

Evolution and Development of Domicile Law in Jammu and Kashmir: A Study from Hereditary State Subject Act 1927 to Domicile Law 2020

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Abstract: Erstwhile State of Jammu and Kashmir (now divided into two union territories: Jammu and Kashmir Union Territory and Ladakh Union Territory) enjoyed a unique special status in the Union of India. In the Constitution of India, Article 370 and 35A were inserted to give autonomy to the State Legislature in a number of matters including the Domicile Law. Erstwhile state had the legacy of domicile law in the form of State-Subject Law since 1927 during the Dogra rule which was continued after the independence with some modifications in form of “Permanent Residents” of Jammu and Kashmir recognized in the Constitution of India under Article 35A and Constitution of Jammu and Kashmir in the Section 6. According to Permanent Residentship rules of Jammu and Kashmir, residents of the erstwhile state enjoyed some special rights and privileges in Jammu and Kashmir viz a viz other citizens of India. They were entitled to buy land, get government jobs and scholarships and right to vote in the State which were denied to other citizens of India. This was provided to protect the distinct identity and economic interest of the residents of Jammu and Kashmir. But present government has revoked all these provisions and came out with a new domicile policy for Jammu and Kashmir Union Territory in 2020. The present Article will analyse the current domicile law introduced in Jammu and Kashmir while exploring the factor responsible for the evolution of and the transition in the domicile policy of Jammu and Kashmir from Hereditary State Subject to Domicile Law.

Keywords: State-Subjects, Domicile Law, Jammu and Kashmir, Permanent Residents, Special Rights, Constitution of India, Dehli Agreement.

Introduction

On 5th August, 2019, the erstwhile State of Jammu and Kashmir witnessed an unprecedented and historic change that fundamentally redefined its constitutional relationship with India and completely destroyed and repealed its own constitutional and legal system which the State had developed through centuries such as State Subject Law (1927), Ranbir Panel Code (1932), Constitution of Jammu and Kashmir (1957) and a number of laws passed by the erstwhile State Government of Jammu and Kashmir (Gazette of India, 2019:2, Kashmir life, 06/11/219, The Hindu, 06/08/ 2019). It was done through the Constitution (Application to Jammu and Kashmir) Order, 2019 which abrogated the Article 370 and 35A of India Constitution that provided autonomy to the State and empowered the State Legislature to define the Permanent Residents (domiciled citizens) of Jammu and Kashmir and specify their rights in the State vis a vis other citizens of India (Anand, 2002:213; Constitution of India, 2007:360-361; Gazette of India, 2019:2). Moreover, erstwhile State of Jammu and Kashmir was also divided into two union territories namely Jammu and Kashmir Union Territory and Ladakh Union Territory by passing Jammu and Kashmir Reorganization Act, 2019, on 5th August, 2019 with effect from 31 October, 2019 (Gazette of India, 2019:2). These developments have completely changed and downgraded the constitutional and legal status of Jammu and Kashmir. Domicile Law which prevailed in the State since 1927 in the form of State Subject upto the independence and after that the same was termed as Permanent Residents also got repealed which provided certain special rights and privileges such as buying land in the State, getting government jobs and scholarships etc. to the Permanent Residents of Jammu and Kashmir (Shah, 1988:27). This law was passed by the then Maharaja of Jammu and Kashmir as a result of great resistance by the native people against the outsiders in the government jobs in the State (Bazaz, 2009:123; Chandel, 2017:108; Khan, 1980:52, Wani et al, 2021:61). This was continued after independence with some minor modifications to protect the distinct identity

of Jammu and Kashmir as well as job security of local youth (Lamb, 1991:121; Shah, 1988:26). But, this historical legacy of domicile law in Jammu and Kashmir has been terminated by the present Bhartiya Janta Party-Led government of India through the abrogation of 35A of Indian Constitution. A new Domicile Law has been introduced by Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order on 31st of March, 2020 for the Union Territory of Jammu and Kashmir (Gazette of India, 2020:53). As per the new domicile law, domicile certificate issued by Naib Tehsildar is required for any appointment in the union territory (of Jammu and Kashmir) services (Ibid). But, the criterion to get the domicile status under the new domicile law is kept very loose through which a huge population of India outside the Jammu and Kashmir can easily get the domicile status of Jammu and Kashmir. This has instilled the fear amongst the Kashmiris that as per the new domicile rules, India would recruit non-Kashmiris in Jammu and Kashmir to dilute the Jammu and Kashmir's ethnic and religious profile resulting into demographic change. (<https://harvardlawreview.org/2021/05/from-domicile-to-dominion-in>, The Wire, 29/07/2020). This move of government of India is highly opposed in Jammu and Kashmir. All the political parties in Jammu and Kashmir except Bhartiya Janta Party (BJP) have launched a movement against this move and formed a grand alliance known as GUPKAR alliance to restore the special status of Jammu and Kashmir including previous domicile law (Greater Kashmir, 28/09/2021, The Hindu, 24/09/2021).

