



Vivekananda International Foundation

# Accession of Jammu & Kashmir and Constitutional Provisions: A Historical Recount

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Published in September 2019 by  
Vivekananda International Foundation  
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## About The Author



Maj Gen Ajay Kumar Chaturvedi (Retired) has been a Sapper officer, who post his retirement has been working on issues related to Non-traditional threats to National Security and Disaster management. He has written extensively on water security and energy security and disaster management strategies.

# Accession of Jammu & Kashmir and Constitutional Provisions: A Historical Recount

## Introduction

In the history of modern India especially during the post-independence period some dates are very important and significant. These are as follows:-

1. 15 August 1947-India became an Independent sovereign state after almost 850 years of subjugation of various kinds.
2. 26 January 1950 - The Constitution of Indian Union was promulgated and India became a democratic republic. This Indian Union consisted of that portion of the British India which was partitioned based on the Indian Independence Act 1947 and those princely states which decided to be part of the Indian Union. While 532 princely states joined without any preconditions, The State of Jammu and Kashmir (J&K), however decided to accede to the Indian Union with certain special conditions, which were later institutionalised as Article 370 of the Indian Constitution.<sup>1</sup> When it was introduced after due diligence, it was declared as ‘temporary and transient,’<sup>2</sup> but implication of it was that J&K had its own flag and its own constitution (more about it subsequently). It was indeed a noteworthy development as in the known history of India for the first time India coalesced into a nation-state.
3. 01 July 2017 - Goods and Services Tax (GST) was introduced, which unified the entire country by a single Tax Regime.<sup>3</sup>

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<sup>1</sup> Patricia Gossman, Vincent Iacopino, Physicians for Human Rights, "The crackdown in Kashmir" (1993), page 10

<sup>2</sup> Cottrell, Jill (2013), "Kashmir: The vanishing autonomy", in Yash Ghai; Sophia Woodman (eds.), Practising Self-Government: A Comparative Study of Autonomous Regions, Cambridge University Press, pp. 163–199

<sup>3</sup> internet upload: [https://en.wikipedia.org/wiki/Goods\\_and\\_Services\\_Tax\\_\(India\)](https://en.wikipedia.org/wiki/Goods_and_Services_Tax_(India))

4. 05 August 2019-2019 - After both the houses of Parliament passed a resolution to amend Article 370 of the Indian Constitution and abrogate Article 35 A, President Ram Nath Kovind issued a constitutional order superseding the 1954 order, and making all the provisions of the Indian constitution applicable to J&K.<sup>4</sup> With this order, country became truly unified, having one constitution and one flag. Simultaneously, the erstwhile State of J&K got bifurcated into two Union Territories (UT) - UT of J&K and UT of Ladakh.

In Mar 1947, the Prime Minister of the United Kingdom (UK), Lord Clement Attlee wrote to the Lord Mountbatten, Viceroy of India, "*His Majesty's Government does not intend to hand over its powers and obligations under paramountcy to any successor Government... The princely states would be free from orders and treaties of British Rule in India. They can either join the two dominions or stay separate*".<sup>5</sup> This statement was quite significant to show the choices that the princely states had when it came to decide which of the two dominions they could be part of. Also it threw up challenges to the post-independence leadership of India, as it had to deal with 533 princely states including State of J&K. They had to either let India slip back to a state which was prevalent prior to the arrival of the British or show a strong will to coalesce India into a strong modern nation-state. It is a tribute to the sagacity and tenacity of the then leadership that India finally emerged as a strong and modern nation-state.

## Fundamental Aspects

Two aspects are important before we go into the constitutional issue, as these have a profound bearing on the subsequent events. These are: geography and history of J&K. It is to be noted that unlike other states, the J&K was and is quite diverse as far as its ethnic composition is concerned and any discussion without taking that into account will not be meaningful.

## Geography

J&K consists of Valley of Kashmir, Jammu Region, Western Districts (part of Pakistan Occupied Kashmir or PoK, part of Potohar Plateau (Muzaffarabad Plains), the Northern territories (Gilgit-Baltistan), Ladakh and area beyond Karakoram Range (Aksai Chin area). All these areas are separated by various mountain ranges.

The Jammu Region, bordered by Punjab in the South, initially rises North to the Shivalic Ranges and then rolls down to Ram Ban Batot Valley. Towards East of it, separated by Chenab River is Doda Kishtwar Area located across the Zaskar Ranges. Beyond River Chenab and to its North, the

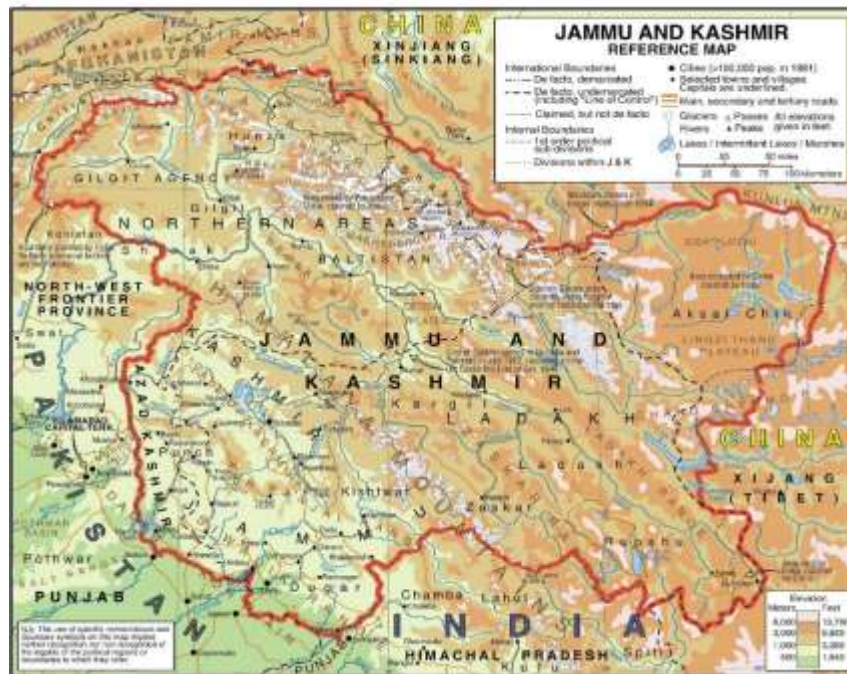
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<sup>4</sup> Pranab Dhal Samanta, "Article 370 rendered toothless, Article 35A ceases to exist"

Published in The Economic Times dated 05 Aug 2019.

<sup>5</sup> Extract of Clement Attlee's minute to the Secretary of State for India (Viscount Mountbatten of Burma), 18 March 1947 at British Library, accessed 27 December 2017

area rises to Pir Panjal Range which rolls into Kashmir Valley. The Pir Panjal Range extends in the West and separates Jammu from Poonch Region. Towards further North is the Shamsha Bari Ranges and beyond that are Gurez and Tangdhar Valleys. Towards the West beyond, the Jhelum Kafir Khan Ranges Rises and the area is known as Potohar.



Map-1: Geography of Jammu and Kashmir

Source: [http://kashmirstudygroup.com/images/maps\\_images/Fig1\\_v6.pdf](http://kashmirstudygroup.com/images/maps_images/Fig1_v6.pdf)

Kashmir Valley rises to the Great Himalayan Range to its East. Beyond that is the Kargil Valley, which has connectivity to Northern Afghanistan. Kargil Valley is sandwiched between the Great Himalayan and Zaskar Ranges beyond which lies Ladakh Region. North of it, beyond the Indus River lies Gilgit. Further East and North lies the Ladakh Range, then the Karakoram Range and beyond that lies Sakshgam Valley and the Kowloon Range which separates Aksai Chin area from the Tarim Basin. As shown in the Map-2, the area in Green is the area under Pakistan's occupation and the area toward North and North-East is under Chinese occupation. Hatched portion in the North is the Shaksgam Valley which has been ceded by Pakistan to China in 1963.

## Ethnicity and Religious Divide

People of Kashmir Valley are original inhabitants of Valley itself. Ethnically, people from Jammu and Western Districts are of the same stock as that of the people of Northern India. There are plenty of Gujjars, Bakarwals and Rajputs (and Rajput converted to Islam) in this area. People of Ladakh are of Indo-Tibetan origin. Potoharis are generally Rajput converts. Gilgit-Baltistan is inhabited by Baltis of Tibetan descent.

