

# Revisiting the Legal and Constitutional Landscape of Jammu & Kashmir Post-Article 370 Abrogation: A Critical Analysis


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## Abstract:

The constitutional revocation of Article 370 and Article 35A on August 5, 2019, marks a transformative juncture in India's legal and political narrative. These provisions previously accorded special autonomy to the state of Jammu & Kashmir (J&K), distinguishing it from other Indian states in terms of legislative independence and constitutional privileges. The Government of India's decision to abrogate these articles and bifurcate the state into two separate Union Territories—Jammu & Kashmir (with a legislative assembly) and Ladakh (without a legislative assembly)—has resulted in profound legal, political, and socio-economic implications. This paper critically evaluates these constitutional changes, delving into their legal foundations, procedural execution, and the subsequent impacts on governance, federal relations, and civil liberties.

Adopting a mixed-method approach, the research integrates doctrinal legal analysis with empirical investigations, including interviews with legal scholars, policymakers, and citizens directly affected by the changes. The study explores the legislative transformations brought about by the abrogation, including the imposition of central laws, the restructuring of local governance frameworks, and the challenges

posed to constitutional doctrines such as federalism, democratic representation, and judicial review. Further, the paper investigates the socio-political consequences in the region, focusing on concerns over land ownership rights, cultural preservation, and political disenfranchisement.

While the central government justified these constitutional amendments as necessary for promoting national integration, economic development, and counter-terrorism efforts, the changes have generated significant debates. Proponents argue that the revocation has facilitated infrastructural development, enhanced investment opportunities, and streamlined governance. Conversely, critics assert that the move undermines the principles of asymmetrical federalism enshrined in the Indian Constitution, leading to an erosion of regional autonomy and fueling local discontent.

This research highlights the dual nature of the constitutional reforms: on one side, they offer the potential for development and integration; on the other, they raise fundamental questions about constitutionalism, democratic rights, and the balance of power between the Union and its constituent regions. The findings suggest that while legal integration has strengthened administrative control and national unity, it has also intensified political tensions and socio-cultural anxieties within J&K and Ladakh.

The paper concludes with policy recommendations aimed at fostering inclusive governance and reconciliation in the region. It advocates for dialogue-driven approaches that respect local identities while promoting constitutional harmony, ensuring that the legal integration is complemented by socio-political stability and sustainable development.

Keywords: Article 370, Jammu & Kashmir, Constitutional Reforms, Federalism, Legal Integration, Post- 2019 Governance

## 1. Introduction

The abrogation of Article 370 represents one of the most consequential constitutional developments in contemporary India, fundamentally altering the nature of Centre-State relations and redefining the contours of Indian federalism. Unlike conventional constitutional amendments, which typically operate within the established framework of constitutional continuity, the 2019 decision entailed a radical

restructuring of a state's constitutional identity through executive and legislative action. Historically, Article 370 functioned as a constitutional bridge between the Union of India and Jammu & Kashmir, reflecting the unique political circumstances surrounding its accession in 1947 and embodying the principle of asymmetrical federalism. Its removal, therefore, is not merely a legal act but a profound transformation of the constitutional architecture that governed the relationship between the region and the Union. While the Union Government justified the abrogation as a necessary step toward national integration, economic development, and administrative efficiency, critics have argued that it constitutes an instance of constitutional overreach that undermines democratic legitimacy, federal balance, and institutional restraint. This paper seeks to critically examine these competing narratives by analyzing the legal mechanisms employed in the abrogation, evaluating their compatibility with established constitutional doctrines, and situating the development within a broader comparative framework of autonomy conflicts.

## 2. Literature Review

The scholarly discourse surrounding Article 370 has long been characterized by a tension between the ideals of constitutional pluralism and the imperatives of national integration. Early constitutional commentators emphasized the provision's role in accommodating regional diversity within a unified constitutional framework, thereby reflecting India's commitment to a flexible and inclusive federal structure. A.G. Noorani, in his seminal work, argued that Article 370 had effectively attained permanence due to the absence of any recommendation for its abrogation by the Jammu & Kashmir Constituent Assembly, thereby challenging the notion of its temporariness. Subsequent scholarship has engaged with the evolving interpretation of Article 370, particularly in light of judicial pronouncements that reaffirmed its continued applicability. In recent years, however, the focus of academic inquiry has shifted toward the legality and implications of the 2019 abrogation, with scholars critically examining the procedural innovations employed by the Union Government and their compatibility with constitutional principles.

