



# A blow against Article 370

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## **Presidential orders and the circumstances in which they were made have eroded J&K's special status**

- On March 1, 2019, the 77th and 103rd constitutional amendments were extended to Jammu and Kashmir (J&K) by a presidential order, with the concurrence of the J&K Governor.
- These relate to reservations in promotions for Scheduled Castes and Scheduled Tribes in the State services and special provisions for the advancement of economically weaker sections, respectively.
- However, on March 18, this was challenged before the J&K High Court.

## **Background and status quo**

- The constitutional relationship between J&K and the Indian Union has been the subject of numerous discussions in recent times.
- This has rekindled the long-standing debate on the continued relevance of Article 370.
- As in Article 370, the provisions of the Indian Constitution do not automatically apply to J&K.
- To extend constitutional provisions and amendments to the State, a presidential order to that effect has to be passed.
- For other cases, only consultation is required.
- Accordingly, a 1954 presidential order extended various provisions of the Indian Constitution to J&K.
- Since then, more than 40 such orders have been made, through which most constitutional provisions have been extended to the State.
- The sheer number of such orders, as well as the circumstances under which they were made, have considerably eroded J&K's special status under Article 370.

## **A slow death**

- From the 1950s there has been a gradual dilution of the procedural norms followed by these presidential orders.
- The presidential orders made after the dissolution of the State Constituent Assembly — except a 1986 order extending Article 249, and the present 2019 order — can be seen as the first level of dilution.
- This is so because for all these orders, while the concurrence of an elected State government was obtained, the State Constituent Assembly did not exist and, therefore, could not give its ratification.
- Although the Supreme Court upheld this practice in the Sampat Prakash case (1968), it has been criticised as being beyond the scope of Article 370.
- The 1986 order represents a second level of dilution.
- If the 1986 order was problematic, the third level of dilution brought about by the 2019 order is almost the final blow.
- In December 2018, the President assumed all the functions of the State government and the Governor through a proclamation under Article 356.
- In an order passed on the same day, the President directed that all powers assumed by him would be exercisable by the Governor as well, “subject to the superintendence, direction, and control of the President”.
- This is the main point of distinction between the 1986 and 2019 orders.
- A presidential order made through obtaining such a Governor’s concurrence is tantamount to the Centre talking into a mirror and makes a mockery of Article 370.

### **Against federalism**

- The manner in which the 2019 order was made also goes against the spirit of federalism, which is a salient constitutional principle.
- Commenting on the 1986 order, the Sarkaria Commission had observed that “every action which is legally permissible may not be necessarily prudent or proper from the political stand-point”.
- Not only is the recent presidential order against federalism generally and the spirit of Article 370 in particular but it also violates the letter of the Constitution.