
Unleashing Positive Transformations: A Comprehensive Analysis Of The Abrogation Of Article 370 In Jammu And Kashmir

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How to cite this article: Anju Sinha (2024) Unleashing Positive Transformations: A Comprehensive Analysis Of The Abrogation Of Article 370 In Jammu And Kashmir. *Library Progress International*, 44(1), 454-462

ABSTRACT

An important milestone in the history of Jammu and Kashmir was reached in August 2019 when Article 370 of the Indian Constitution was repealed. This research paper examines the effects and changes following the crucial decision to revoke Article 370 in the Jammu and Kashmir region. The revocation of Article 370 has far-reaching repercussions on the socio-political environment of Jammu and Kashmir, as the paper explains through a thorough examination of security, governance, and economy. It underlines the potential for economic growth and prosperity resulting from the region's integration with the rest of India, the spread of federal laws and developmental programs, and these developments. Moreover, the paper evaluates the consequences for national security, highlighting the need to remove obstacles to successful counterterrorism efforts and strengthen the rule of law.

Keywords: Abrogation, impact, Instrument of Accession, Constituent Assembly

INTRODUCTION

Jammu & Kashmir (J & K) held a peculiar position on the map of India even before independence; naturally surrounded by ice-laden mountains, beautiful sceneries, and outstanding beauty, the 2/3rd part of this State fell in the part of India while 1/3rd claimed to belong to Pakistan and China for a significant number of years. J & K had been given special status under Article 370, which continued until 2019, when the government abolished the special status by abrogating Articles 370 and 35A of the Constitution of India. Everything that did not apply to the State earlier has now been made applicable to bring this State to par with India's other states and union territories. However, how this abrogation has been brought to the Parliament and assented to by the President has been widely criticized and questioned for being unconstitutional and arbitrary. Several petitions were filed in the Supreme Court. Consequently, the matter was taken up by the five-judge Constitution Bench, which heard the petition extensively and delivered a judgment on December 11, 2023, upholding the validity of the abrogation of Articles 370 and 35 A of the Constitution.

Since gaining its independence, several viceroys, maharajas, and governors have engaged in extensive political bargaining and conditioning of J&K. For this State and its permanent citizens, the struggle between India and Pakistan over who gets to claim this stunning piece of heaven on earth, as well as the many violent occurrences on both sides, have been generous and overpowering. This research paper will be delving into and discussing in detail the history of the State of J&K, its own story of Accession during Independence, the political and legal position of J&K since then, and how this issue of special status was dealt with while framing the Constitution of India and the debates in the Constituent Assembly. After that, how the intertwined link and relationship shared by the Constitution of J&K and India evolved through various constitutional orders and amendments. While building the detailed background of what made the State of J&K, the paper will be discussing the J&K Reorganisation Bill, 2019 and the related external as well internal conflicts, political debates, effects and criticisms and trying to understand the entire discourse on the recognition of Kashmir, their people, land, culture and identity.

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CHRONICLES OF JAMMU AND KASHMIR: A HISTORICAL EVOLUTION

Every State or country at present is the result of its past, and therefore, history plays a crucial role in understanding our present better; as rightly said, the present and past go hand in hand. J&K has a dark history with numerous claims being made to exercise control and exhibit power, and the State has witnessed several incidents of violence, bloodshed, and political uncertainties to fight for their independent existence and has contributed to militarised conflicts, violence, wars, and crises. Being a Muslim-majority state and the fight for an independent identity, J&K had been under the garb of asymmetric federalism and, further, the recognition as a special state due to their semi-autonomy provisions. The historical evolution of J&K can be divided into pre and post-independence:

i. Pre- Independence

The history of J&K could be traced back to the Sanskrit verses in the epic text Rajtarangini, written by a renowned historian Kalhan, where it has been depicted that 'Hindus and Buddhists ruled this state till the 14th century, from where the Mughals took it over till the 18th century until it was conquered by Maharaja Ranjit Singh in 1819' (Menon, 1956). After the death of Maharaja and repeated defeats in Anglo-Sikh war, this land which was in the hands of Sikh Ruler was brought under the control of the British. Later, the British ceded Kashmir for 75 Lakh rupees to Raja Gulab Singh, the Dogra Governor of Jammu under the Treaty of Amritsar, which other Maharajas subsequently replaced. Amongst them, Maharaja Hari Singh was the most important Governor-General, who ascended in 1925 and ruled until 1950, when the Instrument of Accession was signed. (History, PDMD)

