

# 10 E EXPLAINED THE NEW J&K ORDER

**AUGUST 15, 1947**

The Indian Independence Act, 1947, divided British India into India and Pakistan. The princely states were given three options - to remain independent, or join Dominion of India or Dominion of Pakistan. Jammu & Kashmir's Maharaja Hari Singh opted to remain independent.

Maharaja Hari Singh initially opted for an independent J&K, later acceded the state to India



**OCTOBER 26, 1947**

Hari Singh eventually signed Instrument of Accession with India. The decision was forced on him by the invasion of tribesmen from the Northwest Frontier Province, supported by Pakistan. The Maharaja sought military help from India, which sought accession in return.

**2014-2018**

Poles apart in ideology, PDP and BJP allied to form a government, first with Mufti Mohd Sayeed as CM, who was succeeded by his daughter Mehbooba following his death. The killing of militant Burhan Wani led to unrest in the Valley, the alliance strained, and Mehbooba eventually resigned in 2018.



Mehbooba Mufti took over as CM following her father's death. The uncharacteristic alliance between PDP and BJP eventually snapped.

**2004-2014**

The Manmohan Singh years, marked by the appointment of interlocutors for J&K in 2010 (Dilip Padgaonkar, M M Ansari, Radha Kumar); a meeting between the PM and Pakistan President Pervez Musharraf in New York in 2006; and unrest in 2008 over transfer of land to the Amarnath Shrine Board.



Prime Minister Manmohan Singh during a visit to Kashmir in 2013, seen with CM Omar Abdullah and UPA chairman Sonia Gandhi

**APRIL 2003**

PM Atal Bihari Vajpayee made his frequently quoted speech in Lok Sabha, after a visit to J&K. "I stressed that the gun can solve no problem; brotherhood can. Issues can be resolved if we move forward guided by the three principles of *Insaniyat, Jamhooriyat* and *Kashmiriyat*."



FAIZAN MUSTAFA

THE BJP on Monday fulfilled its election promise of removing the special status for Jammu and Kashmir in India's Constitution. Special status was withdrawn by invoking the same Article 370 which had been seen as fire-walling the autonomy of Jammu and Kashmir. What are the constitutional issues in - and arising out of - this development? What will change in the state and the country? What can be the basis of a possible legal challenge to the decision of the government?

**Has Article 370 been scrapped?**

The Constitution (Application to Jammu and Kashmir) Order, 2019, issued by President Ram Nath Kovind "in exercise of the powers conferred by Clause (1) of Article 370 of the Constitution", has not abrogated Article 370. While this provision remains in the statute book, it has been used to withdraw the special status of Jammu and Kashmir. The Presidential Order has extended all provisions of the Indian Constitution to Jammu and Kashmir. It has also ordered that references to the Sadr-i-Riyasat of Jammu and Kashmir shall be construed as references to the Governor of the state, and "references to the Government of the said State shall be construed as including references to the Governor of Jammu and Kashmir acting on the advice of his Council of Ministers". This is the first time that Article 370 has been used to amend Article 367 (which deals with Interpretation) in respect of Jammu and Kashmir, and this amendment has then been used to amend Article 370 itself.

**What is the status of Article 35A now?**

Article 35A stems from Article 370, and was introduced through a Presidential Order in 1954. Article 35A does not appear in the main body of the Constitution - Article 35 is followed by Article 36 - but appears in Appendix I. Article 35A empowers the Jammu and Kashmir legislature to define the permanent residents of the state, and their special rights and privileges.

Monday's Presidential Order has extended all provisions of the Constitution to Jammu and Kashmir, including the chapter on Fundamental Rights. Therefore, the discriminatory provisions under Article 35A are now unconstitutional. The President may also withdraw Article 35A. This provision is currently under challenge in the Supreme Court on the ground that it could have been introduced in the Indian Constitution only through a constitutional amendment under Article 368, and not through a Presidential Order under Article 370. However, Monday's Presidential Order, too has amended Article 367 without following the amending process.

**So, what has changed in Jammu and Kashmir?**

Rajya Sabha on Monday approved The Jammu and Kashmir Reorganisation Bill, 2019. The Bill will come up in Lok Sabha on Tuesday, and is expected to pass easily. In effect, the state of Jammu and Kashmir will now cease to exist; it will be replaced by two new Union Territories: Jammu and Kashmir,



With Nehru by his side, Sheikh Abdullah announces in Srinagar that Jammu and Kashmir and India would be one. Express Archive

and Ladakh. UTs have become states earlier; this is the first time that a state has been converted into a UT. The UT of Jammu and Kashmir will have an Assembly, like in Delhi and Puducherry.

Article 3 of the Constitution gives Parliament the power to amend the Constitution by a simple majority to change the boundaries of a state, and to form a new state. But this change requires that such a Bill be first referred to the concerned state Assembly by the President for ascertaining its views. Explanation II of Article 3 says Parliament's power extends to forming Union Territories.

Not only has Jammu and Kashmir lost its special status, it has been given a status lower than that of other states. Instead of 29, India will now have 28 states. Kashmir will no longer have a Governor, rather a Lieutenant Governor like in Delhi or Puducherry.

It is also likely that corporates and individuals will be able to buy land in Jammu and Kashmir. Non-Kashmiris might now get jobs in Kashmir. A process of demographic change might begin, and progress over the coming decades.

**What is the significance of Article 370?**

The most important feature of federalism in the United States was the "compact" between the 13 erstwhile British colonies that constituted themselves first into a confederation and then into a federal polity under the country's 1791 constitution. India's Supreme Court in *State of West Bengal v. Union of India* (1962) attached the highest importance to an "agreement or compact between states" as an essential characteristic of federalism. In *SBI* (2016), the apex court

accepted the presence of this compact for Kashmir. Article 370 was an essential facet of India's federalism because, like the compact in the United States, it governed the relationship of the Union with Jammu and Kashmir. The Supreme Court has held federalism to be part of the basic structure of India's Constitution.

The original draft of Article 370 was drawn up by the Government of Jammu and Kashmir. A modified version of the draft was passed in the Constituent Assembly of India on May 27, 1949. Moving the motion, N Gopalaswami Ayyangar said that if the accession was not ratified by a plebiscite, "we shall not stand in the way of Kashmir separating herself away from India".

On October 17, 1949, Article 370 was included in India's Constitution by the Constituent Assembly. Some critics of Article 370 have argued earlier that Kashmir joined India in 1947 without any conditions, and Article 370 unnecessarily gave it special status. However, the drafting of the Constitution ended on November 26, 1949 - Article 370 had been included before the Constitution was adopted.

