PERSONALITY TEST PROGRAMME 2019
(Current Affairs Interview Issues)
ABROGATION OF SPECIAL STATUS UNDER ARTICLE 370

Introduction
The Parliament abrogated the special status given to the erstwhile state of Jammu and Kashmir under Article 370. In addition to it, the Parliament also passed the legislation bifurcating the State of Jammu of Kashmir into Union Territory of Ladakh and the Union Territory of Jammu and Kashmir.

Background
- Article 370 of the Indian Constitution granted special autonomous status to the erstwhile state of Jammu and Kashmir. It was incorporated as a temporary provision, which allowed the state have its own Constitution.
  - Except for defence, foreign affairs, finance and communications, the Parliament needed the state government's concurrence for applying all other laws.
- The peculiar position of Jammu and Kashmir was due to the circumstances in which the State acceded to India. The Government of India had declared that it was the people of the state of J&K, acting through their constituent assembly, who were to finally determine the constitution of the state and the jurisdiction of government of India.
- The applicability of the provisions of the Constitution regarding this State was accordingly, to be in nature of an interim arrangement. This was the substance of the provision embodied in Art. 370 of the Constitution of India.
- Now this substance of Article 370, which granted it special status, has been abrogated, although the article still exists in the Constitution.

Timeline of scrapping Article 370
- President issued the president’s rule after the tenure of governor’s rule ended. Using the power under Article 356 (1) (b), the President declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. With this the Parliament of India was given the powers of the Legislative Assembly of the State of Jammu and Kashmir.
- President issued a presidential order under Article 370 (1) of the Constitution. This clause enables the President to specify the matters, which are applicable to Jammu and Kashmir in concurrence with the Jammu and Kashmir government.
- The order amended Article 367. Article 367 contains guidance on how to read or interpret some provisions. The amended Article declares “the expression ‘Constituent Assembly of the State...’ in Article 370 (3) shall be read to mean ‘Legislative Assembly of the State’. Article 370(3) provided that the Article 370 was to be amended by the concurrence of the Constituent Assembly. However, because of the amendment, it can now be done away by a recommendation of the state legislature.
- In other words, the government used the power under 370(1) to amend a provision of the Constitution (Article 367) which, then, amends Article 370(3). And this, in turn, becomes the trigger for the statutory resolution - Resolution for Repeal of Article 370 of the Constitution of India. As Jammu and Kashmir is under the president rule, concurrence of governor is considered as “Jammu and Kashmir government”.

<table>
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<tr>
<th>J&amp;K BEFORE AUGUST 5</th>
<th>J&amp;K AFTER AUGUST 5</th>
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<tr>
<td>State with special status</td>
<td>No special status</td>
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<tr>
<td>Dual Citizenship</td>
<td>Single citizenship</td>
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<td>Separate flag for J&amp;K</td>
<td>Tricolor will be the only flag</td>
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<tr>
<td>No reservation for minorities such as Hindus and Sikhs</td>
<td>Minorities eligible for 15% reservation</td>
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<tr>
<td>Indians from other states can not buy property like land or house</td>
<td>All Indians can buy or sale property in Jammu &amp; Kashmir</td>
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<td>RTI not applicable</td>
<td>RTI will be applicable</td>
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<tr>
<td>Duration of legislative Assembly for six years</td>
<td>Assembly will be for 5 years</td>
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<tr>
<td>Woman from J&amp;K marries person from outside state, she loses citizenship</td>
<td>Woman will retain citizenship even after marriage like any other part of India</td>
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<tr>
<td>Right to education not applicable for children</td>
<td>Children brought under RTI as per rest of the country</td>
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Arguments in favour of scrapping Article 370

- **Temporary Provision**: Article 370 was added as a “temporary provisions with respect to the State of Jammu and Kashmir”. The constitutional framers including Jawaharlal Nehru envisaged that it will erode eventually, but contrary to it, this article had assumed permanency.

- **Impediment in Integration**: Allowing a separate constitution, flag and powers to Jammu and Kashmir had created a sense of separate identity among the people of the state. This had been used to misguide youth and create a demand of separatism among them.
  - The article was also not successful in protecting the interests of entire demography of Kashmir, rather some sections like the Kashmiri Pandits had to flee from their houses following the ethnic attacks on them.

- **Security and Terrorism**: Owing to cross border terrorism, around 42 thousand people have lost lives in the state. The special status was considered an impediment in fight against terrorism.