An undeniable truth about the Indian States was the spectacle of a house from the outside that was divided in itself, with numerous local princes trying to claim the land and fighting amongst themselves. This fact has been extensively used as an opportunity by the British government to attain their political ambitions and establish their dominant position. Hence, the British government gave India a free hand to exercise its sovereignty over internal matters as long as it did not interfere with the British workings or were detrimental to its interests. The position of Indian States in the British regime has been articulated beautifully in the *White Paper on Indian States* under Part XII titled 'Retrospect,' which says that "the Indian States had marked their presence on the political map in the form of patches with a scattered political and economic life of their people. With the advent of the British and the dethroning of the Mughals, this instability has been clearly understood and used by the British to disintegrate the unity and integrity of the nation. The Indian sovereignty at that time was hit by confusion and several disputes internally, which prevented the entire nation from uniting and fighting on equal footing until the advent of the National Movement, thereby turning India into a prop in the hands of British Imperialism" (White Paper, 1950, p.133). The National Movement had started taking shape in different forms, starting with the Sepoy Mutiny and the revolt of 1857. Since then, a feeling of Indian Nationalism has started budding in the hearts of the people of India.

These revolutionary steps forced the British government to pass the Government of India Act 1935, which affirmed the creation of a federation of India as has also been described in the Constitution of India as 'Union of States' (art. 1). This federation was divided into three categories: "first, those States which were previously the provinces of British India and headed by Governors; second, Indian States which were ruled by the feudal princes who can remain in office for life; third, states which were headed by Lieutenant-Governors or Chief Commissioners." (Diwan 1953, p.334). Though the idea or principle of federalism talks about equality of all its unit federation, it is different in India as the states in the first category are mainly different from the second category, and the State of J&K is part of the latter. The provinces of British India were automatically made a part of the federation, but the Indian States were given two options: either to become a member or not to become a member of the federation. Those who wished to become a part of the federation had to mandatorily sign the Instrument of Accession on such conditions and terms as the rulers of that particular unit felt desirable. This was not satisfactorily workable as it created a rift amongst the federation units, the rulers were lashed with immense safeguards and powers, and all of this affected the national interest and integrity as the powers of the Princes remained undisturbed; hence, an imbalance of power and self-rule was created. This difference of power was further balanced after the advent of the Indian Independence Act of 1947, but this was some other agenda in the list of British rulers that they wanted to accomplish by deepening the rift among the Indians.

ii. Post-Independence

The Act of 1947 was actually 'in line with British policy since the Cripps Mission' (Dutta, 2002), which was 'reiterated through the Cabinet Mission' (White Paper, p.152-153) and was finally achieved through this Act. This Act proposed that India be divided into two dominions: 'The Indian Dominion and the Dominion of Pakistan.' The Indian States were not made a part of India by default; instead, they had the option to join India voluntarily (Diwan, 1953, p.334). According to Article 2(4) of this Act, there were two options for the Indian states, i.e., 'to join Indian/Pakistan Dominion or remain an independent State'. Hence, a seed was sown for the germination of a division into several parts, as inferred from the speech of Lord Listowel in the House of Lords on July 16, 1947:

"From the coming into force of the Act of 1947, the appointment and functions of the Crown representative and his officers will terminate, and the States will be the masters of their own fate. They will be free to choose to associate

with one or other Dominion Governments or to stand alone, and there shall not be the slightest pressure to influence voluntary decisions."(Diwan,1953, p.339)

The Government of India also accepted the final outcome of the Act of 1947 and assented to the principle while stating in the Union Parliament on March 15, 1948:

"Regarding the Indian States, there is no desire to coerce them for merger or integration. If they wish to remain as separate autonomous units, we would have no objection." (Diwan,1953,339-340)

