The Article of Contention: Why 35A has always been controversial

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Article 35A of the Indian Constitution empowers the J&K legislature to define the state’s “permanent residents” and their special rights and privileges. The law was inserted in the Constitution through a presidential order of 1954 instead of a parliamentary amendment under Article 368.

35A is based on Article 370, a temporary and transitional provision that was included in the Indian Constitution, on the terms negotiated between J&K’s popular leader Sheikh Abdullah and the Centre led by then PM Jawaharlal Nehru in 1949.

Article 370 guarantees special status to J&K, restricting the Union’s legislative powers to just three areas — defence, foreign affairs and communications. As a result, J&K adopted its own constitution in 1956.

The law related to Permanent Residency in J&K Constitution is drawn from the state subject laws introduced by Maharaja Hari Singh in the early 20th century during the Dogra rule. J&K was a princely state until 1947 when it acceded with India using Instrument of Accession (IOA).

The Permanent Residency laws of J&K are based on Maharaja Hari Singh’s two notifications issued in 1927 and 1932, which defined state subjects and their rights. The Dogra laws were introduced to prevent influx of migrants from neighbouring Punjab during the British rule.

J&K defines its permanent residents as “all persons born or settled within the state before 1911 or after having lawfully acquired immovable property and residence in the state for not less than 10 years or prior to that date”. All emigrants from J&K, including those who migrated to Pakistan, are considered state subjects. The descendants of emigrants are considered state subjects for two generations.

The law prohibits non-permanent residents from settling permanently in the state, acquiring immovable property, government jobs, scholarships and aid.

However, the law is discriminatory against J&K women. It disqualified them from their state subject rights if they married non-permanent residents. But in a landmark order in October 2002, the J&K HC held that women married to nonpermanent residents will not lose their rights. However, children of such women don’t have succession rights as of now.
35A has been a subject of public debate and controversy ever since it was challenged in the SC in 2014 on the grounds that it was not added to the Constitution through amendment under Article 368 and never presented before Parliament. It was also challenged by Kashmiri women married to ‘outsiders’, arguing that the state’s permanent residency law, flowing from 35A, had disenfranchised their children

Though the case is sub judice, the government can bring a bill in Parliament to scrap Article 35A. Since BJP in its manifesto and poll campaign has committed itself to its revocation, there is speculation that the Centre will table a bill during the ongoing session

Kashmir’s entire political leadership is against the revocation of 35A because it fears that opening up the state to non-permanent residents can change the demography of the only Muslim majority state in India. However, in the last 70 years, the religious demography has remained unchanged even as Hindu majority in Jammu and Buddhists in Ladakh can legally buy land and property in the Valley