

A COMPREHENSIVE STUDY OF ARTICLE 370 AND ITS CONSTITUTIONAL IMPLICATIONS

Ravi Kumar

Research Scholar

DECLARATION: I AS AN AUTHOR OF THIS PAPER /ARTICLE, HERE BY DECLARE THAT THE PAPER SUBMITTED BY ME FOR PUBLICATION IN THE JOURNAL IS COMPLETELY MY OWN GENUINE PAPER. IF ANY ISSUE REGARDING COPYRIGHT/PATENT/OTHER REAL AUTHOR ARISES, THE PUBLISHER WILL NOT BE LEGALLY RESPONSIBLE. IF ANY OF SUCH MATTERS OCCUR PUBLISHER MAY REMOVE MY CONTENT FROM THE JOURNAL WEBSITE. FOR THE REASON OF CONTENT AMENDMENT /OR ANY TECHNICAL ISSUE WITH NO VISIBILITY ON WEBSITE /UPDATES, I HAVE RESUBMITTED THIS PAPER FOR THE PUBLICATION.FOR ANY PUBLICATION MATTERS OR ANY INFORMATION INTENTIONALLY HIDDEN BY ME OR OTHERWISE, I SHALL BE LEGALLY RESPONSIBLE. (COMPLETE DECLARATION OF THE AUTHOR AT THE LAST PAGE OF THIS PAPER/ARTICLE

Abstract

Article 370 of the Indian Constitution has evolved into a complex and enduring part of governance, particularly in relation to the state of Jammu and Kashmir, from its original intent as a temporary measure. Article 370 is carefully dissected in this article, with a focus on its exclusions and their effects on the legislative autonomy of the area. Despite being considered temporary, its lasting impact has shaped a distinct political landscape, fostering sentiments of advantage and divide. Laws and constitutional principles have been applied selectively, and legislative authority has been limited, leading to tensions and worries over equality and national unity. The complexities of Article 370 and its broader implications within the Indian Constitution are concisely summarized in this abstract.

Keywords: *Article 370, Indian Constitution, Jammu and Kashmir, temporary provision, legislative autonomy, exemptions, effects, governance, equality, national unity.*

1. INTRODUCTION

Arguably the most contentious clause in the Indian Constitution, Article 370 pertains only to the State of Jammu and Kashmir, which came under the administrative jurisdiction of the Government of India following Pakistan's 15-month-long war against India in 1947 in an attempt to capture sovereignty. The British Raj in India is where Article 370 first appeared. India was split into two

distinct geographic sections before to the partition of 1947: provinces, which made up 60% of the subcontinent known as British India's land area, and princely states, which made up the other 40%. The rulers of the 562 princely kingdoms, which varied in size and population, included Princes, Maharajas, Nawabs, Rajas, and so on. At the time of independence, the subcontinent had 400 million people living in it, of which 100 million were from them. British handled these states' communications, foreign policy, and defense. However, the states were not under British direct control and were granted authority over internal affairs, including law and order, civil freedoms, health, education, and economic growth, in exchange for each state's own treaty acknowledging British "paramountcy."



Figure 1: Article 370

The British stationed company troops under the command of a British Resident in the capital of an Indian state, providing the monarch and the state with security from neighbours and usurpers. That policy called for the dissolution of political relations between the States and the British Crown and British India, respectively. With the creation of India and Pakistan, the States regained the privileges they had previously relinquished. The princely States would become "independent" upon the removal of authority since the communal foundation for British India's separation would have no bearing on the States. The only recommendation offered by the British Government and the Cabinet Mission for the Princely States' future was that they would gain formal independence. Due to competition between India and Pakistan to absorb these states, the possibility of all 562 Indian states achieving independence was jeopardized. V. P. Menon suggested that the princely

rulers be convinced to cede to the central government of India only three functions of their States: communications, defense, and external relations—tasks that the British administration had traditionally handled.

The ruler in India's favor made the admission in October 1947 in response to the promises made by Pt. Jawahar Lal Nehru, who was the country's prime minister at the time. Following through on such promises, Article 370 was later added to the Constitution. Due to Article 370, J&K has more autonomy than other states and is subject to limitations on Union of India sovereignty. Before implementing any new laws, the Indian Parliament would require approval from the state government.