**What did the Instrument of Accession say?**

The Indian Independence Act, 1947, divided British India, i.e., the territories under the direct administration of the British, into India and Pakistan. The 580-odd princely states that had signed subsidiary alliances with the British had their sovereignty restored to them, and were given the options of remaining independent, joining the Dominion of India, or joining the Dominion of Pakistan. Section 6(a) of the Act said joining either India or Pakistan would have to be

through an Instrument of Accession. States could specify the terms on which they were joining one of the new dominions. Technically, therefore, the Instrument of Accession was like a treaty between two sovereign countries that had decided to work together. The maxim of *pacta sunt servanda* in international law, which governs contracts or treaties between states, asks that promises must be honoured. Monday's Presidential Order under Article 370 is a negation of the constitutional pact that India signed with Maharaja Hari Singh.

The Maharaja, the Hindu king of a Muslim-majority state, had initially wanted to stay independent. He signed the Instrument of Accession on October 26, 1947, after Afridi tribesmen and Pakistan Army regulars invaded the state, and India agreed to help only after he acceded. The Schedule appended to the Instrument of Accession gave the Indian Parliament power to legislate for Jammu and Kashmir on only defence, external affairs and communications.

In Clause 5 of the Instrument of Accession, Hari Singh said that the terms of "my Instrument of Accession cannot be varied by any amendment of the Act or of The Indian Independence Act unless such amendment is accepted by me by an Instrument supplementary to this Instrument". In Clause 7, he said: "Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution."

Article 370 was a constitutional recognition of the conditions mentioned in the Instrument of Accession, and reflected the

contractual rights and obligations of the two parties.

**But wasn't Article 370 just a temporary provision?**

Article 370 is the second Article of Part XXI of India's Constitution, which is titled "Temporary, Transitional and Special Provisions". Article 370 was temporary in the sense that the Constituent Assembly of Jammu and Kashmir was given the right to modify/delete/retain it. The Constituent Assembly of Kashmir decided in its wisdom to retain it.

The other view was that it was "temporary" until a plebiscite had been held to ascertain the wishes of the people of Jammu and Kashmir. In a written reply to Parliament last year, the government had said there was no proposal to remove Article 370.

■ In *Kumari Vijayalakshmi Jha vs Union of India* (2017), Delhi High Court rejected a petition that argued that Article 370 was temporary, and that its continuation was a fraud on the Constitution.

■ In April 2018, the Supreme Court said that the word "temporary" in the headnote notwithstanding, Article 370 was not temporary.

■ In *Santosh Kumar* (2017), the apex court said that due to historical reasons, Jammu and Kashmir had a special status.

■ The Supreme Court in *SBI v Zaffar Ullah Nehru* (2016) observed that the federal structure of the Constitution is reflected in Part XXI. The court also said that J&K has a special status, and that Article 370 was not temporary. The court referred to Article 369 of Part XXI that specifically mentions the period of five years; no time limit is mentioned in Article 370. The court observed that Article 370 cannot be repealed without the concurrence of the Constituent Assembly of Jammu and Kashmir.

■ In *Prem Nath Kaul* (1959), a five-judge Bench of the Supreme Court observed that Article 370(2) shows that the continuance of the exercise of powers conferred on Parliament and the President by the relevant temporary provisions of Article 370(1) is made conditional on the final approval of the Constituent Assembly of Jammu and Kashmir.

■ In *Sampat Prakash* (1968), the apex court decided that Article 370 could be invoked even after the dissolution of the Constituent Assembly of Jammu and Kashmir. "Article 370 has never ceased to be operative," the five-judge Bench said.

The Resolution moved in Rajya Sabha by the Home Minister (and passed by the House) states that Monday's Presidential Order will be notwithstanding any treaty, agreement, Instrument of Accession, court decisions, law, rules, custom or usage, etc.

**What is the reason for the secrecy, lockdown in Kashmir?**

The unprecedented security deployment, detention of political leaders in their homes, and the snapping of communication links suggest the government anticipates mass protests. A decision to overturn the very basis of the accession of Jammu and Kashmir has been taken without consultation or negotiation, at a time when the state does not have a popularly elected government. The Presidential Order states that state government's concurrence has been taken; it probably means the concurrence of the Governor, who is a nominee of the central government.

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**1999**

Kargil War, May to July. Pakistani troops and militants had infiltrated through the Line of Control, before India recaptured its positions. It followed the wars of 1947, 1965 and 1971 between the two countries, of which only 1971 was not over Kashmir.

Prime Minister Atal Bihari Vajpayee with soldiers during the Kargil War in 1999. Express Archive



**1990**

A J&K 2008 police report states that 1989 onwards, militants killed 209 Kashmiri Pandits, 109 in 1990 alone. This was the year leading to the exodus of Kashmiri Pandits. Schofield's book puts the number of Hindus who left the Valley at 1.4 lakh in the beginning of March.





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JANUARY 26, 1950

Indian Constitution comes into effect. Provisions (other than Article 1 and Article 370) could apply to J&K "subject to such exceptions and modifications as the President may by order specify", with concurrence of the state government and endorsement of the J&K Constituent Assembly.

Sheikh Abdullah was arrested in 1953; key Presidential Orders came in the years that followed



AUGUST 9, 1953

Sheikh Abdullah, Prime Minister of J&K, arrested, his government dismissed. The arrest was ordered by PM Jawaharlal Nehru and the charge slapped on him was that he had lost the confidence of the cabinet. He was jailed for 11 years; the Congress later patched up with him.

MAY 14, 1954

Presidential Order introduced Article 35A, which protected laws passed by the state legislature regarding Permanent Residents from any challenge on the ground that they were in violation of the Fundamental Rights. The PM of J&K became Chief Minister.

FEBRUARY 24, 1975

Indira Gandhi-Sheikh Abdullah Accord. "The State of Jammu and Kashmir which is a constituent unit of the Union of India, shall, in its relation with the Union, continue to be governed by Article 370 of the Constitution of India," it stated.