Jammu and Kashmir Union Territory

Jammu and Kashmir, a union territory of India is located in the northern part of India. It is bounded in the north east by Ladakh Union Territory, in the north west by Pakistani Administered portion of Jammu and Kashmir, in the west by Pakistan and in the south by the Indian States of Himachal Pradesh and Punjab. It is basically a part of larger region of Jammu and Kashmir which has been a matter of dispute between India, Pakistan and China since the partition of Indian sub-continent in 1947 which includes union territory of Jammu and Kashmir and union territory of Ladakh under Indian control, Pakistani Administered Jammu and Kashmir under Pakistani control and Aksai Chin under Chinese control (<https://www.britanica.com/place/Jammu-and-Kashmir>). Before 1947, India under the British Government was divided into two distinct entities, i.e., British India under the direct British control and Princely States ruled by Indian princes under indirect control of the Britishers. Jammu and Kashmir which included all the above mentioned areas was one of the princely states established on 16 March, 1846, when the Britishers handed over the State to Maharaja Gulab Singh, Dogra ruler from Jammu through the Amritsar Treaty. As per the treaty, Jammu and Kashmir was sold by the Britishers to Maharaja Gulab Singh in return of 75 lakhs of Nanak Shahi rupees (Puri, 1983:1; Verma, 1994:9). Jammu and Kashmir continued as a princely state of British India under the successors of Maharaja Gulab Singh (Ranbir Singh 1856-1885, Pratap Singh 1885-1925 and Hari Singh 1925-1947) till 1947 (Khan, 2002:II, Verma, 1994:10-11). In 1947, Britishers left India by dividing it into two dominions namely India and Pakistan and princely states were advised to join either of the dominion. But Maharaja of Jammu and Kashmir did not join any of the dominion. On 22, October 1947, a large group of armed raiders (tribals) attacked the Kashmir from the western side. Army of Maharaja was unable to defend its territory (Bhatt, 1984:164, Hussain, 2021:6). So he asked for military assistance from Indian dominion. India refused the help until Jammu and Kashmir accessed to India. Therefore, Maharaja signed the Instrument of Accession with India on 26 October, 1947 and became a part of India. Jammu and Kashmir got military assistance from India which pushed back the raiders but could not free some parts of the state which are still under the Pakistan control popularly known as Azad Kashmir or Pakistan Administered Kashmir (Verma, 1994:33). Thus in 1947, part of Jammu and Kashmir which accessed with India was made an India state with substantial autonomy for it in the Constitution of India under Article 370. This article gave some special powers to Jammu and Kashmir State which included a separate Constitution for the State, a separate Flag, Prime Minister of the State, Sadar-e- Riyasat (President of the State) (Wani et al, 2021:53). Some of the special powers were already diluted by the Government of India but 05 August, 2019, Article 370 was made inoperative, all the special power were withheld and by passing Jammu and Kashmir



Reorganization Act, 2019, erstwhile state of Jammu and Kashmir was downgraded into two union territories namely Jammu and Kashmir Union Territory and Ladakh Union Territory (Gazette of India, 2019:2-3, Noorani, 2011:). This study is focussed on only union territory of Jammu and Kashmir.

Conceptual Framework

The key term used in the paper is Domicile. Domicile is a legal terminology which shows the relation between a person and a sovereign state. It provides a lawful connection between an individual and a locality. It is also known as the permanent dwelling place of a person or permanent home. The term Domicile originated from the Roman law. The modern usage of the term comes from the Canon Law. According to a modern canonist, “the term domicilium is derived from the word domum colere which means to foster or inhabit the home. Domicile is not any place of residence but a place of habitual residence” (lawteacher.net. 2021: Moin Uddin, 2022: 291). According to Dicey and Morris (1993), “Domicile means a fixed, permanent and principled home to which an individual always tends to return” (Dicey and Morris, 1993:115). A person is considered to have domicile in a country where he lives permanently and has no plan to move elsewhere. Permanent residence is the cornerstone of the concept of Domicile (Winter, 1969:362; Jubaer, 2021:2) Domicile consists of two fundamental elements that must exist simultaneously such as physical presence in the jurisdiction and the intension to stay forever according to P. Stone (Stone, 1995:25). In this way we can say that domicile is the permanent home of a person. The term, “Permanent Residents” was used in the Constitution of India under Article 35A and Constitution of Jammu and Kashmir under section 6 for the domiciled citizens of Jammu and Kashmir which came into force in 1950 and 1957 respectively. Various special rights and privileges were also described for the Permanent Residents of Jammu of Kashmir which were not enjoyed by other citizens of India. In 2019, the term Permanent Resident has been deleted from the Constitution of India and Constitution of Jammu and Kashmir has been repealed through the Jammu and Kashmir Reorganization Act 2019 (Anand, 2013:206; Bhatia, 2015:84; Jammu and Kashmir Reorganization Act, 2019). Now the term, Domicile is used in place of Permanent Residents of Jammu and Kashmir. Before the usage of the term Permanent Residents, the term, “State Subject” was used during the autocratic rule (in pre-independence period). According to Shah (1988), State connotes territorial limits (of Jammu and Kashmir) and the term Subject implies hereditary resident of any area within those territorial limits (Shah, 1988:19). The term “Hereditary State Subject” means and includes all the persons born and residing within the State before the commencement of the reign of His Highness the Late Maharaja Gulab Singh Sahib Bhadur and also the persons who settled therein before the commencement of Samvaty 1942 and have since been permanently residing therein as per the Government Order on 31 January, 1927 (Ibid: 22).

Methodology

Data for this study is derived from both primary and secondary sources. Secondary sources include books, journals, articles, State and National level News Papers, various government reports and documents of both central and erstwhile state governments etc. Primary sources include the Constitution of India, erstwhile Constitution of Jammu and Kashmir, various Acts of Central and erstwhile State Governments related to domicile law of Jammu and Kashmir. Keeping in view the nature and complexity of the research problem, historical cum analytical method has been used to uphold the findings of the study.

