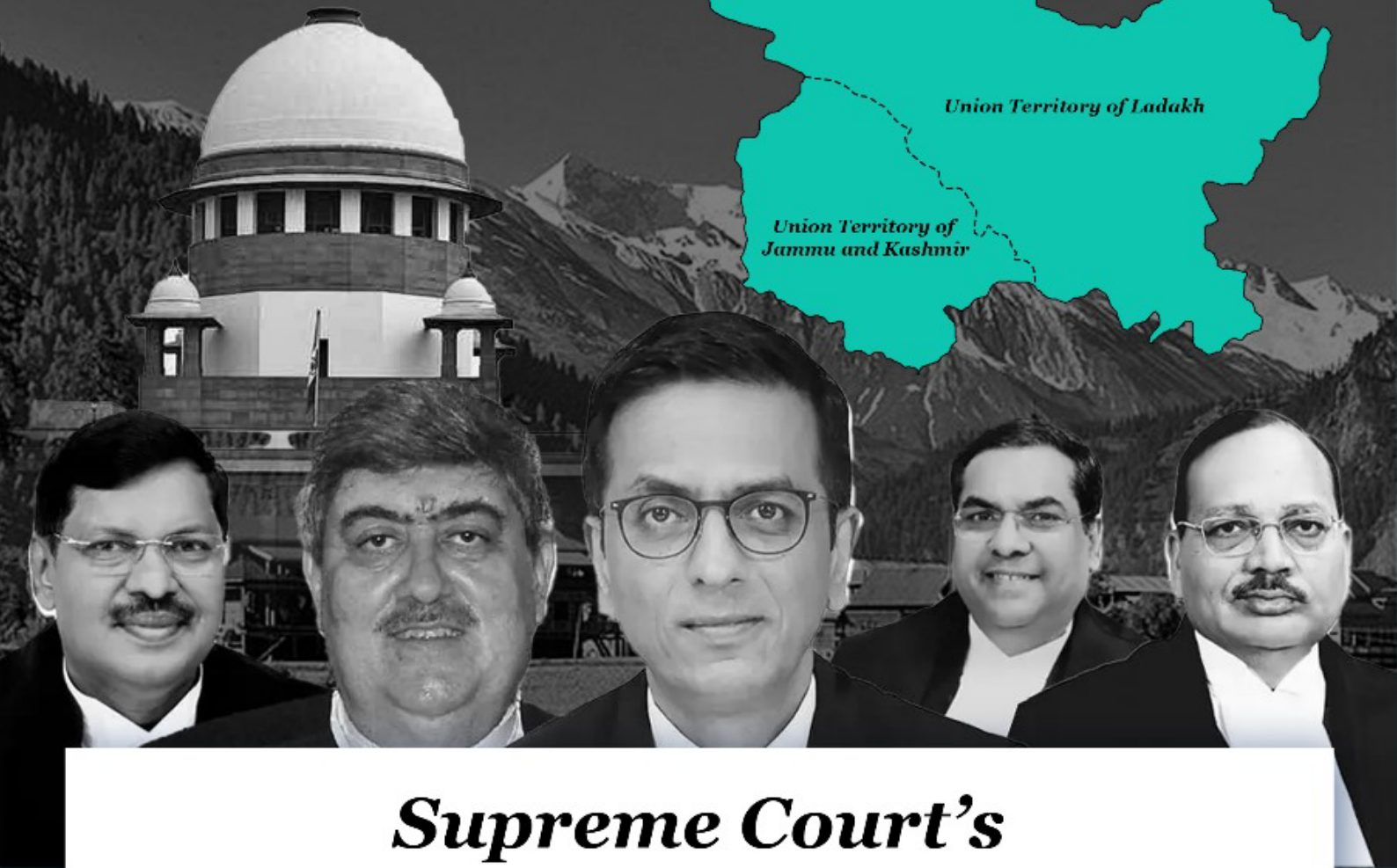


EXPLAINER



Supreme Court's Historic Judgement on Amendment of Article 370

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***Supreme Court's Historic Judgment on
Amendment of Article 370 of Indian Constitution***

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History and context

Termination of British colonial rule in the Indian subcontinent in 1947 resulted in the establishment of two dominions: India, regarded as the natural successor, and the newly formed Pakistan, as delineated by the Indian Independence Act of 1947¹.

