

# Opinion

TUESDAY, AUGUST 6, 2019



## ON ABROGATING ARTICLE 370

Union home minister, Amit Shah

Article 370 was the root of terror in Jammu and Kashmir. It is time for it to go... if it doesn't go today, we can't remove terrorism from Jammu and Kashmir

## J&K needs special solution, not status. This could be it

Under the Constitution, Article 370 was to be a temporary measure; Article 35-A wasn't even passed by Parliament

**T**HOSE ARGUING THAT the central government has mischievously interpreted Article 370, and that its move to make Jammu & Kashmir a Union Territory with a legislature, like Delhi, is fraught with danger and that any other state can now be similarly dismembered—to quote Congress leader P Chidambaram—are missing the point. For one, the much-revered Article 370 was always meant to be a temporary affair, and was part of chapter XXI of the Constitution which is titled 'Temporary and Transitional'. Over time, it so happens, many amendments were made to it to extend several other Indian laws to J&K. If 47 presidential orders were issued to do this, with the concurrence of the state government and, as a result, 94 of 97 subjects in the Union List are now applicable to J&K, it is difficult to argue J&K's special status under Article 370 has been violated now. Also, if Article 370 could be revoked only after the J&K Constituent Assembly allowed it, how was this to be done since the Assembly ceased to exist decades ago? So, is it to be argued that J&K was to decide which Indian laws would apply to it in perpetuity—Supreme Court rulings are still not applicable to J&K, for instance—or that citizens from other parts of the country could never buy land there, or get government jobs etc?

As for Article 35-A that defined who a permanent resident of J&K was—and gave them special rights—keep in mind that while this was brought into the Constitution through an amendment in 1954, unlike other constitutional amendments this was never voted on; it was simply notified by then president Rajendra Prasad on the advice of then prime minister Jawaharlal Nehru!

And while it is all very well to say the Centre acted stealthily, given how Kashmir leaders like Omar Abdullah and Mehbooba Mufti have repeatedly said that J&K will cease to be a part of India the day Article 370 is revoked, how was an all-party meeting to be called to decide on the issue? Given this and the likelihood of massive violence in the state to prevent revoking Article 370, the government had no option but to act in the manner it did, to ask the *yarris* and tourists to leave and to ensure 20,000 more troops were flown in before the move was made public.

It is also short-sighted to divorce the action taken by the Centre from J&K's reality of widespread Pakistan-sponsored militancy/terrorism over decades. And the Centre's action, it has to be appreciated, is also a reaction to the US wanting to pull out of Afghanistan. When this happens, it is fairly obvious, Pakistan will get a relatively freer hand for its state-sponsored terrorism in J&K; indeed, US president Donald Trump's wholly incorrect statement about prime minister Narendra Modi asking him to mediate in J&K—this has always been the opposite of the BJP's J&K policy—was an inadvertent admission of the free hand the US was willing to give Pakistan in return for its troops pulling out of Afghanistan; not surprisingly, Pakistan prime minister Imran Khan has repeated the demand for the US mediation several times since and, after supposedly castigating Pakistan for its role in sponsoring terrorism, the US has restored aid to it and didn't oppose the IMF's \$6bn rescue package for it either.

Of course, revoking Article 370 and delivering on it are two different things. The first task is to ensure that violence in J&K is kept to the minimum in the aftermath of today's actions. More important, since the Centre has blamed Article 370 for J&K's poor progress, it has to ensure investment—and job—flows restart now that the state is under its watch. And, as in Delhi, should a BJP-appointed governor make it impossible for a democratically elected local government—should it be a non-BJP one when elections take place—to function is a recipe for disaster. Kashmir will then truly be lost since reducing a Muslim-majority state—this applies only to Kashmir and not to Jammu, but that's the perception—to a UT is bound to be seen as Hindu chauvinism at its worst.

## Not just killing renewables

Andhra Pradesh needs to relook its stand on cancellation

**T**HE ANDHRA PRADESH government is not altogether unjustified in wanting to review and re-negotiate the PPA contracts for wind and solar power. After all, while the tariffs negotiated in 2014-18 were between ₹4.7 and ₹4.8 per unit, the rates at which renewables projects are being signed today are much lower. Whether or not the tariffs were gold-plated, as has been suggested, is not known. But it would not hurt to review them because it is abundantly clear the AP government can't afford them. Worse, as the state has argued, it needs to continue paying the fixed charge for thermal power even if doesn't draw the power; this hikes the cost of renewable power even more. Indeed, wind and solar power producers in the state are receiving their payments 8-10 months late. Under the circumstances, the state has been forced to draw less power from wind farms and take the drastic step of serving producers a notice.

