

WHAT THE REPEAL OF ARTICLE 35A ENTAILS

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

A year ago: In this photo dated August 5, 2018, Kashmiri traders stage a protest against a petition to the Supreme Court challenging Article 35A. NISSAR AHMAD NISSAR AHMAD

What does Article 35A convey? What does its abrogation entail?

Included in the Constitution through a presidential order of May 1954, the provision is apparently based on the principle of safeguarding the interests of “sons of the soil”, apart from drawing strength through Article 370.

An offshoot of the 1952 Delhi Agreement between Jawaharlal Nehru, Prime Minister of the country, and Sheikh Abdullah, Premier of J&K, the provision envisages the creation of a group of persons, “permanent residents,” who are entitled to be provided “special rights and privileges” in matters such as employment in the State government and acquisition of immovable property.

In addition to raising the question of constitutionality of the provision on the ground that the inclusion was not made through a legislative route, critics of the Article often point out how “discriminatory” the provision has been towards women who marry “non-permanent resident-men”. The popular interpretation of the law is that such women lose their rights and privileges. Though the Jammu & Kashmir High Court, in 2002, held that the women married to “non-permanent residents” would not lose rights, there have been complaints that there is no change in the position.

How would the status of J&K as a Union Territory (and Ladakh too as a non-legislature UT) affect the governance of these States?

There are two models – Puducherry and the National Capital Territory of Delhi - which can guide the proposed Legislative Assembly of Jammu and Kashmir on becoming a Union Territory. While the former seems to be having no restriction with regard to framing laws on police, public order and land, the latter is specifically barred from making laws on the three subjects. It was through an enabling provision – 239 A - that the Puducherry legislature was formed, whereas, in the case of Delhi, the provision – 239AA – spells out the contours of powers of the legislature and council of ministers.

In respect of Ladakh, where there is no Legislative Assembly, the role of the Administrator or Lt. Governor will be greater than that of Jammu & Kashmir. His source of authority is the President.

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