

DPU MUN 2019

WELCOME TO RAJYA SABHA

The revocation of special status to the state of Jammu and Kashmir

Esteemed participants,

We, the Secretariat of DPU Model United Nations Conference 2019 feel more than honored to be welcoming you to the 2nd Edition of this ambitious youth conference. Organized under the framework of Model United Nations, in accordance with its vision to familiarize MUN related activities to young people in the country, the DPU MUN 2019 is eager to reach wide range of attendants from high schools and universities which are deeply interested in diplomacy, international relations, politics and the United Nations itself while constituting a unique experience of debating and socializing at the same time. This year, the conference takes it a step further as it is composed of 4 committees chosen delicately to the very attention of the mentioned variety of participants holding Security, Human Rights, Development Programme committees as well as a Rajyasabha simulation. The academic team embraces an understanding of content which concerns actual and urgent problems that the world faces currently in order to create awareness of the facts touched upon over the youth to which it addresses. The academic content and the structure of the committee have been prepared by the respected Secretary-General (Ms. Ketaki Sawant) and Deputy-Secretary-General (Mr. Bharat Patkar). We advise the participants of this well-prepared committee to read the provided guide thoroughly. For any further questions, please do not hesitate to contact us via mun.dpu@gmail.com .

Best regards Ms. Ketaki Sawant (Secretary-General), Mr. Bharat Patkar (Deputy-Secretary-General), Ms. Shruti Shinde (Director-General), Mr. Aman Kumar (Deputy-Director-General) and Mr. David Nathi (Deputy-Director-General) of DPU MUN Conference 2019.

Introduction

The Rajya Sabha or Council of States is the upper house of the bicameral Parliament of India. It currently has a maximum membership of 245, of which 233 are elected by the legislatures of the states and union territories using single transferable votes through Open Ballot while the President can appoint 12 members for their contributions to art, literature, science, and social services. Members sit for staggered terms lasting six years, with elections every year but almost a third of the 233 designates up for election every two years, specifically in even-numbered years. The Rajya Sabha meets in continuous sessions, and unlike the Lok Sabha, being the lower house of the Parliament, the Rajya Sabha, which is the upper house of Parliament, is not subjected to dissolution. However, the Rajya Sabha, like the Lok Sabha can be prorogued by the President.

The Rajya Sabha has equal footing in legislation with the Lok Sabha, except in the area of supply, where the latter has overriding powers. In the case of conflicting legislation, a joint sitting of the two houses can be held, where the Lok Sabha would hold greater influence because of its larger membership. The Vice President of India (currently, Venkaiah Naidu) is the ex-officio Chairman of the Rajya Sabha, who presides over its sessions. The Deputy Chairman, who is elected from amongst the house's members, takes care of the day-to-day matters of the house in the absence of the Chairman. The Rajya Sabha held its first sitting on 13 May 1952.

Qualifications

Article 84 of the Constitution lays down the qualifications for membership of Parliament. **A member of the Rajya Sabha must:**

Be a citizen of India.

Make and subscribe before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution.

Be at least 30 years old.

Be elected by the Legislative Assembly of States and Union territories by means of single transferable vote through proportional representation.

Not be a proclaimed criminal.

Not be a subject of insolvent, i.e. he/she should not be in debt that he/she is not capable of repaying in a current manner and should have the ability to meet his/her financial expenses.

Not hold any other office of profit under the Government of India.

Not be of unsound mind.

Possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

In addition, twelve members are nominated by the President of India having special knowledge in various areas like arts and science. However, they are not entitled to vote in Presidential elections as per Article 55 of the Constitution.

Powers

In the Indian federal structure, the Rajya Sabha is a representative of the States in the Union legislature (hence the name, Council of States). For this reason, the Rajya Sabha has powers that protect the rights of States against the union.

The Constitution of India is an amalgamation of different constitutions from around the globe.

