

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

FEDERALISM UNDER SIEGE: ANALYZING THE ENDORSEMENT OF ARTICLE 370 ABROGATION BY THE SUPREME COURT OF INDIA

AUTHORED BY - SIA SETHI

Introduction: -

A major change in India's constitutional history occurred when Article 370 was repealed and Jammu and Kashmir's status was converted to that of a union territory.¹ This paper aims at analyzing the historical background of Article 370, its withdrawal and the approval of the same by the Supreme Court in India. This paper mainly examines the effects of this decision on the federal system of India. It explores federalism, the autonomy of states and union territories, and the constitutional implications of dissolving a state, highlighting the potential consequences of this change. The paper concludes by emphasizing the importance of preserving federalism and state autonomy to ensure the continued health of India's democracy.

A Detailed Overview of the history of Article 370: -

On the 26th of October, 1947, the final Maharaja of Jammu and Kashmir, namely, Maharaja Hari Singh, signed a document called the Instrument of Accession², which is a legal document is drafted to assist accession after a king has decided to officially cede a territory³, and thus Jammu and Kashmir was ceded to the Dominion of India.⁴ In this pact, he limited the Union's power in three areas—foreign affairs, defense, and communications—by transferring their regulation to the Indian Parliament.⁵ On January 26, 1950, this was succeeded by the

¹ Press Information Bureau (2021) *Impact of Abrogation of Article 370 On J&K, Ministry of Home Affairs*. Available at: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1694784> (Accessed: 01 November 2024).

² Instrument of Accession of Jammu and Kashmir State, Oct. 26, 1947, available at https://cjp.org.in/wp-content/uploads/2019/08/instrument_of_accession_of_jammu_and_kashmir_state.pdf (Accessed: 01 November 2024).

³ Phull, R. (2020) *Instruments of accession, Times of India Blog*. Available at: <https://timesofindia.indiatimes.com/readersblog/insideoutside/instruments-of-accession-23183/> (Accessed: 01 November 2024).

⁴ Roy, V. (2022) *1947: Maharaja Hari Singh signs instrument of accession, Frontline*. Available at: <https://frontline.thehindu.com/the-nation/india-at-75-epochal-moments-1947-maharaja-hari-singh-signs-instrument-of-accession-jammu-kashmir/article65727536.ece> (Accessed: 01 November 2024).

⁵ Sein, A. and Judge, A. (no date) *C.L. Agrawal Memorial Lecture Accession of Kashmir— Historical & Legal Perspective, Eastern Book Company - Practical Lawyer*. Available at: <https://www.ebc-india.com/lawyer/articles/96v4a2.htm> (Accessed: 01 November 2024).

assimilation of Article 370 into the Indian Constitution.⁶ There were three main points about the connection between India and Jammu & Kashmir that were stated in this section.⁷ Firstly, Article 370 prescribed that India could not enact laws in Jammu & Kashmir beyond those mentioned in the Instrument of Accession, unless the state government agreed.⁸ Secondly, it specified that, aside from Article 1, which has defined the country of India or “Bharat” as a ‘Union of States,’⁹ and Article 370 lays down that the Indian Constitution will not apply to Jammu & Kashmir.¹⁰ Additionally, while the Indian President has the power to apply parts of the Indian Constitution to the state with certain “modifications” or “exceptions,” this was to be done in consultation with the state government.¹¹ Lastly, Article 370 could not be repealed or amended without the approval of Jammu & Kashmir’s Constituent Assembly.¹² Subsequently, on the 31st of October, 1951, the Constituent Assembly of Jammu and Kashmir, which consisted of seventy-five members convened for the first time on an autumn day in the city of Srinagar, which also serves as the capital of the Jammu and Kashmir.¹³ These members also formed the National Conference Party, which was led by the then Prime Minister of Jammu and Kashmir, Sheikh Abdullah, with the explicit aim of drafting a Constitution for the region.¹⁴

Thereafter, the 1952 Delhi Agreement was signed, which was an agreement between the Government of Jammu and Kashmir and the Government of India.¹⁵ It addressed the residuary powers enshrined under Article 248 of the Constitution of India, which those are powers that are not listed in either the State or the Concurrent Lists and are typically exercised by the

⁶ Vora, A. (2024) *Article 370 of the Constitution: A timeline*, *Supreme Court Observer*. Available at: <https://www.scobserver.in/journal/article-370-of-the-constitution-a-timeline/#:~:text=On%20January%2026th%2C%201950%2C%20the,'concurrence'%20of%20its%20governme nt> (Accessed: 01 November 2024).

