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## Abrogation Of Article 370 Of The Indian Constitution –A Study

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### ABSTRACT

An important turning point in the history of the Indian subcontinent was the abrogation of Article 370 of the Indian Constitution in August 2019. The goal of this essay is to provide a thorough analysis of the decision to remove Jammu and Kashmir's special status. This essay starts out by laying out the background information and growth of Article 370, highlighting the special clauses that gave Jammu and Kashmir's state an aspect of autonomy that set it apart from other Indian states. The conditions both before and after Article 370's abrogation are examined in this research.

Key Words: Abrogation, Jammu and Kashmir, Rationale for the abrogation of Article 370.

### INTRODUCTION

Jammu & Kashmir state was granted special status under Article 370, which is found in Part XXI of the Indian Constitution. As a result, this state is entitled to certain benefits. One of the main roadblocks in the growth of the state of Jammu and Kashmir was the application of Article 370. After much discussion, the Indian government decided to remove Article 370 from the Indian Constitution in October 2019 by circumventing a presidential order known as the Constitutional application to Jammu and Kashmir order 2019. Following the enactment of this order, Jammu & Kashmir state was granted equal status with other Indian states.

### REVIEW OF LITERATURE

A.G. Noorani( 2014) in his book “Article 370: A Constitutional History of Jammu and Kashmir” stated that The Indian Constitution went into effect on January 26, 1950, and included a special clause known as Article 370. The people of the state of Jammu and Kashmir lived under a different set of rules while being a part of the Indian Union because of the special status granted to them in the article. A.G. Noorani skilfully switches between politics and history while examining a variety of papers related to Article 370. He provides a shrewd analysis of the article's effects on the state's and the country's constitutional democracy. This book flawlessly captures the little-known constitutional history of the state, from Jammu and Kashmir's 1947 admission to India to the several discussions that followed; from Sheikh Abdullah's incarceration to the draughting of the state's constitution and the replacement of Sadar-i-Riyasat. Noorani emphasises the necessity of restoring autonomy as well as the politics underlying the slow erosion of Article 370. After evaluating the many rulings concerning this constitutional setup critically, he offers a plan for resolving the

“Kashmir problem.” This book, which brings together obscure, frequently overlooked, letters, memos, white papers, proclamations, and amendments, will be a priceless tool for anybody researching Kashmir.

Monika Arora (2019) in her book “Facts and Law on Article 370 & 35A” clarifies the legal ramifications, historical background, and current applicability of Articles 370 and 35A. She gives readers a clearer understanding of these important constitutional principles by her thorough research and interpretation.

Dr. Preeti Sharma and Dr. Sheila Rai (2019) in their research paper “Article 35A & Its Implications: A Quest of Stability in Jammu & Kashmir” revealed that A misleading picture of Jammu and Kashmir ignores the aspirations of the great majority of the other two regions as well as the frontier districts of Kashmir, limiting its scope to the opinions and desires of a small number of the region’s districts. J&K is engaged in a protracted, agonising war for security and peace. The highly contested Articles 370 and 35A of the Constitution, which give the Jammu and Kashmir Assembly the legal authority to grant special privileges to “permanent residents,” are presently being challenged in the Supreme Court. This is because they restrict the ability of non-residents to exercise their rights as citizens of the State. The debate often portrayed as a question of “special status” of Jammu and Kashmir and the Article as some sort of unusual concession to the State. In this paper the reality behind the issue of J&K has to be find out.

Sumit Dutt Majumder (2020) in his book “Article 370: Explained for the Common Man” revealed that with effect from October 31, 2019, the Indian government reorganised the former state of Jammu and Kashmir into two union territories, Jammu & Kashmir and Ladakh, in August 2019. Previously, Jammu & Kashmir enjoyed a special status under Article 370 of the Indian Constitution. With the passage of the Jammu and Kashmir Reorganisation Act, 2019, by both houses of the Indian Parliament, this unique status was revoked and the state was brought closer to the Indian union. The goal of this book is to educate readers on the crucial constitutional, political, and legal concerns surrounding Articles 370 and 35A of the Indian Constitution.

