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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

# **A COMPARATIVE ANALYSIS OF CONSTITUTIONAL AUTONOMY: EXAMINING THE REPEAL OF ARTICLE 370 IN JAMMU AND KASHMIR AND ITS IMPACT ON FEDERALISM IN INDIA**

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## **I. ABSTRACT**

This paper thoroughly explores the relationship between constitutional autonomy and the significant repeal of Article 370 in India. It begins by introducing the concept of constitutional autonomy and how it connects to Article 370. The Historical Perspective chapter traces the history of Article 370, explaining its importance and how its provisions changed over time. It's followed by a detailed Legal Framework analysis, diving into the specific rules and what they meant. Understanding the events before the repeal is crucial. The Socio-Political Dynamics chapter carefully examines the circumstances leading up to this major decision. Then, the paper looks into the effects of repealing Article 370 on India's federal structure, exploring how power shifted between the central government and the states. This paper attempts to comparatively study the levels of autonomy granted to various states in India. The quest for state autonomy remains an enduring issue in Indian federalism. It then delves into Impact Assessment chapters, exploring the effects on governance, society, regional dynamics, and the new power balance. The analysis extends to how the relationship between the Central Government and the States transformed and how the repeal affected things like jobs, local development, and people's living standards. In conclusion, the paper synthesizes these findings, highlighting the lessons learned and the broader implications for India's federal system. This comprehensive study aims to shed light on the complex effects of the Article 370 repeal on India's governance structure.

**Keywords:** Abrogation, Federalism & Union Territory

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## **III. INTRODUCTION**

This paper thoroughly explores the relationship between constitutional autonomy and the significant repeal of Article 370 in India.

Constitutional autonomy refers to the situation where a particular region or entity within a nation is provided with a level of self-governance and authority as outlined in the constitution. This recognition involves granting specific rights, powers, and legislative authority to the identified region or entity within the broader legal context of the country. This principle is commonly applied to areas with distinctive cultural, historical, or ethnic characteristics, seeking to foster inclusivity within a unified political system<sup>1</sup>. The extent of autonomy can vary, encompassing control over local governance, administration, and legislative affairs. The objective of constitutional autonomy is to find a harmonious balance between preserving national unity and addressing the unique needs and aspirations of various regions or groups within the country.

Upon reviewing the constitutional clauses that confer unique status upon certain states, it may seem inconsistent with the principle of equality enshrined in our Constitution. These states face diverse challenges, encompassing cultural, political, socio-economic, and other aspects, necessitating special consideration. Consequently, the provision of special status, outlined in Articles 370 to 371 J, is intended to address and resolve these issues with heightened attention and care.

## **IV. SPECIAL PROVISIONS WITH RESPECT TO SOME STATES**

### **(Article 371- 371J of The Constitution of India)**

Article 371 of the Indian Constitution offers special provisions for specific states within the Indian Union, providing temporary, transitional, and unique measures for these states. These clauses were

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<sup>1</sup> Ajay Kumar Singh, Federalism as Decision-Making, Chapter 7: Constitutional Semantics and Autonomy within Indian Federalism.



not part of the original Constitution but were incorporated later through amendments to address evolving needs. Notably, Article 371F is distinct as it pertains to the integration of Sikkim into India. The primary objective of these provisions is to address the developmental requirements of underprivileged regions within the states, ensuring protection for the rights of individuals in relation to their religious and social practices. Article 371 stands as a distinctive aspect of our Constitution, designed to promote social equity by implementing affirmative actions tailored to specific regions.

### **i. States of Maharashtra and Gujarat**

As per Article 371, the President is not prohibited by the Constitution from issuing an order related to the States of Maharashtra<sup>2</sup> or Gujarat, assigning specific responsibilities to the Governor for:

Creating distinct development boards for:

- Vidarbha
- Marathwada and the remaining parts of Maharashtra<sup>3</sup>
- Saurashtra
- Kutch
- The remaining areas of Gujarat

It is mandated that an annual report on the functioning of these boards must be presented before the State Legislative Assembly.

These responsibilities include fair allocation of funds for development in the specified areas, adhering to the overall requirements of the entire state. The objective is to ensure just distribution of funds for developmental expenses, establish fair mechanisms for technical education, vocational training, and generate sufficient employment opportunities under the state government.

This provision originated after the division of the state of Bombay into Maharashtra and Gujarat<sup>4</sup>. Residents in economically weaker regions of these newly formed states expressed concerns that separation might lead to reduced funding, hindering their development. Hence, Article 371 was introduced to address these issues by establishing separate development boards for the mentioned

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<sup>2</sup> Raj Bhavan Maharashtra, The Scheme of Development Boards and its Achievements (Activities), available at <https://rajbhavan-maharashtra.gov.in/en/activities-of-the-development-boards-note/>, last seen on 12/01/2024.

<sup>3</sup> The Development Boards for Vidarbha, Marathwada and the rest of Maharashtra Order, 1994, Published vide Notification No. GS/G/94/DB/432, dated 30th April, 1994

<sup>4</sup> The Bombay Reorganisation Bill, 1960, available at: [https://eparlib.nic.in/bitstream/123456789/58606/1/jcb\\_02\\_1960\\_bombay\\_reorganisation.pdf](https://eparlib.nic.in/bitstream/123456789/58606/1/jcb_02_1960_bombay_reorganisation.pdf)

regions in both states<sup>5</sup>.

