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“ABROGATION OF ARTICLE 370-A CRITICAL ANALYSIS.”

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I. ABSTRACT:

“The recent controversy regarding the abrogation of Article 370 of the Constitution which guarantees special status for Jammu and Kashmir has instigated a wide array of emotions among the citizens of the State and the rest of the country. The Constitutionality of the said Act, the motive behind scrapping of the Act, the pros and cons are constantly in debate. This paper critically analyses the abrogation of the article, the merits, demerits and the consequences of the move.

*This Act has generated controversies internally, and also has involved various other countries like **Pakistan, China and Russia** externally. Abrogation of the said Article has always been one of the core issues of the **Bharatiya Janata Party** and their decision for forceable ever since the party came to power in the recent elections. However, the furor was created because not only did this move involve zero confrontation with the people affected, but it also brought in a Constitutional Amendment without amending the Constitution.*

The provisions in question for the passage of this resolve were Article 370(1) and the president’s power as under clause 3 of the said article. By junking the 1954 order, the notification thus takes away the special rights and privileges enjoyed by the residents of Kashmir. While this remains a thorny issue as to the survivability of the Act, in this paper the author provides a brief introduction to the issue, the history of Article 370, the current

scenario, the international aspect of the said abrogation, its Constitutionality, the merits and demerits of the abrogation, the lacunae in the decision and makes recommendations in the execution of the decision to make it more effective, beneficial and inclusive.”

II. INTRODUCTION:

*At 11:15 AM, on the 5th of August 2019, Amit Shah, the Union Home Minister read out a resolution abolishing Article 370 and the special status accrued to Jammu and Kashmir in the **Rajya Sabha**. This was a fundamental shift, with respect to the status of Kashmir. To be precise, **Article 370 of the Constitution of India**¹, provided special status to Jammu & Kashmir. By virtue of this resolution, it was to be stripped of this special status. What followed was a 5-day lockdown in the State of Jammu and Kashmir. The State was now to be bifurcated into two union territories under the **Jammu and Kashmir (Reorganization) Act, 2019**. And that now **Jammu, Kashmir and Ladakh** were three separate segregated units. Ladakh was further separated and was accorded a separate Legislature, whilst Jammu and Kashmir valley were to have a State Assembly. At the same time, Article 370 (3) which reads, **“Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from date as he may specify”** came into question with respect to its validity. Similarly, Article 35A was also under scrutiny.²*

The resolution received an array of responses. It was believed by the Conservatives that the essence of democracy was looked at and reframed, that this seemed to be the biggest milestone in the history of the republic since 1947. That it was necessary to curb multiple terrorist attacks like Pulwama, Uri, 26/11 and the 4 wars. It was propounded by this group of people that Article 370 was discriminatory against women, the LGBTQ community and the Dalits as well. All the laws over India had to restrict themselves to exempt Jammu and

¹ Constitution of India 1950

Kashmir, which led to the persistence of terrorism. Now, more *stringent detention laws*² could be carried out as the *National Security Act* would be extended to Jammu and Kashmir as well. After all, this move was not with lieu to a particular political party but the Republic of India in totality. Now there was scope for rapid development under Central rule. The Liberals held that the Constitution in turn should be sacrosanct, as a basis for the roots of democracy. The people of Kashmir were forgotten; not given a conscious choice. The resolution was on the face of it Quasi Constitutional but deep down, Unconstitutional. The J&K Assembly was dissolved wrongfully and all the powers were vested in an appointed governor. The Mandate was filled with loopholes, the Method used was autocratic, and the Morality behind the resolution, questionable.

The move seemed to denote that the ruling party due to its thumping majority and a lack of opposition was the Judge, Jury, and Executioner all by itself. Yet these remain just a handful of viewpoints that the public upheld. The repercussions at the international front were multifold. Whilst arch enemies China and Pakistan showed signs of solidarity wherein China backed Pakistan's proposal to take up this particular issue in the United Nations, India's ally Russia backed India's decision. But as such the outcomes could best be judged by future generations. In many ways, this order on Article 370 was critiqued to be unconstitutional. National Conference, a local party in Jammu and Kashmir challenged this Act for the very same reason & moved to the Supreme Court of India. Although, it had been a part of the ruling party's manifesto since time immemorial.

