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Kashmiri Pandits and Rule of Law: An Analysis

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The Kashmiri Pandits are a Hindu minority community who have lived in the Kashmir Valley for centuries. They are an important part of the Valley's history and culture and have contributed greatly to its rich tapestry. However, the Pandits have been subjected to a long history of religious persecution, and their situation has deteriorated dramatically in recent years. In the late 1980s and early 1990s, they were forced to flee their homes in the face of a campaign of violence and intimidation by Islamist militant groups. This mass exodus left the Pandits feeling deeply traumatized and dispossessed. In recent years, there have been increasing calls for the Pandits to return to the Kashmir Valley. However, the situation remains fraught with difficulty and danger. The Pandits face several challenges, including a lack of security, inadequate housing, and employment opportunities, and a hostile political environment. The situation of the Kashmiri Pandits is a complex and tragic one. People are now being cottoned on to so many things that Kashmiri pandits had to go through. The motive of writing the research paper is to highlight the pandits, and their situation then and now. The paper also consists of rule of law and its criticism.

Keywords: *kashmiri pandits, genocide, rule of law.*

INTRODUCTION

Kashmiri Pandits are a religious minority group who have resided in Kashmir since the 12th century. The Kashmiri Pandits are descendants of the Hindu Kshatriya (warrior) caste who migrated from the Indian subcontinent to Kashmir in the late 12th century. In the early 14th century, the Kashmiri Pandits were subjected to religious persecution by the Muslim rulers of Kashmir. In the late 19th century, the British Raj granted the Kashmiri Pandits limited autonomy and they began to reside in the Srinagar district. In 1948, when the British Raj ceased to exist, the Muslim-majority Kashmiri region became part of independent India and the Kashmiri Pandits faced further religious persecution. In 1990, following a series of political and religious unrest, the Kashmiri Pandits were forced to flee from their motherland and resettle in the Indian state of Jammu and Kashmir. Today, the Kashmiri Pandits are a minority group that continues to face religious persecution and discrimination.

Kashmiri pandits, who make up around 10% of the population of the Indian state of Jammu and Kashmir, are the only community in the country who are legally allowed to practice their religion. This privilege has come at a cost, as the community has long been subject to discrimination and violence from the Muslim population. The pandits are a highly educated community, with a literacy rate of over 80%. They have played a key role in the development of the state, and have played a leading role in the country's economy. They have also been instrumental in the development of the arts and culture in the state.[1] The rule of law is a central principle of the Indian Constitution and is a fundamental part of the Indian democracy. The rule of law allows for fair and impartial justice to be delivered and protects the rights of individuals. The Indian Constitution also guarantees the rights of minorities, including the right to practice their religion freely.

KASHMIRI PANDITS

[1] Vinayak Razdan, 'Census Numbers of Kashmiri Pandits, 1921-1931' (*Search Kashmir*, 18 November 2018) <https://searchkashmir.org/2018/11/census-numbers-of-kashmiri-pandits-1921.html> accessed 16 September 2022

For over 5000 years Kashmiri pandits claim to live in the north Indian mountainous region of Kashmir. They consider themselves devout Hindus. They are followers of the ancient region of India, Hinduism. They are mainly devotees of lord Shiva. Kashmiri pandits are also known as Kashmiri brahmins and a large part of them are the Saraswat Brahmin community of India.[2] Kashmiri pandits are a religious minority group who fled the violence in the Indian-administered Kashmir region in the early 1990s.[3] The pandits, who are Hindus, have been targeted by Muslim militants in the region, who argue that they are occupying Muslim land.

Since the 1990s, the pandits have been living in exile in different parts of the world. In India, they have been living in designated camps in the state of Jammu and Kashmir. In recent years, there have been reports of increased violence and harassment against the pandits, who have been forced to leave their homes and live in fear for their safety. The pandits have been advocates for the rights of Hindus in the Muslim-dominated region. They have also been vocal opponents of the Indian government's policies in Kashmir, which they believe are responsible for the increased violence against them. The plight of the Kashmiri pandits has received international attention, and there have been calls for their safety

RULE OF LAW

"Rule of Law symbolizes an enlightened civilized society's efforts and to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license."

