

UNION TERRITORIES

Articles 239-241 under Part VIII of the Constitution deal with provisions related to Union Territories.

239 Administration of Union territories.

239A Creation of local Legislatures or Council of Ministers or both for certain Union territories.

239AA Special provisions with respect to Delhi.

239AB Provision for failure of constitutional machinery.

239B Power of administrator to promulgate Ordinances during recess of Legislature.

240 Power of President to make regulations for certain Union territories.

241 High Courts for Union territories.



CREATION OF UNION TERRITORIES

- During British Rule, certain areas were constituted as ‘scheduled districts’ in 1874. Later, they came to be known as ‘chief commissioner’s provinces’.
- After independence, they were placed in the category of Part ‘C’ and Part ‘D’ states. In 1956, they were constituted as the ‘union territories’ by the 7th Constitutional Amendment Act (1956) and the States Reorganization Act (1956).
- Gradually, some of these UTs have been elevated to statehood. Thus, states of HP, Manipur, Tripura, Mizoram Arunachal Pradesh and Goa were formerly union territories.
- At present, there are 8 UTs: (1) Andaman & Nicobar Islands—1956, (2) Delhi—1956, (3) Lakshadweep—1956, (4) Dadra and Nagar Haveli—1961 and Daman and Diu— 1962, (5) Puducherry—1962, and (6) Chandigarh—1966, (7) J&K and (8) Ladakh.

ADMINISTRATION OF UNION TERRITORIES

- Even though all UTs belong to one category, there is no uniformity in their administrative system
- Every UT is ***administered by the President*** acting through ***an administrator*** appointed by him. (Administrator is an agent of the President and not head of state like a governor).
- President** can specify the designation of an administrator – Lt. Governor or Administrator or Chief Commissioner.
- He can also appoint governor of a state as administrator of an adjoining union territory. In that capacity, governor is to act independently of his CoM
- UTs of Puducherry (in 1963) & Delhi (in 1992) are provided with a legislative assembly and a CoM headed by a CM. But, establishment of such institutions in UTs doesn't diminish the supreme control of President and Parliament.
- Parliament can make laws on any subject of the three lists** for UTs (including Puducherry & Delhi). But, legislative assemblies of Puducherry & Delhi can also make laws on any subject of the State List (except public order, police and land) & Concurrent List.

ADMINISTRATION OF UNION TERRITORIES

- **President can make regulations** for the peace, progress and good government of the Andaman & Nicobar Islands, Lakshadweep,Ladakh, Dadra & Nagar Haveli and Daman & Diu.
- In case of **Puducherry and J&K** also, President can legislate by making regulations ***but only when the assembly is suspended or dissolved.***
- A regulation made by President has same force and effect as an act of Parliament and can also repeal or amend any Act of Parliament in relation to these UTs.
- **Parliament can establish a high court** for a UT or put it under jurisdiction of HC of adjacent state. (Delhi is the only UT that has its own HC since 1966),now this list includes J&K as well.
- Bombay HC has jurisdiction over Dadra & Nagar Haveli and Daman & Diu. Andaman-Nicobar, Chandigarh, Lakshadweep and Puducherry are placed under Calcutta, Punjab & Haryana, Kerala and Madras HCs respectively.J&K high court is the common high court for J&K and Ladakh.

SPECIAL PROVISIONS FOR DELHI

- **69th Constitutional Amendment Act 1991** provided a special status to UT of Delhi, and re-designated it as the **National Capital Territory of Delhi** and designated the administrator of Delhi as the Lt. Governor.
- It created a legislative assembly and a council of ministers for Delhi. (Previously, Delhi had a metropolitan council and an executive council)
- ***Strength of the assembly is fixed at 70 members***, directly elected by the people. The elections are conducted by the election commission of India.
- Assembly can make laws on all matters of State List (**except public order, police & land**) and Concurrent List; But, laws of Parliament prevail over those made by Assembly.
- ***Strength of CoM is fixed at 10% of total strength of assembly. The chief minister is appointed by President (not by the Lt. governor). The other ministers are appointed by president on the advice of the chief minister.***

- Ministers hold office during the ***pleasure of the president***, but CoM is ***collectively responsible to the assembly***.
- CoM aids and advises the Lt. Governor*** in exercise of his functions ***except where he is required to act in his discretion***. In the case of difference of opinion, Lt. Governor is to refer the matter to President and act accordingly.
- In case of failure of constitutional machinery, President can suspend above provisions (on or without LG's report)*** & make necessary provisions for administering the territory.
- Lt. Governor is empowered to promulgate ordinances*** during recess of the assembly. (Similar to a State Governor) But, he cannot promulgate an ordinance when the assembly is in session.

