

"J&K will be the third Union Territory after Delhi and Puducherry to have an elected Assembly. How does its govt's powers, as described in the Reorganisation Bill passed by Parliament, compare with Delhi's?"

The Jammu and Kashmir Reorganisation Bill, 2019, just passed by Parliament, paves the way for formation of the Union Territory of J&K. It will join two other Union Territories — National Capital Territory of Delhi and Puducherry — which, through Article 239 A of the Constitution, have a Legislative Assembly to enact laws on certain subjects and a Council of Ministers headed by a Chief Minister to aid and advise the Lieutenant-Governor on subjects related to such legislation. For subjects outside the purview of the Assembly, the Lieutenant-Governor does not need the aid and advice of the Chief Minister.

Some key subjects where the model proposed for Jammu & Kashmir is similar to that of Delhi, and where there are variations between the two:

Extent of legislative power

Section 13 of the Bill states that the provisions contained in Article 239 A of the Constitution that are applicable to Union Territory of Puducherry shall also apply to the Union Territory of Jammu and Kashmir. The UT Assembly has the power to enact laws on matters under the State List and the Concurrent List, barring subjects that are exclusively under the ambit of the Union Government.

The Seventh Schedule has 61 subjects in the State List — law & order, health, land, local government etc — and 52 in the Concurrent List such as forests, wildlife protection, social security, employment, etc.

In the J&K Bill, Section 32 proposes that the Assembly can make laws on any subjects in the State and Concurrent lists except on state subjects relating to “public order” and “police”. Therefore, all laws on these two subjects will be directly under the Centre. This is the case in Delhi, too.

In Delhi, by insertion of Article 239AA and by virtue of the Sixty-ninth Constitutional Amendment passed by Parliament, the Assembly cannot legislate on matters in entry 18 of the State List, which is land. In J&K, the Assembly can do so.

Anti-Corruption Bureau

Control of the ACB, which has the power to register FIRs on corruption cases and make arrests, was a contentious issue between Delhi's AAP government and the Centre. In February this year, a two-judge Supreme Court Bench held that the ACB will be under control of the L-G and the Delhi government has no police powers.

For the proposed UT of Jammu & Kashmir, the Bill is very clear. Section 53(2)(iii) states that the Lieutenant Governor shall, in the exercise of his functions, act in his discretion, in matters related to “All India Services and Anti-Corruption Bureau”. Therefore, all appointments and other administrative matters related to the ACB will be directly under the Lieutenant-Governor.

Services

LAND	ANTI-CORRUPTION BUREAU	SERVICES
Delhi: Under Centre J&K Bill: Land rights, land tenures, land improvement and transfer of agricultural land under ambit of Legislative Assembly	Delhi: Under Lieutenant-Governor, as per a Supreme Court ruling J&K Bill: Explicitly places ACB under L-G	Delhi: Matter referred to 3-judge SC Bench J&K Bill: Mentions a “competent authority” that can alter the posting of officers with J&K government

In Delhi, another bone of contention has been services. A Bench of Justices A K Sikri and Ashok Bhushan differed on the issue of transfer of officers posted in Delhi, and referred the matter to a three-judge Bench.

For J&K, Part XIII and Section 88(4) of the Bill make it clear that the Lieutenant-Governor will have discretionary powers relating to composition, strength and allocation of officers of the Indian Administrative Service, Indian Police Service and Indian Forest Service

Section 92 deals with provisions relating to “other services”. It states: “Every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Jammu and Kashmir in any area which on that day falls within one of the successor Union Territory, shall continue to hold the same post or office in that successor Union Territory, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor Union Territory.” It adds: “Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.”

The “competent authority” mentioned, therefore, can alter the posting of an officer currently employed with the Jammu & Kashmir government. However, as in Delhi, it is unclear whether the transfer of officers will be under the exclusive domain of the Lieutenant-Governor.

Other matters

Section 55 of the J&K Bill states that the Lieutenant-Governor shall make rules on the advice of the Council of Ministers for the allocation of business to the ministers, for the more convenient transaction of business with the ministers including the procedure to be adopted in case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a minister. The same rule applies to NCT of Delhi.

Section 36(3) states that if a Bill which, if enacted and brought into operation, would involve “expenditure from the Consolidated Fund of Union Territory”, it 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”. The same rule applies to NCT of Delhi.

"Articles 370 and 371 were part of the Constitution at the time of its commencement on January 26, 1950; Articles 371A through 371J were incorporated subsequently."

