

Constitutionality of extending 77th and 124th amendments to Jammu & Kashmir

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Manifest Pedagogy

Jammu and Kashmir's constitutional status is an issue which is making it to the news time and again. Article 370 and the limitations it puts on the central government is a matter of debate and UPSC has previously concentrated on this aspect of the constitution many a time.

In news

Centre extends two constitutional amendments to J&K

Placing it in the syllabus

Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure.

Static dimensions

- Article 370.
- 77th amendment.
- Various Presidential orders regarding Jammu and Kashmir.

Current dimensions

- Applicability of 77th and 124th amendments.
- Status of Article 370.

Content

77th Amendment

The Constitution (Seventy-Seventh Amendment) Act 1995 introduced clause (4A) pursuant to clause 4 of Article 16 of the Indian Constitution. Clause (4A) provides for the Scheduled Castes and Scheduled Tribes to benefit from the promotion in service.

124th Amendment (103rd Amendment act)

It inserted new provisions to articles 15(6) and 16(6) in the Constitution to provide 10% reservation for economically weaker sections(EWS).

The amendment provides reservation for:

1. People who have an annual income of less than Rs 8 lakh, or
2. People who own less than five acres of farmland, or
3. People who have a house less than 1,000 sq feet in a town (or 100 sq yard in a notified municipal area).

Applying 77th and 124th amendments to Jammu and Kashmir

The 77th and 124th(103rd amendment act) constitutional amendments **were extended by a presidential order** to Jammu and Kashmir (J&K) with the **approval of the Governor of J&K**. These relate to reservations in promotions in the State Services for Scheduled Castes and Scheduled Tribes as well as special provisions for advancing economically weaker sections.

The procedure mentioned in the constitution

- According to article 370, the provisions of the Indian Constitution **do not automatically apply** to J&K. A **presidential order to that effect must be passed** in order to extend constitutional provisions and amendments to the State.

- This order requires the **concurrence of the State government**, where the subject matter does not relate to the subjects specified in the Instrument of Accession (defence, external affairs, and communications).
- Therefore, article 370 makes Article 1 and Article 370 itself applicable to the State of J&K at once and authorises the president to extend other Articles to the state.
- In pursuance of the provisions of Article 370, the President issued an order called the **Constitution (Application to Jammu and Kashmir) Order, 1950**, to **specify the Union's jurisdiction over the state**.
- The President issued another order with the same title, that is, the **Constitution (Application to Jammu and Kashmir), Order, 1954** (with the concurrence of state government and State Assembly). **This is the basic order** that, as amended and modified from time to time, regulates the constitutional position of the state and its relationship with the Union.
- Therefore a presidential order of 1954 extended to J&K various provisions of the Indian Constitution. This order was issued with the concurrence of the State government and also ratified by the Constituent Assembly of the State. **Other such orders were also issued in 1986** (during governor rule-without concurrence of state government) and the present **2019** (governor rule- without the concurrence of state government).

Criticisms

- Many people from the state of Jammu and Kashmir consider the Presidential orders of 1986 and 2019 would erode the status of Article 370.
- **It is stated that Presidential orders of 2019 issued in the absence of State government are detrimental to the constitutional feature of federalism.**
- If the Center had legitimate intentions, it would have

had to wait until an elected government was formed in J&K. The 2019 order falls clearly foul of the principles of constitutional and political morality in the absence of popular will support it.