

**JOURNAL FOR LAW STUDENTS AND RESEARCHERS****ABROGATION OF ARTICLE-370**

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**HISTORICAL BACKGROUND:ARTICLE 370 & KASHMIR**

<sup>1</sup>The story began when India became independent from British Rule in the year 1947. At the time of partition of India in 1947 into two separate countries - India and Pakistan, the State of Jammu & Kashmir was under the rule of Dogra King Maharaja Hari Singh, like other princely States of India at the time of independence. During that time after independence, the King Maharaja of the State of Jammu & Kashmir was attacked by his Muslim subjects who join hands with Pakistan's Pashtun tribal Kabailis and subsequently the Pakistan's Pashtun militia crossed the border of the State in October 1947. Looking to the threat from the Kabailis, the King Maharaja, who earlier did not want to merge Kashmir with India, made a request to India for help and support. Such request was accepted by Government of India but the help was offered subject to his signing an Instrument of Accession to India.

During the year 1948, these Kabailis also got support of the Pakistani armies who entered the war and before they were driven away by Indian Army, they forcibly captured some parts of Kashmir which had already become the integral part of India. These captured parts of Kashmir were never returned by the Pakistan and after ceasefire in the midnight of December 31, 1948, a Line of Control (popularly known as "LOC") was drawn between the two countries and the areas of Kashmir captured by Pakistan will become POK (Pakistan occupied Kashmir).

The above matter was taken to United Nations which resolved that a plebiscite be conducted both in POK and Jammu & Kashmir. For this Pakistan had to withdraw its army from its occupied Kashmir. India agreed to plebiscite in Kashmir under the UN resolution adopted in 1948, but Pakistan subverted the UN resolution by transferring some of POK parts to China in 1965 and bifurcating the POK into two parts in 1970. This has resulted in demographic and legal changes in the POK nullifying the UN Resolution. Since 1948, India has been claiming back the POK, which is considered as the integral part of Republic of India.

Later, many organizations in Kashmir, including the King himself wanted that the Constitution of India should be fully implemented to the State of Jammu & Kashmir but the Political Leader Mr. Shaikh Abdullah who advocated abolition of monarchy wanted a separate constitution for the State. A constituent Assembly was formed in 1951 to look into the matter and the Article 370 was inserted in the Constitution of India, granting special status to Jammu & Kashmir. The Constituent Assembly of Jammu and Kashmir, which was

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<sup>1</sup><https://www.mbauniverse.com/group-discussion/topic/current-affairs/article-370>

an elected body, unanimously resolved on 15 Feb 1954 that the entire princely State of Jammu and Kashmir shall be integral part of India.

### **WHAT IS ARTICLE 370?**

The Article 370 of the Indian constitution came into force in 1954 through a special order issued by the President of India, which granted a special status to the State of Jammu & Kashmir and had allowed it to have a separate constitution, dual citizenship, a State flag and autonomy over the internal administration of the State. The Article was drafted in Part XXI of the Constitution as Temporary in nature, Transitional and had Special Provisions. The Constituent Assembly of Jammu & Kashmir which was empowered to recommend the articles of the Indian constitution that should be applied to the State or to abrogate the articles altogether, was consulted before issuance of Presidential order in 1954. Article 370 was a temporary provision as its applicability was intended to last till the formulation and adoption of the State's own constitution. Subsequently, the State's constituent assembly was dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370, the Article continued to remain in force in State of Jammu & Kashmir. As such Union of India was empowered to abrogate, amend the provisions in Article 370 as there was no more a Constituent Assembly in State of Jammu & Kashmir to which any reference could be made. Despite Jammu & Kashmir being a State of Union of India, the Article 370 & 35A on Kashmir defined that the Jammu and Kashmir State's residents would live under a separate set of laws, including those related to Citizenship, ownership of property, and fundamental rights as compared to residents of other Indian States. Both these Articles prohibited Indian citizens of other States from buying any land or property in the State of Jammu and Kashmir.

### **ARTICLE 370: ADVERSE IMPACTS ON KASHMIR**

Despite being "Temporary and Transitional", the Article 370 made the State of Jammu & Kashmir a closed door economy which helped the politicians and separatist forces in Kashmir to become strong. Article 370 is an exception to the fundamental rights guaranteed to all citizens by the Indian Constitution. Considering the above factors, it is worthwhile to discuss that how Article 370 affected the overall development of the State of Jammu & Kashmir adversely.

1. **No Land or Property for Indians:** Article 35A, which was abolished along with abrogation of Article 370, did not allow any person from any other State of India to buy land or property in Kashmir. This was a major drawback for the State as no developmental work could take place with the impact of no substantial employment generation.
2. **Parallel Constitution without safeguard to Minorities:** Article 370 allowed parallel State constitution in the State of Jammu & Kashmir and it had no safeguard for minorities, even there were no tribal rights. Due to no safeguard for minorities, by taking cover of the protection granted by Article 370, the forced mass departure of the Hindu Pandits from Kashmir had happened in 1990. Their houses were burned and looted, women were raped, many of them were killed but the Government in Kashmir remained silent. The male Kashmiri Muslim's enjoyed far greater rights than any other Indian citizen.

