

KASHMIR HAS BEEN CUT TO THE QUICK

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

A paramilitary trooper stands guard on a road during a curfew in Srinagar on August 5, 2019. | Photo Credit: [AFP](#)

In the face of a massive security build-up in Kashmir at the close of July, a seasoned journalist conjectured, "This is just the right time when militants and their masters in Rawalpindi could do with a terror attack in Kashmir." Such were the arguments trotted out by experienced media persons in seeking to account for the extraordinary lock down that had descended on Kashmir throwing its citizens into a panic, with a run on banks, petrol pumps and stores across the Valley. I began receiving phone calls from friends and associates as far as Gopalpora, Mattan and Doabgah and Sopore asking what was happening. My former colleagues in government, some in key positions, had no inkling and made dire predictions.

And then we had the [statement of the Home Minister, Amit Shah, in the Rajya Sabha on the morning of Monday August 5](#), 2019. Under Article 370 of the Constitution of India, the State of Jammu and Kashmir had its own Constitution and its own laws, with the [President of India empowered to decide which provisions of the Indian Constitution would be applicable within the State](#), but only with the assent of the State.

In one fell swoop, the President, Ram Nath Kovind, declared that all provisions of the Indian Constitution shall now apply to the State, thus nullifying Article 370 with the use of that same article thereby ending the special autonomous status of Jammu and Kashmir that it had enjoyed since the promulgation of India's Constitution. The [Jammu and Kashmir Reorganisation Bill](#) 2019 further bifurcates the State of Jammu and Kashmir into two Union Territories, both with a Muslim majority namely: the Union Territory (UT) of J&K and the Union Territory of Ladakh. While the UT of J&K will have a legislature, the Union Territory of Ladakh will be without one. Although in the past UTs have been upgraded to States, never has a State been downgraded, thus bringing to a consummation the process initiated with the accession, although hardly in the manner dreamt.

Article 370 has governed the accession and relationship of the princely State of Jammu and Kashmir with India under the Indian Constitution. As originally envisaged, Article 370 formed the basis of Kashmir's special and autonomous status. Mainstream political leaders such as Farooq Abdullah, Mehbooba Mufti and others have warned that [revoking Article 370 will mean a break in the relationship between the State and India](#).

A devout Muslim, the then unchallenged Kashmiri leader, Sheikh Abdullah (Baba-i-Qaum to his people), 'faced a clear choice in 1947; he could join a Muslim nation or he could join a secular state, where Kashmiris would be free to live a life of their own choosing. In making his choice, India's Prime Minister Jawaharlal Nehru was the Sheikh's reassurance. Of Kashmiri descent, a heritage that Nehru cherished, Nehru had an inclusive vision of what India was to be'. By contrast, the leader of the newly emerging nation of Muslims, Mohammed Ali Jinnah, was a cold and distant figure, a modernist who could excite awe but little affection. At the time of accession, the portion of the State where Jinnah's Muslim League had its support lay not in the Kashmir Valley but across the Pir Panjal, in Mirpur and the old Poonch principality of the feudal State of Jammu and Kashmir, an area a large part of which Pakistan occupies today and calls 'Azad Kashmir'.

It is important to remember that the Kashmir freedom movement was a movement to rid Kashmir of despotism, working in tandem with the national movement but not part of it. This was primarily a Kashmiri movement drawing almost universal Kashmiri support in a Muslim majority State where the Kashmiris were the largest single ethnic group. Despite efforts by Maharajah Hari Singh's Prime Minister Ram Chandra Kak in eliciting the Sheikh's support for Independence, the latter stood steadfast in his demand for an end to the monarchy.

Visiting Srinagar on June 18- 23, India's Viceroy Lord Louis Mountbatten urged Hari Singh not to make a declaration of independence. He conveyed Sardar Vallabhbhai Patel's message that 'the States Department was prepared to give an assurance that, if Kashmir went to Pakistan, this would not be regarded as unfriendly by Government of India'. It was only when Jammu and Kashmir forces faced an uprising by the Poonch troops of the British Indian Army's decommissioned Sixth Punjab Regiment (in the border district of Poonch), and then a military rout by invading frontier tribesmen in the State's border town of Domel on October 22, 1947 that the Maharaja turned in desperation to India.

According to the 1941 Census, 77.11% of the population of Jammu and Kashmir was Muslim, 20.12% Hindu and 1.64% Sikh. Pakistan has argued that the logic of Partition meant that the State had to be a part of Pakistan. But by recourse to an invasion by Pakistan's frontier tribesmen and the support of the invasion by Pakistan's armed forces, Pakistan virtually lost its case, certainly in the eyes of Kashmiris. India's case rested on the public will. Indeed, Sheikh Abdullah spoke for Kashmir at the United Nations in February 1948 as part of a delegation led by N. Gopalaswami Ayyangar firmly declaring, "[We shall prefer death rather than join Pakistan](#). We shall have nothing to do with such a country." And it was this freedom within the Indian Union that Abdullah sought through the constitutional guarantee of Article 370, which read with Article 369, provided temporary powers to Parliament to make laws for J&K.

Under sub-section 3 of this Article, the President of India can revoke Article 370 only on advice from the Constituent Assembly of Jammu and Kashmir. The Constituent Assembly was dissolved in 1957, and replaced by a Legislative Assembly, which was dismissed last year after the coalition between the Bharatiya Janata Party (BJP) and the Jammu and Kashmir Peoples Democratic Party collapsed and the Governor Satya Pal Malik rejected a bid for an alternative coalition. Importantly, the current Presidential order modifies Article 367 of the Constitution, with "Constituent Assembly" to be read as "Legislative Assembly of the State" and the State government construed as the Governor. This has enabled the President to abrogate Article 370 with the consent of the Governor as consent of the State. The people themselves, who the Constitution is designed to serve, therefore, had no part in this process. The constitutional validity of these amendments are for the Supreme Court to ponder. But the question here is that if these are indeed designed to benefit the people, was it necessary to bring them before Parliament under stealth, with the leaders of mainstream parties, the former Chief Ministers the Abdullahs (father and son), Mehbooba Mufti and the BJP's ally Sajjad Lone all under house arrest?

There is little doubt that these are bold constitutional measures described with contrasting adjective or invective, consummating a process that began with the Constitution of India. But if the view of government was simply to rectify a constitutional error or remedy an anachronism as claimed by assiduous government spokesmen, did it not follow that democratic compulsion required that it be placed before the public most affected — the people of J&K, — before being sneaked into Parliament in tight secrecy? This without the knowledge of even the local government amidst security measures unprecedented in their intensity, surpassing even those that the Jagmohan government was forced to take following the outbreak of insurgency in 1989-90? This endeavour has meant riding roughshod over Kashmiri public opinion already beset with widespread disaffection. What it has succeeded in doing is leading to a feeling of betrayal

among a section of our people and foreboding among well wishers of Kashmir.

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