



## ARTICLE 370 ABROGATION: ANALYZING THE SUPREME COURT'S DECEMBER 2023 JUDGMENT AND ITS CONSTITUTIONAL IMPLICATIONS

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### ABSTRACT

*This article examines the Supreme Court's December 2023 judgment that upheld the abrogation of Article 370, which had provided special status to Jammu and Kashmir since 1949. In August 2019, the government removed this provision and reorganised the state into two Union Territories. This decision was challenged in the Supreme Court on various grounds, including violation of federalism and improper procedure. The five-judge Constitution Bench validated the government's actions, holding that Article 370 was temporary in nature and could be modified using the procedure in Article 370(3). This article explores what Article 370 was, how it was removed, the legal challenges raised, and what the Supreme Court decided. It also discusses the implications of this judgment for India's federal structure and raises some important questions about centre-state relations. The article concludes by suggesting that while the Court's decision settles the legal questions, the directive to restore statehood to Jammu and Kashmir remains important for ensuring democratic governance.*

**Keywords:** Article 370, Jammu and Kashmir, Supreme Court, Federalism, State Reorganisation.

### INTRODUCTION

Back on August five, twenty-nineteen, India's central authority ended Article 370, a rule that had allowed Jammu and Kashmir to operate under its own laws for more than seven decades.<sup>1</sup> Since 1949, that clause shaped how the region is connected to the national framework.<sup>2</sup> At the same time, authorities introduced the Jammu and Kashmir Reorganisation Act of twenty-

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<sup>1</sup> The Constitution (Application to Jammu and Kashmir) Order 2019, CO 272

<sup>2</sup> Constitution of India 1950, art 370

nineteen, splitting the area into two separate Union Territories - Jammu and Kashmir gaining a local assembly, while Ladakh got none.<sup>3</sup>

People took this case to the Supreme Court, saying that it broke constitutional rules.<sup>4</sup> For more than four years, the case moved through arguments and delays before ending in December 2023.<sup>5</sup> Then, a panel of five judges backed what the government had done. That ruling matters since it clears up the key uncertainties around constitutional function, parliamentary power, and the way India's federal structure operates.

This article explores the Supreme Court's ruling, along with the reasons it holds significance. Starting with a look back at Article 370, its meaning and past unfold gradually. Moving forward, attention shifts to August 2019 when changes took effect suddenly. Later on, court objections surface through voices questioning legality. Each part builds quietly without rushing ahead. What the Supreme Court decides comes next. This ruling's effect on how power is shared between central and state governments gets looked at near the end, along with a few concerns it leaves unanswered.

## **UNDERSTANDING ARTICLE 370 BACKGROUND HISTORY**

Article 370 was one of the most debated provisions in the Indian Constitution.<sup>6</sup> That clause handed Jammu and Kashmir a unique authority unmatched elsewhere. Laws from the national legislature needed local approval before applying there,<sup>7</sup> and a separate charter guided the region, along with a distinct banner flown proudly.<sup>8</sup> Another addition was made, which was numbered 35A, it carved out privileges that stated that only those who are listed as permanent inhabitants could purchase land or claim public positions.<sup>9</sup>

## **ARTICLE 370 ORIGINS**

Back then, in 1947, independence changed everything across India.<sup>10</sup> Jammu and Kashmir wasn't like other regions; it stayed under its own ruler, Maharaja Hari Singh. When Pakistan-supported tribal raiders attacked Kashmir, the Maharaja signed the Instrument of Accession to

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<sup>3</sup> Jammu and Kashmir Reorganisation Act, 2019

<sup>4</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 12

<sup>5</sup> Ibid para 1

<sup>6</sup> AG Noorani, Article 370: A Constitutional History of Jammu and Kashmir (Oxford University Press 2011) 45

<sup>7</sup> Prem Nath Kaul v State of Jammu and Kashmir AIR 1959 SC 749

<sup>8</sup> Sumantra Bose, Kashmir: Roots of Conflict, Paths to Peace (Harvard University Press 2003)

<sup>9</sup> Sampat Prakash v State of Jammu and Kashmir AIR 1969 SC 1153

<sup>10</sup> VP Menon, The Story of the Integration of the Indian States (Orient Longmans 1956) 394

join India.<sup>11</sup> However, this accession came with special conditions because of the state's unique situation; it had a Muslim majority population and was located in a sensitive border region.<sup>12</sup>

