

COLONIAL LEGACY POST INDEPENDENCE: MARGINALIZATION IN

KASHMIR

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Abstract

The tensions pertaining to rights, freedom and extra-territoriality of indigenous people have found a stable ground in the post-colonial history-writing. The interest of the dominant state has often subsided those of the less dominant groups. Such clashes when contextualized between a single nation birthed notions around sovereignty, and the constituents of sovereignty. Therefore, power and prestige alike have had a profound implication, particularly of exclusion in the erstwhile State of Jammu and Kashmir until the ceasing of Article 370 (August, 2019). This paper reveals such intricacies of marginalization owed to Article 370. By tracing its legacy to early colonialism and bringing it down to the Independence, the paper argues that rights are not subjective, and rather characterize a crucial feature of world's largest democracy, which if remained un-granted leads to the marginalization of identity, both socio-political and economic.

Key words- Jammu & Kashmir, marginalization, colonial legacy, sovereignty

Introduction

The British India, since the inception of postcolonial historiography, has become a reoccurring phenomenon to understand the notions around marginality and representation, corresponding with rights and freedom. Sociologists, Anthropologists and Historians have agreed that marginality denotes communities in the margins, defining exclusion from political, economic and social framework. To address it in present-day India, instead of contextualizing marginality in the State of Jammu and Kashmir (hereafter Kashmir) post 1947, this paper argues that the Indian case was peculiar due to the fact that while the rest of the Independent India shoved its way towards post-colonial economic and political unity, Kashmir's "special status", exhibited a rather continuance of colonial legacy. Colonialism, which fed itself by reassuring sovereignty through symbolic, military and Legislative Acts found its legacy in the polity of post-colonial Kashmir. The exclusive status of Kashmir *effectualized* marginalization by using it as an instrument for gaining political, social and economic exclusivity. This did not only destroy the efforts of mass struggle led for a collective and unified democratic India, but also went against the conventional notion of marginalization which spelled any area or subject as marginalized, provided it has been excluded *by* the dominant power. Contrarily, Kashmir was excluded *for* the gains, rather *by* the gains (which was the State).

In this context, Kashmir expounded its political legitimacy through the Constitutional Act as did the Imperial Crown in its 1858 Proclamation. The Queen declared herself sovereign for the measures partaking the Indian subcontinent; the State of Jammu and Kashmir expressed its sovereignty via marginality. This legacy of colonialism in Kashmir had profound effects on the populace of the newly exclusive state. While it denounced the concept of 'organic' marginality, it were the laymen, downtrodden subaltern, the West Pakistan Refugees (WPRs) who bore the consequences. These were, what this paper calls "doubly marginalized": initially by their own Kashmir state, later by the Indian state. The complexities around citizenship, rights, property, education- a Right to Life as a whole brought their development to a standstill, provided their exclusivity distinguished them from Indian gains, let alone Kashmir's.

Therefore, sandwiched between lust for power on one hand, and immediacy of accession on the other, the Jammu and Kashmir Instrument of Accession was remembered throughout the history of post-colonial nation-building. These recurring complexities framed identities of WPRs, for, from being the early residents of colonial India to being denied a permanent residence in post-colonial India, the WPRs became a tool for political power exhibited

throughout the subsequent decades, until the Article 370 ceased. Owing to these historical processes and differing issues, this paper situates marginality as a chosen phenomenon for consolidation of power, borrowing from colonial lens transcending to double- marginalization of the WPRs, until recently.

Marginalization- in Colonial Conceptualization

The study around marginalization has gained a significant momentum since the histories of decolonization found its niche. Incepting as one of the critiques of colonial Anthropologists and Ethnographers, like Clifford Geertz¹ and Herbert Hope Risley² to name a few, Sociologists and Historians alike have led a humongous stride to probe against the British romance with categorization of the general populace.

Sovereign of the early twentieth century, the Raj, in the quest to understand the civilizations of the orient, financed Ethnographers to mark the distinct phases and processes of socialization of the dynamic Indian society. Risley's manuscript became the 'maker' of India, as Post-Modernists have framed it. His accounts and travelogues generated a caste census which mobilized the society of the Indian subcontinent strictly within the four-fold caste system, severing, fixating and limiting the society within a heirarchical framework. This British induction of categorization contains massive historical significance in understanding the perspective of the "other", their origins, and migratory and settlement pattern.