## ii. State of Nagaland

As per Article 371A, irrespective of the Constitution's provisions<sup>6</sup>:

- No Parliamentary Act concerning the following matters shall be applicable to the State of Nagaland unless approved by a resolution of the State Legislature:
  - i) Religious and social practices of the Nagas,
  - ii) Customary law and procedures of the Nagas,
  - iii) Administration of civil and criminal justice following Naga customary laws,
  - iv) Transfer of land ownership and its resources.
- The Governor of Nagaland holds special responsibility and powers to address internal disturbances, to be exercised after consulting the Ministerial Council. The Governor has ultimate discretion in matters requiring his action, and his decisions are unquestionable.
- If the Governor reports to the President that the special responsibility is no longer necessary, the President may order the cessation of such responsibility through a notification from a specified date.
- While recommending any grant demand, the Governor ensures that funds provided by the Union Government are included in the demand and not for any other purpose.
- The Governor may establish a regional council for Tuensang district<sup>7</sup>, specifying its composition, member selection, qualifications, term limits, remunerations, procedures, business conduct, and appointment of officers and staff.
- The Governor, recommended by the regional council, may:
  - i. Administer the Tuensang district,
  - ii. Equally allocate Central funds between Tuensang district and the rest of the State,
  - iii. Make regulations for peace, progress, and good governance in the Tuensang district, with retrospective effect.
- One representative from Tuensang district in the Legislative Assembly is appointed as

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<sup>5</sup> [Express News Service](https://indianexpress.com/article/explained/jammu-kashmir-amit-shah-what-is-article-371-what-does-it-say-5884176/), Explained: What is Article 371? , available at: <https://indianexpress.com/article/explained/jammu-kashmir-amit-shah-what-is-article-371-what-does-it-say-5884176/> , Updated: August 7, 2019 17:02 IST

<sup>6</sup> Akshara Sinha, Article 371A in the Constitution of India, Law essentials Blog, Available at-

<https://lawessential.com/all-blogs/f/article-371a-in-the-constitution-of-india?blogcategory=Constitutional+Law>

<sup>7</sup> The Land of culture Tuensang, History, Available at: <https://tuensang.nic.in/history/> , Last Updated: Aug 10, 2023

Minister for district affairs, dealing directly with the Governor.

- The Governor has discretionary power in all matters concerning the Tuensang district, with the final decision resting with him.
- In Articles 54, 55, and 80(4), references to elected members of a State Legislative Assembly include members of the Legislative Assembly of Nagaland.
- If difficulties arise, the President can issue necessary orders within three years of Nagaland's formation.

Additionally, the terms Kohima, Mokokchung, and Tuensang have the same meanings as defined in the State of Nagaland Act, 1962<sup>8</sup>. These provisions stem from a 16-point agreement between the Center and the Naga People's Convention in 1960<sup>9</sup>, leading to the creation of the State of Nagaland in 1963. They grant the Governor special responsibility for law and order, especially in cases of internal disturbances in the Naga Hills-Tuensang Area.

### **iii. State of Assam**

Under Article 371B, regardless of the provisions in the Constitution, the President has the authority to specify, through an order, the establishment and functions of a committee within the State Legislative Assembly of Assam. This committee is to be composed of elected Tribal representatives of the Assembly and other members specified in the order. The order will also outline modifications to the procedural rules of the Assembly.

This constitutional provision was introduced following the signing of the Memorandum of Settlement (Assam Accord)<sup>10</sup> on August 15, 1985, in New Delhi<sup>11</sup>, between representatives of the Central Government and leaders of the Assam movement. The Assam movement<sup>12</sup>, initiated in 1979 by the All-Assam Students' Union (AASU)<sup>13</sup>, concluded after a six-year agitation campaign that demanded

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<sup>8</sup> Government of India, Ministry of Law and Justice, Legislative Department, The State of Nagaland Act, 1962, Available at: <https://ltdashboard.legislative.gov.in/actsofparliamentfromtheyear/state-nagaland-act-1962>

<sup>9</sup> The 16 Point Agreement between the Government of India and the Naga People's Convention, available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/IN\\_600726\\_The%20sixteen%20point%20Agreement\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_600726_The%20sixteen%20point%20Agreement_0.pdf)

<sup>10</sup> Trisha Bharadwaj, Shubhalikha Boruah, Sanchita Borah, Political Socialization and the Role of AASU in Assam, *Tuijin Jishu/Journal of Propulsion Technology*, ISSN: 1001-4055, Vol. 44 No. 2 (2023)

<sup>11</sup> Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/IN\\_850815\\_Assam%20Accord.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf), Source: The South Asia Terrorism Portal (Website)

<sup>12</sup> Jogendra Kr. Das, ASSAM: THE POST-COLONIAL POLITICAL DEVELOPMENTS, *The Indian Journal of Political Science*, Vol. 66, No. 4 (Oct-Dec 2005)

<sup>13</sup> Pulak Gogoi, Sankarjyoti Dutta, VOLUME 57 NO. 9 (2020), Assam in the 1960s and the Birth of the All Assam Students' Union (AASU), available at - <http://psychologyandeducation.net/pae/index.php/pae/article/view/483>

the identification and deportation of illegal immigrants.

