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**JAMMU AND KASHMIR REORGANISATION ACT: GIVING NEW
PERSPECTIVE TO THE VALLEY**

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Abstract

Jammu and Kashmir have unceasingly continued to be the subject of discussion, wherein it has been shown as diffused state, which do not ever have proper system, proper approach for administration and various other means like basic education, industrialisation, right kind of jobs and safe environment. This all could be true, but not in its entire sense, there are problems in every territory, but the factor of how a community and its people is required to be treated and how it can become a developed or developing state, these all depends on conscious efforts and stability in and around the territory. From all these years the efforts have been made and there were some developments as well, but the external factors like terrorism and constant efforts by different territory to annex that territory in subject, would disrupt the territory entirely and hamper its growth.

In this paper we have incorporated many such factors which are responsible for the present situation of Jammu and Kashmir and how the administrative and governing patterns needs to be change within the territory so that stability and safety factors should be prioritize over others. This paper has also contained the merits and demerits of old law and new law pertaining to Jammu and Kashmir, in which sphere developments are required the most, so that safety factors merge into growth factor.

INTRODUCTION

This substantial topic, which is in controversy since the partition of India, has compelled everyone with ascendancy to contemplate the issue, over and over again. The massive point of

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debate was and always be about Jammu and Kashmir, its people, its routine of governance, the saviours protecting the "valley" and the Kashmiri government. The controversy is due to the constant denial by the three neighbouring nations, desire to take over the valley which is the part of India but Pakistan and China trying to confiscate the Kashmir valley. They never fail to take any chance to annex J&K to incorporate it as their part of the territory.

In this war, for "annexation" the nations have overlooked the rights, of common citizens, who live in that valley since the partition. The evils in this whole picture are the people who have illegally taken over and trespasses the segment of Kashmir, here those assailants are the military of Pakistan. Why we've also held, India liable for this cause because since the beginning India has not in its whole sense provided safety and better life to the people of Kashmir. But they have also not entirely failed in securing their citizen's life and preserving their rights. They have made such provisions that give them unique status, in contrast to the whole of India because their conditions are also dissimilar as compared to other states.

BACKGROUND

The provisions **Article 370² and 35 A³** were temporarily made to, protect the valley and also to give sovereign status to Kashmir was enacted after, IOA (Instrument of Accession) by most of

² Article 370 Temporary Provisions for State of Jammu and Kashmir
(1) Notwithstanding anything in this Constitution,

(a) the provisions of Article 238 shall not apply to the State of Jammu and Kashmir;

(b) the power of Parliament to make laws for the said State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify
Explanation For this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharajas Proclamation dated the fifth day of March 1948 ;

(c) the provisions of Article 1 and this article shall apply about that State;

(d) such of the other provisions of this Constitution shall apply to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government

them were not pertinent to Jammu and Kashmir. Article 370 incorporated 6 exceptional provisions for the state of J&K. During the period of drafting, parliamentary powers over J&K were minimal, on the three matters of foreign affairs, defense, and communications. It spared the state to appertain the Indian constitution entirely.

During the early critical time when Jammu and Kashmir were going through many complications, which compels the officials of Kashmir to make massive decisions, one of those was to give autonomous and special status to Jammu and Kashmir and execution of Ranbir Panel Code in J&K, etc. As the laws were different for the state, so the authorities were given different designation before 1965 as in, J&K in place of Chief Minister had Prime Minister and in place of Governor, Sadr-e-Riyasat. The 1st Prime Minister appointed by Raja Hari Singh was Shaikh Abdullah he framed and drafted, the provision of Article 370 and he wanted permanent autonomy for the state.

The temporary provisions made so that it would get easier for the existing government to alter it in near future, for time may come by looking into the prevailing situation. It's 2021, the same thing is happening in this crucial period when between the disruptions caused in the state due to attacks from Pakistan and China, many soldiers killed, people are in fear and their rights are at stake. The government had to take things into their own hands and they did that. They introduced an act Jammu and Kashmir Reorganisation Act, 2019 which bifurcates the state into separate unions Ladakh and J&K as a union territory. Which seeks to transfer the power of governing

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or the second proviso to sub-clause (d) of that clause be given before the Constituent Assembly to frame the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification

³ Article 35A Parliament shall have, and the Legislature of a State shall not have, power to make laws

(i) concerning any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offenses under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

Kashmir and Ladakh, from the state government to union government, to manage and control disputes between countries, and to maintain peace in the valley.