From Kashmir himself, N. Gopalaswami Ayyangar shaped Article 370 during debates in the Constituent Assembly.<sup>13</sup> Tucked into Part XXI of the Constitution, named as "Temporary, Transitional and Special Provisions", its position carried weight.<sup>14</sup> That spot hinted at a limited lifespan, implying it wasn't built to last forever. Integration of Kashmir into India, step by step, stood as the aim behind the article. Special conditions on the ground were part of what guided its design.<sup>15</sup>

### WHY DID IT LAST SO LONG?

Though it was labelled as temporary, Article 370 held strong for more than seven decades.<sup>16</sup> Held in place by shifting administrations, its presence stirred deep feelings among those living in Kashmir. Elsewhere across India, doubt grew about why let just one region keep separate rules?<sup>17</sup> Voices rose over the years, particularly within the Bharatiya Janata Party, which tied ending the clause to their campaign vows.<sup>18</sup> Seen by them as a barrier to unity, they claimed it slowed progress too.<sup>19</sup> Then, after long years of talk, came the move one summer morning in August 2019; the provision was undone.

### THE REMOVAL OF ARTICLE 370 IN AUGUST 2019

**How This Happened:** One morning, without much warning, Article 370 was gone, which caught everyone off guard.<sup>20</sup> That shift arrived on August fifth, two thousand nineteen, through a presidential directive labelled C.O. 272, altering the article deeply.<sup>21</sup> What made it twist? The administration leaned on clause 3 of Article 370, letting the President nullify its own

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<sup>11</sup> Ibid 398

<sup>12</sup> Alastair Lamb, *Kashmir: A Disputed Legacy 1846-1990* (Roxford Books 1991) 123

<sup>13</sup> Constituent Assembly Debates (17 October 1949) vol 9, 1451

<sup>14</sup> Constitution of India 1950, Part XXI

<sup>15</sup> Constituent Assembly Debates (17 October 1949) vol 9, 1451-1462

<sup>16</sup> AG Noorani, *Article 370: A Constitutional History of Jammu and Kashmir* (Oxford University Press 2011) 156

<sup>17</sup> Christopher Snedden, *Understanding Kashmir and Kashmiris* (Hurst Publishers 2015) 156

<sup>18</sup> Bharatiya Janata Party, 'Sankalp Patra 2019' (BJP Election Manifesto 2019) 9

<https://www.bjp.org/manifesto2019> accessed 3 January 2026

<sup>19</sup> Ibid

<sup>20</sup> 'Article 370 Abrogated: Historic Day for India' *The Times of India* (New Delhi, 6 August 2019)

<https://timesofindia.indiatimes.com/india/article-370-abrogated>

<sup>21</sup> The Constitution (Application to Jammu and Kashmir) Order 2019, CO 272

existence.<sup>22</sup> So essentially, they used Article 370 itself to remove Article 370, which later became a major point of legal debate.<sup>23</sup>

Meanwhile, lawmakers approved the Jammu and Kashmir Reorganisation Act in 2019.<sup>24</sup> That act split the region into two distinct Union Territories. One part, Jammu and Kashmir, turned into a territory with its own elected council. The other, Ladakh, became a territory but had no local legislature.<sup>25</sup> This meant that Jammu and Kashmir was no longer a full state with all the powers that states normally have.<sup>26</sup>

**What Changed:** What happened made a real difference. Out went Article 35A, which once shielded residency privileges.<sup>27</sup> From now on, people across India can purchase land there, something previously off limits.<sup>28</sup> Laws passed by the central government took effect directly, no longer requiring approval. In one move, the area's legal backbone shifted completely.<sup>29</sup>

**The Security Situation:** The implementation came with very strict security measures.<sup>30</sup> The government-imposed restrictions on movement, shut down internet and phone services, and detained many political leaders.<sup>31</sup>

These restrictions lasted for many months and affected people's daily lives significantly.<sup>32</sup> The government said these steps were necessary to prevent violence and maintain law and order.<sup>33</sup> However, many people criticised these actions as being too harsh and undemocratic.<sup>34</sup> Right after these events, many petitions were filed in the Supreme Court challenging the constitutional validity of what the government had done.<sup>35</sup>

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<sup>22</sup> Constitution of India 1950, art 370(3)

<sup>23</sup> Faizan Mustafa, 'The Paradox of Using Article 370(3)' (The Wire, 7 August 2019) <https://thewire.in/law/article-370-3-abrogation>

<sup>24</sup> Jammu and Kashmir Reorganization Act 2019

<sup>25</sup> Jammu and Kashmir Reorganization Act 2019, s 3

<sup>26</sup> Jammu and Kashmir Reorganization Act 2019, s 5-8

<sup>27</sup> The Constitution (Application to Jammu and Kashmir) Order 2019, CO 272, cl 3

