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## G20-2023, KASHMIR AND THE ABROGATION OF ART. 370

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### Abstract

*This article talks about the abrogation of Article 370 by the Indian government in August 2019 and the bifurcation of the State of Jammu & Kashmir into two union territories- the Union territory of Jammu and Kashmir and the Union territory of Ladakh. Starting with the historical origin of Article 370, the special status of Jammu & Kashmir as the result of its abrogation, and the impact of abrogation; this article analyses how the international community reacted especially China and Pakistan. And from there to hosting the G20 meeting at Srinagar. Catering seventeen G20 nations that included four of the P5, the invitee nations, and the 7 international organizations is an applaudable step. The article discusses the participants of the meeting and goes on to talk about the benefit that India and Kashmir going to have because of this step. Kashmir has the nickname – Paradise on Earth. Its tourism industry has tremendous potential. The G20 meet showcased Kashmir's potential to the whole world.*

**Keywords:** (Jammu and Kashmir, Abrogation of Article 370, G20 Meet, India, Tourism)

### I. INTRODUCTION

From the time of independence, the State of Jammu and Kashmir enjoyed the status of a special state. It had its own constitution, its own flag, and many laws restricting outsiders to settle and buy property there. All this was by virtue of articles 370 and 35A. Abrogation of Article 370 opened the door of Kashmir for the whole of India. While a bunch of countries supported the move, most of them remained neutral. With Pakistan and China making the most noise. Almost 4 years later, in May 2023, India as the host nation hosts the third tourism working group G20 meet at Srinagar. This step has so much significance: politically, economically, and defence wise. The G20 meeting in Kashmir gave it much-needed attention on the international front.

### II. THE LEGAL CHANGES: BEFORE AND AFTER ARTICLE 370

#### A. THE ORIGIN OF ARTICLE 370.

Article 370 has relation to the pre and Independence Periods. The state of Jammu and

Kashmir was one of the 565 princely states that were not under the direct control of the British Colonial administration. War-beaten Britain decided to end its colonial rule in India through Indian Independence Act. What happened simultaneously was the Partition of India. Jammu and Kashmir was one of the two epicenters of partition on the basis of religion. On June 17, 1947, the Indian Independence Act was passed by the British Parliament providing for the transfer of power to two newly created Dominions, viz., India and Pakistan; Section 7 of the said Act provided that the Indian Princely State could choose to have had accession with either of the Dominions.<sup>14</sup> All but Junagadh, Hyderabad, and Kashmir joined either of the two dominations, but these three didn't. Maharaja Hari Singh choose to remain neutral not choosing anyone but being independent. He signed an agreement with both India and

<sup>14</sup> Prof. K.L Bhatia (Author), Jammu and Kashmir: Article 370 of the Constitution of India (1<sup>st</sup> Edition – 1997) pg.- 18



Pakistan that they will not attack Kashmir. However, the region suffered from both internal revolt and external invasion. India kept its word but Pakistan didn't. He finally signed the instrument of accession with India after being under threat of invasion by tribal militia from Pakistan namely Azad Kashmir Fauz. The accession was signed on 26 October 1947 under some commitments and consideration. What followed after it was the 15-month-long war which resulted in the formation of the Line of Control (LOC). Article 370 was the result of that instrument of accession. As per the instrument, certain specific terms were signed. Defence, Foreign affairs, and communication were handed to the Indian Government but others were controlled by the ruler of the state. Article 370 was introduced in the constitution as a result of these terms. The article was supposedly temporary but it remained in the constitution for almost 70 years.

#### **B. WHAT WAS THE ARTICLE 370?**

Article 370 of the Indian constitution was that provision that allowed the whole state of Jammu and Kashmir to enjoy the special status among the other state of India. Article 370 along with Article 35A which derives from Article 370 itself, granted the state and its residents an exceptional status and rights which the citizen residing in any other state than Jammu and Kashmir do not enjoy. Earlier than the abrogation of Article 370, by virtue of it, the state of Jammu and Kashmir had its own constitution, a separate flag, and autonomy in matters other than foreign affairs, defence, and communication.

Article 370 is contained in Part XXI of the Indian Constitution- Temporary, Transitional, And Special Provisions. The marginal note of Article 370 read as Temporary provisions with respect to the state of Jammu and Kashmir. Previously, i.e., before the abrogation, it contained a total of three clauses. The first clause started with a non-obstante clause 'not withstanding with anything in this constitution'. Clause 1 of Article 370 had exempted the state of Jammu and Kashmir from the reach of Article

238. Article 238 was concerned with the administrative measures of Part-B states. Though this article was long ago omitted by Constitution (Seventh Amendment) Act, 1956.