J&K is overwhelmingly a Muslim majority State. According to the 2011 census, Islam is practiced by about 68.3% of the State's population (of this 14% is Shia and balance Sunni), Hinduism by 28.4%, Sikhism by 1.9%, Buddhism by 0.9%



Map-2: J&K

Source: <https://yaleglobal.yale.edu/content/jammu-and-kashmir-india-and-china-diplomat>:  
US Central Intelligence Agency and Wikimedia)

and Christianity by 0.3%. About 96.4% of the population of the Kashmir Valley is Muslim, 2.45% Hindus, 0.98% Sikhs and 0.17% others.<sup>6</sup> In Jammu, Hindus constitute 62.55% of the population, Muslims 33.45% and Sikhs, 3.3%. In Ladakh (comprising of Buddhists-dominating Leh and Shia Muslim-dominating Kargil), Muslims constitute about 46.4% of the population, the remaining being Buddhists 39.7% and Hindus 12.1%. According to political scientist Alexander Evans, approximately 99% of the total population of 160,000–170,000 of Kashmiri Pandits, left the Kashmir Valley in 1990 as militancy engulfed the State. According to an estimate by the Central Intelligence Agency of USA, about 300,000 Kashmiri Pandits from the entire State of Jammu and Kashmir have been internally

<sup>6</sup> <https://www.census2011.co.in/data/religion/state/1-Jammu-and-Kashmir.html>

displaced due to the ongoing violence. It is interesting to note that the pre-independence Census of 1941 recorded Muslims as 72.41% of the population, and Hindus 25.01%.<sup>7</sup> A word about Potohar region, these are Muslims but different from Valley Muslims and speak Punjabi. People from Gilgit-Baltistan are Shia Muslims and people from Mirpur Kotli Area, which is currently known as Pakistan occupied J&K (PoJK, west of Jammu Region), are Punjabi speaking Muslims of the same origin as that of people from Jammu.

## History

In the first half of the 1st millennium, the Kashmir region became an important centre of Hinduism and later of Buddhism. Further later in the ninth century Shaivism became the dominant philosophy in the Valley.<sup>8</sup> Islamisation in Kashmir took roots during 13th to 15th century and led to the eventual decline of the Kashmir Shaivism. However, the influence of the previous civilisations were not lost. In 1339, Shah Mir became the first Muslim ruler of the Kashmir, starting the Shah Mir dynasty, which lasted for about 250 years.<sup>9</sup> This dynasty was replaced by Mughals who ruled from 1586 until 1751.<sup>10</sup> Mughals were followed by the Afghan Durrani Empire, which remained in power from 1747 to 1819.<sup>11</sup> That year, the Sikhs, under Maharaja Ranjit Singh, annexed Kashmir.<sup>12</sup> Ladakh, after a number of battles, was finally annexed to the Sikh Empire in 1841.<sup>13</sup> In 1846, after the Sikh defeat in the First Anglo-Sikh War, Raja Gulab Singh of Jammu agreed to pay the war reparation of Rs75,00000/- due from Sikhs to the East India Company, in exchange of Kashmir under the provisions of the Treaty of Amritsar.<sup>14</sup> Thus he became the new ruler of the Kashmir. The rule of his descendants, under the paramountcy (or tutelage) of the British Crown, lasted until 1947, when Maharaja Hari Singh, a descendent of Raja Gulab Singh, the ruler of the J&K, signed an Instrument of Accession (IOA) to India as per the provisions of the Indian Independence Act-1947 and Joined Indian Union with certain special provisions (more about it a little later).<sup>15</sup> The accession became disputed as Pakistan tried to grab it by force. As far as China controlled portion is concerned, it is a separate subject and is not being discussed hereafter. The state of occupation of various portions of J&K is shown in the Map-3.

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<sup>7</sup> IBID-6

<sup>8</sup> Basham, A. L. (2005) *The wonder that was India*, Picador, page-110

<sup>9</sup> *Imperial Gazetteer of India*, volume 15 1908. Oxford University Press, Oxford and London. pp. 93–95.

<sup>10</sup> Puri, Balraj (June 2009), "5000 Years of Kashmir", *Epilogue*, 3 (6), pp. 43–45

<sup>11</sup> Zutshi, Chitralkha, "Languages of Belonging: Islam, Regional Identity, and the Making of Kashmir," pub by C. Hurst & Co in 2004, p. 35.

<sup>12</sup> IBID-9, pp. 94-95

<sup>13</sup> Schofield, *Kashmir in Conflict* 2003, pp. 6–7

<sup>14</sup> IBID-12

<sup>15</sup> Govt. of India, *White Paper on Jammu & Kashmir*, Delhi 1948, p.77". [kashmirlibrary.org](http://kashmirlibrary.org).





Map-3: State of Occupation

Source: [https://www.google.com/search?channel=mac\\_bm&q=map+of+j%26k+showing+pak+occupied+j%26k+and+china+occupied+j%26k&tbm=isch&source=hp&client=safari&sa=X&ved=2ahUKewjP3fnK-6fkAhXTW3wKHRL7C4MQsAR6BAgFEAE&biw=1199&bih=900](https://www.google.com/search?channel=mac_bm&q=map+of+j%26k+showing+pak+occupied+j%26k+and+china+occupied+j%26k&tbm=isch&source=hp&client=safari&sa=X&ved=2ahUKewjP3fnK-6fkAhXTW3wKHRL7C4MQsAR6BAgFEAE&biw=1199&bih=900)

## Build Up to Introduction of Article 370 and 35 A

### Activities during 1940-47

On 23 March 1940 during its Lahore Session, the Indian Muslim League adopted the Pakistan Resolution which stated that an independent state comprising of all regions with Muslim majority would be formed. Incidentally, Pakistanis claim that in 'Pakistan' K stood for Kashmir.<sup>16</sup> The cause of Muslim League in J&K was espoused by Muslim Conference led by Chaudhury Ghulam Abbas. In May 1946, Sheikh Abdullah, leader of National Conference launched the 'Quit Kashmir' movement against the Maharaja; he was arrested and charged with sedition. Jawaharlal Nehru attempted to go to Kashmir to defend Abdullah in court but was arrested and forced to leave the State.<sup>17</sup> This event is believed to have a profound impact on the responses of Pandit Nehru, during his subsequent interactions with the Maharaja.

In July 1946, the Maharaja declared that Kashmiris would decide their own destiny without outside interference.<sup>18</sup> Post Jinnah's call for direct action for Pakistan's formation, due to wide spread

<sup>16</sup> [https://en.wikipedia.org/wiki/Timeline\\_of\\_the\\_Kashmir\\_conflict](https://en.wikipedia.org/wiki/Timeline_of_the_Kashmir_conflict) and Wolpert Stanley A., "Jinnah of Pakistan, published by New York:Oxford University Press, during 1984

<sup>17</sup> Hiro, Dilip (2015), The Longest August: The Unflinching Rivalry Between India and Pakistan, Nation Books,

<sup>18</sup> Guha, Ramachandra (2011), India after Gandhi: The History of the World's Largest Democracy, Pan Macmillan

riots in North West Frontier Province (NWFP), Hindu and Sikh refugees from the Hazara District started pouring into Muzaffarabad from August 1946 onwards. Maharaja ordered sealing of borders with Punjab to stop communal violence seeping into Kashmir, however certain religious leaders from NWFP managed to slip into Kashmir to provoke locals for a holy war.

## Period 1947-1950

In April 1947 Hindus and Sikhs of Sialkot fled to Jammu in the face of increasing tensions. The exodus increased in June and continued till August. On 03 June 1947 Mountbatten, the new Viceroy, proposed the Partition Plan to divide British India into independent dominions of India and Pakistan. On 13 June 1947 at the Joint Defence Council meeting, Jinnah and Nehru disagreed on the policy of accession of princely states. Jinnah was of the view that it was for the rulers to decide as to which dominion they wished to be part of. On the other hand, Pandit Nehru insisted that it was for the people to decide.<sup>19</sup> Mountbatten visited Kashmir to persuade Maharaja to join either India or Pakistan.<sup>20</sup> While Maharaja was apprehensive of Jinnah but he was also quite hurt by the hostile attitude of Congress toward him in person and that is why he wanted to keep his options open.

