



A History of Special Status: Sovereignty, Citizenship Laws in Princely Ruled Jammu and Kashmir

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KEYWORDS: ARTICLE 370, PRINCELY STATE, SOVEREIGNTY, CITIZENSHIP, JAMMU AND KASHMIR, SPECIAL STATUS

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Introduction

Citizenship confers a distinct identity on individuals. In India, ration cards, Aadhar cards, voter cards, passports, and a variety of other documents are accepted as proof of a citizen's identity. These cards are required by citizens to receive various state benefits and entitlements, as well as political rights. Only a person with this citizenship right can demand and enjoy other civil, social, and economic rights. Part II of the Indian Constitution (articles 5-11) addresses the issue of Indian citizen identification. It distinguishes between citizens and aliens on 'Indian territory'. In contrast to an alien, a citizen has certain rights and responsibilities (Roy 2010, 36). Whereas T.H. Marshall and Bottomore defines citizenship as "free and equal members of a political community", it stems primarily from viewing citizenship as a process of expanding equality against the inequality of social classes, which is a feature of capitalist society. He emphasises the claim to have the right to citizenship in the country in which one resides (Marshall and Bottomore 1992, 19-22 and 55-60).

When it comes to the state of Jammu and Kashmir, we discover that even during the reins of the feudal ruling class of the Dogra rulers, the natives of Jammu and Kashmir enjoyed a special citizenship under state-



subject laws. The special citizenship status continued during the transition of Jammu and Kashmir to a democratically ruled government under Indian constitutional provisions. These laws debarred the citizens of other Indian states to get citizenship in Jammu and Kashmir.

Dogra kings ruled over Jammu and Kashmir from 1846 to 1947. On May 18, 1846, the Treaty of Amritsar led to the establishment of Jammu and Kashmir as a sovereign state, following an agreement between the British colonial government of India and Raja Gulab Singh, the then Governor of Jammu. Gulab Singh had to pay the British Colonial government seventy-five lakh rupees (Nanakshahee) in exchange for the complete control of the state. Gulab Singh received all the mountainous country with its dependencies situated to the eastward of the River Indus, and westward to the Ravi River (Puri 1983, 1-5), including Chamba, but excluding Lahul, of neighbouring Himachal Pradesh.

The agreement was made solely between the British government and Maharaja Gulab Singh. Following the Amritsar Treaty, several formerly independent principalities and regions, including the valley of Kashmir, Jammu, Ladakh, Baltistan, Mirpur, Poonch, Muzafarabad, Gilgit, Nagar, and Hunza, as well as other smaller kingdoms and hill states became part of new principality of Jammu and Kashmir. Mridu Rai argues that the pre-colonial sovereignty accompanied the British and Dogra efforts to establish the princely state of Jammu and Kashmir which established a Dogra-Hindu ruling class over Kashmir, without considering the interests of its people. She further draws the attention to the political and religious mobilisation of Muslims, primarily in response to the recognition of their history, their numerical power, and the failure of the Dogra-Hindu princely state to satisfy their demands (Rai 2004, 93-109).

Of special interest is the impact on the political economy of the Kashmir Valley, leading to a redefinition of the relationship between the Dogra state and the majority community of Kashmiri Muslims. While the Dogras faced constant scrutiny, Kashmiris found themselves in a twice-removed situation of colonial rule, with dual loyalties and no clear path to redress for their grievances. Despite being subjects of the greater British-Indian Empire, Kashmiris shaped their identities through the Dogra State's legitimacy apparatus, which constantly sought to balance its definition in terms of Hindu idioms (Zitushi 2015, 266-275).

The first section of the article introduces the historiography of hereditary State Subject Certificate during the Dogra princely regime in Jammu and Kashmir. It focuses on the movements led by Kashmiri Pandits and Dogras through their respective organisations that resulted in the inclusion of hereditary state subject laws in the princely state of Jammu and Kashmir. The Maharaja's inclusion and exclusion of residents



is also the primary concern of the investigation to grant this document and to reap benefit in the political and economic spheres of the Jammu and Kashmir state.

