

RECENT CHALLENGES ON STATES REORGANISATION: REORGANISATION OF JAMMU AND KASHMIR

Written by *Garima Shree** & *Shreyansi Jena***

**2nd Year BA LLB Student, KIIT School of Law, Bhubaneswar, India*

*** 2nd Year BA LLB Student, KIIT School of Law, Bhubaneswar, India*

DOI: doi.org/10.55662/JLSR.2022.8601

ABSTRACT

After India's liberation from the British rule, India was partitioned to form two nations: India and Pakistan, there were several princely states existing under the rule of royals. Jammu and Kashmir was one such state, under the rule of the Hindu ruler, Raja Hari Singh. All princely states were given the option to join either of the two nations: India or Pakistan. After pressure from Pakistan and the support from India, he chose to sign "Instrument of Accession" with the Indian government. The Indian government gave special constitutional status to the state under article 370. However, on August 5, 2019, article 370 and 35A have been revoked, dissolving their special status.

Keywords: reorganisation, Jammu and Kashmir, Article 370, Article 35A

INTRODUCTION

On August 5th, 2019, the Indian government made the decision to revoke Article 370 and 35A, which had given a special constitutional status to Jammu and Kashmir which had allowed it to enjoy numerous benefits. The Indian Parliament carried the measure to abolish Article 370 by a resounding majority. It has been said that “Shri Amit Shah Repealing article 370 is not a historic blunder, rather it is historic step to correct this historic blunder.” Not only did many other political parties that normally disagreed with BJP's choices support the move, but even Hindu nationalist groups like the BJP.

HISTORY ON REORGANISATION OF STATES ON LINGUISTIC BASIS

The numerous princely state lands were linguistically absorbed into the Indian union during the independence era, which ran from 1947 to 1950. Most had been incorporated into the current provinces, while others had been organised into new provinces, including Rajputana, also known as Rajasthan, Himachal Pradesh, Madhya Bharat, or Madhya Pradesh, and Vindhya Pradesh, which was merged into Madhya Pradesh as a result of the 1956 States Reorganisation Act. Several additional cities, including Mysore, Hyderabad, Bhopal, and Bilaspur, were also divided into independent provinces.

In 1950, when India's new constitution went into effect, it was named the "Union of States" and established as a sovereign democratic republic. The constitution made a distinction between four different state kinds:

1. Nine Part A states: these were the provinces ruled over by an elected governor and the state legislature. It included the state of Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orissa, Punjab, Uttar Pradesh and West Bengal.
2. According to the Eight Part B, following provinces were once princely states or clusters of princely states that were ruled by a rajpramukh and an elected assembly. Rajpramukh

was appointed by the President. Hyderabad, Jammu and Kashmir, Madhya Pradesh, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, which has been known as Gujrat since 1960, and Travancore-Cochin, which has been known as the state of Kerala since 1956, were included in it.

3. The ten Part C states: it comprised of certain princely states as well as the former chief commissioners' provinces that were governed by chief commissioners chosen by the President of India. The states included Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, Tripura and Vidhya Pradesh which has been merged into Madhya Pradesh.
4. The sole Part D included Andaman and Nicobar Islands, governed by a lieutenant governor appointed by the central government.

Several Indian leaders came to the consensus under the British rule of India that the provinces should be reorganised along linguistic lines and that the main language of the people should be the language of governance and education in order to ensure successful administration. As stated by Dr. B.R. Ambedkar in support "one state, one language but not one language, one state." He proposed making the official language of each state the same as the Central language in order to address the issue of maintaining national unity.

However, there were several others who opposed the linguistic reorganisation proposal stating that "the political ambition of a linguistic group can only be satisfied by the exclusion and discrimination of other linguistic groups within the area." V.K. Krishna Menon, Nehru's confidant stated that "we will balkanise India if we further dismember the State instead of creating larger units." The concern of exclusion of the minority groups was imminent. Andhra Pradesh became the first state formed on linguistic basis.

HISTORY OF THE ISSUE ON INTEGRATION OF JAMMU AND KASHMIR

British India was divided into two independent countries, India and Pakistan, after it was freed from British domination. There were a number of princely states in existence at the time, and they had the option of joining either Pakistan or India, or remain self-reliant.