3. **Deprived Women of their Rights:** <sup>2</sup>The J&K women who marry a non-Permanent resident of Kashmir would lose their permanent resident status and inheritance rights in Kashmir. So if a girl gets highly educated and becomes a scientist, doctor, engineer, film maker, actress and marries any Indian who is not a permanent resident of Kashmir, she would lose all her inheritance rights and Kashmiri citizenship. Even if the person who marries the girl and wants to settle down in Kashmir, the family loses their rights. On the other hand if she marries a Pakistani, all her rights are intact.
4. **No Right to Education:** All the States are governed with the doctrines of Directive Principles of State Policy granting right of education to each and every citizen. But in Kashmir it did not apply and the State had no right to education for its citizens
5. **No Reservation for Dalits:** Article 35A did not allow the thousands of Dalits who were brought in from Punjab as Government sweepers in 1957 to get any Government jobs other than sweepers. They could not get a Scheduled Caste certificate from the State Government and therefore were not eligible for any benefits under Central Government schemes.
6. **Breeding Racial Discrimination:** While Hindu and Sikh refugees from Pakistan have been a non-Permanent Resident second-class citizens, the Uighur Muslim's from Xinjiang were granted Permanent Resident status. The abolition of Article 35A has granted full citizen equal rights not only to the Kashmiri Muslim's but also to Hindu, Sikhs, Buddhists, Dalit's, and minorities granting them fundamental rights as described in the Constitution of India.
7. **Frequent Misuse:** Over the years, Article 370 has become an instrument of exploitation in the hands of the ruling political elites and other vested interests in bureaucracy, business, judiciary and bar. Apart from the politicians, the richer classes have found it convenient to accumulate wealth and not allow healthy financial legislation to come to the State.
8. **Tax Thefts under Cover of Article 370:** At the cost of tax payers from other States, thousands of crores of Rupees were granted for the development of Kashmir, but the end use was deceiving. The provisions of the Wealth Tax, the Urban Land Ceiling Act, the Gift Tax etc, and other beneficial laws of the Union have not been allowed to be operated in the State under the cover of Article 370.

### **REPEALING OF ARTICLE 370**

Even with the infusing lot of funds for the development of Kashmir at the cost of tax payers of other States of India, Government of India remained concerned over the draining of its assistance. No proper and visible development work as well as jump in the employment has been seen in the State, rather sharp increase in terrorist activities has been witnessed in the State of Jammu & Kashmir in connivance with Pakistan and many political leaders/separatist groups, which took the toll of thousands of lives. Ladakh region has suffered most of the negligence of the State Government. Therefore, it was very much essential and in the interest of the country that Article 370 should be made ineffective.

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<sup>2</sup>As per Article 35A stipulation.

As per The Constitution of India, the Title heading which contains the Article 370<sup>3</sup>, which in itself indicates that the Article 370 implemented in the year 1952 was temporary in nature. As said by Shri Gulzarilal Nanda, Home Minister of India during 1963-66, and<sup>4</sup>the terms for the "special status" granted to Jammu and Kashmir in the Article 370 had a "very simple" process for cessation of its operation. It could be done by a public Notification by President of India, declaring that this Article cease to be operative or shall be operative only with such exception and modifications and from such date as he may specify. In the absence of Constituent Assembly in the State, such Notification by President is sufficient. It is to be noted that the powers of all other States could only be amended by the normal process of (constitutional) amendment which had stringent conditions.

After waiting for 71 years and fed up with the working style of the State Government, political leaders supporting separatists and terrorists, the Government of India revoked the special status of the State of Jammu & Kashmir on August 5, 2019 through a Presidential Order and the passage of a resolution in Parliament. On 5 August 2019, Honourable President of India Shri RamNath Kovind issued a Constitutional order superseding the 1954 order. The order made all the provisions of the Indian Constitution applicable to Jammu & Kashmir. Both houses of Parliament have also passed the resolutions. A further order from the President was issued on 6 August 2019.<sup>5</sup>

The abrogation of Article 370 States, 'All provisions of this Constitution, as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary<sup>6</sup> or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise.'

Besides, the Jammu and Kashmir Reorganization Act was passed by the parliament, enacting the division the State of Jammu and Kashmir into two Union Territories (UT) namely UT of Jammu and Kashmir and UT of Ladakh. The reorganisation will become effective from October 31, 2019.

## **ARTICLE 370 ABROGATION: POSITIVE IMPACT ON GROWTH & STABILITY**

### **1. Fast Pace of Development:**

Apart from streamlining the Union Government Funds assigned for enhancing the pace of development in Kashmir and Ladakh, the UT's may go up with PPP model and private investments as the residents of other States can also purchase the properties in the UT's.

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<sup>3</sup>“Temporary provisions with respect to the State of Jammu & Kashmir.”

<sup>4</sup>as stated in clause (3) of Article 370,

<sup>5</sup>declaring all the clauses of Article 370 except clause 1 to be inoperative.

<sup>6</sup>contained in article 152 or article 308

**2. Curb on Terrorism:**

Many political leaders and separatist groups used to operate under the cover of Article 370 and supported the terrorist activities directly and indirectly. Now with the applicability of Constitution of India, the direct action against the terrorist groups can be taken with an aim to bring the misguided youth to main stream.

**3. Equality Before Law:**

The minority communities in reorganized UT's of Jammu & Kashmir and Ladakh will have equal rights with majority Muslim community, as the Constitution of India will be applicable without any obstacle.

**4. Education as a Right to All:**

Now Government of India can open premier educational institutions in the Kashmir valley to provide greater learning opportunities, like IIT, IIM etc.

**5. Kashmiri Women to gain Most:**

<sup>7</sup>The abrogation of Article 370 will now ensure that the Kashmiri Women do not lose their rights on land and property even if they get married to any Indian in any other State.

**6. No Fear of Triple Talaq:**

The law as applicable in whole India will apply. It will give right to Muslim women against triple Talaq as is available in other States.

**7. Resettlement of Hindu Minority:**

The abrogation of Article 370 will help in resettling the uprooted Kashmiri Pandits back home.

**8. Regain and merger of POK in India:**

Now after abrogation of Article-370 by the present Narendra Modi Government, Indian Politicians have started making statements for taking back the POK.

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<sup>7</sup>With the abrogation of Article 370 and 35A.