2. LITERATURE REVIEW

Khalid, M. (2021). India and Pakistan have been at odds over the Kashmir problem since their independence. India and Pakistan have fought three full-fledged wars and one smaller one. India unilaterally revoked Articles 370 and 35-A of the Indian Constitution on August 5, 2019, incorporating Kashmir into its own territory. Pakistan is persistently advocating for the cause of Kashmir and working to alleviate the suffering of the Kashmiri people. This review is based on qualitative research using a logical approach. Books, research articles, newspaper articles, reports, pieces from websites, and magazine articles were examples of secondary data that was employed. Techniques from analysis and description are applied. The results demonstrate that the strategic stability of South Asia would be severely impacted if the two constitutional clauses were repealed. Following India's annexation of Indian-held Jammu and Kashmir, the Kashmiri people have experienced social strangling, economic degradation, human rights abuses, and massacres. Since Kashmir is Pakistan's lifeblood, the country must adopt alternative policies from those listed in the article to address the problem. South Asia and the rest of the globe will experience peace and stability when there is peace and stability in Kashmir.

Mishra, V. K. (2020). One of the most divisive topics between India and Pakistan since their independence in 1947 is the Kashmir conflict. This research tackles the controversy that has been the main point of conflict between Pakistan and India. How come there is such a severe humanitarian problem in South Asia, which is ultimately the reason why India and Pakistan spend

so much on defense? Nevertheless, both nations are aware that diplomatic talks to find a non-military settlement are the best way to address the Kashmir issue. It continues to be a key component of both nations' foreign and internal policy. The present research use complex interdependence theory to analyze the issue, and one of its key components is the peaceful collaboration that ensued between the two nuclear powers. In order to find a peaceful settlement, this review looks into the Kashmir dispute and the collaboration between India and Pakistan. The results demonstrate that the Modi government's unilateral revocation of Article 370, which altered Kashmir's status, exacerbated the conflict and jeopardized the previous attempts at settlement.

Ahlawat, D., & Izarali, M. R. (2020) The security and strategic dynamics in the ties between India and Pakistan have shifted as a result of India's withdrawal of Article 370, which had accorded Jammu and Kashmir a unique status. Pakistan views it as an international problem and is pushing for a settlement in line with pertinent UN Security Council resolutions, while India maintains that it is a domestic affair. Pakistan promises to do all it takes to ensure "freedom" for the Kashmiris, despite the fact that it has little backing from other countries. This battle has taken on new dimensions with US President Donald Trump's visit to India and the conclusion of a peace deal between the US and the Taliban. This analysis addresses the fallout from the revocation of Article 370, presents Pakistan's claims historically, examines the immediate actions taken by Islamabad, identifies the possibilities that Pakistan may consider accessible, and offers a critical evaluation of each.

Jadhav, D. M. R., Krishnan, A., & Vijay, D. S. (2021) The Indian Constitution's original Article 370 is a transitional, transitory provision. A Special Law of the Commonwealth of Jamaica J&K is granted autonomy under this clause. In contrast, state residents are granted additional rights and benefits by Article 35A, which was added to the constitution in 1954. Article 370 has been seen as a contentious constitutional clause ever since it was introduced. It has been influenced by politics in one form or another. It is impossible to consider the repeal of Article 370 in a vacuum since it is closely related to political, historical, and constitutional issues. When it comes to the autonomy of the people of J&K, the repeal of Article 370 is crucial. From the perspective of constitutional law, there are significant concerns about the way in which Article 370 has been revoked and the

process used to render it essentially ineffectual. The nation's unity and integrity, as well as Indian democracy, are consistently threatened by the concerning terrorism among Kashmiris. Undoubtedly, Indian patriotism has always been deeply concerned about the human rights violations committed by militants against the Kashmiri people. Article 370 has been revoked in order to preserve the unity and integrity of the country and to address the Jammu and Kashmir dispute so that all states, including Jammu and Kashmir, have equal opportunity for development. Despite being a brave endeavor on the side of the administration, this move is not without widespread controversy. This assessment looks at the political and constitutional ramifications of Article 370's repeal as well as how it affects the people of Jammu and Kashmir. The paper explores the abrogation of Article 370 from a constitutional perspective, including its historical, political, and constitutional aspects. The investigators have attempted to consider the abolition of Article 370 as a political necessity by analyzing and evaluating it in light of constitutional principles and drawing a correlation between it and human rights.

