

## **Journal of Multi-Disciplinary Legal Research**

### **An Analysis of Article 370 and Article 35A of the Constitution of India and the Implications of its Revocation**

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#### **Abstract**

The general populace was outraged when Article 370 of the constitution was repealed. For the most part, India's choice was well-received. However, there have been complaints about the region's limits on communication and civil liberties. China and Pakistan have reacted forcefully, trying to begin a new chapter in the Kashmir conflict before the UN Security Council. To comprehend these arguments and determine whether or not they are still valid today, we must first comprehend the status quo, which is never static. That is why we need to take a gander at this article's evolutionary history. This paper examines the circumstances under which this Article was introduced into the Indian Constitution, how much of those circumstances still exist, what its contents were, and to what extent has this Article been diluted through time, if at all, since 1947.

**Keywords:** Accession, Conflict, Constitution, Kashmir, Revocation

## **Introduction**

Kashmir, since its inception, has been experiencing multiple instances of conflict in various forms. These conflicts that have arisen as a result of the discord between the people of Kashmir, the surrounding areas and the center have made it an extremely volatile region which has made forging for peace a much more complicated affair. Furthermore, the appearance of peace in the state of Jammu and Kashmir (J&K) has been misinterpreted as a conclusion of the conflict. Unfortunately, this blunder has harmed the thinking of policymakers and politicians at all levels, both at the national and state levels, who are subsequently caught off guard when a new wave of discontent emerges.<sup>1</sup>

The conflict involves the complicity of state and non-state actors and Pakistan, being an orthodox, conservative Muslim state, is a crucial player alongside the Union of India. It is well-known that India and Pakistan are fighting for the status of the disputed Kashmiri areas. The resolution of this disagreement may take several years, but the situation in Kashmir, like our relationship with Pakistan, is currently stuck in a rut.<sup>2</sup>

Kashmir has always held a particular place in my heart. It arrived in India in 1947 under unusual circumstances and with unique safeguards for its autonomy, which Indian political parties frequently overlook.<sup>3</sup> Article 370's repeal or retention has an absolutely critical and unambiguous role in resolving or perpetuating the legacy of Kashmir difficulties indefinitely. As a result, the status quo on this Article cannot be considered in isolation from the Kashmir situation. For a long time, fierce national debates about the deletion or retention of Article 370 have afflicted the psyche of India, with both sides advocating its deletion or retention with equal zeal. Hence it is imperative that one analyses and understands the various intricacies surrounding the related provisions of the constitution, namely Article 35 A and Article 370 along with the legislative

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<sup>1</sup> RAJRASHESHWARI SINGH, The Generation of Rage in Kashmir by David Devadas, JOURNAL OF DEFENCE STUDIES, Vol. 13, No. 2, Apr.–June 2019, at 91, 91.

<sup>2</sup> Id. at xvii.

<sup>3</sup> TAVLEEN SINGH, KASHMIR: A TRAGEDY OF ERRORS, xi (1st ed. Penguin India 2000).

intent behind their inception and the effects that may surround its abrogation and finally the outcome.

### **Article 35 A**

The Jammu and Kashmir state assembly can define who is and is not a "permanent resident" of the state under this clause of the constitution. To put it another way, this article of the constitution grants the legislators of Jammu and Kashmir the sole authority to decide which people within and outside the state would be awarded special rights and benefits.

The clause, which was added by a special presidential decree in 1954, also gives the state assembly the authority to choose who receives state assistance, the right to buy land and property in the state, and the ability to settle permanently in the region. Aside from that, the Jammu and Kashmir legislative assembly can use the clause to limit the rights of anyone who is not a "permanent resident" of the state.

### **Article 370**

The state of Jammu and Kashmir is granted exceptional powers under Article 370. It gives the state constituent assembly the right to write its own constitution, effectively making it an "independent state." Article 370 acted as a "mechanism for governing Centre-state relations with specific reference to Jammu & Kashmir" after the state's admission to India in 1947. Apart from autonomy, Article 370 confers other rights, such as the requirement of "state government approval" if the Central government wishes to change the concurrent list of topics.<sup>4</sup>

### **Historical Background**

On March 16, 1846, the British administration and Maharaja Gulab Singh signed the Treaty of Amritsar, which united Jammu and Kashmir into a unified political and geographic entity.