The partition was a complex and tumultuous period in South Asian history, marked by deep religious, social, and political divisions. It resulted in widespread violence, displacement of millions, and lasting scars on the collective consciousness of the region. Many people see the partition as a tragic event that led to the division of communities that had coexisted for centuries.

The term "dismemberment of Bharat" often reflects the emotional and historical significance attached to the idea of a unified India before the partition. It signifies the pain and sense of loss experienced by many due to the division of the land and people.

This legislative framework mandated over 562 princely states to choose affiliation with either of the two dominions, explicitly precluding the option of remaining independent. Under the provisions of the Act, reigning monarchs of princely states held absolute authority over the destiny of their territories. This power included the right to decide on accession to either India or Pakistan. Such a decision, which vested solely in the hands of the monarch, could be made unilaterally, without the obligation to consult the subjects of the state. This legal framework endowed the monarchs with significant autonomy in determining the future alignment of their states during the critical period of transition following the end of British colonial rule.

Among these, Jammu and Kashmir, a region with a rich legacy of Hindu rishis and Sufi saints, led by its ruler, Maharaja Hari Singh, demonstrated a preference for integration with India. Maharaja Hari Singh's proclivity for aligning with Indian interests was not only evident during the 1930 Round Table Conference in London, where he voiced strong support for an "All India Federation," but also persisted through the critical period of 1947. During this transformative year, he notably avoided meetings with Lord Mountbatten, the last Viceroy of India, further indicating his inclination towards joining India.

In October 1947, Jammu and Kashmir encountered a pivotal moment when Pakistan, in violation of a previously agreed standstill agreement, launched a military offensive, aided by tribal raiders against the state. In a strategic response to this aggression, Maharaja Hari Singh, utilising his sovereign rights, formalised the accession of Jammu & Kashmir to India by signing the Instrument

¹ <https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/collections1/collections2/1947-indian-independence-act/>

of Accession in October 1947². This move legally incorporated Jammu & Kashmir into the Indian Union. In the wake of this accession, the Indian Armed forces intervened, engaging in significant military operations against the invading Pakistani forces and tribal raiders. This intervention was marked by substantial confrontations, wherein the Indian Army effectively countered the aggression, pushing back the invaders.

The conflict persisted until a ceasefire agreement was reached in January 1949. As a result of the ceasefire, approximately two-thirds of the Kashmir region, encompassing the Kashmir valley, Jammu, and Ladakh, came under the sovereignty of India. Conversely, Pakistan maintained control over the remaining territory, which included parts of Jammu and Kashmir, occupied by Pakistan (later renamed Azad Jammu and Kashmir), Gilgit Baltistan, along with Shaksgam Tract, which Pakistan later ceded to China as a gift. This sequence of events, characterised by Pakistan's crime of aggression, occupation and political manoeuvring, not only redefined the territorial boundaries within the region but also illustrating the enduring impact of colonial damages and territorial contestations in the post-independence era.

Indian constitution has a well drafted preamble that sums up the entirety of the nation and its objectives in a few words. India is a Sovereign, Socialist, Secular Democratic Republic and grants to its citizen justice, fraternity, liberty and equality.

The mixed nature is also observed in terms of amendment of the constitution. Ours is a constitution which can be rigid, with certain laws standing tall against the test of time, but at the same time it can be flexible- changing, adding, removing as well as amending laws in accordance with the ideology of the society.

Article 370 of the Indian constitution was integrated into the Indian Constitution in 1949. It represented a special and temporary provision, specifically designed as a transitional arrangement in response to the unique situation of Jammu & Kashmir following a period marked by a Pakistani invasion, leading to a war like situation and heightened hostilities. Article 370 of the Indian constitution accorded Jammu & Kashmir, under the provisions of the Indian constitution, the ability to formulate have its constitution and maintain a separate flag, granting it autonomy some internal matters, while defense, foreign affairs, finance, and communications remained under the jurisdiction of the Republic of India.