Yet, asking producers to lower their tariffs under threat of cancellation, were they to refuse to do so, amounts to renegeing on a contract. This is a dangerous practice, one that will erode the sanctity of contracts. At the central level, India already has a poor track record when it comes to honouring contracts with governments resorting to retrospective amendments, if they get adverse rulings from the court, so as to get their way. Ideally the contract needed to have built in a clause that allowed it to re-work tariffs at intervals; after all, 25 years would see several business cycles and it is difficult to forecast price and demand trends over such a long period of time.

As of now, the courts have stayed the state government's order but even if the judges ultimately rule that the government must uphold the agreements, it is not certain the state will agree since it cannot afford the power. Ideally, the two sides need to settle with the state paying a fine; should the matter not be resolved, Crisil estimates 5.2 GW of capacity of solar and wind assets could be in trouble, putting close to ₹21,000 crore of loans under stress. The ratings agency noted the problem could delay payments by discoms to banks and an estimated ₹10,600 crore of loans to renewables could be at risk of default immediately. The central government needs to facilitate the negotiation instead of just preaching the virtues of not renegeing on a contract; it is not blameless in the sad state the power sector is in since it has encouraged reckless populism that has bankrupted state electricity boards.

## NoNAA

Anti-profiteering body's record shows how little control it has on even the tiny specks of profiteering alleged

**T**HE GOVERNMENT HAS now extended until November 2021 the term of the National Anti-profiteering Authority (NAA) that was set up to ensure that reductions in GST rates or the benefit of input tax credit is passed on to consumers. Given NAA's performance so far, this extension seems not only unwarranted but also excessive. In its close to two years of existence, NAA has delivered only 75 orders, a third of which were delivered after the three-month period from the submission of the Director General of Anti-Profiteering's (DGAP) final report—NAA is mandated to deliver its judgments before this period ends—and are, therefore, susceptible to being legally challenged.

In fact, many of NAA's orders against big companies, including Hindustan Unilever, have been stayed by courts for reasons ranging from methodology of calculating profiteering to constitutionality of anti-profiteering law. As per reports, the body has detected profiteering of approximately ₹600 crore, a mere 0.00023% of the total reported GST revenue, but has failed to make similar collections. The NAA's standing committee, which receives complaints from state-level screening committees, has so far forwarded only 193 complaints to the DGAP, against 1.23 crore registered GST taxpayers. While this is being blamed on the tediousness of the NAA's centralised procedure—plaintiffs are unwilling to travel all the way to New Delhi for profiteering complaints involving small amounts—this shows how badly the body has failed to control even the specks of profiteering alleged. Given the ineffectiveness and wastefulness involved in the functioning—or lack thereof—of the NAA, it is best that the body is scrapped; the lack of profiteering complaints despite the tax cuts on 380 items since the introduction of the GST certainly shows the NAA has outlived its purpose.

● **FISCAL INTRUSION**  
THE CENTRE WANTS A SPECIAL FUND FOR DEFENCE EVEN AS ITS DEFENCE-SPEND TO GDP RATIO HAS SHRUNK, AND ITS SPENDING ON STATE SUBJECTS ROSE FROM 14% (2005) TO 20% (2012)

# Whither fiscal federalism?

**A**S PER MEDIA reports, the government has proposed to the president to extend the term of the 15th Finance Commission up to November 30 and amend the terms of reference (TOR) to create a non-lapsable fund for defence and internal security imperatives. The official statement states, "The amendment provides that the 15th Finance Commission shall also examine whether a separate mechanism for funding of defence and internal security ought to be set up and if so, how such a mechanism could be operationalised". The additional TOR may be issued by the President anytime soon.

Article 280 specifies the basic terms of reference relating to: (i) the distribution of divisible pool of taxes between the Union and the states and the allocation of the shares of individual states; (ii) the principles that should govern the grants in aid of revenues of the states out of the consolidated fund of India and the sums to be paid to each of the states under Article 275; and (iii) the measures needed to augment the consolidated fund of a state to supplement the resources of rural and urban local bodies based on the recommendations of State Finance Commissions and (iv) any other matter in the interest of sound finance.

The proposed additional term is being issued under the fourth provision. In fact, the TOR issued while appointing the 15th Finance Commission states, "While making the recommendations, the Commission shall have regard among other considerations to... The demand on the resources of the Central government particularly on account of defence, internal security, infrastructure, railways, climate change, commitments towards administration of UTs without legislature, and other committed expenditure and liabilities". It is now proposed to mandate the setting up of a separate mechanism for funding of defence and internal security and operationalising it.

