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# Abrogation of Article 370: A Detailed Analysis

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## ABSTRACT

*The Indian Constitution governs the country, ensuring social stability, protecting human rights, and safeguarding mankind from grave crimes. Jammu and Kashmir, a unique state under the Indian Constitution, has special status under Article 370, which defines India-Jammu and Kashmir relations. The 2019 Jammu and Kashmir Reorganization Act provides an essential copy of the Indian Constitution. The Indian government has used constitutional power to abolish Articles 370 and 35A, causing concerns about the region's integration for peace and development. The state's permanent resident laws have been criticized for being discriminatory, including the difficulties faced by West Pakistani refugees, immigrant workers, and female residents. The Jammu and Kashmir Reorganization Order, 2020, abolished 29 state laws and altered 109 Jammu and Kashmir laws, including the Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act 2010. Removing Article 370 would enhance national security, eliminate discrimination against women, Dalits, and other marginalized communities, and grant them equal rights and privileges.*

**Keywords:** Article 370, Unique Status, Jammu and Kashmir Reorganization Act, 2019, Article 35A.

## I. INTRODUCTION

The Indian Constitution is a comprehensive legal framework that effectively governs the country, ensures social stability, protects human rights, and safeguards mankind from grave crimes. However, when examining the global and domestic security situation, particularly the Indo-Pak border in Jammu and Kashmir, it becomes evident that this region is one of the most intricate and perilous areas in the world. It is plagued by a multitude of complex issues that can only be addressed through the enactment of new legislation aimed at upholding security and promoting peace. The persistent intervention of Pakistan in the Jammu and Kashmir region, followed by China's recent involvement after the outbreak of the coronavirus, including an attack in the Ladakh region, has compounded the complexity of resolving these pressing issues.

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The objective is to establish a future relationship characterised by tranquilly and economic success.

The unique status of states under the Indian constitution is seen as a prime illustration of the federal structure of the Indian constitution. Jammu and Kashmir has special status under Article 370 of the Indian Constitution. It became part of the Indian Constitution on October 17, 1949. Article 370 defines India-Jammu and Kashmir relations. India committed to Jammu and Kashmiris in Article 370. According to the Treaty of Accession, parliament has jurisdiction over Jammu and Kashmir in defence, communication, foreign affairs, and kindred concerns. State will retain remaining functions. Jammu and Kashmir is unique in that only Articles 1 and 370 of the Indian Constitution apply. The state's constituent assembly must approve a presidential decree to apply the remaining articles under Article 370.

Years of bloodshed and terror in Kashmir have led to the deployment of millions of troops and the deaths of lakhs. Violence and terror are common. Military or paramilitary personnel guarded Kashmir polls. A Jammu and Kashmir legislature said around six lakh armed personnel were stationed for regional security. The valley had many soldiers to defend the citizens, as shown by the 1:18 ratio of residents to military men. Jammu and Kashmir has 1.47 crore inhabitants, India 130 crore. Military soldiers are large for the valley. State-affiliated military members have committed human rights violations and disasters. Military assaults, molestation, harassment, and abductions in the valley. Amnesty International and others found no evidence of Indian army human rights abuses. They endured such hardships. They consistently survived such situations.

### **(A) Literature Review**

The Jammu and Kashmir Reorganization Act<sup>3</sup>, as updated. This is an extremely essential copy of the 2019 Jammu and Kashmir Reorganization Act, an updated version of the Indian constitution, in which Article 370 is described in detail: Article 370 Clauses (1)(a), (1)(b), (1)(c), and (1)(d). Clause 370 Clause (2) and Clause (3) of Article 370. This resource is extremely beneficial for comprehending the current situation on the ground in Jammu and Kashmir, including Ladakh.