The Assam Accord resulted in several agreements between the Government of India and leaders of the Assam movement, including:

1. Acceptance of migrants who entered the state before January 1, 1966.
2. Revision of the electoral database by the Government of India based on identified concerns of the Assamese people.
3. Securing the international border between India and Bangladesh in Assam through measures such as erecting walls, placing barbed wires, and deploying security forces.
4. Withdrawal of all police charges against the leader of the Assamese movement from the inception of the movement until the accord was signed.

#### **iv. State of Manipur**

Article 371C<sup>14</sup> allows the President to, through an order, establish and define the operations of a Legislative Committee in the State of Manipur. This committee will be composed of Assembly members from the hilly regions of the state.

The Governor is required to submit an annual report to the President, or as needed by the President, concerning the administration of the hilly regions of the State. The executive authority of the Central Government extends to providing directives to the State regarding the administration of these hilly regions. In this context, "hill regions" pertain to those areas explicitly designated as such in the Presidential order.

#### **v. State of Andhra Pradesh or the State of Telangana.**

##### **Establishment of Central University in Andhra Pradesh**

Under Article 371D<sup>15</sup>, the President has the authority to issue orders for the States of Andhra Pradesh and Telangana to ensure equal opportunities and facilities in employment and education for people from different regions within these states.

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<sup>14</sup> The Constitution (Twenty-seventh Amendment) Act, 1971, Available at- <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-twenty-seventh-amendment-act-1971> , Last reviewed and updated on 11 Oct, 2012

<sup>15</sup> The Constitution (Thirty-second Amendment) Act, 1973, Available at- <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-thirty-second-amendment-act-1973> , last reviewed and updated on 12 Oct, 2012

The order issued by the President must include:

5. Directing the State Government to categorize various posts in the civil services of these states.
6. Designating specific parts of the state for various purposes.
7. Specifying the extent, manner, and conditions under which reservation preferences will be given to domicile students in the local area.

The President can also order the establishment of an Administrative Tribunal for these states, granting it specific jurisdiction, powers, and authority as outlined in the order. Such orders may authorize the Administrative Tribunal to address grievances and issue necessary orders, outline its powers and procedures, provide for the transfer of certain proceedings, and include supplemental, incidental, and consequential provisions as deemed fit by the President.

The Administrative Tribunal's orders become effective upon confirmation by the State Government or after three months from the date of issuance. However, the State Government can quash any order of the Tribunal in writing before it takes effect, and such quashing orders must be presented to both houses of the State Legislature.

The High Court of the State has no supervisory power over the Administrative Tribunal, and no court, except the Supreme Court, has jurisdiction over matters handled by the Tribunal.

The President, if convinced of the Tribunal's unnecessary continuation, may issue an order to abolish it. Moreover, appointments, postings, promotions, or transfers should not be considered illegal or void merely because they don't align with existing laws on domicile requirements in Andhra Pradesh.

Article 371D's provisions and any orders from the President remain effective despite any other constitutional provision or existing law. These provisions apply to both the State of Andhra Pradesh and the State of Telangana.

According to Article 371E<sup>16</sup>, the Parliament can legislate to establish a Central University in the State of Andhra Pradesh.

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<sup>16</sup> [Constitution \(Thirty-second Amendment\) Act, 1973](#), following which the University of Hyderabad was established in 1974.

## **vi. State of Sikkim**

Article 371F specifies the following provisions for the state of Sikkim<sup>17</sup>:

1. The State Legislative Assembly must have a minimum of 30 members.
2. Since the commencement of the Constitution Amendment Act in 1975:
  - i) The Sikkim Assembly is considered the Legislative Assembly of the State.
  - ii) Sitting members are regarded as duly elected representatives.
  - iii) The Sikkim State Legislative Assembly has equivalent powers to other State Legislative Assemblies.
3. The term of the Sikkim State Assembly is four years, unlike the five-year term for other states.
4. Sikkim has one seat in the lower house of Parliament.
5. The representative for Sikkim in the lower house is elected by members of the State Legislative Assembly.
6. Parliament can establish seat reservations in the State Assembly for sectional representation from the Sikkimese population.
7. The Governor of Sikkim has a special responsibility for peace and ensuring social and economic development for various sections of the Sikkimese population.
8. All properties within or outside the state's borders are vested in the State Government.
9. The High Court and its officers within the state's territories are recognized as the High Court of the State, along with existing laws.
10. The Supreme Court or any other court does not have jurisdiction over disputes arising from treaties, agreements, or engagements related to Sikkim made with the Government of India before the appointment day.
11. The President, through public notification, may extend any existing enactment in any Indian State to Sikkim.
12. The President can issue orders to resolve disputes arising while applying provisions under this Article to Sikkim, but such orders cannot be issued after two years from the appointment day.
13. Actions or decisions within the state of Sikkim are valid if done with Presidential assent and in conformity with Constitutional provisions.

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<sup>17</sup> information & public relations department, The day-long Sixth Session (Part-IV) of the Tenth Assembly of the Sikkim Legislative Assembly, available on- [https://sikkim.gov.in/media/press-release/press-info?name=The+day-long+Sixth+Session+\(Part-IV\)+of+the+Tenth+Assembly+of+the+Sikkim+Legislative+Assembly#:~:text=The%20old%20laws%20of%20Sikkim,8th%20May%201973%20Tripartite%20Agreement](https://sikkim.gov.in/media/press-release/press-info?name=The+day-long+Sixth+Session+(Part-IV)+of+the+Tenth+Assembly+of+the+Sikkim+Legislative+Assembly#:~:text=The%20old%20laws%20of%20Sikkim,8th%20May%201973%20Tripartite%20Agreement), last visited on 01/02/2024.

