

**29 MARCH 2019**

## Jaitley says Art - 35A is curbing J&K 's progress

### Why In News:

An NGO, We the Citizens, challenged 35A in SC in 2014 on grounds that it was not added to the Constitution through amendment under Article 368. It was never presented before Parliament.

Another petition, claims Article 35A discriminates against woman's right to property.

### In Brief:

- Article 35A - It is a provision in Constitution of India that allows the Jammu-Kashmir assembly to define permanent residents of the state. It was brought in by a Presidential order in 1954 to safeguard the rights and guarantee the unique identity of the people of Jammu-Kashmir.
- Definition of 'Permanent Residents' - According to the Jammu-Kashmir constitution, a Permanent Resident is defined as a person who was a state subject on May 14, 1954, or who has been residing in the state for a period of 10 years, and has "lawfully acquired immovable property in the state.
- Rights granted to Permanent Resident of J & K:
- Property rights;
- Employment in state government;
- Participation in Panchayat, Municipalities and Legislative Assembly Elections;
- Admission to government-run technical education institutions; scholarships and other social benefits.
- Challenge before Supreme Court - A three-judge bench of the court intends to consider if Article 35A infringes the Constitution's basic structure.

### Views against Article 35A

- It is against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens"
- It violates fundamental rights of other citizens under Articles 14, 19 and 21 of the Constitution.
- It restricts the basic right to property if a native woman marries a man not holding a permanent resident certificate.

### Views in favour of Article 35A

- Its removal may lead to further erosion of J&K's autonomy and trigger demographic change.
- The Constitution of India establishes a form of asymmetric federalism Article 370 is as much a part of the Constitution as Article 368, thereby justifies the validity of Art 35A.

### Note

## Government defends move on Finance Act

### Why In News?

The Constitution Bench is hearing a clutch of petitions, including one by Member of Parliament Jairam Ramesh, challenging certain provisions of the Finance Act, 2017 which modify the terms of appointment and functioning in various statutory tribunals, including the National Green Tribunal.



The Centre defended the passing of the Finance Act, 2017 as a Money Bill.

### In Brief:

- The current government has piloted the Finance Act, 2017 through Parliament to get substantial legal provisions passed without the scrutiny of the Rajya Sabha.
- Many appellate tribunals that hear appeals against orders by regulatory authorities which were initially passed by both the houses have been merged with other tribunals without the approval of Rajya Sabha.
- The Constitution has an inbuilt check and balance in the office of the Speaker of the Lok Sabha.
- She/he has the last word on whether or not a proposed law is a Money Bill, that is, a law that deals with matters of finance and tax, as set out in the Constitution.
- If the parliament thinks that the speaker of the Lok Sabha is wrong, nothing can be done except a constitutional amendment to change the powers of the speaker.
- Constitutional courts may be visited with challenges to the abuse, but nothing much can be expected.
- It is equally true that courts have not always steered clear of every wrong that is not justiciable.
- Either entire legislation (for example, environmental charge for entry of vehicles into Delhi) including de facto contents of the Constitution (for example, the judges' collegium for judicial appointments) have been created in the past by judge-made law.
- In a challenge to the replacement of governors of states as political decisions, courts have ruled that no decision of the government, including a decision to replace a governor can be arbitrary, yet ruling that the decision cannot be interfered with.

### What is the previous precedence of such acts?

- This act of simply circumventing the Rajya Sabha has been resorted to in the past.
- The Foreign Exchange Management Act, 1999, had been passed by both Houses of Parliament as a non-criminal law to replace the dreaded criminal law contained in the Foreign Exchange Regulation Act, 1974.
- That was not a Money Bill.
- Two years ago, provisions criminalising exchange controls were brought into FEMA through a Money Bill., thus no consent of the Rajya Sabha was needed.
- There are some laudatory amendments like extending the retirement age of the presiding officer to 70 years.

