



Perils of historical amnesia Article 35A

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Highlights

- The irony of today's India is that while our politics is looking towards our history more often than ever before, we are also becoming comfortable with its constant manipulation.
- The controversial Article 35A of the Constitution, which is currently being challenged in the Supreme Court, is a case in point. Its critics have argued that the Article affords Jammu and Kashmir undue powers, particularly by preventing non-State residents to own land in the State.
- The media has largely gone along with this explanation, often portraying the debate as a question of "special status" of Jammu and Kashmir and the Article as some sort of unusual concession to the State.

Fundamental purpose

- In fact, the fundamental purpose of Article 35A, when it was introduced in 1954 as part of a Presidential Order, was the exact opposite: instead of giving the state a "special status", it was designed to take autonomy away from it.
- The Article was introduced in May 1954 as part of a larger Presidential Order package, which made several additions to the Constitution (not just Article 35A).
- The overall gist of this Order was to give the Government of India enormously more powers over the State than it had enjoyed before.
- For the first time, India's fundamental rights and directive principles were applicable to Jammu and Kashmir and the State's finances were integrated with India.
- Importantly, the Order also extended the Indian Supreme Court's jurisdiction over certain aspects of Jammu and Kashmir.
- In fact, at the time of its introduction, the Order was celebrated in India as a great step towards bringing Jammu and Kashmir closer into the Union of India.
- Even the Hindu right-wing leaders had hailed it as a "commendable step". No eyebrows were raised over the minor issue of Article 35A, which made up a very small component of the Order.

The controversial Instrument of Accession signed by Maharaja Hari Singh in 1947 which brought the State into the Union of India gave New Delhi control only over Kashmir's defence, foreign policy and communications. On all other matters, the State government retained powers.

- It took 70 years of successive governments steadily chipping away at Jammu and Kashmir's autonomy to bring it to today, when the only meaningful "special status" that it enjoys is Article 35A.
- Almost all of State's other autonomous powers have been subsumed by New Delhi.

- Today's debate over the Article should be seen as part of this larger decades-long process of the State's integration into India, sometimes through legal means and sometimes through outright fiat.

To be sure, the whole project of federal nation-building requires constant negotiation between the nation state and its components. Should Article 35A be removed, it must be removed as an expression of the will of the people, through a political process which includes the people of Jammu and Kashmir in the discussion. Or, in the very least, it has to be remembered that the Article is not some special concession to Jammu and Kashmir but the last vestige of a broken promise that India had made to it decades ago.

Source: The Hindu

