

Article 35A of the Constitution of India: Notes for UPSC Indian Polity

Article 35A was an article under the Constitution of India that empowered the State Legislature of Jammu and Kashmir to define “permanent residents” of the state along with granting them special privileges. The article was revoked on August 5, 2019, through a Presidential order along with Article 370.

This article will provide details of Article 35A within the context of the IAS Exam.

Background of Article 35A

Jammu and Kashmir was a princely state under the suzerainty of the British Empire. As such, the population of Jammu and Kashmir were not British colonial subjects but rather “state subjects”.

The political movements gave rise to “hereditary state subject” as a political identity for the people of Jammu and Kashmir at the beginning of the 20th century. The people of the state demanded that only those of Kashmiri ethnicity be given jobs in the state government. Due to this growing popular demand, the Maharaja of Jammu and Kashmir enacted a set of legal provisions in recognition of these special statuses between 1912 and 1932. The provisions granted state subjects the right to a government office, land ownership and usage. The provisions were not granted to non-state subjects.

When Jammu and Kashmir acceded to the Union of India on 26th October 1947, Hari Singh, the Maharaja of Kashmir, handed over control of the defence, external affairs and communications to the Government of India. Article 370 of the Constitution of India and the Constitutional order of 1950 cemented this relationship. Following further discussions that culminated in the 1952 Delhi Agreement, it was decided that Indian citizenship would be extended to all residents of Jammu and Kashmir, but the State Legislature of Jammu and Kashmir would make decisions about the rights and privileges of its own residents, who would be henceforth called state subjects.

Upon the adoption of the Delhi Agreement by the Constituent Assembly of Jammu and Kashmir, the President of India issued the Constitution Order of 1954, extending citizenship rights to the residents of the state. It also inserted Article 35A into the Indian constitution that empowered the state legislature to define who were permanent residents and their subsequent privileges.

Who were 'Permanent Residents' as per Article 35A?

As per Article 35A, a permanent resident was anyone who was a state subject on 14 May 1954 or who has been a resident of the state for 10 years and had "lawfully acquired immovable property in the state". The state legislature of Jammu and Kashmir had the power to modify the definition of a permanent resident along with the applicable privileges through laws passed with a two-thirds majority.

In addition, it also clearly defined which privileges could not be granted to non-permanent residents

- No person who is not a Permanent Resident of Jammu and Kashmir can own property in Jammu and Kashmir.
- No person who is not a Permanent Resident of Jammu and Kashmir can obtain a job within Jammu and Kashmir Government.
- No person who is not a Permanent Resident of Jammu and Kashmir can join any professional college run by the government of Jammu and Kashmir or get any form of government aid out of government funds.

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Legal issues of Article 35A

Some of the legal aspects of Article 35A are highlighted below:

1. It was pointed out by the opponents of Article 35A that it was not added to the Constitution of India through the amendment procedures as per Article 368. It was included under the Indian Constitution through an executive order by the President of India where such procedures could only be brought about through the legislative organ. Therefore Article 35A violated the Constitutional procedures established by law
2. Besides carrying out many modifications and changes, this order 'added' a new "Article 35A" to the Constitution of India. Addition or deletion of an Article amounted to an amendment to the Constitution which could be done only by Parliament as per procedure laid down in Article 368. But, Article 35A was never presented before Parliament. This meant the President had bypassed Parliament in this order to *add* Article 35A.

3. The permanent resident classification by Article 35 is a violation of Article 14, (Right to equality before the law). The non-resident Indian citizens cannot have the rights and privileges, as those of the permanent residents of Jammu and Kashmir.

Current Status of Article 35A

On 5 August 2019, the Union Government revoked the special status granted to Jammu and Kashmir under Article 370 through a Presidential Order and made the entire Constitution of India applicable to the state.

This implied that the Article 35A stood abolished. Further, the Parliament of India passed legislation reorganising the state into two union territories, one being Jammu and Kashmir, the other Ladakh.

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