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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ANALYSIS ON REVOCATION OF ARTICLE 370**

AUTHORED BY: HARSH GARG (A3221519309)

## **ACKNOWLEDGMENT**

I take this opportunity to express our profound gratitude and deep regard to our guide **Ms. Pranjli Sahni** for her exemplary guidance, monitoring and constant encouragement throughout the course of this term paper. The invaluable suggestions and inputs given by her from time to time have enabled me to complete this term paper with ease.

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Last but not least, I want to express my gratitude to God, my parents, and my friends for their unwavering support and motivation, without which this research project would not have been possible.

Harsh Garg A3221519309

Dated: 26.04.2024



## **ABSTRACT**

The architects of the Indian Constitution aimed to establish a sovereign, stable, and peaceful nation that protected human rights. The Constitution played a crucial role in guiding the country's judicial system and securing the future of its parliamentary system through new or updated constitutional laws. However, the controversial Article 370 granted extensive autonomous powers to the state of Jammu and Kashmir, leading to complex issues that threatened national unity. Consequently, the government divided the state into two Union Territories with limited administrative powers under central governance. Article 370 which was deemed as a temporary provision, was considered essential to abrogate or modify due to its historical, political, and religious complexities, which affected international border issues between India, Pakistan, and China. The United Nations recognizes Jammu & Kashmir as disputed territory, but India views recent legal changes as an internal matter and opposes third-party involvement. B.R. Ambedkar, the father of the Indian Constitution, disagreed with the introduction of Article 370. This dissertation research focuses on a legal analytical study of the abrogation of Article 370, examining the complex issues and responsibilities involved in its creation, implications, and the division of the state by the Union Government. It also discusses the formation of the High Court, emergency provisions, fundamental rights, and ground reality scenarios under the Indian Constitution and their implementation in the Valley of Kashmir (Jammu, Kashmir, and Ladakh) towards the country's peace and international relations.

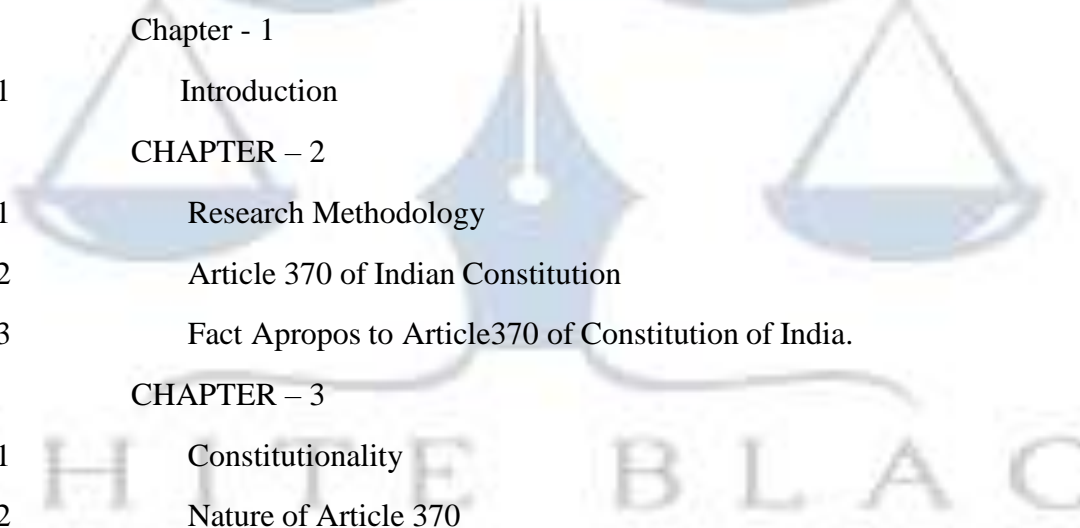
The Indian Constitution is a comprehensive legal document that encompasses all aspects necessary for peacefully controlling the country and society, ensuring social stability, human rights, and protection from serious crimes. The international and national security matters along the Indo-Pak border of Jammu and Kashmir are complex and require new laws to maintain security and peace. Interference from Pakistan and China, especially after the coronavirus situation, has made the matter difficult to resolve. The people of Jammu and Kashmir have endured terror and fear for decades, fighting for freedom against discomfort and discontent. The Jammu and Kashmir Reorganization Act, 2019, addresses the complex issues of Kashmir and the abrogation of Article 370, exploring whether peace is possible or if the stalemate will continue to affect India-Pakistan relations. The research focuses on Kashmir's background, recent developments, and U.S. policy, highlighting the Indian government's constitutional power to make changes in the Muslim-



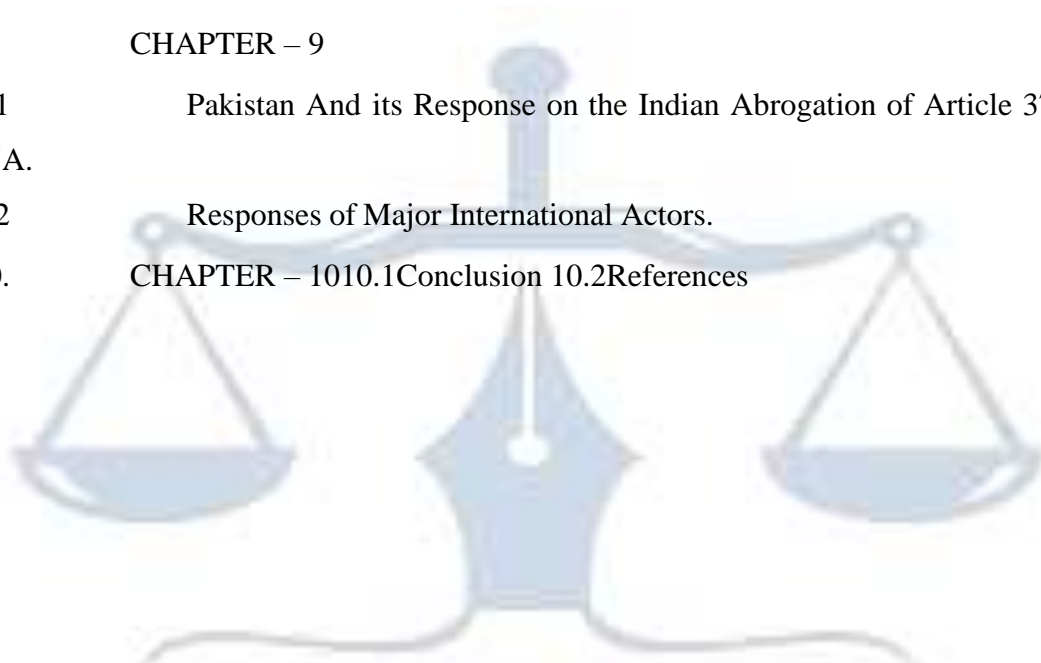
majority state. It discusses Article 370, which grants Jammu and Kashmir a special status, and the bifurcation of the state into union territories under president rules, which may lead to future issues of peace or war, religious stability, Indian military action, interference from Pakistan, and disturbed national and international relations.

The dissertation aims to provide a detailed legal analysis of Article 370, its clauses, current legal framework, challenges, and suggestions for India's future peaceful scenarios. It examines the provision's background, legal cases, judicial decisions, basic structural doctrine, and parliament's power to change Article 370. The research concludes that Article 370 cannot be deleted by the president without the official recommendation of the constituent assembly under constitutional rights.

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W H I T E   B L A C K  
L E G A L

# **CHAPTER - 1**

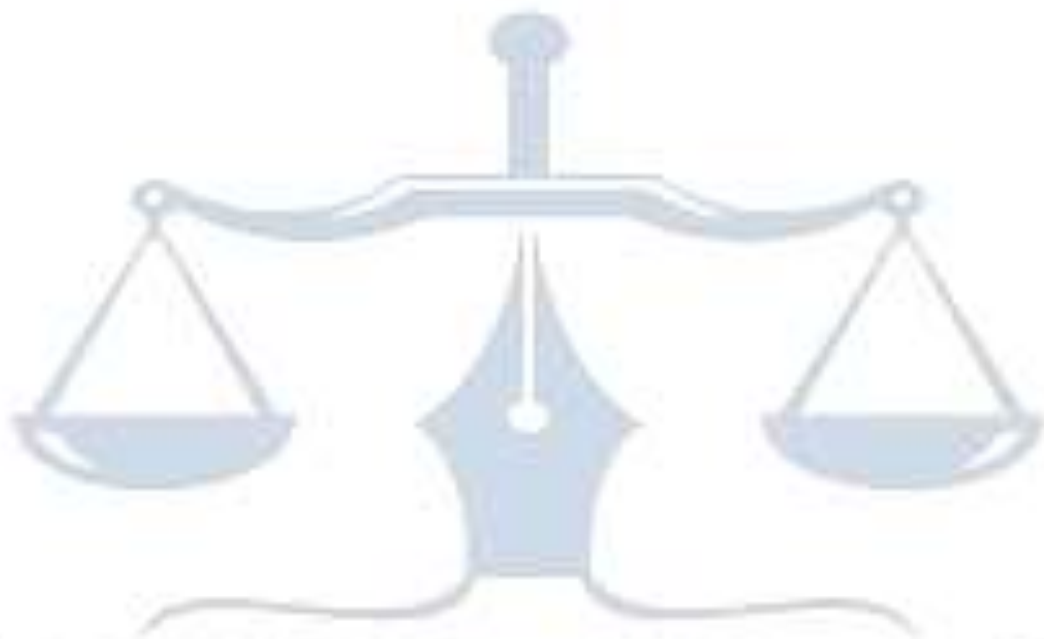
## **INTRODUCTION**

The Indian Constitution is a comprehensive legal framework that encompasses all aspects necessary for peacefully governing the nation and its society, ensuring social stability, human rights, and protection from serious crimes. However, when analyzing the international and national security matters along the Indo-Pak border of Jammu and Kashmir, it becomes evident that this region is one of the world's most complex and dangerous areas, requiring the implementation of new laws to maintain security and peace. The interference from Pakistan in Jammu and Kashmir, and more recently from China following the coronavirus situation and the attack in the Ladakh region, has made the resolution of these serious issues challenging. The hope is to foster future relationships based on peace and prosperity.

The people of Jammu and Kashmir have endured immense terror and fear for decades, fighting for their freedom against the discomfort and discontent they have faced. India and Pakistan were divided into two countries after gaining independence from the British in 1947. At that time, there were nearly 560 princely states in British India, with Kashmir being one of them. The emperor of Kashmir, Hari Singh, made many controversial decisions that became the most debated reasons for stabilizing the conditions in Kashmir. Pakistan targeted India by using Kashmir as a weapon and attacked the region by sending army troops. Unable to defend Kashmir, Maharaja Hari Singh sought help from India. After analyzing the situation in Kashmir and the request made by Hari Singh, Viceroy Mountbatten agreed to help Kashmir in exchange for the Maharaja signing the Letter of Instrument of Accession to India. Since then, this agreement has become an irrevocable and unresolved issue for India.

Following the agreement between India and Kashmir on November 2, 1947, Pandit Nehru proclaimed that Kashmir's future will be decided by means of a plebiscite. However, a plebiscite was never conducted in Kashmir, and it has become a vague promise made by the Indian government. After this incident, the people of Kashmir were protected and

guaranteed their voting rights in general and



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local elections, negating the need for a plebiscite in the state. On the other hand, Pakistan has always favored conducting elections through a plebiscite, believing that the voting of Kashmiri people would hardly make any difference in the state because they only seek to obtain basic amenities and resolve the issues of Kashmir, which they believe cannot be achieved through elections.

According to the ground reality scenario, The Jammu and Kashmir Reorganization Act, registered as No. ID (N) 04/0007/2003 and published by the Ministry of Law and Justice (Legislative Department) in New Delhi, India, addresses the complex issues of Kashmir (as a state of India equalized with other states) and the abrogation of Article 370 [1]. The question remains whether peace can be conceivable or if the stalemate will continue to hamper India-Pakistan relations in the future.