III. HISTORY OF ARTICLE 370:

In order to understand the origin of Article 370 it is important to understand the brief history of Kashmir, right from 1846, where a *Dogra ruler Maharaja Gulab Singh* bought the region of J&K from the East India Company post the *Treaty of Amritsar*³. In the 1930's the Kashmiri Muslims of the place were unhappy with *Maharaja Hari Singh's rule* as they felt that his policies weren't in on their interest. This time was the period when National

² Times of India

³ http://jklaw.nic.in/treaty_of_amritsar.pdf

Conference, J&K's first major political party came into being along with *Sheikh Muhammad Abdullah's*, the party's founder. This was followed by the commencement of the *Quit Kashmir movement*⁴, a moment against the Maharaja.

In August 1947, India gained independence from the British and Pakistan was created as a Muslim majority country. The princely States of India which were not with India or Pakistan were presented with three choices; they could either stay independent or join either India or Pakistan. The States which remained undecided were J&K, Hyderabad and Junagadh. Sardar Vallabhbhai Patel, Indian Home Minister worked to convince these States to join India and in the meanwhile *Maharaja Hari Singh* signed a *standstill agreement with Pakistan*⁵ which effectively opted for a status quo. However, in October 1947 there was an armed infiltration by tribesmen from Pakistan in J&K. The maharaja realized that he needs help from India thus making him reach out to *Prime Minister Jawaharlal Nehru* and Patel who agreed to send troops under a condition that the Maharaja should sign an *Instrument of Accession (IOA)*⁶ favoring India, which would basically hand over control of *Defense, Communication and Foreign Affairs* of Kashmir to India. The Maharaja signed the Instrument of Accession and Indian troops intervene, continuing the armed conflict. In January 1948 the issue was taken to the *United Nations* by India.

A plebiscite was suggested by the UN however India and Pakistan couldn't come into a consensus as on how to demilitarize the region thus causing the conflict to continue throughout 1948. Later in March 1948, an interim government was appointed in J&K by the Maharaja. Later in January 1949, The UN mediated a ceasefire between the two countries, Indian and Pakistan via the *Karachi Agreement* which allowed both the countries to retain their control over the territories which were held by them at the time; however, there wasn't any agreement to conduct a referendum. In July 1949, the maharaja stepped down and his son *Karan Singh* took his place as the new Maharaja. Meanwhile *Sheikh Abdullah* and his colleagues joined the *Indian Constituent Assembly* and thus began the discussion of the

⁴ http://www.oxfordislamicstudies.com/Public/focus/essay1009_quit_kashmir.html

⁵ http://news.bbc.co.uk/2/hi/south_asia/1762146.stm

⁶ http://jklaw.nic.in/instrument_of_accession_of_jammu_and_kashmir_state.pdf

provisions of Article 370 under the Indian Constitution which at the time was still being drafted. In the year 1950, The Indian Constitution came into force and Article 1 of the Indian Constitution defined J&K as a State of India and Article 370 provided J&K with the special status. In the year 1951 the constituent assembly of J&K convened and all members of this new constituent assembly belonged to *Sheikh Abdullah's National Conference*. In 1952 post the Kashmiri leader's discussion regarding their relationship with the union of India in the J&K constituent assembly a comprehensive *Delhi Agreement* came into the picture which defined the relationship of the State with the Union. Later in 1953, *Sheikh Abdullah* was dismissed as the *Prime Minister* because he allegedly had lost the support of his cabinet and *Bakshi Ghulam Mohammad* took his place in the party. 1954: A presidential order extends several provisions of the Indian Constitution to J&K's Constitution. In 1956 *J&K adopted its constitution*⁷ in which it has defined itself to be an integral part of India. In 1957, legislative elections were held in J&K for the first time and its constituent assembly was dissolved and in its place a legislative assembly was formed. The home minister of India, *Govind Ballabh Pant* visited the capital city of J&K-Srinagar, and stated that the State now is completely a part of India, leaving no scope for a plebiscite. In 1960, through an amendment in the Constitution the election commission of India and Supreme Court extended the scope of their jurisdiction by bringing J&K under their jurisdiction. In 1962, after a war with India, China gained control of the *Aksai Chin region* in J&K.