## **vii. State of Mizoram**

Article 371G of the Indian Constitution provides specific provisions for Mizoram, emphasizing special considerations for the religious and social practices of the Mizos, the application of Mizo customary law and procedure, the administration of civil and criminal justice based on Mizo customary law, as well as regulations related to the ownership and transfer of land.<sup>18</sup>

As per Article 371G:

1. No Parliamentary Act pertaining to the following matters will be applicable to the State of Mizoram unless the State Assembly of Mizoram passes a resolution:

- i) Religious or social practices of the Mizos,
- ii) Customary and procedural laws of the Mizos,
- iii) Administration of civil and criminal justice following Mizo customary law,
- iv) Land ownership and transfer.

2. The Mizoram State Assembly must have a minimum of 40 members.

## **viii. State of Arunachal Pradesh**

Under Article 371H<sup>19</sup>:

1. The Governor holds responsibility for law and order in the State of Arunachal Pradesh and related functions, exercising individual judgment after consulting the Ministerial Council. In matters concerning the Governor's authority, the Governor's decision is considered final. If the President deems that the Governor no longer needs this special responsibility, the President can order its cessation from a specified date.

2. The Arunachal Pradesh State Legislative Assembly must have a minimum of 30 members.

## **ix. State of Goa**

In accordance with Article 371-I<sup>20</sup>:

1. The legislative assembly of the State shall have a minimum of 30 members.

2. Under this special status, the State Government of Goa is authorized to enact separate legislation

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<sup>18</sup> Chhakchhuak Lalremruata, Special Status of Mizoram Under Article 371 (G) of Constitution of India, available on [https://www.academia.edu/40835365/Special\\_Status\\_of\\_Mizoram\\_Under\\_Article\\_371\\_G\\_of\\_Constitution\\_of\\_India](https://www.academia.edu/40835365/Special_Status_of_Mizoram_Under_Article_371_G_of_Constitution_of_India) (2019)

<sup>19</sup> 55th Amendment of the Indian Constitution, available at - <https://blog.examarly.com/upsc/55th-amendment-of-indian-constitution/>, last visited on 28/01/2024.

<sup>20</sup> Art.371-I ins. by the Constitution (Fifty-sixth Amendment) Act, 1987, s. 2 (w.e.f. 30-5-1987)

concerning private property dealings by the residents of Goa.

**x. State of Karnataka**

Under Article 371J<sup>21</sup>:

1. The President, through an order related to this State, may confer upon the Governor special responsibilities which include:

- Establishing a separate development board for the Hyderabad-Karnataka region. The order may require the placement of an annual report on its functioning before the State Legislative Assembly.
- Ensuring equitable allocation of funds for developmental expenses in the specified region.
- Providing equal opportunities for the residents of the region concerning public employment, education, and vocational training.

2. The order for ensuring equal opportunities may encompass:

- Reservation of seats in educational and vocational institutions in the specified region for students domiciled in that area.
- Identification of posts or categories of posts under the State Government in the specified region, allowing for direct recruitment or promotion of individuals domiciled by birth in that region.

**V. TEMPORARY PROVISIONS FOR THE STATE OF JAMMU AND KASHMIR (Article 370 and 35A of The Constitution of India)**

**i. Roots of the problem:**

Before 1947, Jammu and Kashmir (J&K) existed as a Princely State, and its ruler, Maharaja Hari Singh, expressed a desire for his state to maintain an independent status rather than merging with either India or Pakistan. The leaders in Pakistan believed that the Kashmir region should belong to Pakistan due to its Muslim-majority population. However, the people of the state identified themselves primarily as Kashmiris, reflecting a sense of regional identity known as Kashmiriyat.

The popular movement within the state, led by Sheikh Abdullah of the National Conference, aimed to remove the Maharaja but was not inclined to join Pakistan. The National Conference, being a secular organization with historical ties to the Congress, expressed a desire for autonomy. Sheikh

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<sup>21</sup> 98th Amendment Of Indian Constitution, available on <https://blog.examarly.com/upsc/98th-amendment-of-indian-constitution/>



Abdullah, having personal connections with leading nationalist figures, including Nehru, played a significant role in the political landscape<sup>22</sup>.

In October 1947, Pakistan dispatched tribal infiltrators to capture Kashmir, compelling the Maharaja to seek Indian military assistance. India provided military support, repelling the infiltrators from the Kashmir valley. The Maharaja then signed an 'Instrument of Accession' with the Government of India<sup>23</sup>. However, as Pakistan retained control over a substantial portion of the state, the matter was taken to the United Nations Organisation.

In its resolution dated April 21, 1948<sup>24</sup>, the UN proposed a three-step process to address the issue. Firstly, Pakistan was required to withdraw its nationals who had entered Kashmir. Secondly, India had to gradually reduce its forces to maintain law and order. Thirdly, a plebiscite was recommended to be conducted in a free and impartial manner. Unfortunately, no progress was achieved following this resolution.

Meanwhile, Sheikh Abdullah assumed the role of Prime Minister of the State of J&K in March 1948. India agreed to grant provisional autonomy to the state under Article 370. During this time, the head of the government in the state was referred to as the Prime Minister.