This article limited the power of the Indian Government to only defence, foreign affairs, and communication; the residuary power of the state lay with the Jammu and Kashmir Legislature and not with the Indian Parliament. Parliament needed the State government's concurrence for applying every other law. Because foreign affairs and defence were in Parliament's control, A national emergency declared on the grounds of external aggression or war extends to Jammu and Kashmir but a national emergency on the grounds of armed rebellion proclaimed by the parliament must concur with the state government to have effect in the state. Article 370(1)(d) provides that other matters than that given specified in the instrument of Accession can apply through President's rule but with concurrence with the state government.

Jammu and Kashmir had its own constitution and many parts of the Indian Constitution including Part III and Part IV didn't apply to the state of Jammu and Kashmir other than articles 19(i) and 31(2). Hence it has its own constitution, its own flag, and dual citizenship. Parliament was not allowed to alter the name, boundary or territory of this state without concurrence with the state government. The state has special privileges for matters of property, residence, education, and government jobs. i.e., the outsiders cannot enjoy such benefits. Kashmiri women cease to have property rights if married to someone not from Kashmir. The restriction to outsiders in buying, owning land, permanently settling in the state, holding local jobs, or having educational benefits or scholarships came from Article 35A. Article 35A derives from Article 370 and was instrumental in providing special status to the state of Jammu and Kashmir. The article can be repealed as given in 370(3), but such a step required a recommendation from the Constituent Assembly of Jammu and Kashmir.



### C. THE ABROGATION.

Abrogation of Article 370 was in the election manifesto of the Bhartiya Janata Party. On 5<sup>th</sup> of August 2019, Home Minister Amit Shah introduced the proposal in Parliament for the removal of the special status of Jammu and Kashmir along with the bifurcation of the state into two union territories. Same day, the president of India issued the Constitution (Application to Jammu and Kashmir) Order, 2019, C.O. 272, pursuant to Article 370(1) of the Constitution of India. The constituent assembly of Jammu and Kashmir was already dissolved way back in 1957. The president of India issued the Constitution (Application to Jammu and Kashmir) Order, 2019 pursuant to Article 370(1) of the Constitution of India. Rajya Sabha also passed a Statutory Resolution recommending that the president of India abrogate most of Article 370 pursuant to Article 370(3). The order abrogated the special status accorded to Jammu and Kashmir under the provision of Article 370. The order came into effect from the very next day. From then provisions of the Constitution which were applicable to other states were also applicable to Jammu and Kashmir and it ceased to have the special status it had. The Jammu and Kashmir Reorganisation Bill 2019, a separate bill was introduced to bifurcate the State into two separate union territories of Jammu and Kashmir with legislature, and Ladakh without legislature.

Abrogation didn't happen just politically and on paper but measures were also taken to maintain peace in the region. Army was deployed, communication was cut, and hundreds of political leaders from both mainstream and separatists camps including three former chief ministers -- Farooq Abdullah, Omar Abdullah, and Mehbooba Mufti -- were taken into preventive custody.<sup>15</sup> Curfew with Article 370, Article 35A was also abrogated.

<sup>15</sup> PTI, "From Article 370 Abrogation to Internet Ban: How 2019 reshaped J&K," The Indian Express, 28<sup>th</sup> December, 2019. <https://www.newindianexpress.com/nation/2019/dec/28/from-article-370-abrogation-to-internet-ban-how-2019-reshaped-jk-2082017.html> (Last Accessed on 16<sup>th</sup> June 2023 – 15.02 PM)

Curfews and lockdowns were also imposed. Noe a way different Article 370 exists in our Indian constitution.

### D. THE IMPACT.

All the problems didn't disappear at once after the abrogation of Article 370. The people of now a union territory were confronted with new problems along with the old ones. Bhasin, a journalist and editor of Kashmir Times wrote an extensive article about the plight of ordinary people. However special circumstances call for special measures.

With the abrogation of Article 370, the entire provisions of the Constitution, with all its amendments, exceptions and modifications, now also apply to the area of Jammu and Kashmir. The citizens of Jammu and Kashmir will not have dual citizenship but they will be citizens of India alone.

