



# The nuances of 35A

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## Highlights

- The political legitimacy of the Indian state in Kashmir hangs on a very slender thread.
- This thread is the legitimacy of the Instrument of Accession, and the negotiations with Sheikh Abdullah in 1949, which led to the adoption of Article 370.
- There is also the ground truth that the Indian state has a long record of betrayal of promises, democratic values and trust.
- The situation on the ground is impossibly oppressive, as if Kashmir is in the throes of a death wish.
- There is something to be said for a more nuanced debate on 35A. But abrogating 35A under the circumstances would be playing with fire — the last act of betrayal.

## Analysis of Judiciary actions

- As a matter of law, the status of the article has been considered by the Supreme Court in the past. In at least two significant cases, *Puranlal Lakhanpal vs President of India and Others* (1962) and *Sampat Prakash vs State of Jammu & Kashmir* (1969), the Court had settled one of the issues of contention, whether modifications could be carried out by a Presidential Order.
- Another interesting case, not on 35A directly but one which has a bearing on the constitutional status of Presidential Orders, is a judgment by Rohinton Fali Nariman and Kurian Joseph in *State Bank of India vs Santosh Gupta*.
- In *Madhav Rao Scindia vs Union of India*, the Privy Purse case, the Court did uphold the idea that the Indian state needs to honour the terms and conditions laid out in different instruments of accession.
- It was in this spirit that in the *Bachan Lal Kalgotra* case, Justice Chinnappa Reddy, in a rare case of judicial forbearance, took the view that essentially laws governing Jammu & Kashmir are part of a political settlement, and it is essentially upto the political process to modify the terms of the settlement, not to look to judges to shortcircuit what should be a political negotiation.
- This may still be a wise position to take. In some ways, the Court is facing the consequences of shortcircuiting the political process in the Assam cases.

From a purely individual rights or economic integration perspective, the case for 35A is not clear-cut. Does the exercise of this power come with no constraints, no requirement that they meet basic standards like Articles 14 or 21? Ironically, 35A, which was meant to protect the demographic identity of Kashmir, proved to be a parchment barrier against one of the most significant episodes of ethnic demographic alteration: The expulsion of Kashmiri Pandits.

Source: [The Indian Express](#)