

Abrogation of Article 370: A Complete Integrate of J&K with Indian Union

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Abstract

Indian nationalists in Jammu and Kashmir were able to implement Hindutva doctrine after the creation of Rashtriya Swayamsevak Sangh (RSS) between 1940 and 1944. In light of the BJP's ascendance to power, Prime Minister Narendra Modi repealed "Article 370" on August 5, 2019, removing Kashmir from its special status. With Modi's alleged "masterstroke," the Muslim majority will be reduced to a minority. The action has sparked considerable public outrage, resulting to a curfew and a suspension of fundamental human rights throughout the area. In this study, the consequences of Hindutva ideology and the current 'Modi's masterstroke' on the area will be discussed in further detail. For the Muslim-majority state, it will examine the role of the RSS-backed Bharatiya Janata Party (BJP).

Keywords: Article 370, Jammu and Kashmir, India, Abrogation of Article 370, Autonomy.

1. INTRODUCTION

Jammu and Kashmir was granted special status under Article 370 of the Indian Constitution as a temporary measure. At least until a plebiscite was conducted to assess the public's desire for a rewrite of the constitution, the Jammu and Kashmir Constituent Assembly had the power to alter, remove, or preserve this article. However, in recent years, there has been a lot of controversy about the Article's transitory status. They've been referred to as permanent provisions by the government and the court on several occasions. Thus, this article examines the history of Article 370 and its current situation in the Indian Constitution. Conflict in Kashmir led to two different outcomes. It was only after a long period of exhaustion and a series of failed "soft measures" that the state decided to take a harsh line on Kashmir. Second, the BJP-led administration utilized the escalating strife in the Valley to fulfill the desire of its ideology Shyama Prasad Mukherjee to abolish Article 370 and Article 35A. Mukherjee, who was assassinated in 1953 while organizing a demonstration against the special status of J&K, insisted that a country could not have two constitutions, two prime ministers, and two flags.

2. LITERATURE REVIEW

Gita Howard (2021) When India abolished Articles 370 and 35A in August 2019, Kashmir's long-standing special protection status was essentially removed. Until it was revoked, Kashmir had a higher degree of autonomy than any of India's other states, making it more vulnerable to Delhi's control. As a result of the termination of the region's special protection status and subsequent lockdown, a number of human rights groups expressed alarm. Whether or if the withdrawal of Kashmir's special protection status violated international law is the focus of this article. Even if Kashmiris have an internal right to self-determination, this essay shows that the right to self-determination must be weighed against India's national security interests and its obligation to defend. Since Kashmir's withdrawal from special protection status was likely a valid act, India's decision to do so was likely legal as well.

NEHA et.al (2020) The architects of the Indian constitution wanted to ensure the country's sovereignty, peace, and protection of citizens' human rights. Constitutional laws have played a critical role in putting the country's judicial system on the proper track in light of the country's current ground reality and complicated situations, and our parliamentary system's future has been ensured by the adoption of new or upgraded constitutions. Many complex problems have arisen as a result of Article 370, which grants the Jammu and Kashmir state considerable autonomy. Our government then split up the state into two "Union Territories" with additional limited aboriginal administrative powers under the Central Government, thereby removing the state's ability to exercise its own power.

Sona Shukla et.al (2019) Article 370 states that in addition to Defense, Foreign Affairs, and Communication, the Union Parliament may pass legislation regarding the items in the Union and Concurrent Lists for Jammu and Kashmir, but only with the approval of the state government. Although all states have unrestricted freedom to create legislation in accordance with the union and concurrent lists of the constitution, Jammu & Kashmir is placed on a separate footing. Unless the Jammu and Kashmir government gives its blessing, it is unable to accomplish anything there. Shortly after the unique provisions for the state were inserted into the Indian constitution, a number of flaws and shortfalls were discovered. As a result of these flaws, the Delhi Agreement of 1952 was signed into law. Though it was a presidential directive that was issued on May 14, 1954. Including Jammu and Kashmir in the financial integration of the state and other constitutional obligations. A number of amendments were made to this decree throughout time, extending more of the Indian constitution to the state.

