

A CRITICAL EXAMINATION ON CONSTITUTIONAL RELEVANCE OF ARTICLE 370

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Abstract

There has been much disagreement over whether Article 370 is constitutionally relevant, especially when considering its importance from a legal, political, and historical standpoint. This essay offers a critical analysis of Article 370 within the context of the Indian Constitution, tracing its historical development and ramifications for federalism and governance. To all the more likely figure out the complicated connection between independence, sway, and reconciliation in the province of Jammu and Kashmir, this study looks at the established conversations encompassing Article 370. It also assesses the socio-political consequences of Article 370's repeal in 2019 and how it will affect India's constitutional framework. By means of an extensive examination of legal precedents, parliamentary discussions, and judicial interpretations, this paper aims to clarify the complex aspects of Article 370 and its influence on the constitution of India. In the end, this critical analysis sheds light on the complexities and difficulties involved in balancing regional aspirations with national unity within a diverse and pluralistic democracy and provide insights into the ongoing discourse on federalism, autonomy, and constitutionalism in the Indian context.

Keywords: *Article 370, Jammu and Kashmir, Autonomy, Constitutional relevance, Federalism, Abrogation.*

1. Introduction

1.1. Instrument Of Accession

Article 370 has been repealed; its introduction into the Indian Constitution has a history. Prior to going under the English Crown until 1947, Jammu and Kashmir was a royal state under English rule from 1846 to 1858, when it was in an auxiliary collusion with the English East India Organization. The production of the august state followed the Primary Old English Sikh Conflict, when the East India Organization offered the Kashmir Valley to Gulab Singh, the Maharaja of Jammu, for Rs 75 lakh. The East India Organization had taken the valley from the Sikhs as a conflict reimbursement.



Figure 1: Jammu and Kashmir

Jammu and Kashmir's Independence and Transition

- Jammu and Kashmir, which was a piece of the English Raj, kept up with its power except for interchanges, international strategy, and guard.
- The ruler, Maharaja Hari Singh, decided not to join Pakistan or India in 1947.
- The Indian government, under State leader Jawaharlal Nehru, chose to give help with the essence of a Pakistani intrusion.

- On October 26, 1947, Hari Singh marked the Instrument of Promotion, resolving to agree to India in the space of correspondences, international strategy, and guard.
- Under the Indian Autonomy Act, Master Mountbatten, the Lead representative General of India, endorsed the arrangement.

1.2. Article 370 Adopted in Constitution

The Instrument of Increase's Condition 7 clarified that Jammu and Kashmir's admission to India was dependent upon the state keeping up with its constitutional freedoms and an elevated degree of independence. This particular clause served as a fundamental component in the development of Article 370.

In order to safeguard these rights and guarantee that Jammu and Kashmir maintained a unique position within the Indian Union, Article 370 was created expressly.

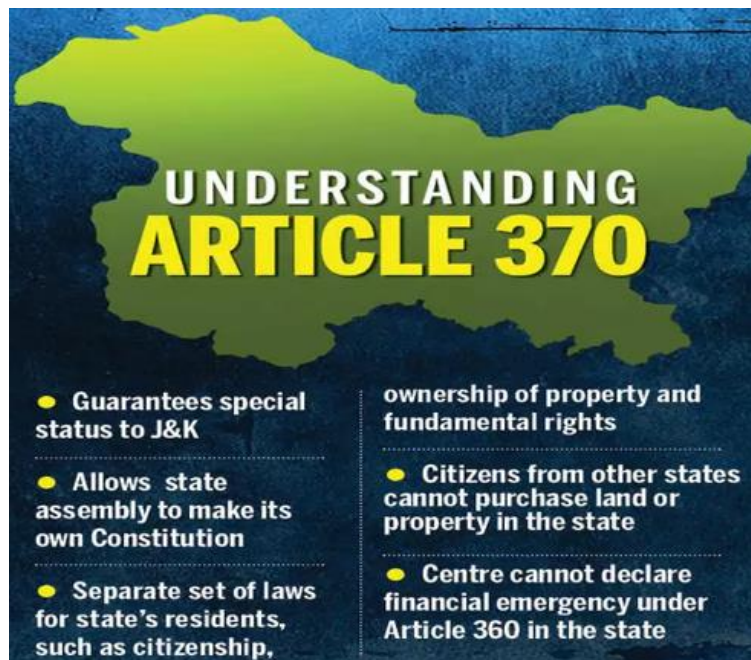


Figure 2: Article 370 Adopted in Constitution

N Gopaldaswami Ayyangar, a significant member of the seven-member Indian Constitution Drafting Committee, was given the task of drafting the article intended to preserve Jammu and Kashmir's special status by Jawaharlal Nehru.

