon the article's repeal, indicating a sense of empowerment among specific populations in the region. In contrast, former chief minister Omar Abdullah criticised the government's action as unilateral and alarming, regarding it as a violation of trust that had been established between the people of Jammu & Kashmir and India in 1947. Abdullah's perspective offers understanding on the deep-seated feelings of betrayal and despair felt by several people of the region following the repeal of Article 370.

⁴⁵The repeal of Article 370 in 2019 was a watershed moment in the political landscape of Jammu and Kashmir, resulting in a complex web of historical, legal, and political repercussions. Krishnadas Rajagopal S extensive study highlights the heated controversy about the legality and constitutionality of this ruling. The feelings of betrayal and disillusionment voiced by certain people of the region, as underlined by Abdullah's viewpoints, shed light on the tremendous emotional impact of this constitutional amendment. The role of the court in scrutinising the process of repealing Article 370 emphasises the necessity of checks and

⁴⁵https://reliefweb.int/report/india/we-are-being-punished-law-three-years-abrogation-article-370-jammu-kashmir?gad_source=1&gclid=Cj0KCQjw8pKxBhD_ARIsAPrG45kr78hSFa3aER3j4jI45QBm0daO-vwsqj81dt8HhLWllbz1BnRjkzEaAsCnEALw_wcB

balances in the Indian constitutional structure. The necessity for "concurrence" from the state government emphasises the complex political forces at work in this process. Furthermore, the potential advantages that the repeal of Article 370 may bring to residents in the region, notably Buddhists who have long been denied certain rights, add another degree of complication to this intricate problem. Overall, the repeal of Article 370 has not only altered the political landscape of Jammu and Kashmir, but has also elicited a wide range of reactions from various political leaders, demonstrating the far-reaching ramifications of this momentous constitutional move. This discussion highlights the need for more study to investigate the decision's long-term implications, fill any knowledge gaps, and contribute to the larger conversation on constitutional law and political dynamics in India. His policy of No Plebiscite, but the meaning of Plebiscite is good evidence that the efforts of the state were gradually integrating with the union but still maintaining a separate identity.

Alterations in administrative framework and governance

⁴⁶The national government has taken initiatives to guarantee effective administration and efficient service delivery in Jammu & Kashmir. Several national plans and programmes that were previously unavailable to the region have been expanded, providing critical assistance for development initiatives and social welfare programmes. This has led to enhanced infrastructure, healthcare facilities, and educational institutions in Jammu & Kashmir.

Furthermore, the repeal of Article 370 has made room for the introduction of progressive legislation and regulations in the region. This involves the expansion of constitutional rights and laws that were previously not applicable to Jammu and Kashmir. The government has implemented efforts to defend people's rights, promote gender equality, and assure social justice in the region. This has led to a more inclusive and equal society in Jammu & Kashmir.

With the area being directly managed by the central government, policy making and execution have been more streamlined and integrated. This involves the expansion of constitutional rights and laws that were previously not applicable to Jammu and Kashmir. The government has implemented efforts to defend people's rights, promote gender equality, and assure social justice in the region. This has led to a more inclusive and equal society in Jammu & Kashmir.

⁴⁶<https://primelegal.in/2023/12/13/article-370-abrogation-contextual-framework-recent-development-and-aftermath/>

Cultural Transformation in Jammu and Kashmir

⁴⁷The changes brought about by the revocation of Article 370 extend beyond just the legal and political landscape. Jammu and Kashmir is experiencing a period of cultural exchange and integration with the rest of India. This increased interaction fosters a richer and more inclusive social fabric within the region.

⁴⁸Previously existing restrictions were lifted, allowing for the preservation and celebration of Jammu and Kashmir's unique cultural heritage. This includes its rich history, art forms, and traditional crafts. By providing a platform for showcasing these cultural treasures, the region witnesses a revival of its artistic traditions and a renewed focus on protecting historical sites.

Furthermore, the changes empower women in Jammu and Kashmir. With the extension of national laws, they now have greater protection against discrimination and violence. This translates into increased participation by women in various fields like education, politics, and entrepreneurship. This overall socio-economic empowerment signifies a positive step forward.

Security situations and changes in law and order

The changes in law and order at Jammu & Kashmir as a consequence of the abolition of Article 370. To begin, the repeal of Article 370 has had a significant positive impact on the security situation in J&K. There are now far fewer incidents of violence, allowing for a peaceful and secure environment. A number of government initiatives have created a more solid security apparatus in J&K that ensures the safety and security of people and property. Security forces have also been equipped with modern equipment and training to effectively combat terrorism and maintain law and order. Additionally, the repeal of Article 370 has allowed for the application of central laws and rules that were previously not applicable to Jammu and Kashmir. This has resulted in a stronger legal system, allowing the government to effectively address criminal activity while ensuring justice for everybody.

