

JAMMU AND KASHMIR REORGNISATION ACT, 2019**-SARTHAK SHARMA****I. INTRODUCTION**

Kashmir is one of the most disputed and militarised places on Earth. In 1947, when India gained Independence and Pakistan was formed, it led to some ripple effects, still unresolved till this date. The epitome of conflicts between Pakistan and India lies at the crown of India, Jammu and Kashmir, with both the countries having fought three wars over the disputed territory, with some involvement from China as well.

- **History of Jammu and Kashmir: The road that led us here**

When the Britain left India and decided to split it in two, the Princely States were given an option to which side they want to join and most of the ruling monarchs decided to go along with the will of their people. Jammu and Kashmir was a special case. It had a Muslim majority being ruled over by a Hindu Monarch, Maharaja Hari Singh. When asked for public opinion, they decided to stay neutral. Fearing that the monarch will decide to side with India, a rebellion started, supported by Pakistan. Seeking military help, the monarch turned to India and as a result, we saw the first Indo-Pak war in 1947. An instrument of Accession was executed by the Monarch which saw Jammu and Kashmir being acceded into the Dominion of India. The war ended by United Nations intervention, which drew a line in the middle of the territory allotting one side to each party. However, both sides laid claim on the entire area. We further saw two more wars being fought in 1965 and then in 1999, both of which ended in a ceasefire and saw the situation unchanged. The conflict continues till date with no end in sight. There are 3 forces battling it out in Kashmir, the Indian forces, the Separatists who want an Independent Kashmir and the Pakistani militants who want to side with the Islamic country.

- **Special Status**

Understanding that the case of Jammu and Kashmir is a peculiar one, owing to its violent and complex history and will of the local residents, it was bestowed with a 'special status'. This special status of Jammu and Kashmir is given legal legitimacy by virtue of Article 370 and Article 35A of the Indian Constitution. The former confers power over Jammu and Kashmir to have a separate constitution, of their own, an independent state flag as well as autonomy over the internal administration of the state, without major interventions from the Centre. The latter empowered the State Legislature to define 'permanent residents' of the State. The permanent residents will be living under a separate set of laws, explicitly tailored for just that region. Such laws included the likes of citizenship, property rights, i.e., purchase and ownership of land and immovable property, ability to cast vote and contest elections, higher education, healthcare, being employed in government jobs and fundamental rights. It was added to the Constitution through a Presidential Order: The Constitution (Application to Jammu and Kashmir) Order, 1954, issued by the President of India on 14 May 1954, under Article 370. The 1954 Presidential Order was issued which specified which all Articles of the Indian Constitution would be applicable to the state of Jammu and Kashmir.

- **Status Quo**

In one of the most controversial and bold moves made by the Bhartiya Janata Party, under the leadership of Mr. Narendra Modi, the Centre revoked Article 370 causing a trickle down and ripple effect. Via abrogation of Article 370, the government made the entire Constitution of India applicable to Jammu and Kashmir, revoking its special status, taking away its independent constitution, separate flag, tailor made set of laws and rules regarding its citizens and the magnitude of autonomy it was given. The government went a step further by enacting the Jammu and Kashmir Reorganization Act, 2019. The Bill was introduced in the Rajya Sabha, on 5th August 2019 by our Minister of Home Affairs, Mr. Amit Shah. Having been passed on the same day itself, it was introduced in the Lok Sabha on 6th August, 2019, and went on to receive the President's assent on 9 August 2019.

II. SIGNIFICANCE OF THIS DEVELOPMENT

The enactment of the Jammu and Kashmir Reorganisation Act, 2019 was preceded by the abrogation of the special status of Jammu and Kashmir by revoking Article 370. The latter was done with an ulterior motive of paving way for the government to pass the above mentioned Act. This move carries a huge amount of significance with it in the Constitutional and political history of India. By repealing Article 370, the government also aims to bring Jammu and Kashmir into the national mainstream and making it a more normalized part of India and making just one Constitution applicable to the whole of the country. This carries with it such significance that due to alteration of property laws can allow outsiders to move into the territory and purchase land, the Right to Education Act and the Indian Penal Code, among other acts will also be made applicable. More importantly, by making all Articles applicable on the State, the government can fulfill its main aim behind the Reorganisation Act, being, making it applicable to Article 3 and Article 239A of the Indian Constitution. Article 3 dictates that the Parliament, by law can, form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State. The latter Article talks about creation of local Legislatures or Council of Ministers or both for certain Union territories. By a combination of the two abovementioned Articles, comes the essence of the entire Act of 2019: demolishing the status of being a State of Jammu and Kashmir and dividing it into two separate Union Territories. The Act reorganises the State into

- a) The Union Territory of Ladakh, which will include the districts of Kargil and Leh, existing without a legislature and,
- b) The Union Territory of Jammu and Kashmir, comprising the rest of the territories and existing with a legislature.