Focusing on Kashmir's background, recent developments, and U.S. policy, as published by the Congressional Research Services, the author highlights the Indian government's constitutional power to make changes in the J&K state, where the Muslim majority exists. The author emphasizes Article 370, which grants Jammu and Kashmir a special status, and the bifurcation of the state from the whole country as union territories under the president's rules. This may lead to serious issues in the future, such as peace or war, religious stability, strong Indian military action, interference from Pakistan, and disturbed national and international relations between the UN, India, Pakistan, and other neighboring countries. The UN officially considers Jammu and Kashmir as a disputed territory, but India reacted to the recent constitutional changes as an internal matter. The UN policy's main objective is to avert conflicts between India and Pakistan. The author highlights the issues of three decades of separatist conflicts and their countless death records as an outcome after 2013. The USA supports partnerships with both India and Pakistan to promote peace and development from 2019 onwards, following President Trump's July mediation offer.

Regarding the historical background of Article 370, the case history of Jammu and Kashmir shows that after the Pakistani attack on Jammu and Kashmir on October 26, 1947, and the merger of royal states with India, Kashmir had its own

constitution since November 17, 1956, under the Constitution of India, which came into force with the provision of Article 370. Maharaja Hari Singh signed the accession papers on October 26, 1947, under which the state acceded to India. Most importantly, the research highlights THE LEGAL ANALYSIS focusing on Article 370 in detail, including its clauses (1)(a), (1)(b), (1)(c), (1)(d), (2), and (3), along with the current legal framework, issues, challenges, and suggestions for India's future peaceful scenarios.

Following this, numerous issues emerge from the research title The abrogation of Article 370: Can the president act without the official recommendation under the constitutional rights of the constituent assembly? Within an in-depth framework, the research focuses on the provision and its background history, legal cases against Article 370, characterization of the article in judicial decisions, the basic structural doctrine, and the parliament's power to change Article

370. The result shows that Article 370 cannot be deleted by the president without the official recommendation under the constitutional rights of the constituent assembly. Clause 3 of Article 370 of the Indian Constitution explains that the President has the power to abrogate or delete this Article by giving official notification in the Official Gazette, if he shall take the consent of the State Governor before making such a move.

As a complex matter related to Article 370, petitions, claims, and complaints are officially registered to Jammu and Kashmir is the epicenter and cause of burning issues due to the interference of both Pakistan and India. The author disagrees with the special status granted under the new constitution as Article 370. This research work's legal analysis questions Article 370 and recognizes the persistent complex problems of communism, dynamics of separatist activities, and moments that put the Indian government into serious trouble (in the present ground reality scenario and the future). The genesis and nature of this article under the Indian Constitution should be understood in detail.

In conclusion, the abrogation of Article 370 and its further implementation are expected to bring development and peace to the Valley of Kashmir (Jammu, Kashmir, and Ladakh), contributing to the country's peace and international

relations. For many years, Kashmir has faced an atmosphere of terror and struggle, resulting in the loss of countless lives and the deployment of millions of troops in the valley due to uninvited events. On numerous occasions, there have been instances of bloodshed and terror-like conditions. Elections in Kashmir were conducted in the presence of military or paramilitary forces for protection. According to an official statement by the J&K assembly, more than six hundred thousand armed forces were deployed for the safety of Jammu and Kashmir. The ratio of locals to military personnel is 1:18, indicating many troops deployed in the valley for the protection and safety of the locals. The country has a total population of 130 crore, while the population of Jammu and Kashmir is only 1.47 crore. The quantum of military forces is quite large compared to the valley's population.

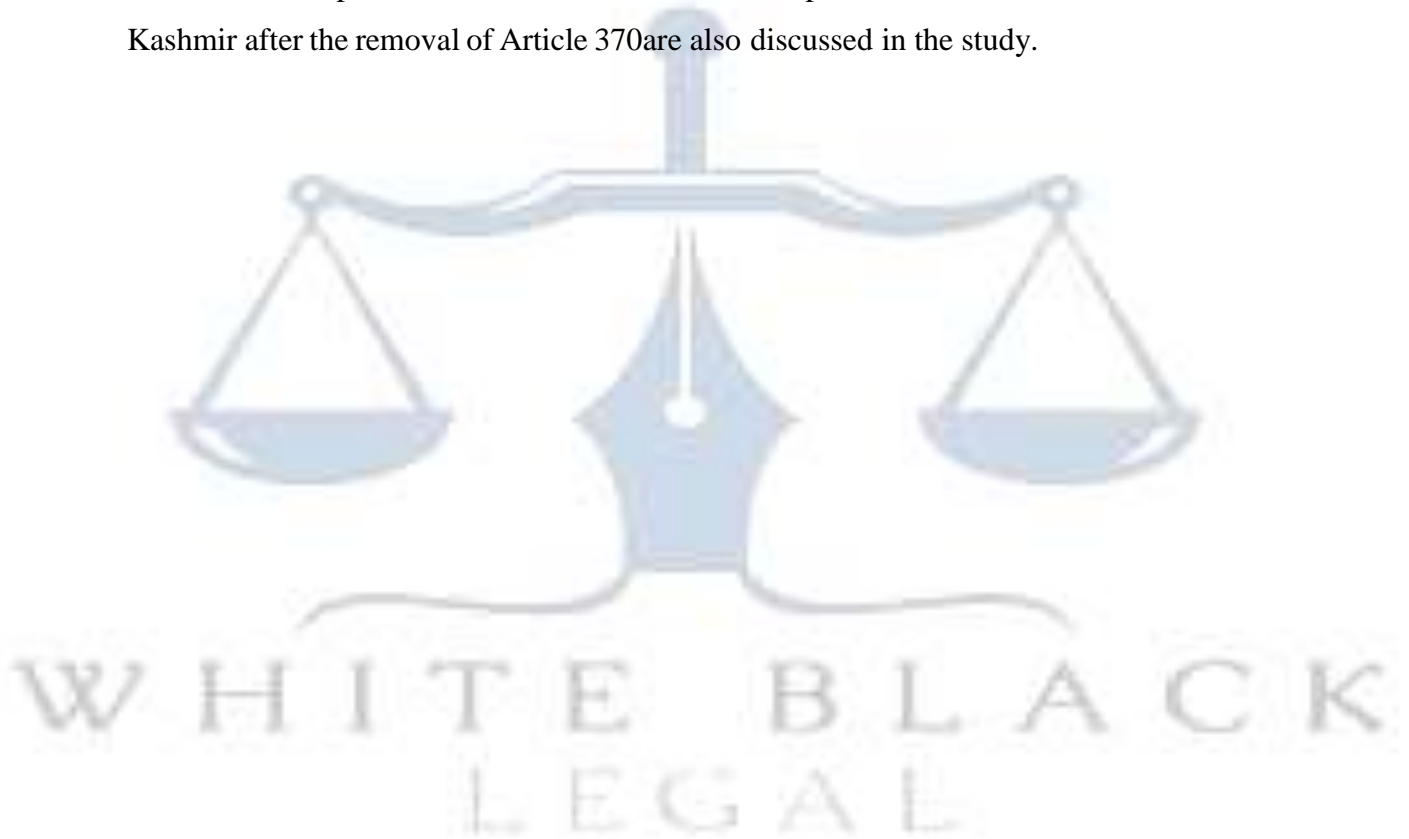
There have been many wrongful acts and tragedies observed in terms of human rights violations by armed forces or army troops in the state, including cases of rape, molestation, harassment, and disappearances. Such cases of human rights violations were investigated by Amnesty International and other agencies, but no proof was found or proven against the Indian army. They always emerged from such cases clean and clear. However, the state is currently ruled by the governing body of India as per the guidelines mentioned under Article 239-A, which are framed in the Jammu and Kashmir Act 2019. J&K is regarded as a union territory administered by a Lieutenant Governor and the Chief Minister.

The political and social constructs of J&K have been inflicted by several hartals, shutdowns, terrorist attacks, fires, and bands owing to disputes emerging in the local communities and with immediate neighborhoods (Navlakha, Manchanda & Bose, 1996). For example, the hartal was initiated in the valley by the shawl weavers in 1865, followed by the Silk Factory labor unrest, mobilization against the Dogra ruler, and plebiscite demands in 1924, 1931, and 1950, respectively. J&K also witnessed proxy war conditions that created communal riots and the exodus of Kashmiri Pandits from the valley.

In Jammu & Kashmir, after its annexation to Indian territory, the sequence of violent clashes, riots, terrorist attacks, hartals, stone-pelting, and other aggressive activities continued in a fluctuating manner, causing severe losses in the form of

human lives, destruction of public infrastructure, damage to private property, and economic losses. Amidst all these, when Article 370 was abolished in J&K, it caused an uproar among social and political groups (Chowdhary, 2019).

The abolition of Article 370 is expected to bring improvements to the state in the form of inclusive banking provisions, the right to education, the right to information, and other facilities that are enjoyed by individuals in other parts of the country. The present research focuses on analyzing the socio-political implications of the abrogation of Article 370 from the Indian Constitution concerning Jammu and Kashmir. The facts related to the introduction, implementation, and shift in the socio-political environment in Jammu and Kashmir after the removal of Article 370 are also discussed in the study.





## **CHAPTER - 2**

### **RESEARCH METHODOLOGY**

This study is doctrinal in nature and analytical in its approach. It will rely on both primary and secondary sources, including political views, debates, commentaries from various authors, books, journals, internet websites, enactments, and more.

### **PRIMARY SOURCES:**

The primary sources utilized in this research encompass the Constitution of India, precedents, statutes, and various reports from the Commission of India.

### **SECONDARY SOURCES:**

Data will be gathered through diverse secondary sources such as the internet, journals, articles, newspapers, and magazines.

### **RESEARCH OBJECTIVES WITH RESEARCH GAP**

- To review and compare the legal status of the State of Jammu and Kashmir in light of the scrapping of Article 370.
- To analyze the legal implications of abolishing Article 370 and Article 35A.
- To find THE MIDDLE PATH SOLUTIONS with new constitutional embedment or basic law structural changes to satisfy both the government and the people of the Valley of Kashmir (Jammu-Kashmir and Ladakh) in a peaceful manner.

### **ARTICLE 370 OF INDIAN CONSTITUTION:**

## **AN OVERVIEW**

Article 370 of the Indian Constitution, one of the most controversial and contentious provisions, has a profound history and is outlined as a temporary provision in the Constitution. The constitution anticipates the assembling of a Constituent Assembly for Jammu & Kashmir State. As per this article, any



modifications, amendments, or exceptions to Article 370 in its application to J&K are at the discretion of the Assembly. Hence, this temporary provision is not proficient to be abrogated, modified, or replaced.

There were many historical and political reasons for according to special status to J&K under Article 370 before its abrogation in 2019. This article, also termed a National Liability on the Government of India, has vast literature and history emerging not just from legal or constitutional dimensions but also from deep-rooted political and religious dimensions. All facts and elements are entangled abruptly, requiring extensive interest and keenness to understand the dimensions of the article and its vast political background. A deeper insight into this article is important as it reflects the deep understanding of unilateral and bilateral types of government in a single country.

## **BACKGROUND**

Not many are aware of the reason behind the formulation of Article 370 and its vital role in making J&K an integral part of the Indian Constitution, despite political apprehensions from Sardar Patel, political parties, and the Constituent Assembly. When B.R. Ambedkar refused to frame this article, Jawaharlal Nehru appointed his most trusted cabinet member, N. Gopalaswami Ayyangar, to draft it. Initially, Sheikh Abdullah was directed to accompany B.R. Ambedkar for framing Article 370, but he was strictly against its formation.

In 1950, when the Indian Constitution came into force, Article 1 defined J&K's special status, marking the beginning of inequality in India. Jawaharlal Nehru and Sheikh Abdullah signed the Delhi Agreement to improve relations between the state and the union. Nehru promised the citizens that Article 370 was just a temporary provision and would be deleted over time. However, the framers did not mention the period, leaving it unclear whether it meant one week, one month, one year, or a decade. It took almost half a century to justify and abrogate the words temporary, transitional, and special provision contained in Part XXI of the Constitution.

As per the Instrument of Accession signed by the State, the Maharaja specifically if India's dominion over J&K would be limited to matters of defence, external affairs, and communication, with other matters to be decided by the Maharaja or the government itself.

Moreover, Clause 7 of the Instrument of Accession defined that no further laws provided in the Indian Constitution would be applicable to J&K.