On 03 July 1947, Vallabhbhai Patel wrote a consolatory letter to the Maharaja to allay his fears of ill-will from the Indian National Congress.<sup>21</sup> Around the same time Mohammad Ali Jinnah declared that if Kashmir opted for independence, Pakistan would have friendly relations with it.<sup>22</sup> There was no unanimity among the Muslims of Kashmir; while a section wanted to remain independent, another section led by Mirwaiz Yousuf Shah advocated its accession to Pakistan. Maharaja conveyed to Mountbatten as well as to Congress and Muslim League that State would not accede to either Dominion. On 01 August 1947, the Gilgit Agency was transferred by the British to the Maharaja. Till now they were hoping to keep their foot hold in Gilgit, because of its strategic location but when partition had become inevitable they decided to release Gilgit, but with a more diabolical plan (details a little later).

On 14 August Kashmir signed a Standstill Agreement with Pakistan; however India requested further discussions on a similar agreement.<sup>23</sup> Immediately after the partition, the Pakistan Army started formulating plans for Operation Gulmarg to organise a tribal invasion of Kashmir. While some people continued to incite locals to rebel, there was no unanimity among the political class within the State about its future. Pakistan, however continued to incite people in Kashmir and

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<sup>19</sup> A. G. Noorani, Relevance of U.N. resolutions, *Frontline*, 5 February 2016.

<sup>20</sup> Rakesh (April 2010), "Pandit Ramchandra Kak: The Forgotten Premier of Kashmir", *Epilogue*, 4 (4): 36–3

<sup>21</sup> Jha, Prem Shankar (2003), *The Origins of a Dispute: Kashmir 1947*, Oxford University Press,

<sup>22</sup> Puri, Balraj (November 2010), "The Question of Accession", *Epilogue*, 4 (11): 4–6

<sup>23</sup> [https://en.wikipedia.org/wiki/Timeline\\_of\\_the\\_Kashmir\\_conflict#cite\\_note-FOOTNOTEJha,\\_The\\_Origins\\_of\\_a\\_Dispute200344-45-31](https://en.wikipedia.org/wiki/Timeline_of_the_Kashmir_conflict#cite_note-FOOTNOTEJha,_The_Origins_of_a_Dispute200344-45-31)

intimidate Hindu and Sikh minorities. In September, an uprising was reported in Poonch Area<sup>24</sup> and Pakistan blocked the supplies of petrol, sugar, salt and kerosene. It also stopped trade in timber, fruits, fur and carpets in violation of the Standstill Agreement.<sup>25</sup> This action really hurt the common Kashmiri as all routes of access till that time to J&K were through Pakistan, be it Jammu which was connected to Sialkot or be it the Valley which was connected to Rawalpindi.

At the same time, Pakistan started preparing for an invasion to Valley using tribals of the NWFP, hoping that this kind of invasion will result into an armed uprising within and J&K will have no choice but to join Pakistan. Muslim Conference convention on 22 September favoured an accession to Pakistan.<sup>26</sup> To raise passions, a rumour was floated by vested interests that 50000 Muslims had been forced to migrate to West Pakistan. With these intelligence based inputs and deteriorating ground situation, Maharaja got alarmed and dispatched his Prime Minister designate Justice Mahajan to Delhi to offer accession. Nehru demanded that Sheikh Abdullah should be released first for any negotiations to commence.<sup>27</sup>

On 27 September, Pandit Nehru conveyed his apprehension in a letter to Sardar Patel that Pakistan might try to invade Kashmir and that is why Maharaja needs to make peace with the National Conference. On 29 September, Sheikh Abdullah was released from prison. On 30th Pandit Nehru proposed plebiscite to settle disputes regarding princely state.<sup>28</sup> After due discussion in the Cabinet it was conveyed to Pakistan who gave no response. On 06 October, an armed rebellion began in Poonch. The rebellion was slowly but steadily gaining ground. As a retaliation, activists of Rashtriya Swayam Sevaks (RSS) and Akalis started attacking villages of Muslims. On 20 October 1947, 900 Mahsud tribesmen were reported to have started from the Frontier Tribal Region for Kashmir. Rebels had started becoming more daring and the State's security arrangements had started collapsing. On 21 – 22 October 1947, Pakistan precipitated the first Indo—Pakistan War when it launched a tribal *lashkar* (levy) from Waziristan to overthrow the Maharaja's government.<sup>29</sup> Thousands of Pashtuns from Pakistan, NWFP, recruited covertly by the Pakistani Army, invaded Kashmir along with the Poonch rebels, allegedly incensed by the alleged atrocities committed against fellow Muslims in Poonch and Jammu. The tribesmen engaged in looting and killing along the way. Pro-Pakistan members of the Maharaja's army rebelled at Domel (Muzaffarabad) and took control of the Jhelum River bridge.

On 24 October 1947, New Delhi received the news of tribal invasion and also a message from the Maharaja to the Prime Minister Nehru with a request for military assistance and a proposal for

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<sup>24</sup> IBID-17

<sup>25</sup> IBID-20

<sup>26</sup> Grover, Verinder (1995), *The Story of Kashmir: Political development, terrorism, militancy and human rights, efforts towards peace, with chronology of major political events*, Deep & Deep Publications, p. 474

<sup>27</sup> Raghavan, Srinath (2010), *War and Peace in Modern India*, Palgrave Macmillan,

<sup>28</sup> Dasgupta, C. (2014) [first published 2002], *War and Diplomacy in Kashmir, 1947-48*, SAGE Publications

<sup>29</sup> Cheema, Brig Amar (2015), *The Crimson Chinar: The Kashmir Conflict: A Politico Military Perspective*, Lancer Publishers, p-58

accession to India. On 25 October 1947, a Defence Committee meeting in Delhi headed by Lord Mountbatten, considered the Maharaja's request. Ministers were unanimous in their view to send military assistance, but disagreed on whether to accept Kashmir's accession. The secretary of the States Department, VP Menon, was sent to Kashmir to assess the situation. On 26 October 1947, V. P. Menon brought the news that the situation in Kashmir was critical and that the Maharaja was ready to agree to accept "any terms" for accession.<sup>30</sup> The accession was accepted on the condition of a future ratification by the people and the appointment of Sheikh Abdullah to the government.<sup>31</sup>

Finally, on 26 October, the Maharaja signed the IOA, acceding the State to the Indian Union. India accepted the accession, however considered it provisional until such time as the will of the people could be ascertained.<sup>32</sup> Incidentally, the IOA was a legal document, first introduced by the Government of India Act, 1935, and used in 1947 to enable each of the rulers of the princely states under the British paramountcy to join one of the new dominions, India or Pakistan, created by the partition of India. It was the same IOA (though with subtle difference on account of the size of the princely state; more about it later) which all other 532 States had signed and as per that only three things, foreign affairs, communication and defence were to be part of the central subjects and for balance subjects the rulers were free to exercise their control. Mountbatten while accepting the IOA said that once situation improves the will of the people will be ascertained.<sup>33</sup> Thus a seed of plebiscite was sown. On 27 October 1947, the Indian Army entered the State to repel the invaders. Sheikh Abdullah endorsed the accession but termed it *ad hoc*, and said that ultimately its fate would be decided by the people of J&K.<sup>34</sup> He was appointed the head of the emergency administration. On the same day Mohammad Ali Jinnah ordered Pak Army Chief to send Pakistani troops into Kashmir. On that day in Pakistan, a Kashmir Liberation Committee was formed to manage Pakistan's conduct of the war.

