

CHMUN-19

Study Guide

Revocation of Article 370

The Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens **JUSTICE**, social, economic and political; **LIBERTY** of thought, expression, belief, faith and worship; **EQUALITY** of status and of opportunity; and to promote among them all **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation; **IN OUR CONSTITUENT ASSEMBLY** this 26th day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Letter From the Executive Board

Greeting Parliamentarians!

It gives us immense pleasure to welcome you to the simulation of Lok Sabha at Choithram Model United Nations'19

This study guide is by no means the end of research, we would very much appreciate if the delegates are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance. In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee.

All the Best!

Harnam Singh Chhabra (Chair)

Pratyush Jain (Chair)

Ishika Bedia (Vice Chair)

Himanshu Rathi (Vice Chair)

Sahaj Malhotra (Vice Chair)

Article 370 of the Indian constitution

ARTICLE 370 gave special status to Jammu & Kashmir allowing it to have a separate constitution, a state flag and autonomy over the internal administration of the state.

History

The article was drafted in [Part XXI](#) of the [Constitution: Temporary, Transitional and Special Provisions](#). The [Constituent Assembly of Jammu and Kashmir](#), after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether. After consultation with the state's Constituent Assembly, the [1954 Presidential Order](#) was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending the abrogation of Article 370, the article was deemed to have become a permanent feature of the Indian Constitution.

This article, along with [Article 35A](#), defined that the Jammu and Kashmir state's residents live under a separate set of laws, including those related to [citizenship](#), ownership of property, and [fundamental rights](#), as compared to resident of other Indian states.^[8] As a result of this provision, Indian citizens from other states could not purchase land or property in Jammu & Kashmir.

The Purpose OF Article 370

The state of [Jammu and Kashmir](#)'s original accession, like all other [princely states](#), was on three matters: defence, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular [Saurashtra Union](#), [Travancore-Cochin](#) and [Mysore](#).

Even though the States Department developed a model constitution for the states, on 19 May 1949, the rulers and chief ministers of all the states met in the presence of States Department and agreed that separate constitutions for the states were not necessary. They accepted the Constitution of India as their own constitution. The states that did elect constituent assemblies suggested a few amendments which were accepted. The position of all the states (or unions of states) thus became equivalent to that of regular Indian provinces. In particular, this meant that the subjects available for legislation by the central and state governments was uniform across India.

Accordingly, the Article 370 was incorporated into the Indian Constitution, which stipulated that the other articles of the Constitution that gave powers to the Central Government would be applied to Jammu and Kashmir only with the concurrence of the State's constituent assembly. This was a "temporary provision" in that its applicability was intended to last till the formulation and adoption of the State's constitution. However, the State's constituent assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of the Article 370. Thus, the Article was considered to have become a permanent feature of the Indian constitution, as confirmed by various rulings of the [Supreme Court of India](#) and the [High Court of Jammu and Kashmir](#), the latest of which was in April 2018.

Presidential Orders

When Article 370 was originally created, only two articles of the Indian Constitution applied in full to Jammu and Kashmir. Other provisions of the Constitution would apply with exceptions and modifications specified by the President in his Order in consultation with or the concurrence of the government of the state. In exercise of these powers, as conferred by clause (1) of article 370 of the Constitution, the President made a series of orders with the concurrence of the Government of the State of Jammu and Kashmir.

1950

The Presidential order of 1950, officially **The Constitution (Application to Jammu and Kashmir) Order, 1950**, came into force on 26 January 1950 contemporaneously with the [Constitution of India](#). It specified the subjects and articles of the Indian Constitution that corresponded to the Instrument of Accession as required by the clause b(i) of the Article 370.

Thirty eight subjects from the [Union List](#) were mentioned as matters on which the Union legislature could make laws for the State. Certain articles in ten of the twenty-two parts of the Indian Constitution were extended to Jammu and Kashmir, with modifications and exceptions as agreed by the state government.

