



## **Human rights violations post abrogation of Article 370 in Jammu and Kashmir: A Critical Appraisal**

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### **Abstract**

The Union Territory of India, (till 31st October, 2019, as a state), Jammu and Kashmir is located in the Northern part of India towards the west most Himalayan mountain ranges and range of karakoram. One of the biggest former princely states of India, Jammu and Kashmir is surrounded by Ladakh from the East, Punjab and Himachal Pradesh from the South, Pakistan by Southwest and Pakistan-administered Kashmir (POK) from the North West. Srinagar being its summer capital and Jammu as its winter capital, the area of this beautiful valley is 16,309 square miles (101,387 square km). For the past several years J&K has remained a scorching issue. An assessment cum survey on the reactions of people regarding the human rights violations that took place after the abrogation of Article 370 and 35A of the Indian Constitution was conducted for the research paper. It is important to note that in situations when harsh and inhumane rules are in place, democracies cannot thrive. Only when every person's dignity is honoured and upheld can democracy be viable. Every mother who lost a cherished kid is crying right now. Everyone in this room despises violence and is eager to see a conflict-free Kashmir free of human rights abuses. Therefore, in this research study, the researcher will draw attention to the atrocities, abuse of power, harsh laws, and grave violations of human rights post-Article 370 and 35A abrogation.

### **Keywords**

Human rights violations, curfews, Blockage of communication, psychological disorders, closure of schools

## **Introduction**

Between India and Pakistan, two South Asian nations, there is an irresolvable struggle over Kashmir. People of Jammu and Kashmir have been impacted severely. Every person suffered in this idyllic valley, which was renowned as a stunning area around the world. But it's ironic that people lost their families as a result of disturbance, turbulence, and a cycle of violence; as a result, Jammu and Kashmir suffered greatly (Untold Stories of Human Rights Violations in Kashmir | Wani, EDUCARE, 2013). On August 5, 2019, the Indian government removed Article 370 and 35A from the Indian constitution. The revocation of Article 370 and 35A of the Indian Constitution put an end to Jammu and Kashmir's autonomy and unique status. In addition, India had deployed a sizable military force in the region and imposed a closure and curfew in the valley to effectively cut it off from the outside world, both physically and virtually. Human rights advocates contend that ongoing violations of these rights occurred in the valley of Indian-occupied Kashmir, (Population of Jammu and Kashmir 2021, Kashmir Population, 2021).

## **Meaning of Human Rights**

Human rights are privileges we enjoy just by virtue of being alive; no state has the authority to bestow them. No matter our nationality, sex, origin, color, religion, language, or any other status, we are all endowed with these universal rights. They span from the most fundamental, the right to life, through those that make life worthwhile, like the right to food, education, labour, health, and liberty, (What Are Human Rights?, n.d.).

The idea of Natural Law is the basis for human rights. They neither come from the social structure nor are they bestowed upon an individual by it. Human rights are the privileges that an individual possesses due to any qualities that are both uniquely and universally human, (Origin and Development of Human Rights, Human Rights and International Law, SRD Law Notes, n.d.).

## **A Brief History of Human Rights**

The first monarch of ancient Persia, Cyrus the Great, overthrew the city of Babylon in 539 B.C. However, it was his subsequent activities that signalled a significant development for Man. He established racial equality, emancipated the slaves, and proclaimed everyone's right to practise whichever religion they so choose. A baked-clay cylinder with cuneiform writing was used to record these and other laws (S. R. Myneni, 2012).

This historic document, also known as the Cyrus Cylinder, is now acknowledged as the first human rights charter in history. Its provisions align with the first four Articles of the Universal Declaration of Human Rights and are translated into each of the six official languages of the United Nations (Manoj Kumar Sinha, 2013).

The written forerunners of many of today's human rights declarations include the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the US Bill of Rights (1791), which all asserted individual rights, (History of Natural Law & Basic Freedoms, Cyrus the Great: United for Human Rights, n.d.).

### **Definitions**

According to Susan Moller Okin, “human rights is a claim to something (whether a freedom, a good, or a benefit) of crucial importance to human life.”

Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines human rights as “those rights, which are connected with life, equality, liberty or dignity of an individual and such rights are provided by the Indian Constitution or for that matter are also there in the International Covenants and the courts are enforcing them.” The Constitution of India encompasses a section that is titled as, “The Rights and Fundamental Rights”, providing fundamental rights to the people of India. This important section was illuminated between 1947-1949 (H. O. Agarwal, 2018).

### **The Situation of Human Rights Violations- Pre and Post Abrogation of Article 370 and 35a of the Indian Constitution**

Since, the fundamental rights mentioned in the Indian Constitution apply to every citizen of India; repudiation of some of these rights has always been a matter of squabble for a very long period of time in Jammu and Kashmir.

Untold tales of egregious human rights abuses by the Indian army, police, and various militant organisations have occurred frequently in this region even before the abrogation of Article 370 and 35A. Kashmiri citizens have suffered murder, torture, harassment, and injury since 1989. Due to Jammu and Kashmir's ongoing cycle of violence, thousands of people have died. Thousands of people suffered injuries, rendering them unable to work. Many people have lost their beloved moms, sisters, daughters, and other family members. Some ladies have also lost their loving spouses, who were the only people who could provide for them. Numerous homes and businesses were burned due to the unrest (Rahul Bansal and Muskaan Punia, 2020).