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<sup>4</sup> Deb, Satyaki, Article 370, the Debate (June 30, 2019).

Jammu, Kashmir, and Ladakh were the three districts that made up the newly constituted state. <sup>5</sup>While India made progress in its campaign for independence from British control, a similar uproar erupted in Kashmir, led by Sher-i-Kashmir Sheikh Mohammad Abdullah, in the fight against despotism. As a result, the dictatorial regime repressed the people's freedom movement. When 22 demonstrators were killed on July 13, 1931, the campaign gained traction and speed. Furthermore, the National Conference, led by Mohammad Abdullah, grew into a popular movement, fueled by people's great desire to oppose authoritarianism. The National Conference, which was led by the people's movement, also saw various ups and downs, as well as changes in conditions and fortunes in Mohammad Abdullah's leadership. <sup>6</sup>

Jammu and Kashmir was one of India's 565 princely states when it achieved independence on August 15, 1947. While India was awarded independence, the rulers of princely states were given the option of joining one of India's or Pakistan's dominions or remaining independent states.

Maharaja Hari Singh, the monarch of Jammu and Kashmir at the time, did not exercise the option of seceding from India or Pakistan, instead proposing a Standstill Agreement with both India and Pakistan's dominions. Pakistan approved the idea immediately after receiving it and informed the then-Prime Minister of Jammu and Kashmir. India, on the other hand, declined to accept the proposal and instead encouraged Maharaja Hari Singh to send representatives to Delhi to discuss it. <sup>7</sup>

Despite the fact that Pakistan and India had agreed to a cease-fire, Pakistan kept an eye on Kashmir. Mohammad Ali Jinnah, Pakistan's founder, reasoned that the majority Muslim population in Kashmir expected it to become part of Pakistan. The events that followed, however, contradicted this.

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<sup>5</sup> THOMAS MARKS, Jammu & Kashmir: State Response to Insurgency- The Case of Jammu, FAULTLINES: WRITINGS ON CONFLICT AND RESOLUTION, Volume 16 (Jan. 2005), 10-12.

<sup>6</sup> Abrogation of Articles 370 & 35A of the Indian Constitution: Implications for Peace in South Asia - Sughra Alam, Muhammad Nawaz, Muhammad Waris.

<sup>7</sup> ADITYA JAIN, Article 370: A Critical Analysis, JOURNAL OF LEGAL STUDIES AND RESEARCH, VOL 2 ISSUE 1, Feb. 2016, at 1, 2.

Pakistan eventually prepared a tribal attack on Kashmir and gave it the green light in order to acquire control of the territory of Jammu and Kashmir. Their main goal was to push the Maharaja of Kashmir out of Kashmir. Simultaneously, the Poonch Uprising took place, liberating the "Azad Kashmir" concept. The people of Kashmir revolted against Maharaja Hari Singh's authority and demanded a safe future for the country of Kashmir during the Poonch uprising.<sup>8</sup>

Such developments increased the pressure on Hari Singh to make a decision about Kashmir's destiny. Maharaja Hari Singh asked India's assistance to put the situation in the state of Jammu and Kashmir under control. Hari Singh signed the Instrument of Accession in favour of India on October 26, 1947, in response to the requests of the people of Kashmir and to push the invaders out of his land. Hari Singh signed the identical Instrument of Accession that the rulers of other Princely States had signed.

After the Instrument of Accession made Jammu and Kashmir a legal and constitutional part of India, Indian forces were dispatched to push out the invaders and free the province from aggression. On October 30, 1947, a day after signing the Instrument of Accession, an Emergency Government was constituted in Kashmir, led by Sheikh Mohammad Abdullah. The army fought the fight and, after many sacrifices, was eventually victorious in driving the invaders out of Kashmir's land.<sup>9</sup>

### **Prominent features of Accession**

1. Despite the fact that the agreement was only designed to be temporary, it went on to grant and maintain a special status to Jammu and Kashmir, with the following key features:
2. Under the terms of the agreement, the state relinquished control over defence, communication, and foreign affairs.

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<sup>8</sup> TAVLEEN SINGH, KASHMIR: A TRAGEDY OF ERRORS, 240 (New Delhi, 1995).

