



Status of valmiki dalits: Pre and post abrogation of article 370 and 35A in Jammu and Kashmir

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Abstract

On 5th August 2019, the Union Home Minister of India, Shri Amit Shah announced the abrogation of Article 370 and Article 35A of the Indian Constitution which granted the state of J&K special status. The state is now divided into two union territories Jammu & Kashmir (with a legislature) and Ladakh (with no legislature). Article 370 provided a special position to the state of Jammu and Kashmir and Article 35A empowers the Jammu and Kashmir State Legislature to define the rights and privileges of State's 'permanent residents' and their special rights and privileges. Before the abrogation of special status of Jammu Kashmir, the State completely worked under the State's separate constitution and in that constitution Valmiki Dalits were deprived off their citizenship rights. Under Jammu Kashmir Reorganization Act of 2019, various safeguards have been provided to Valmiki Dalits. This research paper briefly explores the status of Valmiki Dalits before and after the abrogation of Article 370 and 35A in the state of Jammu and Kashmir. Furthermore, the paper highlights the exploitative nature of Article 370 and 35A leading to hardships and unfair treatment that have faced by Valmiki Dalits who had migrated from Punjab and it also explains the social, economic and political implications of abrogation of Article 370 and 35A on Dalits.

Keywords: Article 370, abrogation, valmiki dalits, deprived, article 35A, citizenship rights, Jammu and Kashmir reorganization act of 2019

Introduction

The Constitution (Application to Jammu and Kashmir) Order, 2019 issued on 5 August, 2019 made all the provisions of the Constitution of India applicable to Jammu and Kashmir by superseding the Constitution (Application to Jammu and Kashmir) Order, 1954. The Order of 1954 had introduced Article 35-A in the Constitution of India which had protected the special rights and privileges of the permanent residents of the State of J&K as defined under Section 6 of the Constitution of Jammu and Kashmir, 1957^[1]. This Article and the permanent resident status however wreaked havoc on the Valmikis of Punjab living in Jammu and Kashmir for the last more than six decades. The special rights and privileges reserved for the permanent residents of Jammu and Kashmir were actually the basic human rights and the deprivations of such rights to the Valmikis reduced them to less than human. With Article 35-A gone since 5 August 2019, Jammu and Kashmir made a Union Territory since 31 October 2019 and the new domicile law in place since 31 March 2020 by virtue of the Jammu and Kashmir Reorganization (Adaptation of State Laws) Order, 2020, they have become entitled to all the rights, a lot however is required to be done to remedy the injustices done to them in the past.

Objectives

1. To analyses the status of Dalits before the abrogation of Article 370 and 35A.
2. To learn about the Socio-Political status of Dalits of Jammu & Kashmir after removal of Article 370.

Methodology

The present study will be descriptive and explorative in nature. Secondary sources will be used for the collection of

data. In secondary sources research papers, newspaper, Internet sources will be used.

History of Valmiki Dalits in Jammu and Kashmir

The Valmikis in the State of Jammu and Kashmir (now Union Territory) were brought from Punjab in the wake of strike that happened in the year 1957 in the State of Jammu and Kashmir, when municipal workers in Jammu went on an indefinite strike. Waste was lying everywhere in the streets of the city. One whole month passed but residents of Jammu and Kashmir were still suffering due to the municipal workers strike. The city was on the verge of becoming a city full of garbage. Situation came to a standstill and the Municipality in Jammu region of the State was completely paralyzed. Taking note of the situation, the then Prime Minister of Jammu and Kashmir, Mr. Bakhshi Ghulam Mohammed called an emergent meeting of his cabinet ministers where discussions went on for hours and finally the cabinet reached on a decision to call municipal workers from neighbouring State of Punjab. Hundreds of workers (Safai Karamcharis) who belonged to Valmiki Community were called in Jammu and Kashmir mainly from Gurdaspur (Noor Mahal, Shahkot areas), Amritsar (Gharwali Gate, Nurpur, Raja Sansi, Bandala, Mirzakadiyan, Ajnala, Khas, Chirag, Putalighar areas) and Batala tehsils of the State of Punjab. The then Health Officer of the Municipal Corporation of Jammu city, Mr. Modi, was given the task of making all the arrangements to bring these Safai Karamcharis in the State. The said Health Officer of the Jammu Municipal Corporation, who had his in-laws in Punjab, brought them to the State of J&K through acquaintances on the promise of providing them jobs in the State, 272 persons (Valmikis) were brought to the State from Punjab at that time^[2]. Free transportation was provided to them as well as the permits under the permit