⁴⁷ <https://www.orfonline.org/research/life-in-kashmir-after-article-370>

⁴⁸ <https://www.orfonline.org/research/life-in-kashmir-after-article-370>

<https://timesofindia.indiatimes.com/india/jks-tourism-blooms-after-abrogation-of-article-370-report/articleshow/100646827.cms>

Abrogation's Impact on Tourism and Hospitality

The removal of Article 370 has had a substantial impact on the tourist and hospitality sectors in Jammu and Kashmir. The region is well-known for its beautiful scenery, nonviolent lakes, and rich cultural legacy, making it an attractive tourist destination. With the loosening of property ownership restrictions and the ease of conducting business, Kashmir has become easier to reach to tourists from all across the country and throughout the world. This has resulted in an increase in the number of tourists, strengthening the tourism industry and offering new work possibilities for locals. The government has made efforts to promote Jammu and Kashmir as a safe and appealing tourism destination. Several projects have been created to promote the region's natural beauty, cultural richness, and adventure tourist prospects. To keep up with rising demand, infrastructure development efforts include the building of extra hotels, resorts, and tourist amenities. Also, the government has adopted efforts to protect the safety and well-being of visitors in Jammu and Kashmir. Special tourist police units have been formed, as have tourist-friendly measures such as telephone number lines and information centres, to aid and support tourists.

Chapter 14: International Reactions and Diplomatic Implications

⁴⁹The abolition of Article 370 in Jammu and Kashmir has also had a global effect. The international world has closely followed the government's move to abolish the region's special status, with many countries expressing their views and issues.

Only a few countries disagreed with the move, claiming that it would worsen regional tensions, others have welcomed it as a step towards guaranteeing stability, peace, and economic growth in Jammu and Kashmir. The Indian government has attempted to ease foreign fears by highlighting the repeal's helpful impact, which includes the promotion of democracy, human rights, and regional economic growth. Also the repeal of Article 370 has created new opportunities for international involvement and cooperation in a variety of areas. The government is actively seeking international investments and associations to encourage economic growth and job creation in Jammu and Kashmir. As a result of growing engagement with international governments, big companies, and organisations, Jammu and Kashmir is

⁴⁹ <https://www.orfonline.org/research/kashmir-after-article-370-india-s-diplomatic-challenge>
<https://www.jstor.org/stable/27003440>

growing stronger and globally linked. These demands by UN institutions were challenged by India, as it stressed that the neighbourhood has been peaceful and that it's an internal matter and is not related to either Pakistan or any third party. India made it clear to the United Nations that there shall be no international interference and has urged its member nations to respect its stance. Indian diplomat, Vimar Sahasrabuddhe, stated that the reorganisation of Jammu and Kashmir is aimed at better delivery of social justice and development to its people, particularly in areas of health, education, and employment. He also stated that measures taken by the Indian government are temporary and that there are no changes in the boundaries with Pak-occupied Jammu and Kashmir. United Nations and Human Rights Organizations United Nations Secretary-General, Antonio Guterres, expressed concerns about recent developments on 8th August 2019 and called on all parties to exercise restraint. Also, the spokesperson for the UN Human Rights Office of the High Commissioner urged India to make sure that human rights are respected and that the rights of the people of Jammu and Kashmir to life and security are protected.

He urged that any actions taken should be in strict accordance with human rights standards. Consequent to these developments, India's neighbouring countries, particularly Pakistan and China, opposed the Indian government's decision. Pakistan, on 7th August 2019, in response to India's moves with respect to the abrogation of Article 370 from Jammu and Kashmir, decided to downgrade diplomatic ties with India and expelled the Indian High Commissioner from Pakistan. Pakistan also decided to take the matter to the United Nations and its Security Council. Pakistan's ally, China, also protested India's decision on the grounds that they were not in accordance with the legal counsel of the international community and has also taken the matter to the United Nations.

Responses from Neighbouring Countries

⁵⁰India's acceptance of the accession was based on the state's ruler taking the advice of his National Conference Prime Minister, on the emergency proclaimed by the Maharaja on the basis of the tribal invasion, and most crucially, on an Instrument of Accession executed by the Maharaja on the same day. Pakistan's claim to the state is based on the Maharaja's indecision, its contention that the popular revolt against his rule as well as the tribal invasion provided just cause for intervention, and the state's Muslim majority. On the tribal invasion, Pakistan

