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“Dharma is to protect the Needy”

Research Article on

ABROGATION OF ARTICLE 370: AN ANALYSIS

- Riddhi Mundhra

STUDENT, SYMBIOSIS LAW SCHOOL, HYDERABAD

ABSTRACT:

Article 370 was one of the most unique and important provisions of the Constitution of India. The relationship of the Indian Union with the state of Jammu and Kashmir was governed under the said article. The article also provided for certain special provisions to the state of Jammu and Kashmir which were not provided to any of the other states of India. The article provides for its own repeal but only on the recommendation of the constituent assembly of “Jammu and Kashmir”. But with the non-existence of such constituent assembly, the recommendation could not be given on “Article 370” for it to become non-operative. Therefore, to understand the abrogation of Article 370 done recently by the Government of India, the paper aims to analyse certain aspects with respect to the said article.

The paper has been divided into five major aspects. The first part will deal with the introduction and the historical background of the article. The second part aims to deal with the process that has been followed by the Government to make the said article inoperative and analysis of the same. The third part tries to find out the ways in which the inoperativeness of the article has affected the centre and the state relationship. The fourth part analyses the situation of the state and the condition of the people of the state after a year of its repeal. The last part concludes the paper and tries to give certain suggestions.

CHAPTER-1

INTRODUCTION:

At the time of independence, all the princely states that existed in India were given the option to either join India or Pakistan or to remain as an independent nation¹. Initially, the then ruler of “Jammu and Kashmir”, Raja Hari Singh, decided to remain independent. But the independence of the state was soon invaded by the tribes who were later joined by the Pakistani Army². Therefore, the help was asked by the ruler from India but no troops could be deployed as the state was not the part of Indian Union. Accordingly, the ruler signed the “instrument of accession” with the Indian Union which was accepted by Lord Mountbatten as the “Governor-General of India”³.

“Article 370” was inserted in the “Constitution of India” to provide the state of “Jammu and Kashmir” autonomy and to comply with the terms and conditions of the instrument of accession⁴. The government of India also had to maintain the state’s regional and cultural identity⁵. Hence, under part XXI of the Constitution dealing with “Temporary, Transitional and Special Provisions”, “Article 370” provided the special status to the state⁶. All the advantages of an independent state were assured without relinquishing the profit and recognition of being a part of the bigger nation⁷. As per the provision of this article, except for the matters dealing with “foreign affairs”, “communication”, “finance” and “defence”, the parliament cannot enforce any law in the state without the consultation of state government⁸.

¹ Faizan Mustafa, *Explained: What are Articles 370 and 35A*, THE INDIAN EXPRESS, (Aug. 6, 2019, 11:00AM), [What is “Article 370” and 35A in “Jammu and Kashmir”: All you Need to Know about Article 35A and “Article 370” of Indian Constitution \(indianexpress.com\)](https://www.indianexpress.com/article/india/article-370-and-35a-in-jammu-and-kashmir-all-you-need-to-know-about-article-35a-and-article-370-of-indian-constitution-6644444/).

² Adarsh Sein Anand, *Kashmir’s Accession to India*, 6 Jour. of the Ind. Law Inst., (1964), [KASHMIR’S ACCESSION TO INDIA \(jstor.org\)](https://www.jstor.org/stable/2324444).

³ Id.

⁴ “Article 370”: *A Short History of Kashmir’s Accession to India*, ECONOMIC AND POLITICAL WEEKLY, (8:10 PM, 09-06-2021), [“Article 370”: A Short History of Kashmir’s Accession to India | Economic and Political Weekly \(epw.in\)](https://www.epw.in/article/370-a-short-history-of-kashmir-s-accession-to-india).

⁵ S.P. Sathe, “Article 370”: *Constitutional Obligations and Compulsions*, 25 ECO. & POL. WEEK., (1990), [“Article 370”: Constitutional Obligations and Compulsions \(jstor.org\)](https://www.jstor.org/stable/2324444).

⁶ *Government removes “Article 370” and article 35A: All you need to know*, THE ECONOMIC TIMES, (Aug. 5, 2019, 11:09AM), [Government removes “Article 370” and 35A: All you need to know - What is “Article 370”? | The Economic Times \(indiatimes.com\)](https://www.indiatimes.com/news/india/government-removes-article-370-and-35a-all-you-need-to-know-what-is-article-370-?utm_source=indiatimes.com).

⁷ Supra, 5.

⁸ Id.