In this first Presidential Order under Article 370 "235 articles of the Indian Constitution were inapplicable to the state of Jammu & Kashmir, 9 were partially applicable, and 29 were applicable in a modified form".

This order was superseded by the Presidential order of 1954.

1952

The Presidential order of 1952 was issued on 15 November 1952, at the request of the state government. It amended the Article 370, replacing the phrase "recognised by the President as the [Maharaja of Jammu and Kashmir](#)" by "recognized by the President on the recommendation of the [Legislative Assembly of the State](#) as the [Sadr-i-Riyasat](#)". The amendment represented the abolition of the [monarchy](#) of Jammu and Kashmir.^{[37][38]}

Background: The [Constituent Assembly of Jammu and Kashmir](#) was elected in 1951 and convened on 31 October 1951. The Basic Principles committee of the Constituent Assembly recommended the abolition of the monarchy, which was unanimously approved by the Assembly on 12 June 1952. In the same month, the Hindu-dominated [Jammu Praja Parishad](#) submitted a memorandum to the President of India demanding the full application of the Indian Constitution to the State. The Government of India summoned a delegation from Jammu and Kashmir in Delhi for discussions on the relations between the Centre and the State. After discussions, the **1952 Delhi Agreement** was reached.

The State's prime minister [Sheikh Abdullah](#) was slow to implement the provisions of the Delhi Agreement. However, in August 1952, the State Constituent Assembly adopted a resolution abolishing the monarchy and replacing the position by an elected Head of State (called *Sadar-i-Riyasat*). Despite reservations on this piecemeal approach to adopting provisions, the Central Government acquiesced, leading to the Presidential Order of 1952. The Legislative Assembly elected [Karan Singh](#), who was already acting as the Prince Regent, as the new *Sadar-i-Riyasat*.

1944

The Presidential order of 1954, officially **The Constitution (Application to Jammu and Kashmir) Order, 1954** came into force on 14 May 1954. Issued with the agreement of the State's Constituent Assembly, it was a comprehensive order seeking to implement the 1952 Delhi Agreement. Arguably, it went further than the Delhi Agreement in some respects.

The provisions implementing the Delhi Agreement were:

1. Indian citizenship was extended to the 'permanent residents' of Jammu and Kashmir (formerly called 'state subjects'). Simultaneously, the [Article 35A](#) was added to the Constitution, empowering the state legislature to legislate on the privileges of permanent residents with regard to immovable property, settlement in the state and employment.
2. The [fundamental rights](#) of the Indian constitution were extended to the state. However, the State Legislature was empowered to legislate on preventive detention for the purpose of internal security. The State's land reform legislation (which acquired land without compensation) was also protected.
3. The jurisdiction of the [Supreme Court of India](#) was extended to the State.
4. The Central Government was given power to declare [national emergency](#) in the event of external aggression. However, its power to do so for internal disturbances could be exercised only with the concurrence of the State Government.

In addition, the following provisions which were not previously decided in the Delhi Agreement were also implemented:

1. Financial relations between the Centre and the State were placed on the same footing as the other States. The State's custom duties were abolished.
2. Decisions affecting the disposition of the State could be made by the Central Government, but only with the consent of the State Government.

Background: The State Government's decision to abolish the monarchy led to increased agitation by the Jammu Praja Parishad, which found support among the Ladakhi Buddhists and the Hindu parties of India. In response, Sheikh Abdullah started questioning the value of Kashmir's accession to India, leading to a loss of support among his Cabinet members. On 8 August 1953, Sheikh Abdullah was dismissed from the post of prime minister by the *Sadar-i-Riyasat* [Karan Singh](#) and his erstwhile deputy [Bakshi Ghulam Mohammad](#) was appointed in his place. Abdullah and several of his colleagues were arrested and put in prison.