Literature Review

Jammu and Kashmir Union Territory has been in the conflict for more than 70 years. Dispute began in 1947 when tribe from North West Frontiers supposedly backed by Pakistan attacked the Jammu and Kashmir and Jammu and Kashmir acceded to India under the pressure of this attack to get army support from India to push out the tribe from the State (Verma, 1994:33). This dispute still continues. Due to this disputed and conflictual nature of the State, there is a plethora of literature on Jammu and Kashmir produced by local, national and foreign academicians. But majority of literature is on the conflictual aspects of the State and its constitutional

relationship with the Union of India which does not high lights the legacy of domicile law in Jammu and Kashmir. Such as Josef Korbel (1997) analysis the role of United Nations played the dispute of Jammu and Kashmir and Lamb, (1991) focus on the genesis of conflict of Jammu and Kashmir. Sumit Ganguly, (1977) analysis the origin of insurgency that has racked the Jammu and Kashmir since late eighties. P. S. Verma (1994) has made an in depth study of the socio-economic and political conditions responsible for the invigoration of crisis in Jammu and Kashmir. Sumantra Bose, (1997) describes the different aspects of political alienation in Jammu and Kashmir. A. G. Noorani, (2011), A. S., Anand, (2004), R. K. Kaul Bhat (1984), Bhatia (2015) focused on the constitutional development in the State within the framework of Indian Union. Rekha Chowdhary (2015) and Mohita Bhatia (2020) evaluated the internal dimensions of the conflict. The present paper departs from this conventional scholarship on Jammu and Kashmir and discusses the legacy of domicile law of Jammu and Kashmir through various phases of since 1927.

Domicile Law before 1947: State Subject

Development of domicile law in Jammu and Kashmir is the result of resistance of Kashmiris against the outsiders in the government services during the Dogra rule. Resentment against the outsiders in Jammu and Kashmir, first of all aroused due to the deposition of Maharaja Pratap Singh and constitution of a State Council headed by the British Resident in his place in 1889 by the British Government. This direct intervention of the Britishers in the state affairs created consternation particularly amongst the Hindus (Kashmiri Pandits and Dogras of Jammu) in Jammu and Kashmir because they feared that British intervention was a prelude to the eventual overthrow of Hindu ruler of the state (Chandel, 2017:106-107; Kaul, 1990:10; Zutshi, 2004:90). One of the first steps taken by the State Council was the replacement of Persian with Urdu as the official language. This language i.e. Urdu was imported alongside numerous administrative servants from the British Punjab by the Resident controlled administration. The administration under the State Council gave various justifications for the recruitment of outsiders instead of native Kashmiris to the services such as lack of modern education, their incompetence in the recently adopted language of administration (Urdu) and so on (Bazaz, 2009:129, Kashmir Life, 10/04/2019). As a result of this a number of local officials who did not know the Urdu language lost their government jobs. In addition to it, a system of competitive examination was introduced in the state with its rigid rules and process for appointment to government services. The result was that outsiders continued to be imported for running the administration of the state (Chandel, 2017:107; Khan, 1980:10; Zutshi, 2014:90). With this change, the Kashmiri Pandits having mastery in the Persian language who dominated the administrative services earlier were thrown out of their government jobs. These government jobs were soon occupied by the outsiders from the neighbouring province of Punjab. Waves of office hunters from outside moved towards Kashmir (Rai, 2004:230). P.N. Bazaz portrayed the situation of outsiders entry in the state services as, “Armies of outsiders trailed behind the officers from the plains with no more interest than to draw as much as they could, and then to depart leaving behind their kindred as successors to continue the drain, and thus was established a hierarchy in the services with the result that profits and wealth passed into the hands of the outsiders” (Bazaz, 2009:135)

This trend of outsiders in the government services made the Kashmiri Pandits and Dogras of Jammu unhappy. They resented this trend on the ground that employing outsiders in the state hit the livelihood opportunities of the local people of Jammu and Kashmir (Bazaz, 2009:116; Chandel, 2017:107; Khan, 1980:10; Zutshi, 2014:90). They soon started a campaign against the outsiders in the state services. In 1894, a group of Kashmiri Pandits in Kashmir region founded an organization namely Sanatan Dharm Sabha and Dogras of Jammu founded another organization namely Dogra Sadar Saha in 1904. Both of these Sabhas started the movement of “Kashmir for Kashmiris” or State for State’s People which proposed the exclusion of Punjabis and the other non- Kashmiris from the government services and the sole employment of Kashmiris in the state services (Bazaz, 2009:123; Chandel, 2017:108; Khan, 1980:52, <https://kashmirlife.net/pratap-singhs-british-rule-56245/>)

). They sent many representations to the Government of India and State Administration to take the matter into consideration.

Meanwhile some steps were taken by the State Administration for promoting education in the state. In 1905, Annie Besant established a Hindu college in Srinagar, which was later taken over by the government in 1911 and renamed Sri Pratap College. The government of Maharaja also constituted a number of college scholarships for Kashmiris to study in Lahore (Zutshi, 2002:185). Another college was also established in Jammu in 1908. The establishment of colleges and provision of scholarship resulted into the passing of a large number of graduates every year (Daily Excelsior, 14/03/2021). Since, the state services were monopolized by Britishers and Indians particularly Punjabis, these graduates who came out of colleges were rendered unemployed. This created a kind of frustration among them. To find a way out, they also joined the movement known as “Kashmir for Kashmiris, or State Subject Movement under the banner of Sanatan Darm Sabha in Kashmir Valley and Dogra Sadar Sabha in Jammu region (Bazaz, 2009:123; Dass, 2014:65; Wani et al, 2021:61). The main demand of the organizations was that preferences should be given to the Mulkies (Natives) over the Gair-Mulkies (Outsiders) in the matters of state services. Thus a vigorous movement for safeguarding the interest of the local people of the state was launched. Its modus operandi was to pass various resolutions in its meetings and submit them to the ruler of the state in the form of representations and deputations for according preferences to the Mulkies in the employment in the state services (Bazaz, 2009:122-123; Chandel, 2017:109; Dass, 2014:65; Wani et al, 2021:61; Zutshi, 2004:185). In response to this movement, Maharaja of Jammu and Kashmir issued a command in the favour of Mulkies in 1910 which was as, “Duly trained State-Subjects must be given preferences over the outsiders while making appointments in the state services”, (Dass, 2014:67). As a result of this order of Maharaja, a committee was formulated for the definition of the term, “State Subject” in the same year. The Definition was finally submitted by the State Council in 1912 (Ibid). The 1912 definition of “State Subject” was the following:

