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## **IMPACT OF THE CONSTITUTIONAL STATUS OF JAMMU AND KASHMIR ON MARGINALIZED COMMUNITIES**

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### **Abstract**

This paper analyzes the socio-political impact of Jammu and Kashmir's special status under Article 370 on marginalized communities, including SCs, STs, OBCs, and minority Hindus. It reveals how these provisions favored high-caste Muslim elites while neglecting lower-caste groups. Employing a mixed-method approach, the research examines socio-economic mobility and representation across six districts in Jammu, Kashmir, and Ladakh. The study traces the historical origins of Article 370, its revocation in 2019, and the ensuing debates. It evaluates constitutional safeguards for equity and critiques the caste-based power dynamics entrenched under J&K's special status. This paper is an outcome of the study sponsored by ICSSR- "A Study of Impact of Constitutional Status of Jammu and Kashmir on Status of Marginalised Communities Since Independence" (F. No SC-17/2019-2020/ICSSR/RP).

### **Keywords**

Jammu and Kashmir, Article 370, Marginalized communities, Autonomy, Political participation

### **Introduction**

On October 26, 1947, a protest from the downtrodden, unlettered labourers of Kashmir made headlines in national and international newspapers. It shook the Maharaja, the landlords, and their authority and terrified the Kashmiri Muslims. About 4,000 of them, under the leadership of a tribal leader, raided the habitats of landlords and principality officials. This act defused tensions



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between two global superpowers, resulting in the signing of Instrument of Accession with the Indian Union by the Maharaja of princely state of Jammu and Kashmir. This instrument allowed the Union of India to have the powers in the defence, finance, and external affairs only. The agreements were unique and significant, owing to Kashmir's distinct status for defence purposes in the Indian Constitution of 1950. Kashmir's special status in the Constitution is also for the territorial integrity of India (Frontline, 2022).

Indian prime ministers and presidents swore by it again and again. This unique arrangement in the Constitution was not only to ensure that the residents of Jammu and Kashmir had a right to have their own constitution, but it also affected an extreme example of the tool of statecraft, described as political deep freeze—an extraordinary event, scheduled for one stroke of the legislature's majority on the 38th in the constitution/history of parliament (Anand, 2016).

Under Article 370 of the Indian Constitution, special autonomy has been given to the state of Jammu and Kashmir to enact a constitution, flag, and exercise autonomy in matters concerning the subjects of the state except Defence, Communications, and External Affairs. In this line, Article 35A was enacted through a presidential order to grant citizenship rights and other privileges to the residents of the state. Presently, the demand for autonomy and special status for the state is coming from the high caste Muslims only, specifically from the 'Sayed caste', which includes Geelani, Jeelani, Andrabi, Qadri, Hamdani, Bhukhari, Shah, and others. Whereas, Wani, Zargar, Bhat, Naqash, Lone, Khandey, Ahangar, and other occupation-based castes and castes in the lower rung—Hanjis (people residing on houseboats), Waza, Gilkar, Sofi, Dobi, Ganie, Bangi, or Sheikh—are in a state of acute deprivation of resources and jobs, often not benefiting from the special status of the state (Sheikh, 2017).

The population is largely composed of Hindus (Brahmins) in Jammu, Muslims (Ashrafs and Syeds) in Kashmir, in addition to Buddhists and Shia Muslims in Ladakh. However, the Kashmiri pandits, refugees, and war-affected families have been suffering from the want of their rights not guaranteed under Article 370(Behera, 2007). Among the Muslims, 85 percent belong to the lower castes and backwards, categorised as Pasmada Muslims. 80 percent of Hindus comprise SCs, STs, and OBCs, while the majority of Laddhaki's consist of Beda, Garba, and Mon, who are



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deprived of resources and opportunities. The high-caste Muslims, specifically Ashrafs, particularly Sayed, dominate land ownership, citizenship rights, and socio-economic and political resources in Kashmir. The special status of the state serves as a tool to maintain their inherited, religious, and caste-based power, often neglecting the rights, representation, and well-being of marginalised castes across different religions. This study looked at how the Jammu and Kashmir's special status has protected the rights, representation, welfare, and upward mobility of SCs, STs, OBCs, and minority Hindus in the context of their socio-economic, and political mobility since independence. In addition, it examined the effectiveness or inadequacy in safeguarding the rights, representation, welfare, and upward mobility of these groups in the distinct religious and regional context of J&K (Tremblay & Bhatia, 2021).