July 1949 saw the start of negotiations regarding the proposed Article's structure. In addition to Ayyangar, Sardar Vallabhbhai Patel, and Jawaharlal Nehru, those involved included Sheikh Abdullah, the prime minister of Jammu and Kashmir and a member of the Constituent Assembly.

The conversations went on for several months.

The Constituent Assembly adopted Article 370, which had been moved for consideration as Article 306A, on October 17, 1949.

1.3. Why Article 370 Was Necessary

Ayyangar argued that the unique circumstances and ongoing conflict in Jammu and Kashmir made Article 370 necessary. Before the state ratified its constitution, he suggested implementing Article 306A as a temporary arrangement. The Indian Constitution was passed in 1950, but Jammu and Kashmir's autonomy was gradually undermined as a result of the government's extension of most of its provisions there. In December 2023, the Supreme Court affirmed this ruling, declaring that statehood should be restored and elections should take place by September 2024. Jammu and Kashmir is now completely incorporated into the Indian Union as a result.

2. Literature Review

Abdullah and Madhav (2014) Reflecting the divergent opinions within India's political spectrum, have a critical discussion regarding the legal and political implications of Article 370. Their discussion, which is emphasized in the article "Omar Abdullah & Ram Madhav start war of words over Article 370" that appears in *The Economic Times*, highlights the controversial nature of the piece and how it affects politics in the area. This article, which offers a real-time snapshot of the discussions from influential political figures, is essential reading for anyone interested in comprehending the political narratives surrounding Article 370 and its repeal.

Akhtar and Kirk (2019) Give a thorough description of Jammu and Kashmir in their *Encyclopaedia Britannica* entry, emphasizing its importance from a political, historical, and geographical standpoint. Their work places Article 370 in the larger geopolitical context, with a special emphasis on the disputed status of the region between China, India, and Pakistan.

Understanding the historical foundations and global implications of the Jammu and Kashmir dispute requires reading this entry.

Ashai (2010) gives a careful assessment of the Jammu and Kashmir State Subjects discussion from 2004 in the Drexel Regulation Survey. Article 370 gives an exceptional status on Jammu and Kashmir. Her paper, "The Jammu and Kashmir State Subjects Debate of 2004," investigates the legitimate complexities and socio-political ramifications of state subject regulations. Understanding the internal legal and social dynamics of Jammu and Kashmir that impact larger constitutional discussions requires knowledge of Ashai's work.

Ashraf (2002) The author of the Islamabad Papers publication "Jammu and Kashmir dispute: Examining various proposals for its resolution" examines a number of political and diplomatic ideas meant to end the conflict between Jammu and Kashmir. His analysis looks at Article 370's place in the larger conflict and gives a thorough rundown of the various approaches put forth by parties over the years. Understanding the variety of viewpoints and suggested fixes regarding Article 370 and the conflict is made easier with the help of this work.

Basu, Manohar, Banerjee, and Khan (2001) in their book Introduction to the Constitution of India, offer a fundamental legal viewpoint. In the framework of the Indian Constitution, their work provides a thorough analysis of Article 370, clarifying its legal foundation, ramifications, and the discussions surrounding its application and eventual repeal. This book is an essential tool for comprehending the constitutional clauses pertaining to Article 370 and how the judiciary and legal community have interpreted it.

3. Abrogation Of Article – 370

On August 5, 2019, the association home minister Amit Shah declared that the special status granted to the Jammu and Kashmir province by Article 370 and Article 35-A of the Indian Constitution would never be applied again. According to Article 35-A, the state council has the authority to decide on the privileges and liberties enjoyed by super long-term residents. The President of India recently addressed the Lok Sabha and introduced two bills concerning Jammu and Kashmir: the Jammu and Kashmir Reorganization Bill, 2019, and the Constitution

(Application to Jammu and Kashmir) Order, 2019. With the support of the Jammu and Kashmir State Administration, the Indian President submitted the Constitution (Application to Jammu and Kashmir) Request. The provisions of Article 370 were declared to be null and void as of August 6, 2019.