After the Independence Act of 1947 came into force, the merger and integration of almost 600 odd States took place in three forms: 'merger of States in Provinces which were geographically touching their boundary; conversion of States into centrally administered areas; and integration of territories to create new federation units.' Ultimately, all Indian States consented voluntarily after several rounds of discussion, conversation, benefits, disagreements, and delays except the three Indian States, namely 'The States of J&K, Hyderabad, and Junagadh.' J&K offered to enter into a standstill agreement with India and Pakistan, to which the former signed and assented while the latter played a condition that unless and until the Instrument of Accession is signed, India shall not enter into a standstill agreement with J&K. 'However, an invasion on Kashmir by the Pakistan army on October 22 1947 rendered Maharaja Hari Singh helpless who sought help from the Government of India to protect J&K from the aggression of the Pakistan trained tribesmen. In that situation of turmoil and incapability, Maharaja Hari Singh offered to the Governor-general of India, Lord Mountbatten, to accede to the Dominion of India, which was accepted on October 27, 1947, but with a stipulation that if the Instrument of Accession became the subject of a dispute then, the question shall be finally settled after a reference to the people of J&K.' (Anand, 2001,p.461) This condition left the subject of Accession into controversy by making it conditional to the whims and desires of the people.

On November 1, 1947, Mr. Jinnah stated that the Accession of Kashmir was based on violence, to which lord Mountbatten replied that *"the accession was brought because of violence, but it was not India but Pakistan, who shall be held responsible."* (Anand,p. 462)) Since the Accession of J&K was accepted in a state of turmoil and war, India invoked article 35 of the Charter of the U.N. (UN Charter,1945) and complained against Pakistan to the Security Council to bring international peace and ensure the security of States. (UN Carter, art.34) At the stage of the Security Council, both the Dominion were on equal footing, and the difference between 'aggressor' and 'victim of aggression' was diluted. 'Since not much progress was made by the Security Council despite the submission of draft proposals by both the Dominions based on resolutions which was accepted on January 17, 1948, hence, Maharaja Hari Singh issued a proclamation on March 5, 1948 that as soon as the normal situation is restored in the State of J&K, steps shall be taken to frame the Constitution of J&K by the National Assembly (or, Constituent Assembly to be elected by universal adult franchise as per the proclamation issued on May 1, 1951) which shall be sent for his assent through the Council of Ministers and in his absence to Yuvraj Karan Singh Bahadur.' (Anand,p.465)

While the Constituent Assembly was busy drafting the Constitution of J&K, the Prime Minister of India, Pandit Jawaharlal Nehru, stated in his reply to the debate on J&K on August 7, 1952, in the form of a declaration that *"the Instrument of Accession was subject to a plebiscite and the Government of India shall abide by the same."* (Potter 1950, p.361) The twofold promises made to the people of J&K were that 'India shall protect them from the invasion of all sorts and that they shall be completely free to arrive at the final decision of how they want to see their State in the future. However, this declaration was not part of the accession document as it was already signed and accepted by Maharaja Hari Singh and cannot be subject to modifications. (Potter, p. 361)

iii. J&K: Post-Accession

The Constitution of India was enforced on 26.01.1950 in which Article 370 was incorporated and J&K was put under Part (B) States of First Schedule, according to which the Parliament of India was able to exercise limited power in law-making and was restricted to three specific subjects which were delegated to them by the 'Instrument of Accession' namely 'Defence, Communication and Foreign affairs'; further, the parts of the Constitution of India which dealt with Fundamental rights, Directive principles of State policy and jurisdiction of the Supreme court were not made applicable to the State of J&K. In fact, India's sovereignty over J&K was not absolute, as everything was subject to the state government's approval, even if it related to the President's order. Hence, the 'Instrument of accession' was a medium of international negotiation between two Independent States where both States signed a treaty and agreed to specific terms and conditions for a peaceful co-existence. As India and J&K were federation units, they were mutually dependent on each other for shared benefits and responsibilities. The Accession was complete in law and, in fact, on October 27, 1947. When the Constitution of India was enforced in the year 1950, the constitutional way which bound the State of J&K and India together was:

- a.The Instrument of Accession of October 27, 1947 and
- b.The special provision of the Constitution of India under Article 370