⁷ Sharma, R. (2023) *Article 370: Now history, here’s how it was adopted in the Indian Constitution*, *India Today*. Available at: <https://www.indiatoday.in/history-of-it/story/article-370-adopted-indian-constitution-jawaharlal-nehru-hari-singh-gopalswami-ayyengar-sheikh-abdullah-2476190-2023-12-15> (Accessed: 01 November 2024).

⁸ Setalvad, T. (2019) *Understanding article 370*, *CJP*. Available at: <https://cjp.org.in/article-370-and-the-hindu-right/> (Accessed: 01 November 2024).

⁹ INDIA CONST. art. 1(1).

¹⁰ INDIA CONST. art. 370.

¹¹ Deva, Z. (2019) *The constitutional siege on Article 370*, *Verfassungsblog*. Available at: <https://verfassungsblog.de/the-constitutional-siege-on-article-370/> (Accessed: 01 November 2024).

¹² Supreme Court of India, (Dec. 11, 2023) *In re Article 370 of the Constitution*, Writ Petition (Civil) No. 1099 of 2019 (Accessed: 01 November 2024).

¹³ *The Jammu & Kashmir Constituent Assembly: A brief history (2023)* *Constitution of India*. Available at: <https://www.constitutionofindia.net/blog/the-jammu-kashmir-constituent-assembly/> (Accessed: 01 November 2024).

¹⁴ Preston, C. (2024) *Jammu and Kashmir National Conference*, *Encyclopædia Britannica*. Available at: <https://www.britannica.com/topic/Jammu-and-Kashmir-National-Conference> (Accessed: 01 November 2024).

¹⁵ Delhi Agreement, 1952, South Asia Terrorism Portal, https://www.satp.org/satporgtp/countries/india/states/jandk/documents/papers/delhi_agreement_1952.htm (Accessed: 01 November 2024).

Union Parliament in other states.¹⁶ However, under this agreement, these powers were assigned specifically to the Government of Jammu and Kashmir.¹⁷ Additionally, the agreement further extended specific aspects of the Indian Constitution to Jammu and Kashmir, this included fundamental rights, citizenship, Union elections, trade and commerce and legislative powers.¹⁸ The Prime Minister of Jammu and Kashmir, Sheikh Abdullah, in the Constituent Assembly stated— *‘The Residuary powers vested in the Centre in respect of all States other than Jammu and Kashmir, in the case of our State, they are vested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the Instrument of Accession on which the Article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow.’*¹⁹

President Rajendra Prasad, in 1954, issued a Presidential Order with the aim of incorporating the provisions of the aforementioned 1952 Delhi Agreement into the Indian Constitution.²⁰ - *“Parliament shall have, and the Legislature of a State shall not have, power to make laws—(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and (ii) for prescribing punishment for those acts which are declared to be offences under this Part.”*²² Permanent inhabitants of Jammu and Kashmir were granted unique privileges by the enactment of Article 35A of the Constitution of India, which was approved by the Constituent Assembly of Jammu and Kashmir.²³ On January 26, 1957, after a five-year process, the Jammu and Kashmir Constitution was put into force²⁴, affirming that *“The State of Jammu and Kashmir is*

¹⁶ Preston, *Supra* note 14.

¹⁷ *Enumeration of legislative powers in India*. (2023) Available at: <https://eacpm.gov.in/wp-content/uploads/2023/03/Enumeration-of-Legislative-Powers-in-India-2.pdf> (Accessed: 01 November 2024).

¹⁸ A.G. Noorani (2011) *Negotiating the Delhi Agreement: 1952*, *Academic.oup.com*. Available at: <https://academic.oup.com/book/26414/chapter-abstract/194791852?redirectedFrom=fulltext> (Accessed: 01 November 2024).

¹⁹ Vora, *supra* note 6.

²⁰ *From the archives: The Hindu's report on the president's order in J&K, 1954* (2019) *The Hindu*. Available at: <https://www.thehindu.com/news/national/from-the-archives-the-hindus-report-on-the-presidents-order-in-jk-1954/article61587383.ece> (Accessed: 01 November 2024).

²¹ Tewari, M., Bhushan, P. and Yadav, B. (2018) *Should Article 35A be scrapped?*, *The Hindu*. Available at: <https://www.thehindu.com/opinion/op-ed/should-article-35a-be-scrapped/article24763536.ece> (Accessed: 01 November 2024).

²² INDIA CONST. art. 35A.

²³ Rao, G. (2017) *Article 35A of the constitution- an overview.pdf*. Available at: https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/Article%2035A%20of%20the%20Constitution-%20An%20overview.pdf (Accessed: 01 November 2024).

