



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Right to Self Determination: An Analysis of the Unresolved Conflict in Kashmir within the context of Article 370

Arya. S^a

^aKerala Law Academy Law College, Trivandrum, India

Received 24 July 2023; *Accepted* 10 August 2023; *Published* 14 August 2023

Dating back to British India's partition in 1947, Kashmir has been a constant battleground for India and Pakistan, with a history of unceasing conflict. A key tenet of international law is the right to self-determination, which gives people the freedom to freely decide their political alignment, economic status, and other aspects of their future without intervention from outside parties. The issue of self-determination in Kashmir arises from the people living in the region who has experienced political unrest, armed conflicts, human right violations and divided communities contributing to a complex socio-political landscape. With the termination of Article 370¹ of the Constitution of India in the year 2019, it becomes necessary to discuss the question of whether India can claim normalcy when the right to home rule of the Kashmiri people remains unresolved. This article focuses on the scope of the right to self-determination of the Kashmiris within the evolving framework of law and analyzes the Kashmir Crisis while addressing the effect of the revocation of the special status or limited autonomy by the Indian Government.

Keywords: *self-determination, anti-colonialism, article 370.*

¹ Constitution of India 1950, art 370

INTRODUCTION

The evolution of the concept of the right to self-determination over the past few decades has resulted in a large number of secessionist movements. The right to home rule is not only an individual right but also a collective right of the people which includes the ability to choose their political position and to seek the pursuit of their own social, cultural and economic advancement. It has been recognized by International Law as the right of the people themselves and not as the right of the Government. This right was initially included in the Atlantic Charter of 1941² and then, in the 'Dumbarton Oaks proposals' which was later adopted into the 'United Nations Charter'³. Anti-colonialism movements in the late 1960s and 1970s marked the downfall of the right to freedom of determination but as the world progressed this right was re-established in many democratic nations as one of the most important tools to uphold democracy.

The indigenous right to home rule is an absolute norm of '*jus cogens*' which is considered as the highest rule of International Law that is to be strictly obeyed at all times.⁴ The main aim of identifying the right to self-determination of the people is to correct all inequalities that arose at the time of colonialism. Self-rule in an identifiable territory, anti-colonialism and realization of human rights are the three main concepts established by the right itself. Kashmir was identified as an Indian state with a separate legal status but with the abrogation of Article 370 of the Indian Constitution, Kashmir is now identified as a Union Territory of India. In this context, it is really important to study the past, present and future of the right to free will of the Kashmiris.

HISTORICAL BACKGROUND OF THE RIGHT TO SELF-DETERMINATION IN KASHMIR

Kashmir is one of the most important geographical locations in the world where India intersect with two other mighty countries, i.e. Pakistan and China respectively. In the 19th century, India was constituted by several hundred provinces and princely states when it was under the

² The Atlantic Charter 1941

³ Charter of the United Nations 1945

⁴ Rashmi Senghal, 'Kashmir Conflict: Demands & Solutions for Self-determination' (2011) 1(6) International Journal of Humanities and Social Science <<https://ssrn.com/abstract=2390419>> accessed 04 July 2023

governance of the Britishers. When India attained independence, a century later the British withdrew and hurriedly resolved to divide British India into two nations: one was a Muslim-dominated nation under the name of Pakistan and the other was a primarily Hindu-dominated but secular India.⁵ Most of the time, the governing monarch respected the wishes of the populace when it was given the option to join either nation. But when it came down to Kashmir, it was adjacent to the border of a Muslim majority population which was under the governance of a Hindu monarch. The ruler refused to declare his allegiance when asked to do so and was still deciding whether to join India or Pakistan or to identify itself as a separate country to avoid any conflict.

A part of the Kashmiri population began a rebellion in Poonch in 1947 out of fear that the ruler would join India.⁶ As the monarch of Kashmir was mulling his options, Pakistan decided that they can no longer wait as it was already an area dominated by Muslims and insisted that they cannot leave the decision-making authority to a Hindu monarch. Armed tribesmen from Pakistan soon joined the rebellion and started to take over Kashmir from the Hindu monarch. It was at this point that the '*1st Indo-Pakistan war*' broke out in Kashmir in 1947 when the monarch appealed to India for military assistance and in exchange for a promise to side with them.