The repeal of the Article 370 on August 5, 2019 (Jaffrelot & Schoch, 2023) revoked the special privileges allotted to J&K, thus, integrating it fully into the Union of India. Article 370 had granted the regional autonomy, allowing it to have its own constitution, laws, and privileges. The BJP-led Indian government argued that the action would advance national integration, development, and better governance. Critics, however, viewed it as a unilateral decision that disregarded regional sentiment and increased tensions. The territory was bifurcated into two Union Territories- Ladakh and Jammu & Kashmir. This decision sparked political, legal, and social debates both within and outside India (Jaffrelot & Schoch, 2023).

### **Background and context**

Scholars who study the issues of Jammu and Kashmir have only looked into militancy, violence against and exclusion of Kashmiri Pandits, the high-caste Muslims of Kashmir's push for dominance and separatism, the unfair and unconstitutional nature of Article 370 and Article 35A (Jaffrelot & Schoch, 2023), violence against women, the issues of caste, untouchability, and exclusion based on caste, terrorism, and important points in the state's history and how it has changed over time. Most importantly, the work and activism of Jammu Kashmir Study Circle and the scholars and leaders associated with the institution have created a discourse to save the state from getting trapped into severe militancy, anarchy, and threats against the sovereignty and integrity of the nation. Despite having significant works on Jammu and Kashmir, the scholars



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have not produced extensive analysis of the issues and conditions of Scheduled Castes, Scheduled Tribes, and Other Backward Classes in the state. None of the work has produced a state-level, district-level, or issue-level analysis on the problems and prospects of SCs, STs, and OBCs in the J&K (Government of India, 2006).

### **Objective**

This research exercise laid emphasis on how the privileges of the J&K has affected rights, representation, welfare, and upliftment of STs, SCs, OBCs, and minority Hindus in terms of their social, economic, and political mobility since independence. It also evaluated the efficiency of such influence in protecting their rights, representation, welfare, and upliftment in the unique religious and geographical background of Jammu and Kashmir.

### **Research Methodology**

This research work adopts a mixed-method approach whereby both qualitative and quantitative methods are used to understand the socio-economic presentation of the deprived communities of Jammu, Kashmir, and Ladakh. This includes fieldwork and preliminary information gathering through the use of structured questionnaires and semi-ethnographic observations.

### **Sample and Data Collection**

The survey consists of six districts, selected due to their different religious and ethnic make-up offering a complete picture of population variety in both Jammu, Kashmir, and Ladakh. From each district, we have collected 80 quantitative interviews—for a total of 480 interviews across Jammu, Kashmir, and Ladakh. Qualitative data were collected from narratives and semi-ethnographic reflections at twelve specific locations of residences of STs, SCs, OBCs. In addition, the sample size included 92 SCs, 319 STs, and 69 OBCs, which are representative in their respective proportions. A sample size of this nature comprehensively covers each category in fulfilling the objectives of understanding the perspectives of marginalized groups and challenges thereof.

### **Data Analysis**

In the case of quantitative data analysis, the Statistical Package for the Social Sciences has been used to deduce statistical insights. Qualitative data from interviews and observations have been



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examined to identify recurring themes and patterns to add depth and context to the quantitative data. Quantitative data was examined through the Statistical Package for the Social Sciences in order to obtain statistical insights. Thematic data analysis was done to identify common themes and trends from the interview and observation data to add texture and richness to the findings of the quantitative examination.

### **Interaction with Participants**

This research undertaking further encompassed group discussions in this regard with a wide range of participants including activists, historians, and youngsters for a broader perspective on the issues. This interaction primarily aimed at establishing in fair detailing of the different economic contexts and issues faced by the people from the marginalized sections. This research exercise, while integrating quantitative and qualitative methods, put the focus on thorough knowledge of rural realities and delivered practical insights that could be useful for improving the socioeconomic conditions of disadvantaged groups within the region.

