



Kashmiri Women in Transition: Legal and Social Rights Before and After Article 370–1845

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ABSTRACT

The study explores the evolution of women's rights in Kashmir from India's independence in 1947 to the post-abrogation period following the revocation of Article 370 in 2019. Drawing on Feminist Legal Theory, Conflict Theory, Postcolonial Feminism, and Islamic Feminism, the research explores how legal, political, and social developments have shaped the status of Kashmiri women over time. Special focus is given to Article 35A's implications on property rights and residency, and how insurgency, militarization, and conflict since 1989 have exacerbated gender-based violence, displacement, and systemic marginalization. Using a qualitative methodology based on secondary sources, the paper highlights both the gains and ongoing limitations in women's legal and socio-economic empowerment, especially in light of the contested benefits brought by the extension of Indian central laws post-2019. The study reveals the dual role of women as both victims and agents of change, examining grassroots activism and policy advocacy. It contributes to the broader discourse on gender rights in conflict zones by illustrating how legal reform, cultural shifts, and political stability must converge to ensure sustainable gender justice in Kashmir's unique socio-political landscape.



INTRODUCTION

Kashmir's socio-political history has significantly influenced women's rights. From the post-independence period to the insurgency and the recent abrogation of Article 370, women's legal and social status has evolved through various transitions (Mehrotra, 2020). While reforms have granted new rights, challenges persist due to cultural norms, conflict, and socio-economic barriers (Ahmad, 2017). The trajectory of women's rights in Kashmir has been deeply intertwined with the region's political, social, and legal developments (Kazi, 2022). From India's independence in 1947 to the revocation of Article 370 in 2019, the status and rights of Kashmiri women have undergone significant transitions, shaped by political instability, conflict, and changing legal frameworks (Mehrotra, 2020; Zeeshan & Aliefendioğlu, 2024). Women in Kashmir have historically been subjected to a dual burden—facing both gender-based discrimination and the broader challenges of an ongoing conflict (Zeeshan & Aliefendioğlu, 2024). The study explores the evolution of women's rights in Kashmir across distinct political periods, critically analyzing the impact of legislative and socio-political changes from independence to the post-abrogation era. At the time of India's independence, Jammu and Kashmir (J&K) enjoyed special status under Article 370 of the Indian Constitution, which granted the region autonomy in governance, except in matters of defence, foreign affairs, and communications. This provision, coupled with Article 35A, restricted non-residents from acquiring land or government jobs, a policy that also affected Kashmiri women who married outside the state (Bhat & Rajeshwari, 2022). Although the 2002 ruling by the J&K High Court granted women the right to retain their residency despite marrying non-state subjects, systemic inequalities persisted due to patriarchal norms and socio-political turmoil (Shafi, 2002). The ongoing insurgency since 1989 has further complicated women's rights in Kashmir. The conflict has led to heightened gendered violence, including sexual violence, forced displacement, and state-sponsored repression (Zeeshan & Aliefendioğlu, 2024). Kashmiri women have not only been victims but also active agents of resistance, forming advocacy groups and seeking justice for human rights violations (McLoughlin, 2023). However, their voices have often been marginalized in the larger political discourse, as issues of sovereignty and security have overshadowed gender rights (Khan, 2007). The abrogation of Article 370 in August 2019 marked a significant turning point in the legal and political landscape of Kashmir (Mehrotra, 2020). Women's rights activists were divided on the implications—while some believed it would lead to enhanced legal protections and economic opportunities, others feared increased militarization and erosion of local autonomy would exacerbate vulnerabilities (McLoughlin, 2023). The extension of central laws such as the Indian Penal Code, domestic violence protections, and property rights to Kashmir theoretically strengthened women's legal standing, but their implementation remains contested amid the region's ongoing unrest (Kazi, 2022). The study critically examines the transformation of women's rights in Kashmir by assessing key legal, political, and social transitions from independence to the post-abrogation period. The research draws on historical records, legal texts, and sociological perspectives to offer a nuanced understanding of gender dynamics in the region, contributing to broader discourses on women's rights in conflict zones.

