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# **THE SCOPE OF FREEDOM OF SPEECH AND EXPRESSION: ANALYSING THE RIGHT TO CRITICISE THE ABROGATION OF ARTICLE 370**

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## **Introduction**

Freedom of speech and expression is a fundamental right essential for the functioning of democratic societies, providing individuals with the liberty to express their opinions and critiques without fear of censorship or reprisal. Embedded within the legal frameworks of nations worldwide, this right serves as a cornerstone for fostering public discourse, promoting the exchange of diverse viewpoints, and holding authorities accountable.

In recent years, the boundaries of free speech have become increasingly contentious, especially when political decisions intersect with deeply ingrained beliefs and identities. One such pivotal moment unfolded with the abrogation of Article 370 of the Indian Constitution, which granted special autonomy to the state of Jammu and Kashmir. Enacted in August 2019, this constitutional amendment sparked widespread debate and elicited polarized reactions across the socio-political spectrum.

This research aims to explore the nuanced question: Does the right to criticize the abrogation of Article 370 fall within the purview of freedom of speech and expression? While Article 19(1)(a) of the Indian Constitution explicitly guarantees this right, the extent to which it encompasses criticism of constitutional amendments—particularly those with profound socio-political ramifications—remains a subject of legal and scholarly inquiry.

Through a comprehensive analysis integrating historical contexts, legal frameworks, and jurisprudential viewpoints, this paper seeks to elucidate the complex interplay between freedom of speech and the critique of constitutional changes. By delving into case law, scholarly discourse, and public opinion, this study aims to offer insights into the broader implications of safeguarding dissent in democratic societies amidst evolving constitutional landscapes. Ultimately, this exploration seeks to contribute to the ongoing dialogue surrounding the preservation and interpretation of fundamental rights in contemporary societies.

## Historical Context and Legal Framework

To understand the intricacies of criticizing the abrogation of Article 370 within the framework of freedom of speech, it is crucial to delve into the historical context and legal framework surrounding this constitutional provision. Article 370, incorporated into the Indian Constitution in 1949, granted Jammu and Kashmir special status, endowing it with a significant degree of autonomy in internal matters.<sup>1</sup> However, the validity and implications of Article 370 have been subjects of debate since its inception.

The abrogation of Article 370 in August 2019 marked a significant departure from the status quo and triggered intense scrutiny and varied reactions from different segments of society. Advocates of the abrogation argued that it would foster economic development, integrate Jammu and Kashmir more closely with the rest of India, and extend constitutional provisions and welfare schemes to the region.<sup>2</sup> Conversely, critics contended that the abrogation undermined the autonomy and special status guaranteed to Jammu and Kashmir, eroded its distinct identity, and disregarded the aspirations of its people.<sup>3</sup>

## Legal Precedents and Jurisprudential Perspectives

Courts have consistently upheld the principle that citizens have the right to express dissent and criticize governmental actions, including constitutional amendments, as long as such criticism does not incite violence or pose a threat to public order.<sup>4</sup>

The most important case that discusses abrogation of Article 370 is *Bhasin v. Union of India* where, the Supreme Court of India declared that an indefinite suspension of internet services would be unlawful under Indian law, asserting that orders for internet shutdowns must meet the criteria of necessity and proportionality.<sup>5</sup> This ruling came in response to a case regarding the imposition of internet and movement restrictions in the Jammu and Kashmir region on August 4, 2019, purportedly to maintain public order in response to the abrogation of Article

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<sup>1</sup> Sharma R, 'Article 370: Now History, Here's How It Was Adopted in the Indian Constitution' (*India Today*, 15 December 2023) <https://www.indiatoday.in/history-of-it/story/article-370-adopted-indian-constitution-jawaharlal-nehru-hari-singh-gopalswami-ayyanger-sheikh-abdullah-2476190-2023-12-15>.

<sup>2</sup> 'Challenge to the Abrogation of Article 370 - Case Page' (*Supreme Court Observer*, 16 December 2023) <https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/>.

<sup>3</sup> Rajagopal K, 'Citizens Have Right to Criticise Revocation of Article 370, Says Supreme Court' (*The Hindu*, 7 March 2024) <https://www.thehindu.com/news/national/every-citizen-has-a-right-to-criticise-abrogation-of-article-370-sc/article67926126.ece>.

<sup>4</sup> Bhargava AK and Sanyal A, 'Every Citizen Has Right to Criticise Any Decision of State: Supreme Court' (*NDTV.com*, 7 March 2024) <https://www.ndtv.com/india-news/citizens-have-right-to-criticise-scrapping-of-article-370-supreme-court-5195633>.

<sup>5</sup> 'Bhasin v. Union of India' (*Global Freedom of Expression*, 11 November 2023) <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>.