## **FACTS APROPOS TO ARTICLE 370 OF CONSTITUTION OF INDIA:**

1. Article 370 is a temporary and special provision accorded to J&K.
2. The principal drafter of the Indian Constitution refused to frame Article 370, deeming it unconstitutional.
3. Sheikh Abdullah was instructed by Nehru to work on this article under B.R. Ambedkar's supervision, but it was eventually drafted by Gopaldaswami Ayangar.
4. When princely states were reorganized, the omitted Article 238 did not apply to J&K.
5. Article 370 is drafted under Part XXI, the Temporary and Transitional Provision of the Indian Constitution.
6. The Instrument of Accession is the original draft of Article 370, defining the Government of the State as the Maharaja of J&K acting on the advice of the Council of Ministers under the Maharaja's Proclamation dated March 5, 1948.
7. Before taking important steps, the parliament must seek the concurrence of the J&K government.
8. The Indian Parliament cannot reduce or exceed the state's borders.
9. Article 370 was renumbered as Article 306A of the Indian Constitution.
10. Non-residents are not permitted to transact land deals in J&K under Article 370.



## **CHAPTER - 3**

### **CONSTITUTIONALITY**

Article 370 was framed to accord special constitutional status to Jammu and Kashmir, and none of the other articles in the Indian Constitution impact its enforceability or credibility. From a constitutional ethics perspective, it is unconstitutional because it degrades the basic structure of the Constitution of India. Clause 2 of Article 370 allowed the formation of a separate Constitution for Jammu and Kashmir, a privilege not granted to any other state. Ethically, morally, and politically, the law demands that there should be only one Constitution for the entire nation. Democracy and sovereignty within the territory should be the absolute power of the country. Furthermore, while any modification, deletion, or amendment to the Constitution of India by the legislative assembly applies to everyone, as per Article 370, Jammu and Kashmir will decide the implication of such changes.

### **NATURE OF ARTICLE 370:**

To understand the question of the basic principles of the Indian Constitution, one must first study the nature of Article 370. In many Supreme Court decisions, it has been determined that it is a temporary provision, but it has effectively become a permanent one over the past half-century. This article was a political venture and used as a weapon by politicians in Jammu and Kashmir. It has several fiscal implications:

1. **Applicability:** The Union government, with the consensus of the state government, must apply all laws except those related to defense, external affairs, and communication. Not all provisions of the Indian Constitution apply to Jammu and Kashmir, such as the entirety of Part VI. No other state has such privileges.
2. **Jurisdiction:** Parliamentary jurisdiction is confined to the Union and Concurrent lists only. The State list does not apply to the valley. In other states, residuary power lies with the Parliament, whereas in Jammu and Kashmir, it is governed by the state legislature. Laws related to preventive detention framed in India are not applicable in Jammu and Kashmir. The state enjoys many other powers not available to other states, such as the plenary power of Parliament defined under Article 3, international treaties, conventions, or agreements signed by India under Article 253, etc.
3. **Fundamental Rights and DPSP are inapplicable in Jammu and Kashmir.**

4. Any amendment, modification, or deletion under Article 368 does not apply to Jammu and Kashmir. The Center has no power to amend the Constitution of Jammu and Kashmir.

5. The High Court of Jammu and Kashmir has limited jurisdiction and cannot declare any law unconstitutional.

## **PROVISIONS OF ARTICLE 370 OF THE**

### **INDIAN**

### **CONSTITUTION**

Part XXI of the Indian Constitution includes Article 370, which represents all its provisions as temporary, transitional and special.

1. The initial words, notwithstanding anything in the constitution, are rarely used in any other provision of the Indian Constitution. These lines mean that it has nothing to do with any other provision and is only applicable to Jammu and Kashmir.

2. Sub-clause (a) of clause 1 explains that the provisions of Article 238 do not apply to Jammu and Kashmir.

3. Article 370 (1)(b) speaks about the limited powers of the Parliament over the state. The dominion of India was set in the Instrument of Accession. Matters related to the Union and Concurrent lists are applicable only with the discretion of the Governor of Jammu and Kashmir. Only matters related to the State list can be decided by the Parliament.

4. Clause 1(c) provides that Article 1 of the Indian Constitution applies to Jammu and Kashmir.

5. Clause 1(d) explains that certain amendments and modifications can be made by passing a Presidential order. However, before passing such an order, the President must take the advice or permission of the Governor of Jammu and Kashmir. Another provision explains that such an order should be related to matters prescribed in the Instrument of Accession and with the concurrence of the Governor.

6. Paragraph (ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) says that with the consent of the Governor of Jammu and Kashmir, it must be placed before the Constituent Assembly.

# EFFECTS OF ARTICLE 370 ON HUMAN RIGHTS

Under the cover of Article 370, many human rights are being violated. Human rights are for the welfare of society and should be awarded to every citizen of India irrespective of caste, color, race, gender, or creed. Under Article 370, the state government of Jammu and Kashmir failed to protect the basic rights of its residents, including discrimination against backward people, women who cannot marry outside the state to protect their property rights, and children's right to education. The consequences of Article 370 in the purview of human rights are as follows:

- 1. GENDER BIASES:** Article 370 highlights gender biases in Jammu and Kashmir. Article 35A speaks about the rights of women who are deprived of property rights if they marry outside the state. This discriminatory behavior against women is unacceptable and demands a call for justice. There is sheer backwardness in Jammu and Kashmir. Basic fundamental rights are not provided to women and children. The Right to Education from the age of 8 to 14 is not compulsory and strictly followed. Child marriage is still prominent, and acts that oppose such crimes do not apply to the residents of Jammu and Kashmir.
- 2. BACKWARD CLASSES:** The presence of Article 370 has increased the chances of discrimination against backward classes, violating their human rights.
- 3. POLITICAL RIGHTS:** Despite being the smallest area, Kashmir valley has the maximum number of seats in the electoral constituencies, which is unfair and fosters inequality among other states. In a democratic government, each state should have an equal opportunity to elect their representatives from their respective constituencies.
- 4. CIVIL RIGHTS:** The Certificate of Permanent Residency is of utmost importance to enjoy special rights in Jammu and Kashmir. Not giving equal rights to people who have stayed in Kashmir for many years because they do not hold the certificate violates adult suffrage and human rights under Article 370.
- 5. MINORITY RIGHTS:** The State Minority Commission or National Minority Commission has no jurisdiction over Jammu and Kashmir; hence, they enjoy the minority position.

6. **EMPLOYMENT RIGHTS:** The right to equal opportunity under Article 16 is enjoyed by every citizen of India but is inapplicable in Jammu and Kashmir. Under the Presidential Order, only citizens with PRC can enjoy employment rights in the state. The Union government has no power to interfere in employment or recruitment in Jammu and Kashmir and cannot act against this discrimination.

7. **FREEDOM OF MOVEMENT:** The right to freedom of movement cannot be guaranteed to the people of Jammu and Kashmir under Article 370. This violates Article 19 and the human rights of the people of Jammu and Kashmir.

## **CHAPTER - 4**

### **DISADVANTAGES OF ARTICLE 370:**

There is a lack of essential facilities in Jammu and Kashmir, such as private hospitals in adjoining districts, adequate water supply, electricity supply, and high-speed internet. The absence of competition among students hinders their mental growth and development, limiting their progress. The youth of Jammu and Kashmir do not have the right to appear for exams in other states. Industrial growth and development are stagnant because companies are not allowed to purchase land in the valley, as property rights are restricted to permanent residents only. Shariah laws are profiling women in the state. The Indian government cannot exercise its powers without the concurrence of the state government, preventing the implementation of laws or policies. Article 370 is not gender-neutral, as it disqualifies women from property rights if they marry outside the state.

## **WHAT IS ARTICLE 35A INCULCATED IN THE LEGAL PROVISIONS OF J & K?**

Article 35A was inserted to provide special status to the residents of Jammu and Kashmir, granting them exclusive privileges. It was introduced on the recommendation of President Rajendra Prasad with the concurrence of Jawaharlal Nehru. Article 35A is considered a

blessing for the people of Jammu and Kashmir, as it can only be enjoyed by the residents of the valley.

## **LEGAL IMPLICATIONS OF ABROGATION OF ARTICLE 370 OF THE INDIAN CONSTITUTION**

Article 370 was inserted during a time of political turmoil and war between Kashmir and Pakistan, following the signing of the Instrument of Accession between Kashmir and the Indian government. The article promised special provisions to Jammu and Kashmir. Its legal implications include:

1. INEQUALITY.
2. TEMPORARY AND TRANSITIONAL PROVISION.



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3. OVERRULES SECTION 5 OF THE INSTRUMENT OF ACCESSION.
4. STIMULATES SEPARATIONISM.
5. FINANCIAL DEVELOPMENT.
6. CORRUPTION.
7. SECURITY AT STAKE.
8. DISCRIMINATION

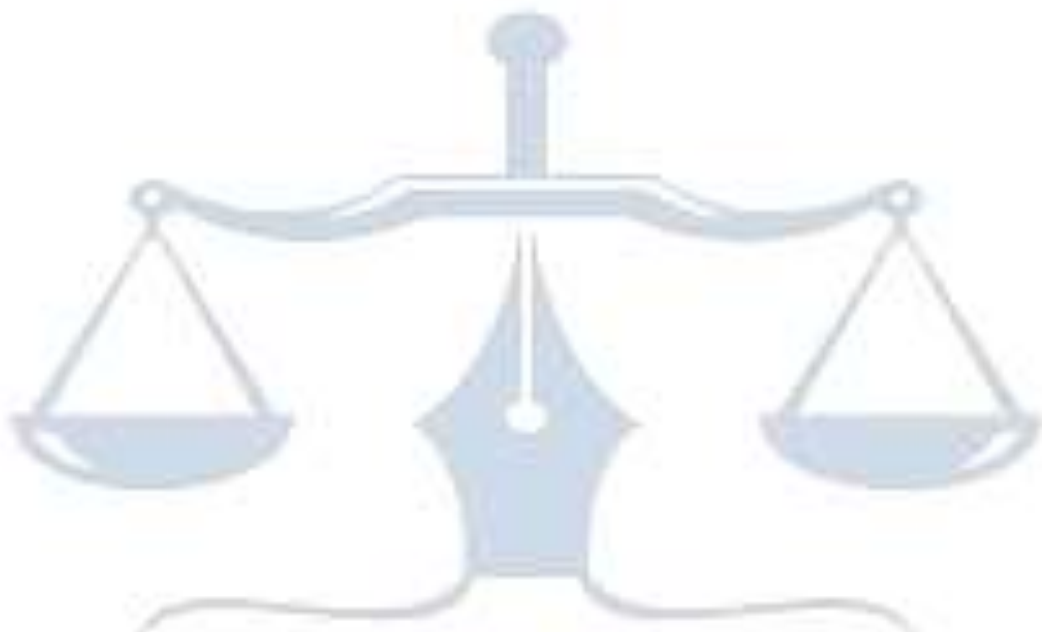
Women's rights differ from men's rights in Jammu and Kashmir. In the case of the State of Jammu and Kashmir and Sheela Shawney, women raised their voices against the provision in the Constitution of Jammu and Kashmir that strips them of property rights if they marry outside the state. The Jammu and Kashmir High Court struck down this discriminatory and biased provision, which lacked legal basis. Later, the Permanent Resident (Disqualification) Bill 2004 was passed with the efforts of Mehbooba Mufti and the PDP Government, stating that women will lose their permanent resident status if they marry anyone outside India. This bill was also supported by Omar Abdullah and his party.

## **OVERVIEW OF GOVERNMENT OFFICIALS**

1) **Dr. B.R. Ambedkar (Bharat Rattan):** From the beginning, Dr. B.R. Ambedkar, the father of the Indian Constitution, disagreed with the introduction of Article 370, deeming it unconstitutional. He stated, Article 365 is required because we all know those of us who were Ministers during the time of the war-how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions .

2) **Views of Sheikh Abdullah:** The accession of the State of Jammu and Kashmir to India is not a matter in issue. It has been my firm belief that the future of Jammu and Kashmir lies with India because of the common ideals that we share....it will be my constant endeavor to ensure that the State of Jammu and Kashmir continues to make its

contribution to the sovereignty, integrity, and progress of the nation....



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the country is passing through a critical period and it is all the more necessary for all of us who cherish the ideals of democracy, secularism and socialism, to strengthen your hands as the leader of the Nation and it is in this spirit that I am offering my whole hearted co-operation

**3) Views of Omar Abdullah:** We the people of J & K would like to categorically tell BJP that it is not possible to withdraw Article 370 and any attempt by anyone will be on our dead bodies. Mark my words and save this tweet long after the Modi Govt. is distant memory either J &K won't be part of India or Art 370 will still exist .