- **Governance**: It was alleged by various activists that due to poor anti-graft architecture (anti-corruption agencies could not enter the state), the resources would never reach the common man. For instance, the average money spent in Jammu and Kashmir is Rs. 14000/ person compared to Rs. 3683/ person for the rest of the country.

- **Lack of economic development**: Owing to a different applicability of laws, following concerns remained:
  - **Land Prices**: The land in the state could only be sold and bought by the permanent residents of the state. This did not allow the land prices to rise in the region.
  - **Lack of investments**: Large businesses houses did not invest in the region owing to land concerns. It resulted in monopoly of some businesses. E.g. Cement prices remain near Rs. 100 against a much lesser price in rest of the country.

- **Recent International events**: The situation in western neighbourhood i.e. Afghanistan has been turbulent in recent times owing to possible ascendance of Taliban after withdrawal of US forces.

- **Local Democracy**: Owing to the concerns of capture of power by certain political parties and killing of elected village heads (sarpanch), the idea of democratic system of Indian Constitution could not reach at the grassroots level.

- **Central Laws inapplicable**: Since all the laws enacted by the Parliament were not applicable automatically to the state, various enabling legislations such as Right to Education, Right to Information were not available to the citizens of Jammu and Kashmir.
  - **Reservations Benefits**: which are available to marginalized sections like OBCs, SC, STs, in rest of the country were not available to the marginalized sections of the state.

- **Equitable Development**: The entire governance machinery was felt to be concentrated on Kashmir valley with less attention to Jammu and Ladakh, which may now be given adequate attention.

On the other hand, there are limited arguments against this step, as there has been a broad consensus among political parties over the above arguments for scrapping the Article 370. However there have been some concerns over the process being followed to do so. Petitions have been filed in the Supreme Court challenging the recent action of the Union Government on Jammu and Kashmir.

Concerns over the process being followed to scrap special status under Article 370

- **Legality of the Presidential order**: Article 370 itself cannot be amended by a Presidential Order. Even though the Order amends Article 367, the content of those amendments, however, do amend Article 370. And as the Supreme Court has held on multiple occasions, you cannot do indirectly what you cannot do directly. Therefore, legality of the order – insofar as it amends Article 370 – is questionable.

- **Misusing the President Rule and Making Governor as a substitute for the elected assembly**: The governor is the representative of the Union Government in the State. In effect, the Union Government has consulted itself.
  - Also, President’s Rule is temporary and is meant to be a stand-in until the elected government is restored. Consequently, decisions of a permanent character – such as changing the entire status of a state taken without the elected legislative assembly, but by the Governor, are inherently problematic.

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**Article 35 A**

- Article 35A was incorporated into the Constitution in 1954 by a Presidential order issued under Article 370 (1) (d) of the Constitution
  - It empowered J&K legislature to define state's "permanent residents" and their special rights and privileges without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution. As a result of this:
    - It denied property rights to native women who marry from outside the State. The denial of these rights extend to her children also.
    - It barred non-J&K state subjects to settle and buy property in J&K.
  - It was contended to be violating fundamental rights under Article 14, 19 and 21 as it is discriminatory against non-residents as far as government jobs and real estate purchases are concerned.
• **Equating state assembly with constituent assembly**: The difference is that the one has to exercise its powers as per the constitution, while the other develops the constitution. This distinction that is at the heart of India's basic structure doctrine that prevents certain constitutional amendments on the ground that Parliament, which exercises representative authority, is limited and cannot create a new constitution and thereby exercise sovereign authority.

• **Going against the Jammu and Kashmir’s Constitutional position**: Presidential order has assumed that legislative assembly has power to scrap Article 370. But Article 147 of the Jammu and Kashmir Constitution prohibits such a move. The Article makes it clear that any changes to the Jammu and Kashmir Constitution needs the approval of two-thirds of the members of the legislative assembly.

• **Protests in Kargil**: as it is a Muslim majority region, which identifies culturally more with Kashmir, but has been placed under the Ladakh union territory after bifurcation. Further, the status of UT to Ladakh has not gone well with Kargil as it had an autonomous council earlier.

• **Clampdown on political parties**: Many leaders from political parties in the state were put under house arrest in the light of security considerations. It has been argued that all these parties had alliances with national parties in the country, so curbing their freedom is inappropriate.

**Analysis of situation in Kashmir after abrogation of special status**

• **No Loss of Life due to protests**: The history of Kashmir valley has been turbulent as and when any step had been taken against the state. E.g. Huge uproar and gatherings following the encounter of the terrorist Burhan Wani in 2016 or the agitation in 2008.
  o However, since the 5th of August, there has been no loss of life in the protest against the state.