⁵⁰ <https://frontline.thehindu.com/cover-story/article29382230.ece>

claimed to have sent aid to local revolutionaries. The Indian Government considered sending troops at the Maharaja's request contingent on his accession. After regaining much territory through the above, Indian Government took the matter to the Security Council which in a resolution asked Pakistan to secure the withdrawal of Pakistani tribesmen, the vacation by Pakistan of the state's territory it had occupied, and the permission of the accession to India by the state's people through a fair and impartial plebiscite. This was unable to be carried out due to an UNSC resolution making the plebiscite conditional to the withdrawal of Indian forces. One cannot understand the nature of Article 370 or the mood in the Kashmir Valley today unless one takes into account the bitter legacy of Partition. In August 1947, the ruler of the princely state of Jammu and Kashmir, Maharaja Hari Singh, dithered over whether to accede to India or Pakistan. Alarmed by an invasion of Jammu and Kashmir by Pashtun tribesmen and militants from Pakistan in September 1947, he opted for the former.

Related Cases

⁵¹Anuradha Bhasin, a Kashmir based journalist who is serving as the Executive editor of The Kashmir Times started a legal action against the presiding government about the communication and media limitations and restrictions imposed in Jammu and Kashmir following the revocation of Article 370. She argued that these restrictions, which notably included the shutdown of internet services, infringed upon fundamental rights guaranteed under the Indian Constitution, particularly the right to freedom of speech and expression.

The court's ruling in this case was significant as it deemed the government's decision to indefinitely suspend internet services in Jammu and Kashmir unconstitutional. The court emphasised the paramount importance of safeguarding fundamental rights, even during periods of disputes, and concluded that any restrictions on internet access must be justified as reasonable and necessary.

This landmark judgement highlighted the significant role of the judiciary in upholding constitutional principles and ensuring that the governmental actions adhere to legal standards, particularly in contentious situations such as the abrogation of Article 370 in Jammu and Kashmir.

⁵¹ <https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/>

One noteworthy legal issue in the Article 370 abrogation conflict is the disagreement regarding the Governor's responsibility. The 2019 abrogation occurred with President's Rule in Jammu and Kashmir, which meant the Governor had legislative authority. A critical question came up: Does the Governor's authority to act as the legislative extend to changing Article 370 itself.

Participants said that this led to the Governor truly altering his own source of authority. However, the Supreme Court's December 2023 decision was based on the 1994 SR Bommai case. Bommai established the Governor's wide powers under President's Rule. The Court concluded that since the Governor could pass another legislation, he could likewise participate in the abrogation process. This interpretation by the supreme court removed a possible obstacle for the current government's step.

The Basic Structure doctrine, Article 370 and the Future of the country

⁵²A constitutional bench of the honourable Supreme Court of India held the hearings correlated to the abrogation of the Article 370 of the Indian Constitution and the classification of Jammu and Kashmir into two separate Union Territories. The Basic Structure challenge pressed onto by the petitioners, is favourably to decide the future of the nation.

The Special Status granted to Jammu and Kashmir can be explained as follows. Initially, subject to the convergence of the democratically chosen state government, the President was able to declare Article 370 applicable in whole or in partial terms with any exceptions or modifications, on a recommendation from the Constituent Assembly of the State. Let's now get into the steps taken by the central in article 370 issue. The state was under president's rule under article 370 and the same proclamation also suspended the second provision of Article 3. When put simply this meant that the legislature was dissolved and the elected state administration of Jammu and Kashmir was replaced. As a result the state's governor was given the right to perform the duties and the authority of the state government. In addition, the need to have the Jammu and Kashmir government's approval before changing the name or territory of Jammu and Kashmir was also suspended.

⁵² <https://www.theindiaforum.in/article/article-370-federalism-and-basic-structure-constitution>
<https://frontline.thehindu.com/cover-story/article29382230.ece>
<https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/>

Basic Structure Review beyond constitutional amendments

⁵³The first vision is based on a powerful and rich vein of jurisprudence, including the unanimous decision delivered by the Supreme Court's nine judges in *I.R. Coelho v. State of Tamil Nadu*, which was later developed by J. Khehar threw two of his judgments, first in the majority on behalf of four other judges and then in a separate opinion.

The Indian Supreme Court was presented with a clear decision. Either it permits the fundamental structural concept (or its "North Star" as referred to by the current Chief Justice) to guide the constitutional analysis in all governmental actions. In doing so, it supports the majority's position in the *Madras Bar Association*, which is to subject the challenged activities to a fundamental structural assessment. This, in turn, could act as a rare example of the Supreme Court being a counter-majoritarian power, as originally intended by the Indian Constitution.