Owing to the literary glasses of Valentine Chirole and Rudyard Kipling³, or famous poems by Ruskin Bond, the imperial fervor began manifesting the destiny of the colonized by situating them in the lowest rank of the race. Risley, for instance characterized the peopling of the world through three races: Anglo, Dravidian and Mongloid, with former as the epitome of

¹ Geertz Clifford, "Deep Play: Notes on the Balinese Cockfight", *The Interpretation of Cultures*. (Winter, 1973), pp. 1-37. Geertz has left a detailed account on the Balinese cock-fighting culture. He penned the history of Balinese uncivility through symbolic and notional interpretation of Balinese epicenter, the practice of cock-fighting. His "interpretive ethnography" strongly raised the question of agency vis-à-vis colonial production of knowledge.

² Risley Herbert Hope, *Tribes and Castes of Bengal* (1891). Several post-Structuralist historians have described Risley's ethnographical manuscript as the forerunner for the emergence of modern-caste system in India. They believe caste consciousness was the consequence of Risley's ethnogenesis and its subsequent institutionalization under the British rule.

³ Kipling's *The Jungle Book* (1891), written after the Mutiny provided a symbolic description of the 'other'. For instance, the illustration of protagonist Mowgli as a "dark-skinned", "jungle", and an "unhygienic" male against the supposed, though rural but "civilized" villagers was a remarkable attempt to mobilize young British children for their imperial duty as the "white boys".

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civilization, and latter as the junk of civilization.⁴ This “civilizational crisis” was the “White Man’s Burden”, as the white race found itself [unanimously] pressed with the responsibility of civilizing the “primitives”⁵, “savages” or “so-called barbarous races”.⁶ This exceptionally convenient road for such massive transformation was either through the ‘creation’ of newer identities upon British taste, or by generalizing the existing ones. The ethnogenesis, as it began to be called, for instance of the tribes of Southeast Asia profoundly characterized British civilizational discourse.⁷ It not merely swiftly swept the way for British patterns of governance, but also became the reason behind marginalization of tribes, castes and populace alike.

This romance with generalization for ease of colonial governance leading to homogenization of linguistic and cultural identity ushered heavy backlash from historians and sociologists. Tracing to these historical colonial formulations, the origins and further scrutinization of the concept of ‘marginalization’, acquired a heightened place in the post-colonial policy-making.⁸ The marginalization incepting as a consequence of colonialism, began to be defined by communities, groups or people with least access to resources, owing to their lower rank in the social, economic, political, religious or cultural ladder. Encouraged through a system of dense stratification, these less powerful communities found their marginalization as a by-product of status driven socio-political-economic system which pushed them into the heirarchical fringes of time and space.

This process when contextualized within the modern forms of power, brewed a particular kind of sovereignty, that which reflected a ‘historical connection’ as Historian and Post Enlightenment French philosopher Michel Foucault also rendered in his book. *Discipline and Punish* (1991) patented a significant term “governmentality” to denote the psychic of the ruling regime. It proposed a methodology of the State which stressed on strategies, methods and

⁴ Bates Crispin, Race, Caste and Tribe in Central India: The Early Origins of Indian Anthropometry, in Peter Robb *The Concept of Race in South Asia* (ed. Oxford University Press, 1995),

⁵ Geertz (1973)

⁶ Lewin T.H, *Wild Races of Southeast Asia* (1870). The title itself suggests a classical orientalist view of the occident.

⁷ Van Scendel Willem, “Geographies of Knowing, Geographies of Ignorance: Jumping Scale in Southeast Asia”, *Environment and Planning D: Society and Space* (2002)

⁸ However, this is not to say that marginalization ceased in pre-colonial society. Historians like Brajadul Chattopadhyay, R.S. Sharma and D.D. Koshambi have produced massive accounts over existence of caste-system induced marginalization. Since this paper argues for marginalization in the post-colonial system, as a consequence of colonial framework, the advancement shall be such.

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techniques that purposely allowed carving a system for the maximization of resources. Central to this was the freedom of the citizen, for, as the control over governance deepened, so did the bondage of citizens to the government.⁹ Foucault traced the emergence of such kind of a 'society' to the liberal theory of governance.