The reorganization of the state sets a roadmap for the authority and people over there and in the future, it can minimize the problem, however, it should not perceive as a panacea or one-stop solution against terrorism. This war is underway and adjacent nations won't approbate this frequent shudder block its way and purpose to cut down India. For that reason, the contribution of two Union Territories should is to prepare the community just as the frontline, essentially for getting between the people and terrorists.

EXPLANATION OF OLD LAW

The Article 35A and 370 of Indian Constitution which were enacted to treat Jammu and Kashmir separately and not dealing with the territory as similar to other states, because of the Instrument of Accession or a contract which was signed between Maharaja Hari Singh and lord Mountbatten according to **clause 7** of the document (IOA), the state should not be forced to follow constitution of India and it couldn't be applied in the state of Jammu and Kashmir, which is now a union territory. The state had the power to make their separate laws, only when they are in need to do so, technically neither India nor the state could solitarily change the provisions or abrogate the **Article 370 and 35 A**, besides according to the terms of the Article. The great scholar A.G. Noorani, after analysing the situation said that Article 370 records a 'solemn compact'.

In the year of 1949, it was proposed to all the rulers and chief ministers of every state to make their constitution but they'd accepted the Indian Constitution as uniform law for all states, on the other hand constituent assembly representatives of the Jammu and Kashmir, requested that provisions of the Indian Constitution which are similar to the IOA should be executed to the state and state's constituent assembly, and government met their demands.

As other articles gave power to the constitution in the same way **Article 370** applicability lasted till the components and adoption of the State's constitution. However, the State Constituent Assembly dissolved on 25th January 1957 without suggesting amendment or modification. Thus, the Article is considered to end up having a permanent component of the Indian Constitution.

According to **Article 370** the six special provisions were embodied for Jammu and Kashmir:

1. The 1st provision had spared or exempted the state from absolute application of the Indian constitution and they'd granted permission to have their constitution.
2. The constitutional powers except which are already applied to the J & K could be widen to the state only with the agreement and concurrence of the state government.
3. The constituent assembly should be gathered and finalised to give the "concurrence" and once the stratagem of powers summoned, no more extension would be attainable.
4. The concurrence had to be signed in by the state's constituent assembly, it was only provisional.
5. At the time of drafting the powers of union legislative powers were limited on state to the three subjects that is defence, foreign affairs and communications.
6. Article 370 has to be abrogated only by the suggestions of the state constituent assembly.

CERTAIN CHANGES IN THE BILL

The reorganisation has its merits as well as demerits, one of the advantages is it will give equal status to every citizen of J&K as similar to other states. As 153 state acts will be repealed, the concept of rule of law, equality before law will be followed, as the detention rules were also different for people of J&K, the detention rules are not followed completely⁴.

CRITICISM OF EXISTING LAW

The law introduced to bring control in the hand of the union government and to develop the region economically and also technologically, which need a lot of efforts, here the major drawback is the sudden bringing of the reorganization bill at the wrong time, without explaining that why the bill needs to be enacted and instantaneous implementation of restrictions in the region which give rise to the feeling of insecurity in the minds of people and internet shut down, that leads to information cut down, people would not be able to find jobs and provoking Pakistan by making unnecessary commentaries will lead to more disruptions.

The Right to Information will now apply to the two union territories instead of the state's own 2009 RTI law, for instance, in a statement on 29th October the UN High Commissioner for Human Rights noted that the State's Human Right Commission, Information Commission, and

⁴Sampat Prakash v/s State Of Jammu & Kashmir on 6 February, 1969

Commission for Women and Child Rights are all being wound up even though the replacement bodies has not been established. If fresh watchdog mechanisms are not set up it could create space for Human Rights abuses. We must remember that status for J&K and Ladakh is challenged in the supreme court which is headed by NV Ramana is hearing several petitions challenging the abrogation of Article 370 and the reorganization act, on the following grounds: -

1st That they downgraded a state's special status and this argues that it violates the principal of Federalism and was not contemplated under the constitution.

2nd That the requirements under Article 3⁵ of the Indian Constitution having being fulfilled. Under this provision parliament has to get the views of the legislature of the state from which it is carving out the new states and union territories. This has never happened as J&K remained under president's rule. Some of the petition have challenged an obscure provision in the proclamation of President's rule in December 2018 which tried to get around this requirement.