### **Historical Overview of the Constitutional Standing of Jammu and Kashmir**

Different states within the India joined the newly formed Indian Union under distinct conditions, and their constitutional status differed. The previous experiences and the history of Jammu and Kashmir in that aspect portrays a picture that is completely paradoxical; it was one of the princely states in India but unarguably the only one that acquired a privileged status within the Union. There are mythologies that surround the acquisition of privileged status by Jammu and Kashmir. The special relationship of J&K with India had its roots in the process of independence itself (Dequen, 2018). The setting of the whole historical process under British rule has to be appreciated in the context to understand the very significance of the conflict and the identity that is deeply religious. Accordingly, this paper shall give a brief and concise historical account of the circumstances that led to the special constitutional status of J&K and, in the meantime, shall deal with the debates and discussions that the peculiar nature of the special status led to, particularly with regard to its women and the Scheduled Tribes. The special relationship of Jammu and Kashmir with India had its roots in the process of independence itself. The setting of the whole historical process under British rule has to be appreciated in order to understand the very nature



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of the conflicts involving class, caste, and the identity that is often deeply religious. The themes involved, including the problems of people, are essentially territorial, and the issues related to the territory and its high strategic location are not necessarily religious or ethical, as the local aspect is emphasised. There is no doubt that various agnostic political and religious leaders take advantage of the current situation. At least, it is the principle that is known and enunciated in theory. The locals of Jammu and Kashmir are well aware that the state occupies an important position for India and Pakistan's foreign security (Noorani, 2014).

On 5th August, 2019, the central government revoked Article 370, which ensures special autonomy to J&K. This constitutional provision had allowed the region a constitution, flag, and privileges and autonomy over internal matters except defence, communications, and external affairs. Government's move was intended to integrate Jammu and Kashmir with the Union of India, ending its special status. Following the revoke, J&K were reorganised into two Union Territories: Jammu and Kashmir and Ladakh. The government argued that this change would promote economic development and enhance security in the region. However, it sparked significant controversy, leading to political unrest and a heavy security clampdown, including communications blackouts and detention of local political leaders. This decision continues to be a subject of debate concerning its effects on the region's stability, development, and the understanding between the Union Government and the residents of J&K (Bose & Jalal, 2021).

### **Pre-Independence Era**

Under British Paramountcy, Jammu and Kashmir was a princely state. In contrast to British India, which was directly under the control of the British Crown, the princely states, such as Jammu and Kashmir, were semi-autonomous regions under the control of local monarchs who acknowledged British suzerainty in areas like defence and foreign affairs. (Menon, 2014). The simmering discontent found vent in 1931 when Shri Maqbool Sherwani launched the Quit Kashmir movement under the banner of Jammu and Kashmir Muslim Conference. The unrest reached its peak by June 1931, when J&K state arrested its Muslim leaders. The arrest of the Kashmiri Muslim Convention coincided with the arrest of M.K. Gandhi in India for the Civil Disobedience movement (Copland, 1981).



The convention raised multiple issues that were specifically tied to the economic exploitation that the Muslims of J&K faced under the Dogra rule, which profited by being an accomplice of the British colonial establishment. The differences between the two called for re-articulation of the Jammu and Kashmir-Pakistan resolution, which was described as an integral part of the freedom movement (Rai, 2019). Following Mahatma Gandhi's support for the Kashmir resolution, various Hindu and Sikh associations attempted to usurp the benefits of the All-State Muslim Conference's support by claiming that their early involvement and individual roles demonstrated that the struggle for freedom in Jammu and Kashmir was not foreign (Bhat, 2019). Soon, these claims were negated, and it was agreed that the Muslims of J&K were left to regulate their own fate in an atmosphere of freedom and purity. With the support of the British Crown, the economic interest of the British that the refinement of Sheikh Abdullah's stance was directed to subserve was accomplished (Khan, 2014). This laid the basis for the post-independence policy towards J&K, the ensuing internal politics that the Dogra ruled state faced, and the strategy that the British pursued to ensure that their investment and return on investment were firmly in place (Bhat, 2019).

### **Post-Independence Period**

The politics of Jammu and Kashmir began to form and develop under British rule, but under the supervision and pressure of the colonial Indian state. After the partition of British administered India, both Pakistan and India claimed J&K as within their respective borders. Since then, the Union Government of India has been accountable for governing the state through Indian administrative representatives. This has led to a number of political differences being seasoned with strong doses of interference and coercion while under the reality of Article 370, which reserved many aspects of autonomy, and international expectations that this arrangement was temporary, awaiting approval to determine the state's final status (Noorani, 2014).

Jammu and Kashmir's special constitutional status created and has sustained the political, economic, social, and cultural distortions that characterise the space within existing state boundaries. Because its autonomy sectors meant exemption from Indian tax burdens and supervision previously incorporated into almost the whole area, it is highly economically



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beneficial to business (Schofield, 2021).