**Dr. Sona Shukla and Firdoos Ahmed**<sup>4</sup> – The author focus on the historical context of Jammu and Kashmir, namely the reign of Maharaja Hari Singh following the Pakistani invasion that

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<sup>3</sup> **The Jammu and Kashmir Reorganisation Act**, Registered No. ID (N) 04/0007/2003, Published by the authority as Ministry of Law and Justice (legislative department), 2019, New Delhi, India

<sup>4</sup> **Dr. Sona Shukla and Firdoos Ahmed** “A comparative study on article 370”, IJES, ISSN 3221 3361, Volume 9 Issue No. 11, 2019

began on October 26, 1947, and continued after the princely territories joined with India. As of the 17th of November 1956, when article 370 of the Indian Constitution went into effect, Kashmir has its own constitution. The state acceded to India on October 26, 1947, when Maharaja Hari Singh signed the accession papers. At long last, the official document (accession papers) that the state assented to with India and further background history was signed by Maharaja Hari Singh on October 26, 1947.

**Mahaveer Golechha**<sup>5</sup> - In this short article, the author emphasises the importance of integrating Kashmir for peace and development. The author raised concerns about the Indian government's use of constitutional power to abolish Articles 370 and 35A. Jammu and Kashmir was given special status and separated into two centrally controlled union territories: Jammu and Kashmir and Ladakh. The author argues that the current scenario of article 370 in Muslim majority states does not protect the rights of minorities. As a result, the majority of the population lacks tribal constitutional rights, the right to information (RTI), and other constitutional rights that citizens in other states enjoy. However, Indians in Jammu and Kashmir and Ladakh now have these rights. The willingness to modify and uphold constitutional rights promotes socioeconomic progress, investment, innovation, good health, peace, and prosperity.

**Ira Singhal**<sup>6</sup> - The author brings up the important problem because the title of the research paper says, "article 370 and article 35A: the impending question of their legal validity." Based on a legal analysis, the author of this study talks about the complicated problem with these two articles and the most important cases in the Supreme Court of India. Jammu and Kashmir will benefit from changes that happen. The author brings up several issues, such as the historical view of certain points about Article 370, the contentious history of Article 370 in the Indian Constitution, and Article 35A and its constitutionality.

**Durga Das Basu**<sup>7</sup> - In this piece, the author talks about what the difference is between a unitary constitution and a federal constitution. In this article, the author also talks about the differences between Jammu and Kashmir and other Indian states. For example, they talk about what powers the state of Jammu and Kashmir doesn't have because it is considered a separate state in the Indian constitution and has its own constitution.

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<sup>5</sup> **Mahaveer Golechha**, "Integration of Kashmir for peace and prosperity" , Correspondence, S0140-6736(19)32077-X, 2019, <http://dx.doi.org/10.1016/>

<sup>6</sup> **Ira Singhal**, "Art. 370 and Art. 35A – The impending question of their legal validity", IJLMH, ISSN- 2581-5369, Volume 1, ISSUE 3, 2018, [www.ijlmh.com](http://www.ijlmh.com)

<sup>7</sup> **Comparative Federalism**

### **(B) Research Method**

The research takes an analytical approach and is doctrinal in nature. Primary and secondary resources will be used in the research. Books, journals, online resources, enactments, political opinions, debates, author commentary, and so on are just a few of the many other sources. For this meta-perspective on Article 370, from its creation until its abrogation, we have used secondary data culled from a variety of sources, such as reports and published papers. Articles published in several law journals, the Jammu and Kashmir constitution, the Indian constitution, and the instrument of accession provide the bulk of the material. The researcher has conducted fieldwork to get first-hand accounts from Jammu and Kashmiris on their thoughts and feelings about the repeal of Article 370 and whether they are willing to accept this shift in their relationship with the rest of India.

### **(C) Hypothesis**

The constituent assembly of Jammu and Kashmir and the people of Jammu and Kashmir must agree before the parliament can change or repeal Article 370, despite its possession of other articles. Substituting a different state assembly for the constituent assembly is the sole option for repealing Article 370. Without the approval of the local population, the Union has taken the unilateral action of repealing Article 370. The government is making this move to generate political excitement. It has cleared the door for more people to speak up for Jammu and Kashmir's independence from the rest of India, which will happen in the end.

