



## SC Verdict on Revocation of Article 370

**For Prelims:** [Article 370](#), [Supreme Court](#), [Special Status](#), [Union Territory](#), [Asymmetric Federalism](#), [Constituent Assembly of India](#), [Instrument of Accession](#), [Articles 371](#), [371A-I](#), [Article 367](#), [Legislative Assembly](#).

**For Mains:** Relevance of the judgement of the [Supreme Court](#) on the polity and the economy of the [Union Territory of Jammu and Kashmir](#).

[Source: IE](#)

### Why in News?

Recently, The [Supreme Court](#) gave its verdict on the Union government's **2019 move to amend [Article 370 of the Constitution](#)**. The abrogation had ended the [special status](#) conferred to the erstwhile state of Jammu and Kashmir. **The court held the Constitutional order that revoked Article 370 as valid.**

### What is the Recent Judgement of the Supreme Court?

- **Jammu and Kashmir did not Possess Sovereignty:**
  - SC observed that there is much evidence in Article 370 and the J&K Constitution to show that in regards to Kashmir, a merger agreement was not necessary to surrender its sovereignty.
  - **Article 370(1) applied Article 1** of the Constitution of India (where J&K was listed as a Part III State) with no modifications.
    - **Section 3** of the J&K Constitution explicitly states that **“the State of Jammu and Kashmir is and shall be an integral part of the Union of India.”**
    - **Section 147 of the Indian constitution prohibited any amendments to Section 3**, further making the provision absolute.
      - Thus, Court said that the Constitution of India, **“became the supreme governing document of the land.”** Further, the Preamble to the J&K Constitution shows a **“clear absence of...a reference to sovereignty.”**
- **Article 370 is a Temporary Provision:**
  - The SC relied on the fact that the Constitution framers placed **Article 370 with the temporary and transitional provisions contained in Part XXI.**
  - Then, it pointed out that the **Instrument of Accession (IoA)** made it “abundantly clear” that Article 1 which stated that **“India that is Bharat shall be a Union of States” applied in its entirety to J&K.**
- **Constitutional Validity of Proclamations Under President’s Rule:**
  - SC’s Bench concurred that the President has the power to make **“irreversible changes, including the dissolution of the State Assembly,”** and that the President’s powers are kept in check by **“judicial and constitutional scrutiny.”**
- **The Constitution of J&K Stands Inoperative:**
  - Court held that it is no longer necessary for the Constitution of J&K through which only certain provisions of the Indian Constitution applied to J&K, to exist.

- The implicit but necessary consequence of the application of the Constitution of India in its entirety to the State of Jammu and Kashmir is that the Constitution of the State is inoperative.
- **Set up a Truth and Reconciliation Commission to Address Human Rights:**
  - The SC recommended that the Union set up a **“truth and reconciliation Commission”** just like South Africa did **post-apartheid** to investigate human rights violations by both state and non-state actors. **The exercise should be time-bound.**

## What was the Special Status of J&K?

- **About:**
  - **On 5<sup>th</sup> August 2019**, the [President of India](#) in the exercise of the powers conferred by Article 370(1) of the Constitution issued the **Constitution (Application to Jammu and Kashmir) Order, 2019**.
    - Through this, the Government of India has **made modifications to Article 370 itself (not revoked it)**.
  - With this, the Government of India has dramatically altered the relationship between the state of Jammu and Kashmir and the Indian Union.
- **Background:**
  - On 17<sup>th</sup> October 1949, Article 370 was added to the Indian constitution, as a **'temporary provision'**, which exempted Jammu & Kashmir, permitting it to draft its own Constitution and restricting the Indian Parliament's legislative powers in the state.
  - It was introduced into the draft constitution by N Gopaldaswami Ayyangar as Article 306 A.
- **Article 370:**
  - The [Constituent Assembly of Jammu & Kashmir](#) was empowered to recommend which articles of the Indian Constitution should apply to the state.
    - The J&K Constituent Assembly was dissolved after it drafted the state's constitution. **Clause 3 of Article 370 gives the President of India the power to amend its provisions and scope.**
  - [Article 35A](#) stems from Article 370 and was introduced through a Presidential Order in 1954, on the recommendation of the J&K Constituent Assembly.
    - Article 35A empowers the Jammu & Kashmir legislature to define the **permanent residents of the state, and their special rights and privileges.**
    - It appears in Appendix I of the Constitution of India.
  - Several states have different constitutional guarantees. **These are codified in Articles 371, 371A- I** for states including Andhra Pradesh, Maharashtra, Gujarat, and those in the North East.