Pathak, M., & Mushahary, J. (2022) After the separation of Jammu and Kashmir and the removal of Article 370 in August 2019, the international diplomatic community responded strongly. The decision made by the Indian government was widely supported. Nevertheless, some have expressed dissatisfaction with the restrictions imposed on civil liberties and communication inside the jurisdiction. In instance, Pakistan and China both reacted fiercely and attempted to begin a fresh chapter about Kashmir at the United Nations Security Council. The shifting global narrative around the contested territory of Kashmir is the focus of this article. It argues that the decision to repeal Article 370 has affected India's narrative on the Jammu and Kashmir valley and that the country has suffered a lot of global blowbacks because of it.

3. Section 370 OF THE INDIAN CONSTITUTION

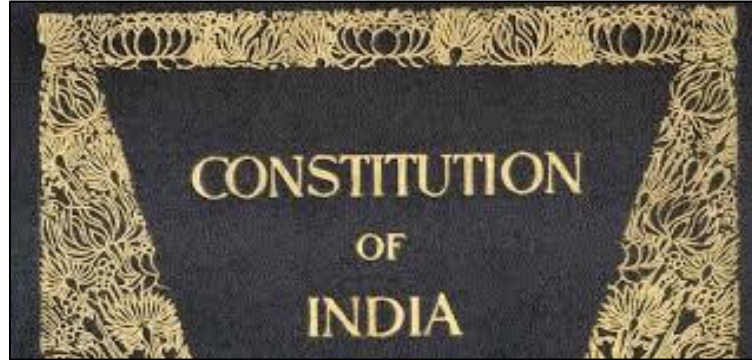


Figure 2: Constitution of India

In this place, dusk doesn't follow spectacular sunsets but rather follows the long, creeping shadows of far trees—black, parallel lines that glide over the undulating landscape of dispersed bodies and other things.

Under Article 370 of Part XXI, "Temporary, Transitional and Special Provisions," of the Indian Constitution, the following is stated: -

1. Regardless of anything else that may be written in this Constitution:

- Article 238's provisions do not apply to the Jammu and Kashmir State.
- Limiting Parliament's power to pass laws for that state should be a priority.
 - i. Items on the Union List and Concurrent List that the President, after consulting with the State Government, declares to correspond to items on the Instrument of Accession governing the State's admission to the Dominion of India as Legislative Powers; and
 - ii. Anything else the President deems fit from the aforementioned Lists, with the State Government's consent, to be designated by executive order. To clarify, "Government of the State" in this context means the person the President has appointed as Maharaja of Jammu and Kashmir, after the

recommendation of the Council of Ministers and in compliance with the Maharaja's Proclamation of March 5, 1948, as stated in this article;

- This State is subject to the terms of these articles and article 1;
- With the exceptions and modifications that the President may declare by executive order, the other clauses of this Constitution shall be applicable to said state.
 - i. It is stated that the State Government must be informed before any order on the topics included in the State's Instrument of Accession can be made, as noted in paragraph (i) of sub clause (b):
 - ii. Subject to the requirements set out in the preceding provision, the government must provide its consent before such an order may be issued, and the subject matter must be distinct from that which was previously specified.
- 2. The State's Constituent Assembly will consider the State Government's agreement mentioned in paragraph (ii) of subclause (b) of clause (1) or in the second proviso to subclause (d) of that clause when it is called upon to deliberate on framing the State Constitution. The Assembly will be asked to make decisions on these matters.
- 3. Through a public notice, the President has the authority to state that this article will either be repealed or subjected to modifications and exclusions as he sees fit. He can also specify the date of notification: The President is required to wait to issue such a notice until he has received the recommendation from the State's Constituent Assembly, as stated in article (2).
- 4. The President, following the advice of the Constituent Assembly of the State of Jammu and Kashmir, used the power granted by this article to declare that Article 370 would be in effect as of October 17, 1952, with the modification that the explanation in clause (1) would be replaced with the following explanation:

All along, Article 370 has been considered "temporary status." In the Constituent Assembly, GopaldaswamiAyyangar had stated that Article 370 was a "Temporary" provision so that it could be changed or removed when Jammu and Kashmir merged with India and accepted its constitution in its entirety, as stated in the speech delivered by Dr. Shyama Prasad Mookerjee in Kanpur on

December 29, 1952. Pandit Nehru reiterated his earlier assertion that "370 ghisteghisteghisjayegi" on the floor of Parliament on November 27, 1963. (Article 370 of the Constitution will erode and eventually disappear.) The goal that Nehru had in mind has not been achieved; rather, Article 370 is now officially "temporary."