The problem with the proposal is: Can the Commission recommend the creation of a non-lapsable fund separate from fiscal space provided after tax devo-

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lution? If the recommendation is to create such a fund from the divisible pool before determining the shares of the Union and states in tax devolution, there will be questions of constitutional propriety. On the other hand, if the fund is recommended from the Centre's consolidated fund after tax devolution, it is superfluous, for the Centre does not need a recommendation to allocate the funds to the subjects within its domain.

Past Finance Commissions have considered the requirements of the Centre for defence and internal security as required by the TOR. The 14th Finance Commission, for example, projected higher defence revenue expenditure (including salaries) of 30% in FY17, which was also supposed to incorporate the pay commission impact and allowed for an increase of 20% for the remaining years of its award. The capital expenditure requirements are not covered in the Finance Commissions' projections. Despite this, the defence spend-GDP ratio declined from over 2% in FY15 to 1.48% in FY19 and is proposed even lower, at 1.45%, in FY20. As a ratio of total central expenditure, it has declined from 14.3% in FY16 to 11% in FY20.

The Constitution divides the responsibilities of the Union and states in terms of the Union, State and Concurrent lists, and the Commission is required to assess expenditures to meet their constitutional obligations. Curiously, while the expenditures on subjects like defence, entirely in the Union list, have shown a decline over the years, the Centre has been spending more and more on state and concurrent subjects. The 14th Finance Commission has noted that the ratio of the Centre's spending on state subjects in the total increased from 14%

in 2005 to 20% in 2012, and its share in spending on concurrent subjects increased from 13% to 17%. It would not be incorrect to infer that it is the Centre's foray into state subjects through centrally sponsored schemes, along with higher spends on interest payments (24% of total expenditure), have crowded out defence expenditures.

It is curious that, even as the Centre is so concerned about protecting the allocation to defence, as to warrant an additional TOR to the Finance Commission, it has allowed the defence expenditure-GDP ratio as well as total expenditures to decline year after year. There is nothing that prevents the central government from making a higher allocation and it does not require the Commission to mandate a separate funding mechanism. Defence is entirely in the Union List. Internal security has both Union and State governments spending on it and, to the extent the Central forces are used by the States, the latter are charged.

What has prompted this additional TOR? The only explanation seems to be to nudge the Finance Commission to recommend lower share to the states in tax devolution. The central government, even after accepting the recommendations of the 14th Finance Commission, has not yet reconciled to the higher share of 42% to states. This is reflected in the TOR of the 15th Finance Commission in Para 5 (iv), which asks the Commission to take into consideration, "The impact on the fiscal situation of the Union government of substantially enhanced tax

devolution to States following the recommendation of the 14th Finance Commission, coupled with the continuing imperative of the national development programme including New India - 2022". In fact, this is despite the fact that the states' share in tax devolution recommended by the 14th Finance Commission was only marginally higher than the previous Commission's, if the plan grants under the Gadgil formula and discretionary grants recommended by the earlier Commissions are considered. In fact, to the extent that devolution was higher, the Union government undertook two measures to contain it. First, in the name of consolidation and rationalisation of Centrally Sponsored Schemes, it increased the matching contributions of the States.

Second, all discretionary changes to raise tax revenues were done by increasing cesses and surcharges to keep the proceeds outside the divisible pool. Therefore, repeatedly professing commitment to cooperative federalism looks only rhetorical.

The 15th Finance Commission is in the process of finalising its recommendations. During their visits to the states, most of the states must have demanded higher devolution and expressed their concern about shrinking fiscal space to meet expenditures on constitutionally mandated services, like basic education, healthcare, water supply and sanitation, agriculture and urban development. It appears that the proposal for additional TOR is to persuade the Commission not to provide it with larger fiscal space, not for additional allocation for defence but for central schemes under the rubric of New India - 2022. The Commission is a constitutional body and while it should make fair assessments of the requirements of the Centre and the states, it should simply ignore this additional term. If the Centre wants to increase allocation to defence and make it non-lapsable, it could very well do so from its consolidated fund.

**Carving the fund out of the divisible pool, before tax devolution, hurts constitutional propriety**

## LETTERS TO THE EDITOR

### Scrapping Article 370

The resolution moved by Union Home Minister Amit Shah in the Parliament to scrap Article 370 of the constitution which conferred special status on the state of Jammu and Kashmir is untimely. While BJP has been vouching for the scrapping of Article 370 for long time and continued to make it as one of its key promises in its poll manifesto every time, its decision to give effect to its promise at the time when sense of alienation has been at its peak among the residents of the Jammu and Kashmir is truly unfortunate. Rather than initiating a dialogue with all the stakeholders of the Kashmir imbroglio and win over their hearts with love, and governance, the BJP-led government, on the strength of its brute majority in Parliament, seems to be making attempts to derail peace and tranquility in the state.