²⁴ Ashiq, P. (2023) *Article 370 Verdict: A changed political landscape in J&K*, *The Hindu*. Available at: <https://www.thehindu.com/opinion/op-ed/a-changed-political-landscape-in-jk/article67655552.ece> (Accessed: 01 November 2024).

and shall be an integral part of the Union of India.”²⁵ “At noon the day before the Constitution was put in force, the Jammu and Kashmir Constituent Assembly officially disbanded, having fulfilled its objective.²⁶ The President of the Constituent Assembly, Hon’ble Gulam Mohammed Sadiq announced – “Today this historic session ends and with this the Constituent Assembly is dissolved.”²⁷ The Constituent Assembly did not make an explicit recommendation to dilute Article 370 of the Constitution.²⁸

After this, on December 19th, 2018, the then President of India, Shri Ram Nath Kovind, brought the state of Jammu and Kashmir under the President's Rule by invoking Article 356 of the Indian Constitution.²⁹ This followed the implementation of the Governor's Rule in June of the same year.³⁰ The Lok Sabha passed this proclamation in December 2018, while the Rajya Sabha did the same in January 2019.³¹ It effectively handed over authority from the state's Legislative Assembly and Governor to the Union Parliament and the President.³² It was established in the case of *Maqbool Damnoo vs. State of Jammu and Kashmir*³³ that the Indian Constitution's Articles 370(1)(b) and 370(1)(d) do not limit the creation or alteration of the Jammu and Kashmir Constitution.” In 2019, President Kovind issued Order C.O. 272, redefining the word “Constituent Assembly” in Article 370(3) as “Legislative Assembly,” following a precedent set by the *Maqbool Damnoo* case.³⁴ This amendment to Article 367, the interpretation clause, came into effect in 2019.³⁵ Parliament represented the Legislative Assembly during the period of President's Rule in Jammu and Kashmir, enabling the issuance

²⁵ Rao, *Supra* note 23.

²⁶ *Abrogation of Article 370: Day 4: J&K Constituent Assembly made art. 370 permanent in the state's Constitution* (2023) *Supreme Court Observer*. Available at: <https://www.scoobserver.in/reports/abrogation-of-article-370-day-4-jk-constituent-assembly-made-art-370-permanent-in-the-states-constitution/> (Accessed: 01 November 2024).

²⁷ India. Constituent Assembly Debates, Vol. VII (Nov. 4, 1948), available at https://eparlib.nic.in/bitstream/123456789/762996/1/cad_04-11-1948.pdf (Accessed: 01 November 2024).

²⁸ *Supra* note 12.

²⁹ Press Release, *Cabinet Approves Extension of President's Rule in Jammu & Kashmir for Six Months with Effect from 3rd July, 2019*, (June 12, 2019), Press Information Bureau, Gov't of India. https://www.pmindia.gov.in/en/news_updates/cabinet-approves-extension-of-presidents-rule-in-jk-for-six-months-with-effect-from-3rd-july-2019/ (Accessed: 01 November 2024).

³⁰ Nirala, S. (2018) Jammu & Kashmir under governor's rule for Eighth Time, *India Today*. Available at: <https://www.indiatoday.in/india/story/jammu-kashmir-under-governor-s-rule-for-eighth-time-1265259-2018-06-20> (Accessed: 01 November 2024).

³¹ Vora, *supra* note 6.

³² Preston, *Supra* note 14.

³³ *Maqbool Damnoo vs. State of Jammu and Kashmir* 1972 AIR 963, 1972 SCR (2)1014

³⁴ *Supra* note 26.

³⁵ Jammu & Kashmir: Issues Around State, *Civildaily*, <https://www.civildaily.com/story/jk-issues-around-state/> (Accessed: 01 November 2024).

of presidential orders which was subject to its approval.³⁶ Importantly, the first Constituent Assembly had been disbanded almost 60 years ago, and the Legislative Assembly had been inactive between June 2018 and July 2019 owing to Governor's Rule and the prolongation of President's Rule.³⁷ Jammu and Kashmir Reorganization Act, 2019 and a statutory resolution urging the repeal of Article 370 were subsequently enacted by the Rajya Sabha.³⁸

Following the Rajya Sabha's passage of the Reorganization Act the previous day, in 2019, the Lok Sabha also adopted a statutory resolution.³⁹ In the aftermath, President Ram Nath Kovind issued an executive order (C.O. 273) that nullified Article 370 and removed Jammu and Kashmir's special status.⁴⁰ "With the exception of clause 1, which specifies that the Jammu and Kashmir state shall be subject to the Constitution of India, all sections of Article 370 were therefore rendered null and void."⁴¹ The state was then partitioned into the Union regions of Jammu and Kashmir and Ladakh after the Jammu and Kashmir Reorganization Act, 2019 was passed by the Union Parliament.⁴² A separate legislative assembly was voted upon for the Union Territory of Jammu and Kashmir, but none for Ladakh.⁴³

Supreme Court's Ramifications for Federalism Following the Revocation of Article 370: -

In an effort to completely integrate Jammu and Kashmir into India, the federal government's bid to remove Article 370 was backed by the Supreme Court of India on the 11th of December, 2023.⁴⁴ In accordance with an assurance given by the Indian Solicitor General, the Court postponed a decision on the constitutionality of merging the two states into one and instead ordered the conclusion of the Jammu and Kashmir Union Territory assembly elections by a

³⁶ Mahajan, K. *The abrogation of Article 370 and bifurcation of Jammu*. Available at: https://ijcl.nalsar.ac.in/wp-content/uploads/2020/08/9IndianJConstL106_Mahajan.pdf (Accessed: 01 November 2024).

