

# **The Abrogation of Article 370 and the Right to Self-Determination Under International Law: A Critical Legal and Political Analysis.**

# **The Abrogation of Article 370 and the Right to Self-Determination Under International Law: A Critical Legal and Political Analysis.**

A research Report on the 2019 Revocation of Jammu and Kashmir's Special Status.

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## **1. Introduction**

### **1.1 Background of the Kashmir Dispute**

The conflict over Jammu and Kashmir has dragged on for decades, making it one of the longest unresolved territorial and human-rights issues on the United Nations' agenda. It started way back in the first Kashmir war of 1947-48. Then, on August 5, 2019, India's central government suddenly stripped the region of its special status an arrangement that had lasted over seventy years under Article 370 of the Indian Constitution. They didn't just stop there, the government split Jammu and Kashmir into two union territories and brought them under direct rule from New Delhi. At the same time, they locked the place down, more troops poured into a region already bristling with soldiers. Authorities detained hundreds of political leaders before trouble could start and pulled the plug on all communications, shutting the area off completely.

### **1.2 Research Question and Scope**

This report focuses on a more specific question than the overall Kashmir conflict: did India's 2019 removal of Article 370, and everything that came with it, break any international laws regardless of whether it was legal under India's Constitution? The report splits these issues on purpose. India's Supreme Court only tackled the constitutional side, in December 2023, the court decided if the President stuck to his authority under the Indian Constitution, but it didn't and honestly, it couldn't rule on whether India followed rules from the UN Charter or international human rights and humanitarian laws.

### **1.3 Significance of the Study**

So, this report takes the Supreme Court's decision as a key, settled point but it also argues that just because the Court has ruled, that doesn't mean there's no room to look at things under international law. The main idea here is that what works under the country's constitution doesn't automatically mean it fits with international legal standards. That's what holds the report together, and you'll see this idea come up again in the Discussion (Section 10).

## **2. Methodology**

### **2.1 Primary Sources**

This report uses a doctrinal, document-based approach to look at the legal and political issues. For sources, it draws on UN Security Council resolutions about the India–Pakistan conflict from 1948 to 1957, the UN General Assembly’s 1960 Declaration on granting independence to colonial countries (Resolution 1514), two OHCHR country reports on Kashmir from 2018 and 2019, the 1972 Simla Agreement, and the Indian Supreme Court’s ruling from December 2023.

## **2.2 Secondary Sources**

Reporting from groups like Human Rights Watch, Genocide Watch, and Access Now’s Keep it on coalition. References to coverage from major news outlets such as Al Jazeera, The Washington Post, and TIME. On the academic side, research published in journals like Economic and Political Weekly, the Global Legal Studies Review, and De Gruyter. All of this helps round out the analysis.

## **2.3 Analytical Approach**

Sources supportive of India’s official position, including Indian government statements and constitutional commentary, are also incorporated to ensure the analysis addresses competing legal interpretations rather than a single advocacy position.

## **3. Historical and Constitutional Background**

### **3.1 Accession and the First Kashmir War (1947–48)**

Also included sources that back up India’s official stance, like government statements and constitutional analyses. That way, the discussion isn’t just one-sided it tackles the different legal perspectives out there. Here’s what happened. In October 1947, Jammu and Kashmir’s ruler, Maharaja Hari Singh, signed the Instrument of Accession, joining India. He made this call after tribal groups, with support from Pakistan, invaded his state. The tension led India to take the issue to the UN Security Council in January 1948.

### **3.2 UN Security Council Involvement**

On April 21, 1948, the Council came up with Resolution 47, here’s the catch Resolution 47 fell under Chapter VI of the UN Charter, so it was more of a recommendation than a rule anyone had to follow. The Security Council doubled down on this idea several times in later resolutions from 1948 all the way to 1957 always sticking to the core point, the people of Kashmir should get to decide. Even in 2020, UN Secretary-General António Guterres repeated the call to follow these resolutions. But after all these years, that plebiscite never happened.

### **3.3 Article 370 and Article 35A**

Back in 1950, Article 370 went into the Indian Constitution as a temporary fix, but it did a lot. The only things New Delhi really controlled were defense, foreign affairs, and communications. Then came Article 35A, which let the state's assembly decide who counted as a "permanent resident" and that meant special rights, like who could own land or get government jobs.

