

Research Paper

An Ethical Appraisal of Article 370 in light of its Abrogation

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Abstract

This paper critically examines the ethical dimensions of Article 370 of the Indian Constitution, which granted special status to Jammu and Kashmir until its abrogation in 2019. While the article has often been discussed through historical and legal lenses, this work foregrounds its ethical stakes—particularly concerning justice, minority autonomy, and constitutional trust in a deeply diverse federal union. Drawing upon liberal multiculturalism, Rawlsian justice as fairness, and Sujit Choudhry's theory of constitutional trust, the paper frames asymmetrical federalism not as a deviation from equality, but as a morally grounded strategy for pluralistic governance. It evaluates the 2019 revocation through these frameworks, weighing the competing moral claims of equality and national unity against procedural fairness and minority dignity. In doing so, the article argues that constitutional integration, when pursued without consent and consultation, undermines both ethical legitimacy and democratic trust. The post-abrogation developments and their ethical implications are analysed to assess whether uniformity fosters inclusion—or merely imposes conformity.

Keywords: Asymmetrical Federalism, Article 370, Indian Constitution, Jammu and Kashmir, Constitutional Identity, Liberal Pluralism, Minority Rights, Constitutional Trust, Postcolonial Constitutionalism

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1. Introduction

The instance of Jammu and Kashmir (J&K) demonstrates the challenges of India's asymmetrical federalism. J&K is located in a strategically important area and has long been the focus of heated political and legal discussions, with the special status provided by the erstwhile Ar. 370, at the heart of these discussions. The state was granted a great deal of autonomy by these constitutional provisions, which included the ability to have its own flag, constitution, and decision-making authority over a variety of policy sectors. The “asymmetrical approach” to federalism was exemplified by the special status accorded to the state of Jammu & Kashmir. India's asymmetrical federalism gives some states a “degree of autonomy” and “special privileges” within the nation's larger federal structure in acknowledgment of their unique historical, geographical, and socio-political conditions. Since it has allowed the central government to adapt its strategy to the particular requirements and difficulties of various regions, the freedom granted to states has been a crucial instrument in preserving the unity and integrity of the Indian Union. I contend, in this paper, that the autonomy granted to Jammu and Kashmir did not conflict with the federal system established by the Indian Constitution in that it was essential to preserve the overall unity of the country and further that the integration with the union when pursued without consent and consultation, undermines both ethical legitimacy and democratic trust. In August 2019, the Indian government abrogated Article 370 of the Constitution, revoking the semi-autonomous status of J&K. This act, while legally defensible under certain interpretations of constitutional

procedure, sparked widespread debate—not only over its political wisdom but over its ethical justification. Hence, the central question this paper seeks to address is whether asymmetrical federalism happens to be a fair way to respect minority identity in a diverse union like India? The answer to this question is not merely historical or doctrinal, but deeply normative. The ethical dimensions of Article 370 have often remained implicit in legal and political analyses. This paper makes them explicit. It draws upon three overlapping philosophical frameworks; “liberal multiculturalism,” as developed by Will Kymlicka; John Rawls's theory of “justice as fairness” and Sujit Choudhry's conception of “constitutional trust”. These ethical lenses help assess not only the establishment and function of Article 370 but also the manner and implications of its abrogation. Framed this way, the article contends that asymmetrical federalism—far from being a constitutional anomaly—is a morally defensible response to diversity. It also argues that the unilateral revocation of such a provision, especially under conditions lacking democratic participation, undermines the ethical foundations of India's pluralistic federalism. By placing the debate within a broader conversation on justice, trust, and democratic legitimacy, this paper aims to recast Article 370 not simply as a political compromise of the past, but as a normative yardstick for India's constitutional future.

2. The Concept of Federalism

The term federalism is derived from the Latin word “foedus”, meaning alliance or covenant. At its core, federalism is a constitutional arrangement that divides power between a central authority and its constituent units, offering an alternative to the concentration of power typical of unitary states. This division is not merely administrative; it is entrenched in a written constitution