³⁷ *Copy of India criticises India*. Available at: <https://rsilpak.org/wp-content/uploads/2021/02/India-Criticizes-India-Kashmir-RSIL.pdf> (Accessed: 01 November 2024).

³⁸ *The Jammu and Kashmir Reorganisation Bill, 2019*, PRS India, <https://prsindia.org/billtrack/the-jammu-and-kashmir-reorganisation-bill-2019> (Accessed: 01 November 2024).

³⁹ *Supra* note 1.

⁴⁰ Rajagopal, K. (2021) *Explained: President's order scraps its predecessor and amends Article 370*, *The Hindu*. Available at: <https://www.thehindu.com/news/national/explained-presidents-order-scraps-its-predecessor-and-amends-article-370/article61587647.ece> (Accessed: 01 November 2024).

⁴¹ Ashiq, *Supra* note 24.

⁴² Rajagopal, *Supra* note 40.

⁴³ *Supra* note 38.

⁴⁴ Sebastian, M. and Hrishikesh, S. (2023) *Article 370: India Supreme Court upholds repeal of Kashmir's special status*, *BBC News*. Available at: <https://www.bbc.com/news/world-asia-india-67634689> (Accessed: 01 November 2024).

certain date.⁴⁵

Putting aside criticisms of the decision itself, the next portion of this study seeks to investigate how the ruling given by the court affected the notion of federalism in India. Here, the emphasis is on the state of Jammu and Kashmir's transition into union territories and the consequences of the court's decision not to consider this move unlawful, rather than on the process of Article 370's abrogation or the logic behind the court's support.

The Essence of Federalism: -

In federalism, power is divided between a central authority and its component units under a federalist form of government, which gives the federal government and the states separate but equal sovereign jurisdiction over certain matters.⁴⁶ A defining feature of federalism is the separation of powers, which gives the individual states considerable authority over internal matters.⁴⁷

It is commonly recognized that the United States is an example of a federal state, where each state has its own constitution, laws, and supreme court.⁴⁸ Due to the inherent fundamentalism of federalism in the United States, state legislators and governors often resisted or curbed President Trump's attempts to exercise executive power via executive orders and regulatory changes.⁴⁹

When Trump deployed federal forces to manage the protests for the Black Lives Matter movement in several states, he encountered very strong opposition from local authorities, particularly in Portland.⁵⁰ The Oregon State Department of Justice even filed a lawsuit against federal agencies in response to this. Ultimately, the Trump administration agreed to reduce the

⁴⁵ *Plea in Supreme Court for Restoration of Jammu & Kashmir Statehood*, ANI News (Oct. 7, 2024), <https://www.aninews.in/news/national/general-news/plea-in-supreme-court-for-restoration-of-jammu-kashmir-statehood20241007144357/> (Accessed: 01 November 2024).

⁴⁶ Tikkanen, A. (2024) *Federalism*, *Encyclopædia Britannica*. Available at: <https://www.britannica.com/topic/federalism> (Accessed: 01 November 2024).

⁴⁷ *Outline of American Government: Chapter 3. The Constitution*, W.W. Norton & Company, <https://www.norton.com/college/polisci/american-government12/brief/ch/03/outline.aspx> (Accessed: 01 November 2024).

⁴⁸ *Comparing Federal and State Courts*, U.S. Courts, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (Accessed: 01 November 2024).

⁴⁹ *Supra* note 47.