Hearings of all these cases begin on 14th November. A request to stay the operation of the reorganisation act till the apex court decided on the petitions was rejected with judges saying they would roll back clock if necessary

AMENDMENT OF THE BILL

- Jammu and Kashmir Reorganisation Act

The Bill divide the State of Jammu & Kashmir into two Union Territories -

- (1) Jammu & Kashmir with a legislature
- (2) Ladakh without a Legislature comprising of Leh & Kargil districts.

J&K and Lakadh will be governed by an administrator appointed by the President having the designation Lieutenant Governor (LG).

The J&K having a legislature with 107 seats together with 24 seats to be able to be stored vacant for areas beneath occupation of POK, seats to be reserved for persons from the SC & ST with a view to be proportionate to their population.

⁵ Article 3 – Formation of new states and alteration of areas, boundaries or names of existing States.

To give adequate representation to women, the Bill gives energy to the Lieutenant Governor to appoint participants to the Legislative Assembly.

The term UT of J&K might be for five years. The Legislative Council present now may be abolished. The range of seats might be extended from 107 to 114 later.

The Union Territory of J&K may have a council of ministers whose electricity will not be greater than ten percent of the total strength of the Assembly. The council of ministers will aid & suggest the Lieutenant Governor on all matters that the Assembly has the energy to make legal guidelines on.

The Bill seeks to make all the laws enacted via the Parliament directly applicable to J&K and Ladakh. Furthermore, could have the power to enact laws on items given in the nation list except "Public order" and "Police".

The High Court is to be shared by Jammu & Kashmir and Ladakh. Moreover, there might be an Advocate General in J&K to propose the authorities on all legal subjects.

The Schedule annexed to the bill lists 106 central laws and the bill seeks to repeal 153 state laws of Jammu & Kashmir. 166 state legal guidelines will remain in force and 7 legal guidelines applicable with amendments and will carry the prohibitions at the leasing of land to folks who aren't permanent citizens of Jammu & Kashmir.

The most significant change will probably the application of the Indian Penal Code in the Central Code of Criminal Procedure. J&K had its penal code and CrPC but now these are being repealed although similar to central laws but because they were technically separate legislative and judicial changes to Indian laws didn't automatically apply there.

Other changes will be to personal laws and the transfer of property laws. For example, the 2005 Hindu Succession act amendments give women equal inheritance rights as Men will now apply. The restrictions of transfer of property under section 139 of the J&K Transfer of property act are also gone. Juvenile between the ages of 16 and 18 can also be prosecuted as adults.

- **Additional Amendments need to be done for the benefit of Jammu & Kashmir and Ladakh**

1) Ladakh was denied to participate in Presidential Vote

The bill, clearly stated that Ladakh will not have a Legislative Assembly because they have only districts Leh And Kargil and also no specific Attorney General for the state but every place even a small colony require law and legal help , even for appointing a colony secretary we have elections why can't the Ladakh have its legislative Assembly to contribute to the vote for the President. It doesn't matter that only one member would be casting their vote or how much contribution it give in the Presidential vote but why it is to be left behind ?

The idea behind including the Union Territories of Delhi and Pondicherry in Article 54⁶ and 55⁷ of the constitution was to allow its citizens to participate, through their legislators, in the election of the President of India but not giving the people of Kargil and Leh districts an assembly, has denied its citizens of their right to participate in the presidential polls through membership to the electoral college.

In this light, the reorganization of Jammu and Kashmir has denied this right to the people of the erstwhile state residing in the Leh and Kargil districts, because that Article 54 has to be amended to allow the legislature of Ladakh to be part of the electoral college.

One of the drawbacks is that the "government doesn't have support to do so because Article 368 of the constitution mentions that for amending Article 54, a two-third majority in parliament along with ratification of more than 50% States is required

So, Jammu and Kashmir may no longer have a vote in the election of the president However, according to constitutional expert and former secretary general of Lok Sabha, P.D.T. Acharya, people of the Jammu and Kashmir will be able to participate in these elections by mentioning two types of UT

- (i) directly governed by the Centre like Chandigarh, Daman and Diu, or even Ladakh now.
- (ii) Others, Delhi and Puducherry, which have an assembly and which participate in the presidential polls.

⁶Article 54 Election of President

⁷Article 55 Manner of election of President

The issue, however, is bigger as there is a call for allowing all citizens to participate in the presidential election through their elected representatives. While all citizens do so in a way through their Lok Sabha MPs, some have a lesser say because their region does not have an assembly and MLAs who are part of the electoral college – Ladakh in this case.