The nineteenth-century constitutional lawyer A. V Dicey is one of the most influential thinkers on the rule of law. He identified and analysed the concept of the Rule of Law in his book "Introduction to the study of Law of the Constitution" published in the year of 1885 sets out the three main principles of the rule of law: the principle of legality, the principle of the due process, the principle of proportionality.[4]The Rule of law originates from the work of the English jurist

[2] Haley Duschinski, 'Survival Is Now Our Politics: Kashmiri Hindu Community Identity and the Politics of Homeland' (2008) International Journal of Hindu Studies <https://www.academia.edu/2503303> accessed 16 September 2022

[3] Kanchan Gupta, '19/01/90: When Kashmiri Pandits fled Islamic terror' (*Rediff*, 19 January 2005) <https://www.rediff.com/news/2005/jan/19kanch.htm> accessed 16 September 2022

[4] Alok Kumar Yadav, 'Rule of Law' (2017) 4(3) International Journal of Law and Legal Jurisprudence Studies <http://ijlljs.in/wp-content/uploads/2017/08/Rule_of_Law.pdf> accessed 17 September 2022

A V Dicey. Dicey argued that the rule of law is a fundamental principle of the British legal system and that it is the fundamental principle by which the government and the courts should operate. Dicey believed that the rule of law is a fundamental principle that ensures that the government is accountable to the people and that the courts can provide a fair and impartial judiciary. Dicey's work has been hugely influential in shaping the modern understanding of the rule of law. His three principles are still seen as the key pillars of the rule of law today.

As per article 13 of our Indian constitution rule of law means law of the land. The right to equality is enshrined in Article 13 of the Indian Constitution.[5] This article provides that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." In other words, any law which takes away or abridges the rights guaranteed in the Constitution is void. The right to equality includes the right to equal treatment before the law, equal protection of the law, equality of opportunity, and equality of status. It also includes the right to life and liberty, and the right to freedom of expression, assembly, association, and movement. The right to equality is not absolute, and the State may make laws that impose reasonable restrictions on the exercise of this right in the interests of public order, morality, and national security. However, any such law must be reasonable and must not discriminate against any particular person or group of persons.

According to Hewart, Lord, "*Rule of Law means The Supremacy or dominance of law, as distinguished from mere arbitrariness, or from some alternatives mode, which is not law, of determining or disposing of the rights of individuals*".

According to Black's law dictionary, "*Rule of Law is the supremacy of law in which decisions are made based on well-established principles or laws, with no discretionary involvement in the application of such principles or laws*."

The rule of law is a cornerstone of democracy and is essential to ensuring justice is served in society. It is a system of government in which laws are established and enforced according to a

[5] *Ibid*

set of established rules. The three pillars of the rule of law are the principle of legality, the principle of due process, and the principle of proportionality. The principle of legality states that any law must be consistent with the constitution and must be based on a legitimate source of authority. It implies that no one should be punished arbitrarily. The principle of due process ensures that individuals are treated fairly and have a fair opportunity to be heard in judicial proceedings. The principle of proportionality ensures that the law is applied in a way that is reasonable and just. All three of these principles are essential to the rule of law because they protect the rights of individuals and ensure that justice is served.

CRITICISM OF THE RULE OF LAW

It would be only one-sided if the criticism of the A V Dicey Rule of Law is not discussed. Sir Ivor Jennings was one of the main critics of A V Dicey. Even one of the writers called rule of law "an exploded myth". Sir Ivor Jennings criticized all three points propounded by dicey. In the first rule dicey stated supremacy of law but he failed to distinguish between arbitrary and discretionary powers. In the second principle dicey states everyone is equal whether they are citizens or officials, rich or poor. This principle was circulated by him to eradicate negligence of the poor and needy however it is not practically applicable because certain powers and privileges are given to the public authorities which are not available to the private authorities i.e., arresting a person for committing an offense can be done by only officers. The third principle, the dicey state general principle of the constitution in England is the result of ordinary law of land and is the result of judicial decision. Sir Ivor Jennings crosses his words as dicey indulges his thinking to some special individual rights namely free of speech perhaps in reality most crucial principles underlying the British constitution are not judge made at all.