⁵⁰ Levinson, J., Wilson, C. and Haas, R. (2020) *50 days of protest in Portland. A violent police response. this is how we got here.*, *opb*. Available at: <https://www.opb.org/news/article/police-violence-portland-protest-federal-officers/> (Accessed: 01 November 2024).

presence of federal forces in Oregon, allowing local agencies and the police to resume their responsibilities.⁵¹

In the United States, each state, notwithstanding its population or size, is represented equally in the Senate by two senators per state.⁵² This ensures that every state has an equal say in national decisions.⁵³ In contrast, India is frequently considered a “quasi-federal” state, as it combines both federal and unitary characteristics rather than being entirely one or the other.⁵⁴

The Framework of India’s unique Federalism: -

Article 1 sub-clause (1) of the Indian Constitution states that “*India, that is Bharat, shall be a Union of States.*”⁵⁵ “This description commonly describes the many characteristics of India’s federalism.⁵⁶ There are three lists that organize the separation of powers between the federal government and the states: the union list, the state list, and the concurrent list.⁵⁷ With respect to matters included on the state list, the power to make laws and policies is mostly with the individual states, rather than with the federal government.⁵⁸” The federal system of India clearly favors the central government, notwithstanding the supremacy of the Constitution and the respect for separation of powers.⁵⁹

An example of this federalist bias in India’s system is entry 97 of the union list, which states that the union has the power to legislate on any matter that is not already on one of the three

⁵¹ Tebor, C. (2021) *Was Trump’s deployment of federal officers to Portland ...* Available at: https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1083&context=honors_theses (Accessed: 01 November 2024).

⁵² U.S. Senate, *Visit the Capitol*, <https://www.visitthecapitol.gov/education-resource/us-senate> (Accessed: 02 November 2024).

⁵³ *Pack the Union: A Proposal to Admit New States for the Purpose of Amending the Constitution to Ensure Equal Representation*, 133 Harv. L. Rev. 1234 (2020), <https://harvardlawreview.org/print/vol-133/pack-the-union-a-proposal-to-admit-new-states-for-the-purpose-of-amending-the-constitution-to-ensure-equal-representation/> (Accessed: 02 November 2024).

⁵⁴ GAHATRAJ, D. (2022) *Quasi federal*. Available at: https://www.iilsindia.com/study-material/810726_1618671525.pdf (Accessed: 02 November 2024).

⁵⁵ *Supra* note 9.

⁵⁶ Gahatraj, *Supra* note 54.

⁵⁷ *Constitution of India*, Supreme Court of India, <https://www.sci.gov.in/constitution/> (Accessed: 02 November 2024).

⁵⁸ *Concurrent Power of Legislation under List III of the Indian Constitution*, Ministry of Law and Justice, Government of India, <https://legalaffairs.gov.in/sites/default/files/Concurrent%20Power%20of%20Legislation%20under%20List%20III%20of%20the%20Indian%20Constitution.pdf> (Accessed: 02 November 2024).

⁵⁹ Malik, A. (2019) *Changing dimensions of federalism in India*. Available at: <https://ili.ac.in/pdf/mam.pdf> (Accessed: 02 November 2024).

lists.⁶⁰ Consequently, any developing or new territory are immediately under the jurisdiction of the federal government.⁶¹ Fields like information technology (IT) and artificial intelligence (AI), for example, are reserved for union control and so cannot be freely formulated by state governments.⁶²

In the event of a national emergency, the federal government may also step in on issues that are traditionally handled by individual states.⁶³ In addition, if the President determines that a state is violating constitutional norms, he may dissolve its legislature and impose direct rule. In such cases, the central government can assume control over the state's administration.⁶⁴

Despite the inherent asymmetry in India's federal structure, the significance of federalism in balancing the powers between the union and state governments is extremely crucial.⁶⁵ Although the Supreme Court initially ruled in the 1960s that India did not exhibit a federal nature, it later recognized federalism as part of the Constitution's "basic structure" in the landmark case of *Kesavananda Bharathi vs. State of Kerala*.⁶⁶ The court has reiterated this principle multiple times, notably in the case of *S.R. Bommai vs. State of Jammu and Kashmir*⁶⁷, where it imposed significant limitations on the union's power to unilaterally dismiss elected state governments.

By recognizing federalism as an integral part of the Indian Constitution's basic structure, it is clear that the country possesses and upholds certain federal characteristics and principles, and that these federal features must be safeguarded as well as respected.⁶⁸ This implies that the union government cannot unilaterally expand its powers beyond those permitted by the

⁶⁰ *Supra* note 58.

⁶¹ Kumar, B.A. (2023) *Does a 'union territory' fall under word 'state' of Article 131 for invoking original jurisdiction of the Supreme Court: A legal analysis*, SCC Times. Available at: <https://www.scconline.com/blog/post/2023/01/28/does-a-union-territory-fall-under-word-state-of-article-131-for-invoking-original-jurisdiction-of-the-supreme-court-a-legal-analysis/> (Accessed: 02 November 2024).

⁶² Muralidharan, V. (2024) *Article 370 Judgment: A betrayal of federal values*, The India Forum. Available at: <https://www.theindiaforum.in/politics/article-370-judgment-betrayal-federal-values> (Accessed: 02 November 2024).