— M Jeyaram, Sholavandan

### A bold move

Modi government has taken a right and bold step in scraping Article 370. Indian citizens are all the praise for the Modi government. The main purpose of this Article was to ensure that the distinct identity of J&K's population was preserved. Though the Article was introduced as a temporary provision that was to be removed in due course of time, this never happened in 72 years of independence. Today, the general sentiment in the country is that Article 370 is doing no benefit to the people of J&K, and nor is it of any help to others. It has just become a barrier in the path of development of the state and the country—J&K has been unable to generate sufficient revenues—and benefiting only those who are trying to make selfish benefits out of power they were given to serve people.

— SC Dhall, Chandigarh

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## J&K: Interests must trump passions

Kashmiris have been let down by politics that doesn't create economic complexity

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**ECONOMIST ALBERT HIRSCHMAN'S** book *Passions and Interests* is a wonderful meditation on how interests (jobs, skills, enterprises, assets, income, growth, etc) blunt passions. As somebody born in J&K, I am sad that today's youth there don't have memories of the wonderful place it was to grow up before 1989. As somebody who went to school in the Valley, I got a great education and strong foundations. As somebody who made pre-exam visits to shi shrines like Aishmaquom, Makhdoom Sahib, and Baba Reshi, I know that the Wahabi intolerance is alien, recent and fragile. As a first-generation, post-reform entrepreneur, I am anguished by the notion that Pakistan—which, with a GDP lower than Maharashtra, recently made its 22nd trip to the IMF—has anything to offer anybody in the Valley. But as somebody who works for a people supply-chain company that has hired somebody every five minutes for the last decade, I despair at J&K's economic infancy. I would like to make the case that Kashmiris should spend the next decade creating the economic complexity that blunts passions by creating interests.

Professor Ricardo Hausman, at a recent conference at Harvard's Centre for International Development, suggested that the only predictor of sustained economic success is economic complexity, and development was like Scrabble; the more letters you have, the more, and also longer, words you make. Vowels are provided by the government. So, development is about creating new letters and vowels. Hausman believes that new letters, for the private sector, come from migration, inbound investment, skills, studying overseas, business travel, etc. Professor James Robinson said inclusive economic systems need vowels from inclusive political systems that distribute power broadly, not monopolise it.

Kashmir is an economic infant with low economic complexity. There is no wage premium in handicrafts; carpet weavers get ₹150 a day while construc-

tion labour costs ₹600 per day (and comes from outside the state). Less than 5% of fruits and nuts are processed. There are only 200 dental and 600 medical seats in the state; 50% of the state's 50,000 graduates go onto a masters degree to stay out of the labour market. The fiscal deficit is more than twice the prescribed ratio and government debt is 50% of GDP. Private credit—to GDP is less than Bihar, and J&K Bank is a shame. Private investment last year was <₹1000 crore. More than 30% of families work for the government. Land costs as much as Gurgaon. The state is less than 0.7% of India's GDP. There is only one listed company and only one company with a paid up capital of ₹10 crore; 28 employment exchanges cost almost ₹50 crore a year to run and have given few jobs. There is no employer in the Valley paying Provident Fund and no private employer with more than 500 formal employees—hardly fertile soil for economic vibrancy.

The solution is not easy but obvious; a 10-year strategy for education, employment and employability that leverages India's economic complexity. Kashmir needs a new skills university that marries higher education with employability. Hari Niwas could be converted into a world-class hotel management institute in partnership with ITE Singapore or EHL Lausanne. We must double direct flights and connect Srinagar to Jammu and Delhi with a 3-hour and 12-hour train. We need revamped employment exchanges that operate a digital jkrozgar.com that offers job-matching, apprentices, and online degrees. We must temporarily suspend our justified fear of economic planning and commit massive funds to infrastructure and cluster creation. We need a massive design and distribution mission for handicrafts and fruit that raises the realisation of the actual producers. Most importantly, we must get huge, skilled, and motivated Kashmiri diaspora to return and reduce informal self-employment by creating more formal wage

employment.

Historians warn against "presentism", and Kashmir's history is too long and complex to belong to any party, community, individual or religion. But it would be foolish to deny that Kashmir's last few Maharajas were distracted (the treasury paid blackmail overseas) and disinterested in development (compared to Mysore or Baroda). Hereditary leadership is ineffective because it thinks of citizens or voters as a necessary evil that must be tolerated, possibly patronised, but certainly ignored. Naya Kashmir—a memorandum Sheikh Abdullah submitted to Maharaja Hari Singh in 1944—outlined a plan to convert J&K from an absolute monarchy to a constitutional democracy and called for universal franchise, freedom of expression and press, encouraging female employment, and a detailed economic plan. Much of what the sought is enshrined in our constitution but his vision of social justice, economic progress and poverty reduction—which he couldn't achieve in his lifetime—is highly relevant for Kashmir today.

