

Article 35A of Indian Constitution, Provisions, Current Status

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Article 35A of Indian Constitution was a special provision linked to Jammu and Kashmir that empowered the State Legislature to define “permanent residents” and grant them exclusive rights and privileges. It protected rights relating to government employment, property ownership, scholarships, settlement and welfare benefits. The provision remained one of the most debated constitutional arrangements until its effective removal in August 2019 following the withdrawal of Jammu and Kashmir’s special status.

Article 35A of Indian Constitution Background

Article 35A of Indian Constitution emerged from historical arrangements that protected the rights of Jammu and Kashmir residents.

- **Historical Origin:** Before Independence, Jammu and Kashmir was a princely state ruled by **Maharaja Hari Singh**. State Subject Orders of 1927 and 1932 granted special rights in jobs and land ownership to state subjects.

- **Permanent Resident Concept:** Permanent residents mainly included hereditary State Subjects recognised before accession to India in 1947. These residents enjoyed exclusive privileges that distinguished them from citizens of other Indian states.
- **Delhi Agreement 1952:** The Delhi Agreement between the Central Government and Sheikh Abdullah extended Indian citizenship to Jammu and Kashmir residents while retaining special protections for State Subjects and their privileges.
- **Constitutional Inclusion:** Article 35A was incorporated through the Constitution (Application to Jammu and Kashmir) Order 1954, issued by President **Rajendra Prasad** under Article 370(1)(d) on the advice of the Jawaharlal Nehru government.
- **Special Constitutional Position:** Unlike most constitutional provisions, Article 35A was not inserted through a Parliamentary amendment under Article 368 and appeared in the Constitution's Appendix rather than its main text.

Article 35A of Indian Constitution Provisions

Article 35A of Indian Constitution granted extensive powers to the Jammu and Kashmir Legislature regarding permanent residents.

- **Power to Define Residents:** The Jammu and Kashmir Legislature received complete authority to determine who qualified as a permanent resident and could modify the definition through legislation passed by a two-thirds majority.
- **Government Employment Rights:** Permanent residents received exclusive access to public sector and state government jobs, preventing non residents from competing for many government positions within the state.
- **Property Ownership Privileges:** Only permanent residents could acquire immovable property in Jammu and Kashmir. Citizens from other states were prohibited from purchasing or owning land there.
- **Settlement and Residence Benefits:** Non permanent residents could not permanently settle in the state, while permanent residents retained exclusive rights regarding residence and long term settlement.
- **Educational and Welfare Advantages:** Permanent residents enjoyed eligibility for state sponsored scholarships, public aid programmes, welfare benefits and other government assistance schemes unavailable to outsiders.
- **Constitutional Protection:** Laws enacted under Article 35A could not easily be challenged for violating **Fundamental Rights**, providing strong legal protection to the special privileges granted by the state legislature.

Article 35A of Indian Constitution Controversy

Article 35A of Indian Constitution generated significant constitutional, political and social debates for decades.

- **Constitutional Procedure Debate:** Critics argued that Article 35A was introduced through a Presidential Order rather than a constitutional amendment under Article 368, thereby bypassing the normal Parliamentary amendment process.
- **Temporary Provision Argument:** Opponents maintained that **Article 370** was intended as a temporary arrangement to facilitate integration and democratic stability, not to introduce permanent constitutional

changes like Article 35A.

- Equality and Fundamental Rights Issue: Restrictions on employment, property ownership and settlement for citizens from other states were viewed as inconsistent with Fundamental Rights guaranteed under **Articles 14, 19 and 21**.
- Class Within Citizens: Many critics described Article 35A as creating a separate category among Indian citizens by granting privileges exclusively to permanent residents while limiting rights of others.
- Gender Discrimination Concerns: A permanent resident woman marrying a person without a Permanent Resident Certificate faced restrictions affecting property related rights, while her children could face difficulties in obtaining resident status.
- Judicial Review Concerns: Article 35A insulated certain state laws from constitutional challenges, leading critics to argue that it weakened the principle of judicial review and constitutional scrutiny.
- Arguments in Support: Supporters believed Article 35A protected Jammu and Kashmir's identity, culture, land and employment opportunities. They also argued that its removal could alter the region's demographic composition and autonomy.

Article 35A of Indian Constitution Present Status

The constitutional position of Article 35A of Indian Constitution changed significantly after 2019.

- Presidential Order 2019: On 5 August 2019, the President issued the Constitution (Application to Jammu and Kashmir) Order, 2019, which superseded the 1954 Presidential Order that had introduced Article 35A.
- Revocation of Special Status: The 2019 Order effectively ended the special constitutional status previously available under Article 370 and extended all provisions of the **Indian Constitution** to Jammu and Kashmir.
- Fundamental Rights Extension: Part III of the Constitution, containing Fundamental Rights, became fully applicable in Jammu and Kashmir without the earlier exceptions and modifications.
- Abrogation of Article 35A: Since Article 35A derived its authority from Article 370, its legal basis ceased after the constitutional changes introduced in August 2019.
- Reorganisation of Territory: **The Jammu and Kashmir Reorganisation Act 2019** divided the former state into two Union Territories: Jammu and Kashmir with a legislature and Ladakh without a legislature.
- Constitutional Impact: The special rights, privileges and restrictions earlier protected under Article 35A are no longer constitutionally valid following the constitutional restructuring of 2019.

Jammu and Kashmir Domicile Criteria

Following constitutional changes, a domicile based framework replaced the earlier permanent resident system.

- Fifteen Year Residence Rule: A person becomes eligible for domicile status if he or she has resided in the Union Territory of Jammu and Kashmir for at least fifteen years.
- Educational Qualification Route: Individuals who studied for seven years in Jammu and Kashmir and appeared in Class 10th or Class 12th examinations there can obtain domicile status.
- Migrant Registration Provision: Persons registered as migrants with the Relief and Rehabilitation Commissioner are eligible to receive domicile status under the revised framework.
- Children of Central Employees: Children of Central Government employees, **All India Services** officers, PSU personnel, autonomous body staff, public sector bank employees and similar officials who served in Jammu

and Kashmir for ten years qualify for domicile.

- Residents Living Outside J&K: Children of Jammu and Kashmir residents working or conducting business outside the Union Territory remain eligible if their parents satisfy prescribed domicile conditions.
- Legal Reforms 2020: The Ministry of Home Affairs issued the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order, 2020, amending 109 laws, repealing 29 laws and introducing the domicile clause into recruitment legislation.

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