The drafters were very prudent while drafting the world's lengthiest constitution due to the diversity that is possessed by India. Every state is unique in one or the other sense as each has its own culture, tradition and is diverse either topographically or culturally. However, among all the 29 states, the most diverse and the most beautiful is the state of Jammu & Kashmir. The state of J&K is the northern most state in Indian sub-continent and shares the border with India's archenemies China and Pakistan, thereby making it vital strategically. The diversity of J&K is evident from Article 370 of the Indian constitution; this article exclusively deals with the state of J&K that came under the administration of Government of India in 1947, granting it a special status. The article proves to be the most debatable constitutional provision since its adoption in 1950, as one section of the society demands its abrogation while the other half vehemently opposes this demand.

History

An agreement was entered between India and Pakistan that none of the two countries would ever attack the region of J&K. However, Pakistan attacked J&K on 6 October 1947 through 'Azad Kashmir Forces'. Two months after

independence, on 20 October 1947, Kashmir was attacked by a large number of armed tribesmen, forcing Hari Singh, the ruler of Kashmir to write to Governor General, Lord Mountbatten, asking India to provide military aid. Attached to this letter asking for aid was the instrument of accession to India, which was signed by Singh. Mountbatten signed the instrument on 27 October 1947. As per the document, however, only defence, external affairs and communications would be handed over to the government of India, while control over all other sectors were to be retained by ruler, under the Jammu and Kashmir Constitution Act 1952. These conditions were peculiar to Kashmir's accession to India, unlike the 565 native states that had chosen to integrate fully with India. Article 370 was therefore introduced in the constitution to preserve the specific terms under which Kashmir had agreed to accede to India. Hari Singh sought special privileges for his people on the lines of a 1927 law that denied outsiders the right to own property in the state. This law restricted the right to own property in Jammu and Kashmir in line of inheritance only. This had been brought apparently to keep the Britishers away from the salubrious Valley of Kashmir. The Jawaharlal Nehru government agreed to Hari Singh's condition subject to future final settlement. The matter was placed before the Constituent Assembly of India, which was dealing with the task of framing the Constitution of India. After a lot of deliberation, Article 370 was inserted in the Constitution's twenty-first part that proclaimed it to be "Temporary, Transitional and Special Provision". In a letter sent to Maharaja Hari Singh on 27 October 1947, the then Governor-General of India, Lord Mountbatten accepted the accession with a remark, "it is my Government's wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader the question of the State's accession should be settled by a reference to the people." Lord Mountbatten's remark and the offer made by the Government of India to conduct a plebiscite or referendum to determine the future status of Kashmir led to a dispute between India and Pakistan regarding the legality of the accession of Jammu and Kashmir to India. India claims that the accession is unconditional and final while Pakistan maintains that the accession is fraudulent.

WHAT IS ARTICLE 370?

Article 370 of the Indian constitution gave special status to Jammu and Kashmir—a state in India, located in the northern part of Indian subcontinent, and a part of the larger region of Kashmir, which has been the subject of dispute between India, Pakistan, and China since 1947, conferring it with the power to have a separate constitution, a state flag and autonomy over the internal administration of the state. The government of India revoked this

special status in August 2019 through a Presidential Order and the passage of a resolution in Parliament.

The article was drafted in Part XXI of the Constitution: Temporary, Transitional and Special Provisions. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abrogate the Article 370 altogether. After consultation with the state's Constituent Assembly, the 1954 Presidential Order was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending the abrogation of Article 370, the article was deemed to have become a permanent feature of the Indian Constitution.

This article, along with Article 35A, defined that the Jammu and Kashmir state's residents live under a separate set of laws, including those related to citizenship, ownership of property, and fundamental rights, as compared to residents of other Indian states. As a result of this provision, Indian citizens from other states could not purchase land or property in Jammu & Kashmir.

On 5 August 2019, President Ram Nath Kovind issued a constitutional order superseding the 1954 order, and making all the provisions of the Indian constitution applicable to Jammu and Kashmir based on the resolution passed in both houses of India's parliament with 2/3 majority. Following the resolutions passed in both houses of the parliament, he issued a further order on 6 August declaring all the clauses of Article 370 except clause 1 to be inoperative.