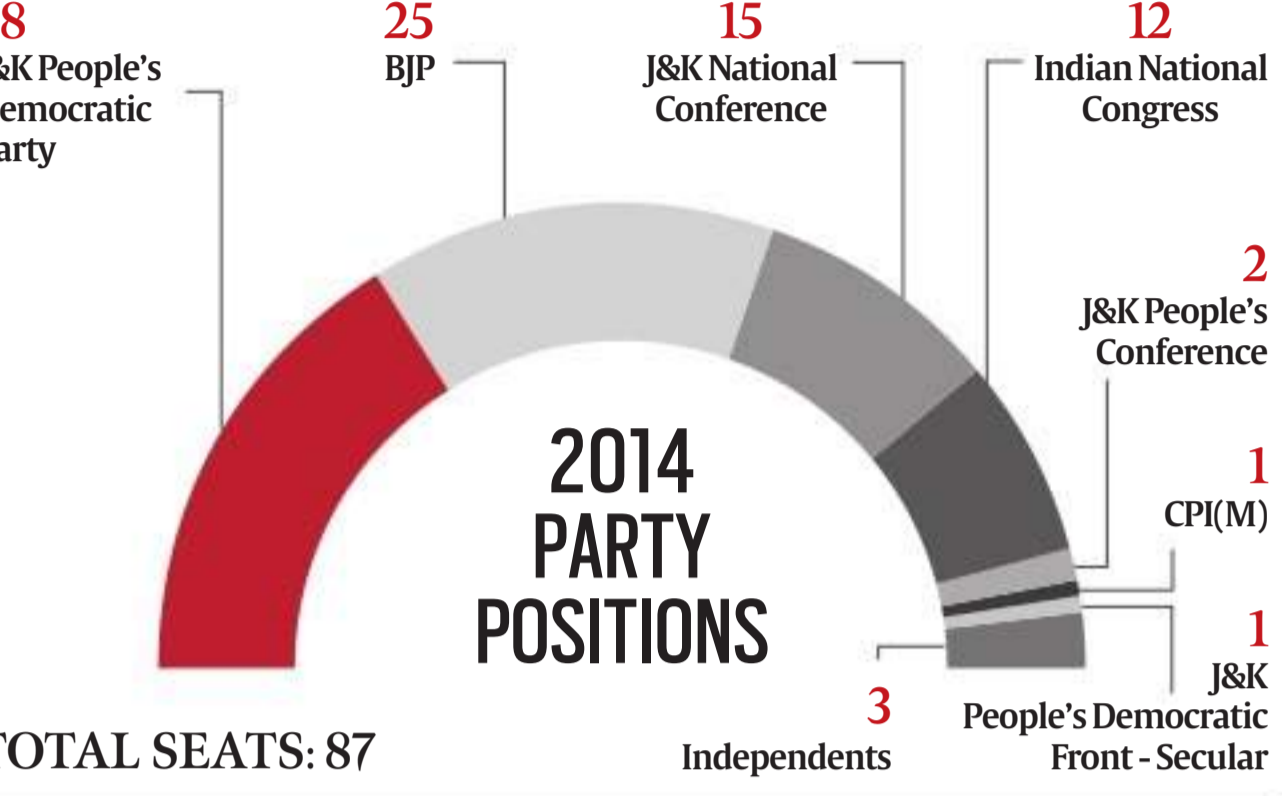


Governor Jagmohan served during key periods, coinciding with Farooq Abdullah's tenure as CM and the beginning of militancy in the Valley. The 1987 election, which returned Farooq to power with Congress support, is seen as rigged and as a turning point leading to militancy.

MARCH 23, 1987

An election widely seen as rigged, and seen as a turning point leading to militancy. Dismissed as CM in 1984 and replaced with his brother-in-law (with Congress support), Farooq Abdullah was reinstated after the 1987 polls, again with Congress support.

The last Assembly



**DEC 23, 2014:** National Conference government of Omar Abdullah lost power  
**MAR 1, 2015:** Mufti Mohammad Sayeed sworn in as Chief Minister of PDP-  
**JAN 7, 2016:** Mufti Mohammad Sayeed passed away  
**APR 4, 2016:** Mehbooba Mufti sworn in as Chief  
**Minister of PDP-BJP government**  
**JUN 19, 2018:** PDP-BJP ruling coalition fell apart  
**NOV 21, 2018:** J&K Assembly was dissolved

Article of faith: History of the RSS and BJP opposition to 370

SHYAMLAL YADAV  
NEW DELHI, AUGUST 5

THE UNION government's move to strip the special status of Jammu & Kashmir was one of the three core issues of the Rashtriya Swayamsevak Sangh. The other two issues were the Common Civil Code and the Ram Temple.

On Monday, RSS Sarsanghchalak Mohan Bhagwat "congratulated the courageous step taken by the government" and said that it "was very necessary not just for Jammu and Kashmir but (also) for the whole nation. Everyone should rise above political interest and difference and support the initiative".

The RSS has always held that "Article 370 is a provision to break Kashmir from Bharat", and it has always demanded the removal of Article 370 of the Indian Constitution. A total of 51 resolutions on Kashmir have been passed in the annual meetings of the Akhil Bhartiya Karyakari Mandal (ABKM), Akhil Bhartiya Pratinidhi Sabha (ABPS) and the Kendriya Karyakari Mandal (KKM) since the early fifties, and a majority of them have demanded the scrapping of Article 370. Even though Article 370 has not been scrapped, the end result — the removal of special treatment for J&K — has been achieved by the government on Monday.

As far as the division of the state is concerned, the RSS supported the idea in 1995 when it demanded in its resolution that the Jammu region "be granted an autonomous council". Later, in 2002, the RSS passed a resolution to divide the state.

**1952:** The first resolution on J&K was passed in a meeting of the RSS's KKM in which it condemned the "Pak-American Pact" and said that the "open aggression in Kashmir" was still on.

**1953:** J&K Praja Parishad, an organisation formed by the late Bharatiya Jana Sangh leader Balraj Madhok, started a movement for "complete integration" through a resolution at the ABPS. Later, Syama Prasad Mookerjee, the founder president of the Bharatiya Jana Sangh, who was protesting the special status of J&K, died in mysterious circumstances in a Srinagar jail on June 23, 1953. During his last agitation against Article 370, the BJS's main slogan was: "Ek desh me do vidhan, do pradhan, do nishan, nahi chalega, nahi chalega (One country cannot have two



Prime Minister Narendra Modi pays tributes to Dr Syama Prasad Mookerjee on his birth anniversary in Parliament House last year. Express Archive

constitutions, two Prime Ministers, and two flags)".

**1964:** A resolution of the ABPS, titled "Bharat's Kashmir Policy," stated that "Article 370, which was incorporated in our Constitution as a temporary provision on Kashmir, must be immediately repealed and the state brought in line with the other states".

**1982:** The J&K government passed a Resettlement Bill, which sought to enable all Kashmiri Muslims who had migrated to Pakistan to return to Kashmir and acquire Indian citizenship. After that, the ABKM of the RSS passed a resolution that reiterated that the J&K Assembly is using Article 370 to achieve separatist and communal ends, and that the Article should be scrapped.

**1984:** The ABKM passed a resolution stating Article 370 was "being used to fan

separatist tendencies" and demanded its repeal.

**1986:** The demand was reiterated in an ABPS resolution.

**1993:** The ABKM resolution stated that the "insistence" on Article 370 was one of the many signs of a "myopic state administration".

**1995:** In a resolution, the ABKM demanded that the Jammu region "be granted an autonomous council".

**1996:** In a resolution, the ABKM said that Article 370, which was intended to be "temporary," had "become totally redundant".

**2000:** When the BJP-led government was in power at the Centre, and the J&K Assembly passed a resolution demanding "autonomy," the RSS's ABKM passed a resolution stating, "things would not have come to this pass had the transitory Article 370 been abrogated in time".