## **II. AN OVERVIEW AND BACKGROUND OF ARTICLE 370 OF THE INDIAN CONSTITUTION**

The most divisive Indian Constitutional article is 370. It has a rich history, both permanent and transitory. This Article was deemed a "temporary provision" in the Indian Constitution. The Indian constitution calls for a Jammu & Kashmir Constituent Assembly. This Article allows the Assembly to modify, alter, or exclude Article 370 of the Constitution of India for Jammu and Kashmir. This is a transitory provision that cannot be changed or replaced. Before its abrogation in 2019, Jammu & Kashmir was granted special status under Article 370 of the Indian Constitution for historical and political reasons. Article 370 is known as the National Liability of the Indian Government. This article includes extensive literature and history that is neither legal or constitutional, but rather political and religious. To comprehend the Article and its political context, one must be acutely aware of the interconnected facts and factors. An in-depth grasp of unilateral and bilateral government in a single country is crucial.

Few understand the significance of Article 370 in the Indian Constitution, which has helped

Jammu & Kashmir become a fundamental part of the nation. This was despite political concerns from Sardar Patel, political parties, and the Constituent Assembly. To draft Article 370 of the Indian Constitution, Jawaharlal Nehru appointed his loyal Cabinet Member N. Gopala swami Aiyengar when B.R. Ambedkar declined to do so. Initially, Sheikh Abdullah was asked to join B.R. Ambedkar in creating Article 370, but he opposed it. In 1950, the Indian Constitution established Jammu and Kashmir as a unique status. The "Delhi Agreement"<sup>8</sup> was struck by Jawaharlal Nehru and Sheikh Abdullah to enhance relations between the state and the union. Nehru assured Indian citizens that Article 370 will be removed after a limited period. Article framers did not indicate the period, but they used temporary.

Does it refer to a week, month, year, or decade? It took over 50 years to remove language like "temporary, translational, and special provision" from part XXI of our Constitution. The Instrument of Accession signed by the State states that India's dominance over Jammu and Kashmir is limited to defence, external affairs, and communication, with other matters to be decided by the Maharaja or government. Additionally, Clause 7 of the Instrument of Accession states that Jammu and Kashmir is exempt from any additional laws in the Indian Constitution.

### **III. TEMPORARY PROVISION**

Jammu and Kashmir was in a precarious position throughout the preparation of the Indian Constitution. The Kashmir conflict between Pakistan and India continued to occupy the attention of the United Nations Security Council. India had promised the international community that the people of Jammu and Kashmir would be able to choose their side in the conflict in a vote once fighting had stopped and the raiders had been driven out of Kashmir. The resolution of the Jammu and Kashmir question, however, could not postpone the process of creating and finalising the Constitution of independent India. This is why the Jammu and Kashmir clause must be a short-term amendment to the Constitution. However, the fundamental premise has always been that the Indian government would not usurp state powers without the approval of its citizens.

As the Constituent Assembly's constitutional advisor, B.N. Rau was the one who initially proposed the notion of a transitional clause for Jammu and Kashmir. He wrote that the "special position" of Jammu and Kashmir would need to be addressed in India's constitution in a document he sent to the Indian government's Ministry of States. He inquired, "Until we determine the state's final position, is it feasible to have a transitional provision that keeps the

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<sup>8</sup> The Delhi Agreement, 1952

present Instrument of Accession alive even under the new Constitution?"

The Maharaja chose Sheikh Abdullah as Prime Minister and a Council of Ministers to lead a "Popular Interim Government" in Jammu and Kashmir on March 5, 1948. Maharaja nominated, not elected, this transitory administration. The proclamation said that a "National Assembly based on adult suffrage" would write a state constitution once "normal conditions" were restored. Nehru informed Sheikh Abdullah in May 1949 that Jammu and Kashmir had joined the Indian Union in foreign affairs, defence, and communications. Speaker: The Constituent Assembly of Jammu and Kashmir will decide what other subjects the state can join. The next month, Abdullah and three others represented Kashmir in the Indian Constituent Assembly. A UN-sponsored plebiscite was K.T. Shah's demand for Kashmiri representation in the Constituent Assembly. Rajendra Prasad said Kashmir's admission to India was "unconditional" and that the Constituent Assembly's representation was unaffected by the plebiscite's scheduling or outcome.