Conclusion

Jammu and Kashmir never really enjoyed autonomy despite the special status and privileges bestowed upon it under Article 370. The special provision had plagued the country's integrity and prevented the affected region from progressing in the right direction. The autonomy demanded by the leaders was either misused or never translated on the ground for common citizens. From 1947-1952, the region had its own constitution which was finally abrogated on 20th August 2019. The constitution was amended several times, purportedly eroding the autonomy of the state. The sensitive issue of a separate constitution for the state and the limited application of Indian Laws in respect of Jammu and Kashmir was like a hard nut that no particular government could crack. The limited autonomy slowly transformed into the state's secessionist tendency, leading to domestic terror and radical forces on the ground. This secessionist tendency encouraged cross border terrorism, which created conflict for Indian defence forces as well as for the civil society in the state.

⁵⁴The unresolved status of Jammu and Kashmir has certainly impeded its development. Framing of laws and execution of plans for socio economic and political developments could never bear the desired results. Its people had been alienated on various fronts. This legacy of

⁵³<https://www.thehindu.com/news/national/cji-asks-petitioners-if-article-370-is-above-basic-structure-amending-powers-of-parliament/article67270435.ece>

⁵⁴ <https://www.usip.org/publications/2020/08/indias-kashmir-conundrum-and-after-abrogation-article-370>

impeded developments and alienation has unfortunately become the supposed identity for the state in which no one wants to compromise. The abrogation of Article 370 is truly a paradigmatic shift and paves the way to resolve the long pending issue of the state's status and its integration with India. The state and its people will no doubt have to traverse a rough road ahead, but the clouds of volatile history no longer hover above them. This historic step defies the state's clouded past and prepares a new canvas for its people and the coming generations.

The Future Prospects for Jammu and Kashmir

⁵⁵These criticisms add fuel to the fire and may create legal and political problems in the state. According to J.N Pandey, "Even if the scrapping of Article 370 be legally correct, the manner in which it has been sought to be done is highly questionable and has greatly undermined the position of the state, thereby raising questions on the future of its accession with the Union of India. This may significantly enhance alienation and the demand for separation. This may also lead to militancy and a long drawn legal and political turmoil within the state." This situation has various implications, domestic as well as international, and can create problems for India in the long run.

However, repealing of Article 370 has been criticised by various leaders of Jammu and Kashmir as well as Pakistan on the ground that it is against the wishes of the people of Jammu and Kashmir, it is unconstitutional and illegal, and that it has an international flavour. They also argue that the accession of the state with India is purely conditional and hence it is not possible to alter the status of the state unilaterally. Some leaders of Jammu and Kashmir argue that it is detrimental to the cause of Kashmir and it may lead to disaffection and chaos among people. Another argument presented is that it may also lead to a shift in the borders of the state in favour of China as there has been a long-standing border dispute between India and China. This would be a great threat to the unity and integrity of the state.

The present paper investigated the context of history, legal explanations and expected repercussions of this course of action. While the ultimate effectiveness of the abrogation remains to be seen, it has clearly opened in an era of significant chaos for the area. Supporters of the repeal said that Article 370 hindered Jammu and Kashmir's integration with the rest of

⁵⁵<https://www.thehindu.com/news/national/centre-on-life-in-jammu-kashmir-post-repeal-of-article-370-has-no-bearing-on-constitutional-challenge-to-the-abrogation-sc/article67066662.ece>

India. It limited the execution of central legislation, slowed economic growth, and reportedly encouraged separatist sentiment. The abrogation intended to break down these boundaries, establishing a feeling of national belonging and encouraging equal chances for the state's citizens.

⁵⁶However, opponents argue that the special status was meant to ease the concerns of the state's Muslim majority population and avoid alienation. They say that the abrogation violates these historical promises, potentially reactivating tensions and jeopardising the weak peace agreement. The legal validity of the abrogation has been much discussed. While the government claims it followed constitutional guidelines, questions have been made about a lack of involvement with the state's lawmakers and a possible violation of its autonomy. The current legal challenges at the Supreme Court are likely to impact the future understanding of this ruling. The repeal of Article 370 represents an important shift in the relationship between Jammu & Kashmir and the Indian Union. Whether it contributes to a better off and united future or worsens current conflicts is determined by the government's ability to handle the complicated social, political, and legal landscape. This thesis points out the major problems and possibilities that stood ahead. Only time will tell whether this risky move ushers in a new era of peace and growth in Jammu & Kashmir.

The abrogation of article 370 that bifurcated the state in two union territories has taken away the special status from the people of Jammu and Kashmir. This step has brought the status of the state at par with other states and union territories of India. The people are now entitled to fundamental rights guaranteed by the constitution of India.

They would also get benefits of various central schemes as well as the right to education and the right to information. They would get the reservation in the education sector and employment as provided under articles 15 and 16 of the Indian Constitution. This would help in overall development and growth of the people and bring political, administrative and economic reforms in the state.

⁵⁶ <https://www.usip.org/publications/2020/08/indias-kashmir-conundrum-and-after-abrogation-article-370>

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