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 significant impact on the demography, culture, and politics of J&K.