



# CLAT 2020

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# Questions for CLAT Exam.

## Legal Reasoning Quiz 1

**Directions: Study the following information carefully and answer the questions given beside.**

The President's notification of the Constitution (Application to Jammu and Kashmir) Order of 2019 of August 5 amends Article 370 of the Indian Constitution and scraps its 65-year-old predecessor, The Constitution (Application to Jammu and Kashmir) Order of May 14, 1954. By junking the 1954 Order, the notification takes away the special rights and privileges enjoyed by the residents of Kashmir. It has effectively allowed the entire provisions of the Constitution, with all its amendments, exceptions and modifications, to apply to the area of Jammu and Kashmir. This is evident from the text of the August 5, 2019 notification. For one, the 2019 notification "supersedes" the 1954 Order. And two, it declares that "all the provisions of the Constitution, as amended from time to time, shall apply in relation to the State of Jammu and Kashmir". It is important to note that Article 370(1)(c) explicitly mentions that Article 1 of the Indian Constitution applies to Kashmir through Article 370. Article 1 lists the states of the Union. This means that it is Article 370 that binds the state of J&K to the Indian Union. Removing Article 370, which can be done by a Presidential Order, would render the state independent of India, unless new overriding laws are made. The August 5 notification has been issued under Article 370 of the Constitution. In short, the government has employed Article 370, which had once protected the 1954 Order giving special rights to the people of Jammu and Kashmir, to scrap the sexagenarian Order.

So far, the Parliament had only residuary powers of legislation in J&K. This included enacted laws to prevent terror and secessionist activities, for taxation on foreign and inland travel and on communication. Now, the Centre has proposed the Jammu and Kashmir Reorganisation Bill of 2019, which says the new Union Territory of Jammu and Kashmir would be administered/governed like the Union Territory of Puducherry.

The tabling of the proposed Reorganization Bill is also proof that the long reign of the 1954 Order has ended. The 1954 Order had introduced a proviso to Article 3, namely that "no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State". That power of the State Legislature to give prior consent does not exist anymore. This has provided a free hand to the Centre to table the Re-organization Bill.

The 1954 Order had also brought into existence Article 35A. This Article gave the State Legislature of Jammu and Kashmir exclusive power to define classes of persons who are/shall be permanent residents of the State; to confer permanent residents special rights and privileges and impose restrictions upon other persons from outside the State; make laws and conditions for State government employment, acquisition of immovable property, settlement rights, scholarships and other forms of aid from the State government.

With the removal of the 1954 Order, the power of the State Legislature ceases to exist and Parliamentary laws, including that of reservation, would apply to Jammu and Kashmir as it does in

other parts of the country. The government called this the end of “positive discrimination” and the closing of the “chasm” between residents of J&K and citizens of other parts of the country. The removal of the 1954 Order further also negates a clause which was added to Article 352. The Order had mandated that no proclamation of Emergency on grounds “only of internal disturbance or imminent danger shall have effect” in the State unless with the concurrence of the State government.

The second part of the August 5, 2019 notification deals with the addition of a new clause to Article 367 which amends the proviso to clause (3) of Article 370. Article 367 deals with the applicability of the General Clauses Act 1897 to interpret the provisions of the Constitution.

The August 5 notification amends the expression “Constituent Assembly”, contained in the proviso to clause (3) of Article 370, to mean “Legislative Assembly”.

Clause (3) of Article 370 gives the President power to end the special rights and privileges of the people of Jammu and Kashmir under the 1954 Order. However, the clause carries a rider. That is, the President would have to first get the consent of the Constituent Assembly of J&K before issuing such a notification. This rider or check on the President’s power was intended to give the people of the State a say in their own future. Now, the Constituent Assembly has ceased to exist since 1956, when it was dissolved. The Assembly, at the time of its dissolution, had said nothing about the abrogation of Article 370. Consequently, Article 370, though it resides among the ‘temporary provisions’ of the Constitution, is deemed to have become a permanent feature of the Constitution.