The article provided for the following provisions⁹:

- Only such matters mentioned in the list I and II of the 7th Schedule can be legislated by the union government which must be in correspondence with the provisions of the instrument of accession signed by the king of Kashmir. The subjects mentioned in the Schedule can be identified by the President of India but such order must be made with the consultation of the state government of “Jammu and Kashmir”.
- The legislative power of the Parliament can be extended by the President to include the subjects not mentioned in the “instrument of accession” but not without the consultation of the state government.
- The articles of the “Constitution of India”, except article 1, can be applied to the state of Kashmir only if it within the legislative powers of the Parliament and the consultation of the state government.

The article provides for its own repeal but only on the recommendation of the constituent assembly of “Jammu and Kashmir”¹⁰. But with the non-existence of such constituent assembly, the recommendation could not be given on “Article 370” for it to become non-operative¹¹.

But recently, the Government of India has repealed “Article 370” and the special status of the state has also been revoked¹². The major reason that was stated by the Government of India for the said action was that to bring the state of “J&K” at par with all the other states of the Indian Union¹³. Therefore, the paper aims to discuss the provisions of “Article 370” and the power of the president to revoke the special status of the state. Furthermore, it will also discuss the situation of the state after “Article 370” has been revoked.

RESEARCH PROBLEM:

“Article 370” of the “Constitution of India” has been governing the relationship between the state of “Jammu and Kashmir” and the centre since the time of the accession of Kashmir to the Indian Union. The article was inserted as the temporary provision in the Constitution but the steps were not taken for the removal of the said article even though the

⁹ INDIA CONST. art. 370.

¹⁰ Id.

¹¹ Supra, 5.

¹² RSTV: *The Big Picture- “Article 370”- Abrogation and Implications*, RSTV, (8:10 PM, 09-06-2021), [RSTV: THE BIG PICTURE- “ARTICLE 370”- ABROGATION AND IMPLICATIONS - INSIGHTSIAS \(insightsonindia.com\)](https://www.insightsonindia.com/insights/the-big-picture-article-370-abrogation-and-implications/)

¹³ “Article 370: What happened with Kashmir and why it matters”, BBC, (8:10 PM, 09-06-2021), <https://www.bbc.com/news/world-asia-india-49234708>”.

article provided for the procedure of its revocation. According to the article, the article could only have been repealed on the recommendation of the constituent assembly of “Jammu and Kashmir”. But the constituent assembly of the state ceased to exist. Hence, the procedure for laid down under “Article 370” could not be followed. Thereafter, in 2019, through presidential order, the article was abrogated. Therefore, the question that the paper will deal with is whether the abrogation of “Article 370” through presidential order is constitutional or not?

As mentioned above, “Article 370” also governed the relationship between “the centre and the state”. But with its abrogation, the same has also been affected. Moreover, the status of the state has been bifurcated into two union territories of Jammu & Kashmir and Ladakh. Therefore, the other important the paper will focus on is how has the abrogation affected the relationship of centre and state.

The main reason for the insertion of “Article 370” was to preserve the unique cultural and regional identity of the state. “Article 370” also allowed the state to formulate its own constitution. There was some autonomy that was provided to the people of the state. But with the abrogation of the article, the constitution of the state has also ceased to exist. Therefore, another important question that this article will answer is how has this abrogation affected the lives of the people who were governed by their own constitution and enjoyed the autonomy?

HYPOTHESIS:

Hypothesis 1: “Article 370”’s abrogation has made a drastic change in the relationship that was shared between the state of “Jammu and Kashmir” and the centre.

Hypothesis 2: Abrogation of “Article 370” has not only affected the centre and state relation but with the removal of autonomy enjoyed by the state, it will also have an impact on the cultural identity and lives of the people of the state.

Hypothesis 3: Removal of “Article 370” will remove the difference between citizens of the people of “Jammu and Kashmir” and citizens of the other states of the country.

RESEARCH QUESTION:

The paper aims to answer the following research questions:

- a) How has “Article 370” impacted the centre-state relation?
- b) What is the constitutional validity of the presidential order that has been used to revoke “Article 370”?

- c) What is the impact on the people of the state after the revocation of the “Article 370”?

RESEARCH OBJECTIVE:

The main objective of this research is to analyse the situation of the state of “Jammu and Kashmir” after the removal of the special status with the abrogation of “Article 370”. The study also tries to compare the situation of the state before and after the removal of the article. The study will also try to find the purpose, reasons and need behind the abrogation of “Article 370”. Furthermore, the focus has also been laid upon finding the constitutionality of the presidential order through which the article has been abrogated. The article was also the governing provision of the relationship between “the state and the centre”. Therefore, the objective of the study has also been set upon to find out the impact that the abrogation has had on the centre-state relation.