1. All bonafide subjects of His Highness the Maharaja Sahib Bahadur.
2. All persons who have tendered a duly executed Rayatnama (certificate of being a subject) and have acquired immovable property in the State.
3. All persons who have resided within the State territories for not less than 20 years and are subject to the laws and regulations promulgated from time to time by His Highness the Maharaja and have intention to live in the state for an unlimited time.
4. The descendants of the persons mentioned in the above clauses would be considered Permanent State-Subjects.
5. In addition, the persons who fulfil the following conditions would be considered as eligible for the appointment reserved for the State-Subjects
 - I. Any state employ that though not State Subjects had not less than ten years worked of approved service in the state.
 - II. The children of such state employees, also the remote descendants, provided that the connection of the family with state services has not been interrupted without due reason. (Chandel, 2017:109; Dass, 2014:68)

Thus, the State Subject definition was framed for the first time in 1912 in the state. The terminology the Mulkies (State-Subjects) and the Gair-Mulkies (non State-Subjects) were coined to define the domiciled and non-domiciled citizens of the state and to meet the pertinent demand of the natives under the banner of Kashmir for Kashmiris Movement or State Subject Movement led by Dogra Sadar Sabha and Kashmiri Pandits to protect their inherent and hereditary rights in the government jobs (Dass, 2014:68, Kashmir Life, 10/04/2019). But definition of State-Subject did not serve the required purpose. It proved quite ineffective. Because outsider could easily obtain Rayatnama on a stamp paper worth eight Annas (1/2 rupee) from the Maharaja’s government to own land declare himself a State Subject. In other words, a State-Subject-hood could be acquired by outsiders

by paying eight Annas, for submitting a Rayatnama. In addition to this the third clause of the definition was too a flaw because the dominance of the Punjabis in the administration was kept intact because most of them had lived/worked in the State for at least twenty years and even more than that (Chandel, 2017:110, Kashmir Life, 10/04/2019). The ineffective provisions of the definition proved futile in checking the perpetual incursion of outsiders and they continuously enjoyed the employment opportunities and preferences in the state services at the cost of native educated youth. Kashmiri Pandits spearheaded many agitations for genuineness and legitimacy of their demands against outsiders and Dogra Sadar Sabha also launched an agitation to press for the codification of a genuine definition of the state subjects and enactment of effective legislation to ensure the preferences for the native Kashmiris in the government jobs (Chandel, 2017: 111; Dass, 2014:69, Kashmir Life, 10/04/2019). Continuing its struggle, Dogra Sadar Sabha submitted a memorandum to the Settlement Officer, Mr, W.S Talbot on 16th of June 1914. In this memorandum demand was put for the exclusion of some clauses from the definition and it was claimed that in Clause III instead of twenty years, a provision of 30 years should be incorporated. The Settlement officer while agreeing the proposal wrote to the Revenue Minister requesting him to place before Maharaja, the demands put by the Sabha (Dass, 2014:69)). Accordingly, the Revenue Minister forwarded the copy of Settlement Officer's letter before the Maharaja to provide the preferential treatment to the hereditary and bonafide subjects of the state (Dogra Sadar Sabha, 1914:2). Maharaja endorsing the opinion of the Settlement Officer appointed a Committee to look into the matter of definition of State-Subject in 27th of June 1914. The Committee held its meeting on 18th of October, 1914. After detailed discussion and deliberation, Pandit Uday Chand, the Secretary to the Maharaja was authorised by the Committee to draft the new rules for State-Subject in consultation with the Judge of State High Court. (Dass, 2014:70). Pandit Uday Chand in consultation with the Judge of State High Court, recommended certain amendments in the definition of 1912 on 23rd of April, 1917 which were as follows:-

State-Subject means:-

1. I. All the natural born subjects of the state
 - II. Those whose ancestors have been permanently residing in the state for three generations or more, whether born within or outside the state.
 - III. Decedents of those State-Subjects, having centre of business outside the state, retained the status of being State-Subject.
2. All those persons who have been domiciled within the state territories for less than thirty years and are subject to all laws and regulations promulgated by the Maharaja having the intension to live in the state for an indefinite period of time (Ibid.71).

However, no concrete action was taken on these recommendations and the definition of 1912 continued to remain in practice which was to be manipulated by the outsiders in their own benefit. Kashmiri Pandits of Kashmir valley and Dogras of Jammu under Dogra Sadar Sabha continued their struggle against the domination of outsiders in the government services and demanded amendments in existing definition (News Click, 08/08/2019, Kashmir Life, 10/04/2019). Consequently, on 5th of March 1921, the Maharaja announced at Jammu that he had formulated a policy to associate his subjects in the government of the state. The statement "association of the subjects in the government of the state" obviously implies that positions of responsibility would be given to State-Subjects and they would receive preferential treatment over the outsiders. However, the Maharaja was also helpless as he himself was not enjoying full powers and was unable to do anything concrete (Chandel, 2017:73). In 1921, Lord Chelmsford, the Viceroy of India restored the full powers to the Maharaja Pratap Singh. After restoration of his powers on 28th of January 1922, the Maharaja constituted a new State Council to run the administration of the state. As the Maharaja was already aware of the injustice being meted to the State-Subjects; consequently, on 12th of May 1922, directed the Senior Member of the Council, Raja Hari