In a summary, it can be claimed that every Kashmiri has gone through some sort of hardship. In the name of an encounter, young people from Kashmir were slaughtered, women were abused and raped, and elderly men were treated dishonourably. Bridges, buildings, stores, and other structures were burned down or destroyed. All of this was carried out by Indian Paramilitary Forces, Indian Armed Forces, and Indian Police.

Before revoking the special status of Jammu and Kashmir, thousands of paramilitary troops were sent into the valley on the approval of the Ministry of Home Affairs. On 4th of August, satellite phones were given to security forces across Jammu and Kashmir and on 5th August the news came regarding the abrogation of Article 370 and 35A.

As a result of this, 5- day lockdown was imposed in Jammu & Kashmir and the state was now branched into two Union Territories under the Jammu & Kashmir (Reorganization) Act, 2019 i.e. Jammu and Kashmir as one Union Territory and Ladakh as the other. Ladakh was given a separate legislature while the valley of Jammu and Kashmir was to have a state legislature, (ABROGATION OF ARTICLE 370- A CRITICAL ANALYSIS, 2020). With the revocation of Article 370 and 35A, prominent leaders like Mehbooba Mufti (PDP'S president), Omar Abdullah (vice-president of NC) were detained and kept under house arrest and civilians in large numbers were also arrested. More than 90,000 Indian army personnel were employed in Jammu & Kashmir which is recognized as the world's most militarized zone, (Forces Deploy 1 Million to

Guard Kashmir Valley, 2019). In the meantime, a strict curfew was imposed and all forms of communication and internet links were abstained. Section 144 of the Criminal Procedure Code of 1973 (CRPC) which intercepts the gathering of more than four people in a public space was imposed across Jammu and Kashmir. Even though restrictions on communication are common in Kashmir and has been imposed many a times over the past years but, this time the picture was totally different as there was a complete blackout and neither 2G nor 4G services were accessible for almost 6 months from August 2019, (Kashmir: Public Health and Human Rights Crises, 2021).

### **International Perspective**

From an international perspective, human rights are seen as an essential part of global governance and diplomacy. International organizations such as the United Nations, the International Criminal Court, and the International Labour Organization are responsible for upholding and protecting human rights around the world.

One of the key principles of International human rights law is that these rights are universal and indivisible. This means that all human beings are entitled to the same fundamental rights and freedoms, without discrimination of any kind. It also means that civil, political, economic, social, and cultural rights are all equally important and must be protected (Indian and International Perspectives of Human Rights, 2019).

In 1945, the United Nations was established which allowed more than 50 member countries to make contributions to the Universal Declaration of Human Rights which was adopted in 1948. As per this declaration, the term “human rights” include all such rights that are ingrained in our nature, without which our existence as human being is not possible, (History of the Declaration | United Nations, n.d.).

The UDHR articulates that human rights are rampant- relished by all people, despite where they live or who they are. Similarly, Article 2 of Universal Declaration of Human Rights says that everyone is provided with all such rights and freedoms which are given by this declaration irrespective of any discrimination on the basis of sex, religion, colour, social or national origin, birth, status, etc.

The United Nations Human Rights Council (UNHRC) is an intergovernmental body within the United Nations system responsible for promoting and protecting human rights around the world. It was established on March 15, 2006, by the UN General Assembly to replace the UN Commission on Human Rights, which was criticized for being ineffective and for allowing countries with poor human rights records to become members, (Welcome to the Human Rights Council, n.d.).

The UNHRC is made up of 47 member states, which are elected by the UN General Assembly for three-year terms. The council meets at least three times a year in Geneva, Switzerland, to discuss and address human rights issues and violations around the world.

Globally speaking, there are many severe cases of human rights violations. Many nations have been charged with violating human rights, according to a study by Human Rights Watch. China, Syria, Venezuela, Nicaragua, Cuba, Zimbabwe, and Turkmenistan are a few of the nations that have been charged with violating human rights (Cases of Human Rights Violations by Country in 2020 - Hidden Story Channel, 2022).

Tibet, also known as the Tibetan Bod or, in its entirety, the Tibet Autonomous Region, is a historical and autonomous region of China that is frequently referred to as "the roof of the world." Tibet was essentially cut off from the outside world prior to the 1950s. Since its inception in 1950, Tibet's integration into the People's Republic of China has been a contentious and highly heated topic both within Tibet and internationally. Many Tibetans (especially those outside of China) view China's action as an invasion of a sovereign state and the ongoing Chinese presence in Tibet is seen as an occupation by a foreign force (Tibet | History, Map, Capital, Population, Language, & Facts | Britannica, n.d.)

The human rights situation in Tibet is still very concerning more than ten years after the unprecedented wave of protests that swept across the Tibetan plateau prior to the 2008 Beijing Olympics, as China has stepped up repression to quell any fresh challenge to its control there.