India saw a scope of reactions and perspectives in regards to the nullification of Article 370, which can be separated into two classifications: Backers and Protesters:

3.1.Proponents

Lieutenant General Subrata Saha, Resigned, Indian Armed force The choice to repudiate Article 370 is apparently the best reverence to a huge number of safety staff, columnists, political activists, and blameless residents who have given their lives on the side of Jammu and Kashmir's mix with India.

Bharatiya Janata Party (BJP): Since its founder, Shyama Prasad Mookerjee, died in prison in Jammu and Kashmir in 1953 challenging the state's exceptional status and seeking complete reconciliation with the Association, the BJP has held a strong stance on Article 370 of the Indian Constitution. This stance has been central to the party's central plan.

Bahujan Samaj Party (BSP): With Mayawati at the helm, the Bahujan Samaj Party has supported the BJP's proposals to dissolve Jammu and Kashmir and repeal Article 370.

Aam Aadmi Party (AAP): Head Arvind Kejriwal upheld the Middle's choice to annul Article 370 and communicated positive thinking that it would bring about "harmony and improvement" for the state.

Biju Janata Dal (BJD): furthermore, proclaimed that it upheld the cancelation of Article 370. Moreover, BJD expressed on August 5, 2019, "Jammu and Kashmir is currently a fundamental part of India".

Other ideological groups that have communicated help for revoking Article 370 incorporate the Shive Sena, the All India Anna Draveda Monnetra Kazahagam (AIADMK), and the Telegu Desam Party (TDP).

3.2.Opponents

Indian National Congress (INC): pronounced that the cancelation of Article 370 was a "disastrous step" and that it was a "dark day" in Indian constitutional history. Ghulam Nabi Azad, an eminent member of the Congress party, accused the government of having "slashed off" and eradicated the identity of Kashmir, which is regarded as India's crown. Kapil Sibal, an alternate Congress leader, proclaimed, "Kashmir was lost by you and we (the Congress) won it back."

The DMK: pronounced that the Middle's activity was a "murder of a majority rules government" and unequivocally decried it. Party boss MK Stalin charged that the BJP-drove Center was just keen on completing its philosophical plan and was apathetic regarding the sensations of the Jammu and Kashmiri individuals, who upheld India.

Left Front leaders: additionally voiced their dissatisfaction. The "backward step will additionally estrange individuals of Jammu and Kashmir," as indicated by CPI general secretary D. Raja, and the CPI(M) called it a "assault" on the Constitution.

People's Democratic Party (PDP): India has failed to live up to its obligations in Kashmir, according to Mehbooba Mufi, the current and former chief minister of Jammu and Kashmir. Among the PDP members involved in the chaos in Parliament were Nazir Ahmad Laway and Mir Mohammad Fayaz, who tore banners and yelled slogans. Indeed, even his "kurta," or shirt, was torn by Laway. Afterward, when the showings escalated, the two destroyed duplicates of the Constitution, which prompted their expulsion.

National Conference: pioneer and former Jammu and Kashmir Chief Minister The public authorities continue on Article 370 was named "one-sided and stunning" by Omar Abdullah, who likewise considered it a total "disloyalty of trust" of individuals of Jammu and Kashmir.

Patriot Congress Party members, Janata Dal members, Rashtra Janata Dal members, and Trinamool Congress members were among those who questioned the government's extreme measures in response to the nullification of Article 370 of the Indian Constitution. While Soli Sorabjee, the former Head legal officer of India, fought that Article 370 was not unconstitutional in light of the

fact that it was anything but an essential arrangement of the Constitution and could be changed by expansive meeting and famous agreement, A.S. Dulat reprimanded the law for being empty.

4. Implications Of Revoking Article 370

In South Asia, particularly in Jammu and Kashmir, the disavowal of Article 370 has achieved phenomenal turns of events, including a condition of warlike pressures among India and Pakistan. The presence of troops and more tight safety efforts has kept the Kashmir valley serene. Notwithstanding, time-limited guidelines, including Section 144 of the Criminal Procedure Code, have been in place in the valley since August 2019. This has affected day-to-day living and brought about a rise in mental health problems in the area by resulting in undemocratic and abruptly reduced privileges as well as a total communication blackout.