KASHMIRI PANDITS SITUATION THEN

Kashmiri Pandits, the Hindu community of Kashmir, have been living in the valley since the 13th century. The Muslim majority in the valley has historically not enjoyed the same level of religious freedom as the Hindu community. In 1989, the Kashmiri Pandits were targeted by

Muslim mobs after the state government failed to protect them from a series of attacks.[6] The resulting exodus of Kashmiri Pandits left the community with a significant population deficit.

Since the 1990s, the Kashmiri Pandits have been facing increasing levels of violence and discrimination from the Muslim community. In 2010, the Indian Supreme Court upheld the special status of the Muslim-majority Kashmir region, which allows for religious discrimination against the Kashmiri Pandits. This ruling effectively means that the Kashmiri Pandits are second-class citizens and are not protected under the Indian Constitution.[7] The Kashmiri Pandits are suffering from an acute lack of protection from the Indian government. The Indian government has failed to provide the Kashmiri Pandits protection.

The principles of A V Dicey Rules of Law were mere stories as the antagonistic dread the Pandits had to go through was miserable. They have been brutally treated even mass killings, forced disappearances, torture, rape and sexual abuse, political repression, suppression of freedom of speech, forcible seizure of property, etc became terrific that their soul shudder.[8] As per the report, thousands of Kashmiri pandits were killed in the custody of Indian armed forces extrajudicial executions and enforced disappearances are done under total impunity by the Indian security force. Local villagers were killed and burnt alive, women raped in this monstrous attack were by the Indian security force.[9] The situation was so much terrific that even Neelkanth Ganjoo, a judge was murdered openly in a market near Srinagar High Court.[10]

Kashmiri citizens were abused by the Indian central reserve police force, border security personnel, and various militant groups.[11]Original inhabitants of Jammu & Kashmir saw the

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[6] 'Violence in Kashmir: Why a Spike in Killings Signals an Ominous New Trend' (*Crisis Group*, 28 June 2022) <https://www.crisisgroup.org/asia/south-asia/india-pakistan-kashmir/violence-kashmir-why-spike-killings-signals-ominous-new-trend> accessed 18 September 2022

[7] Triloki Nath Tiku & Anr vs State of Jammu & Kashmir & Ors Writ Petition (Civil) 107/1965

[8] B Raman, '23 years on, Kashmiri Pandits remain refugees in their own nation' (*Rediff*, 19 January 2012) <https://www.rediff.com/news/column/kashmiri-pandits-remain-refugees-in-their-own-nation/20120119.htm>accessed 18 September 2022

[9] "Rape In Kashmir: A Crime of War" (1993) 5(9) <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF> accessed 18 September 2022

[10] 'Kashmiri Pandits: History, struggle, exodus and everything else you need to know' (*News9*, 6 June 2022) <https://www.news9live.com/knowledge/kashmiri-pandits-history-struggles-exodus-and-everything-else-you-need-to-know-174708?infinitescroll=1> accessed 18 September 2022

[11] B Raman (n 8)

genesis of the ethnic cleansing of Kashmiri Pandits or genocide from their motherland by some Kashmiri jihadi perhaps they are trained by ISI.[12] The Jammu & Kashmir Liberation Front and the Hizbul Mujahideen had taken the initiative of ethnic cleansing of Kashmiri Pandits or genocide.[13]Pandits were forced to live as refugees in their land, might while the majority of pandits were reduced to the woebegone status of refugees in their own country.[14] The original inhabitants of Kashmiri pandits were perhaps given an estimate of 24 hours to either leave convert or die.[1516] The paraenesis becomes thunderous and shriller at the end of the day. The whole night some recorded slogans are repeatedly played from mosques: 'Kashmir mei agar rehna hai, Allah-O-Akbar Kehna hai' (If you want to stay in Kashmir, you have to say Allah-O-Akbar); 'Yahan kya chalega, Nizam-e-Mustafa' (What do we want here? Rule of Shariah); 'Asi gachchi Pakistan, Batao roas te Batanev san' (We want Pakistan along with Hindu women but without their men).[17]