Importance of Kashmir to both India & Pakistan – With the deployment of aircraft, tanks, artillery, and large battalions of soldiers along the 'Line of Control' by both India and Pakistan, Kashmir became one of the most militarized regions on the planet. The most prominent reasons for India & Pakistan to keep Kashmir to itself are as follows:

- All of the major rivers that go across the two countries originate in Kashmir. Whoever has power over Kashmir has control over the other country's water supply as well.
- Possessing and controlling the river and glacial waters could cause an existential threat to another as it can be used as a weapon against the other nation at the time of any war.

⁵ *Ibid*

⁶ *Ibid*

- Whoever controls Kashmir not only controls the water flow to the other nation but also the power supply. This is because the major power supply to both these nations is generated out of the river water originating from Kashmir.

United Nations Approach towards the Kashmir Conflict – The United Nations emphasized the indigenous rights of the Kashmiri people with the intention to end the political as well as military peril between India and Pakistan. The UN Security Council broke a ceasefire in 1949 and asked the Pakistan tribesman to vacate from the area wrongfully occupied by them.⁷ They also adopted resolutions that called for a vote of the Kashmiri people to decide the fate of the region under United Nations supervision, but neither country reneged on the agreement.⁸ This was because Pakistan argued that Kashmir belonged to them because of the Muslim majority population in the region while India contended that Kashmir was granted to India by the monarch of Kashmir. Therefore, the plebiscite under the auspices of the United Nations was never held.

INSTRUMENTS PROTECTING THE RIGHT TO SELF DETERMINATION

Article I of the Charter of the United Nations⁹ recognizes the principle of the right to self-determination and asserted its universal recognition as fundamental in order to cordial friendly relations and international peace among the two nations. The same right has also been identified under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹⁰ The African Charter of Human and Peoples Rights of 1981, the CSCE Charter of Paris for a New Europe of 1990 and the Vienna Declaration and Programme of Action 1993 also identify the right to self-determination as an inalienable right that is considered as a major tool to uphold democracy in regions which were once colonized.¹¹

⁷ Dr. Raja Muhammad Khan, 'Kashmir Dispute: A Legal Perspective' (2015) 29(1) NDU Journal <<https://www.prdb.pk/article/kashmir-dispute-a-legal-perspective-1427>> accessed 05 July 2023

⁸ *Ibid*

⁹ Charter of the United Nations 1945, art 1

¹⁰ Neera Chandhoke, *Contestant Successions: Rights, Self-determination, Democracy, and Kashmir* (1st edn, Oxford University Press 2012) 87

¹¹ *Ibid*

The fact that the freedom of determination is included in both the International Covenants on Human Rights and the Vienna Declaration and Programme of Action underscores the fact that this legal principle is at the foundation of human rights law and has a broader scope. A thorough explanation of the parameters and significance of the right-to-home rule has also been provided by the UN Human Rights Committee.

For analyzing the establishment and practice of the principle of territorial integrity under international law, it is important to note that, there are basically two major components of the principle of home rule that are operational in both the theoretical and practical aspects of international law in order to comprehend its formation and application. The first essential component is the one that deals with territorial integrity, non-interference, and sovereign equality. This implies a responsibility under international law to respect the sovereignty of an independent State by refraining from using any force or other forms of meddling in its internal affairs. The second part focuses on when the people have the right to self-govern under circumstances if they are not already doing so, which is the fundamental premise and goal of the right to home rule in the first place. This is indeed a fundamental conundrum that causes much controversy among experts and States as both these aspects are conflicting with one another. Therefore, it is important to identify a clear line of distinction between both these components while interpreting the right to national identity of people.

