

# CENMUN 2019



# RAJYA SABHA (UPPER HOUSE OF THE INDIAN PARLIAMENT)

The revocation of special  
status to the state of Jammu and Kashmir –  
Past, Present & Future.

*27th - 29th September 2019*  
*Centre Point School, Wardhaman Nagar*  
*Nagpur*  
*India*

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## **Letter from the Executive Board**

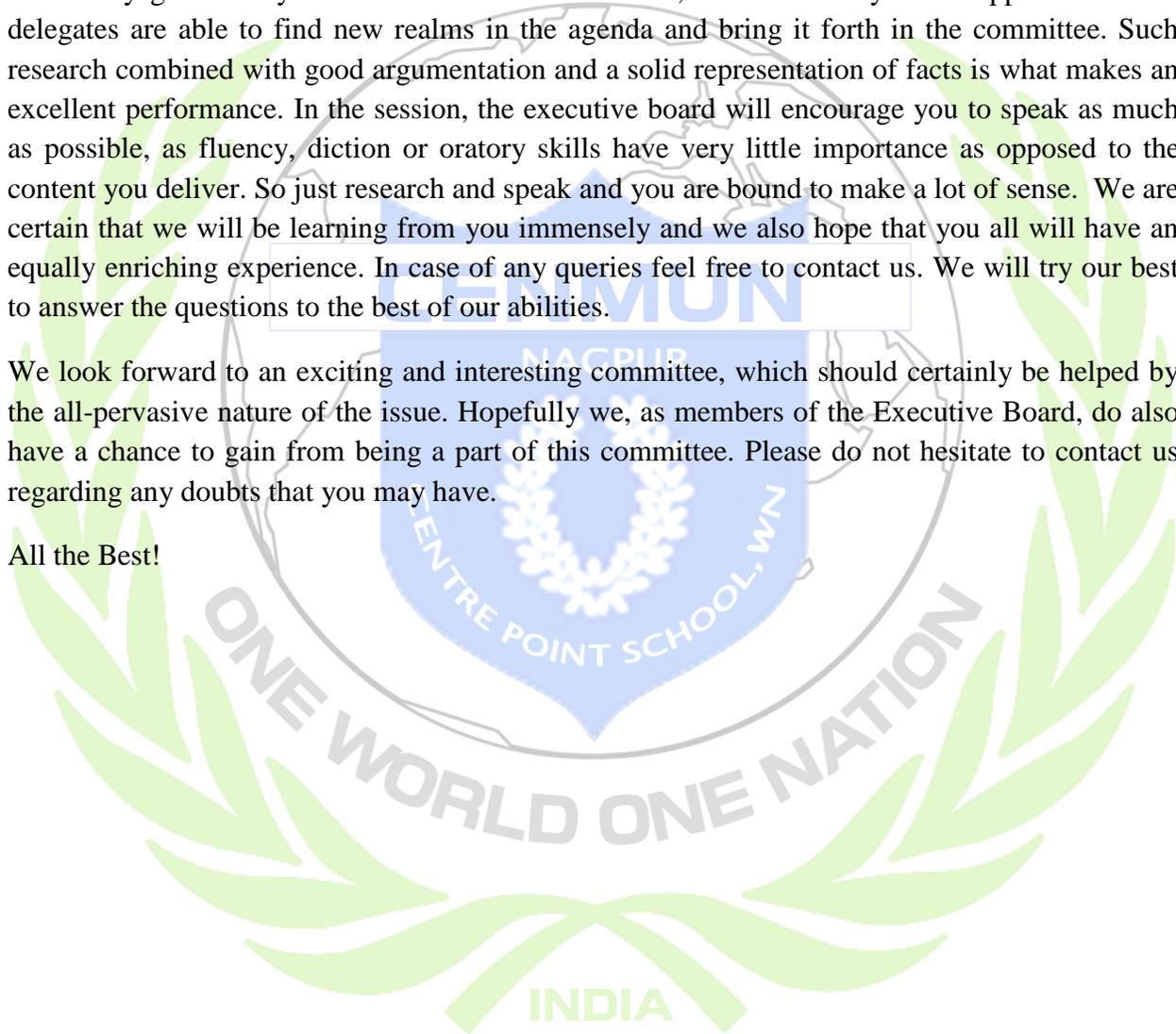
Greetings Parliamentarians!

