
ARTICLE 35 A

Article 35 A of the Indian Constitution is an article 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.

The genesis

A Look at article 35 A whose constitutional validity has been challenged in the Supreme Court.

- Article 35 A was Constitution by the advice of the incorporated into the Presidential order on Cabinet in 1954.
- The order of 1954 followed the 1952 Delhi Agreement between Jawaharlal Nehru and the then J & K Prime Minister Sheikh Abdullah, which extended Indian citizenship to the 'State subjects' of J & K.
- Article 35 A bars a non-J & K resident from buying property in the State and ensures job reservation; State decides permanent residents.

DELHI AGREEMENT

- The Government of India agreed that while the residuary powers of legislature vested in the Centre in respect of all States other than Jammu and Kashmir, in the case of the latter they vested in the State itself.
- It was agreed that persons domiciled in Jammu and Kashmir shall be regarded as citizens of India, but the State Legislature was empowered to make laws for conferring special rights and privileges on the State's subjects.

Why Article 35 A is in the news

1. What is it?

Article 35 A is a Provision incorporated in the constitution through a presidential Order, and not by parliamentary debate, giving the Jammu and Kashmir state Legislature a complete say in deciding who the 'permanent residents' of the state are. The state legislature can grant its permanent residents special and privileges in public sector jobs, acquisition of property, scholarships and other public aid and welfare programmes within the State.

2. How did the Article come about?

It was incorporated into the Constitution in 1954 by an order of President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet. The constitution (Application to Jammu and Kashmir) Order of 1954 followed the 1952 Delhi Agreement entered into between Prime Minister Nehru and Jammu and Kashmir Prime Minister Sheikh Abdullah extending Indian citizenship to the 'State subjects' of J&K.

The Presidential Order was issued under Article 370(1) (d), which allows the President to make certain "exceptions and modifications" to the Constitution for the benefit of Jammu and Kashmir. However Article 368(1) of the Constitution mandates that only the Parliament can amend the Constitution by introducing a new article.

Why is it in the news?

Writ petitions filed in the Supreme Court argue that the Article is violative of fundamental right of Equality and equal treatment enshrined in the Constitution as it restricts citizens from other States from getting employment or buying property within Jammu and Kashmir. The writ petitions also point out that any act of the State Legislature made under Article 35 A is final and binding.

ARTICLE 370 OF THE INDIAN CONSTITUTION

- A temporary provision
- Grants special status to Jammu and Kashmir.
- Under Part 21 of the Constitution of India, which deals with "Temporary, Transitional and Special provisions", the State of Jammu and Kashmir has been accorded special status under Article 370.

Different Perspectives

J&K :

‘Any attack on identity and distinctiveness on J&K under Art 35a will be rejected.’

Writ petition

1. It creates class within class of Indian citizens.
2. Violation of fundamental rights under Article 14,19 and 21.