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## An analysis of the abrogation of Jammu and Kashmir's special status

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### Abstract

In 1949, Article 370 was inserted into the Indian Constitution. J&K is covered under Article 370 of the Indian Constitution, which has been in effect for more than 60 years. On January 26, 1950, the constitution went into effect, bringing with it special provisions. This paper discusses the effects of the current Bharatiya Janata Party government's deletion of Article 370 regarding J&K. (Aug5, 2019) Yet, some Muslims in Kashmir believe that this action has had a more detrimental effect on their lives. It has created psychological and emotional barriers between Kashmir's residents and the rest of India. As stated in the Constitution Order 2019, repealing Article 370 will also enable the centre to declare an emergency in the state, with the exception of times of war. By making the provisions of Article 370 of the Indian Constitution inoperative, the Hindu nationalist BJP revoked the disputed territory of Jammu and Kashmir's semi-autonomous status on August 5, 2019. Article 35A, which gave the state government the authority to identify the state subjects and prohibited non-state subjects from acquiring real estate in the state, was likewise repealed through a presidential proclamation. BJP has, to its credit, fulfilled both a historic promise to its electorate and an ideological commitment, despite the fact that many in India have criticised this choice as being undemocratic and against the constitution. Yet, what does this decision represent for the Kashmiri tehrrek, or movement for self-determination?

### Objective

1. Understanding the fundamental idea behind Article 370 in India is one of the goals.
2. Examine the national law-implementation procedure.
3. To emphasise the Bharatiya Janata Party's contribution and political advantages.
4. To evaluate the advantages and disadvantages of repealing Article 370.
5. To draw attention to how the Kashmiri people would be affected by this choice.

**Research Methodology:** The information used to construct this research was primarily based on textual sources, including books by renowned scholars, essays, and papers published in a variety of national and international journals. Hence, this research was written using secondary data.

**Historic Background:** Following the partition of India, British rule ceases. Following a Pakistani army onslaught at that time, Hari Singh signed the J&K accession document, starting the India-Pakistan conflict. Hari Singh was persuaded by Mountbatten to choose between Pakistan or India. But Hari Singh chose to maintain Kashmir's independence until August 15th, 1947<sup>[1]</sup>. However, when Pakistan attacked Kashmir in October 1947, Hari Singh agreed to join India's dominion at that time since he had no other choice, which resulted in the loss of its sovereignty. He then signed the Instrument of Accession. The Muslim leader Mr. Jinnah lost authority. Sheikh Abdullah and three other associates joined the India Constituent Assembly in 1949, when they negotiated the J&K's unique status, resulting in the passage of the article

**Keywords:** Women participation, electoral system, women in Indian electoral system

### Introduction

Jammu and Kashmir, a region in the northern part of the Indian subcontinent that was governed by India as a state from 1954 to 31 October 2019, received special status under Article 370 of the Indian constitution, giving it the authority to have a separate constitution, a state flag, and autonomy over the internal administration of the state<sup>[2]</sup>. The Indian Constitution's "Temporary, Transitional and Special Provisions" Part XXI contains Article 370<sup>[3]</sup>. It declared that the Jammu and Kashmir Constituent Assembly would have the authority to suggest how much of the Indian Constitution should be applied to the state. The Indian Constitution would have been fully applicable if the state assembly had completely repealed Article 370. A 1954 Presidential Order was issued based on the recommendations made by the state's constituent assembly regarding which provisions of the Indian constitution should apply to the state<sup>[4]</sup>.

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Article 370 was considered to have been a permanent part of the Indian Constitution because the state constituent assembly disbanded itself without recommending its repeal. The end result is that, in comparison to citizens of other Indian states, residents of Jammu And Kashmir State live under a different set of laws, particularly those pertaining to citizenship, property ownership, and fundamental rights. This clause prohibited residents of other Indian states from buying land or other property in Jammu and Kashmir. The state of J&K is given a special autonomous status within the India union under what is referred to as a "Temporary provision" of Article 370 of the Indian Constitution. The union parliament is only permitted to enact laws for the state under article 370(1B.)<sup>[5]</sup> In discussion with the state government. On a few points that the document of accession specified Namely, communication, foreign relations, and defence. 12 Additional issues from the legislative subject lists can only be applied to J&K with "Concurrences of the Government of the State" via a president's order. Article 370(3), which provides the president of India the authority to change or repeal Article 370, is the most significant section of Article 370 for the purposes of current developments<sup>[6]</sup>. The greatest number of stone-throwing incidents in Jammu & Kashmir were reported in the year 2019. The Modi administration has altered how the world views terrorism in general, not just in Pakistan or Kashmir. On August 5th, 2019, Shri Amit Shah proposed the J&K (Reorganisation bill 2019) which would have given Ladakh and J&K the same status as union territories but without a legislative assembly. The J&K reserve, 2 Amendment bill is also included (2019)<sup>[7]</sup>

#### Article 35A

In 1954, Article 35 A was inserted to the Indian Constitution<sup>[8]</sup>. This article gives the state of J&K the authority to define who is considered a permanent resident of the state and what "Special rights and privileges" are associated with that residency, such as the ability to limit immigration to the state and acquire real estate.