A Union Territory is a small administrative unit, directly under the control and administration of the Central Government. Union Territories enjoy very little power and autonomy and are ruled over by a Lieutenant Governor, who acts as the representative of the President and rules on his behalf. Union Territories have a unitary relationship with the Union instead of a federal relationship, like the ones states share and one that Jammu and Kashmir shared. After the bifurcation, the Union Territory of Jammu and Kashmir will follow the Delhi and Puducherry format, i.e., it has been given a partial statehood with a unicameral legislature. Municipal

functions will come under the purview of the legislative assembly; whereas, aspects like security will be overseen by the Lt. Gov. The Union of Territory enjoys no such privilege and will have absolutely on representation whatsoever.

Non legal significance of this move was also in great magnitude. Before passing of such order, the Central Government imposed Section 144 in the region, pre-empting violence in the area as a reaction to this order. Kashmir valley was locked down, with assembly prohibited and a surge of security forces were deployed to see through this imposition. A lot of political leaders like former Jammu and Kashmir chief ministers Omar Abdullah and Mehbooba Mufti were also placed under house arrest. The lockdown was also supplemented by restrictions on telecom and internet services.

III. SALIENT FEATURES

The following are the salient features of the Act in pointers-

- Formation of a new Union Territory, known as Union Territory of Ladakh, comprising of Kargil and Leh districts of the State of Jammu and Kashmir.
- Formation of a new Union Territory, known as Union Territory of Jammu and Kashmir, comprising of all those territories, other than the ones specified above.
- The Governor of existing State of Jammu and Kashmir will become the Lieutenant Governor of Union Territory of Jammu and Kashmir and Union Territory of Ladakh.
- The Union Territory of Jammu and Kashmir will enjoy partial statehood with a unicameral legislative assembly, with the Lt. Gov. dealing with issues of security, peace, etc. only.
- The Union Territory will be ruled over solely by a Lt. Gov.
- The total number of seats in the Legislative Assembly of the Union Territory of Jammu and Kashmir will be 107.
- 24 of these seats remaining vacant for the areas of Jammu and Kashmir under occupation by Pakistan, should the territory ever be acceded.
- Out of the 107, seats will also be reserved for Scheduled Caste and Scheduled Tribes, in proportion to their population in the region.

- Further, the Lt. Gov. may nominate two additional members if he/she feels that women have not been adequately represented.
- The term of the Legislative Assembly will be for five years.
- The Lieutenant Governor must summon the said Assembly at least one time in six months.
- The Legislative Assembly can make laws on matters specified in the Concurrent List of the Indian Constitution and the State List, with the exception of Police and Public Order matters. The Parliament can also make any law it deems fit in relation to any matter regarding the Union Territory of Jammu and Kashmir.
- The Union Territory of Jammu and Kashmir will have a Council of Ministers to aide and advise the Lieutenant Governor. The Council of Ministers will not have more than ten percent of the total number of members in the Assembly. All decisions of the Council will be communicated to the Lieutenant Governor by the Chief Minister.
- The existing High Court of Jammu and Kashmir will act as the common High Court for both the Union Territories.
- The Union Territory of Jammu and Kashmir will also have an Advocate General providing legal advice.
- The existing Legislative Council of the State of Jammu and Kashmir will cease to exist and all the bills pending approval will also lapse.
- Advisory Committees will be appointed by the Central Government, for various purposes such as, distribution of assets and liabilities, water and power supply and the State Financial Corporation, to send a report within six months.
- 106 Central laws will now be made applicable to the Union Territories of Jammu and Kashmir and Ladakh and 153 state laws of Jammu and Kashmir will be repealed. 173 state laws will remain in force, with 7 requiring amendments.
- With regards to representation in Lok Sabha, Union Territory of Jammu and Kashmir will have five seats and that of Ladakh will have just one.
- Under the First Schedule of the Constitution, under the heading, 'States', entry 15 shall be deleted and under the heading, 'Union Territories', entry number 8 and 9 will be added specifying the Union Territories of Jammu and Kashmir, and Ladakh, as specified under Section 4 and 3 of the Reorganisation Act, respectively.

