STATUS OF THE PERMANENT RESIDENTS OF KASHMIR
CHAPTER 5:
STATUS OF THE PERMANENT RESIDENTS OF KASHMIR

5.1 KOSHURS – THE PEOPLE OF KASHMIR

The people of Jammu and Kashmir, better known as Koshurs, are also referred to as Mulkis, State Subjects or Permanent Residents. They enjoy a special status within the Indian Union compared to the residents of the other States. This special status acts as a legal and social barrier between the people of the State of Jammu and Kashmir and the people of the rest of India. The special status of the Permanent Residents of Kashmir is one of the reasons for which the complete integration of Kashmir with India has not been possible and is one of the causes for resentment in the minds of the rest of the Indian population in general. Though this special status was guaranteed to the people of the State due to various socio-political factors embedded in the State’s history, its existence some how contradicts the observation made by the Supreme Court of India in Indra Sawhany’s case, where a Constitution Bench of the Apex Court was pleased to observe that, ‘India has one common citizenship and every citizen should feel that he is Indian first irrespective of any other basis’.¹ A similar view has also been expressed by the Supreme Court of India in Raghunathrao Ganapatrao v. Union of India where the Supreme Court was
pleased to observe that in a country like ours with so many disruptive forces of regionalism, communalism and linguism, the unity and integrity of India can be preserved only by a spirit of brotherhood. India has one common citizenship and every citizen should feel that he is Indian first irrespective of any other basis.²

The division between the people of the State of Jammu and Kashmir and the rest of India is artificial and since time immemorial the State of Jammu and Kashmir been considered to be an integral part of India. It has been said that the “Country which lies to the South of the Himalayas and North to the Ocean is called Bharat and the Bharatiyas are the people of this country”.³ According to this ancient definition of ‘Bharat’ and the ‘Bharatiyas’ there can be no doubt that the people of India and Kashmir are one and the same and share a common ancestry. It has also been pointed out that the people of Kashmir were originally Hindus like the rest of the Indian population and that the Princely States (of which Kashmir is one) geographically formed a part of India.⁴ In ancient times the territory of India stretched beyond the Indus valley and included parts of Tibet in the North. Presently the State is wedged between India and Pakistan, which prior to partition in 1947 was also a part of India. Therefore it is clear that

1 Indra Sawhany v Union of India, AIR 1993 SC 477 (9 Judges Bench)
3 Translated from the Vishnupurana Ch. 3-1
both historically and geographically Kashmir was and is a part of India and
the people of Kashmir were no doubt Bharatiyas or Indians.

5.2 HISTORY OF THE PEOPLE OF KASHMIR¹: A HISTORY OF
OPPRESSION

The history of the people of Jammu and Kashmir is a history full of
oppression and exploitation. It was for this reason that certain rights and
privileges were guaranteed to the Mulkis or the Permanent Residents of the
State. The Mulkis or Permanent Residents of the State of Jammu and
Kashmir enjoyed these rights and privileges both prior to independence and
also after independence. The object of retaining these rights and privileges
even after independence is to protect the people of the State of Jammu and
Kashmir from further oppression and exploitation.

In 1750 started Afghan rule, which was a reign of terror. In order to
relieve the people of Kashmir from the tyranny of the Afghan Rulers,
Maharaja Ranjit Singh in 1819, sent Raja Gulab Singh to the Kashmir
valley and defeated the Afghan Governor. Kashmir remained under the
control of the Sikh Durbar from 1819 till 1846, when the British ultimately
defeated the Sikhs. The Sikhs wanted Raja Gulab Singh to lead them in the
battle against the British but Raja Gulab Singh delayed his assistance and

¹ See – Chapter 2.
deliberately allowed the Sikhs to be defeated. By doing so, Raja Gulab Singh successfully won the favour of the British and on 16th March 1846, by the Treaty of Amritsar the British Government transferred the entire State of Jammu and Kashmir to Raja Gulab Singh. The said treaty nowhere mentioned what would be the rights and interests of the millions of people residing in the State. The said treaty established Dogra rule in the State, which was harsh and discriminatory against the Muslim majority population. Between 1889 and 1905, there was an onslaught of outsiders into the State. This, coupled with continued discrimination of the Muslim population, lead to an agitation with a slogan, “State for State’s People”. This agitation later took the shape of a National Struggle and ultimately brought an end to Dogra rule in the State of Jammu and Kashmir.