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that acts as a safeguard, ensuring that neither level of government can unilaterally alter the balance of powers. A federal constitution thus requires a certain degree of rigidity¹ to preserve this equilibrium. Livingston, in his seminal essay *A Note on the Nature of Federalism*, cautioned against viewing federalism as merely a legal or institutional mechanism. For him, federalism is a function of societies—an organic response to the plural character of the polity rather than a static constitutional formula Livingston (1952). He highlights how cultural, linguistic, economic, and historical variations shape the federal compact, such that the relationship between constituent units and the federal centre may differ across the federation. Federalism, then, is not only about allocating power but about accommodating diversity. Tarlton Tarlton (1965) built on Livingston's sociological foundations, introducing the idea that federations may be driven by either centripetal or centrifugal tendencies. Centripetal federations, such as the United States, coalesce around shared identity, history, or objectives whereas centrifugal federations, like India, are held together despite their internal differences. The latter often manifest in asymmetrical arrangements designed to address distinct regional aspirations. Within such federations, constituent units may seek political forms of “self-expression”—a reflection of their unique societal identities. As Livingston aptly noted, “federal societies vary in degree, not kind”. This insight holds critical relevance for India's constitutional structure. The federation was not built on homogeneity but on a conscious accommodation of linguistic, religious, and cultural pluralism. Article 370 exemplified such an accommodation—offering a differentiated arrangement to a region with a distinct political history and demographic composition. This is where the study of implications of the abrogation becomes crucial and for that an even deeper dive into the broader concept of asymmetry in federal systems becomes essential.

3. Asymmetry in Federal Societies

The ethical stakes of asymmetrical federalism—particularly the morality of differential treatment for minority regions—come into sharp focus in the context of Article 370. As scholars increasingly revisit federalism through the lens of pluralism, asymmetry is no longer seen as a constitutional anomaly but as a ‘tool’ for ethically grounded inclusion. Ronald Watts defines federalism as a system that blends self-rule and shared rule, emphasizing the accommodation of diversity as a central function of federal structures Watts (1996). Within this framework, asymmetry becomes a mechanism to preserve distinct identities within a united polity. Livingston laid the theoretical groundwork for this by asserting that federalism emerges from the diversity of civilization itself. Tarlton further developed this into a theory of asymmetrical federalism, where certain units enjoy distinctive levels of autonomy. Although Tarlton initially expressed concern that asymmetry might fuel secessionism, later theorists such as Burgess Burgess (2006) and Kymlicka Kymlicka (2001) refuted this, arguing that asymmetry reflects existing societal cleavages rather than creating them. More importantly, asymmetry can build “constitutional trust” by offering minority groups institutional avenues for self-expression and protection. Kymlicka identifies several conditions under which asymmetry becomes not just practical but ethically imperative:

1. Political cultures and traditions – deeply embedded norms that vary across regions.
2. Social cleavages – such as linguistic, religious, or ethnic divisions, which often require tailored accommodations.
3. Territoriality – where geography reinforces identity-based claims to autonomy.
4. Socio-economic disparities – necessitating differentiated governance for equitable development.
5. Demographic distinctiveness – including unique population patterns that shape local political demands.

In this light, asymmetrical arrangements like Article 370 are not constitutional indulgences but morally defensible instruments of pluralistic governance. Watts further distinguishes between political asymmetry (arising from practice) and constitutional asymmetry (embedded in legal design), both of which can play a role in maintaining democratic stability. Indeed, scholars such as Sujit Choudhry have argued that constitutional asymmetry can foster trust-based federalism, where minority groups are more likely to remain invested in the larger union if they are constitutionally recognized as distinct and legitimate stakeholders (Choudhry, 2008). This ethical dimension of asymmetry is especially salient in evaluating the abrogation of Article 370. Far from being a symbol of fragmentation, asymmetrical federalism may function as a trustee of cultural heterogeneity and as a bulwark against majoritarian overreach. These normative ideas when applied to the Indian context, can be held as a criterion to check whether the revocation of Article 370 upheld or betrayed the principles of justice, minority dignity, and constitutional trust. The emergence of nation-states in the 19th and 20th centuries often followed wars, regime shifts, or decolonization. India, forged in the crucible of partition and colonial withdrawal, was no exception. The trauma of partition was not a peripheral wound—it was etched into India's constitutional imagination which necessitated a need for resilience, unity, and recognition of diversity. As the newly independent state confronted the reality of being a montage of languages, religions, and cultures, it became evident that a uniform model of governance would be inadequate. To accommodate this pluralism, India's federal structure incorporated both symmetrical and asymmetrical elements. Alfred Stepan, in his influential comparative work on multinational states, identifies India alongside Canada, Belgium, and Spain as federations that rely on asymmetry to maintain unity in deeply diverse societies Stepan et al. (2011). Indian federalism, while tilted toward a strong centre, nonetheless experimented with constitutional arrangements that reflected regional particularities—none more consequential than Article 370. Article 370, as it stood before its abrogation in 2019, accorded J&K limited autonomy by restricting the Union government's legislative competence and vesting residuary powers in the state legislature. This arrangement, however, has sparked scholarly disagreement. Some, like Tillin (2006), argue that Article 370 was a temporary political compromise rather than a sincere institutionalization of asymmetrical federalism, primarily because its intent was not explicitly to preserve minority identity but to facilitate accession under specific conditions. Nevertheless, others view Article 370 as emblematic of the Indian approach to asymmetrical governance—one where differentiated autonomy served as both a legal and ethically sound response to regional specificity. The broader academic debate, then, centres not only on constitutional intent but also on normative purpose; Does Article 370 represent genuine asymmetrical federalism in moral terms, or was it merely a strategic aberration?