The second section focuses on the history of Jammu and Kashmir, which adopted the federal structure pattern to become a part of the Indian Union after signing the "Instrument of Accession". This accession agreement grants Jammu and Kashmir residents the special status of dual citizenship under Indian Constitution Articles 370 and 35A. This section brings out the importance of Permanent Resident Certificate (PRC) enshrined by the constitution of Jammu and Kashmir. It analyses how the Hereditary State Subject remains an important document in the lives of people to attain the PRC. It analyses the political, social and economic importance of the PRC document.

The third section investigates the abolition of Jammu and Kashmir's special status and its separate citizenship after around one hundred years of its introduction in 1920. This new development not only renders the PRC document ineffective, but also introduces the Domicile-Certificate to the people who have undergone a special capping process. Hence, the article also attempts to engage into a debate on the significance of the special identity certificate, formerly known as "State Subject Document", which was recently revoked by the Union government and was providing a unique identity to the residents of Jammu and Kashmir, and how these new documents impact people's lives under the politics of hyper-nationalism.

Historiography of mobilisation for identity and rights

Prior to 1947, Jammu and Kashmir was a sovereign Hindu-ruled princely state under British paramountcy. The Maharaja enjoyed a degree of autonomy in internal governance, with his own set of laws and administrative structures. However, with the partition of British India in 1947, princely states had the option to accede to either India or Pakistan or to stay independent. Maharaja Hari Singh, the ruler at the time, initially remained undecided, considering factors like the state's religious demography and his own secular ideals. During the period when sovereignty was vested in the monarchical court, an articulation of subject people as rights-bearing subjects developed in the princely state of Jammu and Kashmir. The state subject is primarily concerned with the identification of persons residing in the state's territories, as well as the specifications of the state's territories (Shah 1998, 18-21).

The demand for special rights can be traced back to the late nineteenth century, when natives began to perceive a threat from the Panjabi Hindu community. The threat perception had its roots in some political



decisions made by the then Maharaja Paratap Singh. He changed the court language in 1889 from Persian to Urdu and English (Bazaz 1954, 27-35). Despite being a sovereign princely state, the interference of Britishers cannot be ruled out. The change made by Maharaja had an impact on especially literate Kashmiri Pandits (Hindus) population working at different positions in Maharaja administration as preference was given to these Kashmiri Pandits in recruitment to administration jobs (Robinson 2013, 37). In response to such actions, a popular demand for an authentic state identity (*mulkhi*) sworn-in and succeeded to force the successive Dogra Maharajas to hire only Mulkhi for state administration positions (Bamzai 1994, 1-29).

In 1920-30s, a second movement focussed on redefinition of the 1912 definition of state subjects. It was based entirely on economic recognition of land occupancy and proprietary rights and limited the state patronage to those who possessed an *ijazatnamah* (Zutshi 2003, 24-35). The Maharaja had power to confer state own community land and empowered to grant or withhold the right of occupancy to subjects (Rai 2004, 250-51). Chitrlekha Zutshi (2003, 24-35) has argued that how a kind of securing state services is important for the Muslims but were unaware about its importance. Through the movement of 1920's the local inhabitants raise the question of how they used to dominate state services prior to the change of the court language, which was currently dominated by outsiders (Panjabi Hindus and Sikhs) of the state by acquiring the *Rayatnama*.

The agitation for the demand of State Subject Certificates was initiated by Kashmiri Pandit reformist organisations. They began a campaign against Panjabi Hindu settlement in Kashmir. Sanatan Dharma Sabha launched an anti-reformist campaign against Arya Samaj and Panjabi Hindus calling "Kashmir for Kashmiris". They demanded a clear definition of what it means to be a Kashmiri and how they are treated in their own country. Shankar Lal Kaul, a Pandit who wrote under the pen name 'Kashmiricus', published a scathing indictment of the Dogra States recruitment policy in the United India and Indian States in 1921. He argued in a pamphlet banned by Maharaja Administration,

Kashmiris are treated as strangers in their own house. In their own country their status is nil. A post of rupees 40 falls vacant in some office... ninety to one an outsider is brought to fill up – and the state officials who indulge in the luxury have not [...] good sense enough to bring at least a good a man from outside to fill up the post, as could be available in Kashmir [...] a good-for-nothing outsider almost illiterate – but whose qualification is a communal or geographical alliance with some powerful official in the state – is given a post to which a Kashmiri graduate may aspire [...]. The



