

Deciding on Art 35-A

Why in news?

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The Supreme Court has recently adjourned the hearing on petitions relating to Article 35-A.

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What is Art 35-A?

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- Art 35-A empowers the Jammu and Kashmir Constitution to define “permanent residents” (PR) of the state.

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- Only the J&K assembly can change the definition of PR through a law ratified by a two-thirds majority.

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- It provides some special rights and guarantees to safeguard the unique identity of the people of J&K.

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- It was brought in by a presidential order in 1954.

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What is the case?

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- The Supreme Court is hearing petitions challenging the validity of Art 35A.

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- The legitimacy of the Instrument of Accession, by which J&K united with India, is in question.

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- The validity of the negotiations which led to the adoption of Article 370 is also questioned.

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- [Article 370 underscores J&K’s special legal status, and has actually given

the Centre the power over that state.]

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- The case has been adjourned as J&K administration and Centre cited local poll preparations.

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- The Centre also said an interlocutor has been appointed and the talks are going on. Click [here](#) to know more.

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What is the contention?

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- **Rights** - From a purely individual rights or economic integration perspective, the case for 35A is not clear-cut.

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- There is a contention that any restrictions differentiating residents and non-residents are inherently discriminatory.

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- But this argument would not only invalidate 35A with respect to Kashmir alone.

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- Several other states including Mizoram, Nagaland and Himachal would also be affected by it.

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- **Constitution** - Art 370 is the only mechanism that allows the Indian Union to legally exercise power in Kashmir.

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- Abrogating that mechanism is not just abrogating a specific policy.

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- It would amount to repudiation of an important part of the legal structure which India's claims rest upon.

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What had the Court's stance been?

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- As a matter of law, the status of Art 35-A had been considered by the Supreme Court in the past.

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- The Court had observed that the Indian state needs to honour the terms and

conditions in different instruments of accession.

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- Accordingly, the SC had noted that essentially, the laws governing J&K are part of a political settlement.

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- So it is up to the political process to modify the terms of the settlement, and not that of the judiciary.

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How to deal with it?

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- The challenge in leaving it to political process is that the application of this principle could be deeply politicised.

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- So the Supreme Court can instead uphold the validity of 35A through its judgement.

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- Nevertheless, it should also ensure to not completely leave it to the mercy of the J&K assembly when it comes to discrimination issues.

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Source: Indian Express, The Hindu

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