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ABROGATION OF ARTICLE 370 OF THE INDIAN CONSTITUTION: AN ANALYTICAL STUDY

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ABSTRACT

“Architects of the Indian constitution were eager to make the country sovereign stable, peaceful and to protect the human rights of people. Constitutional laws contributed a very pivotal role to make the country’s judicial system on right track for the sake of country’s present ground reality complex scenarios and the future has been made secured for our parliamentary system is based on upgrading or new constitutional laws. But controversial **Article 370** has provided the Jammu and Kashmir state vast powers as the autonomous body which created many complex problems including the threat of unity of the country and our government bifurcated the state into two successors **“Union Territories”** with additional limited aboriginal administrative powers under the Central Government. This Article was a **“Temporary Provision”** and it was essential to abrogate, modify and to eliminate this article. Article 370 has a historical background that does not emerge from legal or constitutional dimensions but it has complex political and religious dimensions that have an impact on the international border highly complex issues between India and Pakistan. Pakistan’s government has been claiming over J&K since 1947. Dispute of **L.A.C. “Line of Actual Control”** around **“No Men’s Land”** and continue to complex issues of **“Line of Control”** with Pakistan have been going on since 1947, whereas China has been claiming on our land which is located near to Ladakh. The United Nations deliberates J&K to be disputed territory between Indo-Pak, but New Delhi, the status quo party, calls the recent legal changes an internal matter and it is usually opposing third –part involvement in the Kashmir issue. Since the beginning of this matter Article 370 Dr. B.R. Ambedkar, the father of the Indian constitution was totally disagreed in introducing this article in our constitution. In this Dissertation research work, abrogation of Article 370 of the Indian constitution is taken as a **“Legal Analytical Study”** were focusing the complex issues and matter of responsibilities in the making of Article 370 and its right implication, Division of State by The Union Govt., Distinct formation of High Court, Emergency Provisions as Temporary and Transition, Fundamental Rights and Ground Reality Scenarios under The Constitution of Indian and its Problem-Solving Skills implementation on ground reality complex scenarios have impact on The Valley of Kashmir (**Jammu – Kashmir, and Ladakh**) towards country’s peace and international stable and progressive relations. The hope is that the fine combination of Muslims (Kashmiris - One Divine Wisdom) and Buddhists (Ladakh from Tibet University - Lhasa) gives us a unique culture and scope of advanced future enhancements to reshape the unstable country’s situations in peaceful, enlightened and advanced development under the umbrella of Indian Constitution.”

Keywords: The Constitution of India, *The Valley of Kashmir* (Jammu- Kashmir, and Ladakh), Article 370, Temporary Provisions, Union Territories, Ground Reality Scenarios, Human Rights, Legal Analytical Study, Problem Solving Skills, Country Peace, Stability, advanced development, international stable and progressive relations.

1. INTRODUCTION

Indian constitution is one of the fine legal documents of our country which covers all features to control the country and its society peacefully for social stability, human rights and protect humanity from serious crime. But when we analyse the international and national matter of security focusing north Indo-Pak border of Jammu and Kashmir then it can be seen as the world's complex dangerous area have serious complex issues which can only be resolved by the implementation of new laws to maintain the security and peace. The interference from Pakistan in Jammu and Kashmir area and recently from China after the coronavirus situation, attack in the region of Ladakh, these serious issues are continuing which make the matter complex to solve. The hope is to make a future relationship in peace and prosperity.

The folks of Jammu and Kashmir have faced an immense amount of terror and fear from decades consecutively and they have been fighting for their freedom against discomfort and discontent faced by them. India and Pakistan were divided into two countries after the Independence from the Britishers in 1947. There were almost 560 princely states situated in British India till that time Kashmir was also the part of it. The emperor Hari Singh of Kashmir instead of his kingship, has made many conflicts which were the most debated reasons to stabilize the conditions of Kashmir. Pakistan targeted India by making Kashmir as a weapon and attacked Kashmir by sending army troops. Maharaja of Kashmir was unable to defend Kashmir and sought for help and extend his hand towards India. After analyzing the position of the Kashmir and request made by Hari Singh, the viceroy Mountbatten was ready to help Kashmir but in exchange, he proposed an agreement to the Maharaja signed the "Letter of Instrument of Accession to India", since that time this agreement has become an irrevocable and unresolved issue for India.

After the agreement between India and Kashmir on 2nd November 1947 Pandit Nehru proclaimed that "*Kashmir's future will be decided by the means of the plebiscite*", a plebiscite was never applied on Kashmir since then and it has become a vague promise made by the government of India. After such an incident, Kashmir people were protected and guaranteed their voting rights in general and local elections. Hence, there was no need for plebiscite in the state. Whereas on the other side of the coin Pakistan was always in the favor of conducting elections with the means of a plebiscite. They have always provoked Kashmiri Muslims to demand their rights and Plebiscite in their State. They were of the view that voting of Kashmiri people will hardly make any difference in the State because they only urge to get the basic amenities and resolved issues of Kashmir which they won't get by the means of elections.

As per the ground reality scenario, finally, The Jammu and Kashmir Reorganisation Act, Registered No. ID (N) 04/0007/2003, Published by the authority as Ministry of Law and Justice (legislative department), 2019, New Delhi, India [1]. The serious complex issues of Kashmir (as a state of India equalize with other states) and the abrogation of article 370: peace can be conceivable, or stalemate endures to hamper India and Pakistan relation in future [2] Focusing on Kashmir with its background, recent development and U.S. Policy as published by Congressional Research Services, the author highlights the issue with Indian government based on constitutional