Review of Literature

Existing literature on women's rights in Kashmir emphasises how intricately law, conflict, and gendered injustice interact. Examining the milieu of women's activism in Kashmir, Iqbal (2023) records grassroots events, rights abuses, and group campaigns. Examining women's journey from home environments to political realms, Bhat (2023) exposes cross-class involvement throughout past times of struggle. Ganaie (2021) investigates how social movements could help to eliminate social injustices, therefore indirectly influencing women's rights in the area. Emphasising the role militarism and opposition play, Ahmad (2024) offers a comparative study of women's hardships in Kashmir and Afghanistan. Wani et al. (2022) examine the geographical distribution of violence against women, therefore highlighting the unequal effect of war on Kashmiri women. Mohiuddin (1997) provides a basic overview of Kashmir's human rights abuses, thus guiding knowledge of modern gender rights concerns. While Vaid and Sharma (2005) look at the historical path of political rights for women in

Jammu and Kashmir, Iqbal and Magill (2022) record women-led demonstrations, following their progression from the 1940s to the post-abrogation period. Emphasising the importance of policy-driven change, Shah et al. (2024) show how educational growth influences women's emancipation. These studies reveal how women negotiate systemic oppression, conflict, and changing legal frameworks, therefore helping to provide a sophisticated knowledge of gender dynamics in Kashmir. Political changes, grassroots movement, and changing state policies interact to highlight how difficult it is to further women's rights in areas of conflict.

Significance of the Study

The present study is significant in understanding the evolution of women's rights in Kashmir by examining the intersection of law, conflict, and feminist thought. Given the region's unique socio-political landscape and history of armed conflict, it provides valuable insights into how legal and political transformations have shaped gender dynamics over time. By integrating Feminist Legal Theory, Conflict Theory, Postcolonial Feminism, and Islamic Feminism, the research offers a multidimensional perspective on women's agency and marginalization. It contributes to feminist legal scholarship by analyzing the implications of legislative changes, including the abrogation of Article 370, on Kashmiri women's legal and socio-economic status. Additionally, the study provides empirical and theoretical insights for policymakers, legal practitioners, and human rights organizations, informing gender-sensitive legal frameworks and effective policy interventions. Shedding light on the lived experiences of Kashmiri women, it highlights how armed conflict, socio-political unrest, and legal uncertainty contribute to gender inequalities, reinforcing the need for community-driven advocacy and empowerment initiatives. Furthermore, the study enriches academic discourse on women's rights in South Asia by offering comparative insights into how regional conflicts shape gendered realities. Ultimately, it underscores the necessity of a holistic approach to gender justice in Kashmir, emphasizing legal reforms, socio-economic empowerment, and grassroots activism as essential components of sustainable change.

Research Methodology

The present study adopted a qualitative research approach, relying exclusively on secondary data to analyzed existing literature, reports, and scholarly discussions on women's rights in Kashmir.

- **Data Sources:** The research utilizes academic books, peer-reviewed journal articles, government reports, policy documents, and publications from non-governmental organizations (NGOs) that focus on gender issues in Kashmir. These sources provide a comprehensive foundation for understanding the historical, legal, and socio-political dimensions of women's rights in the region.
- **Analytical Framework:** A thematic analysis is employed to identify key trends shaping women's rights in Kashmir. This includes an examination of legal frameworks such as the Jammu and Kashmir Constitution, legislative amendments following the abrogation of Article 370, and reports on gender-based violence. The study critically evaluates these factors to understand their implications for women's socio-economic and political status.
- **Comparative Approach:** The research adopted a historical-comparative perspective, assessing shifts in women's rights across different time periods—from pre-independence to post-2019. This approach helps contextualize contemporary challenges and progress within broader historical and political transformations.
- **Reliability and Validity:** To ensure academic rigor, the study prioritizes credible and authoritative sources. Data is drawn from well-established academic literature and policy-oriented research. Additionally, conflicting perspectives are acknowledged to provide a balanced and nuanced analysis of women's rights in Kashmir.
- **Limitations:** Since the study does not include primary data, its findings are contingent upon existing interpretations and analyses. However, this methodological choice enables a broader

synthesis of multiple perspectives, offering a comprehensive understanding of the evolving landscape of women's rights in Kashmir.

Theoretical Framework

The study employs an interdisciplinary theoretical framework that integrates Feminist Legal Theory, Conflict Theory, and Postcolonial Feminism to analyze the transformation of women's rights in Kashmir.

Feminist Legal Theory

Feminist Legal Theory provides a lens to examine the legal transformations affecting women's rights in Kashmir, particularly in the context of constitutional changes. This theory critiques patriarchal legal structures and highlights how laws shape gender relations and social justice (MacKinnon, 1989). The study applies this theory to analyze the pre- and post-abrogation legal landscape, focusing on how the removal of Article 370 impacts women's autonomy and rights.