On 29 October 1947, Pakistan entered the war officially. On 31 October 1947, Sheikh Abdullah was appointed as the head of the Emergency Administration in Kashmir. On the same day, Major William Brown, the commander of the Gilgit Scouts, led a coup against the governor of Gilgit and imprisoned him. A provisional government was declared by the rebels.<sup>35</sup> On 01 November 1947, Lord Mountbatten and Mohammad Ali Jinnah met in Lahore. During the meeting Mountbatten offered India's proposal that the accession of Junagadh, Hyderabad and Kashmir should be decided

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<sup>30</sup> Hajari, Nisid (2015), *Midnight's Furies: The Deadly Legacy of India's Partition*, Houghton Mifflin Harcourt,

<sup>31</sup> IBID-30

<sup>32</sup> Govt. of India, *White Paper on Jammu & Kashmir*, Delhi 1948, p.77". [kashmirlibrary.org](http://kashmirlibrary.org)

<sup>33</sup> Thomas Bruce Millar, "The Commonwealth and the United Nations" (1967), page 26

<sup>34</sup> "Sheikh Abdullah, *Flames of the Chinar*, New Delhi 1993, p.97". [kashmirlibrary.org](http://kashmirlibrary.org)

<sup>35</sup> Bangash, Yaqoob Khan (2010), "Three Forgotten Accessions: Gilgit, Hunza and Nagar", *The Journal of Imperial and Commonwealth History*, 38 (1): 117–143,

by an impartial reference to the will of the people in the form of a plebiscite. Jinnah mercifully rejected the offer.<sup>36</sup> By 05 November, sensing an imminent defeat most of the tribesmen started heading for home. By 07 November, Baramulla and Uri were recaptured.

During Liaquat Ali Khan's visit to Delhi for a Joint Defence Council meeting on 26 – 27 November 1947, a tentative agreement on Kashmir was reached; Pakistan agreed to use its influence on the raiders to withdraw, India to scale back its troops, and the United Nations (UN) to be approached for holding a plebiscite.<sup>37</sup> However, Pakistan reneged on its commitment. On 08<sup>th</sup>, Mountbatten proposed that the UN be invited to break the deadlock. He further advised India to take the matter to the UN, as he felt that India had a '**Iron Tight**' case.<sup>38</sup> However there were people in British Government who felt that such an approach would be a miscalculation. Finally India referred the Kashmir problem to UN Security Council (UNSC) on 31 December 1947. It is interesting to note that the permanent representative of the UK in UN felt that India was entitled to charge Pakistan as an aggressor under Article 35 and to take measures for self-defence under Article 51, including "pursuing invaders into Pakistan"<sup>39</sup>; however India took up the case for dispute resolution under Chapter-VI.

In January 1948, Britain put up a proposal for the consideration of the UNSC to put Kashmir under an '**Impartial Administration**' headed by a UN appointed Chairman. It showed the mal-intent of UK. Mercifully, the proposal was vetoed by USA. On 17 January 1948, the UNSC passed Resolution 38 which called upon India and Pakistan to refrain from aggravating the situation. It further passed Resolution 39 on 20 January which announced a three-member commission to investigate the Kashmir dispute. India had nominated Sheikh Abdullah, as a member of the Indian delegation to the UNSC. However he had his own agenda at UNSC. While at UN he met the US delegate; Warren Austin and raised the possibility of the independence for Kashmir.<sup>40</sup> Thankfully USA ignored the proposal. At that stage, the US showed no interest in further fragmentation of India. The Indian Cabinet at that point in time was said to be in favour of withdrawing the UN referral unless greater consideration was shown to India's complaints.

On 21 March 1948, UNSC passed Resolution 47 which called for a three-step process for the resolution of the dispute.<sup>41</sup> Salient points of this resolution were: Withdrawal of Pakistani nationals; reduction of Indian troops to minimum level to maintain law and order; and, arrangements for a plebiscite. Both India and Pakistan rejected the resolution but promised to work with the proposed

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<sup>36</sup> Noorani, A. G. (2014) [first published in 2013 by Tulika Books], *The Kashmir Dispute, 1947-2012*, Oxford University Press, pp. 13–14

<sup>37</sup> Raghavan, *War and Peace in Modern India* 2010, pub by Palgrave Macmillan p. 116–117

<sup>38</sup> Dasgupta, *War and Diplomacy in Kashmir* 2014, pub by SAGE Publication, p. 100.

<sup>39</sup> Ankit, Rakesh (2013), "Britain and Kashmir, 1948: 'The Arena of the UN'", *Diplomacy & Statecraft*, 24 (2): 273–290,

<sup>40</sup> Schaffer, Howard B. (2009), *The Limits of Influence: America's Role in Kashmir*, Brookings Institution Press,

<sup>41</sup> *IBID*-37, p-131-132

UN Commission. During the subsequent discussion, the draft was modified considerably, with several concessions made to Pakistan at the instigation of the British delegation. India expressed discomfort at the modifications. The resolution was passed under the Chapter VI of the United Nations Charter (which is devoted to "peaceful settlement of disputes"). It did not consist of directives to the parties, but rather "recommendations". Former UN diplomat Josef Korbel, states that this bound the parties only "morally" but not "judicially". The final resolution of the conflict rested with the governments of India and Pakistan and depended on their goodwill.<sup>42</sup> In July 1948, Pakistan accepted that its Army was operating in J&K.<sup>43</sup> By November 1948, the tide had started turning and the rebels, tribesmen as well as Pakistan Army, were in retreat. Pakistan then accepted the Ceasefire proposal as per the provisions of Resolution 47.<sup>44</sup>

The situation on 01 January 1949 at the time of Ceasefire was like this: India was in control of the Kashmir Valley, most of the Jammu province and Ladakh, while Pakistan gained control of the western districts comprising the present PoJK, the Gilgit Agency and Baltistan. As per the 1948 and 1949 UN Commission for India and Pakistan (UNCIP) Resolutions, both countries accepted the principle that Pakistan would secure the withdrawal of Pakistani intruders followed by withdrawal of Indian forces as a basis for the formulation of a truce agreement, the details of which were to be determined, followed by a plebiscite. However, the countries failed to arrive at a truce agreement due to differences in interpretation of the procedure for and extent of de-militarisation.

In 1949 itself, the Jammu Praja Parishad launched an agitation for full integration of J&K with India. Around the same time, the PoJK (Azad Kashmir) signed an agreement with Pakistan Government to cede control over defence and foreign affairs and complete control over Gilgit-Baltistan; however this agreement was disclosed only in 1990.<sup>45</sup> In June 1949, the Maharaja was forced to leave the State and appoint his son Karan Singh as the Prince Regent. On 17 October 1949, the Indian Constituent Assembly adopted Article 370 of the Constitution, ensuring a special status and internal autonomy for J&K, with Indian jurisdiction in Kashmir limited to the three areas as agreed in the IOA: defence, foreign affairs and communications. However, it was mentioned in the Article that it was temporary and transient.<sup>46</sup>

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<sup>42</sup> Korbel, Josef (1966) [first published 1954], *Danger in Kashmir*, Princeton University Press

<sup>43</sup> IBID-37, pp-135-136

<sup>44</sup> IBID-37, pp-132

<sup>45</sup> Snedden, Christopher (2013) [first published as *The Untold Story of the People of Azad Kashmir*, 2012], *Kashmir: The Unwritten History*, HarperCollins India,

<sup>46</sup> "Article 370: 10 facts that you need to know: Highlights, News - India Today". [Indiatoday.intoday.in](http://Indiatoday.intoday.in). dated 28 May 2014

## Period 1950-1960

In 1950, India put up a tentative proposal to the UN mediator Sir Owen Dixon which entailed "partition cum plebiscite"-plebiscite to be held in the Kashmir Valley and the remaining State to be partitioned as per existing control.<sup>47</sup> Pakistan accepted the proposal with the condition that the State be put under neutral administration. India rejected the idea. In September 1951, India went ahead with the formation of the Constituent Assembly of the J&K having 100 seats, with 25 of them reserved for the PoJK.<sup>48</sup> However, election to this body was not construed by the UN as a substitute for the plebiscite. The J&K Constituent Assembly, in November 1951, stripped the Maharaja of all powers and made the government answerable to the Assembly.<sup>49</sup>

During the period January-June 1952, Sheikh Abdullah veered around to the position of demanding self-determination for Kashmiris and questioning the State's accession to India which he had earlier endorsed.<sup>50</sup> In July 1952, Sheikh Abdullah signed the Delhi Agreement with the Indian Government on Centre-State relationship, which provided for autonomy of the State within India and autonomy for regions within the State.<sup>51</sup> In November 1952, the Constituent Assembly adopted a resolution which abolished the monarchy and replaced it with an elected *Sadar-i-Riyasat* (Head of State).<sup>52</sup> The Prince Regent Karan Singh was elected to the position.

