



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## ARTICLE-370 ABROGATION

~*Korada Devyka*

### INTRODUCTION

Article 370 of the Indian Constitution was a provision that granted special autonomous status to Jammu and Kashmir. This unique article arose from the historical and political circumstances during the partition of India in 1947, when princely states had to choose between joining India or Pakistan. Article 370 represented the constitutional recognition of the terms agreed upon during the state's accession, maintaining a delicate balance between integration with India and the autonomy of Jammu and Kashmir. Over the years, it became a focal point of political discourse and debates, symbolizing the intricate relationship between Jammu, Kashmir, and the Indian Union.

The implementation of Article 370 reflected the complex and sensitive nature of Jammu and Kashmir's accession to India, acknowledging the state's unique political, cultural, and social context and distinguishing it from other regions in the Indian Union.

### HISTORICAL BACKGROUND

During the momentous partition of India and Pakistan in 1947, the princely states were given the crucial choice to accede to either newly formed nation. Jammu and Kashmir, a strategically located and culturally significant princely state, was at the center of this historic decision. The state's ruler, Maharaja Hari Singh, was tasked with determining the future alignment of Jammu and Kashmir.<sup>1</sup>

---

<sup>1</sup> Vindu Goel, *What Is Article 370, and Why Does It Matter in Kashmir?*, THE NEW YORK TIMES, Feb. 27, 2019, <https://www.nytimes.com/interactive/2019/world/asia/india-pakistan-crisis.html>, (last visited Jun 5, 2024).

Maharaja Hari Singh laid down several stringent conditions for the accession of Jammu and Kashmir to India to preserve the state's autonomy and unique identity. These conditions were integral to the accession agreement and included the following key stipulations:

1. **Constitutional Autonomy:** One of the foremost conditions was that the Constitution of India would not apply to Jammu and Kashmir. Instead, the state would have its own constitution. This provision ensured that Jammu and Kashmir retained significant self-governance and control over its internal matters.

2. **Legislative Independence:** The Maharaja stipulated that the Indian central government would have no authority to apply laws to Jammu and Kashmir unilaterally. This condition protected the state's legislative independence, ensuring its local government retained its primary legislative authority.

3. **Application of Presidential Orders:** It was agreed that only presidential orders, rather than direct parliamentary legislation, would apply to Jammu and Kashmir. This arrangement was intended to limit the extent of the central government's direct intervention in the state's affairs.<sup>2</sup>

4. **Consultative Legislative Process:** Any laws the Indian government wishes to implement in Jammu and Kashmir require prior consultation with the state's government. This ensured that Jammu and Kashmir had a say in the legislative process and that its interests were considered before any new laws were imposed.

5. When signing the Instrument of Accession (IOA), it was explicitly stated that the Indian Union would only govern Jammu and Kashmir's external affairs, communications, and defense.

Recognizing the strategic importance of Jammu and Kashmir and the delicate political situation, Prime Minister Jawaharlal Nehru accepted these conditions. Consequently, on October 26, 1947, Maharaja Hari Singh signed the Instrument of Accession, formally integrating Jammu and Kashmir into the Indian Union under these unique terms.<sup>3</sup>

Accepting these conditions led to the incorporation of Article 370 into the Indian Constitution. Article 370 granted special status to Jammu and Kashmir, formally acknowledging and

---

<sup>2</sup> LexForti Legal News Network, *Abrogation of Article 370*, LEXFORTI (Aug. 15, 2020),

<https://lexforti.com/legal-news/abrogation-of-article-370/> (last visited Jun 5, 2024).

<sup>3</sup> Santhosh Kumar, *Abrogation of Article 370 & 35A of Constitution* | UPSC, IAS EXPRESS (Oct. 24, 2019),

<https://www.iasexpress.net/article-35a/> (last visited Jun 5, 2024).

institutionalizing the terms of accession. This special status allowed Jammu and Kashmir to maintain a distinct and autonomous position within the Indian Republic. The state's constitution was enacted in 1957, further cementing its special status and legislative independence.

Article 370 thus became a cornerstone of Jammu and Kashmir's relationship with India, embodying the unique terms under which the state had acceded.