In addition, the Jammu and Kashmir Reorganisation Act was passed by the parliament, enacting the division the state of Jammu and Kashmir into two union territories to be called Union Territory of Jammu and Kashmir and Union Territory of Ladakh. The reorganisation took place on 31 October 2019.

PURPOSE

The state of Jammu and Kashmir's original accession, like all other princely states, was on three matters: defence, foreign affairs and communications. All the princely states were invited to send representatives to India's Constituent Assembly, which was formulating a constitution for the whole of India. They were also encouraged to set up constituent assemblies for their own states. Most states were unable to set up assemblies in time, but a few states did, in particular Saurashtra Union, Travancore-Cochin and Mysore. Even though the States Department developed a model constitution for the states, on 19 May 1949, the rulers and chief ministers of all the states met in the presence of States Department and agreed that separate constitutions for the states were

not necessary. They accepted the Constitution of India as their own constitution. The states that did elect constituent assemblies suggested a few amendments which were accepted. The position of all the states (or unions of states) thus became equivalent to that of regular Indian provinces. In particular, this meant that the subjects available for legislation by the central and state governments was uniform across India

EVENTS THAT OCCURRED BETWEEN 1947 and 2019

October 26, 1947

The Maharaja of Kashmir, Hari Singh, signs the Instrument of Accession with Prime Minister Jawaharlal Nehru whereby Kashmir decides to join India. The first India-Pakistan war breaks out

April 1948

The United Nations Security Council (UNSC) calls for a plebiscite in Kashmir. Since Pakistan refuses to withdraw troops, Kashmir is effectively partitioned. Pakistan retains 'Azad Kashmir' as well as Gilgit – Balistan.

October 17, 1949

Directed by Nehru, cabinet minister in charge of Kashmir, Sir Gopalswami Ayyangar, drafts Article 370 since Dr. B.R.Ambedkarrefuses to do so. India adopts Article 370, conferring special status on J&K. The centre's jurisdiction is restricted to key areas, such as foreign affairs, defence and communications

Sept.-Oct.1951

First election held in J&K. The Sheikh Abdullah - led Jammu & Kashmir National Conference (earlier Muslim conference) wins all 75 seats. UNSC declares that elections cannot be a substitute for plebiscite.

May 1953

Bhartiya Jana Sangh founder Shyama Prasad Mukherjee arrested by the J&K police while protesting against the state's special status. His death takes place in police custody a month later.

1953-1954

Sheikh Abdullah arrested after he dithers over accession to India.

February 1954

The Bakshi Ghulam Mohammad-led regime in Srinagar ratifies the Instrument of Accession after Sheikh Abdullah develops cold feet and is incarcerated.

November 17, 1956

The states adopt a constitution defining J&K as a part of India. It comes into effect on January 26, 1957. The UN says this cannot be the final disposition of Kashmir. Govind Ballabh Pant, then Union home minister, declares in Srinagar, the capital city, "Jammu and Kashmir is an integral part of India"

1965

Pakistan militants begin insurgency in the Kashmir Valley. Maqbool That and Amanullah Khan launch a plebiscite front - the Jammu and Kashmir National Liberation Front (NLF).

Operation codenamed Gibraltar by Pakistan terrorists leads to full-scale hostilities between India and Pakistan. In January 1966, a historic agreement is signed in Tashkent where both sides agree to revert to the pre- 1965 position.

1971

Third war between India and Pakistan leads to the liberation and creation of Bangladesh (erstwhile East Pakistan). Around 81,000 Pakistani soldiers are made prisoners of war.

July 2, 1972

Pakistan premier Zulfikar Ali Bhutto and Indian Prime Minister Indira Gandhi sign the Shimla Agreement, whereby the Kashmir issue is to be settled only bilaterally. The ceasefire line is henceforth to be treated as the Line of Control (LOC)

February 1975

Sheikh Abdullah returns as CM and remains so till his death in 1982

1987

Massive rigging of state assembly polls helps NC leader Farooq Abdullah come to power. It instigates an armed insurgency, led by the Jammu and Kashmir Liberation Front (JKLF) backed by Pakistan-based terrorists

1989-90

Soviet withdrawal from Afghanistan frees up a huge cache of weapons and mercenaries, who find their way into Kashmir.

