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REALITY OF REAL ESTATE APROPOS THE JAMMU AND KASHMIR REORGANISATION ACT, 2019

ABSTRACT¹

The abrogation of Article 370 and Article 35(A) has led people to believe that development and economic nirvana is not very far off in the future for the place that has rightly been called Heaven on Earth by Jahangir. One of the primary reasons for this belief is the opening up of non-agricultural land for purchase by non-residents of the state. However, the reality is very different. Did The Jammu and Kashmir Reorganisation Act, 2019 open Pandora's box? Depends on who you ask. This paper answers the question: What are the issues and problems plaguing Jammu and Kashmir and the use of its land in the most optimal way possible? The research presents arguments on various issues with a legal lens predicting its future repercussions, also taking a hard look at the reasons leading up to The Jammu and Kashmir Reorganisation Act and factors that led to the opening up of the land for purchase by outsiders. Till now, Real Estate in Jammu and Kashmir faced ponderous growth due to geographic and socio-political problems. It cannot be said with certainty that the act will bring an evolution in this sector. Better to wait for the fog about the new law to clear before accepting the invitation of purchasing land. We considered various facets of the decision, including the legal and historical backdrop, the role of RERA, backlash from the residents of the surrounding region, the politics involved, and the way the Act was implemented by a Presidential decree raising question upon its ethicality and legality.

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I. INTRODUCTION

Over the past decade, the Real estate sector has advanced to make up the leeway, emerging as the fastest-growing market. Rapid urbanisation and rising income levels better explain for its escalation. Infrastructure development has witnessed growth over the years in form of residential, office spaces, commercial real estate, factory spaces.

Earlier it was expected that commercial real estate will contribute around 11% to India's GDP, making it a market worth \$180 billion by 2020. At this rate, it could attain a market size of US \$1 Trillion in 2030.² But in the current scenario, a decline is caused by slow market, declining sales volume, and delayed projects.

The property industry is not that smooth functioning as one would suppose it to be. It is stumbling on several fronts. Because of the laxity in adherence to the laws, rules, and regulations, the realtors, buyers, and the government itself is experiencing complex issues. Moreover, an unprecedented move was made by the government in 2019.

The Jammu and Kashmir Reorganisation Act created history by revoking Article-370 and Article 35(A) on 5th August 2019. While Article 370 granted special status to Jammu and Kashmir³, Article 35(A) till now had stopped the non-residents of the state from investing in Real estate and also from acquiring land⁴. Article 35A was added to the constitution of India through a Presidential order, the constitution (Application to Jammu and Kashmir) Order, 1954, issued under Article 370.⁵

Article 370 provided the then state of J&K with their constitution. It empowered the state and gave it autonomy, from having its own flag to freedom of implementing laws. Though some provisions were enforced in the state as well as the rest of the country, it was only done with the concurrence of the State government except for certain subjects such as foreign affairs, defense, and communications that remained under the preserve of the central government.⁶ While Article 35A gave a special privilege to the residents of Jammu and Kashmir, it is also special as it does not appear in the main body of the constitution. In fact, it is immediately

² Sadhana Tandon, *Real estate sector to cross \$1 trillion by 2030: The Housing Secretary*, BUSINESS STANDARD (June 8, 2021, 9:50 am) https://www.business-standard.com/article/current-affairs/real-estate-sector-to-cross-1-trillion-by-2030-housing-secretary-121053100871_1.html.

³ The Constitution of India, 1949, Article 370 (India).

⁴ The Constitution (Application to Jammu and Kashmir), 1954 C.O. 48 (India).

⁵ The Jammu and Kashmir Reorganisation Act, 2019 NO. 34 OF 2019 (India).

⁶ Geeta Pandey, *Article 370: What happened with Kashmir and why it matters?* BBC NEWS (June 10, 2021, 2:20 pm) <https://www.bbc.com/news/world-asia-india-49234708>.

followed by Article 36 but it appears in appendix I. 35A defines the “permanent residents” of the J&K and special rights and privileges conferred to those permanent residents.