Jammu and Kashmir had been one such princely state presented with this option. It was then ruled by a Hindu ruler, Raja Hari Singh. He was aware of his political standing and knew that he wasn't capable of maintaining an independent nation and so he had no other option but to join India or Pakistan. He knew that Pakistan was a Muslim majority state and knew that he wouldn't be allowed to rule being a Hindu himself. However, he was against the leaders of the Indian National Congress because they were the ones who started the country's war for independence. He also knew that the Indian National Congress supported Sheikh Abdullah, a democratic leader he had jailed for defying him and advocating for a democratic government. As a result of this dilemma, the ruler was unable to make a clear choice and chose to sign a standstill agreement in order to iron out the details and obtain the supplies necessary to sustain his people.

However, Pakistan was suspicious of the ruler and on 20th October, 1947 invaded Kashmir, fully aware of the fact that it wasn't in any position to be able to defeat them. The Indian army then intervened in support of Raja Hari Singh.

As a result, Raja Hari Singh agreed to sign an "Instrument of Accession" with the Indian government resulting in India gaining the state of Jammu and Kashmir. Pakistan did gain some of Kashmir's northern and other regions and these areas are still illegally occupied by Pakistan to this day.

The state of Jammu and Kashmir is given a special status within the Indian Union under Article 370 of the Indian Constitution, which is referred as a "temporary provision." Part XXI of the Indian Constitution, which contains "temporary, transitional, and special provisions," which has been included within this clause. Due to this provision, the legislative authority of the Parliament over the state was constrained.

Statements such as "Article 370 is a tunnel to take the Constitution of India to Jammu and Kashmir." and that "only the shell will remain there and it will be bereft of its contents, and it will hardly make any difference whether it is kept or not" by a prominent leader, the then Home Minister Gulzari Lal Nanda as well as the statement by Pandit Nehru saying "Article 370 has been eroded and the process of gradual erosion is going on" spoke volumes considering that fact that the discussions regarding the dilution of Article 370 was initiated merely a decade of its enactment. With the issuance of "the Constitutional Application Order 1950", the process

had already begun. “The Delhi Agreement of 1952”, which established that a number of subjects beyond those mentioned in the “Instrument of Accession” would be applied to Jammu and Kashmir, was the product of discussions between Centre and the State leadership after that. This took the place of the instrument of accession that Raja Hari Singh and the Indian government had already signed.

HOW DOES ARTICLE 370 GIVE SPECIAL STATUS TO THE STATE OF JAMMU AND KASHMIR?

One may argue that Jammu and Kashmir's accession to India was contingent upon Article 370. Its constitution makes it clear that keeping the state separate from the rest of India was never the plan. The state has been specifically mentioned in Article 3 of our constitution as being a fundamental component of India. The salient features of Article 370 state:

1. Jammu and Kashmir is free from all legislation enacted under the Indian Constitution under Article 370 with Ranbir Penal Code as its constitution.
2. With the exception of matters involving defence, foreign policy, finance, and communications, the Indian Parliament need the government of Jammu and Kashmir's consent before enacting laws in the region.
3. The laws governing citizenship, property ownership, and basic rights
4. Under the article, no one except the residents of Jammu and Kashmir can own a property there.
5. The state has its own flag
6. Article 370 (1)(c) states that “Article 370 applies to Jammu and Kashmir in accordance with Article 1 of the Indian Constitution. Article 1 contains a list of the Union's member states.” This suggests that Article 370 serves as the foundation for its affiliation with the Indian Union. A presidential decision may nullify Article 370, which would render the state independent of India until fresh legislation was established to overturn it.

REVOCATION OF SPECIAL STATUS OF JAMMU AND KASHMIR

On 5 August 2019 Articles 370 and 35A of the constitution of India were removed, consequently dissolving the unique status enjoyed by the territory which will result the following for the citizens-

1. Individuals from any state would be able to purchase land there which wasn't possible before.
2. All regulations passed by the focal law-making body would become relevant in the province.
3. The province would now turn into a different association domain, with its own law-making body.
4. Ladakh would likewise be granted the situation with an association domain without a council.
5. The legislative leaders of these areas would be exhorted by the focal government, similar to some other state's lead representatives.