## **KEY PROVISIONS OF ARTICLE 370**

Article 370 of the Indian Constitution was designed to grant special autonomous status to Jammu and Kashmir. This article was rooted in the unique historical and political circumstances surrounding the accession of Jammu and Kashmir to India in 1947.

- **Legislative Autonomy:** This autonomy allowed Jammu and Kashmir to govern itself with minimal interference from the central government.
- **Limited Applicability of the Indian Constitution:** Article 370 specified that, apart from Article 1, which establishes India as a Union of States, no other articles would automatically apply to Jammu and Kashmir. This provision underscored the unique status of the state, setting it apart from other Indian states which were fully governed by the Indian Constitution.
- **Presidential Powers:** Despite the restrictions on the applicability of the Indian Constitution, Article 370 granted the President of India the authority to extend additional provisions of the Constitution to Jammu and Kashmir. However, such extensions could only be made with necessary amendments, modifications, or exceptions, ensuring that any new provisions were tailored to the specific needs and circumstances of the state.<sup>4</sup>
- **Temporary Provision:** Article 370 was introduced as a temporary measure. It was intended to remain in force until the Constituent Assembly of Jammu and Kashmir drafted its own constitution and made decisions regarding the state's relationship with India. This temporary status reflected the ongoing negotiations and the provisional nature of the state's accession to India.

---

<sup>4</sup> Article 370 and 35(A) Revoked - Drishti IAS, 370, <https://www.drishtiiias.com/daily-updates/daily-news-analysis/article-370-and-35-a-revoked> (last visited Jun 5, 2024).

- **Protection Against Amendment or Repeal:** One of the most critical aspects of Article 370 was its protection against unilateral amendment or repeal. According to the article, any modification or abrogation of Article 370 required the approval of the Constituent Assembly of Jammu and Kashmir. This clause ensured that the state's special status could not be altered without the consent of its own legislative body, thereby preserving its autonomy and safeguarding the terms of its accession to India.<sup>5</sup>

Article 370 was a meticulously designed provision acknowledging the unique status of Jammu and Kashmir within the Indian Union. Additionally, it safeguarded against unilateral amendments. Article 370 aimed to balance the integration of Jammu and Kashmir with India through these measures while preserving the state's distinct identity and autonomy.

### **THE FIRST PRESIDENTIAL ORDER, 1950**

In 1950, a significant moment in Jammu and Kashmir's constitutional journey unfolded as President Rajendra Prasad issued the inaugural presidential order under Article 370 of the Indian Constitution. This landmark order, titled the "Application to J&K Order, 1950," marked the introduction of Article 35A and profoundly influenced the region's governance and jurisdictional landscape.<sup>6</sup>

The issuance of the "Application to J&K Order, 1950" represented a pivotal step in clarifying the extent to which the legislative authority of the Indian Parliament would extend to Jammu and Kashmir. This order established specific parameters, delineating which subjects from the Union List and the Concurrent List of the Indian Constitution's Seventh Schedule would apply to the region.

By providing clarity on the scope of the Indian Parliament's jurisdiction, this order played a crucial role in shaping the governance structure of Jammu and Kashmir within the framework of the Indian Constitution.<sup>7</sup>

---

<sup>5</sup> Abrogation of Article 370 | Judgement Summary, SUPREME COURT OBSERVER 370,

<https://www.scobserver.in/reports/abrogation-of-article-370-judgement-summary/> (last visited Jun 5, 2024).

<sup>6</sup> Article 370: Decoding the Supreme Court Verdict, DRISHTI IAS 370, <https://www.drishtias.com/daily-updates/daily-news-editorials/article-370-decoding-the-supreme-court-verdict> (last visited Jun 5, 2024).

<sup>7</sup> Abrogation of Article 370 & 35A of Constitution | UPSC - IAS EXPRESS, 370, <https://www.iasexpress.net/article-35a/> (last visited Jun 5, 2024).

## **RAMIFICATIONS OF ARTICLE 370**

The ramifications of Article 370, which delineates the restricted purview of the Indian Parliament and bestows special status upon Jammu and Kashmir, have been diverse, particularly regarding subsequent directives and amendments within the region. A notable instance pertains to fundamental rights, notably the Right to Property. Initially, this fundamental entitlement applied uniformly across India. However, a unique amendment was enacted in Jammu and Kashmir, resulting in its distinct application within the region.<sup>8</sup>

This amendment is a compelling illustration of how Article 370 has facilitated tailored legislative measures specifically designed for Jammu and Kashmir. Article 370 has accommodated the region's unique historical and socio-political context by enabling such modifications.