Particularly under President Xi Jinping's direction, the Chinese government has further restricted a variety of basic human rights under the guise of "security" and "stability," while also giving its abuses the appearance of legality and legitimacy. Tibetans currently exist in a situation that is akin to a prison, with strict restrictions on all of their movements (Fr et al., n.d.)

Similarly, Syria, a nation in south western Asia, is situated on the Mediterranean Sea's eastern shore. Its boundaries include areas of the Golan Heights that Israel has controlled since 1967. Syria's conflict started in 2011. The high rates of unemployment, widespread corruption, and lack of political independence infuriated a lot of people. Peaceful demonstrations began in March, spurred on by the "Arab spring" revolutions in Tunisia and Egypt. However, the administration quickly opposed the nonviolent protests. Protests broke out all over the country when the government used lethal force to quell the unrest. Rapidly rising acts of violence ultimately gave way to a brutal war (The Syrian Conflict Explained - ShelterBox, n.d.). More than 11.5 million people have been displaced since the war started a decade ago, and many of their homes have been damaged or destroyed. According to the Organized Crime And Corruption Reporting Project (OCCRP) 'The attack on Syrian citizens has been an attack on the core principles of humanitarian law and human rights' (Syria: 10 Years of War Crimes, Abuses, Human Rights Violations, 2021)

According to the report of World's Human Rights released by Amnesty International in 2023, grave human rights abuses have occurred across a number of countries in sub-Saharan Africa. In The Report, It Is Noted That "Global And Regional Institutions, Including The UN Security Council and African Union, have failed to adequately respond to crimes committed under international law" in nations like South Sudan, Ethiopia, and Burkina Faso (Amnesty Report Details Rights Violations across Sub-Saharan Africa | Africa Times, 2023).

### **Research Methodology**

The current research work is based upon both doctrinal as well as non-doctrinal methods of research. Simple random sampling has been used to conduct the research. The research will be based on primary as well as secondary sources. A number of sources are there like debates, commentaries of various authors, journals, books, websites etc. The primary sources used in this research include the Constitution of India and in the secondary source, the data will be collected from the internet, articles, newspapers, journals etc.

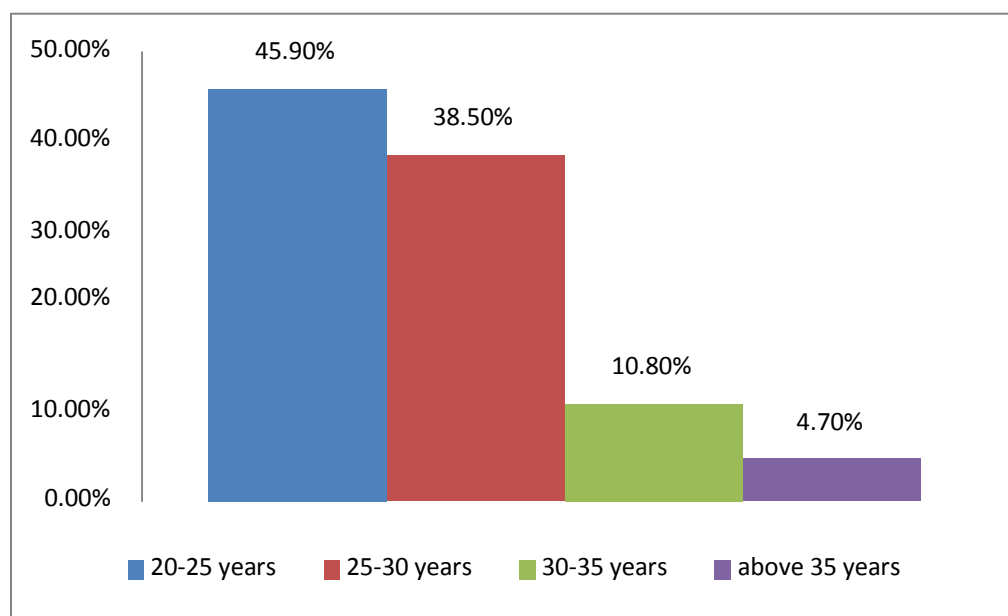
For the empirical study the universe of the study is J&K and samples will be collected from Kashmir. A single district is selected to conduct the research namely district Srinagar. The total number of respondents targeted for the research is 50, and out of 50, 10 are from the legal

fraternity and 40 are from the general public. The valid responses out of 50 respondents are 50 which are accepted through filling of Google forms questionnaires.

### Analysis of Data Collected

To find out the outcome from the questionnaire based on the objectives, the percentage analysis has been done.

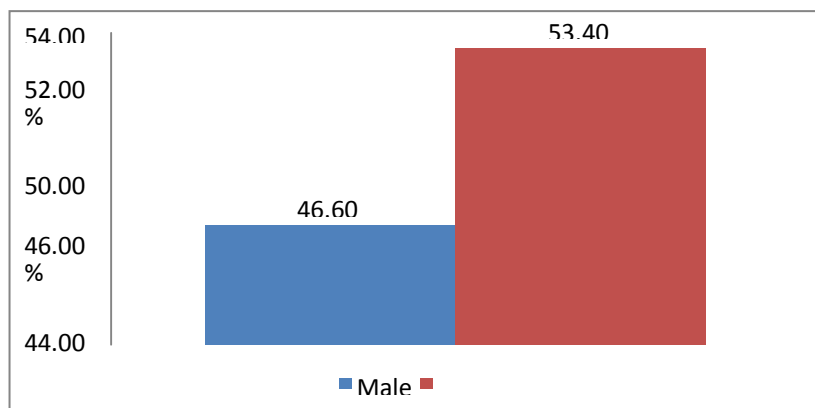
**Figure no. 1: Age group of the Respondents**



Explanation of Figure no.1: A maximum of 45.9% of respondents are in the 20–25 age range, followed by 38.5% in the 25–30 age range, 10.8% in the 30–35 age range, and 4.7% in the above 35 age range.