Jean-Philippe Dequen (2018) This study examines Jammu and Kashmir's position in the Indian Union and its effect on the everyday administration of justice in Srinagar... Regional States in India still have certain unique characteristics and prerogatives under the Indian Constitution, but J&K's is a very distinct case. J&K is the only state in India to have its own constitution, therefore it was granted a unique kind of sovereignty when it joined the Union. Comparative legal frameworks are used to characterize the relationship between India and J&K in this article. It claims that J&K falls into the same legal category as New Caledonia, which is presently part of the French Republic. It then investigates how this unique status interacts with the administration of justice in Srinagar at the local level. Thus, it seems there is a strong correlation between the general approval of J&K's judicial system and its increasing integration into Indian law, as well as the permanent resident status of its judges.

3. ABROGATION OF ARTICLE – 370

Article 370 and Article 35-A of the Indian constitution, which conferred special status to the state of Jammu and Kashmir, were repealed on August 5, 2019 by India's Union Home Minister, Shri Amit Shah. It is entrusted to the Jammu and Kashmir State Assembly under Article 35-A of India's constitution to determine the state's permanent inhabitants as well as their particular rights and benefits. Article 35-A was not included in India's 1949 constitution. Later, the Presidential Order of 1954 incorporated it to the Indian constitution with the approval of the State administration of the day.

On the same day, the 5th of August 2019, the Union Minister of Home Affairs also tabled two legislation and two resolutions pertaining to Jammu and Kashmir (J&K) in Lok Sabha. The following are a list of those:

(1) This year, the President of India issued an order to override the 1954 ruling on the application of Article 370 of the Indian Constitution to Jammu and Kashmir. The President of India, with the approval of the Government of the State of Jammu and Kashmir, has issued such an Order in accordance with Article 370 of the Constitution.

(2) Resolved that Article 370 of the Indian Constitution should be repealed

(3) Reorganization of Jammu and Kashmir (Reference. Article 3 of the Constitution of India) Bill, 2019

“It is provided for under Article 371(3). To alter or delete Article 370, President of India may do so by issuing a notice based on a suggestion of Constituent Assembly of J&K. To ensure that Article 370(1) of the Indian Constitution applies to Jammu and Kashmir, the President of India signed the Constitution (Application to Jammu and Kashmir) Order 2019, which came into effect on August 5, 2019. Legislative Assembly of Jammu and Kashmir might replace Jammu and Kashmir Constituent Assembly. In the past, Article 370 has undergone similar revisions. President's rule in the state now means that Article 370 will no longer be implemented when the President of India publishes a notice in this respect.” On August 6, 2019, President Trump announced that all sections of Article 370 would be ineffective, following the suggestion of the Indian Parliament.

There was a wide range of responses and differing perspectives in India after the abolition of Article 370. Opponents and supporters of the issue:

Proponents

Lieutenant General (Retired) Subrata Saha of the Indian Army. For those who have died in the name of Jammu and Kashmir's integration with India in the last several decades, the decision to repeal Article 370 is arguably the best homage they can get.

Hindu nationalist party (HNP): The BJP's primary objective has always included revoking Article 370 of the Indian Constitution, a cause close to the party's ideologue Shyama Prasad Mookerjee's heart after he died in a Jammu and Kashmir prison in 1953 protesting the state's unique status and demanding its full integration with the Union.

Bahujan Samaj Party (BSP): When it came to repealing Article 370 and dividing Jammu and Kashmir, Mayawati's Bahujan Samaj Party offered their support to the Bharatiya Janata Party (BJP).

Aam Aadmi Party chief Arvind Kejriwal also backed the Centre's decision of scrapping of Article 370, and hoped that, it would bring "peace and development" in the state.