2) Lower Level Jobs for the Domicile of Jammu and Kashmir

Relief and Rehabilitation Commissioner (Migrants) a person registered as a migrant can apply for domicile benefits, as per the J&K Reorganisation Order, 2020 Section 3A, issued by the Union home ministry. The order has been defined under the J&K Civil Services Act.

The order empowers the tehsildars to issue domicile certificates. The government has been empowered to notify any other officer as the competent authority to issue the certificate which allows people from outside J&K to apply for jobs in the UT.

The Level IV jobs have been reserved for people with domicile status as other non-gazetted and gazetted jobs have been opened for people from across the country, including people domiciled in J&K.

Level IV jobs include posts like junior assistant and constable, which are the lowest category of non-gazetted posts. Only such jobs have been exclusively reserved for people with J&K domicile status.

The Jammu and Kashmir Civil Services (Decentralization and Recruitment) Act. Section 5⁸ According to which no person shall be eligible for appointment to a post carrying a pay scale of not more than Level-4 (25500) unless he is a domicile of the Union territory of Jammu and Kashmir,”

Civil Services Act, 2010, of J&K Sections 6⁹,7¹⁰& 8¹¹ states about the appointment at the state,

⁸ Mode of Recruitment

(1) The appointment to District, Divisional and State Cadre posts shall be made by the competent authority based on the selection made by the Public Service Commission or the State Service Selection Board, as the case may be Provided that till the State Service Selection Board is constituted under the Act, the Board constituted under the Jammu and Kashmir Subordinate Service Recruitment Rules, 1992, shall be the Board for the Act.

(2) The competent authority shall refer all the available vacancies in each cadre of service to the Public Service Commission or the State Service Selection Board, as the case may be, at least once in a year.

⁹ Appointment to District Cadre post

A person shall be eligible to the appointment to a District Cadre post only the,-

(i) is a permanent resident of the State
(ii) is a resident of the concerned district and

divisional, and district level, the word "permanent resident of the State" has been substituted to "Domicile of Union Territory of Jammu and Kashmir".

The mandatory residence clause which barred inter-district appointment or inter-division appointment across Jammu and Kashmir has also been omitted.

In Jammu & Kashmir, Article 35A of the Constitution of India had empowered the local government to determine who are permanent residents of J&K and granting them exclusive rights when it came to jobs and owning land and property.

The only amendment this law want is that to give equal rights to everyone based on the qualification and giving preference to Kashmiri people as it's their land and have love and affection towards the valley and the people living in hilly regions find it difficult to adjust to other areas because they have adapted that atmosphere and we can't advise the people of Iceland to work or live in Africa. Similarly, the situation of the Kashmiri people. Article 14¹² of the Indian Constitution states that there should be equal protection of law then the law should be amended to protect the people of the valley and not limit them with level 4 jobs.

3) Giving the Kashmiri Pandits their valley back

Some people still live in the refugee's camp in their own country what was their fault where was our law when we fail to protect them. If Kashmiri Pandits want to come back to their homeland why this thing has not been done and why still those people lived in the camp for years. They were thrown away from, abducted, women were raped, just because they were not Muslim's in abundance people were killed, their houses were burnt, their property was seized. Thus, we still

(iii) possesses the prescribed qualification, eligibility and experience for the post as specified under the rules orders regulating recruitment to such posts.

¹⁰ Appointment to Divisional Cadre post-

A person shall be eligible to the appointment to a Divisional Cadre post only the,-

(i) is a permanent resident of the State ;

(ii) is a resident of the concerned division and.

(iii) possesses the prescribed qualification, eligibility and experience for the post as specified under the rules order regulating recruitment to such posts.

¹¹ Appointment to State Cadre post .-

A person shall be eligible to the appointment to the State Cadre post only if he,

(i) is a permanent resident of the State ;

(ii) possesses the prescribed qualification, eligibility and experience for the post as specified under the rules orders regulating recruitment to such posts.

¹² Article 14 – Right to Equality

talk about the property rights then why should not be moved back with the originality as Kashmiri. When we talk about secularism why it vanished in such cases. Thus, Kashmiri Pandits should be treated as Kashmiri and not as an outsider.

