



CRITICAL ANALYSIS OF THE REVOCATION OF THE SPECIAL STATUS OF JAMMU AND KASHMIR

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ABSTRACT

The drafters of the Indian Constitution sought to make the country sovereign, stable, peaceful and to protect the human rights of its people. The Constitution plays a very important role in putting the country's judicial system on the right track to deal with today's complex real-life scenarios, and the future of our parliamentary system is secured by the current or new constitution. I'm here. However, the controversial Article 370, which gives Jammu and Kashmir broad powers as a self-governing body, raises many complex issues, including threats to the unity of the country, and our government: Split the state into two successor "Union Territories" with additional limited administrative powers.. This provision was a "temporary provision" and it was essential to repeal, amend or delete this provision. Article 370 has a historical background that is not derived from legal or constitutional considerations, but it contains complex political and religious aspects that affect the very complex issue of the border between India and Pakistan. Dr. B.R. Ambedkar, the creator of the Indian constitution, has been vehemently opposed to the inclusion of Article 370 since the matter's inception. A good mix of Muslims (Kashmiris - Divine Wisdom) and Buddhists (Ladakh from Tibet University Lhasa) has given us a unique culture and a progressive attitude to transform the unstable situation of the country into a peaceful one. We hope this will provide opportunities for future improvements, an enlightening and progressive development under the umbrella of the Indian Constitution. The author does not agree with the special status enshrined in Article 370 of the new constitution.

1. INTRODUCTION

The Indian Constitution is one of the best international constitutions that encompass all the needs for peaceful administration of the country and its society to ensure social stability and human rights and to protect humanity from serious crimes. In analyzing international and national security issues, we focus on the state of Jammu and Kashmir on the northern border of India and Pakistan. It is one of the world's most complex threat regions with serious and complex problems that can only be resolved through the implementation of new laws to maintain security and peace caused by Pakistani interference in the Jammu and Kashmir region. After the recent corona virus attack in the Ladakh region, which came from China, these serious problems are still present and the problem is very complicated. According to the ancient background of this article 370, Maharaja Hari Singh has ruled Jammu and Kashmir since October 26, 1947, after the Pakistani attack on Jammu and Kashmir after the union of the principalities with India under the Kashmir Constitution. It has become the history of the Kashmir incident. November 17, 1956 Article 370 of the Indian Constitution came into force and on October 26, 1947, Maharaja Hari Singh signed the accession instrument to which the State of India became a member. Finally, on October 26, 1947, Maharaja Hari Singh signed the official document (doctor of accession) to which the Indian state agreed. Most importantly, they are subject to Section 370(1)(a), (1)(b), (1)(c), (1)(d), (2) and (3) Section 370 Articles broader current legal framework, questions, challenges and suggestions for India's future peaceful scenario. This provision is governed by the Indian Constitution and Unequal Federalism, Bureaucratic Limitation of Amendment Powers, Article 370 and Transitional Constitutionalism. This result indicates that the Constituent Assembly's constitutional rights preclude the negation of Article 370 without a formal recommendation. Kashmir has long had an atmosphere of



terror and strife, with uninvited events killing many and millions of troops stationed in the valley. In many cases, large-scale bloodshed and terror-like situations occurred. The number of armies is quite large compared to the population of the Valley. The state has witnessed many illegal acts and tragedies related to military and human rights abuses by the military.

2. LITERATURE REVIEW

Dr. Tehseen Nisar [2] In this study the authors focus on the serious and complex issues of Kashmir (as an Indian state on a par with other states) and the repeal of Article 370: Is Peace Possible?, a deadlock that hinders India and future India-Pakistan relations. She strongly emphasizes Kashmir's complex issues such as repeal of Sections 370 and 35a by India.

Kronstadt, K. Alan [3] His studies, which were disseminated by the Congressional Research Service, concentrated on the history of Kashmir, recent events, and US politics. The author calls attention to Indian government measures in J&K state, which has a majority of Muslims, based on constitutional authority to undertake reforms. The author draws attention to Article 370, which, by means of the constitution, accords the J&K a "special status" and designates it as a "union territory".