But things didn't stay frozen, starting in 1954, one presidential order after another stretched more parts of the Indian Constitution into Indian illegally occupied Jammu and Kashmir (IIOJK). Now, when the state's Constituent Assembly wrapped up in 1957 without ending Article 370, Indian courts started treating the Article as if it was here to stay. Over time, that "interim arrangement" took on a life of its own.

## **4. The 2019 Abrogation and Its Domestic Legal Outcome**

### **4.1 The Presidential Orders and Reorganization Act**

On August 5, 2019, the President of India issued Constitutional Order 272, changing Article 367 so that Article 370 would be interpreted differently. The next day, both houses of Parliament passed the Jammu and Kashmir Reorganization Act, splitting the state into two union territories: Jammu and Kashmir, and Ladakh. Afterward, twenty-three petitions challenged whether these moves were constitutional.

### **4.2 The Supreme Court Judgment (2023)**

On December 11, 2023, a five-judge Constitution Bench of the Supreme Court of India unanimously backed the government's decision. The Court said Article 370 was always meant to be a temporary, war-time measure. They made it clear that the President didn't need approval from a state Constituent Assembly which no longer existed to change or revoke it. The Court also said that reorganizing the state into union territories should be reversed as soon as possible, but that move didn't undo the abrogation itself. The judges ordered assembly elections to happen by September 30, 2024.

People in the legal world had strong opinions on both sides before this ruling, some saw the 2019 orders as going against the constitution or even outside it. The government and its supporters, though argued that ending Article 370 got rid of discriminatory laws and helped bring the region fully into the rest of India.

### **4.3 The 2024 Assembly Elections**

The INDIA alliance, led by the National Conference, scored a majority winning most of the 90 seats up for grabs. Omar Abdullah took the oath as Chief Minister on October 16, 2024, bringing back some level of elected government. Still, even with the Supreme Court's promise, full statehood hadn't returned by the time of the election.

## **5. International Legal Framework: Self-Determination**

### **5.1 Self-Determination Under the UN Charter and Resolution 1514**

The beginning of the UN Charter, and spelled out even more clearly in the UN General Assembly's 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514). That declaration makes it plain: every group has the right to decide its own political future, and nobody gets to hold up economic or political "unpreparedness" as an excuse to stall that process. This same idea runs through Common Article 1 of both the ICCPR and ICESCR, where self-determination isn't just a nice goal it's a legal right.

### **5.2 The Self-Determination Claim Before the Supreme Court**

People who brought their case to India's Supreme Court leaned hard on this point: Kashmiris weren't even asked before such a huge change to the Constitution, so scrapping Article 370 trampled their right to self-determination. They also said the way it was done detaining people and cutting off communication violated basic rights like free speech, movement, and personal liberty. But the Supreme Court didn't get into the whole self-determination angle in the way international law might frame it. The judges stuck to the Indian Constitution, only considering if the President used his powers legally inside the country.

### **5.3 The Contested Legal Weight of the 1948–57 Resolutions**

People still argue over how much legal power the 1948–57 UN Security Council resolutions really carry when it comes to holding a plebiscite. The truth is, since these resolutions fell under Chapter VI, they only made recommendations they didn't actually force India or Pakistan to do anything. Both countries acted like those old ideas (like withdrawing troops or setting up a temporary administration) just didn't matter anymore, especially after the Simla Agreement in 1972 changed the situation. Still, Pakistan and Kashmiri activists insist the promise to hold a plebiscite remains on the books as an International obligation. They point out the Security Council has never officially canceled it.

## **6. Documented Human Rights Concerns from International Bodies**

### **6.1 OHCHR Reports (2018 and 2019)**

In June 2018, the Office of the UN High Commissioner for Human Rights released its first-ever report on human rights in Kashmir, then followed up with another in July 2019, covering events from May 2018 to April 2019. That second report landed just weeks before the region's special status was revoked. According to the update, civilian deaths in Indian-administered Kashmir hit a new high in 2018 a local group counted around 160 people

killed that year. The report singled out India's Armed Forces (Jammu and Kashmir) Special Powers Act (AFSPA) as a major roadblock to justice; ever since the law came in back in 1990, not one security force member had been allowed to stand trial in a civilian court.