power to make changes in J&K state where the Muslim majority is existing. The author highlights the Article 370 which make the Jammu and Kashmir state as a “**special status**” and bifurcation of the state from the whole country as a “**union territories**” with the use of constitution came under “**president rules**” which in future makes serious issues as peace or war, religious stability, Indian military strong action, interference of Pakistan, disturbing national and international relation between UN, India, Pakistan and other neighbouring countries. UN said officially that Jammu and Kashmir consider as a disputed territory but India reacted with the recent constitutional surprised changes an “**internal matter**”. UN policy’s main objective is to avert conflicts between India and Pakistan. He highlights the issues for the three decades of separatist conflicts and their countless death records as an outcome after 2013. The USA supports both sides of Indian and Pakistan partnership to make the peace and development continue to future from 2019 with the president Trump’s July “**mediation**” offer [3]. As per old background of this article 370 the case history of Jammu and Kashmir where Maharaja Hari Singh after Pakistani attack since the 26th of October 1947, on Jammu and Kashmir, after princely states merged with India Kashmir had its constitution since 17th of November 1956 under the constitution of India came into force with provision article 370, Maharaja Hari Singh signed the accession papers on October 26, 1947, under which the state acceded to India. Finally, Maharaja Hari Singh signed the official document (accession papers) on 26th of October 1947 in which the state assented to India. Most importantly they highlighted “THE LEGAL ANALYSIS” focusing Article 370 in detailed research as Article 370 Clause (1)(a), (1)(b), (1)(c), (1)(d), (2) & (3) with the further current legal framework of article 370, issues, challenges and suggestions for India’s future peaceful scenarios. [4]. After this lots of issues reflect from his research title as “the abrogation of article 370 can the president act without the official recommendation under constitutional rights of the constitute assembly?”. With the in-depth framework, he focusing on the provision and its background history, the legal cases against article 370, characterization of the article 370 in judicial decision with proper details, basic structural doctrine and the parliament’s power to change article 370. This article under the Indian constitution and unequal federalism, bureaucratic limitation on amending power, ARTICLE 370, and provisional constitutionalism. The result shows that article 370 cannot be deleted by the presented without the official recommendation under the constitutional rights of the constituent assembly. Clause 3 of Article 370 of the Indian Constitution explains that the President has the power to abrogate or delete this Article by giving official notification in the Official Gazette. Provided that he shall take the consent of the State Governor before making such move. [5]. As complex matter related to article 370 the petitions, claims and complaints are registered officially [6] to [14]. Jammu and Kashmir is the epicenter and the cause of burning issues due to the interference of both Pakistan and India. The author is disagreeing with the special status done under the new constitution as article 370. This research **Work Legal Analysis** put a question on the article 370, and to recognize why the tenacious complex problems of communism, dynamics of separatist activates and moments which put the Indian government into serious trouble (in the present ground reality scenario and the future) the genesis and nature of this article under Indian constitution which should be understood in details [15]. In the end, the article 370 and its further implementation makes development and peace in *The Valley of Kashmir (Jammu- Kashmir, and Ladakh)* towards country’s peace and international relations [16], [17], [18] & [19].

From the past many years, it has been observed that Kashmir is facing an atmosphere of terror and struggle due to which lakhs of people were lost their lives and millions of the troops have been deployed in the valley due to uninvited events. On many occasions, there were a large number of bloodshed and terror like condition. Elections were conducted in Kashmir in the presence of military or Para-military force for their protection. There were more than six lakhs of armed forces deployed for the safety of Jammu and Kashmir which was an official statement proclaimed by the assembly of J & K. The ratio of locals and military personnel is 1:18, considering this it can be witnessed that a large number of troops were deployed in the valley for the protection and safety of the locals. In the country which has a total population of 130 crores and in comparison to that population of Jammu and Kashmir is 1.47 crore only. The quantum of military forces is quite large as compared to the population of the valley. There have been many wrongful acts and tragedies observed in consideration of Human rights violations by armed forces or army troops in the State. Cases of rapes, molestation, harassment, disappearances, etc. done by armed forces deployed in the valley. Such cases of violation of human rights were investigated by Amnesty International and other agencies but no such proof was found or proven against the Indian army. They always came out of such cases clean and clear.

2. LITERATURE REVIEW

The updated Jammu and Kashmir Reorganisation Act [1] This is a most important copy of Indian constitution the updated Jammu and Kashmir Reorganisation Act, 2019 where article 370 is mentioned in detail with Article 370 Clauses (1)(a), Article 370 Clause (1)(b), Article 370 Clause (1)(c), Article 370 Clause (1)(d) Article 370 Clause (2), Article 370 Clause (3). Which is very useful to understand the present ground reality scenarios in Jammu and Kashmir and including Ladakh?

Dr. Tehseen Nisar [2] In this research work author focus on the serious complex issues of Kashmir (as a state of India equalizes with other states) and the abrogation of article 370: peace can be conceivable, or stalemate endures to hamper India and Pakistan relation in future. She strongly highlights the complex issues of Kashmir as India's abrogation of article 370 and including 35a which are obvious to that end. The author also highlighted the misuse of political power to make the Kashmir a special status, separate constitution, and merging it with union territory. She discussed the in-depth details regarding article 370 and its future impact on the internal relation (J&K), and international relations (Pakistan, UN, and the U.S.A.).

K.Alan Kronstadt [3] In this research publication author focusing on Kashmir with its background, recent development and U.S. Policy as published by Congressional Research Services. The author highlights the issue of Indian government action based on constitutional power to make changes in J&K state where the Muslim majority is existing. The author highlights the Article 370 which make the Jammu and Kashmir state as a “**special status**” and bifurcation the state from the whole country as a “**union territories**” with the use of constitution came under “**president rules**” which in future makes serious issues as peace or war, religious stability, Indian military strong action, interference of Pakistan, disturbing national and international relation between UN, USA, India, Pakistan and other countries. UN said officially that Jammu and Kashmir consider as a disputed territory but India reacts

with the recent constitutional surprised changes an “**internal matter**”. The USA supports both sides of Indian and Pakistan partnership to make the peace and development continue to future from 2019 with the president Trump’s July “**mediation**” offer.

Dr. Sona Shukla and Firdoos Ahmed [4] in this research publication authors highlights the case history of Jammu and Kashmir where Maharaja Hari Singh after Pakistani attack since 26th of October 1947 on Jammu and Kashmir, after princely states merged with India Kashmir had its constitution since 17th of November 1956, the constitution of India came into force with provision article 370. Maharaja Hari Singh signed the accession papers on October 26, 1947, under which the state acceded to India. Finally, Maharaja Hari Singh signature the official document (accession papers) on the 26th of October 1947 under which the state assented to India and further background history.

Balu G. Nair [5] as the author highlights the issues as reflect from his research title as “**the abrogation of article 370 can the president act without the official recommendation under constitutional rights of the constitute assembly?**”. With in-depth framework he focusing on the provision and its background history, the legal cases against article 370, characterization of the article 370 in judicial decision with proper details, basic structural doctrine and the parliament’s power to change article 370, article 370 under Indian constitution and unequal federalism, bureaucratic limitation on amending power, The lawfulness of CO 272 and CO 272, ARTICLE 370 and provisional constitutionalism and at the end with conclusion show that the article 370 can the president act without the official recommendation under constitutional rights of the constituent assembly is constitutionally doubtful and full of carelessness towards the country’s future peace.

