

Indian Constitutional Aid Association



ANALYSIS

The Jammu and Kashmir Reorganisation (Amendment) Bill, 2021-

Thrusting reforms without consent justified in India?

Author: Shrirang Ashaputre
Indian Constitutional Aid Association

INTRODUCTION

In the ancient times, the region of Jammu and Kashmir has been a haven of culture and learning, with scholars connecting Jesus' journey to the West for experimenting with philosophy and exploring the mysteries of existence to this land - many conspiracy theorists believe that the Rozabal Monastery is the final resting place of the Son of God¹. Placed at the crossroads of civilizations, Kashmir, majorly a Hindu state in the early era, shifted hands from Buddhist², Islamic³ and even Sikh Empires⁴, before finally finding some stability during the British Era⁵, which recognized the rule of Hindu Kings over the “*Graveyard of the Empires of India*”.

Post- independence, although India did assure autonomy to the region, it had no option but to intervene following Pakistan's attempt to disrobe the same – the then Prime Minister Nehru, in the quest of upholding its self-control to its residents (as had been the tradition for almost a century) sought the intervention of the United Nations which effectively helped in maintaining the same till date⁶. Constitutional provisions, such as Article 370⁷ and Article 35A⁸, which assured non- interference into internal governance and granted certain privileges to its citizenry respectively were inserted for upholding the promise made to Raja Hari Singh vide the Instrument of Succession⁹. During the regime of the Congress party, up until 2013, the status of the region was sufficiently respected, though mobilization of the military was always on a rise, but again, for preventing terrorist attacks and ensuring tranquillity therein.

Things worsened, after the dawn of the Modi Government, wherein the emerging rightist sentiments coupled with the fear of being slaughtered at the hands of the majority among the Muslim minority of the nation escalated in Kashmir, giving rise to several terrorist attacks by foreign terrorists– Uri and Phulwama to mention a few. The Surgical Strike further aggravated the prevailing disharmony therein and the constant curfews and lack of welfare activities caused serious grievance to the Kashmiris. It is but natural for them to feel ignored in matters relating to its development and therefore, the cause for independence appears to stem for the negligence of the Government towards the needs of the region in the last few years. And probably in the quest of seeking to curb this move of independence by promising to bring about socio-economic progress therein, the Government passed the Jammu and Kashmir Reorganization Act, 2019 – it separated Jammu & Kashmir from Ladakh and these provinces were declared as Union Territories¹⁰. This implied, that the provisions of the Constitution which sought to maintain its independence were deemed redundant, i.e., the region was no more autonomous, which undoubtedly, engendered instability therein. Besides the greater technical and linguistic errors, the Act abruptly merged the administrative governance of the region, which critically affected the socio-cultural fabric, mindset and the lifestyle of the society of that region, which, has considerably differed in comparison to the one maintained by the other citizens therein. While many States have declared Kashmir as an “internal issue” of the country, owing to the international intervention decades ago, it is but natural for Human Rights activists to declare the zone as a “disputed territory” – the 2019 Act is the finest example of abuse of power reflective of dictatorial sentiments no less than China. In the opinion of the Author, the sudden deprivation of the autonomy by the Modi Government is likely to add fuel to the already burning Kashmir Valley, potentially escalating violence therein.

Rather, the efforts of the Congress Government with regards to steadily creating an atmosphere of acceptance and belongingness of and towards India respectively and then undertaking measures for procuring the willingness of the residents of this conflicted zone to join the Indian State officially should have been executed – in the truest sense, this would have ensured the respect of the International Covenants, i.e., the promises so made by the country at the international level with regards to recognizing human rights. History, after all, is a witness as to how reckless and undemocratic decisions without any plan of appropriate implementation gravely affects the lives of the citizens and is truly a sign of mal-governance.

PEACEFUL INCLUSION OF KASHMIR IN INDIA - A MYTH?