As the new union territory of Jammu and Kashmir will be subject to the Indian Constitution, its citizens will now have the Fundamental Rights enshrined in that document-until now. Any citizen of India can now buy property there. All the central laws are applicable. Indian Penal Code replaced the Ranbir Penal Code. No more two flags, One Nation One Flag One Constitution. Kashmiri Women will not lose the right to property after marrying non-Kashmiri men. Any Indian can buy land there, own property, invest and settle down. This will allow companies to invest and set up there. In short Kashmir will be open for Whole India. The relationship between Kashmir and the rest of will get better with the exchange now possible. This move was welcomed with open hands by most of India, and criticism was also made. The reaction which we received on the international front can definitely be seen as proof of India's strength.

### III. INTERNATIONAL REACTION, RECEPTION, AND RESPONSE.

#### A. WHO SUPPORTED, WHO CRITICIZED?

Starting with Our neighbours, Bhutan and Sri Lanka welcomed the abrogation of Article 370, and Maldives, Nepal, Bangladesh, and Afghanistan called the move an internal matter.

Myanmar's response was probably silence as the newspapers did not report anything. Pakistan and China were against this decision and not only their media reacted but also the government. China and India do maintain a cooperative partnership but the relationship can never be called friendly. They obviously opposed the abrogation of the Article.

The Organization of Islamic Countries (OIC) also reacted opposingly, however, its reaction was paid no heed as the neighbouring countries of India, Bangladesh, Maldives, and Afghanistan, who are part of the OIC considered the issue as an internal matter. Turkey was the only Muslim country to take a stand against India's move and support Pakistan over Kashmir Issue. The Turkish President raised the Kashmir issue during his address at the 74<sup>th</sup> regular session of the UN General Assembly which opened on 17 September 2019. Malaysia is also one of the nations which criticized the move. Malaysian Prime Minister Mahathir Muhamad alleged on 27<sup>th</sup> September during his UNGA speech that India has invaded and Occupied Kashmir.<sup>16</sup> The Gulf countries mostly maintained a neutral stance on the matter. While Saudi Arabia expressed their concern over the upcoming crisis, United Arab Emirates (UAE) leaned more on India's side. Kuwait, Qatar, Bahrain, and Oman remained silent officially.<sup>17</sup> Iran's stance was also almost neutral, the government didn't side with Pakistan.

Australia<sup>18</sup>, France, Israel, Thailand, and Poland also considered the matter to be solved bilaterally. Russia, having close ties, supported India. Zambia became the first African country

to react on the matter, calling the matter a bilateral issue.<sup>19</sup>

The United States also called the matter an internal issue. This was a blow to Pakistan as it was hoping for the USA to intervene.<sup>20</sup> The United Kingdom showed concern and called the issue bilateral<sup>21</sup> although the British parliament was divided over the matter.

### B. The TWO SPECIAL NEIGHBOURS-PAKISTAN AND CHINA.

India's relationship with Pakistan is anything but friendly. And Kashmir has always been the main subject matter of dispute. Hence foretelling that Pakistan will be against abrogation of Article 370 can be never wrong. Its reaction was not much different. Pakistan showed an outraged reaction. Article 370 was abrogated on the 5<sup>th</sup> of August 2019; it came into effect from the very next day. On 7 August, within 48 hours of the abrogation, Pakistan expelled India's High Commissioner and recalled its own top diplomat from New Delhi, India<sup>22</sup>. Bilateral trade between India and Pakistan was also shut down. It also banned the screening of all Indian films and even canceled the Samjhauta Express,<sup>23</sup> the train which linked Lahore to New Delhi calling India's step unilateral and illegal. Not stopping to that, it launched a diplomatic campaign to secure diplomatic support at the international stage

<sup>16</sup> Yoshita Singh, "At UNGA, Malaysian PM Says India 'Invaded and Occupied' Kashmir, 30<sup>th</sup> September, 2019. <https://thewire.in/world/at-unga-malaysian-pm-says-india-invaded-and-occupied-kashmir> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

<sup>17</sup> AP. "Article 370: Here is why the Arab response to Kashmir has been muted", CNBCTV18, 15<sup>th</sup> August 2019 <https://www.cnbctv18.com/politics/article-370-here-is-why-the-arab-response-to-kashmir-has-been-muted-4179701.htm> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

<sup>18</sup> ANI, "Article 370 abrogation: Kashmir issue should be resolved bilaterally, says Australian envoy", Hindustan Times, 24<sup>th</sup> June 2020, <https://www.hindustantimes.com/india-news/abrogation-of-article-370-is-india-s-internal-matter-australian-envoy-harinder-sidhu/story-clK9gzC3mUYpB3LHOboIKO.html> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

