

# ABROGATION OF ARTICLE 370 IN JAMMU AND KASHMIR STATE: A CRITICAL ANALYSIS

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**Abstract :** Jammu and Kashmir is known as 'Switzerland' of India. Jammu and Kashmir is the most beautiful state in the country. It is enriched with the boundless beauty of the mountains, large natural lakes, forests, rivers and springs. It has own distinguish and peculiar cultural ethos. BJP govt under the leadership of Narendra Modi Home Minister Amit Shah on August 5, 2019, moved a resolution in the parliament and revoking all the provision of article 370 which gave special status to the state of Jammu and Kashmir and bifurcated the state into two separate union territories. The present study is focused and analysis how abolishing article 370 will benefits for the rest of india and, of course, kashmiris, scheduled tribes, scheduled castes and the Other Backward Class for the overall development in the state and after abrogation article 370 we will see change in the state of jammu and Kashmir.

**Keywords:** Jammu and Kashmir, Article 370, Abrogation, Development and Change

## INTRODUCTION

The State Jammu and Kashmir lies in Northern India. It is located mostly in the Himalayan Mountains, and shares a border with the states of Himachal Pradesh and Punjab to the south. Jammu and Kashmir has an international border with China in the north and east, and the Line of Control separates it from the Pakistani-controlled territories of Azad Kashmir in the west and northwest respectively. The state has special autonomy under article 370 of the constitution of India.

When the British Raj ended in 1947, 'United India' was partitioned into India and Pakistan along religious lines. About eleven million Hindus and Muslims fled from one area to another, most of them losing their lives in the ensuing communal riots, one of the worst in world history. Under the Indian Independence Act of 1947, the supervision of the British over about six hundred princely states faltered and these states were allowed to remain independent or to join India or Pakistan. In case the of India, Sardar Vallabhbhai Patel, the then Indian home minister, integrated about five hundred sixty one princely states, covering 800,000 km<sup>2</sup> and containing a population over eighty million, into the nascent nation of India without shedding any blood. The complication however came in the case of Hyderabad, Junagarh and Jammu & Kashmir.

The ruler of Jammu and Kashmir was not able to decide which country he wanted to join. The confusion stemmed from the fact that while he was Hindu, his population was predominantly Muslim. Also the king was unwilling to give up his monarchical power, which was going to be the case if he joined democratic India. On 22 October, 1947, about five thousand tribesmen with overt assistance from the Pakistani Army attacked the region, quickly capturing large parts of it. During the course of this invasion, tribesmen burned houses and looted property of the valley residents. Large scale rapes accompanied this and several women were abducted and taken forcibly back to Pakistan. In panic, Maharaja Hari Singh made a frantic appeal to India to come to his rescue, but the Government of India took the stand that it was not in a position to send troops to rescue him. The Maharaja fled from Srinagar, arriving in Jammu where he was met by V P Menon, representative of the Prime Minister of India, Jawaharlal Nehru, and signed the Instrument of Accession, whereby Jammu and Kashmir became part of India.

Article 370 of the Indian constitution is an article that gives special status to the state of Jammu and Kashmir. The article is drafted in Part XXI of the Constitution: Temporary, Transitional and Special Provisions. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether. After the J&K Constituent Assembly later created the state's constitution and dissolved itself without recommending the abrogation of Article 370, the article was deemed to have become a permanent feature of the Indian Constitution. The article says that the provisions of Article 238, which was omitted from the Constitution in 1956 when Indian states were reorganized, shall not apply to the state of Jammu and Kashmir. Laws applicable to all the States of India are also not applicable in this State. Until 1965, for example, the Governor was replaced by Sadar-e-Riyasat and the Chief Minister as Prime Minister in Jammu and Kashmir. As per the provisions of Article 370 of the Constitution, Parliament has the power to make laws on defence, foreign affairs and communication on Jammu and Kashmir, but the Centre needs the approval of the State Government to enforce the law relating to any other subject.

