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ARTICLE 370 OF THE INDIAN CONSTITUTION

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ABSTRACT

Article 370 was a part of India's Constitution. It was an important rule that gave special status to a region of India called Jammu and Kashmir. This law came into place in 1949. Due to this law, Jammu and Kashmir could have its own set of rules and flags. They also had quite a bit of power to pass their own laws. This was different from other areas in India. The reason why this law was passed is partly because of the unique history of Jammu and Kashmir. This region became a part of India in 1947 after some big changes in the area and a conflict with Pakistan. Our article will give you details about why Article 370 was formed. What impact it had on the relationship between the region of Jammu and Kashmir and the governing body of India is also discussed. Also, it is explained how this piece of law was often a topic of debate about power sharing and unity in India. The article will inform you about the ways that this law was ended on August 5, 2019. On this day, the Indian government decided that Jammu and Kashmir will not have special status anymore. The region was also broken down into two smaller regions—these are now called Jammu & Kashmir and Ladakh. People are talking a lot about the decision to end Article 370. Some people are okay with it because they think it will bring more unity in India. But others are not happy with the way it was done. In this article, we also analyse how this change affects us—from how the government works, to what it means to the people living in the region, and how it might be a test for democratic values in the federal structure of India.

I. INTRODUCTION

Article 370 in India's Constitution gave special rights to Jammu and Kashmir. This place is in Northern India. It is also a part of Kashmir. Kashmir is a bigger place. This place has been a cause of arguments. The arguments are between India, Pakistan, and China. They have been arguing since 1947. Jammu and Kashmir had a special status. It got this status from Article 370. This was from 1952 to October 31, 2019. During this time, India was ruling Jammu and Kashmir. Article 370 let Jammu and Kashmir have their own constitution. It also let them have their own flag. Plus, they could rule themselves. A key thing about Article 370 was that the State Legislature had power. They could decide to follow Central laws. They could do this by making a similar law⁷⁸⁹. They did not have to automatically follow the Central laws. This was

for Jammu and Kashmir when it was a State. Article 370 was in Part XXI of the Constitution⁷⁹⁰. This part had laws that were temporary, transitional, and special. As the title shows, it was meant to be temporary. They thought it would last only until the State made up their own laws. It limited the power of Parliament over Jammu and Kashmir. The power of Parliament was also limited by Article 370. There are many laws in India. These laws apply to the whole country. But they do not apply to Jammu and Kashmir when it was a State. This Article let the State rule 94 out of 97 items on the Union List. Exceptions were military, foreign policy, finance, and communication matters. But the State had its own laws. So, the Parliament needed approval from the State government if it wanted to use any of these 94 items. The people of the State had different laws and rules about

⁷⁸⁹ The Instrument of Accession signed by Maharaja Hari Singh on 26 October 1947 allowed the Dominion of India to legislate in matters of defence, external affairs, and communications.

⁷⁹⁰ Article 370, Constitution of India, 1950. Originally a "temporary provision" under Part XXI dealing with transitional and special provisions.

citizenship, ownership, and Fundamental Rights. Therefore, an Indian citizen who wasn't a citizen of the State permanently could not buy any property in Jammu and Kashmir. Article 370 was invalidated in August 2019. So, Jammu and Kashmir no longer had a special status. This was a big and surprising change in the history of this region. Not many people from around the world disagreed with this move. Almost every country was careful not to speak badly about India's action in Kashmir. The exceptions were China and Pakistan.

Most countries didn't react strongly to India's decisions. They were more worried about how people in the valley might suffer, rather than the new legal changes. The area, called J&K, had its own rules, separate from the rest of India thanks to law 370. This law also meant that the Indian government was limited in what it could do in J&K⁷⁹¹. They needed to get the okay from the local government before making changes. But for more serious changes, the local government needed to give their clear approval. This all came about when India and Pakistan were created from what used to be British India in 1947. These rules, better known as the independence regulations or IOA, came into play then.

II. HISTORY

In 1947, when India became independent, the King of Jammu and Kashmir, Maharaja Hari Singh⁷⁹², wanted his state to stay independent from both India and Pakistan. But, after his declaration, Pakistan started secret fighting to free the Muslim-majority state from being ruled by Hindus. When Maharaja Hari Singh was unable to protect his state, he asked India for help. India said it would help if Kashmir joined India. Because of this, both sides signed a joining agreement. This said that the agreement could not change without Kashmir's permission, and it made sure that any more of India's Constitution could only apply in Kashmir if the

state agreed to it first. At the same time as the joining agreement, other big things happened in Jammu and Kashmir while India was writing its Constitution⁷⁹³. The ruler issued important announcements in 1948 and 1949⁷⁹⁴, a government that the people voted for was set up in Jammu and Kashmir, representatives from Jammu and Kashmir were part of the group making India's Constitution, and they talked about Article 370. The ruler's announcements in 1948 and 1949 specifically talked about the need for a group to write Jammu and Kashmir's own Constitution. For India to manage its links with the state of Jammu and Kashmir under its Constitution, these messages said that India's Constitution was likely to be sent around, and it would also apply to Jammu and Kashmir for a short time.