The Government of National Capital Territory of Delhi (Amendment) Act, 2021

On 28th March 2021, the President of India granted assent to the GNCTD (Amendment) Bill, 2021 which enhances the powers of the Delhi Lieutenant Governor over the elected government of the GNCTD.

1. The expression 'Government' referred to in any law to be made by the Legislative Assembly shall henceforth mean the Lieutenant Governor.
2. Conduct of business in the Delhi Legislative Assembly will have to be consistent with Rules of Procedure and Conduct of Business in the Lok Sabha.
3. The Delhi Legislative Assembly shall not make any rule to enable itself or its Committees to consider the matters of the day-to-day administration of the Capital or conduct inquiries about the administrative decisions, and any of the rule made in contravention of this proviso, before the commencement of the GNCTD (Amendment) Act, 2021, shall be void.
4. Before taking any Executive action in pursuance of the decision of the Council of Ministers or a Minister, to exercise powers of Government, the opinion of the L-G shall be obtained on all such matters by a general or special order by the L-G.

AMENDMENT OF ARTICLE 370

- Article 370 was inserted in the constitution of India in Part XXI as temporary provisions concerning the state of J&K (Jammu & Kashmir). It shows that it was inserted for a short term and it may be repealed or abrogated or modified following the situations in the state when the need arises to repeal this Article.
- On the 6th day of August 2019 by the Presidential Order with Declaration under Article 370 (3) of the Constitution of India special status of J&K has ended. With this amendment, the state of J&K became an integral part of India practically. The de-operationalization of article 370 converted the State of J&K into Union Territory of J&K and Union Territory of Ladakh. Mainly it has given relief to Ladakh much more which was an isolated part of India. By this amendment development of U.T. of Ladakh can be easily possible.

What is Article 370?

- Article 370 is a constitutional provision that gave Jammu and Kashmir its special status.
- The provision was incorporated in Part XXI of the Constitution: Temporary, Transitional and Special Provisions.
- As evident from the title of the Part, it was supposed to be a temporary provision and its applicability was projected to last till the formulation and adoption of the State's constitution.
- It restricts the Parliament's legislative powers for the state of J&K.

Application of 370

- The State's constituent assembly dissolved itself on 25 January 1957 without recommending either abrogation or amendment of Article 370, leaving the status of the provision on a cliff-hanger.
- The provision was later held to have acquired permanent status by way of rulings of the Supreme Court of India and the High Court of Jammu and Kashmir.
- This implied that to apply a central law to the state on subjects included in the Instrument of Accession, mere “consultation” with the state government is required.
- However, to apply central legislation to matters other than defence, foreign affairs and communications,” concurrence” of the state government was mandatory.

Jammu and Kashmir Constitution

- Article 3 (Relationship of the state with the Union of India) states that the State of J&K is and shall be an integral part of the Union of India.
- In the Preamble to the Constitution, not only is there no claim to sovereignty, but there is a categorical acknowledgement about the object of the J&K Constitution being “to further define the existing relationship of the state with the Union of India as its integral part thereof.”

Constitution (Application to Jammu and Kashmir) Order, 2019

- (1) (i) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 2019. (ii) It shall come into force at once, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time to time.
- (2) All the provisions of the Constitution, as amended from time to time, shall apply concerning the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows:

To Article 367, there shall be added the following clause, namely: -

“(4) For this Constitution as it applies concerning to the State of Jammu and Kashmir-

- a)References to this Constitution or the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied concerning the said State;
- b)references to the person for the time being recognized by the President on the recommendation of the Legislative Assembly of the State as the Sadr-i-Riyasat of Jammu and Kashmir, acting on the advice of the Council of Ministers of the State for the time being in office, shall be construed as references to the Governor of Jammu and Kashmir;
- c)references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers; and
- d)in the proviso to clause (3) of Article 370 of this Constitution, the expression “Constituent Assembly of the State referred to in clause (2)” shall read “Legislative Assembly of the State”.

Has Article 370 been scrapped?

