Supreme Court Verdict on Article 370

Why in news?

A Constitution Bench of the Supreme Court unanimously upheld the power of the President to abrogate Article 370 of the Constitution, which granted special status to the former State of Jammu and Kashmir (J&K).

History of J&K's Accession to India
• **Pre-Independence**- Under British rule, from 1846 to 1858, J&K was a ***princely state*** in a subsidiary alliance with the British East India Company and subsequently came under the British Crown until 1947. • The East India Company, which had annexed the Kashmir Valley from the Sikhs as war indemnity, sold it to the Maharaja of Jammu, Gulab Singh. • J&K remained a part of the British Raj but enjoyed its ***sovereignty,*** except for matters of defence, foreign affairs, and communications. • It also disallowed outsiders to own properties in the State. • **Post-Independence**- During the time of Partition, J&K 's ruler, Maharaja Hari Singh, decided ***not to side*** with either India or Pakistan. • An *invasion by tribal militias from Pakistan*, backed by the country's establishment, in 1947 made the Maharaja to call New Delhi for assistance in the fight against the invasion. • The Indian government, led by then Prime Minister Jawaharlal Nehru, agreed to extend help but asked Maharaja to sign an ***Instrument of Accession (IoA).*** • The IoA was signed by Maharaja Hari Singh on ***October 26, 1947***, agreeing to accede to the newly independent India, but with a significant degree of autonomy.

What is Article 370?

- **Origin-** Article 370 is derived from ***Part XXI*** of the Constitution under the title *"Temporary, Transitional and Special provisions"*.
- **Features** – Article 370 gave Kashmir its autonomy in internal administration and in all matters except for 3 subjects - ***defence, external affairs, and communication.***
- Except for ***Article 1*** (*India is a Union of States*) and ***Article 370*** *(Temporary provisions with respect to the State of J&K)* of the Constitution of India, other provisions do not apply to J&K.
- Clause (1) (d) of Art 370 empowered the President of India to extend other provisions of the Constitution through an executive order with the ***concurrence of the government of J&K.***
- Article 370(3) empowered the President to 'declare Article 370 shall cease to be operative' completely or partially but only if the ***Constituent Assembly of J&K recommended*** such an action.
- ***Delhi agreement,*** signed in 1952, extended the provisions of Indian Constitution regarding citizenship, fundamental rights to the State, in addition to the jurisdiction of

the Supreme Court of India.

What is Article 35A?

- **Origin-** It was inserted as part of the amendments made through a ***1954 Presidential order*** imposed under Article 370.
- **Features**- It grants the J&K assembly complete freedom to decide or define the ***permanent residents*** of the State.

  *The permanent resident of J&K has been defined as a person who was a subject of the State on **May 14, 1954,** or a person who has been residing in* J&K *for **10 years,** and has acquired **immovable property** in the State under the ambit of law.*

- It allows J&K to confer special rights and privileges to permanent residents in
  - Public employment
  - Acquisition of immovable property in the State
  - Settlement in different parts of the State
  - Access to scholarships
  - Other such aids that the State government might provide
- It exempts the legislation with respect to permanent residents from being annulled on the ground that they infringe on any of the fundamental rights.
- It also ***bars female residents of J&K from property rights*** in the event that they marry a person from outside the state.
- It ***forbids outsiders*** from permanently settling, buying land, holding local government jobs or education scholarships in the region.

How was Article 370 scrapped?

Article 367 *provides guidance on the interpretation of various provisions of the Constitution and set out the rules for determining the meaning of words and phrases used in the Constitution.*

- **Constitutional Order 272-** It amended Article 367 thereby stating that the reference to *Constituent Assembly* in Article 370 would mean *Legislative Assembly* of the State.
- During that time (2019), the State was under the President's rule and hence the President issued the orders instead of State Legislative Assembly.
- **Constitutional Order 273**- On the recommendation of Rajya Sabha, President announced the order effectively declaring that the *Article 370 would cease to operate*, thereby applying the provisions of Indian Constitution to J&K.
- **Jammu and Kashmir Reorganization Act, 2019**- The law bifurcated the State into

two Union Territories (UTs)
    - **Ladakh** (without Legislature) - Comprises Kargil and Leh districts
    - **J&K** *(*with Legislature) - Comprises all the remaining territories of the erstwhile State of J&K.

National Unity Day was observed on October 31, 2019, the day the two union territories (J&K and Ladakh) were established.

What are the arguments in favour of abrogation?

- **Temporary nature**- The provision is temporary and its abrogation is the ultimate step towards integration of J&K with India.
- **Article 14** - Article 35A discriminates against women who marry outside the State and allows only the permanent residents to buy land in J&K, thereby violating the *Right to equality (Art 14).*
- **Inclusiveness**- There is no separate flag and Constitution for J&K, meaning that the State is no longer a separate entity from India.
- **Promise of restoration-** It is converted into Union Territory owing to its *sensitive border State* for a temporary period and Statehood would be restored once normalcy was established in the State.