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latest civil and military lists of the state present the miserable spectacle of 5 percent Kashmiri Hindus, 1 percent Kashmiri Mussulmans –and the less than 7 percent of the state subjects–and by state subjects we mean the children of the soil of Jammu and Kashmir – whatever the state authorities may mean by it [...]. The state has established two colleges and [...]. every year and more students pour into them – and what are their prospects? The state has encouraged them to be ambitious [...] diverted them from and unfitted them for pursuing humbler occupations – in short the end is it has ruined them (Rai 2004, 250-251).

From the above letter, it is clear that Pandit Shankar Lal Kaul's letter represents a public perception, particularly among literate Kashmiris, convinced that literate natives of the state have no future prospects due to the government's preference for non-Kashmiris over natives for various government jobs. Anger against Panjabis could also be traced back to an attempt by Kashmiri Pandits and the Dogra Sabha, which collaborated in 1920 to change the definition of the term "Hereditary State Subject" in order to exclude outsiders from state employment opportunities. Protests were organised by the state's first political parties in response to populist demands to reserve 'Kashmir for Kashmiris' argued Mridu Rai (Rai 2004, 250-255). In the struggle against the Panjabi Hindus' dominance, the Kashmiri Pandit community strategically broke new ground for mobilisation, speaking not just for Kashmiri Hindus, but for Kashmiris in general and all state subjects. This identity document debate broke the barriers of the region as well as religion identities and the larger question of 'we and they' emerged.

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Significantly, the national definition in 1912 excludes nomads and migratory peoples such as Gujjar and Bakerwal herders, whose grazing lands were generally held as *khalsah* (government property). It also barred residents of Jammu and Kashmir's internal feudatory dependencies from participating in recruitment of the state (e.g., Poonch Jagir, Chenani Jagir, and the frontier chieftainships). Members of excluded groups demanded recognition as state nationals in mass protest movements in the 1920s and 1930s. In order to address a flaw in the definition of State Subject, the movement attempted to provide another definition of State Subject, according to which a person could only be eligible for state-subjecthood if he or she could demonstrate hereditary residence in the state for at least five generations. The title of state subject excluded those who had simply presented a *Rayatnama*, or those who had acquired rights through a simple contract while serving in the state then only they will be eligible to have benefits for employment in state services.

After 1920, a strong movement in the valley arose against the Dogra



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ruler of the state, led by Kashmiri Pandits and Dogras demanding equal opportunity and rights for all residents in state jobs including Muslims and nomads, who were excluded in 1912 definition. Few months later Maharaja Partap Singh, issued the circular which reads:

In the future, no non-state subject shall be appointed to any position in the state without his express order passed in council, and each such proposal shall be accompanied by a full written statement of why it is deemed necessary to appoint a non-state subject qualified and available to hold the position proposed. Similarly, no scholarship or training expenses of any kind will be granted to any non-state subject. He also directs the senior member of the council to select and form a committee comprised of six official and four non-official representatives from the Jammu and Kashmir provinces. (KNS 2020) (*Kashmir Life* 2019).

Such orders emphasise the importance of state subjects, which became important as a result of the fact that the demand has support among Kashmir Pandits and some educated Muslim population, who were feeling discriminated by Maharaja administration on communal and religious lines. Chiltrelekha claims that Muslim residents of the Kashmir province faced widespread discrimination. The Jammu region's Kashmiri Pandits and Dogras were given the majority of jobs in the state while Muslims in Kashmir valley lived in poverty, majority of them working as peasants or labourers. The movement sparked for the equal rights for all natives spread in the whole princely state including the Jagirs which were independent under the Maharaja regime (Shah 1998, 138-141).

