Presidential Order amending Constitution (Application to Jammu and Kashmir) Order, 1954

What is the issue?

- The Centre's executive order amending the Constitution (Application to Jammu and Kashmir) Order, 1954 is challenged in the J&K high court.
- Here is a brief look on the evolution and purpose of the 1954 Order and the disputes related to it.

What is the executive order for?

- The Union Cabinet recently approved the proposal of the J&K Governor's administration to amend the Constitution (Application to Jammu and Kashmir) Order, 1954.
- Following this, President Ram Nath Kovind issued an executive order amending the 1954 Order.
- The objective was to extend the provisions of the 77th and 103rd Constitutional Amendments to the state.
- The Centre said that the amendment would give benefit of promotion in service to the Scheduled Castes, and Scheduled Tribes.
- It would also extend the 10% reservation for economically weaker sections in educational institutions and public employment.
- The Centre's move has now been challenged in the Jammu & Kashmir High Court.

Why is it being challenged?

- Major J&K parties said the order violated Article 370 which regulates J&K's relationship with the Union.
- The power of the Governor to make the recommendation without the concurrence of the state government has been challenged.
- The petition pleaded the court to struck down -

1. The Constitution (Application to Jammu & Kashmir) Amendment Order, 2019
2. The Jammu and Kashmir Reservation (Amendment) Ordinance, 2019

- In 1986 too, an amendment to the 1954 Order was issued just with the concurrence of Governor's administration.
- It extended to J&K, Article 249 of the Indian Constitution, which describes

the power of Parliament to legislate, in the national interest, even on matters in the State List.
- The petition challenging this is still pending.

What were the terms of J&K's entry into Indian Union?

- Maharaja Hari Singh, who was ruling J&K, signed the Instrument of Accession (IoA) in October, 1947.
- J&K then gave up control over only 3 subjects which are Defence, Foreign Affairs, and Communications.
- A separate Constituent Assembly of J&K was planned to frame the J&K Constitution, and to work out J&K's constitutional relationship with New Delhi.
- Under Article 370 of the Indian Constitution, only two articles of the Constitution apply to J&K.
- One is Article 1 which defines India, and the other is Article 370 itself.
- Article 370 provides that other provisions of the Indian Constitution can apply to J&K "subject to such exceptions and modifications as the President may by order specify".
- Notably, this is done only with the concurrence of the state government.

What was the 1954 Presidential Order for?

- The decisions to extend the provisions of the Indian Constitution other than those specified in the IoA had to be ratified by the J&K Constituent Assembly.
- The J&K Constituent Assembly was yet to be set up then.
- But the Centre wanted to extend a few provisions of the Constitution to streamline J&K's relationship with the Union.
- Thus, a Presidential Order was issued on January 26, 1950 itself, with the state government's concurrence.
- On November 5, 1951, J&K's Constituent Assembly was convened.
- Soon, the 1950 Order was replaced by The Constitution (Application to Jammu and Kashmir) Order, 1954.
- This Order applied to J&K the provisions of Part-III of the Indian Constitution that relates to fundamental rights.
- Besides, it introduced Article 35A which protected laws passed by the state legislature of J&K in respect of permanent residents.
- Any protections offered to its residents cannot be challenged on the ground that they violated any of the fundamental rights.
- This order was ratified by the Constituent Assembly that also framed the J&K Constitution, before dispersing in November, 1956.

What is the contention thereafter?

- The 1954 Order had the requisite concurrence of both the state government and the J&K Constituent Assembly.
- But subsequently, 42 Presidential orders have been issued, all of which were amendments to the 1954 mother order.
- Through these orders, successive central governments have extended 94 out of the 97 entries in the Union List, and 26 out of the 47 in the Concurrent List to J&K.
- They have also made 260 out of the 395 Articles of the Indian Constitution applicable to J&K.
- This list does not include The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act, 2002, and the GST Acts.
- But notably, none of these amendments to the 1954 Order have fulfilled the requirement of ratification by the J&K Constituent Assembly.
- To this, the Centre has argued that an elected state government's consent is enough.

- In 1959, the Supreme Court too observed that the Constitution-makers were anxious that the said relationship should be finally determined by the State's Constituent Assembly itself.
- A decade later, the court ruled that Presidential orders could still be made through Article 370.
- Also, in 1972, the court said the Governor is the head of government aided by a council of ministers.

Is the present order justified?

- The latest order only has the consent of the Governor without the requisite aid and advice of the Council of Ministers.
- Understandably, the Governor acts only as a nominee of the Union government.
- S/he does not meet the definition of state government as laid down by Article 370 and the Supreme Court.
- Major J&K parties have also always opposed the amendments to the 1954 Order without ratification by the Constituent Assembly of the state.

Source: Indian Express

Quick Facts

Constitution (77th Amendment) Act

- SCs and STs have been provided reservation in promotions since 1955.
- This was discontinued following the judgement in the case of Indra Sawhney wherein it was held that it is beyond the mandate of Article 16(4) of the Constitution.
- Subsequently, the Constitution was amended by the Constitution (77th Amendment) Act, 1995.
- It inserted a new clause in Article 16 to enable the government to provide reservation to SCs and STs in promotion.

Constitution (103rd Amendment) Act

- The Act aims to provide reservation of up to 10% in public employment and higher education for economically weaker sections.

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