A long cycle of bloodshed begins, leading to militants take aim at anyone close to the establishment; Kashmiri Pandits bear the brunt, over 100 killed in 1990 alone. Next decade sees exodus of 150,000 Pandits

January 1990

Farooq Abdullah resigns as CM to protest against the killing of Kashmiri demonstrators by CRPF troops at Gawkadal. President's rule comes into force. The Centre imposes Armed Forces Special Powers Act (AFSPA) under Governor Jagmohan

July 1999

The launch of a bus service between Delhi and Lahore rekindles hopes for India- Pakistan peace. Infiltration by Pakistan militants and soldiers into Kargil puts paid to that hope. Kargil war erupts.

October 1, 2001

Suicide attack by Jaish -e- Mohammed militants on the legislative assembly in Srinagar, followed by the attack on Parliament on Dec. 13

2008

Protests erupt in the Valley over transfer of 99 acres of land to the Amarnath Shrine Board. Violent counter-protests in Jammu when revoked.

2010

Unrest in Valley after it is learned that three 'terrorists' killed in a 'foiled infiltration bid' were actually civilians murdered by armed forces personnel.

February 10, 2013

The hanging of Afzal Guru in Delhi for his alleged role in the 2001 Parliament attack sparks protest in the Valley.

May 2014

PM Narendra Modi invites his Pakistani counterpart Nawaz Sharif to his swearing-in. Later, India scraps talks with Pakistan after its high commissioner invites Hurriyat separatists for consultations. Assembly poll sees 65 per cent voter turnout.

2014-15

PDP and BJP come together in an 'antithetical' alliance and Mufti Mohammad Sayeed becomes CM. Narendra Modi and his Pakistani counterpart Nawaz Sharif try to build bridges but NSA-level talks between India and Pakistan fall through again

April 4, 2016

Mehbooba Mufti becomes the state's first woman chief minister following a delay of three months of indecision after her father's death.

July 8, 2016

Hizbul commander Burhan Wani is gunned down in an encounter with the J&K police, leading to violent protests and the imposition of indefinite curfews

June 19, 2018

BJP withdraws support to PDP. Mehbooba resigns as CM, Governor's rule imposed

August 5, 2019

The Modi government scraps J&K's special status granted under Article 370 and bifurcates the state into two union territories: Jammu & Kashmir and Ladakh

The BJP's pact with PDP to form a government was a halfway house. Amit Shah, the recently appointed Union Home minister, began studying problems faced due to the controversial Article 370. Its abolition had been one of the three cornerstones of the ruling BJP and its ideological flagship, the Rashtriya Swayamsevak Sangh (other two being Uniform civil code and Ram Mandir). With BJP's 303 seat victory in the Lok Sabha election, considering the strong mandate decided to take action on J&K's special status, though the planning had begun long ago and the country's big shots in the political executive and the bureaucracy already at work. Over 45,000 paramilitary troopers were reportedly flown into the valley to join the nearly 300,000 army personnel already posted there to guard the borders with Pakistan and counter-terrorism operations. The reason cited for the deployment was to foil cross-border conspiracies and the expected hard political engagement with Pakistan in the near future. But all this now appeared to be a ruse, as everything became transparent on the 5th of August, 2019

Why were these changes essential?

As per clause 3, Article 370 could have only been scrapped after the state's constituent assembly recommended it. Currently, Governor Satya Pal Malik is

in-charge of the state, after the ruling coalition of PDP –BJP fell in 2018. Hence, the clause added to Article 367 ensured that the Governor could be counted as the state, on whose recommendation the new presidential order was passed.