system of the State were also relaxed for these Safai Karamcharis. As the jobs in the State of Jammu and Kashmir were restricted only to the Permanent Residents of the State of Jammu and Kashmir (as specified in the J&K Constitution), the State Government by amending the rules granted exemption to the Valmikis from the requirement of being the State Subjects/Permanent Residents of the State of J & K for the purpose of job in the State Government. Under Rule 35-B of the Jammu and Kashmir Civil Service Regulations, 1956 in the case of every new entrant into the Government service, the concerned authority empowered to make the appointment was to certify that the applicant is a "State Subject", later called "permanent resident" under the Constitution of Jammu and Kashmir, 1957. A permanent resident of J&K meant those citizens who had lawfully acquired immovable property in the State of J&K, or had been ordinarily resident in the State for not less than ten years prior to 14 May 1954^[3]. Since Valmiki community came to J&K in 1957, they were given exemption from producing the State Subject under the sweeper category only. This meant that they/ their progeny could not seek an employment other than that of a sweeper in the State of J&K.

Status of Valmiki Dalits in Jammu and Kashmir before abrogation of Article 370 and 35A

On coming to the State of Jammu and Kashmir in 1957, the families of the Valmikis were settled by the J&K State Government in the Jammu Division of the State. These 272 Valmiki Safai Karamcharis were allowed to make their hutments/small houses on the land assigned by the State Government in the municipal area of Jammu. On being brought to the State, the Valmikis were housed by the State Government in the then newly constructed shopping complex towards the left of the Swarn Theatre (opposite Monika Super Market) in the Gole Market area of Jammu city and a dairy farm and JDA Complex in the Mini Market of the Green Belt colony of Jammu city from where they were later settled in the areas of Gandhi Nagar, Bakshi Nagar, Kot Bhalwal, Dogra Hall, Purkhu, Resham Ghar, Preet Nagar and Qasim Nagar of Jammu District^[4].

Initially Valmiki Dalits were not given the citizenship rights, while relaxing the PRC condition for Valmikis, a clause was inserted in the Jammu and Kashmir Civil Service Regulations that clarified that the rules were relaxed only to the point of the community members getting appointed as safai karamcharis. Though that was not an issue for the first generation of Valmikis, who were happy to get regular jobs and accommodation, the newer generation was unable to venture into other fields as they could not prove their domicile. They could not take admission in professional courses for post-graduation since state universities in Jammu and Kashmir demand a PRC. While they can study up to graduation, that only qualifies them for the position of a sweeper. Despite owning land in Jammu and living there for all their life, they are deprived of various rights including, the right to vote, right to higher education, right to get state scholarship, deprived of welfare schemes launched by government, ownership of property and they were also deprived to get reservation in Government jobs. Moreover, the Valmikis working in the municipal corporation were not entitled to promotions since they were eligible only to work as safai karamcharis. So, even if they managed to acquire additional

qualification or decades of experience, they could only remain sweepers. Even though Valmikis belong to the Scheduled Caste (SC), not being permanent residents of the state, they were not issued SC certificates in Jammu and Kashmir, depriving them of Central government schemes and policies to which they are entitled. Apart from facing discrimination in higher education and government jobs, the Valmikis have also been disfavoured when it comes to residential rights^[5]. The colonies that were allotted to the Valmiki families when they were brought to the state have not been regularised till date. There are 13 such localities in different areas of Jammu – like Gandhi Nagar, Valmiki Colony, and Bakshi Nagar – which have not been regularized.

Constitutional provision that justify their Discrimination

As per Article 35A, Jammu and Kashmir legislature has a right to decide who the 'permanent residents' of the state are. It enables the state assembly to give the rights and privileges – otherwise enjoyed by all citizens of the country – only to those who are granted the 'permanent resident' status.