III UNVEILING ARTICLE 370: INSIGHTS FROM THE CONSTITUENT ASSEMBLY DELIBERATIONS

Article 370 (Draft Article 306A) was proposed in the Constituent Assembly by Shri N. Gopalaswami Ayyangar. (Constituent Assembly Debates, 1949) He intended to make J&K a part of the Republic of India because 'once the Constitution is enacted, the fact about the Instrument of Accession shall become a thing of the past. Further, considering the situation of J&K, there was a need for this positive discrimination because the State was still not ready for a complete merger and integration as they had not assented to the Indian Constitution in its entirety. India does not have the power to interfere with the Union or Concurrent list in the case of J&K, and there is a lack of uniformity in the relationship w.r.t. State and the Union.' (CAD, 1949) Through the Draft Article 306A, he suggested the following additions:

A. "The competence of Parliament with respect to the Union and Concurrent list shall be restricted to subjects mentioned in the Accession; the President can further elaborate on this with the state government's concurrence.

b. Provisions of Article 1 shall apply to this State, and such other provisions, subject to the exception and modification, shall apply as the President may order with the concurrence of the State Government.

c. If concurrence is given before the Constituent Assembly is convened, then it shall be made before the Assembly for such a decision.

d. Notwithstanding anything mentioned in this draft article, the President, after the recommendation of the Constituent Assembly, may, through public notification, declare this article as inoperative or operative with certain exceptions and modifications, and not otherwise." (CAD, 1949)

Through the debate in the Constituent Assembly, the President announced that the motion was adopted, and Article 370 (Draft Article 306A) was added to the Constitution of India.

Article 370 was a temporary provision with respect to the State of J&K, i.e., an article for the time being and certainly open to changes in the future. Art 370(1)(a) states that the provision of Art 238 (Omitted by Constitution (Seventh Amendment) Act, 1956), which applies the Constitution of India to other Indian states, shall not be applicable to this State. Clause (1)(b) talks about the limited power of the Parliament w.r.t. this State on subjects mentioned in Instrument of Accession, that is, defense, communication, and foreign affairs. Also, this clause provided a check on the President's power to add matters to this list with the concurrence of the Government of the State. An Explanation was added to clause (1), which defines 'Government of State' as the one who is, for the time being, recognized by the President as the Maharaja of J&K, acting on the advice of the Council of Ministers. Clauses (c) and (d) talk about the applicability of this Constitution on the State and the restriction of exercising power without consultation of or concurrence with the Government of the State. Art 370(2) of the Constitution caters to the wishes of the people of J&K and gives them an opportunity to discuss all those decisions that have been made before the Assembly was convened. And the last clause to Art. 370 says that once the Constitution is finally drafted and all the federal subjects have been discussed and incorporated, then, upon the recommendation of the Constituent Assembly, the President may issue an order to cease the operation of Art. 370 or restrict its operation with certain exceptions and modifications.

IVJAMMU AND KASHMIR CONSTITUTION: CONSTITUENT ASSEMBLY PERSPECTIVE

After several deliberations and discussions, the process of framing the Constitution of J&K started in the 12th session of the Constituent Assembly from September 29, 1956, to November 19, 1956. The Constitution of J&K came into force on January 26, 1957. On August 11, 1952, the Chief Minister of J&K, Sheikh Abdullah, stated before the Constituent Assembly of the State that 'though in the Constitution of India, the residuary power is vested in the center in respect of all the States who have signed the Instrument of Accession, the situation with respect to J&K is different as they have vested the power in the State itself.' (Diwan, p.344) The Accession gave J&K the liberty to frame its own Constitution by forming a Constituent Assembly, which was convened in October 1951.

In the inaugural address of the Constituent Assembly, Mohammad Abdullah said that "the assembly shall come up with a reasoned conclusion regarding accession" (Anand, 2001, p.466) and warned about four significant issues before the Assembly- 'future of the ruling dynasty, compensation for the land transfers under the Big landed Estate Act, ratification of State's accession and Constitution of the State.' (Diwan, p. 230) The Assembly ratified the State's Accession to India in February 1954 through a resolution that was convened on the basis of universal adult franchise by the people's representative, and hence, there was a full stop to this dilemma and controversy of plebiscite and Accession. This Resolution of 1954 led to the incorporation of Section 3 in the Constitution of J&K, which was an affirmation that the people of J&K would become an absolute part of India, wholly and irrevocably. Further, Section 147 of the Constitution of J&K prohibits amendment of Section 3, thereby making it an essential feature of the Constitution of J&K and affirming more strongly the Instrument of Accession and voluntary merger and integration with the Union of India.