On attaining independence, British India was divided into two dominions of India and Pakistan. Maharaja Hari Singh, on 26th October 1947, signed the Instrument of Accession with India. Though the State’s accession was done in accordance with the provisions of the Government of India Act 1935 and the Indian Independence Act 1947, the future of the State of Jammu and Kashmir was once again decided without paying any heed to the hopes and aspirations of the people of the State. After the signing of the Instrument of Accession by Maharaja Hari Singh, Lord Mountbatten wanted that the people of the State should decide the ultimate future of the state. The United Nations in 1948 also recognized the right to
have a peaceful plebiscite in order to decide the future of the State. However for various reasons the people of Jammu and Kashmir, till date, have been deprived of their right to a plebiscite.

A study of Kashmir’s history clearly shows that the hopes and aspirations of the Kashmiri people have been throughout totally ignored. Events such as signing of the Treaty of Amritsar and signing of the Instrument of Accession are events that determined the future of the State without paying any heed to the wishes of the people of Jammu and Kashmir. Though these events were in accordance with the settled principles of law prevailing at that time, they definitely had a traumatic effect on the minds of the people of Jammu and Kashmir.

5.3 STATUS OF THE PERMANENT RESIDENTS PRIOR TO ACCESSION

If Afghan rule in the Valley was a reign of terror, then Dogra rule was a reign of discrimination mainly perpetrated against the Muslim majority population of the State. The armed forces in the State are an example of such discrimination. The army consisted of mainly Dogras, Dards and Punjabi. Kashmiris in general were disqualified from military service. Maharaja Pratap Singh, like his father, Maharaja Ranbir Singh continued to exclude Kashmiris from both the Army and the civil services. This deliberate and continued exclusion of Kashmiris from serving in high
posts of both the military and civil services lead to the growth of dissatisfaction in the minds of the Kashmiri people. Discrimination against the Muslim majority continued during the reign of Maharaja Hari Singh. All official high posts were still occupied mainly by Dogras and Rajputs and the State Army comprised only of Dogras and Dards. Kashmiris were intentionally excluded from the Armed Forces and under the State’s Arms Act only Rajputs and Dogras were permitted to own and use firearms.

Between 1889 and 1905 Maharaja Pratap Singh was temporarily dispossessed from the throne. During this period there was a great influx of outsiders from the neighbouring states into the State of Kashmir. Many of the outsiders were appointed in a large number of administrative posts. This onslaught of outsiders into the State lead to an agitation with a slogan, “State for State’s People” that took the shape of a National Struggle. These agitation compelled Maharaja Hari Singh to issue an order defining the term ‘Mulkis”, i.e. the State Subjects. Under the said Order the State Subjects would be preferred over outsiders in cases of employment in the Government services. The said order also provided that outsiders, from now onwards, would be unable to purchase immoveable property within the State of Jammu and Kashmir. On 20th April 1927 the Maharaja issued a notification being No. I-L/84, defining the State Subjects. This regulation was meant to protect the people of Jammu and Kashmir from outsiders
coming from the neighbouring State’s, but discrimination within the State still continued, especially against the Muslim majority.