⁶³ Khaund, A.K. (2021) *National emergency: A comparative analysis of emergency laws in India, U.S.A. and Germany*, *Aequitas Victoria*. Available at: <https://www.aequivic.in/post/ajjacla-national-emergency-a-comparative-analysis-of-emergency-laws-in-india-u-s-a-and-germany-3> (Accessed: 02 November 2024).

⁶⁴ S.R. Bommai vs. State of Jammu and Kashmir 1994 AIR 1918, 1994 SCC (3) 1

⁶⁵ Ghosh, A. (2023) *The paradox of 'centralised federalism': An analysis of the challenges to India's Federal Design*, *orfonline.org*. Available at: <https://www.orfonline.org/research/the-paradox-of-centralised-federalism-an-analysis-of-the-challenges-to-india-s-federal-design> (Accessed: 02 November 2024).

⁶⁶ *Kesavananda Bharathi vs. State of Kerala* AIR 1973 SUPREME COURT 1461

⁶⁷ *Supra* note 64.

⁶⁸ Aney, S. and Anturkar, A. (2021) *Recasting of Federal Structure of the Indian constitution*, SCC Times. Available at: <https://www.scconline.com/blog/post/2021/04/02/indian-constitution/> (Accessed: 02 November 2024).

Constitution or disrupt the established balance of power in its favor.⁶⁹

Understanding the autonomy of States and Union Territories in India: -

The recognition of “statehood” is crucial for a territory and for its inhabitants so as to engage fully in the nation's federal structure.⁷⁰ In both India as well as the United States, regions like New Delhi and Puerto Rico have long sought statehood, which highlights their desire for greater representation and participation in the federal system.⁷¹

The aspirational value for attaining statehood is evident, as territories and their populations seek to engage in national governance while also desiring increased autonomy in local matters.⁷² B.R. Ambedkar emphasized this point during the Constituent Assembly, asserting, “*The federal government has no business interfering with the legislative or executive power that the states have under our Constitution. All states and the federal government are on equal ground here.*”⁷³ This underscores the importance of statehood in facilitating a balanced and participatory federal structure.

In the case of *State (NCT of Delhi) vs. Union of India*,⁷⁴ the apex Court highlighted the significance of statehood within the Indian framework, stating, “*In a democratic system, the desire of the people must be carried out, which means that the interests of the states, which are inherent in a federal form of government, become even more important. It is against democratic ideals to have the people of one state or area answer to the federal government, particularly for issues that are best handled at the local level.*” This statement reinforces the idea that statehood is essential for ensuring that local governance reflects the will and desire of the people.⁷⁵

While states have considerable constitutional autonomy in their operations, union territories do

⁶⁹ Khaund, *Supra* note 63.

⁷⁰ Malik, *Supra* note 59.

⁷¹ Goel, D. (2019) *Federalism in India and USA: A comparative analysis*. Available at: <https://ijlra.com/wp-content/uploads/2023/05/FEDERALISM-IN-INDIA-AND-USA-A-COMPARATIVE-ANALYSIS.pdf> (Accessed: 02 November 2024).

⁷² Sahoo, N. (2023) *Statehood or autonomy: Rethinking governance in India's capital*, or *online.org*. Available at: <https://www.orfonline.org/research/statehood-or-autonomy-rethinking-governance-in-india-s-capital> (Accessed: 02 November 2024).

⁷³ *Constituent Assembly Debates: Volume 10*, December 12, 1948, Lok Sabha Secretariat, https://eparlib.nic.in/bitstream/123456789/762994/1/cad_10-12-1948.pdf (Accessed: 02 November 2024).

⁷⁴ *State (NCT of Delhi) vs. Union of India* AIR ONLINE 2018 SC 1029

⁷⁵ Goel, *Supra* note 71.

not.⁷⁶ Each state has its own legislature, exercises a high level of autonomy, and answers directly to its people. Alternatively, the federal government is solely responsible for the administration and oversight of union territories.⁷⁷ While union territories like Puducherry and Delhi do have some measure of autonomy, it is still much less than what states have. This is true even though these territories have their own legislative assemblies.⁷⁸ So, the first question that arises in one's mind is: why were union territories established?

The idea of "centrally administered units" was put up by the States Reorganization Committee, who in their report said that some areas should not be integrated into states due to "strategic, security, or other compelling reasons."⁷⁹ This reasoning was the basis for the formation of union territories. Importantly, the report anticipated a gradual increase in autonomy for these territories, envisioning that they would eventually move towards greater self-governance, either through merging with other states or through other means.⁸⁰ This expectation is ironically recognized by the Court in its judgment regarding Article 370.⁸¹ Over time, several union territories have achieved statehood, including Himachal Pradesh in 1970, Manipur and Tripura in 1971, and Mizoram and Arunachal Pradesh in 1981.⁸²

It is evident that the vision and framework of the Constitution do not intend to permanently strip states and territories of their autonomy, except in extraordinary circumstances where such temporary measures may be necessary.⁸³

Assessing the Impact of Jammu and Kashmir's Dissolution on Federalism:-

The dissolution of Jammu and Kashmir into three union territories, none of which had a local administration, occurred with the repeal of Article 370.⁸⁴ Article 3 of the Indian Constitution

⁷⁶ Muralidharan, *Supra* note 62.