Another Hirschman book, *Exit, Voice, and Loyalty*, synthesized three choices that confront citizens; leave, speak up, or capitulate. Most Kashmiri elites have economically diversified away from the Valley, but the masses can't exit and have lost their voice because of Kashmir's economic infancy and oligopolistic democracy. Political royalty over the last few decades have ensured that Kashmiri democracy lived up to Iqbal's warning, "*Jamhooriyat ek tarz-e hukumat hai jis mein bandon ko gina kartay hain tola nahin kartay*" (democracy is a system where people are counted but not weighed). The grandiloquence of political royalty about the threats to civilization sounds like scorn for the more prosaic concerns of Kashmiri youth who are more skilled, entrepreneurial, and aspirational than past generations. India and J&K are tremendously and permanently intertwined. When one does well, the other does well. Time for Sheikh Sahib's dream of Naya Kashmir.





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# Why Article 370 had to go

Article 370, now history, has a notorious history

**AUGUST 5, 2019**, will be etched in the constitutional history of India as a glorious day. A historic blunder committed about 70 years ago on October 17, 1949, during the course of the Constituent Assembly debates, has been set right, finally. Article 370, which entered the draft Constitution 70 years ago as Art 306A, has finally been abrogated.

Nobody should complain because abrogation of this discriminatory article has been a nobbling theme of the BJP and Jana Sangh. Nobody should have entertained any doubt that PM Modi, a leader with grit and determination, who was instrumental in hoisting Indian tricolour at Lal Chowk on January 26, 1992, would have spared

this illogical entity in our Constitution when an appropriate moment came. Art 370, which became history yesterday, has a notorious history. It was introduced into the draft Constitution on October 17, 1949, by Gopalaswami Ayyangar as Art 306A. He proposed that 'Kashmir state' would have special powers to be excluded from the purview of the laws that Parliament of India would make and also would have the powers to make its own laws.

'Why this discrimination?' yelled Maulana Hasrat Mohani, the member from the United Provinces. Ayyangar gave an unconvincing reply that there existed special circumstances in the state and hence the special provisions. He was challenged by members like Mohani on the grounds that

why were different accessions being treated differently. Ayyangar's logic was bizarre. The Instrument of Accession's relevance was limited to mattering the Dominion, he argued, adding, what mattered for Indian Republic that was going to take shape on January 26, 1950, were the decisions in the Constituent Assembly. He was clever in making this distinction between the Dominion and the Republic, but not logical.

Five months before the introduction of Art 306A, on May 27, 1949, another important discussion happened on the question of nominating members to the Constituent Assembly from J&K. The rules said that of the four nominations, two may be made by the ruler and two from the provincial legislature that was in existence before the accession. The rule was scrupulously followed in the case of all the princely states, whereas in the case of J&K, Nehru insisted that the Jammu Kashmir Praja Sabha, the state legislature under Maharaja Hari Singh, shouldn't be authorised to nominate the members. Praja Sabha elections in 1946 were a fraud, insisted Nehru, and hence wanted the Maharaja to nominate all the four members through consultations with the National Conference leader Sheikh Abdullah.

Sheikh Abdullah's party had boycotted the 1946 Praja Sabha elections, refusing to accept Maharaja's authority. While the rest of the country was fighting the British with Quit India as the mantra, Sheikh Abdullah had launched the Quit Kashmir agitation against the Maharaja. It was in him that Nehru had reposed his trust and got four members nominated. Sheikh Abdullah himself, together with Mirza Afzal Baig, Maulana Masoodi and Moti Ram Baigra, became members of the Constituent Assembly. It was this clique that had supported 306A when it came up for inclusion in the draft Constitution.

With such a notorious background, one can easily imagine how illogical it was to continue with such a discriminatory article. In order to further strengthen Art 370 came another article, Art 35A—it too found its way into the Constitution in 1954 in an unconstitutional and surreptitious manner by bypassing procedure for amending the Constitution as stipulated in Art 368. Art 35A was inserted not through parliamentary assent, which is mandatory for amendments, but through a Presidential proclamation.

All this was happening under Nehru, as the quintessential democrat. Credit goes to Ambedkar for inserting Art 370 in the section entitled Part XXI of the Constitution of India, which itself is titled "Temporary, Transitional and Special Powers".

The Opposition's argument that Art 370 was a link to state's accession are fallacious. J&K's accession had concluded on October 26, 1947, when Maharaja Hari Singh signed on the Instrument of Accession. Art 370, in Ayyangar's words, took birth as a temporary provision because of the 'special circumstances' in the state. The criticism of the Congress party is even more specious because it was they who had affected at least 44 amendments to this article in almost as many years.