It gives me immense pleasure to welcome you to the simulation of Rajya Sabha at CENMUN'19, we look forward to an enriching and rewarding experience.

This study guide is by no means the end of research, we would very much appreciate if the delegates are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance. In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!



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 was to be retained by ruler, under the Jammu and Kashmir Constitution Act 1939. 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 and 35-A**

The Article 370 was included in the constitution of India since its inception in 1950. It exempts the state of J&K from the provisions of the Indian constitution (except article 1) and permits the state to draft its own constitution. It also restricts Parliament's legislative power in respect of J&K as every law is made applicable to the state of J&K with the 'concurrence' of the state government. The article was included in the constitution in order to honor the Instrument of Accession entered between the government of India and Maharaja Hari Singh, this is honored due to the internationally recognized principle 'pacta sunt servanda' which means that the promises must be honored otherwise the parties must be restored to the original position.

Article 35A stems from Article 370 as it originated through a Presidential order in 1954. This article is also unique in its own way as it do not appear in the main draft of the Indian constitution but comes in Appendix-I. It defines 'permanent resident' and empowers the J&K legislature to grant privileges and immunities to the permanent residents of the state in respect to immovable property, employment and residence.

### **Abrogation of Article 370: An Anomaly**

Article 370 was initially a temporary provision granting autonomy to the state of J&K, its applicability was intended to last until the formulation and adoption of state's constitution and the clause 7 of the instrument of accession gave the power to abrogate or amend the provision only on the recommendation of Constituent Assembly. However, the constituent assembly dissolved itself in 1957 without recommending either abrogation or amendment to the article 370, thereby making it a permanent feature of the Indian constitution. Reliance is placed on *Prem Nath Kaul v. State of J&K*, in this case the apex court held that the power of President and Parliament is conditional on the final approval of constituent assembly. The apex court also held that the situation are been altered and Article 370 would continue to remain in force and every amendment in the constitution would be affected only when it is applied by President under Article 370 (1). In *State Bank of India v. Santosh Kumar Gupta*, the apex court while deciding that whether an act of parliament of India if in contravention to any clause mentioned in the Instrument of Accession of J&K is applicable to the State of J&K. The apex court by applying the principles of pith & substance held that, even if there is incidental encroachment by an act of parliament of India over a legislation of J&K, it cannot invalidate it. However, the J&K High Court in a judgment delivered in 2015 held that the constitution of the state is "sovereign in character" and the Assembly exercises sovereign power to legislate laws. The court also said that the "sovereign character" of the state cannot be challenged or abridged. In addition to it the Supreme Court in 2018 said that despite the head note using the word 'temporary', Article 370 is not temporary.

With the divergent views of judiciary and the lacuna in law, it is difficult to abrogate Article 370 by merely issuing a Presidential order. Article 370 (3) confers the power on President to cease the effect of the article by issuing a public notification, however, this power is curtailed by the proviso which mandates that the recommendation of constituent assembly is necessary, which ceases to exist since 1957. Therefore, the government added few clauses to Article 367 which deals with 'interpretations', in which the word 'Sadar-i-Riyasat' was replaced with 'the Governor' and 'Constituent Assembly' was replaced as 'Legislative Assembly of the State'. As a result, by imposing a Presidential rule in the state of J&K under Article 356, the parliament performs the legislative function of the state and in order to abrogate the Article 370 legislative assembly of the state is to be considered which ultimately the union parliament is. On the other

hand, if any amendment made to the constitution that results in any change in Seventh Schedule of Indian constitution then such amendment should be ratified by not less than half of the states. Therefore, the abrogation of Article 370 could be termed as a carefully thought and practiced move of the government.

### **IMPORTANT READINGS**

- Drive Link - <https://bit.ly/2mih0GF>
- Standing up to China-Pak Nexus  
<https://openthemagazine.com/cover-stories/after-article-370-standing-up-to-china-pakistan-nexus/>
- In a Stroke, J&K Loses Statehood, Special Status  
<https://openthemagazine.com/special/stroke-jammu-kashmir-loses-statehood-special-status/>