Another example of discrimination in the State was evident from the State’s election laws. The people of the State hardly had any right to vote and the election laws were such that even during the reign of Maharaja Hari Singh voting rights were restricted to only 3% of the population. Only literate persons having an annual income of Rs.400/- or more were permitted to vote. Women and illiterates were totally debarred from exercising any franchise. By Regulation No. 1 of Samwat 1991 (1934 AD) a Legislative Assembly for the State called the Praja Sabha consisting of a total of 75 members was constituted of which 33 members were elected members. Of the elected 33 elected members 21 were Muslims, 10 were Hindus and 2 were Sikhs. However, Maharaja Hari Singh further issued a proclamation on 11th February 1939 increasing the number of elected members of the Praja Sabha from 33 to 40. The total number of members being 75, the Praja Sabha now had an elected majority over the previous official majority. On further demand of the National Conference, on 7th September 1839, Maharaja Hari Singh enacted the Jammu and Kashmir Constitution Act 1939 [Act XIV of Samwat 1996 (1939AD)], which made major alterations guaranteeing further opportunity to the people to participate in the administration of the State. However, the Jammu and
Kashmir Constitution Act 1939 did not fulfill the demand for Representative Government with an elected legislature.

5.4 RIGHTS OF THE PERMANENT RESIDENTS AFTER ACCESSION

After accession the rights of the Permanent Residents of the State of Jammu and Kashmir continued to be protected to a large extent and they had many of the rights and privileges, which they were enjoying prior to independence. Prior to independence the State of Jammu and Kashmir was an independent State. Even after accession the permanent residents of the State of Jammu and Kashmir continued to enjoy various rights and privileges. The Constitution (Application to Jammu and Kashmir) Order, 1950\(^1\), issued by the President of India, mainly dealt with the items specified in the Instrument of Accession. Under the said Order, Part III of the Constitution of India, 1950, dealing with Fundamental Rights was not made applicable to the Permanent Residents of the State of Jammu and Kashmir. Though the people of Kashmir were deprived of the fundamental rights, enjoyed by the citizens of India, the permanent residents of the State of Jammu and Kashmir continued to enjoy certain rights and privileges guaranteed to them under the State Subject Act 1927 read with Notification of 1932\(^2\). The Constitution of Jammu and Kashmir Act 1939 (Act XIV of

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\(^1\) Later repealed by the Order of 1954 dated 14\(^{th}\) May 1954.
\(^2\) Notification No. I-I/84, dated 20\(^{th}\) April 1927 read with State Notification No. 13/L, dated 27\(^{th}\) June 1932.
1996) also did not provide for fundamental rights and legally speaking the people of the State virtually had no fundamental rights at all. Some provisions of Part III of the Constitution of India 1950 were made applicable to the State in 1952 by the signing of the Delhi Agreement. Ultimately, by the Constitution (Application to Jammu and Kashmir) Order 1954 dated 14th May 1954, Sections 2(3) and 2(4) of the Order of 1954 made Part II of the Constitution of India dealing with Citizenship and Part III of the Constitution of India dealing with Fundamental Rights applicable to the State of Jammu and Kashmir. Section 2(3) of the said Order made Part II of the Constitution applicable to the people of the State of Jammu and Kashmir from the date of commencement of the Constitution of India. The provisions of Part II of the Constitution of India came into force on 26.11.1949 all over India except the State of Jammu and Kashmir where it was made effective on and from 26.1.1950.2

On 26th January 1957 the Constitution of Jammu and Kashmir 1957 came into force. The said Constitution does not contain any chapter dealing with fundamental rights of the permanent residents of the State. However by virtue of the Order of 1954 the permanent residents of the State were already enjoying all the fundamental rights secured to the citizens of India under Part III of the Indian Constitution, subject to certain modifications

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1 See - Constitution (Application to Jammu and Kashmir) Order 1954
and exceptions. Sections 6 to 10 contained in Part III of the Constitution of Jammu and Kashmir, 1957\(^1\) separately deals with the Permanent Residents. The Sections are set out below:

**Section 6: Permanent Residents:** (1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the fourteenth day of May 1954:

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

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

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

(3) in this section, the expression “State Subject of Class I or of Class II” shall have the same meaning as the [State Notification No. I-L/84 dated the twentieth April, 1927, read with State Notification No. 13L dated the twenty-seventh June, 1932].