RESEARCH METHODOLOGY:

Doctrinal Legal Methodology will be used to carry out this research. This method of legal research, on a particular issue, revolves around the question of “what is the law?”. It, thus, focuses on statutes, case-laws and other legal sources. The emphasis given by the researcher, on this methodology, is also on the doctrine, concepts and the substantive law on that particular issue. Thus, contributing to the “continuity, consistency and certainty of the law”.

This research method is preferred to carry out the research on the topic of “Abrogation of “Article 370”” because this will help the researcher in systematically and critically analysing the constitutional provisions and other statutory provisions, in any, involved. It also deals with the development and application of the law. It becomes important to know the development and history of “Article 370” before analysing the same because it has been put under Part XXI of the Constitution which deals with “Temporary, Transitional and Special Provisions”. Furthermore, this methodology will help in giving a better understanding of the abrogation of “Article 370” and the constitutionality of presidential order passed to remove “Article 370” of the “Constitution of India”. After analysing the same, this method will help also the researcher in occurring with the logical reasoning behind the said move.

SCOPE AND LIMITATION OF THE STUDY:

Since the abrogation of “Article 370” has been done through a presidential order, therefore, the study will try to analyse the constitutionality of the same. The research work will also try to find out the scope of the presidential order to abrogate “Article 370”. Furthermore,

the research also aims to analyse the situation of the state before and after the abrogation of “Article 370”. It also deals with the effect that the abrogation has had on the centre-state relation. But the research work does not aim to question the rightness of the abrogation of “Article 370” or the positive/ negative aspects of the abrogation. It does not even aim at questioning the constitutionality of the removal of “Article 370”. It will be limited to analysing its impact on the lives of the people as well on the centre-state relation. The paper will not focus upon analysing the correctness of the decision of abrogating “Article 370”.

The major limitation of the study is that the findings will be mostly based on the published articles or the newspapers reports or the opinion of the experts. And since the doctrinal research methodology is being followed, therefore, the finding is not empirically tested. Thus, it will suffer from the limitations of the doctrinal research study.

CHAPTER-2

PRESIDENTIAL ORDER:

The procedure for the removal of “Article 370” has been provided under the article itself. The said article can be made inoperative by the President through public notification with certain “exceptions” and “modifications”, but the same has to be done in consultation with the Constituent Assembly of Jammu & Kashmir¹⁴. That is, it can be said that it was made mandatory to take recommendation from the constituent assembly of the same. The major problem that now arose in the removal of “Article 370” was that the Constituent Assembly of the state of “J&K” ceased to function in the year 1957¹⁵. Due to this non-existence of the constituent assembly, there occurred another obstacle, i.e., with respect to the nature of the article. It was also held in various cases by the Supreme Court of India that the non-existence of the State’s Constituent Assembly may result in non-revocation of the article¹⁶. The power is also given to the President of India to make certain “modifications” and “exceptions” in some other article when they are being applied to the state of “J&K”¹⁷.

¹⁴ “INDIA CONST. art. 370(3)”.

¹⁵ “Gautam Bhatia, *The Article 370 Amendments on Jammu & Kashmir: Key Legal Issues*, BLOOMBERG QUINT, (6:00 PM, 09-06-2021), <https://www.bloombergquint.com/opinion/the-article-370-amendments-key-legal-issues>”.

¹⁶ Sampat Prakash v. State of “J&K”, 1969 AIR 1153.

¹⁷ INDIA CONST. art. 370(1)(d). Also, Pranal Lakhanpal v. President of India & ORs., 1961 AIR 1519.

PRESIDENT'S RULE:

President's rule can be imposed under the "Constitution of India" on the ground of "breakdown of Constitutional Machinery"¹⁸ during which the direct control of the centre is established over the state through the Governor, who has been appointed by the centre¹⁹. But the procedure that is being followed while imposing the President's rule in "J&K" is different from other states mainly because the state has its separate Constitution which lays down separate provisions.

Under the Constitution of "J&K", if there is a failure in the functioning of the Government, it is compulsory to impose Governor's rule for six months²⁰ where all the legislative powers shall be vested with the Governor of the state. If the Governor's rule is not revoked for six months, then only the President's Rule can be imposed under Article 356 in the State of "J&K"²¹.