With the Jammu and Kashmir Reorganisation Act, 2019 coming into picture, the matter has become labyrinthian. Scrapping of Article 370 and Article 35A meant stripping of the special status of the residents of J&K and equating it with the rest of the Indian states in law application procedure.

The provisions of the Transfer of Property Act, 1882 will be applicable from here on across India. Theoretically, this Act was pre-existing, in the diluted form of Transfer of Property Act, 1977 but was subject to the state’s own laws on the transfer of immovable property.⁷ The two Union territories will still be governed by the Act of 1977 with a little tweaking: removal of Section 139. The protection awarded by extinct Section of 139 included the right for the various communities to own a property and use the resources of J&K, prohibiting the citizen to alienate these to the outsiders.⁸

Jammu and Kashmir Real Estate (Regulation and Development) Act which was entitled to set up Real Estate Regulatory Authority, had been approved in December 2018 by the State Administration Council. But soon after, the Centre divided the state into two Union Territories, and the regulatory law stands repealed under the Jammu and Kashmir Reorganisation Act, 2019. Thus the Real Estate Regulatory Authority was not formed.

For more than a month, phone connectivity and internet services had been suspended. PDP president Mehbooba Mufti was taken into custody and house arrested in Hari Niwas guest house. National Conference leader Omar Abdullah was also detained along with a few other mainstream political leaders. The Indian Army and Air Force were put on high alert. 8,000 CRPF personnel were reportedly airlifted to Kashmir.

II. BACKLASH AGAINST JAMMU AND KASHMIR REORGANISATION ACT, 2019

⁷ Vakansha Sachdev, *Article 370 ‘Revoked’: How Central Laws Will Impact Kashmiris*, THE QUINT (June 12, 2021, 3:20 pm) <https://www.thequint.com/news/india/major-changes-jammu-and-kashmir-laws-bifurcation-union-territory-ipc-transfer-property#read-more>.

⁸ Transfers of Property Act, Svt. 1977, § 139 No. XLII of Svt. 1977 (India).

The government's decision sparked anger in the region of J&K, where most people remain steadfastly opposed to the removal of special status, which was a foundational assurance given to the territory when it acceded to the Union of India in 1947. The terrain remains flooded with military and paramilitary forces to counter militant organisations and riots.

Congress leader P. Chidambaram criticized the act and stated, "Jammu and Kashmir is not a piece of Real Estate." The people of Jammu and Kashmir want their autonomy. This act not only challenged the sentiments of the residents but also reduced the state into municipal administration. He reiterated his party's stand for the restoration of statehood in the Assembly.⁹

Congress spokesperson of Jammu and Kashmir, Ravinder Sharma supported the "Signature Campaign" which took place in Jammu. The contention being the scarcity of jobs to the unemployed youth of the state and upon this overloading, the burden by giving up their lands to the outsiders.

To make things worse, militant organisation People's Anti-Fascist Front (PAFF) threatened potential buyers and investors with grave repercussions, carving out dire consequences on the walls and streets in Srinagar. As the slogan reads out, "Don't put your honor and life on the line for a piece of Kashmiri land", a video went viral on social media where an anonymous militant stated, "We won't allow Israeli-type colonialism in Kashmir".

III. PARADISE ON EARTH BECKONS PROPERTY BUYERS

Property prices in Jammu, Srinagar, and Baramulla range between Rs 2,200 and Rs 4,000 per square foot which is significantly lower than rates in tier two and tier three cities.¹⁰ Real estate experts affirm that the low prices are an incentive for those who want to invest. The real-estate sector across India is going through a recessionary phase.

An opportunity is unbarred where one could now observe a surge in investment in the hilly and serene land which may in turn surge in investment. Depressed commercial real estate may shoot up, thus supplementing the economy of the country. Until now, the real estate market

⁹ Amit Chaturvedi, *Jammu and Kashmir not a real estate: Chidambaram reiterates Congress demand for full statehood*, HINDUSTAN TIMES (June 12, 2021, 5:08 pm) <https://www.hindustantimes.com/india-news/jammu-and-kashmir-not-a-real-estate-chidambaram-reiterates-congress-demand-for-full-statehood-101624252700797.html>.