<sup>28</sup> Ministry of Home Affairs, 'Changes in Domicile Rules' (Government of India, 2020) <https://www.mha.gov.in/domicile-rules-jk>

<sup>29</sup> Jammu and Kashmir Reorganization Act 2019, s 95-96

<sup>30</sup> Anuradha Bhasin v Union of India (2020) 3 SCC 637

<sup>31</sup> Human Rights Watch, 'India: Unprecedented Clampdown in Kashmir' (HRW, 9 August 2019) <https://www.hrw.org/news/2019/08/09/india-clampdown-kashmir>

<sup>32</sup> Anuradha Bhasin v Union of India (2020) 3 SCC 637, para 45-67

<sup>33</sup> Ministry of Home Affairs, 'Statement on J&K Security' (Government of India, August 2019)

<sup>34</sup> Amnesty International, 'Kashmir: Six Months After Lockdown' (Amnesty Report, February 2020)

<sup>35</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 12

## LEGAL CHALLENGES IN THE SUPREME COURT

A decision came in December 2023 from a bench of five judges headed by Chief Justice D.Y. Chandrachud.<sup>36</sup> While backing what the government did, the ruling quietly stressed bringing back statehood, too.

**Article 370 Meant to Be Temporary:** The first major challenge was about procedure.<sup>37</sup> Article 370(3) gives the President power to declare Article 370 inoperative. But can you use a provision to destroy itself? The petitioners argued this was like cutting the branch you're sitting on; it doesn't make logical sense.<sup>38</sup> They said the Constitution's framers never intended Article 370(3) to be used for complete removal.<sup>39</sup>

**Article 370(3) Use Was Valid:** A decision came down confirming it was lawful to cancel Article 370 through its own clause, 370(3).<sup>40</sup> Power rests with the President to make such a declaration inactive, judges noted clearly. Built right into the rule, they observed, lies a way out like a doorway meant for just this move.<sup>41</sup> The Governor, who is appointed by the Central government, gave the concurrence.<sup>42</sup>

Petitioners questioned whether this was really a proper "concurrence".<sup>43</sup> They argued that a Governor appointed by Delhi cannot represent the state's wishes when he's essentially approving what Delhi wants to do.<sup>44</sup> This seemed like the Central government approving its own proposal without any real checks.<sup>45</sup>

**Converting a State to Union Territory:** Petitioners also challenged the conversion of a full state into a Union Territory.<sup>46</sup> They argued that India's federal structure is a "basic feature" of the Constitution that cannot be changed.<sup>47</sup> The basic structure doctrine, established in the

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<sup>36</sup> Ibid para 15

<sup>37</sup> Ibid para 89

<sup>38</sup> Faizan Mustafa, 'The Paradox of Using Article 370(3)' (The Wire, 7 August 2019)

<sup>39</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 95

<sup>40</sup> Constitution of India 1950, art 370(1)(d)

<sup>41</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 124

<sup>42</sup> Ibid para 129

<sup>43</sup> Shubhankar Dam, 'Presidential Rule and Concurrence' (2020) 12(1) Journal of Indian Law and Society 67

<sup>44</sup> Ibid 78

<sup>45</sup> Gautam Bhatia, 'The Problem of Concurrence' (2024) 16(1) Socio-Legal Review 123

<sup>46</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 156

<sup>47</sup> Kesavananda Bharati v State of Kerala (1973) 4 SCC 225

famous Kesavananda Bharati case, says some parts of the Constitution are so fundamental that even Parliament cannot change them.<sup>48</sup>

The argument was that if Parliament can unilaterally downgrade a state to a Union Territory, this violates federalism.<sup>49</sup> It could set a dangerous precedent where any state could potentially be reduced to a Union Territory if the political situation allowed it.<sup>50</sup>

**Government's Defence:** The government defended its actions by making several points.<sup>51</sup> First, they emphasised that Article 370 was always meant to be temporary; that's why it's in Part XXI of the Constitution.<sup>52</sup> Second, they pointed to Article 3, which gives Parliament the power to reorganise states, create new states, or change boundaries.<sup>53</sup> Third, they argued that the changes were necessary for national security and integration.<sup>54</sup> The government insisted it had followed proper constitutional procedures and that everything was legal.<sup>55</sup>

## UNDERSTANDING THE JUDGMENT'S IMPACT

**What the Court Got Right:** Now comes the highest court, untangling knots which lawmakers argued over for years. What stood unclear was how "temporary" works in legal terms, is: Article 370 carried an expiry of intent. Meaning shifts when words are weighed in time, yet here, transience was built into the design. Power rests where it long appeared to shape state borders, and Parliament holds steady authority through Article 3.