Liberalism mandates the creation of a certain kind of citizen, rather than an 'individual'- a responsabilised, moralized, socialized and civilized citizen, against a non-responsible individual, who through his fruits of intellectualism and obedience, benefits the state¹⁰. In this manner, while the citizen exercised 'freedom' through service, the state did so by means of granting that freedom in the first place. A striking example of this theory supported by methodological framework was the "Macaulay Minute of 1835",¹¹ aimed towards producing civilians who were to be European in taste but Indian by race. However, since the scope of this paper is limited to notions surrounding sovereignty and marginalization in Kashmir, I shall not dive into pre-colonial educational system.

The marginalization which colonial hegemony instigated throughout the Indian subcontinent was met with symbolic muscles, to begin with, succeeding by the institutional framework, and finally substantiating itself through the officialization of power. Tracing this to its infancy, the 1764 success of the East India Company (henceforth Company), allowed their initial entry into the Indian subcontinent. The grant of *diwani* or the right to collect revenue, *khil'at* or the robe of honor, and *farmans* or the order were perceived by Company, as Mughal 'obligation' than their grant.¹² Such discourses which allowed the skillful maneuver of power dynamics was further witnessed throughout the British rule, predominantly by means of military superiority, disguised as benevolence, or "protectionist myth".¹³ The "Proclamation" of Queen Victoria in 1858, under the background of vocal and violent Indian subjects coupled with a heightened

⁹ Doherty Robert "Critically Framing Education Policy: Foucault, Discourse and Governmentality", *Counterpoints*, Vol. 292, Why Foucault? New Directions in Educational Research (2007), pp. 193-204

¹⁰ *ibid*

¹¹ Macaulay Thomas Babington, "Minute by the Hon'ble T. B. Macaulay, dated the 2nd February 1835" (2nd February, 1835). Macaulay's famous Educational Theory expounded to educate the elite section, or the upper class Indian male, who through their social formations would transmit the literacy into the grassroots, also known as "Downward Filtration Theory".

¹² Minault Gail, "The Emperor's Old Clothes: Robing and Sovereignty in Late Mughal and Early British India", *Robes of Honour: Khil' at in Pre-Colonial and Colonial India*, ed. Stewart Gordon (Oxford, 2003)

¹³ Shahabuddin Mohammad, "The Myth of Colonial 'Protection' of Indigenous Peoples, *International Journal on Minority and Group Rights* , (2018), Vol. 25, pp. 210-235

sense of contempt of foreign, unruly and illegitimate power, behaved as a verbal, non-violent document.

The two page document proclaimed absolute sovereignty of the Crown over the Indian subjects. By using the phrases such as “Dependencies”, “Our” and “We”¹⁴, all with their upper case initials, profoundly lamented the motive behind.¹⁵ It said:

“We hold Ourselves bound to the Natives of Our Indian Territories by the same obligations of Duty which bind Us to all Our other Subjects ; and those Obligations, by the Blessing of Almighty God, We shall faithfully and conscientiously fulfill... We declare it to be Our Royal Will and Pleasure that none be in any wise favored, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection of the Law”....”It is Our Royal Pleasure that these Terms of Grace and Amnesty should be extended to all those who comply with their Conditions before the First Day of January next.”¹⁶

In this manner, the Proclamation provided a legal framework to condemn the Great Uprising on one hand¹⁷, and an overwhelming confidence on the British system of governance on the other. For this reason, Historians like Gail Minault¹⁸, Amar Farooqui¹⁹, and Sabyasachi Bhattacharya²⁰ to name a few, referred it as the foundational script of the British Raj. This pattern re-occurred during the Durbar at Jodhpur, in 1908. The Proclamation expressed:

“The rights and privileges of the Feudatory Princes and Ruling Chiefs have been respected, preserved, and guarded; and the loyalty of their allegiance has been unswerving”.... “Important classes among you, representing ideas that have been fostered and encouraged by British rule, claim equality of citizenship, and a greater share in legislation and government. The politic satisfaction of such a claim will strengthen, not impair, existing authority and power.”

However, despite the promises these Proclamations held, the consequential national movements and the history which it unfolded revealed otherwise. These two instances then, did not subscribe to governance for the welfare and upliftment of the Indian citizens. Rather, they conspicuously hinted the ulterior motive behind the Legislative Acts which followed in due course of time. Few examples being: the Government of India Act (1858) and (1919), the

¹⁴ Queen Victoria Proclamation, (November 1st 1858)

¹⁵ The Proclamation contained “VICTORIA” in capitals, alongwith the aforementioned phrases. This was one of the instances of swift manipulation of words and phrases. By using upper cases, the British effortlessly advocated the predominance of their Queen.