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Section 7: Constitution of references to State Subjects in existing laws: Unless the context otherwise requires all references in existing law of hereditary State Subjects or to State Subject of Class I or of Class II or of Class III shall be construed as references to permanent residents of the State.

Section 8: Legislature to define permanent residents: 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.

Section 9: Special provision for Bill relating to permanent residents: A bill making provisions for any of the following matters, namely: -

(a) defining or altering the definition of the classes of persons who are or shall be, permanent residents of the State;

(b) conferring on permanent residents any special rights or privileges;

(c) regulating or modifying any special rights or privileges enjoyed by permanent residents,

shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that House.
Section 10: Rights of the permanent residents: The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.

5.5 DUAL CITIZENSHIP IN CASE OF THE PERMANENT RESIDENTS

In a federal State there are normally two sets of Government – a national government and a regional government, and the citizens in a federal state hence normally enjoys a dual or double citizenship owing allegiance to both the national and the regional governments. In the United States of America, in addition to State citizenship, which is determined solely by residence, every person has a federal citizenship, which can neither be denied nor minimized. The 14th Amendment of the Constitution of United States of America clearly lays down that all inhabitants of the U. S. A. are primarily federal citizens and are state citizens only secondarily. On the contrary citizenship in the Swiss Federal Republic depends primarily on citizenship of a Canton. Any person acquiring citizenship of a Canton automatically becomes a citizen of the Swiss Republic. Here Cantonal citizenship is primary and federal citizenship is secondary. In Germany federal citizenship was given priority over state citizenship and in the Soviet Union citizens are primarily Soviet citizens and were local

1 An Introduction to Politics – Shibnath Chakraborty – fifteenth edition – Page II 117
2 See - Article XIV of the Amendments to the Constitution of the USA
3 An Introduction to Politics – Shibnath Chakraborty – fifteenth edition – Page II 117
citizens only for the purpose of elections. But the Indian Constitution, like the Canadian, does not introduce any dual citizenship, viz, - the Citizenship of India (Article 5), and birth or residence in a particular State does not confer any separate status as a citizen of that State.\(^1\) Every citizen has the same rights, privileges and immunities of citizenship, no matter in what State he resides.\(^2\)

Part II of the Constitution of India 1950, deals with citizenship.\(^3\) Citizenship in India is extremely unitary and centralized. In India, no other citizenship except Indian citizenship is recognized by the constitution.\(^4\) For this reason under Article 11 of the Constitution of India 1950, only Parliament has power to regulate the right of citizenship by law.\(^5\) The concept of dual citizenship is neither honoured under the Articles of the Constitution, nor under the Citizenship Act 1955 nor under any of the provisions of the Indian Laws.\(^6\) It has been held in K. L. Modi v. Union of India\(^7\) that dual citizenship does not seem possible under Indian laws. The system of single citizenship has been adopted in the Indian Constitution in order to avoid any scope of discrimination between the residents of the various states of the Indian Union. In countries having double citizenship

