Special Status to J&K

What was the issue?

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The Centre asked the Supreme Court to debate on the special status granted to the State of Jammu and Kashmir.

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What was the case?

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- Jammu and Kashmir High Court earlier ruled that Article 370 assumed a place of permanence in the Constitution and the feature was beyond amendment, repeal or abrogation.
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- It also observed that the President under Article 370 (1) was conferred with power to extend any provision of the Constitution to the State with such “exceptions and modifications” as may be deemed fit subject to consultation or concurrence with the State government.
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- It said that J&K, while acceding to the Dominion of India, retained limited sovereignty and did not merge with it.
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- It also clarified that Article 35A gave “protection” to existing laws in force in the State.
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- Article 35A of the Indian Constitution empowers the J&K state's legislature to define “permanent residents” of the state and provide special rights and privileges to those permanent residents.
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- In this regard a PIL plea was filed contending that the J&K government was discriminatory against non-residents as far as government jobs and real estate purchases were concerned.
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- The Supreme Court Bench agreed to schedule the case before a three-judge Bench after six weeks.
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Why Special Status has been conferred to J&K?

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- In 1947, after independence, the State of Jammu and Kashmir decided not to join either Pakistan or India.
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- India welcomed this decision, but Pakistan attempted to annex the State militarily.
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- So the Maharaja of J&K sought Indian help to save his territory and people who were being killed and looted by the Pakistani militants.
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- Subsequently an **“Instrument of Accession”** was signed which provided certain concessions for the autonomy of the State.
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- This special status of the State is enshrined in **Article 370** of the Indian Constitution. This Article cannot be amended.
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What are the provisions in ‘Special Status’?

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- The State of Jammu and Kashmir has its own Constitution apart from Indian constitution.
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- This state follows ‘dual citizenship’- Citizenship of Jammu and Kashmir and India.
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- The residuary power of the state lies with the Legislature of the Jammu and Kashmir and not the Parliament of India.
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- Except for defence, foreign affairs, finance and communications, the Parliament needs the state government’s concurrence for applying all other laws.
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- The national emergency declared in the ground of war or external aggression

shall have an automatic extension to the State.
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- The national emergency proclaimed on the grounds of armed rebellion, shall not have an automatic extension to Jammu and Kashmir.
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- The Governor of the State is to be appointed only after consultation with the Chief Minister of that State.
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- Financial Emergency under Article 360 of Indian constitution cannot be imposed on the State.
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- Directive Principle of Policy and Fundamental duties enshrined in the Indian constitution are not applicable to Jammu and Kashmir.
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- Apart from the President‘s rule, the Governor’s rule can also be imposed on the State for a maximum period of six months.
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- The preventive detention laws as mentioned in Article 22 of Indian constitution do not have an automatic extension to the State.
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- The name, boundary or territory of the State of Jammu and Kashmir cannot be changed by the Parliament without the concurrence of the State Legislature.
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- Article 19(i) (f) and 31 (2) of Indian constitution have not been abolished for this State and ‘Right to property’ still, stands guaranteed to the people of Jammu and Kashmir.
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Source: The Hindu

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