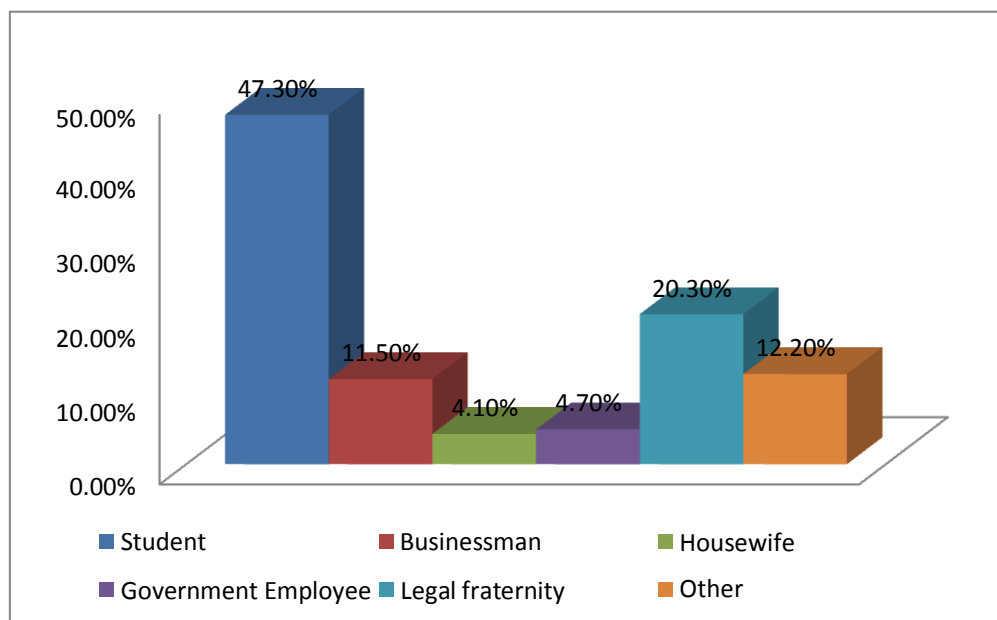
**Figure no. 2: Gender of Respondents**





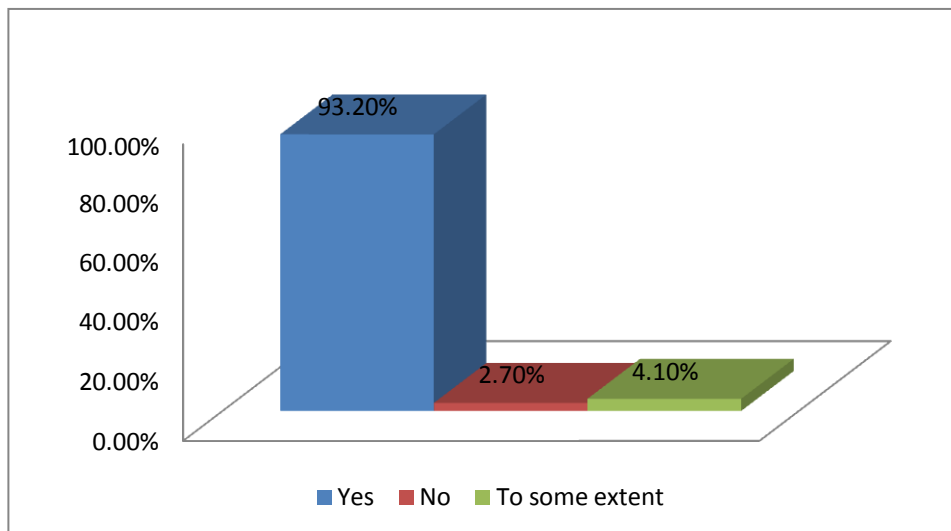
Explanation of Figure no.2: A maximum of 53.4 % of respondents are female and 46.6% are male in gender.