¹Rigid constitution here means a constitution which needs a special majority to be amended as opposed to a simple majority needed for an ordinary legislation

4. The Vision

In addressing the Constituent Assembly about the form of government envisaged in the constitution and the form of constitution, Dr. B.R. Ambedkar unequivocally emphasized the presence of all “means and methods” for India to be a federation while also having uniformity in basic matters in order to keep the country’s unity Assembly Assembly (1985). While addressing the need for a balance in the distribution of powers between the center and the states and accepting that in modern times, centralization of powers is unavoidable, he also emphasizes the fact that the general tendency should be to resist the tendency to strengthen such centralization. The Drafting Committee was not pleased with this situation. They wanted the Provinces and Indian States constitutional relationships with the Centre to be consistent. He made a plea to those states that had yet to join the Union of India to contribute to the strength of the union, which is based on solidarity among its constituent entities. The word “Union” is used deliberately in Article 1 of the Indian Constitution (India, 1950, Article 1). To be absolutely clear, the Indian federation did not originate as a result of states ‘coming together’ to form such a federation, and the states had no authority to resign from it. The division that occurred shortly after the passage of the Indian Independence Act revealed a clear bias in favor of a strong central government in India’s federal arrangement, as evidenced by constitutional provisions. Some observers refer to it as ‘Cooperative Federalism’. However, it is important to stress at this point that India’s constitution does not recognize ‘state rights’, but instead emphasizes linguistic and cultural sovereignty Basu (1966). This discussion firmly cemented in the ideals of unity and central control—raises a deeper normative question; In a polity that did not emerge from a compact among sovereign states, what ethical obligations exist toward regions with distinct identities and historical grievances? If India’s federalism was never about contractual equality but about negotiated asymmetry, then the moral basis of that asymmetry demands careful scrutiny. It is at this intersection—between constitutional design and moral judgment—that this paper now turns to its central ethical inquiry.

5. Theoretical Framework: Justice, Pluralism, and Constitutional Trust

At the heart of this paper lies a central question; Is asymmetrical federalism a fair and just way to protect minority identity within a diverse constitutional union? To examine this, we turn to three foundational theoretical frameworks in political ethics and constitutional theory: liberal multiculturalism, justice as fairness, and constitutional trust. These lenses allow us to ask not only whether Article 370 was legal or expedient, but whether its existence—and eventual abrogation—measured up to our moral obligations in a plural society. Will Kymlicka’s theory of liberal multiculturalism argues that justice in multicultural societies does not result from treating everyone exactly the same; rather, it requires recognizing and accommodating cultural differences that shape people’s sense of identity, belonging, and participation in public life. Kymlicka Kymlicka (1996). Kymlicka distinguishes between “polyethnic rights” (for immigrants) and “national minority rights” (for groups with historic claims to territory and autonomy) Kymlicka Kymlicka (2001). Jammu and Kashmir fits the latter category—like the Québécois in Canada or the Basques in Spain—who have maintained a distinct cultural and political identity through centuries. In such cases, justice may demand group-differentiated rights: not as a privilege, but as a condition for