What are the arguments against abolition?

- **Unique nature** - The State had a unique relationship with the Union but the Maharaja of J&K *did not give up the internal sovereignty* to the dominion of India.
- **Violates the doctrine of colourable legislation-** The President *indirectly amended* Article 370, by substituting the Constituent Assembly of J&K with the Legislative Assembly.

The doctrine of colourable legislation means what cannot be done directly cannot also be done indirectly.

- **Violation of democracy** - Not ascertaining the will of the people either through its elected Government or legislature or referenda, violates the basic principle of democracy, federalism, and fundamental rights.
- **Time of abrogation** - The J&K Reorganisation Act, 2019 was unconstitutional as the declaration had been made with the concurrence of Governor at a time when J&K was under *President's rule.*
- **Article 3-** The Centre's decision is also said to violate Article 3 of Indian Constitution.

*Article 3 empowers the **Parliament** to form new States and alter the boundaries*

of existing State. It is mandatory for the President to refer any Bill proposing the reorganisation of a State to its ***legislature*** *if the Bill "affects the area, boundaries or name of any of the States".*

What are the key takeaways from the Supreme Court verdict?

Key issues	SC verdict
Nature of Article 370	• The court ruled that Article 370 was always meant to be a ***temporary provision***, considering its historical context, wording and placement in the Constitution under part XXI.
Internal Sovereignty of J&K	• The court said that J&K didn't have any internal sovereignty following the *proclamation of Karan Singh* (the ruler of J&K) made in 1949. • The Proclamation stipulated that the Indian Constitution would govern the relationship between J&K and the Union and had the effect of a '*merger' like any other princely state*. • However, one of the judges followed the decision of the 1959 judgement in ***Prem Nath Kaul v Jammu and Kashmir,*** where it was held that the States retained an element of internal sovereignty.
Federalism	• Article 370 was a feature of ***asymmetric federalism.*** • The special status granted to J&K was simply a higher degree of that autonomy, not a different kind of autonomy.
Constitution of J&K	• The Constitution of J&K was ***always subordinate*** to the Constitution of India. • Hence, Article 370 became inoperative after the Constitutional Orders 272 and 273.
President rule in J&K	• The court upheld the validity of the President's rule in J&K, and said that the actions taken by the President were not irrational referring to the landmark 1994 ruling in '***SR Bommai v Union of India'***. • The President can assume "all or any" roles of the State legislature and such action must be tested judicially only in extraordinary cases.
Parliament power under Article 356	• Article 356(1)(a) states that the President may declare that the ***"powers of the State Legislature***" shall be exercised by or under the authority of Parliament. • The court held that allowing Parliament to exercise all constitutional powers of the Legislative Assembly would limit the power of the State. • However, the Constitution recognises such reduction of federal power when *Article 356 is in force.*
Reorganisation of the State under Article 3	• The court held that the Parliament had the power to reorganise J&K into 2 Union Territories under Article 3. • It also said that the ***consent of the State legislature was not required*** as the Parliament had assumed its role during President's Rule. • It also asked the Union to restore statehood at the earliest.
Truth and Reconciliation Commission (TRC)	• The court recommended the constitution of *TRC just like South Africa* did in its post-apartheid era to *address human rights violations* perpetrated in J&K both by State and non-State actors since the 1980s.
Elections	• The court asked the Election Commission of India to conduct elections to the J&K Legislative Assembly by ***30th September 2024.***

Why election in the Union Territory of J&K is important?

The last Assembly election was in 2014, and the last elected administration fell in June 2018.

- **Restore democracy-** Elections are a way of restoring democracy and representation to the people of J&K, who have been under President's rule since 2018.
- **Affirmative action-** As the Jammu and Kashmir bills increased the seats in the Legislative Assembly for SCs and STs, it provides a stronger political representation.
- **Boosts confidence** - Elections are a chance of building confidence and trust between the Centre and the people of J&K.
- **Grievance redressal**- Elections are a means of addressing the grievances and aspirations of the people of J&K, who have faced various challenges and hardships after the abrogation of Article 370.
- **Reduce terrorism-** Elections can also foster dialogue and reconciliation among the stakeholders and reduce the alienation and violence in the region.
- **Citizen engagement**- Elections are an opportunity of enhancing the governance of J&K, by ensuring the participation and accountability of the elected representatives and the administration.
- **Economic gain**- Elections can also attract more investment and infrastructure to the region and improve the quality of life of the people.

Quick Facts

SR Bommai Case – Regarding Article 356
• **Article 356-** It allows the President to impose Central rule in States experiencing a "***failure of constitutional machinery.***" • **Legal precedents**- The President must have a "***reasonable satisfaction***" that the State government is unable to function according to the Constitution. • There must be a failure of constitutional machinery, not just a political crisis. • ***The Governor's report*** that recommends President's rule, must be based on objective facts and not mere speculation. • The Central government's decision must be immediately communicated to both Houses of Parliament for approval. • The proclamation of President's rule must be laid before each House of Parliament ***within a month*.**