In June 1965, the National Conference merged with Indian National Congress. August 1965 to January 1966 was a period of war between India and Pakistan which ended post the signing of the *Tashkent Declaration*⁸ by the *Indian Prime Minister Lal Bahadur Shastri* and the Pakistani president *Ayub Khan*. In 1966 the demand for a referendum in J&K rose. In 1971, another war (the third war) commenced between India and Pakistan and in the 1972, the *Simla Agreement*⁹ was signed by the warring countries which provided the status of Line of Control to the ceasefire line. In the year 1975 the *Kashmir Accord*¹⁰ was signed by the Indian Prime Minister *Indira Gandhi and Sheikh Abdullah*, which reemphasized the

⁷ <http://jklaw.nic.in/pdf/CONSTITUTION%20.pdf>

⁸ <https://mea.gov.in/bilateral-documents.htm?dtl/5993/Tashkent+Declaration>

⁹ mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972

¹⁰ <https://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972>

provisions of Article 370 and J&K's position as an integral part of India. Post this the demand for a plebiscite was dropped and Sheikh Abdullah resumed being in power as the Chief Minister of J&K with the support of the Congress. The Congress-JKNC split in 1977 where congress withdrew its support for Sheikh Abdullah's government this led to elections being held in July 1977 and Sheikh Abdullah was re-elected. Between the years 1977 to 1989, there was a steady rise of militant groups, a number of unstable governments, increase in arrests and killings of militant youths. In the year of 1990 the Kashmiri youth took to the streets to protest against Indian administration and due to clashes with the Indian troops many of them were killed and gravely injured, this resulted in the imposition of Central rule and due as the Kashmiri Pundits started to flee to their hometowns in the fear of the rapidly rising militancy. The central government imposed the *Armed Forces Special Powers Act* which provided the armed forces with unprecedented power to fight against the armed militancy taking place. The 1990s was a period where militant insurgency was on the rise and several separatists were arrested. In the year 1995 the then Prime Minister of India, *PV Narasimha Rao* made a statement in parliament assuring against the abrogation of Article 370, whereby he reiterated the fact that J&K is an integral part of India and the need to put an end to president's rule in Kashmir.

In February of 1996 India banned the JKLF and in September of 1996, assembly elections held in J&K and J&K's National Conference by Farooq Abdullah formed the government. This timeline provides a brief insight to the relationship between India, Pakistan and Kashmir, the constant strain in the relationship between them. The wars between India and Pakistan over Kashmir, the issue of militant groups, the separatists and the Article 370, shows the kind of unrest that existed ever since the separation of India- Pakistan and the union of Kashmir with India.

IV. CURRENT SCENARIO:

On the fourth of August 2019, many prominent Kashmiri leaders like the former chief ministers *Mehbooba Mufti (president of the People's Democratic Party)* and *Omar Abdullah (Vice- President of National Conference)* were placed under house arrest. There

was an immediate shut down of mobile and internet services and Section 144 of the Criminal Procedure Code of 1973 (prevention of a gathering of more than four people in public spaces) was imposed throughout J&K. On the fifth of August 2019 presidential order to repeal Article 370 and Article 35A was proposed by the *Hon'ble Home Minister Amit Shah* further J&K was to be bifurcated into two union territories – J&K with the legislative assembly and Ladakh administered by the Centre and this resulted in a strong protest in the parliament by the opposition and a complete shutdown in the Kashmir valley.

Majority of the State's population will be in the union territory of Jammu and Kashmir which basically comprises the Kashmir valley a Muslim majority and Jammu with a Hindu majority and the newly created union territory – Ladakh, filled with an almost equal population of both Buddhists and Muslims. This reorganization of the State is seen as a blatant reflation of its Hindu, nationalist agenda as the Hindu nationalists have been strongly against the article 370 stating it to be an appeasement towards the Muslim Majority State, and they further found the article to be a hindrance towards India being a centralized and unified nation.