In May 1953 Sheikh Abdullah headed a subcommittee of the National Conference which recommended four options for the State's future, all involving a plebiscite or independence. However these recommendations did not find favour/acceptance by other members of the Abdullah's Cabinet including his Deputy Prime Minister.<sup>53</sup> In August 1953, Sheikh Abdullah was dismissed by *Sadr-i-Riyasat* and later arrested. Bakshi Ghulam Mohammed was appointed as the new prime minister.<sup>54</sup> Nehru again pushed for a plebiscite in talks with Pakistan, and the two countries agreed to appoint a Plebiscite Administrator within six months. It was decided that a plebiscite would be held in all regions and the State would be partitioned on the basis of the result. However, getting to know about the reports of an US-Pakistan alliance, Nehru warned Pakistan that it had to choose between winning Kashmir through plebiscite and forming a military alliance with the United States. This shows that Pandit Nehru was genuinely convinced that the plebiscite was the way to resolve the Kashmir dispute

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<sup>47</sup>A. G. Noorani, The Dixon Plan, Frontline, 12 October 2002.

<sup>48</sup> Bose, Sumantra (2003), Kashmir: Roots of Conflict, Paths to Peace, Harvard University Press

<sup>49</sup> Das Gupta, Jammu and Kashmir 2012, pub by Springer, p. 186

<sup>50</sup> IBID-49, P-196

<sup>51</sup> Kumar, Radha; Puri, Ellora (2009), "Jammu and Kashmir", in Radha Kumar (ed.), Negotiating Peace in Deeply Divided Societies: A Set of Simulations, SAGE Publications, p-258

<sup>52</sup> IBID-49, p-200

<sup>53</sup> IBID-48, p-64

<sup>54</sup> "Plebiscite Conundrum". kashmirlibrary.org. Archived from the original on 16 February 2015.

but at every stage the duplicity of Pakistan ensured that the stage; when plebiscite could be held; never reached.

In February 1954, the Constituent Assembly, under the leadership of Bakshi Ghulam Mohammad, passed a resolution ratifying the accession of Kashmir to India.<sup>55</sup> India withdrew its offer of plebiscite in May 1954 after Pakistan and US signed a mutual defence assistance agreement. In August 1955, a '**Plebiscite Front**' was formed by Mirza Afzal Beg who demanded unconditional release of Sheikh Abdullah. The legal hitch about withdrawal of the proposal of plebiscite was removed by the J&K Constituent Assembly; while adopting the state Constitution on November 17, 1956. The Section 3 of the Constitution stated, "**That** the state of Jammu and Kashmir is and shall be an integral part of the Union of **India**." As insurance for life, this Section 3 was immune from any amendment at any time. Thus all legal hitches were removed by the J&K Constituent Assembly.<sup>56</sup> However UNSC, passed Resolution 122 in January 1957 which stated that the State Constitution was not a final legal disposition of the State. Elections were held for the first and second Legislative Assembly in 1957 and 1962 respectively, which were construed to have confirmed the accession of J&K to India

### Period 1960-1972

In 1960, the state of J&K was brought under the jurisdiction of the Supreme Court of India and the Indian Election Commission. In March 1963, Pakistan ceded the Trans Karakoram Tract (Shashgam Valley) to China.<sup>57</sup> It needs to be noted that this incident clearly brings out the duplicity of Pakistan. On one side they say that POJK is an Independent country but on the other side they have ceded Shakshgam Valley to China as if they had sovereign rights over it. During 21-24 November 1964, Articles 356 and 357 of the Indian Constitution were extended to the State, by virtue of which the Central Government could assume governance of the State and exercise its legislative powers.<sup>58</sup> At this time there was consensus in the Indian Parliament to abrogate Article 370 but for some unknown reasons the Government could not muster the will to do that (probably international geopolitical pressures and fragile economic conditions were the reasons).

The State Assembly then amended the State Constitution, changing the posts of *Sadr-i-Riyasat* and '**prime minister**' to '**Governor**' and '**Chief Minister**,' as consistent with the Indian Constitution. During August 1965, Pakistan sent infiltrators across the Cease Fire Line (CFL) (Operation Gibraltar) to exploit dissent there; however due to resolute action that attempt failed. **Pakistan's** misadventure resulted in a full scale war between India and Pakistan which ended in a stalemate. After Cease Fire on 23 September 1965, the Tashkent Declaration was signed on 10 January 1966 by both countries

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<sup>55</sup> IBID-17,p. 151.

<sup>56</sup> "**Forgotten day in Kashmir's History**" dated 08 Mar 2004 uploaded on <http://www.rediff.com/news/2004/mar/08arvind.htm>

<sup>57</sup> IBID-48 P-76

<sup>58</sup> IBID-48 pp-81-82



under Soviet mediation. The Pakistan-supported dissident groups in Kashmir had increased their activities after the Cease Fire.

Things changed after the 1971 War. Unlike 1965, India did not vacate its newly captured positions and the CFL got transformed into a Line of Control (LC) post-Shimla Agreement, which stipulated that the Kashmir dispute will be decided bilaterally. It was a very significant development as hereafter the matter got reduced to the status of a bilateral dispute.

### Period 1972-1990

On 24 February 1975, an accord between Indira Gandhi, the Prime Minister, and Sheikh Abdullah was signed. As per the Indira-Sheikh Accord, the Plebiscite Front was dissolved and renamed as the National Conference and Sheikh Abdullah assumed the position of Chief Minister of J&K. Although not said in so many words it was an admission by the Sheikh Abdullah that Plebiscite was no longer on his agenda. On 17 June 1977 mid-term elections were held. It was considered a free and fair election and the expression of the will of the people. Sheikh Abdullah got the majority in the election.

In 1980, President Zia-ul-Haq tried to reignite insurgency in J&K by what is known as 'Operation Topac'. The Inter Services Intelligence (ISI) of Pakistan started its efforts to execute the plan which entailed a strategy of 'thousand cuts'. In 1987 elections, Farooq Abdullah won the Assembly Elections which were dubbed to be rigged. In subsequent days, insurgency in the Kashmir Valley gathered momentum. In 1989, after the end of the Soviet occupation of Afghanistan, a large number of Mujahideens joined the insurgency and surplus weapons were smuggled in to give further boost to insurgency. In a planned move a mass exodus of Kashmiri Hindus was engineered from Valley. Situation since then has waxed and waned but unrest has continued, despite elections. During this period a number of peace efforts were made but without making much headway. Post 1987 rigged election, the All Parties Hurriyat Conference of 26 of political, social and cultural organisations was formed in Mar 1993, which espouses the cause of separation.<sup>59</sup>

### Period 1990-2019

On 22 February 1994, the Indian Parliament unanimously adopted a resolution to declare the state of J&K as an integral Part of India, and it further said that any attempt to separate it from India would be resolutely resisted. Finally the Resolution said that all out efforts would be made to take

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<sup>59</sup> <http://en.m.wikipedia.org>

back those portions of the State which were in illegal occupation of Pakistan.<sup>60</sup> The exact text of the resolution was as follows:-

On February 22, 1994, a unanimous resolution was passed by the Indian Parliament. This resolution declared that,

“(a) The State of Jammu & Kashmir has been, is and shall be an integral part of India and any attempts to separate it from the rest of the country will be resisted by all necessary means;

(b) India has the will and capacity to firmly counter all designs against its unity, sovereignty and territorial integrity; and demands that-

(c) Pakistan must vacate the areas of the Indian State of Jammu and Kashmir, which they have occupied through aggression; and resolves that-

(d) All attempts to interfere in the internal affairs of India will be met **resolutely.**”

Terrorist attacks on Pathankot Air Force Station in January 2016<sup>61</sup> and on the Administration Base of a Brigade at Uri in September 2016<sup>62</sup> proved to be the proverbial last straw on the **camel’s** back. The Indian Government took a firm position from that point onwards that the talks and terror could not go hand in hand. A robust strategy was put in place. As a part of it, a surgical strike over a frontage of 250 km along the LC was launched on 29 September 2016.<sup>63</sup> Based on reliable intelligence inputs in these raids; five terrorist launch pads were destroyed.