¹⁶ Proclamation, 1858

¹⁷ Modern historians have used varied phrases to describe this event, ranging from “Fisrt War of Independence” to a revolt inhabiting national consciousness. For the purpose of this paper, I have used a general term. To read more on this, refer to Sekhar Bandopadhyay’s *From Plassey to Partition: A History of Modern India* (Delhi, 2004)

¹⁸ Ibid

¹⁹ Farooqui Amar, “Governance, Corporate Interest and Colonialism: The Case of the East India Company”, *Social Scientist*, Sep. - Oct., 2007, Vol. 35, No. 9/10 (Sep. - Oct., 2007), pp. 44-51

²⁰ Bhattacharya Sabyasachi, *The Colonial State: Theory and Practise*, (Delhi, 2016)

Indian Councils Act (1861) and (1909), and the Indian Independence Act (1947). In essence, the legislations contained one common thread- the maximization of power by the British and subsequent denial of the same to the Indians. Numerous deliberations and conferences were held, but in partial vain. Indian freedom fighters, though distinguished as Moderates and Extremists²¹, along with revolutionaries and general populace, were caught in an indefinite tussle for power until the eventual 1947 Act. However, despite the British farewell, this is not to say that the struggle for power followed a backseat. It was the issue of Kashmir, which obtained a position of contestation between two energetic centers of power, the newly Independent India and an infant Pakistan. In this manner, Kashmir became an epicenter of colonial legacy, for the issue was similar [of power], and so were the methods to dissolve it [of Legislative Acts]. This combined with the demographic and geographical divide altered the society, economy and polity of the people of Kashmir, particularly the WPRs. It pushed them into the margins, the way colonialism did so to the indigenous people- the tribes and other ethnicities.²²

Marginality- a Post Colonial Conceptualization

The Independence Act charted Indian subcontinent into two political domains with their distinct socio-political and religious specificities, except the Kashmir region. Jammu & Kashmir (henceforth Kashmir)²³ did not have a set of specificities, and rather conglomerate culture of diverse ethnicities. Cutting across this, the political surgery of the land etched the fate of WPRs against spatial and temporal binaries, for, though they belonged to the Indian land, the overnight declaration of Pakistan as a separate state shook their permanency as residents of Kashmir [or India].

Kashmir traces its colonial footsteps down to the Treaty of Amritsar (1846). In the aftermath of Anglo-Sikh war, the Company sold Kashmir to Sikh ruler Raja Gulab Singh (r. 1822-1846) against 75 lakhs (7.5 million) of Nanak Shahi rupees.²⁴ The Article 10 of the Treaty obligated Raja to pay annual tributes that would reflect symbolic recognition of sovereignty of the

²¹ To know more about Moderates and Extremists, refer to Sarvepalli Gopal's book *Radhakrishnan: A Biography* (1989).

²² Van Schendel Willem, *Francis Buchanan in Southeast Bengal (1798): His Journey to Chittagong Hill Tracts, Naokhali and Comilla*, (Bangladesh, 1992). The conspicuous case of ethnogenesis is exemplarily highlighted through Francis Buchanan's travelogue. It provided a detailed insight into the land, tribes and economy of the regions.

²³ Note: in this paper unless stated otherwise, the term 'Kashmir' implies the erstwhile Jammu & Kashmir State.

²⁴ Nanak Shahi rupee was the contemporary currency of the Sikh Empire in early nineteenth century.

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British. This included one horse, twelve shawl goats and three pairs of Cashmere shawls.²⁵ By marking the beginning of Dogra rule, cutting down to 1947, the monarchy found its demise through Raja Hari Singh's (r. 1925-1952) Instrument of Accession. It stated:

"I hereby declare that I accede to the Dominion of India"... "and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof".. "exercise in relation to the State of Jammu and Kashmir..such functions may be vested in them by or under the Government of India Act, 1935 as in force in the Dominion of India on the 15th Day of August, 1947".. "the terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument".. "Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State".²⁶

The document repeatedly used absolute phrases such as "My" and "Nothing", with upper case initials. Alike 1858 Act, it placed concern towards retaining power through acts of legislation. These provisions had decadal impact on the communities who could have benefitted from the Indian legislations. Because, barring the power dynamics, the Instrument of Accession was used to frame a separate Constitution and a flag alongside Indian. This implied there were two set of authorities, the pre-Independence Princely State of Jammu & Kashmir acceded to the Dominion of India *without* becoming an absolute part of it, and the Dominion of India. The integrity, protection and federal sovereignty which rest of the Princely States received upon their succession into India; similar was not the case with Kashmir. Invariably, being the only State with its separate legal framework, its infancy caused its people to adjust to the socio-political vulnerability as opposed to a giant conglomerate economy.

