

**Full Length Research**

# Historical Analysis of the Revocation of Article 370

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The government of India has removed the disputed article 370 from the state of Jammu and Kashmir which was given a special status to its people and also gave them exclusive rights which was not available to the rest of India. The state has been divided into two Union Territories- UT of Jammu and Kashmir and UT of Ladakh by passing the J&K Reorganization Act (2019) by Parliament of India. This paper explores briefly the integration of the state of Jammu and Kashmir with the Indian Union through the Instrument of accession. It also talks about the nature of article 370 within the Constitution of India and also analyses the positive and negative impact of the annulment of Article 370.

**Keywords:** *Jammu and Kashmir, Integration, Article 370, Special status, annulment.*

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## INTRODUCTION

In the Union of India, Jammu and Kashmir has been the only state that has negotiated in terms of accession in 1947. It was established in the result of Treaty of Amritsar which was signed on 16th March, 1846 as an independent state under the colonial rule of British people<sup>2</sup>. Till 1947, India was under the rule of Britishers which was later divided into two domains viz- India and Pakistan. But this division wasn't applied to the princely states of India which was of 565 in number like Jammu and Kashmir that had adored semi-autonomous prominence under the British Colonial period. When these princely states were given the option either to accede with India or Pakistan or to remain sovereign, Raja Hari Singh, the then ruler of Jammu and Kashmir decided to remain sovereign rather joining any of two independent nations but this decision was short lived as the tribal people from Pakistan called Qabalis entered from North West Frontier Province to Jammu and Kashmir. Maharaja fled Delhi and asked for help from Indian Government in order to throw out these Qabalis from Jammu and Kashmir<sup>3</sup>. Therefore, on 26<sup>th</sup> October, 1947, Jammu and Kashmir acceded to India through signing an Instrument of Accession. In this

accession, the state of Jammu and Kashmir surrendered three subjects only viz- Communication, Defence and External Affairs to the India dominion<sup>4</sup>. After signed the Instrument of Accession, the Indian troops moved to the valley of Kashmir to fight the invaders.

The government of India at that time promised that the people of state of Jammu and Kashmir completed their own Constituent Assembly and would structure their own state constitution, and conclude the Indian Union's Jurisdiction over the state of Jammu and Kashmir, and till the verdict of the constituent assembly of the state of Jammu and Kashmir, the Indian constitution might only deliver a temporary arrangement concerning the state. These circumstances were peculiar to the Kashmir's accession with India. Therefore, Article 370 was included in the Indian Constitution in order to reserve the specific terms under which Kashmir had decided to accede to India<sup>5</sup>.

## Article 370

Article 370 of the Indian Constitution was questionably the most contentious provision of the Constitution of India. It was granted special status to the state of Jammu and Kashmir in terms of a separate law of domicile

(under Art. 35 A). The article was drafted in part XXI of the Constitution which related to Temporary, Transient and Special provisions which act as a bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India<sup>6</sup>.

This article allowed the state of Jammu and Kashmir a precise amount of autonomy with its own constitution, a separate flag and freedom to make law for Jammu and Kashmir except foreign affairs, defense and communication which kept a degree of its Sovereignty which became possible only by signing the controversial Instrument of Accession in 1947 which was signed by Maharaja Hari Singh in order to accede with the Dominion of India to deal with the emerging situation created by the tribal- militiamen entered from North-West Frontier Province to the state of Jammu and Kashmir. Article 370 permitted the people who are the permanent residents of Jammu and Kashmir to buy and sell the property within the state and sanctioned them to collect total benefits in public sector employment<sup>7</sup>. Many Legislative Acts and the provision of the Indian Constitution, which are relevant in the other states of Indian Union, are not applicable to the Jammu and Kashmir state through the Article 370. The state of Jammu and Kashmir through

this article has the overall control over 94 subjects out of 97 in the Union list, the remained three being communication, Foreign Affairs and Defense<sup>8</sup>. However, the Parliament of India needs the approval of the state government for the applicability of laws relating to the other 94 subjects which are revealed in the Union list. The President of India cannot announce the Emergency to the region of Jammu and Kashmir which comes under Article 352 without consulting the Governor of Jammu and Kashmir<sup>9</sup>.