Conflict Theory

Rooted in the works of Karl Marx and later expanded by sociologists like C. Wright Mills, Conflict Theory explains the socio-political struggles that shape power dynamics. In the context of Kashmir, this theory helps to understand how political instability, armed conflict, and legal changes intersect with women's rights (Galtung, 1990). It provides insights into how state policies, insurgency, and military presence have influenced women's access to resources, security, and social mobility.

Postcolonial Feminism

Postcolonial Feminism critiques mainstream feminist theories for overlooking the unique experiences of women in formerly colonized regions (Mohanty, 1988). In Kashmir, where historical and political tensions have played a crucial role in shaping gender experiences, Postcolonial Feminism provides a framework to analyze women's agency in a region marked by contested sovereignty and socio-political upheaval. This theory underscores the importance of intersectionality, recognizing that Kashmiri women's struggles are shaped by ethnicity, class, religion, and political identity.

Islamic Feminism

Islamic Feminism offers a perspective that reconciles women's rights with Islamic principles, challenging patriarchal interpretations of religious laws. In the Kashmiri context, where Islam plays a significant role in shaping social norms, Islamic Feminism provides insights into how religious discourse can be used both to oppress and empower women. This theory highlights the role of women as active agents in interpreting religious texts to advocate for gender justice (Mernissi, 1991). The study applies Islamic Feminism to examine how Islamic jurisprudence has influenced women's legal and social status in Kashmir, particularly in relation to marriage, inheritance, and personal laws.

Integration of Theories

By integrating these theoretical perspectives, this study provides a comprehensive understanding of women's rights in Kashmir. Feminist Legal Theory offers insights into legal constraints and advancements, Conflict Theory contextualizes socio-political struggles, Postcolonial Feminism situates these within the broader discourse of colonial legacies and resistance, and Islamic Feminism explores the role of religion in shaping gender norms. This interdisciplinary approach ensures a nuanced examination of gendered transitions in Kashmir, contributing to broader discussions on women's rights in conflict zones.

Historical Overview of Women in Kashmir: A Theoretical Analysis

Pre-Colonial Period: Gender Roles in Early Kashmir

The socio-political landscape of early Kashmir reflected diverse gender dynamics, shaped by religious, cultural, and political transformations. Feminist Legal Theory helps contextualize the legal status of women in early Kashmir, while Postcolonial Feminism provides insights into the region's indigenous traditions before external influences reshaped gender norms. During the reign of rulers like

Lalitaditya (724–760 CE) and Avantivarman (855–883 CE), women had access to education, religious participation, and, in certain cases, governance. Kalhana's *Rajatarangini*, a 12th-century chronicle, records instances of royal women, such as Queen Didda (958–1003 CE), exercising sovereign power, challenging later patriarchal restrictions. Postcolonial Feminism critiques mainstream feminist discourses for failing to recognize such historical female agency in non-Western societies (Mohanty, 1988). However, the shift toward Islamic rule in the 14th century introduced new gender norms. The arrival of Sufi saints, such as Mir Sayyid Ali Hamadani (1314–1384), integrated Islamic legal traditions, offering both protective measures—such as inheritance rights for women—and reinforcing patriarchal constraints that limited their autonomy. Islamic Feminism highlights this dual role of religious jurisprudence, emphasizing women's agency in interpreting religious texts for gender justice (Mernissi, 1991).

Dogra Rule (1846–1947): The Institutionalization of Gender Inequality

Gender inequalities became increasingly evident after Dogra government was established by means of the Treaty of Amritsar (1846). Conflict Theory contends that the junction of feudalism and colonial government strengthened patriarchal systems. Under a government that gave male power first priority, women's legal rights in spheres of property ownership, education, and political involvement were drastically limited (Khan, 2011). Though confined to privileged women, the arrival of modern education in the early 20th century signalled the start of structural changes (Hussain, 2023.). Still excluded, nevertheless, women from underprivileged families highlighted class-based gender inequalities (Zutshi, 2014). Feminist Legal Theory questions these laws that institutionalised gender inequality and hence limited women's access to social and economic possibilities. By the 1930s, political movements—especially the Kashmir Freedom Struggle headed by Sheikh Abdullah—had included women's rights into more general sociopolitical changes. Women's groups supporting legislative changes and education arose but encountered opposition because of ingrained patriarchal standards (Rai, 2004). The era prepared the ground for later post-colonial Kashmir gender-oriented reforms. Furthermore, historical studies show how pre-colonial social mobility and gender roles were further limited under colonial policy, hence deepening these inequities (Kazi, 2023; Hasan, 2002).