Accordingly, in 2018, when the President's rule was imposed in the state of "J&K" after 22 years, the Governor's rule was imposed²². Thereafter, after the six months from it, the Legislative Assembly of the state was dissolved by the governor which was then followed by the imposition of President's rule²³.

PROCEDURE FOLLOWED FOR THE REMOVAL OF "ARTICLE 370":

Now, the question that arises is that since the Constituent Assembly of the state ceased to exist, then how did the government make "Article 370" inoperative?

The period when the article was made inoperative, the state of "J&K" was under the "President's rule". The power under "Article 370(1)(d)" was used to make "modification" in "Article 367"²⁴. A new "clause (4)(d)" was added to article 367 which stated that "Constituent

¹⁸ INDIA CONST. art. 356.

¹⁹ "How President's Rule in "Jammu and Kashmir" differs from That in Other States, THE WIRE, (6:00 PM, 09-06-2021), <https://thewire.in/government/presidents-rule-jammu-kashmir-different>".

²⁰ J&K CONST. art. 92.

²¹ "After Governor's rule, President's rule comes into force in "Jammu and Kashmir", THE ECONOMIC TIMES, (Dec. 20, 2018, 10.28 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/after-governors-rule-presidents-rule-comes-into-force-in-jammu-and-kashmir/articleshow/67168758.cms?from=mdr>".

²² President's rule imposed in "Jammu and Kashmir" after 22 years, INDIA TODAY, (Dec. 19, 2018, <https://www.indiatoday.in/education-today/gk-current-affairs/story/president-rule-jammu-kashmir-22-years-6-months-governor-rule-1412710-2018-12-19>).

²³ Id.

²⁴ "Neither Abrogated nor Removed: The Ploy Behind Centre's Article 370 Move, THE WIRE, (8:10 PM, 09-06-2021), <https://thewire.in/rights/neither-abrogated-nor-removed-the-ploy-behind-centres-article-370-move>"

Assembly in “Article 370(3)” would mean Legislative Assembly of the state”²⁵. Therefore, in this way, the problem of the non-existence of the Constituent Assembly of the state of “Jammu and Kashmir” was solved. It, thus, also became possible for the assembly of “J&K” to recommend the removal of “Article 370” which the Constituent Assembly failed to do during its existence²⁶.

Under the new interpretation, the President could abrogate the article on the recommendation of the Assembly of the state. But since, “J&K” was under the President’s rule, therefore, it did not have a Legislative Assembly during the time of removal of the Article²⁷. Accordingly, the Ministry of Home Affairs passed a resolution to this effect for the removal of article. Thus, it becomes crystal clear that “Article 370” was not amended, rather, article 367 was modified to make it applicable to “Article 370”.

ANALYSIS:

The process used to make “Article 370” inoperative may be “democratically” and “constitutionally”²⁸ correct but there definitely exist some major problems with the Presidential Order passed for the same. Some of the problems with respect to this are:

1. The requirement as per the new modification was to obtain the “concurrence” of the State Assembly of “J&K”. Since, the state was under the Presidential rule, therefore, the concurrence was not taken from the “elected Legislative Assembly”, but from the governor of the state²⁹, who essentially is considered to be the Central Government’s representative in the state. Thus, it can rightly be interpreted to mean that to amend the constitution, the Central Government has taken its own consent³⁰.
2. The Presidential Order even though amends Article 367 but also amends the provisions of “Article 370” “indirectly”³¹ and it has been held by the Supreme Court in various

²⁵ Jeet H Shroff, “four reasons why the Presidential Order on Kashmir is not kosher, yet”, THE HINDU BUSINESS LINE, (6:05 PM, 09-06-2021), <https://www.thehindubusinessline.com/opinion/three-reasons-why-the-presidential-order-on-kashmir-is-not-kosher-yet/article28836245.ece>”

²⁶ Id.

²⁷ Id.

²⁸ Purna Katiyar, “Article 370” had led “J&K” to psychological isolation: Union Minister Jitendra Singh, THE ECONOMIC TIMES, (Aug. 10 2019, 11:02 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/article-370-had-led-to-psychological-isolation-union-minister-jitendra-singh/articleshow/70621990.cms?from=mdr>

²⁹ “Gautam Bhatia, Presidential Order amending Article 367 removed possible roadblocks in path of “Article 370” revocation, FIRST POST, (8:10 PM, 09-06-2021), <https://www.firstpost.com/india/presidential-order-amending-article-367-removed-possible-roadblocks-in-path-of-article-370-revocation-7134101.html>”.