Biju Janata Dal (BJD) Article 370 should be repealed, according to the report. Jammu and Kashmir is now a "integral part of India," BJD claimed in a statement on August 5, 2019. Telegu Desam Party (TDP), All India Anna Dravida Monnetra Kazahagam (AIADMK), and Shive Sena have all expressed support for the repeal of Article 370.

Opponents

Indian National Congress (INC) It was labeled "catastrophic move" and "dark day in the constitutional history of India" by many who spoke out against Article 370 being repealed. Ghulam Nabi Azad, a member of the Congress Party, accused the administration of "chopping off" Kashmir's "crown" and removing its identity. "We (Congress) won Kashmir and you lost Kashmir," Kapil Sibal, a fellow Congressman, stated."

It was a "murder of democracy," the DMK said, vehemently condemning the government's decision. MK Stalin, the party's leader, accused the BJP-led government in Delhi of only caring about pursuing its ideological agenda and disregarding the views of the people of Jammu and Kashmir, who supported India.

Leaders of the Left Front have also voiced their displeasure. A "regressive measure" would alienate the people of Jammu and Kashmir, CPI(M) general secretary D. Raja warned; the CPI(M) characterized it as an assault on the Constitution.

People's Democratic Party (PDP) Indian promises in Kashmir, according to Mehbooba Mufi, the current chief minister of Jammu & Kashmir and a previous chief minister. In the midst of the commotion in Parliament, PDP members Nazir Ahmad Laway and Mir Mohammad Fayaz screamed slogans and tore posters, respectively. Even Laway's kurta (shirt) was torn by him. The two were later evicted when they tore up copies of the Constitution during the demonstrations, which fanned the flames.

National Conference political figure and former chief minister of the Jammu and Kashmir He called the government's action on Article 370 "unilateral and alarming" and a "complete violation of trust" in Jammu and Kashmir, calling it "unilateral".

Other political groups, including as Janata Dal, Rashtra Janata Dal, Trinamol Congress, and the Nationalist Congress Party, expressed strong opposition to the repeal of Article 370.

That the government has taken such severe measures to remove many articles of Article 370 of the Constitution is unfortunate and needless," said a former Research and Analysis Wing head A.S. Dulat. In addition, the government's decision to remove the provisions of the provision is more alarming. Permanent inhabitants of the state were given preferential treatment under Articles 370 and 35A of the Constitution. Article 370 was already hollow, like a fig leaf, and had undergone several revisions. Kashmiris were mainstreamed while maintaining their distinct identity, and this was achieved over time via successive administrations' implementation of Article 370 in the Constitution."

Ex-Indian Attorney General Soli Sorabjee has said that he does not believe that the repeal of Article 370 was illegal. It was not part of the Constitution's fundamental structure, and hence was not subject to revision.

However, no legislation can be effectively implemented unless there is public support and significant engagement prior to its passage.”

4. ARTICLE 370 ABROGATION REPURCUSSIONS: AN ANALYSIS

They were split by philosophy and principle among the political leaders of Jammu and Kashmir at the time. While Unionist politicians have always advocated for Jammu and Kashmir's autonomy under India's constitution, separatists have always sought full independence from India. Unionist and separatist leaders were detained by the central government because of its arbitrary decision to revoke Article 370. The political landscape of Jammu and Kashmir has changed dramatically as a result of this ruling. This is because the Unionists' support for Jammu and Kashmir remaining in India was based on Article 370's safeguards for the state. Unionists, on the other hand, have lost their logic and may now link themselves with the separatists to oppose New Delhi. A political leader in Kashmir who was previously incarcerated but is now being held under house arrest, Unionist Shah Faesal, has warned that "Kashmiri politicians may now have to choose either to be stooges of New Delhi or separatists." As a result of this convergence of Unionist and Separatist interests, New Delhi may face its greatest challenge in Kashmir in 72 years, namely the discovery that it has no viable ally in Kashmir. The future of Jammu and Kashmir is bleak ten months after Article 370 was abolished. As Hasnain Masoodi, the National Conference leader, noted, any further moves by New Delhi that impact the valley's cultural or demographic character would exacerbate the situation. Once released, political leadership across the Unionist and Separatist divide is likely to resist the removal of Article 370. (Member of Parliament, Lok Sabha).