**2002:** The RSS's ABKM passed a resolution stating that "the people of Jammu think that the solution to their problems lies in the separate statehood for Jammu region. This has been demonstrated by the agitation spearheaded by Jammu and Kashmir National Front (JKNF) and other organisations". The ABKM offered its support to the JKNF's demand for a separate state. The JKNF too, was formed by some members of the RSS.

**2010:** The last resolution on this issue was passed in the ABPS that year. It stated: "Article 370, which was included in our Constitution as a 'temporary and transitional provision', instead of being abrogated, continues to be a tool in the hands of the separatist and secessionist elements".

However, since 2014, when the BJP received a full majority in Lok Sabha and Narendra Modi became Prime Minister, the RSS has not passed any resolution in any of its meetings.

Repeal of Article 370 has not always figured in the BJP's election manifestos. For instance, the 1984 manifesto did not mention it, and the 1989 manifesto only promised a "regional council" for Jammu. In 1991, the BJP stated this clearly — but this promise did not find mention in 1996, 1998, 1999 and 2004. In 2009 and 2014, the BJP reiterated its stand on the abrogation of Article 370. In 2019, the BJP's Sankalp Patra stated: "We reiterate our position since the time of the Jana Sangh to the abrogation of Article 370".

...and what the govt's move could lead to

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Didn't Congress governments too misuse Article 370?

Yes, they did. A number of Presidential Orders were issued against the letter and spirit of the Instrument of Accession. By the Presidential Order of 1954, almost the entire Constitution (including most constitutional amendments) was extended to Jammu and Kashmir. Ninety-four out of the 97 entries in the Union List are today applicable to Jammu and Kashmir as to any other state. Two hundred and sixty out of the 395 Articles of the Constitution have been extended to the state. Seven out of the 12 Schedules of the Constitution of India too, have been extended to Jammu and Kashmir.

Over the years, the central government has used Article 370 to amend a number of provisions of the Jammu and Kashmir constitution, even though that was not the power given to it under this Article of the Constitution of India. Article 370 had a limited mandate to extend the applicability of the Constitution of India to Jammu and Kashmir.

Thus, Article 356 (on the imposition of President's Rule in the states) was extended to Jammu and Kashmir, even though a similar provision was already there in Article 92 of Jammu and Kashmir's constitution. To change the provision in the Jammu and Kashmir constitution regarding the Governor being elected by the state Assembly, Article 370 was used to convert the position into a nominee of the President.

Governors have proved to be the Centre's agents in the state. Monday's Order has now extended the remaining Articles of the Constitution after withdrawing all the earlier Orders.

Why didn't governments before this take such a step?

Nehru probably lacked the political will, and wanted to honour the constitutional pact with Maharaja Hari Singh. He also had a sentimental connection with Kashmir. Atal Bihari Vajpayee's idea was that of the healing touch — in the form of Kashmiriyat,

Insaniyat and Jamhooriyat. The first Modi government was in an alliance with the PDP in Jammu and Kashmir till 2018. The Home Minister has said that once peace returns and the situation improves, the government will restore statehood to Jammu and Kashmir.

Can the Presidential Order be challenged in the Supreme Court? On what grounds?

It will most likely be challenged. However, the Supreme Court will consider that Article 370 does, indeed, give sweeping powers to the President. It might also take two to three years for a Constitution Bench of the court to decide such a challenge.

The possible grounds of challenge could include the argument that the conversion of Jammu and Kashmir into a Union Territory is in violation of Article 3, as the Bill was not referred by the President to the state Assembly. Also, can the Constituent Assembly mean Legislative Assembly? Are the Governor and the state government one and same? The constitutional relevance of Instrument of Accession will also be examined by the court. Whether Article 370 was part of the basic structure will likely be considered. The use of Article 367 in amending Article 370 will also be examined.

So, is Kashmir now fully integrated with India?

Article 3 of the Jammu and Kashmir constitution itself declares the state to be an integral part of India. In the preamble of the Jammu and Kashmir constitution, not only is there no claim to sovereignty like in the Constitution of India, there is, rather, a categorical acknowledgment that the object of the Jammu and Kashmir constitution is "to further define the existing relationship of the state with the Union of India as its integral part thereof".

Integration thus, was already complete. Article 370 merely gave some autonomy to Jammu and Kashmir, which has now been withdrawn.

(Prof Faizan Mustafa is an expert of constitutional law. These are his personal views)

Sheikh Abdullah, Ayyangar, Sardar Patel: How Article 370 was negotiated, debated

SEEMA CHISHTI  
NEW DELHI, AUGUST 5

IN JULY 1949, Sheikh Abdullah and three others were nominated by the ruler of Jammu & Kashmir to the Constituent Assembly in Delhi. They negotiated the special status of J&K, leading to the adoption of Article 370. (It was Article 306A while being debated in the Constituent Assembly.) The negotiations were carried out over several months between N Gopalaswami Ayyangar (cabinet minister without portfolio and former Dewan of Kashmir) and Sheikh Abdullah and others.

The first meetings were held during May 15-16, 1949 at Sardar Vallabhbhai Patel's residence with PM Jawaharlal Nehru present. When Ayyangar prepared a draft letter from Nehru to Abdullah summarising the broad understanding reached, he sent it to Patel with a note: "Will you kindly let Jawaharlalji know direct as to your approval of it? He will issue the letter to Sheikh Abdullah only after receiving your approval."

Ayyangar, who eventually drafted Article 370, spoke in the Constituent

Assembly on October 17, 1949: "We have also agreed that the will of the people, through the instrument of the Constituent Assembly, will determine the Constitution of the State as well as the sphere of the Union's jurisdiction of the state... You will remember that several of these clauses provide for the concurrence of the Jammu & Kashmir state. Now these relate particularly to the matters not mentioned in the Instrument of Accession and it is one of our commitments to the people and the Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the state for framing its Constitution."

Later, Abdullah insisted that the Article should not extend the Fundamental Rights and Directive Principles to Jammu and Kashmir, but leave it to the state's Constituent Assembly to decide whether or not to adopt them. Patel was unhappy but allowed Ayyangar to proceed. Nehru was abroad then; Patel wrote to him on November 3, 1949: "After a great deal of discussion, I could persuade the [Congress] party to accept". When Sheikh Abdullah threatened to resign from the Constituent

Assembly, Patel asked Nehru to get him back on board.

In November 1963, in a debate in Parliament, when Hari Vishnu Kamath argued that Kashmir was "not fully" integrated, Nehru asserted that it was, indeed, "fully integrated" with India. He said: "The House will remember that we have some such restrictions with respect to NEFA and other places; outsiders cannot buy land. This is also in some other districts, the hill districts of Assam. This is to protect them."

