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# A New Era for Kashmir: The Effects of Repealing the Ranbir Penal Code

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## ABSTRACT

*This research paper analyses the Ranbir Penal Code in contrast to the Indian Penal code after the repealing of the former and replacement with the latter, due to the abrogation of Article 370 and thus replacing all the laws in Jammu, Kashmir and Ladakh with the central Indian laws. There are a few differences in the substantial aspects of the Penal Codes which entails changes and thus new challenges faced by the courts in adapting to the changes.*

*Therefore, this expansion of the Indian Penal Code, 1860's territorial jurisdiction has numerous implications and consequences owing to the conflict of certain sections. This article will explore in depth the history behind the separate penal code of Kashmir, the decision to abrogate Article 370 with special reference to the substantive criminal law, and the possible conflicts and/or changes that are undeniably bound to follow such an ordinance.*

## I. INTRODUCTION

Certain laws in the Ranbir Penal Code are not seen in the Indian Penal Code, and vice versa. For the purposes of this research paper, the term 'Kashmir' shall be used to refer to the area of Jammu, Kashmir and Ladakh as in almost all of the discourse surrounding the issue, Kashmir is at the very heart of it. In 1932, during the rule of Ranbir Singh over Jammu and Kashmir, the Ranbir Penal Code was made on similar lines to the Indian Penal Code, 1860 by Macaulay. When the ruler of Maharaja Hari Singh during the time of the independence was under attack from Muslim tribes, he signed an Instrument of Accession granting only Foreign Affairs, Defence and Communications related aspects to the Government of India. Hence, the criminal laws governing Jammu and Kashmir continued to be the Ranbir Penal Code instead of the Indian Penal Code. This was one of the special features of autonomy given to JK under Article 370 of the Constitution of India until August 5<sup>th</sup>, 2019. Article 370 has presently been repealed and effective immediately, the territorial jurisdiction of the Indian Penal Code extended to the territory of JK and the Ranbir Penal Code was discarded. However, there are

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several differences between the Ranbir Penal Code, 1932 and the Indian Penal Code, 1860 owing to the different amendments made in the Indian courts. The Ranbir Penal Code, 1932 has remained relatively static as compared to the Indian Penal Code, 1860 due to the higher population and diversity in India which forced the courts and the legislature to modify and reform laws. For example, Section 377 was partially decriminalised to the extent of consensual homosexual intercourse in the Indian Penal Code, 1860, but this was never the case in JK. This can be seen as a step forward for JK as this will now be the precedent for JK as well. At the same time, certain restrictions which were imposed in JK are now removed. For example, the banning of cattle slaughter and possession of beef in JK as of now stands removed, and there are petitions to reintroduce it in order to save the environment as well as to protect certain religious sentiments.

There is a startling dichotomy to be observed here. This shift in laws and expansion of territorial jurisdiction of the Indian Penal Code, 1860 has two implications. One, is the progressive shift forward in the theoretical aspects of the law, as all of the Supreme Court's rulings and precedents as well as the Legislative amendments to the Indian Penal Code, 1860 are now applicable to Kashmir which had stagnated in its development of criminal law. However, in the practical and theoretical aspects of the law, it is a dynamic and unprecedented shift which entails procedural changes and decisions to be made as to the pending cases which were booked under the Ranbir Penal Code, 1932, as well as to manage tensions regarding laws that were in existence before in Kashmir under the Ranbir Penal Code, 1932 that are now not applicable, and the tensions surrounding amendments to the Indian Penal Code, 1860 that the citizens of Kashmir were given no say in before this.

### **Scope of Research**

This research paper will limit itself to the analysis of the substantive law, i.e, the definition of the offences and the differences between the description of the crime in the Indian Penal Code and the Ranbir Penal Code. This paper will not delve into the procedural aspects of the repealing of the Ranbir Penal Code, 1932 and its replacement by the Indian Penal Code, 1860, i.e, the Criminal Procedural Code. Furthermore, this research will only touch upon the history of the two different penal codes but will not aim to analyse the circumstances in much detail. This research paper will also not discuss the abrogation of Article 370 of the COI as this study is focused on the substantive criminal laws and not the constitutionality of the decision to fully integrate Kashmir with India.