Home Minister Amit Shah introduced The Jammu and Kashmir Reorganisation Bill in the Rajya Sabha on 5 August 2019. And scraped all the provision of article 370 under this bill Jammu and Kashmir will cease to be a state. Instead, the state will be converted to two union territories, that of Ladakh without legislature and Jammu and Kashmir with legislature.

**IMPLICATIONS OF THE ARTICLE 370 FOR THE PEOPLE OF JAMMU AND KASHMIR.**

- As per this article an outsider can't buy land or property in J&K so this makes the price of real state under control. But at the same time because of this bigger business are not coming to the state as the basic need of their i.e. land is not providing to them.
- As an outsider can't get job in state govt. hence the competition is low for the people of J&K.
- It's not easy for outsiders to operate business here.
- Under Article 370, the Centre has no power to declare financial emergency under Article 360 in the state.
- The Union government can therefore not declare emergency on grounds of internal disturbance or imminent danger unless it is made at the request or with the concurrence of the state government.
- According to this article, except for defense, foreign affairs, finance and communications, Parliament needs the state government's concurrence for applying all other laws.
- The Right to Information (RTI) was not applicable.
- A resident of J&K losses his/her citizenship of the state if he/she marries an individual from Rest of India, however, if a resident of J&K marries a Pakistani national, the Pakistani national gains J&K citizenship, the resident gets to enjoy his/her dual citizenship.

**ARTICLE 370 SCRAPPED – NOW WHAT WILL CHANGE IN THE STATE OF JAMMU & KASHMIR:.**

- Special powers to Jammu and Kashmir completely abolished after removal of Article 370
- Now, any citizen of the country will be able to buy property in Jammu and Kashmir.
- Jammu and Kashmir will no longer have a separate flag.
- In Jammu and Kashmir, there will no longer be dual citizenship.
- Jammu and Kashmir will no longer be a separate state but a Union Territory.
- Jammu and Kashmir will be a Union Territory with the Assembly.
- The term of the Assembly will be 5 years instead of 6 years.
- Jammu & Kashmir's special statehood abolished
- Ladakh was declared a separate Union Territory
- Laws like RTI and CAG will also come into force here.
- In Jammu and Kashmir, any citizen of the country can now get a job.
- Now There Will be No More Governor ,Now Lt Governor Will head

**HOW ABOLISHING ARTICLE 370 WILL BENEFIT KASHMIRIS.**

- Now Jammu & Kashmir Will Attract More investment from Various business Houses Which Will Lead To Development.
- Abolition of Article 370 will lead to industrialization in Jammu & Kashmir
- Education Sector Will develop, More School, Colleges, Universities Will open .
- If Investment Will Come Than More industries Will Set up ,Than More People Will get Job
- Another Main area Of Jammu & Kashmir is Tourism Growth; this is the Main Area where Kashmir has huge potential.

**IMPLEMENTATION OF THE CONSTITUTIONAL PROVISION OF THE INDIAN CONSTITUTION WILL BENEFIT FOR SCHEDULED TRIBE DEVELOPMENT.****Political Reservation:**

Several provisions have been incorporated in the Indian Constitution for safeguarding and promoting the interests and rights of the Scheduled Tribes in various spheres so as to enable them to join the national mainstream. Before Abrogating Article 370 in Jammu and Kashmir state. Article 330 and 332 of the constitution provide for the Political reservations of seats in Lok Sabha and the State Legislative Assembly are not implemented in Jammu and Kashmir.

After abrogating Article 370, Bharatiya Janata Party's (BJP) national general secretary and party's pointsman for Jammu and Kashmir (J&K) Ram Madhav addressed a gathering of Gujjar and Bakerwal community members in Jammu and promised to give political reservation to them. There was no provision for political reservation for Scheduled Tribe (ST) communities in J&K. But now we will provide political reservation to tribals. Seats for ST communities will be reserved in J&K assembly. As per the plan of the BJP, some constituencies in the new assembly post delimitation will be reserved for the Gujjar and Bakerwal communities, who were given Scheduled Tribe status long ago in J&K, but were denied benefits of being STs.

