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Dawn of a New Era

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Prime Minister Narendra Modi addressed the nation on August 8, 2019 making it clear that the government will do all that is necessary to bring the Kashmir valley back to normalcy at the earliest. Source: The Quint

Union Home Minister Amit Shah introducing the Jammu and Kashmir Reorganisation Bill in the Rajya Sabha on August 5, 2019. Source: Times Now

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Reorganisation of Jammu & Kashmir: Dawn of a New Era

by

Lalit Kapur, Arun Sahgal and Hemant Krishan Singh

On August 05, 2019, the Government of India introduced the Jammu and Kashmir Reorganisation Bill in the Rajya Sabha, where it was passed by 125 votes in favour to 61 against. The next day, the Lok Sabha passed the bill with 351 votes in favour to 72 against. Passage of this bill signals a fundamental shift in the domestic outlook of India towards a robust and realist nationalism. By fully integrating Jammu and Kashmir (J&K) into the constitutional order of a secular India, this measure discards the proposition that an integral part of the Indian nation state must be accorded special status in perpetuity solely on account of its religious majority. A long outdated constitutional anomaly, a lifeline for secessionist sentiment and an excuse for Pakistani claims on J&K has finally been put to rest.



Union Home Minister Amit Shah introducing the Jammu and Kashmir Reorganisation Bill in the Rajya Sabha on August 5, 2019. Source: TimesNow

Notwithstanding the overwhelming support with which the bill was passed in the two Houses of the Indian Parliament, there have been some motivated commentaries attempting to portray alarmist narratives to the public. This is of course a welcome and healthy sign in a vibrant democracy, but it cannot obscure the changed reality of mainstream national thought and public opinion in relation to J&K, which has transitioned from the sentimental idealism of the Nehruvian past to uphold principles of broader national interest, security and integrity, transcending parochial narratives. Significantly, apart from emotional outbursts from isolated elites, no cogent arguments have been put forward against the historic steps taken by the government, support for which has been publicly articulated even by Dr. Karan Singh, the scion of the erstwhile ruling family of J&K and a stalwart of the opposition Congress party. There is also a palpable sense of national fatigue regarding the unending separatist narratives kept alive by vested and dynastic interests in the Kashmir valley, not least because these have drifted beyond ethnic identity issues towards a radicalised Islamist militancy which evokes no sympathy in the rest of the country.

Our purpose here is to provide a factual background for what has transpired and some of the implications for the Indian nation state.



*Jammu & Kashmir map at the time of partition. Source: Wikipedia/Planemad
[Disclaimer: This map does not depict the boundaries of J&K officially recognised by India].*

We must begin with a review of the geographical and historical context. At the time of partition, Jammu & Kashmir bordered Tibet to the East, Xinjiang to the North (both had not yet been forcibly occupied by China), Afghanistan to the Northwest, Pakistan to the West and India to the South. The state itself comprised four natural regions: Jammu to the South, the Kashmir Valley in the centre, Gilgit (and the route connecting the sub-continent to Kashgar through the Mintaka Pass) to the North, and Ladakh, lying between the Kashmir Valley and Tibet. Since the time of Mahmud of Ghazni (971 – 1030 AD), India had been subjected to periodic invasions from the Northwest. Strategically, it made prudent sense for independent India to control the borders with Afghanistan, rather than leaving them in the hands of a weak or a hostile neighbour.

Before partition, the sub-continent's geography comprised British India and a number of princely states, who had accepted British suzerainty but were permitted some degree of self-rule. Rulers of these princely states, including Maharaja Hari Singh of J&K, were given the choice of acceding to India or Pakistan. Pakistan first attempted to coerce Maharaja Hari Singh by dishonouring its Standstill Agreement and imposing an economic blockade in September, 1947. It then followed up with an invasion of J&K by purported frontier tribesmen, armed and supplied by the Pakistani Army and led by its officers, who were transported across Pakistan commencing October 22, 1947. The modus operandi of using tribal raiders trained, equipped and led by its own army personnel while denying its direct involvement, became Pakistan's standard operating procedure which it later repeated in 1965, then continued through the (still ongoing) campaign of cross-border terror it has unleashed from 1989-90, and also during the Kargil conflict in 1999.

