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Amidst tumultuous uproar as well as strong criticisms, the BJP government headed by the Prime Minister Narendra Modi took some bold steps with regard to the status of governance in the valley of Jammu and Kashmir. The government has now decided to roll back the Article 370 and Article 35(A). Repealing these two articles will scrap the special status and exclusive powers enjoyed by the State of Kashmir. This will mean that Kashmir will come in par with all the other states and will be governed by the same laws that govern the rest of India. The implications of removing 35(A) could mean some significant changes effected to the face of Jammu and Kashmir. Overview of Article 35(A) As per the provisions contained in Article 35(A), the state government heading Jammu and Kashmir can define who the permanent residents of the state are. This article came into force earlier following the Constitution (Application to J&K) order, 1954, which was passed by Rajendra Prasad, the then president on the advice of the then Prime Minister Jawaharlal Nehru. Definition of permanent resident of Kashmir At the time of adopting the article 35(A) in 1956, the state's constitution defined the term 'permanent resident' as someone who was the subject of the state as on May 14, 1954, or the one who had been the resident of the state for more than 10 years and has acquired an immovable property through legal means. What the article 35(A) implied The clauses contained in the Article 35(A) would bar anyone from outside Jammu and Kashmir (who is not a permanent resident) from getting a state job or owning a property in the state. This article is also known as permanent residents' law. Yet another important provision of article 35(A) deprives the state's female residents' right to property if they get married to an outsider. This provision will eventually extend to the children born to such a female. What has changed now in Kashmir? After the repealing of Article 35(A), Kashmir will no longer enjoy any special status or powers. In response to the proposal by Amit Shah, President Ram Nath Kovind issued the Constitution (Application to Jammu and Kashmir) Order, 2019, stating that the provisions of the Indian Constitution will henceforth be applicable to J&K. The Constitution (Application to Jammu and Kashmir) Order, 2019 takes effect "at once", and shall "supersede the Constitution (Application to Jammu and Kashmir) Order, 1954". The promulgation issued by the President observes, "All the provisions of the Constitution shall apply in relation to the state of Jammu and Kashmir." The order also added that in the proviso to clause (3) of Article 370, the term "Constituent Assembly of the State referred to in clause (2)" will henceforth read as "Legislative Assembly of the State". Kashmir comes on par with any other state in India. The present legislative moves by the central government has scrapped the special status and powers to the state of Kashmir. Henceforth, all the laws that govern the other states of India will come to govern the state of Kashmir also. The petitioners are challenging the constitutional validity of Article 35A of the Constitution. Firstly, Article 35A is being challenged on the ground that it was introduced through illegitimate means. It was introduced by a Presidential Order, issued by Rajendra Prasad, in 1954. As a result, the article is extra-constitutional, meaning that it has not been added to the text of the Constitution. Only the Parliament, not the executive, can amend the Constitution. Nevertheless, Article 35A has been operative for the last sixty years. The second major issue is whether Article 35A lies in tension with Article 14, equality before the law. Article 35A empowers the legislature of Jammu and Kashmir to make laws relating to permanent residency in the State. Controversially, it allows Jammu and Kashmir to make laws that are potentially discriminatory and in violation of Article 14. Much of the controversy surrounds Article 6 of the Constitution of Jammu and Kashmir. Article 6 lays down conditions for obtaining permanent residency in the State and confers permanent residents with the right to own land, hold government jobs and settle down in the State. The petitioners challenge Article 35A on the grounds that it results in the unfair treatment of women. They claim that Article 6 of the Constitution of Jammu and Kashmir discriminates against women and violates the right to equality. A female descendant of a permanent resident of the State loses her status of permanent residency on marrying a non-permanent resident of the State. However, the same disqualification does not apply to a man who has marries a non-resident of the State. The State of Jammu and Kashmir has rebutted the contention that Article 6 violates the right to equality. The State argued that the position in this matter has been settled in 2002 by the High Court of Jammu and Kashmir in Sushila Sawhney. The Court held that the daughter of a permanent resident marrying a non-permanent resident does not lose her permanent residency. Thus, the State claims that Article 6 of the Jammu and Kashmir Constitution does not discriminate against women. However, the Court in this case did not decide the matter of the rights of the children and spouses of such women. The J&K Government initially filed a Special Leave Petition against this decision but withdrew it. The Revenue Committee, which was constituted to recommend guidelines on the issuance of Permanent Resident Certificates, did not seek any substantial changes in the law. Ms. Khanna filed the writ petition after the J&K Government refused to identify her as a permanent resident as she did not have any documentary evidence. She claimed that she has anecdotal evidence of her ancestry as a Kashmiri Pandit. She sought to build a home in J&K to re-establish her roots but being a non-permanent resident, she could not buy property. Currently the case is being heard by a three-judge Division Bench. If the Court decides to hear this case, it will