## Note

For the rest of India, the Constitution lays down an elaborate procedure in [Article 367](#) to **enlarge or curb state power through a constitutional amendment**. However, for J&K, the Constitution provides that a mere executive action under Article 370 would suffice.

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## What are the Key Changes Brought Out by the Order of 2019?

### ▪ Constitution (Application to Jammu and Kashmir) Order, 2019:

- The Constitution (Application to Jammu and Kashmir) Order, 2019 has replaced the [Presidential Order of 1954](#).
  - Subsequently, the [Jammu and Kashmir Reorganisation Bill, 2019](#), passed by Parliament divides the state of Jammu and Kashmir into two new Union Territories (UTs): Jammu & Kashmir, and Ladakh.
- This is the **first time that a state has been converted into UTs**.
  - Of the six Lok Sabha seats currently with the state of Jammu and Kashmir, five will remain with the union territory of Jammu and Kashmir, while one will be allotted to Ladakh.
- The **UT of Jammu and Kashmir** will have an Assembly, like in Delhi and Puducherry.
  - Ladakh will be a UT without legislature
  - Kashmir will no longer have a Governor, but rather a [Lieutenant Governor](#) like in Delhi or Puducherry.

### ▪ Status of J&K Union Territory:

- J&K Assembly will have a five-year term, not six, as was the earlier case.
- Section 32 of the J&K 2019 Bill proposes that the Assembly **can make laws on any subjects in the State and Concurrent lists except on state subjects relating to “public order” and “police”**.
  - This is similar to [Article 239A of the Constitution](#) that is applicable to Union Territories of Puducherry and Delhi.
- However, by insertion of [Article 239AA](#) and by virtue of the [69<sup>th</sup> Constitutional Amendment](#), the Delhi Assembly cannot legislate on matters in entry 18 of the State List, i.e. land.
  - In the case of J&K, the Assembly can make laws on land.

### ▪ The Special Status of J&K Abolished:

- Jammu & Kashmir **will no longer have the separate constitution, flag or anthem**.
- The citizens of Jammu and Kashmir will not have dual citizenship.
- As the new union territory of Jammu and Kashmir will be subject to the Indian Constitution, its citizens will now have the Fundamental Rights enshrined in the Indian constitution.
- **Article 360**, which can be used to declare a Financial Emergency, will **now also be applicable**.

- All laws passed by Parliament will be applicable in Jammu and Kashmir, including the [Right to Information Act](#) and the [Right to Education Act](#).
- The [Indian Penal Code](#) will replace the **Ranbir Penal Code** of Jammu and Kashmir.
- **Article 35A, which originates from the provisions of Article 370 stands null and void.**

## Note

J&K historically had a unique relationship with the Union. There was no merger agreement between J&K and the Union, **but only the [Instrument of Accession \(IoA\)](#)**. Hence there is no transfer of sovereignty, and the state's autonomy has to be maintained. The IoA deals with external sovereignty. External sovereignty is lost with a few exceptions here and there. **CJI in recent judgement said that J&K has no internal sovereignty after the signing of IoA.**

## What were the Different Legal Challenges in Abrogation of Article 370?

### ▪ Constitutional Challenges:

- Presidential order that sought to abrogate Jammu and Kashmir's special status, according to **Article 370 (3) the President would require the recommendation of the constituent assembly of Jammu and Kashmir** to make such a change.
- However, the **2019 Presidential order adds a sub-clause to Article 367**, replacing the terms:
  - "Constituent Assembly of Jammu and Kashmir" to mean "legislative Assembly of Jammu and Kashmir".
  - "Government of Jammu and Kashmir" to mean "Governor of Jammu and Kashmir acting on the aid and advice of the council of ministers".
- The government **sought to dilute the autonomy under Article 370 without bringing a Constitutional Amendment** that would require a two-thirds majority in the Parliament.
- This provision **was challenged in the Supreme Court on the ground that it added article 35A to the Indian Constitution only through a Presidential Order.**
- Conversion of Jammu and Kashmir into a Union Territory **is in violation of [Article 3](#), as the Bill was not referred to the President by the State Assembly.**
- In the reorganisation of the state, **the Presidential order also requires the concurrence of the government of the state.** However, since Jammu & Kashmir is currently under the Governor's rule, the Governor's concurrence is deemed to be the government's concurrence.