The UN also called out "cordon-and-search" operations, saying they led to arbitrary arrests and property damage. They even went so far as to tell the Human Rights Council it should consider setting up a commission of inquiry. India dismissed both reports as "false and motivated," claiming they ignored cross-border terrorism. Pakistan, on the other hand, liked the parts on Indian-administered Kashmir but pushed back against anything critical of its own administration.

## **6.2 UN Independent Experts' Response to the Abrogation**

After India's August 2019 decision, five UN-appointed human rights experts spoke out. Their message was clear, India needed to stop the crackdown on free speech. By October that year, Rupert Colville from the UN's human rights office said most of the Kashmir Valley was still under an undeclared curfew. People couldn't move freely, gather, or even access basic health care and education. On top of that, hundreds of political and civil society leaders were still locked up without trial.

## **6.3 The Genocide Watch Alert: A Contested Assessment**

Genocide Watch, an independent organization based in the US and founded by Gregory Stanton, put out a formal "genocide alert" for Indian-administered Kashmir in August 2019. They used their own ten-stage model for spotting signs of genocide and pointed to things like increased troop deployments, cut-off communications, and a history of impunity as warning signs. They urged the UN and its member states to warn India not to let the situation get worse.

It's important to note that this is the view of Genocide Watch, an advocacy and early warning group it isn't a conclusion from any UN court or official investigation. India strongly rejected these claims as incorrect, and so far, no international court or UN inquiry has legally declared genocide in Kashmir. So, this statement stands as one perspective among many in the global discussion, not as any kind of final legal decision.

## **7. Communications Restrictions and Digital Rights**

### **7.1 The 201G Communications Blackout**

Starting the night of August 4, 2019, about seven million people in the Kashmir Valley lost landlines, mobile networks, broadband, even cable TV. By December, The Washington Post noted the shutdown had dragged on for over four months, and digital rights experts later tallied the whole ordeal at 552 days before things slowly came back online. Even after

India's Supreme Court said in 2020 (*Anuradha Bhasin v. Union of India*) that you can't suspend the internet indefinitely, the restrictions lingered for months gradually easing but not disappearing right away.

## **7.2 Comparative Data on Global Internet Shutdowns**

Access Now's keep it on coalition reported 187 internet shutdowns worldwide in 2022, spread across 35 countries. Out of those, India pulled the plug 84 times, and 49 of those happened in Indian-administered Kashmir. That's how India kept its title as the world leader in internet shutdowns for the fifth year in a row.

## **7.3 Economic and Press Freedom Impact**

Back in 2019, the Kashmir Chambers of Commerce and Industry said that at least half a million people mostly from the tourism industry lost their jobs during that year's shutdown. And it's not just a local problem: India's internet shutdowns cost the country more than \$184 million in 2022 alone. Life for Kashmiri journalists hasn't been any easier, Independent reports show that 22 journalists have been killed in the region since 1990. The frequent, lengthy shutdowns pushed many local publications and digital outlets to either close for good or drastically cut back their coverage.

## **8. Demographic Change and the Domicile Law**

### **8.1 The 2020 Domicile Framework**

On March 31, 2020, the Indian government rolled out Indian illegally occupied, Jammu and Kashmir Reorganizations Adaptation of State Laws) Order. A few weeks later, in May, they brought in the Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules. With these changes, the old "permanent resident" status something only the region's own legislature could define under Article 35A, which no longer exists was dropped. Now, any Indian citizen can get "domicile" status if they've lived in Jammu and Kashmir for 15 years. For central government officials and their children, it's just 10 years, and for students who've studied there, 7 years is enough. Then, in October 2020, the government went a step further and scrapped the permanent residency rule for buying land. Since then, any Indian citizen can purchase property in the territory.

### **8.2 The Fourth Geneva Convention Argument**

Pakistan's Foreign Office criticized the domicile order, saying it breaks international law especially the Fourth Geneva Convention. They urged the United Nations to step in and stop India from changing the region's population makeup. Legal experts writing in the *Economic and Political Weekly* and the *Global Legal Studies Review* pointed to Article 49 of the Fourth Geneva Convention, which bars an occupying power from settling its own

civilians in occupied land. They used this rule to examine what's happening in Kashmir and drew clear parallels to how Amnesty International describes Israeli settlements in Palestine as violations of international humanitarian law. Some commentators didn't stop there; they argued that forcing population shifts like this raises serious questions under the Rome Statute of the International Criminal Court.