In their research, Dr. Sona Shukla and Firdoos Ahmed [4] highlight the Jammu and Kashmir case history and explain how Maharaja Hari Singh, following a Pakistani assault on the region on October 26, 1947, after princely states had joined with India, executed the region's inhabitants.

Balu G. Nair [5] the author addressed the question arising from the study title, "Will Repeal of Article 370 Allow the President to Act in Accordance with the Constituent Assembly's Constitutional Rights without Official Recommendation?"

Dr. Akashdeep Singh - 2019 [6] Author said it's an art. 370 have been inserted in the Constitution as an interim provision. This includes any 'agreement' or 'consultation' with the GoI. 370(3) is no longer working and further affects future county relations, engulfing India's internal affairs, especially in J&K. Moonis Ahmar [7] said the author is the erosion of art. 370. In the mid-1950s, the weakening of Jammu and Kashmir's special status cast doubt on New Delhi's assertion that secularism was a fundamental principle of the Indian state. He also alleged that GoI is targeting specific religious interests and nullifying constitutional rights in Jammu and Kashmir.

Nimisha Mishra's [8] research title demonstrates the critical study - the necessity of Art 370 in the current political climate in India.

Tawheeda Nabi, Subaiya Nazir, Shahid Hussain Wani [9] in this research explains the intricate issue and its specifics relating to Article 370 of the Indian Constitution. Why raise doubts about Article 370 when there is controversy over the regressive scenario that will affect Kashmir?

In short article, Mahaveer Golechha [10] the publication's authors focus on the issue of Kashmir's integration today and for greater peace and prosperity.

In this research article, Amitabh Hoskote [11] focuses on the J&K issue as well as other politics that underlie Article 370, including the desire for its legality.

Rinashree Khound's research paper naming Repeal of Section 370 of the Indian Constitution. [12] Ira Singhal highlights a serious problem because the title of the study reflects "Sections 370 and 35A – future questions regarding their legal validity". In this study, the authors shed light on the complexity of these two articles and the culmination of petitions to the Apex court, based on legal study and other changes that will positively impact Jammu and Kashmir. The authors highlight issues such as historical views on the points relating to Section 370, the controversy surrounding Section 370 of the Constitution, and Section 35A regarding the legality of provisions. [13]

Surbhi Gupta and Shashi Bhushan Ojha [14] in this study, the authors shed light on the issue of 'special status' and their efforts to conduct research with precise reference to legal aspects and their implications.



Asthma Mehta [15] J&K is the epicentre and source of serious problems caused by Pakistani-Indian interference. The author does not agree to the status granted by Article 370 of the new constitution.

Aditya Jain [16] briefing about the historic moment dealing with Section 370, highlights a critical analysis of Section 370 of the Indian Constitution.

Dr. Preet Sharma and Dr. Sheila Rai [17] underline article 35A in the research paper before the ensuing article 370. They also emphasise the historical context of article 35A, the circumstances leading up to and following independence, and the presidential order that has an impact on Jammu & Kashmir and Ladakh.

B.G. Varghese [18] the author highlights the relation between Pakistan and India.

Davis R.A. [19] focuses on the important issues created after the implementation of article 370 to balance the critical situation.

3. RESEARCH METHODOLOGY

This study is doctrinal in nature and takes an analytical approach. Research makes use of both primary and secondary sources. There are other sources of information, including political views, debates, and commentary by various authors, books, magazines, websites, regulations, and more.

1. Primary Sources

Primary sources used in this study include the Indian Constitution, jurisprudence and statutes.

2. Secondary Sources

Data are collected through various sources such as the Internet, magazines, articles, newspapers and magazines.

A. Research Hypothesis

Effective implementation of Article 370 abrogation of the Indian Constitution would improve the overall social situation in Jammu and Kashmir.

B. Research Gap Objectives

- Examination and comparison of the legal status of Jammu and Kashmir in light of the repeal of Section 370.
- Analysis of the legal impact of repealing Sections 370 and 35A.
- Find a middle-of-the-road solution through new constitutional amendments and structural changes to the Basic Law to peacefully satisfy both the government and the people of the Kashmir Valley (Jammu and Kashmir and Ladakh).
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4. AN OVERVIEW OF ARTICLE 370.