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\(^3\) See - Part II of the Constitution of India 1950.
\(^4\) An Introduction to Politics – Shibnath Chakraborty – fifteenth edition – Page II 118
\(^5\) See - Article 11 of the Constitution of India 1950.
\(^7\) AIR 1970 Delhi 76
each state may discriminate against the citizens of other states.\(^1\) However in the case of the permanent residents of the State of Jammu and Kashmir an exception to India’s concept of single citizenship has been created. Part II of the Constitution of India dealing with Citizenship was not made applicable to Jammu and Kashmir State.\(^2\) The Union Parliament had no power to make laws for the State on citizenship.\(^3\) The provisions of the State’s Constitution read with the Constitution of India 1950, would imply that the permanent resident of the State of Jammu and Kashmir enjoy a type of double citizenship. On one hand, Part III of the Constitution of Jammu and Kashmir 1957, dealing with the Permanent Residents of the State, guarantees various rights and privileges to the permanent residents of the State. On the other hand the permanent residents of the State enjoy all the rights conferred by the Constitution of India 1950, on the citizens of the Indian Union. By this unique position, an important but very controversial exception has been made through the Constitution of India for the permanent residents of the State of Jammu and Kashmir.\(^4\) It has been pointed out that the citizens of India are not ipso-facto the citizen of Jammu and Kashmir.\(^5\) This has been a matter of irritation among the people of the country in general.\(^6\) The theory that the permanent residents of the State of

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\(^1\) An Introduction to Politics – Shibnath Chakraborty – fifteenth edition – Page II 118


Jammu and Kashmir enjoy dual citizenship has been refuted with the logic that Part III of the Constitution of Jammu and Kashmir 1957 abolishes the separate citizenship of the State¹ and no longer have the residents of Jammu and Kashmir a separate citizenship distinct from Indian Citizenship.² The Indian citizenship Act 1955,³ enacted by Parliament, in exercise of the powers given to it under Article 11 of the Constitution of India 1950, also extends to the State of Jammu and Kashmir. However there is no doubt that the permanent residents enjoy certain special privileges that resemble double citizenship. Even in the case of the State of Jammu and Kashmir, Article 11 of the Constitution of India 1950, that states that only Parliament has power to regulate the right of citizenship by law,⁴ can do so subject to the provisions of the Constitution of Jammu and Kashmir.

5.6 APPLICABILITY OF FUNDAMENTAL RIGHTS TO THE PERMANENT RESIDENTS

Under the Constitution (Application to Jammu and Kashmir) Order, 1950, Part III of the Constitution of India 1950 dealing with Fundamental Rights and Part IV of the Constitution of India 1950 dealing with Directive Principles, were not applicable to the State and Supreme Court of India

³ See Indian Citizenship Act 1955 (Act 57 of 1955)
⁴ See - Article 11 of the Constitution of India 1950.
obviously had no jurisdiction within the State in matters relating to such rights. For some time of course there was no such thing as “fundamental rights” in Kashmir.\(^1\) The Constitution of Jammu and Kashmir Act 1939 (Act XIV of 1996) did not provide for Fundamental Rights to the State Subjects. Some provisions of Part III of the Constitution of India 1950 were made applicable to the State in 1952 by virtue of the Delhi Agreement. The Constitution (Application to Jammu and Kashmir) Order 1954 came into force on 14\(^{th}\) May 1954. Sections 2(3) and 2(4) of the Order of 1954\(^2\) made Part II of the Constitution of India dealing with Citizenship and Part III of the Constitution of India dealing with Fundamental Rights applicable to the State of Jammu and Kashmir. However, the State legislature would have power to make special provisions for the permanent residents of the State and for that purpose Section 2(4)(j) of the Order of 1954 inserted Article 35A in the Constitution of India 1950.\(^3\) Discriminatory and special rights as regards employment, acquisition of property and settlement have been conferred on permanent residents of the State by inserting new Article 35A in the Constitution.\(^4\) Article 35A reads as follows: -

**ARTICLE 35A:** Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and

\(^2\) See - Constitution (Application to Jammu and Kashmir) Order 1954
\(^3\) See – Article 35A – Constitution of India 1950.
\(^4\) The Dilemma of Article 370 – 96 CWN 93
Kashmir, and no law hereafter enacted by the Legislature of the State, -

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

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

(i) employment under the State Government;

(ii) acquisition of immoveable property in the State;

(iii) settlement in the State; or

(iv) right to scholarships and such other forms of aid as the State Government may provide;

shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens on India by any provisions of this part.