¹⁰ Ravi Dubey, *Property rates in Kashmir: All you need to know about owning land in J&K*, DNA (June 14, 2021, 5:10 pm) <https://www.dnaindia.com/business/report-property-rates-in-kashmir-how-to-get-a-plot-all-you-need-to-know-about-owning-property-in-jammu-and-kashmir-2852796>.

faced ponderous growth due to geographic problems and unstable socio-political situations. Segments like hospitality, tourism, entertainment are in utmost need of infrastructural development which may attract tourism and investment opportunities in the near future.

Inheritance rights for the women to the property, which were revoked the moment they marry an outsider, now stand repealed. The possession of the estate held by the woman can be legally inherited by their children. State's heavy reliance on tourism, cannot aptly suffice the decreasing employing rate. A spark arising from the industrial sector could endeavour to the growth of the economy and may unlock some opportunities.

BJP leader Nirmal Singh said the Union government will propose a domicile-like option for the Union territory ensuring that the interest of the residents will be protected by not allowing outsiders to buy agricultural land. He added, the bill is a resurgence to attract migrants who want to move back to the Valley.

In spite of the fact that a prosperous future could be ascertained ahead, the investors and realty developers are taking precautions before washing their hands in the real estate sector as it could be too early to predict what's in the Pandora's box. A pragmatic approach is needed in order to earn a profit before investing in this sector which has been facing distress in the state for years already.¹¹

According to the chairman of Frutech Infrastructure Private Limited, as soon as the act was passed, people all around the country started making enquiry about the land availability but they were still waiting for the fog about the new law to clear before initiating transactions.

Vast lands in Samba and Kathua, being the major Hindu majority districts could be the attraction for the outsiders and exploitation could be seen in the near future. Other rich areas include the stretch of land along the city of Jammu to Akhnoor, which is located on the banks of river Chenab.

He added that real estate dealers could face resentment, backlash from militants, and anonymity from their community as an impulse for dealing and escalating transactions of native lands. Real estate dealers are stuck between the Government and society. It's their duty to obey the new land law but doing so they would pit against their people.

¹¹ Honey Katiyal, *Article 370 Revoked: How govt's move may boost real estate market in Jammu and Kashmir*, FINANCIAL EXPRESS (June 16, 2021, 9:20 am) <https://www.financialexpress.com/industry/article-370-revoked-how-govts-move-may-boost-real-estate-market-in-jammu-kashmir/1671266/>.

The Chairman of ASSOCHAM National Council on Real Estate, Housing and Urban Development, Pradeep Agarwal in a conference organised by Signature Global stated “After few months, things would be in total control and government is expected to issue directions for proceedings of the transaction agreements.”¹²

IV. ROLE OF REAL ESTATE REGULATORY AUTHORITY

RERA stands for Real Estate Regulatory Authority which came through a well-drafted Act named Real Estate (Regulation and Development) Act, 2016. The Act received the assent of The President of India on 25th March 2016 and came into force on 1st May 2016. At the time of its initial existence, only 52 sections out of 92 sections were notified, also, 69 of the 92 sections were being notified vide notification of the Ministry of Housing and Urban Poverty Alleviation (HUPA). The rest of the provisions came into operation in May 2017.

Before the RERA act was launched, Indian real estate was a confounding and unfettered market. The main rationale behind the same was there was no meticulous Act governing the Real estate industry. With the introduction of RERA, all the realtors and the builders have to compulsorily be registered to their respective state authorities, meaning thereby that they have to work under the legal framework and ambit of the authority.

At the time of induction, the Act extended to the whole of India except the State of Jammu and Kashmir¹³, but after the revocation of Article 370, the Union Territory of Jammu & Kashmir has notified the implementation of the Real Estate (Regulation and Development) Act, paving the way for property development in the two regions. Its main objective is to protect the interest of the buyers, maintain transparency among the citizens investing in real estate, curb money laundering and black marketing, prevent leakage, and boost the industry.¹⁴

V. IMPACT OF COVID-19

The impact of covid-19 could be seen affecting almost all the industries and real estate being no exception. The pandemic was around the corner when the J&K Reorganisation act was passed. Till now people have been suffering at their own existing locations due to a large

¹² Disha Sanghvi, *Why you shouldn't rush to buy property in J&K*, LIVE MINT (June 16, 2021, 12:17 am) <https://www.livemint.com/money/personal-finance/why-you-shouldn-t-rush-to-buy-property-in-j-k-1565544780598.html>.