Former MP Karan Singh, son of Maharaja Hari Singh, wrote in *An Examined Life*: "The right wing seems to resent that J&K carries a special status. That has always surprised me. We are a great country, we should be large-hearted. J&K came to India under complex and difficult circumstances. Now after all these years to ask why it holds a special position is baffling. It will always be special because it was born out of a special historical event and subsequent political developments. In England they have all sorts of governing systems...we should feel so lucky that J&K, a Muslim-majority state became a part of India despite the religion-led Partition. Cherish that; relish that; honour that."

JANUARY 1990

New Delhi reappointed former Governor Jagmohan. Following raids on people's houses, a crowd protested at Srinagar's Gawakadal Bridge. CRPF troops fired on unarmed protesters. Over 100 died, Schofield writes. The state came under Governor's Rule in February.

Mufti Mohammad Sayeed (centre) was made Union Home Minister by PM V P Singh (left)



1989

That year marked the real beginning of insurgency, writes historian Victoria Schofield (*Kashmir in Conflict*). Strikes were frequent, many militant groups emerged. Days after Mufti Mohd Sayeed had been appointed Union Home Minister, his daughter Rubaiya was kidnapped.





The Indian EXPRESS

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RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

Blood and Betrayal



PRATAP BHANU MEHTA

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

RUPTURE IN HISTORY,  
STITCHING A FUTURE

Historic changes draw an audacious red line across Jammu and Kashmir and its compact with the Union. How government carries this forward will decide many things for India

THE NDA GOVERNMENT'S decision to abrogate the special status to Jammu and Kashmir under Article 370 fulfills a nearly 70-year-old project of Hindutva parties, their promise that they would one day make the "integration" of J&K with the Union of India a reality. The Constitution (Application to Jammu & Kashmir) Order 2019 supersedes the 1954 order, which included Article 35 A, and defined the state's special status. Article 35 A has ceased to exist. Although Article 370 remains, it's effectively dead. The government has simultaneously proposed the bifurcation of the state through the Jammu & Kashmir State Reorganisation Bill 2019, under which it will become two Union Territories, one comprising Ladakh without a legislature, another comprising Jammu & Kashmir, with a legislature.

But the special status guaranteed to Jammu and Kashmir was not a partisan or personal decision of the founding fathers of the Indian republic. It was based in the imperative of nation-building. It was a recognition of the role a Muslim majority state — its unique demography protected by the Constitution — would play in belying the claims on which Partition had taken place, and in strengthening the secular "idea of India". The developments of August 5, 2019, are in no small measure about rewriting history, changing that very demography, and bringing in a new idea of India, with the stamp of Narendra Modi firmly on it. The changes are no less than historic, they draw an audacious red line over and across the Nehruvian idea of India.

But what is this new idea of India, and how will it be given shape? What will also go down in history is the manner in which the momentous change in J&K's status has been brought about. There is no parallel in the history of independent India for the secrecy and stealth deployed by the government to bring in something that is politically and communally contentious. To do this at a time when Parliament is in session, to present it as a virtual fait accompli to the House, may be the BJP's way of doing business, as it believes it has the mandate. But it goes against every democratic convention and norm.

Curiously, government officials put out the red herring of a purported terror plot emanating from Pakistan to justify the induction of additional troops in the Valley and cancellation of the Amarnath Yatra. As it has turned out, these were law and order measures in anticipation of a backlash to the government's real plans. For the first time since the 1953 arrest of Sheikh Abdullah, the government placed two former chief ministers, both leaders of mainstream political parties, under arrest.

The promise of resolving the Kashmir issue through partnership and dialogue with Kashmiris, articulated by a BJP prime minister, Atal Bihari Vajpayee, and carried forward by a Congress prime minister, Manmohan Singh, was implicit in the PDP-BJP alliance of 2015-2018. It failed, yet as recently as last year, Prime Minister Modi invoked Vajpayee's "insaniyat, jahmuriyat, Kashmiriyat" credo for resolution in Kashmir. It now seems that he and his trusted lieutenant believe that the people of Kashmir need not be consulted at all about their political fate, and that the use of force can overcome their opposition.

Now that the die has been cast, how the government proposes to carry this forward from here, how it will deal with the legal and political fallout and the reactions in the Valley, will decide many things for India. If the unkept promise of autonomy in Article 370 was the genesis of the Kashmir problem, the government has significantly departed from that, not just by its definitive move to scrap the constitutional guarantee of that autonomy but by demoting the state into truncated union territories that will now be governed directly by the Union home ministry through an all powerful Lt. Governor, working with an emasculated legislature.

Regional parties, such as AIADMK and TRS, that have supported the government's move, might do well to ask themselves what they would do if the Centre decided that Tamil Nadu, with a traditionally strong regional ethos, be carved up into union territories. But the challenge for the Opposition is also more than a distant thought experiment. It is real and it is already here: A BJP that is bringing its "core issues" — for long relegated to the backburner — to centre stage. A BJP with a mandate that will have its way, few questions asked.

It cannot be the government's intention to keep voices in the Valley suppressed forever. For starters, it must release Omar Abdullah, Mehbooba Mufti and Sajjad Lone, leaders with a following in the Valley and in Jammu too. It must remove restrictions on movement in the Valley, allow telecommunications to be restarted. It must demonstrate that its political confidence to do what it has done in Kashmir does not flow out of the barrel of a gun or a numerical majority alone. There will be other challenges, such as the changing dynamics in the region, especially the deal with Pakistan's help, in Afghanistan between the US and Taliban. This is hard work in progress even though the deed has been done.

A JUST WAY

AYODHYA IS BACK IN COURT. IT IS UPTO THE SUPREME COURT TO ensure that due process is respected above all

THE SUPREME COURT'S initiative to push for a negotiated settlement in the Babri Masjid case has failed to find traction. The three-member panel set up by the apex court conducted extensive consultations with the stakeholders in the dispute, but evidently could not convince the parties to agree to an out-of-court settlement. This does not come as a surprise. Previous attempts to mediate, too, had failed since the parties to the dispute refused to budge from their stated positions. The case has become a political battleground involving history and myth, faith and identity. Within the deadline set by the Court, it was ambitious perhaps to expect that the mediation committee could provide a breakthrough for an over seven-decade-old matter. The panel led by retired Supreme Court judge, Justice F M I Kalifullah, including Art of Living Founder Sri Sri Ravi Shankar and senior advocate Sriram Panchu, was set up in March this year with a deadline of eight weeks, which was extended till July 31.