Marking its official efficacy in 1949, Article 370 of Part XXI of the Indian Constitution conferred Kashmir with its "special status". This barred Indian government to interference into the region, vis-à-vis granted uncontested power to the [Kashmir] State. The Constitution of Kashmir stated:

"JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among us all;

FRATERNITY assuring the dignity of the individual and the unity of the Nation;"²⁷

Noteworthy is the use of upper case in initials. It highlighted the belief Kashmir government staunchly stood by. However, contrarily such was not the case. The fruits which Justice,

²⁵ Hussain Naseer, *The Jurisprudene of Emergency: Colonialism and the Rule of Law*, (Michigan, 2009)

²⁶ Instrument of Accession, (15th August, 1947)

²⁷ Sharma Sant Kumar, *Article 370 Deceit and Fraudulent Communication*

Liberty, Equality and Fraternity concurred were not exercised by all the communities of Kashmir. It were the West Pakistan Refugees (WPRs) who, owing to the exclusivist status got excluded from the benefits of it, hence arrived their marginalization.

The WPRs were the pre-Partition settlers of Jammu & Kashmir. The communal violence which generated the politico-religious surgery in undivided Punjab forced them to migrate to the Indian-occupied Kashmir in later part of 1947. The then Indian government encouraged these new migrants to settle in the margins of Pakistan, ensuring their development.²⁸

However, reports suggested WPRs were largely left at the behest of their fate. Their seclusion into the margins, combined with geographical alienation permeated unequal access to basic resources, such as land, employment and significant legal rights. They became a precursor to social exclusion, ensuring unavoidable poverty.²⁹

One of the most significant legal drivers to these conditions was Article 35A. It monogamously allowed Kashmir to define her “Permanent Residents” (PRs). As a result, the legislation denied PR status to those who did not belong to the erstwhile Princely State of Jammu and Kashmir. These were the WPRs who had migrated from Sialkot district of Pakistan to the fringes of Jammu, particularly Samba, Kathua and Rajouri districts. The official records suggest migratory population accounted to 47,215 people containing 5,764 families at large, who in subsequent years multiplied to approximately 2.5 lakhs.³⁰ Currently there are 19,960 families with a population upto 85,000.³¹

The contemporary Legislative and Humanitarian bodies operating on global network also could not be utilized by WPRs to attain beneficiary schemes. For instance, the 'United Nations Convention on the Status of Refugees' (CRSR), 1951 or of the 1967 Protocol, the 'Universal Declaration of Human Rights' (UDHR), 1948, the 'International Covenant on Civil and Political Rights' (ICCPR), 1966, and the 'International Covenant on Economic, Social and Cultural Rights' (ICESCR), 1966. They define who is a “refugee”, but since Pakistan Occupied Jammu and Kashmir was a part of India, the relocated people were not characterized as ‘refugees’ or

²⁸ Sharma Sant Kumar

²⁹ Gatzweiler and Baumuller, “Marginality- A Framework for Analysing Casual Complexities of Poverty” (2014)

³⁰ Chauhan Abha, “Caught in a Maze: Predicaments of West Pakistan Refugees as Non-Permanent Residents in Jammu and Kashmir”, *Rajasthan Journal of Sociology*, Vol. 17 (2022)

³¹ Dubey Navneet “West Pakistan Refugees in J-K ‘empty-handed’ Even 70 Years After Independence” *Hindustan Times* (2016)

‘immigrants’, and rather featured as ‘migrants’ or ‘Internally Displaced Persons’ (IDPs).³² This denied them the rights applicable to ‘refugees’.

Consequently, while the rest of India enjoyed one-single permanent citizenship, WPRs’ IDP status stained them as Non-Permanent Residents (NPRs). This became the biggest differing issue, which despite national and regional efforts went into vain. The people were vanished from the mainstream benefits, and so were their successive generations.