4) Equal Laws for women

In this era where men and women both are treated equally, still, we see that some laws are different them, from a bare reading of Article 35A, it is evident that it only acted as an enabling provision, and defining the term permanent resident' was not direct and also did not directly confer permanent residents with any special rights and privileges. The Constitution of Jammu & Kashmir Section 6¹³ defines the permanent residents which have to be read in consonance with two State Subject notifications issued in 1927" and 1932. These notifications sought to provide certain special privileges to permanent residents and were a result of a strong campaign by Kashmiri Pandits who had protested against the hiring of Punjabi civil servants, as it affected their representation in the local administration

Article 35A only enabled the State Legislature to frame laws that would define the permanent residents of Jammu & Kashmir and confer upon them certain special rights and privileges. Article 35A only provided immunity to such laws from being challenged on the ground that they abridge the rights of the alter citizens of India. The immunity conferred was limited in nature, and Article 35A does not provide any immunity if a law discriminates inter se between the permanent residents of Kashmir.

If law inter se discriminates between male permanent residents and female permanent residents of Kashmir, such a law would anyway not be granted any immunity under Article 35A It was hence fallacies in the first place to claim that Article 35A directly perpetrated gender equality

¹³ (6) (I) 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 of class II: or Kashmir

(b) having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years before that 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 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 13/L dated the twenty-seventh June 1932

between the permanent residents of Jammu & Kashmir. Keeping this in mind, we may now refer to one controversial provision of the 1927 State Sulzer Notification which denied permanent resident as per Note III of the Notification.

Susheela Sawhney Judgement

The controversy was regarding Note III which was settled by the full bench of the High Court of J & k. Here the court adjudicated a petition filled by a Kashmiri woman who was deprived of their permanent residency status by the government of J&K after they married an outsider who was not a permanent resident of the state. The court says that note III uses the term acquire which is only applicable to a woman who is not a permanent resident but marries a man who is a permanent resident. It also held that this doesn't mean the woman will lose her residency or her children will be deprived of such residency or the property of women.

The Susheela Sawhney decision, however, does not directly deal with the other two forms of gender discrimination two firstly, if married women or a widow the women leaves the J & K and resides in another state she will lose her permanent residency, and secondly, if she marries a man of another state she will lose her permanent residency women who married the other state. However, such a thing won't happen with a happen which is a clear violation of Article 14 and 15(1)¹⁴ of the Indian constitution. Before the judgment of Susheela Sawhney, the women were given the certificate of permanent residency as "valid till marriage "which continued to be even done after the decision. The non-implementation of this judgment leads to children deprived of the status of permanent residency Even after the removal of Article 35A the law of there is no correspondence law for Sec 6 of a permanent resident of J&K along 1927 and 1932 notification and Section 8 of J&K Constitution which defines the class will exist. It is fallacious to claim that the removal of Article 370 and 35A would provide equal status to all gender for this a new law is required to amend.

3.2. GROUNDS ON WHICH THE LAW IS BEING AMENDED

The common grounds which are required for amendment of any law in India, in this case, those grounds are to bring peace in the state, to put limitations over unlawful activities, to keep away

¹⁴ Article 15(1) The State shall not discriminate against any citizen on grounds only on religion ,race,caste , sex , place of birth or any of them

the external unwanted force from creating disruption and abuse, bringing back the fundamental rights of the citizen, introducing development in the territories by inculcating more job opportunities, economically stabilizing the region and strengthening the valley to thrive as the other state and union territories.

CONCLUSION

The enactment of the new law was for the betterment of the whole nation and the state of J&K when looking into the background and history we can say that it was the right decision to protect the Kashmiri people and giving a separate UT to Ladakh as they always feel alienated but always considered them as Indian. The j & K has its separate flag now even they have the Tiranga and now they can proudly put that flag instead of putting a separate flag which symbolizes their autonomy. We can proudly claim POK now that it is our part as we have recently seen how Pakistan wants to occupy Gilgit Baltistan.

But somehow every law can't cover all the aspects so that's why, as a researcher some points of amendments is discussed above which should be added to protect the rights of everyone as mentioned in the constitution, right to equality and to avoid gender discrimination, special rights should also be given to the women in Kashmir. The territory has its own merits and worth like other states, so it should be a collective effort of every state and also central government to make conditions better and more acceptable in the vulnerable regions like Jammu and Kashmir, every time people cannot live in denial that things got better, laws are made and the people who desire to confiscate Kashmir have now abandoned the region. laws and statutes have their sense when its application would be proper and also by ensuring that everyone is going the extra mile to make things better.

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