While all of this was in the loop, there was geo-political news about the 'U.S. granting military aid to Pakistan by the end of 1953, and this was alarming as it might affect the India-Kashmir political and military relationship, it might have an impact on the border areas of India as well and turn out to be the worst military balance'. (Sharma, 1958, p. 287)

Hence, in order to have a closer integration with the State of J&K and to fight back against this unwanted military movement of Pakistan, the President of India, on May 14 1954, issued "The Constitution (Application to J&K) Order, 1954" which included 98 more articles of the Constitution of India to be extended to J&K. This Order of 1954 was later amended on February 26, 1958 and called "The Constitution (Application to J&K) Second Amendment Order, 1958.

V THE J&K REORGANISATION BILL, 2019: IMPLICATIONS AND ANALYSIS

Jammu and Kashmir had always been in a state of turmoil since the independence of India, as everyone desired it by hook or by crook. This State had been through the worst of phases, which can primarily be divided into three- 'the first phase was from 1989 to 2002 when more than hundred thousand Kashmiri Pandits suffered through a magnanimous incident of intense violence and population displacement; the second phase is the period from 2003-2012 where there was a steady decline in violence and had attained the graph of all-time low because of the collective efforts of Indian Intelligence, Border control and governance towards the India-Pakistan conflict resolution strategies; and the third phase from 2013-2019 when there was a rapid rebound of mass agitation and insurgence of militant groups'. (Lalwani and Gayner, 2020, p.4) The third phase of conflict has given birth to quasi-violent tactics, which shows failed State political and counterterrorism strategies. This violence is basically unarmed collective violence where nonlethal pressure is created on the State, or such actions are showcased, which automatically creates a shift in the State's behavior. 'It is a way to show resistance, generate sympathy, and create that intensity of violence without actually doing the act visibly. Such acts have been marked in the form of stone pelting or interdiction of security operations or participation in militant funerals.' (Lalwani and Gayner, p.6-9)

Citing the prevailing internal security and cross-border terrorism in the State of J&K, the Indian Government revoked the special status of J&K by abrogating Articles 370 and 35A and split the State into two Union Territories (hereinafter, U.T.) as Jammu & Kashmir and Ladakh. The fact that Art. 35A has been abrogated now, which means that the legislative Assembly can no longer enjoy the sole authority to define 'permanent residents.' Consequently, there shall be an open entry to non-Kashmiri people, leading to dilution of the indigenous population as they can become permanent residents and purchase property; the territory can be used for investment and to explore its natural resources. The act of abrogation has been done in two steps:

1. The Constitution (Application to Jammu & Kashmir) Order, 2019 C.O. 272 was passed, which amended Art. 367 by inserting a clause that stated that "Constituent Assembly of the State" under Art. 370(2) should be read as "Legislative assembly of the State" and introduced the term "Governor of J&K" in place of "Government of J&K." Since President rule was imposed in J&K in December 2018, the recommendation of Parliament was considered equivalent to that of legislative Assembly. Hence, the Constitution of India was made applicable to J&K in its entirety.
2. Secondly, the Government of India passed a statutory resolution with the majority in both houses of the Parliament to abrogate Article 370. On August 6, 2019, the President, upon invoking its power under Article 370(3), declared that all clauses of Article 370 would cease to be operative and assented to the J&K Reorganisation Bill, 2019.

The salient features of the Bill 2019 are as follows:

1. "Two Union Territories, Ladakh and Jammu And Kashmir, have been created, thereby making changes in the First Schedule with 28 States and 9 Union Territories.
2. Administration: Both the U.T.s shall be administered by the President, who shall act through the Lieutenant Governor. Further, the members of the Indian Administrative Service, Indian Police Service, and Indian Forest Service shall be borne on the AGMUT Cadre, meaning thereby that they shall be posted in any of the U.T.s, and the Lt. Governor shall single-handedly decide the related matters along with the Anti-Corruption Bureau. They shall have complete discretion and not be bound by the aid and advice of the Council of Ministers.
3. Legislature and Executive: Art. 239A applies to the U.T.s. Only the U.T. of J&K shall have a Legislative Assembly. This Assembly can make laws on matters listed in the State and concurrent lists, which were not so previously. However, 'public order' and 'police have been exempted.
4. Common High Court: Both the U.T. shall have a common High Court at J&K, and there shall be an Advocate General for J&K only.
5. Seats in the Parliament: J&K shall have the maximum number of seats in Rajya Sabha as compared to other U.T.s, i.e., 4. Ladakh shall not have any." (Ratan and Johri, 2019) .