## **HOW WAS ARTICLE 370 WIPED OFF?**

Article 370 previously stated that it could only be diminished by the President with the concurrence of the Jammu and Kashmir State Constituent Assembly. However, since independence, Jammu and Kashmir have been enjoying the privileges of Article 370 and would not concede to nullifying it under any circumstances. The government faced the challenge of overcoming this stumbling block.

The government amended Article 367 of the Constitution through a Presidential order, specifically the interpretation clause. In the interpretation, the expression Constituent Assembly was replaced with Legislative Assembly . This change helped abrogate the provision that accorded special status to Jammu and Kashmir.

Section 92 of the Jammu and Kashmir Constitution elucidates that the Governor has all the powers and functions of the state when Governor's Rule is operative. The government skillfully changed the phrase Constituent Assembly to Legislative Assembly because the Constituent Assembly would never vote for the depletion of Article 370. At present, Governor's Rule was proficient.

The government's defense was that the Governor is accomplished with all the powers, including those of the Legislative Assembly, so he can give his consent

for ceasing Article 370 and making it inoperative. The government used this approach to achieve what they could not do directly.

Section 92 of the J & K Constitution declares that during Governor's Rule, it is the Governor's responsibility to pin the announcement before the State Assembly. The Governor can make provisional decisions, but the final decision is made by the State Assembly.

After offering all the powers to the Governor, the state government made their move and threw their ax by deleting Article 370 of the Indian Constitution. This has become history, and the government made this gesture without any debate or discussion, finally pronouncing their decision to the nation.

On August 5, 2019, the Indian Government abrogated the special status of Jammu and Kashmir protected under Article 370 and Article 35A. The alternative to this gesture would have required the consent of the elected representatives of J & K or a majority vote from the members of Parliament, which might have taken another half a century. The never-ending temporary provision was finally abolished, fulfilling the long-lasting promise made by Jawaharlal Nehru decades ago. From a legal perspective, the abrogation of Article 370 was a significant milestone.

## **LATEST BILL: JAMMU AND KASHMIR REORGANISATION BILL 2019**

The Jammu and Kashmir Reorganisation Bill 2019 was passed after the Presidential Order deleting Article 370. This bill aimed to divide Jammu and Kashmir and Ladakh into two separate Union Territories. The Jammu and Kashmir region has always been a target whenever there is an insurgency situation between India and Pakistan. The Act came into effect on October 31, 2019, and was inaugurated by the Minister of Home Affairs, Amit

Shah, on August 5, 2019. The bill was passed with a majority vote in both houses of Parliament. In the Rajya Sabha, 125 members voted in favor of the bill. The President of India also gave his prestigious consensus on August 9, 2019, in favor of passing the bill. The bill was





set in motion through a Presidential Order, which effectively eradicated Article 370 from the Indian Constitution. With the depletion of Article 370, the Union Government passed the Reorganization Bill, enabling them to alter the boundaries of Jammu and Kashmir and Ladakh.

## Features:

1. According to the Act, Jammu and Kashmir will have a Legislative Assembly, while Ladakh will not have a Legislative Assembly and will be governed by a Lieutenant Governor only.
2. Leh and Kargil will no longer be part of Jammu and Kashmir and will be merged with the Ladakh territory.
3. All other districts, villages, and states will remain inculcated in Jammu and Kashmir.
4. The allocation of Lok Sabha seats is also decided in this Act, specifying that five out of six seats will be allotted to Jammu and Kashmir and one to Ladakh for representation in the Parliament.
5. The election process will be the same as prescribed in the Delimitation Act.
6. The Legislative Assembly of Jammu and Kashmir will have a term of 5 years.
7. Article 239A will be enforceable on Jammu and Kashmir, likewise to Puducherry.
8. The number of Legislative Assembly seats has been increased from 107 to 111, with 37 for Jammu, 46 for Kashmir, and 4 for Ladakh.
9. SC/ST will get reservation.
10. The High Court will be the same for both Union Territories.

# **CHAPTER - 5**

## **RESULTS: COMPLETELY NEW UNFOLDED OPPORTUNITIES FOR J&K**

The abrogation of Article 370 has brought about a total revolution and transformation in Jammu and Kashmir, opening up new opportunities for development and progress.

### **1. More Development and Investment**

Earlier: Article 370 and Article 35A imposed restrictions on land transfer, hindering industrial growth and the establishment of large industries. The government neglected the areas of education, tourism, and health, limiting educational growth and job opportunities. Large industries were banned as they could not buy or sell land in the state.

Present Situation: The elimination of these provisions will boost the private and industrial sectors. Industrialization will lead to magnification and prosperity in the state. Revolutionary changes can be expected in trade, commerce, tourism, and educational opportunities. Local farmers can learn new cultivation techniques, and women can run small-scale businesses at home, boosting their confidence and enthusiasm.

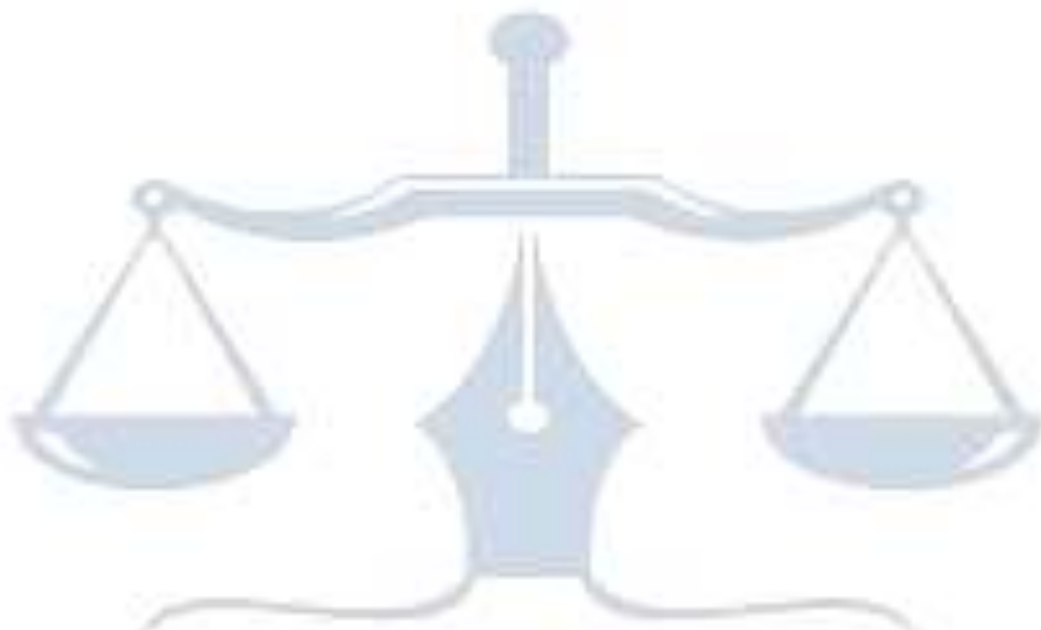
### **2. Tourism**

Earlier: Despite being a popular tourist destination, legal implications due to Article 370 and Article 35A limited Jammu and Kashmir's potential to become a top tourism venture in the nation.

Present Situation: Increased investment in tourism will enhance the state's financial condition and development. Film shootings, adventure sports, and job opportunities will increase. Village or rural tourism will expand in peaceful circumstances.

### **3. Health and Education Sector**

Earlier: Limited educational opportunities degraded the future of youngsters. The restricted scope of higher education hindered children's progress. Proficient



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professors or schools could not be provided due to the provisions. Health facilities were inadequate, forcing residents to seek major treatments in other states. There were no private hospitals in Kashmir or adjoining districts.

Present Situation: The PPP model will help develop the state by constructing private schools, colleges, and large private hospitals, increasing job opportunities for residents near their doorsteps.

#### **4. Basic Rights**

Earlier: The Right to Education (RTE) and property rights were not available to the people of the state. Women faced discrimination, and many children were deprived of education. RTE was not a crucial right in Jammu and Kashmir. Women lost property rights if they married outside the state and had no right to fight domestic violence. Juvenile justice and rights were forgotten concepts.

Present Situation: Women can enjoy property rights regardless of where they marry. Children can avail of RTE, providing free education from 8 to 14 years. The Juvenile Justice Act will apply to the state's residents. All acts shielding women's dignity and children's innocence will be implemented in the valley.

#### **5. Backward Groups**

Earlier: Discrimination against SC/ST classes was common, with a long history. They were not allowed to contest elections, mistreated by permanent residents, and restricted to sweeper jobs without proper promotion rights. Citizenship was denied to sanitation workers, who were forced to work in the department. Many backward classes were forced to reside in forest areas.

Present Situation: The rights of ST/SC will be protected. All acts protecting human rights and the dignity of backward group residents will now apply. They will get reservation to contest elections in the regional Parliament. Better working conditions and job opportunities will be provided, along with proper reservation rights in education and employment.

## **6. Property Rights**

Earlier: Only permanent residents could own property or land, resulting in no pricehike compared to other states. Non-residents could not claim any land or property in the valley.

Present Situation: Land ownership will vary after the abrogation of Article 370. Noone will be forced to part with their land, but landowners who wish to buy or sell are free to do so.

## **7. West Pakistan Refugees (WPRs)**

Earlier: WPRs had no citizenship, property, or democratic rights.

Present Situation: All such rights, including citizenship, property, and democratic rights, will apply to WPRs.

## **8. Panchayati Raj**

Earlier: Panchayats had no right to decide or finalize anything without the state government's concurrence or consent. No elections were held for selecting panchayat members.

Present Situation: The Indian government reinstated the rights of the Panchayat, and the 73rd and 74th Constitutional amendments will be operative on local bodies. Direct funds will be allocated to Panchayats, enhancing development in the entire state, including rural areas and the lowest level of democracy.

## **9. Corruption**

Earlier: Lack of transparency and accountability in the state government's working led to corruption. The RTI Act was not applicable, and investigating authorities like CBI could not intervene in state matters without permission from state authorities.

Present Situation: The right to information will act as the primary tool to eradicate corruption from the grassroots level. The people of Jammu and Kashmir will now enjoy



this fundamental right. Several acts contributing to liquidating corruption will be operative in the state. Agencies or investigation teams can investigate state matters, reducing corruption to some extent.



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## 10. **Modifications or Policies**

Earlier: Any new redrafting, alteration, or revision in the provisions of the laws was not operative in Jammu and Kashmir until the state government passed such amendments. As a result, many acts, bills, or legislation binding on other states did not apply to Jammu and Kashmir.

Present Situation: All enactments, bills, policies, or amendments will be binding and implementable in Jammu and Kashmir, like in other states. Many laws that will bring growth and development to the state are now applicable and operative. No section of the state will be deprived of any fundamental right, directive principle, or human right. This new era of equality and diversity will change the dimension and vision of people looking at Jammu and Kashmir as separate Union Territories. There is new hope for revolution, development, and financial stability, with only one official language, one flag, and one constitution. This decision has eliminated discrimination, inequality, and separatism in India, restoring people's faith in justice and human rights. Jammu and Kashmir will become new hubs for education, job opportunities, tourism, industrialization, and employment, soon turning into a new world of hope and success for its people.

The hope is that the fine combination of Muslims (Kashmiris - One Divine Wisdom) and Buddhists (Ladakh from Tibet University - Lhasa) will provide a unique culture and scope for advanced future enhancements to reshape the unstable country's situations into peaceful, enlightened, and advanced development under the umbrella of the Indian Constitution.

## **CHAPTER - 6**

### **IMPLICATIONS OF REVOKING ARTICLE 370**

Article 370 was added to India's Constitution in 1949. It allowed Jammu and Kashmir to have its own constitution, a separate flag, and independence over all matters except foreign affairs, defence, and communications. This autonomy has been greatly eroded in practice over recent decades. During the recent national elections, which the Bharatiya Janata Party (BJP) led by Prime Minister Narendra Modi won decisively, they promised to revoke Article 370. Except for one clause to which the government did not object, this happened by presidential order on August 5, 2019.

A Bill was also rapidly approved by both Houses of Parliament, splitting the state of Jammu and Kashmir into two federal (also known as Union) territories. One will be called Jammu and Kashmir, which will have a state legislature. The other is Ladakh, which will be ruled directly from New Delhi.