Indian-Pakistan ties have been further strained by the repeal of Article 370. Now, Pakistan has just two options: accept or reject India's approach, which has enraged Pakistan considerably. Direct military action or infiltrating Jihadis are two options Pakistan has if it wants to oppose India. In light of India's security preparations and Pakistan's poor economy, a military conflict with India is very unlikely. Given its history of backing Kashmir's continuing political and militant separatist struggle despite international pressure, Islamabad is unlikely to sit back and do nothing. Despite the fact that Pakistan and India were at odds, Prime Minister Imran Khan used rhetoric against India at the United Nations and abroad to orchestrate a diplomatic campaign against New Delhi.

According to media sources, there has been a new surge of Pakistani terrorists into Kashmir. According to a recent revelation from Indian Army Chief General Bipin Rawat, "about 500 militants are ready to infiltrate into the valley." this is confirmed. Around 250 terrorists, the most of whom are locals, have already been counted by security forces in the valley. Over the last five years, the number of militants murdered has stayed almost steady as new members have been recruited to replace those who were slain. The presence of more foreign militants on the ground has the potential to drastically change the current scenario.

In the wake of Article 370's demise, the Line of Control between India and Pakistan was once again rife with fighting. 'Every time Pakistan indulges in mischief, it gets dealt a stinging smack in the face,' said an Indian Army officer of Northern Command. When Jammu and Kashmir's special status was abolished, Pakistan's army began launching ferocious assaults on security troops and shelling along the border." Terrorists may be pushed into Jammu and Kashmir with ease, according to a new study from the Intelligence Bureau.

After this major event, the Union Territory of Jammu and Kashmir remains volatile and unclear (abrogation of Art. 370). As of May 2020, we've seen fresh military conflicts between China and India, as well as a stalemate along the Line of Actual Control (LAC) in Ladakh, which is the boundary between the two countries. Indian attempts to integrate Kashmir may be hampered by this difficult situation between Pakistan and India, which sees the possibility of further escalating violence in Kashmir's valleys.

Several Kashmir political specialists believe there is a connection between the unrest along the LAC and the escalating militancy in Kashmir. As a result of the Union government's decision to revoke Article 370 in Ladakh, they attribute the escalating hostilities with the Chinese army, Pakistan's repeated remarks about Kashmir, and the growing frustration and fury in the Valley. They feel that China has become a third party in the Kashmir issue after the status quo in Jammu and Kashmir was shattered. When Article 370 was revoked, China's UN spokesman labeled it a "unilateral move" and added, "Kashmir is a conflict left from history whose settlement should be based on UN Security Council Resolutions."

Ten months have passed since that time. What does this revocation accomplish? It accomplished nothing significant, but it became a clear cause of restriction of civil and political rights, further alienating the people of Jammu and Kashmir from India. Even in the worst-case scenario, the state of Jammu and Kashmir has been

reduced to a Union Territory that is ruled by unelected bureaucrats and without an elected legislature for almost a year.