The committee reportedly persuaded one side to come with a proposal that included a plan to build a mandir and masjid adjacent to each other at the disputed site. That, however, did not elicit a response from the backers of the temple. The committee also presented a possible deal premised on shifting the mosque outside the contested site. This deal had four elements, among them freezing the status of all places of worship as per their status on August 15, 1947 (as stated in The Places of Worship (Special Provisions) Act, 1991) and providing alternative land and funds to build a mosque anywhere. The parties to the dispute appear to have discussed the proposal, but failed to reach a consensus. Those seeking to build a Ram temple at the site where the masjid stood before it was pulled down by kar sevaks on December 6, 1992, see it as a political project and are unwilling to cede any ground. The other side insists that the land where a masjid stood could not be given for any other purpose.

Now that the mediation effort has failed, it is for the Supreme Court to decide this sensitive and fraught issue. It must ensure that due process is respected by both sides. The litigation itself has gone on for long and the accumulated layers have only added to the complexity of the issue. The challenge before the Court is to separate the multiple strands in the dispute and settle it in a way that is fair and is seen to be so too.

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 deliberation. 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 propitious. We can do what China is doing: Remake whole cultures, societies. We can take advantage of the fact that human rights is not even a hypocrisy left in the international system. We can show Pakistan and Taliban their place. Let us do away with our old pusillanimity. Now is the time to seize the moment. Settle this once and for all, if necessary with brute force.

There are kernels of truth to many of these arguments. The status quo was a double whammy: It did nothing to address the well-being of Kashmiris who have now endured two generations of what was effectively military occupation. And it increased the gulf between Kashmir and the rest of the nation. So some movement was inevitable. But the kernel of truth is being deployed with an armory of evil. The solution being proposed is an annihilation of decency. The fact that these measures had to be done under

There will be a sullen peace, militarily secured, that we will mistake for victory. The very army, behind whom every patriot now hides, will now 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, pumelled by military might, the prospect of radicalisation in the rest of the country cannot be ruled out. There are already incipient signs of that. The theatre of political violence will shift.

stealth, with a tight security noose and informational blackout is a measure of the evil of the step taken. This is not the dawn of a new constitutional settlement, designed to elicit free allegiance. It is repression, plain and simple, reminiscent of the Reichstag or Chinese constitutional ideology that sees federalism as an obstacle to a strong state and homogenous culture.

Think of the proposal's broader ramifications. India has betrayed its own constitutional promises. India has many asymmetric federalism arrangements outside of Kashmir. This act potentially sets the precedent for invalidating all of them. How can we justify offering Nagaland asymmetric federalism but deny it to Kashmir? Its implication is that the government can unilaterally declare any existing state to be a Union Territory. This is a constitutional first. We are simply a union of Union Territories that happen to be a state at the discretion of the Centre.

Let us also not put too fine a point on this. Even if Article 370 were to be scrapped, the proposal to alter Jammu and Kashmir's status to Union Territory, even if temporarily, is designed to humiliate an already subjugated population. How dare a Muslim dominated state exist in India? Kashmir can now not even be trusted to be a state. The optics of this measure is not integration, it is humiliation, of a piece with subtle and unsubtle 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 now 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, pumelled by military might, the prospect of radicalisation in the rest of the country 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 feckless abdication of the Opposition will only deepen the sense of alienation. There are no political avenues for protest left. Most of the so-called federal parties turned out to be more cowardly than anyone anticipated; the Congress can never stand for any convictions. Not a single 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 hurling 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 that is 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.

The writer is contributing editor, The Indian Express



IMAD UL RIYAZ

WE ARE JUST AT THE BEGINNING

Centre has failed Kashmiris who believed in the Constitution, stood by India

IN THE LAST 24 hours, I have not been able to reach out to my family in Kashmir; I have no clue as to their safety. In a constant state of frenzy, I keep checking to make sure I have my ID card, passport and mobile phone with me so I can negate any suspicion and even arrest.

I have been a pious Indian throughout, diplomatic, balanced and politically correct. People who have known me would tell you "this is how Kashmiris and Muslims should be". But this attitude, the belief in dialogue and accommodation, can also backfire. In the conflict-ridden area I call home, the choice is to be pro-Kashmir, pro-India or pro-Pakistan — and I chose India. I grew up reading and gradually gaining a deeper understanding of the Indian Constitution. For many at home, my blind faith in the Gandhian path of non-violence and peace was something to scoff at.

I could stand up for my beliefs, and found refuge in a conflict-torn region in the idea of India, because of the Constitution's values that were at its core.

The very first page of the Constitution says that the country is a "Union of States", which implies a syncretic union of diverse cultures, languages, religions, etc. The political mainstream in Kashmir recognises this, and many have died so that Indian democ-

Today, we are dejected, appalled and feel betrayed. The issue is not just about the abrogation of Article 370 — it is about the unconstitutional manner in which the exercise is being carried out, the way national and international treaties have been violated. Most importantly, it is about the manner in which the views of the people of Jammu and Kashmir were ignored.

racy had a chance to thrive there. Yes, the mainstream leaders can be corrupt, and they have made serious errors time and again. But the positions they occupy, their legitimacy, is made possible by the countless, faceless workers on the ground, including BJP workers.

Today, we have failed all of them. We have failed the political workers, the security establishment and every person who thought a truce, and eventually reconciliation, is possible. Babaseheb Ambedkar's fear, and his warning, that mere political democracy is not enough, is coming true. This push for homogeneity and towards implementing a unitary idea of India by the ruling party should, perhaps, come as no surprise. The people who have disrespected the Constitution, those who never truly believed in the spirit that animates the document, could never understand its importance. What they want is political and social hegemony. And, it seems, that dream will soon come true.

My appreciation for India, and that of many other Kashmiris, and the desire to stand by it in the face of hostility and bullying back home, was sustained by the Constitution. Today, we are dejected, appalled and feel betrayed. The issue is not just about the abrogation of Article 370 — it is about the unconstitutional manner in which

the exercise is being carried out, the way national and international treaties have been violated. Most importantly, it is about the manner in which the views of the people of Jammu and Kashmir were ignored.

The dispensation currently in power has made a mockery of democracy and the idea of India. This could mark the beginning of our end. For "people like me", there is now only insecurity. With the UAPA amended, it is easier to frame me as a terrorist and put me behind bars. Perhaps "peace" can also be brought about by killing thousands back home. But this historical blunder will not be forgiven. Sooner or later, an injustice of this scale will be noticed.

Finally, today it is us, tomorrow it could be you. The process of destroying constitutional democracy, of the rights that were inalienable, has just begun. Such a process does not discriminate, in the long run, between castes, religions and communities. In Pakistan, it began with non-Muslims, but soon enough, the forces unleashed consumed the society entirely. There are lessons to learn from our neighbours and from history, before it's too late. Kashmir is just the beginning.