Since the imposition of section 144 and the enhanced security measures the valley has remained relatively peaceful, the restrictions hence were a well-planned and enforced lockdown. Roadways have been blocked in several places across the city to reduce vehicular movements and in some places the pedestrian movement was also bound to restrictions. According to the reports there were only a few incidents of stone pelting and *a few broken bricks at a tri-junction between the airport and downtown*¹¹. In an address to the nation on 8th of August 2019, the Prime Minister addressed the Kashmiris and promised to implement more schemes and jobs. He further stated that he would give J&K full statehood upon the improvement of the situation thus, indicating that the temporary nature of the State's status as a Union territory. However, on the 12th of August despite the tight security arrangements, the State celebrated its first Eid post the abrogation of Article 370. There was a local meeting which was held by the State administration in order to oversee the prayer arrangements and ensure that there would be a safe and peaceful enjoyment of the celebration.

¹¹ <https://economictimes.indiatimes.com/>

Despite all these efforts there continues to be a situation of political vacuum in J&K as its Kashmir's main political leaders who played an important role in winning back those alienated remain to be under detention. About 300 political leaders, such as J&K's formal chief ministers Mr. Omar Abdullah and Mehbooba Mufti are either detained in a guest house or are under a house arrest.

V. INTERNATIONAL ASPECT:

This move has been strongly criticized by China, and remains a thorny issue between the two countries. It has raised a move to scrap the special status granted to Jammu and Kashmir and bifurcate the State into two Union territories with India. China has been the occupier of the Aksai Chin area of Ladakh since the 1950's. Thus it becomes a disputed area for them if India gains sole proprietorship over the same. Yet the argument here remains, that India has assured that there will be no implication for either the External Boundaries of India or the Line of Actual Control with China. This move would also not impact the Line of Control with Pakistan. India's *External Affairs Minister S Jaishankar* has reassured and re-affirmed the same. Overall, Delhi and Beijing are committed to manage the dispute peaceably.

With respect to Pakistan, the country has decided to approach the *United Nations Security Council* about the Kashmir issue. The Pakistani foreign minister *Shah Mehmood Qureshi* has criticized Pakistan, who has decided to boycott trade with India. He explicitly stated that it is not wise to live in a fool's paradise for Pakistan. India is a huge market for prospective traders. The Arab world is invested in India. Any of the 5 Permanent members can stop this boycott. Countries like Bahrain throughout time have arrested Pakistani's for creating ruckus. Whether Pakistan will be able to garner support is questionable. Thus, it is a source of tremendous pressure for Pakistan. The false narrative created by its media will also be busted. Pakistan's bid for debate in the UNSC has also been rendered unsuccessful. Islamabad now thus, is stirring up western allies. Kashmiri and Pakistani Diasporas have existed in the US, Europe, Britain and other western countries. Thus their intervention could take place. Pakistani prime minister *Imran Khan* has also accused India of conducting Ethnic Cleansing

in Kashmir, wherein it mutely watched China send its Muslim citizens in the Xunjiang Autonomous Region to “*re-education camps*” to *de-Islamize* them. The problem between India and Pakistan has existed since the split between the two. There are multiple influences that Pakistan and India could have within Jammu and Kashmir. Either side could radicalize people. The fundamental situation could also become such that a Military Confrontation may arise between India and Pakistan, both being nuclear States. Yet, Pakistan since the past ages regularly raises the Kashmir issue at the United Nations and India accuses Pakistan of exploiting the unrest in Jammu and Kashmir to further their goals in the region. There is a possibility of this issue being raised in the Human Security Council. Pakistan has previously accused India of committing various excesses in Kashmir. India having signed the *1993 Vienna Human Rights Conference and Geneva’s Accord 1994* owes a responsibility here. Anti-India campaign on Kashmir and Article 370 will arise as per Pakistan.

Externally, Poland, UNSC Presidency has made its stance clear by stating that Delhi and Islamabad should find a solution bilaterally. Poland, like the European Union, is in favor of dialogue between India and China. Russia, a permanent member of the UNSC underscored that India’s move was carried out within the frame work of the Republic of India. *International Human Rights Organizations* may also try to intervene here, due to the excesses committed in the process of bringing about such a resolution.

Apart from this, countless human rights violations have been caused in the process of passing this resolution. Amnesty International says the Indian Government policy in the region gives its army legal immunity for their actions, making conviction rates close to zero. India’s stand here remains, that it’s an internal matter. *Antonio Gutteres, UN Secretary General reminds India of their 1972 Shimla Agreement*, and that bilateral negotiations should be conducted.