**Figure no. 3: Occupation of Respondents**



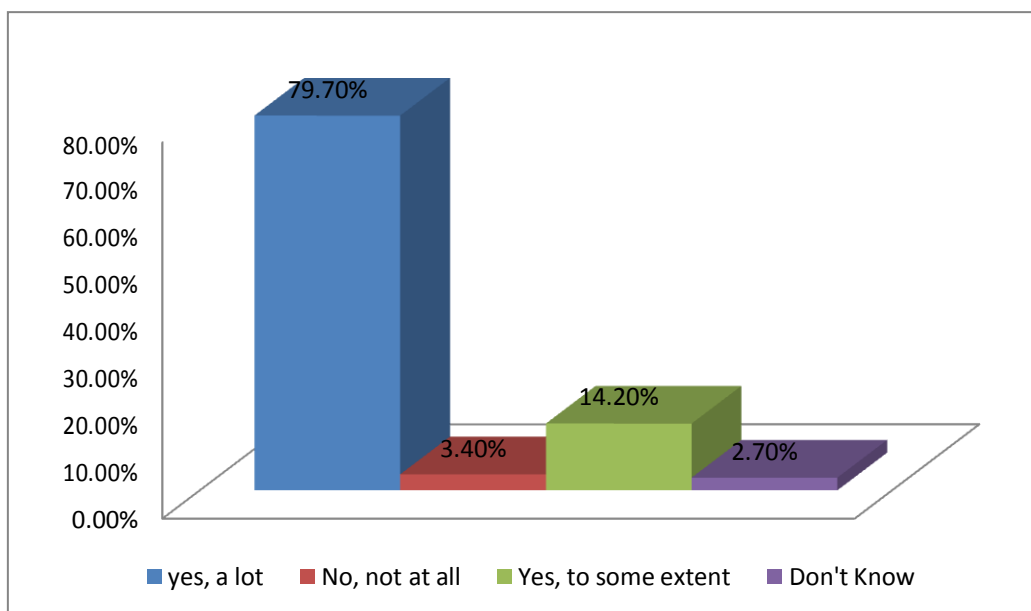
Explanation of Figure no.3: 47.3% respondents are students, 20.3% are from the legal fraternity, 11.5% are from business, 4.7% are government employees, 4.1% are housewives and the rest 12.2% belong to other occupations.

**Figure no. 4: Are you Familiar with Article 370 and 35A of the Indian Constitution?**



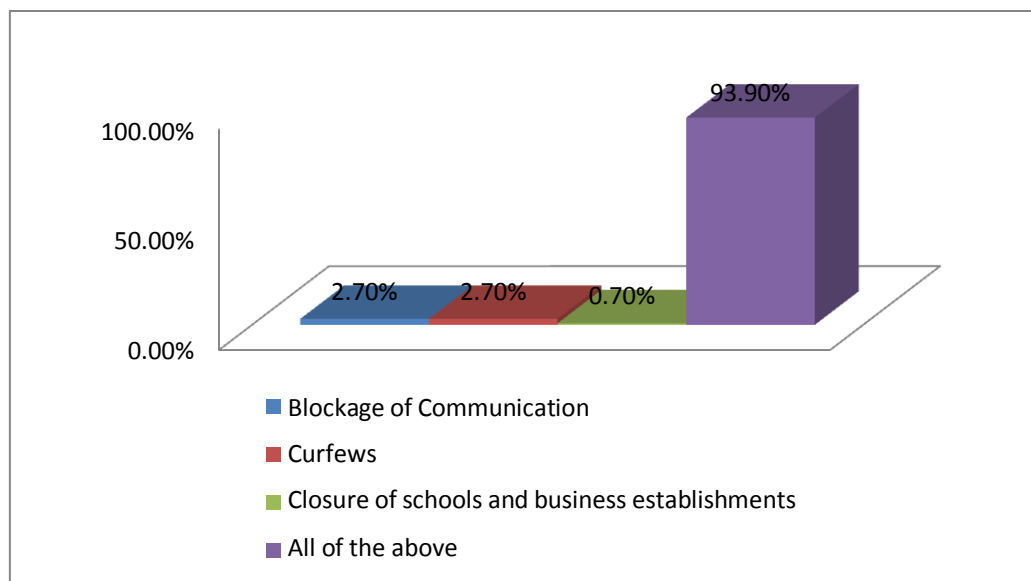
Explanation of Figure no.4: 93.2% respondents are familiar with Article 370 and 35A of the Indian Constitution. But, 4.1% are to some extent familiar with it and 2.7% are not familiar with Article 370 and 35A.