Though fundamental rights were made applicable to the permanent residents of the State there are some exceptions and variations to their applicability. Right to Equality is enshrined in Articles 14 to 18 of the Constitution of India 1950. Article 14,\(^1\) dealing with equality before law and Article 15,\(^2\) dealing with prohibition of discrimination on grounds of

\(^1\) See – Article 14 of the Constitution of India 1950
\(^2\) See – Article 15 of the Constitution of India 1950
religion, race, caste, sex or place of birth both apply to the State of Jammu and Kashmir. However, as there are no Schedule Tribes in the State of Jammu and Kashmir, Article 15(4), to that extent has no application in the State of Jammu and Kashmir. Article 16,\(^1\) dealing with equality of opportunity in matters of public employment also applies to the State of Jammu and Kashmir with the exception of clause (3), which provides that Parliament shall also have power to make laws prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment. In the case of Jammu and Kashmir this power has been vested in the in the State Legislature by virtue of Article 35A of the Constitution of India.\(^2\) Again Articles 17\(^3\) and 18\(^4\) dealing with abolition of untouchability and abolition of titles apply to the State of Jammu and Kashmir without any modification. Right to Freedom is enshrined in Articles 19 to 22 of the Constitution of India 1950. In 1950, under Article 19\(^5\) of the Constitution of India 1950, the citizens of India enjoyed the following seven freedoms:

(a) Right to freedom of speech and expression

(b) Right to assemble peaceably and without arms

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\(^1\) See – Article 16 of the Constitution of India 1950
\(^2\) See – Article 35A of the Constitution of India 1950
\(^3\) See – Article 17 of the Constitution of India 1950
\(^4\) See – Article 18 of the Constitution of India 1950
\(^5\) See – Article 19 of the Constitution of India 1950
(c) Right to form associations or unions
(d) Right to move freely throughout the territory of India
(e) Right to reside and settle in any part of the territory of India
(f) Right to property
(g) Right to practice any profession, or to carry on any occupation, trade or business.

However, by virtue of the Constitution (44th Amendment) Act 1978,¹ the right to property ceased to be a fundamental right with effect from 20th June 1979. These rights are not available to a person who is not a "citizen of India".² The Legislature has the right to impose restrictions on the freedoms guaranteed under Article 19 under certain conditions. The 'sovereignty and integrity of India' was inserted as a ground of restriction by the Constitution (16th Amendment) Act 1963,³ with effect from 6th October 1963. The object was to enable the State to combat cries for secession and the like from organizations such as the Dravida Kazhagam in the South and the Plebiscite Front in Kashmir.⁴ Article 19 of the Constitution of India 1950, applies to the permanent residents of the State of Jammu and Kashmir with the primary difference that in the case of the permanent residents, the freedoms of assembly, association, movement,

¹ See the Constitution (44th Amendment) Act 1978.
² Hans Muller v. Supdt. -(1955) 1 SCR 1285 (1289)
³ See the Constitution (16th Amendment) Act 1963.
residence and property shall be subject to an additional ground of restriction, being the 'Security of State'. This special provision was made in view of the peculiar circumstance in which the State is placed. Article 20, dealing with protection in respect of conviction for offences are available to persons residing in any part of India irrespective of his nationality. Article 21, dealing with protection of life and personal liberty also applies to the people of the State of Jammu and Kashmir without any modification or variations. Article 22, dealing with protection against detention in certain cases applies to the State of Jammu and Kashmir with the exception that the power of legislation with regards to preventive detention shall belong to the State Legislature and not Parliament. Right against exploitation is enshrined in Articles 23 and 24 of the Constitution of India 1950. The protection of Article 23 is available to both citizens as well as non-citizens. The Supreme Court while dealing with Article 24, in the case of Labours Working on Salal Hydro Project v. State of Jammu and Kashmir, stated that construction work is a hazardous employment and children below the age of 14 cannot be employed in the work. Right to freedom of religion and cultural and educational rights enshrined in

2 See – Article 20 of the Constitution of India 1950
3 See – Article 21 of the Constitution of India 1950
4 See – Article 22 of the Constitution of India 1950
5 See – Article 23 of the Constitution of India 1950
6 See – Article 24 of the Constitution of India 1950
8 AIR 1984 SC 177.
Articles 25 to 30\(^1\) of the Constitution of India 1950 apply to the State of Jammu and Kashmir without any additions or alterations.