Sanjay Dixit(2020) in his book “Unbreaking India: Decisions on Article 370 and the CAA” stated that in 2019, two significant pieces of legislation were passed: the Citizenship (Amendment) Act (CAA) and the nullification of Article 370. In-depth historical research is done by author Sanjay Dixit to show how certain incidents, decisions, and outcomes ultimately resulted in the Union of India enacting these two laws. He examines these events from historical, social, and political angles. He covers all of Kashmir’s history, including pre-Islamic times and the events leading up to India’s Partition, which resulted in the original insertion of Article 370 into the Indian Constitution. Dixit also thoroughly examines the legal and constitutional mazes, going over numerous Presidential Orders as well as case law from the Supreme Court’s Constitutional Bench. Dixit covers the sad events of the 1947 Partition and the history of India’s constitution for CAA, starting with the division of Bengal in 1905. His research mainly draws from the theology of a “separate nation” that was prevalent at the time and Dr. B.R. Ambedkar’s understanding of the grounds for the Partition. According to the author, the central theme of the anti-CAA protests is Mazhabi Pehchan, which represents a return of this same theology.

Kaushal Kasliwal(2020) in his article “The Abrogation of Article 370” examines several facets of eliminating Article 370. In order to determine how piece 370 came to be, this research piece examines the history of the law from its inception. Additionally, piece 370 and its addition, Article 35A, are defined in this study piece. This study piece also makes it very evident why piece 370 had to be removed.

Tanya Bhattamishra (2023) in her article “Abrogation of Article 370: Political Attack or Step for Holistic Democracy?” explored the geopolitical ramifications of this historic choice, concentrating on how it would affect the dynamics of security in the area and the relationship between India and Pakistan. The study also examines the ramifications for the people who live in Jammu and Kashmir, taking into account the changed demographics and socioeconomic difficulties the area is now facing in the wake of Operation 370. This paper attempts to provide a thorough understanding of the repeal of Article 370 and its far-reaching effects through a multidisciplinary approach that blends historical, legal, political, and socioeconomic views. It draws attention to the intricate interactions between various elements that have moulded the country and the area and stimulates more conversation about how this historic event has affected the opportunities and problems that the people of Jammu and Kashmir and the Indian subcontinent as a whole continue to face. The harms-benefits analysis of Article 370’s effects on the contemporary Jammu and Kashmir and Ladakh region brings the paper to a close.

Vinod Rai (2024) in his article “Supreme Court of India Upholds Abrogation of Article 370” concluded that the Supreme Court of India’s Constitution Bench unanimously maintained the President’s authority to revoke Article 370 of the Constitution, which resulted in the state of Jammu and Kashmir (J&K) being divided into two Union Territories and stripped of its unique rights in August 2019. It concluded that, at a period of internal conflict and warfare, Article 370 was merely a “temporary provision” to facilitate the then-princely State’s admission to the Union.

## OBJECTIVES

1. To study the background of Article 370.
2. To analyse the reasons for abrogation of Article 370 of the Indian Constitution.
3. To examine the conditions before and after abrogation of article 370

## HISTORY OF ARTICLE 370

Similar to other states, Jammu and Kashmir was a princely state until Pakistani forces invaded it in 1947, following India's independence. Therefore, at that time, Maharaja Hari Singh, the maharaja of this state, requested assistance from the Indian government in order to defend this state against Pakistani assault. Maharaja Hari Singh was invited by the Indian government to sign an instrument of accession in order to become a part of India’s dominion. On October 26, 1947, Than Maharaja Hari Singh agreed to join the Indian realm by signing the Instrument of Accession. On October 27, 1947, Lord Mountbatten, the governor general of India, recognised this accession; nonetheless, the Indian Constitution was not ratified until 1949. The future trajectory of Jammu & Kashmir’s relationship with India was then unclear. Thus, in order to forge connections with Jammu and Kashmir, Article 370 was added to the Indian Constitution. This article, which was only meant to be a temporary measure, granted Jammu and Kashmir special status by declaring that the state would have its own constitution and that the Indian Constitution would not apply here. According to this article, the only three topics that the Indian legislative is in charge of are communications, defence, and external affairs. Additionally, this article’s clause (3) specifies that Article 370 may be repealed upon the constituent assembly of this state’s decision. The rights of a permanent resident of Jammu and Kashmir remained unaffected even after Article 370 was applied. Thus, on May 14, 1954, Dr. Rajendra Prasad, the President of India, issued a presidential order titled Constitution application to (Jammu and Kashmir) order 1954, which contained Article 35A, which outlines the rights of Jammu and Kashmir’s permanent citizens. The Jammu and Kashmir Constituent Assembly was dissolved in 1957, although Article 370 remained in place. Thus, it was understood that Article 370 was the Constitution’s permanent provision. The Indian president issued a presidential order in August 2019 that superseded the presidential order from 1954. Following the order’s implementation, the government of India introduced two bills in the upper house: one dealt with the reorganisation of Jammu and Kashmir and the other with the removal of Article 370 from the Indian Constitution. Both bills were approved by the upper house with a two-thirds majority.