### **Constitutional Provisions and Marginalised Communities**

The Indian Constitution, adopted in 1949, not only defined the political relationship between the Delhi government and Jammu and Kashmir but also impacted various communities residing in the state. As a result, the territory were granted its own constitution and national flag, and it does not implement a host of Indian laws pertaining to the rights of the marginalised communities, i.e., laws relating to the Right to Education, Right to Information, Protection of Rights of Women from Domestic Violence Act, the Protection of Children from Sexual Offences Act, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the Prohibition of Child Marriage Act, Land and Property Rights of Scheduled Tribes, Consolidation of Holdings and Gift Act, Jal, Thal, Vehar, and Orchards Land Act, and the Forest Act(Dulat & Sinha, 2017).

The government of J&K had cited ‘total exclusion of the minorities as one of the basic creeds of the state and its constitution’ as the reason for not allowing the laws to be implemented in the state. The minority communities considered the rationale defective since alienating these marginalised groups will have economic implications. After independence, the government took various steps, significant among which were the uncodified orders from 1912 to 2008 issued and re-issued intermittently to restrict the definition of a permanent resident. The chairman of the draughting committee of the constitution for J&K had defined the state as a ‘nation’ within the preamble and had been eluding the reorganisation of the National Conference while working on the provisional president and council of ministers’ presidential laws in 1952. Later, the party had introduced sections 35(a), 147, and 370 in the state’s constitution to protect the rights of the people of the state (Dulat & Sinha, 2017).

### **Special Autonomy: Article 370**

The, then Prime Minister Sheikh Abdullah and the state’s alliances with the Indian National Congress signed the Lahore Agreement in 1944, paving the way for the post-independence accession of the State of Jammu and Kashmir to India (Lamb, 1991). The State of J&K signed the Instrument of Accession, and the formal requirements for the two states to join were straightforward. Because of this, the Indian government promised safety and the success of a





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plebiscite to help people make a decision and protect Jammu and Kashmir's internal rights and limitations without eroding its autonomy or changing the state's assumed identity. These conditions were written into the Instrument of Accession.

What resulted was the power vacuum after the Maharaja abdicated, and the then appointed Prime Minister Sheikh Abdullah refused to administer the Maharaja's duties, which precipitated the Governor-General to carry out those functions through the executive premises of his visit to Srinagar (Lamb, 1991). With his strategic advice given on 26th October, 1947, Indian armed forces halted the advances of the aggressors. Thus, the State's Legislative Assembly on 5th November, 1947, ratified the accession of the J&K to India without prejudice (Sarila, 2005). The treaties that came after built on this idea and included clauses like the one in the agreement for the J&K state. Such agreement highlighted the state government's internal rights and powers could not be used in whole or in part by or under any constitution, ordinance, or other instrument.

### **Article 35A and its Implications**

Initially, any changes and access to resources for local communities in Jammu and Kashmir were not as explicitly debated as they became later. Article 35A gives Jammu and Kashmir's state government the power to make rules about what "permanent residents" are, and it denies even the most basic rights to people who aren't permanent residents. These actions are clearly unfair to people who live in other communities (Noorani, 2014). In 1954, the President issued an order under Article 370, clause (1) for the creation of Article 35A. It was brought in to secure the basic rights of the state's permanent residents and their social immunity (Ali et al., 2011). Internal reciprocity is evident from the fact that Article 35A was passed according to the provisions of the then state's constitution (Noorani, 2014).

Ever since its origin in the mid-twentieth century, the legislative and policy frameworks in India have been driven by the idea of a unified nation-state, which was to be achieved by creating uniformity in rights despite diversity in society (Ali et al., 2011). Right from colonial interventions in India, elite groups that ruled have had a long history of asserting control over the commons and marginalising the communities dependent on them. The common uniformity provided under colonialism started changing after independence in the form of special



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constitutional features, legislative provisions, and land use patterns to demarcate disparity and form diversity. Nevertheless, Jammu and Kashmir is an exception to this arrangement, with extensive powers granted to the state after the partition, as well as special rights and privileges existed for its citizens prior to independence (Ahmad, 2017).