In June 2018, the Coalition Government of Bhartiya Janata Party (BJP) and **People’s** Democratic Party (PDP) was allowed to fall when the BJP withdrew its support, and the State was put under Presidential Rule.<sup>64</sup> Another attack by the Pakistan sponsored terrorists at Pulwama in Feb 2019 was responded with an air strike at Balakot in Khyber Phaktunkhwa where it was believed that a large number of terrorists were waiting to be launched into Kashmir.<sup>65</sup> In July 2017, ‘**Operation All Out**’ was launched by the Indian Army to liquidate all those terrorists who had picked up arms against India.<sup>66</sup> Simultaneously, actions against the separatists and Hurriyat leaders over their financial

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<sup>60</sup> “Solution to Kashmir is explained in Parliament resolution on Jammu and Kashmir passed 25 Yrs Before today” dated 22 Feb 2019 and up loaded on <https://www.jammukashmirnow.com/Encyc/2019/2/22/Solution-to-Kashmir-is-explained-in-Parliament-resolution-on-Jammu-and-Kashmir-passed-25-Yrs-Before-today.html>

<sup>61</sup> Terrorists storm air force base, first challenge to Modi's Pak outreach". The Hindu, dated 2 January 2016

<sup>62</sup> Militants attack Indian army base in Kashmir 'killing 17". BBC News. 18 September 2016

<sup>63</sup> Kashmir attack: India 'launches strikes against militants". BBC News. 29 September 2016.

<sup>64</sup> Rakesh Mohan Chaturvedi, “Poles Apart”, BJP-PDP government falls in J&K”, pub in The Economic Times dated 20 June 2018

<sup>65</sup> Slater, Joanna; Constable, Pamela "Pakistan captures Indian pilot after shooting down aircraft, escalating hostilities". The Washington Post dated 27 February 2019.

<sup>66</sup> Jitendra Bahadur Singh, “Operation All-Out: Army's master plan to flush out terrorists from Kashmir”, published in ‘India Today’ dated 22 June 2017

irregularities have been intensified with a view to put a check on the terror funding. India has also intensified its diplomatic offensive to isolate and expose Pakistan internationally. With that India has been able to get Masud Azhar, the mastermind of Pulwama attack, designated as a global terrorist.<sup>67</sup> The Asia Pacific Group (APG) of the Financial Action Task Force (FATF) has also found that Pakistan (who is already on the 'Grey List' of the FATF a Paris based terrorism Watch Dog since June 2018), is non compliant of 32 parameters of the 40 parameters on terror funding. As such she has been put in the Enhanced Expedited Follow Up List (Blacklist) for its failure to meet its standards.<sup>68</sup> If Pakistan does not do enough to check terrorism emanating from its soil, in their October review meeting FATF might down grade Pakistan to the 'Black List'.

The Indian Parliament has also amended its Unlawful Activities Prevention Act 1967 (UAPA) to notify individuals as terrorists while earlier only organisations could be designated under that Act.<sup>69</sup> This will help in nabbing and dealing with the terrorists/terror suspects more effectively (Under the provisions of this act; Hafeez Saeed, Masud Azhar, Zaki-ur-Rehman Lakhvi and Daud Ibrahim have been designated as terrorist on 04 Sep 2019) . Finally on 05 August 2019 the President of India issued a constitutional order superseding the 1954 order and making all provisions of the Indian Constitution applicable to J&K.<sup>70</sup> Following the resolutions passed in both the houses of the Parliament, he further issued an order declaring all the clauses of the Article 370 except Clause-1 to be inoperative.<sup>71</sup>

## Reorganisation of the State of Jammu & Kashmir

Consequent to the Presidential Order under Article 370 revoking the special status, The Jammu & Kashmir Reorganisation Act-2019 was passed by the Indian Parliament (both Rajya Sabha and Lok Sabha) on 05 and 06 August respectively. It got the Presidential assent on 09 August 2019. It will become effective from 31 October 2019. As per this provision the erstwhile State of J&K was reorganised into two Union territories (UT), namely UT of J&K and UT of Ladakh. UT of J&K will comprise of Jammu Division, Kashmir Division, Pakistan Occupied Kashmir (PoJK) and the Shakshgam Valley which has been illegally ceded to China by Pakistan. UT of Ladakh will consist of Leh, Kargil and Aksai Chin which is currently under illegal occupation of China.<sup>72</sup>

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<sup>67</sup> PTI, "UN designates Jaish-e-Mohammed chief Masood Azhar as global terrorist", published by The economic Times dated 02 May 2019

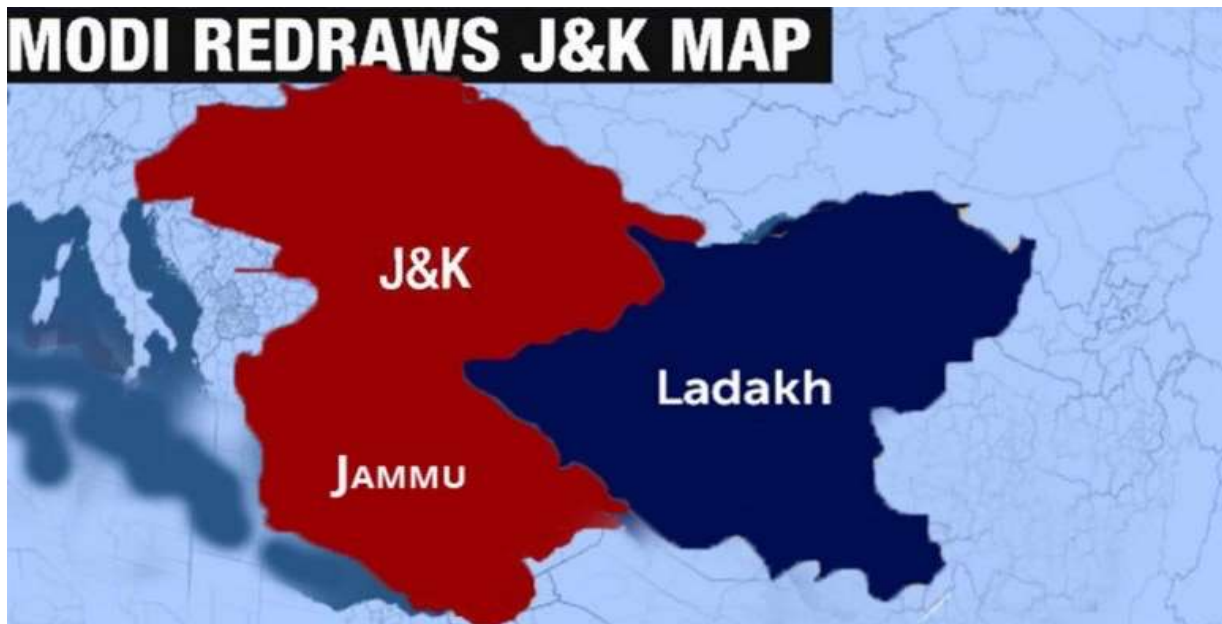
<sup>68</sup> Shaswati Das, 'FATF Asia-Pacific Group puts Pakistan in 'enhanced blacklist', published in The Mint dated 23 August 2019

<sup>69</sup> PTI, "President gives assent to amendments to UAPA; individuals can now be declared as terrorists", published in The Economic Times dated 09 August 2019

<sup>70</sup> K. Venkataramanan, "How the status of Jammu and Kashmir is being changed", published in The Hindu dated 5 August 2019

<sup>71</sup> "President declares abrogation of provisions of Article 370," The Hindu, dated 07 August 2019

<sup>72</sup> The Jammu and Kashmir Reorganisation Bill, 2019 published by published by PRS Legislative Research and uploaded on <https://www.prsindia.org/billtrack/jammu-and-kashmir-reorganisation-bill-2019>



Map-4: Reorganisation of J&K

Source: A Reuters Map uploaded at <https://www.indiatoday.in/india/story/jammu-kashmir-ladakh-amit-shah-map-india-union-territories-1577383-2019-08-05>

Article 35 A and Article 370

Article 35A

It is an article of the Indian Constitution that empowered the J&K legislature to define ‘permanent residents’ of the State and provide special rights and privileges to them. It was issued by the President of India on 14 May 1954 under Article 370.<sup>73</sup> The state of J&K defined these privileges which include the ability to purchase land and immovable property, ability to vote and contest elections, seeking government employment and availing other State benefits such as higher education and health care. Non-permanent residents of the State, even if Indian citizens, were not entitled to these ‘privileges’.