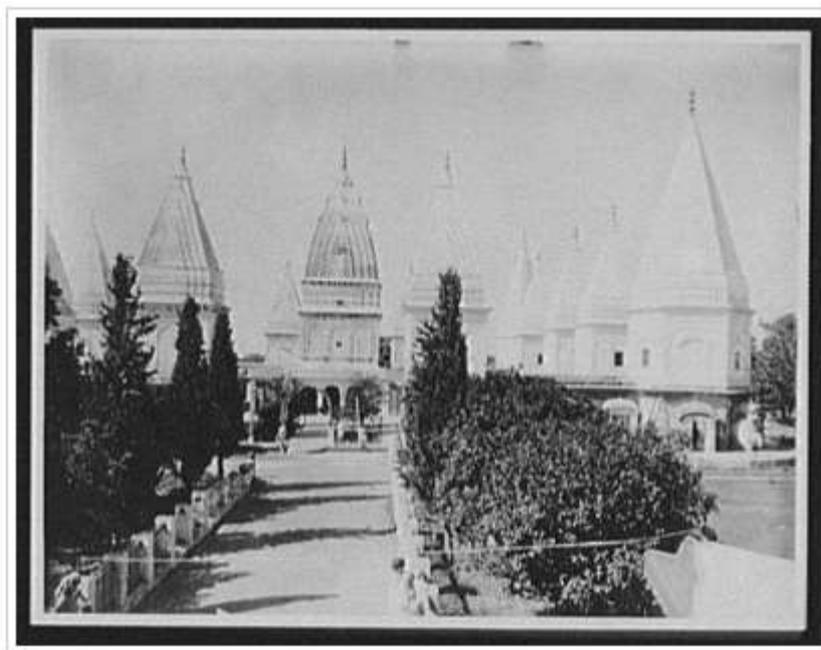
Until Internet services in the state are fully restored, it will be difficult for residents to go back to their usual lives. One of the most prevalent complaints is that the 2G network is woefully insufficient for current demands.

5. ART 370 HAS LIMITED INTEGRATION WITH THE REST OF INDIA IN FOLLOWING WAYS-

1. Article 370, rather from forming a foundation for J&K's unification with India, has prohibited it from doing so.
2. On the basis of gender, class, caste and origin, Article 370 was seen as a form of discrimination.
3. J&K's potential for growth would improve if Article 370 was repealed, allowing private investors to invest there.
4. The development of more jobs and the improvement of the state's socioeconomic infrastructure would be facilitated by higher investment.
5. The opening of property purchases to private people and international corporations would strengthen the local economy and bring in much-needed investment.
6. In India, there is a law that prohibits the abuse of sacred sites for political objectives. However, J&K is exempt from this rule. It creates a condition where the legal recognition of separatism is possible. After Friday prayers, separatist leaders conduct anti-India remarks from the mosque's ramparts. The government is just a bystander.
7. India's development processes are weakened by corruption, and this is no different in J&K. Article 370 limits the authority of agencies like the CAG, Lokpal, CBI, and others in J&K.
8. The state is exempt from RTI's requirements. People are denied access to information as a result of this policy. In other words, it suggests that the State is still lacking a crucial facet of democratic governance, accountability, and transparency. This RTI tool is missing from the state's civil society's arsenal in the battle against corruption.
9. Inter-communal interactions and views in other Indian states are negatively impacted by separatist politics in J&K.

6. LEGAL CHALLENGES BEING CONSIDERED BY INDIA'S COURTS

According to attorneys and legal experts, the repeal of article 370 is certain to fail. There is a question as to whether or not the Jammu and Kashmir administration has given its approval. After the BJP withdrew from an agreement with a regional party and the governor of the state dissolved the state parliament, the state has been under direct presidential control under article 356 of the Constitution for the last year. The governor, like the president, is a representation of the central government," says one lawyer. As a result, Presidential Order 272 equates to the Central Government's own approval to modify the Constitution." " Article 370(1)(c) "this Article shall apply in reference to that state" precludes the president from using his power of modification in the Constitution (as applicable to Jammu and Kashmir) to alter article 370 itself, even if it is done indirectly. Ordinary Article 368 Amendment Procedure would be required.



Hindu temple and tombs of the kings from inside the walls – Jammu, Kashmir.