¹³ The Real Estate (Regulation and Development) Act, 2016 No. 16 of 2016 (India).

¹⁴ Faizan Haider, *Jammu & Kashmir notifies RERA*, THE ECONOMIC TIMES (June 22, 2021, 5:30 pm) <https://economictimes.indiatimes.com/industry/services/property/-/cstruction/jammu-kashmir-notifies-rera/articleshow/77302966.cms?from=mdr>.

outbreak of the virus and continuous lockdown. They will wait for the situations around them to get stabilise before exploring out uncharted territory in Jammu and Kashmir.

Developers who are about to start their careers in the real estate industry are bearing the brunt of the pandemic. With the surge in coronavirus cases for the second time, there is an escalation in the number of distressed properties. RERA acting as the last nail in the coffin is being of no help, whilst making the execution of the projects impossible. With 75% of the funding being deposited with the escrow as per the RERA Act¹⁵, the builders cannot manoeuvre their ways to other developments and divert their funding to other launches, which is forbidden, sending an open invitation to the concerned authority to strip off their license.

V. AGRICULTURAL LAND AS A BONE OF CONTENTION

In August 2020, the two UTs agreed to comply with the Real Estate (Regulation and Development) Act, 2016. Buying and selling of the property which was only restricted to the citizen is now open to the outside world. Prior to this, it was impermissible for a non-resident of J&K to invest in an immovable property. Nevertheless, according to the J&K Reorganisation Act, 2019 the non-residents do not have free reigns as agricultural land cannot be used for non-agricultural purposes¹⁶. But this statement is factually incorrect, a district collector is vested with the power to convert the use of agricultural land to non-agricultural purposes. Land which previously was not given to the industrialist will now be exploited. The industries will abuse prestigious natural resources in the garb of development in the state.

VI. LACK OF SECURITY

Real Estate Industry is more of a sentiment-driven industry; thus security environment is a big concern without which no real-estate venture could work. Investors want political stability in J&K, without which it just has a novelty value and is not a very lucrative market otherwise. Commercial and residential real estate firms will not want to invest until there is political

¹⁵ *supra* note 12.

¹⁶ The Jammu and Kashmir Reorganisation Act, 2019 No. 34 of 2019 (India).

stability in the state. Situations of real estate in Jammu are still preferable vis-a-vis Kashmir, because of which Jammu will get a new lease of life.¹⁷

VII. LEASH ON INNOVATION

The enactment of the Central Laws puts a harness around the builder's creativity and modernization. For example, where a realtor comes up with an architectural design of a mini play-safe clubhouse for children, comprising of air purifiers for a virus-free habitat or a specialised meditation centre to get peace of mind. Either way, RERA dissuades this. Since new plans take an additional period to get finalized, which could also result in burdening the developer with a hefty penalty.

VIII. SUBTRACTING IDENTITIES AND TRADITIONS

This concern is less pronounced in the countryside. The ethnicity and culture of the Kashmiris will be done away with, which is culturally wrong since they consider their traditions and customs to be pious. This could be put in parallel with the CAA and NRC laws brought by the Government in Assam; the persecuted minorities of Pakistan will be dominating over the Assamese ensuing loss to their oneness.

Hindu residents in the city of Jammu have reservations about selling their land to outsiders. Now the new act will dilute the Dogra identity in return. Furthermore, the Act of 2019 gives the government rampant power to take over any land, pronounce any area of strategic interest for defense or assign them for industrial and public use.

IX. SLING YOUR HOOK FROM A PROPERTY WITH PENDING LITIGATION

The government will soon notify "development zones" for investments and specified purposes. Those interested will have to ensure that no outstanding claims or litigation are pending. Mortgaged properties or pending litigation on the property should also be a signal to hightail it. It is for the reason that if the seller is not the rightful owner or the ostensible owner is not given the authority to transfer the property, it has to be handed back to the winning litigant.