**Figure no. 5: During the abrogation of Article 370 and 35A, were your Human Rights violated?**



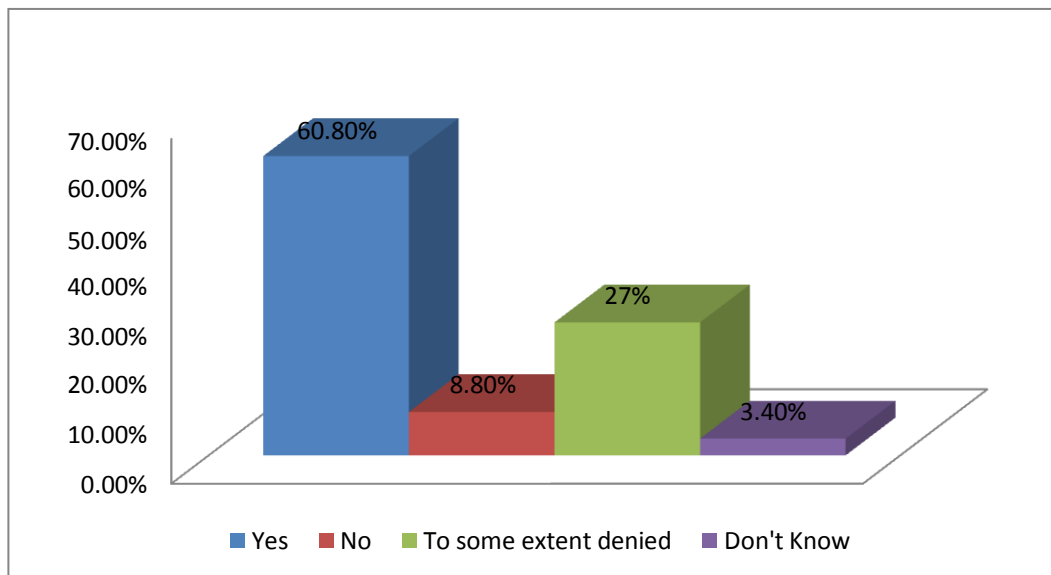
Explanation of Figure no.5: 79.7% respondents have said that there were human rights violations post abrogation of Article 370 and 35A. However, 14.2% said that to some extent they were violated, 3.4% said that human rights were not violated and 2.7% respondents had no idea.

**Figure no. 6: According to you, what sort of atrocities was faced by the people during the abrogation of Article 370 and 35A of the Indian Constitution?**



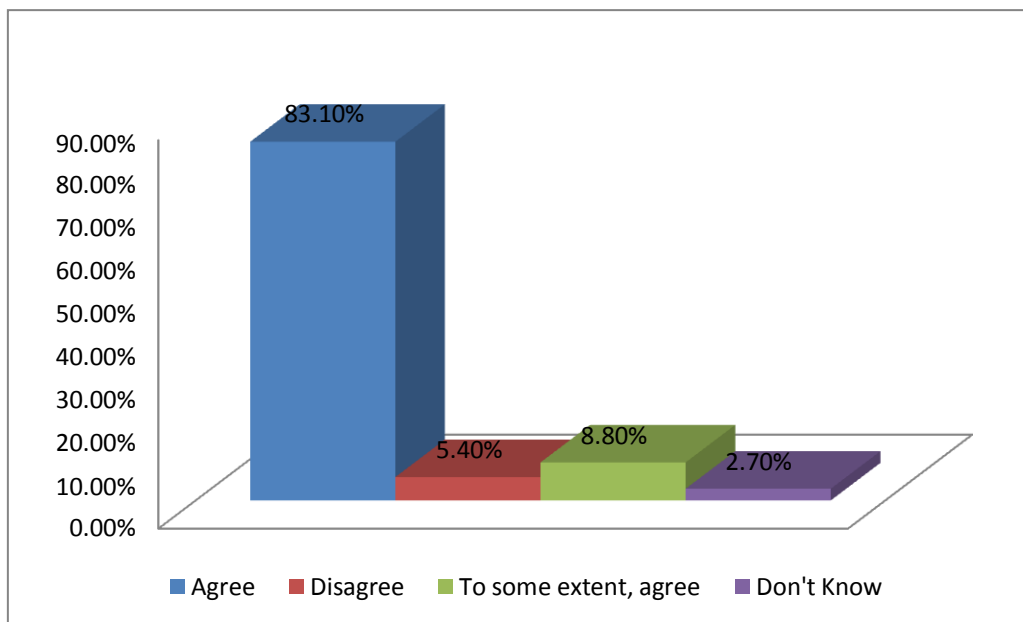
Explanation of Figure no.6: Almost 93.9% has given their opinion that all the above atrocities i.e., (blockage of communication, curfews, closure of schools and business establishments) were faced by the people during the abrogation of Article 370 and 35A and only 2.7% have said blockage of communication, 2.7% have said curfew and 0.7% has said closure of schools and business establishment.

**Figure no. 7: According to you, were the people of Kashmir denied their right to worship during the abrogation of Article 370 and 35A of the Indian Constitution?**



Explanation of Figure no.7: 60.8% respondents have said that their right to worship was denied during the abrogation. But 27% respondents said that to some extent this right was denied, 8.8% said that right to worship was not denied and 3.4% had no knowledge.