These include the right to acquisition of property, right to public sector jobs, right to participate in the panchayat, municipalities and legislative assembly elections, right to take admission in government-run technical education institutions, state-sponsored scholarships and other public aid and welfare. However, those who are not considered 'permanent residents' are denied these rights, allowing legally-sanctioned discrimination.

Article 35A also safeguards any law of the state from legal challenge that confers permanent residents with special rights and privileges. Section 8 of the Jammu and Kashmir constitution clearly states:

"Nothing in the foregoing provisions of this part shall derogate from the power of the state legislature to make any law defining the classes of persons who are, or shall be, permanent residents of the state".

The rights being violated

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16: Equality of opportunity in matters of public employment.

Article 23: Prohibits human trafficking, beggary and forced labour. (Yet, generations of Valmikis are being forced to remain sweepers despite being capable and qualified enough for higher posts.)

Disabilities and Problems faced by Valmiki community in Jammu and Kashmir

1. Ownership of Property

Valmiki people in Jammu and Kashmir, being non-permanent residents, remained barred from purchasing any land or owning any property permanently in the State of Jammu and Kashmir. Many of them possess land allotted to them by the State, most of them are in the possession of State land occupied by them on their own and some possess land purchased by them from local residents. They have their houses on their lands, most of which are semi-pucca structures. However, none of them has the legal documents pertaining to the land in possession. Neither of those who are allotted the State land nor do those who have occupied

the State land have the legal documents of such land. The personal affidavits on which the land stands purchased by those living in Preet Nagar, Qasim Nagar, Purkhu and Kot Bhalwal also do not hold good in law. As such the occupation on the basis of such affidavits continues to remain unauthorized in the eyes of law due to which the Valmikis continue to reel under the sense of insecurity. The Valmikis came to J&K in 1957 and their population has grown ever since, their number from 272 has currently grown into few thousands. The legal heirs of these Valmiki Safai Karamcharis are currently living in almost six decade old structures. The situation is such that the space allotted to such sweepers is a very limited one, the legal heirs of second, third and fourth generations of such sweepers have built multistoried structures over small pieces of land held by them as they could have only the vertical divisions of their houses on the enlargement of their families due to their inability to purchase any more land in the State of Jammu and Kashmir being non-permanent residents of the State^[6]. Their colonies have become slums because of zero facilities of development. Those legal heirs of such 272 sweepers, who wished to purchase and acquire more land to accommodate and settle their families comfortably, could not do so because their right to acquire and hold property was taken away by the State legislations. All land legislations of the State denied this right to them as under those laws this right was vested only in the permanent residents of the State. The Jammu and Kashmir Property Rights to Slum Dwellers Act, 2012 also provided relief of property rights to slum dwellers, but 272 sweepers of Valmiki community and their legal heirs being non-permanent residents were not entitled to any such rights^[7]. Thus, the State land legislations completely denied the right to acquire and hold any immovable property in the State to the members of the Valmiki community.

2. Education

Though literacy rate is low in Valmiki Community, but with the passage of time, a change has reflected in the lives of Valmiki youths and their attitude towards education. Children of Valmikis are more inclined towards study and especially the youth are more interested in higher studies. Many of them have attained higher education. However, the children of Valmiki community residing in J&K were denied admission into professional and technical courses such as B.Ed., MBBS, BE, etc, because of non-grant of the Permanent Resident Certificates to them. Due to the same reason, they were not considered entitled to the State/ Central scholarships^[8].

3. Employment

In their place of origin (Punjab), the occupation of the families of the Valmikis was farming. However, in the State of J&K, they were engaged as the Safai Karamcharis. In spite of living in different areas of the State for the last 62 years, Valmikis were debarred from applying for any government job, except sweepers, in J&K because they were denied Permanent Resident Certificates¹². Their children could study up to the graduation/ University level but were not eligible to apply for government jobs in the State. Even though they were well qualified and fulfilled all the necessary conditions and criteria, they were denied any State Government job other than that of a sweeper. Well deserving children of Valmiki community were not given

