

AN ARTICLE ON J&K

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People display placards and wave black flags during a protest against the petitions in the Supreme court challenging the validity of Article 35 A, in Srinagar. File | Photo Credit: [PTI](#)

As the Supreme Court begins looking into the validity of Article 35A, protests erupted in Jammu and Kashmir against the Article being altered. A look at what the Article is about.

Article 35A is a provision incorporated in the Constitution through a Presidential Order, and not by parliamentary debate, giving the Jammu and Kashmir State Legislature a complete say in deciding who the 'permanent residents' of the State are. The State Legislature can grant its permanent residents special rights and privileges in public sector jobs, acquisition of property, scholarships and other public aid and welfare programmes within the State.

It was incorporated into the Constitution in 1954 by an order of President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet. The Constitution (Application to Jammu and Kashmir) Order of 1954 followed the 1952 Delhi Agreement entered into between Prime Minister Nehru and Jammu and Kashmir Prime Minister Sheikh Abdullah extending Indian citizenship to the 'State subjects' of Jammu and Kashmir. Article 35A was added to the Constitution as a testimony of the special consideration the Indian government accorded the 'permanent residents' of Jammu and Kashmir.

The Presidential Order was issued under Article 370(1)(d), which allows the President to make certain "exceptions and modifications" to the Constitution for the benefit of Jammu and Kashmir. However Article 368(i) of the Constitution mandates that only the Parliament can amend the Constitution by introducing a new article.

Over 60 years after the Article came into existence, the Supreme Court has decided to go into the question whether the provision violates the Basic Structure of the Constitution.

Writ petitions filed in the Supreme Court argue that the Article is violative of fundamental rights of equality and equal treatment enshrined in the Constitution as it restricts citizens from other States from getting employment or buying property within Jammu and Kashmir. The writ petitions also point out that any act of the State Legislature made under Article 35A is final and binding.

A three-judge Bench is currently hearing whether the petitions challenging Article 35A should be referred to a Constitution Bench for an in-depth examination. If referred, the Constitution Bench would look into questions like whether the President acted outside his jurisdiction or whether the fact of non-consultation with the Parliament renders the Article invalid.

The J&K government banks on a 1961 judgment by a five-judge Bench of the Supreme Court in *Puranlal Lakhanpal v. The President of India*. This verdict concludes that the President has the power to modify the Constitution when making it applicable to Jammu and Kashmir.

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