REVOCAION OF KASHMIR

On 5 August 2019, the Government of India revoked the special status, or limited autonomy, granted under Article 370 of the Indian Constitution to Jammu and Kashmir—a region administered by India as a state, and a part of the larger region of Kashmir, which has been the subject of dispute between India, Pakistan, and China since 1947

Among the Indian government actions accompanying the revocation, all communication lines were cut in the Kashmir Valley, a region gripped by a prolonged separatist insurgency. Government officials described these restrictions as designed for preempting violence, and justified the revocation for enabling people of the state to access government programmes such as reservation, right to education and right to information.

International human rights groups condemned the revocation resolution. The reaction in the Kashmir Valley was effectively reduced to silence because of cut-off communication. Several leading Kashmiri politicians were taken into custody, including the former chief minister, Mehbooba Mufti, who called the day the blackest in India's democracy. Many Hindu nationalists celebrated, declaring the move to herald public order and prosperity in Kashmir. Among political parties in India, the revocation was supported by the ruling Bharatiya Janata Party, and, among others, by the Bahujan Samaj Party, the Aam Aadmi Party, AIADMK, Telegu Desam Party, and the ShivSena. It was opposed by the Indian National Congress, Jammu & Kashmir National Conference, Jammu and Kashmir Peoples Democratic Party, Trinamool Congress, Janata Dal (United) and the DMK. In Ladakh, people in the Kargil area, who are Shia Muslim and form the plurality of the population of Ladakh, protested; The Buddhist community in Ladakh supported the decision.

The President of India issued an order under the power of Article 370, overriding the prevailing 1954 Presidential Order and nullifying all the provisions of autonomy granted to the state. The Home Minister introduced a Reorganisation Bill in the Indian Parliament, seeking to divide the state into two union territories to be governed by a lieutenant governor and a unicameral legislature. The resolution seeking the revocation of the special status under Article 370 and the bill for the state's reorganisation was debated and passed by the Rajya Sabha – India's upper house of parliament – on 5 August 2019. On 6 August, the Lok Sabha – India's lower house of parliament – debated and passed the reorganisation bill along with the resolution recommending the

revocation. The constitutional expert opinion is divided on whether the revocation is legally sound.

What is the current status of Article 370?

It remains, but is toothless. One of its own provisions – clause 3 – was used to make it inoperative. A statutory resolution by Parliament recommended that the President declare all clauses of Article 370 inoperative in the KASHMIR TODAY – AFTER REVOCATION OF SPECIAL STATUS.

The dilution of Article 370 has done away with all the erstwhile state's special powers, including that of the state legislature to draft its own laws on all subjects other than communications, foreign affairs and defence. Gone also are J&K's own constitution, flag and the Ranbir penal code. The bifurcation will result in two Union territories – Jammu and Kashmir and Ladakh. Jammu and Kashmir will be a Union Territory with legislature, though there will be a few changes, thus not making it an exact structural copy to that of Delhi, whereas Ladakh will be a Union Territory without legislature, directly under the control of the union government. Notwithstanding the legislature in the UT of J&K, Policing will remain with the central government. Both the newly created UTs will have a common high court. Existing law and procedure for practice in High court will remain the same. 108 central laws will be applicable for both UTs while 164 state laws would be repealed and 166 state laws will continue to prevail. The J&K administration imposed a total shutdown on telecommunications (except for those handling the situation) and an indefinite curfew. Internet was turned off and landlines too were severed. Thousands of paramilitary forces, most of whom were flown in by the IAF aircrafts in several waves, fan out into the streets to enforce the curfew. There is restriction on movement for ordinary citizens. The government has massively used the provision of preventive detention to detain various people who were suspected to cause unrest, due to which a few compare the situation in Kashmir today to be similar to the internal emergency of 1975-77. Former chief ministers Omar Abdullah and Mehbooba Mufti, who were under house arrest were taken into custody. Many leaders of the All Parties Hurriyat Conference (APHC) were also detained.