Home Minister Amit Shah told Lok Sabha Tuesday that the government had no intention of removing Article 371 of the Constitution, which includes "special provisions" for 11 states, including six states of the Northeast. His assurance came after Congress leaders expressed apprehension that having rendered Article 370 irrelevant, the government might unilaterally move to abrogate or modify Article 371.

Articles 369 through 392 (including some that have been removed) appear in Part XXI of the Constitution, titled 'Temporary, Transitional and Special Provisions'. Article 370 deals with 'Temporary Provisions with respect to the State of Jammu and Kashmir'; Articles 371, 371A, 371B, 371C, 371D, 371E, 371F, 371G, 371H, and 371J define special provisions with regard to another state (or states).

Article 371I deals with Goa, but it does not include any provision that can be deemed 'special'.

Articles 370 and 371 were part of the Constitution at the time of its commencement on January 26, 1950; Articles 371A through 371J were incorporated subsequently.

Article 371, Maharashtra and Gujarat: Governor has "special responsibility" to establish "separate development boards" for "Vidarbha, Marathwada, and the rest of Maharashtra", and Saurashtra and Kutch in Gujarat; ensure "equitable allocation of funds for developmental expenditure over the said areas", and "equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment" under the state government.

Article 371A (13th Amendment Act, 1962), Nagaland: This provision was inserted after a 16-point agreement between the Centre and the Naga People's Convention in 1960, which led to the creation of Nagaland in 1963. Parliament cannot legislate in matters of Naga religion or social practices, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, and ownership and transfer of land without concurrence of the state Assembly.

Article 371B (22nd Amendment Act, 1969), Assam: The President may provide for the constitution and functions of a committee of the Assembly consisting of members elected from the state's tribal areas.

Article 371C (27th Amendment Act, 1971), Manipur: The President may provide for the constitution of a committee of elected members from the Hill areas in the Assembly, and entrust "special responsibility" to the Governor to ensure its proper functioning.

Article 371D (32nd Amendment Act, 1973; substituted by The Andhra Pradesh Reorganisation Act, 2014), Andhra Pradesh and Telangana: President must ensure “equitable opportunities and facilities” in “public employment and education to people from different parts of the state”. He may require the state government to organise “any class or classes of posts in a civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State”. He has similar powers vis-à-vis admissions in educational institutions.

Article 371E: Allows for the establishment of a university in Andhra Pradesh by a law of Parliament. But this is not a “special provision” in the sense of the others in this part.

Article 371F (36th Amendment Act, 1975), Sikkim: The members of the Legislative Assembly of Sikkim shall elect the representative of Sikkim in the House of the People. To protect the rights and interests of various sections of the population of Sikkim, Parliament may provide for the number of seats in the Assembly, which may be filled only by candidates from those sections.

Article 371G (53rd Amendment Act, 1986), Mizoram: Parliament cannot make laws on “religious or social practices of the Mizos, Mizo customary law and procedure, administration of civil and criminal justice involving decisions according to Mizo customary law, ownership and transfer of land... unless the Assembly... so decides”.

Article 371H (55th Amendment Act, 1986), Arunachal Pradesh: The Governor has a special responsibility with regard to law and order, and “he shall, after consulting the Council of Ministers, exercise his individual judgment as to the action to be taken”.

Article 371J (98th Amendment Act, 2012), Karnataka: There is a provision for a separate development board for the Hyderabad-Karnataka region. There shall be “equitable allocation of funds for developmental expenditure over the said region”, and “equitable opportunities and facilities” for people of this region in government jobs and education. A proportion of seats in educational institutions and state government jobs in Hyderabad-Karnataka can be reserved for individuals from that region.

GS World Team...

The Jammu and Kashmir Reorganisation Bill, 2019

Why in the News?

- The Jammu and Kashmir Reorganisation Bill, 2019 was introduced in Rajya Sabha on August 5, 2019 by the Minister of Home Affairs, Mr. Amit Shah.
- The Bill provides for reorganisation of the state of Jammu and Kashmir into the Union Territory of Jammu and Kashmir and Union Territory of Ladakh.

Provisions

- **Reorganisation of Jammu and Kashmir:** The Bill reorganises the state of Jammu and Kashmir into:

(i) the Union Territory of Jammu and Kashmir with a legislature, and (ii) the Union Territory of Ladakh without a legislature.