Medecins Sans Frontieres (MSF) conducted the 2015 Kashmir Mental Health Survey, which reported:

- By and large, seen or been a piece of north of seven traumatic occasions in the course of their life.
- In the damaged populace of Kashmir, 21% of men and 36% of ladies experience the ill effects of a likely nervousness related disorder, 18% of men and 22% of ladies from plausible post-traumatic stress disorder (PTSD), and 37% of grown-up guys and half of females experience the ill effects of plausible gloom.
- Among adults in the Kashmir Valley, 1.8 million (45%) exhibit notable signs of mental distress.
- Of the grown-ups in the valley, around 1.6 million (41%) have critical side effects of gloom, and 415,000 (10%) fit every one of the analytic prerequisites for extreme discouragement.
- 1,000,000 grown-ups in the valley, or 26% of the aggregate, are remembered to have significant side effects of a tension related disorder.
- Around 771,000 individuals in the Valley, or almost 1 of every 5 grown-ups (19%), have serious PTSD side effects, with 248,000 (6%) of them fitting the analytic measures.

- Grown-ups living in the valley had high paces of co-dismalness between side effects of tension, gloom, and post-traumatic stress disorder.

4.1.Economic Implications

Losses in Kashmir's economy ranged from Rs 15,386 crore to Rs 18,989 crore between September 5, 2022, and January 20, 2022, due to the imposition of restrictions, continuous shutdowns, and internet blockade in the Valley.

Table 1: Sector: Prudent Financial Losses in Kashmir, September 5, 2022–January 20, 2022

Sector	Economic Losses (Rs. in Crores)	Number of Job Losses
Tourism	1167	85611
Agriculture and Allied Services	5682	23000
Industrial Sector, and other Utilities Services	56186	
Service Sector (Hotel, Restaurant, Transport, Communication, Financial Services etc.)	28282	
Handicrafts and Kashmiri Carpets	80000	

Using two different approaches, the Kashmir Chamber of Commerce conducted the evaluation. The primary methodology depended on an area wise investigation of the nearby economy, while the subsequent methodology depended on misfortunes assessed on Gross domestic product in light of the 2017-18 financial study.

Moreover, the evaluations of the financial ramifications on Kashmir since September 5 have been brought to the consideration of various Congress pioneers on numerous events. By and by, the latest explanation that was conveyed in Rajya Sabha by Minesh Tiwari, a Congress chief and Individual from Parliament, expressed that:

- Seventy percent of the population in the state relied on agriculture for their livelihood, and the agricultural sector has experienced a loss of ten billion rupees over the course of the last seven months.

- Although the crop was not harvested until October of the previous year, the state made a total of Rs 6,500 crore in revenue from the sale of apples during the 2016–2017 fiscal year.
- The tourism industry, which had been responsible for the direct employment of 5 lakh people and the indirect employment of 26 lakh people, had also collapsed.
- During the 2019-20 fiscal year, the government itself reduced its projections of revenue from tourism to Rs. 1170 crore, which was previously estimated to be Rs. 1670 crore.
- A shortfall of \$2.4 billion in monetary movement was determined over the course of four months by the Jammu and Kashmir Office of Business and Industry.

4.2. Political Implications

Article 370 has been delivered invalid and void by the Indian National Congress, which has made it workable for Jammu and Kashmir to turn into a piece of the Indian Association. Taking into account the well-established position of the Bharatiya Janata Party (BJP) with respect to the cancelation of Article 35-A, which gave the Jammu and Kashmir Lawmaking body the power to characterize super durable occupants, this choice was impacted by that position. In its statement for the 2019 Lok Sabha Political race, the Bharatiya Janata Party (BJP) made reference to the party's well-established position on the scratch-off of Article 370. A more noteworthy level of command over nearby regulatory and regulative powers, as well as police and public request, could be conceded to New Delhi because of the redesign of Jammu and Kashmir. Through this choice, political mileage could be acquired, and the Kashmir issue could be brought to the front as an interior matter of India. By and by, the Bharatiya Janata Party (BJP) knows about the potential perils that are involved, which incorporate the chance of common turmoil, fear monger assaults, collective pressures, and the internationalization of the Kashmir issue.

5. Article 370 Abrogation Repercussions: An Analysis

Based on philosophy and standard, the political heads of Jammu and Kashmir have been isolated all through the area. The two separatists and unionist pioneers have customarily battled for Jammu and Kashmir's independence inside the system of India's constitution. Separatists, then again, request total freedom from India. The two Unionists and Rebel pioneers have been compelled to

be confined because of the focal government's choice to pull out Article 370, which has brought about a huge change in the political scene. There is plausible that the evacuation of these shields will make Unionists combine efforts with Separatists to keep up with their resistance to New Delhi.

