The Importance of India's Federal Design

Mains: *GS II – Issues and challenges pertaining to the federal structure*

Why in News?

Recently, The Supreme Court has sought a detailed response from the Centre on the issue of restoration of statehood to Jammu and Kashmir (J&K).

What is the issue?

- **Abrogation of article 370 and 35A** – On 5 August 2019, the Government of India revoked *the special status, or autonomy, granted under Article 370 & 35A of the Indian Constitution to Jammu and Kashmir.*

Article 370 (deleted) *– It was a temporary provision that granted special autonomous status to the former state of Jammu and Kashmir (J&K),* ***allowing it to have its own constitution*** *and limited legislative powers on internal matters, while major powers like defense, foreign affairs, and communication remained with the Indian government.*

Article 35A (deleted) *– It was a constitutional provision that granted the Jammu and Kashmir Legislature the* ***power to define "permanent residents"*** *and provide them with special rights and privileges, particularly in areas like state employment, property acquisition, and settlement in the state.*

- **Supreme Court's direction** – On December 11, 2023, the Supreme Court *upheld the abrogation of Articles 370 and 35 A.*
- The SC also directed the Union Government to restore the statehood of Jammu and Kashmir and hold Legislative Assembly elections.
- **Elections for J&K assembly** – The *election for the 90-member Assembly were held in October 2024,* but there has not been any hint so far from the Government to restore the statehood as asked by the Court.

What is federalism?

- **Federalism** – Federalism is a system of government where power is constitutionally divided between a central authority and constituent regional units, such as states or provinces.
- **Characteristics** – Some of the key characteristics of federal system are
  - Division of power
  - Two levels of government
  - Independent authority

    - Shared governance
- **Examples** – This include the United States, Germany, India, and Canada, etc.

How are States Created in India?

- **Process** – There are 3 processes enshrined in the Constitution of India for creating States
    - Admission
    - Establishment
    - Formation
- **Admission** – For admission of a new State into the territory of India, the entity *should have its own organised political unit.*
- It is also required that admission through acquisition shall be guided by international law.
    - ***For example**, Jammu and Kashmir was admitted into India's territory by this process, through the Instrument of Accession in 1947.*
- By executing this Instrument under the provisions of the Indian Independence Act, 1947, the then ruler of Kashmir, Maharaja Hari Singh agreed to accede his State to India.
- **Establishment** – For establishing a new State, territory shall be acquired as per the definition of acquisition in international law.
    - ***For example**, India acquired Goa and Sikkim and established them as States.*
- **Formation** – The process of forming a new State has been, in fact, the reorganization of an existing State which led India to take its number of 14 States in 1956 to 29 States before the enactment of the Jammu and Kashmir Reorganisation Act, 2019.
- **Article 3 of the Constitution** – It provides for this process of reorganisation wherein Parliament may by law form a new State by
    - Separation of territory from any State, or
    - By uniting two or more States or parts of States, or
    - By uniting any territory to a part of any State,
    - Increase the area of any State, diminish the area of any State, alter the boundaries of any State, or alter the name of any State.
- **Limitation** – The Union may diminish the area of a State, but it cannot take it away by making it a Union Territory.
- Therefore, it is mandatory for the Union to restore the statehood of Jammu and Kashmir.

What about India's federal design?

- **Union of state** – India has been made a Union of States which means that it is indivisible and that States have no right to secede.
- **Article 1 of the constitution** – ***India, that is Bharat, shall be a Union of States.***
    - **The word 'India'** – It reflects a unitary federation.
    - **The word 'Bharat'** – It is a cultural connotation which signifies that India has a composite culture and that there is unity in diversity.
- **Federation not explicitly mentioned** – Despite being a two-tier system of governance, the word 'federation' is not used but rather 'Union' is written expressly.

- The idea behind this unique feature is to ensure India's federal character and unitary spirit.
- The direct use of the word 'Union' makes the Centre strong enough to protect the unity and integrity of the nation.
- The federal character is created to equitably distribute the resources establishing India as a welfare state.
- **Basic structure** – India's federal character has been included in the Basic Structure of the Constitution.
- **Position of Rajya Sabha** – Without a federal design, India's union would lose its existence.
- Hence, the Rajya Sabha has been made a permanent House in Article 83 (1) which writes that it shall not be subject to dissolution.
- The States' representation must always be there at the Union level to maintain and sustain India's unitary federation.
- Thus, it is imperative that the statehood of Jammu and Kashmir be restored to protect the sanctity of federation.

What lies ahead?

- The restoration of statehood would definitely empower the elected government in Jammu and Kashmir.
- This could also limit the powers of the Lieutenant Governor and affect the present position of the Union over the Union Territory of Jammu and Kashmir.

Reference

The Hindu| India's Federal Design