**Forest Right Act, 2006 and SC/ST prevention of Atrocities Act to Jammu and Kashmir**

There has been a longstanding demand of the tribal communities of Jammu and Kashmir and their leaders for the implementation of the Forest Rights Act, 2006 or an identical Act in the State. On 7th August, 2015 at a programme organized by Forum of SC & ST Legislators & Parliamentarians of India at New Delhi. In the past as well, there have been agitations and protests to press this demand. Why are tribals demanding the extension of the Forest Rights Act to the State? The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act was passed in 2006. The Act sought to address the issue

of historical injustice towards the tribals by providing various kinds of rights to the tribals in India. Management of forest resources; and the right of access to biodiversity and community rights. The Forest Rights Act, therefore, ensures both rights to the tribals and conservation and management of forest resources. However, the Act is not applicable to the state of Jammu and Kashmir. Tribals in J&K demand extension of the Forest Rights Act, 2006 to the state so that they too can enjoy rights on forest land as are available to the people belonging to Scheduled Tribe communities across India. Talib Hussain Social Activist These demands that as a large chunk of tribals; especially Gujjars and Bakerwals are landless and have been dependent on forest resources for centuries for livelihood. These communities basically want to be treated at par with other scheduled tribe communities in India. They demand that every family of tribals and forest dwellers in Jammu and Kashmir, as per the Forest Rights Act, should be allotted four hectares of land with 'use rights' to grazing areas and pastoralist routes, etc. The Forest Rights Act is not all about 'title rights' and 'use rights', it would also provide development & rehabilitation rights and forest conservation rights. It would seek to ensure basic amenities in forest areas and also rehabilitation in case of illegal eviction or forced displacement. It would also ensure protection of forests, wildlife and biodiversity which is very significant for this Himalaya

After abrogating article 370 a new hope among Gujjar and Bakerwals of the Jammu and Kashmir implemented Forest Right Act, is a long pending demands of the tribals of Jammu and Kashmir. Gujjars and Bakerwals are the third biggest ethnic group in Jammu and Kashmir constitute more than 20% of the total population of the state (Census, 2011); scheduled tribe is the only community, which maintain its culture and heritage throughout ages. Gujjar and Bakerwals long pending demand inclusion Gojri in eight scheduled of the Indian constitution

### Reaction of the People of Jammu And Kashmir On Abrogation Of Article 370

Jammu and Kashmir consists of three divisions **Jammu, Kashmir valley and Ladakh**

#### Reaction from Kashmir valley:

People of Kashmir valley against the mainstream politicians they now perceive as their foes, rather than friends, New is not an enemy. Delhi is open and clear about its actions and words. It is our own who have betrayed the people of Kashmir. People say mainstream party National Conference and Peoples Democratic Party who have brought this situations. People of Kashmir said National conference MP Hasnain Masoodi did not present a valid arguments to defend the special status. Congressman Manish Tewari defend it better than our own people in the parliament. The people of valley are totally against the abrogation of article 370.

#### Reaction from Kashmir valley:

The people of leh cutting across party lines, the prominent politicians from both the BJP and Congress and civil society joined to welcome the announcement, a long pending demands of the people of the region.

In the kargil district of Ladakh people are totally against governments move on abrogation article 370. Former MLA Asger Ali Karbalai said the government's decision to create a separate UT for Ladakh without legislature is unconstitutional. Ladakh into a UT without legislature means the people of the region have been deprived of their constitutional right to elect their representative.

#### Reaction from Kashmir valley:

The people of Jammu who are supporters of BJP party said that this decision will open the door for development in the region and will leave no space for any discrimination. Will Attract More investment from various businesses Houses Which Will Lead To Development. If Investment Will Come Than More industries Will Set up, Than More People Will get Job Education Sector Will develop, More School, Colleges, universities Will open. Another Main area Of Jammu & Kashmir is Tourism Growth; this is the Main Area where Kashmir has huge potential. and majority of the people of peerpanjal and chaneb valley are against the abrogation of article 370 people of these area says article 370 is our identity we will fight in a democratic manner and we will approach supreme court for unconstitutional decisions.

