

October 8, 2020

Jammu and Kashmir's New Domicile Law

Justice for some, repression for many

By: Mohita Bhatia

Jammu and Kashmir's new domicile law recognizes the rights of marginalized Hindu communities that had earlier been locked in social exclusion. But giving rights to one set of groups while simultaneously taking away the rights of Kashmiris is not justice.

The new domicile policy of Jammu and Kashmir, that came into effect earlier this year, has triggered many fears, emotions and controversies within the erstwhile state, now partitioned and 'downgraded' to a union territory. The policy replaces the earlier law on permanent resident (PR) status and has opened the possibility of certain categories of residents to become domiciles. PR status has formed an essential component of identity for the people of Jammu and Kashmir. Coming after the modification of Article 370 and the redundancy of the state's constitution, the new policy is seen by Kashmiris as erasing any remnants of the region's freedom and uniqueness.

Among those granted domicile status under the new policy are three marginalized Hindu communities: the Scheduled Caste Valmiki community; refugees from West Pakistan, several of whom are members of Scheduled Castes; and Gorkhas, brought by the Dogra kings to serve the princely state's army. Despite living in Jammu for decades, these communities were previously denied permanent residence rights, and their demands to be accommodated had been rejected by the Kashmiri leadership.

|| [T]he current domicile policy's claim of undoing the injustice done to peripheral communities and other groups is not based on inclusive politics.

Although it is only appropriate that these communities acquire an equal footing in Jammu and Kashmir through the new policy; it is highly unfortunate that these rights have come through the communal and hyper-nationalist politics of the Bharatiya Janata Party (BJP). Granting vulnerable and peripheral Hindu groups their rights while stripping Kashmir of its basic constitutional and federal autonomy are not signs of a secular democracy.

The previous Kashmiri leadership was to blame for denying these groups basic rights that had been conferred on permanent residents. But the current domicile policy's claim of undoing the injustice done to peripheral communities and other groups is not based on inclusive politics. Rather, the political approach that informs this policy is communal and anti-secular, and sets a dangerous precedent that could undermine the federal structure of the country.

Domicile policy replaces PR law

The earlier PR status was a continuation of the state subject law introduced in 1927 by the Dogra ruler Hari Singh that privileged the residents of the state over the outsiders in the matters of state jobs and ownership of land. After the end of the monarchy, under the National Conference government, this status was incorporated into the state's constitution and protected by Article 35A of the Indian Constitution. PR status was granted to those who were state subjects as of 14 May 1954, or to those who had been residents in the state for 10 years on that date and had legally acquired property.

This hereditary status shielded PRs from outside competition and aimed to protect their economic interests. Only PRs were eligible for employment in state-level government jobs, for reservations in those sectors, for admission to state-run professional institutions, and to own property in the state. Non-PRs were also denied the right of representation in the state and the local levels of governance. They could vote for Parliament but could not vote or contest in elections to the legislative assembly or the panchayats.

|| Article 370 had already been diluted by preceding ruling governments. Yet [...] a complete dismissal of the article symbolized an absolute closure to political negotiations.

The new policy states that non-state subjects are eligible to be domiciles of the union territory if they are either bureaucrats serving in Jammu and Kashmir for the last 10 years or any other person residing there for the last 15 years.¹

The domicile order was another major step taken by the BJP-led government in decimating the distinct identity and autonomy of Jammu and Kashmir, following the modification of Article 370 and division of the state into two union territories: Jammu and Kashmir, and Ladakh. Article 370 was considered the only bridge between Kashmir and India and it offered special status to the erstwhile state: the autonomy to have its own constitution, flag and make certain laws. In complete disregard of the historical promises made to Kashmir at the time of accession that it could maintain a distinct cultural and political identity, the BJP government went ahead with its agenda of territorial integration and making Article 370 redundant. It is important to note that Article 370 had already been diluted by preceding ruling governments. Yet whatever remained of it still offered some psychological security and a sense of political autonomy to the Kashmiri Muslim community. A complete dismissal of the article symbolized an absolute closure to political negotiations.

When people from outside are allowed to buy land and property in the union territory, it is the Jammu region that would bear the brunt of economic expansion.

The people of Jammu, mainly Hindus, celebrated the abolition of the erstwhile state's special status, only to realize later that even their jobs, identity, and culture could be in a precarious situation in the future. The domicile policy would grant many non-locals in Jammu, working as bureaucrats, government officials, teachers, and other professionals, the privileges previously reserved for the PRs.