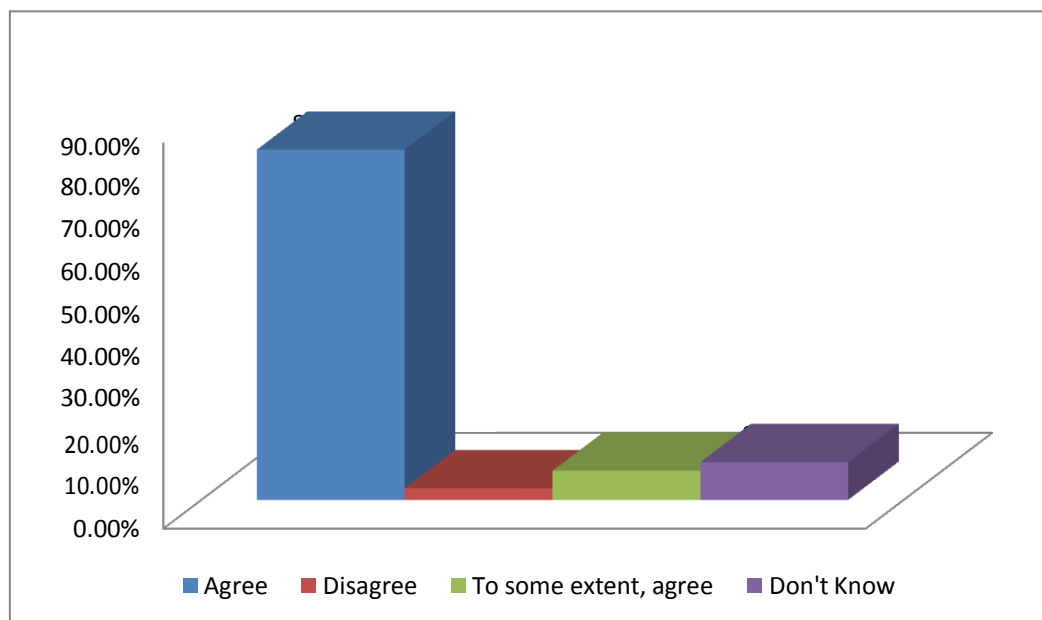
**Figure no. 8: Do you believe that the right to receive timely medical attention was affected due to the delays at checkpoints during the abrogation?**



Explanation of Figure no.8: A maximum of 83.1% respondents gave their opinion that timely medical attention was affected due to the delays at checkpoints during the abrogation of Article

370 and 35A. However, 8.8% said to some extent it was affected, 5.5% said it was not affected and 2.7% said they don't know.

**Figure no.9: Do you think that there was misuse of draconian legislations such as the Public safety Act (PSA) and Unlawful Activity and Prevention Act (UAPA) during the abrogation of Article 370 and 35A of the Indian constitution?**



Explanation of Figure no.9: Almost 81.8% respondents have said there was misuse of draconian legislations such as the Public safety Act (PSA) and Unlawful Activities Prevention Act (UAPA) during the abrogation of Article 370 and 35A and only 6.8% has said that to some extent the laws were misused, 8.8% had no idea and 2.2% said no they were not misused.

## Findings of the Research

### 1. People are familiar with Article 370 and 35A of the Indian Constitution

Many people in the district Srinagar of Jammu and Kashmir in which the research is conducted are aware of Article 370 and Article 35A of the Indian Constitution, as these provisions have been important constitutional issues that have affected their lives and political status post its abrogation. Article 370 of the Indian Constitution granted special autonomous status to Jammu and Kashmir, allowing the former state to have its own constitution, flag, and the power to make

its own laws. Article 35A, on the other hand, allowed the state legislature to define who is considered a permanent resident of J&K and to provide special rights and privileges to them.

However, not everyone in Jammu and Kashmir is fully aware of the details and implications of these provisions, especially those who are illiterate or living in remote areas without access to education or information.

## **2. Human rights were violated during the abrogation of Article 370 and 35A of the Indian Constitution**

People of district Srinagar revealed that human rights were violated just after the abrogation of Article 370 and 35A of the Indian Constitution. There have been restrictions on freedom of movement, communication, and assembly, and the excessive use of force by security forces. Also, arbitrary detentions, torture, night raids and harassment of civilians, as well as restrictions on access to healthcare, education, internet shutdowns and media access, had hindered the ability of journalists and human rights organizations to report the on ongoing situation in the region.

Many individuals from the said district revealed that they were detained during night raids and were mistreated. The majority of the forces fell most heavily on the youth. It was thought that the majority of the men and boys had experienced sexual assault. There were numerous reports of violent gendered and sexualized crimes. A case of torture from Srinagar district was reported by “The Independent” on September 1. The cordon and search operation resulted in the arrest and torture of Mohammad Yasin Bhat and 11 other individuals. They were kept in a line on the public road after being stripped naked. In their genitalia, they were all electrocuted. They were forced to lie face down in a pile when the physical agony was over (With Meticulous Planning Then Mass Arrests and ‘Torture’, Kashmir’s Autonomy Was Lost, The Independent, 2019).

## **3. Blockage of communication and curfews**

While Article 370 and 35A of the Indian Constitution in J&K was being repealed, the people were suffering from the worst atrocities like imposition of Section 144 of the CrPC and the blockage of Communication. On the evening of August 4, 2019, the District Magistrate issued orders imposing section 144 of Crpc beginning at 6 a.m. on August 5, 2019. The question that arises in this situation is how often it was actually necessary and required throughout its

imposition. People due to the strict curfews revealed that they could not avail the medical services nor the proper food they could get for their toddlers due to the shortage of baby food as the public transport was suspended.

Also, limitations were placed on its use of telecom services, including the internet, under the terms of Section 144. The Universal Declaration of Human Rights' Article 19 recognises that the right to information, the right to free expression of one's thoughts and opinions, and the right to peaceful assembly are the three internationally recognised and fundamental human rights that were restricted by the denial of access to internet and phone services (UN Condemns Internet Access Disruption as a Human Rights Violation - The Verge, 2016). Jammu and Kashmir experienced the longest internet outage in a democracy ever, which was approximately six months long.