Dr. Akashdeep Singh - 2019 [6] The author said that the Art. 370 is added in the Indian constitution as a temporary provision. The Government in power behind the article 370 ignore the official recommendation under constitutional rights of the constituent assembly. The author said that Dr. B.R. Ambedkar had refused to draft the Art. 370 due to its injustice and exclusions within the constitution of an autonomous India. Respected Baba Saheb Ambedkar the father of the Indian constitution disagrees with this article 370. President of India under art 370 (1) which yet again involves “**concurrence of**” or “**consultation with**” the state government of India. 370 (3) is no longer functioning moreover it affect the future relations of counties and complex the Indian internal matter which starting from the state Jammu and Kashmir. Petitioners appeal by the process of the petition to the supreme court of India demand to change the article or its further embedment to make the country stable and peaceful.

Moonis Ahmar [7] The author said that the erosion of Art. 370 meanwhile mid-1950s by lessening the special status of Jammu and Kashmir interrogated the claim of New Delhi that secularism endured a fundamental principle of India state. He also blames the Indian government in power targeting particular religious’ benefits and vanishes the constitutional rights of Jammu and Kashmir State. The author examines in depths with details of the nature of article 370 under the constitution of India, its steady erosion and its bad implications on Jammu and Kashmir. He said that with the misuse of government power and implementation of Indian military and B.S.F. in very planned stick way on the valley of Kashmir from a haven on this earth convert into a large –scale prison camp. As Concluded the author is agents article 370 and the government behind that article to make it in shape and its implementation on Jammu and Kashmir.

Nimisha Mishra [8] as research title shows the critical study – the need of art 370 in the current political situation in India, the author well introduced the article 370 in Indian constitution with the addition of Dr. B.R. Ambedkar official point of views as he disagrees with this Article 370 and told that government of India have no right to interfere in the matter of Kashmir, as a minister of law, I will never do it. The author is will mentioned the details of provisions in article 370. Finally, he highlights that why we need to remove the article 370 based on serious issues of the present and the upcoming future complex situations as Provisions as Temporary and Transition, the implementation of the article doesn't fulfil the criteria of section 5 of the instrument of accession, Boosts separationist propensity, the article 370 affect the economic growth, this article causes serious corruption. The article will restrict women's rights; this article causes a serious threat to Indian security.

Tawheeda Nabi, Subaiya Nazir, Shahid Hussain Wani [9] in this research work authors show the complex matter and its details regarding article 370 under the constitution of India. why this article 370 is questionable concerning the controversial ground reality scenarios which affect the Kashmir in retrograde. With the highlighting, the history behind this article and its further details of article 370 is explained very well. Finally, with the conclusion as this is the matter of injustice and government of India must take a stand of will power to take positive action so that the future of Jammu and Kashmir including the whole country to make peace with further positive embedment.

Mahaveer Golechha [10] In this short article publication author highlights the matter of integration of Kashmir for the present and further peace and prosperity. The author mentioned the serious matter that the present Indian government revoked the provisions of article 370 and article 35A with the use of constitutional power to take away Jammu and Kashmir as a special status and unravelling the two states into two central administered union territories Jammu and Kashmir and Ladakh. The author said that the present case scenario of article 370 with the matter of Muslim majority state did not mansion the world minorities, therefore, the old rights of minorities are avoided in a strategic way including other serious matter as the majority of the population had the no tribal constitutional rights, no right to information (RTI), many of the constitutional rights as in the other state citizen follows but in Jammu and Kashmir and Ladakh Indians now restricted to the Indian constitution. Finally, the positive will to change in further embedment's or following old constitutional rights makes socioeconomic development, investment, innovation, good health, peace and prosperity.

Amitabh Hoskote [11] in this research paper author highlights the issue with the research title as Jammu and Kashmir and further politics behind the article 370 – seeking legality for the illegitimate. This research work analysis the article 370 with the validity of politics based on four major specific arguments a first as the genesis of article 370 under Indian constitution makes inequality in India, the second argument as the retention of article 370 under Indian constitution permissible the argumentative issues to fester, third argument highlights the ramification of article 370 of the Indian constitution which make disparity within Jammu and Kashmir, the fourth argument as the politics behind the article 370 is the manifestation of limited political influence. In the end, the author focus on the present case scenarios has serious issues after article 370 implemented and further peace in the country.

Rinashree Khound [12] The research work title as the abrogation of article 370 under the Indian constitution – an appearance back at its origin and aftermath shows the serious matter of the use Indian constitution and its further impact on Jammu and Kashmir. the author highlights the irresponsibility in the making of “**temporary provision**” and “**special status**” for the state of Jammu and Kashmir. After mentioned historical point of view very well, further is focus the present ground reality scenarios of complex issues regarding the significance of article 370 under the use of political power to make the strategic disastrous changes which no one tries to change it, abrogation of article 370 under the constitution of India, bifurcation of Jammu and Kashmir into Union Territories. An effort has been made by the author to analyse the complex matters behind it and its further impact on Jammu and Kashmir as a special status and temporary provision.

Ira Singhal [13] The author highlights the serious issue as research title reflect “article 370 and article 35A – the impending question of their legal validity”. In this research, work author highlights the complex issue against these two articles and the highpoint of petitions in the supreme court of India based on legal analysis and further changes that positively impact the Jammu and Kashmir. The author highlights a matter of issues as the historical view of points regarding article 370, the debated gyratory around article 370 of Indian constitution, article 35A with its constitutional validity of the provisions.

Surbhi Gupta and Shashi Bhushan Ojha [14] In this research work authors highlight the issue of “special status” and efforts to make a study in precise references to legal dimensions and its insinuation. With the details behind the article 370 and its further complex problems are highlighted as the scope of research study, research questions. The authors are very well explored the point of views regarding the article 370.

Asthma Mehta [15] Jammu and Kashmir are the epicenter and the cause of burring issues due to the interference of both Pakistan and India. The author is disagreeing with the special status done under the new constitution as article 370. This research work legal analysis put the question on the article 370 and to recognize why the tenacious complex problems of communism, dynamics of separationist activates and moments which makes the Indian government in serious trouble (in the present ground reality scenario and the future) the genesis and nature of this article under Indian constitution which should be understood in details.

Aditya Jain [16] After a brief case study of historical moments that deals with this article 370 AUTHOR highlight the critical analysis of Indian constitution article 370. The author makes efforts on detailed legal analysis on the article 370 is mentioned in detail with Article 370 Clause (1)(a), Article 370 Clause (1)(b), Article 370 Clause (1)(c), Article 370 Clause (1)(d) Article 370 Clause (2), Article 370 Clause (3). Moreover, highlights the Present legal work frame, relevant constitutional bodies, issues and challenges of article 370, the importance and role of the judiciary at the end identifying lacunas in laws of Indian constitution as the article 370.

Dr. Preet Sharma and Dr. Sheila rai [17] in this research work authors highlight the article 35A before the upcoming article 370, they highlight the historical approach of article 35A, situation before independence, during independence time, conserving with the matter of special status, presidential order which affectst the Jammu and Kashmir and Ladakh. Authors exploring the significance behind the article 35A very well.