³⁰ Supra, 24.

³¹ Id.

occasions that “what cannot be done directly, cannot also be done indirectly”³². “Article 370(1)(c)”³³ makes it clear that the amending power of the President doesn’t extend to article 1 and “Article 370”, thus, referring to “other provisions” of the “Constitution of India”³⁴.

3. Another major question that can cause problems for the Presidential order is that “Whether Article 367(4)(d), i.e., the newly added clause too article 367, can override the original provision of Article 370(3) or not?”³⁵. This is mainly because the Constituent Assembly of the state did not make any recommendation for abrogation of the said article and therefore, ““Article 370” has in turn taken the shape to mean the permanent provision of the Constitution”³⁶.

Therefore, for the above-mentioned reasons, the Presidential order faces serious “constitutional problems” which also forms the statutory resolution’s and the Reorganisation Bill’s basis.

REORGANISATION OF STATE OF “JAMMU AND KASHMIR”:

The state of “J&K” has been reorganised and bifurcated into two Union Territories, i.e., Union Territory of “J&K” and Ladakh³⁷. During the time when President’s rule is imposed, along with state government and assembly, few other provisions of the constitution id also suspended. One such provision is the article empowering the Parliament to alter the boundaries of any states³⁸. Under article 3, the views of the State Legislature must be taken before altering the boundaries of the state even though the view is not binding. However, for the state of “J&K”, under the constitution of the state, consent of the State Legislature of “J&K” is must while altering the boundaries or resizing or renaming the state³⁹. The reorganisation of the state has been constitutionally and legally possible because the state was under the “President’s rule” when the “Article 370” was declared as “inoperative”⁴⁰. The duty of the State Legislature has

³² State of Bihar v. Kameshwar Singh, 1952 1 SCR 889.

³³ “Notwithstanding anything in this Constitution, he provisions of Article 1 and of this article shall apply in relation to that State”.

³⁴ INDIA CONST. art. 370(1)(d).

³⁵ Supra, 24.

³⁶ Supra, 15.

³⁷ “Central rule to continue in Jammu and Kashmir through Lieutenant Governor, THE HINDU BUSINESS LINE, (Aug. 9, 2019, 12:30 PM), <https://www.thehindubusinessline.com/news/central-rule-to-continue-in-jammu-and-kashmir-through-lietenant-governor/article29838916.ece>”.

³⁸ INDIA CONST. art. 3.

³⁹ “K. Venkataramanan, Under the cover of Presidents’s rule, THE HINDU, (Aug. 28, 2019, 10:48AM), <https://www.thehindu.com/opinion/lead/under-the-cover-of-presidents-rule/article29254040.ece>”.

⁴⁰ Id.

been performed by the Parliament itself under the name of “President’s Rule”. Even though the power has been vested with the President under article 356 of the Constitution, but it does not vest the President or the Parliament with the “blanket power”⁴¹. There must be certain limitation in exercise of the same.

CHAPTER-3

CENTRE-STATE RELATION

The special status was provided to the state of “J&K” under “Article 370” of the “Constitution of India”. The article was also the governing article of the “relationship between the centre and state”. Originally, the centre only had the power with respect to the matters related to “Defence”, “Communication” and “External Affairs”. But gradually, the centre’s application over the state of “J&K” extended to include various other subjects and provisions⁴². Therefore, an attempt has been made by the researcher to find out the changes that have occurred in the centre-state relationship after the inoperativeness of “Article 370”.

WHEN “ARTICLE 370” WAS INOPERATIVE:

- The state was the only state of the Indian Union which had separate Constitution and where the citizens are provided with the “dual citizenship”⁴³. Otherwise, in rest of the country, “single citizenship” is provided.
- Under article 3 of the “Constitution of India”, the Parliament has been vested with the power to alter, rename or resize boundaries of the state. But in the case of “J&K”, to do the same, consent of the State Legislature is a must.
- The powers under the Indian Constitution have been divided between “the centre and the state” through three lists, namely, “The Union List”, “The State List” and “The Concurrent List”⁴⁴. Further, the centre has also been empowered with the residuary power. However, this is not the same with “J&K”, the only state in India which “stands-

⁴¹ Id.

⁴² Pankaj Singh Katal, *Centre State Relations in Context of “Jammu and Kashmir”*, LEGAL SERVICE INDIA, (6:10 PM, 09-06-2021), <http://www.legalserviceindia.com/legal/article-4653-centre-state-relations-in-context-of-jammu-and-kashmir.html>.