⁷⁷ Heslop, A. (2024) *Encyclopædia Britannica*. Available at: <https://www.britannica.com/topic/political-system/Federal-systems> (Accessed: 02 November 2024).

⁷⁸ Iwanek, K. (2020) *Ladakh, Jammu and Kashmir Are India's Newest Union Territories. What Does That Mean in Practice?*, – *The Diplomat*. Available at: <https://thediplomat.com/2020/04/what-exactly-does-union-territory-status-in-the-republic-of-india-mean/> (Accessed: 02 November 2024).

⁷⁹ Heslop, *Supra* note 77.

⁸⁰ Muralidharan, *Supra* note 62.

⁸¹ *Supra* note 12.

⁸² Bhattacharjee, G. (2016) *Other northeastern states: Meghalaya, Manipur, Tripura, Mizoram, and Arunachal Pradesh*, OUP Academic. Available at: <https://academic.oup.com/book/10382/chapter-abstract/158184136?redirectedFrom=fulltext> (Accessed: 02 November 2024).

⁸³ Mahajan, *Supra* note 36.

⁸⁴ Rai, V. (2024) *ISAS.NUS.EDU.SG*. Available at: <https://www.isas.nus.edu.sg/papers/supreme-court-of-india-upholds-abrogation-of-article-370/> (Accessed: 02 November 2024).

grants the union government the authority to alter state boundaries, create new states or union territories from existing ones, or merge states and union territories into new entities.⁸⁵ However, in accordance with federalism principles, such alterations must occur only after consulting the relevant state legislature.⁸⁶ Notably, Article 3 does not include the provision to convert an entire state into one or more union territories.⁸⁷

Article 3 of the Constitution of India does grant the union the authority to dissolve a state.⁸⁸ For example, the former State of Bombay has been divided into the states of Maharashtra and Gujarat, but the fundamental nature of statehood was preserved; both newly formed states retained full statehood and the associated benefits.⁸⁹ In contrast, with the dissolution of Jammu and Kashmir, no portion of the former state maintains its status as a state. Consequently, an entire federal unit has been stripped of its statehood at a time wherein there was no local government or representatives available to raise objections or protests against such a significant change.⁹⁰

The unilateral power to dissolve a state represents a profound and flagrant violation of the principle of federalism. Given that the court had already heard arguments on this matter, it would have been straightforward for it to clarify this violation and order a prompt restoration of statehood. However, once again, the court failed to fulfill its responsibility and chose not to render a decision on the issue.⁹¹

The court's decision is contingent upon the solicitor general's promise to reinstate statehood; thus, this matter will be tabled until an appropriate opportunity presents itself.⁹² The efficacy of a constitutional court is called into question by this method. The federal government might dissolve states like Tamil Nadu, West Bengal, or Kerala without consulting their legislatures or using emergency powers to bypass legislative authority if the Supreme Court does not step

⁸⁵ INDIA CONST. art. 3

⁸⁶ Rai, *Supra* note 84.

⁸⁷ *Supra* note 85.

⁸⁸ Muralidharan, *Supra* note 62.

⁸⁹ Sengupta, A. (2023) *How the bilingual Bombay State was split into Gujarat and Maharashtra*, *The Indian Express*. Available at: <https://indianexpress.com/article/explained/explained-history/bilingual-bombay-state-split-gujarat-maharashtra-8585690/> (Accessed: 02 November 2024).

⁹⁰ *Restoration of Statehood in J&K Won't Change Status of Assembly: Legal Experts*, *The Economic Times*, Nov. 4, 2024, <https://economictimes.indiatimes.com/news/elections/assembly-elections/jammu-kashmir/restoration-of-statehood-in-jk-wont-change-status-of-assembly-legal-experts/articleshow/114086776.cms?from=mdr> (Accessed: 02 November 2024).

⁹¹ Mahajan, *Supra* note 36.

⁹² Vora, *supra* note 6.

in.⁹³ This scenario establishes a concerning precedent where measures enacted against a state might go unchallenged in the judicial system for a prolonged duration, leading to substantial delays in resolving such crucial matters. A clear pattern is emerging: initially, a state of emergency is declared, resulting in the dissolution of the state legislature; subsequently, control is established over the state, which may involve revoking its statehood.⁹⁴

When confronting a federal administration that is apparently bent on dismantling the framework, the court could have in one breath define its stance, in the other, reassert federalism and protect state sovereignty. Not only that, but this decision not to arrive at a conclusion happens after hours of discussions on the history of union territories, federalism, democracy, importance of state and autonomy and other such topics.

