



Article 35A

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For Prelims: Article 35A, Article 370, Fundamental Rights, Right to Property

For Mains: Revocation of Article 370 and 35A and its implications

Why in News?

A bunch of petitions challenged **Article 35A** which confers the [special status to the permanent residents of Jammu and Kashmir \(J&K\)](#).

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.

What was the Controversy regarding Article 35A?

- Many believe that this article was incorporated unconstitutionally, dodging **Article 368** which emancipates only the Parliament to amend the constitution.
 - Article 368 in Part XX of the Constitution **deals with the powers of Parliament to amend the Constitution and its procedure**.
 - It states that the Parliament may amend the Constitution by way of addition, variation or repeal any provision in accordance with the procedure laid down for the purpose.
- 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 Indian 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.

What were the Arguments Given 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.

What is the Latest Update on the Status of Article 35A?

- On 5th of August 2019, the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order, 2019.
- The order effectively [revoked the special status accorded to Jammu and Kashmir](#) under the provision of Article 370.
 - It “superseded the **Constitution (Application to Jammu and Kashmir) Order, 1954**” under which Article 35A was added to the Indian Constitution.
- A separate Bill - the **Jammu and Kashmir Reorganisation Bill 2019** - was introduced to **bifurcate the State into two separate union territories** of Jammu and Kashmir (with legislature), and Ladakh (without legislature).
 - In 2021, the [Jammu and Kashmir Reorganisation \(Amendment\) Ordinance, 2021](#) was promulgated to amend the Jammu and Kashmir Reorganisation Act, 2019.
- In 2020, the Ministry of Home Affairs (MHA) issued the [Jammu and Kashmir Reorganisation \(Adaptation of State Laws\) Order, 2020](#).
 - It amended 109 laws and repealed 29 laws of the erstwhile State and **inserted the ‘domicile’ clause** in the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act, 2010.
 - **Criteria for Domiciles:**
 - Someone who has resided for a period of 15 years in the UT of J&K or
 - Someone who has studied for a period of seven years and appeared in Class 10th/12th examination in an educational institution located in the UT of J&K or
 - Someone who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants).
 - Children of Central government officials, All India Services, PSUs, autonomous body of Centre, Public Sector Banks, officials of statutory bodies, Central Universities, recognised research institutes of Centre who have served in J&K for a total period of 10 years.
 - Children of such residents of J&K who reside outside J&K in connection with their employment or business or other professional or vocational reasons, but their parents fulfil any of the conditions provided.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Mains

Q. To what extent is Article 370 of the Indian Constitution, bearing marginal note “Temporary provision with respect to the State of Jammu and Kashmir”, temporary? Discuss the future prospects of this provision in the context of Indian polity **(2016)**

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