Singh to form a committee consisting of six official and five non-official members from both the provinces of Kashmir and Jammu for the purpose of redefining the term State Subject (Chandel, 2017:75; Dass, 2014:85). Complying, the order of Maharaja Pratap Singh, a committee was constituted for promulgating the Definition of Hereditary State Subject. Colonel Janak Singh, the revenue minister of the state was appointed its president. The Committee recorded a host of evidences from different sections of the societies and formulated the Definition of Hereditary State-Subject in January, 1927. The Committee finally submitted its recommendations to the government. The government accepted the recommendations in toto, which were to be commenced from 20 April 1927. Thus, the most awaited legislation defining the term Hereditary State Subject came into force (Dass, 2014:85). The term State Subject means and includes:-

Class-I: All persons born and residing within the state before the commencement of the reign of Maharaja Gulab Singh, and also persons, who settled therein before the commencement of the Samvat year 1942 (corresponding to 1885 A.D) and have since been permanently residing therein.

Class-II: All persons other than those belonging to class-I who settled within the state before the close of Samvat year 1968 (corresponding to 1911 A.D) and have since permanently resided and acquired immovable property therein.

Class-III: All persons, other than those belonging to classes I and II, permanently residing within the state, who have acquired under a Rayatnama (certificate of being a subject) any immovable property therein or who may hereafter acquire such property under an Ijazatnama (certificate permitting the holder to buy immovable property) and may execute Rayatnama after ten year's continuous residence therein.

Class IV: Companies which have been registered as such within the state and which, being companies in which the government are financial interested or as to the economic benefit to the state or to the financial stability of which the government are satisfied, have by a special order of the Maharaja been declared to the State Subjects.

Note. I: In matters of grants of the state scholarships, State lands for agricultural and house building purposes and recruitment to State-Services, the State Subjects of class-I should receive preference over other classes and those of class-II over class-III, subject however to the order dated 31 January, 1927 of Maharaja regarding employment of hereditary State-Subjects in government services.

Note. II The descendents of the persons who have secured the status of any class of the State-Subjects will be entitled to become the State-Subjects of the same class. For example, if A is declared a State-Subject of class II, his sons and grandsons will ipso facto acquire the status of the same class II and not of class I.

Note. III. The wife or the widow of a State-Subject of any class shall acquire the status of her husband as State-Subject of the same class as her husband, so long as she resides in the state and does not leave the state for permanent residence outside the state.

Note. IV. For the purpose of the interpretation of the term State-Subjects either with reference to with any law for the time being in force or otherwise, the definition given in this notification as amended up to date shall be read as if such amended definition existed in this notification as originally issued (Dass, 2014:85-86; J&K Gazette, 1927:4; Shah, 1988:25, Wani et al, 2021:62).

In this way, first State Subject Law was passed and implemented in the state after a prolong struggle by the natives. It was simply a protective measure which provided for a preferential treatment in the matter of recruitment to state services, purchasing of land grant of stipends and scholarship to the students by the government to the natives or State-Subjects. This definition of State-Subject was latter adopted and subsumed almost unchanged into the term, "Permanent Residents" in the Constitution of Jammu and Kashmir and Constitution of India (Lamb, 1991:121)

Domicile Law after 1947: Permanent Residents

Constitution of India came into force on 26th of January 1950. In the constitution, Article 370 was included which give special status to the State of Jammu and Kashmir. In this article, it was mentioned that Article 1 and this Article (370) of Indian Constitution are applicable to state and other articles will be applied to the state by a Presidential Order, in the concurrence of Government of Jammu and Kashmir subject to such exceptions and modifications as President may by order specify (Anand, 2004:208; Bhatia, 2017:82). By the virtue of powers conferred by this article the President of India, in concurrence of the government of the State issued an Order, The Constitution (Application to Jammu and Kashmir), Order, 1950 on 26th of January 1950.(Anand, 2004:208; Noorani, 2011:98,). This order enumerated the provisions of Indian Constitution which were to be applied to the state of Jammu and Kashmir in addition to the Article 370 and Article 1. As a result of this order, Part-II and Part-III of Indian Constitution which deals with the Citizenship and Fundamental Rights were not applied to Jammu and Kashmir. Even Entry 17 of Union List, which empowers the Union government to make laws for the State on the matters of “Citizenship, Naturalization and Aliens” was modified to read only as “Naturalization and Aliens” in its application to Jammu and Kashmir State (Anand, 2004:208; Gupta, 1968:198 Noorani, 2011:94). The omission of Citizenship from this entry of Union List meant that Central Parliament had no power to make laws for the State on Citizenship and old State Citizenship Law of the State prevailed. These constitutional safeguards were provided due to some historical and political reasons. Due to this the matter of Citizenship and fundamental rights of the people of Jammu and Kashmir came under the preview of state’s jurisdiction.

When, Jammu and Kashmir’s Constituent Assembly came into existence for the formation of the Constitution of Jammu and Kashmir in 1951, an Advisory Committee was appointed on the Fundamental Rights and Citizenship on 7th of November, 1951(Gupta, 1968: 184; Noorani, 2011:118, Shah, 1988:25). It was said that the Committee will make recommendations with regards to the qualifications necessary for State Citizenship and determination of Fundamental Rights of the citizens of the state. In making recommendations on the concerned subjects, the Committee will keep in view the definition of the “State Subject” as contained in notification No.I-L/84 dated the 20th of April, 1927.(Noorani, 2011:119; Shah, 1988:26).