B.G. Varghese [18] the author makes efforts to highlights the relation between Pakistan and India. with the research framework author including the case history of conflicts between Pakistan and India which is based on the valley of Kashmir as the princes Hyderabad, Kalat, Bahawalpur, Junagadh, J&K, Chitral), Pakistan's invasion and Jammu and Kashmir concurrence, Jammu and Kashmir Indian and further details reflect the relation between Pak-Indo and concerning the serious matter.

Davis R.A. [19] in this research work the author focus on the serious issues created after the implementation of article 370 to balance the critical situation as research title reflect "Kashmir in the Balance," is done by the government of India and defence agencies under Indian constitution to make the peace in the country and between international borders.

3. RESEARCH METHODOLOGY

The study is doctrinal in nature and analytical in approach. The research will depend on both primary and secondary sources. There are many other sources like political views, debates, commentaries of various authors, books, journals, websites on the internet, enactments, etc.

1.Primary Source

The primary sources used in this research include the Constitution of India, Precedents and Statutes. Various reports of Commission of India.

2.Secondary Source

The data will be gathered through different sources such as the internet, journals, Articles, Newspaper and Magazines.

4. RESEARCH HYPOTHESIS

The abrogation of Article 370 of the Indian Constitution will improve the overall condition of society at large in Jammu and Kashmir if implemented effectively.

5. RESEARCH OBJECTIVES WITH RESEARCH GAP

- To review and compare the legal status of the State of Jammu and Kashmir in the light of the scrapping of Article 370.
- To analyze the legal implication of the abolition of Article 370 and Article 35A.
- To find out THE MIDDLE PATH SOLUTIONS with New Constitutional Embedments Or Basic Law Structural Change to satisfied the both side of government and the people of Valley of Kashmir (Jammu -Kashmir and Ladakh) in peaceful way.

6. ARTICLE 370 OF INDIAN CONSTITUTION: AN OVERVIEW

Article 370 of the Indian Constitution is the most controversial and contentious. It has a profound history with immeasurable and temporary. This Article was outlined as a 'temporary provision' of the Indian Constitution. The constitution of India anticipates the assembling the Constituent Assembly for Jammu & Kashmir State. As per this Article, any modification, amendments or exceptions in Article 370 within the Constitution of India in the

application to the Jammu and Kashmir State are within the discretion of the Assembly. Henceforth, this article is a 'temporary provision is not proficient to abrogate, modify, or replaced. There were many historical and political reasons that the State Jammu and Kashmir were accorded with the special status under Article 370 of the Indian Constitution before its abrogation in 2019. Article 370 is also termed as the National Liability on the Government of India. This Article has vast literature and history which does not emerge from legal or constitutional dimensions but it has a deep-rooted political and religious dimension. All the facts and elements are entangled so abruptly with each other that one needs the extensive interest and keenness to understand the dimensions of the Article and its vast political background. Deeper incite of this Article is important as it replicates the deep understanding of the unilateral and bilateral type of government in a single country. Let's study the dimensions of the framer of this Article which tried to fulfill the hopes and aspiration of justice to the citizens of India and also residents of Jammu and Kashmir.

6.1 BACKGROUND

Not many people know the reason behind the formulation of Article 370 in the Constitution of India and it has played a vital role for Jammu and Kashmir to become an integral part of the Indian Constitution. It was despite the political apprehension of the Sardar Patel, Political Parties and Constituent Assembly. When the B.R Ambedkar refused to frame this Article, Jawaharlal Nehru appointed his most trusted Cabinet Member N. Gopaldaswami Ayyangar to draft Article 370 of the Constitution of India. Earlier Sheikh Abdullah was directed to accompany B. R Ambedkar for framing Article 370 but he was strictly against the formation of this Article. In 1950, the Indian Constitution came into force, Article 1 of the Constitution defined Jammu and Kashmir has a special status. Inequality in India begun from here. Jawaharlal Nehru and Sheikh Abdullah signed an agreement known as the 'Delhi Agreement' to improve relations between the state and the union.

Jawaharlal Nehru promised the citizen of India that Article 370 is just a temporary provision and it will be deleted over time. Framers of Article did not mention the period replicate the word temporary in the provision. Does it mean one week, one month, one year, or a decade? Because it took almost half a century to justify and abrogate these words like 'temporary, translational and special provision' which is contained in part XXI of our Constitution. As per the Instrument of Accession signed by the State, Maharaja provided specifically that dominion of India on the State of Jammu and Kashmir will be limited to the matters related to defence, external affairs and communication and other matters will be decided by the Maharaja or government itself. Moreover, Clause 7 of the Instrument of Accession also defines that no further laws provided in the Constitution of India are applicable to the State of Jammu and Kashmir.

6.2 FACTS BEHIND THE ARTICLE 370 OF THE INDIAN CONSTITUTION:

1. Article 370 of the Indian Constitution is the temporary and special provision accorded for the state of Jammu and Kashmir.
2. The principal drafter of the constitution of India refused to frame the Article 370 because this article was unconstitutional according to him.
3. Sheikh Abdullah was instructed by Nehru to work on this Article under the supervision of the B.R Ambedkar. But eventually, it was drafted by Gopaldaswami Ayyangar.

4. At the time of collective princely states were reorganised provisions of the omitted Article 238 did not apply to the State of Jammu and Kashmir.
5. Article 370 is drafter under Part XXI 'the Temporary and Transitional Provision' of the Constitution of India.
6. The Instrument of accession is the original draft of the Article 370 and under that it was defined that "the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March 1948.
7. As per this Article before taking any important steps parliament has to look for the concurrence of the Government of the state.
8. Parliament of India cannot reduce or exceed the borders of the state.
9. Article 370 was renumbered at the place to Article 306A of the Indian Constitution.
10. Non-residents do not have permission to transect the land deals in the Jurisdiction of the J & K as provided under Article 370.
11. The Union cannot interfere in the provision provided in the Constitution of Jammu and Kashmir.

6.3. CONSTITUTIONALITY

This Article was framed to accord the special constitutional status to the State and none of the Article of the Constitution of India has anything to do with the enforceability or credibility of Article 370. If we view this article with the vision of constitutional ethics, then it is unconstitutional in the eye of law because it degrading the basic structure of the Constitution of India. Clause 2 of article 370 has allowed the formation of the separate Constitution of the State Jammu and Kashmir. No other state in India is awarded this entitlement. Ethically, morally and politically law demands that there should be only one book of Constitution for the whole nation. Democracy and sovereignty in the territory should be the absolute power of the Country. Furthermore, any modification, deletion or amendment in the Constitution of India by the legislative assembly is the application to everyone but as per the recommendations of Article 370, the State of J & K will decide the implication of such amendments, modification, or deletion.