### Challenge to Article 370 abrogation, J&K Reorganisation Act in Supreme Court

1. 14 PILs have been filed challenging the Parliament's decision to abrogate Article 370 by amending the definition of Article 368 of the Constitution and allowing Constitution and other laws of India to be applicable in J&K. Pleas have also challenged the J&K Reorganisation Act.
2. Petitions have claimed these changes could not have been passed by the Parliament without the approval of the constituent assembly of the state. The petitions have raised allegations that the principle of "federalism" and "democracy" are being violated.
3. Manohar Lal Sharma's petition: The Delhi-based lawyer has said abrogation of Article 370 is unconstitutional and it has violated the principles of justice.
4. Ganderbal-based businessman Farooq Ahmad Dar's petition.
5. J&K-based lawyer Shakir Shabir.
6. Delhi-based artist Inder Salim alias Inder Ji Tickoo.
7. Shah Faesal and others' petition: IAS officer-turned-politician Shah Faesal and others have challenged the changes made to the relationship between India and state of J&K and said this could not have been changed without the consent of the people. The petitioners have said the situation in Kashmir required a constructive political solution. Citizens were kept in the dark, fundamental rights under Article 14, 19, 21 have been violated.
8. Radha Kumar and others' petition: Former MHA appointed interlocutor Radha Kumar, retired Air Vice marshal Kapil Kak and other senior retired bureaucrats and military personnel have said that the sentiment of the people was not considered by the government, people were not even consulted. This goes against democratic principles.

9. Muzaffar Iqbal Khan's petition: Retired judge of district court in J&K and now a social worker has said that the Centre could not have passed the amendment without consulting elected representatives. The Governor cannot be substituted for elected representatives.
  10. Lawyer Soayib Qureshi's petition: The petition argues that Presidential proclamation of Governor Rule had lapsed in June. There was no valid Governor Rule at the time this fresh proclamation was issued on August 5. There is no legal basis for the abrogation of Article 370.
  11. National Conference member Mohd. Akbar lone's petition: The petitioner has said elected representatives of the people were not consulted before the promulgation.
  12. Kashmir Times editor AnuradhaBhasin's petition: Restrictions on press freedom violates fundamental rights. The petitioners have said "right to know" is being denied. Srinagar-based newspapers are not being published. The press has not been able to contact reporters in other districts. Reporters are not being allowed to go to "sensitive" areas.
  - 13 Social activist TehseenPoonawalla's petition: The lockdown in Kashmir Valley is affecting fundamental rights of persons. Article 14,18,21, which are basic rights are being denied.
- The Supreme Court has issued notices to the Centre and J&K administration and the matter will again be heard in seven days by regular bench after the Centre files its reply.
14. VineetDhanda's pro-government petition: The petitioner has said people are creating a violated atmosphere and provoking trouble in J&K and this should be stopped. The petition was not taken up separately and may be considered later with the rest of the petitions on Article 370.
- Supreme Court heard a total 14 PILs regarding Jammu and Kashmir. The 14 PILs on Article 370, restrictions in the Valley were listed for hearing before a bench of CJI RanjanGogoi, Justices SA Bobde and S Abdul Nazeer. While hearing two of the petitions, the court issued two notices to the Centre. In one of the notices, the CJI Gogoi-led bench has said all petitions on Article 370 will be taken up by a 5-judge Supreme Court bench in October.

## CONCLUSION

article 370 is India's constitutional relationship between Jammu and Kashmir and grants special status to the Jammu and Kashmir state. On August 5, Modi govt has introduced the Jammu and Kashmir Reorganisation Act 2019, and revoked all the provision of article of 370, and splits up the state into two Union Territories of Ladakh (without Legislature) and Jammu and Kashmir (with legislature). In this article we have seen that in the Kashmir valley people are totally against on the other hand in ladakh and some part of Jammu division people welcome the abrogation of article 370. Kashmiri people say we lose our identity and government says articles 370 obstacle in the way of development and promote terrorism in the state. After abrogation all the policy and programmes direct implemented in Jammu and Kashmir for the welfare of the people.

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