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The Big Picture – Article 370

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Since the BJP and PDP alliance broke in Jammu and Kashmir, there have been debates on whether Article 370 which grants special status to the state, should be revoked or not. The promise when it was formulated that Article 370 was a temporary provision and will get eroded over a period of time has turned out to be an illusion. Article 370, included in the Constitution on a temporary provision should have been gradually abrogated. This has not happened in nearly 70 years.

Background

- Article 370 of the Indian Constitution deals with the special status given to the state of Jammu & Kashmir.

- It was supposed to be an interim arrangement till final resolution of the issues of Kashmir is achieved by engaging all the stakeholders.
- The article has undergone fair amount of changes and it does not come into the way of the jurisdiction of the Indian parliament it did in its original form.
- It provides a degree of autonomy to the state and permits the state to give some special privileges to its "permanent residents".
- Some of the major implications of this can be listed as:
 - The Emergency provisions are not applicable to the state on the grounds of "internal disturbance" without the concurrence of the State;
 - The name and boundaries of the State cannot be altered without the consent of its legislature.
 - The state has its own constitution, a separate flag and a separate penal code (Ranbir Penal Code).
 - Duration of the state's Assembly is six years, unlike five in the rest of India.
 - The Indian Parliament can pass laws regarding J&K in the matters of Defense, External affairs and communication only. Any other law formed by Union will only be applicable in J&K by presidential order if it concurs with state assembly.
 - The President may, by public notification, declare that this Article shall cease to be operative but only on the recommendation of the Constituent Assembly of the State.

Article 35A

- Article 35A, which is an extension of article 370 that empowers the Jammu and Kashmir state's legislature to define "permanent residents" of the state and provide special rights and privileges to those permanent residents and doesn't allow residents from other states to work or own property in the state.
- The intention behind this article was to protect the demographic structure of J&K. In spite of the fact that the people from the Hindu and Buddhist majority Jammu and Ladakh are permitted to reside in Kashmir, its demographic structure has remained more or less the same.
- The constitutionality of Article 35A have been debated on the ground that it was not added via an amendment procedure. However, similar provisions were used to extend special rights to other states as well. In this scenario, it is difficult to abrogate this act.

Objections to the Article

- The article circumcises the power of the Indian parliament to make laws for one its states.
- This article has not been added to the constitution as per the amendment procedure laid down in Article 368. Instead, it was inserted in the constitution by a presidential order.

- This Article also violates some fundamental rights of women who marry outside the state, manual scavenging workers, West Pakistani refugees etc.
- It is also criticized for allowing the state government and to discriminate between citizens of India, on an unfair basis.

Issues in Revoking 370 and 35A

- Currently, the right of permanent settlement is perceived as the only significant autonomy held by Kashmiris. So any attempt to tamper it might attract a massive backlash.
- If the article 35A is repealed, constitutionally, **J&K will return to its status as before the 1954 act**. In that case, the union government will be left with powers related to defence, foreign affairs and communications within the state.
- It has also been argued that many of the autonomies granted by Article 370 have been eroded anyway and most of the laws of the union apply to the state of J&K as well.

What needs to be done?

- Article 370 cannot be revoked unilaterally. It is important that Jammu and Kashmir and the Centre arrive at a consensus regarding. This can be done by promoting cooperative federalism and building confidence.
- The youth of Kashmir, in particular and the people in general, have to be convinced of the fact that Kashmir is an integral part of India by making them a part of the economic progress of the country.
- The law and order situation in the state needs to be dealt with and peace should be restored so that talks regarding 370 can be initiated in an amicable environment.
- The hate-mongering by the means of social media and fake news need to be curbed campaigns for peace should be carried out so that the people of India feel more acceptance for the people of Kashmir.
- The State government should also adopt the way of Consensus Democracy. It is important that the decision making structures involve and take into account a broad range of options as opposed to systems where minority opinions can potentially be ignored by vote-winning majorities.