⁴³ Kamaljit Kaur Sandhu, *No special status, no separate constitution: “J&K” before and after “Article 370”*, INDIA TODAY, (Aug. 6 2019, 1:38PM), <https://www.indiatoday.in/india/story/no-special-status-no-separate-constitution-jammu-and-kashmir-before-and-after-article-370-1577601-2019-08-05>.

⁴⁴ INDIA CONST. art. 246.

out” of this scheme of the provision where the residuary power has been vested with the state and not the centre⁴⁵.

Though the Parliament is competent to make laws on the subjects mentioned in the Union List for the state of “J&K”, but there are certain exceptions⁴⁶. Some of them are:

- a) Non-applicability of the “Centre Bureau of Intelligence and Investigation”.
- b) Laws related to the acquisition and requisition legislated by the Parliament shall not be applicable.
- c) No power of the parliament to formulate laws in regards to the “co-operative Societies” or “Trading Companies”.
- d) Parliament has also not been vested with the power to legislate laws with respect to the “ancient” or “historical monuments” or “archaeological sites” of the state.

Therefore, the state also had certain laws which were different from the laws that were followed in the rest the country. For example, if a woman resident of the state was married to “non-resident of the state”, their right to inherit property was taken away⁴⁷. This provision was also upheld by the hon’ble High Court in the case of *Prakash v. Sahanicase*⁴⁸. However, the situation was altered in the case of *State of Jammu and Kashmir v. Sushila Sawhney*⁴⁹ which was also confirmed by the hon’ble Supreme Court later.

- The Union can administer the state directly under three circumstances:
- a) National Emergency arising out of “war” or “internal disturbance”⁵⁰.
 - b) President’s rule in state due to “the breakdown of Constitutional Machinery”⁵¹.
 - c) Financial emergency⁵².

In case of emergency in the state of “J&K” on the ground of “internal disturbance” under article 352, only at the request or with the consent of the State Legislature it can be declared⁵³.

⁴⁵ Supra, 41.

⁴⁶ Navneet Pal Singh, *Chapter-6: A study of centre state relations with special reference to “Article 370” of the “Constitution of India”*, SHODHGANGA, (8:10 PM, 09-06-2021), <https://shodhganga.inflibnet.ac.in/handle/10603/310909>.

⁴⁷ Id.

⁴⁸ *Prakash v. Sahanicase*, AIR 1965 J&K 83.

⁴⁹ *Jammu and Kashmir v. Sushila Sawhney*, LPA 29 “J&K” LR 1979.

⁵⁰ INDIA CONST. art. 352.

⁵¹ INDIA CONST. art.356.

⁵² INDIA CONST. art.360.

⁵³ Supra, 42.

- Since special status was given to the state, therefore, only the “residents” of “J&K” were allowed to “acquire property in the state”⁵⁴, which is not the situation for the rest of states of the country.

WHEN “ARTICLE 370” WAS MADE INOPERATIVE:

- Withdrawal of special status of the state.
- The tenure of the Legislative Assembly has been decreased to 5 years from 6 years⁵⁵.
- Separate citizenship to the citizens of “J&K” has been abolished⁵⁶, i.e., only single citizenship will be provided to the “residents of “J&K””.
- The union territories of “J&K” and Ladakh shall be administered through the “Lieutenant Governor”⁵⁷.
- The state shall be governed like any other Union Territory, thus, conferring the rights on the Parliament to make laws for both the Union Territories⁵⁸, i.e., similar to that of the case of Union Territory of Puducherry and Delhi.
- The state will have no separate flag and the “National Flag” of India shall prevail⁵⁹.
- The right to buy immovable property has been extended to “non-residents of the state”⁶⁰.

Thus, it can be said that, earlier centre only had the power to make laws with certain subjects with respect to the state of “J&K” and certain laws were made applicable to the state with the approval of the State Legislature. But after the article has been made “inoperative”, the state is being treated as a Union Territory which will also empower the centre to make laws for this state.

⁵⁴ Infographic: Before and After “Article 370”, THE BUSINESS TODAY, (Aug. 5 2019, 11:15AM), <https://www.business today.in/current/economy-politics/infographic-before-and-after-article-370/story/370816.html>.

⁵⁵ Supra, 43.

⁵⁶ Supra, 46.

⁵⁷ Supra, 42.

⁵⁸ Id.

⁵⁹ Supra, 51.

⁶⁰ Id.