An estimated 14 petitions involving Jammu and Kashmir are being heard by India's Supreme Court right now, according to media accounts. Article 370 and the special status of Jammu and Kashmir are two of the most contentious issues raised in the petitions. Other petitions "demand an end to restrictions on travel and communication imposed in the Kashmir valley" are being heard by the Supreme Court. This week, the Supreme Court of India said a five-member panel would consider the petitions challenging the legitimacy of India's decision to revoke Jammu and Kashmir's special status under article 370.

India's Supreme Court on September 16, 2019, according to news reports, has agreed to accept a state political party petition challenging the "Presidential Rule" imposed in the state and the "abrogation of provisions," but it has refused to accept any new petitions challenging the order related to Article 370. "We instruct Jammu and Kashmir to make the very best effort to ensure that normal life resumes" after a panel of three justices heard multiple petitions pertaining to the state, according to the chief justice of the Supreme Court.

The Supreme Court began hearings on the aforesaid subject this week, on October 1, 2019, but permitted the federal government 28 days (until November 14) to respond to all petitions pertaining to Jammu and Kashmir. Petitioners have objected to this since the state's reorganization deadline is October 31. It was expressed by a petitioner's lawyer that "the procedure is irreversible and the petitions must not be made infructuous".

7. ABROGATION OF ARTICLE 370: RATIONALE AND IMMEDIATE IMPACT

370 has been watered down several times by successive governments in Kashmir and by the local people to make integration, improved administration, and good governance easier. Article 370, notwithstanding these alterations, had a significant symbolic and psychological impact on Kashmiris. Asymmetric federalism in India was also on show, with certain federal components receiving preferential treatment because of their particular ethnic identities.

Pro-India Kashmiri leaders were detained before to Delhi's move to abrogate the Article 370 and partition J&K into two union regions. All communication in and out of the Valley was severely disrupted, and thousands of security officers were sent. As stated by New Delhi, this "implemented constitutional transition" was done in order to improve the region's administration, good governance, and economic progress. Article 370 was also cited as a factor in the state's corruption and militancy by the administration.

Kashmir had 1,999 incidences of stone-pelting in 2019, up from 1,458 in 2018 and 1,412 in 2017, according to government statistics. Since the Intelligence Bureau's Multi-Agency Centre (MAC) recently estimated that 400 militants are operating in the Valley, the prospect of heightened insurgent activity has been raised to include

Rajouri-Paonch and Kishtwar border districts. Government officials were so alarmed that they placed the whole area under an unprecedented high-security grid and imposed a communications blackout in response to their 5 August decision.

As of this writing, New Delhi is unsure about its next course of action. In spite of the fact that India's worldwide reputation as a liberal democracy has been tarnished by its activities in the newly established Union Territory, the government has failed to take any serious efforts to restore the confidence of the people and normalize the situation. Additionally, the abolition of Article 370 has resulted in Kashmir being a worldwide issue, something the NDA administration had previously opposed.

Closed-door UN Security Council (UNSC) discussions have been held on Kashmir in the past five months. Congress has approved two resolutions criticising the Indian government's action in Kashmir. Pramila Jayapal, an Indian-American member of Congress, proposed House Resolution No. 745 last year, and it now has 36 supporters, 34 Democrats and two Republicans. In light of the heightened attention being paid to the Kashmir crisis (by the UNSC and the US in particular), New Delhi has been compelled to invite international diplomats and MPs to the Kashmir Valley on "fact-finding" excursions. The first occurred in October of this year, when the administration hosted a delegation of EU legislators in the Valley. People from far-right groups like Ras emblement (France), Prawoi Sprawiedlo (Poland), the Brexit Party (UK), AfD (Germany), Lega Nord (Belgium), and VOX (Spain) attended to the meeting.

An official tour to Jammu and Kashmir was organized for the second time by foreign diplomats from 15 countries, including the Ambassadors and High Commissioners to India. Diplomats from the United States, South Korea, Vietnam, Bangladesh, Fiji, Maldives, Norway, the Philippines, Morocco, Argentina, Peru, Niger, Nigeria, Guyana, and Togo made up the group of participants. Instead of attending the meeting, EU ambassadors opted to see the jailed political leaders[a] at a different time.