The revocation of Article 370 extends to a key provision added under it, known as Article 35A. This gave special privileges to permanent residents, including state government jobs and the exclusive right to own property in Jammu and Kashmir. It intended to protect the state's distinct demographic character as the only Muslim-majority state in India. Others, including the BJP, viewed it as discriminatory against non-Muslims and harming development. It was introduced in its current form in 1954, but a similar law existed before Indian independence in 1947.

Thousands of additional soldiers were sent to Jammu and Kashmir before the August 5 announcement. A curfew is still in force. At least two senior Kashmir opposition politicians and former Chief Ministers, Omar Abdullah and Mehbooba Mufti, have been detained, and there is a communications 'lockdown'. It is hard to find out what is happening on the ground.

# **IS REVOCATION LEGAL UNDER INDIAN LAW?**

Many acknowledge that Jammu and Kashmir's political autonomy has been greatly eroded in practice since Article 370's introduction. But is the act of revocation legal under Indian law? There are many differing views.

Constitutional expert Subhash Kashyap has said the order was constitutionally sound and that no legal and constitutional fault can be found in it. But some lawyers assert that constitutional change of this kind requires a two-thirds majority in both Houses of the Union Parliament. Others suggest that it requires the approval of a body – the Jammu and Kashmir Constituent Assembly – which no longer exists, having been abolished in 1957 after the state constitution was agreed.

In addition, the Supreme Court has previously declared that, contrary to those who believe it was only supposed to be a temporary measure, Article 370 has become a permanent provision of the Indian Constitution. This has led some to question whether it can ever be legitimately revoked.

The Supreme Court will very likely be asked to rule on the constitutionality of the BJP-led government's latest actions. But this could take some time. The Court is already considering a constitutional challenge to Article 35A.

Many critics of revocation regard it as breaching the contractual basis upon which the Maharaja of Kashmir decided to join India in 1947. Some lawyers think that this means there could be an international law dimension too.

## **COULD INTERNATIONAL LAW APPLY?**

Constitutional law expert Faizan Mustafa has characterized the 1947 agreement (known as the Instrument of Accession) under which the Maharaja of Kashmir decided to join India as one between two sovereign states – in other words, it has the character of an international

treaty. He says that by revoking Article 370, the Indian Government can be interpreted as returning Kashmir to its pre-agreement status as a sovereign state. For him, this might also conceivably lead to the reopening of the possibility of a plebiscite in Kashmir to decide its future.



This is endorsed by UN resolutions upholding Kashmir's right to self-determination following the first war between India and Pakistan over Kashmir in 1948.

Other experts may disagree with Faizan Mustafa's interpretation. Lawyers for the BJP-led government will certainly do so. One line of argument will be that the UN resolutions were superseded by provisions for the bilateral resolution of disputes set out in the 1972 Simla Agreement, which brought the third war between India and Pakistan (over the creation of Bangladesh) to an end.

However, Mustafa's is not a lone voice. There has already been talk of taking a case to the International Court of Justice (ICJ). But given that the Indian Government is very unlikely to accept the ICJ's jurisdiction in this matter, the court may only be able to respond to a request for a non-binding 'advisory opinion'.

## **INTERNATIONAL REACTION**

Pakistan's reaction has been one of outrage. Its foreign ministry was quick to say that India's move violates UN resolutions. Its army chief, General Qamar Javed Bajwa said: Pakistan army firmly stands by the Kashmiris in their just struggle to the very end... We are prepared and shall go to any extent to fulfil our obligations in this regard.

Pakistan's Prime Minister Imran Khan said: ...incidents like Pulwama are bound to happen again... I can already predict this will happen. They will attempt to place the blame on us again. They may strike us again, and we will strike back.

On August 7, Pakistan expelled India's High Commissioner and recalled its own top diplomat from New Delhi. It also announced the suspension of bilateral trade.

China has said it supports Pakistan's stance, highlighting its opposition to the establishment of Ladakh as a separate territory ruled from New Delhi. China currently controls territory which India claims as an extension of Ladakh.



The policy of Western governments (including the UK) on Kashmir since the 1950s has been not to get involved in discussions of sovereignty and international law but simply to urge all parties to resolve the dispute peacefully. There will be heightened anxiety that the revocation of Article 370 might trigger another full-blown conflict between India and Pakistan, both of which are nuclear weapon states.

The Western response to the revocation of Article 370 has so far been low-key. The US has called on all parties to maintain peace and stability along the Line of Control. At the time of writing, there have been no official statements by the UK or EU. The UN Secretary-General has called for restraint.

In 2018, the UN called for an international commission of inquiry into human rights abuses since 2016 on both sides of the Line of Control. India rejected this call.

## **AIM AND OBJECTIVES**

Under this section, the authors attempt to accelerate on the main purpose of the study and simplify its aim and objectives. The objectives of the study are

To search the introduction and implementation of Article 370 in the Constitution of India.

To investigate the implications of Article 370 on the social, political, and economic aspects of Jammu and Kashmir.

To explore the manner of the abrogation of Article 370 in the Indian Constitution.

To learn about the socio-political environment in Jammu & Kashmir after the removal of Article 370.

## **REVIEW OF LITERATURE**

The introduction and implementation of Article 370 in the state of Jammu and Kashmir (J&K) are discussed. Article 370 was present in Part XXI of the Indian Constitution, where it was mentioned that the provisions provided under this Article were temporary and transitional. Under Article 370, the state of J&K was granted a

special provision to reject all directives from the Indian Constitution and implement independent regulations within its state boundaries (Priyadarshi & Bhardwaj, 2019).

According to Article 370, the rulings mentioned under Article 238 (which was omitted from the Indian Constitution in 1956 regarding the reorganization of states) would not apply to the J&K state. The authority of the Parliament to make laws would also be limited to matters of the Union and Concurrent Lists. The political parties in the state were empowered to make rulings as per the Instrument of Accession received by the President of India. Due to the introduction and implementation of Article 370 in J&K, the state was completely exempted from the application of any rulings mentioned in the Indian Constitution. It allowed the state to practice government policies framed independently. The Central governing agency could exercise limited powers over J&K, restricted to the segments of communications, defense, and external affairs. Article 370 specified that other provisions or rulings laid out by the Central government could only be implemented with the concurrence of the independent State governing accord. The directives related to concurrence were to be considered provisional by the state government and could be ratified by the State Constituent Assembly. The concurrence privilege could be enjoyed by the State Government until the next State Constituent Assembly. If the ruling power admitted to the prevailing concurrence rulings, the previous directives would continue to be executed; otherwise, modifications would be introduced as per the new ruling power. Additionally, the provisions specified under Article 370 could be amended or abrogated based on the recommendations provided by the State Constituent Assembly (Tremblay, 1992).

The state of J&K was given special privileges under Article 370 from 1950 to 2019, allowing it to have a separate constitution and act as an autonomous body. The local administrators in J&K could make decisions or recommend the extent to which the provisions mentioned under the Constitution of India would be applicable in the state. J&K was currently led by the ruling party governance that came into force after the convening of the state constituent assembly. The Assembly suggested that the provisions mentioned under the Indian Constitution could be made applicable in J&K by issuing a 1954 Presidential order (Wagay & Singh, 2021). However, as the constituent assembly dissolved without making any

recommendations, Article 370 became a permanent facet of the Constitution of India. As a result, due to the implementation of Article 370 in J&K, the residents in the state followed a separate set of laws and regulations related to citizenship, ownership of property, fundamental rights, education rights, religions, and others that were different from the rest of the states in the country. For example, Indian citizens from other states could not purchase land or property in J&K. To purchase land in J&K, the individual was required to be a resident of the state (Gupta, 2019). However, on August 5, 2019, a Presidential Order was issued according to which the 1954 order was superseded, and the rulings mentioned under the Indian Constitution were made applicable to the state of J&K. The suspension of Article 370 was confirmed after the same order was passed in the Parliament with a two-thirds majority. As a result, all the clauses, provisions, and regulations implemented under Article 370 in J&K would be considered undermined and inoperative as of August 6, 2019. Apart from this, the Jammu and Kashmir Reorganization Act, 2019, was also passed, according to which Jammu and Kashmir would be treated as two union territories, namely the Union Territory of Ladakh and the Union Territory of J&K, since October 31, 2019. Based on the above facts, it can be said that Article 370 was introduced to reduce the complexities of the state J&K, but it did not prove fruitful, and it was abolished on August 6, 2019, giving J&K the normal state status like others in India (Golechha, 2020).

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## **CHAPTER 7:**

### **Article 370 and its implications on the economic and socio-political aspects of J&K:**

Article 370 was implemented in Jammu and Kashmir to provide J&K with an interim provision after India gained independence immediately. This law was supposed to exist in the state until the state's Constituent Assembly. However, with the passage of time and the interests of political parties, the temporary provision of Article 370 was retained by J K for a longer period. The long term implementation of Article 370 created chaos in the state and undermined its unity and integrity with the country by framing a separate constitution for itself. The formation of separate constitutional laws and provisions has impacted the social, political and economic aspects of J K by creating emotional, psychological, employment and governance barriers. While focusing on the social aspects, the implementation of Article 370 has created a separatist sentiment among the people of J K. This secession has been effectively used by Pakistan to create unrest in J&K, claiming that although India is a state from Kashmir to Kanyakumari, it maintains a diplomatic attitude towards J K by how to apply the two state policy. This has resulted in the separatist lobby creating a mindset of alienation among the citizens of J K and encouraging them to think in a separatist way of dividing the country rather than uniting all constituencies (Sadiq, 2016).

Political implications include the growing dominance of political parties that place their personal interests above those of the nation. Most politicians have abused the policies and provisions of Article 370, entrusting their personal interests to the bureaucracy, businessmen, judiciary and others. As a result, no financial laws have been introduced in J&K, leading to the exploitation of the poor and underprivileged citizens of the state by bureaucrats and politicians. There were improper dealings in gift taxes, property taxes and municipal limits laws, leading to the theft of state coffers. So the rich get richer and the situation of the common masses worsens because they do not enjoy any economic benefits. Therefore, Article 370 led to the creation of a powerful elite and gave economic superpower to local kings and used their power to trample or subjugate the genuine demands of the masses. people. This has caused serious damage to the welfare and welfare of the public

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creating a separate constitution, separate flag, dual citizenship, inability to buy land in J&K etc. Rather, 2020.

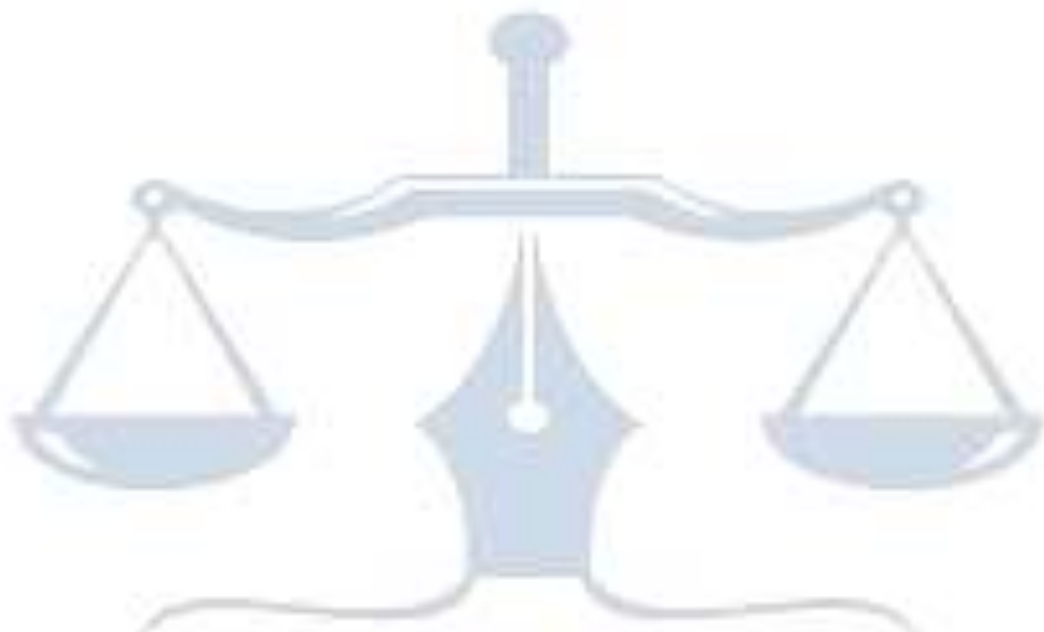
The intransigent attitude of state politicians under Section 370 has created enormous economic losses in terms of loss of business, jobs and growth in the state. In the absence of adequate trade policies and economic support measures, it becomes very difficult for local individuals to carry out commercial activities. For example, there is no structured tax system in J K to enable businesses to pay taxes properly. As a result, the state had a low economic growth of 12 between 2004 and 2014, 2 lower than the Indian average. Due to weak economic growth, the rate of poverty reduction also slowed down, only decreasing by 3 in 2012. The poverty rate fell from 13 to 10 in 2014, compared with 15 in other states in India. The poverty rate in different parts of J K like Kishtwar, Poonch, Ramban, Kupwara and others was recorded at 17.4, 17.1, 15.2% and 14.5 respectively. Due to the interests of political parties, terrorist rebel activities have increased, increasing the cost burden on the state in terms of poor infrastructure such as lack of educational facilities, lack of hospitals, and poor roads. Complaints and inadequate traffic. The literacy rate in the state is also low (43%), the lowest in the country. There is also a large literacy gap (17%) between men and women, compared to the national average of 14. The proportion of wasteland is also said to be the highest in J&K, with 73 being in the form of barren and rocky soils. This provides fewer employment opportunities for the working population of the state as they cannot undertake agricultural activities which are the most popular source of occupation in India (Hameed, Saboor, Khan, Ali, and Wazir, 2017). Based on the above facts, it can be said that the implementation of Article 370 does not bring any benefit to J K because of widespread separatism, selfish political management, and poor economic conditions of the residents of the state.