## ii. External and Internal Disputes

Since then, the politics of Jammu and Kashmir has been fraught with controversy and conflict, both due to external and internal factors<sup>25</sup>. Externally, Pakistan has consistently asserted that the Kashmir valley should be part of Pakistan. In 1947, Pakistan sponsored a tribal invasion of the state, resulting in one part of the state coming under Pakistani control. India contends that this area is under illegal occupation, while Pakistan refers to it as 'Azad Pakistan.' The Kashmir issue has remained a

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<sup>22</sup> P.S. VERMA, The Indian Journal of Political Science, Vol. 48, No. 4, GOLDEN JUBILEE NUMBER: STATE POLITICS IN INDIA (Oct. - Dec. 1987), Published By: Indian Political Science Association, available on-  
<https://www.jstor.org/stable/41855339>

<sup>23</sup> Instrument of Accession of Jammu and Kashmir, available at [https://cjp.org.in/wp-content/uploads/2019/08/instrument\\_of\\_accession\\_of\\_jammu\\_and\\_kashmir\\_state.pdf](https://cjp.org.in/wp-content/uploads/2019/08/instrument_of_accession_of_jammu_and_kashmir_state.pdf)

<sup>24</sup> United Nations Digital Library, Resolution 47 (1948) / [adopted by the Security Council at its 286th meeting], of 21 April 1948. Available at - <https://digitallibrary.un.org/record/111955/?ln=en>

<sup>25</sup> JAVID AHMAD AHANGER, World Affairs: The Journal of International Issues, The Chronic Conflict Over Kashmir, Vol. 23, No. 2 (SUMMER 2019 (APRIL-JUNE))

significant source of conflict between India and Pakistan since 1947.

Internally, there is a dispute regarding the status of Kashmir within the Indian union. Special provisions under Articles 370 and 371 of the Indian Constitution, have provoked contrasting reactions. Some outside Jammu and Kashmir believe that the special status conferred by Article 370 hinders the full integration of the state with India. They advocate for the revocation of Article 370, treating Jammu and Kashmir like any other state in India.

Conversely, a section of the population, particularly Kashmiris, feels that the autonomy provided by Article 370 is insufficient. They have three major grievances. Firstly, the promise to hold a plebiscite after normalizing the situation following the tribal invasion has not been fulfilled, leading to demands for a plebiscite. Secondly, there is a perception that the special federal status guaranteed by Article 370 has been eroded in practice, prompting calls for the restoration of autonomy or 'Greater State Autonomy.' Thirdly, concerns exist that the democratic practices observed in the rest of India have not been similarly institutionalized in the state of Jammu and Kashmir.

### iii. Politics since 1948

Upon assuming the position of Prime Minister, Sheikh Abdullah implemented significant land reforms and policies that positively impacted the common people. However, differences arose between him and the central government regarding Kashmir's status. In 1953, he was dismissed and detained for several years. The subsequent leadership lacked widespread support and struggled to govern the state, relying heavily on the support of the central government. Allegations of malpractices and rigging marred various elections.

Between 1953 and 1974, the Congress party exerted considerable influence on the state's politics. A truncated National Conference, excluding Sheikh Abdullah, initially held power with Congress support but eventually merged with the Congress. Consequently, the Congress directly controlled the state government and implemented changes. Attempts were made to reach an agreement between Sheikh Abdullah and the Government of India during this period.

In 1965, a constitutional amendment in Jammu and Kashmir changed the designation of the state's

head, with the Prime Minister becoming the Chief Minister<sup>26</sup>. Ghulam Mohammed Sadiq of the Indian National Congress became the first Chief Minister under this revised provision.

In 1974, an agreement was reached between Indira Gandhi and Sheikh Abdullah<sup>27</sup>, leading to his appointment as the Chief Minister of the State. He successfully revived the National Conference, which secured a majority in the 1977 assembly elections. Following Sheikh Abdullah's death in 1982, his son, Farooq Abdullah, assumed leadership of the National Conference and became the Chief Minister. However, he was subsequently dismissed by the Governor, allowing a breakaway faction of the National Conference to briefly take power.

The dismissal of Farooq Abdullah's government, orchestrated by the intervention of the Centre, sparked resentment in Kashmir. The trust that Kashmiris had developed in democratic processes, following the accord between Indira Gandhi and Sheikh Abdullah, suffered a setback. The perception that the Centre was interfering in the state's politics was further solidified when, in 1986, the National Conference agreed to form an electoral alliance with the Congress, the ruling party at the Centre.

#### iv. Insurgency and after

In the backdrop of this context, the Assembly election of 1987 unfolded. Official results declared a significant victory for the National Conference-Congress alliance, reinstalling Farooq Abdullah as the Chief Minister. However, widespread belief held that the results did not genuinely represent the popular choice, with allegations of rigging throughout the election process. Pre-existing resentment against the inefficient administration in the state since the early 1980s was compounded by the prevailing perception that democratic processes were being subverted by the state under the influence of the Centre. This gave rise to a political crisis in Kashmir, intensifying with the emergence of insurgency.