4. Section 370: Consequences and exceptions

All three of the following lines in Article 370—"in consultation with the government of the State," "with the concurrence of the Government of the State," and "the recommendation of the Constituent Assembly of the State shall be necessary"—are vital. Despite its position as the fifteenth state in the First Schedule, Jammu and Kashmir is not subject to the general provisions of the Constitution. The Jammu and Kashmir State has been granted the right to fly its own flag, write its own constitution (which is officially called "The Constitution of Jammu and Kashmir"), and produce its own anthem (15). Legislation addressing Jammu and Kashmir must get either agreement or consultation in order to be approved by parliament under the terms of Article 370. number sixteen It is interesting that several laws approved by the Indian Parliament do not apply to the state at all or only partially. Several legislative measures that do not apply to Jammu & Kashmir include the following:

- The Indian Penal Code, 1860
- The Prevention of Corruption Act, 1988
- The Places of Worship (Special Provisions) Act, 1991
- The Delhi Special Police Establishment Act, 1946
- The Protection of Human Rights Act, 1993
- The Representation of the People Act, 1950s

Additionally, Jammu and Kashmir is not subject to several constitutional restrictions. They are: -

- Section 31C
- Sections 36 through 51
- Section 51A
- Section 134A

- Sections 153 through 2172
- Section 360

Despite Jammu and Kashmir's constitutional recognition as an integral part of India, not even the Indian Penal Code of 1860 may be enforced there by the Union Government. The Indian Penal Code's exclusion of Jammu and Kashmir from its scope suggests that nationalism has been trumped by vote-bank politics in India. Consequently, the people and administration of Jammu and Kashmir are seen as possessing special privileges. Successive federal administrations have approved this plan in an effort to appease the community's voting base. The Kashmir valley, namely the Jammu and Ladakh regions, is frequently criticized for its restricted status.²⁹ In 1976, the Union Parliament added the word "secular" to the Preamble of the Constitution by the 42nd Amendment.

The intention was to keep it out of the context of Jammu and Kashmir. Jammu & Kashmir is not considered part of the "secular" framework, which is fundamental to the constitution. There is a limitation on the Parliament's power to change the name or extent of a state under Article 3 because the article also says that no measure on the growth or contraction of Jammu and Kashmir's territory can be submitted without the agreement of the State Legislature. Curiously, although Indian nationals residing in Jammu and Kashmir can cast ballots in the Lok Sabha elections, they are unable to do so in the state assembly elections due to their lack of permanent citizenship as per the state's constitution and regulations. Once again, we see prejudice against the right to vote in this case.

5. CONCLUSION

The Indian Constitution's Article 370 has many complex and nuanced ramifications that provide for a distinct political environment in the country's government. Though intended to be only temporary, this provision has persisted, clouding the once-imminent hopes of unification. Though once considered transitory, its enduring nature has come to light, forming a unique set of conditions for the state of Jammu and Kashmir. Certain laws and constitutional requirements of the Indian Parliament do not apply completely or at all in this complicated environment due to the exclusions and consequences of Article 370, particularly the autonomy provided to the area in legislative

affairs. This unique status has bred envy and strife, causing divisions among the state's regions and casting doubt on equality and the unity of the country.

Dissatisfaction has been sustained by the unwillingness of successive administrations to address these differences, especially in populations outside the Kashmir valley. The particular difficulties presented by Article 370 are further highlighted by the selective application of constitutional ideals, such as secularism, and the restrictions on legislative authority. In summary, the story of Article 370 represents a legal and constitutional oddity as well as more general concerns about national cohesiveness, identity, and governance within India's heterogeneous fabric.

