



### ARTICLE 35 A: KASHMIRIS BRACE FOR ANOTHER BATTLE

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**As if the ongoing bloodshed was not enough, the people of the state of Jammu and Kashmir are bracing for yet another battle - this time to protect Article 35 A of Indian Constitution from being amended or scrapped.**

For a large part of the history, Article 35 A remained hidden from the public eye and it was only Article 370 that came under fire from time to time. However, it was in 2014 when a right wing NGO "We the Citizens" filed a petition in the Supreme Court of India challenging Article 35 A as unconstitutional.<sup>1</sup> Subsequently, a couple of more petitions were also filed against this Article.

Article 35 A empowers the state legislature to decide who are the permanent residents of the state. It is important for Kashmir as it ensures special rights to the permanent residents of the state. By virtue of this article, only permanent residents of the state can own land or immovable property in the state. Similarly, only the permanent residents of the state are eligible for state's government jobs, scholarships or aid.<sup>2</sup>

Contradictory voices have been raised in favor and against Article 35 A. Those who are against this Article see it as discriminatory and unconstitutional. They argue that this law

<sup>1</sup> What is Article 35 A? *The Indian Express*, August 8, 2018 at <https://indianexpress.com/article/what-is/what-is-article-35a/>

<sup>2</sup> Akmal Hanan, "Article 35- A sword hanging over people", *Rising Kashmir*, August 8, 2018 at <http://www.risingkashmir.com/article/article-35-a-sword-hanging-over-people>

was never brought before the Parliament. Article 35 A was incorporated into the Constitution of India through a Presidential Order, "The Constitution (Application to Jammu and Kashmir) Order 1954," without undergoing the procedure for constitutional amendments as prescribed in Article 368 of Indian Constitution which gives powers to the parliament to amend the constitution.<sup>3</sup> They further believe that this particular Article is against the spirit of oneness of India and that it creates a class within a class of Indian citizens. It has also been argued by those opposed that this Article also violates fundamental rights of Indian citizens by barring them from buying property in the state. And last but not the least, Article 35 A is also criticized for gender bias. Any Kashmiri woman who chooses to marry a man who is not a permanent resident of the state loses her right to property in the state of Jammu and Kashmir.

Those who are against scrapping or making any amendment to the Article argue that this was one of the guarantees that was sought when the state was being (so called) accessioned with the Indian Union. They stress that Article 370 and Article 35 A are as much part of Indian constitution as is Article 368, and the fact that the drafters of Indian constitution did grant special status to the state of Jammu and Kashmir is beyond any doubt. They believe that this particular Article provides the only link between the state of Jammu and Kashmir with India and scrapping of this Article will nullify all the provisions and controls that India enjoys over the state.

This situation has naturally caused much unrest in the state. The act of challenging Article 35 A is being seen by many as a scheme to completely erode whatever little is left of autonomous character of the state. There is a strong sentiment in the state that by doing away with this Article and by allowing non-state subjects - particularly Hindus - to settle in the state, India is actually trying to change the demography of the Valley. This concern is particularly relevant as the state of Jammu and Kashmir is a disputed territory between India and Pakistan since 1947, and according to UN resolutions, plebiscite under the auspices of UN is to be held to ascertain the will of people whether they want to join Pakistan or India. Since Jammu and Kashmir is a Muslim majority state, Pakistan becomes a more natural choice for the people if they are given a chance. Pakistan has been demanding

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<sup>3</sup> Bhupender Yadav, Manish Tewari & Prashant Bhushan, "Should Article 35 A be scrapped?", *The Hindu*, August 24, 2018 at <https://www.thehindu.com/opinion/op-ed/should-article-35a-be-scrapped/article24763536.ece>

that the UN resolutions be implemented, whereas India, with a fear of losing the state, has been refusing to give Kashmiris their right to decide their fate and instead, has been keeping its grip over the state of Jammu and Kashmir with brutal tactics. Thus, changing the demography of the state and turning Muslim majority into minority will once and for all solve the problem for India.

It is notable to see that the Kashmiris have come out in defence of the said article with one voice. Not only has the Hurriyat leadership come out strongly in defense of Article 35 A ,but People's Democratic Party (PDP) and National Congress (NC) have also found themselves on the same boat . In fact, both the parties - PDP and NC - have even boycotted the ongoing Urban Local Bodies Polls and have demanded that the government clarify its position on Article 35 A.<sup>4</sup> The mood of the common man has best been described by an Associate Fellow at Observer Research Foundation, India who wrote, "On my recent visit to Srinagar, I saw stickers in defense of the article posted on buses, auto rickshaws and shops. In fact, even wedding invitation cards are also seeking unity of people in support of the article 35 A."<sup>5</sup>

The BJP had made its intentions very clear before coming to power in 2014. Its election manifesto clearly stated taking controversial steps like abrogating Article 370 and resettlement of Hindu Pandits.<sup>6</sup> Hence, when BJP formed a coalition government with PDP in the state of Jammu and Kashmir, voices in favor of resettlement of Hindu Pandits and granting permanent resident certificates to refugees from West Pakistan<sup>7</sup> became more audible. These refugees actually migrated to the state mostly from Pakistan's Punjab province, and are considered Indian citizens and not permanent residents of the state.

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<sup>4</sup> Only 3.5% polling in Kashmir, *Rising Kashmir*, October 14, 2018 at <http://www.risingkashmir.com/news/only-35-polling-in-kashmir-335479.html>

<sup>5</sup> Khalid Shah, "Tinkering with 35 A will cause more trouble in Kashmir" *Observer Research Foundation*, September 4, 2018 at <https://www.orfonline.org/expert-speak/43750-tinkering-with-35a-will-cause-more-trouble-in-kashmir/>

<sup>6</sup> BJP manifesto pledges good governance, talks of constructing Ram Mandir, abrogating Article 370, *The Indian Express*, April 7, 2014 at <https://indianexpress.com/article/india/politics/bjp-unveils-poll-manifesto-includes-contentious-issues-like-ram-temple-and-article-370/>

<sup>7</sup> Government to look into West Pakistani refugees' demand for permanent resident status in J&K, *DNA*, September 24, 2016 at <https://www.dnaindia.com/india/report-govt-to-look-into-west-pakistani-refugees-demand-for-permanent-resident-status-in-jk-2258174>

Further, Indian government also intends to construct “sainik colonies” for retired army officers by allotting them land in Jammu and Kashmir.<sup>8</sup>

Since even after more than seven decades, India has not been able to win the hearts and minds of Kashmiri people, it perhaps feels that changing the demography of the state will help in weakening, and in the long run eroding the Kashmiri struggle for the right to self determination. On the contrary, any such move will further complicate the already volatile situation. Sensing the public mood and making the pretext of recently ongoing local bodies elections, the Supreme Court of India has deferred the hearing on the case till January 19, 2019.<sup>9</sup> One can only hope that sanity will prevail and historical facts along with the Kashmiri sentiments will be taken into account before any judgement is given on the matter.

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<sup>8</sup> Permanent Mission of Pakistan to the United Nations addressed to the President of the Security Council at <http://www.mofa.gov.pk/documents/related/Security-Council.pdf>

<sup>9</sup> Article 35 A: SC defers hearing till January 2019, *Outlook*, August 31, 2018 at <https://www.outlookindia.com/website/story/article-35a-sc-defers-hearing-till-january-2019/315818>