Section 370 of Indian Constitution is the most controversial and controversial one. It has a deep, unfathomable and ephemeral history. Provision of the Constitution provides for the convocation of the Constituent Assembly of Jammu and Kashmir. Pursuant to this provision, amendments, additions or exceptions to Article 370 applicable to the State of J&K are left to the discretion of the Parliament. Henceforth, this provision is a provision which cannot be waived, modified or replaced. Jammu and Kashmir was granted special status under Article 370 for a number of historical and political reasons before it was revoked in 2019.

4.1- Background

Few people are aware of the reasons behind the creation of Article 370 of the Indian Constitution, but it was crucial in ensuring that J&K included as a fundamental element of the Indian Union. Despite opposition from political parties, the Constituent Assembly, and Sardar Patel, this was accomplished. Ambedkar declined to write this thing but Jawaharlal Nehru selected N. Gopalaswami Aiyangar, his



most dependable minister, to write item 370 of the Indian Constitution. Sheikh Abdullah had previously been asked to assist B.R. Ambedkar in formulating Article 370, but he vehemently disagreed. The Indian Constitution went into effect in 1950. Article 1 of the Constitution, gave a unique status to J&K. Nehru J. promised people of India that Section 370 was only a temporary provision and would be deleted in due course. The article's author did not mention the term and repeated the word "temporary" in the clause.

4.2 Facts behind Article 370 of the Indian Constitution:

1. Article 370 is a provisional and special provision for the State of Jammu and Kashmir.
2. At reorganization of the collection of princely State, the omitted provisions of Article 238 did not apply to J&K.
3. According to this article, the legislature must obtain the consent of the state government before taking any significant action.
4. The Union is not supposed to interfere with the provisions of the Constitution of J&K.

4.3. Constitutionality

Article was drafted to give the State a special constitutional status and no provision of the Indian Constitution has anything to do with the enforceability or reliability of Section 370.

4.4 Nature of Article 370

To understand the basic principles of the Indian Constitution, one must get to the nature of this Article. A number of Supreme Court decisions have therefore held that this was a temporary provision that happened to be a permanent provision dating back to the last five years. Article 370 is a political adventure, weaponized by J&K politicians.

Negligible Tax Impact:

1. Scope: Union Government with Consent of State Governments. Before all other laws, except national defence and foreign law, apply.
2. Jurisdiction: Jurisdiction of Congress is limited to the Union and Concurrent Lists only. The state list does not apply to this canyon.
3. The J&K High Court has limited jurisdiction and cannot declare any law unconstitutional.

4.5 Article 370 of the Indian Constitution

Article 370 is stipulated to be 'temporary, transitional and special'.

4.6 Impact of Article 370 on Basic Human Rights

Under the cover of Article 370, many human rights have been destroyed and manipulated. Human rights are for the benefit of society and should be recognized by, regardless of caste, colour, race, gender or creed. The citizens of J&K did not successfully defend their fundamental rights. Consequence of art Article 370 on the Scope of Human Rights states:

1. **Gender Agreement:** Article 370 speaks out against gender bias in Jammu and Kashmir. Section 35A addresses the right of a woman to be stripped of her property rights if she weds outside of her state.
2. **Inverse Class:** The existence of Section 370 creates opportunities for increased discrimination. The underclass may face discrimination that is a violation of human rights.
3. **Political Rights:** The Kashmir Valley has the smallest area and the most seats in constituencies among other states, which is unfair and promotes inequality among other states.
4. **Citizenship:** A permanent residency certificate is paramount to enjoy special rights in J&K.
5. **Ethnic Minority Rights:** Despite possessing minority status, Jammu & Kashmir is not under the jurisdiction of either the State Minority Commission or the National Minority Commission.
6. **Right to Work:** All citizens of India shall have the right to equal opportunity under section 16, which does not apply to the State of Jammu and Kashmir.



- 7. Freedom of Movement:** Under the protection of Article 370, the inhabitants of Jammu and Kashmir are not guaranteed the right to freedom of movement. This violates Article 19 and the human rights of the Jammu and Kashmiri people.