370 of the Indian Constitution.<sup>6</sup> Despite this, the Court did not immediately lift the internet restrictions but instructed the government to reassess the shutdown orders in accordance with the principles outlined in its judgment, lifting those that were deemed unnecessary or lacked a specific time limit.<sup>7</sup> The Court reiterated the Constitutional protection afforded to freedom of expression online, while acknowledging that such freedoms could be curtailed in the interest of national security.<sup>8</sup> Furthermore, it emphasized that although the Government possessed the authority to implement a complete internet shutdown, any such orders must be made publicly available and subject to judicial scrutiny.<sup>9</sup> It also contended that the government needed to lift the internet shutdown unless it could prove that if this was done it would hamper public order.<sup>10</sup>

Another case is the one where a FIR was registered under section 153A of the Indian Penal Code, 1860 against Professor Javed Ahmed Hajam for promoting communal disharmony, when he wished Pakistan “Happy Independence Day” and called August 5<sup>th</sup>- Jammu and Kashmir’s Black Day through his WhatsApp status.<sup>11</sup> The Supreme Court ruled that “every citizen had the right to extend good wishes to citizens of other countries on their respective Independence days.<sup>12</sup> Moreover, under 19(1)(a), every citizen had the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the state.”<sup>13</sup> The Court further stated that “Javed had the right to say he is unhappy with any decision of the state,” and thus the FIR against him was disposed of.<sup>14</sup> The Court also stated that “the right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21 and thus citizens of India possess the right to criticise the abrogation of Article 370 not only under Article 19(1)(a) but also under Article 21 of the Indian Constitution.”<sup>15</sup>

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<sup>6</sup> *Bhasin v. Union of India* (2011) 8 SCC 1.

<sup>7</sup> ‘Bhasin v. Union of India’ (*Global Freedom of Expression*, 11 November 2023) <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>.

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

<sup>11</sup> TOI News Desk / TIMESOFINDIA.COM / Updated: Mar 7 2024, ‘Every Citizen Has the Right to Criticise Abrogation of Article 370: SC: India News - Times of India’ (*The Times of India*, 7 March 2024) <https://timesofindia.indiatimes.com/india/every-citizen-has-the-right-to-criticise-abrogation-of-article-370-sc/articleshow/108308001.cms>.

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

## The way forward

Legal challenges to the abrogation of Article 370 have been brought before the Indian judiciary, with petitioners questioning the constitutionality and procedural validity of the decision.<sup>16</sup> The outcome of these legal battles will have far-reaching implications for the interpretation of constitutional rights and the limits of executive power in India's democratic framework.

A favourable ruling for the petitioners could reaffirm the importance of constitutional safeguards, democratic principles, and the rule of law in the governance of the country. It could also serve as a check on the unchecked exercise of executive power and underscore the need for meaningful dialogue and consultation in matters affecting the rights and aspirations of citizens.

Conversely, a decision upholding the abrogation of Article 370 could signal a broader interpretation of executive authority and a willingness to prioritize national unity and security over regional autonomy. Such a ruling could set a precedent for future constitutional amendments and executive actions, potentially altering the balance of power between the central government and India's federal units.

Regardless of the outcome, the legal challenges to the abrogation of Article 370 underscore the importance of an independent judiciary in upholding constitutional principles, safeguarding fundamental rights, and ensuring accountability within India's democratic framework.<sup>17</sup> They also highlight the vital role of legal advocacy and judicial review in challenging government actions perceived as unconstitutional or undemocratic, thereby contributing to the ongoing evolution of India's democratic institutions and governance structures.<sup>18</sup>

## Conclusion

In conclusion, the analysis conducted in this research paper unequivocally affirms that the right to criticize the abrogation of Article 370 unequivocally falls within the ambit of freedom of speech and expression enshrined in the Indian Constitution. However, it is imperative to acknowledge that the exercise of this right must be balanced with the imperatives of public order, national security, and the integrity of the state. As India navigates the intricate terrain of

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<sup>16</sup> Kashyap G and Spandana RS, 'Challenge to the Abrogation of Article 370 - Case Page' (*Supreme Court Observer*, 16 December 2023) <https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/>.

<sup>17</sup> Prakash B, 'Upholding the Abrogation of Article 370: Can It Be Called Another Black Spot-on Indian Judiciary?' (*SSRN*, 24 January 2024) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4680658](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4680658).

<sup>18</sup> *ibid*.

its constitutional landscape, preserving robust safeguards for dissent and dialogue is paramount for upholding the principles of democracy and pluralism.<sup>19</sup> It is essential to ensure that while advocating for freedom of expression, the state maintains mechanisms to safeguard against any potential threats to public order and national unity. Through a delicate balance, India can uphold its democratic ideals while fostering an environment conducive to constructive dialogue and diverse perspectives.

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<sup>19</sup> Bhasin v. Union of India' (*Global Freedom of Expression*, 11 November 2023)  
<https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/>