opportunity to join any professional course like MBBS, B.Tech, etc. in the State of Jammu & Kashmir even though their parents had been serving the State for the past six decades. Presently in Jammu and Kashmir, the Valmikis are predominantly in the occupation of Safai Karamcharis with a few of them in some other menial jobs. Most of them are working as Safai Karamcharis in Jammu Municipal Corporation where they have been engaged in the work comprising manual scavenging, septic tank cleaning and sewer line cleaning. Nearly 1/3 of them are working as Safai Karamcharis on contractual basis in the Jammu Municipal Corporation, some against the posts of retired Safai Karamcharis, a few are in private service, i.e., working in call centres, as helpers in beauty salons and shops and a few are driving auto- rickshaws owned by local residents. Valmiki youth today is reluctant to join traditional sweeper and scavenging jobs. However, the requirement of Permanent Resident Certificate from them remained a stumbling block in the realization of their dreams.

Radhika Gill, a Valmiki girl, is residing in the State of Jammu and Kashmir since her birth. She is a sports woman and an excellent athlete. She is a rank holder in games like „Shot Put“ and „100 mtr Race“ in 14th State Athletic Championship of Jammu and Kashmir. She has passed her secondary education and wants to join Indian Army. She is qualified for Grade III and Grade IV jobs in State services. In 2016, Radhika Gill applied for the post of constable (GD) in CAPFs (Central Armed Police Forces) in Open Recruitment Rally, 2016-17. She was issued Admit Card for appearing in/going through the test at the Recruitment Centre.¹³ She qualified tests prescribed for the post.¹⁴ However, her candidature was rejected on the ground of non-production of the Permanent Resident Certificate.¹⁵ Radhika Gill filed a writ petition in the Supreme Court of India¹⁶ contending that in spite of having necessary qualifications for applying to the Government post she was denied the same for non-production of the Permanent Resident Certificate. She was told that she could apply only for the post of Sweeper in Jammu and Kashmir^[9].

Eklavya, born in Jammu, belongs to the Valmiki community and holds a Bachelor's Degree in Arts and is also pursuing the Masters in Political Science. He was qualified enough to apply for admission in B.ED course. But merely because he was not covered under the definition of Permanent Resident of Jammu and Kashmir, he was considered ineligible to apply for admission in the said course in the colleges funded by the State. Also, he could not apply for any Government job under the State services or in the State's instrumentality. This was the position of children of Valmikis even after residing in the State of J&K since birth. The youth of Valmiki Community were continually denied the employment opportunity under the State Government services and its instrumentalities. Effect of such denial has been that the young generation of this community was forced to end its career in the job of sweeper only.

4. Promotions of Valmikis in the Job of Safai Karamchari

The irony was that the local Safai Karamcharis working in the Jammu Municipal Corporation who held Permanent Resident Certificates were entitled to promotions on acquiring necessary educational qualification but those Valmiki Safai Karamcharis who were brought to the State in 1957 were not entitled to the promotions, even after serving

the State on the request of the State Government itself for almost six decades, because the Government of Jammu and Kashmir did not recognize them as the Permanent Residents of the State. However, the Valmiki Safai Karamcharis working in the Jammu municipality, though qualified for further promotions, had to continue only as sweepers. They were not considered for promotions due to non-grant of Permanent Resident Certificates to them. They worked in the field as Safai Karamcharis up to In-charge Supervisor but they retired without any further promotion. They retired in the pay scale of a Safai Karamchari.

5. Pension Benefits to Valmikis

As far as the pensionary benefits are concerned, in 1995, the Safai Karamcharis of Valmiki community employed in local bodies/municipality of the State who retired after 1988 and before 1998 were given the same pensionary benefit as the local PRC holder Safai Karamcharis. This was one time exemption given to the Safai Karamcharis to make them eligible for benefit of pension under Article 240-AAA of the J&K Civil Service Regulations. Those who retired from the regular job of Safai Karamcharis from the Municipal Corporation, Jammu received pensions after retirement. Thus though the pension was paid to them, but they joined as sweepers (Safai Karamcharis) and also retired as sweepers.

6. Voting Rights

Another important implication of not having PRC for the Valmikis was that the members of their community could not vote in the State Assembly or Municipal elections, they could vote only in the Lok Sabha elections. Such non-participation in elections at State level resulted into non-representation of these Valmikis in State Legislature and urban local bodies, in effect rendering this downtrodden community as voiceless class of citizens^[10].