VI. CONSTITUTIONAL VALIDITY:

Under Article 370 (3) of the Constitution of India, the President wields effective power to amend, repeal or remove the Article itself, provided that the act is in concurrence with the

State Legislature. This would ensure that the people of the State have a say in their future. The controversy here, with respect to this provision, is that the State Legislature's assent cannot be derived from the Governor, who is the representative of the central government. "Government" cannot be equated as such with "Governor" in matters involving the restructuring of the State itself. Another aspect, as to whether this move is constitutionally valid or not, is that the power to amend the Constitution is enshrined in Article 368 of the Constitution, something that cannot be claimed by using Article 370(1) of the Constitution. Further, the Constitution provides for 3 sorts of provisions. Those are, Temporary, Transitional and Special. Article 370 falls under Temporary Provisions, which make their nature essentially weak. Yet now, it has become permanent in nature.

Our Constitution, being federal in nature, this move to convert a State into a Union territory is not of a federal nature. The accession and merger of J&K will also be far more difficult than other small and big States. The President's order also sought to nullify the effect that Article 35A of the Constitution had on itself. It superseded the Presidential Order of 1954. Since a State is to be formed into a Union territory, as per the Indian federal structure by Article 1 and Article 2 of the Indian Constitution, the parliament is not given the power to retrogressively downgrade statehood into a less representative form such as a Union territory.

It is also under question whether this would violate the basic structure of the Constitution as per the *Keshavananda Bharti case*. Yet, this move to dissolve the statehood of Jammu and Kashmir could reinforce the Supremacy of the Indian Constitution, and the ideals of *One Nation, One Constitution, One National Anthem and One National Flag*.

VII. THE MERITS OF THE ABROGATION OF ARTICLE 370:

1. Economic Benefits - upliftment of the economy:

The provisions enlisted in Section 35A, were such that the non-residents of the State could not buy land or avail the facilities offered by the state government of J&K thus severely hampering business and trade activities in the state. The non-citizens carrying out their

business in the state were left with only two options, take the land on lease or collaborate with local resident, and this was both an inefficient and costly way of doing the business.

Another drawback was that it was almost impossible to send skilled labor to the state as they could not buy land to build their homes. Thus despite the efforts of the leaders to attract big corporate investors, they stayed away from investing due to the issue regarding the availability of land and talent.

This lack of availability of jobs was a major problem faced by the people living in the state as they were left with little or no employment option, thus making majority of them migrate to other states in search of jobs and those who remained unemployed result in resorting to indulging in anti-national activities in order to earn a living. Through the abrogation of article 370, people would be more willing to open their businesses and companies in the state as there would not be any hassle in the ownership of land, the employees could reside there freely and not face any issues with residence and ownership of houses and property. The main merit resulting from the abrogation of Article was that it will open the market of the state. In today's world economic growth is possible only when there is an open environment as this would pave the way for greater progress and would definitely boost innovation, investment and income. With an increase in investments and improvement in infrastructure and linkage the products of the region would now have the opportunity to reach beyond the boundaries of the state to the rest of the country and the world providing a lot more prosperity and improvement in the economic situation.

2. Improvement of infrastructure, education and healthcare facilities:

Through the abrogation of the said article, the government seeks to improve and build better physical infrastructure such as, housing for those living below the poverty line, availability of water and toilets in every home, provide health care facilities and build institutional infrastructure to solve the continuous paradox of floods and calamities faced in parts of the country. As the Hon'ble Prime Minister had stated, with the opening of top educational institutions such as IIT, AIIMs, IIM etc. in the state of J&K the people of the state would gain the benefit of having better educational opportunities and thus resulting in a well-educated

and trained workforce. This would ensure that there is quality education provided and this again will benefit the economy as the students passing out from such universities of repute would get better jobs and their recruiters wouldn't have to worry about them being inefficient or incompetent.

3. Eradication of terrorism and separatism:

The main purpose of the Article was to preserve the identity of J&K's population and the Article was a temporary provision that was to be removed in due course of time, which never happened until recently. Over the years, the article had become a perfect tool for the separatists to exploit as under the provision mentioned in the article, it separated the state from the rest of India with its own constitution and flag and this was used whenever it was convenient and to keep the Muslims in this region under a constant fear and state of siege mentality.