The State's Constitution needed to be created. It was set to stand strong over any other law when it took effect. A rule, called Article 370, started on January 26th, 1950. This was a temporary setup for how India and the State of Jammu and Kashmir would connect at the constitutional level. The phrase "temporary nature" just means this rule will guide the relationship between the Central and Jammu and Kashmir. That is until Jammu and Kashmir's own Constitutional group accepts their Constitution. The Constitution of Jammu and Kashmir was accepted on November 17, 1956. It began to work on January 26, 1957. This state was unique. It was the only state in the union with a special position. It had its own Constitution different from other Indian States. Meanwhile, Article 370 and its parts kept – guiding the interaction between the state and the centre. It's important to note that Article 370 did not create the Constituent Assembly of Jammu and Kashmir. Instead, it recognises the Assembly's importance. It shows the people of Kashmir's wish to have a unique position.

⁷⁹¹ Presidential Order C.O. 48 (1950) and C.O. 10 (1954) extended several provisions of the Indian Constitution to Jammu and Kashmir, including Article 35A.

⁷⁹² Instrument of Accession, signed by Maharaja Hari Singh on 26 October 1947, allowed Jammu and Kashmir to accede to India on three subjects: defence, external affairs, and communications.

⁷⁹³ Noorani, A.G., *Article 370: A Constitutional History of Jammu and Kashmir*, Oxford University Press, 2011.

⁷⁹⁴ The Constituent Assembly of India debated Article 370 on 17 October 1949, and it was adopted under Part XXI of the Constitution as a temporary provision.

III. SALIENT FEATURES OF ARTICLE 370 OF INDIAN CONSTITUTION

1. Jammu and Kashmir has a unique flag and its own set of laws.

2. Only the head of the state, not the President, can take charge during emergencies. The Indian government can't announce a money crisis in this state under law Article 360. Only a country-wide emergency due to war or threats from other countries can be called.

3. This state also has its own criminal law, called the Ranbir Penal Code.

4. People living in the state have the privilege of dual citizenship.

5. While lawmakers in other Indian states serve for 5 years, in Kashmir, they serve for 6 years.

IV. ABROGATION OF ARTICLE 370 – AUGUST 2019

On August 5, 2019, a big change came to India⁷⁹⁵. This was when Article 370 got removed. This Article had given the state of Jammu and Kashmir a unique position within India. Under Article 370, Jammu and Kashmir had its own constitution, and the Indian Parliament had limited control there. But the Government of India decided to change this. The Bhartiya Janata Party (BJP), who were in power, made this change. They did this by using a Presidential Order. This adjusted another Article, which meant they could view the Assembly of Jammu and Kashmir differently. Because of this, the Indian Parliament was able to act in place of the state. They could remove Article 370 without needing any approval from the state. With the removal of Article 370, the state was split into two parts. Each became what is known as a Union Territory. These are Jammu & Kashmir, which has a legislature, and Ladakh, which does not. During this time, people in the state experienced some restrictions. The government put in tight security, stopped communications, and detained some political leaders. People had different reactions to these changes. Many saw it as helping India to be more united. They liked how it brought

uniformity across the nation. But others thought it went against democratic principles. Three years later, the Supreme Court of India talked about this change. They agreed it was constitutional, meaning it was in line with the laws of the country. They said that the President had the right to remove Article 370, as it was only a temporary rule. This gave the legal backup to the change that happened in 2019.

V. RELATED CASE LAWS

In the 2017 case, Kumari Vijayalakshmi Jha against the Government of India⁷⁹⁶, the Delhi High Court rejected the appeal. The court suggested that Article 370 was temporary and keeping it would be against the constitution. However, in April 2018, the Supreme Court declared that Article 370, though known as a temporary part in the constitution's Part XXI, wasn't a temporary rule. The Supreme Court further discussed the 1959 case of Prem Nath Kaul against Jammu and Kashmir state. The court said that one must look at the aim and rules of Article 370 to understand its influence. It's linked to the remarkable constitution relationship between the State and India. The basic suggestion of this temporary rule under the Article is that the state's Constituent Assembly will decide the state's relationship with the country.