Later on in 1922, a committee was founded to develop a suitable definition of the term "state-subject". Only a small proportion of citizens had a chance of becoming state servants, and the question of which class of the population they should belong to is far less important than the other issues involved in the broader problem of who should enjoy the status of state subject. Before coming up with a new definition of state-subject, the committee also dealt with the defects in the definition of state subject, framed in 1912. In the new definition of state subject, the people were classified in classes as per different clauses A, B and C. These clauses deal with different types such as:

Clause A: Hereditary state subject

Clause B: Naturalised state subject

Clause C: Statutory state subjects

And here the possession of immovable property made the prime and sufficient qualification to acquire the state subject. It further defines that the state subject might acquire such property and therefore in our state



acquisition of such property (but not mere possession) would be *prima facie* evidence of the fact that person is acquiring a *Rayatnama*, may hereafter be granted in accordance with the laws and rules for the time being in force (Loksabha Secretariat 2017, 7-13).

The Hereditary State Subject Certificate further explains that no non-state subject shall acquire immovable property or any interest therein within the state unless by succession, testamentary or intestate, or by leases of not more than twenty years' duration. This is a crucial clause that asserts migrant settlement. No state subject shall be eligible for state service unless specifically sanctioned by His Highness the Maharaja Sahib Bahadur in council or in the case of certain posts specified in his name. Except in exceptional circumstances, no land should be granted by Durbar to any non-State Subject in the future. No scholarship, stipend, or training expenses will be granted to non-state subjects. (ibid.).

Regarding the state services, the committee laid down that the temporary measures for ten years that the recruitment should be confined to Clause A, if a suitable candidate be not available from that class, then Clause B-the naturalized state subject, should be given preference to the statutory state subject falling under Clause C. The reason for making *Rayatanama*, and later *Ijzatnama*, a necessary condition for granting state-subjecthood was to ensure that the person to be granted state-subjecthood was eligible to be a resident of the state. This provision aimed at integrating Panjabis working in the state. The ruler was gracious to them. The majority of them were educated and had cultural ties to the Dogra Maharaja.

Introduction of Hereditary State Subject Certificate by Dogra ruler

The proposal of an official document called Hereditary State Subject certifying the natives was first discussed in the state in 1924, during the regime of the Dogra ruler Partap Singh. Since then, the issue of state-subjecthood has played a significant role in the lives of the residents of Jammu and Kashmir. The provisions of Hereditary State Subject were adopted as legal framework for recognising citizen-subjects of the erstwhile princely state of Jammu and Kashmir by the states of Jammu and Kashmir.

The first legal order which defined a Hereditary State Subject was issued by Maharaja Hari Singh in 1927. The definition of the term Hereditary State Subject, include all persons born and residing within the state before the commencement of the reign of His Highness the late



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Maharaja Gulab Singh Sahib Bahadur and also the persons settled therein before the commencement of the *Samvat 1942* (1885) and have since been permanently residing therein (*Indian Kanoon* 2003).

The Hereditary State Subject would be issued after due enquires by the *Wazir Wazarat* (Rai 2004, 253) in whose charge the candidate for state services had been residing. The certificate then had to be submitted by the Accountant General for the approval in Jammu and Kashmir Council. It was a watershed moment for the residents of Jammu and Kashmir, where the legal subjects were identified.

It was the beginning of the usage of the term "the son of the soil", as the benefit of state services was given exclusively to a specific section of the state's residents. This provision of granting state subject was not applicable to the foreigners or non-state subjects residing in the state, which was earlier used in the case of Punjabi Hindus. However, few months later in 1927, the new definition of the term State Subjects was divided into three categories defining the state subjects of the state (Shah 1998, 53).

Significantly, the new definition classified state subjects into classes, implying an institutional hierarchy in access to citizenship. According to this new definition, people who were hereditary state subjects were treated as first-class state subjects, while many others were given the status of second-class and third-class state subjects. This notification also paved the way for an outsider to obtain state subject status by acquiring immovable property under an *Ijzatnamah*, followed by the execution of a *Rayatnama* after ten years of continuous residence in the state. These moves failed to satisfy either an increasingly vocal Kashmiri Pandit community or the Dogra Sabha who were not in favour of giving citizenship rights to outsiders at any cost.