• **Slow Normalisation setting in**: as the shops are opening, schools have started and hospitals are working fine. E.g. the daily OPD visits to the hospitals in the region has been 60,000 which is highlights their normal functioning.
  o It shows that the life of a common person has not witnessed much change in terms of daily essentials.
  o Although people had grievance against the abrogation in the early days, but now many in regions have reconciled to this abrogation.
  o Recently, the Confederation of Indian Industry (CII) has announced an industrial program in October.

• **Terrorism**: There hasn't been any major terror attack following the abrogation of special status. However there has been a change in nature of terror attacks.
  o There has been targeting killing of labour, truck drivers, Apple traders, school staff and some events at mosques to create panic.
  o There is an attempt to create a fear in the minds of residents regarding outsiders in terms of various opportunities in the state.

• **Cross border infiltration**: It has also facilitated reduction in infiltration attempts.
  o Jammu and Kashmir Police (JKP) has been able to work much better in the current administrative system, since the control is under the LG.
  o Earlier, the OGWs (Over-Ground Workers) had a fair idea of the working of the forces, which allowed them to man the reception areas where the terrorists could infiltrate.
  o Now Political patronage has been eroded, so JKP is much better equipped to handle the issue. Further because communication system has been curbed, so this infiltration has come down.

• **Governance**: Following the division of the state and conversion into Union territories, there has been a better accountability framework in place.
  o As per reports, villagers have responded that administrative implementation of various schemes has improved.
  o However, it has also led to excessive bureaucratisation, which may work anti-thetical to the development of democracy at the grassroots. For instance, in some regions, finding officials to sanction the finances is still a challenge.

• **Democratic Processes**: The recently concluded panchayat elections have been successful. It can be seen from the voting percentage, which has been around 98%. Even South Kashmir (Anantnag-94%), Jammu (99%) and Srinagar (100%) has witnessed good voting.

**Over-Ground Workers (OGWs)**

- There is no proper definition of the term, however as per the Jammu and Kashmir Police, an OGW is “anybody who supports the militants”.
- A person providing a safe house, passage, information or acting as a messenger for suspected militants automatically comes under the radar of the police as an OGW.
- The OGWs also help militants plan and execute their activities.
- The 2018 data compiled by State Crime Record Bureau (SCRB) highlights that the number of Over Ground Workers (OGWs) was nearly ten times higher than the militants in the Jammu and Kashmir.
As per government data, around 60-70 lakhs has already been credited to accounts of Panchayats and equipments like JCBs have been bought in some villages.

However, the house arrest of main political party cadres of the region remains a concern, which need to be addressed.

The Central Government has stated that once the situation improves, the UT of Jammu and Kashmir can be upgraded back to the status of a state.

**Has exposed the Propoganda** - of various stakeholders which was keeping Kashmir to hostage such as-

- **Pakistan** - which had repeatedly convinced, its population about ‘Kashmir Banega Pakistan’ has been completely destroyed. Also, Pakistan has failed to convince the international community of its position on Kashmir.
- **Terrorists** - They are also facing a dilemma whether to tow the Pakistani line or follow independence movement. If they follow the former, then the call gets converted to Islamic Jihad. Today the recruitment is inspired by the caliphate and not by independence of Kashmir.

What needs to be done?

- **Accept the reality** - There needs to be an understanding that there is no magic wand to bring the things to normal state, rather it will take time.
- **Change the discourse of valley** - Where an ecosystem of India bashing, like abuse the Indian democratic institutions, was thriving on the back of separatists and support of Pakistan has to be halted. The people need to be shown the true agenda of these propagandists and the value, which India creates in their lives.
- **De-radicalization** - More aggressive attempts must be made towards de-radicalization of youth in the valley, especially targeted towards the OGWs.
- **Promote democratic setup** - Government must release the leaders of political parties and allow a more constructive debate where all the stakeholders of region can come, discuss and work towards more prosperity in Jammu and Kashmir. Further, the government must also work towards reducing the security footprint to allow democratic institutions work smoothly.