<sup>19</sup> Sparshita Saxena, "Zambia becomes first African country to react on India-Pak tensions, calls Kashmir Bilateral issue.", WION, 21<sup>st</sup> August 2019 <https://www.wionews.com/india-news/zambia-becomes-first-african-country-to-react-on-india-pak-tensions-calls-kashmir-bilateral-issue-244689> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

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<sup>21</sup> PTI "UK's stance of Kashmir being bilateral issue between India, Pak remains unchanged: Boris Johnson", Times Of India, 30<sup>th</sup> Oct, 2019, <https://timesofindia.indiatimes.com/world/uk/uks-stance-of-kashmir-being-bilateral-issue-between-india-pak-remains-unchanged-boris-johnson/articleshow/71824714.cms> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

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<sup>23</sup> Express Web Desk, "Pakistan suspends Samjhauta train service, bans Indian films," The Indian Express, 8<sup>th</sup> August, 2019, <https://indianexpress.com/article/india/pakistan-suspends-samjhauta-express-bans-bollywood-films-5888753/> (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

with the intent to rally against India. Though it was unable to get much success, it appealed to the United Nations (UN) and the Organization of Islamic Countries. Pakistan's Foreign Minister on September 10 claimed in the 42<sup>nd</sup> session of the United Nations Human Rights Council (UNHRC) that it has the support of 58 countries on the Kashmir issue, however, it failed to present the required signatures.<sup>24</sup> Another Step it took was to call United Nations Security Council session, this step was backed by our other neighbour China. UNSC called a meeting to discuss the issue of Kashmir for the first time since 1965. It was a closed-door session on the 16<sup>th</sup> of August, 2019. Pakistan tried to garner support from China, Turkey, Malaysia, and Saudi Arabia. The meeting didn't result in what Pakistan intended. The issue raised was called India's internal matter.

Border conflicts between China and India have never ended. We have conflicts with China over Kashmir too. The region called 'Aksai Chin' though a part of Indian territory is controlled by China. Another region called 'Shaksgam Valley' was chided by Pakistan to China but comes under Indian Territory of Pak-Occupied Kashmir. A Chinese newspaper has called India 'too reckless and arrogant'<sup>25</sup> while the foreign minister of China has assured his Pakistani counterpart that it will uphold justice for Pakistan. It called the bifurcation of Jammu and Kashmir into Two Union territories as 'unlawful and void' and that it 'challenged Beijing's sovereignty'<sup>26</sup>. The UNSC meeting called by the parliament member China in favour of Pakistan failed and China was unable to pressurize India

using it. The meeting ended without any statement on Kashmir with the other members refusing to make any statement.<sup>27</sup>

#### IV. G20 SUMMIT AT SRINAGAR.

Just a month ago, the Third G-20 Tourism working group meeting was held in the union territory of Jammu and Kashmir. This year is the first time for India to host G20 summit. Also, this event is the first major international event that happened in Kashmir after abrogation of the Article 370 and the reorganization of the state of Jammu & Kashmir into two Union Territories in 2019. J&K had never held such an event ever since Independence.

##### A. THE PARTICIPANTS.

The G20 is made up of 19 countries and the EU. The 19 countries are Argentina, Australia, Brazil, Canada, China, Germany, France, India, Indonesia, Italy, Japan, the Republic of Korea, Mexico, the Russian Federation, Saudi Arabia, South Africa, Turkey, the UK, and the US. Out of these three G20 member countries that are China, Saudi Arabia, and Turkey, and two guest nations Egypt, and Oman did not send their delegations. Though unofficial guests came from Saudi Arabia and Egypt. Three Islamic countries, Bangladesh, UAE, and Indonesia that are also part of OIC sent their delegation to the Srinagar meeting. All the other G-20 countries and invited countries sent their delegation. Seven delegates from the European Union and other multilateral organizations like World Trade Organisation (WTO) International Labour Organisation (ILO) and United Nations Environment Programme (UNEP) were present.

##### B. THE BENIFITS.

Jammu and Kashmir had been a region where constant stone petting used to happen. Militant groups were active there. The beautiful valley got its well-deserved attention at the international front as the marvelous beauty it is. The Paradise on Earth which has got hidden under the blanket of terrorism needed this treatment very much.