<sup>9</sup> PREM NATH BAZAZ, STRUGGLE FOR FREEDOM IN KASHMIR, 140-160 (New Delhi 1954).

3. The Instrument of Accession will control Jammu and Kashmir's relationship with India's dominion.
4. The state was given the power to write its own constitution through a separate constituent assembly.
5. The state of Jammu and Kashmir was created in the Part B category of the original Constitution (1950).
6. Only with the prior assent of Jammu and Kashmir will the center pass laws relating to the Union and concurrent list.
7. In order to give effect to and accommodate the foregoing principles, Article 370 was introduced into the Indian Constitution.

### **What does the Indian Constitution's Article 370 imply?**

The following revisions to the Indian Constitution in favor of the state of Jammu and Kashmir are enshrined in Article 370:

1. The state of Jammu and Kashmir is granted its own constitution under Article 370.
2. Without the authorization of the state assembly, the name, territory, or boundaries of Jammu and Kashmir cannot be changed.
3. Jammu and Kashmir is exempt from Part VI of the Indian Constitution, which governs state governments.
4. Permanent residents of the state have special rights in terms of public employment, settlement, and government scholarships, as well as the acquisition of immovable property.
5. The state of Jammu and Kashmir is exempt from the Directive Principles of State Policy and Fundamental Duties.
6. In the state of Jammu & Kashmir, a financial emergency cannot be declared.
7. Other than Fundamental Rights, the high courts of Jammu and Kashmir do not have the authority to issue writs.
8. The state of Jammu and Kashmir would be affected by the National Emergency, which would be enforced on the basis of internal unrest, unless the state administration agreed.

9. The provisions of official language apply solely insofar as they pertain to the Union's official language.
10. The Indian Constitution's fifth and sixth schedules do not apply to the state of Jammu & Kashmir.
11. President rule can only be enforced to the state of Jammu and Kashmir if the state constitution's constitutional system fails, not the Indian Constitution.
12. Except for activities including terrorist acts, questioning and undermining India's sovereignty and territorial integrity, and causing disrespect to the national flag, national anthem, and the Constitution of India, residuary power belongs to the state.

The state of Jammu and Kashmir is accorded unique status under Article 370 of the Indian Constitution, which is awarded in recognition of the circumstances in which the princely state signed the instrument of accession. In relation to the state of Jammu and Kashmir, the Indian Constitution set various limitations on the central government's capabilities.<sup>10</sup>

However, in recent years, a succession of undemocratic practices and actions has resulted in the erosion of vital rights and authorities given to the state of Jammu and Kashmir by Article 370. Recent examples of manifestos and actions put out by major Indian subcontinent parties, which will be described in depth in the following section of this article, have resulted in the erosion of Jammu and Kashmir's rights.<sup>11</sup>

Article 370 was written with the idea that it would only be in effect for a short time. Only three subjects were surrendered when the ruler of Kashmir signed the Instrument of Accession: External Affairs, Communication, and Defense. Jammu and Kashmir was surrendered to India's dominion by the state. As a result, the relationship between India and the state of Jammu and Kashmir can be described as unusual and historically significant.

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<sup>10</sup> Article 3: The Article 370 Amendments on Jammu and Kashmir: Explaining the Global Silence - Jahnvi Sodhi.

<sup>11</sup> Robina Khan, Muhammad Zubair Khan & Zafar Abbas (2021) Moving Towards Human Catastrophe: The Abrogation of Article 370 in Kashmir Valley, *Journal of Muslim Minority Affairs*, 41:1, 78-85, DOI: [10.1080/13602004.2021.1894387](https://doi.org/10.1080/13602004.2021.1894387).

It can be claimed that the Union of India has the authority to act independently only if the matter is related in any way to the three subjects surrendered by the ruler of Jammu and Kashmir, or if it is one of the subjects named in the Instrument of Accession.

After studying the evolutionary background of Article 370, which depicts the circumstances justifying its inclusion and the gradual changes in those circumstances that culminated in the plague of secessionist tendencies in Kashmir, it is now necessary to comprehend the arguments for and against its deletion and retention. These arguments cannot be explored in isolation because they are linked, and they must be put together in the arena of this debate in order to arrive at a clear winner, namely, does India still require Article 370?