There was a background to 35 A. Prior to 1947, people of the princely state were ‘State Subjects’, not British colonial subjects. To ward off the fear of outsiders coming and settling down in J&K, a political movement in the State in the early twentieth century led to the emergence of ‘hereditary State subject’ as a political identity for the State’s people. In particular, the Pandit community had launched a ‘Kashmir for the Kashmiris’ movement demanding that only Kashmiris should be employed in state government jobs. Legal provisions for the recognition of the status were enacted by J&K between 1912 and 1932. The 1927 Hereditary State Subject Order granted to the state

<sup>73</sup> “Origin of Jammu and Kashmir: Analysis of Article 370 in Present Scenario”. LexHindustan, dated 12 October 2017

subjects the right to government office and the right to land use and ownership, which were not available to non-state subjects.<sup>74</sup> Post Accession to India and promulgation of Article 370; discussions for furthering the relationship between the State and the Union continued, culminating in the 1952 Delhi Accord, whereby the governments of the State and the Union agreed that Indian citizenship would be extended to all the residents of the state but the state would be empowered to legislate over the rights and privileges of the state subjects, who would now be called permanent residents.<sup>75</sup> Article 35 A is an extension of that order of the erstwhile Riyasat-e-Jammu & Kashmir order of 1927 ‘**Hereditary State Subject Order**’ after J&K’s accession to India. While initial aim was to help the locals but later it was used as a political tool against those refugees who migrated from West Pakistan; who/their descendants are still stateless. Similarly during 1957, certain Safai Karmacharis were brought to the State from Punjab with the assurance that they would be given Permanent Resident Certificates/State's citizenship; but even after three generations those Safai Karmacharis and their descendants are still stateless. Cancellation of Article 35A will help them to get their rights as Indian Citizens. It may be noted that the Article 35A was not added to the Constitution by following the procedure prescribed for an amendment of the Constitution of India under Article 368. Article 370 does not anywhere confer on the President legislative or executive powers so vast that he can amend the Constitution or perform the function of Parliament. It has been brought about by the executive organ when actually the right of an amendment to the Constitution rests with the legislative organ. Therefore, it was, allegedly, ultra virus to the basic structure of the Constitution since it violated the Constitutional procedures established by law.<sup>76</sup> As such questions were raised about the manner of its enactment from time to time. In 2014, A Delhi based NGO; ‘**We the Citizens**’, challenged the validity of Article 35A in the Supreme Court on the grounds that the Article was not added to the Constitution through an amendment under Article 368 and that it was never presented before Parliament and came into effect immediately. A two-judge Supreme Court Bench referred the matter to a three-judge Bench after the Attorney General said that it raised constitutional issues. On 05 Aug when the resolution for Changes to be made to the Article 370 with a view to make it ineffective was presented to the Rajya Sabha of the Parliament, this PIL along with the petitions of a number of political parties, namely; National Conference and CPI-M in support of the Article 35 A, were pending in the Apex Court.<sup>77</sup> But now they all have lost their relevance.

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<sup>74</sup> Robinson, “**Body of Victim, Body of Warrior**” during 2013, pp. 34–35.

<sup>75</sup> IBID-49, pp-198-211

<sup>76</sup> Bhatia, K. L. “Article 35a A Mishmash of the Textual Constitution of India”. Dated 17 April 2014 up loaded on [kblbhatia.wordpress.com](http://kblbhatia.wordpress.com).

<sup>77</sup> Bhaswar Kumar, “SC to hear Challenges against Article 35 A: All you Need to Know about it”, published in Business Standard dated 25 February 2019

## Article-370

### Background

The IOA, by which the rulers of the princely states as per the provisions of the Indian Independence Act-1947 agreed to the accession of his kingdom to independent India, granting the latter, control over specified subject matters.<sup>78</sup> The nature of the subject matters varied depending on the acceding state. The states which had internal autonomy under the British; signed an IOA which ceded only three subjects to the government of India, namely; defence; external affairs and communications, each defined in accordance with List-1 to Schedule VII of the Government of India Act 1935. Second category states were those which in effect were smaller estates or talukas; where rulers exercised very limited power and substantial administrative powers were exercised by the Crown; signed a different IOA. As per this IOA; all residuary powers and jurisdiction were vested in the Government of India. There was a third category of states; which had an intermediate status. Their rulers signed a third type of IOA; which preserved the degree of power they had under the British.<sup>79</sup> Princely State of J&K, like all other Princely States of India of first category mentioned above, signed an IOA for only three subjects: defence, foreign affairs and communications.<sup>80</sup> After having signed the IOA, all concerned states were advised to send representatives to India's Constituent Assembly. They were also encouraged to set up their respective constituent assemblies to formulate their own constitutions for which a draft Model Constitution was prepared and forwarded for their consideration. After certain deliberate discussions, in May 1949, the rulers and chief ministers of all the states met and agreed, except J&K, that separate constitutions for the states were not necessary.<sup>81</sup> That meant that the subjects decided for legislation formulation by the Central and state governments would become uniform across India.

However, in the case of J&K, representatives of the State represented that only those provisions of the Indian Constitution, that were part of the IOA, should be applied to their State.<sup>82</sup> Accordingly, Article 370 was incorporated into the Indian Constitution, which stipulated that the other articles of the Constitution that gave powers to the Central Government would be applied to J&K only with the concurrence of the State's constituent assembly. This Article was introduced as a “**temporary** and transient provision” in that its applicability was intended to last till the formulation and adoption of the State's constitution.<sup>83</sup> However, the State's Constituent Assembly dissolved itself

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<sup>78</sup> Ramusack, Barbara N. , “**The Indian Princes and Their States**, The New Cambridge History of India III.6, Cambridge, England”: published by Cambridge University Press, during 2004

<sup>79</sup> Menon, V. P. “**The Story of the Integration of the Indian States**, New York” published by Macmillan, during 1956

<sup>80</sup> Justice A. S. Anand, “**The Constitution of Jammu & Kashmir**”, 5th edition, 2006, page 67

<sup>81</sup> IBID-79

<sup>82</sup> Noorani, “**Article 370**”, 2011, page. 4

<sup>83</sup> IBID-82, Introduction

on 25 January 1957 without recommending either abrogation or amendment to the Article 370. Thus it was inferred by those who supported the Article that it had become a permanent feature of the Indian Constitution as State's constituent assembly no longer existed.

Initially, those three subjects (Defence, foreign affairs and communication) were included, which were in the Concurrent List. Over a period of time many more laws have been added to the List with the concurrence, initially of the State Constituent Assembly and post-January 1957 when the State Constituent Assembly was dissolved, with the concurrence of the State Assembly as provided by Section 1 (b) (ii) of Article 370 of the Indian Constitution.

However, many more welfare based acts which enhance the **people's** fundamental rights need to be introduced in the State. Similarly, land rights are inhibiting the investments in the State. Thus Article-370 along with Article 35 A was hampering seamless integration of the people of the J&K into the mainstream of the country. Another angle to the issue of the amendment is that the Article-370 has been part of the Indian Constitution for close to 70 years despite being temporary and transient in nature and yet, it has not helped the State to grow and to reduce alienation of a section of the society. Therefore there was a need to explore other options. Yet another angle is that it was discriminatory with respect to other states, more so with respect to other border states which also have minority community in majority in their respective States, like Mizoram and Nagaland (both have Christian majority).