First and foremost, the reaction of Pakistan over this G-20 meeting reflected its malafide

<sup>24</sup> Dipanjan Roy Chaudhury, ET Bureau, "Pakistan fails to prove claim of 58 nations' support on Jammu & Kashmir" 21<sup>st</sup> September, 2019 [https://economictimes.indiatimes.com/news/international/world-news/pakistan-fails-to-prove-claim-of-58-nations-support-on-jammu-kashmir/articleshow/71228075.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/international/world-news/pakistan-fails-to-prove-claim-of-58-nations-support-on-jammu-kashmir/articleshow/71228075.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last Accessed on 16<sup>th</sup> June 2023 – 15.09 PM)

<sup>25</sup> "India is 'Too Reckless and Arrogant': Chinese Media after Article 370 Abrogation," Huffington Post, August 13, 2019, [https://www.huffingtonpost.in/entry/india-china-media-after-article370abrogation\\_in\\_5d525555e4b0cfeed1a245a](https://www.huffingtonpost.in/entry/india-china-media-after-article370abrogation_in_5d525555e4b0cfeed1a245a) (Last Accessed on 16<sup>th</sup> June 2023 – 15.03 PM)

<sup>26</sup> PTI, "Formation of J&K and Ladakh union territories 'unlawful and void': China" Times Of India, 31<sup>st</sup> October, 2019, <https://timesofindia.indiatimes.com/india/formation-of-jk-and-ladakh-union-territories-unlawful-and-void-china/articleshow/71836883.cms> (Last Accessed on 16<sup>th</sup> June 2023 – 16.05 PM)

intentions and insecurities. This meeting has beautifully exposed the false narratives on Jammu and Kashmir. Another advantage happened the increase in tourism. Jammu and Kashmir's economy is agriculture and allied activities based. It produces and export agricultural products such as apples, barley, cherries, corn, millet, oranges, rice, peaches, pears, saffron, sorghum, vegetables, and wheat, and manufactured products such as handicrafts, rugs, and shawls. Another sector that has a significant part and has massive scope for improvement is the Tourism Industry. Kashmir is a global tourist destination. The year 2022 recorded a tourism boom with lakhs of tourists, the highest footfall recorded in J&K in the last 75 years of India's Independence.<sup>28</sup> The G20 meeting held in Kashmir became the perfect advertisement to the whole world of the vast potential that Kashmir holds. Be it traditional recreational tourism, adventure tourism, pilgrimage, spiritual, and health tourism. After the abrogation of Article 370, people were worried about peace in the valley. This meeting must have freed them of this worry to a greater extent.

The G20 working group Meeting in Kashmir was also a perfect indicator to the whole world that Kashmir is open for business and investments. According to BBC over 60 delegates were expected to visit for the meeting. The wire also reports the same number arriving at the Srinagar airport on Monday (May 22) afternoon. The magazine called Kashmir Wallah mentioned in its online news desk post on 23<sup>rd</sup> May that as many as 53 foreign delegates, 46 from G-20 nations, invitee countries, and 7 from multilateral organizations are participating in the G20 Tourism Working Group meeting currently underway in Srinagar. The recommendation of the working group is likely to give J&K international-level exposure and assist hugely in the economic development

of UT.<sup>29</sup> They have witnessed J&K's bloom and they will be instrumental in bringing prosperity there.

## V. CONCLUSION

From the abolition of Article 370 to the G20 Meet at Srinagar, step-by-step strategic moves can be deduced. The abolition of Article 370 saw mixed to muted responses international front. This move was welcomed with open hands by most of India, and criticism was also made. Most of the countries showed concerns over peace. While Pakistan and China were gauging the disputed region status. With abolishing Article 370 now we have one nation, one flag, and one constitution. Nothing can be more an official way to announce that the whole of Jammu and Kashmir is Indian territory that this move. The G-20 Meet at Srinagar helped India in shedding the worry of not being able to maintain peace in Jammu and Kashmir. Participation of 17 G20 countries and 4 of the P5 shows India's value and Strength. The G20 meeting in Kashmir should prove very advantageous for Kashmir's economy. Growth in the tourism sector and foreign investors in there is expected.

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<sup>28</sup> Lt Col Saurabh Mall in Voices "G20 Summit: Importance for Jammu and Kashmir", 19<sup>th</sup> may 2023, <https://timesofindia.indiatimes.com/blogs/voices/g20-summit-importance-for-jammu-and-kashmir/> (Last Accessed on 16<sup>th</sup> June 2023 – 15.02 PM)

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