Yet, in the 1986 case, Sampat Prakash against Jammu and Kashmir State⁷⁹⁷, a different group of the Supreme Court found that Article 370 could still apply. This was even though Jammu and Kashmir Constituent Assembly was no longer there. Also, the Supreme Court refused to view Article 370 as an interim rule. The court with five judges concluded that Article 370 is permanent as it was never restricted from applying. They stated if it becomes a constant part of our constitution then it wouldn't be

⁷⁹⁶ Kumari Vijayalakshmi Jha vs. Union of India & Anr, Writ Petition (Civil) No. 9300/2015, Delhi High Court (Bench: Chief Justice G. Rohini & Justice Jayant Nath), judgment pronounced on 11 April 2017 — petitioner contended that Article 370 was a temporary provision which ceased to operate after the dissolution of the Jammu & Kashmir Constituent Assembly in January 1957; the High Court rejected this argument and dismissed the petition.

⁷⁹⁷ Sampat Prakash v. State of Jammu & Kashmir, AIR 1970 SC 1118 — The Court ruled that Article 370 had not ceased to be operative despite the dissolution of the state's Constituent Assembly in 1957, reaffirming its continuing status.

⁷⁹⁵ Chatterji, Angana P., et al., "The Impact of the Abrogation of Article 370 on Kashmir," *Economic and Political Weekly*, Vol. 54, Issue 35, 2019.

changed and would be part of the basic frame. Article 368 suggested that Parliament can change any constitution rule, but it can't change or dishonour the constitution. There were many arguments about Article 370. Some believed that this Article was short-term and no longer legal or necessary. On the other hand, some supported the Government of India's continuing use of Article 370. In Sampat's case, the Supreme Court explained this rule by bringing Article 21⁷⁹⁸ as an illustration. The court said that the term "right to live" in Article 21 mentioned the right to live with self-respect. It also gave the privacy rights given by this article.

The word "temporary" in Part XXI's name wasn't meant to hint that it would only last for a short time. In fact, any short-term rule could be called 'special'. Therefore, in 1962, the 13th changes to the Constitution added the word "Special" to that part's name. Also, Sardar Vallabhai Patel created a specific rule within Article 370 for Jammu and Kashmir. This rule took the current relations between the central and state authorities into account. It was also observed that the reserves for the Scheduled Tribes (ST), Schedule Cast (SC), and State Assemblies in the Constitution were true temporary provisions. Originally, these reserves were planned to last only a decade. In the past, people thought of English as a language to bridge gaps in official jobs. Because of this, Article 370 of the Indian Constitution is a permanent rule.

VI. CRITICISMS AND DEBATES ON ARTICLE 370 OF THE INDIAN CONSTITUTION

People have argued a lot about Article 370 in the Indian Constitution. Some people said it made Jammu and Kashmir separate from the rest of India. They noted that it led to a feeling of being different and supported ideas of separating further. This law also stopped people from other parts of India from buying land or living in this region. Some thought this was unfair and stopped the area from growing and attracting investment. In addition, laws about women's rights and fighting corruption didn't

automatically apply in Jammu and Kashmir. This led to claims that it stopped society from improving and being held accountable. Other people defended Article 370⁷⁹⁹. They said it acknowledged the unique history and politics of Jammu and Kashmir joining India in 1947. The article was viewed as a protection for the region's culture, independence and specific needs. Those against the 2019⁸⁰⁰ decision to end Article 370 also pointed out that it happened without the people or their chosen leaders saying yes. This happened because the President was ruling at the time. People worried about democracy going backwards and Indian unification getting weaker. Human rights groups and civilians also criticised the lockdown, cutting off communication and arresting people after Article 370 was ended. They said it was too much and oppressive. As a result, the arguments about Article 370 show the bigger disagreement between bringing the country together and letting regions be independent. It also shows the struggle to balance unity and diversity in a country like India, where it operates under a federal democracy.

WHY ARTICLE 370 GOT CRITICIZED

1. People Think it Promotes Separation:

Some people think Article 370 made Jammu & Kashmir feel different from the rest of India. They say it stoked feelings of independence and made national unity weaker.

2. It Didn't Help Progress:

A lot of laws that would help people and make a lot of improvement didn't apply automatically in J&K. Critics say this restricted the region's financial growth and social progress.

3. It Was Unfair:

Laws about treating men and women equally, everyone having a right to study, and giving extra help to people who need it were not put in place quickly or at all in J&K. It created worries about people not being treated the same.

4. It Stopped Outside Investment and Merging:

⁷⁹⁸ Article 21, Constitution of India, 1950 — "No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁷⁹⁹ Rajeev Dhavan, "Article 370 and the Constitution: Between Law and Politics," *The Hindu*, August 7, 2019.

⁸⁰⁰ Suhas Palshikar, "After Article 370: Federalism and Its Future," *Indian Express*, August 9, 2019.

People not from J&K couldn't buy land or stay long term there. Critics think this discouraged money coming from outside and kept the state lonely, both economically and socially.

5. It Broke Constitutional Unity:

Some big legal minds and politicians, like Dr. B.R. Ambedkar, didn't like one state having special status. They said it went against the belief of "One Country, One Constitution".