Meanwhile in 1952, Delhi Agreement was negotiated between the representatives of Jammu and Kashmir and India in which issues of Citizenship and Fundamental rights were also discussed. It was agreed that Fundamental Rights contained in the Constitution of India could not be conferred on the residents of Jammu and Kashmir in their entirety taking into account the social, economic and political character of the New Kashmir Plan of Kashmir Movement. It was admitted that certain suitable modifications and amendments will be made in the Fundamental Rights to harmonize them with the pattern of principles followed in Jammu and Kashmir (Bhatt, 1984:201-202, Gupta, 1968:198, Noorani, 2011:133). With regard to Citizenship, it was agreed that it accordance with the Article 5 of Indian Constitution persons who have their domicile in Jammu and Kashmir will be the citizens of India. It was also agreed by the government of India that State Legislature shall have the power to define and regulate the rights and privileges of permanent residents of Jammu and Kashmir State more especially with regard acquisition of immovable property, appointment in the government services, scholarships and the like matters Shah, 1988:27). Government of India further agreed that special provision could be made in the law governing citizenship to provide for the return of those Permanent Residents of Jammu and Kashmir who went to Pakistan in consequences of the disturbance of 1947 and also for those who left for Pakistan earlier but could not return. If they return, they should be entitled to the rights, privileges and obligations of the citizenship. However, no final decision was taken at this juncture due to which old citizenship law of the State was to continue (Anand, 2004:209; Bhatt, 1984:202; Shah, 1988: 26-27; Noorani, 2011:174).

After the negotiation of Delhi Agreement, the committee constituted on the Citizenship and Fundamental Rights in 1951, was reconstituted by the State Constituent Assembly in 1953 by its Resolution dated 20th of October, 1953. The Committee in the light of Delhi Agreement Reported:-

“The State having acceded to the Union of India, every state subject and every person having his domicile in the State is the Citizen of India under the provision of the Constitution of India. It is however, recognized by the Government of India that this provision would not affect the existing State-Subject definition. While Committee adheres to the principle underlying this definition, it feels that the definition should be liberalized in keeping with the changed times” (Noorani, 2011:248; Shah, 1988:26)

The Committee also recommended that all the three classes of State Subject provided in the definition of 1927 should be put an end and uniform class of Permanent Resident be established. It also reported that every person residing in the state belonging to Class-I or Class-II or Class-III should be declared as the “Permanent Residents” of the State. Accordingly every person residing in the State who is a State Subject of Class-I or Class-II or who after having acquired immovable property (Class-III) in the State has been ordinarily residing here for a period of not less than ten years prior to the date of enforcement of this provision shall be a Permanent Resident of the State (Noorani, 2011:248). It also recommended that in future power should be given to the State Legislature to define “Permanent Residents of the State” in any manner it deems fit and to regulate the rights and privileges of Permanent Residents of the State. A majority of not less than two-thirds of the total membership of the house would be necessary for the exercise of this power (Shah, 1988:27). The committee expressed the view that while adequate provision to that effect should be inserted at an appropriate place in the Indian Constitution and provisions of Part-II of Indian Constitution relating to the Citizenship should also be made applicable to the State of Jammu and Kashmir and care should be taken to protect the special rights and privileges of Permanent Residents of the State (Noorani, 2011:249). In order to give effect to the recommendations of the Committee and to safeguard the domicile law of the state, on May 14, 1954, Article 35A was added in Constitution of India (Noorani, 2011:268; Wani et al, 2021:63). Article 35A reads as:-

“35A. saving of laws with respect to permanent residents and their rights:-

Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State:-

(a) Defining the classes of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir; or

(b) Conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects:-

(i) Employment under the State Government;

(ii) Acquisition of immovable property in the State;

(iii) Settlement in the State; or

(iv) right to scholarships and such other forms of aid as the State Government may provide, shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part”(Anand, 2002:213; Constitution of India, 2007:360-361; Gazette of India, 1954:823-824, Noorani, 2011:267-268). In this way, as per the Article 35A, it was determined that Permanent Resident are those persons as declared to be so by any existing law or by any future law enacted by the legislature of the State. And any such law may either confer special rights or privileges or impose restrictions upon the permanent residents with respect to any or all of the matters mentioned above. It was also such legislations shall be valid notwithstanding that it is inconsistent with the Fundamental rights conferred by the Constitution of India upon

the other citizens of India such as discrimination on the grounds of place of birth, equality of opportunity for government employment, right to acquire, hold and dispose property and right to reside and settle in any part of the country (Anand, 2002:214; Noorani, 2011:267-268, Shah, 1988:30). This special treatment of was accorded to the permanent residents of Jammu and Kashmir to safeguard them from the exploitation from the outside. As compared to other parts of India Kashmir was backward in the educational and economic field, they had long been exploited by their well-to-do neighbours. So it was necessary to make special provisions to enable them to develop so that they could deal with other Indian citizens on equal terms (Anand, 2004:214)

As per the Article 35A of Indian Constitution, Constituent Assembly of Jammu and Kashmir made provisions regarding the "Permanent Residents of the State" by inserting Section 5A to 5F in the Constitution Act 1939 (of Jammu and Kashmir) in 1954. Latter when the Constitution of Jammu and Kashmir came into force on 26 January, 1956, the same was included in it. Part-III of the Constitution of Jammu and Kashmir, dealt with Permanent Residents of the State (Shah, 1988:27). In this part Permanent Residents were defined as:-

1. Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May, 1954:-

(a) He was a State Subject of Class I or of Class II; or

(b) Having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

2. Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who having migrated after the first day of March, 1947, to the territory now included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

3. In this section, the expression "State Subject of Class I or of Class II" shall have the same meaning as in State Notification No. 1-L/84 dated the twentieth April, 1927, read with State Notification No. 13/L dated the twenty seventh June, 1932.(Anand, 2004:206-207; Constitution of Jammu and Kashmir:2007:4-5) .