This article had remained as an anachronism in our polity providing irrationally special powers to one state, which were being thoroughly misused by the regional leaders and parties. If 370 had benefited anybody in all these years, it was only the political leadership in the state. While people had suffered with lack of development, progress and prosperity, the leaders enjoyed lack of accountability and enriched themselves. The last major industry to come into the J&K was in mid-1950s.

On the other hand, this article had become an instrument in the hands of the separatist and anti-national forces to propagate a lie that the J&K was special and perpetuate sentiments of separatism in the Valley. Putting an end to this article was the much-needed measure for complete emotional integration of the people of J&K in the Indian Union.

The decision to bifurcate the state is also a strategically shrewd move. It will insulate Ladakh from the happenings in the other two regions and provide for greater development of the region. The situation emerging in the western neighbourhood and the possible reascendancy of the Taliban in Afghanistan calls for greater attention and care to be taken in what will remain as J&K after bifurcation. Making it an UT with a Legislature makes a lot of strategic sense.

"You say Yes, when others say No; You do what others will not; You blaze trails; You always step up to a challenge; You make it happen; You raise the bar on what is possible; You are strong and powerful; You are a Leader". That is the kind of leadership we see in Narendra Modi and Amit Shah.

# Blood and betrayal

The BJP thinks it is going to Indianise Kashmir. Instead, we will see, potentially, the Kashmirisation of India

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**THERE ARE TIMES** in the history of a republic when it reduces itself to jackboot. Nothing more and nothing less. We are witnessing that moment in Kashmir. But this moment is also a dry run for the political desecration that may follow in the rest of India. The manner in which the BJP government has changed the status of Jammu and Kashmir by rendering Article 370 ineffective and bifurcating the state is revealing its true character. This is a state for whom the only currency that matters is raw power. This is a state that recognises no constraints of law, liberty and morality. This is a state that will make a mockery of democracy and liberation. This is a state whose psychological principle is fear. This is a state that will make ordinary citizens cannon fodder for its warped nationalist pretensions.

The narrative supporting a radical move on Kashmir is familiar. Article 35(A) was a discriminatory provision and had to go. Article 370 was not a mechanism for integration but a legal tool for separatism. The Indian state, despite the horrendous violence it has used in the past, has never had the guts to take a strong stand on Kashmir. The radicalisation within Kashmir warrants a crackdown. The treatment meted to Kashmiri Pandits has never been recompensed either through justice or retribution. The international climate is repulsive. We can do what China is doing: Remake whole cultures, societies. We can take advantage of the fact that

proposal to alter J&K's status to Union Territory is designed to humiliate an already subjugated population. How dare a Muslim-dominated state exist in India? J&K can now not even be trusted to be a state. The optics of this is not integration, it is humiliation, of a piece with subtle and unsimile reminders to minorities of their place in India.

Let's take the argument that this pain is worth the price, if it actually solves the problem. But will it? There will be a sullen peace, militarily secured, that we will mistake for victory. The very army, behind whom every patriot now hides, will potentially be put in even more harm's way. To be used more and more as the sole basis for keeping India together. And even if we concede to the tragic necessity of force, that force can work only in the context of a larger political and institutional framework that inspires free allegiance, not fear. But even if Kashmir resigns to its fate, pummelled by military might, the prospect of radicalisation in the rest of India cannot be ruled out. There are already incipient signs of that. The theatre of political violence will shift. In the context of the communally sensitive arc from UP to Bengal and in Kerala, India will seem more fragile.

For, fundamentally, what this change signals is that Indian democracy is failing. It is descending into majoritarianism, the brute power of the vote; it will no longer have the safety valves that allowed inclusion. The reckless abdication of the Opposition will only deepen the sense of alienation. There are no political avenues for protest left. Most so-called federal parties turned out to be more cowardly than anyone anticipated; the Congress can never stand for any convictions. Not one of us can take any constitutional protections for granted. Parliament is a notice board, not a debating forum.

Let us see what the Supreme Court does, but if its recent track record is anything to go by, it will be more executive-minded than the executive. Kashmir is not just about Kashmir. In the context of the UAPA, NRC, communalisation, Ayodhya, it is one more node in a pattern hurtling the Indian state towards a denouement where all of us feel unsafe. Not just Kashmiris, not just minorities, but anyone standing up for constitutional liberty.

The larger worry is the fabric of our culture making this possible. There is a propaganda machinery unleashed with the media that builds up a crescendo baying for blood and calls it nationalism. There is the coarsening of human sentiments that makes empathy look worse than violence. There is the sheer political impatience with any alternative. The old Congress system of dealing with these issues appears so decrepit and corrupt that even a total carpet bombing of institutions and morality will be better. There is a kind of cruel aestheticism in our politics where audacious evil will be celebrated for its audacity, and mundane goods will invite contempt because they are mundane.