#### Opposition to the Abrogation of Articles 35A and 370

According to some academics, it is illegal to turn a state into a union territory. 15 Articles 35 A and 370, which grant J&K a special status, cannot be changed, according to all Kashmir valley-based parties, including the Jammu and Kashmir People's Movement (J&KPM), People Democratic Party (PDP), and National Conference (CNC). These items should be protected, according to the congress party. Mehbooba Mufti, the chief minister of J&K, also defends Article 35 A mufti instructed her party members to prepare for a significant battle to defend article 35 A.

#### Significant Advantages of Article 370 Abrogation

1. J&K is governed by the Indian Constitution.
2. Kashmiri women are free to wed any Indian.
3. Indians may purchase real estate or land in J&K.
4. Kashmiri people can find better employment and educational opportunities.
5. Panchayats shall enjoy equal rights to those found in other states.
6. J&K is subject to RTI.
7. SC-ST reservations are acceptable.
8. Tourism expansion is also conceivable.
9. Ban smuggling of drugs into India.

10. The government will make sensible choices throughout the election. Transparency is likely.
11. Single citizenship is applicable; dual citizenship is revoked.

#### Disadvantages of repealing Article 370 include

1. Kashmiris do not generally support single citizenship.
2. The relationship between India and Pakistan deteriorates, which is a sensitive subject for all Indians.
3. The stability and growth of J&K notwithstanding uncertain conditions.
4. There is a chance that terrorism will continue to grow in India.
5. Security concerns are a concern for Indians.

#### Pakistan's Response to the Abrogation of Article 370

The Indian Constitution contains two unique and contentious clauses that only address Jammu and Kashmir: Article 370 and Article 35A. By issuing a Presidential Order (C.O. 272) and a statutory resolution on August 5, 2019, the Government of India abrogated Article 370, which defined Jammu and Kashmir's relationship to the rest of the nation and granted the region special status and increased autonomy. It also repealed Article 35A, which defined the term "permanent resident" of the State and the special rights and privileges that go along with it. Jammu and Kashmir's current state has been split into two Union territories: Jammu & Kashmir Union Territory with a Legislative Assembly and Ladakh Union Territory without a Legislative Assembly are the two examples. The response from Pakistan has been one of indignation. India's move breaches UN resolutions, the country's foreign ministry quickly declared. On August 7, Pakistan dismissed the high commissioner for India and summoned its own senior diplomats from New Delhi. Also, the suspension of bilateral trade was announced. Pakistan started a diplomatic campaign to get support from other countries for its stance on Kashmir. Throughout the past ten years, Pakistan's Kashmir strategy has been retaliatory, largely in response to Indian activities on the subcontinent. This trait was evident during the violent demonstrations that took place after Indian army killed Kashmiri militant commander Burhan Wani in 2016. Once Wani was killed, the unrest became more violent, resulting in 90 civilian deaths and more than 2,300 injuries. Then-Pakistani Prime Minister Nawaz Sharif, expressing support for the militant commander, referred to Burhan Wani as a "martyr" and declared that Pakistan will commemorate July 19 as "Black Day" in order to show support for the people of Kashmir.

#### Some potential outcomes of the repeal of 370

1. Risky for India's democracy.
2. The Kashmir question has become more global.
3. The danger of a global conflict.
4. Destructive to the federal system.

#### Conclusion

Since 1947, Jammu and Kashmir has been the focal point of hostilities between India and Pakistan who have engaged in four wars over the region. Before 1999, the nature of the conflict in Kashmir was different. A comprehensive, integrated, and decentralised mental health programme in the Kashmir Valley that focuses on both prevention and treatment is urgently needed, according to the research.

Students in educational institutions can learn about the issue and find nonviolent solutions through seminars and group discussions. The International Convention for the Protection of All Persons must be ratified by the federal government of India. In conclusion, discussions have always centred on Article 370 of the Indian Constitution. The ancient Jana Sangh and Rastriya Swayansevak Sangh, the Hindu party and the organisation, have consistently pushed for the section 370 of J&K to be repealed. However, in order to gain political benefit in the next elections, the BJP completely removed Article 370 and Section 35(A) of the J&K Constitution in the elections of 2014 and 2019. Thus, in the end, we can say that if the current administration satisfies the requests of the Kashmiri people by promising to assist them in every facet of their lives.

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