## EC examining violation of Mode of Conduct

### Why In News:

The Election Commission of India (ECI) on Thursday said a committee of officers was examining the responses received from Doordarshan and All India Radio (AIR) on Prime Minister Narendra Modi's address to the nation on Wednesday announcing India's successful demonstration of anti-satellite missile capability - 'Mission Shakti'.

According to ECI, the Prime Minister's Office (PMO) had neither informed, nor sought any permission from the ECI for broadcast of his address.

### In Brief:

The commission is yet to take a call on the biopic on Prime Minister — 'PM Narendra Modi'.

### Note



Doordarshan and AIR had taken the feed from a social media platform instead of directly airing it live — apparently to avoid violation of the model code of conduct, which came into force on March 10, the day the poll panel announced the schedule of the Lok Sabha polls as well as the elections to the legislative assemblies in Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim.

The poll panel had also issued a notice to NitiAyog vice-chairman Rajiv Kumar, who, despite being a public servant, had criticised the Congress' Minimum Income Guarantee poll pledge.

### **Model Code of Conduct (MCC):**

The MCC is a set of guidelines issued by the Election Commission to regulate political parties and candidates prior to elections, to ensure free and fair elections.

Article 324 of the Constitution gives the Election Commission the power to supervise elections to the Parliament and state legislatures. The MCC is operational from the date that the election schedule is announced till the date that results are announced.

It was first introduced in the state assembly elections in Kerala in 1960 and was largely followed by all parties in the 1962 elections and continued to be followed in subsequent general elections.

The MCC incorporated certain restrictions in 1979, regulating the conduct of the party in power.

- Ministers must not combine official visits with election work or use official machinery for the same.
- The party must avoid advertising at the cost of the public exchequer or using official mass media for publicity on achievements to improve chances of victory in the elections.
- Ministers and other authorities must not announce any financial grants, or promise any construction of roads, provision of drinking water, etc.
- Other parties must be allowed to use public spaces and rest houses and these must not be monopolised by the party in power.

However, it stated that an exception may be carved out for advertisements highlighting the government's poverty alleviation programmes or any health related schemes.

The MCC is not enforceable by law. However, certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Representation of the People Act, 1951.

The Election Commission has argued against making the MCC legally binding, stating that elections must be completed within a relatively short time (close to 45 days), and judicial proceedings typically take longer, therefore it is not feasible to make it enforceable by law.

### **SC asks petitioners to seek remedy from legislature**

#### **Why In News:**

Supreme Court said that it is within the domain of the legislature to carve out an appellate forum, where people who have been declared "foreigner" by Foreigners Tribunals and their names deleted from the Assam NRC list can seek relief, instead of expecting SC to carve out such an appellate forum using its extraordinary powers under Article 142 of the Constitution.

#### **Note**



**In Brief :**

**About NRC:**

The National Register of Citizens (NRC), is the list of Indian citizens in Assam. It is being updated to weed out illegal immigration from Bangladesh and neighbouring regions.

The process of NRC update was taken up in Assam as per a Supreme Court order in 2013.

It was carried out under The Citizenship Act, 1955, and according to rules framed in the Assam Accord.

For a person's name to be included in the updated NRC list of 2018, he/ she will have to furnish:

- Existence of name in the legacy data: The legacy data is the collective list of the NRC data of 1951 and the electoral rolls up to midnight of 24 March 1971.
- Proving linkage with the person whose name appears in the legacy data.

**Al-shabaab militants**

**Why in news?**

- The Al-Shabaab militants leveraged a car bomb explosion at Mogadishu, the capital of Somalia, killing atleast 15 people.

**In Brief:**

**Al-Shabaab militants:**

- Al-Shabaab (Literally “The Youth” or “The Youngsters”) is a jihadist fundamentalist group based in East Africa..
- In 2012, it pledged allegiance to the militant Islamist organisation Al-Qaeda.
- As of 2015, the group has retreated from the major cities, however al-Shabaab still controls large parts of the rural areas.

**PRELIMS BITS :**

- **Malham cave** – It is the world's longest salt cave recently discovered inside Mount Sodom in Israel.

\*\*\*

Note