### **Research Objectives**

The objective of this research study is to analyse the differences and implications of repealing the Ranbir Penal Code of Kashmir and replacing it with the Indian Penal Code. It seeks to understand the subtle changes that will come about by this replacement, and to objectively understand if this replacement is beneficial. Furthermore, this paper will also bring to attention the sections that are given importance in the Ranbir Penal Code, 1932 but aren't given the same treatment in the Indian Penal Code, 1860, and vice versa.

### **Research Questions/Hypothesis**

The research hypothesis is as follows:

The replacement of the Ranbir Penal Code, 1932 with the Indian Penal Code, 1860 will be substantially beneficial for the development of criminal law of Kashmir.

The research questions are as follows:

1. What are the differences between the Ranbir Penal Code, 1932 and Indian Penal Code, 1860?
2. Does the replacement of the Ranbir Penal Code, 1932 with the Indian Penal Code, 1860 bode well for the field of criminal law in Kashmir?
3. What are the implications of the expansion of the territorial jurisdiction of the Indian Penal Code, 1860?

### **Research Methodology**

The research methodology applied in this research study is an amalgamation of doctrinal legal research, comparative legal research, and analytical legal research. Doctrinal legal research has been used in order to approach the research in a more theoretical and substantive manner by reviewing not only the bare acts but also the various newspaper articles and research papers that deal with the subject matter. Comparative legal research is used in order to compare the specific sections of the Ranbir Penal Code, 1932 with the related sections of the Indian Penal Code, 1860. Analytical legal research is then utilised to analyse these differences objectively and determine the impact of such replacement of laws.

## **II. LITERATURE REVIEW**

There is a dearth of in-depth studies which analyse the theoretical and substantive shift from the Ranbir Penal Code, 1932 to the Indian Penal Code, 1860 as this is a recent development in the field of the territorial jurisdiction of the Indian Penal Code. The article titled "Article

370 ‘Revoked’: How Central Laws Will Impact Kashmiris” by Vakasha Sachdev<sup>2</sup> describes the changes that will follow the revoking of Article 370. The article lists out the changes that will come about in the penal code now applicable to Kashmir following the application of the Indian Penal Code, 1860, such as the decriminalisation of homosexuality. However, this article does not provide a comparative analysis of the Ranbir Penal Code, 1932 and the Indian Penal Code, 1860. “Bitter realities of political history of J&K” by Bhim Singh<sup>3</sup> narrates the story of the accession of Jammu and Kashmir, the special status it was given and the functioning of the laws in Jammu and Kashmir. It does not compare any laws to the Indian Penal Code, 1860 but it provides a valuable insight into the legal history of Kashmir and its jurisprudence. A legal report titled “Committee for reform in criminal law to start online consultation soon”<sup>4</sup> in The Hindu newspaper provides valuable information on the composition of the panel to review the required reforms in the criminal laws and their method of going about the same. “Three days before Ranbir Penal Code was replaced by Indian Penal Code, 1860, SC struck down its adultery clause” a newspaper article by Ananthakrishnan G.<sup>5</sup> describes the plight of a man who was charged under the Ranbir Penal Code, 1932 and thus had to go through a lengthy process to attain justice and thus provides an insight into the perils that the juxtaposition of two different penal codes posed. “HC refuses to quash defamation proceedings against ex-PDP Minister”<sup>6</sup> by Daily Excelsior narrates the High Court’s stance on cases registered under the Ranbir Penal Code, which was that if the offence was reasonably considered a crime, then the proceedings would continue and would not be dismissed simply in lieu of there being a differently titled penal code in effect. This is important as it puts forth the theory that there will be no retrospective application of the Indian Penal Code, but it is still unclear whether this will apply for all offences under the Ranbir Penal Code.

### III. DISCUSSION

- **Expansion of territorial jurisdiction of Indian Penal Code**

The revocation of Article 370, which was the article that limited the Parliament’s power to make laws governing the territory of Jammu and Kashmir, was also accompanied by the

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<sup>2</sup> Vakasha Sachdev, *Article 370 ‘Revoked’: How Central Laws Will Impact Kashmiris*, THE QUINT, August 7, 2019.

<sup>3</sup> Bhim Singh, *Bitter realities of political history of J&K*, VIJAYVAANI (2010), <http://www.vijayvaani.com/ArticleDisplay.aspx?aid=1076> (last visited Jul 15, 2020).

<sup>4</sup> Committee for reform in criminal law to start online consultation soon, THE HINDU, July 1, 2020.

