



Article 35A

 drishtiias.com/printpdf/to-the-point-paper-2-article-35a

Why in News?

- A bunch of petitions have challenged Article 35A which confers the special status to the permanent residents of Jammu and Kashmir (J&K).
- The Supreme Court (SC) has adjourned the case and postponed the hearing till January 2019.

What is 35A?

- Article 35A was added to the Indian Constitution by a **Presidential order in 1954** – issued under Article 370 of the Constitution.
- This provision allows the President to make certain “exceptions and modifications” to the Constitution for the benefit of ‘State subjects’ of J&K.
- While **Article 370 of the Constitution grants special status to J&K**, Article 35A provides the special rights and privileges to the **permanent residents of J&K**.
- The Fundamental Right to Property is still guaranteed in the state. Also, certain special rights are granted to the permanent residents of the state with regard to public employment, acquisition of immovable property, settlement and government scholarships.
- It disallows people from outside the state from buying or owning immovable property there, settle permanently, or avail themselves of state-sponsored scholarship schemes.
- Only the Jammu-Kashmir assembly can change the definition of Permanent Residents through a law ratified by a two-thirds majority.

Controversy

- Many believe that this article was incorporated unconstitutionally, dodging Article 368 which emancipates only the Parliament to amend the constitution.
- Others consider Article 35 A against the “very spirit of oneness of India” as it created a “class within a class of Indian citizens” - by treating non-permanent residents of J&K as ‘second class’ citizens.

- Restricting citizens from other States from getting employment or buying property within J&K is a violation of fundamental rights **under Articles 14, 19 and 21 of the Constitution**.
- There is also probable discrimination on the basis of gender – since it denies property rights to children of women who marry those from outside the state.

Arguments in support of 35A

- Article 35A safeguards the uniqueness of the J&K. Even Himachal Pradesh and Uttarakhand have the laws which state no outsider can buy a land.
- This was part of the deal struck between the Maharaja of Kashmir, Hari Singh, and the republic of India to protect the privileges of Kashmiri residents from outsiders.
- Striking Article 35A down will have various consequences on other constitutional amendments contained in the 1954 Presidential Order. And this can erode the autonomy of J&K.
- Striking down Article 35A would allow people from outside J&K to settle in the state and acquire land and property, and the right to vote, thus altering the demography of the state.

Way Forward

- The matter is sensitive and requires participation of various stakeholders and requires a larger debate.
- This issue requires separate constitutional bench to take a stand about the article.
- Though article 35A need relook, any further alteration should not take away the uniqueness of J&K.
- Should Article 35A be removed, it must be removed as an expression of the will of the people, through a political process which includes the people of J&K in the discussion.

For Mind Map