



ARTICLE 370

GOVERNMENT OF INDIA

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Written By: Dheeraj Sharma



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About:

Union Minister for Home Affairs, Shri Amit Shah, introduced two bills and two resolutions regarding Jammu & Kashmir (J&K) today. Both the bills were passed by Rajya Sabha unanimously.

Abolish of Article 370:

- Government is moving a resolution which would repeal the provisions under Article 370 of the Constitution of India, which granted a special status to the state of J&K.
- The provisions of Article 370 would cease to exist from the date President of India issues a notification in this regard, after the recommendation of the Parliament.
- Consequently, the Constitution of India would get applicable to J&K, on par with other states/UTs of the country, the Minister added.
- Under article 370(3), there is a provision that President, on recommendation of the Parliament, has the power to amend or cease the implementation of article 370, through a public notification.

Government of India (Arguments) for this move:

Political benefits:

- Article 370 was a temporary and transient provision, it had to go. J&K would become a true part of India in letter and spirit once article 370 is removed.
- After partition Refugees who came from Pakistan did not get citizenship till now.
- They cannot become councillors in the state.
- 73rd and 74th Amendments to the Constitution could not be applied to J&K due to article 370. Panchayat and Nagar Palika elections could not



be held.

Social benefits:

The provisions of Article 370 are discriminatory on the basis of gender, class, caste and place of origin.

- Every Daughter of the state marrying outside the state lose their rights to property.
- SC and ST people have been discriminated against and have been deprived of reservation to political offices.

Economic Benefits:

- Post the repeal of the Article 370, doors to private investment in J&K would be opened.
- Opening of buying of lands would bring in investments from private individuals and multinational companies and give a boost to the local economy.

Internal security:

- According to Home Minister, had article 370 would not been there, civilians and soldiers wouldn't have lost their lives during 1989-2018.

Government (Counter-arguments) against Apprehensions:

- Removing article 370 would not destroy Kashmiri culture as all states have preserved their culture and language after becoming a part of the Union of India.
- If the Union Territory model works well, government would also consider giving J&K the status of state again. No constitutional amendment would be required.
- Shri Shah said that it's a path breaking decision by the Government.

Important Points From Bill:

1. Act may be called the Jammu and Kashmir Reorganisation Act, 2019.
2. REORGANISATION OF THE STATE OF JAMMU AND KASHMIR
 - o There shall be formed a new Union territory to be known as the Union territory of Ladakh comprising the following territories of the existing



State of Jammu and Kashmir, namely:— "Kargil and Leh districts", and thereupon the said territories shall cease to form part of the existing State of Jammu and Kashmir.





- o There shall be formed a new Union territory to be known as the Union territory of Jammu and Kashmir comprising the territories of the existing State of Jammu and Kashmir other than those specified in section 3.
- o The Governor of the existing State of Jammu and Kashmir shall be the Lieutenant Governor for the Union territory of Jammu and Kashmir, and Union territory of Ladakh for such period as may be determined by the President.

In the **First Schedule** to the Constitution, —

“I. THE STATES”,—

- o entry 15 shall be deleted.
- o entries from 16 to 29 shall be renumbered as 15 to 28.

“II. UNION TERRITORIES”,— after entry 7, the following entries shall be inserted, that is:—

- o “8 Jammu and Kashmir: The territories specified in section 4 of the Jammu and Kashmir Reorganization Act, 2019”.
- o “9 Ladakh: The territories specified in section 3 of the Jammu and Kashmir Reorganization Act, 2019”.
- o Nothing in the foregoing provisions of this Part shall be deemed to affect the power of the Government of successor Union territory of Jammu and Kashmir to alter, after the appointed day, the name, area or boundaries of any district or other territorial division in that Union territory.

In the **Fourth Schedule** to the Constitution —

- o entry 21 shall be deleted
- o entries 22 to 31 shall be renumbered as entries 21 to 30, respectively.
- o Four sitting members of the Council of States representing the existing State of Jammu and Kashmir shall be deemed to have been elected to fill the seats allotted to the Union territory of Jammu and Kashmir, as specified in the First Schedule to this Act.
- o The term of office of such sitting members shall remain unaltered.
- 3. The Lieutenant Governor and The Legislative Assembly of Union territory of Jammu and Kashmir.



- o The provisions contained in article 239A, which are applicable to “Union territory of Puducherry”, shall also apply to the “Union territory of Jammu and Kashmir”.
- o There shall be an Administrator appointed under article 239 of the Constitution of India for the Union territory of Jammu and Kashmir and shall be designated as Lieutenant Governor of the said Union territory.
- o There shall be a Legislative Assembly for the Union territory of Jammu and Kashmir.
- o The total number of seats in the Legislative Assembly of the Union territory of Jammu and Kashmir to be filled by persons chosen by direct election shall be 107.
- o Notwithstanding anything contained in sub-section (3), until the area of the Union territory of Jammu and Kashmir under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives—
 - ✓ 24 seats in the Legislative Assembly of Union territory of Jammu and Kashmir shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly.
 - ✓ The said area and seats shall be excluded in delimiting the territorial constituencies as provided under PART V of this Act.
- 4. On and from the appointed day, the Delimitation of Assembly Constituencies Order, 1995, as applicable to Union territory of Jammu and Kashmir, shall stand amended as directed in the Third Schedule of this act.
- 5. Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in the Legislative Assembly of the Union territory of Jammu and Kashmir.
- 6. The number of seats reserved for the Scheduled Castes and the Scheduled Tribes in the Legislative Assembly of the Union territory of Jammu and Kashmir under sub-section (6) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the Union territory of Jammu and Kashmir or of the Scheduled Tribes in the Union territory of Jammu and Kashmir, in respect of which seats are so reserved, bears to the total population of the Union territory of Jammu and Kashmir.
- 7. The provisions of article 286, article 287 and article 288 shall apply in



relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in those articles as they apply in relation to any law passed by the Legislature of a State with respect to those matters.

8. The provisions of article 304 shall, with the necessary modifications, apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in that article as they apply in relation to any law passed by the Legislature of a State with respect to those matters.
9. A Bill / Amendment shall not be introduced into or moved in, the Legislative Assembly except on the recommendation of the Lieutenant Governor, if such Bill or Amendment makes provision for any of the following matters:—
 - The imposition, abolition, remission, alteration or regulation of any tax.
 - The amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of the Union territory.
 - The appropriation of moneys out of the Consolidated Fund of the Union territory.
 - The declaring of any expenditure to be expenditure charged on the Consolidated Fund of the Union territory or the increasing of the amount of any such expenditure.
 - The receipt of money on account of the Consolidated Fund of the Union territory or the public account of the Union territory or the custody or issue of such money or the audit of the account of the Union territory - Provided that no recommendation shall be required under this sub- section for the moving of an amendment making provision for the reduction or abolition of any tax.
 - A Bill or Amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
 - A Bill which, if enacted and brought into operation, would involve



expenditure from the Consolidated Fund of Union territory shall not be passed by the Legislative Assembly of the Union territory unless the Lieutenant Governor has recommended to the Assembly, the consideration of the Bill.

10. A Bill pending in the Legislative Assembly shall not lapse by reason of the prorogation of the Legislative Assembly.

- A Bill which is pending in the Legislative Assembly shall lapse on dissolution of the Legislative Assembly.

11. When a Bill has been passed by the Legislative Assembly, it shall be presented to the Lieutenant Governor and the Lieutenant Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.

Special Article

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