ANALYZING THE LEGALITY OF THE REVOCATION OF ARTICLE 370 OF THE INDIAN CONSTITUTION

The princely state of Jammu and Kashmir joined the Dominion of India when Maharaja Hari Singh, the former Hindu monarch, signed the 'Instrument of Accession' on October 26, 1947.¹² It gave Jammu & Kashmir special legal status and exempted it from the Constitution of India except for Article 1¹³ and Article 370¹⁴ of the same. On August 5, 2019, "*Union Home Minister Amit Shah declared in the Rajya Sabha that Article 370 of the Indian Constitution, which provided the*

¹² Khan (n 7)

¹³ Constitution of India 1950, art 1

¹⁴ Constitution of India 1950, art 370

State of Jammu and Kashmir special status, has been officially revoked by the Indian government"¹⁵ – this was the major headline of all the major newspapers across the country. On the same day that he exhibited a presidential order that applied to all of the Constitution's provisions to the state and repealed Article 370, he also introduced two bills in the Rajya Sabha that highlighted the requirement for the state's special status to be withdrawn. Both bills were passed in the House with a majority of votes and the former President, Mr. Ramnath Kovind stated that since Jammu & Kashmir no longer enjoys a special status, all of the Indian Constitution's provisions will now apply to it.¹⁶ He added that the separate *Constitution of the State of Jammu and Kashmir* will no longer be in effect and that the Indian Penal Code will replace the *Ranbir Penal Code* and *Article 35A* which makes a distinction between J&K's permanent residents and non-residents, will also be repealed with immediate effect.¹⁷ Further, it was also specified that the Constituent Assembly will now be read as the 'Legislative Assembly' in Article 370(3)¹⁸.

Legal Status of Kashmir prior to the Abrogation of Article 370: The state of Jammu and Kashmir was granted a special territorial integrity status within the Union of India through what is referred to as a '*Temporary Provision*' under Article 370 of the Indian Constitution. As article 370(1)(b)¹⁹ mandates that the Parliament may only pass laws for the state '*in consultation with the Government of the State*' with regard to the defence, foreign policy and communication-related issues incorporated in the '*Instrument of Accession*'. Only with the '*Concurrence of the Government of the State*' via a presidential order, many other issues from the legislative subject lists could have been applied to Jammu and Kashmir. According to Article 370(1)(d)²⁰, the state may at times apply other constitutional provisions, '*subject to such modifications or exceptions*' through a presidential order put forward by the President of India, provided that they have no bearing on the aforementioned issues and unless the State Government conveys its consent.

¹⁵ Bhadra Sinha, 'Can't turn back the clock: What Legal Experts Say on Abrogation of Article 370' (*The Print*, 06 August 2022) <<https://theprint.in/judiciary/cant-turn-back-the-clock-what-legal-experts-say-on-abrogation-of-article-370/1072446/>> accessed 07 July 2023

¹⁶ *Ibid*

¹⁷ Khan (n 7)

¹⁸ Constitution of India 1950, art 370(3)

¹⁹ Constitution of India 1950, art 370(1)(b)

²⁰ Constitution of India 1950, art 370(1)(d)

The state of J&K enacted its own Constitution which was officially adopted on November 17, 1956, by the Constituent Assembly due to this special privilege granted under the Indian Constitution and came into force on 26th January 1957. The most significant provision under Article 370(3)²¹ of the Indian Constitution was, however, that *'the President of India has the authority to amend or repeal Article 370 through a public notification, provided that the State's Constituent Assembly provided the President with a recommendation before he issued such a notification.'*

Significance of Article 35(A): In July 1952, the then-Prime Minister of India, Shri Jawaharlal Nehru and the Prime Minister of J&K, Mr. Sheikh Abdullah came into an agreement that the *'Citizenship Law'* of India will be made applicable to the State and permitted the State to determine the rights and privileges of its own permanent inhabitants.²² The President of India formally ratified this agreement by adding Article 35(A)²³ to the Indian Constitution, granting Jammu and Kashmir the authority to decide when a person becomes a permanent resident of the state and what all *'special rights and privileges'* comes with such residency.

The legality of Abrogation of Article 370 of the Indian Constitution: The legality of the abrogation of Article 370²⁴ of the Indian Constitution has always been a subject of debate as it is a very complex and controversial legal and political issue. Prime Minister, Narendra Modi and the Bharatiya Janata Party (BJP) had despised Article 370 for a very long time and revoking it was in the party's manifesto in the year 2019. When the party won the general elections in April-May of that year, the government wasted no time in fulfilling its promise once it came to power. One of the most prominent Constitutional experts, Mr. Subhash Kashyap stated that the order was constitutionally sound and that no legal constitutional fault can be found in it.²⁵ Making an in-depth analysis of the same the following aspects stated by the proponents relating to the legality of the abrogation of Article 370 should be noted:

²¹ Khan (n 7)

²² *Ibid*

²³ Constitution of India 1950, art 35A

²⁴ Constitution of India 1950, art 1

²⁵ Constitution of India 1950, art 370

Absence of Constituent Assembly: Article 370 of the Indian Constitution can only be repealed with the consent of the J&K Constituent Assembly, but since India imposed federal rule after Mehbooba Mufti's government, was reduced to a minority, there hasn't been much of a state government in J&K for more than a year.²⁶

Governor as the Representative of State: When there is an absence of Constituent Assembly in the State, the Governor automatically becomes the representative of the State and the President's rule will come into force as per Article 356 of the Indian Constitution.

Temporary Provision: Article 370 was considered a temporary provision as it was initially included in the Indian Constitution to provide a transitional arrangement for Jammu & Kashmir's incorporation into India in 1947. The temporary nature of the provision necessitated its eventual abrogation to fully merge the state into the Union of India.

National Integration: The abrogation of Article 370 was seen as a step towards the national integration of J&K with the rest of India. Supporters of the decision argued that the special status granted to the region under Article 370 created a sense of separatism and hindered the full integration of the State into the Indian Union. They believed that removing Article 370 would help foster a stronger sense of unity and promote the idea of 'One Nation, One Constitution'.

Economic Growth and Development: Another major justification put forward was that the abrogation would pave the way for accelerated development and economic growth in Jammu and Kashmir. Proponents argued that the special status had hindered the region's progress by creating barriers to investment, development projects, and economic opportunities. By bringing J&K directly under the governance of the central government, it was believed that the region would benefit from increased investment, infrastructure development, and job creation.

²⁶ Constitution of India, art 370

THE TRANSFORMATIVE EFFECTS OF THE REVOCATION OF ARTICLE 370

The revocation of Article 370 of the Indian Constitution has had various transformative effects on the region of Jammu and Kashmir. Here are some of the key effects explained in points:

Extension of Indian Laws and Rights:

- After the abrogation, all Indian laws are now applicable to Jammu and Kashmir, ending the dual legal system that existed before thereby promoting the complete integration of Kashmir into the Indian Union.
- Fundamental rights enshrined in the Indian Constitution are now guaranteed to the people of Jammu and Kashmir, ensuring equal protection under the law.

Boost to Economic Development:

- The removal of Article 370²⁷ has opened up new avenues for economic growth and development in the region.
- Investments from the private sector have increased due to the ease of doing business and the removal of barriers to trade and commerce.

Inclusion of Women and Minorities:

- Article 35A²⁸ allows the Jammu and Kashmir legislature to define 'permanent residents' and accord special rights to them, has been revoked.
- This has led to greater gender equality, as women no longer lose their resident status if they marry outside the state.

Increased Central Government Support:

- With the special status revoked, the region now receives more direct financial assistance from the central government for various developmental projects and initiatives.

²⁷ Constitution of India 1950, art 1

²⁸ Constitution of India 1950, art 35A

Security and Counterterrorism Measures:

- The abrogation has enabled better coordination and implementation of security measures in the region.
- It has facilitated the government's efforts to combat cross-border terrorism more effectively.

Widened the Educational & Employment Prospects:

- The integration has led to an increase in the number of educational institutions and job opportunities in the region.
- Students from Jammu and Kashmir can now avail themselves of various national-level competitive exams and scholarships.

Tourism and Cultural Exchange:

- The region's integration has resulted in increased tourist inflow due to improved security and a more open environment.
- Cultural exchange with the rest of India has also been enhanced, fostering a sense of national unity and diversity.

Infrastructure Development:

- The abrogation has facilitated infrastructure development projects, including roadways, railways, and connectivity initiatives.

Democratization and Grassroots Governance:

- The reorganization of Jammu and Kashmir into union territories (J&K and Ladakh) has brought the administration closer to the people at the grassroots level.
- It has allowed for more efficient and accountable governance.

KEY LEGAL CHALLENGES TO BE ADDRESSED

Article 370(3)²⁹ facilitates the Central Government to annul Article 370 of the Indian Constitution through a Presidential order based on the recommendation of the Constituent Assembly of the State of Jammu & Kashmir. When Article 370 was abrogated in 2019, the opponents of this decision argued that the manner in which Article 370 was annulled raises questions about constitutional propriety and violates the spirit of federalism.