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**Has this issue been internationalised?**

There has been discussion on internationalization of Kashmir issue and hyphenation of India's ties with Pakistan. But, the External Affairs Minister S. Jaishankar has remarked that **uninformed comments abroad on our internal affairs are hardly internationalization.** And the reputational and real differences between India and Pakistan puts paid to any hyphenation effort. It can be seen from the following points-

- **No mediation from other country**: India has mostly succeeded in conveying that it would brook no third-party mediation.
- **Diplomatic win**: India has been able to get its way mostly on this — the nuclearisation of South Asia and the growing global interest in India’s economy.
- **United nations**: United Nations Secretary-General in January 2018 too ruled out any mediation for resolving the Kashmir issue unless all parties agreed to it — and asked India and Pakistan to address all outstanding issues through talks.
- **Support from Gulf Countries**: The Gulf countries, with which Pakistan has enjoyed a long-standing "brotherly" relationship for decades, have stayed away from condemning India’s crackdown in Kashmir.

However, **international media** is creating a perception on Kashmir. The recent visit by a delegation of MPs from the European Union was also criticised by some as a manufactured visit.

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*Note: The information provided is based on the context of the document and may not reflect the most recent and updated data.*
Summary
The special status accorded to the state of J&K under Article 370 has been abrogated and the state has been bifurcated into the Union Territories of Ladakh and Jammu and Kashmir.

History of Article 370
In light of the circumstances under with J&K acceded to India, the Government assured that constitutional relationship between India and Jammu & Kashmir will give due recognition to the unique socio-cultural identity of the state and “to the will of the people to govern themselves” through an internal Constitution. Thus, Article 370 in provided for the special relationship with J&K.

Special provisions related to J&K
Under Art 370, J&K is allowed to have a separate Constitution. Except for defence, foreign affairs, finance and communications, Parliament needs the state government’s concurrence for applying all other laws. Further, no amendment under Art 368 is applicable directly to the State except when through Presidential Order. Article 370 enabled provisioning of special rights such as right to public employment, acquisition of immovable property and government scholarships. Under Article 35A, J&K legislature was empowered to define state’s "permanent residents" and grant them special rights and privileges without attracting a challenge on grounds of violation of rights of people from other States.

Arguments in favour of scrapping the special status under Article 370
There has been a long standing demand for abrogation of Article 370 on the grounds that it was deemed to be a “temporary provision” by the Constitution makers. It has further contributed to the feeling of alienation and a sense of separate identity among the people of Kashmir. This has been abused by separatists and pro-Pakistani groups to perpetuate seditious activities and terrorism in the region. The security implication is of particular concern due to rise of groups like Taliban & ISIS in the neighbourhood.

Article 370 has also proved to be a hindrance in socio-economic integration of the region with rest of the countries as the Government has not able to implement laws and developmental policies in the region like (Right to Education Act, Right to Information Act etc.). It has been a drag on economic development of the region impeding investments, undermining the potential of tourism industry and creating disincentives for human resources to work in the region.

Concerns over the process followed to abrogate special status
While there has been a broad consensus among political parties over the above arguments for scrapping the Article 370, there have been some concerns that it has been scrapped without consultations or due process. Doubts have been cast over the legality of the amendment of Article 370 itself through Presidential order. Also, misusing the President Rule and making Governor as a substitute for the elected assembly as well as equating state assembly with constituent assembly. Abrogation goes against J&K’s position promised in the original constitution. Further, clampdown on political parties and civil liberties has been criticized as undemocratic.

Analysis of situation in Kashmir
There hasn’t been any major los s of life due to protests or violence or any terror attack post the announcement of abrogation of Article 370. There have been significant curbs on the working of Over-Ground Workers (OGWs). Political space available to separatists is gradually shrinking. At the ground level, normalization has been setting in the region slowly and there has been a significant reduction in the infiltration attempts. Further, attempts have been made to strengthen governance and democratic processes in the State as evident from successful conclusion of Panchayat elections. The move also sends a strong message that India is willing to take tough and authoritative steps to preserve its territorial integrity and ensure its national security. International response has been in consonance with India's stance that no 3rd party mediation would be accepted on the issue & Pakistan's attempts to internationalize the matter have borne little fruit.

Way Forward
Abrogation of Article 370 in itself would not solve the alienation of Kashmiris. Besides ‘security oriented approach’ to contain radicalization of the youth and reducing the terror attacks and infiltration attempts, the Government needs to strengthen the democratic setup in the region. It can begin with releasing the leaders of political parties and allowing a more constructive discussion on the future prospects of the region. Further, the government must also work towards reducing the security footprint to allow democratic institutions work smoothly. The Government needs to win hearts and minds of the people through better governance and economic empowerment of the people. Not only this, it needs to gradually work towards improving public perception towards the Indian Government and the State by working in close collaboration with community organizations and encouraging public participation in governance.