

## Jammu & Kashmir Shall Not Be Deemed To Be Placed Within The Territory Of India

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**Abstract:** The State of Jammu & Kashmir is an integral part of India though the Indian criminal jurisdiction does not extend to that State. Thus, when any offence is committed in the State of Jammu & Kashmir by any foreigner, the Indian court (except the courts in Jammu & Kashmir) has no criminal jurisdiction to prosecute and punish the foreigner even though he is found at any place within the territory of India. Similarly, when any offence is committed in that State by a citizen of India and he is found at any place within the territory of India, he shall not be prosecuted and punished except after obtaining the permission from the Central Government because the State of Jammu & Kashmir is deemed to be placed outside the territory of India for the purposes of criminal law. In this way the authors are of the opinion that the State of Jammu & Kashmir shall not be placed within the territory of India for the purpose of criminal law. However, the Constitutional status of Jammu & Kashmir is that it is a part of the territory of India for other purposes (except for criminal law).

[Ansari, Jamshed and Urmaliya, Deepika. **Jammu & Kashmir shall not be deemed to be placed within the territory of India.** *Rep Opinion* 2014;6(2):75-76]. (ISSN: 1553-9873). <http://www.sciencepub.net/report>. 11

**Key Words:** Jammu & Kashmir, Criminal Jurisdiction, Prosecution, Foreigner, previous sanction.

### 1. Introduction:

The question is when an offence is committed in State of Jammu & Kashmir, then for the purpose of prosecution and punishment, whether that offence shall be deemed to be committed within the territory of India or outside the territory of India?

Section 1 of the Indian Penal Code, 1860 provides that this Act shall be called the Indian Penal Code, and shall extend to the whole of India except the State of Jammu and Kashmir. Further according to Section 1(2) of Criminal Procedure Code, 1973, the Criminal Procedure Code extends to the whole of India except the State of Jammu and Kashmir. The term "India" has been defined under Section 18 of Indian Penal Code, 1860 as "India" means the territory of India excluding the State of Jammu and Kashmir, Section 2(f) of Code of Criminal Procedure, 1973 defines the term "India" as "India" means the territory of India excluding the State of Jammu and Kashmir and Section 3 of Indian Evidence Act, 1872 defines the term "India" as "India" means the territory of India excluding the State of Jammu and Kashmir. The result is that the territory of India does not include the State of Jammu & Kashmir for the purposes of criminal law and thus the Indian criminal law does not extend to that State.

2. Since the criminal jurisdiction of India does not extend to State of Jammu & Kashmir, it does not have any say when any offence is committed in that State. Section 3 of Indian Penal Code applies when any offence is committed by any person beyond India

shall be prosecuted and punished in India as if such act had been committed within India. Further, Section 4 of Indian Penal Code states that the provisions of this Code apply to any offence committed by-

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be.

Since the State of Jammu & Kashmir is not coming into India as per the definition contemplated, therefore the offence committed within the territory of that State shall not be deemed to be committed within the territory of India. According to Section 188 of Code of Criminal Procedure, 1973 when an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government. In this way, Section 188 of Code of Criminal Procedure, 1973 will be applicable in case a citizen of India commits an offence in State of Jammu & Kashmir. According to the definition of "India" as given in Section 2(f), Indian" means the

territories to which this Code extends; Sec 1(2) provides that the Code extends to the whole of India except the State of Jammu and Kashmir: the result is that if a citizen of India whether he is a resident of that state or of some other state in India, commits an offence in Jammu & Kashmir, he may be dealt with at any place in any other state of India where he may be found; but no such offence shall be enquired into or tried in India except with the previous sanction of the central government. In case of a foreigner committing an offence in the state of Jammu & Kashmir, he can not be prosecuted here in India even with the previous sanction with the Central Government. The situation in the present circumstances can not be changed as Parliament's power to legislate for the State does not extend to items 1 and 2 of the concurrent list relating to criminal law and criminal procedure. The anomalous situation should be changed by first amending the Constitution (Application to Jammu and Kashmir) Order, 1950 under Article 370 and then extending IPC and Cr.P.C. to that State.

3. On 27.10.1947, an instrument of accession signed by the ruler of State of Jammu & Kashmir was accepted by the Governor General of India. As per this instrument only three subjects were surrendered to the dominion of India, i.e. defence, external affairs and communication. Thus, the Government of India can not extend its law on any subject to State of Jammu & Kashmir except on above three subjects. Article 370 of the Constitution of India makes "temporary provision for State of Jammu & Kashmir recognizing it as special position.

#### 4. Constitutional Status of Jammu & Kashmir:

Jammu & Kashmir is a constituent State of the Indian Union but its constitutional status and its relation with the Central Government differ from that of the other States. Article 1 of the Constitution of India provides that India, that is Bharat, shall be a Union of States. Further it says that the States and the territories thereof shall be as specified in the First Schedule. Furthermore, it says that the territory of India shall comprise the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired. It is to be noted here that Jammu & Kashmir is one of the States specified in First Schedule. The Constitution of India contains Article 370 which makes

'temporary provision' with respect to Jammu & Kashmir. On 27.10.1947, the instrument of accession signed by the ruler of Jammu & Kashmir was accepted by the Governor- General of India. Under this instrument the ruler of Jammu & Kashmir had surrendered only three subjects (like external affairs, defence and communication) to the Dominion. Thus the Government of India has control over Jammu & Kashmir only in respect of the above three subjects and for other matters the State has its own capacity to deal with by making law. Exercising the power under Article 370(1)(b)(ii) of the Constitution, the President of India with the consultation with the Government of Jammu & Kashmir has promulgated the Constitution (Application to Jammu & Kashmir) Order, 1950 which, as amended and modified from time to time, regulates the constitutional status of Jammu & Kashmir.

#### Conclusion:

The Indian criminal law does not extend to the State of Jammu & Kashmir. Hence, if any offence is committed by any citizen of India within the State of Jammu & Kashmir, it shall not be deemed to be committed within the territory of India and for prosecuting the person who committed the offence, Section 188 of Code of Criminal Procedure, 1973 shall apply meaning thereby the previous sanction of Central Government is required to be taken. Similarly, when any offence is committed by any foreigner in the State of Jammu & Kashmir, he shall be prosecuted and punished under Ranveer Penal Code of Jammu & Kashmir and the Indian Criminal law will not apply on him even if he is found at any place in India. However, for the subjects like external affairs, defence and communication, the Government of India may interfere with the activities of the State of Jammu & Kashmir.

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