The following apprehensions sneak into the personalities of Kashmiris-

1. Muslims worry that the state would transition from being state with Muslim majority to one with Hindu majority, with the middle having an impact on who gets appointed to the state government and how the state is run.
2. The Bharatiya Janata Party has a covert declaration to change the state's segment guidelines by allowing non-Kashmiris to buy land there. As a result, the party has a covert plan to evict Kashmiris from their homes and subsequently disengaging them.

COMPETING VOCIES ON THIS ISSUE

The government desperately needed to take this action. It is firmly believed that the existence of this Article prevents India from ever fully implementing a vote-based system. The resistance,

in any case, doesn't hold back from portraying this step of the focal government as out and out a disaster. Additionally, they mention how this action was not legal. This is because Article 370 cannot be repealed alone by the national government without consulting the state governments, according to the Indian Constitution. In any event, it is obvious that there was almost no state government for that entire year. Even the protected professionals are sharply divided on this matter, therefore no consensus on its legality has been reached to this point.

LEGAL CHALLENGES

The Middle's proposition on Jammu and Kashmir will undoubtedly be tested under the watchful eye of the High Court. What the court will be called upon to conclude will be substantially more than specialized understanding of the law. What is in question is the actual person of federalism in the Constitution, which has in the past been pronounced by the High Court to be important for the essential construction of the archive.

Could the Middle at any point be permitted to drive President's standard on a state and afterward make changes that totally change the actual idea of the state? Plus, can a matter so significant be changed in so relaxed a way against the desires of individuals of Kashmir, particularly when the state is under virtual time limit with telephone associations snapped and actual development shortened? The inquiry under the watchful eye of the High Court might be whether this choice effects the fundamental design of the Constitution, which the Parliament has no ability to change.

LEGISLATIVE POWERS OF THE UNION TERRITORY OF JAMMU AND KASHMIR

The Regulative Gathering makes regulations for the entire or any part of the Association Domain of Jammu and Kashmir. As for issues counted in the state list besides on "public request" and "police" will stay under the Middle opposite the Lieutenant Governor.

In the event of irregularities between regulations made by Parliament and regulations made by the Administrative Get together, prior regulation will win and regulation made by the Authoritative Gathering will be nullified.

ROLE AND POWERS OF THE LIEUTENANT GOVERNOR

The Legislative head of the current territory of Jammu and Kashmir will be the Lieutenant Lead Representative for the Association area of Jammu and Kashmir, and the Association Domain of Ladakh for a period not yet completely established by the President.

Course of action of Lieutenant Governor in Ladakh: The President will choose the Lieutenant Governor under article 239.

The Lieutenant Governor will be helped by instructors appointed by the Center since the Association Domain will not have a Regulative Get together.

By virtue of Association Domain of Jammu and Kashmir, the Lieutenant Governor will "act in his carefulness" on issues other than the capacities introduced on the Administrative Gathering, in which one is supposed to apply any lawful capabilities, and furthermore matters associated with All India Administrations and the Counter Debasement Agency.

CONCLUSION

The province of Jammu and Kashmir has voyaged far, developing from a regal state to now completely incorporated territory of India. Each step of this advancement has been tried, be it the provision of special status or its recent revocation. As I would see it, granting extraordinary status then, at that point, was a need, taking into account what is going on which was winning by then of time.

Those who disagree with this Article refer to it as a political grievance, while others see it as a necessity. Whatever the reasoning, it is clear that the country would not be fully united with Jammu and Kashmir if Articles 370 and 35A were simply repealed. This action suggests a sacred unity that is en route to a true, unmistakable unification. Hence, a great deal actually should be finished to accomplish this objective.

REFERENCES

- <https://blog.iplayers.in/process-unification-jammu-kashmir-indian-union/>
- <https://selfstudyhistory.com/2015/01/30/the-linguistic-reorganisation-of-states/>
- <https://prsindia.org/billtrack/the-jammu-and-kashmir-reorganisation-amendment-bill-2021>
- <https://www.thc.nic.in/Central%20Governmental%20Acts/Jammu%20and%20Kashmir%20Reorganisation%20Act,%202019.pdf>
- <https://blogs.loc.gov/law/2019/10/falqs-article-370-and-the-removal-of-jammu-and-kashmirs-special-status/>
- <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192505>
- <https://byjus.com/free-ias-prep/article-370/> <https://www.business-standard.com/about/what-is-article-370>