Post-Independence Developments

Reforms under Sheikh Abdullah (1947–1975): Expanding Women's Rights

Under Sheikh Abdullah's direction, post-independence saw notable social and legal improvements. Conflict Theory helps one to understand how these changes aimed to solve socioeconomic disparities that had worsened under feudal control. By increasing economic stability for lower-class households, the land reforms of the 1950s—which transferred land from feudal landowners to peasants—indirectly helped women (Ganie, & Deivam, 2016). The Aligarh Movement helped Sheikh Abdullah's attempts to advance education—especially for Muslim women—by guiding her into mainstream public life (Ahmed & Ahmad, 2005). Formally acknowledging women's legal rights including access to property, education, and work, the Jammu and Kashmir Constitution (1957) Notwithstanding these legislative developments, society views kept restricting women's involvement in public life; political changes often slowed the pace of gender transformations (Hassan, 2009). The sluggish progress mirrors the criticisms of Feminist Legal Theory, which holds that without changes in society norms and enforcement systems, legal improvements by themselves are inadequate (MacKinnon, 1989). Parallel to this worldwide change in women's roles as seen in early 20th-century Malay society, highlights the interaction of legislative changes and cultural shift in

forming women's agency (Noor, 2020). Though systemic patriarchal impediments still exist, Sheikh Abdullah's reformist vision set the foundation for further attempts at gender justice.

Insurgency and Conflict (1989–2000s): The Gendered Impact of War

The armed insurgency starting in Kashmir in 1989 fundamentally changed women's lived experiences and gender roles. Conflict Theory offers a critical prism through which one may see how political unrest heightened gender vulnerabilities. Women experienced more relocation, financial difficulties, and gender-based violence—including well-documented instances of sexual abuse by both governmental and non-governmental entities (Cockburn, 2010). Emphasising the gendered aspects of war, reports by groups like Human Rights Watch (1999) revealed incidences of rape, prison assault, and stigmatising of survivors. Feminist research underlines that conflict accentuates already existing gender inequality as women's bodies frequently become targets of violence (Cockburn, 2010; Giles & Hyndman, 2004). Notwithstanding these hardships, women's advocacy became more potent. Seeking justice and conflict settlement, groups like women-led peace projects and the Association of Parents of Disappeared Persons (APDP) Arguing that female views are typically silenced in male-dominated political systems, Postcolonial Feminism challenges the marginalising of women in official peace discussions (Cockburn, 2013; Sjoberg, 2014). Moreover, studies show that resolving both current violence and long-term security issues requires an awareness of conflict seen from a gendered perspective.

Legal and Social Shifts in the 21st Century

Strengthening Legal Protections

Early in the twenty-first century, major legislative changes meant to combat violence and gender inequality were undertaken. Providing legal remedies including protection orders and financial help, the Jammu and Kashmir Protection of Women from Domestic abuse Act (2010) matched national regulations to acknowledge domestic abuse as a criminal offence. Reflecting more general attempts to increase legal protections for vulnerable groups, the Protection of Children from Sexual Offences Act (POCSO) (2012) reinforced defences against child exploitation. Feminist law Theory emphasises, nevertheless, the ongoing discrepancy between law clauses and their execution. Weak law enforcement systems, ignorance, and social shame still impede women's access to justice (Ahmad, 2017). Legal assistance and advocacy of gender-sensitive policies have been much aided by women's rights organisations such Kashmir Women's Collective and Jammu and Kashmir Women's Development Corporation (Zargar, 2021). Government programs include the Beti Bachao Beti Padhao program have helped women have more career possibilities and literacy rates rise. Promoting gender equality and social justice has also depended critically on legal changes meant to empower women (Mukund, 2025). Still, patriarchal conventions still provide a major obstacle to complete gender equality. Simultaneously, continuous debates on data protection and privacy legislation in India draw attention to the changing character of legal systems and their possible influence on social development and individual liberties (Burman, 2022).

The Abrogation of Article 370 and 35A (2019): Legal Changes for Women

The revocation of Article 370 and 35A in August 2019 introduced major legal transformations, particularly in property rights, residency laws, and access to government benefits. Feminist Legal Theory views these changes as removing gender-based legal discrimination, as Kashmiri women now have equal inheritance rights (Swadimath et al., 2024). However, Postcolonial Feminism warns of the socio-political consequences, particularly the risk of demographic shifts and increased militarization

affecting women's security (Kazi, 2022). Concerns persist regarding the practical benefits of these legal changes. While women legally gained greater access to property ownership, customary barriers and familial opposition continue to limit their rights (Zargar, 2021; Chauhan, 2022). Additionally, increased military surveillance and mobility restrictions post-2019 have disproportionately affected Kashmiri women, raising concerns about heightened gender-based violence (Kuszevska, 2022). Conflict Theory underscores that these legal changes must be examined within the broader context of state policies, insurgency, and militarization, which continue to shape women's experiences in the region (Kawale & Agrawal, 2024).

