

ARTICLE 35A

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Manifest pedagogy

Kashmir problem needs an integrated study and hence, this issue has been dealt in different articles. In the last write-up on Article 370, a mention was made on Article 35A. This article is an update to the last one. For a consolidated information on Jammu and Kashmir the following Articles need to be read together :

1. Kashmir Issue
2. China-Pakistan relations
3. Article 35A

One of the unique features of Manifest 11 articles is to Consolidate and save time for the aspirants.

In news

Petition to strike down Article 35A

Placing it in syllabus

1. Indian Society – Regionalism
2. Indian Polity – Federalism
3. International Relations – Neighborhood Relations
4. Internal Security

Static Dimensions

1. Provisions of Article 35A

Current Dimensions

1. Constitutionality of Article 35A and the demand for it to be revoked

Content

What is it?

Article 35A was added to the Constitution by a Presidential Order. It gives a Carta Blanche power (complete power to the State Legislative Assembly) to the state to decide who is a *permanent resident* and these residents get special provisions in terms of employment, buying property and inheritance. It is a part of provisions related to Asymmetric Federalism in India provided for by the Constitution of India where in certain interests of Jammu and Kashmir need to be protected for which special provisions are given.

Provisions

“Saving of laws with respect to permanent residents and their rights. – Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State:

1. defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or
2. conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects—
 1. employment under the State Government;
 2. acquisition of immovable property in the State;

3. settlement in the State; or
3. right to scholarships and such other forms of aid as the State Government may provide,

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this part.”

Criticisms

1. Giving such special provisions are given only to Jammu and Kashmir is discriminatory
2. The provisions hinder the consolidation of India
3. It discriminates Citizens of India as outsiders cannot buy properties in Jammu and Kashmir.
4. It is gender discriminatory as any woman marrying outside Jammu and Kashmir will lose the Right to Property
5. It has been added to the Constitution of India by Presidential Order and not by an amendment under Article 368 hence there are procedural inaccuracies

These issues have been raised through a petition by an NGO

Constitutionality of the article

Constitutionality refers to whether or not Article 35A is in conformity with the Constitutional provisions . Let us examine the criticisms made in the light of the Constitution of India

1. When it is differentiating among citizens, how right is it to do so?

Indian Constitution provides for the differentiation among states in India as India follows Asymmetric Federalism (special provisions for certain states can be given. Eg. Article 35A, Special Provisions for certain states c under Articles 371A to Article 371J, 5th and 6th Schedule in India)

2. Whether addition to the Constitution of India is procedurally incorrect?

It an amendment to the Jammu and Kashmir Constitution and not to the Constitution of India. Though Article 35 A is an addition to the Constitution of India it does not make any changes with respect to its power and authority. And the addition made was procedurally correct as according to the **Instrument of Accession** any amendment made wrt Jammu and Kashmir Constitution must be validated by the State Legislative Assembly and this particular Presidential Order got the validation of the State Legislative Assembly, so it is in cue with the Constitutional provisions and there are no procedural errors.

3. The test of Gender Parity may not hold under Article 15 which shall be examined by the Supreme Court .

In short Article 35A rather than hinder Consolidation of India in fact promotes it as Consolidation respects diversities in a United India.

Test Yourself: Mould Your Thoughts

Briefly explain provisions of Article 35A. Outline the criticisms against it and examine the Constitutionality of the Article.