The purged Constituent Assembly, with 60 of the original 75 members, unanimously adopted on 6 February 1954, the recommendations of its Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship. According to the Basic Principles Committee:

While preserving the internal autonomy of the State, all the obligations which flow from the fact of accession and also its elaboration as contained in the Delhi Agreement should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms.

The Presidential order of 1954 was issued based on these recommendations.

J&Ks Structure and Limitations

India's constitution is a [federal structure](#). The subjects for legislation are divided into a 'Union List', a 'State List', and a 'Concurrent List'. The [Union List](#) of ninety-six subjects, including defence, military and foreign affairs, major transport systems, commercial issues like banking, stock exchanges and taxes, are provided for the Union government to legislate exclusively. The [State List](#) of sixty-six items covering prisons, agriculture, most

industries and certain taxes, are available for States to legislate on. The [Concurrent List](#), on which both the Centre and States may legislate include criminal law, marriage, bankruptcy, trade unions, professions and price control. In case of conflict, the Union legislation takes precedence. The 'residual power', to make laws on matters not specified in the Constitution, rests with the Union. The Union may also specify certain industries, waterways, ports etc. to be 'national', in which case they become Union subjects.

In the case of Jammu and Kashmir, the 'Union List' and the 'Concurrent List' were initially limited to the matters ceded in the Instrument of Accession; later, they were extended with the concurrence of the State Government. The 'residual powers' continued to rest with the State rather than the Union. According to the State Autonomy Committee, ninety-four of the ninety-seven items in the Union List applied to Jammu and Kashmir; the provisions of the Central Bureau of Intelligence and Investigation and preventive detention did not apply. Of the 'Concurrent List', twenty-six of the forty-seven items applied to Jammu and Kashmir; the items of marriage and divorce, infants and minors, transfer of property other than agricultural land, contracts and torts, bankruptcy, trusts, courts, family planning and charities had been omitted - i.e., the State had exclusive right to legislate on those matters. The right to legislate on elections to state bodies also rested with the State.

Constitution of J&K

Preamble and Article 3 of the erstwhile Constitution of Jammu and Kashmir stated that the State of Jammu and Kashmir is and shall be an integral part of the Union of India. Article 5 stated that the executive and legislative power of the State extend to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India. The constitution was adopted on 17 November 1956 and came into force on 26 January 1957.

The Constitution of Jammu and Kashmir was rendered infructuous by The Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) issued by the president of India on 5 August 2019.

Facts

1. The negotiations were held at the residence of Home minister [Vallabhbhai Patel](#) on 15–16 May 1949, and prime minister Nehru recorded the results in a letter on 18 May. It said in particular, "It will be for the Constituent Assembly of the State when convened, to determine in respect of which other subjects the state may accede".
2. 238 was repealed by the [7th Amendment](#) in 1956.
3. This was changed via the [1952 Presidential order](#).
4. The Constituent Assembly was dissolved by a resolution passed by the representatives of Kashmir in 1956, and it ceased to exist on January 26, 1957.
5. While the Congress party central government led by Rajiv Gandhi was in power, the President of India made an order under Article 370, on 30 July 1986, extending to Jammu and Kashmir [Article 249](#) of the Indian Constitution in order to empower Indian Parliament to legislate on matters in the State List after obtaining a Rajya Sabha resolution. The then Governor Jagmohan gave concurrence on behalf of the state government while the state was under President's rule, despite protests from G. A. Lone – the Law secretary of Jammu & Kashmir – and in the absence of a Council of Ministers.
6. In the 1972 case *Mohd Maqbool Damnoo vs State of Jammu and Kashmir* (1 SCC 536), the petitioner challenged the constitutionality of interpreting and replacing the *Sadar-i-Riyasat* with the Governor of the state. The Supreme Court of India held that the "Governor is the successor to the *Sadar-i-Riyasat* and is able to give the State Government's concurrence to any amendments under Article 370", states Louise Tillin
7. The legal term "permanent residents" replaced the term "state subjects" in earlier laws
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