Considering the way that political initiative on the two sides of the Unionist and Dissenter partition is probably going to go against the evacuation of Article 370, the eventual fate of Jammu and Kashmir is very questionable as of now. The circumstance would turn out to be much more desperate assuming New Delhi were to make any extra moves that would affect the social or segment part of the valley. A discretionary mission against India has been organized by Pakistan, which has brought about a minimization of relations with New Delhi and Top state leader Imran Khan's utilization of way of talking that is threatening toward India at the Unified Countries and other international gatherings.

New military conflicts have broken out along the Line of Control among India and Pakistan because of the cancelation of Article 370, which has likewise prompted an expansion in the quantity of aggressors in the valley. Expanding strains with the Chinese armed force in Ladakh, Pakistan's steady assertions on Kashmir, and outrage and dissatisfaction in the Valley are undeniably accepted to have their beginnings in the choice of the Association government to disavow Article 370. This is the assessment of specialists.

The renouncement of Article 370 has prompted the concealment of common and majority rule freedoms, the estrangement of individuals of Jammu and Kashmir from the Indian Association, and the downgrade of the state to the situation with an Association Domain that is overseen by civil servants who are not chosen by individuals.

5.1.Possible Outcomes

- As a result of the decision made by the NDA government, which is led by the BJP, to revoke Article 370, relations between India and Pakistan have become strained, and instability and disorder have been sown in South Asia. This could be detrimental to the peace, prosperity, and development of SAARC. Following the abrogation of Article 370, Pakistani outrage and global concerns about the possibility of a new war were immediately sparked. As a form of protest

against India's unilateral decision, Pakistan has been downgrading its diplomatic relations and has been requesting support from its international allies with effect from August 5.

- The Peace Process, which has been going on for decades, was derailed by the abrogation of Article 370, which could also bring an end to any healthy and harmonious relationship that Jammu and Kashmiris have with India.
- The evisceration of Jammu and Kashmir State into Association Domain, which had been happening for a really long time, frustrated individuals and ran their expectations and desires. One of the variables that added to the segment shift in the area was the division of the state into Jammu Kashmir and Ladakh, which prompted the disintegration of ethnic character. They will turn out to be considerably more alienated from individuals of the former state, which might bring about an expansion in how much clash, distress, and uprising in Jammu and Kashmir.
- Guaranteeing individuals of Jammu and Kashmir that the renouncement of Article 370 would achieve "Vikas" (Advancement) and "VIshwas" (Trust), the Top state leader of India gave his own assurance. Then again, occupants of Jammu and Kashmir experienced financial misfortunes, instructive emergencies (1,000 schools were shut right down until December 2019), and different hardships.
- Jammu and Kashmir's business climate was ruined as a result of the scrapping of Article 370, which may have contributed to a worsening of the unemployment crisis and led to enhanced insurgent activity.
- It is the assessment of an extraordinary number of political specialists that denying Article 370 will be negative to the experienced and fruitful legislative issues of Jammu and Kashmir. Prior to the biased announcement of the revocation of Article 370 by the focal government, all Kashmiri legislators who supported India were apprehended under the Public Security Act. This included three former chief ministers: Dr. Farooq Abdullah, Omar Abdullah, and Mehbooba Mufti. There is as yet one secured. On various events, those pioneers guarded the popularity based and mainstream standards of India. "I have not seen such India," Dr. Farooq Abdullah said in a meeting with NDTV after the cancelation of Article 370. "Mainnay Aisa Hindustan Nahi Daikha".

6. Conclusion

Article 370 of the Indian Constitution granted Jammu and Kashmir special autonomy, which included the right to choose its own flag, constitution, and laws. Critics argue that this created a constitutional anomaly, fostering separatism, hindering integration, and perpetuating socio-political tensions in the region. The temporary status led to a lack of clarity in governance, exacerbating administrative challenges and impeding development initiatives. The Indian government's abrogation of Article 370 in August 2019 sparked debates and raised questions about its constitutionality. Supporters argue it was necessary for national unity, combating terrorism, and promoting socio-economic development, while opponents view it as an infringement on the rights of Jammu and Kashmir's people, undermining federalism, democracy, and secularism. The constitutional relevance of Article 370 remains a subject of intense scrutiny, reflecting broader tensions between regional autonomy and national integration, constitutional provisions, political imperatives, and competing interests of diverse communities.

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