### ▪ Federalism Issue:

- The Instrument of Accession was **like a treaty between two sovereign countries** that had decided to work together.
- In **Santosh Kumar v. State of J&K & ors, 2017**, the SC said that due to historical reasons, Jammu and Kashmir had a special status.
  - In **SBI v Zaffar Ullah Nehru, 2016**, the SC held that Article 370 cannot be repealed without the concurrence of the Constituent Assembly of Jammu and Kashmir.

## What are the Signs of Peace and Security in J&K After the Abrogation of Article 370?

### ▪ Reduction in Stone Pelting and Militancy:

- Increased security presence and action by central agencies like the [National Investigation Agency \(NIA\)](#) led to decrease in the cases of stone pelting.
- The number of stone-pelting incidents decreased from 618 in 2019 to 222 in 2020.
- Injuries to security forces decreased from 64 in 2019 to 10 in 2021.

### ▪ Reduction in Civilian Injuries:

- Civilian Injuries from pellet guns and baton charges reduced from 339 (2019) to 25 (2021).

- Law and Order also improved in J&K as only 20 law and order incidents were reported in 2022.
- **Arrests of Militants and Over-Ground Workers (OGWs):**
  - Arrests of OGWs of militant groups increased from 82 in 2019 to 178 in 2021.
  - There has been a 32% decline in terrorist acts from August 2019 to June 2022, compared to the preceding 10 months.



## How did the International Community Respond to the Abrogation of Article 370?

- **Pakistan and the Muslim World:**
  - Pakistan refused to acknowledge the supremacy of the Indian Constitution over Jammu and Kashmir.
  - The [Organisation of Islamic Cooperation \(OIC\)](#) reiterated its call to reverse “all illegal and unilateral measures taken since 5th August 2019 aimed at changing the internationally recognised disputed status of the territory”.
- **China:**

- China said that it did not recognise the “**so-called union territory of Ladakh set up unilaterally and illegally by India**”, and the western section of the China-India border has always belonged to China.
- **United States:**
  - It expressed **concern over detentions and restrictions in J&K**, but also called on all parties to maintain peace and stability along the **Line of Control**, including “**taking firm and resolute steps**” to combat cross-border terrorism.
- **European Union:**
  - It called on **India and Pakistan to reopen dialogue**, and reiterated the grouping’s backing for a bilateral solution on Kashmir.
- **Russia:**
  - Russia **underlined that the changes were carried out “within the framework of the Constitution of the Republic of India”**. Moscow also stressed the “bilateral” nature of the J&K issue and mentioned the **Simla Agreement (1972)** and **Lahore Declaration (1999)**.

## Way Forward

- A **10-year strategy for 3Es (education, employment and employability)** should be deployed for uplifting Kashmir.
- The plan for a ‘**zero-terror incident**’ in J&K has been in force since 2020 and will be successful by 2026.
- The **Gandhian path of non-violence and peace** should be adopted to solve the legitimacy crisis in Kashmir.
- The government can mitigate the challenges emanating out of Action on article 370 by launching a **comprehensive outreach programme to all Kashmiris**.
- In this context, Atal Bihari Vajpayee's version of **Kashmiriyat, Insaniyat, and Jamhooriyat (inclusivity culture of Kashmir, humanitarianism and democracy)** for Kashmir solution, should become a cornerstone of the forces of reconciliation in the State.

## UPSC Civil Services Examination Previous Years’ Questions (PYQs)

### Prelims

**Q. Siachen Glacier is situated to the (2020)**

- (a) East of Aksai Chin
- (b) East of Leh
- (c) North of Gilgit
- (d) North of Nubra Valley

**Ans: (d)**

**Q. Which one of the following is the largest (areawise) Lok Sabha constituency? (2008)**

- (a) Kangra
- (b) Ladakh
- (c) Kachchh
- (d) Bhilwara

**Ans: (b)**

### Mains:

**Q. To what extent is Article 370 of the Indian Constitution, bearing marginal note “Temporary provision with respect to the State of Jammu and Kashmir”, temporary? Discuss The future prospects of this provision in the context of Indian polity. (2016)**

**Q.** Analyze internal security threats and transborder crimes along Myanmar, Bangladesh and Pakistan borders including Line of Control (LoC). Also discuss the role played by various security forces in this regard. **(2020)**

**Q.** The banning of 'Jamaat-e-islami' in Jammu and Kashmir brought into focus the role of over-ground workers (OGWs) in assisting terrorist organizations. Examine the role played by OGWs in assisting terrorist organizations in insurgency affected areas. Discuss measures to neutralize the influence of OGWs. **(2019)**

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