By 1989, the state found itself entangled in a militant movement advocating for a separate Kashmiri nation. The insurgents received support—moral, material, and military—from Pakistan. The state

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<sup>26</sup> The Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965, available at [https://aasc.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/aasc\\_webcomindia\\_org\\_oid\\_4/menu/docume nt/the\\_constitution\\_of\\_jammu\\_and\\_kashmir\\_1956\\_1.pdf](https://aasc.assam.gov.in/sites/default/files/swf_utility_folder/departments/aasc_webcomindia_org_oid_4/menu/docume nt/the_constitution_of_jammu_and_kashmir_1956_1.pdf)

<sup>27</sup> Danvir Singh, Indira Gandhi – Shiek Abdullah 1974 Agreement, available at- <https://www.indiandefencereview.com/indira-gandhi-shiek-abdullah-1974-agreement/>

remained under President's rule for several years, effectively controlled by the armed forces. From 1990 onward, Jammu and Kashmir witnessed extraordinary violence perpetrated by insurgents and countered by army action. Assembly elections took place only in 1996, with the National Conference, led by Farooq Abdullah, coming to power and advocating for regional autonomy for Jammu and Kashmir. In 2002, at the end of its term, elections were held, resulting in a shift of power from the National Conference to a coalition government led by the People's Democratic Party (PDP) and Congress.

v. 2002 and beyond

According to the coalition agreement, Mufti Mohammed led the government for the initial three years, followed by Ghulam Nabi Azad from the Indian National Congress. However, Azad couldn't complete the term as President's rule was imposed in July 2008. Subsequent elections were held in November-December 2008, resulting in another coalition government (consisting of NC and INC) led by Omar Abdullah in 2009. Despite this, the state continued to experience disruptions led by the Hurriyat Conference.

In 2014, the state held another election, marking the highest voter turnout in 25 years. Consequently, a coalition government, led by Mufti Mohammed Sayeed of the PDP with the BJP as its partner, came into power. After Mufti Mohammed Sayeed's demise, his daughter, Mehbooba Mufti, assumed the role of the first woman Chief Minister in April 2016. During her tenure, the state witnessed major acts of terrorism and escalating external and internal tensions. In June 2018, President's rule was imposed after the BJP withdrew its support to the Mufti government. On August 5, 2019, Article 370 was revoked by the Jammu & Kashmir Reorganisation Act 2019, and the state was reconstituted into two Union Territories: Jammu & Kashmir and Ladakh.

## **VI. ABROGATION OF ARTICLE 370**

On August 5, 2019, the Union Home Minister of India, Shri Amit Shah, announced the revocation of Article 370 and Article 35-A of the Indian constitution, which provided special status to the state of Jammu and Kashmir<sup>28</sup>. Article 35-A empowered the Jammu and Kashmir State legislature to define

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<sup>28</sup> Institute of Peace and Conflict, Article 370 and the reorganisation of Jammu and Kashmir, Aug 1, 2019, available at <https://www.jstor.org/stable/resrep19799>, accessed on 25/01/2024

the state's permanent residents and grant them special rights and privileges. Originally absent from the 1949 constitution of India, Article 35-A was later added in 1954 through a Presidential Order with the agreement of the State government at that time.

Additionally, the Union Minister for Home Affairs introduced two bills and two resolutions concerning Jammu and Kashmir in the Lok Sabha on August 5, 2019:

1. The Constitution (Application to Jammu & Kashmir) Order, 2019, referring to Article 370(1) of the Constitution of India. This order, issued by the President of India with the concurrence of the Jammu and Kashmir State government, supersedes the 1954 order related to Article 370.
2. A Resolution for the Repeal of Article 370 of the Constitution of India, referencing Article 370(3).
3. The Jammu & Kashmir (Reorganisation) Bill, 2019, referencing Article 3 of the Constitution of India.

Article 370(3) grants the President of India the authority to amend or repeal the Article through a notification based on the recommendation of the Constituent Assembly of Jammu and Kashmir. The President signed the Constitution (Application to Jammu and Kashmir) Order 2019 on August 5, 2019, concerning Article 370(1), making all provisions under Article 4 of the constitution of India applicable to Jammu and Kashmir. The Jammu and Kashmir Constituent Assembly would now be considered the Jammu and Kashmir Legislative Assembly. This action aligns with previous changes to Article 370. With President's rule in force in the state, the implementation of Article 370 ceased when the President of India issued the relevant notification, effective from August 6, 2019.

## **VII. IMPLICATIONS OF REVOKING ARTICLE 370**

The abrogation of Article 370 brought about unprecedented developments in South Asia, especially in the region of Jammu and Kashmir. The removal of Article 370 intensified a situation resembling war between India and Pakistan. The Jammu and Kashmir territory has been a longstanding source of dispute between the two nations, leading to four wars (1947, 1965, 1971, and 1999) over the valley. The significant impacts on the people of Jammu and Kashmir, post the abrogation of Article 370, can be categorized into social, economic, and political realms. Following the revocation, the Kashmir valley experienced a period of relative calm due to heightened security measures and a substantial deployment of troops. From August 2019 to November-December 2019, the Kashmir valley was

subjected to conditions akin to curfew, with the implementation of Section 144 of the Criminal Procedure Code, restricting assemblies of more than four persons. The restrictions extended to the extent of blocking roads and locations across the city, affecting vehicular traffic and the movement of people.

This situation elicited anguish among the people of Jammu and Kashmir on two main fronts. Firstly, there was a sense that their longstanding privileges were undemocratically and unceremoniously curtailed. Secondly, the populace was distressed by a complete communication blackout in Kashmir<sup>29</sup>, including the suspension of mobile phones, landlines, internet services, and other messaging tools (The Economic Times, 2019). These restrictions not only significantly impacted the day-to-day lives of the people but also had profound effects on their social psychology, triggering a new wave of mental health issues in the Kashmir valley.