7. Reserved Category Benefits

The Valmiki community in the State of Jammu and Kashmir consists of the Hindu Scheduled Caste people. However, there was no mention of the Valmiki community in any caste based census of the State. Though the Valmiki community belongs to the Scheduled Caste category in the rest of India but they were not issued Scheduled Caste Certificates in J&K for the reason that they did not have the Permanent Resident Certificates of Jammu & Kashmir. This discrimination deprived their families to avail any benefit of the Scheduled Caste category to which they were entitled under the policy of the Central Government or the State Government^[11].

In January 2016, a delegation of Valmikis approached the office of the District Development Commissioner, Jammu in the matter of Caste Certificates with the plea that Caste Certificates were earlier being issued to them but later were declined on the ground that such certificates may be used by them for employment purpose. The Valmikis did not have the Permanent Resident Certificates, so there was no possibility of Caste Certificates to be used by them for State employment. The then Deputy Commissioner pointed out that though as per SRO 294, Rule 35-B, the benefit of caste could be availed by a candidate subject to the condition that he was a Permanent Resident of the State, however, the exemption at the end of that Rule provided that sweepers are exempted from producing State Subject Certificates.

He had observed that there was no harm in issuing the Caste Certificates on the prescribed format under SRO 294 which could be used for employment as sweeper in Municipal Corporations, medical colleges and other places for recruitment to the post of Sweeper and for availing other benefits under various welfare schemes of the Central and the State Government. He had advised the Tehsildar Jammu to issue the Caste Certificates to the Valmikis subject to the fulfilment of other formalities and ascertainment of the caste credentials of the Valmikis. Thereafter 10-12 Caste Certificates were issued to the Valmikis. Later the process was halted. They again gave the representation to the Deputy Commissioner, Jammu for the issuance of Caste Certificates to them on which the Deputy Commissioner, Jammu issued instructions to the Tehsildar concerned to take necessary action. No further progress took place in the matter. Even those who were issued the Caste Certificates under SRO-294 complain that derogatory word was used to denote their caste (instead of „Valmiki“) in the certificates issued to them. At a time when in the rest of India, steps are being taken to stop the use of derogatory connotations for the Scheduled Castes, it is not understood why the State of Jammu and Kashmir used such expression for the Valmikis.

8. Basic Amenities

Ration Card, LPG, Electricity and Water Supply

Prior to the implementation of National Food Security Act, 2014 (NFSA), the Valmikis were holding ration cards on the basis of exemption from producing the Permanent Resident Certificates. On the basis of such exemption, the ration cards were issued to them by the CAPD (Consumer Affairs and Public Distribution Department). However after the implementation of NFSA, they were asked to produce the Permanent Resident Certificate for the issuance of new ration cards under NFSA. Representation in this regard was made by the Valmikis to the Director CAPD Jammu. A deputation of Valmikis led by their President also met the then Speaker, J&K Legislative Assembly, Sh. Kavinder Gupta and apprised him of this problem who requested the Director CAPD, Jammu to get the ration cards issued to the Valmikis on priority. The matter was also represented by the Valmikis to the Chairman, District Level NFSA Committee (the then Deputy Commissioner Jammu) who directed the Additional Deputy Commissioner for examination and necessary action in the matter. In pursuance to this, they were issued the ration cards in relaxation of the Permanent Resident Certificates.

Regarding electricity, they do have some kind of electricity connection in their houses, though not regular in all cases. For long since their coming to the State of Jammu and Kashmir, they had been having the Electricity connections without meters. In the Valmiki Colony, Gandhi Nagar, they have two transformers, each 250 KV, one opposite Valmiki Temple and another in the graveyard. However, there is no proper networking of electrical wires in their colonies. The irregular network of wires forming meshes of wires hanging in the lanes of their colonies is spread throughout their colony posing the greatest danger to their lives. The same is the position in their other colonies. Some twenty years back, due to a rule made by the State Government that the salary of a State Government employee will be released only on the production of the Electricity bill of his/her house, the Valmikis working in Municipal Corporation were allowed to have the electricity meters installed in their houses. Prior

