

Article 35A comes under scrutiny

The question whether Article 35A, relating to special rights and privileges of the citizens of Jammu and Kashmir, is ultra vires of the Constitution or not is likely to head for a decision before a five-judge Constitution Bench.

The indication that the constitutionality of Article 35A will be under scrutiny came from a Bench of Justices Dipak Misra and A.M. Khanwilkar while hearing a petition filed by Charu Wali Khanna, who has challenged the Article as well as Section 6 of the Jammu and Kashmir Constitution, which deal with the permanent residents' status in J&K.

Property rights

The petition said Article 35A protects certain provisions of the J&K Constitution which denies property rights to native women who marry from outside the State. The denial of these rights extend to her children also. "This should ideally go before a Constitution Bench," Justice Misra said.

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.

"Section 6 of the Jammu and Kashmir Constitution 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," the petition, filed through advocate Bimal Roy, said.

The court tagged the petition along with another filed by NGO We the Citizens challenging Article 35A.

The NGO's petition contended that the State's special autonomous status under Articles 35A and 370, was discriminatory against non-residents as far as government jobs and real estate purchases are concerned.

END

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