Deciding on Art 35-A

Why in news?

\n\n

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

\n\n

What is Art 35-A?

\n\n

\n
- Art 35-A empowers the Jammu and Kashmir Constitution to define “permanent residents” (PR) of the state.
\n
- Only the J&K assembly can change the definition of PR through a law ratified by a two-thirds majority.
\n
- It provides some special rights and guarantees to safeguard the unique identity of the people of J&K.
\n
- It was brought in by a presidential order in 1954.
\n

\n\n

What is the case?

\n\n

\n
- The Supreme Court is hearing petitions challenging the validity of Art 35A.
\n
- The legitimacy of the Instrument of Accession, by which J&K united with India, is in question.
\n
- The validity of the negotiations which led to the adoption of Article 370 is also questioned.
\n
- [Article 370 underscores J&K’s special legal status, and has actually given

the Centre the power over that state.]
\n
- The case has been adjourned as J&K administration and Centre cited local poll preparations.
\n
- The Centre also said an interlocutor has been appointed and the talks are going on. Click here to know more.
\n

\n\n

What is the contention?

\n\n

\n
- **Rights** - From a purely individual rights or economic integration perspective, the case for 35A is not clear-cut.
\n
- There is a contention that any restrictions differentiating residents and non-residents are inherently discriminatory.
\n
- But this argument would not only invalidate 35A with respect to Kashmir alone.
\n
- Several other states including Mizoram, Nagaland and Himachal would also be affected by it.
\n
- **Constitution** - Art 370 is the only mechanism that allows the Indian Union to legally exercise power in Kashmir.
\n
- Abrogating that mechanism is not just abrogating a specific policy.
\n
- It would amount to repudiation of an important part of the legal structure which India’s claims rest upon.
\n

\n\n

What had the Court's stance been?

\n\n

\n
- As a matter of law, the status of Art 35-A had been considered by the Supreme Court in the past.
\n
- The Court had observed that the Indian state needs to honour the terms and

conditions in different instruments of accession.
\n
- Accordingly, the SC had noted that essentially, the laws governing J&K are part of a political settlement.
\n
- So it is up to the political process to modify the terms of the settlement, and not that of the judiciary.
\n

\n\n

How to deal with it?

\n\n

\n
- The challenge in leaving it to political process is that the application of this principle could be deeply politicised.
\n
- So the Supreme Court can instead uphold the validity of 35A through its judgement.
\n
- Nevertheless, it should also ensure to not completely leave it to the mercy of the J&K assembly when it comes to discrimination issues.
\n

\n\n

\n\n

Source: Indian Express, The Hindu

\n