### **8.3 Contested Classification as "Occupied Territory"**

Jammu and Kashmir's status as "occupied territory" isn't settled law India argues it's not occupied because it gained sovereignty through the 1947 Instrument of Accession, not by force. So when people draw on the Fourth Geneva Convention to call it "occupied," it's really a debated legal stance pushed by critics, not an official international classification.

Looking at the numbers, India's 2011 Census showed that Muslims made up about 68.3 percent of the former state's population. Critics say the recent changes to domicile rules are meant to shift that balance over time. The government, on the other hand, insists the new rules are just administrative tweaks, not some hidden plan to reshape the region's demographics.

## **G. India's Legal and Political Counter-Position**

### **G.1 The Simla Agreement and Bilateralism**

India sees the Kashmir dispute as something that should be handled only between itself and Pakistan, based on the 1972 Simla Agreement. After the 1971 war, Prime Minister Indira Gandhi and President Zulfikar Ali Bhutto signed this deal, promising to work out differences peacefully and directly, without anyone else getting involved, and to respect the Line of Control. Whenever there's talk of outside mediation whether from the UN or any other third party India points to this agreement. Indian officials say the Simla Agreement replaced the earlier UN plan for a plebiscite because both countries agreed to work things out face-to-face, without outside interference.

### **G.2 Claims of Ending Discrimination and Security Gains**

The government and those backing its decision say scrapping Article 35A put an end to some legal discrimination. They point out that, before the change, Kashmiri women who married outside the state lost property and inheritance rights. Also, important laws like the Right to Information Act, along with other anti-corruption and transparency measures, didn't apply in the region. Security officials add that terrorism-related incidents have dropped since the abrogation. They credit the tighter central control for this decline, but not everyone buys that explanation independent analysts argue it's tough to tell whether the

decrease happened because of the abrogation or because counter-insurgency efforts had already been working before 2019.

## **10. Discussion**

### **10.1 Reconciling Domestic and International Legal Findings**

The main challenge here is simple, domestic courts and international bodies aren't answering the same questions or playing by the same rules. Take India, for example the Supreme Court just looked at whether the President stayed within the limits of the Indian Constitution nothing more. That decision doesn't touch on whether the government's actions broke any promises under the UN Charter, the ICCPR, or international

humanitarian law. On the flip side, international organizations like the OHCHR don't get to overturn or undo what a country's highest court decides. They can report on what's happening and offer recommendations, but they don't have the power to hand down binding legal decisions.

### **10.2 What is the International Record Shows**

Here's what stands out from international reports if you look at the UN, human rights groups, and digital-rights advocates not just what either government says. There's a clear pattern, first, two reports from the UN Office of the High Commissioner for Human Rights pointed to serious accountability issues that were left hanging 2019. Then, after 2019, India imposed the world's longest internet shutdown in Kashmir and even India's own Supreme Court had to admit that cutting off communication like that couldn't go on forever. On top of that, the government changed the region's demographic status with administrative rules, skipping any real involvement from local residents.

Now, if you're wondering whether all this breaks actual binding international law, that's still debated. The facts are there but legal experts and scholars are still arguing over whether these actions crossed a legal line with no final word from an International court or the UN Security Council. So far, there's no binding decision on whether India's 2019 move violated international obligations or is just a thorny political issue.

## **11. Conclusion**

India's 2019 move to revoke Article 370 and restructure in Indian illegally occupied Jammu and Kashmir (IIOJK) is now backed by the country's highest court especially after the Supreme Court's unanimous decision in 2023 and the return of government in 2024. Still, those steps only settle the issue within Indian law. There's a whole other layer on the international stage that this report looks at: the 1948 UN Security Council's plebiscite recommendation, which never happened; claims for self determination that have come up

but haven't been judged in India's own courts; heavy communication blackouts that even Indian judges found too harsh and debates about the legal status of population changes through the new domicile rules.

Any deep analysis on this subject really has to lay out India's stance rooted in bilateral agreements and its own legal view of accession alongside the arguments made by critics, who call on self-determination and international humanitarian law. Both sides pull from real if clashing interpretations of law and history, so it's important not to sideline either.

Looking ahead, scholars should watch for any fresh UN interest in those old 1948–57 resolutions. Keeping a close, independent eye on civil liberties as policies shift in (IIOJK) will matter, too, as the situation keeps evolving.

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