VI JUDICIAL RESPONSE TO ABROGATION OF ARTICLE 370

It has been four years since the abrogation of Article 370, and numerous petitions have been filed in the Supreme Court, but they lie dormant. Finally, a Constitution Bench was constituted to preside over these hearings. The arguments

started on August 2, 2023, and continued for almost a month, and the Judgment was delivered on December 11, 2023. In total, eight issues were framed by the Hon'ble Court:

1. Whether Article 370 is temporary, or have they acquired a permanent character?
2. Is the amendment under Article 367 in the exercise of power under Article 370(1)(d) to substitute "Constituent assembly" of Article 370(3) with "legislative assembly" constitutionally valid?
3. Whether the Constitution of India can be made applicable to the State of J&K in its entirety under Article 370(1)(d)?
4. Is the abrogation of Article 370 by the President in the absence of a recommendation of the "Constituent assembly" constitutionally invalid?
5. Are the Proclamation of the Governor under Section 92 of the Constitution of J&K and the subsequent exercise of power under Section 53(2) of the Constitution of J&K to dissolve the Legislative Assembly constitutionally valid?
6. Is the Proclamation of the President under Article 356 and subsequent extensions constitutionally valid?
7. Whether the J&K Reorganisation Act 2019 is constitutionally valid?
8. Whether during the Proclamation under Article 356 and when the legislative Assembly of the State is dissolved or suspended, does the conversion of a State into a union territory under Article 1(3)(b) of the Constitution constitute a valid exercise of power?

Answering these issues, the Hon'ble Court arrived at the following conclusions in order to declare that Article 370 of the Constitution was a temporary provision and that the Central government's decision to repeal the special status of J&K is valid and held that:

1. "The State of J&K does not retain sovereignty after the execution of IOA and the issue of Proclamation dated November 25, 1949, by which the Indian Constitution was adopted in the State of J&K. Hence, the State of J&K do not have any special privilege or power which is distinguishable from other states of the country.
2. The exercise of power by the President under Article 356 is subject to judicial review, and the one who challenges the same need to prove prima facie that there is a mala fide or extraneous exercise of power. The petitioners did not challenge the issuance of Proclamation under section 92 of the Constitution of J&K, and Article 356 of the Constitution before Article 370 was abrogated. This challenge does not stand on merit because the principal challenge is to take action after the issuance of the Proclamation.
3. The power of Parliament under Article 356(1)(b) to exercise powers of the Legislature of the State cannot be restricted to either law-making or non-law-making powers as such a limited interpretation would be contrary to the language of the article.
4. The historical context of Article 370 clearly signifies that it is a temporary provision; however, the power under Article 370(3) did not cease to exist upon the dissolution of the Constituent Assembly as they were constituted to suggest a recommendation of a transitional nature. The President's power under Article 370(3) is not affected.
5. Against the Union, it is held that Article 370 cannot be amended by an exercise of power under Article 370(1)(d), as the appropriate procedure for abrogation amendment or modification could have been through Article 370(3). The usage of CO 272 to the extent of modifying Article 367 is ultra vires Article 370(1)(d) because it is modifying the article itself to further their intention.
6. The power of the President under Article 370(1)(d) to issue CO 272 is not mala fide as the President can unilaterally issue a notification and does not have to secure the concurrence of the Government of State or Union. Hence, the issuance of paragraph 2 of CO 272 under article 370(1)(d) for applying all the provisions of the Constitution of India to the State of J&K is valid.
7. The continuous exercise of power under Article 370(1) by the President to issue a declaration under Article 370(3) shows a gradual process of constitutional integration with India. Hence, the Constitution of J&K becomes redundant, and CO 273 is valid.
8. Parliament's exercise of power under the first proviso to Article 3 under the Proclamation is valid and not mala fide, as the views of the State Legislature are recommendatory in nature. 9. The Court upholds the validity of the U.T. of Ladakh in view of Article 3(a), read with Explanation I, which allows for the formation of a U.T. upon separation of a territory from any State. In the case of J&K, the Court directed for the earliest restoration of the statehood of the U.T. of J&K." (Shah Faesal, p. 548).