### **Abrogation of Article 370**

On 5th August 2019, the BJP government after re-elected in an enormous landslide, annulled the semi-autonomous status which was guaranteed under Art 370 of the Indian Constitution to the state of Jammu and Kashmir by putting its residents under an unprecedented lockdown<sup>10</sup>. The state was also divided into federally ruled territories namely Ladakh and Jammu and Kashmir. There seems a sharp puff of Colonialism in the air<sup>11</sup>. On 4th August 2019, whole state was turned into a cage by sending thousands of additional Paramilitary troops to the state of Jammu and Kashmir claiming that there is possibility of terror attack by militants. There was a mass arrest of civilians, Pro-Indian politicians, students, human rights activists which create a huge confusion among the masses of the region as rumors of revoking of Article 370 were shared through social media. But at the same time, the then Governor Satya Pal Malik assured the people of the region by saying that there is no threat to their culture

and identity. He also assures them that the heavy curfew is imposed in order to secure the tourists and the residents of the state. But next day on 5th August, when the people of state opened their eyes, they were surprised to see a curfew everywhere and shocked as well by putting whole state under a cage with all modes of communication block out<sup>12</sup>.

The Jammu and Kashmir Reorganization Act 2019 had been passed by the Parliament which strips the state of Jammu and Kashmir and its statehood and partitioned it into 2 union territories<sup>13</sup>. The Central Govt. stated that this move will end the dynastic politics and provide more opportunities for the development in the state. They believed that Art 370 created inequality in whole India and also with Jammu and Kashmir. They also believed that Art 370 was the root cause of corruption and militancy in the state of Jammu and Kashmir<sup>14</sup>. They argued that with this article the people of the region were deprived of various schemes that people in other states enjoy. But the move put the whole region in a state of shock. The most residents of the state are feared and angry on this decision. They argued that government eventually wants to alter the demographic character of the Muslim-majority region by allowing non-Kashmiris to buy land here and by inviting investors to come and invest in the state. They believed that abrogation of Art 370 is simply the erosion of native culture, ethnicity, religion and way of life to satisfy their own dreams. Delhi only ever had one goal. The common forbear among Kashmiris is that the decision robbing its inhabitants of economic and political rights. With this decision people of valley feared the comeback of Dogra rule. In short, this move is upsetting the majority of its territories<sup>15</sup>.

The abrogation of Art 370 paralyzed the life of the people of Jammu and Kashmir by the heavy imposition of curfew everywhere and communication blockade. The press was also severely affected. The media person faced a lot of trouble to reach the areas surrounded by security forces. The streets in the valley were filled with barriers to restrict the movement of the people. Markets were deserted. Education and all other sectors were worst hit. The people who were outside the state for pursuing their studies or for doing their business or jobs facing a tough time also. Students faced financial crisis. Though the management later given the access to the people to the satellite phone but their number was very less. The people who came from a long distance to the police station for making calls to their loved ones were supposed to wait in a queue for hours and hours<sup>16</sup>.

### **Positive Impact of Abrogation of Art 370**

The government of India has eliminated the disputed Article 370 from Jammu and Kashmir which was an obstacle between the people of Jammu and Kashmir and the rest of India. Although the article gave special status

to the region of Jammu and Kashmir but it had stopped the progress of state because the investment rate was very low as required to meet the current demands of locals<sup>17</sup>. But after abrogation of this article it is believed that investment in many sectors will be on top agenda. As per the report, the MD Punit Dalmia Bharat Group says, "Investment in Jammu and Kashmir will be now a top agenda in much corporate boredom. In the next five years, the youth in the region will benefit from tremendous job opportunities as a result of these investments."

The Govt. of India believed that Jammu and Kashmir has many possibilities of investment in different sectors which can provide many job opportunities to the people of this region. Tourism sector comes on top which is backbone of economy of this region but was rigorously affected by the continuous terrorist activities. For example, the business of houseboat is almost finished. Agriculture and horticulture will get a big boost. The limit of Handicraft industry will now be able to directly export and collaborate both at national and international level which was earlier limited to the selected destinations<sup>18</sup>.

