

Date: 06 August, 2019



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1. Bill to divide J&K into two Union Territories passed in Rajya Sabha

- Has Article 370 been scrapped?
- What is the status of Article 35-A?
- What is the future status of State of Kashmir?
- What is Article 370? Can Article 370 be deleted?


GS paper 2 (Indian Constitution- evolution ,historical underpinnings, features, amendments, significant provisions and basic structure)

In this video, you can find detailed answers for all the above questions.



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What is the context about?



The Jammu and Kashmir Reorganisation Bill was passed in Rajya Sabha on Monday. The bill seeks to divide the state of J&K into two Union Territories — Ladakh and Jammu & Kashmir. Apart from this, the Jammu and Kashmir Reservation (2nd Amendment) Bill was also passed in the Upper House of Parliament.



Some insignificant amendments have been made by this order such as the substitution of term Constituent Assembly by the State by the Legislative Assembly of State and Sadar-e-Riyasat by the Governor of State.



The Presidential order has now extended all the provisions of the Indian Constitution to the State of Jammu & Kashmir.

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Has Article 370 been scrapped?



The Presidential order signed by the President of India has not scrapped Article 370. But invoking this very article, special status of Jammu & Kashmir has been withdrawn. Thus Article 370 is very much on the statute book.

What is the status of Article 35-A?



Since Presidential Order of August 5 has extended all the provisions of the Constitution to Kashmir, Fundamental rights chapter has now been extended and therefore discriminatory provisions of Article 35-A have now become unconstitutional. President also may withdraw Article 35-A.



What is the future status of State of Kashmir?



The State has now been bifurcated into two union territories — Jammu & Kashmir and Ladakh.



Legally speaking, under Article 3, Parliament does have the power to amend the constitution by simple majority change the boundaries of a state and form a new state. But such a change would require that such a Bill should first be referred to the concerned State Assembly by the President for ascertaining its views. Under Explanation II of Article 3, Parliament's power extends to form Union Territories.



It means not only Kashmir's special status been taken away but Kashmir has now been given a status lower than other states. Instead of 29 states, we will now have 28 states.



What is Article 370?



Included in the Constitution on October 17, 1949, Article 370 exempts J&K from the Indian Constitution (except Article 1 and Article 370 itself) and permits the state to draft its own Constitution. It restricts Parliament's legislative powers in respect of J&K.

Can Article 370 be deleted?



Yes, Article 370(3) permits deletion by a Presidential Order. Such an order, however, is to be preceded by the concurrence of J&K's Constituent Assembly.



Since such an Assembly was dissolved on January 26, 1957, one view is it cannot be deleted anymore. But the other view is that it can be done, but only with the concurrence of the State Assembly.