Since the inception of Article 370 in the Indian Constitution, granting special status to Jammu & Kashmir, the provision has been mired in controversy and debate. This article, often exploited by various groups including Pakistan-backed fundamentalists and separatists, has led to significant issues and human rights violations in the region.

² <https://www.scobserver.in/journal/article-370-of-the-constitution-a-timeline/>

A prime example of the detrimental impact of Article 370 is the implementation of the Big Landed Estates Abolition Act³. While aimed at redistributing land and dismantling feudal landownership, this Act, rather than achieving its intended goal of social equity, resulted in a severe disruption of the existing land ownership systems. This disruption disproportionately affected the Hindu landowners, who were forced to relinquish their ancestral lands without adequate compensation or consideration of their long-standing ties to the land. This loss of traditional land, a critical economic and cultural asset, precipitated a decline in the livelihoods and social status of these families. Furthermore, the Act's implementation was seen as part of a broader pattern of policies under Article 370 that were aimed to marginalise the native Hindu community in Jammu & Kashmir.

The plight of the Valmiki community serves as another stark example. Brought into Jammu & Kashmir primarily for sanitation work, the Valmikis have, for over seven decades, faced systemic discrimination under the state's laws. Despite their long-term residence, they were denied basic rights and privileges that other citizens of India took for granted. Article 35A, which allowed the state to define 'permanent residents' and grant them special privileges, effectively excluded the Valmiki community from these rights. They were not entitled to property rights, voting rights in local elections, government employment, or higher education opportunities in state institutions. This exclusion created a cycle of socio-economic disadvantage, confining the community largely to menial jobs and preventing them from fully integrating into the social fabric of the state.

Moreover, the region witnessed the ethnic cleansing of Kashmiri Hindu, the native community from the region. This tragic episode, marked by targeted violence and intimidation, resulted in a massive exodus, disrupting the demographic balance and cultural fabric of the valley. This native community, historically integral to the cultural and social life of the region, became the target of escalating Islamist violence in the late 1980s and early 1990s. Terrorist groups, often with support from across the border, launched a campaign of terror against the Hindus with little or no state government intervention. This campaign included threats, assassinations, and attacks on their homes and religious sites. The violence was not only physical but also psychological, marked by a constant fear of attack, leading to a palpable sense of insecurity among the community. The exodus of the Kashmiri Pandits was stark and swift. Within a short span, a majority portion of the community was forced to flee, leaving behind their homes, possessions, and a rich cultural legacy that had been nurtured over centuries. The tragedy of the Kashmiri Pandits is a direct reflection of the exploitation of Article 370's provisions.

Women in Jammu & Kashmir also faced unique challenges under Article 35A. If a woman from the region married a non-permanent resident, she risked losing her property rights and other entitlements. This provision enforced a gender-based disparity, limiting women's choices and reinforcing patriarchal norms.

³ https://prsindia.org/files/bills_acts/acts_states/jammu-and-kashmir/1950/1950J&K17.pdf

Furthermore, the inability to apply national laws aimed at social welfare and progressive reforms meant that the residents of Jammu & Kashmir were often unable to benefit from legislation that protected and empowered citizens in other parts of India. This legal exceptionalism contributed to a sense of alienation and undermined efforts towards socio-economic equity.

In August 2019⁴, the Indian government's decision to revoke the special status of Jammu and Kashmir, under the leadership of Prime Minister Narendra Modi, marked a turning point in the region's history. This move, involving the amendment of Article 370, was received with a spectrum of responses both within India and internationally. On one hand, the decision sparked widespread celebrations across various communities, transcending regional and societal boundaries. People from different races, castes, colours, and creeds were seen engaging in festivities, with scenes of dancing, drum playing, and the distribution of sweets. This sentiment of jubilation extended to the global stage, where the Indian diaspora and supporters of the decision participated in events to commemorate what they considered a historic moment⁵.

