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CONSTITUTION OF INDIA

ARTICLE 370 : THEN & NOW

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TEMPORARY PROVISIONS FOR J&K : ARTICLE 370

ORIGINAL PROVISIONS : ARTICLE 370(1)

Article 370(1)(b)

- **Power of Parliament to make laws for J&K**
 - shall be **limited**
- (1)
 - to those matters in Union List and Concurrent List
 - which are declared by the President in **consultation** with State Govt
 - to **correspond** to matters specified in the Instrument of Accession...
- (2)
 - to such **other matters** in these two lists
 - which the President may by order specify with **concurrence of State Govt**

Article 370(1)(c)

- Provisions of article 1 and article 370
 - shall apply to the State of J&K

Article 370(1)(d)

- Such other provisions of this Constitution shall apply to the State of J&K
 - as the President may by order specify subject to exceptions and modifications specified by him
- Provided that no such order shall be issued except
 - in **consultation** with State Govt if the order relates to matters specified in Instrument of Accession
 - with **concurrence of State Govt** if the order relates to other matters

Explanatory Notes by DLA on Article 370(1)

- Articles 370(1)(c) and 370(1)(d) deal with applicability of Indian Constitution to J&K.



- Article 370(1)(c) states that Article 1 and Article 370 of the Constitution shall apply to J&K.
- Article 370(1)(d) states that other provisions of the Constitution can be made applicable to J&K with such “*modifications as the President may by order specify*”.
- However, Article 370(1)(d) requires that the President secure **consultation/concurrence** of J&K government before issuing such order.

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Original Provisions : [Article 370\(2\)](#)

- If the above referred concurrence of State Govt be given before the Constituent Assembly of the State is convened
 - it shall be placed before such Assembly for such decision as it may take thereon

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Original Provisions : [Article 370\(3\)](#)

- **President may declare**, by public notification
 - that this article shall **cease to be operative** or
 - that **this article shall be operative only with such exceptions and modifications as he may specify:**

Provided that

- **Recommendation** of the Constituent Assembly of the State
 - **shall be necessary** before the President issues such a notification

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Explanatory Notes by DLA on Article 370(3)

- Article 370(3) states that the President can issue a notification making the whole of Article 370 inoperative *if such a recommendation is made to the President by the Constituent Assembly of J&K.*
- Article 370 was intended to be temporary until Kashmir’s Constitution was drafted and the Constituent Assembly of Kashmir had the power to recommend abrogation of Article 370 to the President.



- The Constituent Assembly of Kashmir however dissolved itself in 1957 without making any recommendation for amendment or abrogation of article 370.
- Supreme Court has ruled on multiple occasions that Article 370 is now a permanent part of the Constitution since the only body that could have abrogated it has been dissolved without doing so.

Orders under article 370

- Under article 370, the President issued the first Order in 1950. In 1952, there was an agreement at Delhi between GoI and State of J&K.
- In 1954, Constituent Assembly of J&K approved the State's accession to India and the Delhi Agreement. In 1954, President issued the Constitution (Application to J&K) Order superseding the earlier Order of 1950.
- This Order regulated the Constitutional position of J&K till 5 August 2019.

Prominent Features of the 1954 Presidential Order:

- (1)
 - Name, area or boundary of J&K cannot be changed by the Union without consent of its legislature
- (2)
 - J&K has its own constitution. Part VI of Indian Constitution is not applicable to J&K
- (3)
 - Parliament can make laws on most of Union List matters and on a good number of Concurrent List matters
- (4)
 - Residuary power of law making belongs to the State legislature except in matters like terrorism, sovereignty, integrity etc.
- (5)
 - Preventive detention laws made by Parliament are not applicable to J&K



(6)

- Part III is applicable to the State with modifications. Right to Property is still a Fundamental Right in J&K

(7)

- Special rights are granted to permanent residents of State in matters of public employment, settlement and immovable property

(8)

- Part IV and IVA of Indian constitution are not applicable to J&K

(9)

- President has no power to declare a financial emergency in J&K

(10)

- National Emergency on the ground of internal disturbance requires concurrence of State govt