6.4 NATURE OF ARTICLE 370:

To understand the question of the basic principle of the constitution of India one should study the nature of this Article first. So in many Supreme Court decisions, it has been decided that it is the temporary provision of the Constitution but happened to be the permanent provision from the past half-decade. This Article was the political venture and used as a weapon by the politicians of Jammu and Kashmir.

It has few of the fiscal implications:

1. **Applicability:** Union government with the consensus of the state govt. before applying all other law except the law related to defense, external affairs. and communication. All the provision of the Indian Constitution is not applied on the state Jammu and Kashmir like the whole Part VI does not apply to Jammu and Kashmir. No other state has such privilege as Jammu and Kashmir.

2. **Jurisdiction:** Parliamentary Jurisdiction is confined to Union and Concurrent list only. The State list does not apply to the valley. In context to the other states, the residuary power lays in the hand of Parliament whereas the Jammu and Kashmir residuary power is governed by the legislature of the state. The law related to preventive detention framed in India are not felicitous on the State J & K. Kashmir enjoys many other powers other than the other states of India which are plenary power of parliament defined under Article 3 of the Constitution of India, International treaties, convention or agreements signed by India under Article 253 does not apply to Kashmir, etc.
3. Fundamental Right and DPSP are inapplicable on the State of Jammu and Kashmir.
4. Any amendment, modification or deletion under Article 368 does not apply to the J & K. The Center has no power to amend the Constitution of Jammu and Kashmir.
5. The high court of Jammu and Kashmir has limited jurisdiction and cannot declare any law unconstitutional.

6.5 PROVISIONS OF ARTICLE 370 OF THE INDIAN CONSTITUTION

Part XXI of the Indian Constitution includes Article 370 which represents all its provision to be 'temporary, transitional and special'

1. The initial words are '*notwithstanding anything in the constitution anything in this constitution*'. These words are very rarely used in any other provision of the Indian Constitution. These lines mean that it has nothing to do with any other provision of the Indian Constitution as it is only applicable to the Jammu and Kashmir.
2. Sub-clause 'a' of clause 1 of Article 370 explains that the provisions of Article 238 do not apply to the state of Jammu and Kashmir.
3. Article 370 (1) b speaks about the powers of the parliament on the state are limited. Dominion of India was set in the instrument of accession. Matters related to union list and concurrent list are applicable only with the discretion of the Governor of the Jammu and Kashmir. Only matters related to the State list can be decided by the Parliament.
4. Clause 1(c) of Article 370 provides that Article 1 of the Indian Constitution applies to the state Jammu and Kashmir.
5. Clause 1(d) of Article 370 explains that certain amendments and modifications can be made in Article by passing the Presidential order. But it also includes the proviso that before passing such order President must take the advice or permission of the Governor of the State Jammu and Kashmir. Another proviso explains that such order should be related to the matters as prescribed in the instrument of accession and with the concurrence of the Governor of the state.
6. Paragraph (ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) of that clause says that with the consent of the Governor of the Jammu and Kashmir it must be placed in front of the Constituent Assembly.

6.6 EFFECTS OF ARTICLE 370 ON HUMAN RIGHTS

Under the cover of Article 370 many human rights are being trashed and tampered. Human rights are for the welfare of the society and should be awarded to every citizen of India irrespective of their caste, colour, race, gender or creed. Under the ambit of Article 370 state govt. of the valley failed to protect the basic rights of the

residents of Jammu and Kashmir. discrimination with backward people, women who cannot marry outside the state to protect their property rights, right to education of children etc. are not protected under the constitution of Jammu and Kashmir. The consequences of the Art. 370 in the purview of Human Rights are as follows:

- 1. GENDER BIASES:** Article 370 cries loud the gender biases in the Jammu and Kashmir. Article 35A speaks about the rights of women who are deprived of property rights if they marry outside the state. This discriminatory behavior against the women of Jammu and Kashmir is solely unacceptable and demands the call for justice. There is sheer backwardness in the state of Jammu and Kashmir. Basic Fundamental rights are not provided to women and children. The Right to education from the age of 8 to 14 is not compulsory and strictly followed by the people of the valley. Child marriage is still prominent and such act which opposes such crimes do not apply to the residents of Jammu and Kashmir.
- 2. BACKWARD CLASSES:** In the presence of Article 370 the chances to increase discrimination have been aroused. Backward classes can face discrimination which is a violation of human rights.
- 3. POLITICAL RIGHTS:** Kashmir valley been the smallest area of all other has the maximum number of seats in the electoral constituencies which is unfair and fosters inequality amongst other states. As far as the democratic government is concerned each state should have equal opportunity to elect their representatives from their respective constituencies.
- 4. CIVIL RIGHTS:** The Certificate of Permanent Residency is of utmost importance to enjoy the special rights in the Jammu and Kashmir. Violation of adult suffrage is caused by not giving equal rights to the people who have stayed in Kashmir for many years just because they do not hold the certificate of Permanent Residency. This is a sheer violation of Human Rights under the umbrella of Article 370.
- 5. MINORITY RIGHTS:** State Minority Commission or National Minority Commission has no jurisdiction over Jammu and Kashmir hence they enjoy the minority position.
- 6. EMPLOYMENT RIGHTS:** Right to equal opportunity under Article 16 is enjoyed by every citizen of India but it is inapplicable on Jammu and Kashmir. Under the Presidential Order, only citizens with PRC can enjoy employment rights in the state. Union government has no power to interfere in the matters of employment or recruitment in Jammu and Kashmir and also cannot take action against this discrimination amongst the people.
- 7. FREEDOM OF MOVEMENT:** The right to freedom of movement cannot be guaranteed to the people of Jammu and Kashmir under the blanket of Article 370. This is a violation of Article 19 and also the human rights of the people of Jammu and Kashmir.

6.7 DISADVANTAGES OF ARTICLE 370:

There is no private hospital in the vicinity of the adjoining district of Jammu and Kashmir. Lack of essentials in the state such as water supply, electricity supply, or fast speed internets. There is no competition among students who lacks their mental growth and development. This lacks the progress of the youth mentally. The Youth of Jammu and Kashmir do not have the right to crack other state exams. There is no industrial growth or development because no company has the right to buy land in the valley. The permanent residents of the state have property rights only. Shariah laws are profiling to the women of the state. The Indian government cannot access its powers without the concurrence of the state government. Hence, they cannot implement any law or policy on the state.

This Article is not gender-neutral as it disqualifies the women from property rights if she wishes to marry outside the state.