Section 8 empowered the State Legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the State and section 9 made the special provisions for bills relating to permanent residents. A bill making provision for any of the matters such as defining or altering the definition of the classes of persons who are, or shall be, permanent residents of the State, conferring on permanent residents any special rights or privileges, regulating or modifying any special rights, or privileges enjoyed by permanent residents shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that House. Section 10 stated that the permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India (Constitution of Jammu and Kashmir, 2007:5-6; Prakash, 2020:3824, Noorani, 2011:278-280). In this way, the Constitution of Jammu and Kashmir, only defined the classes of the persons who were the Permanent Residents of the state and did not confer on them any special rights or privileges. It only empowered the State Legislature to make laws for that those matters and laid down the detailed procedure to make those laws. But it saved the rights and privileges enjoyed by the Permanent Residents under the previous laws.

As a result of these provisions of the Constitution of Jammu and Kashmir, permanent residents of Jammu and Kashmir became full-fledged citizens of India and enjoyed all the rights guaranteed to the citizens of India under the Constitution of India. But he also got additional rights and privileges to the exclusion of non-permanent residents like right to suffrage to the State legislature, to the local bodies and other institutions, preferential claim to the services and scholarships and above all the to the exclusive right for the acquisition and possession of immoveable property in the state(Shah, 1988:30). This status of Permanent Residents and special rights provided to them in the Constitution of India and Constitution of Jammu and Kashmir was actually the

continuation of the State Subject Laws introduced in 1927 by Dogra Ruler Maharaja Hari Singh that privileged the residents of the State over the outsiders in the matters of State services and ownership of land (Bhatia, 2020:2)

Domicile Law after 2020: Implementation of New Domicile Rules

The special treatment provided to the permanent residents of Jammu and Kashmir was highly opposed by the right wing politicians both within the State and outside the State since its inception when Jammu and Kashmir acceded to the Union of India in 1947. From the very beginning, the Jammu based Praja Parishad Party founded by Balraj Madhok and patronized by Bhartiya Jan Sangh, later morphing into today's Bhartiya Janata Party vehemently opposed granting any special position to the residents of Jammu and Kashmir. The party started its campaign in 1954 with the slogan, "ek Vidhan, ek Nishan, ek Pardhan" (One Constitution, One Flag, One President in One Country" (Wani et al, 2021:54). When, Bhartiya Janta Party (BJP) came in power in 2014 in India, it revived its old position on the normalization of special status to Jammu and Kashmir particularly in the matter of domicile rules. It started working for abolishing this special status to the Jammu and Kashmir under the Article 370 and 35A of Indian Constitution. In 2019, BJP passed the Jammu and Kashmir reorganization Act 2019, through which Jammu and Kashmir State was divided into two Union Territories namely Jammu and Kashmir and Ladakh (Ibid). Moreover, the Article 370 and 35A the foundations of constitutional structure of Jammu and Kashmir were abrogated by passing Constitution (Application to Jammu and Kashmir) Order, 2019 and whole constitutional system of Jammu and Kashmir including Domicile rules prevalent since 1927 were destroyed in a single stroke. Thus the domicile rules prevailed in the State of Jammu and Kashmir come to an end on 5th of August, 2019 (Gazette of India, 2019:2-3; Rather et al, 2020:508).

In the exercise of powers conferred by the section 96 of Jammu and Kashmir Reorganization Act, 2019, the Central Government of India passed the Jammu and Kashmir Reorganization (Adaptation of State Laws) Order, 2020, on 31st of March 2020, through which 109 laws of erstwhile Jammu and Kashmir State were amended and 29 laws were repealed. Through the same Order, the term, "Permanent Residents" was replaced by the term, "Domicile", and new definition and rules of domicile were prescribed by discarding all the previous rules and regulations for the Permanent Residents of Jammu and Kashmir (Gazette of India, 2019:54, Gazette of India, 2020:53).

A domiciled person is defined in the Law as:-

1. Any person who fulfils the following conditions shall be deemed to be a domicile of Union Territory of Jammu and Kashmir for the purpose of appointment to any post carry a pay scale of not more than Level-4 (25500) under the Union Territory of Jammu and Kashmir under a local or other authority (other than cantonment board) within the Union territory of Jammu and Kashmir:-

(a). who has resided for a period of fifteen years in the Union Territory of Jammu and Kashmir or has studied for a period of seven years and appeared in the Class 10th or 12th examination in an educational institution located in the Union Territory of Jammu and Kashmir; or

(b). Who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrant) in the Union Territory of Jammu and Kashmir

2. Notwithstanding anything contained in the sub-section (1), following persons shall be deemed to be domicile under sub-section (1):-

(a). Children of those Central Government officials, All India Services, Officials of Public Sector Undertaking and Autonomous Body of Central Government, Public Sector Banks, Officials of the Statutory Bodies, Officials of the Central Universities and recognized Research Institutes of Central Government who have served in Jammu and Kashmir for a total period of ten years

(b). Children of parents who fulfil any of the conditions in sub-section (1); or

(c). Children of such residents of Union Territory of Jammu and Kashmir as reside outside the Union Territory of Jammu and Kashmir in connection with their employment or business or other professional or vocational reasons but their parent fulfil any of the conditions provided in the sub-section (1).”(Gazette of India, 2020:53).