true equality. Imagine a classroom where one student speaks a different language. Treating all students identically—speaking only the majority language—ignores that student’s needs and likely impedes her learning. Justice, in this case, means offering that student language support, not pretending everyone’s the same. Under this view, Article 370 was not a concession, but a constitutional mechanism to ensure that Kashmiris could meaningfully participate in Indian federalism without erasing their political and cultural identity. To revoke such autonomy in the name of uniformity is to confuse sameness with fairness—a confusion that often leads to deeper alienation. John Rawls’s theory of justice as fairness emphasizes that institutions must be designed such that they would be accepted by individuals under fair and impartial conditions—what he famously termed the “veil of ignorance” Rawls Rawls (1971). This idea grounds procedural justice, where legitimacy flows from how decisions are made, not just what results they produce. From a Rawlsian perspective, the abrogation of Article 370 fails as a matter of democratic fairness. The Jammu and Kashmir Legislative Assembly had been dissolved. The region was under President’s Rule, and its elected representatives were absent from the process. The Union Government effectively gave consent on behalf of the very entity that was supposed to consent to any change—a constitutional sleight of hand. Rawls also emphasized the equal political liberty of all citizens. For Kashmiris, the process of abrogation undermined not just their special status, but their fundamental democratic agency. The absence of procedural safeguards—consultation, participation, consent—renders the outcome ethically suspect, even if its proponents claim long-term national benefit. In divided societies, where religious, ethnic, and linguistic cleavages run deep, constitutions often function not only as legal instruments but as political covenants—documents that encode mutual trust and reassurance. Sujit Choudhry terms this “constitutional trust,” a foundational principle that allows diverse groups to coexist under one legal framework (Choudhry, 2008). When Jammu and Kashmir acceded to India in 1947, it did so with the understanding—reflected in Article 370—that it would retain substantial autonomy. This was part of the broader federal bargain, much like how Scotland joined the United Kingdom under the Act of Union, or how U.S. states were guaranteed equal representation in the Senate regardless of size. To dismantle such arrangements unilaterally is not merely a constitutional revision; it’s the breaking of a promise. The abrupt abrogation, executed during a communications blackout and accompanied by troop deployment, effectively transformed a constitutional relationship into a unilateral command. The Kashmir Valley’s response—marked by silence rather than celebration—reflected not merely discontent but a deep rupture of political faith. Trust, once broken, is difficult to restore—and in plural societies, it is trust that binds more than law. Together, these above mentioned three frameworks lay the foundation of a more holistic ethical appraisal of Article 370 and its demise. They compel us to ask questions like was Article 370 a tool of exception or a reflection of inclusion through differentiated treatment? Perhaps, did the process of abrogation meet the standards of political justice and fair procedure? Or perhaps, can constitutional legitimacy survive if federal promises can be unilaterally revoked? The answers, while complex, point to a consistent ethical insight that pluralism requires more than law—it demands moral bent of mind, respect for difference and a commitment to shared constitutional integrity. Without these, the scaffolding of unity collapses under the weight of uniformity. If justice in a plural society requires recognizing historical, cultural, and political

difference, then constitutions must create space for that recognition. Asymmetrical federalism is not merely a legal technique—it is the institutional reflection of moral pluralism. The ethical arguments advanced above demand constitutional mechanisms that allow differentiated treatment without undermining national unity. This brings us to the doctrine and practice of *de jure* asymmetry in India—the legal embedding of special provisions for states and regions like J&K, Nagaland, or Mizoram. The question now becomes as to how has India's constitutional framework operationalized these ideals, and with what implications for federal equality and unity?

6. De Jure Asymmetry

The postcolonial Indian state has adopted a “differentiated citizenship” approach, dividing the country into states based on ethnicity and language Kymlicka Kymlicka (1996). However, not all of these states have been founded on a legally unbalanced basis. The linguistic restructuring of state boundaries in India during the 1950s was primarily an asymmetric reform, creating states with equivalent self-governance rights while admitting the prevalence of *de facto* language and ethnicity disparities. However, in some sections of the federation, asymmetrical instrumentalities have been used openly to resolve conflicts and accommodate diverse national histories and local goals. In federal systems, ‘constitutional asymmetry’ or ‘*de jure* asymmetry’ can manifest as formal structures that offer specific regions or units distinct or ‘special status’ inside the larger legal framework. Fundamentally, there are three ways to institutionalize constitutional asymmetry: expanding regional autonomy, diminishing it, or allowing constituent states to opt out of a legally symmetrical system. This idea of asymmetry tries to safeguard cultural pluralism while also accommodating national minority groups’ self-expression within the federal politics. Two contrasting perspectives on *de jure* asymmetrical federalism exist in scholarship: the ‘normative’ and the ‘functional’ (Tillin, 2006). The normative argument is based on the moral value of giving political acknowledgment to culturally diverse subunits, but the functional approach favors asymmetry as the most pragmatic model for resolving contextual ‘realities.’ The normative approach distinguishes between nationality-based units and mere regional divisions, implying that the former demand more autonomy Kymlicka Kymlicka (2001). Commentators contend that these diverse units cannot be treated uniformly, resulting in the requirement for asymmetry. However, this contradicts the conventional federal principle of equality among constituent states. While we know that *de facto* asymmetry exists in India, as proven by population-based representation in Parliament, the Constitution also explicitly enshrines unique protections for specific states and regions in the form of *de jure* symmetry. The asymmetric aspects of the Indian Constitution represent a process of innovation over time, as a response to evolving constraints within multiethnic regions. One of India's earliest asymmetrical arrangements involves developing a ‘transitional’ constitutional framework for Jammu and Kashmir, which was under attack by the Pakistan at the time of the Constituent Assembly and is the primary focus of this study. Subsequently, separate agreements with the Nagas and Mizos were achieved and incorporated into Article 371 by constitutional modifications. During the linguistic restructuring of state boundaries, techniques for regulating inequalities within states became increasingly important, since regions with differing degrees of economic development were combined under