### **An Analysis of the Arguments For and Against the Abrogation of Article 370**

The supporters of Article 370 argue that the limited character of Hari Singh's accession to India meant that total integration with India would require a fresh agreement (Instrument of Merger), and that Kashmir would retain its special status until that time. Article 370 must remain in place because no new agreement has been reached between the J&K government and the central government. Except for J&K, Sardar Vallabhbhai Patel, India's then-Deputy Prime Minister, and his close aide V.P.Menon had successfully coaxed and coerced all other princely states to fully integrate with the Union of India through Instruments of Mergers. Kashmir did not sign any Instrument of Merger with New Delhi because it was unable to do so due to the disputed tag connected to it and UN resolutions that have yet to be implemented. In the absence of this Instrument of Merger, the Union of India devised Article 370 as a governing mechanism, with the word "temporary" prefixed to prevent international condemnation.

If this article is repealed, the governing machinery will be lost, leaving India with only an instrument of accession in hand, the authenticity of which has been questioned by many historians. In an appropriate reaction to this seemingly insurmountable argument, proponents of the deletion of this Article claim that the Indian Independence Act of 1947 made no provision for conditional merger. The right to decide on merger was given to the rulers of the state by the Government of India Act, 1935, which was included in the Indian Independence Act, 1947, and

any Indian State should be treated as merged into either of the two nations only when the Governor General approved the Instrument of Accession prepared by the respective state's administration<sup>12</sup>.

Because Mountbatten signed the Instrument of Accession prepared by India (in the same manner as the other princely states that acceded to India) and signed by Maharaja Hari Singh, there can be no doubt about J&K's status if Article 370 is repealed. The argument that Article 370 is the governing mechanism or the primordial link connecting J&K and India, and that its repeal would cut off all ties between Srinagar and New Delhi is absurd, because the Instrument of Accession came before the incorporation of Article 370, and the Jammu & Kashmir State Constituent Assembly was formed in 1951, and this same Constituent Assembly ratified the merger of J&K and India. Furthermore, Article 3 of the J&K Constitution plainly indicates that the state of J&K is an integral part of India, and Article 3 is irrevocable, according to Article 147 of the same State Constitution..<sup>13</sup>

In response to the argument that the Instrument of Accession is the only instrument available to the Indian government in the event that Article 370 is repealed, it should be noted that no other instrument is legally required, despite the ratifications of the J&K Constituent Assembly and Articles 3 and 147 of the State Constitution. This is because, as previously stated, the very Act (Indian Independence Act, 1947) that granted us independence gave rulers of princely states the freedom to accede their kingdoms to India or Pakistan through an Instrument of Accession (nowhere in the Indian Independence Act could the provisions of Instrument of Merger be found), and Maharaja Hari Singh did so. As a result, regardless of Article 370, in my opinion, J&K is an intrinsic part of India. As a result, regardless of Article 370, in my opinion, J&K is an intrinsic part of India.

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<sup>12</sup> Chand Jee Bhat, Complete Merger, DAILY EXCELSIOR (Jun.21,2019, 7:51AM), <https://www.dailyexcelsior.com/complete-merger/>.

<sup>13</sup> J&K CONST. Art. 3, 143.

Defenders of Article 370 argue that it was inserted to the Constitution as a gesture of goodwill to show India's commitment to respecting plebiscites in J&K, and that if it is repealed, a plebiscite will be held to determine what the residents of J&K want when their special status is removed. Furthermore, they seek temporary admission to India until a fair plebiscite is performed.

The lineup advocating for the deletion of this Article shattered such an outrageously politically and legally immature argument in one swift stroke of a response, saying that while India has historically supported the issue of plebiscite, India is no longer under any legal obligation to hold one because the issue of plebiscite was mentioned second in the U.N. Resolution, with the first condition being complete demilitarization of the entire state and the U.N.<sup>14</sup> Seeing as J&K is currently de facto occupied by three parties, namely India, Pakistan (POK), and China (Aksai Chin), and their militaries are present, India is under no legal obligation to hold a plebiscite unless the other two countries remove their militaries first as aggressors, and as demonstrated in the previous issue of this dissertation, J&K is an integral part of India despite Article 370.