#### **4. Denial of Right to Worship**

The limitations imposed by the government following the repeal of Article 370 and 35A of the Indian Constitution also had a detrimental effect on the community's right to practise their religion. People revealed that in order to prevent large-scale gatherings during the Muslim holiday of Eid on August 12, authorities in Srinagar and other Kashmir Valley regions only permitted prayers at the area's modest mosques. On the first day of Eid, a harsh curfew was in force until late in the afternoon with scarcely any movement of individuals. The Jamia Masjid Mosque in the city's centre and the Hazratbal Mosque in Dargah, two of the Kashmir valley's most important mosques and two of its holiest, have both been forbidden by J&K authorities from holding Eid prayers.

People from district Srinagar revealed that Jamia Masjid's prayers were prohibited for a whole period of 4 months, lasting 19 weeks, and were only reinstated on December 20. On November 22, under the guise of upholding "law and order," the authorities forbade the special afternoon prayers (known locally as Khoja Digar) at the shrine of Naqashband Sahib in Srinagar for the first time in seventy years.

#### **5. Timely medical attention was affected**

The severe restrictions placed in J&K had resulted in immediate violations of the local population's right to health, despite the Indian government's efforts to tout the purported long-term economic benefits of the revocation of Article 370 and 35A of the Indian Constitution. Chemists from the said districts revealed that they were running low on pharmaceutical supplies (Amid Restrictions in Jammu and Kashmir, Chemists Say Medicine Stocks Running Low | India News, The Indian Express, 2019). According to a doctor, some patients receiving life-saving care were unable to access ongoing medical procedures and treatment, endangering their lives. Shortly after he made those statements, the cops detained him (Staff, 2019). There was intense pressure on the doctors who worked in Srinagar's tertiary care hospitals to conceal the true number of casualties. Even death certificates for the deceased were being withheld from the relatives (Ghosts of Kashmir: Indian Authorities Refusing to Issue Death Certificates for Civilians Killed in Clashes, Say Families, The Independent, 2019).

#### **6. Misuse of Public Safety Act (PSA) and Unlawful Activities Prevention Act (UAPA) during the abrogation of Article 370 and 35A of the Constitution of India**

People revealed that there was a huge misuse of the draconian laws such as PSA and UAPA. They revealed that political leaders of Jammu and Kashmir were placed under house arrest after the abrogation of Article 370 and 35A of Indian Constitution. Omar Abdullah and Mehbooba Mufti were two of the over 400 political figures that were either arrested or put under house arrest. For a preventive detention order to be legitimate, it must meet the criteria outlined in Article 22. Also, as per Article 9 of UDHR, No One Shall Be The Victim Of Arbitrary Detention, expulsion, or arrest.

Apart from political leaders, protesters, including minors, suspected members of armed opposition groups, journalists, who supported freedom, and human rights advocates were illegally detained. After the Indian government repealed Article 370 and 35A on August 5, the use of PSA and other administrative tools to keep persons in detention for an extended period of time was increased.

#### **Conclusion and Suggestions**

After heuristically conducting an empirical study on the human rights violations post deracination of Article 370 and 35A in Jammu and Kashmir, a persistent and distressing abuse of



fundamental human rights emerged. Since 5 August 2019, an area-wide curfew promulgated by the Indian government proscribed the inhabitants of Kashmir from moving around freely. Their social, economic, and political rights were desecrated by the Indian military, and they were immured inside their homes. The internet and other communication channels were shut, and political leaders were jailed. Kashmir's residents had no influence to the outside world. The transgression of the 1948 Declaration, the 1966 Covenant, and the 1990 Convention, all of which were recognised worldwide, required immediate attention from the international community.

The Kashmiri people have suffered severe effects as a result of the international community's lack of interest in the unresolved Kashmir problem. International attention should be given to the present state of human rights in the Kashmir region. More than 100,000 individuals have died and at least 10,000 have dissipated under perplexing circumstances since 1989. Under the aegis of the Special Powers Act, the Indian army is countered to detain anyone without a court order, and the people of Kashmir have no chance of obtaining justice in a court of law.

### **Suggestions**

1. The conflict's focal point should be assuaged or de-escalated by the Indian government. It is stupendously indispensable to withdraw half the troops and take away their untrammelled and unbridled powers under the AFSPA, UAPA, and PSA in order to wangle long-term peace and equanimity in the valley.
2. Gentrify all ci-devant nations' legal organizations, explicitly those that oversee human rights, encompassing the Jammu and Kashmir Commission on the Rights of the Child and the J&K Human Rights Commission. The National Human Rights Commissions or Women Commissions must concoct centres in the cities of Jammu and Srinagar.
3. Chastise police officers, troops, and soldiers who have been described as felonious for infringing human rights with both criminal and civil penalties.
4. All children who are detained should be freed, and the fine levied against them should be removed.
5. The Government of India should be held accountable by the international community for its dour pervert of human rights in Jammu & Kashmir, and the international community should ensure that it collaborates with UN mechanisms and supports an alacritous, non-partisan inquisition.

6. Lastly, reimburse the nearby businesses and conflict victims that had to shut down due to the closure of the authorities between August 2019 and March 2020, and ensure that the victims may receive the official services they require and expeditiously offer support with finances and security.

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