Conversely, the amendment elicited strong opposition and legal challenges. A notable figure in this dissent was Mohammad Akbar Lone, a Member of Parliament from the National Conference, who emerged as the lead petitioner in challenging the repeal of Jammu and Kashmir's special status. His actions brought the issue to the forefront of the Supreme Court of India, igniting a significant legal and constitutional debate. The controversy and discussion surrounding this decision persisted until a landmark moment on December 16, 2023, when the Supreme Court of India delivered a crucial verdict. The court upheld the actions of the Indian government, confirming the legality of the amendment of Article 370. This ruling provided a definitive legal clarification and was seen as a validation of the government's actions. The Supreme Court's decision thus marked the culmination of years of intense debate and legal scrutiny, representing a significant chapter in the ongoing narrative of Jammu and Kashmir's integration into the Indian Union.

Indian Governmental Action on August 05, 2019

Following the election victory, the party in power-initiated steps to amend Article 370, a constitutional provision that had long been a subject of debate. It's noteworthy that Karan Singh, son of Maharaja Hari Singh and a prominent Congress leader, also expressed the view that a comprehensive review of Article 370 was overdue, suggesting that this should be undertaken in collaboration with the State of Jammu and Kashmir.

On August 5, 2019, Home Minister Amit Shah announced in the Parliament the decision to abrogate Article 370. This article had previously allowed Jammu and Kashmir certain exemptions from the

⁴ https://www.mha.gov.in/sites/default/files/PressReleaseJ%26KDecisions_06082019.pdf

⁵ <https://www.ddnews.gov.in/national/people-hail-scraping-article-370>
<https://timesofindia.indiatimes.com/india/govt-move-on-article-370-draws-emotional-response-from-people-across-the-country/articleshow/70540055.cms>

Indian Constitution, with the exception of Article 1 and Article 370 itself, and had enabled the state to draft its own Constitution.

Following the parliamentary resolution on the same day, President Ram Nath Kovind issued Constitutional Orders 272 and 273 under Article 370(3)⁶. These orders stated that all clauses of Article 370 would cease to be operative from August 6, 2019, effectively revoking the special status of Jammu & Kashmir and aligning its governance structure more closely with that of other Indian states.

The government's rationale behind this decision was not solely focused on political integration. It also aimed at fostering unhindered development in the region. This move was seen as a step towards ensuring equal opportunities for growth and progress in Jammu and Kashmir, in line with the rest of the country. This decision represented a significant milestone in the history of Indian governance and its approach towards managing the diverse and complex challenges of national integration.

Global Misinformation Campaigns

In the international political arena, the amendment of Article 370 of the Indian Constitution, which led to the bifurcation of Jammu and Kashmir into two separate Union Territories – Jammu and Kashmir, and Ladakh – in August 2019, became a focal point for global disinformation campaigns. These campaigns, marked by fabricated narratives, proliferated both within India and across the world, distorting the reasons behind the amendment, its implications, and the legal and constitutional aspects involved.

Media entities and individuals, often misinformed, portrayed the decision to revoke Article 370 as undemocratic, alleging a lack of proper consultation with the people of Jammu & Kashmir. Critics raised concerns about the potential impact on the region's autonomy, identity, and its relationship with the rest of India.

The Inter Services Public Relations (ISPR) of Pakistan played a notable role in these disinformation efforts. Analysis of their Twitter activity from August 5 to December 31, 2019⁷, revealed that 41.11 percent of their tweets during this period focused on Article 370. Similarly, Pakistani Prime Minister Imran Khan's tweets, numbering 239 in the same timeframe, had 44.76 percent devoted to Article 370, often propagating misinformation.

⁶ https://www.scobserver.in/wp-content/uploads/2021/09/370_PO_CO2721.pdf

⁷ <https://www.defencexp.com/ispr-an-insight-into-pakistans-disinformation-machinery/>

Imran Khan's campaign extended beyond social media. He engaged in diplomatic efforts, such as contacting Iranian President Hassan Rouhani to urge action against India and lobbying China to bring motions against India at the United Nations⁸. His rhetoric included nuclear threats against India and comparisons of Indian Prime Minister Narendra Modi to Adolf Hitler, coupled with repeated unfounded claims of potential genocide in Kashmir.