Today, life in Kashmir is edging closer to normality, although slowly. There is an unsettling quiet, though, that may be shattered at any moment by an attack from the other side.

8. NULLIFYING ARTICLE 370 AND PUBLIC PERCEPTION

The people of Kashmir have a greater sense of danger because of the renunciation of autonomy without their permission. Though pro-India political parties in the Valley may have used the "autonomy" provided to J&K under Article 370 to their advantage, it had symbolic and emotional value for those who live there. There has been a rise in anxiety and distrust of one's identity and cultural norms after the 5 August terrorist attacks. According to a research released in late September 2019 by the New Delhi-based Concerned Citizens Group (CCG), "the abrogation of Article 370 would inevitably draw foreigners to the Valley since they will be packaged as development projects. Kashmiri Pandits and ex-servicemen (Sainik Colonies) are the third demographic transformation plan that the locals feel the government may adopt.

Political lies by politicians in Kashmir and Delhi have done nothing to allay the fears. Union Minister G Kishan Reddy claimed on September 23 that over "50,000 temples" in J&K had been closed down over the years and that some of them have been demolished or disfigured. According to him, the government has ordered an assessment of these temples and hopes to reopen them shortly. There are just 4,000 temples in J&K, according to Sanjay Tickoo, a well-known Kashmiri Pandit politician and the chairman of the KPSS, which is based in Srinagar.

The central government in the newly-formed Union Territory of J&K is attempting to implement new laws that would provide domicile rights to citizens over property and government employment. An answer to the notion that J&K's jobless rate is greater than the national average, this has been the reaction. As for the Dogras of Jammu and the Buddhists of Ladakh, they've long demanded the right to their own land and homes. Few of those questioned by this author voiced concern about the impact of a change in domicile rights on the Valley's workforce and demographics, but the majority of those questioned decided to keep mute on the matter.

When the J&K High Court on December 31st 2019 solicited applications from throughout the country to replace 33 empty non-gazetted positions, their suspicions may have been proved correct.

After opposition parties in Jammu expressed their displeasure with the decision and called for the passage of legislation to protect the rights and interests of young people in J&K, the notification was withdrawn.

According to reports, the government is considering additional solutions for resolving the problem of non-Kashmiri citizens having access to employment, property ownership, and college and professional education. According to Article 371 of the Constitution, these arrangements are similar to those in Himachal Pradesh, Uttarakhand, and other northeastern states.

Anxiety and misunderstanding have grown as a result of the lack of New Delhi's communication since August 5. The removal of Article 370 renders the Union of India's laws automatically applicable in J&K, making the state's laws ultra-vires (or they no longer apply). Many young, civil society activists as well as previous chief ministers are now imprisoned under severe regulations imposed by the former state parliament such as the Public Safety Act (PSA). Article 370 was repealed on the pretext of "one constitution, one rule of law," yet because of these inconsistencies, many people believe they have been reduced to second-class citizens. They also demand the immediate and unconditional release of all those detained as a result of allegations made against them under the PSA, but who are still being held in detention facilities across the country.

9. CONCLUSION

Article 370 of India's constitution guarantees special rights to the people of Jammu and Kashmir, and revoking that provision has led to political instability and the possibility of demographic shift in the region. Jammu, Kashmir and Ladakh's ethnic identity and employment and property rights were snatched away from them when Article 370 was abolished. Even if Article 370 was rescinded, the people of Jammu and Kashmir still have a long way to go to find a legal and constitutional solution to their concerns. Jammu and Kashmir's long-term disagreement may be resolved via the development of public opinion in India and the rest of the world. With a new deity at the helm, India may be able to reassert itself as a historic brand ambassador and protector of democratic principles. The people of Jammu and Kashmir must also be able to trust one another.

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