The right to property guaranteed under Articles 19(1)(f) and 31 of the Constitution, ceased to be a fundamental right by virtue of the Constitution (44\(^{th}\) Amendment) Act 1978,\(^2\) with effect from 20\(^{th}\) June 1979. However the Constitution (44\(^{th}\) Amendment) Act 1978, did not totally erase the said right from the Indian Constitution and inserted the right to property as a constitutional or legal right guaranteed under Article 300A\(^3\) of the Constitution of India. This Article is an exact reproduction of the repealed Article 31(1).\(^4\) However all the other Clauses of Article 31 stand repealed. Article 300A applies to both to natural and juristic persons, as well as, to aliens.

However it is interesting to note that the fundamental rights guaranteed under Part III of the Constitution of India 1950, are further subject to Article 35A of the Constitution of India 1950. By virtue of Article 35A, legislation of the State that is inconsistent with the fundamental rights guaranteed under the Indian Constitution shall be valid, in case of discrimination on grounds of place of birth, equality of

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\(^1\) See – Article 25 to 30 of the Constitution of India 1950  
\(^2\) See the Constitution (44\(^{th}\) Amendment) Act 1978.  
\(^3\) See – Article 300A of the Constitution of India 1950 and the Constitution (44\(^{th}\) Amendment) Act 1978  
opportunity for employment, right to acquire, hold and dispose of property, and the right to reside and settle in any part of the territory of India. This special treatment for Kashmiris seems to be a violation of the generally accepted principle of ‘equality before of law,’ as permanent residents of Kashmir and citizens of India in the same sense as any person belonging to any other State of India.¹

5.7 NEED FOR PROTECTION OF THE RIGHTS OF THE PERMANENT RESIDENTS

The special status enjoyed by the permanent residents of the State of Jammu and Kashmir has caused great controversy and even though various Central Governments, over the years, have accepted the special status enjoyed by the permanent residents, they have done so, sometimes reluctantly and with protest. But for various social and political reasons there has been no rash attempt to abrogate this special status of the permanent residents. Indian government has been honouring both in letter and spirit this aspect of the Constitution of Jammu and Kashmir.² The logic for retaining this special status has been to protect the people of the State of Jammu and Kashmir from further exploitation. But the relevant question here would be, protection from whom? By virtue of Notification No. I-L/84 of 1927, the State Subjects would be preferred over outsiders in cases of

employment in the Government services and outsiders would be unable to purchase immoveable property within the State of Jammu and Kashmir. At that time the State of Jammu and Kashmir was an independent State and in the circumstances then prevailing such a restriction was quite reasonable. However, now that the State of Jammu and Kashmir is an integral part of India and the permanent residents are Indian citizens, the proposition of enjoying a special status truly seems unfair and unreasonable. To considers fellow Indians outsiders is not only painstaking but also hits at the very roots of the concept of fraternity as envisaged in the Constitution of India, which is the basis of integrity of this diverse nation. These special provisions are a threat to Gandhiji’s dream of “an India in which all communities shall live in perfect harmony.”

It has been reasoned that: “The special treatment has been accorded to the ‘permanent residents’ to safe guard them from exploitation from outside. As compared with other parts of India, Kashmir is backward in the educational and economical fields; Kashmiris have long been exploited by their well-to-do neighbours. It was necessary to make special provisions to enable them to develop so that they could deal with other Indian citizens on equal terms.”

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