Rohit Kansal, the PS and spokesperson of the J&K government adds significantly that there have been no reports of major injuries and deaths since the decision of the centre to revoke J&K's special status. The administration also acknowledges incidences of protest of various kinds, but specifies that most of it were in Srinagar, whose population of 1.8 million accounts for only 17 percent of the valley's inhabitants – and that much of rural Kashmir has been free of incident. Though the lockdown is eased in some places in the Kashmir valley and Jammu, situation still remains distressed in some parts of Kashmir

valley. The curfew has been withdrawn from a few, as well as re-imposed citing expected violence. Meanwhile, more than half of the police stations have relaxed curbs on day time movement. The government claimed it had made provisions to keep hospitals running as well as ensure supply of food and other essentials. Restrictions were also placed on media movement, though the government held daily press conferences to control the narrative. Leaders from out were not allowed to enter Kashmir and sent back from Srinagar airport, a few examples being the deputation of opposition leaders led by Rahul Gandhi and Ghulam Nabi Azad. Shah Faesal was apparently detained by Indian security forces on August 14, 2019, leading to a statement by over 100 people associated with Harvard University (his alma mater) condemning the detention and calling for the release of Faesal and other Kashmiri leaders. Shehla Rashid was booked under sedition law for her social media posts alleging Human rights violation in Jammu and Kashmir, though she was granted an interim protection from arrest by the Delhi High court. Faesal and Rashid moved the SC, challenging Abrogation of Article 370 and the bifurcation of the state. SC on August 28 said that it will hear the petitions filed in relation to abrogation on Article 370 starting from the first week of October. The ruling has effectively shut the door on all those fighting for the valley to merge with Pakistan or demanding azadi.

WHAT NEXT?

The next step is likely to be delimitation of the J&K legislative assembly, where the seats are heavily skewed in favor of the valley than Jammu who has a greater population and size. With the passage of the Unlawful Activities (Prevention) Amendment Bill, the central government will go for a massive crackdown on separatist elements, who will no more have the cover of the state laws. BJP party line adopted to explain how Article 370 had stifled Kashmir's development, kept people backward and only made certain political families prosper. It's worth noting here that while economic growth in the state has been fitful and per capita income below national average, the poverty rate in J&K was half the national average and the state's human development index was above the national average. The valley has been numbed by the move and the presence of security forces in such huge numbers. Security forces on the ground fear a volcano of violence is waiting to erupt. Some Kashmiris also sense this move as a loss of identity. Kashmir's economy has been hit hard with every sector downsizing and suffering huge losses. Former J&K Finance Minister feels that though businesses cite ban on purchase of land by outsiders and the security threat as major deterrents, the problem has been Kashmir's 'disputed' tag by the UN. Also since years, there has also been a near of the Central Public Sector Enterprises (CPSEs) in the state. Of the 339 CPSEs in India, only 3 are in J&K. The government is endeavoring to attract FDIs and private

investments in the state, and a talk of holding a business summit in November have also been initiated. But Business houses are likely to hold back big-ticket investments until there is a definite sense of political stability in Kashmir. Empirical evidence also suggests very little correlation between what is announced and what finally gets implemented on the ground. Employment remains key, and an announcement has been made that 50,000 vacancies for government posts will be filled up soon. More than Article 370, the bigger concern for people is whether the Apple plucking season will proceed unhindered. Despite the dilution of Article 370, security officials feel it to be extremely difficult to resettle Kashmiri Pandit refugees immediately in the valley, given the hostility and terrorists in the loss. August 5's decision might polarize the state even further along regional and religious lines.

Amit Shah directly reached out to the people of Kashmir and said "Give us five years, and we will make Jammu and Kashmir the most developed state in the country..... I want to tell the youth of Kashmir valley: have faith in the Narendra Modi government. Nothing negative will happen." But convincing the people of Kashmir to trust the Home minister's words will be no easy task. For now, given the massive incarceration of Kashmiri leaders, the silence of the valley is deafening. But this silence of the valley cannot be taken as given or eternal. Hence we all are here, in this august council of states, to analyse the past and what lies on the ground in the erstwhile state, thus discussing prudential points and arguments, and making the present better with a 'Naya Kashmir', ensuring the best for the future.