REFERENCES

1. Ataov, T. (2001). *Kashmir and Neighbours: Tale, Terror, Truce*. Farnham: Ashgate Publishing Limited.
2. Behera, N. C. (2006). *Demystifying Kashmir*. Washington D.C.: Brookings Institution Press.
3. Burns, J. F. (2001, December 29). *Pakistan moves against groups named by India*. Retrieved March 13, 2020, from *The New York Times*:
4. Chowdhary, R. (2014). *Modi's roadmap for India's Kashmir and Pakistan policies*. *East Asia Forum*, 1-7.
5. Lüthi, L. (2012). *Sino-Indian Relations, 1954-1962*. *Eurasia Border Review*, 93-119.
6. Kugelman, M. (2019). *India's Sudden Kashmir Move Could Backfire Badly*. Washington, D.C.: Foreign Policy Press.
7. Wenning, H. (2003). *Kashmir: A Regional Conflict with Global Impact*. *New Zealand Journal of Public and International Law*, 197-228.
8. Khalid, M. (2021). *Abrogation of Article 370 and 35-A, human rights situation in Indian occupied Kashmir and response options for Pakistan*. *Journal of Humanities, Social and Management Sciences (JHSMS)*, 2(1), 166-175.
9. Mishra, V. K. (2020). *The Abrogation of Article 370 International Reactions*. *Indian journal of asian affairs*, 33(1/2), 120-129.

10. Ahlawat, D., & Izarali, M. R. (2020). *India's revocation of Article 370: Security dilemmas and options for Pakistan. The Round Table, 109(6), 663-683.*
11. Jadhav, D. M. R., Krishnan, A., & Vijay, D. S. (2021). *Constitutional and Political Intricacies Involved in Abrogation of Article 370. Revista Geintec-Gestao Inovacao E Tecnologias, 11(4), 5306-5323.*
12. Pathak, M., & Mushahary, J. (2022). *The revocation of Article 370 in Indian Constitution: An analysis of the socio-political and economic effects after withdrawal of the article in Jammu and Kashmir. Journal of Positive School Psychology, 3012-3018.*
13. Snedden, C. (2012). *The Untold Story of the People of Azad Kashmir. London: C. Hurst & co Publishers Ltd.*
14. Schofield, V. (2015). *Why Kashmir is still important. Asian Affairs, 46 (1), 18-31.*
15. Schofield, V. (2010). *Kashmir in Conflict: India, Pakistan and the Unending War. London: I.B. Tauris.*

Author's Declaration

I as an author of the above research paper/article, here by, declare that the content of this paper is prepared by me and if any person having copyright issue or patent or anything otherwise related to the content, I shall always be legally responsible for any issue. For the reason of invisibility of my research paper on the website /amendments /updates, I have resubmitted my paper for publication on the same date. If any data or information given by me is not correct, I shall always be legally responsible. With my whole responsibility legally and formally have intimated the publisher (Publisher) that my paper has been checked by my guide (if any) or expert to make it sure that paper is technically right and there is no unaccepted plagiarism and hentriconane is genuinely mine. If any issue arises related to Plagiarism/ Guide Name/ Educational Qualification /Designation /Address of my university/ college/institution/ Structure or Formatting/ Resubmission /Submission /Copyright /Patent /Submission for any higher degree or Job/Primary Data/Secondary Data Issues. I will be solely/entirely responsible for any legal issues. I have been informed that the most of the data from the website is invisible or shuffled or vanished from the database due to some technical fault or hacking and therefore the process of resubmission is there for the scholars/students who finds trouble in getting their paper on the website. At the time of resubmission of my paper I take all the legal and

formal responsibilities, If I hide or do not submit the copy of my original documents (Andhra/Driving License/Any Identity Proof and Photo) in spite of demand from the publisher then my paper maybe rejected or removed from the website anytime and may not be consider for verification. I accept the fact that as the content of this paper and the resubmission legal responsibilities and reasons are only mine then the Publisher (Airo International Journal/Airo National Research Journal) is never responsible. I also declare that if publisher finds Any complication or error or anything hidden or implemented otherwise, my paper maybe removed from the website or the watermark of remark/actuality maybe mentioned on my paper. Even if anything is found illegal publisher may also take legal action against me

Ravi Kumar