The August 5 notification has tided over this obstacle of a non-existent ‘Constituent Assembly’ by amending the expression in the proviso to ‘Legislative Assembly’. Ideally, any such amendment to the name of the ‘Constituent Assembly’ would require the assent of the Constituent Assembly itself. Besides, an amendment in Article 370 should have undergone the constitutional amendment procedure envisaged under Article 368 of the Constitution.

But the government can, on the other hand, argue that the amendment made in its August 5 notification only applies to Jammu and Kashmir and not the entire Dominion of India, and so, does not require a constitutional amendment. This point of contention may reach the Supreme Court, where several petitions on the constitutionality of Article 35A, and in consequence Article 370, are pending for adjudication.

Source :- The Hindu and Business Standard.

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- 1. The legislative assembly of Jammu and Kashmir passes a law against the 100th Amendment Act of Parliament of India passed in 2015 in its session held on 20-1-20.**

**The Speaker of the House attends the session and calls it path-breaking in the ethos of federal democracy where the legislative Assembly can pass a law showing true spirit of dissent against the Union.**

- A. Democracy in itself entails the true spirit of dissent and thereby the law shall hold.
- B. The Legislative Assembly could pass a law because the law was passed in 2015 and then the state was covered under Article 370.
- C. The Legislative Assembly could not pass the law but a resolution showing its democratic dissent.
- D. The Legislative Assembly cannot pass the law.

**2. The People of J and K had the right to have say in interference of legislative law making power by Union of India by virtue of \_\_\_\_\_ the Indian Constitution.**

- A. Article 370 (1)
- B. Article 370 (2)
- C. Article 370 (3)
- D. Article 370 (4)

**3. Ram Singh is a permanent resident of J and K and is notified under the Scheduled Caste category. He applies for the job of DSP Police whose recruitment exam was undertaken in February 2019 and interviews are to be conducted in the month of December 2019. Ram Singh was not selected eventually as the government did not provide him reservation benefits. Decide.**

- A. Ram Singh is to be selected as the laws of G.O.I will apply in December 2019.
- B. Ram Singh is not to be selected under the laws of J and K.
- C. Ram Singh is to be selected because Fundamental Rights under the Indian Constitution have been applied on the state.
- D. Ram Singh will not be selected because the government of J and K does not recognize the concept of reservations.

**4. The new order promulgated by the President has removed the legislature of J&K. The New UT is governed on the lines of \_\_\_\_\_?**

- A. Delhi
- B. Chandigarh
- C. Puducherry
- D. Lakshwadeep

**5. The President issued an order well under his powers and under Article 370 of the Indian Constitution. If instead of the promulgation of the order, the Parliament would have removed Article 370 from the Indian Constitution, what would have been the consequence?**

- A. The law would be declared unconstitutional.
- B. The Law will fail the test in the court of Law.
- C. The Law will result in independence of J&k.
- D. The Law will further solidify the Presidential order of 1954.

**Correct Answers:**

|   |   |   |   |   |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|

|   |   |   |   |   |
|---|---|---|---|---|
| D | C | B | C | C |
|---|---|---|---|---|

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**Explanations :**

1. The legislative assembly cannot pass the law against the law made in parliament.

Hence, option D is correct.

- 2.** Article 370(3). It is clearly mentioned in the passage that Article 370(3) was the clause that was a rider or check on the power of the President.

Hence, option C is correct.

- 3.** The vacancies and the advertisement came when new presidential notification was not issued. The law of recruitment applicable at that time will apply.

Hence, option B is correct.

- 4.** It is clearly mentioned in the passage that the new UT will be governed on the lines of UT of Puducherry.

Hence, option C is correct.

- 5.** The abrogation of Article 370 will result in complete Independence of the state of J&k from the Union of India. In order to come over this obstacle, a presidential notification was issued without abrogating Article 370.

Hence, option C is correct.

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