In view of their reservations, Hari Singh introduced a new definition in 1927 that specifies certain conditions for becoming a hereditary state subject of Jammu and Kashmir. In this, he specifically stated that no one who did not fit the bill would be allowed to work in state services or purchase agricultural land in the state. Both Kashmiri Pandits and the Dogra Sabha were pleased with the ruler's new concessions. These concessions put them in a better position to compete with the Panjabi community, which they saw as a threat. With these developments, Kashmiri Muslims, who had not previously been involved in the agitation, began to mobilise for their own rights, believing that they were as much "sons of the soil" as Kashmiri Pandits.

As rules regarding the state-subject hood were implemented in 1927, due weight was given to the certificates of state-subjecthood issued by the revenue authorities in all fields including admission to educational



institutions, entry into state services, acquisition of immovable property and other similar rights and privileges. Certain new provisions were formulated in such a way as to give very limited access to property to migrants who wished to settle down willing to work in the interests of the locals of the state. The provision, which claimed that subjects of the monarchy had durable rights, was repealed in the 1927 state-subject definition. It also created a legal mechanism for state-subjects to make claims on the Princely State by limiting the Maharaja's ability to confer land rights and restricting employment in government institutions for state-subjects (*Indian Kanoon* 2003).

Later, between 1932 and 1936, Maharaja Hari Singh redefined the state subject and accepted the Jammu and Kashmir Constitution Act (1934), which established the state's first Legislative Assembly—the Praja Sabha. The Praja Sabha had only advisory powers with limited direct popular participation. However, its establishment legalised political parties in the Princely State, and a number of regional and trans-regional parties arose after 1932 (Snedden 2011, 25-28). Concurrently with the 1934 Constitution Act, an amended Hereditary State Subject Order (1932) was drafted. It established three classes of state subjects as well as a hierarchy of rights based on claims to immovable property, agricultural land, bureaucratic labour, and taxation limitations. Although these rights were not directly related to political representation, Praja Sabha representatives (appointed by the Maharaja) used the recognition and distribution of land rights to confer political rights to certain subjects (Nayak 2019).

This section has attempted to explain why the hereditary state subject provision was introduced in Jammu and Kashmir and how it was used to categorise different sections of the population living within the state and its Jagirs. It demonstrates how the demand for state-subjecthood, which was initially and primarily raised by the state's Kashmiri Pandit and Dogra classes, later became an important agenda of Kashmiri Muslims' rights movements. It also explains in how far the sovereign ruler changed land laws to maintain control over subjects along with containing popular uprising. It also shed light on the influence of the British on the Dogra ruler to make changes in the state which served their interests.

Indian federal system and constitutional provision for citizenship in Jammu and Kashmir

While the rest of newly formed India was transitioning to a democratic form of government with equal rights, the people of Jammu and Kashmir remained under monarchical rule. The state of Jammu and Kashmir, which had been granted autonomous status under the British Raj until



1947, refused to accede to either India or Pakistan at the time of partition and decided to remain independent. Jammu and Kashmir was attacked by Pakistani invaders a few months after Partition in 1947. Thousands of Hindus and Sikhs were displaced as a result of the attack from the areas which are now known as "Pakistan-occupied Jammu and Kashmir" (POJK) and "Azad Kashmir" in Indian and Pakistani discourse respectively. To save their lives, the vast majority of Hindu and Sikhs fled to the Jammu region. The Maharaja wrote a letter to Lord Mountbatten, the Governor-General of the Indian state, requesting intervention to save the lives of the people of Jammu and Kashmir. In exchange, Maharaja was willing to integrate with the Indian state. He went on to say that if India would not help, he would have to concede to Pakistan (Mohananey 2019).

The "Instrument of Accession" was signed on 26 October 1947 between the Indian state and Maharaja Hari Singh of Jammu and Kashmir, after which the Indian army occupied Jammu and Kashmir. In turn, the Maharaja had to agree on three issues: Defence, foreign policy and communications, which became the sovereign rights of the Indian state. Another important condition was that Jammu and Kashmir was granted a special status in the Indian constitution, which would limit the centre's interference in the affairs of Jammu and Kashmir. There was also a provision for a separate flag, separate constitution granting dual citizenship to the natives of Jammu and Kashmir. The "Instrument of Accession" changed the citizenship provisions once more, and it resulted in the formulation of PRC.