These proposals are not about solving a problem. What is playing out in Kashmir is the warped psyche of a great civilisation at its insecure worst. The BJP thinks it is going to Indianise Kashmir. But, instead, what we will see is potentially the Kashmirisation of India: The story of Indian democracy written in blood and betrayal.

**Even if Kashmir resigns to its fate, pummelled by military might, the prospect of radicalisation in the rest of India cannot be ruled out**

## Trouble & opportunity in India's north-west

Delhi must now develop an external strategy that will facilitate a major settlement of the Kashmir question

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help Pakistan repair the damaged relationship with the US. Islamabad also hopes that it will restore Pakistan's value in US strategy towards South Asia that had tilted in favour of India in recent years.

India learnt, through repeated crises since the 1980s, to fend off Pakistani pressures on internationalising the Kashmir question. Delhi has also got better at navigating the triangular dynamic with Pakistan and the US. Delhi has also become adept at turning the crises with Pakistan to focus less on Kashmir and more on the sources of terrorism originating from Pakistani soil.

number of factors have facilitated this. For one, Delhi is a lot stronger than it was at the time of the first Afghan crisis in 1979 after Soviet Union occupied Afghanistan. For another, the gap in comprehensive national power has widened in favour of India. And the quality of India's relations with the great powers, too, has significantly improved.

The biggest change is Delhi's decision to stop being defensive on Pakistan and Kashmir. We have seen that in the response of the Modi government to the terror attacks at Uri in 2016 and Pulwama in 2019.

Having rolled the dice on Kashmir, Delhi now needs an effective strategy to contain potential violent reactions at home and manage international diplomatic fallout.

If India plays its cards well, the change in the internal status of Kashmir might provide the basis for addressing the international dimensions of a question that has long hobbled India and the subcontinent. Much in the manner the creative diplomacy that followed India's defiant nuclear tests of 1998 helped end the nation's prolonged atomic isolation, Delhi must now develop an external strategy that will facilitate a final settlement of the Kashmir question.

Until now, the Taliban has insisted that the US must withdraw all its forces from Afghanistan. The US, on the other hand, wants to leave a small force to execute counter-terror missions. Pakistan is expected to nudge the Taliban into accepting a phased withdrawal of American troops.

The US also wants early talks between the Taliban and the Afghan government. The Taliban has so far resisted any direct engagement with what it calls America's 'puppet regime' in Kabul. Last month, the Taliban acquiesced in the participation of Kabul's representatives, in their personal capacity, in an intra-Afghan dialogue in Doha.

There is speculation that talks between the Taliban and the government might take place soon in Oslo, immediately after the US and the Taliban agree on withdrawal and counter-terror assurances. Kabul is said to be preparing to send a delegation to the Oslo talks. If these reports turn out to be true and

the Taliban agrees to observe a ceasefire as part of the dialogue with the government, Pakistan can claim to have 'delivered' the Taliban to the US.

Sceptics would say these are very big 'IFs'. On top of it, there are reports the US wants all elements of the deal—a phased withdrawal of US troops, Taliban's terror assurances, talks with Kabul and a ceasefire—tied up pretty quickly. President Trump seems to have set a deadline of September 1.

If a comprehensive framework is ready by then, Trump might visit Afghanistan to preside over the signing ceremony. From there it is but a short hop to Islamabad for a thanksgiving visit.

The Pakistan army certainly understands that an Afghan peace deal would be a huge personal and political triumph for President Trump as he approaches his election campaign next year.

Facilitating a deal, even a shaly one, that is in tune with Trump's political calendar will

## Demystifying Article 35A

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Constitution readers:

1. "Every person who is, or deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the 14/5/1954:

(a) he was a State Subject of Class I or the Class II; or (b) having lawfully acquired immovable property in the State, he had been ordinarily resident in the State for not less than ten years prior to the date."

2. "Any person who, before 14/5/1954, was a State Subject of Class I or II and who having migrated after 1/3/1947, to the territory now included in Pakistan returns to the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on return be a permanent resident of the State."

Non-staying in J&K are classified as PR and non-PR. A State Subject who migrated to Pakistan but returns to J&K under a permit for resettlement in the State or permanent return will be deemed to be a citizen of

India. But those who migrated from Pakistan during partition are denied PR status, deemed West Pakistan Refugees (WPR).

Note that the concept of PR originated from 'State Subject'. The definition of 'State Subject' of Class I, II, III was set out in the State Maharaja's Notification of 20/4/1927 read with the Notification of 27/6/1932. These notifications provided to some extent the law of the Citizenship of the State.