### **Article 370 and SCs: A Field View**

Fifty years into independent rule, the plight of marginalised communities seems to have worsened. Jammu and Kashmir remains a deeply caste-divided state where nearly one-third of the population is considered untouchable, where 2 to 3 percent of people still follow hereditary occupations and more than 60% of people belonged to backward communities. There are about 11 characters in it that the touchables cannot touch. Gassons are the weavers. Dhobis are the washermen. Kalwares are the oilmen who supply the rozgar mixed with jasmine oil for marriage, funerals, and festivals for long periods. It has a number of marginalised people with whom no one wants to drink water. They are lentils and a few other caste people who also do some marginally untouchable things. These people are called Golging and Mangliness (Saxena, 2009). They were all Vaidis who provided medicines and have thus acquired the status of Malias, a caste. Similarly, the Prajapar, the potters, for casting the she goat and for repairing broken pots, and Begat, the meat vendors, who supplied marriage rozgar with meat. Sevub and Chingris, the barbers, and the Bedars, the converts—all these people are teachers in religion.

The state defined Panchayati Raj Institutions to fall within the meaning of the term Scheduled Caste Tribe and prescribed reservation for such SCs/STs (Dabla, 2013). It also defined BCs/SCs, although the power to define OBCs/SCs/STs is vested with the Centre. For SCs/STs and BCs/SCs, their reservation was to be pronounced in the same manner as the state-level services, and they were also to be provided reservation in promotions (Pushp, 1996). While defining such castes, the Supreme Court commented on the state for its grip on caste names and priorities attached to them within the state. They still feel they are socially untouchable in villages, and some feel that the reservation exercise is to deceive them and they are still outside the quota (Shah, 2001).

### **Social and Economic Conditions**

Jammu and Kashmir predominantly comprises 85% of rural parts. A concentration of people who



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belong to ST's, SC's and OBC's make up a sizable portion of the rural population. These communities face serious economic and social issues. Close to 25% of the population is ST and SC, compared to pan-India proportion of approximately 25% of the demography. The high dependency on agricultural activities renders these groups economically vulnerable, particularly in rural areas. These groups are seeking to escape the poverty trap through various forms of self-employment and wage employment (Baral et al., 2021).

The significant proportion of earned income in the rural parts, particularly for ST's and SC's, comes from casual wage employment, underscoring the vital role of the labour market in income generation. Besides agricultural work, mining and the construction industry are important avenues of employment for workers obtaining the aid and assistance from the MGNREGA. The high dependency ratio, that is, the share of dependent populace in the case of marginalised groups, is very high as compared to the share of dependents in the case of the general population, implying a high proportion of dependents to the few earners (Kumar, 2023).

The survey data on caste categories, based on a sample of 480 respondents, reveals a diverse representation of caste groups. The majority of respondents, 319 (66.4%), belong to the Scheduled Tribe (ST) category, making it the most prevalent group in the population. 93 respondents (19.4%) from the Scheduled Caste (SC) category follow, and 68 respondents (14.2%) are members of the Other Backward Classes (OBC). This distribution underscores the significant presence of ST respondents, reflecting the demographic composition of the surveyed population and providing insights into the caste diversity within the sample.

The collected data shows that 21.45% of respondents earn from agricultural activities, 32.7% from non-agricultural sectors, and 23.95% from a combination of both. The collected data reveals that 20.2% are unemployed, and only 1.66% have stable and salaried jobs. Out of 480 interviewed, 21.45% earn from agricultural activities, 32.7% from non-agricultural areas, and 23.95% from a combination of both. A sizable proportion, 23.95%, say that their income comes from both agricultural and non-agricultural sources.

Furthermore, the study reveals that 20.2% of the interviewed population is unemployed, with only 1.66% in formal jobs, highlighting the population's economic diversity, with a significant segment



working in both agricultural and non-agricultural sectors, while unemployment continues to be a major concern for a sizable minority of respondents. The study aimed to analyse the income sources of all 480 participants, revealing economic diversity and livelihood patterns. The findings indicate notable economic variation among the individuals surveyed. A significant portion, 157 respondents (32.7%), depend on non-agricultural activities for their income, highlighting a transition from conventional agriculture. A total of 115 respondents (23.95%) indicate participation in both agricultural and non-agricultural activities, showcasing a diverse economic approach to maintaining their livelihoods. At the same time, 103 respondents (21.45%) rely solely on agriculture, highlighting the ongoing significance of farming. It is significant that 97 respondents (20.2%) are unemployed, highlighting a considerable portion of the population experiencing economic difficulties.

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