It underscores the imperative for a nuanced and contextually sensitive approach to governance, ensuring that legal frameworks and constitutional provisions align with Jammu and Kashmir's distinctive needs and circumstances. Furthermore, this example underscores the intricate interplay between national unity and regional autonomy, highlighting the delicate equilibrium Article 370 aims to uphold.<sup>9</sup>

## **IMPACT OF ARTICLE 370, SPECIAL STATUS OF JAMMU AND KASHMIR**

The impact of Article 370 on Jammu and Kashmir has been profound and multifaceted, influencing various aspects of governance, citizenship, and socio-economic development within the region.

- Firstly, the provision granted residents of Jammu and Kashmir dual citizenship, distinguishing them from citizens of other Indian states.
- Additionally, Jammu and Kashmir boasted their own separate flag, symbolizing their unique status within the Indian Union. Minorities in Jammu and Kashmir did not have

---

<sup>8</sup> Kashmir special status explained: What are Articles 370 and 35A? | News | Al Jazeera, 370, <https://www.aljazeera.com/news/2019/8/5/kashmir-special-status-explained-what-are-articles-370-and-35a> (last visited Jun 5, 2024).

<sup>9</sup> Article 370: What happened with Kashmir and why it matters, 370, <https://www.bbc.com/news/world-asia-india-49234708> (last visited Jun 5, 2024).

access to reservation benefits, and women from the state who married non-state subjects risked losing their property rights, creating gender disparities.<sup>10</sup>

- Moreover, land ownership and settlement restrictions meant that people outside Jammu and Kashmir could not buy land or settle in the region, limiting economic integration and development opportunities. Furthermore, these restrictions limited privatization in sectors like healthcare and education, resulting in a lack of private hospitals and educational institutions.
- Consequently, high unemployment rates, coupled with limited economic activities, fueled discontent among the youth, prompting some to resort to violence as a means of livelihood. Development disparities were also evident, with the region lagging behind other states in terms of infrastructure, access to basic services, and overall development, exacerbating feelings of discrimination and alienation among its residents.<sup>11</sup>

The predominant impact of Article 370 on Jammu and Kashmir has been viewed negatively, overshadowing any perceived positive outcomes. While originally intended to safeguard the region's autonomy and distinct identity within the Indian Union, its implementation has often exacerbated tensions and disparities.

Rather than promoting unity, this legal framework has perpetuated a sense of detachment and estrangement among the region's people, complicating efforts toward integration and cohesion.<sup>12</sup>

Over the years, the restrictions imposed by Article 370 have profoundly affected the lives of Jammu and Kashmir's inhabitants. Furthermore, the scarcity of private institutions and restricted economic opportunities have fueled unemployment and discontent among the youth, occasionally leading to outbreaks of violence and unrest.<sup>13</sup>

---

<sup>10</sup> What's Article 370? What to know about India's top court verdict on Kashmir | Conflict News | Al Jazeera, 370, <https://www.aljazeera.com/news/2023/12/11/whats-article-370-what-to-know-about-india-top-court-verdict-on-kashmir> (last visited Jun 5, 2024).

<sup>11</sup> Understanding the Abrogation of Article 370: Origin and Impact, SUPREME COURT OBSERVER 370, <https://www.scobserver.in/journal/understanding-the-abrogation-of-article-370-insights-into-its-origin-and-impact/> (last visited Jun 5, 2024).

<sup>12</sup> Article 370 and 35A: Origin, Provisions, and the Politics of Contestation | SpringerLink, 370, [https://link.springer.com/chapter/10.1007/978-3-030-56481-0\\_3](https://link.springer.com/chapter/10.1007/978-3-030-56481-0_3) (last visited Jun 5, 2024).

<sup>13</sup> Understanding the Abrogation of Article 370, *supra* note 11 at 370.

Consequently, the region has lagged behind other parts of India in development, exacerbating sentiments of neglect and discrimination among its residents. Article 370 was initially conceived to protect Jammu and Kashmir's autonomy; its implementation has resulted in far-reaching negative consequences.