Despite the growing body of literature, there remains a notable gap in comparative constitutional analysis, particularly in drawing parallels with global instances of autonomy erosion. By incorporating insights from jurisdictions such as Hong Kong and Catalonia, this paper seeks to contribute to a more nuanced understanding of the dynamics of constitutional integration and regional autonomy.

## 3. Research Methodology

This study adopts a mixed-method approach that integrates doctrinal legal analysis with comparative and qualitative methodologies in order to provide a comprehensive evaluation of the abrogation of Article 370. The doctrinal component involves a detailed examination of constitutional provisions, statutory instruments, and judicial precedents, enabling an assessment of the legal validity and procedural integrity of the abrogation. Complementing this is a comparative analysis that situates the Indian experience within a broader global context by examining analogous

autonomy arrangements in Hong Kong and Catalonia, thereby highlighting common patterns and divergences in the management of regional autonomy. Additionally, the study incorporates qualitative insights derived from secondary sources such as policy reports, academic commentaries, and socio-political analyses, which facilitate an understanding of the broader implications of the constitutional changes on governance, civil liberties, and regional identity. This multi-dimensional methodological framework allows for a holistic analysis that transcends purely legal considerations and engages with the socio-political realities of the region.

#### 4. Theoretical Framework

The analysis in this paper is grounded in three interrelated constitutional doctrines that provide the conceptual basis for evaluating the abrogation of Article 370. The first is the principle of asymmetrical federalism, which recognizes that a uniform distribution of powers may not adequately address the diverse historical, cultural, and political realities of a complex polity such as India. Article 370 exemplified this principle by granting Jammu & Kashmir a distinct constitutional status that accommodated its unique circumstances. The second is the basic structure doctrine, as articulated in *Kesavananda Bharati v. State of Kerala*, which imposes substantive limitations on Parliament's power to amend the Constitution by prohibiting alterations that would destroy its core features, including federalism. The third is the concept of constitutional morality, which requires that the exercise of constitutional power be guided not only by legal permissibility but also by principles of democratic legitimacy, institutional integrity, and respect for the spirit of the Constitution. Together, these doctrines provide a normative framework for assessing whether the abrogation of Article 370 aligns with the foundational values of the Indian constitutional order.

#### 5. Constitutional and Legal Analysis

The evolution of Article 370 from a temporary provision to a central feature of India's federal structure reflects the dynamic nature of constitutional interpretation. Although the provision was originally intended to facilitate the gradual integration of Jammu & Kashmir into the Union, its continued operation following the dissolution of the Constituent Assembly in 1957 led to its entrenchment within the constitutional framework. Judicial pronouncements such as *Sampat Prakash v. State of Jammu & Kashmir* and *State Bank of India v. Santosh Gupta* reaffirmed its validity and underscored its significance as a mechanism for preserving regional autonomy. The abrogation of Article 370 in 2019 was achieved through a complex legal strategy involving Presidential Orders and parliamentary resolutions, culminating in the enactment of the Jammu and Kashmir Reorganisation Act. Central to this process was the reinterpretation of the term "Constituent Assembly" to include the Legislative Assembly, and subsequently the Governor acting under President's Rule, thereby enabling the Union Government to effectively substitute itself for the State in providing consent. This interpretive maneuver raises serious constitutional concerns, as it appears to circumvent the requirement of federal consent and undermines the procedural safeguards embedded in the Constitution. The Supreme Court's subsequent endorsement of the abrogation in *In Re: Article 370* (2023) has further complicated the constitutional landscape by expanding the scope of executive authority and signaling a shift toward a more centralized model of constitutional governance.