VII UNRAVELLING THE AFTERMATH: ASSESSING THE IMPACT OF ARTICLE 370 ABROGATION

With the historic repeal of Article 370, Jammu and Kashmir has experienced a dramatic transition in a number of different areas, opening up new possibilities for development. The region's educational establishments have continued to run smoothly, and the accessibility of flawless Internet services has aided the development of digital enterprises. The number of tourists has increased in several places, with border tourism becoming increasingly popular and attracting travelers from all across the nation (R.K. Online Desk,2023).

i.Educational Development:

One of the most significant benefits of the post-Article 370 revolution has been the smooth operation of educational institutions. Schools and institutions have continued to operate, giving pupils a steady and uninterrupted learning environment despite the difficulties encountered throughout the changeover.

ii. Digital Advancement:

The smooth functioning of Internet services has acted as a driving force behind the expansion of digital enterprises in the area. The newfound chances have been seized by startups and entrepreneurs, strengthening the local economy within the State of J&K.

iii. Tourism Development:

J&K's tourism industry has expanded beyond its historical bounds, with border travel becoming increasingly popular. The captivating hooting and waving exchanges between tourists on both sides of the Line of Control (LOC) now draw visitors from all over the country. A more inclusive and linked world has been fostered by the rise of border tourism, which has created opportunities for cross-cultural dialogue and understanding.

iv. Advancing Security Measures:

Numerous security incidents, including grenade attacks, IED explosions, stone-pelting incidents, and civilian casualties, have significantly decreased. With fewer incidences posing a threat to public safety, this decline is indicative of a beneficial effect. In addition, there have been notable declines in confrontations, arson events, weapon stealing, hit-and-run and stand-off fire cases, as well as Hartal/Bandh calls. The reduction in these metrics suggests a general enhancement in upholding law and order as well as a more tranquil atmosphere inside the area. Thus, with the abrogation of Article 370, the overall security environment in J&K has also improved in many ways. The security situation in the region has significantly improved (Yusuf,2023).

It is clear that a new age has dawned in Jammu and Kashmir as the area embraces the benefits and difficulties of the post-Article 370 era. People's tenacity, thriving enterprises, and the growth of border tourism all point to a region that is prepared to prosper on its own terms.

The shift has promoted inclusivity, unity, and wealth, laying the foundation for a better future. With the rising of the sun on a fresh day, Jammu and Kashmir are prepared to welcome the boundless opportunities that lie ahead.

VIII

CONCLUSION

Thus, the repeal of Article 370 in J & K is a momentous event in the history of the area that has the potential to bring about a wide range of beneficial changes. After a thorough investigation, it is clear that the region has seen a number of political and socioeconomic shifts as a result of the decision to repeal Article 370. From a governance standpoint, J&K's integration with the rest of India has made it easier for national laws, policies, and development projects to be implemented, which has improved the administrative framework of the country's unity and coherence. This action has eliminated the region's unique identity while simultaneously opening the door for fair growth and increased rights for its citizens.

Also, the abrogation has stimulated economic growth and prosperity in Jammu and Kashmir, which has created new opportunities for investment, entrepreneurship, and job creation. The area is now better positioned to use its abundant potential in industries, tourism, and agriculture, which will raise living standards and provide possibilities for the local populace.

Additionally, the decision has strengthened national security by tearing down obstacles that prevented efficient counterterrorism actions and building peace and stability in the area. The government of Jammu and Kashmir has demonstrated its commitment to preserving the rule of law and defending the rights of all inhabitants by bringing the region closer to India's Constitution.

However, at the same time, it is crucial to recognize that there is still work to be done before the full advantages of Article 370's abrogation can be fully realized. There are still issues to be resolved, such as resolving grievances, fostering peace, and making sure inclusive development considers the varied goals of the people living in J&K. In brief,

the abrogation of Article 370 is a brave and decisive step toward the realization of the dream of a united and prosperous India, but its success ultimately depends on persistent efforts to promote inclusive growth, peace, and security in the area. The actual potential of J&K can only be realized via an all-encompassing and cooperative strategy, opening the door to a more promising and safe future for both the region's citizens and the country at large.