Citizens who oppose the repeal of Article 370 fiercely argue that the state of J&K requires special status indefinitely to protect their culture, lands, jobs, and everything else. Their reasoning is that if other provinces throughout the world, such as Hong Kong, have Special Administrative Region (SAR) status under China, why can't J&K? They believe it is their constitutional right to have the special status of a sub-national identity indefinitely under Articles 370 and 35A. Some supporters of Articles 370 and 35A argue that J&K was forced into an arranged marriage with India without their consent, and that since the special status was provided to them as a gesture of goodwill, it cannot be taken away, and they must continue to be married to India. Furthermore, they argue that Article 370 is a constitutional bridge that reflects the subcontinent's cultural and historical diversity.<sup>15</sup>

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<sup>14</sup> Raghav Pandey, Article 370, FIRSTPOST, (23rd Jun.2019,9:57AM),<https://www.firstpost.com/politics/article-370-was-introduced-temporarily-in-good-faith-repeal-it-is-political-choice-not-a-legal-one-6396051.html>.

<sup>15</sup> Rather, Tariq, Abrogation of Article 370 of the Constitution of India: Socio-Economic and Political Implications on Jammu and Kashmir (July 1, 2020). International Journal of Research and Analytical Reviews, July 2020, Volume 7, Issue 3.

The proponents of the deletion of these regressive Articles may claim, at the opening of their answer to this ostensibly pro bono publico argument in favor of the people of J&K, that these Articles constitute an attack on India's basic secular and democratic fabric.

The Former Governor of Jammu and Kashmir, Mr. Jagmohan had said : “ *Article 370 is nothing but a breeding ground for the parasites at the heart of the paradise. It skins the poor. It deceives them with its mirage. It lines the pockets of the 'power elites'. It fans the ego of the new sultans, in essence, it creates a land without justice, a land full of crudites and contradictions. It props up the politics of deception, duplicity and demagogy. It breeds the microbes of subversion. It keeps alive the unwholesome legacy of the two-nation theory. It suffocates the very idea of India and fogs the very vision of a great social and cultural crucible from Kashmir to Kanyakumari. It could be an epicentre of a violent earth-quake, the tremors of which would be felt all over the country with unforeseen consequences.*”

He further added: “*Over the years, it has become an instrument of exploitation in the hands of the ruling political elites and other vested interests in bureaucracy, business, judiciary and bar. Apart from the politicians, the richer classes have found it convenient to amass wealth and not allow healthy financial legislation to come to the State. The provisions of the Wealth Tax, the Urban Land Ceiling Act, the Gift Tax, etc and other beneficial laws of the Union have not been allowed to operate in the State under cover of Article 370. The common masses are prevented from realising that Article 370 is actually keeping them impoverished and denying them justice and also their due share in the economic advancement*”.<sup>16</sup>

Article 35A was inserted to officially create a sub-national identity in support of Article 370's special status. The Right to Equality is the cornerstone of Indian democracy, according to the Indian Constitution. As a result of the provisions of Article 35A, this is sacrificed. J&K is the only state in the Indian union with the authority to regulate the rights and liberties of Indian people living in the state. This is why nonpermanent inhabitants of J&K are denied access to the

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<sup>16</sup> JAGMOHAN, MY FROZEN TURBULENCE IN KASHMIR, 230-231, (6th ed., Allied Publishers Pvt. Ltd. 2002).

legal system. This fundamental rejection of the Indian Constitution is sanctified and legitimised by Article 35A.

Because it was introduced as an Appendix, which is not part of the official text of the Constitution, most persons in the legal profession are unaware of it. It was never presented to Parliament because only the Indian Parliament has the right to change the Constitution<sup>17</sup>. Over the rest of J&K, these Articles are a sign of 'Kashmiri Colonialism.' Many communities' fundamental rights, such as the right to property, work, choice of marriage, higher education, membership in a Panchayat or cooperative society, and access to bank loans, have been "legally seized" by the state government. These communities are:<sup>18</sup>

1. Refugees from POJ&K who were forced to live and settle outside J&K after they crossed over to Jammu in 1947.
2. Kashmiri Pandits and Sikhs who were forcibly pushed out of Kashmir Valley
3. West Pakistan Refugees (WPR) who migrated to adjoining Jammu in 1947.
4. Families displaced due to regular firing along the Line of Control (LOC) with Pakistan.
5. Balmiki community members who were persuaded by Sheikh Abdullah to migrate from Punjab to J&K to undertake the scavenging of night soil.
6. Descendants of Gorkha soldiers of the Maharaja's Army.
7. Women of J&K who married men from other states.
8. The children born of such offspring too are denied all rights.
9. No such provision exists for the men who marry non-state subjects, making it a gender biased issue.
10. The people of Ladakh who have to live at the mercy of the Kashmiri administration

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<sup>17</sup> Major General Dhruv C Katoch, Article 35A and the future of stability in Kashmir, Winter 2017, CLAWS JOURNAL, 112.