Firstly, in accordance with Article 356³⁰ of the Indian Constitution, the State of J&K had been under presidential authority since the BJP broke off in conjunction with a local party. This led to the Governor dissolving the State Assembly when the then Chief Minister, Mehbooba Mufti's Government was reduced to a minority. The Governor who is appointed by the Central Government is an emissary for the Central Government itself just like the President of India. In light of this, the Presidential decision to repeal Article 370 is equivalent to the Central Government obtaining its own assent to modify the Constitution. This was indeed an unambiguous infringement of the right to self-determination of the Kashmiri people as the special status of Kashmir was taken away at a time when the BJP Government intentionally dissolved the State Assembly by withdrawing from the conjunction with a regional party. This points out the violation of the Doctrine of Basic Structure of the Indian Constitution. Moreover, the Central Government took this decision without even seeking the opinion of the Kashmiris.

When one does not have the power to make any laws directly, one can't do it indirectly is the very essence of the Doctrine of Colorable Legislation³¹. In this situation, the President will not be able to repeal Article 370 unless the State Assembly recommends the same. In this present case, the 'Jammu & Kashmir (Reorganisation) Act 2019'³² was passed and thus, the Presidential order came into force in the absence of a Constituent Assembly in the State of J&K. This can be viewed as a clear violation of the Doctrine of Colorable Legislation.

²⁹ Constitution of India 1950, art 370(3)

³⁰ Constitution of India 1950, arts 1, art 356

³¹ Chandhoke (n 10)

³² Jammu & Kashmir (Reorganisation) Act 2019

Secondly, despite being referred to as a '*temporary provision*,' Article 370 will continue to be in effect and has in fact already attained the status of a '*permanent provision*' as a result of numerous decisions made by the High Court of Jammu & Kashmir and the Hon'ble Supreme Court of India over a long period of time.³³ It was introduced as a temporary provision and was intended to be a transitional measure until a permanent solution could be found for the State's accession to India but Article 370 was abrogated without finding a proper solution for the core issue in Kashmir. The decision was made at a time when there was an absence of the Constituent Assembly of the State of J&K upon the Central Government's decision carried on by the President of India.

Thirdly, the annulment of Article 370 of the Indian Constitution garnered international attention and sparked various reactions. Pakistan, which also claims parts of Kashmir, strongly condemned the move and raised the issue at international forums. India maintained that the decision was its internal matter and argued that it aimed to bring about development, peace, and stability in the region. It was pointed out as a violation of the right-to-home rule of the people as no plebiscite was organized as per the guidance of the UN to determine the opinion and interest of the Kashmiris.

The abrogation of Article 370 brought about significant changes in the administrative structure of Jammu and Kashmir. The region transitioned from being a state with its own constitution to a union territory directly governed by the central government. This transition presented administrative and developmental challenges including issues related to governance, implementation of policies and economic development. Furthermore, the entire state of J&K was transformed into a prison house as soon as the bill was introduced. House arrest was imposed on the political leaders of the State and Section 144 of the Criminal Procedure Code³⁴ which forbade gatherings of more than five people was immediately put into effect. According to media reports, the communication system was cut-off for over a week in Kashmir under the

³³ Arundhati Roy et al., *Kashmir: The Case of Freedom* (1st edn, Verso 2011) 269

³⁴ Code of Criminal Procedure 1973, s 144

name of curbing violence which indicates a violation of the fundamental ‘right of the freedom of speech and expression’ of Kashmiri.³⁵

The Jammu & Kashmir (Recognition) Act, 2019 has taken away the special status of J&K by the process of delimitation or setting the boundaries of the territorial constituencies in the State. The Act repealed around 153 state laws and extends over 106 central laws for Union Territories. Moreover, the most important indigenous right to self-rule which is accepted and recognized under International law was denied to some extent. It is very important for the Supreme Court to closely analyze the matter by addressing all the key legal issues and come to a final decision while remaining impartial for the administration of justice.