4.7 What does Section 35A of the J&K Rules contain?

This article was included to give special status to residents of Jammu and Kashmir. Section 35A benefits the people of J&K and is available only to valley residents.

4.8 Legal Implications of Section 370 of Indian Constitution

Section 370 was inserted during the political turmoil and war between Kashmir and Pakistan. To implement this agreement, Article 370 was created and drafting of this Article has begun.

1. Inequality.
2. Temporary and transitional measures.
3. Inspire separatists.
4. Financial Development.
5. Corruption.
6. Your security is at risk.
7. Discrimination

4.9 Overview of Government Officials

1) Dr. B.R Ambedkar (Bharat Rattan)

The makers of the Indian constitution had a disagreement with the idea of include article 370 from the very beginning.

2) Views of Sheikh Abdullah

“The accession of the State of J&K to India is not a matter in issue. Because of our shared objectives, I have been adamant that India holds the key to Jammu and Kashmir's future. I will make every effort to guarantee that the state of Jammu and Kashmir continues to contribute to the sovereignty, integrity, and advancement of the country.

3) Views of Omar Abdullah

“We the people of J & K would like to categorically tell BJP that it is not possible to withdraw Article 370 and any attempt by anyone will be on our dead bodies.”

4.10 How was Article 370 removed?

The problem is that Jammu and Kashmir has enjoyed Article 370 a lot since independence. Article ninty two of the J&K Constitution provides that it is the Governor's responsibility to make statements before the Legislature during his term of office.

Aftermath of Section 370 Deletion

The Prez of India repealed his 1956 Presidential Decree and announced the repeal of Section 370.

4.11 Latest Legislation: Jammu and Kashmir Restructuring Act, 2019

The Act was passed following a Presidential Decree deleting Section 370.

1. Leh ceases to be part of J&K and will be incorporated into the territory of Ladakh.
2. All other districts, villages and states remain anchored in J&K.
3. The law also determines the distribution of seats in Sabah. It stipulates that, as Lok Sabha's representative in parliament, five of the six seats will be allocated to J&K and one to Ladakh.
4. The no. of seats in the L.A. also increased from 107 to 111, including 37 in Jammu, 46 in Kashmir and 4 in Ladakh.
5. SC/ST receives reservation.
6. The Supreme Courts of both UTs be one.

5. CONCLUSION



Fewer Whole New Opportunities for J&K Overall Revolution or Transformation of Jammu and Kashmir after Section 370 Repeal

1. Tourism

Previous: J&K is India's paradise and there are many tourists who want to visit this place, but the problem is the legal impact on the state under Articles 370 and 35A. This will dematerialize the state's ability to become one of the nation's leading tourism companies.

2. Health and Education Sector

Previous: Lack of educational opportunities affects the future of young people. For children studying in J&K, the reach of higher education is limited and an exorbitant burden.

3. Fundamental Rights

People in the state had no RTE or property rights. Women were discriminated against and many children were denied access to educational institutions. Educational right was not a conclusive right in J&K.

5. Back Group:

Before: Discrimination against SC/ST class has long been widespread in J&K. They are not allowed to participate in elections and suffer abuse from permanent residents.

6. Property Rights

Before: Only permanent residents could claim property or land title. For this reason, land prices in the state have not raised compared to other states. Non-residents cannot claim land or property within the valley.

7. Corruption

The RTI law does not apply to Jammu and Kashmir, and investigative agencies such as the CBI, a surveillance agency, are without the consent of state authorities, cannot interfere with domestic issues.

8. Amendments or Guidelines

No new amendments, amendments or amendments to the provisions of the law were effective in J&K until approved by the State Government. For these reasons, there have been numerous laws, bills and laws that are binding on other states but do not apply to Jammu and Kashmir.

6. SUGGESTIONS WITH RESERACH GAP

1. Locals to be educated about the decisions and downsides of Section 370 that impede the state's growth and development. You have to earn people's trust first.
2. The Government imposed a press ban in violation of Article nineteen. This prevented the media from portraying the true side of the story.
3. J&K not be granted Union Territory status, but should be a single state.
4. In both areas, women should receive proper self-defence training to protect them and ensure their safety. A woman should experience her power and liberation in whatever dimension she desires.

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