<sup>18</sup> Vijay Kranti, Article 35A is almost like Apartheid, SUNDAY GUARDIAN, (24th Jun. 2019, 2:55 PM), <https://www.sundayguardianlive.com/news/10755-article-35a-almost-apartheid>.

Except for the exiled Pandit families and the people of Ladakh, Article 6 of the J&K Constitution, which derives its authority from Article 35A of the Indian Constitution, has denied all other communities on this list the status of permanent residents or state subjects.<sup>19</sup>

Another illustration of how these regressive Articles are not in the best interests of the state's common people is the case of the Nedous Hotel lease renewal in March 1988. The original lease of the Nedous Hotel expired in June 1980 in this situation. The State Government extended the lease for a duration of 95 years, beginning in June 1980, for an annual rent of Rs.52,000, which would be quadrupled during the last ten years of the lease period, in March 1988. Simultaneously, the lessee was given permission to sublease the property to the Indian Tobacco Company, which operates a hotel chain under the name Welcomgroup, for an annual rent of Rs.14 lakhs, which would be doubled in the coming years, bringing the annual rent to Rs.30 lakhs in the last decade of the lease period. In other words, the lessee would get nearly Rs.19 crores in rent from Welcomgroup throughout the lease period and pay the Government Rs.80 lakhs in rent during the same period, resulting in an unjustified gain of Rs.18.20 crores at the expense of the State as an intermediary. The State Government would have received several crores in leasing money if the property, which consists of roughly 11 kanals (1 kanal= 4500 sq.ft) of land, had been auctioned or assigned on the basis of competitive bidding.

The preceding points demonstrate how regressive Article 370 is for the general public in J&K, as well as how well it supports those in authority. Regarding the argument that other provinces throughout the world, such as Hong Kong, have special status, it should be noted that, despite the fact that Hong Kong has special status for a specified period of 50 years, not indefinitely<sup>20</sup>, that the special status under Article 370 should be debated on its own merits, not in the shadow of other special provinces elsewhere, for the obvious reason that ground conditions vary, and that false notions of autonomy picked up from foreign environments will lead to the country's Balkanisation and society's fragmentation. Furthermore, the use of such regressive Articles to

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<sup>19</sup> Ibid.

<sup>20</sup> Hong Kong Territory Profile, BBC NEWS, ( 25th Jun. 2019, 2:44 PM), <https://www.bbc.com/news/world-asiapacific-16517764>.

defend J&K's culture, tradition, variety, and so on is completely unwarranted against the rest of India.

## **Conclusion**

The space for regressive laws is rapidly reducing in today's modern period. However, vested interests will fight any repeal of such legislation. The proponents of Article 370 claim that it must be preserved in order for the state to have significant autonomy. But what does this Article have to do with desirable autonomy? When other Union states aspire for more autonomy, they are not implying a split of identities. They genuinely desire decentralisation and power devolution so that administrative and development tasks may be completed more quickly and the quality of service to the people increases. Furthermore, thinking about greater autonomy before addressing poverty, backwardness, illiteracy, obscurantism, and parochialism would be like placing the cart ahead of the horse. Article 370 must be repealed, as evidenced by the previous debate. It is frequently contended that repealing this Article without the consent of the State's Constituent Assembly is not constitutionally permissible. The relevant part of Article 370 is as follows:

*“Notwithstanding anything in the foregoing provisions of the Article, the President may, by public notification, declare that this Article shall cease to be operative.....Provided that the recommendation of the Constituent Assembly of the State referred to in Clause(2) shall be necessary before the President issues a notification”*<sup>21</sup>

The constituent assembly's recommendation is a necessary condition of the Presidential declaration. In other words, even if the Union Government decided to repeal this Article, it cannot do so constitutionally because it would require the State's Constituent Assembly to be positioned and its recommendations to be obtained. Article 368 of the Constitution's amending powers would also be ineffective. On the surface, the aforementioned argument appears to be compelling. However, no provision of the Constitution may be interpreted on its own. The importance of Article 1 is significantly greater. It goes as follows:

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<sup>21</sup> INDIA CONST. Art. 370.