The Government of Jammu and Kashmir under clause (1) (d) of erstwhile operative Article 370 in the Constitution of India was granted special powers to incentivize the Permanent Residents of Kashmir State (now UT) with exclusive privileges in matters of: (a) employment in the Government of J&K; (b) confiscation of immovable property; (c) residence in the State; (d) right to government funded Scholarship for various means. Other measures such as medical and social insurances which the State was to provide by virtue of legislative backing, along with the ‘exclusive’ privileges, were not given to the non- permanent WPRs.

Ineligible for government jobs, offices and courts, WPRs found their livelihood through menial works. They were majorly confined to the labor class, earning minimal living through domestic labor work and other blue-collar jobs such as in automobile garages, or as staff in medical and departmental stores. Their limitations to the agricultural field too became apparent and visible, in addition to the army recruitment which demanded a PRC- a document the WPRs could not legitimize.³³ In this manner, Article 370 indirectly produced a massive community who had only been able to attain a partial acceptance of their horrible fate, before they knew in the subsequent years, they were to be completely symbolically, denounced legitimacy of the Indian progression.

In terms of education, courses such as M.B.A, M.B.B.S, B-Tech (Engineering) or Poly-technology did not become their forte. Admission into these courses required a Permanent Resident Certificate (PRC). Likewise the youth of Kashmir could not avail the centrally-sponsored government policy of compulsory and free education for children below the age of 14 years. This forms one of the reasons behind the lack of Kashmir students in eminent Universities across the nation. They do not have generational wealth; neither do they come from a financially secured family.

³² Chauhan Abha, (2022)

³³ Jamtani Pankaj, “Changing Dimensions of Law & Justice: A Socio-Legal Study of th Marginalized Population Group of J&K”, *Indraprastha Law Review*, Vol. 1: Issue 1 (2020)

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To solve this crisis, for the rights of the WPRs, the Senior Counsel of Jammu and Kashmir High Court Bachan Lal Kalgotra filed a case in the Supreme Court in 1982. On February 20th 1987, the SC verdict declared that the WPRs:

“have very anomalous rights within the State. For example, they are not entitled to be included in the electoral roll of the State Assembly, they are not entitled to be elected to a village panchayat, they are not entitled to purchase any land and they are also not entitled to be appointed to any service under the State Government. All these denials and deprivations are the consequence of the definition of a 'permanent resident' under sec.6 of the Jammu & Kashmir Constitution”³⁴

Justice O. Chinnappa Reddy advanced the 1927 Notification which defined the State Subject under Class I, II, III, & IV. The Article 35-A along with it, denied electoral rights to NPRs. Barring voting in the Lok Sabha elections, the Article confiscated their right to participate in State Legislature elections, and Panchayat elections or Urban Local Body (ULB) elections. Furthermore, Shri R.R. Jha, the Joint Secretary (FFR) of Ministry of Home Affairs stated that the main grievances of the WPRs included:

- i) Permanent Resident Rights for West Pakistani Refugees in the State of Jammu and Kashmir;
- (ii) Right to contest in State elections;
- (iii) Right to purchase property in Jammu and Kashmir;
- (iv) Eligibility for recruitment to State Services;
- (v) Issuance of Domicile Certificate to West Pakistani Refugees;
- (vi) Issuance of SC/ST/OBC Certificates;
- (vii) Right to education in technical/professional institutes in the State;
- (viii) Extension of benefits under Indira Awas Yojna (IAY) and those available to BPL families;
- (ix) Extension of benefits under Centrally Sponsored Schemes;
- (x) Extension of credit facilities by banks to West Pakistani Refugees without collateral security;
- (xi) Special financial package for rehabilitation; and so on.³⁵

This indicated the massive dispossession of WPRs from their traditional country vis-à-vis the democratic privileges. The years of unequal access to basic rights became a heightened issue when it could not be curtailed or fit into the larger narrative. On 31st August 2001, the government of Kashmir received a letter from Home Minister L.K. Advani requesting detailed analysis of the benefits of Article 350. The letter noted:

“a) While they [WPRs] are entitled to exercise their franchise for elections to the Lok Sabha, they cannot vote for the elections to the State Assembly and Local Bodies.

³⁴ Bachan Lal Kalgotra vs State Of Jammu & Kashmir And Others on 20 February, 1987

³⁵ Sharma Sant Kumar

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(b) They cannot mortgage the land in their possession for raising loans.