The removal of this article will benefit the 600,000 refugees who entered into Jammu and Kashmir from Pakistan at the time of Partition by giving them their basic democratic and citizenship rights. It also evokes the feeling of one nation by single citizenship. The fundamental rights will now be applicable to this region. On the economic front it will also provide more opportunities in employment sector to its citizens which can be helpful in eradicating the poverty.

The government also ensured that the abrogation of this article also helps in relocating the uprooted Kashmiri Pandits especially those who are still living in wretched condition in refugee camps in Jammu or elsewhere. It will also end the discrimination of women who are being deprived of property rights after marrying outside the valley<sup>19</sup>.

The Panchayat Raj Institutions were not active by the applicability of article 370. There were no elections held from long periods but now the 73rd and 74th Amendment Acts have become applicable. The Local Self Governing Institutions will now achieve direct funding which will lead to strengthening the democracy from grass root level.

### **Negative Impacts**

The ideological agenda of the BJP government was the revocation of Art. 370. From the very beginning, its slogan was that there shall not be two Constituent Assemblies, two Prime Ministers and two flags in one country<sup>20</sup>. They argued that this article needs to be revoked in order to fully integrate the state of Jammu and Kashmir with the rest of India. They believed that the militancy and secessionist movement in Jammu and Kashmir was the result of the superfluous prerogative

meted out Art 370. The revocation of Article 370 was an election promise of the BJP government and after getting thumping majority in the 2019 election in the Indian Parliament; they lost no time in acting on its promise.

The historic decision of revocation of article 370 not only jerked the residents of Jammu and Kashmir emotionally but also had a significant negative effect on them slowly. Due to prolonged unrest, the economy of the state is in shambles. All sectors got crumbled due to the evacuation of all tourists from the state of Jammu and Kashmir by the unprecedented lockdown of aftermath of abrogation of Art 370. The people of valley argued that the government of India shows the whole world that there is normalcy in Jammu and Kashmir by sending the foreign visitors in Kashmir who gave good statements like there is normalcy in Jammu and Kashmir and everything is fine but in reality there was complete shutdown. Due the closure of educational institutions, students faced a lot of problems. They lost the whole academic year. Other sectors also worstly hit by lockdown. In the beginning of revocation of Art 370, the people of Ladakh and Jammu region first welcomed this historic decision but after some time they too demanded the domicile law in order to protect their demographics as they worried about the disappearance of their ethno-cultural identity by non-locals<sup>21</sup>.

The blockade of Jammu and Kashmir was justified as a short-term measure in order to prevent any kind of protest against that government decision of striking Art 370. But this short-term measures dragged by government of India till now. The all modes of communication is still without high speed internet a year later which creates a lot of sufferings for the people of Jammu and Kashmir even the Supreme Court refused to pass an order to restore the same. Such type of restrictions affects not only the day to day life of public of the region but also impact on their social psychology which also gives birth to the mental health of the people of Jammu and Kashmir. The people of Jammu and Kashmir are yet to retrieve from the blare dealt by Modi government. The picture of Kashmir is strangulating. There is fear, uncertainty, and anxiety among the people of Kashmir regarding their culture, religion, customs and language. There is a dangerous silence in the region which may burst out like a disaster.

### **CONCLUSION**

Since the annulment of Article 370, the valley of Kashmir had more or less persisted peaceful due to improved security measures and a huge deployment of troops. Since August 2019 to December 2019, the Kashmir valley remained under curfew like situation and Section 144 of the Criminal Procedure Code was also implemented, which prohibited assembly of more than four persons. The need of the hour is that the center

must win the trust of the people of Jammu and Kashmir carefully and try not to hurt further their sentiments. It could do so by encouraging dialogue and putting an end by exceptional methods in Jammu and Kashmir. The position of Statehood should be returned as soon as possible. The political leaders, as well as the common people, should be discharged immediately. The government must fastly lift the ban on internet and should also be helpful to restore regular functioning of closed educational institutions. The people of Jammu and Kashmir also need to think deeply that their integration with the rest of India is better rather than continue with their isolationism. It'll also provide a lot of investment possibilities and will increase the Per Capita Income of the region. People will get more job opportunities. It will be beneficial for the state progress.

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