

1. WHY IT IS OFTEN ALLEGED THAT INCORPORATION OF ARTICLE 35-A IN THE CONSTITUTION NOT ONLY BYPASSED INDIAN PARLIAMENT, BUT ALSO CREATED MORE DISCRIMINATION? WHILE DISCUSSING ITS KEY PROVISIONS, CRITICALLY DISCUSS THE GROUNDS ON WHICH IT WAS CHALLENGED RECENTLY IN SUPREME COURT AND ALSO DISCUSS ITS CURRENT STATUS.

Answer

Article 35A, added to the Constitution by a Presidential Order in 1954, accords special rights and privileges to the natives of J&K, and empowers its legislature to frame any law without attracting a challenge on grounds of violating right to equality or any other constitutional right of people from other states.

It was not added to the Constitution by following the procedure prescribed for amendment of the Constitution of India under Article 368. Therefore it bypassed the Indian Parliament and violates the constitutional arrangement for carrying out amendments to the Constitution of India, under which the Parliament i.e. its two Houses and the President of India are together empowered to amend the Constitution. It was undemocratic as it did not represent the popular will. Inclusion of the 35A in the Appendices and its absence in the text of the main constitution is unconstitutional.

Recently, a PIL, filed by a Delhi-based NGO 'We the citizens', has sought Article 35A to be declared unconstitutional, on the ground that the President could not have amended the Constitution by the 1954-order and it was supposed to be a temporary provision.

It was overtly discriminatory because denies certain basic rights to non-permanent residents who have been residing in the state for many years... It gave arbitrary power to state government to discriminate between citizens of India on an unfair basis and provided preferential treatment to some while denying fundamental rights of many to residence, government job, vote in local election etc.

In August 2019, the discriminatory Article 35A has been scrapped by a Presidential Order. Now, Jammu and Kashmir – divided into two Union Territories of J and K and Ladakh – and its people are treated at par with the rest of India.