## **Article 370 and the Abolition of the Constitution of India:**

The abrogation of Article 370 includes the removal of the privileges of Article 370 from the State of Jammu and Kashmir. This includes removing the special state status accorded



to J K under Article 35 A this article empowers the J



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K legislature to define permanent residents of the state and grant them rights and privileges). special rights). The special status of J K was abolished by the Indian Board on 5 August 2019 thanks to the support of other political parties such as Bahujan Samajwadi Party BSP, Aam Aadmi Party and Biju Janata Dal (BJD ) (Farooq Javaid, 2020 . The abrogation of Article 370 also led to the introduction of two bills in J K in the form of the Jammu and Kashmir Reorganization Bill, 2019, under Section 3 of the Constitution of India and the Jammu and Kashmir Reorganization Act, 2019. Kashmir Reorganization Bill, 2019, the State administration is amended from the directions applicable under Article 370 to the ordinary proceedings of the State as practiced in other States of the India. On the other hand, under the Jammu and Kashmir Reorganization Act, 2019, the union territory status of Jammu and Kashmir changed from separate union territory to combined union territory and declared Ladakh as a union territory individual. The repeal of Article 370 would have economic and social consequences for the State in terms of loss of health and income. Since the state was under curfew under Section 144 of the Code of Criminal Procedure and there was no internet connection from August 5, 2019 to December 2019, the social aspects of the state were affected. Travel restrictions have been imposed in some parts of the city on car traffic. This has a negative impact on human psychology and spirit, as individuals feel they are blatantly excluded from decades-long privileges. The people of Jammu and Kashmir felt the pain as all communication was disrupted due to lack of access to mobile phones, landlines, internet and other communication tools. All these factors have negatively impacted the daily life activities of J K and they face new health problems related to mental stress and depression Ahmed, 2019.

The political implications were seen in the wake of opposition from major political parties and the Chief Minister of J K. Political parties consider the abrogation of Article 370 in Jammu and Kashmir as the darkest day in the history of Indian democracy. The withdrawal was seen as shocking, unilateral and an erosion of the rights of Kashmiri citizens.

The abrogation of Article 370 also had a negative economic impact due to the curfew; the tourism industry witnessed a loss of INR 1,056 crores. The agriculture, industrial and services sectors are impacted by core buckets of INR

4,591 crore, INR 45,095 crore and INR 19,191 crore respectively. Economic losses were also recorded in the form of unemployment in various sectors such as tourism, agriculture, and handicraft industries with losses of 74,500, 12,000 and 70,000 jobs respectively. Based on the above facts, it can be said that the abrogation of Article 370 was not well received by many politicians and government agencies around the world and was not considered a successful initiative to annex J K with the remaining states of India Sharma, 2019.

Changing socio-political atmosphere in J K after removal of Article 370 The revocation of Article 370 from Jammu and Kashmir has led to a change in the political and social environment of the state. Apart from the social impacts, the curfew-like situation and the closure of all means of communication have increased mental health problems among people in the valley. About 37 of men and 50 of women in Kashmir are likely to suffer from depressive symptoms, while 21 of men and 36 of women suffer from anxiety disorders. About 18 of men and 22 of women have symptoms of post-traumatic stress disorder (PTSD). There has been the creation of a submissive environment in which individuals are deprived of their freedom due to the adoption of undemocratic decisions Ganai and Bhavna, 2020 . The Indian government's sudden decision to abrogate Article 370 has evoked mixed reactions from political parties in J K and the rest of the Indian states. For example, the abolition was heavily criticized by Jammu and Kashmir Chief Minister Mehbooba Mufti, former Chief Minister Omar Abdullah, politician Shah Faesal, Imam Khomeini Memorial Trust and others. On the other hand, the abrogation of Article 370 was supported by the Ladakh Buddhist Association, representatives of the Hindu community in Kashmir, Ladakh constituency member Jamyang Tsering Namgyal and others. Reactions from neighboring countries like Pakistan, China and SAARC countries have been noted. For example, Pakistan criticized the Indian government and argued that the removal of Article 370 was unconstitutional. The move will increase aggression between India and Pakistan, leading to the suspension of bilateral trade activities and downgrading of diplomatic associations. On the other hand, China points out that treating Ladakh as a Union Territory is unacceptable as it directly affects the sovereignty of the Chinese community. Amidst all the assertions and conclusions made by various political parties in India and abroad, the abrogation of Article 370 will bring new hope to the people of

Jammu and Kashmir, who have suffered at the hands of influential political parties in the state. The inclusion of Jammu and Kashmir among the states of India has given the state opportunities for growth and development in education, healthcare, infrastructure, banking and other services enjoyed by other states.

As all the 890 central laws and guidelines of the Indian Constitution will be applicable to J K, J&K will also enjoy the benefits of progressive laws like the Whistleblowers Protection Act, 2014, the Right of Children to Free and Compulsory Education, 2009, Whistleblower Protection Act, 2009. Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act and Others, 1954 (Kaushik, 2019).

The revocation of Article 370 will help rehabilitate Kashmiri professionals who have been hunted by rebels for years. Around 4,000 Kashmiris have secured jobs in the Union Territory and many more have registered for job opportunities. A massive recruitment drive has been launched in J K to hire residents and fill 10,000 posts in local government. Another 250,000 vacancies are being prepared to fill qualified candidates in the state. These include providing employment opportunities to all backward classes, economically weaker sections, and scheduled tribes so that they can receive financial assistance. Additionally, refugees from West Pakistan considered as foreigners were provided with residency and monetary assistance worth INR 5.50 lakhs per household through implementation of domicile certificates and simple stay. Additionally, a vigilance squad called the Central Vigilance Committee was formed to integrate parts of J K with other parts of the country. Based on the above facts, it can be said that after the removal of Article 370, constructive work has been started in J K which will bring positive socio-economic change in the valley in years to come.

# **CHAPTER 8**

## **Why in the news?**

Recently, the Supreme Court delivered a verdict on the Union government's 2019 proposal to amend Article 370 of the Constitution. The repeal ended the special status granted to the former state of Jammu and Kashmir. The court upheld the constitutional decree repealing Article 370.

## **What is the recent decision of the Hon'ble Supreme Court of India?**

### **Jammu and Kashmir did not Possess Sovereignty:**

- SC observed that there is much evidence in Article 370 and the J&K Constitution to show that in regard to Kashmir, a merger agreement was not necessary to surrender its sovereignty.
- Article 370(1) applied Article 1 of the Constitution of India (where J&K was listed as a Part III State) with no modifications.
- Section 3 of the J&K Constitution explicitly states that the State of Jammu and Kashmir is and shall be an integral part of the Union of India.
- Section 147 of the Indian constitution prohibited any amendments to Section 3, further making the provision absolute.
- Thus, Court said that the Constitution of India, became the supreme governing document of the land. Further, the Preamble to the J&K Constitution shows a clear absence of a reference to sovereignty.

### **Article 370 is a Temporary Provision:**

- The SC heavily relied on the fact that the framers of the Constitution placed Article 370 with the temporary and transitional provisions contained in PartXXI.





□ Then, it pointed out that the Instrument of Accession (IoA) made it abundantly clear that Article 1 which stated that India that is Bharat shall be a Union of States applied in its entirety to J&K.

### **Constitutional Validity of Proclamations Under President's Rule:**

SC's Bench concurred that the President has the power to make irreversible changes, including the dissolution of the State Assembly, and that the President's powers are kept in check by judicial and constitutional scrutiny.

### **The Constitution of J&K Stands Inoperative:**

□ Court held that it is no longer necessary for the Constitution of J&K through which only certain provisions of the Indian Constitution applied to J&K, to exist.

□ The implicit but necessary consequence of the application of the Constitution of India in its entirety to the State of Jammu and Kashmir is that the Constitution of the State is inoperative.

### **Human Rights:**

The SC recommended that the Union set up a truth and reconciliation Commission just like South Africa did post-apartheid to investigate human rights violations by both state and non-state actors. The exercise should be time-bound.

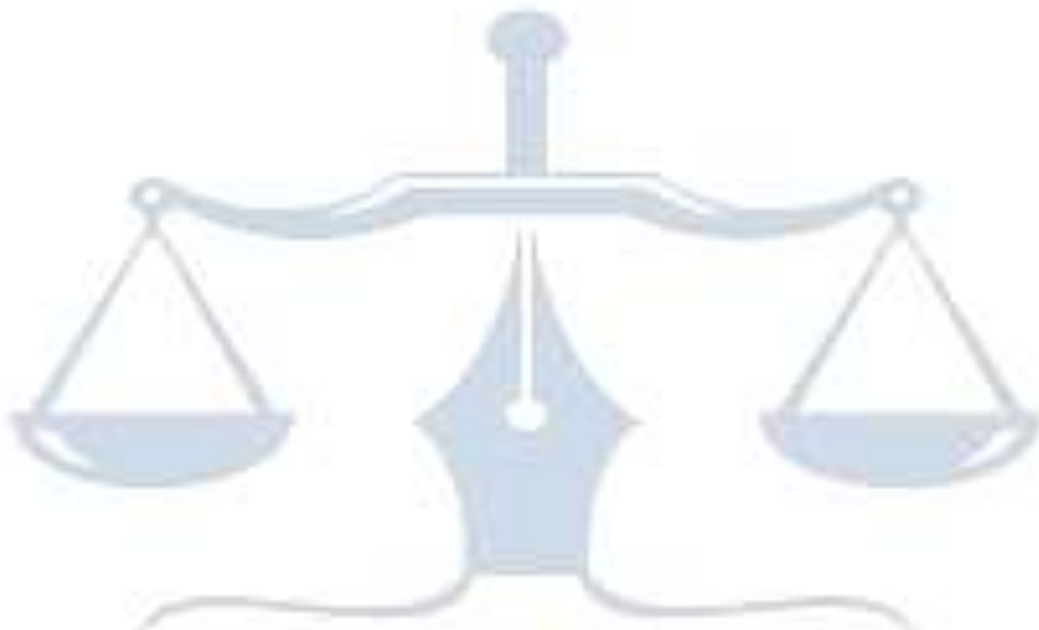
### **What was the Special Status of J&K?**

About:

On 5th August 2019, the President of India in the exercise of the powers conferred by

Article 370(1) of the Constitution issued the Constitution (Application to Jammu and  
Kashmir) Order, 2019.

o Through this, the Government of India has made modifications to Article 370 itself  
(not revoked it).



W H I T E   B L A C K  
L E G A L

- o With this, the Government of India has dramatically altered the relationship between the state of Jammu and Kashmir and the Indian Union.

### Background:

- o On 17th October 1949, Article 370 was added to the Indian constitution, as a 'temporary provision', which exempted Jammu & Kashmir, permitting it to draft its own Constitution and restricting the Indian Parliament's legislative powers in the state.
- o It was introduced into the draft constitution by N Gopalaswami Ayyangar as Article 306 A.