to that the electrical connections were issued to the Valmikis by the State Power Development Department only on the introduction of the President of the Valmiki Mohalla Trust. In 2018, from September 2018 to December 2018, under the “Saubhagya” Scheme or the Pradhan Mantri Sahaj Bijli Har GharYojana, 100 electrical meters were installed in the houses in the Valmiki Colony, Gandhi Nagar. Regarding water supply, they have water connection to their houses from the tube- well. In the Gandhi Nagar Colony, there is a tube-well in their colony/area which caters to the Gandhi Nagar and the Shastri Nagar areas. They don’t have any knowledge whether any written order was issued for supply of water to their houses from that Tube-well, but the State PHE Department has laid down a network of pipes from that tube-well to their houses.

Condition of Roads and Streets

The colonies of the Valmikis/ their houses exist within/ adjoining the colonies of the local residents and the road network is common to all of them. However, the streets of their colonies are not properly made and maintained by the State as in the case of the colonies of the local residents. The condition of the streets of the colonies of the Valmikis is appalling. In rainy season, the lanes in their streets get blocked and the rainy water enters into their houses causing huge loss to many of them. The Nullah passing through the Gandhi Nagar Colony of Valmikis is also not cleaned, and remains a continuous source of diseases for them.

Health Measures

The facility of the State (now UT) hospitals has always been available to them, however, they do not have dispensaries in their localities. In Valmiki Colony, Gandhi Nagar, a dispensary was opened in the year 1984-85. It was opened in the premises the existing temple area) which was later made into the dispensary and the temple was shifted to the other part of the premises where it presently exists. However, the dispensary was closed in about 1 and a 1/2 years of its opening due to non-regularity of the doctors.

1. Facility of Bank Loans

The Valmikis working in the Municipal Corporation, who have a regular source of income, were granted the loan by the bank whereas others did not get the loan.

2. Welfare Schemes

The Valmikis in the State of J&K also remained deprived of benefits of many centrally sponsored and State Welfare schemes for not being the permanent residents of the State. For the same reason, they have faced the denial of the benefit of many welfare schemes meant for the Scheduled Castes in the State as the State did not issue them the Scheduled Castes (SC) certificates. No welfare schemes were initiated specifically for them by the State or the Central Government.

Socio-Political status of Valmiki Dalits after Abrogation of 370 and 35A

With the scrapping of Article 370 and Article 35-A, the entire Indian Constitution, as amended till date plus all other central laws get automatically enforced in Union territories of J&K and Ladakh and all residents living there will be subjected to same laws as any other citizen living anywhere else in the country. The revocation of provisions of Article 370 has given hope to over 10,000 Valmiki community

members, who live on the land allocated to their ancestors brought from Punjab by J&K government in 1957 but was denied state's citizenship and entailing rights^[12]. After the scrapping of Article 370, Valmikis can now purchase land and apply for jobs in J&K, besides, they can also contest elections^[13]. The Valmikis can also now change their occupation, as prior to the abrogation they were engaged in sanitation work but now, they have domicile certificate having same rights as other domiciles of UT of Jammu and Kashmir. They are eligible for government jobs, right to vote, can seek reservation in educational institutions, right to get educational scholarship, ownership rights, facility of bank loan etc. Their fundamental rights get restored and now having political rights i.e Right to vote, right to contest elections, to form political parties and equal participants in decision making. Economic condition of Valmikis has improved due to social security schemes that are launched by central government for their betterment. Now they can get loans from banks, they have right to work (MGNREGA). Valmikis getting equal rights and benefits of welfare schemes as launched by UT Administration as they are living dignified life.

Conclusion

As this paper analyses, the actions of the government to abrogate Article 370 and 35A leads to the Socio-political and economic upliftment in the life of Valmiki Dalits. They get citizenship of UT of Jammu and Kashmir, which results into the recognition of their identity. Sixty-three years after their arrival in Jammu and Kashmir as “sanitary workers” by State reorganization act of 2019, members of Valmiki community are finally hopeful of a bright future for their children as they are being granted domicile certificates. The revocation of provisions of Article 370 of the Constitution has given a new lease to Valmiki community members.

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