(c) Their children do not get admission to higher educational/professional institutions and are denied jobs in State Government services.”³⁶

Therefore, the marginalization was brought into limelight only after petitions were filed and the discourses from influential elites were held. Carlo Ginzburg called this “method of clues”. Ginzburg contended an investigation became necessary when there needed to be an explanation for narratives which did not fit or was odd in the larger picture.³⁷ WPRs could not dissolve into the background of an overall development of the Kashmir State through its exclusivity.

This paper calls this a process of “internal colonization”, which constantly denied the democratic privileges for the sake of power and prestige. The WPRs were debarred from PRCs which lessened the competition in the government posts as well as ensured political support from the communities with PRCs.

In this manner, power became a representation of socio-economic and cultural practices. It allowed the concept of marginality to move beyond geographical inaccessibility and exposed the hidden stakes. This kind of socio-economic imperialism advertised a neo-colonial framework which maintained a successive defiance of voices of the WPRs, by their constant neglect. The 1987 verdict, letters from L.K. Advani to Chief Minister Farooq Abdullah, Jha Findings, all detected power imbalances against power equality, which Article 370 very much tried to achieve.

Marginality became an identifier of the degree of inequality in Kashmir. It took the shape of gradation in society. Those with PRCs, owing to their exclusionary treatment acquired a higher status in society as opposed to the non-PRC holder; as was the case of the Princely States after 1903 Durbar. Princes who complied with the British received primary attention and enormous privileges, including social and symbolic.³⁸

Similarly, power then became a tool not only for administrative and legal jurisdictions but also embedded itself into the psychic of the WPRs. It generated feelings of self-pity, vulnerability, and insecurity, leading to social and moral exclusion, and “existential

³⁶ Jamtani Pankaj

³⁷ Singh Sonal, “Micro-history Lost in a Global Narrative?”, *Social Scientist*, Vol. 45, No. 3/3 (2017)

³⁸ For instance, the Princes who supported British rule received more salutes in public ceremonies, grants and superior treatment. The Princes who resisted compliance were back-seated leading to social humiliation.

isolation”³⁹ in extreme forms. Invariably, this is where concept of race struck. The anthropometrical variations in people of extreme north-western India had a visibilized Subsequently marginality became a torch-bearer of dyadic concepts- marginal situation produced by legislation and marginal personality as a consequence of legislative actions. The situation led to the distortion of personality development which eventually affected their participation in larger social and political processes. One of the most significant methods for elimination of social marginalization of the WPRs was in fact found in the Constitution of India itself.

The Constitution advocates for positive discrimination of certain tribes and castes owing to their inaccessibility to resources. Minister of Tribal Affairs mentions the enabling provisions of ST status under the following categories: as (i) Education and Cultural Safeguards, (ii) Social Safeguards, (iii) Economic Safeguards, (iv) Service Safeguards and (v) Political Safeguards.⁴⁰ Kargil and Leh constitute more than 50 per cent of ST population, whereas Poonch, Rajouri and Reasi districts have 25 per cent of ST population. Schedules: 1. Balti, 2. Beda, 3. Bot, Boto 4. Brokpa, Drokpa, Dard, Shin, 5. Changpa, 6. Garra, 7. Mon, 8. Purigpa, [9. Gujjar, 10. Bakarwal], [11. Gaddi, 12. Sippi] qualify as STs for reservation, and so on paper has been granted by 1991.

However despite this, the political, educational and economic privileges which come along reservation have not been exercised by the WPRs. The Right to Information Act (2005) of Parliament declared nationwide freedom to acquire and inquire information with respect to government. In Kashmir, owing to Article 370, after much persuasion it was only passed in 2009. Irrespective of the delay, transparency in the flow of information was not witnessed. For instance, under sub-section (b), the Kashmir Government was to maintain active disclosure within 120 days since the Act came into force. Neither was there any disclosure, nor could the Central RTI Act (2005) be applied to the region.

Additionally, the reservation could not guarantee their participation in local, regional or national politics. The Centrally advocated 73rd and 74th Constitutional Amendments empowered rural and urban populace with the right to establish self-governing institutions, such as the Panchayati Raj Institutions (PRIs), and the Urban Local Bodies (ULBs).

