

# Article 370 removal

August 15, 2019

**Source:** *The Hindu*

## **Manifest pedagogy:**

Article 370 has been in news for the most obvious reasons. It will be very tricky to write an answer on this in Mains and at the same time remain apolitical. It is advisable that students remain neutral by sticking to the constitutional and legal aspects of the recent Presidential notification rather than going into the politics of it!

## **In news:**

- Article 370 has been repealed.

## **Placing it in syllabus:**

- Constitutional provisions

## **Dimensions:**

- Notification and reorganization bill and how article 370 was removed
- Legal and constitutional loopholes
- Positive and negative impacts

## **Content:**

### **Notification and reorganisation bill:**

Recently Union Minister for Home Affairs, Shri Amit Shah, introduced the following bill and resolutions regarding Jammu & Kashmir (J&K) in Lok sabha

These are:

- Constitution (Application to Jammu & Kashmir) Order, 2019 {Ref. Article 370(1) of the Constitution of India}

- issued by President of India to supersede the 1954 order related to Article 370.
- Resolution for repeal of Article 370 of the Constitution of India {Ref. Article 370 (3)}
- Jammu & Kashmir (Reorganisation) Bill, 2019 {Ref. Article 3 of the Constitution of India}

Article 370(3) provides President of India has the powers to amend or repeal the article by issuing a notification, based on a recommendation of Constituent Assembly of J&K. Since President's rule is in force in the state, implementation of article 370 ceased to exist when President of India issued a notification in this regard, after both parliamentary houses passed the resolution.

The Rajya Sabha and Lok Sabha passed the Jammu & Kashmir Reorganisation Bill which bifurcates the state into **two Union territories**. As the President signed the Bill and the government issued a notification, Jammu and Kashmir ceased to exist as a state

- The two Union territories are Jammu and Kashmir and Ladakh.
- Jammu and Kashmir will have a legislature like Delhi and Puducherry, where key subjects like law and order are with the Centre.
- Ladakh will have no legislature like Chandigarh.
- The Governor of Jammu and Kashmir will now become a Lieutenant Governor.
- **Article 35A**, which made a distinction between the permanent residents of Jammu and Kashmir and the outsiders, also ceased to have any effect in Jammu and Kashmir



The government is likely to set up a commission for

delimitation of constituencies

### **Legal and constitutional loopholes:**

**Article 370(1)(c)** explicitly lists the two constitutional articles that will apply to Jammu and Kashmir: **Article 1** (which enumerates India's constituent divisions) and **Article 370** itself. **Article 370(1)(d)** explains how other constitutional provisions may discretionarily be applied to the state – as modified by the president of India through an order, along with the “concurrence” of the “Government of the State.”

According to clause 3 of Article 370, for the article could “cease to be operative” or be operative only in part: the president would have to issue a “public notification,” but the “*recommendation*” of the “*Constituent Assembly of the State*” would be “*necessary before the President issues such a notification.*”

However, the Constituent Assembly of Jammu and Kashmir dissolved in 1957, after the state's constitution was adopted and came into force. In 2017, the Supreme Court, in the case **State Bank of India v Santosh Gupta**, observed that even though Article 370 was labeled a “temporary provision” and the Constituent Assembly had dissolved, the article “continue[s] to be in force”, thus indicating it had attained permanent status.

On Aug.5,2019 , the president of India, issued **Presidential Order C.O. 272**. Since 370(1)(d) grants the president the authority to apply other constitutional provisions “as modified” to Jammu and Kashmir (provided the president acts in “concurrence” with the state government), C.O. 272 used this authority to amend a separate constitutional provision, Article 367, not through the regular constitutional amendment procedure but to apply to Jammu and Kashmir.

*Article 367 provides guidelines on interpreting the*

*Constitution* and earlier contained three clauses. C.O. 272 added a fourth clause to this article. According to C.O. 272, **Article 367(4)(c)** shall state that “*references to the Government of [Jammu and Kashmir] shall be construed as including references to the Governor of Jammu and Kashmir*” of relevance in following 370(1)(d)’s requirement of the president obtaining the “concurrency” of the government of the state.

Additionally, Article 367(4)(d) shall state that the expression “‘Constituent Assembly of the State’ shall read ‘Legislative Assembly of the State’” of relevance in following Article 370(3)’s requirement of state-level “recommendation” to the president for ceasing the operation of all or part of Article 370.

As the concurrence of the “Constituent Assembly” of Jammu and Kashmir was no longer needed to amend Article 370 and the “Legislative Assembly” of the state would suffice under C.O. 272, and moreover because the state’s legislature was dissolved and the state was under President’s rule, the governor’s concurrence was sufficed

The two serious problems with basing C.O. 272 upon the consent of the Governor are:

- Governor is a representative of the Central Government. In effect, therefore, Presidential Order 272 amounts to the Central Government taking its own consent to amend the Constitution
- As President’s Rule is temporary and is meant to be a stand-in until the elected government is restored, decisions of a permanent character such as changing the entire status of a state taken without the elected legislative assembly, but by the Governor, are problematic

**Positive and negative impacts of Article 370 removal:**

It has been blamed that Article 370 led to the separatist movement in the state. Government has opined that terrorism cannot be eliminated in J-K until Article 370 and 35A were in existence. The articles not only hindered development and bred corruption but also responsible for the denial of the right to education and reservation for minorities.

As no outsiders could have bought land, it had prevented the building of adequate healthcare services/industry. The government's decision to revoke Article 370 would ensure stability, market access, and predictable laws in the state, which could help it gaining investment, especially in key sectors like tourism, agriculture, IT, healthcare among others.

The economic growth cannot happen in a closed environment in today's world. Hence open minds and open markets will ensure that the youth of the region will put it on the path of greater progress. The integration also gives a boost to investment, innovation and incomes. With the opening of top educational institutes like IIT, IIM, AIIMs, people of the state would not only get better educational opportunities, they would also get a better workforce environment.

With several road, airport and rail line projects in the pipeline in the state, the ease of doing business in the state would improve. Ending the discrimination against women deprived of property rights after marrying outside the valley is also a welcome step. If the decision helps in resettling the uprooted Kashmiri Pandits back home, it will be a big win

#### **Negative impacts:**

- With J&K a Union territory, the central government must ensure that funds are deployed properly and don't line the pockets of a few families and their cronies.
- It will take time before industry feels that the valley is a safe bet.

- Pakistan will try to up its terrorist game.
- At this stage, it is still unclear if any business house wants to invest in an uncertain and precarious environment.
- When the US withdraws its troops from Afghanistan, some of the Taliban's resources will be available to Pakistan to be re-directed towards Kashmir.
- Given the sentimental attachment that most people in the Valley have with the "special status", the decision to remove it has left a negative impact on the emotional integration of people.
- The decision hasn't gone down well in Kargil, a predominantly Muslim district, where people have come out on the streets to protest. This may exacerbate tensions in a region that has managed to stay peaceful so far despite the conflict in the neighbouring Valley.
- It is also critical that proper provisions and restrictions are put in place for buying of property to protect the fragile ecology of the region.
- The mainstream Kashmiri politicians are being projected as villains whose leadership is that have been the bridge between alienated Kashmiris and mainland India since years