¹⁷ Vijayta Lalwani, *Real-estate developers are wary of investing in J&K: Businesses cannot grow if there are curfews*, SCROLL.IN (June 24, 2021, 12: 10 pm) <https://scroll.in/article/936374/real-estate-developers-are-wary-of-investing-in-j-k-businesses-cannot-grow-if-there-are-curfews>.

X. VIRAL MESSAGES OFFERING LAND FOR SALE

If there is anything that can beat the present government's penchant for disruption, it has to be the fake news factory of the country. The same was seen when Article 370 was abrogated. Kolkata-based real estate company forwarded messages offering to secure land deals in the Kashmir valley at a throwaway price of 11.25 Lakhs. Eventually, the text message turned out to be a hoax. Any prudent person having knowledge of real estate could figure out that the price was too low. The number turned out to be Eden Realty's office, a major real estate group. The founder, Sachinanda Rai was arrested soon after. He denied the allegations, saying that no such offers were made from their side.¹⁸

The question being, **why the government is treating the state of J&K poles apart from the other states where trading land with outsiders is partially or fully forbidden?**

There are at least 15 such states which don't allow non-residents to be a part of their real estate business while Nagaland, Sikkim, Arunachal Pradesh, and Himachal Pradesh provide for only the residents to buy land.

The Jammu and Kashmir Development Act, 1970 debars the establishment of J&K Industrial Development Corporation to restrict investment and settlement of any industrial zone. J&K Industrial Development Corporation has been set up by the Central government through the amendment in the J&K Development Act. The Centre struck down the phrase "permanent resident of the state"¹⁹ from Section 17 which revoked the special privilege of the residents of the state, used for regulating the land ownership, leaving a window open for the outsiders to chance upon a property. The Act gives power to the corporation to acquire any land and has legal cover against challenges to the property vested in it. The corporation has the power to acquire and hold the property for leasing, mortgaging, selling for industrial developments, and to raise construction to get the duties and functions executed.²⁰

¹⁸ Newsroom, *Article 370: The Truth Behind Viral SMS Offering Land For Sale In Kashmir*, HUFFPOST (June 24, 2021, 7:15 pm) https://www.huffpost.com/archive/in/entry/article-370-truth-behind-the-viral-sms-offering-land-for-sale-in-kashmir_in_5d47eabae4b0aca341206f48.

¹⁹ The Jammu and Kashmir Development Act, 1970 No. XIX of 1970 (India).

²⁰ Mudasir Ahmad, *Contrary to Government Line, New J&K Land Laws Can Effect Sweeping Changes*, THE WIRE (June 23, 4:16 pm) <https://thewire.in/rights/jammu-kashmir-new-land-laws-sweeping-changes-government>.

Section 4 of The Jammu and Kashmir Alienation of Land Act, 1938 stated “transfer of land in favour of any person who is not a State Subject, is prohibited.”²¹ - a law to flick through the transfer of ownership of agricultural land for non-agricultural purposes will stand terminated.

6000 acres of land has been issued for an industrial park on the land of Jammu and Kashmir. A whopping amount of 30,000 crores would be invested for installing 37 industrial estates. Lieutenant Governor Manoj Sinha defended the government-initiated project in the name of providing more employment opportunities for the youth. But if we flip the other side of the coin, it just paved way for private enterprises and outside industries to gain settlement.²²

Punjab and Assam are the two states which battled insurgency in the past. After which, real estate prices inflated once the trouble subsided. **Will Jammu and Kashmir show a similar trend?**

There is a lot of difference between Kashmir and Punjab. Punjab has rich land for both agriculture and setting up industries, but the same cannot be said for Kashmir. One has to wait for around 10-15 years in order to see any significant value growth. In comparison, Jammu is a safe play for anyone who has a high-risk appetite.²³

Most parts of Jammu and Kashmir are connected by road but rail and air connectivity are limited. Constant geological changes occur due to which it is difficult to access geology in advance. Advanced engineering skills are required to cut through inaccessible and challenging hilly terrain for laying down tunnel portals and rail tracks. Connectivity of the state with other parts of the country is necessary for the people to engage themselves in the development.²⁴

²¹ The Jammu and Kashmir Alienation of Land Act, 1938 (1938 A. D.) No. V of 1938 (India).