(11)

- Article 356 is applicable, but in a different form. President's rule can be imposed under Indian Constitution, and Governor's rule under State constitution

(12)

- Amendment to the Constitution does not apply unless it is extended to the State by a Presidential order

(13)

- Provisions relating to special leave jurisdiction of SC, Election Commission and CAG are applicable to J&K

(14)

- J&K High Court can issue writs only for enforcement of FRs and not for any other purpose



THE DEVELOPMENTS OF AUGUST 2019:

Constitution (Application to Jammu and Kashmir) Order 2019

C.O. 272 : 5 August 2019

- In exercise of powers conferred by clause (1) of article 370, the President, with **concurrence** of the Govt of Jammu and Kashmir, is pleased to make the following Order:
- **All provisions of the Constitution shall apply** to the State of Jammu and Kashmir
- These provisions shall apply with the following exceptions and modifications:
 - To article 367, there shall be added the following clause:

(4) For purposes of this Constitution as it applies to Jammu and Kashmir

(d) in proviso to clause (3) of article 370: “Constituent Assembly of the State” shall read “**Legislative Assembly of the State**”
- This Order shall come into force **at once** and shall thereupon **supersede** the Constitution Order 1954.

Explanatory Notes by DLA on CO 272 dated August 5, 2019

- The Presidential Order uses Article 370(1)(d) to apply all provisions of the Indian Constitution (other than Articles 1 and 370 – which are already applicable) to J&K.
- The concurrence of J&K government is necessary to effect such a step but since J&K is presently under President’s rule and has no state government, this was effectively dispensed with.
- While applying provisions of the Constitution to J&K, the President effected one ‘modification’ to Article 367. The Presidential Order inserts a new sub-clause (4)(d) in Article 367 which states that the words “*Constituent Assembly*” in Article 370(3) must be read as “*Legislative Assembly of the State*”.



- The government has sought to overcome the problem of the Constituent Assembly not having abrogated Article 370 by requiring that “*Constituent Assembly*” in Article 370(3) be read as the J&K Assembly. By doing so, it now becomes possible for the J&K Assembly to do what the Constituent Assembly did not i.e. recommend abrogation of Article 370.
- To be clear, the President has not amended Article 370(3) itself because he does not have the power to do so. He can only modify other provisions of the Constitution when making them applicable to J&K.
- Applying this new interpretation of Article 370(3), the President could have abrogated Article 370 upon a recommendation to this effect being made by the J&K Assembly. But since J&K is now under President’s rule and has no legislative assembly at the moment, it fell upon Parliament to make this recommendation under the newly ‘modified’ Article 370(3).

Further Notes

- The President’s power to modify the Constitution under Article 370(1)(d) is only limited to J&K. The power to amend the Constitution vests exclusively with Parliament.
- Currently therefore, the Constitution as it is applicable to J&K contains Article 367(4)(d) which requires ‘Constituent Assembly’ in Article 370(3) to be read as the J&K Assembly but this is only applicable to J&K.
- A formal amendment to Article 367 or 370(3) would strengthen the President’s hand as and when he issues a notification to abrogate Article 370.

Declaration under Article 370(3) of the Constitution:

C.O. 273 6th August, 2019

- In exercise of powers conferred by article 370(3) read with article 370(1):
- the President is pleased to declare



- on the recommendation of Parliament
- that *all clauses of article 370 shall cease to be operative from 6th August 2019*
- except the following:

Article 370:

- **All provisions of this Constitution**, without any modifications or exceptions
- **shall apply to the State of Jammu and Kashmir...**
 - notwithstanding anything contrary
 - in article 152 or 308 or any other article of this Constitution or in any provision of the Constitution of Jammu and Kashmir or
 - in any law, judgment, order, by-law, rule, regulation, notification, custom or usage having the force of law in India or
 - in any other instrument, treaty or agreement as envisaged under article 363 or otherwise

THE PRESENT ARTICLE 370:

- **All provisions of this Constitution**
- **shall apply to the State of Jammu and Kashmir...**
- without any modifications or exceptions