In July 1949, the Ministry of States under Vallabhbhai Patel clarified its position on Jammu and Kashmir's constitutional status. The note stated that Jammu and Kashmir cannot be treated like other Indian states due to the Maharaja's refusal to allow India's parliament to enact laws on subjects other than defence, external affairs, and communications until the Constituent Assembly decides<sup>9</sup>. The decision was made to continue the accession of Kashmir to India till it reaches the level of other states. A unique constitutional clause was needed for a transitional arrangement.

September 1949 saw the Constituent Assembly Drafting Committee Share Article 306A (later Article 370). Draft allows President to terminate Jammu and Kashmir provision without government consent. It extended large elements of the Indian Constitution to Jammu and Kashmir but limited parliament's power. Abdullah and two companions met with Gopala swami Aiyengar on October 15, 1949, to criticise the Constitution a month before its finalisation. In the modified proposal, Aiyengar required the Constituent Assembly of Jammu and Kashmir to accept President Article 306A termination. Aiyengar's plan dramatically limited Jammu and Kashmir's Indian Constitutional coverage. On October 16, Patel wrote to Aiyengar, worried that India's Constitution's fundamental rights and directive principles would not apply to Jammu and Kashmir. "You can see the paradox of the State joining India without acknowledging these provisions," remarked he. Next day, October 17, Gopala swami Aiyengar

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<sup>9</sup> Note by the Ministry of States Explaining the Decisions Regarding the Indian States" (July 1949). B. Shiva Rao (ed.), *The Framing of India's Constitution: Select Documents* (Delhi: Universal Law Publishing Co. Pvt. Ltd., 2012 reprint), vol. 4, at p. 556.

proposed adding Article 306A to the draft Constitution. Former Kashmiri Prime Minister Aiyengar represented India at the UNSC over Kashmir. His speech was deliberate and compelling. The speaker stated "special conditions" in Kashmir required this clause. Three circumstances existed.

War broke out in Kashmir first. A cease-fire did not settle the state's odd and aberrant conditions. He added, "part of the State is still in the hands of rebels and enemies". Thirdly, the UN-India Jammu and Kashmir dispute makes it hard to foresee our release. This needs a satisfactory Kashmir resolution. Aiyengar stressed that India would let the people vote on the state's constitution and Union power through a constituent assembly. Indian control over Kashmir was determined by Kashmiris through a constituent assembly. Aiyengar said Kashmir would hold a plebiscite provided peaceful and regular conditions and impartiality are restored. Article 306A was easily passed by the Constituent Assembly and renamed Article 370<sup>10</sup>. It essentially said three things:

(a) **Parliaments Legislative Power** - First, India would not exceed its powers in the Instrument of Accession to legislate over the three topics without the "concurrence" (agreement) of the "Government" of Jammu and Kashmir<sup>11</sup>. For Jammu and Kashmir legislation, India only needs to "consult" the "Government" for matters listed under the Instrument of Accession, but for anything outside those themes, it needs the "concurrence" of the "Government". Jammu and Kashmir's "Government" was the Maharaja acting on the Council of Ministers' instructions under his March 1948 proclamation. According to Sheikh Abdullah, Article 370 should use the term "appointed" instead of "for the time being in office"<sup>12</sup>. This would have precluded India's parliament from legislating outside the Instrument of Accession without Sheikh Abdullah and his ministers' consent. Even without Abdullah and his cabinet, Article 370 empowers India's parliament to legislate on matters beyond the Instrument of Accession with the new state government's consent. Due to his prospective announcement of Jammu and Kashmir's independence from India, Abdullah was arrested and deposed as Prime Minister in 1953.