As per the Kashmir Mental Health Survey conducted in 2015 by Medecins Sans Frontieres (MSF), the findings reveal that, on average, an adult residing in the Valley has encountered or undergone more than seven traumatic events throughout their life.

Among the traumatized population of Kashmir, 37% of adult males and 50% of females are reported to be suffering from probable depression, with 21% of males and 36% of females experiencing a probable anxiety-related disorder. Additionally, 18% of men and 22% of women are dealing with probable Post Traumatic Stress Disorder (PTSD).

The survey indicates that 1.8 million adults, constituting 45% of the population in the Kashmir Valley, exhibit significant symptoms of mental distress. Furthermore, around 1.6 million adults (41%) in the valley manifest substantial symptoms of depression, with 415,000 individuals (10%) meeting all the diagnostic criteria for severe depression<sup>30</sup>.

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<sup>29</sup> See Ayjaz Wani, "Life in Kashmir After Article 370," ORF Special Report no. 99, Observer Research Foundation, January 2020, [www.orfonline.org/wpcontent/uploads/2020/01/ORF\\_SpecialReport\\_99\\_Kashmir.pdf](http://www.orfonline.org/wpcontent/uploads/2020/01/ORF_SpecialReport_99_Kashmir.pdf), 5–12; and Khalid Shah, "Internet Restrictions to Detention of Politicians: 5 August Continues in Kashmir," Observer Research Foundation, May 4, 2020, [www.orfonline.org/expert-speak/internet-restrictions-detentionpoliticians-5-august-continues-kashmir-6562](http://www.orfonline.org/expert-speak/internet-restrictions-detentionpoliticians-5-august-continues-kashmir-6562)

<sup>30</sup> Apoorva Rao, "A First in 3 Decades: No Hartal, No Shutdown Call in Jammu and Kashmir During a Home Minister's Visit," Republic World, June 26, 2019, [www.republicworld.com/india-news/politics/a-first-in-3decades-no-hartal-no-shutdown-call-in-jammu-and-kashmir-during-a-home-ministers-visit.html](http://www.republicworld.com/india-news/politics/a-first-in-3decades-no-hartal-no-shutdown-call-in-jammu-and-kashmir-during-a-home-ministers-visit.html)

An estimated 1 million adults (26%) in the valley are grappling with noteworthy symptoms of an anxiety-related disorder. Nearly 1 in 5 adults (19%), equivalent to 771,000 individuals in the Valley, are living with significant PTSD symptoms, of which 248,000 (6%) meet the diagnostic criteria for PTSD.

The survey also highlights the prevalence of high rates of co-morbidity of symptoms of depression, anxiety, and PTSD among adults living in the valley.<sup>31</sup>

The application of restrictions, persistent shutdowns, and the internet blackout in the Valley spanning from August 5, 2019, to December 2019 dealt a significant blow to Kashmir's economy, resulting in losses ranging from Rs 14,295 to Rs 17,878 crore.

The BJP's decision to revoke Article 370 could have two potential outcomes: firstly, the BJP may derive political benefits from the decision, both within J&K and across the rest of India. Secondly, New Delhi might have an increased ability to assert the Kashmir issue as an internal matter of India, particularly in response to any attempts at third-party mediation. However, the government is aware of the associated risks, including potential civilian unrest and terrorist incidents in the Valley, communal tensions in J&K, and the internationalization of the Kashmir issue.

## **VIII. 2023 SUPREME COURT JUDGMENT**

On December 11, 2023, the Supreme Court's five most senior judges affirmed the annulment of Article 370, a constitutional provision that conferred special status upon Jammu and Kashmir. The Constitution Bench, comprised of Chief Justice D.Y. Chandrachud along with Justices S.K. Kaul, Sanjiv Khanna, B.R. Gavai, and Surya Kant, declared Article 370 as a temporary provision and emphasized that Jammu and Kashmir did not possess sovereignty. The verdict concluded that the President wielded unilateral authority to revoke Jammu and Kashmir's special status, marking the conclusive integration of the state into India<sup>32</sup>. The judgment produced three opinions, with Chief Justice D.Y. Chandrachud leading the majority opinion alongside Justices B.R. Gavai and Surya Kant.

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<sup>31</sup> Muntazar Kashmir Mental Health Survey Report, 2015

<sup>32</sup> Gauri Kashyap and R. Sai Spandana, Challenge to the Abrogation of Article 370 | Judgement Explainer, available at <https://www.scobserver.in/journal/challenge-to-the-abrogation-of-article-370-judgement-explainer/> , last visited on-01/02/2024.

Justice S.K. Kaul presented a separate concurring opinion, and Justice Sanjiv Khanna concurred with the judgments of the Chief Justice and Justice Kaul.

Chief Justice D.Y. Chandrachud clarified that Jammu and Kashmir did not possess "internal sovereignty." He asserted that while every state enjoys a certain degree of autonomy, this is a reflection of India's asymmetric federal structure, not an indication of retained sovereignty. The special status accorded to J&K represented a higher degree of autonomy within the Indian framework. Chief Justice Chandrachud further stated that after Maharaja Hari Singh signed the Instrument of Accession, the state became fully integrated into India, and any claim of sovereignty was surrendered with Yuvaraja Karan Singh accepting the supremacy of the Indian Constitution.