### **THE ROADBLOCK FOR ABROGATING ARTICLE 370**

The movement to abrogate Article 370 gained momentum and sought to revoke this constitutional provision. However, the process of abrogation was hindered by a significant roadblock outlined within Article 370 itself: the requirement for approval from the Constituent Assembly of Jammu and Kashmir. According to Article 370, any amendment or repeal of its provisions necessitated the consent of the Constituent Assembly of Jammu and Kashmir. However, this assembly was dissolved on January 26, 1957, leaving a procedural obstacle to the abrogation process.

This constitutional requirement posed a formidable challenge to efforts to revoke Article 370. The absence of a Constituent Assembly meant that alternative mechanisms would need to be explored to navigate this hurdle and proceed with the abrogation process. As a result, the discourse surrounding the abrogation of Article 370 has been characterized by legal debates, political negotiations, and strategic considerations aimed at overcoming this procedural barrier.<sup>14</sup>

### **PROCESS OF ABROGATING ARTICLE 370**

To surmount the hurdle created by the dissolution of the Constituent Assembly of Jammu and Kashmir, extensive groundwork was undertaken by the Prime Minister's Office to devise an alternative strategy for repealing Article 370. After exhaustive efforts and careful analysis, a breakthrough emerged by thoroughly examining existing constitutional orders.<sup>15</sup>

---

<sup>14</sup> Article 370, *supra* note 6 at 370.

<sup>15</sup> India's Kashmir Conundrum: Before and After the Abrogation of Article 370, UNITED STATES INSTITUTE OF PEACE 370, <https://www.usip.org/publications/2020/08/indias-kashmir-conundrum-and-after-abrogation-article-370> (last visited Jun 5, 2024).

Despite the dissolution of the Constituent Assembly in 1957, it was discovered that two constitutional orders had been subsequently passed, in 1958 and 1965. Of particular note was the 1954 constitutional order, which contained a crucial provision under Article sub-clause (d). This provision conferred powers to transfer authority from the Constituent Assembly to the legislative assembly, including the pivotal power to abrogate Article 370. This strategic foresight demonstrated an anticipation of the potential dissolution of the Constituent Assembly in the future, ensuring that the legislative assembly possessed the requisite authority to act in its absence.

However, a significant development occurred in the subsequent Constitutional Order of 1958, where sub-clause (d) was intentionally omitted. This deliberate omission reflected a conscious decision to shield Article 370 from potential amendments or repeal attempts. It underscored a strategic effort to safeguard Jammu and Kashmir's special status and maintain its constitutional provisions' integrity.<sup>16</sup>

Through this meticulous examination of constitutional provisions and strategic maneuvering, a pathway was paved to navigate the complex legal and procedural challenges associated with the repeal of Article 370. This process exemplified a nuanced approach to addressing constitutional complexities and underscored the determination to overcome significant hurdles in pursuing constitutional reform.

## **INTRODUCTION BILL OF ABROGATION ARTICLE 370 IN PARLIAMENT**

On August 5th, Union Home Minister Shri Amit Shah, authorized by President Ram Nath Kovind and following an order from Prime Minister Shri Narendra Modi, introduced three significant legislative Bills in the Rajya Sabha: the Resolution for the repeal of Article 370 of the Indian Constitution, the Jammu & Kashmir (Reorganisation) Bill, 2019, and the Jammu & Kashmir Reservation (2nd Amendment) Bill, 2019. These bills were subsequently introduced in the Lok Sabha on August 6th.<sup>17</sup>

---

<sup>16</sup> SC verdict on abrogation of Article 370 Explained Highlights: Everything you need to know about the landmark judgment, THE INDIAN EXPRESS 370 (Dec. 11, 2023), <https://indianexpress.com/article/explained/explained-law/article-370-verdict-supreme-court-explained-live-updates-9061383/> (last visited Jun 5, 2024).

<sup>17</sup> Article 370: What happened with Kashmir and why it matters, *supra* note 9 at 370.

The opposition parties were caught off guard by this major decision and raised several important questions during the Rajya Sabha debate. The primary question was about the legality of abrogating Article 370 without the approval of the Constituent Assembly of Jammu & Kashmir, which no longer exists. Shri Amit Shah responded by referring to subclause (d) of Article 370 in the 1954 constitutional order. This subclause stated that the powers of the Constituent Assembly would be transferred to the Legislative Assembly of Jammu & Kashmir, including the power to abrogate Article 370. Since the Constituent Assembly had dissolved, its powers were transferred to the Legislative Assembly.