CHAPTER-4

SITUATION AFTER A YEAR OF ITS REPEAL

With the withdrawal of “Article 370” it is certain that the special status and autonomy of the state of “J&K” has also been withdrawn. This sudden inoperativeness of the article has had both positive and negative impact on the lives of the people of the state.

NEGATIVE IMPACT:

1. After the abrogation of “Article 370” on August 5, 2019, there was a “blackout lasting” of the “telecommunication and internet” services⁶¹. This shutdown of the services in the state lasted for about five months which has been the maximum in a democratic nation⁶². Though the services were restored after the order of the Supreme Court, but it was provided only to the selected “whitelisted websites”⁶³.

This also had a severe impact on the education sector. Due to the non-availability of the internet services, the “digital learning” has suffered drastically, thus, ultimately impacting the education in schools, colleges and universities⁶⁴. Furthermore, because of this, the students of the state have also not been able to apply for competitive exams online or scholarship including non-completion of research papers.

2. Tourism has been one of the major sources of income for the “state of J&K”⁶⁵ which formed around 8-10% of the total GDP of “J&K”. However, after the removal of “Article 370”, the number of the tourists visiting the state has declined sharply in the state⁶⁶. The gravity of the impact on the tourist sector can be better understood by the case study of a citizen of the state. A resident of the state states that “the hotel rooms which were once fully booked has now only two or three reservations”⁶⁷. Though the

⁶¹ Mohammed Kudrati, *One Year After “Article 370” Revoked in “J&K”: What changed*, BOOMLIVE, (6:14 PM, 09-06-2021), <https://www.boomlive.in/fact-file/one-year-after-article-370-revoked-in-what-changed-9161>

⁶² Id.

⁶³ “K. Deepalakshmi, *Fact Check: What is true and what isn’t on “J&K” “Article 370”*, THE HINDU (Aug. 6, 2019, 9:45AM), [Fact check: What is true and what isn’t on “J&K”, “Article 370” - The Hindu](https://www.thehindu.com/news/national/fact-check-what-is-true-and-what-isn-t-on-j-k-article-370-the-hindu)”.

⁶⁴ *One year since the Repeal of Art. 370*, CIVILS DAILY, (09-06-2021, 8:10 PM), <https://www.civildaily.com/burning-issue-one-year-since-the-repeal-of-art-370/>.

⁶⁵ Neeta Sharma, *Decline in Tourism since Removal of “Article 370” in “J&K”: Centre*, NDTV, (Aug. 8th, 2020, 1:00pm), [Decline In Tourism Since Removal Of “Article 370” In “Jammu and Kashmir”: Centre \(ndtv.com\)](https://www.ndtv.com/decline-in-tourism-since-removal-of-article-370-in-jammu-and-kashmir-centre-2020-08-08).

⁶⁶ *“One year since “Article 370” revocation: economy crippled, more locals take up militancy and more*, The Hindu, (Aug. 28th, 2020, 12:36 PM), <https://www.thehindu.com/data/data-one-year-since-article-370-revocation-economy-crippled-more-locals-take-up-militancy-and-more/article32273731.ece>”.

⁶⁷ Athar Parvaiz, *Kashmir Tourism has dropped 86% since “Article 370” was hollowed out*, SCROLL, (6:20 PM, 09-06-2021), <https://scroll.in/article/951354/abrogation-of-article-370-has-broken-the-back-of-kashmirs-tourism-industry>

situation improved after a few months, but the losses incurred by the people is irreplaceable.

3. It has also been stated by the “Kashmir Chamber of Commerce & Industry” that after the revocation of “Article 370”, for few months, the Kashmir Valley has also incurred huge amount losses roughly around “400 billion Indian rupees”⁶⁸. Thus, it can be said that the economy of the state was declining at a sharp pace which could have also led to the “collapsing of the economy”.
4. The impact of the removal was also seen in the employment sector. Further, in agriculture sector where one of the major contributors to the GDP was the Apple industry has been affected poorly⁶⁹.
5. Just after the revocation of “Article 370”, violations of the Human Rights and Fundamental Rights were also seen including killing of militants and civilians⁷⁰.