different jurisdictions. These conditions prompted further changes to Article 371. In the early 1970s, a separate agreement was struck on Sikkim's accession to the Indian Union². Among all cases of constitutional asymmetry in India, Jammu and Kashmir stands out. Unlike other states, it negotiated the terms of its accession, demanded and received formal recognition of its unique political identity and was promised constitutional safeguards that were embedded in Article 370.

7. The Asymmetry for Kashmir

This segment is concerned with the special case study of Kashmir for which we first need to look into the socio-political history of the state in order to understand in what circumstances did the state of Kashmir accede to India. My argument is in alignment to the argument of Watts and Burgess who believe that these preconditions and the corresponding asymmetrical outcomes are crucial for the preservation of diversity of the federal state and so the asymmetrical federalism model for Kashmir was essential for the preservation of its political identity which was promised to them by the Union of India at the time of Accession. Furthermore, I contend that the Art. 370, which was used as a tool to implement the *de jure* asymmetry promised to Kashmir by India, was fully within India's federal framework. When we talk about asymmetric “arrangements”, we are essentially painting a picture in the minds of the readers that highlights the prospect of a debate or a negotiated resolution between two or more parties over a shared issue. It is primarily a compromise reached between the parties that is reasonable and proportionate to their requests. They are often an exception mechanism to the general rule of symmetric federalism that arises when the general rule fails to apply; they may be referred to as a response in the aftermath of an ethno-political conflict. Jammu and Kashmir is the only state in the Indian Union that negotiated unique terms of admission upon joining the union. Jammu and Kashmir's accession to India in 1947 was unlike that of other princely states. Faced with an invasion by Pakistani tribal forces, the Maharaja signed the Instrument of Accession, which limited India's legislative competence to defence, external affairs, and communications. The state's political leadership, led by Sheikh Abdullah, insisted on retaining internal autonomy and drafting its own constitution. Article 370 enshrined this arrangement. It limited the Indian Parliament's powers to legislate on matters beyond the acceded subjects unless the state government concurred. Clause 3 of Article 370 permitted its abrogation only on the recommendation of the Jammu and Kashmir Constituent Assembly—a body that ceased to exist in 1957. This effectively froze the Article in place. Contrary to the view that Article 370 was a temporary, expedient provision, this paper argues that it functioned as a legitimate mechanism of asymmetrical federalism. Applying the “living tree” theory of constitutional interpretation Jackson Jackson (2006), the provision should be seen as having evolved into a permanent expression of Kashmiri political identity. Even if not originally intended as such, it acquired normative weight as a symbol of federal trust. This trust-based understanding of asymmetry is key to interpreting Article 370 not just as a political compromise, but as a constitutional assurance. The moral legitimacy of the provision lies in its role as a safeguard for minority identity within a federal union. The abrupt nullification of this

²These examples are based on preliminary research since in-depth research happens to be beyond the scope of my paper.

assurance in 2019 demands a careful ethical reckoning. This delicate structure, negotiated during the formative years of Indian federalism, may have originated under the shadow of political expediency, but over time it acquired substantive federal characteristics. To understand whether Article 370 could have been regarded as a legitimate instrument of asymmetrical federalism, we must assess not just its original intent but its lived constitutional trajectory.