Justice Kaul took a nuanced stance, aligning with the 1959 judgment in *Prem Nath Kaul v Jammu and Kashmir*<sup>33</sup>, which acknowledged states retaining "an element of internal sovereignty." Justice Kaul added that since the ultimate goal was complete integration, Article 370 was considered temporary. The unanimous court decision emphasized Article 370's temporary nature, considering its historical context, wording, and placement in the Constitution<sup>34</sup>. This contradicted the petitioner's argument that Article 370 became permanent after the dissolution of the Constituent Assembly of Jammu and Kashmir.

Regarding the President's rule, the court rejected the argument that the President cannot take irreversible actions during this period. The court clarified that the President's rule is imposed only in the event of a constitutional breakdown, and actions must align with the purpose of declaring it. Judicial review applies only to actions taken with malicious intent. The court also affirmed Parliament's power to exercise both law-making and non-law-making functions of the state legislature during the President's rule. Chief Justice Chandrachud emphasized the necessity of this under President's rule. The court ruled that the President unilaterally possesses the power to revoke Article 370 without the Constituent Assembly's concurrence under Article 370(3). Article 370(3) mandates the Constituent Assembly's recommendation, but the court clarified that the President was not bound by it and had no constitutional obligation to consult the legislative assembly. The court asserted that

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<sup>33</sup> 1959 AIR 749, 1959 SCR SUPL. (2) 270, AIR 1959 SUPREME COURT 749

<sup>34</sup> Aneesha Mathur, Why Supreme Court upheld scrapping of Article 370: An analysis of verdict, India Today, Available on- <https://www.indiatoday.in/law/story/article-370-verdict-supreme-court-analysis-jammu-kashmir-statehood-2474848-2023-12-12>



if there were malicious intent, the actions could be reviewed, but in issuing CO 272 and 273, there was no such intent.

Justice Kaul concurred with the Chief, stating that the President could use these powers to fully integrate Jammu and Kashmir with the Union of India<sup>35</sup>.

The court found part of CO 272 unconstitutional, which changed the interpretation clause, as the President cannot amend Article 370 through the interpretation clause. However, the court held CO 272 as a whole to be valid, as it made all provisions of the Indian Constitution applicable to Jammu and Kashmir under Article 370(1)(d). CO 273 was deemed constitutional, representing the culmination of efforts to fully integrate Jammu and Kashmir into India. The court did not analyze the constitutionality of the J&K Reorganisation Act of 2019 but directed the Election Commission of India to conduct elections in the State Legislative Assembly of Jammu and Kashmir by September 30, 2024.

Justice Kaul recommended the establishment of a "truth and reconciliation Commission" to address human rights violations in Jammu and Kashmir, similar to South Africa's post-apartheid era.

## **IX. IMPACT ON FEDERALISM IN INDIA**

The relationships between different levels of governing units, namely the Centre and the States, are referred to as the division of powers. This structure differs from the relations among the three organs of the nation-state – executive, judiciary, and legislature, known as the separation of powers. In the Indian Constitution, the division of powers between the Centre and States is delineated in the Union List, State List, and Concurrent List. States possess the authority to legislate on matters specified in the State List. This constitutional framework provides a certain degree of autonomy to the federal units, meaning the states, as members of the Union of India, can independently decide and execute specific functions outlined by the Constitution. State autonomy implies non-interference from the central government in the day-to-day affairs of the states, with major decisions made according to the

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<sup>35</sup> AARATRIKA BHAUMIK, Supreme Court's verdict upholding the abrogation of Article 370 | Explained, available at <https://www.thehindu.com/news/national/supreme-courts-verdict-abrogation-of-article-370-explained/article67626973.ece>

powers conferred to the states in the Seventh Schedule of India<sup>36</sup>.

A significant challenge in Indian federalism is the uneven and imbalanced development among different states and sub-regions within a state. This disparity has led to a consciousness, particularly in less developed states, that their regions lag due to perceived discrimination by the Centre. In response, political leaders, activists, and civil society organizations in these states often advocate for autonomy, believing that local governance can spur development<sup>37</sup>. The demand for autonomy is sometimes linked to a request for special status, which involves providing preferential treatment in central assistance and tax exemptions to disadvantaged states. This may also include the establishment of special development authorities, reservation of jobs for locals, increased educational and healthcare infrastructure, and incentives for industries. Autonomy demands are associated with civil rights, democratic liberties movements, democratic upsurge, and the devolution of power.

The recent revocation of the special status of the State of Jammu and Kashmir raises hope that similar provisions for other states might also be reconsidered. The idea is that special treatment, even for a state, goes against the principles of a democratic nation where equality is ensured for all.

W H I T E   B L A C K  
L E G A L

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<sup>36</sup> Dr. Manjari Raj Oraon, Assistant Professor, Dept. of Political Science, BBAU, Lucknow, Unit 5- State Autonomy, available at- <https://egyankosh.ac.in/bitstream/123456789/77124/3/Unit-5.pdf>

<sup>37</sup> Arkadyuti Sarkar, Special Status given to States under the Indian Constitution, IPleaders, written on June 24,2020, available at - [https://blog.ipleaders.in/special-status-given-states-indian-constitution/#Continuation\\_of\\_existing\\_laws\\_and\\_their\\_adaptation](https://blog.ipleaders.in/special-status-given-states-indian-constitution/#Continuation_of_existing_laws_and_their_adaptation) , last visited on 27/01/2024.