When the "Instrument of Accession" was signed, the process of drafting the Indian constitution was still in progress. The Constituent Assembly of India convened for the first time on 9 December 1946, and approved the Draft Constitution on 26 November 1949. The Constitution of India finally took effect on 26 January 1950. Neerja Gopal Jayal explores the concept of citizenship in India beginning with the late colonial period, when the constitution was being drafted. In India, the larger debate on citizenship primarily contested in terms of legal status, enjoyment of rights, identity, and belongingness. Jayal delves into the question of who is a citizen of the nation-state and who is not; she goes on to say that without legal recognition, they cannot enjoy political and social rights (Gopal 2013, 35-40). Anupama Roy's traces the Indian state's constitutional history on the issue of granting citizenship to people who live on its territory. She traces the evolution of India's Citizenship Act, particularly during the constitution-making process. She discusses how prevalent legal practices and people's desire for rights prompted the



legislature to make several changes to the concept of citizenship. (Roy 2010, 18-23).

Jammu and Kashmir hold a special status and follows its own constitution laws to grant state citizenship to its citizens during the princely regime. Adarsh Sein Anand explained Article 370 of the Indian Constitution, which grants autonomy to Jammu and Kashmir. It was in the Part XXI of the Constitution approved by the Constituent Assembly of India. It was a temporary provision enacted to govern Jammu and Kashmir while the Constituent Assembly of Jammu and Kashmir was in the process of creating and framing a separate constitution for the state (Anand 1980, 16-25). The Jammu and Kashmir Constituent Assembly was empowered to repeal Article 370 entirely but following the dissolution of the Jammu and Kashmir Constituent Assembly, without a recommendation to repeal Article 370, the provision became a permanent feature of the Indian Constitution. According to Anand, the citizenship right in Jammu and Kashmir is granted by the Jammu and Kashmir constitution to a citizen who resides in the state and has, most importantly, a Hereditary State Subject (Anand 1980, 16-25).

On 14 September 1954, the provisions of Article 35 (A) were made by Presidential order under Article 370 (1) (d) and were received by Bakshi Ghulam Muhammad, the then Prime Minister of Jammu and Kashmir. Article 35(A) of the Indian Constitution empowers the legislature of Jammu and Kashmir State to define Permanent Residents and grant them special rights and privileges. It is worth noting that the people of the princely state of Jammu and Kashmir were "State Subjects", not British Colonial subjects. The Maharaja of Jammu and Kashmir granted legal recognition to the status of state subject in 1927, under the Hereditary State Subject order, which was only applicable to state subjects and no others residents. Article 35 (A) confirms what was already in the state subject status for all citizens of undivided Jammu and Kashmir, but it does not apply to Pakistan-occupied Kashmir. Some provisions to define permanent residents were adopted in the context of Article 35 (A) of the Jammu and Kashmir constitution, which was drafted at that time (Rajagopal 2017).

In 1956, the Jammu and Kashmir constitution was eventually passed. Part III of the constitution contains provisions relating to the Permanent Resident Certificate (PRC) and went into effect on 17 November 1956. Section 6 of the Jammu and Kashmir's constitution specifies who is considered a permanent resident of the state. It reads, unless the context requires otherwise, that all references to Hereditary State Subjects of Class I, Class II, or Class III in any existing law shall be construed as references to the permanent residents of the state. From the before-



mentioned PRC rules, it is clear that the state has purposefully made provisions which empower the rights of former state subjects. As stated in one of the notifications, no new citizen is legalised in the state that arrived during the partition because, according to the law, they did not complete the ten years of their residence in the state until 1954. This was because, in order to become a permanent resident of the state, a person must be or be deemed to be a citizen of India, in addition to meeting the other requirements and conditions outlined in Section 6 of the Jammu and Kashmir constitution.

The constitution's framers devised a method of protecting traditional state subjecthood without violating the Indian Constitution. Under Article 16(3) and Article 35, both applicable to the state of Jammu and Kashmir with the exception that clause (3) of article 16, which states that the Parliament of India has the power to require residence within the state as a qualification for employment in Jammu and Kashmir. In addition, the Jammu and Kashmir constitution includes a special provision with the state legislature to count down any changes in the provision of granting the PRC in the state. (Shah 1998, 138-141).