- “1.Name and Territory of the Union. India, that is Bharat, shall be a Union of States.*
- 2. The States and 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.<sup>22</sup>”*

Jammu and Kashmir is the 15th state in the Constitution's Schedule 1, and thus is covered by Article 1 in its entirety. Article 370, on the other hand, is a temporary measure. "Temporary, transitional, and special provisions," states the very first heading of Part XXI of the Constitution. As a result, when Article 370 was drafted, it was assumed that it would only be in place for a limited time and would cover the transitory phase. The matter of the State's Constituent Assembly's consent under Article 370 does not arise because it no longer exists. The consent of a dead or non-existent body is meaningless. As a result, the Union Parliament, which also represents the people of the state, can modify the Constitution under Article 368. After then, the proviso requiring the Constituent Assembly's recommendation could be removed. Following this deletion, the President can make the requisite statement, and Article 370 will be repealed.

In the event of a conflict between two Constitutional provisions, the more fundamental clause will take precedence. When interpreting the Constitution, the courts must take into account the changing circumstances as well as the larger national goal for which the Constitution was drafted. As previously stated, Article 1 is of critical importance. It has to do with the country's territorial integrity. Unlike the Soviet Union, no state has the right to secede. The Union Parliament is responsible for all territorial and political affairs affecting the entire country, and it has the sole authority to ensure that nothing happens that jeopardises the country's territorial integrity.

The current scenario in Kashmir demonstrates that Article 370 has engendered a separatist mindset, endangering the Union's geographical integrity. As a result, the Union Parliament must

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<sup>22</sup> INDIAN CONST. Art. 1.

take action. And, when called upon to interpret the Constitution and reconcile the provisions of Article 1, Article 368, and Article 370, the Courts must accept the argument in favour of territorial integrity and not interfere with the Parliament's decision to repeal Article 370, especially when this Article is being used as a tool of injustice, and the Court's fundamental goal is to ensure justice and end unjust situations. In other words, if the Court interprets the Constitution in a creative and dynamic way, it will almost probably sustain the deletion of Article 370 when its sub-clause is removed by the Constitutional revision under Article 368.

The provisions of our Constitution's Article 355 are also extremely important. This Article imposes on the Union of India the responsibility of protecting the States from both external and internal threats. If Article 370 prevents the Union of India from carrying out this vital constitutional function, it must be repealed. In the current context, when J&K is vulnerable to both external aggression and internal rebellion, and Article 370 is playing a significant role in enabling hostile elements to cause internal unrest and facilitate external aggression, the Union Government must take steps to delete this Article in order to carry out the duty imposed by Article 355. Thus, if Article 370 is read in conjunction with Articles 1 and 355, a change to the Constitution under Article 368 to delete the Proviso to Article 370 would be completely acceptable, and the President's declaration eliminating the entire Article 370 would make the provision crystal apparent. It should also be noted that simply eliminating Article 35A, the fangs of Article 370 can be removed.

It is past time to bring the victims of these retrograde Articles to justice. When the nation resorts to such action, unrest will be created in the Kashmir Valley, but this cannot and must not discourage the State from upholding the Constitution's right to equality. If preserving the fundamental integrity of India's Constitution necessitates a lengthy and violent struggle, we, the people of India, must engage in that struggle. We must remember that in the United States, the North and the South went to war over human rights, and Abraham Lincoln triumphed. Abrogation of Article 370 is a pressing need of the hour, since it would be the first and most important step toward encouraging J&K to join India's mainstream. What India requires today, for the sake of all of her people in all of her States and Union Territories, is not petty sovereignties and religious power brokers who would sap her spirits and blackmail her

aspirations, turning India into false republics in the hands of dictators and of the ruling elite, but a new social, political, and cultural crucible that would provide real freedom to all of her people.



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