SITUATION NOW

Kashmiri Brahmins are one of the most respected and privileged communities in India. They are a part of the Hindu caste system and are traditionally involved in religious and spiritual ceremonies. However, since the independence of India in 1947, Kashmiri Brahmins have been subjected to discrimination and violence. They have been targeted by the Indian government because they are supporters of the Kashmiri separatist movement. Since the 1990s, there has been a gradual increase in the number of Kashmiri Brahmins who are leaving India to live in exile. This is because they are no longer safe in their home country. As a result of the discrimination and violence against Kashmiri Brahmins, their situation has been deteriorating. They are poverty-stricken and have little access to education or employment. The Indian

[12] *Ibid*
[13] *Ibid*
[14] *Ibid*
[15] Kanchan Gupta (n 3)
[16] Col (Dr) Tej Kumar Tikko (Retd.), 'Kashmiri Pandits offered three choices by Radical Islamists' (2022) Indian Defence Review <http://www.indiandefencereview.com/news/kashmiri-pandits-offered-three-choices-by-radical-islamists/> accessed 19 September 2022
[17] *Ibid*

government has promised to tackle the discrimination and violence against Kashmiri Brahmins, but it is unclear whether this will be successful.

Kashmiri brahmins have a very bad condition now. They are living in poor and deprived conditions. They do not have any land, money, or property. They are living in a very difficult situation. They are not able to get any job and earn a living. They are facing lots of problems in their life. They are not able to get any support from the government or society. They are living in a very difficult situation. Kashmiri Pandits, who have been living in the Kashmir valley for centuries, are facing several challenges, including a deteriorating situation in the Kashmir Valley. The pandits have been living in the valley since the ninth century AD, but their situation has deteriorated in recent years. Many Kashmiri Pandits have left the valley in fear of attacks by militants. The Indian government has been working to improve the situation for the pandits, but many say that more needs to be done.

Some of the challenges that the pandits face include:

- Attacks by militants;
- Restrictions on their freedom of movement;
- Poverty and unemployment;
- Lack of security.

The Indian government has been working to improve the situation for the pandits by providing them with security and economic assistance. However, many say that more needs to be done, including providing the pandits with permanent residency in the valley.

CONCLUSION

Kashmiri Pandits have been living in the Kashmir valley for centuries. They have a rich culture and have played an important role in the development of the valley. The rule of law is a fundamental principle in any democracy and the Kashmiri Pandits have been able to maintain a strong rule of law system in the valley. There have been allegations of human rights abuses against the Kashmiri Pandits, but these allegations have not been substantiated. The rule of law

in the Kashmiri Pandit's favour has helped to protect them from abuses. The government has responded to allegations of human rights abuses by investigating and prosecuting those responsible.

The Jammu and Kashmir Reorganisation Act, 2019, is an Act of the Parliament of India which bifurcates the state of Jammu, The Jammu and Kashmir Reorganization Act, 2019 was passed by the Indian Parliament on 5 August 2019.[18] The act bifurcated the state of Jammu and Kashmir into two union territories, Jammu and Kashmir, and Ladakh. The act revoked the special status of Jammu and Kashmir under Article 370 of the Constitution of India. The Act also made provision for the delimitation of Assembly constituencies in the UTs of J&K and Ladakh.

The Act was passed by the Lok Sabha on 5 August 2019 and by the Rajya Sabha on 6 August 2019. The President of India gave his assent to the Act on 9 August 2019.[19] The act has been criticized by the opposition parties and various civil society groups who have termed it as "unconstitutional" and "against the spirit of federalism". The main points of criticism are that the act was passed without consulting the people of Jammu and Kashmir and that it undermines the principle of self-determination, and revoked the special status of Jammu and Kashmir under Article 370 of the Constitution of India. The Opposition has also accused the government of "rushing" through the Act without proper consultations.

[18] Jammu and Kashmir Reorganisation Bill 2019
[19] *Ibid*