(b) **Applicability of Constitution** - Other than Article 1 (describing India as a union of states) and Article 370, no aspect of the Constitution (including fundamental rights and directive principles) applicable to Jammu and Kashmir. For the Indian President to apply Constitutional provisions beyond defence, external affairs, and communications to Jammu and Kashmir, the

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<sup>10</sup> 5 On 25 November 1949, Yuvaraj Karan Singh, by then the new ruler of J&K, issued a proclamation accepting the Constitution. Noorani

<sup>11</sup> Article 370(1)(b).

<sup>12</sup> Aiyengar to Abdullah, 18 October 1949

“Government” of Jammu and Kashmir must give its “concurrence”<sup>13</sup>. President Rajendra Prasad stated that this article prohibits the Parliament of India from influencing the Constitution of Jammu and Kashmir. The President may apply provisions of the Indian Constitution to Jammu and Kashmir with exclusions and adjustments. Later, Prasad informed Nehru that this required an executive order to change the Constitution for Jammu and Kashmir.

(c) **Cessation of Article 370** - Article 370(3) of the Indian Constitution allows the President to amend or repeal the Constitution with the consent of the Constituent Assembly of Jammu and Kashmir (J&K)<sup>14</sup>. This clause was unique as it allowed for amendments of the Constitution by an executive act of the Government of India, distinct from Parliament. The intent behind giving the Constituent Assembly the power to recommend the abrogation of Article 370 was to ensure that the Constituent Assembly would decide the fate of the Constitution. In 1952, Nehru reiterated that the people of Kashmir must decide whether to remain in India or leave. He suggested a special provision in the transitory clause to allow for changing circumstances without a formal amendment of the Constitution. Prasad was concerned about the possibility of losing Jammu and Kashmir in a plebiscite and suggested making the cease-fire line between India and Pakistan the boundary between the two countries.

#### **IV. EROSION OF ARTICLE 370**

The Instrument of Accession limited parliament's legislative power to three subjects, but over time, several more subjects were added, and provisions of the Indian Constitution were made applicable to the state by presidential orders under Article 370. The Constituent Assembly of Jammu and Kashmir drafted a constitution that declared the state an integral part of India, eliminating the need for a plebiscite. Only with the approval of the State Constituent Assembly of Jammu and Kashmir can the President reduce Article 370. The government made amendments to Article 367 of the Constitution, replacing the term "Constituent Assembly" with "Legislative Assembly." This change abrogated the provision that accords special status to Jammu and Kashmir.

The government argued that the Governor of Jammu and Kashmir can vouchsafe the authorization to delete Article 370, as Section 92 of the Jammu and Kashmir Constitution states that during governor rule, the Governor is responsible for announcing the announcement before the State Assembly, the government argued that the Governor of Jammu and Kashmir can

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<sup>13</sup> Article 370(1)(d). If, on the other hand, he wanted parts of the Constitution that did not go beyond the Instrument of Accession to apply, he needed only to “consult” the “Government” there.

<sup>14</sup> Article 370(3). As Prasad noted, however, the President was not bound to act on the advice of the Constituent Assembly of J&K

vouchsafe the authorization to erase Article 370. Jammu and Kashmir's unique status, which was protected by Article 370 and Article 35 A, was revoked by the Indian government on August 5, 2019, bringing an end to the situation. To change the situation in the opposite direction would have required the approval of the elected representative of Jammu and Kashmir or the majority vote of the members of Parliament, both of which may have taken an additional half century to materialise. In order to fulfil his long-standing pledge, Jawaharlal Nehru eliminated the part that said that it would never cease.

## **V. ARTICLE 35 A AND ITS BACKGROUND**

With the authority to define "permanent residents" and bestow special benefits upon them, the Jammu and Kashmir State Legislature could exercise its authority under Article 35A of the Indian Constitution.

The Jammu and Kashmir state assembly was given the authority by Article 35A of the Indian Constitution to define "permanent residents" of the state and provide them exclusive rights and benefits that were not granted to other Indian citizens. Under Article 370, the President of India issued The Constitution (Application to Jammu and Kashmir) Order, 1954, which added it to the Constitution. Permanent residents were allowed to buy land and real estate, vote and run for office, apply for jobs with the government, and make use of other state privileges like health care and college degrees under the state's now defunct distinct constitution. These 'privileges' were not available to non-permanent residents of the state, including Indian citizens.