Women's Status in Contemporary Kashmir

Modernization, education, and legal reforms have significantly influenced the lives of women in Kashmir. However, challenges persist due to political instability, cultural traditions, and economic dependencies.

Education and Employment

Over the past few decades, there has been a marked improvement in women's access to education. Female literacy rates have improved, leading to greater participation in professional fields such as medicine, education, and administration. Government initiatives like Beti Bachao Beti Padhao have contributed to this progress. However, gender disparities persist, particularly in rural areas where conservative attitudes limit educational opportunities for girls (Zutshi, 2014). Historical accounts show that women in ancient Kashmir, despite occasional leadership roles, often faced structural inequalities that still echo today (Ayub & Raina, 2018; Bhat & Rajeshwari, 2022).

Political Participation

Women in Kashmir have increasingly engaged in political movements, activism, and policy-making. However, political conflict has subjected them to unique vulnerabilities, including displacement and human rights violations. While women have played key roles in advocacy, such as in APDP and grassroots peace initiatives, their representation in formal political structures remains limited. Feminist scholars have highlighted how Kashmiri women navigate political resistance while facing intersectional oppression in conflict zones (Zeeshan & Aliefendioğlu, 2024).

Legal Reforms and Rights

Legislative measures, such as laws against domestic violence and increased advocacy for gender equality, have helped improve women's rights. The Jammu and Kashmir Protection of Women from Domestic Violence Act (2010) aligns with national laws, but enforcement remains weak due to social stigma and inadequate law enforcement mechanisms (Ahmad, 2017). The abrogation of Article 370 has brought legal changes, but studies show the practical benefits for women remain limited, with customary practices still curtailing rights (Chauhan, 2022).

Economic Empowerment

Women in Kashmir have made significant contributions to entrepreneurship and self-employment. Handicrafts, tourism, and small-scale businesses have provided economic opportunities, although gender-based wage disparities continue to exist. Organizations such as the Jammu and Kashmir Women's Development Corporation have played a crucial role in skill development and financial aid. Yet, research shows that working women still face systemic obstacles, including gender biases and limited upward mobility (Shafi, 2002; Tabasum, 2014).

Challenges and Future Prospects

Despite progress, Kashmiri women face several socio-economic and political challenges:

1. **Conflict and Violence:** The ongoing political unrest has disproportionately affected women, leading to displacement, loss of livelihoods, and psychological trauma.
2. **Patriarchal Norms:** Traditional gender roles continue to restrict women's agency, particularly in rural areas.

3. **Health and Well-being:** Limited access to healthcare services, particularly in conflict-prone areas, remains a major concern.

4. **Globalization and Cultural Shifts:** While globalization has facilitated awareness and opportunities for women, it has also led to tensions between traditional values and modern aspirations. While legal reforms and modernization have improved women's socio-economic status, addressing deeply rooted patriarchal structures and conflict-related vulnerabilities remains critical for ensuring gender equality in Kashmir.

CONCLUSION

Women's rights in Kashmir have evolved in response to a complicated interaction of historical legacies, sociopolitical upheavals, and legislative changes. From the pre-colonial era to the post-abrogation age, changing governance systems, armed conflict, and patriarchal traditions have moulded women's socio-economic and legal position. Legal changes—especially the extension of central laws to Jammu and Kashmir—have brought fresh safeguards and possibilities; but, their application is still hampered by strong gender stereotypes and continuous political unrest. The research emphasises that while legal developments might improve women's rights, their efficacy relies on more general structural improvements like political stability, socioeconomic empowerment, and cultural changes. The results highlight the necessity of gender-sensitive policy that transcends legislative clauses to handle the actual reality of Kashmiri women. Realising true gender equality requires a comprehensive strategy combining legislative changes with grassroots activity, community involvement, and dispute resolution. In the end, the research adds to the conversation on women's rights in conflict areas by stressing that transformational social change is as important for sustainable development as legislative actions. Building a more inclusive and fair society depends on realising and magnificuating women's agency in Kashmir.

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