### Article 370:

- o The Constituent Assembly of Jammu and Kashmir was empowered to recommend which Articles of the Constitution of India should apply to the State.
- o The J&K Constituent Assembly was dissolved after drafting the state constitution. Article 370(3) gives the President of India the power to change its provisions and scope.
- o Article 35A is derived from Article 370 and was enacted by presidential decree in 1954 on the recommendation of the J K Constituent Assembly.
- o Article 35A empowers the Legislature of the State of Jammu and Kashmir to determine the permanent residents of the State and their special rights and privileges.
- o It is listed in Schedule I of the Constitution of India.
- o Several states have different constitutional guarantees. These are codified in Articles 371, 371A-I for states like Andhra Pradesh, Maharashtra, Gujarat and North East states.

What important changes were introduced by the 2019 decree?

- o The Constitution (Application to Jammu and Kashmir) Ordinance, 2019 replaced the Presidential Ordinance, 1954.
- o Subsequently, the Jammu and Kashmir Reorganization Act, 2019, passed by Parliament, divides the State of Jammu and Kashmir into two new Union Territories UTs Jammu and Kashmir and Ladakh.
- o For the first time the state was converted into a UT.
- o Of the six Lok Sabha seats currently held by the State of Jammu and Kashmir, five will remain with the Union Territory of Jammu and Kashmir and one will be allocated to Ladakh.
- o The UT of Jammu and Kashmir will host the assembly like Delhi and Puducherry.
- o Ladakh becomes a UT without a legislature.
- o Kashmir will no longer have a governor but a lieutenant governor like Delhi or Puducherry.

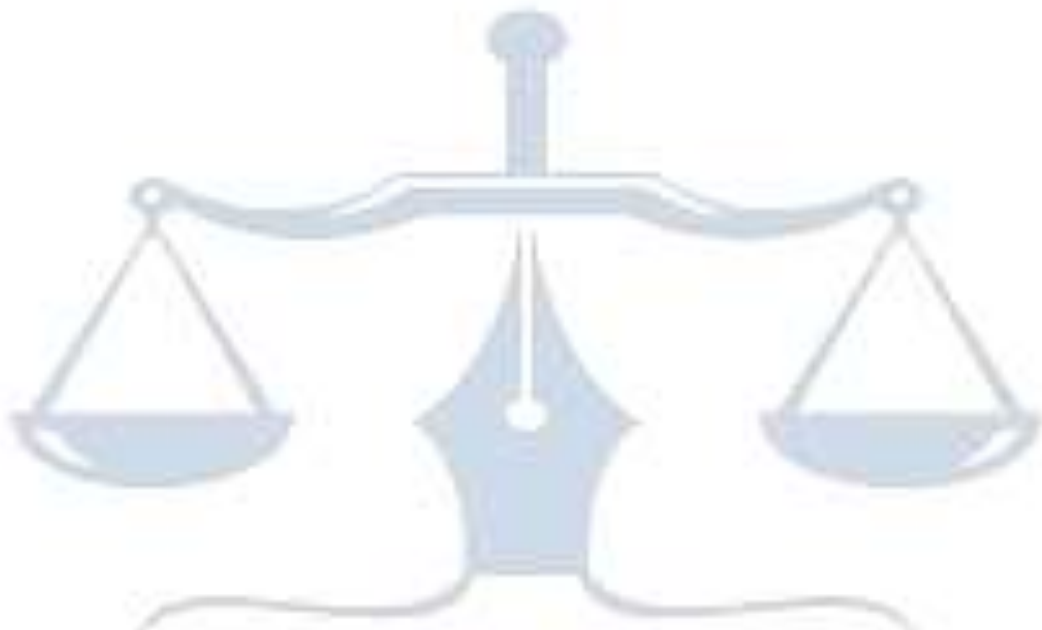
#### – Status of Union Territory of J&K:

- o The term of office of the J K Assembly is five years and not six years as before.
- o Section 32 of the J&K Act, 2019 proposes that the Assembly may make laws on any subject included in the State and Concurrent Lists, except State subjects relating to public order and police.
- o This is similar to Article 239A of the Constitution which applies to the Union Territories of Puducherry and Delhi.
- o However, due to the insertion of Article 239AA and the 69th Amendment of the Constitution, the Delhi Assembly cannot make laws on matters enumerated in Article 18 of the State List viz. H. Country.
- o In the case of J&K, the Assembly may make laws relating to land.

Special status of J K abolished:

oJammu and Kashmir will no longer have its own constitution, flag or anthem.o

Citizens of Jammu and Kashmir do not have dual citizenship.



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LEGAL

- o Since the new Union Territory of Jammu and Kashmir will be governed by the Indian Constitution, its citizens will now have the fundamental rights enshrined in the Indian Constitution.
- o Section 360, which may be used to declare financial distress, now also applies.
- o All laws passed by Parliament shall apply in Jammu and Kashmir, including the Right to Information Act and the Right to Education Act.
- o The Indian Penal Code will replace the Ranbir Penal Code of Jammu and Kashmir.
- o Article 35A arising from the provisions of Article 370 is invalid.

Article 370, was this inevitable?

Article 370 of the Indian Constitution granted special status to Jammu and Kashmir allowing them to have their own constitution, national flag and autonomy in the internal administration of the state. The Government of India revoked this special status in August 2019 by an order of the President and a resolution of Parliament Article 370 of the Indian Constitution, Paragraph 1.

This Article, together with Article 35A, provides that the people of Jammu and Kashmir are subject to different laws, including those relating to citizenship, property and fundamental rights, different from those of other Indian States. Due to this provision, Indian citizens from other states could not acquire land or property in Jammu and Kashmir Article 370 of the Indian Constitution, Paragraph 3 . It is also important to consider Article 370 in the light of Article 7 of the Act of Accession signed by Maharaja Hari Singh, which declared that the State cannot be compelled to accept any future Constitution of India. The state had the right to develop its own constitution and decide independently what additional powers it would grant to the Delhi government. Article 370 was intended to protect these rights. According to the constitutional scholar A. G. Nurani, Article 370 records a solemn agreement Wikipedia, 2019 . Neither India nor a state can unilaterally amend or repeal an article except in accordance with the provisions of the article Article 370 of the Constitution of India, paragraph 13 . In addition, Article 370 contained six special provisions for Jammu and Kashmir.

1. It exempted the state from the full application of the Constitution of India. The



state was allowed to have its own constitution.

2. The central legislative powers over the state at the time of composition were limited to the three areas of defense, foreign policy and communications.

3. Other constitutional powers of the Central Government may be extended to a State only with the consent of the State Government.

4. Consent was only provisional. It had to be ratified by the state's Constituent Assembly.

5. The state government's power to grant consent only existed until the state constitutional assembly was convened. Once the state constituent assembly finalised the scheme of powers and dispersed, no further extension of powers was possible.

6. Article 370 could be abrogated or amended only upon the recommendation of the State's Constituent Assembly (Article 370 of the constitution of India, para 14) On 5 August 2019, Home Minister Amit Shah announced in the Rajya Sabha, the upper house of the Indian Parliament, that the President of India had issued the Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) under Article 370, superseding the Constitution (Application to Jammu and Kashmir) Order, 1954. The order stated that all the provisions of the Indian Constitution applied to Jammu and Kashmir. Whereas the 1954 order specified that only some articles of the Indian constitution apply to the state, the new order removed all such restrictions. This effectively meant that the separate constitution of Jammu and Kashmir was abolished. The President issued the order with the consent of the Government of the State of Jammu and Kashmir Article 370 of the Indian Constitution,

Paragraph

48.

Consequences of the cancellation: reaction and response Experts consider this step by the BJP government to be catastrophic. Palaniappan Chidambaram, a senior leader of the opposition Congress party, called the decision a disastrous step and warned in Parliament that it could have serious consequences You may think you have won, but you are wrong and history will prove it. You are wrong. Future generations will understand what a grave mistake this House is making BBC World News, 2019.

Other opinions in opposition claimed that the central government (in blatant

violation of the Instrument of Accession, or, the Indian Constitution), cannot arbitrarily downgrade the status of a state to that of a union territory. This is a violation of fundamental rights of the state and its people. This act alone, without any legal, economic or political justification attracts violations of constitutional rights and invites judicial review of the Supreme Court. Only the President has the powers to amend or modify, and not to do away with it (as suggested by the Indian Supreme Court in *Sampat Prakash vs State of J&K* 1970; Shah, 2019). Therefore, the argument surrounding the justification for the illegality of Article 370, is that if the act or 'status of state' of instrument of accession was not acceptable then why was it allowed to be part of the Indian Constitution for unexplainable years. (Shah, 2019)?

Meanwhile, the Narendra Modi government remains confident that India will remain united, even despite the fiercest local opposition to its decision. In his speech, Modi said: We as a nation, as a family, have taken a historic decision. A system that deprived the brothers and sisters of Jammu, Kashmir and Ladakh of many rights and posed a major obstacle to their development. Article 370 and Article 35A only provided for terrorism, separatism, nepotism and massive corruption. These items were used as weapons by Pakistan to inflame passions. This is the reason why 42,000 people have died in the last three decades and it brings tears to everyone's eyes India Today, 2019.

Modi broke his silence on the government's actions and urged the people of Jammu and Kashmir, Ladakh and the entire country to work towards the development of Jammu and Kashmir and to put an end to the menace of terrorism. Modi's speech sent a message to both the international community and his domestic audience. This came as the US was reconsidering its position on India's decision to revoke Article 370 and integrate Jammu and Kashmir more firmly into the country by reorganising it into two Union Territories Live Mint, 2019 .

## **CHAPTER – 9**

### **Pakistan and its response to the India's abrogation of Article**

### **370 and 35A**

Meanwhile, Modi's move on Kashmir sent shockwaves through Pakistan. This is because Pakistan's Prime Minister Imran Khan had just returned from his first official trip of the United States with high hopes amidst Trump's commitment to mediate on the Kashmir issue. In the background of Prime Minister Imran Khan's three-day visit to the United States, where he met President Donald Trump, while responding to a question on Kashmir, the Prime Minister had said that the US being a powerful nation led by Donald Trump can play a role in resolving the old issue between India and Pakistan. To this, Trump said that Prime Minister Modi had also requested him to mediate on Kashmir. However, India rejected the claims saying no such request has been made by Prime Minister Modi to US President Trump. Ministry of External Affairs spokesperson Raveesh Kumar said that it has been New Delhi's consistent position that all outstanding issues with Pakistan are discussed only bilaterally. 'Any engagement with Pakistan would require an end to cross border terrorism. The Shimla Agreement & the Lahore Declaration provide the basis to resolve all issues between India & Pakistan bilaterally' (Financial Express, 2019).

Pakistani media was quick to jump off to an immediate reaction of Khan's successful US trip, without foreseeing what it meant. Critics to the Khan's PTI government accuse him of a tacit deal with the Americans to have traded off Kashmir with the IMF economic package currently underway for bailing out Pakistan's ailing economy. Many also believe that Khan has nearly lost Kashmir, as strict Financial Action Task Force (FATF) conditions call for a strict ban on Jihadi outfits, which acted as a soft underbelly of the deep state. Therefore, to woo the security establishment and the reactionary religious lobbies that might want to overtly assert their support for the Kashmiris, Khan's vociferous rhetoric against BJP as a rogue and fascist government is clearly to boost domestic and political support.

Pakistan was quick to respond to India's move in Kashmir as illegitimate, illegal and denounced that it was an internal matter of India. Pakistan believes that Kashmir is a disputed area and that under the UN Resolutions, Kashmiris be given the right of national self-determination and that no unilateral action in Kashmir should be acceptable to Pakistan. Furthermore, Pakistan believes that Kashmir is the unfinished agenda of partition and any change in the territorial status of Kashmir is an infringement on its demography and a violation of territorial jurisdiction by India. Pakistan justifies that India made an illegal and unilateral attempt to hijack Kashmir by revocation of Article 370 and 35A. In this respect, according to Pakistan, the issue of conflictual status of Jammu and Kashmir is recognized by the UN charter and especially the International Community along with India should adhere to The United Nations Security Council Resolution 47 which had recommended a three-step process for the resolution of the dispute. (UN Security Council Resolution 47, para 2) In the first step, Pakistan was asked to withdraw all its nationals that entered Kashmir for the sake of fighting. In the second step, India was asked to progressively reduce its forces to the minimum level required for law and order and in the third step, India was asked to appoint a plebiscite administrator nominated by the United Nations who would conduct a free and impartial plebiscite. (UN Security Council Resolution 47, para 2).