- The Presidential order signed by the President of India **has not scrapped Article 370.**
- But invoking this very article, the special status of Jammu & Kashmir has been withdrawn.
- Thus, Article 370 is very much on the statute book.
- In other words, the move by the government gives full applicability of the Indian Constitution in Jammu and Kashmir. Earlier, only a set of limited provisions such as foreign relations, communication and defence had jurisdiction over Jammu and Kashmir

Status of Article 35A?

- Since the Presidential Order of August 5 has **extended all the provisions of the Constitution to Kashmir**, the Fundamental Rights chapter has now been extended and therefore some discriminatory provisions of Article 35A may not be per prescribed rules.
- Therefore, the President can also declare this to be inapplicable.

Criticism

1. Due Process

- The process of revocation of Article 370, which ties the state with India, needed the approval of J&K's Constituent Assembly. In the absence of such an assembly, it can be removed with the concurrence of the state legislative assembly. But the assembly does not exist at the moment either, and the notification suggests that it was the Governor's concurrence that was obtained to render the provisions irrelevant. This is not sufficient.
- The process has been pushed through without consultations with Kashmir's political leaders, who have been under detention.
- In this case, J&K has been bifurcated, and statehood diluted to UT status, without any deliberations in the assembly

2. Article 3 of the Constitution

- It says that before parliament can consider a bill that diminishes the area of a state or changes its name, the bill must be “referred by the President to the Legislature of that State for expressing its views thereon”.
- This is an essential safeguard of India’s federal system and the process of turning the state into a UT mustn’t since the J&K assembly was dissolved and the state is under Central rule, it is parliament that gets to exercise the prerogatives of the assembly.
- This move will strain India’s social fabric not only in its impact on Jammu and Kashmir but also in the portents it holds for federalism, parliamentary democracy and diversity.
- The Centre’s abrupt move disenfranchised people on a matter that directly affects their life and sentiments. It might deepen communal and religious lines.

- While Ladakhi Buddhists, for instance, are now celebrating the fulfilment of their long-pending demand for Union Territory status, the voices of Kargili's who are still under a strict curfew are yet to be heard.
- They may not support this decision because 'a Union Territory without a legislature' not only negates the idea of decentralisation of power to the grassroots (the undergirding principle of the autonomous hill council) but could well lead to a shifting of the loci of power to Leh, resulting in losing whatever gains they have assiduously made over the years.

3. Union Territory Status

- Except for the National Capital Territory of Delhi and Puducherry, UTs did not have their legislature until now.

Now, the state of Jammu and Kashmir has also been added along with Delhi and Puducherry to be a UT with a legislature and Ladakh will be UT without legislature.

Is it right to give a state Union Territory status?

- Ladakhis since then have consistently been demanding a separate region from the Jammu and Kashmir State and asking for the status of Union Territory for the area.
- Jammu and Kashmir is strategically important for India.
 - The situation emerging in the western neighbourhood and the possible re-ascendance of the Taliban in Afghanistan call for greater attention and care to be taken in what will remain as J&K after bifurcation. Making it a Union Territory with a legislature makes a lot of strategic sense.
 - In the interest of security, this is a good move. Once all the security measures are met, we can give statehood as it happened with Goa and Arunachal Pradesh in the past.
- It will insulate Ladakh from the happenings in the other two regions and provide for greater development of the region.
- Ladakh remained critical for India's national security. Imagine, without Ladakh, China's People's Liberation Army would be sitting on the southern foothills of the Himalayas. It has been self-harming to have ignored Ladakh thus far.
 - Ladakh's unique geographical location should offer India a huge counter-offensive potential in terms of leveraging connectivity to the Eurasian region and China.

J&K REORGANISATION ACT, 2019

- It is an act by the Indian Parliament where the State of Jammu and Kashmir was bifurcated into two union territories — Jammu & Kashmir and Ladakh.
 - The Union Territory of Jammu and Kashmir will have a legislative assembly,
 - Whereas the Union Territory of Ladakh will not have a legislative assembly and will be administered by the Lieutenant Governor alone.
- The Union Territory of Ladakh will include the districts Leh and Kargil which will, in effect, cease to be part of the existing state of Jammu and Kashmir.
- The remaining territories will remain with Jammu and Kashmir after the bifurcation.
- Representation in the House of People: Out of the six Lok Sabha seats in the state of Jammu and Kashmir, five will remain with the Union Territory of Jammu and Kashmir and one will go to the Union Territory of Ladakh.
- The Election Commission may conduct Lok Sabha elections for both the Union Territories as per the allocation of seats specified in the Delimitation of Parliamentary Constituencies Order, 1976 as amended by this act.