be referred to a five-judge Constitution bench. The We the Citizens vs. Union of India (Writ Petition (Civil) No. 722 of 2014) case has been tagged. On August 5th, the Union government effectively struck down the Constitution of Jammu and Kashmir, by abrogating Article 370 of the Constitution of India. The challenge to the abrogation of Article 370 is currently pending before the Supreme Court. If the Court rules in favor of the Union, the Article 35A matter will become infructuous. Context: Larger debate on constitutional validity of A35A and A370 is needed. Refugees of West Pakistan, who had migrated to India during the 1947 partition, have moved the Supreme Court challenging Article 35A of the Constitution. It was added by a 1954 presidential order issued under Article 370, the constitutional provision that mediates the relationship between the Union of India and Kashmir Article 35A 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. Article 35A also empowers the State's legislature to frame any law without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution. Details about how it was added which might make it unconstitutional: Article 35A was added into the Constitution in 1954 by an order of the then President Rajendra Prasad on the advice of the Union Cabinet led by Jawaharlal Nehru. The controversial Constitution (Application to Jammu and Kashmir) Order of 1954 followed the 1952 Delhi Agreement, which provided Indian citizenship to the citizens of J&K. The Presidential Order was issued under Article 370 (1) (d) of the Constitution. This feature allows the President to make certain "exceptions and modifications" to the Constitution for the benefit of citizens of J&K. So Article 35A was included in the Constitution as a mark of the special consideration the Indian government extended to the 'permanent residents' of J&K. The President incorporated Article 35A into the Constitution by bypassing the parliamentary route. Article 368 (i) of the Constitution mandates that only the Parliament can amend the Constitution. So the question is did the President act outside his jurisdiction? Is Article 35A null and void because the government did not carry out a Parliamentary discussion? A five-judge Bench of the Supreme Court in its 1961 judgment discussed the powers of the President under Article 370 to 'amend' the Constitution, during the Purnali Lakhnupal vs. The President of India case. The court observed that the President can modify an existing article in the Constitution under Article 370 but the SC ruling is silent over the President's power to introduce a new Article without the Parliament's knowledge. This question remains unanswered. Who is a permanent resident? The 1956 J&K Constitution defines a Permanent Resident as one who, apart from being an Indian citizen, was a state subject on May 14, 1954, or a resident of the state for 10 years, and owns immovable property in the state. The petitioners have challenged Article 35A on ground that it can only have been introduced through Constitutional amendment under Article 368 and not through a Presidential Order under Article 370. They say that Article 35A is against very spirit of oneness of India as it creates a class within a class of Indian citizens. It restricts citizens from other States from getting employment or buying property within J&K, thus is a violation of fundamental rights under Articles 14, 19 and 21 of the Constitution. One petition also held that Article 35A is gender-biased and also against Article 14 of the Constitution as it denies property rights to J&K permanent resident woman who marries a non-resident while a man who marries outside state will continue to enjoy his rights. Government's new legal pro-activism against Articles 35A or 370 will lead to more alienation in the Valley. In the Valley, the government's reply on 35A is being seen as paving the way for moves to do away with Article 370 that excludes J&K from most laws enacted by Parliament, except through presidential orders that have the concurrence of the J&K Legislative Assembly Court has also asked the Centre to respond to a petition challenging Article 370. All this has served to strengthen suspicions that the Centre is using the legal route to bring about the changes that it wants The Centre is likely to take a divergent opinion from that of the Jammu and Kashmir government on Article 35A, on the grounds that it discriminates against women who marry outside the State from applying for jobs or buying property, which is in violation of Article 14 of the Constitution. Critics argue that Article 35A goes against the principles of equality and as well as the unity and integrity of India. They argue that it restricts citizens from other States from getting jobs or acquiring property in J&K and is a violation of fundamental rights enshrined under Articles 14, 19 and 21 of the Constitution. Article 35A has also been challenged for protecting certain provisions of the J&K Constitution, which limits the basic right to property if a native woman marries a man who does not possess a certificate of permanent residence. Recently, a Supreme Court Bench has indicated that the validity of Articles 35A and 370 may ultimately be decided by a Constitution Bench. Section 6 of the Jammu and Kashmir Constitution: It restricts the basic right of women to marry a man of their choice by not giving the heirs any right to property if the woman marries a man not holding the Permanent Resident Certificate. Her children are denied a permanent resident certificate thereby considering them illegitimate — not given any right to such a woman's property even if she is a permanent resident of Jammu and Kashmir Why are Political Parties & Separatists opposed to tinkering with 35A? Fear that it would lead to further erosion of J&K's autonomy and trigger demographic change in Muslim majority valley. Political parties say Kashmir resolution lies in greater autonomy; separatists fan paranoia against possibility of Hindus 'flooding' the valley.



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