The writer, a social worker working in Bihar, is from Kashmir



AUGUST 6, 1979, FORTY YEARS AGO

KABUL REBELLION HEAVY FIGHTING INVOLVING tanks, helicopters and automatic weapons broke out in Kabul, diplomatic sources in Islamabad and the BBC reported. Sketchy reports coming from Pakistan's capital mentioned a possible army rebellion because fighting started around the old Bala-Hissar fort at the edge of the inner city, used as military barracks. Government tanks and helicopters opened fire to quell the outbreak, which started at 12.45 pm and lasted four hours. Afghan authorities claimed to have quelled a disturbance created by what they said were "Iranian and Pakistani infiltrators", who had made their way to Kabul.

ANTI-CHARAN MOVE THE JANATA PARTY launched a campaign to topple the Charan Singh government as early as possible. Addressing a huge rally at the Ramliila Grounds in Delhi, Jagjivan Ram, leader of the Janata Parliamentary Party, said that the induction of this "government of defectors" was a shameful chapter in world history. "The sooner it is toppled the better it will be for the country," he said. The rally was organised by the Janata Party to protest against what it described as the "betrayal of the people's faith by Charan Singh".

COSTLY ELECTIONS RAJ NARAIN, CHAIRMAN of the Janata (S),

said in Patna that he had told Jayaprakash Narayan that a poor country like India could not afford the luxury of mid-term elections frequently. Narain claimed that Narayan had heard his appraisal of the political situation in the country with "sympathy" and his reaction "appeared to be favourable" (towards the present dispensation at the Centre). Narain said that in line with his party's policy Prime Minister Charan Singh had set the date for summoning Parliament but he was not in a position to say if the confidence vote would be sought on the very first day, August 20. Replying to questions, he said he was confident about the outcome of the confidence vote.



# 13 THE IDEAS PAGE

## Correcting a historic blunder

Abrogation of Articles 370 and 35A is a much-needed step for the complete emotional integration of people of Jammu and Kashmir with the Indian Union



RAM MADHAV

AUGUST 5, 2019, will go down 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 finally been set right. Article 370, which entered the draft constitution 70 years ago as Article 306A, has finally been abrogated.

Nobody should complain because the abrogation of this discriminatory article has always been a running theme for the BJP and Jana Sangh. Nobody should have entertained any doubt that Prime Minister Narendra Modi, a leader possessing grit and determination, who was instrumental in hoisting the Indian Tricolour at Lal Chowk on January 26, 1992, would have spared this illogical entity in our Constitution when the appropriate moment came.

Article 370, which became history yesterday, has a notorious history. It was introduced into the draft constitution on by N Gopalaswami Ayyangar as Article 306A. Through this provision, Ayyangar had proposed that "Kashmir state" would have special powers to be excluded from the purview of the laws that the Parliament of India would make and also would have the power to make its own laws.

"Why this discrimination?", asked Maulana Hasrat Mohani, the member from 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 who asked why different accessions were being treated differently. Ayyangar's logic was bizarre. The Instrument of Accession's relevance was limited to joining the Dominion, he argued, adding that what mattered for the Indian Republic that was going to take shape on 26 January 1950, was the decisions in the Constituent Assembly. He was no doubt clever in making this distinction between the Dominion and the Republic, but not logical.

Some five months before Ayyangar's introduction of Article 306A, on May 27, 1949, another important discussion took place on the question of nominating members to the Constituent Assembly from Jammu & Kashmir. The rules said that out 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, Jawaharlal Nehru insisted that the Jammu Kashmir Praja Sabha, the state legislature under Maharaja Hari Singh, shouldn't be authorised to nominate the members. The Praja Sabha elections in 1946 were a fraud, insisted Nehru, and hence, he wanted the Maharaja to nominate all the four members through consultations with National Conference leader Sheikh Abdullah.

It must be noted that 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 ag-



CR Sasikumar

itation against the Maharaja. It was in him that Nehru had reposed his trust and got four members nominated—Abdullah himself, together with Mirza Afzal Baig, Maulana Masoodi and Moti Ram Baigra. 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 Article 370 came another provision, Article 35A. Article 35A too found its way into the Constitution in 1954 in an unconstitutional and surreptitious manner, by bypassing the procedure for amending the Constitution as stipulated in Article 368. Article 35A was inserted not through parliamentary assent, which is mandatory for amendments, but through a presidential proclamation.

All this was happening under Nehru, whom the apologists never tire of projecting as a quintessential democrat. The credit goes to B R Ambedkar for inserting Article 370 in Part XXI of the Constitution of India, which is titled "Temporary, Transient and Special Powers". The Opposition's argument that Article 370 was a link to the state's accession to India is fallacious. The state's accession had concluded on October 26, 1947, when Hari Singh signed the Instrument of Accession. Article 370, according to Ayyangar's own words, took birth as a temporary provision because of the "special circumstances" in the state. The criticism by the Congress is even more specious because it is this party that has 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 spe-

cial powers to one state, which were being thoroughly misused by the regional leaders and parties. If Article 370 had benefited anybody in all these years, it is only the political leadership in the state. While the people have suffered from a lack of development, progress and prosperity, the leaders enjoyed a lack of accountability and enriched themselves. The last major industry to come into J&K was in the mid-1950s.

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 has benefited anybody in all these years, it is only the political leadership in the state. While the people have suffered from a lack of development, progress and prosperity, the leaders enjoyed a lack of accountability and enriched themselves.

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 re-ascendance of the Taliban in Afghanistan call for greater attention and care to be taken in what will remain as J&K after bifurcation. Making it an Union Territory 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.

The writer is a national general secretary, BJP, and director, India Foundation

### WHAT THE OTHERS SAY

"The radicals are nothing but cowards trapped by utopian illusions. Only can relentless law enforcement wake them up so they will realize that Hong Kong has never abandoned the rule of law." — GLOBAL TIMES, CHINA

## For Naya Kashmir

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



MANISH SABHARWAL

ECONOMIST ALBERT HIRSCHMAN'S book, *Passions and Interests*, is a wonderful meditation on how interests (jobs, skills, enterprises, assets, income, growth) blunt passions. As somebody born in Jammu and Kashmir, I am sad that today's youth there don't have memories of the wonderful place it was to grow up in 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 sufi shrines like Aishmuqam, Makhdoom Sahib, and Baba Reshi, I know that the Wahabi intolerance is alien, recent and fragile. As somebody who is a first generation post-reform entrepreneur, I am anguished by the notion that Pakistan — whose GDP is lower than Maharashtra and 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 someone 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.

A recent conference at Harvard's Centre for International Development offers context. Professor Ricardo Hausmann suggested that the only predictor of sustained economic success is economic complexity, and development was like a game of scrabble; the more letters you have, not only can you make more words, but you can make longer words. Vowels are provided by the government. So development is about creating new letters and vowels. Hausmann believes that new letters in the private sector come from migration, diaspora, venture capital, inbound investment, skills, studying overseas, business travel. Professor James Robinson suggested that inclusive economic systems need vowels from inclusive political systems that distribute political power broadly rather than concentrate, monopolise or hoard it.