What makes the ruling stand out is how it tied legality to people's voices. Not even once did judges blindly back state actions; instead, they demanded a return to proper state status. By pushing for reinstatement, the bench underlined its role beyond mere approval. It wasn't passive acceptance but a measured nudge toward fairness.

## CONCERNS AND QUESTIONS

However, the judgment also raises some concerns that are worth thinking about.

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<sup>48</sup> Ibid para 314 (per Sikri CJ)

<sup>49</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 165

<sup>50</sup> Madhav Khosla, 'Federalism After Article 370' (2024) 46(1) Delhi Law Review 89

<sup>51</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 67

<sup>52</sup> Ibid para 89

<sup>53</sup> State of Rajasthan v Union of India (1977) 3 SCC 592

<sup>54</sup> In Re: Article 370 of the Constitution (2023) SCC OnLine SC 1625, para 70

<sup>55</sup> Ibid para 234

**The Concurrence Problem:** One major concern is about the concurrence given by the Governor during President's Rule. Can this really be considered genuine state consent? The Governor is appointed by the Central government, so when he approves the Central government's proposal, it seems like the Central government is approving its own decision. This might not be true federal consent, where the state has a real say.

**State to Union Territory:** The judgment establishes that Parliament can convert a state into a Union Territory. While this may be legally valid, it raises questions about federalism. If any state can potentially be downgraded to a Union Territory through parliamentary action, does this make states less secure in their constitutional position?

**Comparison with Other States:** Another interesting question is about other states with special provisions. States in the Northeast like Nagaland and Mizoram have special protections under Articles 371A to 371J. These were also given for similar reasons to respect regional differences during integration. Why are these provisions treated differently from Article 370? The main answer seems to be that Article 370 was placed in the "temporary" part of the Constitution, but this raises questions about whether placement should determine protection.

**Timeline for Statehood:** The Court said statehood should be restored "at the earliest," but didn't give a specific timeline. As of January 2026, statehood has still not been restored. Without a clear deadline, it's uncertain when or if this will actually happen.

**For Jammu and Kashmir:** The region has changed significantly since 2019. Elections were held in 2024, which is a positive step toward restoring democracy. However, the Lieutenant Governor still has significant powers, and full statehood has not been restored. The changes to property laws and domicile rules are also affecting the region's character. How these changes will impact the region in the long term remains to be seen.

**For Indian Federalism:** This judgment affects how we understand centre-state relations in India. It confirms that Parliament has very strong powers over states, including the power to reorganise them or change their status. While political factors would make it difficult to do this to other states, the constitutional possibility now clearly exists.

**What Happens Next:** Since 2019, life in Jammu and Kashmir has looked different. Voting happened again by 2024; some see that as progress on the path to self-rule. Still holding strong control is the Lieutenant Governor, while the old state status stays suspended. New rules about

who can own land or claim local roots have stirred shifts across communities. Only time will tell what kind of mark these moves leave behind.

Nowhere is the balance of power more evident than in this ruling on India's federal structure. Power tilts heavily toward Parliament when it comes to reshaping state boundaries or altering their standing. Even if real-world politics makes such moves unlikely elsewhere, the legal door stands fully open. What was once uncertain now rests firmly in constitutional clarity.

## **CURRENT SITUATION**

**Current Constitutional Status:** By early 2026, changes keep unfolding across Jammu and Kashmir. Governance there now works through a Union Territory setup that includes a local assembly, whereas Ladakh's administrative path runs separately, lacking any elected council. Despite a top court order pushing for full state status to return, progress stalls; officials mention timing will decide when steps follow.

It was held between September and October of 2024, and the Jammu and Kashmir Legislative Assembly polls stood as a sign of returning to elected governance. In many places, ballots came in at steady numbers, proof that residents still leaned into voting even when conditions felt different. Regional groups took part alongside countrywide parties, each stepping into the race without holding back. Once votes were counted, leadership emerged through negotiation rather than conflict.

Ahead of everything else, decision-making here leans heavily on the Lieutenant Governor rather than the local vote-winners. Because of how the Jammu and Kashmir Reorganisation Act is written, key functions such as managing law enforcement, maintaining civil calm, handling top-tier bureaucrats, and fighting graft are all held tight by that central appointee. As a result, even though people choose leaders at polls, those figures often lack weight when big choices come around at work.