In 1963, the Jammu and Kashmir government enacted the Jammu and Kashmir grant of the Permanent Certificate (Procedure) law, which governed the issuance of the PRC. A time-limit of thirty days was fixed by the government for the issuance of PRC after completion of the verification process. The verification documents, which had to be submitted to these authorities, were classified in the form of current records and old records. In case of granting PRC to a minor citizen (below 18 years) of the state, the authorities ask for an affidavit from the father or grandfather of the minor, stating that he is a permanent resident of Jammu and Kashmir state and has not migrated to any other state.

However, an important exemption pertained to documents, which are princely states records. These old records are being sought from displaced migrants who fled Pakistan-occupied Jammu and Kashmir (POJK) in 1947. The records are required by the Revenue Department which deals with property matters, in order to issue a PRC to a newly born child of those who migrated in 1947. As a result, these records were extremely important for POJK migrants of 1947. However, the Revenue Department did not require these records when issuing PRCs to Jammu and Kashmir natives. These documents were intended to demonstrate that the individual has resided in Jammu and Kashmir since the Dogra era, i.e. before Independence (*India Code 1963*).



Abrogation of Jammu & Kashmir's special status and aftermath

The irony of Jammu and Kashmir is that the state was founded under unusual circumstances, and unique rules were enacted in response to those circumstances. However, the state has continued to yearn for its original status after several years. As a result of militancy, border conflict, and other issues, the state is already in disarray and it needs to be addressed with extreme caution rather than adding to the chaos such as the unilateral revocation of the Article 370 by the Union Government without consulting the stakeholders of Jammu and Kashmir.

Following the abolition of special status, the argument has shifted back to the topic of natives versus outsiders, as well as bringing about a hegemonic assimilation of Jammu and Kashmir into India through a weakening of the state's institutions. In April 2020, the Union Government came up with a new domicile law for Jammu and Kashmir as per a gazetted notification. The Section 3 of the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order 2020, under the Jammu and Kashmir Civil Services Act, was introduced to define domicile. The new domicile policy establishes a dangerous precedent for eroding the Indian Union's asymmetrical federal structure and increasing the Union's control over various Indian states.

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Eleven other Indian states including Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, and Goa, have special privileges and powers under the constitution that provide them with cultural and economic security on issues such as land sale, forest rights, tribal customs and land rights protection and so on. For jobs in Uttarakhand, only residents of the state are eligible who had domicile certificate proving their mandatory 15 years' residency in the state. Similar rules of domicile are applicable in Maharashtra, Gujarat, Assam, and Meghalaya with certain percentage of recruitment to locals (Indian Express 2020). In case of neighbouring state of Himachal Pradesh other than natives, the outsiders are not permitted to purchase land with some exceptions (Sachdev 2020, October 19). Whereas in Jammu and Kashmir people from outside Jammu and Kashmir can now buy land (Aashiq 2021, December 4).

In a gazette notification of April 2020, the central government omitted the phrase 'permanent resident of the state' from Section 17 of the Jammu and Kashmir Development Act that deals with disposal of land in the Union Territory. However, the amendment did not allow the transfer of agricultural land to non-agriculturists except in few cases (Hindustan Times 2021, August 5). All Kashmiri Pandit organisations, as well as the Dogra Sabha and related organisations, welcomed the dilution of the state subjects' laws of Jammu and Kashmir. Though



Dogras and Kashmir Pandits welcomed the abrogation, it was these very same Kashmiri Pandit and Dogra organisations that had begun struggle in 1912 and got State Subject laws introduced in a Muslim majority state of Jammu and Kashmir. (Ghose 2019).

New domicile laws and counter effects in Jammu and Kashmir

After the revocation of Article 370 in 2019, the Hereditary State Subject was completely revoked but was replaced with the domicile law in Jammu and Kashmir, while a different domicile law was introduced in Laddakh. The new domicile law for Jammu and Kashmir has created a new category of residents according to which any Indian citizen can become a local resident. Section 3A of the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order of 2020, under the Jammu and Kashmir Civil Services (Decentralisation and Recruitment) Act, defines the domicile as any Indian citizen, according to the notification.

