

HOW J&K'S STATUS IS BEING CHANGED

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

Jawaharlal Nehru with Sheikh Abdullah. The HINDU PHOTO ARCHIVES

The special status enjoyed by Jammu and Kashmir under Article 370 of the Constitution was considered temporary, and it will cease to be operative if the President issues a public notification to that effect. However, prior to that, a recommendation is necessary from the Constituent Assembly of Jammu and Kashmir.

As a result of Article 370, Jammu and Kashmir had its own Constitution, and laws passed by Parliament will not be applicable to the State unless the State government gives its concurrence. The President is empowered to decide what provisions of the Constitution of India would be applicable to the State and what are the exceptions, but with the State government's concurrence.

The Constitution (Application to Jammu and Kashmir) Order, 1954, lists the Articles and provisions that apply to J&K. These special measures can be altered only on the recommendation of the Sadar-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers or by the "Constituent Assembly" of that State. As of now, there is no "Constituent Assembly".

This was how the Modi government has changed the special status of Kashmir:

President Ram Nath Kovind issued a presidential order under Article 370(1) of the Constitution. This clause enables the President to specify the matters which are applicable to Jammu and Kashmir. As it can be issued only with the Jammu and Kashmir government's concurrence, the notification uses the words "with the concurrence of the Government of the State of Jammu and Kashmir". This presumably means the Governor, who is now administering the State under President's Rule, has given his concurrence on behalf of the State government.

The Order supersedes the 1954 Order. This effectively means that all the provisions that formed the basis of a separate "Constitution" of Jammu and Kashmir stand abrogated. The Order declares that all the provisions of the Constitution of India, shall apply to Jammu and Kashmir too.

However, some special measures were still needed for the scrapping of Article 370 altogether. Therefore, a few clauses were added to Article 367 of the Constitution, which contains "Interpretations". They contain guidance on how to read or interpret some provisions.

The new clauses say, when applicable to Jammu and Kashmir, all references to the 'Sadar-i-Riyasat', acting on the aid and advice of the Council of Ministers, will be construed as references to the Governor of Jammu and Kashmir.

All references to the State government shall mean "the Governor". And most importantly, the reference to the "Constituent Assembly" in a proviso to Article 370 (3) has been amended to read "Legislative Assembly of the State". This is the proviso that says the President can declare that Article 370 is no more operative only on the recommendation of the Constituent Assembly. As there is no Constituent Assembly in existence now, there is no body to "recommend" the demise of Article 370. Therefore, the State Assembly has to play that role.

The government has made use of the fact that Jammu and Kashmir is under President's Rule, during which Parliament performs the legislative functions of the State Assembly.

Thus, when Union Home Minister Amit Shah introduced two resolutions, one, to recommend that the President issue a notification rendering Article 370 inoperative, and another to accept the Jammu and Kashmir Reorganisation Bill, Parliament was ostensibly acting on the State government/Assembly's recommendation.

You need to subscribe or sign-up to read Today's Paper articles.

Already a subscriber? [Sign in](#)

Already a subscriber? [Sign in](#)

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading our articles without intrusion from advertisements.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

*Our Digital Subscription plans do not currently include the e-paper or Android, iPhone, iPad mobile applications and print. Our plans enhance your reading experience on the website.

Support The Hindu's new online experience with zero ads.

Already a user? [Sign In](#)

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com