6.8 WHAT IS ARTICLE 35A INCULCATED IN THE LEGAL PROVISIONS OF J & K?

This Article was inserted for providing the special status to the residents of the Jammu and Kashmir. This Article was inserted on the recommendation of President Rajendra Prasad with the concurrence of Jawaharlal Nehru. Article 35 A is a blessing to the people of Jammu and Kashmir and can only be enjoyed by residents of the valley.

6.9 LEGAL IMPLICATIONS OF ABROGATION OF Article 370 OF THE INDIAN CONSTITUTION

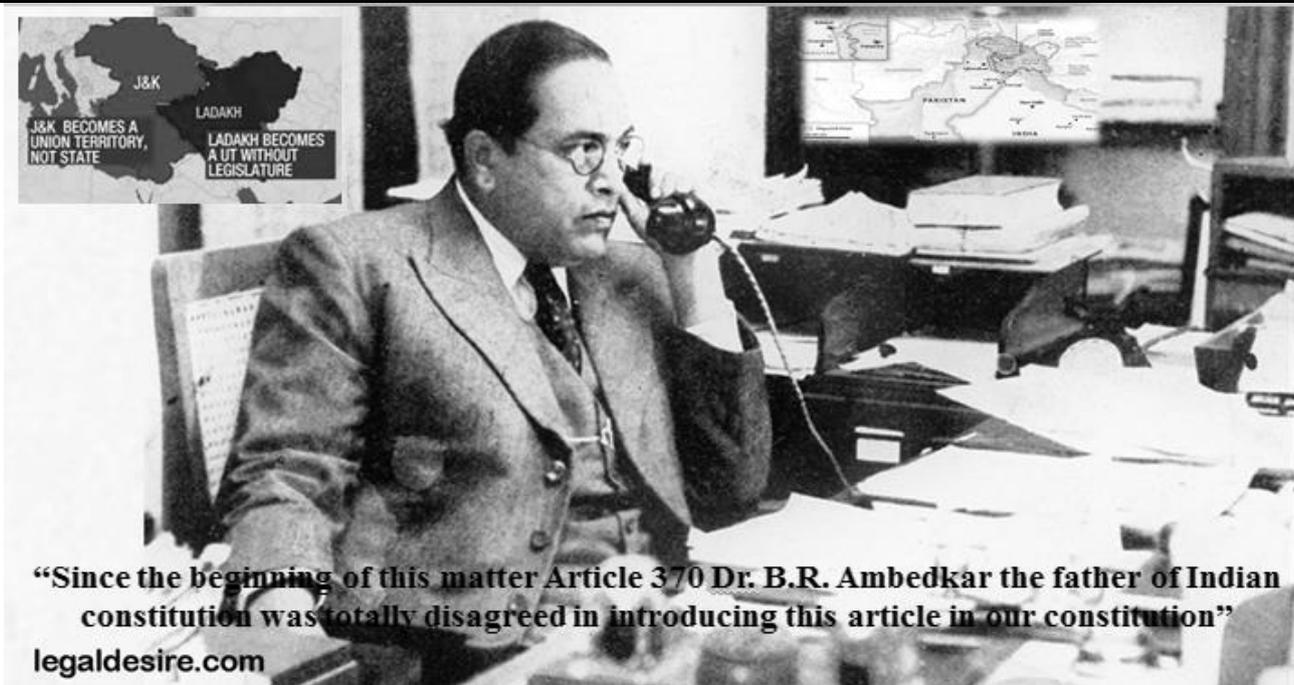
Article 370 was inserted during the political turmoil and the war between Kashmir and Pakistan. Initiation of the Article was when the Instrument of Accession was signed between Kashmir and the government of India. As per this Article special provision was promised to be given to Jammu and Kashmir. To fulfil such agreement Article 370 came into existence and the drafting of this Article was initiated.

1. INEQUALITY.
2. TEMPORARY AND TRANSITIONAL PROVISION.
3. OVERRULES SECTION 5 OF THE INSTRUMENT OF ACCESSION.
4. STIMULATES SEPARATIONISTS.
5. FINANCIAL DEVELOPMENT.
6. CORRUPTION.
7. SECURITY AT STAKE.
8. DISCRIMINATION: The rights provided to women differ as compared to the rights of the men in the state of Jammu and Kashmir. In the case, the State of Jammu and Kashmir and Sheela Shawney women raised her voice against the provision given in the Constitution of the Jammu and Kashmir that if a woman marries outside the state she will lose her property rights. It was settled in the full bench of Jammu and Kashmir High court that its provision will be struck down as discriminatory and bias. This provision also does not have any legal basis. Later this bill was moved forward and the bill named Permanent Resident (disqualification) Bill 2004 was passed with the efforts of Mehbooba Mufti and PDP Government which says that the women will lose their legal status as a permanent resident if she marries anyone outside India. Such a bill was also supported by Omar Abdullah and his party.

6.10 OVERVIEW OF GOVERNMENT OFFICIALS

1) Dr. B.R Ambedkar (Bharat Rattan)

From the beginning of this matter of article 370 Dr. B.R. Ambedkar, the father of the Indian constitution was disagreeing in introducing this article in our constitution.



“Article 365 is required because we all know those of us who were Ministers during the time of the war-how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions”.

2) Views of Sheikh Abdullah

“The accession of the State of Jammu and Kashmir to India is not a matter in issue. It has been my firm belief that the future of Jammu and Kashmir lies with India because of the common ideals that we share....it will be my constant endeavor to ensure that the State of Jammu and Kashmir continues to make its contribution to the sovereignty, integrity, and progress of the nation.... the country is passing through a critical period and it is all the more necessary for all of us who cherish the ideals of democracy, secularism and socialism, to strengthen your hands as the leader of the Nation and it is in this spirit that I am offering my whole hearted co-operation”

3) Views of Omar Abdullah

“We the people of J & K would like to categorically tell BJP that it is not possible to withdraw Article 370 and any attempt by anyone will be on our dead bodies.” “Mark my words and save this tweet long after the Modi Govt. is distant memory either J & K won't be part of India or Art 370 will still exist”.

6.11 HOW WAS ARTICLE 370 WIPED OFF?

Article 370 has previously elucidated that it can only be diminished by the President with the concurrence of the State Constituent Assembly of the Jammu and Kashmir.