Person who has resided for a period of fifteen years in the UT of Jammu and Kashmir or has studied for a period of seven years and appeared in class 10th/12th examination in an educational institution located in the UT of J&K. Children of those central government officials, All India services officers, officials of PSUs and autonomous bodies of central government, public sector banks, officials of statutory bodies, officials of central universities and recognised research institutes of central government who have served in Jammu and Kashmir for a total period of ten years or children on parents who fulfil any of the conditions in sections. (Javaid 2020)

This new domicile policy clearly states that non-state subjects of Jammu and Kashmir are now eligible to be the Union Territory's domicile if they meet the specified conditions. This new rule of granting domicile has weakened the once tough provision to get Jammu and Kashmir citizenship. It has been reported that thirty-four non-locals have acquired property (land) in the Union Territory of Jammu and Kashmir after the abrogation of Article 370, which was earlier limited to the residents of the Jammu and Kashmir having PRC (Tiwayr 2020).

Only grade four jobs—the lowest on the employment ladder—were reserved for this new domicile category to residents of Jammu and Kashmir in the first order on 1 April 2020. Jammu, in particular, went in uproar. The initial order of the Reorganisation Act was amended twice. The phrase "have served" was changed to "shall have served" for central government employees. This was a significant change. While "have served" only applied to employees who had served for ten years prior to the date the order was issued, "shall have served" applies to anyone who has already served for ten years or will serve in the future. To avoid



legal ambiguity, they have also changed “shall be deemed to be a domicile” to “shall be a domicile”. There appears to be fewer checks and balances in the issuing of domicile certificate and authority to issue is granted to a junior bureaucrat (Tehsildar).

The acceptance of non-state subjects as domiciles would be viewed as a naturalisation process, as they must follow a procedure similar to that used to obtain citizenship in most modern states around the world. This new category of residences has been introduced successfully. The right to vote and run for office can now be exercised by any Indian citizen who has a domicile certificate, a privilege previously reserved for PRC holders. This transformation will not only change the demography of Jammu and Kashmir, but it will also have a significant impact on the cultural and social milieu of the residents of the hilly terrain.

Conclusion

Jammu and Kashmir’s special status was a complex historical product shaped by the state’s pre-independence sovereignty, the circumstances of accession, and the desire to preserve its unique identity. The revocation of special status marked a significant shift with far-reaching implications for the region’s future. This article demonstrates how citizenship evolved from a former feudal principality to the democratic state of Jammu and Kashmir. The special status and unique citizenship laws were intertwined with notions of sovereignty and identity. Proponents argued that these provisions preserved a sense of autonomy and cultural distinctiveness for Jammu and Kashmir. However, critics contended that these limitations hampered integration with the rest of the Indian Union and created a sense of alienation for non-permanent residents. The debate surrounding Article 35A became a flashpoint, with arguments for and against its perceived impact on economic development and social inclusion.

The journey of citizenship in Jammu and Kashmir from Hereditary State Subject via the Permanent Resident Certificate to the Domicile Certificate Article 370 revocation points towards the erosion of the Indian Union’s federal structure. The politics of hyper-nationalism, as demonstrated by the abrogation of special status under Indian Constitution and implementation of Jammu and Kashmir’s domicile law, seems to a warning signal to the states enjoying a special status under constitution of a democratic country. The history of the past ten decades has witnessed complete change of the political players on the issue of citizenship.

The issue of locals and outsiders has resurfaced in Jammu and Kashmir. The abrogation of the special status has pushed towards a



hegemonic assimilation of Jammu and Kashmir into the Indian Union through a process of weakening the distinct cultural and political character of Jammu and Kashmir on the one side and the overall federal feature of the Indian Union on the other. Allowing non-locals to obtain domicile rights and settle permanently in the region allows for the gradual dissolution of not only the Kashmir valley's but also the Jammu region's distinct identity. Jammu witnessed a strong resentment against the new job policy induced by the Indian Union. Despite ban of protests, the resentment over social media platforms was so intense that it forced the Union Government to revoke the law. Yet, this is only a small victory in a war that seems to be lost

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