J&K as a Union Territory

- The Jammu and Kashmir Legislative Assembly will have a tenure of five years unless it's dissolved earlier by the L-G.
- Provisions contained under Article 239A of the constitution that apply to Puducherry shall be applicable here as well.
- This allows the Union Territory of Jammu and Kashmir to function as a legislative assembly under an administrator appointed under the said Article. In this case, it will be the LG.
- The delimitation of constituencies following the bifurcation may be determined by the Election Commission.
- The constituencies will be re-organised through a de-limitation exercise under the 2002 Act of Parliament.
- For delimitation, the 2011 census figures will be taken as the benchmark.
- The number of seats in the Legislative Assembly of Jammu and Kashmir shall be increased from 107 to 114.

J&K as a Union Territory

- The state assembly currently has 111 seats, of which 46 are in the Valley, 37 in Jammu and the remaining four are in the Ladakh division.
- Of these, 24 seats would be deemed to be vacant till the time Pakistan-Occupied Kashmir comes under the jurisdiction of the Indian state.
- With this, the existing legislative council in Jammu and Kashmir stands abolished. “Every member, therefore, ceases to be such a member and all bills pending in the Legislative Council shall lapse.”
- Four sitting members of the council of states (Rajya Sabha) representing the existing state of Jammu and Kashmir shall be deemed to have been elected to fill the seats allocated to the Union Territory of Jammu and Kashmir. Their term of office remains unaltered.
- The High Court of the existing state of Jammu and Kashmir will be the common High Court of the two Union Territories.
- The new Assembly shall have reservations for Scheduled Caste and Tribes as in other parts of the state.

Legislative powers of the Union Territory of Jammu and Kashmir

- The Legislative Assembly may make laws for the whole or any part of the Union Territory of Jammu and Kashmir for any of the matters enumerated in the state list except on subjects “public order” and “police” which will remain in the domain of the Centre vis-a-vis the LG.
- In case of inconsistencies between laws made by Parliament and laws made by the Legislative Assembly, earlier law shall prevail and law made by the Legislative Assembly shall be void.

Role and Powers of Lieutenant Governor

- The Governor of the existing State of J&K shall be the Lieutenant Governor for the Union territory of Jammu and Kashmir, and the Union Territory of Ladakh for such period as may be determined by the President.
- For the appointment of L-G in Ladakh, The President shall appoint the L-G under article 239. The L-G we will be assisted by advisors appointed by the centre.
- In the case of Union Territory of Jammu and Kashmir, the L-G shall “act in his discretion” on issues which fall outside the purview of powers conferred on the Legislative Assembly, in which he is required to exercise any judicial functions, and/or matters related to All India services and the Anti-corruption Bureau.

<u>Before</u>	<u>After</u>
• Special powers exercised by J&K	• No special powers now
• Dual citizenship	• Single citizenship
• Separate flag for J&K	• Tricolour will be the only flag
• Article 360 (Financial Emergency) not applicable	• Article 360 will be applicable
• No reservation for minorities such as Hindus and Sikhs	• Minorities will be eligible for 16% reservation
• Indian citizens from other states cannot buy land or property in J&K	• People from other states will now be able to purchase land or property in J&K
• RTI not applicable	• RTI will be applicable
• Duration of Legislative Assembly for 6 years	• Assembly duration in U.T. of J&K will be for 5 years
• If a woman from J&K marries out of state, she would lose the citizenship of the state	• If a woman marries out of state or country, she will still retain all her rights and Indian citizenship
• Panchayats did not have any rights	• Panchayats will have the same rights as in other states
• Right to Education (RTE) was not applicable	• Children in the state will benefit from RTE

Amendment of Article 370 in a nutshell is dissolved or suspended. Further, no ordinance can be promulgated or withdrawn without permission of President.

Advisory Committees of UTs: Under GoI Rules, Ministry of Home Affairs is the nodal ministry for all matters of UTs relating to legislation, finance and budget, services & appointment of Administrators. All UTs without a legislature have a Home Minister's Advisory Committee (HMAC), to discuss general issues relating to social & economic development of the UTs.

Thank You!