IV. AIMS AND OBJECTIVES

Article 370 was revoked to be able to bring about massive changes in the region of Jammu and Kashmir. The aim of the government was to do away with the special status of Jammu and Kashmir for a variety of reasons. Mainly, and something which was long due, the government hopes to integrate the region into the mainstream of India. By abrogating the separate Constitution and separate set of laws, the area will now be subject to the Indian Constitution and other Indian laws, which were needed in Jammu and Kashmir as Article 370 was viewed as discriminatory at multiple stages. The government wanted to introduce acts such as the Indian Penal Code, Right to Education Act, Hindu and Muslim personal laws, property laws, etc., that will help in social development. By letting outsiders in, tourism will also hike, which is deserved by the beautiful valley of Kashmir and further, the government hopes to see a rise in private investment as well to develop infrastructure.

To convert the area into two separate Union Territories, was essentially to gain more control over the area; more control which the government felt it needed due to internal security situations and the concerns of cross border terrorism. The district of Ladakh, though always mixed with Kashmir, is significantly dissimilar from the rest of the region. The terrain is different and difficult and further the problem of Jammu and Kashmir, regarding security concerns, is centralized to areas of Srinagar and the government felt the need to separate the district of Ladakh from it. Further it has been a demand of the people of Ladakh, being a heavily Buddhist populated area, for a separate existence. Upon granting this status, there were celebratory demonstrations in the area and as the government put it, now they can ‘realise their aspirations’.

V. CRITICAL ANALYSIS

Despite the abrogation of Article 370 being mentioned in the 2019 election manifesto, a lot of people saw this as a surprise move, which did not help their reaction towards it. This move faced a lot of backlash from the international community, from the people of Jammu and Kashmir and of the whole of India.

In India, the act was labeled by a lot of words, inter alia, ‘arbitrary misuse of state power’ and ‘utterly and palpably unconstitutional’. The detention of Kashmiri political leaders was called

out to be a ‘classical colonial excuse’. On 24th August, a delegation of opposition leaders was sent back from Srinagar when they tried to approach the region to take a stalk of the situation.

The people of Jammu and Kashmir were not a big fan of this move to say the least. The clampdown on the region by the Centre did not help that opinion. Already exasperated, the situation of the locals was worsened by the lockdown of the area. The Kashmir Valley was hit by Section 144, prohibiting assembly, internet and telecom services were shut down and political leaders were put under house arrest with about 500 people being arrested after about 10,000 people protested in Srinagar, according to Reuters. Former Chief Minister, Mehbooba Mufti, described the event as a ‘Dark day for democracy’. In the capital of the country, hundreds took to the street to protest against the government, calling it the ‘death of Indian democracy’.

The occurrence also saw a fierce criticism at the Global Level. The President of Pakistan, Arif Alvi, summoned an emergency joint parliamentary sitting of the National Assembly and the Senate to discuss the situation and passed a resolution, condemning India's move, calling it ‘illegal, unilateral, reckless and coercive attempt to alter the disputed status of Indian occupied Kashmir as enshrined in the UNSC resolutions’. The Pakistani ambassador from India was recalled and the Indian ambassador to Pakistan was expelled from the country. Soon, all transport and trade activities between the two countries also came to a halt. The Foreign Ministry spokeswoman of China opposed the integration of the Union Territory of Ladakh into India's administrative jurisdiction, stating that ‘it undermined China's territorial sovereignty’, and that, ‘India's action is unacceptable and would not have any legal effect’. The European Union sent a delegation of EU Parliament members to Kashmir and expressed deep concerns over the development. António Guterres, Secretary-General of the UN, expressed his concern by saying that the curbs ‘could exacerbate the human rights situation in the region’.

VI. CONCLUSION

The move of abrogating Article 370 and enactment of the Reorganisation bill was definitely a bold move by the government, one that may prove to be beneficial over time to curb the tensions in the region. Of course, any action taken with regards to Jammu and Kashmir will always be met with a lot of scrutiny and criticism and even though there are a lot of sections of the act that

have been left unexplained, the whole procedure has been a constitutional one with repercussions that will be proved over time to be positive or detrimental. The end of the special status was never that problematic, the backlash faced was due to this being done with the concurrence of the region's people as they are direct stakeholders and such a move will disenfranchise them, furthermore, the massive lockdown and arresting of political leaders covered a move in negative light, what could have been a productive and constructive attempt of normalization and curbing of security issues. Though of course, all this can be for naught, as we wait for the verdict of the Supreme Court on the matter of revocation of Article 370. We have been patient for a long time regarding this matter, and the same is required for the future as long as human rights are not being violated and democracy and liberalism is not being mocked.