



KAMARAJ IAS ACADEMY
Only IAS Academy by Grandson of "Perunthalsivam Kamarajar"

Article 35A

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Why is in news? Chief Justice of India D.Y. Chandrachud said Article 35A, which empowered the Jammu and Kashmir Legislature to define “permanent residents” of the State and provide them special privileges, denied fundamental rights to others.

Article 35A is a provision incorporated in the Constitution **giving the Jammu and Kashmir Legislature** a carte blanche to **decide who all are ‘permanent residents’ of the State** and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.

The provision mandates that **no act of the legislature coming under it can be challenged for violating the Constitution or any other law of the land.**

Article 35A was **incorporated into the Constitution in 1954** by an order of the then President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet.

The Presidential Order was **issued under Article 370 (1) (d)** of the Constitution. This provision allows the President to **make certain “exceptions and modifications”** to the Constitution for the benefit of ‘State subjects’ of Jammu and Kashmir.

So, Article 35A was added to the Constitution as a testimony of the special consideration the Indian government accorded to the ‘permanent residents’ of Jammu and Kashmir.

Critical side of Article 35A:

It treats **non-permanent residents** of J&K as ‘**second-class’ citizens**.

Non-permanent residents of J&K are **not eligible for employment** under the State government and are also debarred from contesting elections.

Meritorious students are denied scholarships and they cannot even seek redress in any court of law.

Further, the **issues of refugees** who migrated to J&K during Partition are **still not treated as ‘State subjects’** under the J&K Constitution.

It was **inserted unconstitutionally**, bypassing Article 368 which empowers only Parliament to amend the Constitution.

The laws enacted in pursuance of Article 35A are ultra vires of the fundamental rights conferred by Part III of the Constitution, especially, and not limited to, Articles 14 (right to equality) and 21 (protection of life).

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