Kashmir is an economic infant with low economic complexity. There is no wage premium in handicrafts; carpet weavers get Rs 150 a day while construction labour costs Rs 600 per day (and comes from outside the state). There are only 200 dental and 600 medical doctor seats in the whole state. Less than five per cent of fruits and nuts are processed. Fifty per cent of the state's 50,000 graduates go onto do a masters degree, only to stay out of the labour market. The fiscal deficit is more than twice the prescribed ratio and government debt is 50 per cent of GDP. Private Credit to GDP is less than Bihar and the J&K Bank is a shame. Private investment last year was less than Rs 1,000 crore. More than 30 per cent of families directly work for the government. Land costs as much as in Gurugram. The state accounts for less than 0.7 per cent of India's GDP. There is only one listed company and only one company with a paid up capital of Rs 10 crore. Their 28 employment exchanges cost almost Rs 50 crore a year to run and have given few

jobs to anybody in a decade. There is no employer in the Kashmir Valley who pays 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 skill university that spreads higher education with employability. We should convert Hari Niwas into a world class hotel management institute in partnership with ITE Singapore or EHL Lausanne. We must double the direct flights and directly connect Srinagar to Jammu and Delhi with a three-hour and 12-hour train. We need revamped employment exchanges that operate a digital jkrozgar.com that offers job matching, assessments, 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 fruits that raises the realisation of actual producers. Most importantly, we must get the 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 and disinterested in development. Monarchies or hereditary leadership are ineffective because they think of citizens or voters as a necessary evil that must be tolerated, possibly patronised, but certainly ignored. Naya Kashmir — a memorandum that Sheikh Abdullah submitted to Maharaja Hari Singh in 1944 — outlined a plan to convert J&K from an absolute monarchy to a constitutional democracy, called for universal franchise, freedom of expression and press, ability of women to work in all trades and professions, and a detailed economic plan. Much of what he 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 Albert Hirschman book, *Exit, Voice, and Loyalty*, synthesised 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 voices 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 that "Jamhuriyat ik tarz-e-hukumat hai ki jis mein bandon ko gina karte hain taula nahin karte" (democracy is a system where people are counted but not weighed). The grandiloquence of political royalty about the threats to civilisation sound like scorn for the more prosaic concerns of Kashmiri youth who are more skilled, entrepreneurial, and aspirational than the past generations. India and J&K are tremendously and permanently intertwined. When one does well, the other does well. And when we both do well, we are unstoppable. Time for Sheikh Sahib's dream of Naya Kashmir.

The writer is with TeamLease Services



C RAJA MOHAN

## Possibilities in the Northwest

After altering J&K's status, Delhi needs strategy to manage external environment

INDIA'S BOLD MOVE to alter the status of Jammu and Kashmir comes at a moment of rapid diplomatic developments in Afghanistan. It was the intensification of the efforts for a political settlement in Afghanistan that had emboldened Pakistan in the first place to escalate tensions on the Line of Control and prepare a major offensive in Kashmir. Delhi's Kashmir move begins a rewriting of India's strategy to cope with an entrenched conflict on its north western frontiers.

But first to Afghanistan. Contrary to the widespread scepticism about a political breakthrough in the peace process, there is a new momentum since Pakistan's army chief General Qamar Jawed Bajwa and Prime Minister Imran Khan traveled to Washington last month. The US-Pakistan talks arrived at a broad understanding that the Pakistan army will help "extricate" (in US President Donald Trump's words) the US from its longest war and Washington will reset the relationship with Islamabad that has frayed badly in recent years. American mediation in Kashmir is part of Pakistan's wishlist in the planned reset.

Meanwhile, the Bajwa-Imran visit to Washington set the stage for the eighth round of talks between the US and the Taliban over the weekend in Doha, Qatar. Just before the talks, US special envoy for Afghanistan, Zalmay Khalilzad said the Taliban might be willing to compromise now

that the US is "ready for a good agreement". Khalilzad's visit to Kabul and Islamabad on his way to Doha has generated expectations that a deal between the US and the Taliban may well be signed by next week. The agreement is expected to be built around a US commitment to withdraw troops and assurances from the Taliban that it will not let al Qaeda and other international terror groups operate from Afghanistan.

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 in Kabul. The Taliban has resisted until now 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 quite 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 that 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 shaky one, that is in tune with Trump's political calendar will help Pakistan repair the damaged relationship with the US. Islamabad also hopes that it will restore Pakistan's value in the US's 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 United States. Delhi has also become adept at turning the crises with Pakistan to focus less on Kashmir and more on the forces of

terrorism originating from Pakistani soil.

A number of factors have facilitated this. For one, Delhi is a lot stronger than it was when the first Afghan crisis broke out in 1979 after the 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, however, is the decision in Delhi to stop being defensive on Pakistan and Kashmir. We have seen so 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 strategies 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 that 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.

The writer is director, Institute of South Asian Studies, National University of Singapore, and contributing editor on international affairs for The Indian Express

### LETTERS TO THE EDITOR

#### ABOUT THE VALLEY

THIS REFERS TO the editorial, 'New Delhi, old line' (IE, August 5). It argues that the government must have taken into confidence the two major political parties and the steps it has taken are against the claims made by Narendra Modi government for winning over Kashmir with love, dialogue and good governance. This is one part of the story. The other part of the story pertains to the violence against the minorities in the state. The Hindus of the Kashmir Valley were forced to flee their homes and leave behind property after they were targeted by Islamist insurgents between 1989 and 1990. What every Indian, including the common resident of Kashmir, wants is peace in the state.

Krishan Chugh, Delhi

THIS REFERS TO the editorial 'New Delhi, old Line' (IE, August 5). The atmosphere of fear and uncertainty in the Kashmir Valley is because of New Delhi's ambivalent stand on the state. The abrupt calling off of the Amarnath Yatra last week has heightened the feeling of anxiety and fear among people in the Valley. New Delhi needs to reach out to the people in the Kashmir Valley. Taking on the terrorists with guns is one thing and winning the Kashmiris' trust is another. Sadly, the latter issue appears to be nowhere in the Modi government's agenda.

Vijai Pant, Hempur

#### LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to [editpage@expressindia.com](mailto:editpage@expressindia.com) or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

THE WINNER RECEIVES SELECT EXPRESS PUBLICATIONS

#### THE LAST RESORT

THIS REFERS TO the article, 'Helpless in Unnao' (IE, August 5). It reveals five truths. One, reforms in the criminal justice system continue to remain in limbo. Two, our leaders have no ideology. Three, despotic slogans for ensuring justice for all, power takes precedence. Fourth, the CBI is a caged parrot. Fifth, the Supreme Court remains the last resort for justice.

Tarsem Singh, Mahilpur