DISCUSSIONS IN FAVOUR FOR ARTICLE 370

1. Historical Promise:

People who back Article 370 say that it was part of a political deal made when J&K joined India in 1947. They believe it was needed due to J&K's special circumstances⁸⁰¹.

2. Safeguarded Cultural Identity:

Article 370 helped look after the region's cultural and religious identity. It mainly protected the Muslim-majority population from outside influences or changes in their community.

3. Legal and Fairness Worries:

People criticised the removal of Article 370 for being unfair. This is because it happened while the state's government was run by the President, and people weren't asked for their agreement⁸⁰².

4. Danger to Shared Government:

Some experts and leaders from other parties said that removing Article 370 without asking people first could risk damaging shared government in India.

VII. BRIEF OF REVOCATION OF ARTICLE 370 WITH AN AMENDMENT TO ARTICLE 367

In simple words, Article 370 of the Indian Constitution lost its power on August 5, 2019⁸⁰³. The Indian government decided to change the laws of Jammu and Kashmir and took away its special rights. Article 370 was like a bridge clause in the Constitution for Jammu and Kashmir. This meant that Jammu and Kashmir first followed Articles 1 and 370, based on

370(1)(c). Then, Article 370(1)(d) allowed the President of India, with Jammu and Kashmir's consent, to add more rules. Article 370 could stop only if the region's own Assembly suggested this change to the President. This Article was only supposed to be there until Jammu and Kashmir accepted its own Constitution. But their Assembly dissolved in 1957 before they could recommend any changes to Article 370. Because of these events, the Supreme Court of India declared that Article 370 is a permanent part of the Indian Constitution. To fix this, the Union Government devised a smart legal strategy. They used the President's powers in Article 370(1) to change Article 370(3) indirectly through another clause – Article 367⁸⁰⁴. They added a new subclause 4 in the Constitution's Article 367⁸⁰⁵. This subclause says the term "Constituent Assembly" in Article 370(3) should be read as "the State's Legislative Assembly". With this change, the Jammu and Kashmir Assembly had the power to request the removal of Article 370. But another problem came up because the region was under Presidential Rule. So, the Indian Parliament made the request as per the updated Article 370(3). Here, the Home Minister of India proposed to the President the removal of Article 370. So, the President had the right to announce Article 370 as no longer valid. As a result, Article 370 is now not active under the Indian Constitution.

VIII. CONCLUSION

Jammu and Kashmir is a part of India. Because of its unique history and India's federal structure, it had some self-rule under a law called Article 370. This law was about self-rule, not about separation from India. In 2018, India's top court said Article 370 was no longer temporary. This was because the local assembly that could have changed it no longer existed. The Indian government called Article 370 "not working" to get rid of any legal

⁸⁰¹ A.G. Noorani, *Article 370: A Constitutional History of Jammu and Kashmir*, Oxford University Press, 2011.

⁸⁰² Suhas Palshikar, "After Article 370: Federalism and Its Future," *Indian Express*, August 9, 2019.

⁸⁰³ The Constitution (Application to Jammu and Kashmir) Order, 2019 [C.O. 272], issued by the President of India under Article 370(1), dated 5 August 2019.

⁸⁰⁴ Ministry of Law and Justice, Government of India, Notification GSR 551(E), Amendment to Article 367, redefining "Constituent Assembly of Jammu and Kashmir" as "Legislative Assembly."

⁸⁰⁵ Lok Sabha Debates, 5 August 2019 — Statement by Home Minister Amit Shah outlining the legal procedure for the revocation using Article 367.

problems. But, it is still in the Indian constitution. Jammu and Kashmir is seen as very special to secular India, both in terms of its location and symbolism. Both the people and officials of Jammu and Kashmir wanted Pakistan to be more secular than India. When Jammu and Kashmir lost its special status, things changed. This brought a year without fast internet, a change in regional politics and administration, focusing more on controlling insurgency and terrorism, new resident rules, and talk of becoming a state again. According to data from the tourism agency of Kashmir, in March 2022 (after Article 370 was lifted), tourist numbers hit a new high of 180,000. This was the highest in ten years. The new thinking will have to show the majority of people in Jammu and Kashmir that being closer to India will give them more rights and opportunities, more freedom and space than the alternatives put forward by other political parties or separatists. Going forward, the people of Jammu and Kashmir should trust India. India should bring development that helps all parts of society and give Jammu and Kashmir statehood again as promised. The issue of land between two countries complicates the history and situation in Jammu and Kashmir. Article 370 was meant to be temporary, but it made people in Jammu and Kashmir feel different from the rest of India. Taking away this article was necessary, as it brings fair treatment, equality, progress, empowerment, and removes some laws. At last, Jammu and Kashmir got its freedom, not from India, but from Article 370.

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