Order of On 05 August 2019-Home Minister Amit Shah announced in the Rajya Sabha that the President of India had issued The Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) under Article 370, superseding the Constitution (Application to Jammu and Kashmir) Order, 1954. The order stated that all the provisions of the Indian Constitution shall be applied to Jammu and Kashmir. This in effect meant that the separate constitution of the Jammu & Kashmir stood abrogated. The President issued the order with the "concurrence of the Government of State of Jammu and **Kashmir**".<sup>84</sup> The Presidential Order 2019 also added clause (4) with four sub-clauses to Article 367 under "interpretations". The phrase "Sadar-i-Riyasat acting on the aid and advice of the Council of Ministers" shall be construed as the "Governor of Jammu and Kashmir". The phrase "State government" shall include the Governor. In proviso to clause (3) of article 370 of the Constitution, the expression "Constituent Assembly of the State referred to in clause (2)" shall read "Legislative Assembly of the **State**". According to Jill Cottrell, some of the Presidential orders under Article 370 have been issued since 1954 in similar circumstances when the state was under President's rule. The Union governments interpreted the "concurrence of the state government" under these circumstances

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<sup>84</sup> IBID-70

to mean that of the Governor.<sup>85</sup> After placing the Presidential Order 2019 before the Rajya Sabha, the Home Minister, moved a resolution recommending that the president issue an order under article 370(3) rendering all clauses of Article 370 inoperative.<sup>86</sup> After the resolution was adopted by both the houses of the parliament on 05 and 06 Aug 2019, the President of India issued Constitutional Order 273 on 6 August 2019 replacing the extant text of Article 370 with the text<sup>87</sup>, "All provisions of this Constitution (Indian Constitution), as amended from time to time, without any modifications or exceptions, shall apply to the State of Jammu and Kashmir notwithstanding anything contrary contained in article 152 or article 308 or any other article of this Constitution or any other provision of the Constitution of Jammu and Kashmir or any law, document, judgement, ordinance, order, by-law, rule, regulation, notification, custom or usage having the force of law in the territory of India, or any other instrument, treaty or agreement as envisaged under article 363 or otherwise."

Opposition to the Move- There was furore within the ranks of opposition but more vehement opposition came from across the border in Pakistan, who has gone to the extent of Threatening a nuclear war. However a deft diplomacy has left Pakistan quite isolated in the comity of nations. Most countries, except China, have termed it a bilateral issue between India and Pakistan. China managed to get a discussion organised at UNSC behind the closed doors. But UNSC did not convey its outcome. All this has left Pakistan terribly rattled. Thus; so far Pakistan has not been successful to convince the World Community against this decision. It appears that their efforts are more to convince their own public that they are doing enough for the Kashmiris and for their own citizens. However their attempts to raise passions may backfire because their own record in looking after Balochistan, PoJK and Gilgit-Baltistan leaves much to be desired. More intriguing is the opposition within the country. After all till 1994 when the Parliament passed an unanimous resolution India had a consensus but now opposing the action is not understood. It has been challenged in the SC of India and its legality would be tested in October 2019 when it comes up for hearing. Efforts of some of those who are opposing the move to give it a communal colour is avoidable as it is a religion neutral move.

### Timing of the Amendment

It looks like that the Government had prepared well for the constitutional amendment to avoid any kind of rise of the internal security situation and had also taken steps to shape the international opinion, but the timing has been questioned by many analysts. It may be noted that a consideration of the geopolitical scenario brings out clearly that US is very keen to move out of Afghanistan at the earliest. Similarly, China is quite concerned with its investment in the China Pakistan Economic Corridor (CPEC). Likewise, Russia and China are also concerned about Taliban

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<sup>85</sup> IBID-2 , pp. 173–175.

<sup>86</sup> "No Article 370 for Jammu & Kashmir, Historic Move by Modi Govt", India Today Web Desk New; August 5, 2019

<sup>87</sup> President declares abrogation of provisions of Article 370, The Hindu, 7 August 2019.



influence creeping into Central Asian Republics (CAR) and Xinjiang respectively. Growth of Taliban/ISIS ideology may create security problems in CAR which Russia considers as its soft under belly, and in Xinjiang Province of China which has a sizeable Uyghur Muslim population. Further, during his recent visit to USA, the Prime Minister of Pakistan Imran Khan got quite encouraged with President **Trump's** response, feeling that they had regained their place in the US scheme of things in AfPak region and it is indeed likely that Pakistan might become important to US in her efforts to deal with Taliban. Since US Elections are due next year, President Trump is in a hurry to finalise the deal so that US troops could be withdrawn from Afghanistan. With these developments, time was running out and the window of opportunity was closing. Therefore, it was considered that it was just the right time for India to act.

### Case of Bifurcation of the State of J&K

As has already been explained, Ladakh was traditionally not a part of the J&K. It was added to Riyasat of J&K only in 1841. Because of the cultural differences between Ladakh and Kashmir, Ladakhis were being discriminated all these years and similar was the case with the Shia community of the Kargil area. It may be appreciated that Ladakhis have more cultural affinity with people from Gilgit Baltistan than with people from Jammu or Valley. No wonder that from the time of Independence, Ladakh had been demanding UT status. That is why the bifurcation has not come a day too soon. After getting passed by the two houses of the Parliament on 05 and 06 Aug 2019, finally the Jammu and Kashmir Reorganisation Act, 2019 No 34 of 2019 finally got approval of the President on 09 Aug 2019.<sup>88</sup>

### Conclusion

There is no doubt that the current state in J&K is a handiwork of Western powers particularly UK who realised the strategic importance of the region and wanted to keep it unstable so that they could exploit its locational advantage. They exploited the weakness of the Riyasat prior to independence, and later the naïveté of the Indian leadership as well as **India's** economic weakness.

Time has come now for a resurgent India to exert its will. Also it needs to be remembered that the J&K is not just those five districts of the Central and South Kashmir who had been the beneficiary of the existing system for all these years and are still trying to be the opinion makers. J&K also belongs to defrenchaised Valmikis, West Pakistan refugees, Kashmiri Pandits, people from Jammu region, Ladakhis, people of; Gurez Valley; Tangdahar and Uri Area too. In the new system each one of the citizens of the J&K will have equal rights and their areas will see growth without losing their cultural identity. However, it will be a test of the Government as to how they are going to pull it through

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<sup>88</sup> Jammu & Kashmir Reorganisation Act 2019 - Gazette of India  
Uploaded on egazette.nic.in

against opposition within India and build internal consensus. Indian diplomacy will also be tested to build favourable opinion in favour of India. They will have to use **India's** goodwill and other elements of national power with other countries and its economic heft to build that kind of opinion.

As far as Pakistan is concerned, she is a self-appointed Stake Holder in Kashmir Dispute. She has always displayed double standards while dealing with J&K. With this new development she has started becoming fearful about its hold on POJK and Gilgit-Baltistan. No wonder Pakistani leadership is making all efforts to internationalise the issue, though without much success so far. For them it is also a loss of face in front of their public whom they had been fooling all these years with the slogan, “**Kashmir** banega **Pakistan**”. It is also a loss of face for the Pakistan Army who considers itself a custodian of Pakistan. There may be a situation not too far ahead in future when Pakistan Army may decide to try to take charge of the country. The bottom line, however is that; she needs to understand that the making of Article 370 non effective is purely an internal matter of India and her reaction is nothing short of her attempts to interfere in **India's** internal matters, which if she persists would be strongly responded.

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## About the VIVEKANANDA INTERNATIONAL FOUNDATION

The Vivekananda International Foundation is an independent non-partisan institution that conducts research and analysis on domestic and international issues, and offers a platform for dialogue and conflict resolution. Some of **India's** leading practitioners from the fields of security, military, diplomacy, government, academia and media have come together to generate ideas and stimulate action on national security issues.

The defining feature of VIF lies in its provision of core institutional support which enables the organisation to be flexible in its approach and proactive in changing circumstances, with a long-term focus on **India's** strategic, developmental and civilisational interests. The VIF aims to channelise fresh insights and decades of experience harnessed from its faculty into fostering actionable ideas for the **nation's** stakeholders.

Since its inception, VIF has pursued quality research and scholarship and made efforts to highlight issues in governance, and strengthen national security. This is being actualised through numerous activities like seminars, round tables, interactive dialogues, Vimarsh (public discourse), conferences and briefings. The publications of VIF form lasting deliverables of VIF's aspiration to impact on the prevailing discourse on issues concerning **India's** national interest.



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