8. Is Article 370 a legitimate instrumentality of Asymmetrical Federalism?

During the formulation of the Indian Constitution, several members were concerned about the “temporary” character of Article 370, which is understandable given that arguments in support of the article’s repeal have always revolved around it being a “temporary” provision. However, a look at the constituent assembly debates reveals the intention of the Article 370 negotiators, such as Sheikh Abdullah and Mohammad Afzal Beg, who argued that its temporary nature was due to the prerogative of the Jammu and Kashmir Constituent Assembly, which was a sovereign body NooraniNoorani (2011). During the Constituent Assembly deliberations, Sheikh Abdullah emphasized that the “temporary nature” of Article 370 stemmed from the power placed in the Jammu and Kashmir Constituent Assembly, whose primary responsibility was to complete the “constitutional relationship” between the state and the Union. Similarly, Mubarak Shah and Mohammad Afzal Beg claimed that Article 370 would be in effect until the constitutionmaking process was completed, at which point the state’s constitution would specify the division of powers between the state and the Union. The investigation of whether the provision was permanent or transitional is fascinating, but it is outside the scope of my research. What is relevant to this research, however, is the argument I made regarding the provision’s permanent character, which may not have been intended by the original constitution but has evolved over time. The scholarship on Article 370 of the Indian Constitution, which gives special autonomy to Jammu and Kashmir, is disputed. While some historians say that Article 370 reflects the state’s asymmetrical autonomy, others argue that it was only a transitory legislation that was not designed to protect the Kashmiri minority identity (Tillin, 2006). I refute Tillin’s notion that the imbalance in Article 370 was purely functional and not purposeful, since it was intended to be an ‘interim measure’ for political expediency. For this, I draw on the “living tree theory” of constitutional interpretation, which posits that constitutions evolve over time and cannot be fixed to the original intentions of the drafters, as opposed to the “Originalist Theory of Constitutional Interpretation”, which is one of the oldest and most basic theories of interpretation that advocates interpreting constitutional text in accordance with the meaning and intention that was accorded to it during its formulation Jackson Jackson (2006) ³ There is no disputing that the constitution should be considered as a living text capable of adapting to changes in moral and social norms. As a result, not every constitutional modification must be considered simply in light of the drafters’ original meaning. Article 370 of the Indian Constitution, which guarantees special autonomy to Jammu

and Kashmir, was intended to be a transitory measure, but it has already been recognized as a permanent element by both the court and political establishment. Article 370’s objective has developed, being identified with the Kashmiri people’s “political identity” as a result of the peculiar regional politics. While the provision was not initially provided to preserve the region’s ethnic character, it does represent the idea of territoriality, which, as Burgess explains, is a necessary precondition for asymmetrical federal structures. Alternatively, even if Article 370 is deemed a transitory measure, the specific powers assigned to the state ensure an unequal structure. The provision’s principal goal was to promote ‘decentralized government’ as part of the unique system of Indian Federalism in Jammu and Kashmir, regardless of whether it was meant to be permanent or transitory. Understanding Article 370 as a pillar of asymmetrical federalism compels us to evaluate the provision which evolved into a mechanism of trust, identity, and negotiated pluralism and its abrogation in 2019 not solely through a procedural lens. The consequences of that rupture—both constitutional and moral—demand critical reflection on the nature of federalism, legitimacy, and justice in India today.

9. The Scenario Post-Abrogation

While the legality of the abrogation has been fiercely debated in courts and among legal scholars, the deeper normative questions remain unresolved. This paper, rooted in constitutional and federalist theory, acquires renewed urgency in light of this event. It asks whether the principles that justified asymmetrical federalism—autonomy, fairness, pluralism, and trust—retain normative force even after their institutional embodiment has been dismantled. At the heart of the post-2019 ethical debate lies two competing visions of justice. Supporters of the abrogation invoke ideals of equality, uniform citizenship, and national security. They argue that Article 370 enshrined a privileged status that impeded full integration and fostered alienation. Uniformity of laws, in this view, is a moral imperative—it affirms equal dignity across citizens and corrects an historical aberration. Yet equality is not sameness. As political philosopher Will Kymlicka Kymlicka (1996) has argued, liberal democracies must recognize that treating “unequals equally” can perpetuate injustice. The Indian Constitution itself acknowledges this principle through Article 14, which permits reasonable classification to address structural disadvantage. Kashmir’s unique political history—its conditional accession, demographic complexity, and chronic instability—warranted a differentiated constitutional arrangement. Article 370 was not a concession but a compact; a mechanism of federal trust that assured plural identities a place within a unified state. Its sudden abrogation, particularly when J&K was under President’s Rule with its legislature dissolved, raises ethical red flags. The Union’s interpretation of the Governor—an appointee of the Centre—as the legitimate voice of Kashmiri concurrence, sidesteps the principle of representative democracy Jaffrelot Jaffrelot (2021). This raises a deeper moral problem. In Rawlsian terms, such a process undermines procedural justice. John Rawls Rawls (1971) argued that legitimate political decisions must be those that citizens could reasonably accept, even from behind a “veil of ignorance,” where one is unaware of their social location. If the people of Jammu and Kashmir had no participatory role in a decision that redefined their political identity, its legitimacy is ethically tenuous. Moreover, constitutional trust—central to Sujit Choudhry’s (2008) framework for managing deeply divided societies—cannot