Many leaders of Jammu have now come forward to express their fears related to the domicile policy and its gradual expansion in times to come. They are concerned that when people from outside are allowed to buy land and property in the union territory, it is the Jammu region that would bear the brunt of economic expansion, rather than Kashmir. This is because Jammu is the commercial hub of the territory, with thriving educational, professional and business activities. Consequently, non-residents largely prefer to settle down in Jammu. There is an apprehension that the extension of domicile and land rights to non-locals could result in the local population scrambling for professional and economic opportunities.

Narratives of marginal Hindu communities

The real reason to cheer the new policy is the grant of domicile status to Valmiki, West Pakistan refugees, and Gorkhas.

The Valmiki community has been living in Jammu city since 1957. Originally from Punjab, about 250 Valmiki families were brought from Gurdaspur and Amritsar to break a strike by local sanitation workers. The community maintains that, at that time, the state government had promised to grant it privileges at par with local residents.

Social exclusion based on caste had been reinforced [...] Without PR status, members of the Valmiki community were not eligible for government jobs apart from that of *safai karamcharis*.

However, besides housing and other minimal facilities, no other benefits or basic rights available to native residents (including native Scheduled Castes) were extended to the Valmikis.

This has had disastrous consequences.

During my interviews with members of the Valmiki community, in 2015, they asserted that being forced to take up cleaning and other low-end jobs, the cycle of misery and social exclusion based on caste had been reinforced generation after generation. Without PR status, members of the Valmiki community were not eligible for government jobs, apart from that of *safai karamcharis* (sanitation workers) in the municipality. Most young girls and boys in the community would drop out from school, since they could not gain admission into state-run professional institutions, take advantage of the state's affirmative action, or get jobs in its government sector. There was no incentive for them to continue studying.

While having a strong sense of Jammu identity, Valmikis at certain moments, would refer to themselves as 'migrants' or 'outsiders'. "Many of us are born here and have a strong sense of belonging to Jammu. But Jammu has continued to treat us as outsiders by denying us our basic rights," a respondent commented.

A vocal member of the community argued at that time: “ We are not their [Kashmiri political parties’] vote banks since we are not state-subjects and therefore cannot vote in the state assembly elections [...] It is no surprise that no political party cares for us. We are living in extreme misery.”

|| “We are tenants in our own house.”

The-then president of the Valmiki community in the Gandhi Nagar area of Jammu, Garu Bhatti, informed me that the only benefit they got from the government was the allotment of houses back in the 1950s, and added that “Now that our families have grown and their numbers multiplied, we don’t have enough housing space. Our colony is still not regularized.” Their houses were still not in their names.

As Sudha, a middle-aged housewife remarked: “We are tenants in our own house.”

The West Pakistan refugees, who migrated from Sialkot in West Punjab of Pakistan, to the Indian part of Jammu and Kashmir during the 1947 partition, faced a similar situation. There are now approximately 21,000 of these families in Jammu, most of them in remote border districts of Jammu. A large majority of them are members of Scheduled Castes. The refusal by the state to grant them rights has pushed them into a state of economic misery. Furthermore, the closure of all possibility of economic mobility has resulted in the reproduction and reification of their caste and class oppression. The small Gorkha community in Jammu, that had moved from Nepal in the mid-19th century to join the Dogra army, too felt completely abandoned by the denial of PR status and was confronted with severe economic, cultural and social challenges.

Politics of conflict and exclusion

Although the granting of equal rights to these long-marginalized communities has offered them a sense of empowerment and inclusion, it has also led to communalization of these groups and strengthening of their bonds with the BJP and its politics.

The previous Kashmiri leadership is responsible to a large extent for neglecting the concerns of these communities, and driving them away towards the Hindu-based political parties.

|| Any demand for rights to these excluded groups used to be rejected by the mainstream and the separatist Kashmiri leadership. This denial was closely related to the political discourse of the conflict.

But the idea propagated by these parties, that the abrogation of Article 370 was the only way for these marginalized groups to eventually acquire citizenship rights at the local and state levels, was misleading. These communities could have easily been accommodated and granted rights at par with the PRs by the introduction of minor constitutional amendments by the erstwhile state’s leadership.

However, any demand for rights to these excluded groups used to be rejected by the mainstream and the separatist Kashmiri leadership. This denial was closely related to the political discourse of the conflict. The commonly prevailing Kashmiri political narrative reiterated that granting these rights to ‘outsiders’ would have an impact on the demography of the state and dilute its Muslim-majority character. Another objection was that an increase in Jammu’s population would lead to a demand for more seats for that region in the state assembly, challenging the politically dominant position of Kashmir. These arguments were clearly undemocratic and were used to sustain the Kashmiri movement by refusing the essential rights of already vulnerable groups.