Additionally, under Article 367 of the Indian Constitution, the President has the power to interpret any article. This allowed the Constituent Assembly to be considered equivalent to the Legislative Assembly, providing the constitutional basis for abrogating Article 370.

The second major question from the opposition concerned the current administrative status of Jammu & Kashmir. They pointed out that the government and Legislative Assembly of Jammu & Kashmir had been dissolved, and President's Rule was in effect. They questioned how the abrogation could proceed under these circumstances. Shri Amit Shah explained that when the President's Rule is imposed in a state, the powers of the state government, including legislative powers, are transferred to the Parliament of India.

Therefore, under the existing President's Rule in Jammu & Kashmir, the Parliament assumed the role of the state's Legislative Assembly. This transition of power enabled the Parliament to exercise the legislative functions of the dissolved assembly, including the power to abrogate Article 370.<sup>18</sup>

Shri Amit Shah's detailed responses addressed the constitutional and legal framework supporting the abrogation of Article 370. By invoking the provisions of Article 367 and the 1954 constitutional order, he clarified that the necessary legislative authority had been appropriately transferred to the Parliament, thus legitimizing the repeal of Article 370 and the subsequent reorganization of Jammu & Kashmir.

After addressing all the questions and concerns raised by the opposition and completing a comprehensive debate, the bill's voting process began. The bills were successfully passed by

---

<sup>18</sup> Supreme Court verdict on Article 370: What is the case all about?, FIRSTPOST 370 (2023), <https://www.firstpost.com/explainers/supreme-court-verdict-jammu-kashmir-article-370-case-arguments-for-and-against-it-13488262.html> (last visited Jun 5, 2024).

both the Rajya Sabha and the Lok Sabha. This marked a significant achievement for the government as they abated Article 370.<sup>19</sup> Consequently, Article 370 was officially removed from the Indian Constitution, leading to a historic reorganization of the state of Jammu & Kashmir. This decision was a monumental shift in the region's governance, bringing it fully under the jurisdiction of the Indian Constitution.

### **SIGNIFICANT TRANSFORMATIONS OCCURRED IN JAMMU & KASHMIR FOLLOWING THE ABROGATION OF ARTICLE 370:**

**Unified Citizenship:** Residents now hold Indian citizenship exclusively, without special provisions.

**Withdrawal of Special Privileges:** The distinct autonomous powers previously granted to Jammu & Kashmir have been rescinded.

**Application of Articles 356 and 360:** Articles 356 (imposition of President's Rule) and 360 (declaration of Financial Emergency) of the Indian Constitution are now applicable in Jammu & Kashmir.

**Singular National Flag:** Only the national tricolor is recognized as the official flag.

**Reservation for Minority Groups:** Minorities are now entitled to reservations in education and employment.

**Full Adoption of the Indian Constitution:** The Indian Constitution is now fully enforced, replacing the state's former constitution.<sup>20</sup>

**Property Rights:** Individuals can marry individuals of any status without forfeiting their property rights.

**Land Ownership:** Land transactions are now open to individuals from all over India.

### **CONCLUSION**

---

<sup>19</sup> What's Article 370? What to know about India top court verdict on Kashmir | Conflict News | Al Jazeera, *supra* note 10 at 370.

<sup>20</sup> India's Kashmir Conundrum, *supra* note 15 at 370.

In conclusion, the abrogation of Article 370 stands as a watershed moment in India's contemporary political landscape, with profound and far-reaching consequences. This decision, aimed at integrating Jammu and Kashmir more seamlessly with the rest of India and stimulating development, signifies a dramatic shift in the region's constitutional status and governance. Its true legacy will be measured by how much it contributes to the stability, development, and harmonious coexistence of all communities within Jammu and Kashmir and the broader Indian nation. The long-term consequences of this decision will unfold as the region adjusts to its new status, with the central government's efforts to address local aspirations and concerns playing a crucial role. Ultimately, the measure's success will be gauged by its ability to foster peace, stability, and inclusive prosperity in Jammu and Kashmir.