China, aligning with Pakistan, also interfered in the matter, labelling the amendment of Article 370 as “illegal and invalid⁹.” Between August 5, 2019, and March 10, 2020, China made three attempts to bring the Kashmir issue to the United Nations Security Council's agenda, all of which were unsuccessful.

Turkey joined this disinformation campaign, with its Foreign Ministry spokesperson Hami Aksoy criticizing India's actions. On the first anniversary of the amendment, Aksoy, as reported by Anadolu Agency, claimed that the situation in Kashmir had become more complicated and detrimental to regional peace and stability.

Despite these international efforts to discredit India's decision, the response within Jammu & Kashmir contrasted sharply with these narratives. The region, witnessing developmental initiatives and new projects from the central government, did not resonate with the fabricated propaganda. The prevailing peace and burgeoning prosperity in Jammu & Kashmir stood in stark contrast to the criticisms and served to undermine the credibility of those opposing the decision. This development highlights the complex interplay of internal policy decisions and international perceptions, often influenced by geopolitical interests and alignments.

Positive Effects of the amendment

The intricate fabric of democracy often operates under the presumption of representing the diverse voices within a society. However, in regions like Jammu & Kashmir, a complex confluence of historical, political, and social factors had created a vacuum within the democratic system, fostering an environment conducive to the rise of terrorism.

In this vacuum, terrorist groups found fertile ground to propagate their ideologies and recruit disillusioned individuals. They exploited grievances and capitalized on the lack of faith in democratic avenues to channel dissent, often resorting to violence as a means to amplify their objectives.

⁸ <https://www.wionews.com/opinions/pakistan-trying-hard-to-spread-false-narratives-on-jammu-and-kashmir-246411>

⁹ <https://www.indiandefencereview.com/news/china-on-abrogation-of-article-370-look-whos-talking/>
https://www.orfonline.org/wp-content/uploads/2021/05/ORF_OccasionalPaper_318_Kashmir-Silence.pdf

The vacuum within the democratic system in Jammu & Kashmir was not insurmountable and demanded a concerted effort to strengthen democratic institutions, foster inclusivity, and address the grievances of all sections of society to thwart the influence of terrorism and pave the way for lasting peace, development and stability.

The amendment of Article 370 has brought about profound changes in Jammu & Kashmir and Ladakh, aligning them more closely with the rest of India and opening up new avenues for development and progress¹⁰. This integration means that all the laws applicable in India are now also applicable in Jammu & Kashmir and Ladakh, ensuring uniformity of rights and privileges across the country.

The amendment of Article 370 in Jammu & Kashmir marked a significant turning point in the region's political landscape, opening doors to democratic processes that were previously restricted. The amendment not only integrated the region more closely with the rest of India but also paved the way for the establishment of democratic principles and practices.

One of the most notable democratic processes initiated post the Article 370 amendment was the conduct of elections. The region witnessed the successful completion of the District Development Council (DDC) elections in December 2020. These elections were hailed as a crucial step towards grassroots democracy, allowing local representatives to take charge of developmental initiatives in their respective districts.

The participation and enthusiasm seen during these elections reflected the people's desire to engage in the democratic process and have a say in the governance of their region. It also provided an opportunity for individuals from diverse backgrounds and regions within Jammu & Kashmir to actively participate in the political arena.

Furthermore, the formation of Block Development Councils (BDCs) and Urban Local Bodies (ULBs) bolstered the democratic setup by empowering local governance bodies. These institutions have been instrumental in addressing local issues, implementing developmental projects, and ensuring a more inclusive decision-making process.

Additionally, efforts have been made to ensure greater transparency and accountability in the region's administration. Measures such as increased public access to government services, the establishment of grievance redressal mechanisms, and the promotion of transparency in resource allocation aim to strengthen democratic principles and build trust between the government and the people.