- The Union Territory of Ladakh will comprise Kargil and Leh districts, and the Union Territory of Jammu and Kashmir will comprise the remaining territories of the existing state of Jammu and Kashmir.
- **Lieutenant Governor:** The Union Territory of Jammu and Kashmir will be administered by the President, through an administrator appointed by him known as the Lieutenant Governor. The Union Territory of Ladakh will be administered by the President, through a Lieutenant Governor appointed by him

- **Legislative Assembly of Jammu and Kashmir:** The Bill provides for a Legislative Assembly for the Union Territory of Jammu and Kashmir. The total number of seats in the Assembly will be 107. Of these, 24 seats will remain vacant on account of certain areas of Jammu and Kashmir being under the occupation of Pakistan.
- Further, seats will be reserved in the Assembly for Scheduled Castes and Scheduled Tribes in proportion to their population in the Union Territory of Jammu and Kashmir. In addition, the Lieutenant Governor may nominate two members to the Legislative Assembly to give representation to women, if they are not adequately represented.
- The Assembly will have a term of five years, and the Lieutenant Governor must summon the Assembly at least once in six months. The Legislative Assembly may make laws for any part of the Union Territory of Jammu and Kashmir related to: (i) any matters specified in the State List of the Constitution, except “Police” and “Public Order”, and (ii) any matter in the Concurrent List applicable to Union Territories. Further, Parliament will have the power to make laws in relation to any matter for the Union Territory of Jammu and Kashmir.
- **Council of Ministers:** The Union Territory of Jammu and Kashmir will have a Council of Ministers of not more than ten percent of the total number of members in the Assembly. The Council will aide and advise the Lieutenant Governor on matters that the Assembly has powers to make laws. The Chief Minister will communicate all decisions of the Council to the Lieutenant Governor.
- **High Court:** The High Court of Jammu and Kashmir will be the common High Court for the Union Territories of Ladakh, and Jammu and Kashmir. Further, the Union Territory of Jammu and Kashmir will have an Advocate General to provide legal advice to the government of the Union Territory.
- **Legislative Council:** The Legislative Council of the state of Jammu and Kashmir will be abolished. Upon dissolution, all Bills pending in the Council will lapse.
- **Advisory Committees:** The central government will appoint Advisory Committees, for various **purposes, including:** (i) distribution of assets and liabilities of corporations of the state of Jammu and Kashmir between the two Union Territories, (ii) issues related to the generation and supply of electricity and water, and (iii) issues related to the Jammu and Kashmir State Financial Corporation. These Committees must submit their reports within six months to the Lieutenant Governor of Jammu and Kashmir, who must act on these recommendations within 30 days.
- **Extent of laws:** The Schedule lists 106 central laws that will be made applicable to Union Territories of Jammu and Kashmir and Ladakh on a date notified by the central government. These include the Aadhaar Act, 2016, the Indian Penal Code, 1860, and the Right to Education Act, 2009. Further, it repeals 153 state laws of Jammu and Kashmir.
- In addition, 166 state laws will remain in force, and seven laws will be applicable with amendments. These amendments include lifting of prohibitions on lease of land to persons who are not permanent residents of Jammu and Kashmir.

Expected Questions (Prelims Exams)

1. Recently Jammu and Kashmir Reorganisation Bill, 2019 has been passed. In this context, consider the following statements-

1. According to this bill, the Jammu and Kashmir Legislative assembly can make laws on the subjects of state and concurrent list, except the subject of the Public System and Police.
2. Delhi Legislative Assembly cannot make law on the subject of 'land' of the State List, where as Jammu and Kashmir Legislative Assembly can make law on it.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

1. Consider the following statements reference the Article 371-

1. In Article 371 'special provision' has been provided for 11 states including 6 states of North East.
2. Article-369 to Article 392 has been mentioned, under title " Temporary, Transitional and Special Provisions" in the part XXI of the constitution.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Expected Questions (Mains Exams)

Q. 1 After the passage of the Jammu and Kashmir Reorganization Bill, 2019, Jammu and Kashmir will be the third union territory with an elected Legislative assembly followed by Delhi and Puducherry. How is the powers of Jammu and Kashmir Government different from the Delhi Government as mentioned in this Reorganization Bill passed by the Parliament? Discuss. (250Words)

Q. 2 Discuss various states and their related provisions included in Article-371 under Part-21 of the Indian constitution. (250Words)

Note: Answer of Prelims Expected Question given on 6 Aug. is 1(d).