The Indian state has spent more than 70 years trying to deal with the separatists and militants in the most careful and peaceful manner. It was only in certain grave situations such as facing an attack by foreign or local militants has the Indian armed forces responded with a heavy hand. The Indian state has consistently provided J&K with as much as it could in the fields of health, education and basic amenities while constantly dealing with surprise attacks from externally-supported armed militants and gun men. With the abrogation of the article 370, J&K would become like any other state of India, following the same constitution, empowered with the same rights and benefits as enjoyed by the rest of citizens of the country and thus giving no ground for the separatists to exploit.

4. Change in rules of succession:

According to the provisions of the act a woman belonging to the state would lose her property rights if she marries a person who is not a permanent resident or citizen of the state. The children of such women also did not have any succession rights and thus the revoking of the Article would end the age-old discrimination against the women of J&K who had chosen to marry from outside the state.

VIII. THE DEMERITS OF THE ABROGATION OF ARTICLE 370:

- ***Loss of the unique privileges guaranteed under Article 35A:***

According to the provisions of Article 35A the non-permanent residents of J&K could not permanently settle in the state by buying immovable property or acquire land or apply for government jobs or any kind of scholarships and aids granted by the state government. With the abrogation of the article granting them such special powers the citizens of J&K will now lose these benefits that came with their title of being a permanent resident of the state.

- ***Fear of loss of the state's demographic character:***

Kashmir is the only Muslim majority state in India. There is a fear that the abrogation of the act would change the demography state and disempower the Muslims to an extent where they would be reduced to the state of being the second class citizens in their own state as without the article Hindus all over India could migrate to the state and thus change the demographic character.

IX. LACUNAE IN THE DECISION:

There were various loopholes in the passage of this bill. Firstly, this forceful attempt seems to be modus for radicalization. Various human rights violations were committed in the means to achieve the passage of this Bill. A lockdown over the whole state of Jammu and Kashmir by arresting leaders like Mehbooba Mufti to clamping down on the people of Kashmir. Secondly, it is also unclear, that if the Governor has been assigned powers to decide the intricacies of the problems in the state, then it seemingly denotes the supremacy of the central government in the issue. This in turn becomes an existential crisis for Kashmir.

Thirdly, the transition of a state into a union territory seemingly is a reverse flow. The federal character of our country is now in question, as has been enshrined in the constitution. This is so since previously, a transition from a union territory to a state was the one prevalent, which fell within the purview of the federal nature of our constitution. This move is also said to be a means to curb terrorism. Yet, it is increasingly creating hostilities among India and Pakistan.

This may create a sense of hatred and spite which inevitably may lead to a clash in the form of terrorism. Terrorism can be fought with inputs and employment of an effective military strategy and not by removing a historically derived special status. Further, another point remains that this move will seemingly remove corruption. But this seems to be a modus operandi for the ruling party to denote that politicians in Kashmir are essentially corrupt, which is not necessarily the case. Next, the provisions of Article 370 are being used to scrap Article 370. The question remains as to how the article itself can be used for the removal of itself.

Alongside this, the Presidential Order says, that the state's concurrence has been taken for the approval, as has been stated in Clause 3 of Article 370. But the governor has been appointed by the Central Government, then how can the state's concurrence be assumed to have been ascertained. This mix of political opportunism and aggression, although helped India win over Jammu and Ladakh, yet Kashmir and Pakistan remain bones of contempt for India. This error in the acceptance that was earned by India will make it tougher to accomplish the unity that India seeks to uphold. Further, Indian activists in Kashmir have visited the desolated valley, and put forth a report which by its means expresses concern as to the state of affairs J&K is in. Thus it seems imperative that the government's move be countered. This possible human rights violation, and form of imposition of orders in a democracy could lead unrest and discrepancies in the near future, and not only would the people of the country be protesting against the same, but this would set wrongful precedents for the future political parties to use as an excuse to get their way across things.

The forced house arrest of the political leaders of J&K, who have been representatives of the state for the past years, will lead to a disbelief within the parties and citizens of Jammu and Kashmir with respect to the Indian Union. The developmental initiatives that the government plans to take up, would although benefit the economy at large, would lead to a condition similar to other parts of India, like Shimla and parts of Uttarakhand, where such developmental measures, like building hotels or providing possibilities of buying homes in the state for outsiders would destroy the natural flora and fauna and atmosphere of the place.