SCOPE FOR RE-ESTABLISHING THE RIGHT TO SELF-DETERMINATION IN KASHMIR

The scope for re-establishing the right to territorial integrity in Kashmir is a subject of ongoing debate and negotiation. The complex and sensitive nature of the Kashmir conflict, along with differing positions held by India, Pakistan and the people of Kashmir, make the path toward exercising the right to home rule challenging. However, some possibilities and approaches to find a solution for re-establishing the Right to national liberation in Kashmir are as follows:

Diplomatic Dialogue: Meaningful and sustained diplomatic dialogue between India and Pakistan is crucial for addressing the Kashmir conflict and re-establishing the right to self-determination. Encouraging both countries to resume comprehensive peace talks and engage in dialogue focused on finding a mutually acceptable solution can create an environment conducive to discussing the aspirations of the people of Kashmir.

International Mediation & Facilitation: Diplomatic dialogue between India and Kashmir had never led to a mutually acceptable solution. In 1949, the United Nations intervened and suggested a plebiscite to decide upon the matter but was disagreed by both nations. Today, both India and Pakistan are two countries that currently possess some of the most highly developed nuclear weapons. If another war breaks out between India and Pakistan, it may not only affect

³⁵ Constitution of India 1950, art 370

both these nations alone but it can also disturb international peace. Therefore, strengthening the international legal framework is crucial for reinforcing the right to home rule. It is crucial to encourage states to ratify and put into effect international human rights treaties and conventions such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights that recognize and protect the right to free will.

Confidence-Building Measures: Legal measures that build confidence can play a vital role in creating an atmosphere of trust and reducing tensions. Measures such as the release of political prisoners, the withdrawal of security forces, the relaxation of restrictions, and the restoration of civil liberties can help build confidence among the people of Kashmir and pave the way for discussions on self-determination.

Inclusive Dialogue with all Stakeholders: It is crucial to involve all necessary parties in the discussion process in order to re-establish the right to self-determination. This includes representatives from different regions of Kashmir, political parties, civil society organizations, and other relevant people. It is crucial to make sure that the opinions and aspirations of the Kashmiri people are accurately represented and heard by the Government of India.

Human Rights and Economic Development: Addressing human rights concerns and ensuring justice for victims of human rights abuses can contribute to creating an environment conducive to discussing self-determination. Establishing mechanisms for accountability and reconciliation, as well as providing redress for past violations, can help to boost trust and confidence among the people of Kashmir. Moreover, it is very essential to make the Kashmiris aware of the various advantages of being included as a Union Territory of India. The various aspects of political, social and economic advantages and progresses of becoming a part of the Union of India should be made aware to all the Kashmiris. Private business owners can establish their factories in Kashmir and thereby, can increase the employment opportunities of the people and their level of income might also increase. All these advantages should be properly communicated with the people in order to aid them while exercising their right to national identity and induce them to be a part of secular India.

CONCLUSION

The concept of self-determination in relation to the ongoing conflict in Kashmir, as stated in Article 370³⁶, is still a challenging and disputed matter. The historical background, different viewpoints, and continuous conflicts have all contributed to the intricate nature of exercising this right. The diverse interpretations and applications of Article 370³⁷ have further added complexity, sparking discussions on whether it is temporary or permanent. This conflict has had wide-ranging consequences, including concerns about human rights, tensions in the region, and political considerations. The revocation of Article 370 has resulted in significant changes in the area, triggering debates on the legality of this decision and its impact on the indigenous right to territorial integrity.

Efforts to strengthen the right to home rule in Kashmir necessitate a comprehensive approach, encompassing international legal frameworks, diplomatic dialogue, protection of human rights, inclusive engagement with stakeholders, and international support. However, achieving a peaceful and mutually agreeable resolution remains challenging, given the different perspectives and intricate dynamics involved. Resolving the Kashmir conflict and restoring the freedom of determination after the abrogation of Article 370 demands persistent efforts, sincere communication, and a commitment to combating the grievances of the Kashmiri people. The pursuit of a just and equitable solution must prioritize the principles of human rights, inclusivity, and peaceful negotiation in order to foster an environment that upholds the rights and aspirations of both India and Pakistan while respecting the choices made by the Kashmiri population.

³⁶ Constitution of India 1950, art 370

³⁷ *Ibid*