Unfortunately, this shows the current state of the Supreme Court, which states the principles and issues associated with an issue but does not address it when it is necessary. This trend suggests that such inaction might well become the norm in the future.⁹⁵

Concluding insights and analysis: -

The decision of the Supreme Court of India to repeal Article 370 of the Constitution has great significance for India's constitutional law, and particularly for the theory of federalism.⁹⁶ Article 370 has been always safeguarding the autonomy of the Jammu and Kashmir so that it continues to remain different identity in the Indian Union.⁹⁷ It was through this article that the region was afforded a clear constitutional personality and the article was crucial in the protection of its legislative sovereignty. Nevertheless, the recent judgement of Supreme Court is a shift in this constitutional architecture that raises critical questions about future of federalism in India or the implications of changing the status of the special autonomy that was enjoyed by Jammu and Kashmir.⁹⁸

However, this recent ruling of the Court seems quite far from what the Supreme Court had

⁹³ Muralidharan, *Supra* note 62.

⁹⁴ *Supra* note 35.

⁹⁵ Muralidharan, *Supra* note 62.

⁹⁶ *Supra* note 26.

⁹⁷ *Article 370: What happened with kashmir and why it matters* (2019) BBC News. Available at: <https://www.bbc.com/news/world-asia-india-49234708> (Accessed: 02 November 2024).

⁹⁸ Daly, T. (2019) *Constitutional redesign of the federal balance: India and Article 370 - IACL-IADC Blog*, IACL. Available at: <https://blog-iacl-aadc.org/2019-posts/2019/11/28/constitutional-redesign-of-the-federal-balance-india-and-article-370> (Accessed: 03 November 2024).

articulated in its earlier decisions regarding federalism; a concept that has always stressed the need to protect the sovereignty of states and the requirement of a states' consensus before changing their status.⁹⁹ If the Court supports the central government's unilateral decision to abolish Jammu and Kashmir as a state and divide it into two union territories, the Court may set a dangerous precedent which may undermine the federal structure of India in a drastic level.¹⁰⁰ This decision direction underlines a number of questions to the separation of powers between the Union and the states, particularly to the obvious lack of legislative participation prior to the changes in the Constitution of such significance. The Court's retreat from a comprehensive federal structure not only undermines the principle of partnership for governance, which is crucial for a healthy democracy, but also enormous doubts about the prospects of such unilateral actions against other countries.¹⁰¹ Such actions could potentially lead to weakening of the democratic tenets on which the Indian constitution is premised; essentially meaning that state freedom and voice would be significantly compromised.

These ruling questions the basic tenet of Indian federalism which has always meant the harmonious sharing of power between the center and the States.¹⁰² Its consequences do not end with the case of Jammu and Kashmir. The lack of vigorous defense of principles that underpin the feature of federalism by the Supreme Court poses a significant threat of making normal such an approach that lets the Union act single-handedly in a manner that undermines state rights and self-governance.¹⁰³ This shift in power relations might undermine the democratic framework in India and create a situation in which the opposition between states and central power remains unresolved. This not only undermines the basic building blocks of governance but also threatens the very tenets of democracy on which the Indian state operates. If this trend progresses further, it might lead to the formation of an environment where the Union overrides the state's authority disregarding their rights which in the end would be against the spirit of democracy which has been the essence of India's polity¹⁰⁴.

Based on these important factors, this paper calls for the need to maintain constant guard in the defense of the principles of federalism, and especially the protection of rights and powers of

⁹⁹ Malik, *Supra* note 59.

¹⁰⁰ *Supra* note, 37

¹⁰¹ Daly, *Supra* note 98.

¹⁰² Khaund, *Supra* note 63.

¹⁰³ Mahajan, *Supra* note 36.

¹⁰⁴ Ashiq, *Supra* note 24.

the states from any encroachment by the central government unilaterally. Thus, the durability of Indian democracy and the longevity of its federal structure are interlinked, statehood as a constitutional right is not only governance mechanism but as a power that reflects the will and desires of the states and their people. In this perspective, the role of the Supreme Court is significant and critical; it has to defend federalism and states' sovereignty as the main principles that will serve as the basis of the democratic nature of the country. In this regard, through its active adherence to these principles the Court is in a position of facilitating a proper check and balance of powers whereby the central and state governments can harmoniously and efficiently address the needs and wants of the citizenry. Such commitment is important for the continued health and stability of the democracy and its federal structure that presupposes cooperation between the central and the regional authorities.