What is truly upsetting is that in the last 2 years, the Central Government seems anxious for integrating the region within the country despite being aware of the illicit Chinese and the Pakistani occupation of the eastern and western region respectively, severely affecting the relations of India with foreign nations. In Rajya Sabha, the Minister of State for Home Affairs G. Kishan Reddy in the Rajya Sabha on February 4, 2021, seeking to replace the Jammu and Kashmir Reorganisation (Amendment) Ordinance, 2021 and to amend the Jammu and Kashmir Reorganisation Act, 2019, passed the raised the amendments to it, was successfully passed in the Rajya Sabha¹¹. Specifically, the Bill amends Section 13, i.e., the applicability of Article 239A and Section 88, which talks about the Provisions related to All India Services of the Parent Act, i.e., thrusts strict administrative control over the region. In simple words, the amendment provides for the applicability of all the Article of the Constitution related to elected members of a legislative assembly and merging the existing cadres of J&K with those of Arunachal Pradesh, Goa, Mizoram and Union Territories- this move comes in the wake of the desire of the individual cadres herein to separate¹². While the process of amalgamating Kashmir with India has commenced, installing officers from other parts of India who aren't aware of the lifestyle of the region is likely to engender maladministration and increment the desire of resentment therein. Some breathing-space or some action-plan should have been implemented so as to convert the anguish of the citizens to hope of inclusiveness. Exposing the region suddenly to the ways of India with regards to the law, rules and regulations is unwarranted; the Central Government is in the process of enforcing 170 Laws in Kashmir¹³.

The willingness of the residents for accepting their implementation does not seem to have been taken into account. Likewise, if either of the laws conflicts with the customs of the *modus operandi* of the residents of this area, whether they would be forced to abide by the same? In such a scenario, whether they would be forced to adjust themselves to the demands of Delhi? From the perspective of their residents, the abrogation of Article 370 and the subsequent application of the Act of 2019 and the installation of officers from India for ensuring appropriate implementation and integration of J&K is no less than an illicit occupation! Unlike Goa and Arunachal Pradesh, where, there has always been a desire for merging with India, Kashmir has always sought to maintain its independence autonomy and respecting it was the responsibility of the ruling party. The least the Government could have done is relax the application of those laws, which are likely to contradict the ways of the residents of the region and instead, implement welfare schemes so as to regain their trust. While amending the Bill, any measures for seeking to establish Public industries in the hopes of boosting employment in the said sector should be unjustified – luring them on economic grounds could have enabled successful integration.

CONCLUSION

These moves, in the opinion of the Author, are likely to backfire, increasing the chances of losing the territory as a whole, considering the previous trends of similar nature:

1. The United Kingdom lost its 13 colonies in North America when they levied heavy taxes upon the citizens, prohibiting any representation to them in the law-making process.
2. Tibetans and the citizens of Hong Kong despise Chinese occupation and legal and administrative influence respectively over their region.
3. Even today, South Koreans continue to resent Japanese for their illicit occupation over the peninsula during the first half of the 20th century for attempting to force their integration to Japan by restoring to the administrative authority.
4. Hungary, among other Soviets of the mighty USSR, attempted to break away after being wary of the socio-cultural and political domination therein.

These examples are suggestive of how the imposition of certain ideology through the means of law negatively impacts the rights of the masses. This is precisely why several Covenants of the United Nations specifically provides for the freedom conscience, the right of the citizens to chose their leaders and the mode in which they seek to be governed and so-forth – self-autonomy is given the highest priority and its abidance is expected to be fulfilled by all the nations. In a country where singing the refusal to sing the national anthem is also permitted if it contradicts with the conscience of the individuals, it is unfortunate that the Central Government is attempting to enforce “Indianism” upon the residents of Kashmir and in fact, is the reason for them revolting this way – rather than winning their trust by affection and support, resorting to stringent and unsympathetic paperwork by seasoned officials is likely to aggravate this issue further. The USSR and the Japanese Empire are the finest examples of how “Ultra-Nationalism” tends to desert the very sovereignty of the nations in the first place and with India heading on imposing a similar attitude on the individuals the Author fears the well-being of the nation as a whole, let alone Jammu and Kashmir.

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³ Id.

⁴ Id.

⁵ Id.

⁶ <https://www.thehindu.com/opinion/op-ed/nehru-and-the-kashmir-quandary/article28362589.ece>

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¹⁰ <https://www.hindustantimes.com/india-news/jammu-kashmir-and-ladakh-become-separate-union-territories-from-thursday-10-points/story-fsYC3R1HFXFZxzlwomycrJ.html>

¹¹ <https://www.bloomberquint.com/law-and-policy/rs-passes-jammu-and-kashmir-reorganisation-bill>

¹² Id.

¹³ Id.

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