Article 35A and its Significance

1) Introduction
   - Article 35A of the constitution empowers J&K legislature to define state's "permanent residents" and their special rights and privileges.
   - Special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare.
   - No act of the State legislature can be challenged for violating the Constitution or any other law of the land.
   - It was added to the constitution through a 1954 presidential order under Article 370 (1) (d) of the Constitution.

2) Background
   - After J&K's accession, Sheikh Abdullah in 1949 negotiated J&K's political relationship with New Delhi, which led to the inclusion of Article 370 in the Constitution.
   - Article 370 guarantees special status to J&K
   - Under the 1952 Delhi Agreement between Abdullah and Nehru, several provisions of the Constitution were extended to J&K via presidential order in 1954. Article 35A was inserted then.

3) Why is Article 35A Debated?
   - 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, and the parliamentary route of lawmaking was bypassed.
   - It argues that four representatives from Kashmir were part of the Constituent Assembly involved in the drafting of the Constitution and J&K was never accorded any special status in the Constitution.
   - Article 370 was only a 'temporary provision' to bring normality in Jammu and Kashmir and strengthen democracy in the State.
   - Article 35 A is against the “very spirit of oneness of India” as it creates a “class within a class of Indian citizens”.
   - Restricting citizens from other States from getting employment or buying property within Jammu and Kashmir is a violation of fundamental rights under Articles 14, 19 and 21 of the Constitution.
   - In another case in SC, Article 35A restricts the basic right to property if a native woman marries a man not holding a permanent resident certificate.
   - Her children are denied a permanent resident certificate, thereby considering them illegitimate.
   - The Supreme Court has indicated that the validity of Articles 35A and 370 may be decided by a Constitution Bench.

4) Arguments in Support of this article
   - Tinkering with Article 35A would lead to further erosion of J&K's autonomy
   - Various Articles in the Constitution provide special rights to states like Nagaland (Article 371A) and Mizoram (Article 371G) based on historical reasons.
• Article 35 A protects the demographic status of the Jammu and Kashmir in its prescribed constitutional form.
• The major political parties of the Kashmir Valley, NC and PDP support the safeguarding of Article 370 and Article 35A.
• In the last 70 years, demography of Kashmir Valley has remained unchanged even as Hindu majority in Jammu and Buddhists in Ladakh have rights to buy property and settle in the Valley.

5) **Consequences if Article 35A is removed**
• Any adverse order against the provision, could give the separatists a chance to stoke violence in the Valley.
• If Article 35A is scrapped, the extension of the Fundamental Rights and every other provision to J&K through Presidential Orders will cease to apply.
• Only Article 1 and Article 370 of the Indian Constitution will then apply to J&K.

6) **Article 370 and its Provisions**
• The Article 370 deals with certain special powers provided to the state of Jammu and Kashmir.
• It grants a ‘temporary’ autonomous status to the state of Jammu & Kashmir.
• Except for Defense, Foreign Affairs, Finance and Communications, the Indian Government needs the State Government’s nod to apply all other laws.
• The central government has no power to impose financial emergency in the state.
• Emergency can be imposed only on the grounds of internal disturbances and imminent danger from a foreign enemy.
• The state government has the control on how it needs to govern the state
• Indian nationals belonging to other states cannot buy land or property in the state of J&K.
• Woman who marries a person belonging to any other state loses her right to ownership.

7) **Conclusion**
• There is a need to have a larger debate on Article 35A including political parties, intelligentsia and the civil society at large
• Article 35A has not only a constitutional or legal issue, it has larger socioeconomic and political issue.
• The Centre needs to take all political parties along for protecting the rights and privileges of the people of the state.