Over the years, the state's permanent resident laws and the provisions made possible by Article 35A have come under fire for being discriminatory. Examples of these provisions include the difficulties faced by West Pakistani refugees, immigrant workers, and the state's female residents, who may lose their status as permanent residents if they marry outside of the state. President Rajendra Prasad issued the Constitution (Application to Jammu and Kashmir) Order, 1954 under Article 370, following the instruction of the Jawaharlal Nehru-led Union Government. This law followed the 1952 "Delhi Agreement" between Nehru and Jammu and Kashmir's prime minister, Sheikh Abdullah, to offer Indian citizenship to "state subjects" of the state.

The Instrument of Accession and Article 370 allow the state to impose exceptions to the Indian Constitution, except for surrendered subjects. Article 35A was deemed an exemption under Article 370(1)(d). The Prime Minister of Jammu and Kashmir during the 1954 Presidential decree was Bakshi Ghulam Mohammad of the Jammu and Kashmir National Conference. By a Presidential Order dated August 5, 2019, the Union Government revoked the special status

that Jammu and Kashmir had been accorded under Article 370 and declared the state to be subject to the entirety of the Indian Constitution. This suggested that Article 35A had been repealed. In addition, laws reorganizing the state into two union territories—Jammu and Kashmir and Ladakh—were passed by the Union Parliament.

Jammu & Kashmir operated under the former legal framework until March 31, 2020, under President's Rule. The Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020, passed by the Union Ministry of Home Affairs on March 31, abolished 29 state laws and altered 109 Jammu and Kashmir laws. One amended law is the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act 2010. The phrase "domicile" in the union territory has substituted "permanent resident of the State" in the Act. According to the directive, an individual is considered to have domicile in Jammu and Kashmir if they have studied for seven years, taken the Class 10th or 12th exam there, or resided there for fifteen years. Residence status is available to children of central government employees and those who served in Jammu & Kashmir for a decade. Anyone registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) can apply for domicile benefits.

**Discriminatory nature of Article 35A** - Inherently discriminatory and unequal, Article 35A of the Indian Constitution prohibits women who marry outside their caste, religion, or State from owning or inheriting property, violating Article 14.

The provision is also in violation of the J&K Constitution. According to Section 6 of the J&K Constitution, a citizen of India is considered a permanent resident of the state if they were a state subject of Class I or II on May 14, 1954, or had legally acquired immovable property in the state and resided there for at least 10 years prior to that date. The section also states that individuals who were class I or class II state subjects before May 14, 1954, and returned to the state under a resettlement permit or permanent return law will be granted permanent resident status.<sup>15</sup>

Further, in *State of Jammu and Kashmir v. Dr. Susheela Sawhney*<sup>16</sup>, the court ruled that discrimination based on gender violates the Constitutions of India and J&K, and there was a reference to the Preamble of the Constitution of India, which guarantees equality of status and liberty. The court agreed that Section 10 of the J & K<sup>17</sup> Constitution guarantees permanent residents all rights under the Indian Constitution, including Article 14. This implies that the state must uphold the fundamental rights of the Indian Constitution, including Article 14. But

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<sup>15</sup> Section 6, Jammu and Kashmir Constitution, 1956

<sup>16</sup> AIR 2003 J&K 83

<sup>17</sup> Section 10, Jammu and Kashmir Constitution, 1956

in the process of the interpretation of the definition of permanent resident an entire section of the society (the women) has become discriminated against and are unable to claim or purchase property or even obtain scholarships and employment even though they are just as much of a permanent resident of the state as the men are.