¹⁰ <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2023/mar/doc2023315171901.pdf>

Development and Progress Initiatives:

- **Application of Central Laws:** With the abrogation of Article 370, over 890 Central laws became applicable in Jammu & Kashmir and Ladakh. This includes critical areas like education, health, labor, and social welfare, enabling residents to avail benefits and protections that were previously not accessible.
- **Economic Development:** Initiatives like the Industrial Development Scheme have been introduced, aiming to boost local industries, create jobs, and attract investment. Significant investment has been made in sectors such as tourism, handicrafts, and information technology to spur economic growth.
- **Infrastructure Projects:** Numerous infrastructure projects have been launched, including road and highway constructions, railway expansions, and the development of modern urban facilities. These projects are aimed at improving connectivity and fostering regional development.
- **Educational and Healthcare Reforms:** New educational institutions, including IITs, IIMs, and AIIMS, are being established to improve the quality of education and healthcare. Existing institutions are being upgraded to provide better facilities and opportunities for the youth.
- **Social Welfare Schemes:** Various central social welfare schemes, such as Pradhan Mantri Awas Yojana, Ujjwala Yojana, and Ayushman Bharat, have been implemented, providing housing, healthcare, and other essential services to the needy.
- **Environmental Initiatives:** Projects focusing on environmental conservation, such as the Jal Jeevan Mission for clean water and the Swachh Bharat Mission for sanitation, have been introduced.
- **Cultural Revival and Tourism:** Efforts are being made to revive local arts, crafts, and cultural heritage, along with promoting tourism, which is a vital sector for the region's economy.
- **Agriculture and Horticulture:** Special emphasis is being placed on the development of agriculture and horticulture, crucial sectors for the local economy, through various schemes and technological support.

G20 Summit in Jammu and Kashmir:

In addition to these initiatives, the successful hosting of a G20 summit in Jammu and Kashmir stands as a testament to the region's progress and stability¹¹. This event not only showcased Kashmir's potential as a global meeting destination but also helped in changing international perceptions about the region.

The comprehensive development and progress initiatives concluded in Jammu & Kashmir and Ladakh post the amendment of Article 370 demonstrate a significant leap in their journey towards prosperity and integration with the broader national narrative. These efforts are reflective of the government's commitment to ensuring that the benefits of growth and modernisation are equitably distributed across all regions of the country.

Moreover, the amendment of Article 370 has indeed had a significant impact on various aspects of life in Jammu & Kashmir and Ladakh, especially in terms of women's rights, investments, and overall prosperity.

Women's Rights¹²:

- **Property Rights:** Prior to the amendment, women in Jammu & Kashmir faced restrictions on their property rights, particularly if they married non-residents. The revocation of Article 370 has ensured that women in the region enjoy the same property rights as women in other parts of India, irrespective of their marital choices.
- **Employment Opportunities:** The integration has opened up new employment opportunities for women, including in sectors that were previously less accessible. This is a significant step towards economic empowerment and gender equality.
- **Legal Protection:** Women now benefit from various national laws that protect their rights and interests, including laws against domestic violence, dowry harassment, and other forms of gender-based discrimination.

Investments and Prosperity:

- **Investment Inflows:** The region has seen a surge in investments post-amendment. The government has been actively promoting Jammu & Kashmir and Ladakh as attractive investment destinations, resulting in increased business interest and economic activities.

¹¹ <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/significance-of-holding-a-g-20-meeting-in-kashmir/>

¹² https://www.business-standard.com/article/news-ani/abrogation-of-article-370-dipr-j-k-highlights-benefits-for-women-scs-sts-obcs-119090700479_1.html

- **Industrial and Economic Development:** Special incentives and schemes have been introduced to encourage industrial growth. This includes the promotion of local handicrafts, agriculture, and tourism, sectors in which the region has inherent strengths.
- **Connectivity Projects:** Investment in connectivity infrastructure like roads, bridges, and railways has been a priority, improving access and fostering economic integration with the rest of the country.
- **Technology and Innovation:** There's been a focus on fostering innovation and technology-driven industries, with initiatives to establish IT parks and encourage startups.
- **Tourism:** The region's natural beauty and cultural heritage make it a prime location for tourism. Post-amendment, there have been efforts to promote sustainable and responsible tourism, which contributes significantly to local prosperity. This has resulted in the highest footfall of tourists in history.