³Vicki Jackson argues that the “Living Tree Theory” views constitutions as evolving documents that must adapt to contemporary societal changes, contrasting with the rigid “Originalist Theory” which adheres strictly to the drafters’ original intentions. She emphasizes that this dynamic approach ensures constitutions remain relevant and effective, citing the Canadian case of *Edwards v. Canada* as an example. Jackson critiques originalism for potentially stifling constitutional development and failing to address modern issues.

be built through coercion or administrative fiat. It demands negotiation, transparency, and fidelity to the spirit of federalism. The abrupt manner of abrogation, enforced through lockdowns and communication blackouts, symbolized domination, not dialogue. Such ruptures do not just breach institutional norms; they dilute the moral foundations of constitutional legitimacy. The ethical stakes of this paper are thus amplified post 2019. It seeks to recover the values—pluralism, asymmetry, democratic consent, and negotiated unity—that were set aside in the name of national integration. Comparative experiences reveal similar tensions. Spain's 2017 suspension of Catalonia's autonomy and Sri Lanka's post-war centralization demonstrate the long-term costs of disregarding subnational identities (Keating, 2012). In each case, legal centralization failed to generate legitimacy because it dismissed the ethical value of trust and recognition. India's constitutional culture, historically celebrated for accommodating linguistic, religious, and regional diversity, risks discouragement of its own pluralist legacy when such trust-based arrangements are unilaterally revoked. If democratic legitimacy hinges on trust, and trust on inclusive dialogue, then India must reckon with the ethical deficit that Article 370's abrogation has created. Yet, even as this paper critiques the ethical shortcomings of the abrogation, it does not adopt a romanticized view of asymmetry. Autonomy is not an end in itself. The constitutional project must balance unity with pluralism, integration with recognition. The challenge before India today is not whether asymmetry is good or bad—it is whether autonomy can be recalibrated to serve both justice and national cohesion.

10. Conclusion

The abrogation of Article 370 crystallizes the enduring tension between competing visions of unity and pluralism. On one side, it is hailed as a corrective move—ending legal exceptionalism, ushering in uniform governance, and integrating Jammu and Kashmir with the national mainstream. Proponents argue it will spur development, curb separatism, and reinforce a shared national identity. On the other side, critics raise alarm over the procedural bypassing of democratic institutions and the message it sends: that constitutional promises can be unilaterally revoked. This paper argues that in deeply divided societies, trust is not ornamental—it is constitutional infrastructure. Article 370 represented a commitment, not just a clause. Its revocation without public dialogue signals a breach in the moral contract between the centre and the periphery. Trust, once broken, cannot be restored through legal integration alone; it demands ethical repair. That said, this paper does not conflate asymmetry with permanent exceptionalism. Autonomy must operate within a sovereign, constitutional framework. The Indian Constitution never envisaged a confederal arrangement like the USA; it endorsed differentiated unity—where necessary, temporary, and justified. As Ambedkar was of the belief that 'Unity is the ultimate goal and any differentiation must be justified by necessity not by ideology'. Thus, when asymmetric arrangements are perceived to foster institutional paralysis, separatism, or legal opacity, the Union has not only the power but the moral responsibility to review them. The challenge then is to recalibrate autonomy so that it respects identity without diluting sovereignty. In this light, the abrogation of Article 370—while procedurally questionable—can be ethically defended if its long-term effect is to restore equitable citizenship and national integration, provided it is followed by genuine political inclusion, restoration of statehood, and renewed federal dialogue.

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