This Order was highly opposed by the people in Jammu and Kashmir. Because, domicile rules of Jammu and Kashmir are defined in such a broader way that enable a huge population of India to become the domicile of Jammu and Kashmir (<https://www.orfonline.org/expert-speak/decoding-new-domicile-l>). Any person who stayed for fifteen years can become the domicile of Jammu and Kashmir. Children of Central Government officials of all sectors like All India Services, public sector banks etc who have served for ten years in Jammu and Kashmir, will get the domicile status if they studied in Jammu and Kashmir for seven years and appeared in either class 10th or class 12th examinations. All those who were registered by the Relief and Rehabilitation Commissioner (Migrants) can also become the domicile of Jammu and Kashmir and children of all those residents of Jammu and Kashmir who reside outside Jammu and Kashmir in connection with their employment or any vocational purpose are also entitled to the domicile status of Union Territory of Jammu and Kashmir. The most disturbing provision that provoked the whole people of Jammu and Kashmir particularly the job seeker youth that it opened all government services in Jammu and Kashmir to all Indians except fourth class jobs through provision I of the domicile law mentioned above. Only fourth class jobs were reserved for domicile of Jammu and Kashmir. Domicile status was also extended to maximum outsiders by loosening the criteria. It meant all the jobs in Jammu and Kashmir were opened to all Indians so that maximum Indians move to Jammu and Kashmir for jobs and settle there. Thus this order seemed a policy of Indian Government headed by right wing Hindutva nationalist to settle maximum outsider Hindus in Jammu and Kashmir (the Only Muslim Majority Union Territory of India) to propagate its Hindutva Agenda to make India a Hindu Nation. That is why this policy of Government of India toward Jammu and Kashmir was termed as “Settler Colonialism” and a policy to change the “Demography of Jammu and Kashmir” (harvardlawreview.org, 10/05/2021). As a result of opposition from both within and outside the Jammu and Kashmir, an amendment was made in the rules which reserved all the government services in Jammu and Kashmir for domicile certificate holders (Hindustan Times, 04/04/2020, The Economic Times, 04/04/2020). But the criterion to get the domicile status is very loose which opens the door to the maximum outsiders to get the domicile status of Jammu and Kashmir.

Thus, the legacy of domicile law of Jammu and Kashmir since 1927 came to an end with the commencement of new domicile rules introduced by the Government of India in 2020. The past legacy of domicile law was a result of Kashmiris’s efforts to protect their distinct identity and economic interest by reserving government jobs and landed property for only Permanent Residents of Jammu and Kashmir. But the new domicile policy introduced in 2020 has loosen the criteria to get the domicile status of Jammu and Kashmir for the outsiders who may usurped the jobs and landed property in Jammu and Kashmir thereby threatening the economic interest, ethnic and religious makeup of the Jammu and Kashmir Union Territory.

Conclusion

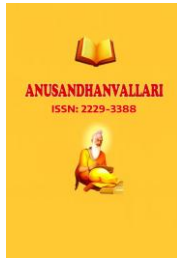
Erstwhile State of Jammu and Kashmir which is now divided into two Union Territories namely Jammu and Kashmir and Ladakh enjoyed a unique special status in the Union of India till 2019. In the Constitution of India, Article 370 and 35A were inserted to give autonomy to the State Legislature in a number of matters including the Domicile Law. Erstwhile state had the legacy of domicile law in the form of State-Subject Law since 1927 during the Dogra rule. This law was the result of resistance of natives Kashmiris particularly Kashmiri Pandits of Kashmir Valley and Dogras of Jammu region against the outsiders in the government services of Jammu and Kashmir. As per the demands of the native people, then Maharaja of Jammu and Kashmir princely State defined the State Subjects of Jammu and Kashmir and conferred on them some special rights and privileges which were

denied to the outsiders such as buying immovable property (land), employment in state services, scholarships for studies etc. After, the independence of Indian-subcontinent, Jammu and Kashmir acceded with India after negotiating the terms of accession. As per the terms of negotiations between the government of India and representatives of Jammu and Kashmir, it was allowed to have its legacy of domicile law with some modifications in form the “Permanent Residents” of Jammu and Kashmir under the Constitution of India and erstwhile Constitution of Jammu and Kashmir. According to Permanent Residentship rules of Jammu and Kashmir, Permanent Residents of Jammu and Kashmir enjoyed some special rights and privileges in Jammu and Kashmir viz a viz other citizens of India. They were entitled to buy land, get government jobs and scholarships and right to vote which were denied to other citizens of India. This was provided to protect the distinct identity and economic interest of the residents of Jammu and Kashmir. But present government has revoked all these provisions and came out with a new domicile policy for Jammu and Kashmir in 2020 which is neither favourable to the distinct identity of Jammu and Kashmir nor to the economic interest of the Union Territory. Under the new domicile law, the criterion to get the domicile status is so loose that maximum outsiders can get the domicile status very easily. They eventually will buy the land in Jammu and Kashmir and usurped the jobs there and which further alienate the youth that will result into further deterioration of conflict situation. An analysis of Domicile law of Jammu and Kashmir in the historical perspective will help in effective policy making for the government of India which will really address issues of domiciled citizens of Jammu and Kashmir. This will also enrich the scholarship on changing dynamics of Domicile law in Jammu and Kashmir by examining the dynamics of Domicile law of Jammu and Kashmir in historical perspective. This is basically a historical study of Domicile law of Jammu and Kashmir which is focussed only on analysis of the factors responsible for the transition of domicile law as well as the current domicile rules in Jammu and Kashmir, but it has opened the scope for more studies on the socio-economic, political or legal implications of new domicile rules introduced in Jammu and Kashmir in 2020. The current study will also provide historical background as well as theoretical framework for such studies.

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