POSITIVE IMPACT:

The fact that the problems faced by the people of the state of “J&K” after the removal of the special status of the state is a nightmare but it certainly cannot be denied that the removal of the article will also have few positive effects on the lives of the people of the state. One such is that it has certainly ended the discrimination faced by the women and children for inheriting the property⁷¹. Furthermore, the discrimination against the other communities of the state like the Gorkhas, Dalits, Valmiki and LGBTQ are also expected to come to an end⁷². To provide people of the state with more job opportunities, the government has also taken an initiative to start with the “rare recruitment drive” where the preference for different job posts shall be given to widows and new candidates⁷³. The step has also been taken to provide the sanitation workers and refugees with “legitimate domiciles” and “citizenship”. Moreover, to improve the condition of the people, the newly formed administration of the Union Territory has decided to come up with reservation in two more categories, i.e., “reservation to Pahari-speaking people”

⁶⁸ Kaisar Andrabi, *A year after “Article 370”’s End, a Dangerous silence in Kashmir*, THE DIPLOMAT, (6:21 PM, 09-06-2021), <https://thediplomat.com/2020/08/a-year-after-article-370s-end-a-dangerous-silence-in-kashmir/>

⁶⁹ Supra, 66.

⁷⁰ Supra, 68.

⁷¹ Abhijit Majumdar, *What Media didn’t tell you about “Jammu and Kashmir” since abrogation of “Article 370”*, FIRST POST, (6:21 PM, 09-06-2021), <https://www.firstpost.com/india/what-media-didnt-tell-you-about-jammu-and-kashmir-since-abrogation-of-article-370-8670081.html>.

⁷² Id.

⁷³ Id.

and “reservation to economically weaker section”⁷⁴. It will also be worth to note here that the reservation which earlier was provided only to the people of the villages has also been decided to extend it to those families living near international borders⁷⁵. Since after the abrogation of “Article 370”, the central laws are being made applicable to the newly formed Union Territories, therefore, the benefits under the “7th Central Pay Commission” are also being made applicable to the people of “J&K”⁷⁶.

CHAPTER-5

SUGGESTION AND CONCLUSION

“Article 370” was one of those articles which governed the relationship between “the centre and the state” of “J&K”. It also provided the state with the special status and greater autonomy. Under this provision of the “Constitution of India”, “J&K” became the only state in India which had its “own constitution” and where the citizens were provided with the “dual citizenship”. However, because of this provision, there were several central laws which were not applicable to the state. This also caused discrimination against the citizens of the state. One such law was the right to inherit property by the women and children of the state.

Though this provision was inserted in the Constitution to preserve the cultural and religious identity of the state but this provision has also been misused by the political leaders of the state. Since the power was vested with the State Legislature for the applicability of the laws in the state with required “modifications”, therefore, certain important laws like the “Anti-Defection law” has also been failed to perform its duty⁷⁷. Under this law, the power has been vested with the Speaker to decide upon the legislator’s defection. But when made applicable to the state of “J&K”, the Chief of the party has been vested with this power, thus, demeaning the whole purpose of the law.

“Article 370” was also a temporary provision under the “Constitution of India”. The repeal of the same has not been possible because of non-existence of the “Constituent Assembly of “J&K””. Recently, Modi government has made the “Article 370” “inoperative”. The process

⁷⁴ “Jammu and Kashmir”: What has changed in one-year since abrogation of “Article 370”, ZEE NEWS INDIA, (6:22 PM, 09-06-2021), <https://zeenews.india.com/india/jammu-and-kashmir-what-has-changed-in-one-year-since-abrogation-of-article-370-2300815.html>.

⁷⁵ Id.

⁷⁶ Supra, 71.

⁷⁷ Impact of “Article 370”, INDIAN DEFENCE REVIEW, (8:10 PM, 09-06-2021), <http://www.indiandefencereview.com/spotlights/impact-of-article-370/>

that has been followed to do the same may be “constitutionally and democratically” correct it might face certain problems in near future. With the removal of “Article 370”, the people of the state have faced certain major problems for the following few months in mostly all the sectors including employment, agriculture and educational sectors. But it is certain that the state of “J&K” shall be treated equally with other states, thus, bringing all the discrimination to an end. Furthermore, several central laws shall also be made applicable to the newly formed Union Territories.

To improve the situation of the state, centre-state relation and better administration and governance of the state after the removal of “Article 370” because “Article 370” has been there as a governing provision for a long time now, the researcher has put forth the following suggestions:

- To establish a dispute resolution and effective communication mechanism between centre and state to resolve any conflict while implementing or legislating laws for the two Union Territories.
- The local administration should be vested with more autonomy and powers for the betterment of the people of the Union Territory. This will help the local people to uplift their standard of living.
- The measures can also be taken to build infrastructure in the Union Territories by inviting the corporate world since it has now been allowed to buy and sell immovable properties to “non-resident”. This will also help economic development.