## **VI. REASONS FOR THE ABROGATION OF ARTICLE 370**

1. Article 370 impeded the **full integration** of Jammu and Kashmir into the Indian Union, resulting in a sense of secession and hindering its growth. Full integration was thought to facilitate enhanced access to resources, infrastructure, and opportunities for the inhabitants of Jammu and Kashmir.
2. Pakistan utilised Article 370 to bolster terrorism and promote separatist in the region, so compromising national security. The abrogation would enhance **national security** by granting the Indian government greater authority over the region and enabling stricter measures against terrorist operations.
3. **Eliminating Discrimination** - Article 370 exhibited discriminatory practices towards women, Dalits, and other marginalised communities in Jammu and Kashmir. The abrogation would subject them to Indian laws and grant them equal rights and privileges.
4. Article 370 resulted in a **dearth of transparency and accountability** in the administration of Jammu and Kashmir. The abrogation would subject the state under the jurisdiction of the Central Vigilance Commission and the Right to Information Act, resulting in enhanced governance and accountability.
5. **Economic Prosperity** - Article 370 impeded economic progress in the region of Jammu and Kashmir. The abrogation would facilitate increased investment, tourism, and job generation in the region.

## **VII. IMPACT OF ARTICLE 370'S ABROGATION**

As a result of the repeal of Article 370, there has been a notable **decrease in the amount of violence** that has occurred in Jammu and Kashmir. In the past four years, the number of terrorist attacks has reduced by more than fifty percent, and officials have reported that security forces have been responsible for the deaths of more than three hundred militants. This can be linked to a number of different variables, such as an increase in security measures, an improvement in intelligence collecting, and a decrease in popular support for militant activity.

The **number of visitors** who visit Jammu and Kashmir has dramatically increased since Article 370 was repealed, which has led to an increase in the number of travellers. This can be

attributed to several different things, such as enhanced safety measures, enhanced marketing strategies, and the introduction of new tourism projects. There were 1.62 crore tourists in the region of Jammu and Kashmir in 2022, which is the largest number of **tourists** in India's history, which spans 75 years since the country gained its freedom.

The government has also made significant investments in the **development of infrastructure** in Jammu and Kashmir. This covers initiatives such as the building of new roads, bridges, tunnels, and electricity lines, among other different types of construction. As a result of these enhancements, it is now simpler for individuals to travel throughout the region and conduct business there.

### **VIII. JAMMU AND KASHMIR REORGANIZATION BILL 2019**

The Presidential Order to delete Article 370 prompted this statute. This bill created two Union Territories—Jammu and Kashmir and Ladakh. Insurgencies between Pakistan and India always target Jammu & Kashmir. This Act takes effect October 31, 2019. On August 5, 2019, Home Minister Amit Shah launched this Act. The measure passed by majority vote in both houses of Parliament. With the floor open, 125 Rajya Sabha members supported this measure when it was introduced. On August 9, 2019, India's president gave his renowned consensus to enact the bill. The measure, launched by presidential order, repealed Article 370 from the Indian Constitution. As Article 370 expired, the Union Government passed the Reorganisation Bill to redraw Jammu and Kashmir and Ladakh.

**Features** - This law establishes the legislative assembly for the Indian state of Jammu and Kashmir. The people of Ladakh will be led only by the lieutenant governor since the region lacks a legislative assembly.

1. Jammu and Kashmir would be dissolved and Ladakh territory will be combined with Leh and Kargil.
2. No other states, districts, or villages will be able to escape Jammu and Kashmir's influence.
3. The Act also determines how the Lok Sabha seats would be distributed, with five seats going to Jammu & Kashmir and one to Ladakh out of a total of six.
4. Following the procedures outlined in the delimitation Act will govern the election.
5. The term of the Jammu and Kashmir Legislative Assembly is five years.
6. Sixth, Jammu and Kashmir will have the same legal standing as Puducherry under Article 239a.

7. There is an increase from 107 to 111 seats in the Legislative Assembly, with 37 seats from Jammu and Kashmir, 46 from Kashmir, and 4 from Ladakh.
8. Reservations will be made for SC/ST.
9. There will be no difference between the two UTs' High Courts.

## **IX. SUPREME COURT'S JUDGMENTS/VIEWS ON ARTICLE 370**

The Supreme Court of India has ruled that the President possesses the authority to apply the Indian Constitution to Jammu and Kashmir with appropriate "modifications" in accordance with Article 370. This authority includes the authority to make significant changes to the Constitution since it pertains to that state.

