# Article 370 and 35(A) Revoked

drishtiias.com/printpdf/article-370-and-35-a-revoked

On 5th of August 2019, the President of India promulgated the **Constitution (Application to Jammu and Kashmir) Order, 2019.**

- The order effectively abrogates the special status accorded to Jammu and Kashmir under the provision of **Article 370** - whereby provisions of the Constitution which were applicable to other states were not applicable to **Jammu and Kashmir (J&K)**.
- According to the Order, provisions of the **Indian Constitution are now applicable in the State.**
- This Order comes into force "at once", and shall "supersede the Constitution (Application to Jammu and Kashmir) Order, 1954."
- A separate Bill - the **Jammu and Kashmir Reorganisation Bill 2019** - was introduced to bifurcate the State into two separate **union territories of Jammu and Kashmir (with legislature)**, and **Ladakh (without legislature).**
- **Jammu and Kashmir Reservation (Second Amendment) Bill, 2019** was also introduced to extend the reservation for **Economically Weaker Sections (EWS)** in educational institutions and government jobs in Jammu and Kashmir.

## History

- J&K acceded to the Dominion of India after the **Instrument of Accession** was signed by Maharaja Hari Singh, the ruler of the princely state of Jammu and Kashmir, on 26 October 1947.
- **Article 370 of the Indian Constitution** provided that only **Articles 1 and 370 itself would apply to J&K.** The application of other Articles was to be determined by the President in consultation with the government of the state.
- **The Constitution Order of 1950** specified the matters on which the Union Parliament would be competent to make laws for J&K, in concurrence with the Instrument of Accession - 38 Subjects from the Union List were added.
- The **Constitution (Application to Jammu and Kashmir) Order, 1954** settled the constitutional relationship of J&K and the Union of India. It made the following provisions -
    - Indian citizenship and all related benefits (fundamental rights) were extended to the **'permanent residents'** of Jammu and Kashmir.
    - **Article 35A was** added to the Constitution (empowering the state legislature to legislate on the privileges of permanent residents with regard to immovable property, settlement in the state and employment)
    - The **jurisdiction of the Supreme Court of India** was extended to the State.
    - Central Government was given the power to **declare a national emergency** in the event of **external aggression.** The power in case of internal disturbances could be exercised only with the concurrence of the State Government.
    - Normalized the financial relations between the Centre and J&K

## Article 370 - Features and Provisions

- **Present in part XXI of the Indian Constitution** which comprises of **Temporary, Transitional and Special Provisions** with rest to various states of India.
- Forms the basis of the **"Special Status"** of J&K.
- Provides for a **separate Constitution of J&K.**
- Limits the Union Parliament's power to make laws for J&K to those subjects mentioned in the **Instrument of Accession (defense, foreign affairs, and communications)** and others as and when declared by the Presidential Orders with the concurrence of the Government of the State.
- Specified the mechanism by which the Article shall cease to be operative. That is, on the **recommendation of the Constituent Assembly of the State** before the President issues such a notification. However, this provision has been **amended by the Constitution (Application to Jammu and Kashmir) Order, 2019.**

## Was it Temporary

- The Article was introduced to accommodate the apprehensions of Maharaja Hari Singh who would not have acceded to India without certain concessions.
- Territorial integrity was of paramount importance to India post-independence, thus, such a special provision was inducted in the constitution.
- The provision, however, is part of the **"Temporary, Transitional and Special Provisions"** of our constitution.
- Moreover, Article 370 could be interpreted as temporary in the sense that the J&K Constituent Assembly had a right to modify/delete/retain it; it decided to retain it.
- Another interpretation was that accession was temporary until a plebiscite.

## Issues in Revoking

- Article 370 is the bedrock of the constitutional relationship between Jammu and Kashmir and the rest of India.
- It has been described as a tunnel through which the Constitution is applied to J&K.
- India has used Article 370 at least 45 times to extend provisions of the Indian Constitution to J&K. This is the only way through which, by mere Presidential Orders, India has almost nullified the effect of J&K's special status.
- By the 1954 order, almost the entire Constitution was extended to J&K including most Constitutional amendments.
- However, abrogating the article altogether **may threaten the peace in the state** which is already a hotspot of conflicts and militancy.
- It will completely change the relationship between the state and the rest of India.
- It will also clear the path for **abrogating Article 35A** which would allow Indian citizens to **purchase land and settle permanently** in J&K.
- Thus, the move is bound to have a s**ignificant impact on the demography, culture, and politics of J&K.**