

**IN RE: ARTICLE 370 OF THE CONSTITUTION, WRIT PETITION (CIVIL) NO.  
1099 OF 2019, SUPREME COURT OF INDIA**

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## INTRODUCTION

In India's legal history, the case of In re: Article 370 has a huge impact on the country and its constitutional law. In August 2019, the Indian government once again was able to rewrite the history by abrogating Article 370 of the Constitution of India which gave special status to the state of Jammu and Kashmir. This ruling which was at one time a contentious issue and could be described as having created more light than heat, triggered a chain of legal suits that were taken all the way to the Supreme Court of India, the apex court of the country.

Ever since the time of the inception of the Indian nation, the Union government and the state of Jammu and Kashmir have shared a distributive power and it is most evidently presented in Article 370 of the constitution of India. This made it award to the state a special privilege, to have its flag, constitution, and a large measure of autonomy in the administration of its affairs though there were some areas that came under the direct control of the Union like defence, foreign policy, finance and communication. Hence, there was political meaning, societal meaning, and historical meaning in the decision to announce the abrogation of Article 370 apart from the legal meaning.

As per the constitutional legal aspect of the government's decision to repeal article 370, there has been a number of issues which have been raised in the petitions with regard to the rights of the people of Jammu and Kashmir, nature of the federal structure of the country being secular and parliamentary power. This left the Supreme Court with the challenge of having to chart its way through a maze of constitutional precedents, legal theories and counter-interpretations that the Court had to act on to deliver its decision which shaped the future of the country.

This case commentary aims to clarify the complexities surrounding the Supreme Court's ruling in In re: Article 370 by presenting a comprehensive overview of the matters at stake for the Court to decide or the questions made by the parties for the court to answer. Article 370 enhances the evaluative potential of a legal opinion concerning the given case, its analysis, and

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the outcome of the ruling passed by the Court. In fact, it is intended to give a detailed understanding of one of the major legal controversies of contemporary India encompassing historical and legal context as well as socio-political implications of the case.

### **FACTS OF THE CASE**

Historically significant development of August 2019, the Indian government abrogated Article 370 of the country's Constitution, under which the state of Jammu and Kashmir enjoyed a sweeping self-governance. Ever since the Indian Constitution was framed and adopted, Jammu and Kashmir have had a special constitutional status under Article 370. The state of Jammu and Kashmir was bifurcated into two separate Union Territories namely Jammu and Kashmir and Ladakh at the time of abrogating Article 370. This decision which the Indian President made through an executive order caused the creation of discussions, controversies, and legal cases. The Supreme Court of India got several petitions challenging the constitutional validity of the government's desire to abrogate Article 370.

Hence, it was left to the Indian Supreme Court to decide whether the re-organisation of Jammu and Kashmir and abrogation of Article 370 was constitutional or not. This case clouded important issues related to federalism as well as the sovereignty of the parliaments of India and Jammu and Kashmir and the rights of the people of the latter as envisaged by the Indian constitution.

### **PROCEDURAL HISTORY**

The start of the In re: Article 370 case where the Supreme Court got several writ petitions challenging the centre's action of abrogating Article 370 of the Indian constitution. These petitions were consolidated by the Court, which began lengthy hearings after the parties involved presented their cases including the petitioners as well as the government. After a lot of thinking, the apex court passed the verdict on the question of the constitutional validity of the Centre's decision to abrogate Article 370 and the order contains detailed reasons.

### **CONTENTION OF THE APPELLANTS**

Since neither the state legislature nor the people of Jammu and Kashmir approved of the repeal of Article 370, it was unlawful.

The appellants contended that democratic procedures, such as consultation with the state legislature and gaining the approval of the impacted populace through a referendum or plebiscite, should have been applied to such a major constitutional change.

The rights and interests of Jammu and Kashmir's minority communities, especially the Kashmiri Muslims, were put in jeopardy when Article 370 was repealed.

### **CONTENTION OF THE RESPONDENT**

According to the respondents' assertion, Article 370 served its purpose; it no longer had relevancy and must be abrogated to make Jammu and Kashmir an actual part of India.

According to the respondents; the President of India as the head of the state of the nation/ country has the legal authority and mandate to revoke Article 370 and such power was well articulated in the constitution of India. It shall be noted that the President could eliminate or alter any of the temporary provisions at any time whether it is Article 370 constitution or not.

The responders thus emphasized that to eliminate Article 370, the goals that were relevant to the nation's economic development, security, and unity were relevant. This led to the conclusion that since the security issues in the region and the need for socio-economic development could not be addressed with the help of Article 370 in place, it had to be abrogated.

### **ISSUES BEFORE THE SUPREME COURT**

Whether the abrogation of Article 370 of the Constitution by the Government of India is constitutionally valid?

Did the unilateral abrogation of Article 370 without the consent of the people of Jammu and Kashmir or the state legislature violate the principles of federalism?

Does the President of India possess the authority to modify or repeal temporary provisions like Article 370 through a presidential order?

Did the abrogation of Article 370 adversely affect the rights and interests of minority communities in Jammu and Kashmir, particularly the Kashmiri Muslims?

## **ANALYSIS OF THE JUDGMENT**

A pivotal moment in Indian legal and constitutional history was reached in the case of *In re: Article 370*, which mentions the consequences of the repeal of the constitution. The objective of this research is to analyze the case brought before the Supreme Court and the eventual outcome of the decision from the aspect of minority rights, the principle of federalism, democracy and within the constitutional structure of India.