In the case of **Puranlal Lakhanpal v. President of India**<sup>18</sup>, the person who filed the petition questioned a part of the 1954 Presidential order that changed how Article 81 of the Indian Constitution applied to Jammu and Kashmir. Article 81 says that the people of India should directly pick members of the Lok Sabha. The 1954 order, on the other hand, said that members of Jammu and Kashmir would be chosen for the Lok Sabha based on a suggestion from Jammu and Kashmir's legislature. This is called "indirect elections." In front of the Supreme Court, the petitioner said that the President's power to apply the Indian Constitution to did not give him the power to completely change the Constitution. The Supreme Court did not agree with this point and said that Article 370 should be given the "widest possible amplitude." It said that the president could "efface" a rule and make big changes to it.

In the case of **Prem Nath Kaul v. State of Jammu and Kashmir**<sup>19</sup>, the Supreme Court of India ruled that "the Constitution-makers attached great importance to the final decision of the Constituent Assembly." The court also reached the conclusion that the President's powers under Article 370 could only be maintained if the Constituent Assembly of Jammu and Kashmir gave its "final approval" for him to continue exercising those powers.

**Mohd. Maqbool Damnoo v. State of Jammu and Kashmir**<sup>20</sup> presented the Supreme Court with an intriguing question. The President made an order to change Article 367, the defining clause, of the Constitution on 24 November 1965 under Article 370 of the Constitution. The purpose of the amendment was to replace "Sadar-i-Riyasat" with "Governor" in the Explanation to Article 370. A governor who was nominated succeeded the elected Sadar-i-Riyasat of Jammu and Kashmir. Any proposed change to Article 370 had to be recommended

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<sup>18</sup> AIR 1961 SC 1519 (SCC Online version).

<sup>19</sup> AIR 1959 SC 749 (SCC Online version) (5 judges).

<sup>20</sup> (1972) 1 SCC 536.

by the Constituent Assembly of Jammu and Kashmir in accordance with Article 370(3). The Constituent Assembly of Jammu and Kashmir had already disbanded when this decree changed the Explanation to Article 370. This case's petitioner contended that the presidential order was invalid because it was issued without the Constituent Assembly of Jammu and Kashmir's recommendation and because it attempted to accomplish through the "back-door" (an amendment to Article 367) what could not be accomplished through the "front-door" (an amendment to the Explanation of Article 370 without the recommendation of the Constituent Assembly).

Finally, the Supreme Court of India, in the case of **State Bank of India v. Santosh Gupta**<sup>21</sup>, concluded that the State of Jammu and Kashmir has "no vestige of sovereignty outside the Constitution of India" and that the Constitution of Jammu and Kashmir was subject to the Constitution of India. On the other hand, the court reaffirmed that the president is not permitted to issue an order that would cease the implementation of Article 370 without first receiving a recommendation from the Constituent Assembly of Jammu and Kashmir.

## **X. CONCLUSION**

Jammu and Kashmir is a state that is an essential component of India. The state has been granted a certain degree of autonomy in accordance with Article 370, taking into consideration the federalist system and the state's singular history of joining the Union of India. The question of whether to offer autonomy or federalism is what Article 370 all about is; it is not about integration. Since the Constituent Assembly of the State is no longer in existence, the Supreme Court of the United States decided in 2018 that Article 370 is a provision that will remain in effect forever. Article 370 was rendered "inoperative" by the Indian government to circumvent all of the other legal issues, yet it continues to hold a position within the Constitution of India due to its continued existence.

Following the removal of Article 370, it is anticipated that Jammu and Kashmir will revert to the status of a normal state, equivalent to that of the other states. It is anticipated that real estate businesses will soon commence operations in Jammu and Kashmir, and it is anticipated that a similar trend will be followed in other industries. Due to this, the Union Territory of Jammu and Kashmir is going to experience a surge of quick and comprehensive growth in the not-too-distant future.

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<sup>21</sup> (2017) 2 SCC 538.

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