However, the devolution of powers in Kashmir has been referred to as “toothless tigers” as no

³⁹ Giddens Anthony, *Modernity and Self-Identity: Self and Society in the Late Modern Age* (1991)

⁴⁰ Ministry of Tribal Affairs

sincere sovereignty has been exercised. The membership for instance, for the District Development Boards (DDBs) is achieved by nominations of Chief Minister than direct elections by the general masses. The planning, evaluation and recommendations are dealt by influential and powerful elites. In such a case, the inputs of PRIs do not find a sincere expression.⁴¹ This kind of a spherical influence of the Kashmir State becomes justifiable upon the non-implementation of 73rd Constitutional Amendment which empowered the rural-urban in the first place.

The working of these institutions does not do justice to the entire concept of democratic decentralization, domestic autonomy and federal liberty. Rather, the disempowerment of local bodies in Kashmir points to the centralization of State power, than the decentralization of it. Such complexities find more visibility within the Constitution of India itself. The Constitution, instead of being completely 'Unitary' has fascinatingly allowed the separation of powers through its 'Quasi-Federal' character. Therefore, to still exercise unquestioned sovereignty at the behest of marginalization of substantial population stands against the democracy and freedom granted to the people of India.

A striking reference of non-inclusive character of Kashmir has been in its Constitution itself. While the term 'Secular' finds explicit mention in the Constitution of India, the Kashmir State had ceased to include it (until the abrogation of Article 370). It bores significant attention that education, employment and political rights, the keen features that the Indian people take pride on, through the abrogation of Article 370 has finally found its place in the erstwhile Kashmir State.

Conclusion-

The problems of West Pakistan Refugees and their wretched conditions have been in exclusion, as any deliberations around Jammu and Kashmir instantly pop an image of terrorism and military occupation. To gain a lens into the underlying fabric of society, a deep insight is more convenient when scrutinized across temporal and spatial dynamics.

The post- Independence history of Jammu and Kashmir witnessed violence and neglect like no other state post-colonial state of the Indian subcontinent. The Instrument of Accession, according to Raja Hari Singh was justifiable amidst political complexities that had existed throughout colonialism. The Dogra ruler laid conditions for his accession into the Dominion

⁴¹ Sharma Sant

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of India considering the fact that his absolute right to rule was not upheld by the British; he was a puppet with a payment of fixed annual tribute. Therefore, there needed to be an assurance that such shall not prevail in the Dominion of India. In this context, Instrument of Accession merely became a valid source of guaranteeing protection.

Following the footsteps of Raj, the polity which exercised its territorial, political and economic sovereignty through swift manipulation of agreements and acts, the sandwiched Kashmir perceived sovereignty as a tool for an extended statehood that would allow autonomy of the subjects.

The establishment of Article 370 in post-colonial Kashmir then harnessed all these idioms but failed to confirm it. It rather accentuated social, economic and political inequality. The legal imaginary of a citizen came under massive complexities as the [Kashmir] State described permanent residents against the non-permanent citizens. The phrasal utility as was signified by the Imperial Crown saw its re-emergence in the Constitution of Jammu and Kashmir. Both the documents had significant commonality, to justify their respective sovereignty in front of large masses and legislative power(s)- for Raj it were the Princely States along with the Indian masses; as for the then government of Kashmir it were the erstwhile Princely States and the Dominion of India.

In the quest for esteemed liberty, the State formulated policies to promote a vision of statehood, as against nationhood. In this process the WPRs were pushed into the peripheries. They could be benefitted neither through progressive policies of the Center, nor by exclusivist modifications, or the “special status” of the State. Leading to their “double-marginalization”, the fight only consumed them into a linear pattern of compliance and consonance until the “special status” was abrogated.

While colonialism fed itself by allowing ‘limited’ territorial, economic and political sovereignty to the Princely States, the larger narrative for such benevolence was to curtail a shared feeling of nationhood. This constantly hindered the imagination of general masses as one single community, and intacted the colonial policy of ‘Divide and Rule’.⁴² Therefore, the separate statehood only further pushed substantial population of Kashmir into the peripheries, including moral and existential, manifesting into racial inferiority.

⁴² Anderson Benedict, *Imagining Communities: Reflections on the Origin and Spread of Nationalism* (1983)

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The infancy which territorial sovereignty brought, debarred these marginalized communities from national privileges and eliminated them from general populace. Abrogation of Article 370 did not merely brought them the certificate of a Permanent Resident, but opened a new door in the history of marginalization, except it would hopefully guarantee their exclusivity in national services through reservations and scholarships, as against exclusion *from* it.

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