<sup>5</sup> Ananthakrishnan G, *Three days before Ranbir Penal Code was replaced by Indian Penal Code, SC struck down its adultery clause*, THE INDIAN EXPRESS, August 8, 2019.

<sup>6</sup> HC refuses to quash defamation proceedings against ex-PDP Minister, DAILY EXCELSIOR, July 16, 2020.

creation of two new territories that are now considered a part of the Indian State by simply dividing the pre-existing Jammu and Kashmir territory, i.e, Ladakh, and Jammu and Kashmir. They are now considered Union Territories. Therefore, the jurisdiction of the Indian Penal Code now extends to two more territories.

The practical burdens of this shift are irrefutable, such as the application of these laws, the working of the justice system, educating the police as well as the judiciary about the changes that have now come about, and the disposal of past cases which were filed under the Ranbir Penal Code. However, theoretically, this appears to be a leap ahead with regards to the substantial matters. Owing to the political turmoil and uncertainty of status in Jammu and Kashmir, there was never a large focus on the progression of criminal law<sup>7</sup>. Now, all of India's reforms and amendments are applicable all at once. This in practise has and will lead to more tensions, but in the long run, are more in tune with the international standards of criminal law.

- **Section 4**

Section 4 of the both the penal codes penalise offences committed by the citizen outside of the state, and with an illustration also dictates that the citizen can be tried for that offence even if it was committed outside of the state. However, the Indian Penal Code<sup>8</sup> is more illustrative in this aspect. It penalises even the citizens on ships and aircrafts registered in India so as to offset any defences of being "international waters". Additionally, the Indian Penal Code penalises the attacking of a computer resource located within the state, irrespective of where the crime was committed from. It also defined computer resource much more clearly through the IT Act, 2000. The Ranbir Penal Code has no mention of either external transportation such as ships and aircraft, and also does not overtly protect the computer resource located in Kashmir.

This will now imply that if a citizen of the state tries to attack or damage a computer resource located inside the country, irrespective of which computer he attacks or from where he attacks, he can still be tried in the State of India. This is indeed progress, as it has been previously mentioned that the Ranbir Penal Code has not been amended nearly as much as the Indian Penal Code and hence this technological development is welcome.

- **Section 153AA**

Through the Amendment of Act 45 of 1860, Section 153AA was inserted after Section 153A.

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<sup>7</sup> Supra Note 2.

<sup>8</sup> INDIAN PENAL CODE, 45 (1860).

Section 153A in both the codes are the same, which penalises promoting or trying to provoke tension based on religion, race, place of birth, residence, language either through covert actions and words, or overt declarations and acts. The Ranbir Penal Code merely stops at that, but the Indian Penal Code by way of this amendment which was passed in the The Code of Criminal Procedure (Amendment) Act, 2005, further penalises knowingly carrying arms or weapons in any procession or drill. The definition of arms is also explained as being any object which is used for offence and defence. The Ranbir Penal Code has no mention of this and hence does not separately penalise this higher form of discrimination or attack on groups by way of organising drills.

This law being applied in Kashmir will have severe implications, as demonstrated in the case of *Bijumon V. State Of Kerala* wherein hate speech against Muslims was punished by the court. Furthermore, pursuant to the abrogation of Article 370, there were widespread riots and protests by residents of Kashmir and a majority of them carried arms and weapons during the protests to defend themselves as well as attack. This was done mostly on religious grounds and terrorism. Now, all these protestors can be tried under Article 153AA.

- **Section 195A**

Section 195 of the Indian Penal Code penalises the fabrication of false evidence in order to get the accused convicted of a crime. Section 195 of the Ranbir Penal Code also reads similarly with regards to the initial part of this, but the punishment for the Indian Penal Code differs as it imposes another penalty on the offender if the innocent is convicted due to such false evidence. The offender is given the same punishment as the innocent. Such a law could have proved prudent to victims in Kashmir, such as in the case of *Santosh Kumari. Vs. State of Jammu and Kashmir, and ors.* In this case, a woman filed an FIR against a man who she stated had murdered her deceased husband. The brother of the accused consequently physically assaulted and threatened the son of the deceased from providing evidence. This was merely seen as a peripheral issue and no specific law was applied back then but now, the same would have been punishable by Section 195A.