## RATIONALE FOR THE ABROGATION OF ARTICLE 370

**1. Promotion of National Integration-** Because Jammu and Kashmir was granted a separate constitution, flag, and set of powers under Article 370, the state’s citizens developed a distinct sense of identity. This was exploited to mislead young people and incite a separatist demand in them. There was an explanation given for why Article 370 should be repealed in order to advance national integration.

**2. Aid in the fight against Terrorism-**In the state of Jammu & Kashmir, terrorist activities across international borders has claimed the lives of almost 42,000 people. The unique status that Article 370 granted to Jammu and Kashmir was thought to be a barrier in the war against terrorism. It was argued that repealing Article 370 made strict anti-terror legislation like the UAPA applicable.

**3. Reduction of Corruption and graft-** Jammu and Kashmir's anti-graft architecture is subpar as a result of Article 370. Due to the state's prohibition on anti-corruption organisations, there was widespread money laundering, hawala, and corruption. It was argued that the strict implementation of the FEMA Act and PMLA was made possible by the repeal of Article 370.

**4. Promotion of economic development-** Because of the implementation of Article 370, only state permanent residents were permitted to purchase or sell land in the state. Large corporate entities refrained from investing in the area as a result due to land-related issues. Removing Article 370 was thought to encourage more investment in the state of Jammu and Kashmir.

**5. Effective implementation of affirmative policies-** Jammu and Kashmir's residents were not entitled to a number of affirmative action laws, including the Right to Information and Education. Furthermore, the state's marginalised populations were not eligible for the reservations privileges granted to OBCs, SCs, or STs. It was argued that affirmative action programs could be implemented more successfully if Article 370 were repealed.

### CONDITIONS BEFORE ABROGATION OF ARTICLE 370

1. There was the separate Constitution of Jammu and Kashmir state
2. There was a system of dual citizenship
3. There was a separate flag of this state
4. There was no reservation for minorities
5. Article 360 (Financial Emergency) not applicable
6. RTI not applicable
7. Right to Education (RTE) was not applicable
8. Duration of Legislative Assembly for 6 years
9. Panchayats did not have any rights
10. Earlier if women of Jammu and Kashmir marries to the man who is not resident of Jammu and Kashmir then she has to lose his share of the property
11. Earlier people from other states can't permanently settle here and can't purchase any property of this state.

### CONDITIONS AFTER ABROGATION OF ARTICLE 370

1. The Constitution of India will apply to Jammu and Kashmir state like other states
2. Now there will be a system of single citizenship
3. Now there will be no separate flag
4. Now there will be reservation for minorities
5. Article 360 will be applicable
6. RTI will be applicable
7. Children in the state will benefit from Right to Education (RTE)
8. Assembly duration in Union Territory of J&K will be for 5 years
9. Panchayats will have the same rights as in other states
10. Now will not have to lose the property if women of Jammu and Kashmir marries the man who is not resident of Jammu and Kashmir
11. Now people from other states can purchase a property of this state and can settle permanently here.

### CONCLUSION

The new doctrine will need to convince the majority of Jammu and Kashmiris those closer ties with India will benefit their rights, give them more freedom and space, and offer them more opportunities than alternatives put forth by separatists or other mainstream parties. Moving forward, India ought to have faith in the people of J&K, implement development that benefits all facets of society, and reinstate statehood in accordance with its original pledge.

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