Not only would these measures destroy the true beauty of Jammu and Kashmir, but if effective measures not be taken, would impair the ecosystem and sustainability of the state. Despite the aforementioned issues, this move would also generate a sense of fear and uncertainty amongst the Kashmiri populace. And rightfully so, since the revocation of this Article 370 status, may seem to the ruling party's propaganda to convert India into a Hindu – only Nation. Kashmir's are well aware of the situation of the minorities present within India and the treatment they are subjected to. This seems to be a very unwelcome welcome that the populace of J&K will be receiving. With the passage of this decree, the president of India has signed the death warrant of not only Indian occupied Kashmir, but of India's democracy. The process of easing restrictions, although has started, yet it is imperative that these restrictions be conducted in a systematic manner, with due emphasis on the allowances or permits that the government provides.

Lastly, India's hard fought federalism is under attack after the unprecedented Kashmir decision. This now to be glorified municipality of Delhi could become a cause of concern in the near future, with respect to the autonomy that the state will be provided with. "The constitution strives to strike a delicate balance, between the unitary and federal systems", as said by Yamini Aiyar, chief executive of Delhi- based think tank Centre for Policy Research. However, there have always been doubts about what some commentators call the "authenticity of Indian Federalism." Even though there may be a cause of concern because of the failure of constitutional machinery within the state or states for that matter, such acts to overrule the state governments or the voices of people can only make one go deeper and deeper into the abyss of chaos.

X. RECOMMENDATIONS:

For starters, the procedure used for its implementation, could have been better, wherein an inclusive method like a referendum or a healthy feasible discussion among their leaders, people and constituent assembly be conducted so as to include the people in the process of the conversion of this state into a union territory. The Governor should not have been the one

to represent the state legislature, as his appointment is by the central legislature, thus it would not be an egalitarian approach and would be perceived to be a forceful obtaining of consent. The stoppage of the clamp down on the media or the state of emergency situation within the state, and the release of the leaders from their house arrest would make the people of the state feel more respected and inclusive and thus would wish to aid the process rather than be averse to the same. The road to root out terrorism would not necessarily work from Jammu and Kashmir itself and thus should be a focal point for all other states and territories as well. Since there was a sense of ambiguity with respect to the interpretation of the provision of Article 370, any such future ambiguity must be removed.

A total lockdown, with the disablement of communication, would've created a sense of enhanced fear, confusion and chaos, something that the people did not deserve to have been subjected to. The politician's daughter in Kashmir, scared to her life, demonstrates the extreme conditions of fear that prevailed amongst the population within. Eid Al Adha, one of the core festivals for the people in the state, was celebrated in a sense of lockdown, unknowing and scared. It is not an ideal scenario for a country like ours, to be creating an atmosphere of fear within. Thus overall, all the recommendations would be fulfilling the common purpose and objective of passing resolutions with a much more peaceful and inclusive approach. India with its diverse social fabrics must be more inclusive and sensitive than other countries with these differing conditions. The instrument of accession so signed, was the one condition for the inclusivity of Kashmir within India. Thus any diversion would necessarily cause a condition for disruption. Each intricate situation must be dealt with the most accommodative manner so as to ensure harmonious co-existence.

With respect to Preventive Detention, that was caused by the the lockdown and house arrest of the leaders of the state, as a means to pass the bill could only be considered a clamping down on the voices of the minority population of the state. What was more important, as many say, was the spirit of the status provided by Article 370. It signaled that the Indian constitution was malleable enough to make space for people who felt alienated or estranged from the mainstream.

XI. CONCLUSION:

Prior to the abrogation of Article 370 it was a common view that the article had just become a fundamental barrier in the progress and development of the state which was benefiting only those trying to take selfish benefits out of power given. The state which was once regarded as the Switzerland of India had become a battlefield with continuous acts of violence, murder of innocents and terrorist activities over the past 2 decades.

It was high time that the government stepped up and scrapped the Article 370 which kept the state of J&K in a state of isolation and the scrapping of Article 370 would eventually end the suffering of the people and pave the way for development and upliftment of the state and its citizens.