The question is since Independence Jammu and Kashmir are having a whale of a time with Article 370. They would not in any circumstance concede to nullify the effect of Article 370. Then how this Article can be demolished from the Indian Constitution? This stumbling block needs clarification and competence to resolve this issue. The Government by the virtue of Presidential order made amendments in Article 367 of the Constitution. The amendment part was the interpretation clause of Article. Under the interpretation in the clause the articulation “Constituent Assembly” was replaced by “Legislative Assembly”. Now the question is how this

will help to abrogate the provision that accords Special Status to the Jammu and Kashmir? and another question is that instead of vanishing Article 370 government has molded Article 367? So the explication can be observed by reading the section 92 of the Jammu and Kashmir Constitution. Section 92 elucidate that Governor has all the powers and functions of the state if Governor Rule is operative. So the government proficiently changed the phrase “Constituent Assembly” to Legislative Assembly” because the Constituent Assembly will never vote for the depletion of Article 370. And at present Governor rule was proficient. The Government defense was that Governor is accomplished with all the powers including the Legislative Assembly so he can give his consent for ceasing Article and to make it inoperative. The government tricked and did what they cannot do by the shortest route.

The governor of the Jammu and Kashmir can vouchsafe the authorization to delete Article 370. Section 92 of the J & K Constitution declares that during the governor rule it is the liability of the governor to pin the announcement before the State Assembly. Governor can make provisional decisions but the final is made by the State Assembly only.

After offering all the powers to the Governor of the state government made their move and thrown their ax by deleting Article 370 of the Indian Constitution. This has become the history and the government made this gesture without any debate or discussion and finally pronounced their decision to the nation. Finally, On August 5, 2019, The Indian Government abrogated the Special Status of the Jammu and Kashmir protected under Article 370 and Article 35 A. The other way around to this gesticulation would require the consent of the elected representative of the J & K or the majority votes of the members of Parliament which might have taken another half a century to happen. The never ending provision which was temporary was abolished. It was promised by the Jawaharlal Nehru that this Article is just a temporary provision and it will be deleted over time but it took almost decades to ran into the conclusion. The long lasting promise was finally fulfilled in the dimension of the legal perspective.

AFTERMATH OF STRIKING OUT ARTICLE 370

Overruling the Presidential Orders of 1956, President of India announced the order of eradicating Article 370. The Home Minister introduced and implemented the new bill named “Reorganisation Bill” throughout India. As per this bill, Jammu and Kashmir and Ladakh were fractioned into two UT’s. Both the UT’s will be governed by the unilateral Governments. This decision was passed by the upper house and later was challenged by the lower house of the parliament.

6.12 LATEST BILL: JAMMU AND KASHMIR REORGANISATION BILL 2019

This act has been passed after the Presidential Order of deleting Article 370. This bill was passed to divide the Jammu and Kashmir and Ladakh into two separate Union Territories. The region Jammu and Kashmir are always at target whenever there is any insurgency situation between India and Pakistan. This Act will come into effect from the date 31st October 2019. This Act was inaugurated by the Minister of Home Affairs Amit Shah on 5th August 2019. The bill was passed with the help of the majority voting in both the houses of Parliament. In the Rajya Sabha when this bill was presented and ouns of voting were in the hands of members of the house, 125

members were in the favor. The president of India also gave his prestigious consensus on 9th August 2019 in the favor of passing such a bill. The bill was set in motion through Presidential Order and with the effect of which Article 370 was eradicated from the Indian Constitution.

As Article 370 was depleted Union Government passed the Reorganization bill which helped them to pave the way to alter with the boundaries of the Jammu and Kashmir and Ladakh.

Features: As per this Act Jammu and Kashmir will have a legislative Assembly. Ladakh will not have any Legislative assembly and will be governed by lieutenant Governor only.

1. Leh and Kargil will not be the part of Jammu and Kashmir anymore and will be merged with Ladakh territory.
2. All the other districts, villages or states will remain inculcated in Jammu and Kashmir.
3. Allocation of Lok Sabha seats is also decided in this Act which specifies that five seats out six will be allotted to Jammu and Kashmir and one to Ladakh for the representation of Lok Sabha in the house of Parliament.
4. The Election process will be the same as prescribed in the delimitation Act.
5. Legislative Assembly of Jammu and Kashmir will last for 5 years
6. Article 239a will be enforceable on Jammu and Kashmir as Puducherry.
7. Legislative Assembly seats are also escalated from 107 to 111, 37 of Jammu and 46 of Kashmir and 4 of Ladakh.
8. SC/ST will get a reservation.
9. The High Court of both UTs will be the same.

7. RESULTS

COMPLETELY NEW UNFOLDED OPPORTUNITIES FOR J&K

Total revolution or transformation in the Jammu and Kashmir witnessed after the extermination of Article 370

1. More Development and investment

Earlier: curtailment inflicted on land transfer due to applicability of Article 370 and Article 35 A. There were obligations which stop industrial growth and setting up large industries. The areas of education, tourism, and health were completely ignored by the government. There was curtailment on educational growth or job facilities. Large industries were banned as they were not allowed to buy or sell land in the state.

Present Situation: elimination of such provisions will hike the private and industrial sectors. There will be magnification and prosperity among the state if industrialization enters. Revolutionary change can be seen by increasing trade and commerce, tourism, and educational opportunities. Local farmers can learn new cultivation techniques and women can learn to run small scale businesses at home which will boost up their confidence and enthusiasm.

2. Tourism

Earlier: Jammu and Kashmir is the heaven of India and there is the immense number of tourist who wishes to visit this place but the problem is the legal implications on the state due to Article 370 and Article 35A. This dematerializes the capability of the State to become topmost tourism ventures in the nation.

Present Situation: thickening the investment in the tourism of State which will enhance the financial condition and development. Film shootings, adventure sports and job opportunities will shoot up. Village or rural tourism will expand in peaceful circumstances.

3. Health and Education sector

Earlier: lack of educational opportunities degrade the future of youngsters. The limited scope of higher education is becoming a ban for the children studying in the Jammu and Kashmir. All across the nation higher education is at heights and nurturing the future of the youth if due to restricted provisions proficient professors or schools can be provided to the State. The health facilities are slandered in the State and for the major treatments residents move to other states. There is no private hospital in the Kashmir or the adjoining district.

Present Situation: PPP model strides the State towards a completely developed State by constructing private schools, colleges, and large private hospitals. This will surge the job opportunities for residents near doorsteps.

4. Basic Rights:

Earlier: No RTE or property rights were deliverable to the people of the State. Women were facing discrimination and many children were deprived of education facilities. Right to Education was not the crucial right in the Jammu and Kashmir. Women were no more authorized to property rights if she marries other men outside State. Women were not given any right to fight against domestic violence. Juvenile Justice or Rights were far away forgotten concept in the State.

Present situation: Women can reap the benefit of property rights irrespective of the places where they marry. Children can avail themselves of the Right to Education which provides free education to children from the age of 8 to 14 years. Juvenile Justice Act will apply to the residents of the State. All the acts that shield the dignity of the women and innocence of the children will be implemented in the valley as well.