## **CONSTITUTIONAL VALIDITY AND PRESIDENTIAL AUTHORITY**

The central question in this case was whether the government's decision to repeal Article 370 was constitutional. Jammu and Kashmir was to be given special autonomy through Article 370 in the Constitution but this was to be only for some time. The Supreme Court supported the presidential authority to change or repeal such items, as the transitory provisions, by a presidential order. This claim was backed up by historical support and parliamentary sovereignty philosophy as well as the constitution.

The Court pointed out that the unionization process of Jammu & Kashmir stopped due to Article 370 which was required in the past. By abrogating Article 370, the government wanted to pave the way for easy governance, development and atheist security in the region.

As a result, the Court affirmed the constitutional character of the Government's action and understood the data as an application of the presidential prerogative.

## **DEMOCRATIC PROCESSES AND MINORITY RIGHTS**

The primary complaint of the petitioners was that they considered the move to scrap the provision under Article 370 as undemocratic. Some claimed that the democratic process was violated because the action was executed without approval from the state legislature or the people of Jammu and Kashmir. The Supreme Court ruled however that, such a judgment could be made by the central government after its election and which actually reflects the people's decision.

While pinpointing the relevance of democracy in governing the state, the Court stipulated that the executive branch sometimes has to operate faster in terms of decision-making and actions which affect national security and unity. However, the Court noted that bypassing some

democratic institutions through the deeming of Article 370 as demolished was reasonable to preserve the nation's integration and unity.

The Court also understood the concerns regarding the impact of this abrogation which people had regarding the rights of the minorities particularly the rights of the Muslims of Kashmir. The Indian constitution and principles of federalism stressed the need to protect the rights of minorities while urging the government not to wait to protect the political, religious and cultural rights of minorities in Jammu and Kashmir.

### **IMPLICATIONS FOR FEDERALISM AND CONSTITUTIONAL FRAMEWORK**

The ruling in *In re: Article 370* does not only raise important questions about the nature of the Constitution of India and Constitutional law but also of the federal structure of India. It reinforces the concept of parliamentary sovereignty by repeating the central government's authority to determine the manner in which Union territory will be governed. It also poses questions over the relative power of the Union and the states, particularly on matters of self-governance and selective status.

The removal of Article 370 implies a shift in the special status and the state administration in the Union of Jammu and Kashmir and between the centres. Debates over whether federalism should be to an extent, to what extent executive powers need to be defended and protection of minorities under the Indian Constitution.

Furthermore, the given decision determines the provisions of other Constitutional interpretations and amendments. On the aspects of presidential authority to alter or repeal provisions of the constitution or supply a process that defines how a constitution may be changed. It also especially underlines the importance of understanding the minorities' rights of democracy as well as federalism notions within the Indian administrative context.

A major turning point in India's legal and constitutional history was reached in the 2019 case in regard to Article 370, which deals with factual issues aa connection with the repeal of Article 370Thehe following sections, explain the Supreme Court's conception where the decision is constitutional or not, the Presidential authority, and future implications on democracy, federalism, and minority status.

The majority decision in the ruling is in favour of parliamentary sovereignty and the powers of the central government but at the same time outlines the aspects of minority protection and cultural integrity within the existing framework of Indian federalism. The guidelines set in this ruling will be used to provide directions to future legal change and construction of meanings as India persists in manoeuvring within the constitutional landscape.

### **IMPLICATIONS OF THE CASE**

The ruling in the In re: It has different implications in different areas of law, politics and economy of India, hence the case of 'Article 370'. These ramifications affect largely the nation's federalism, minority rights, and governance, as well as the processes of constitutional interpretation.

The removal of Article 370 shows that the Centre is gradually going towards more centralization especially when it comes to the UTs. This has implications for the sovereignty and the special status of other states in the Indian Union as well as the nature of the federal balance of power between the Union and the States. Also, it reiterates the concept of parliamentary supremacy asserting that the central parliament remains the master of its fate as regards what is best for the security and integration of the nation. Some of the issues that have been brought by this decision include the scraping of Article 370 not only threatens the autonomy of the country's states but also the distribution of powers between the Union and the States leading to the reconsideration of the federal structure of India and distribution of power. The ruling lays down how imperative it is to safeguard such rights and that one cannot forget that minority distribution's cultural, religious, and political identity is as significant where changes such as Article 370 revoke are influential. Setting precedence for upcoming constitutional interpretations and modifications is the ruling in In re: Article 370. The language of the article informs about the procedure for the change of the Indian constitution and specifies the scope of the president's authority to alter or rescind the constitution. It affects society in a way that influences the masses' general attitude towards federalism, minority issues and the government and the political parties' agendas in India. The decision to abrogate Article 370 and its impact is international and defines the relations of India with its neighbours and the international community. It intervenes with power dynamics on regional security, international relations, and human rights discourses in the global platform.

Finally, the ruling in In re: These major themes include, but are not limited to, governance, federalism, minority rights and matters of constitutional justice of India which Article 370 took into its far-reaching effects beyond the purview of law. Domestically and internationally, India's status is altered as is the trajectory of its constitution. The consequences will shape the nature of Indian democracy and government as they incessantly progress for several more decades.