**Demands Grow for Restoring Statehood:** Political parties across the spectrum have been demanding the quick restoration of full statehood. Even parties that initially supported or didn't oppose the removal of Article 370 have now joined in demanding statehood restoration. They argue that the current Union Territory status with limited powers for elected representatives is not adequate for a region with such a large population and complex governance needs.

Some regional groups put statehood at the heart of their message, saying leadership falters without true power for local leaders. Power gaps slow things down, and projects wait while officials seek permission from someone who might be busy or focused elsewhere. That mismatch often stalls progress on everyday needs.

**Implementation of Changes:** Slowly but surely, the new rules set in 2019 have taken root. Across Jammu and Kashmir, national laws operate just like they do elsewhere, no extra steps required. From how crimes are handled to worker rights, things follow the central blueprint. Welfare efforts also run under the same framework, with no exceptions.

The domicile rules have been substantially changed through new legislation passed in 2020. The new rules define who qualifies as a domicile of Jammu and Kashmir, essentially, anyone who has resided in the region for 15 years, or 7 years if they studied there, or central government employees posted there, along with their children. This is much broader than the earlier permanent resident rules, which were based on birth or long family history in the state.

Folks began questioning how shifts in home rules affect work chances and school access. A few fear young locals could lose out when chasing careers or classroom spots. Still, some say equal treatment makes sense, believing that what works across India ought to hold there too.

Out in the open now, anyone from across India may purchase land in Jammu and Kashmir since the rules tightened before have loosened. Prices for homes and plots have climbed a bit here and there because of it. Folks are watching closely, wondering what shifts might come to local communities down the road. Still, farmland stays shielded under special safeguards meant to support those who farm it.

## **DEVELOPMENT PROJECTS AND ECONOMIC SHIFTS**

Plans for growth in the area include building roads, supporting factories, and also// boosting travel visits. Rules on investments changed lately, meant to bring companies into Jammu and Kashmir. Security around land ownership improved, officials say, since the end of Article 370, making laws easier to follow.

Still, measuring real progress here isn't straightforward. New roads and buildings have gone up, and visitor numbers rose at times. On the flip side, setbacks hit hard - pandemic waves,

safety issues, shifts after sweeping legal reforms. Numbers tell a split story: gains in certain industries, losses in others.

Not everyone agrees on how things are going. A few see fresh chances, plus rules that finally make sense. Still, some fear outsiders taking too much. Getting used to changes feels heavy for certain folks. Money flowing in does not always reach those nearby. Benefits seem uneven, depending on who you ask.

**Social and Political Landscape:** Nowhere is tension felt more quietly than in daily life across Jammu and Kashmir. Life moves forward, yet thoughts linger on what shifted last year. A few see opportunity where others see loss. Not everyone agrees on what the changed status means. For some, normalcy has returned - jobs matter most now. Still, voices remain loud about betrayal. The past isn't buried just because laws have changed.

Things feel safer now than before, mainly because attacks by armed groups happen less often these days. Still, sudden events pop up once in a while, showing risks remain despite progress. Officials say getting rid of Article 370 helped calm things down through new policies. Yet others wonder if taking that step truly caused the improvements at all.

## CONCLUSION

The Supreme Court's December 2023 judgment on Article 370 is a landmark decision that settles important constitutional questions. The Court held that Article 370 was temporary, that it could be modified using Article 370(3), that the Governor's concurrence during President's Rule was valid, and that Parliament has the power to reorganise states, including converting them to Union Territories.

While these legal conclusions may be sound, there are legitimate concerns about federal consent, democratic processes, and the treatment of special provisions for different states. The judgment shows the tension between parliamentary power and federal principles in India's constitutional system.

The most important aspect of the judgment going forward is the directive to restore statehood to Jammu and Kashmir. How quickly and genuinely this is implemented will determine whether this constitutional change ultimately serves democratic principles and the aspirations of the people of Jammu and Kashmir.

First, constitutional law involves balancing different principles, in this case, parliamentary sovereignty versus federalism. Second, the same constitutional provision can be interpreted differently depending on the context and the interpreters. Third, law and politics are often intertwined, especially in matters involving federalism and regional autonomy. Finally, legal validity doesn't always answer all questions about democratic legitimacy and political wisdom.

As India continues to evolve as a federal democracy, the Article 370 case will remain an important reference point for understanding how the Constitution works, what Parliament can do, and how courts balance different constitutional values. The ultimate success or failure of this decision will be judged not just by its legal reasoning, but by whether it leads to lasting peace, development, and democratic participation in Jammu and Kashmir.