The successful implementation of these initiatives in Jammu & Kashmir and Ladakh reflects a broader commitment to ensuring equal rights and opportunities for all citizens, fostering an environment where women can thrive and communities can prosper. The changes brought about by the amendment of Article 370 have been instrumental in paving the way for greater social, economic, and gender equality in these regions.

Supreme Court of India Hearings

In a detailed examination of one of the most consequential legal matters in recent Indian history, the Supreme Court of India conducted comprehensive hearings on the constitutional amendment of Article 370¹³. These hearings, which occurred over 16 days from August 2 to September 4, 2023, represented a rigorous judicial inquiry into a decision that has significantly reshaped the political and social landscape of Jammu & Kashmir.

The Supreme Court's deliberations, extending over three months, were focused on assessing the constitutionality of the government's decision to amend Article 370. This process involved an in-depth analysis of various legal and constitutional provisions, historical documents, and legal precedents. Additionally, the Court meticulously considered the implications of the amendment on the rights and lives of the people of Jammu & Kashmir.

The legal representation in this landmark case included some of the most eminent lawyers in the country. The petitioners challenging the amendment were represented by a team of advocates: including Kapil Sibal, Gopal Subramaniam, Rajeev Dhawan, Dushyant Dave, Gopal

¹³ <https://thewire.in/law/article-370-hearing-day-9-extreme-examples-extreme-cases>

Sankaranarayanan, and Zafar Shah. These legal luminaries brought forth arguments emphasizing the historical context of Article 370, its significance in the accession of Jammu & Kashmir to India, and the potential impacts of its revocation on the region's autonomy and the rights of its residents.

On the other side, representing the Central Government, were Attorney General R Venkataramani, Solicitor General Tushar Mehta, and senior advocates Harish Salve, Rakesh Dwivedi, and V Giri. Their arguments underscored the legal and constitutional validity of the government's action, emphasizing the need for uniformity of laws across the country and the benefits of fully integrating Jammu & Kashmir into the Indian Union. The hearings were marked by intense legal debates, encompassing a wide range of constitutional, legal, and political issues. The Supreme Court's role in this process was pivotal, as it sought to balance the intricate constitutional nuances with the broader implications for national integrity, security, and the rights of the people of Jammu & Kashmir.

Supreme Court ruling in the matter

In a significant judicial endeavour, the Supreme Court of India, led by a five-judge Constitution Bench comprising Chief Justice DY Chandrachud, Justices Sanjay Kishan Kaul, Sanjiv Khanna, BR Gavai, and Surya Kant, was tasked with adjudicating a series of petitions challenging the Centre's decision to revoke Article 370¹⁴. This bench faced the formidable task of navigating through a maze of constitutional, political, and social considerations. The hearings, which extended over 16 days, followed by a deliberation period of over three months, culminated in a historic verdict delivered on December 11, 2023.

This verdict was not merely a legal interpretation of the Constitution. It delved deep into the multifaceted relationship between the Indian government and the Jammu & Kashmir region, addressing broader implications encompassing political, social, and human rights dimensions. On this landmark day, the Supreme Court rendered a judgment that resonated with the foundational principles of the Indian Constitution. The Court upheld the sovereignty and integrity of India, a core value that resonates deeply with every Indian citizen. In its ruling, the Supreme Court made a pivotal observation that the decision made on August 5, 2019, was aimed at enhancing constitutional integration, rather than fostering disintegration. Furthermore, the Court recognised the transient nature of Article 370, validating the government's stance that the article was not meant to be a permanent feature of the Indian Constitution.

This acknowledgment by the Supreme Court was crucial in reaffirming the legal and constitutional basis for the amendment of Article 370. The Supreme Court's decision thus marked a seminal moment in India's constitutional history. It provided judicial clarity on a contentious issue, reaffirming the principles of national unity and constitutional governance. The judgment also set a precedent for how constitutional changes of such magnitude are to be perceived and interpreted in the context of India's evolving political and social landscape.

¹⁴ https://main.sci.gov.in/pdf/LU/article_370.pdf

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