REFERENCES

1. Adarsh Sein Anand, "Accession of Jammu & Kashmir State: Historical and Legal Perspective" 43 *Journal of the Indian Law Institute* 461 (2001).
2. Art 238, Omitted by the Constitution (Seventh Amendment) Act, 1956.
3. Bodh Raj Sharma, "The Special Position of Jammu and Kashmir in the Indian Constitution", 19 *The Indian Journal of Political Science* 287 (1958).
4. Cabinet Mission, Simla, May 12, 1946, of White Paper on Indian States.
5. Constituent Assembly Debates, Vol X, (October 17, 1949) available at: https://eparlib.nic.in/bitstream/123456789/763271/1/cad_17-10-1949.pdf (Visited on September 21 2023).
6. Constitution of India, 1950, Art. 1: (1) India, that is Bharat, shall be a Union of States.
(2) The States and the territories thereof shall be as specified in the First Schedule.
(3) The territory of India shall comprise —
(a) the territories of the States;
(b) the Union territories specified in the First Schedule; and
(c) such other territories as may be acquired.
7. Constitution of J&K, 1956, Art. 3: The State of Jammu and Kashmir is and shall be an integral part of the Union of India.
8. Constitution of J&K, 1956, Art. 147: 147. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in the Legislative Assembly and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of at the House, it shall be presented to the *Sadar-i-Riyasat* for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill: Provided that a Bill providing for the abolition of the Legislative Council may be introduced in the Legislative Assembly and passed by it majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting: Provided further that no Bill or amendment seeking to make any change in: (a) this section; (b) the provisions of the sections 3 and 5; or (c) the provisions of the Constitution of India as applicable in relation to the State; shall be introduced or moved in either House of the Legislature.
9. Devesh Ratan and Iti Johri, "Salient Features of Jammu & Kashmir Reorganisation Bill," *LiveLaw*, August 7, 2019.
10. History, Planning Development & Monitoring Department, J&K, available at: <https://jkplanning.gov.in/history.html> (Visited on September 22, 2023).
11. Menon, V.P.: *The Integration of Indian States*, Orient Longmans Limited, 1956, p. 390–391.
12. Ministry of Law and Justice, "Orders Issued under the Constitution of India" 447-448 (1958).
13. Ministry of Law and Justice, "Orders Issued under the Constitution of India" 75 445, Ministry of Law and Justice, (1954) available at https://lddashboard.legislative.gov.in/sites/default/files/legislative_references/Part-1%20Constitution%20Orders.pdf (Visited on September 25, 2023).
14. 15. Paras Diwan, "Kashmir and the Indian Union: The Legal Position" 2 *The International and Comparative Law Quarterly* 334 (1953).
16. Pitman B. Potter, "The Principal Legal and Political Problems involved in the Kashmir case," 44 *The American Journal of International Law* 361 (1950).
17. President, on the recommendation of the constituent Assembly of the State, made changes in the Explanation to clause (1) by referring to 'Government of State' as 'Governor' vide a Constitutional Order dated November 15, 1952.

18. R.K. Online Desk, Article 370 abrogation brings about transformation in J&K, RISING KASHMIR, July 31, 2023, available at <https://risingkashmir.com/article-370-abrogation-brings-about-transformation-in-jk/> (Visited on September 29, 2023).
19. Sameer P. Lalwani and Gillian Gayner, "India's Kashmir Conundrum: Before and After the Abrogation of Article 370" Special Report no. 473 US Institute of Peace 4 (2020).
20. Shah Faesal and others v. Union of India, (2023) SCC Online SC 1647.
21. SHABIR IBN YUSUF, Pre and Post Abrogation of Article 370, GREATER KASHMIR, August 4, 2023, available at <https://www.greaterkashmir.com/op-ed-2/pre-and-post-abrogation-of-article-370/> (Visited on September 30, 2023).
22. Summarising the proposal of this mission in line with the Indian Independence Act of 1947.
23. The Indian Independence Act of 1947.
24. The UN Charter, 1945, art 34: The Security Council may investigate any dispute or any situation which might lead to international friction or give rise to a dispute in order to determine whether the continuance of the conflict or situation is likely to endanger the maintenance of global peace and security.
25. The UN Charter, 1945, art 35(1): Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
26. V. N. Datta, "The Cripps Mission, Its failure and significance," 63 Proceedings of the Indian History Congress 64