After a vigorous and rapid diplomatic engagement, Pakistan hastened to downgrade diplomatic relations with India. He also fired the Indian High Commissioner and suspended bilateral trade with New Delhi. In addition, Pakistan halted trade relations with India, imposed a ban on Indian films, canceled all means of communication, including buses and trains, and imposed restrictions on Indian airspace. The Samjhota Express Peace Train service was discontinued, as was the Peace Bus service from Pakistan and India and vice versa. Pakistan has also asked the Organization of Islamic Cooperation OIC to cut diplomatic ties with India. He also convened the UN General Assembly for an emergency session on Kashmir, but these efforts were seen by many as futile as he failed to change the global position on India.

## **Responses of major international actors**

The US distanced itself from India's decision to revoke Article 370 and the move to bifurcate Jammu and Kashmir in two union territories. The country has also denied India did not consult or inform the US government before scrapping the special status given to Jammu and Kashmir Business Today, 2019. Contrary to press reporting, the Indian government did not consult or inform the US government before moving to revoke IOK special constitutional status, said the US Bureau of South and Central Asian Affairs, attributing the statement to Assistant Secretary for South Asia Alice Wells Business Today.

Russia, France, and as well as the US made no official comment that criticized Indian move and so maintained their official diplomatic position as Kashmir being an internal matter of India. In line with Pakistan's call to urge the international community to stick to UN resolutions on Kashmir, the United Nations General Assembly was called to address the issue. While Pakistan claimed that it was the diplomatic victory for the country that it was successful to convene the UN meeting with the good offices of China and that Kashmir was again on the UN agenda in spite of the Indian reluctance to bring it to the UN forum. India on the other hand asserted that Pakistan failed miserably to convince the leaders of the western democracies that Kashmir is an international conflict and that the reason why no joint statement was released after the session was reminiscent of this fact. Negating Indian claims, Pakistani officials have reiterated that the UNSC meeting on Kashmir asserted that the conflict in Kashmir will be resolved as per UN charter and UNSC resolutions (The Nation, 2019). The statement said Kashmir is not internal matter of India. It is matter of world peace and security which has come under debate within UN ambit after 1965. The officials also cited a statement by the UN Secretary-General expressing deep concern over the situation in occupied Kashmir. He also suggested referring to the Shimla Agreement between Pakistan and India.



## **Pakistan's big disappointment**

The tug of war over Kashmir continues between Pakistan and India, the Arab Gulf states have expressed their diplomatic, economic and strategic tilt towards India. This is obvious as the government of UAE officially rendered the highest civilian award for the Indian Prime Minister Narendra Modi upon his arrival in the Emirates on 24 August 2019. The Saudi as well Bahraini tilt towards India is seen as a major diplomatic win India has gained over Pakistan in terms of its huge array of support from its Arab allies. According to sources the Saudi ARAMCO and India's Reliance Cooperation has signed contracts worth millions of dollars guaranteeing broad cooperation, future collaboration in industry, petrochemicals, business, technology and education. While India's trade with UAE amounts to about more than 60 billion dollars, correspondingly with Saudi Arabia it is on the same trajectory. Seen from this perspective, the future of bilateral trade and investment vis a vis India and Arab Gulf region remains smooth.

However, for Pakistan, the Emirati and Saudi tilt towards India is a huge blow. Pakistan considers Saudi Arabia as its fraternal Islamic state and therefore, the concept of Islamic brotherhood constitutes a very important part of that relationship. Most Pakistanis have a spiritual connection with Saudi Arabia as the Land of Islam, and thus any criticism on Saudis is considered as a taboo in the country. Regardless of what the Saudi and Emirati policies pertain to the war in Yemen, which has been aided militarily by the two Arab Gulf countries no official position has been taken on the butchery of war in Yemen. Former Pakistan army chief Raheel Sharif heads the Saudi-led Islamic Military Counter-Terrorism Coalition (IMCTC).

Today all members are countries whose governments are dominated by Sunnis. Countries with Shiite-dominated governments such as Iran, Iraq or Syria are not part of the alliance. According to Euro News, some analysts see the alliance as part of Saudi Arabia's efforts to take a leading role in the Middle East



and the Muslim world in its rivalry with Iran. Islamic Military Counter-Terrorism Alliance, para.5

Iran reacted very angrily to this move and expressed its displeasure towards Pakistan. India and Iran have started working closely for the development of Shah Bahar port which is seen to have been an answer to Pakistan's intentions to jointly collaborate with China in the development of the China Pakistan Economic Corridor CPEC. In the current climate therefore, Pakistan has very tough choices with its Eastern as well as its Western neighbours. Any attempt by India to instigate a war like situation along the Line of Control LoC in Kashmir will result in the movement of troops from Afghan-Pakistan border to the troubled LoC. Pakistan's ambassador to Washington raised the possibility that his country might redeploy troops from the Afghanistan border to the Kashmir frontier, a shift that could complicate American peace talks with the Taliban. Gladstone, 2019 This statement was reflecting not only the immense challenges that Pakistan is facing, but also an indication that considering troop mobility, efforts for peace in Afghanistan will bear a huge cost and considering the US withdrawal from Afghanistan and talks with the Taliban, it could be perilous. Shah Mehmood Qureshi, Pakistan's foreign minister, quickly reacted to the UAE's decision to award Modi its highest civilian honor. Far from a utopian nationalist view, Qureshi said global alliances were determined by geoeconomics and state interests were more in line with national interests. Qureshi remains a tough and forceful speaker and many in the PTI disagree with his bold stand on national issues.

## **The Nuclear Deterrence, Bluff or real threat?**

Rajnath Singh, India's Defence Minister, commenting on India's choices in the case of a war with Pakistan stated India's no first use doctrine on the use of nuclear weapons is open for change in the future. Considering the choices that India must respond to Pakistan's hard line position on Kashmir, many believe that Singh's indication comes with a thinking within the establishment that no policy is written in stone, and could be modified to deal with current realities.

On 17 August 2019, Pakistan Foreign Minister Shah Mehmood Qureshi termed Defence Minister Rajnath Singh's statement over a possible change in New Delhi's no first use nuclear policy as a 'damning reminder of India's unbridled thirst for violence' (Shreya, 2019).

As Pervez Hoodbhoy, Pakistan's peace advocate and a prominent nuclear physicist believes, despite its no first use policy, India could still strike first. 'You can always come back later and say, we had been provoked to this point' (TRT World, 2019).

While political pundits are still weighing in on the consequences of the Indian decision to declare Jammu and Kashmir as a union territory, the situation in some parts of the Valley as well as in some districts remain a point of concern. Even though curfew has been partially lifted, people remain despondent and agitated. Prices of commodities have hiked; schools and colleges have remained closed. Hospital and medical emergencies are desperate, and protests and even mass calls for a nationwide boycott of the move has gained potency. Though reports within mainstream Indian media highlight normalcy to have returned to Kashmir but News channels like BBC Urdu, which has started an exclusive news coverage on the situation in Jammu and Kashmir, carries an overall different picture of the ground realities.

Most media channels in Pakistan openly called out Modi as a terrorist and his move to have set the precedent for a mass scale ethnic cleansing and even a probability of a genocide, considering the possibility that the region will become majoritarian Hindu from a majoritarian Muslim, ripping off their Muslim majoritarian status. There have been many talk shows on Geo News and ARY News Channels that have discussed in length the ramifications of abrogation of 370 and 35A. One program on ARY News channel discussed that with Article 35A gone, Kashmiris lost the territorial status and are now subjected to the mercy of intruders (ARY News, 2019). They debated that Kashmiris would not be able to exercise the right to own property, as the Modi's move results in losing the right to inherit land and kinship. In other words, Kashmiris, like Palestinians, will be deprived of the land which they once owned, thus

resulting in their political, economic, and social marginalisation. Furthermore, many constitutional experts across the board opined that this is one of the most ferocious constitutional frauds attributed to India. India deployed 70,000 troops, one of the largest deployment of its military contingents ever into Kashmir, blocked and banned all communication links, incarcerated and detained the political leadership of Kashmir, imposed unlimited curfew, curbed the basic human rights of millions of people in Kashmir by making it one of the largest human prison of the world. At its worst, schools, colleges, universities and all seats of learning were closed, hospitals recording extreme emergencies with severe limitations of medical supplies, maternity wards having almost absent midwives. Casualty wards having next to zero rescue staff. The world watched the most hapless scenes of how one of the biggest democracies kept its population hostage.

In Pakistan, many respond to the Indian move on abrogation of article 370 and 35A as a belligerent and bizarre development, something to be referred to as a dark spot in history, and as the great carnage of its own people. Many also claim that it is reminiscent to how Pakistan lost its eastern part, today's Bangladesh, like the then Pakistani army treated their Bengali minority as the arch enemy. Likewise, the Kashmiris see India as an occupation force, which will never be acceptable for them and thus they will fight for their territory till the last drop of their blood.

Najam Sethi, a renowned Pakistani journalist opines that Pakistan has taken a very hard-line decision to boycott India on all platforms. Pakistan moved from a softer to a harder policy on Kashmir as a reaction to the media and the sentiment of the people in Pakistan. Initially the government did not want to take a very tough stand as even the joint session of parliament did not include the mention of Article 370. Later it changed following a huge media outcry over the issue. Pakistan's pre-occupation with its economic woes, huge deficits, public debts and highly deflated economy limits the choices.

The regulations of FATF, as mentioned earlier, could be very challenging in assessing the successes or failures of its policies vis a vis India,

as well as with its other neighbours. It will be very tough for Pakistan to maintain its line not to talk to India provided the American pressure as well as the pressure of the international community to settle all its long- standing disputes with India bilaterally.

In the aftermath of the current stalemate between India and Pakistan, there have been many speculations circulating in both countries about the rising of tensions at the borders, killing of civilians and personnel of the armed forces of both the countries as well as the eventuality of the use of nuclear weapons. Since both countries possess a reasonable stockpile of nuclear weapons, both believe that nuclear weapons act as a deterrent. It is tragic that had the money both countries spent on nuclear and conventional weapons warfare could have been diverted to just causes: in sectors like social welfare, economy, population, healthcare and the general wellbeing of their people, both India and Pakistan might not have had suffered extreme poverty, and unemployment. The defence budget of both the countries is much higher than the budget for social sectors. In Pakistan alone military has dominated over the civilian government for almost more span than military dictated martial laws. After **almost** 72 years of independence, the horrors of **the** wars in Hiroshima and **Nagasaki have taught us nothing**. Both countries **are using** the threat of nuclear attack to assert their weight over the other. Both **fought in** wars **three times**, but **argued** over **many** issues. As the **younger** generation **replaces the old** in both countries, there **is a need** to change **perspectives**, ideas and **opinions**, but unfortunately the leadership **is coming full circle towards** lasting peace.

## **CHAPTER – 10**

### **CONCLUSION:**

The provision of Article 370 in the Indian Constitution was initially implemented to alleviate the tensions experienced during the violent partition of British India. However, this special status led to unintended negative consequences in the region, including the rise of separatist movements and self-serving political factions, which hindered public welfare, growth, and development. The revocation of Article 370 on August 5, 2019, sparked significant reactions both within India and internationally, with mixed responses from various political entities. Countries like the Maldives and Bhutan took a neutral stance, while Sri Lanka supported the decision to designate Ladakh as a union territory. Conversely, Pakistan and China strongly condemned the removal of Article 370 and the associated Article 35-A from Jammu & Kashmir.

The abrogation of Article 370 is anticipated to foster positive developments in infrastructure, education, healthcare, and public welfare within the state.

The Indian Government has also established the 18th Bench of the Central Administrative Tribunal (CAT) in the region to monitor its progress closely. The expectation is that the elimination of Article 370, along with Article 35-A, will significantly enhance public welfare initiatives and restore prosperity, harmony, and peace in the valley.

Prime Minister Modi emphasized the unity of all parties on the issue of Kashmir, stating that this consensus sends a clear message to the world, separatists, and the people of Kashmir. He compared the consensus on this issue to the agreement on the GST Bill, expressing that the loss of any life in Kashmir, be it a local youth or a security personnel, is a loss for the entire nation.

It is hoped that the rich cultural amalgamation of Muslims in Kashmir and Buddhists in Ladakh will provide a unique cultural foundation and opportunities for significant advancements. This blend is expected to help stabilize the region and promote peaceful, enlightened, and progressive development under the governance of the Indian Constitution.

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