Many of these fears can be partially understood as a manifestation of the conflict psyche. Over the years, many political and democratic rights of Kashmiris have been eroded or diluted to suit Indian nationalist interests. Their expressions of protest have been suppressed using an iron-fist approach. Constant pro-Hindu propaganda and anti-Kashmir positions have created fear and insecurity among Kashmiris. The idea of demographic change by settling Hindus in the state is generally projected by the pro-Hindu parties such as the BJP as the most viable resolution of the Kashmir conflict. The current domicile policy is also a political extension of this assimilationist political ideology.

|| On the one side, the Kashmiri leadership abandoned their concerns; and on the other side, pro-Hindu parties such as the BJP often opportunistically raised the demand of granting PR status to Hindu migrants to further their anti-

|| Kashmir conflict politics.

Yet, the fear that granting PR rights to these three communities (whose numbers are minuscule) would affect the Muslim-majority status was unsubstantiated. There are approximately 200,000 West Pakistan refugees and a very small number in other communities, such as Valmikis, who were without state subject status. Given that the population of the state was around 13 million, with approximately 5.5 million in the Jammu division, conferring PR rights on these groups would not have had any significant impact on the demography or politics of the state.

Politics thriving on these insecurities had a disastrous impact on vulnerable communities like the Valmikis, whose economic and social fate seemed frozen in time and space. On the one side, the Kashmiri leadership abandoned their concerns; and on the other side, pro-Hindu parties such as the BJP often opportunistically raised the demand of granting PR status to Hindu migrants to further their anti-Kashmir conflict politics. Through the domicile policy, the BJP has opportunistically pushed its integration agenda by championing Hindu minority rights in Jammu and Kashmir.

This celebratory moment for West Pakistan refugees, Gorkhas, and Valmikis symbolizes dark days for Kashmir, whose cultural and political identity has been snatched in the most undignified and undemocratic way. Giving rights to one set of groups by simultaneously taking away another community's rights, and that too in a manner that is driven by religious ideology, cannot be seen as justice in any holistic sense.

In any case, coercive integration has not resolved the Kashmir issue. Rather it has led to extreme alienation and hardening of separatist sentiments even among those Kashmiri sections who were previously opposed to hard separatist politics. A complete dissolution of the Kashmiri cultural and political identity has closed all doors for dialogue. We know from global examples that negotiation and not repression is the only viable means to deal with political problems and conflicts. As the Dalai Lama has said, "Peace can only last where human rights are respected, where the people are fed, and where individuals and nations are free." Extreme repression and abandoning of emotional, political and cultural concerns of Kashmiris could be a cause of worry for the nation's future and security.

Conclusions

In a broader context, the new domicile policy is not aimed at addressing the concerns of the marginal Hindu groups but more generally at bringing about a hegemonic assimilation of Jammu and Kashmir into India through a process of weakening of its distinct cultural and political character. By allowing non-locals to get domicile rights and settle permanently in the region, it allows for a gradual dissolution of the distinct identity of not just Kashmir but also Jammu.

The erasure of PR status in Jammu and Kashmir in such an abrupt and non-negotiable manner symbolizes a process of dehumanization of Kashmiri Muslims. Besides, it also hurts the process of national integration by alienating and antagonizing even those mainstream Kashmiri leaders and sections of society that had previously vouched for India. Additionally, through such policies, the BJP is also hurting the interests of the people of Jammu it claims to protect. The new domicile policy is being viewed by many sections of Jammu as an assault on their distinct identity and economic interests.

The domicile policy sets a dangerous precedent for eroding the asymmetrical federal structure of the Indian union and increasing the control of the centre over various Indian states. Many other states such as Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh, and Goa enjoy certain special privileges and powers under the Constitution that offer them cultural and economic security on issues related to land sale, forest rights, protection of tribal customs and land rights, and so on.

The politics of hyper-nationalism and communalism, as exemplified in the implementation of Jammu and Kashmir's domicile law, serves as a note of caution to these states.

Footnotes:

1 Elaborating on the domicile order, the government spokesperson Rohit Kansal stated that the eligibility conditions include any person "who has resided for a period of 15 years in the UT of J&K or has studied for a period of seven years, or appeared in Class 10th/12th examination in an educational institution located in the UT of J&K or who is registered as a migrant by the Relief and Rehabilitation Commissioner (Migrants) in the union territory of Jammu and Kashmir as per the procedure prescribed by the government for migrants and displaced persons." Further, children of central government officials including all India services officers, officials of public sector

undertakings and autonomous body of central government, public sector banks, officials of statutory bodies, officials of central universities and recognized research institutes of the central government who have served in the UT of Jammu & Kashmir for a total period of 10 years are eligible to get domicile certificates.