5. Backward Groups:

Earlier: Discrimination with the SC/ST classes was common in the Jammu and Kashmir from the long back history. They are not allowed to contest elections and are mistreated by the permanent residents. They are not allowed to do any other job except as sweepers. They were not awarded with the proper promotion rights. Citizenship was not given to the people who were working in the sanitation commission. They were forcefully making them work in the sanitation department. Many backward classes are forced to resides in the forest areas.

Present Situation: protection to the rights of ST/SC will be availed. All the Acts that protect the human rights situation and dignity of the backward group residents will be now applicable. In the election, they will get the reservation to contest elections in regional Parliament. Working conditions and better job opportunities will be provided to them. Proper reservation rights will be provided in the field of education and employment.

6. Property Rights:

Earlier: Only permanent residents could avail of property or land ownership rights. Due to this reason, there was no hike in the prices of the land in the State as compared to other states. Non-residents cannot claim for any land or property in the valley.

Present Situation: land ownership will vary after the abrogation of Article 370. No one will be forced to part their land after this event of deleting the special status of Jammu and Kashmir. but landowners who wish to buy or sell land are free to do so.

7. WPRs

Earlier: no citizenship rights, property rights, or democratic rights applied to the refugees from West Pakistan.

Present Situation: All such rights like citizenship, property rights, or democratic rights will apply to WPRs.

8. Panchayati Raj

Earlier: panchayats do not have any right to decide or finalise anything without the concurrence or consent of the State Government. There were no elections held for the post of selecting members of panchayat.

Present Situation: Indian government reinstated the rights of the Panchayat and 73th and 74th Constitutional amendments will be operative on local bodies of the State. Direct funds will be allocated to the Panchayats that will enhance the development in the whole state including the rural areas or at the lowest level of democracy.

9. Corruption:

Earlier: lack of transparency and accountability in the working of the state government has led to corruption. RTI Act was also not applicable in Jammu and Kashmir and also the investigating authorities like CBI who act as watchdogs cannot invade in the matters of State without the permission of the State authorities.

Present Situation: the right to information has acted as the primary object to eradicate corruption from the grass-root level. Now people of Jammu and Kashmir will also be delighted with this fundamental right. Several acts that contribute to liquidate corruption will be operative in the State. Agencies or Investigation teams can invade the state matters of the Jammu and Kashmir which will reduce corruption to some dimension.

10. Modifications or policies:

Earlier: any new redrafting, alteration or revision in the provisions of the laws were not operative in Jammu and Kashmir until State government passes such amendment. Due to these reasons there were many Acts, bills, or legislation that were binding on other states that did not apply to Jammu and Kashmir.

Present Situation: all the enactments, bills, policies or amendments will be binding and implementable on the Jammu and Kashmir as other States of the nation. Many laws that will bring growth and development in the state are all applicable and operative. None of the sections of the state will be deprived of any fundamental right, directive principles, or human rights.

This new era of equality and diversity will change the dimension and vision of people to look at Jammu and Kashmir as separate Union Territories. There is a new hope of revolution, development, and financial stability. There will be only one official language, one flag, and one constitution. This decision has rubbed off the segment of discrimination, inequality, and separatism in India. All the faith of people for justice and human rights is gained back by such an epic decision. Jammu and Kashmir will be new hubs for education, job opportunities, tourism, industrialization, and employment. It will soon turn into a new world of hope and success for the people of Jammu and Kashmir.

The hope is that the fine combination of Muslims (Kashmiris - One Divine Wisdom) and Buddhists (Ladakh from Tibet University - Lhasa) gives us a unique culture and scope of advanced future enhancements to reshape the unstable country's situations in peaceful, enlightened and advanced development under the umbrella of Indian Constitution.

8. CONCLUSION

1. This decision was declared in such a short period that it was like flash news for the Nation. The people of Kashmir were in shock. No doubt it is for the development of peace and order in Jammu and Kashmir but the government should have taken such big move slowly and gradually.
2. They should have educated the locals about their decisions and the disadvantages of Article 370 as it hinders the growth and development of their State. The confidence of the people should be gained first.
3. The government has imposed the barriers for the Media which was a violation of Article 19 i.e. Right to speech and expression. This has hindered media to represent the true side of the story.
4. There are many concerns of the locals which should be resolved like high-speed internet facilities which are becoming a hurdle to get healthcare prerequisites and online education from their respective educational institutions.
5. The involvement of the media would have to Enlighten the issue in a positive direction when the locals have seen the love and support they would get from outside their state.
6. The Panchayati Raj is the new festival for Jammu and Kashmir but this will only strengthen the democracy at a lower level.
7. Jammu and Kashmir should not be given the status of Union territories instead should be made a single state.
8. Diplomats are only using this issue for their benefits. They belong to the organization which should only think of the nation's betterment and development instead of their revenge or profits.
9. Human Rights Commission has observed many people who being killed, orphans, widows, half widows, and many dead people have no trace of the record just because they were militants. Some compensation or jobs can be awarded to suffering families.
10. Women in both territories should be given proper self-defense training for their protection and safety. Women should empower and liberate in every dimension they want.
11. Young children should educate and acknowledge the latest facilities and technologies.
12. Militants should surrender and think about their own and their families bright and blossom future.
13. The revolution and development phase should be acknowledged by every local of both the territories by vocational training or camp.
14. Political parties should focus on the work they entered for in this organization rather than using citizens for their benefits and personal revenge.
15. Prime Minister Narendra Modi addressed through the show "app ki Baat" to the youth, giving them a message to maintain peace and order to avoid unavoidable circumstances.

PM addressed that "All parties are united on Kashmir. They sent a message to the world, to the separatists and reached out to the people of Kashmir." Equating it with the passing of the GST Bill in the assembly, PM Modi said, "It is the view of all of us, of 125 crore people from a Pradhan of a village to the Prime Minister, that if any life is lost in Kashmir, whether of any youth or any security man, that loss is ours".

The hope is that the fine combination of Muslims (Kashmiris - One Divine Wisdom) and Buddhists (Ladakh from Tibet University - Lhasa) gives us a unique culture and scope of advanced future enhancements to reshape the unstable country's situations in peaceful, enlightened and advanced development under the umbrella of Indian Constitution.

9. DISCLAIMER

In this dissertation as a research work title **Abrogation of Article 370 of the Indian constitution: An analytical study** is based on the available international research work published literature reviews, website articles, website URL, Books, articles and other facts and figures, as a post-graduate student I am nothing modified or change the reference matter or thesis matter in negative or misuses way and end the dissertation with positive conclusion under ethics for the peace and harmony for India and its international relation under our Indian constitution.

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