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# INSIGHT

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## THE BALKANISATION OF JAMMU AND KASHMIR

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In the mid-1990s, when he was Mayor of Istanbul, Recep Tayyip Erdogan famously quipped “democracy is like a tram. You ride it until you arrive at your destination, then you step off.” India, once called the world’s largest democracy, seems to have adopted this approach when it comes to Jammu and Kashmir. After achieving regional superpower status and following the BJP’s election into power, it has become decidedly and unapologetically non-democratic. On August 5, 2019, Jammu and Kashmir was annexed to India and bifurcated into two. These historic constitutional changes redefined the legal status of the disputed territory and fundamentally changed its relationship with both India, Pakistan, and even China. Many Indian constitutional lawyers defended the abrogation of Article 370, arguing it is in accordance with India’s domestic law, however, most agreed that the bifurcation of the territory into two, Jammu and Kashmir and Ladakh, was legally void. This is a strange conclusion to reach as, from Pakistan’s point of view, while both are bad, the annexation seems to be far worse. However, the bifurcation of the state is a worrying development that should be followed very carefully by Pakistan and China.

Firstly, because this seeks to dilute the demography of the state. Ladakh has a Buddhist majority with a sizable Shia Muslim population, Kashmir’s valley has a Muslim majority, and Jammu has a Hindu majority. Now that these have been balkanised by India into two territories and India’s settler laws encourage non-local, mostly Hindu Indians to move to Jammu and Kashmir, it is likely that India wants the Muslim majority in the valley to be substantially diluted. This would be a problem for Pakistan’s long-standing legal position which is that a referendum should be held in the state, as the question now is where would this be held and also how many local Kashmiris would be left in the territory to vote? Secondly, significantly for India, it faces many critics at home regarding the bifurcation as it forms a worrying precedent for other states and undermines its own constitution. Thirdly, another

country which has a bearing on this change is China which is unhappy with the unilateral nature of the step on territory which it considers disputed, and which abuts land upon which China and India have clashed very recently. We will turn to the second and third of these issues in turn as the first has been much discussed in Pakistan’s opposition to this law.

The Jammu and Kashmir Reorganisation Act (2019) was passed by India’s Parliament with a two-thirds majority days after the abrogation of Article 370. The law is unprecedented as never before in India’s history has a state been bifurcated into two union territories. Amit Shah, as Foreign Minister, explained that the state was bifurcated owing to the “long pending demand of people of Ladakh, to give it the status of a Union Territory to enable them to realise their aspirations”, whilst for Jammu and Kashmir, the reason given is “the prevailing internal security situation, fuelled by cross border terrorism in the existing State of Jammu and Kashmir.” The law however is legally void as India’s constitution, under Article 3, does not allow the Parliament to get rid of a state and create two union territories in its place. Also, even if it could be argued (as some Indian constitutional lawyers do) that the constitution does allow this, it could not be done while the state of Jammu and Kashmir was under the President’s rule, as it requires the input of the state’s legislature. As the input of Jammu and Kashmir’s legislature could not be given, Parliament consented to its own proposed reorganisation, which undermines the safeguards of a federalist structure and may create a dangerous precedent which takes away the prerogative of states to have a say in their reorganisation. This erodes the democratic nature of the constitution under which a state may not be guaranteed its territorial integrity but they are guaranteed a say in the extent to which this is altered.

Petitions were filed before India’s Supreme Court challenging the abrogation of Article 370 and the state’s bifurcation soon after those laws were passed. Notices were issued by the court and stays

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were not granted. The matter was last heard in March 2020, when the Supreme Court ruled that it should not be referred to a larger bench. Since then nothing has happened in an incredibly important case of constitutional significance with the court showing no urgency despite virtually hearing other cases during the coronavirus pandemic. Over three years have passed since these petitions were filed before the Court and it seems unlikely that we will have a pronouncement on the matter any time soon. However, it does indicate a clear reluctance on the part of the superior judiciary to censure the government for its unconstitutional moves.

The other important element to this relates to China. The Chinese Foreign Ministry released a statement the day after India's announcement regarding the bifurcation which said that "India has continued to undermine China's territorial sovereignty by unilaterally changing its domestic law." Since then China has stated it is following the situation closely and maintains that any unilateral change to the status quo is illegal and invalid. President Xi, in October 2019, during a visit to India was quoted as saying the "dragon and elephant dance is the only correct choice for China and India", which seems to indicate that China wants India to act in tandem with it and not unilaterally in order to prevent issues. The reason for China's indignation is because Ladakh abuts China's Aksai Chin where the Line of Actual Control between India and China runs. This is not only the site of the 1962 Sino-Indian war but also where border clashes took place between Indian and Chinese forces in 2020 and more recently in 2022. However, China is taking ever increasingly aggressive postures in defence of its territorial claims, especially in the South China Sea. In April 2023, the Chinese government renamed 11 places in Arunachal Pradesh in Chinese and Tibetan characters, referring to the region as 'Zangnan, the southern part of Tibet' and part of Chinese territory. In this context, it seems apparent that India's unilateral actions of 5 August 2019 have opened a new front

with China and its evolving state practice on exerting its territorial claims.

As both sides are now competing to build infrastructure along the disputed Line of Actual Control, there are likely to be more clashes along this area especially given India's aim is to enhance Ladakh's connectivity and construction of a new road to a high-altitude base has already started. India is investing heavily in defence infrastructure in Ladakh in a move which signals its desire to meet China toe to toe along the disputed border. The Defence Minister, Rajnath Singh, inaugurated 75 infrastructure projects in Ladakh in October 2022 - these include bridges, roads, helipads, landing ground for aircraft, and storage for up to 22,000 troops and 450 heavy vehicles and tanks. All of this signals why India chose to bifurcate the territory in the first place - at the heart of this decision is its desire to ensure defence preparedness at high altitudes while distancing the area from the Jammu and Kashmir 'dispute'. The alibi of allowing the people of Ladakh 'to realise their aspirations' is a mere figleaf, as is shown by the fact that the population, both Buddhist and Shia, began protests in February 2023 disillusioned with what was promised to them after the bifurcation and what was delivered. India's real reasons should be a cause for concern for both China and Pakistan but could also be an opportunity for Pakistan and China to align their state practice in a way which preserves their joint interests while preserving the disputed nature of the territory.

Not only is the division of the state of Jammu and Kashmir a violation of international law, it is also an erosion of India's democracy, and it affects two of the largest countries in the region. In violating their own constitution to further oppress and change the demographics of the valley, India can no longer claim to be the world's largest democracy. This ride ended in August 2019 and India has most definitely gotten off the tram.