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Q2

To what extent is Article 370 of the Indian Constitution, bearing marginal note "temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.

UPSC Civil Services Mains 2016 · GS II · 12 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- To what extent is **Article 370** of the Indian Constitution, bearing marginal note "temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity
- Read **Article 370** with Part XXI, the Presidential-order practice, the dissolved Constituent Assembly, and the later 2019 constitutional change

Revision summary

Article 370 is labelled temporary in Part XXI and can cease under clause (3), but the State Constituent Assembly never recommended that before it dissolved in 1957.

Presidential orders, especially 1954, extended the Union Constitution while keeping the special gateway.

Court practice treated the article as continuing, so it was temporary in name and durable in fact until 2019.

C.O. 272, C.O. 273 and the J&K Reorganisation Act, 2019, made it inoperative; the **2023** judgment upheld that path and spoke of restoring statehood.

Prospects in polity are now about statehood and ordinary federalism, not about reviving the old **Article 370** as a living special status.

Introduction

Article 370 sits in Part XXI under the heading of temporary, transitional and special provisions, and its own marginal note calls it a temporary provision with respect to the State of Jammu and Kashmir. Temporariness was real in the text of 1949, but for seven decades practice made it a durable special status, until the President and Parliament in 2019 used **Article 370(3)** and related orders to end that status. A discussion of extent and prospects must hold both the original design and that later political-legal settlement.

Body**How far it was temporary in the text**

- **Article 370(1)** limited the application of the Union Constitution to Jammu and Kashmir to **Article 1**, **Article 370** itself, and such other provisions as the President specified by order, with

the State government's concurrence on matters in the Instrument of Accession and beyond.

- **Article 370(2)** tied certain concurrence to a decision of the State's Constituent Assembly.
- **Article 370(3)** allowed the President to declare that **Article 370** shall cease to be operative or shall operate only with exceptions, but only on the recommendation of the Constituent Assembly of the State.
- That Assembly adopted the State Constitution and dissolved itself in 1957 without recommending abrogation, which is why "temporary" in the margin did not, by itself, put an expiry date on the article.
- A chain of Constitution (Application to Jammu and Kashmir) Orders, especially the 1954 Order, extended Union lists, fundamental rights with modifications, and later **Article 35A (through the 1954 Order)**, so integration grew while the special gateway of **Article 370** remained.

How practice made it durable

- Supreme Court rulings such as Prem Nath Kaul and Sampat Prakash treated **Article 370** as still alive after 1957 and allowed continued Presidential orders, which converted a wartime accession clause into a long-running special federal arrangement.
- Separate flags, residency rules, and a State Constitution sat beside the Union Constitution; that was special status in daily polity, not a sunset clause waiting to lapse.
- **Politically, Article 370 became a symbol:** for some a promise of autonomy after accession, for others an incomplete national integration. Temporariness was therefore a legal label and a political argument at the same time.
- In 2016, when this question was asked, the provision was temporary in constitutional classification and permanent in operational fact, unless a political majority found a lawful path through **Article 370(3)** or a constitutional amendment.

Future prospects in Indian polity

- **One prospect, later chosen, was to end the special application of the Constitution:** in August 2019 the President issued C.O. 272 and C.O. 273, Parliament passed the **Jammu and Kashmir Reorganisation Act, 2019**, and the State was reorganised into two Union Territories, with **Article 370** declared inoperative.
- **The Supreme Court in In Re: Article 370 (2023)** upheld the constitutional path of those orders while asking that statehood be restored, which shows that "future prospects" were not only academic.
- A second prospect, argued before 2019, was gradual erosion through more Presidential orders without a formal cease-to-operate declaration, which had already been the method since the 1950s.
- A third prospect was a political settlement restoring greater autonomy inside the Union, which remains a live federal demand even after 2019, especially around statehood, Assembly powers, and local jobs.
- For Indian polity the larger lesson is that Part XXI "temporary" clauses can last for generations, and that their end, when it comes, is a high-stakes Union decision tested in the Supreme Court, not an automatic lapse.

Flow diagram

Part XXI temporary heading -> Article 370 gateway

Article 370 gateway -> Presidential orders to 2019

Article 370 gateway -> Constituent Assembly dissolved 1957

Constituent Assembly dissolved 1957 -> No automatic expiry

Presidential orders to 2019 -> Constituent Assembly dissolved 1957. Presidential orders to 2019. 272 and 273 of 2019

C.O. 272 and 273 of 2019 -> Special status inoperative

Conclusion

Article 370 was temporary in its Part XXI heading and in **Article 370(3)**, but not self-expiring after the State Constituent Assembly vanished. Practice made it a long special status. Its future, as actually written in 2019 and tested in **2023**, was inoperativeness plus reorganisation, with statehood still an open federal promise. Temporariness was therefore a legal possibility that politics finally used, not a calendar date printed in 1950.

Facts & figures

Article 370

Part XXI provision that limited and gated the application of the Constitution to Jammu and Kashmir through Presidential orders and State concurrence.

Article 370(3)

Empowered the President to declare that **Article 370** shall cease to operate, originally on the recommendation of the State Constituent Assembly.

Constitution (Application to J&K) Order, 1954

Principal order that extended large parts of the Union Constitution to the State, including modified fundamental rights, and was the vehicle for **Article 35A**.

Jammu and Kashmir Reorganisation Act, 2019

Parliament Act that reorganised the State into the Union Territories of Jammu and Kashmir and Ladakh after **Article 370** was made inoperative.

In Re: **Article 370 (2023)**

Supreme Court upheld the 2019 constitutional orders ending the special status and observed that statehood should be restored.