#### 6. Federalism and Democratic Implications

The transformation of Jammu & Kashmir from a state into two Union Territories represents a significant departure from established federal principles and raises important questions about the future of Indian federalism. The reorganization not only reduces the degree of autonomy enjoyed by the region but also alters the balance of power between the Centre and the States in a manner that may have broader implications for the federal structure. The absence of an elected legislative assembly for an extended period has exacerbated concerns about democratic representation and accountability, creating a governance vacuum that undermines the legitimacy of state institutions. This development is particularly significant in light

of the Supreme Court's recognition of federalism as part of the basic structure of the Constitution in *S.R. Bommai v. Union of India*. The centralization of authority in the aftermath of the abrogation thus raises the possibility that the basic structure doctrine may be indirectly weakened through the erosion of federal principles.

## 7. Civil Liberties and Governance

The abrogation of Article 370 was accompanied by a series of measures aimed at maintaining public order and security, including restrictions on communication, movement, and political activity. While these measures were justified by the government as necessary to prevent unrest, they have been widely criticized for their impact on civil liberties and fundamental rights. The prolonged communication shutdown, in particular, attracted significant attention and was challenged before the Supreme Court in *Anuradha Bhasin v. Union of India*, where the Court recognized the importance of internet access as a component of the right to freedom of speech and expression. However, the Court's reluctance to provide immediate and effective relief has been interpreted as indicative of a broader trend of judicial deference in matters involving national security. The restrictions imposed in the aftermath of the abrogation have thus raised important questions about the balance between security and liberty, as well as the role of the judiciary in safeguarding fundamental rights in politically sensitive contexts.

## 8. Comparative Constitutional Analysis

The experience of Jammu & Kashmir can be better understood by situating it within a comparative constitutional framework that examines similar instances of autonomy erosion in other jurisdictions. In Hong Kong, the principle of "One Country, Two Systems" initially guaranteed a high degree of autonomy, but recent developments, particularly the enactment of the National Security Law, have significantly curtailed this autonomy and strengthened central control. Similarly, in Catalonia, tensions between regional aspirations and central authority have culminated in a series of constitutional crises, highlighting the challenges of managing diversity within a unified state. While the specific historical and political contexts differ, these cases share a common pattern in which unilateral alterations to autonomy arrangements by central authorities lead to increased political tensions and challenges to legitimacy. The comparative analysis thus underscores the importance of consent, dialogue, and institutional safeguards in ensuring the stability and legitimacy of constitutional arrangements.

## 9. Critical Discussion

The abrogation of Article 370 presents a complex and multifaceted constitutional dilemma that cannot be adequately understood through a binary framework of legality and illegality. On the one hand, the move has facilitated the extension of central laws to the region, potentially enhancing administrative efficiency and promoting economic development. On the other hand, it raises serious concerns about the erosion of federalism, the weakening of democratic institutions, and the expansion of executive power. The central issue is not merely whether the objectives of integration and development are desirable, but whether they have been pursued in a manner consistent with the principles of constitutionalism. The procedural innovations employed in the abrogation, particularly the substitution of federal consent, suggest a departure from established constitutional norms and highlight the tension between political expediency and constitutional integrity.

## 10. Conclusion

The abrogation of Article 370 represents a defining moment in India's constitutional evolution, reflecting both the possibilities and the challenges of managing diversity within a unified political framework.

While the move has achieved formal legal integration, it has also disrupted the delicate balance between unity and autonomy that lies at the heart of Indian federalism. The long-term success of this constitutional transformation will depend



not only on its legal validity but also on its ability to secure democratic legitimacy, protect fundamental rights, and foster trust between the State and its citizens. Ultimately, the experience of Jammu & Kashmir serves as a reminder that constitutional integration must be grounded in principles of consent, accountability, and respect for diversity, without which the promise of unity risks becoming a source of division.

## Footnotes

1. *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.
2. INDIA CONST. art. 370.
3. *Sampat Prakash v. State of Jammu & Kashmir*, AIR 1970 SC 1118.
4. *State Bank of India v. Santosh Gupta*, (2017) 2 SCC 538.
5. Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272).
6. *Prem Nath Kaul v. State of J&K*, AIR 1959 SC 749.
7. *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.
8. *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.
9. *In Re: Article 370*, Supreme Court Constitution Bench Judgment (2023).