²² Riyaz Wani, *Kashmiri Property Dealers 'Fear The Future' As Land Laws Change*, HUFFPOST (June 24, 2021, 10:50 pm) https://www.huffpost.com/archive/in/entry/kashmiri-property-dealers-land-laws_in_5fba89dec5b66bb88c5ef137.

²³ Ashwani Kumar Sharma and Vandana Ramnani, *Thinking of buying property in Jammu and Kashmir? Here are 6 things to know*, MONEYCONTROL (June 25, 2021, 12:20 pm) <https://www.moneycontrol.com/news/business/real-estate/thinking-of-buying-property-in-jammu-and-kashmir-here-are-6-things-to-know-6044801.html>.

²⁴ Anisha Dutt, *Why railway connectivity in Jammu and Kashmir is such a challenge?* HINDUSTAN TIMES (July 2, 2021, 2:40 pm) <https://www.hindustantimes.com/india-news/why-railway-connectivity-in-jammu-and-kashmir-is-such-a-challenge/story-JfBKVyHZ4RSnzNn63oi3CM.html>.

XI. CONCLUSION

The Jammu and Kashmir Reorganisation Act is considered undemocratic, unconstitutional and backward-looking with the only aim to disempower the people of Jammu and Kashmir and change the demography. The induction of the Reorganisation Act resulted in diminishing the stature of quite a few legislations, some got repealed, some got amended.

The list includes Big Land Estate Abolition Act, 1950, Jammu and Kashmir Tenancy Act, 1980, Jammu and Kashmir Common Lands (Regulation) Act, 1956, The J&K Land Revenue Act, 1996, The Agrarian Reforms Act, 1976 and the J&K Land Grants Act, 1960, the J&K Development Act, 1970.

As part of standard lawful procedure, the Centre should have taken permission of the State government of J&K prior to modifying any law concerning the state, but the state legislative assembly was reduced to a minority after its dissolution in 2018, thereby imposing President's rule. Thinking it to be the most opportunistic moment, the federal government, only had to seek the Governor's consent to revoke Article 370 and Article 35A and propose the Jammu and Kashmir Reorganisation Act, a year later. The state assembly being absolved of power, no referendum was sought by the Centre giving them unbridled authority to twirl the constitution of J&K upside down. Some legal experts were of opinion that "this move was completely within the powers of government, constitutionally sound and no legal and constitutional fault can be found in it." On the contrary, an expert reasoned that, "it was an illegal decision, akin to committing fraud that could be challenged in the Supreme Court."

It is too early to forecast how demand for real estate in Jammu and Kashmir will pan out as it is still a sensitive area due to socio-political situations and militant organisations. Buyers would be observing the pertinent issues prevailing over the land before moving further with the transactions. Initially, the real estate momentum may benefit the hospitality sector which is in dire need to prosper but it may be a slow start for residential real estate. Unless the government ensures utmost safety, it would be difficult to pace the realty sector. Security was increased in terrain soon after the act was passed which shows scepticism of the people towards the government. Kashmir withstands a decades-old insurgency and Pakistan manoeuvre attempts along the Line of control and Radcliffe line volatile.²⁵

²⁵ Rajesh Chandramouli, *As government opens J&K real estate market, paradise on earth beckons property buyers*, TIMES OF INDIA (July 2, 2021, 8:20 pm) <https://timesofindia.indiatimes.com/business/india-business/as-government-opens-jk-real-estate-market-paradise-on-earth-beckons-property-buyers/articleshow/78919809.cms>.

Price appreciation is expected in the regions of Jammu, Kashmir, and parts of Baramulla only if the demands go up and that could only be possible if the government comes out with contingency policies to boost up confidence in buyers to initiate investments.