- **Section 304B**

Section 304B is the section that penalises dowry death. While the sections may read the same, i.e, when a woman dies of unnatural causes within seven years of getting married and there exists proof that there was cruelty by the husband or his family inflicted upon the woman regarding or connected to dowry, the death is assumed to be a dowry death and punishes the husband and/or his family, upon closer inspection of the very words used in the

sections show a clear difference. The Indian Penal Code and Ranbir Penal Code differ in the meaning of the term 'dowry'. The definition under Indian Penal Code is the same as Section 2 of the Dowry Prohibition Act, 1961, while the definition under Ranbir Penal Code is the same as Section 2 of the Dowry Restraint Act, 1960. It has a wider scope of meaning under the former. The latter describes it as the practice of giving property from one party to another in connection to or pursuant to a marital contract, but also goes on to say, "but does not include voluntary marriage gifts such as ornaments to a bride and dresses to a bridegroom the value of which in aggregate does not exceed two thousand rupees." The Dowry Prohibition imposes no such restriction but it does decriminalise the practice of dower or mahr under the Muslim Personal laws. The ceiling price on voluntary marital gifts is arbitrary and also outdated. Two thousand rupees was much more valuable in 1960 when the law was enacted than today. There has been an inflation rate of 7,329.88% in these 60 years, which means that the value of one rupee in 1960 was the same as the value of 74.28 rupees today. Two thousand rupees as a ceiling price not only is therefore implausible, but also arbitrary in the sense that the government cannot limit voluntary gifted transactions on the ground of dowry prohibition as there exists no data to support this. Furthermore, the Ranbir Penal Code in its definition of Dowry only lists a few specific examples of what would constitute as dowry and is therefore more specific in nature. This allows practices by other cultures to go un-penalised unlike the definition of Dowry in the Indian Penal Code which is more structured and describes Dowry more as an act or thing to be done rather than a mere customary practice followed by specific groups or communities.

- **Section 190A**

This is one of the most dangerous articles in the Ranbir Penal Code which does not find its presence in the Indian Penal Code, and for good reason. This section criminalises the publication or circulation of content that the government finds seditious. The second subsection to this furthermore places the distinction of deciding whether the concerned material is seditious or not on the Chief Minister. This essentially places all the power of the people's freedom of expression on a single individual. Such a clause finds no mention in the Indian Penal Code. Sedition in of itself under the Indian Penal Code is a highly contentious issue as it is often misused by the government to silence oppositional views even in instances where the material was not inflammatory but merely critical. The abrogation of Article 370 has therefore paved the way for the freedom of speech and expression in terms of print media and circulated material.

- **Section 377 decriminalised**

One of the most welcome and long-overdue judgments in India came in 2018, which was the decriminalisation of homosexual intercourse in India. But an often overlooked part of this is that no such revelation came about in Kashmir. The Indian government also emphasized the need for such a reformation while justifying the dissolution of Kashmir's semi-autonomous status<sup>9</sup>. However, this justification has been widely criticised by the LGBTQ+ community of Kashmir.

The queer community of Kashmir have vehemently opposed this 'pinkwashing'<sup>10</sup> done by the Indian government. Pinkwashing is the act of claiming to be pro-queer right oriented on the surface to cover up acts that inadvertently negatively affect the LGBTQ+ community. After the abrogation of Article 370, a complete blackout ensued and this affected the queer community adversely, as it took away their only safe space- the internet. Furthermore, this decision and justification by the BJP-led government degrades the LGBTQ+ community's fight for recognition of equal rights. While the government claims to be liberating the queer community of Kashmir, it is covering up its inherent queerphobia. The Transgender Rights Bill is now applicable to Kashmir, but this bill was openly opposed by transgender people, for example. Queer activists have also opined<sup>11</sup> that their first demand is for dignity and security as Kashmiri citizens, before their recognition as queer individuals.

- **Section 376**

It is in this one offence that the Ranbir Penal Code is more rigorous and feministic. While the definitions for rape, rape by a public officer, gang rape, rape resulting in permanent vegetative state, upon separation of husband and wife, rape by person in authority, and repeating offenders are the same, the punishments differ. For the offence of rape, the Ranbir Penal Code imposes a minimum of eight years of imprisonment compared to the seven years in the Indian Penal Code. For the offence of rape resulting in the permanent vegetative state of the victim, the Ranbir Penal Code imposes a minimum of twenty-five years of imprisonment compared to the twenty years in the Indian Penal Code. Similar laws and punishments are imposed on the offenders of gang rape. Additionally, the Ranbir Penal Code also cancels the driving license of anyone convicted of rape and they are not allowed to drive any vehicle in the State.