These definitions came into being because during the rule of Maharaja Pratap Singh (1885-1925), there was an outcry due to appointment of a large number of west-ern-educated men in Kashmir and to prevent rich neighbours from Punjab and other states by property in J&K. The agitation was so strong that Maharaja was forced to issue an order that 'State Subjects' would be preferred to outsiders in cases of government employment, hence the definition of State Subject in 1927. Thus, sections of the State's Constitution allow only PRs to be registered as voters in State Assembly.

Region	2001 Census		2011 Census		2014 Lok Sabha voters	
	Population	Assembly voters	Population	Assembly voters	Population	Assembly voters
Kashmir	54.77	28.85	68.88	32.63	35.97	35.97
Jammu	44.30	30.26	53.79	31.15	31.76	31.76
Ladakh	2.37	1.74	2.74	1.59	1.60	1.60
<b>Total</b>	<b>101.44</b>	<b>60.85</b>	<b>125.41</b>	<b>65.37</b>	<b>69.33</b>	<b>69.33</b>

Monarchy may have allowed Maharaja of J&K to disregard democratic equality to offer special treatment to certain subjects. But are these laws defensible in a sovereign democratic republic like India? And it is not the case that the poverty levels in J&K today are higher than in other parts of India; they are actually much lower.

Consequences of Article 35A

One, some residents of J&K, being citizens of India, can vote in the Lok Sabha elections but not in the State polls.

Two, WPR have been denied citizenship rights in J&K. WPR are mostly Hindus and Sikhs (70% SCs, 10% OBCs, 10% Sikhs, 10% others) who crossed over to J&K during partition. Because they are not PR, WPR cannot acquire immovable property in the State, be employed by the State government and be a member of a village panchayat. They have no right to scholarships and such other forms of aid as the State government may provide.

Three, companies are averse to setting up manufacturing units or IT centres in J&K because they cannot own the land. Educated local talent is unemployed or migrates.

Four, banks will be apprehensive of granting loans against land because in case of default, properties given as security can-

not be sold under the Sarfaesi Act, as SBI discovered in 2015. It adversely affects employment and economic activity in J&K.

Five, till a October 2002 J&K High Court order, when a girl being a PR of J&K marries one who is not a PR, she no longer remains a State Subject so loses the right to inherit property and get a government job. But even post the order, the law is discriminatory because the children of such women don't enjoy succession rights. Conversely, if a male citizen of J&K marries a non-PR, the spouse automatically becomes a citizen of the State.

It has become the norm for the Valley to play the victim card. They complain about lack of employment, but warn of dire consequences if Article 35A is repealed. Also, Valley residents hold most government jobs and are the largest beneficiaries of government expenditure, yet scream alienation.

There is not a word about the 45,172 lives lost to terrorism from 1988 to 2019, or the presence of Kashmiri shops in virtually every part of India.

They make baseless allegations on attempts to change demography when the population of Muslims in J&K was 70% in 1951 and 68.31% as per 2011 Census. Did the demography change when:

■ The Sheikh Abdullah-led government

granted citizenship rights to numerous Uyghur Muslim families in 1952, and settled them in the Eidgah area of Srinagar;

■ Lakhs of Kashmiri Valley Hindus left their ancestral homes forever;

■ Rohingya Muslims from Myanmar were settled in Jammu;

■ Kashmiri Muslims bought property on the outskirts of Jammu after the Kashmiri Hindu exodus of 1989-90. Sidhra, Bathindi and Narwal came into existence with an intent to change demography and increase Muslim population of Jammu leaders.

Conversely, not a word by Valley leaders on efforts by Kashmiris to change demography of Jammu. The unusual increase in voters in Kashmir Valley must be probed. During 2001-11, the State's population went up by 23.6%, while in 2002-14, the number of voters rose by 14%. In absolute terms, the population in Kashmir between 2001 and 2011 went up by 14.11 lakh (25.8%), while the increase in number of voters between 2002 and 2014 was 24.7% (7.12 lakh). Corresponding figures for Jammu are 21% and 5%. So, the percentage rise in voters in Kashmir was 24.7%, against only 5% in Jammu!

Note that in 2002 the number of voters in Jammu was more than in Kashmir by 1.41 lakh; in 2014, Kashmir exceeds Jammu by 4.21 lakh, i.e. a swing of 5.67 lakh.

So far, the country was being held hostage by Kashmir Valley, which occupies only 15.73% of the state's land area of 1,01,387 sq-km. The people of India now pray that women, WPR, SCs and STs would get the same rights as their counterparts in the rest of India, followed by the development of Jammu and Ladakh regions, ignored since 1951 by the Valley-centric rulers of J&K.