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<sup>9</sup> Shahruxh Alam, *Pish Posh, Pink Wash: Lauding Centre's 370 Move as a Benchmark for Gay Rights Is Absurd*, THE WIRE, October 11, 2019.

<sup>10</sup> Tanvi Kanchan, *An analysis of Hindu nationalist and homocapitalist discourses of queerness in Indian English newspapers post Navtej Singh Johar and others vs Union of India* 36.

<sup>11</sup> Anish Gawande, *The False Link Between Article 370 and Queer Rights*, THE WIRE, September 6, 2019.

The only punishment that the Indian Penal Code imposes harsher than the Ranbir Penal Code is for the offence of rape after separation of husband and wife. The Indian Penal Code imposes a minimum of two years and a maximum of seven years, while the Ranbir Penal Code imposes a minimum of three years and a maximum of seven years. This law in itself is regressive, as intercourse without consent is rape irrespective of the relationship between two individuals. Both the punishments are insufficient, but the imprisonment under the Indian Penal Code is slightly more rigorous.

- **Section 204A**

This Section does not find any place in the Indian Penal Code. Section 204<sup>12</sup> in both codes are identical, both penalising the destruction of any document which is to be used as evidence in a court of law. The Ranbir Penal Code goes one step forward and also criminalises tampering with the documental evidence in any way, “or attempts to destroy, cancel, deface, obliterate or render illegible that whole of any part of a document.” This section should be incorporated into the Indian Penal Code in order to prevent the misuse of any loopholes.

- **Section 21**

This section defines the term “public officer” in the context of the Penal Code. The first twelve categories of both are the same, being judges, armed forces’ officer, officers of courts, those assisting the court, arbitrators, jailers, civil servants, government officers, and electoral officers. However, the Ranbir Penal Code goes on to expand upon the term even more and in a more detailed manner. It also attributes the term ‘public officer’ to the following positions:

- i. Servants of departments of devasthanams
- ii. Employees of municipal bodies, committees and co-operatives
- iii. Members of corporations of trades established by an Act
- iv. All medical officers and healthcare providers

It would be astute of the criminal law reform committee to further expand upon the meaning of the term ‘public officer’ by drawing ideas from the Ranbir Penal Code, in order to make the government more accountable to the people and ensure less corruptive practices.

- **Section 497**

Adultery was criminalised in Kashmir to the extent of even punishing the wife who had sexual intercourse with a man other than her husband. The criminalisation of adultery is

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<sup>12</sup> Supra note 7.

inherently sexist, and commodifies a woman<sup>13</sup> as the property of her husband and therefore adultery was the act of “diluting”<sup>14</sup> the woman’s purity. Kashmir due to its stagnant development of criminal law, feminist jurisprudence has not been able to establish itself concretely<sup>15</sup>.

Just a few days prior to the abrogation of Article 370, a court was hearing a case<sup>16</sup> regarding adultery and its decriminalisation. It cited the Supreme Court of India’s judgment in *Joseph Shine v. Union of India*<sup>17</sup> which struck down Article 497 of the Indian Penal Code. In the aforementioned case in Kashmir, the petitioner was a Colonel in the army, and one of the prime contentions put forth by the defendant was that the army had to uphold a certain ‘disciplinary code’<sup>18</sup>. However, these arguments have all been rendered void as the law no longer holds any value in Kashmir anymore.

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<sup>13</sup> *Supra* note 4.

<sup>14</sup> K.M. Sheeba, *Interrogating Disciplinary Boundaries: Feminist Alternatives And Writing Women’s Histories*, 74 PROC. INDIAN HIST. CONGR. 482–489 (2013).

<sup>15</sup> Indrani Chatterjee, *When “Sexuality” Floated Free of Histories in South Asia*, 71 J. ASIAN STUD. 945–962 (2012).

<sup>16</sup> *Col. Rajnish Bhandari v. Union Of India*, 2019 Civ. Appeal 3204 (2019).

<sup>17</sup> *Joseph Shine v. Union of India*, 2018 SCC OnLine 1676 (2018).

<sup>18</sup> Colonel facing adultery charge under J&K law cleared by SC, Times of India

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