This turn of events forced Maharaja Hari Singh to seek India's help to repel the aggression from Pakistan and to accede to India on October 26, 1947. The instrument of accession signed by the Maharaja was identical to that signed by 562 other princely states. As the ruler of J&K, the Maharaja had full legal authority to make this decision. The accession itself was final and endorsed by the British Governor General; the so-called conditional accession argument is a falsehood that has deliberately been fostered by Pakistani and some other motivated narratives, in part by misinterpretations of Article 370.

Having stabilised the military situation and regained some territory, India asked Pakistan to deny to the raiders access to and use of Pakistani territory for operations against Jammu & Kashmir, as well as military training, aid and other supplies that could prolong the conflict. Notwithstanding political reservations and military advice, India's leadership under Prime Minister Jawaharlal Nehru then decided to accept Lord Mountbatten's advice and refer the case to the

United Nations under Article 35 of the UN Charter. The idealistic objective was to prevent wider conflict arising from India's entitlement under international law to defend itself, including by striking basing and support structures across the international border with Pakistan. India's interests would certainly have been far better served by first recovering the entire territory of J&K. The UN Security Council, as a politicised body, proceeded to convert India's well-intentioned referral into an India-Pakistan dispute. Nehru's naïveté was met with duplicity and betrayal.

Going to the UN also proved to be geo-strategically counter-productive: not only was the UN unable to provide the redress sought, but also its inability to restore the status quo with respect to the territories of J&K resulted in India losing the historical border it should have enjoyed with Afghanistan, while providing Pakistan with a land bridge to China. This also enabled inimical elements to portray J&K, which had legally and irrevocably acceded to India, as 'Indian Occupied Kashmir', never mind the fact that these same elements described the part of undivided J&K, including Gilgit, which had been illegally occupied by Pakistan, as "Azad Kashmir". This stands out in stark contrast to the fact that Xinjiang and Tibet, which China occupied subsequently through military force, are not referred to as 'China occupied Xinjiang' or 'China occupied Tibet'. For India, the long-term adverse implication of the referral to the UN was that it generated doubt in the international community about the legal validity of the J&K's accession to India, a doubt that Pakistan continues to exploit to the present day through disinformation and propaganda.

India's government then compounded the situation further by unilaterally offering a plebiscite. There was no legal or military requirement to do so; the offer was made only in keeping with an ideologically driven belief that the will of the people must be taken into account. However, the plebiscite was conditional on the status quo being restored in J&K. This conditionality was incorporated in UNSC Resolution 47 of April 21, 1948, implicitly accepting the legitimacy of J&K's accession to India, the need for vacation of aggression by Pakistan, the need to restore normalcy and bring back the people who had been uprooted by this aggression, and restoring India's sovereignty over the entire state till the plebiscite could be carried out. The resolution thus provided a sequential set of measures to "bring about a cessation of the fighting and create proper conditions for a free and impartial plebiscite". The measures required that first, the Government of Pakistan should secure the withdrawal from the state of Jammu & Kashmir of all tribesmen and Pakistani nationals not normally resident therein, and stop furnishing of material aid to those fighting in the state. When it was satisfactorily established that the tribesmen were withdrawing and arrangements for cessation of fighting had become effective,

India was to reduce its force levels to the minimum strength required for support of civil power in the maintenance of law and order. Only after that, a plebiscite would be conducted.

These provisions were included in the UNCIP Resolution of August 13, 1948. The UNCIP resolution of January 05, 1949 repeated that a plebiscite would be held once Pakistan had secured withdrawal of the tribesmen and its regular forces and India had reduced its force levels as envisaged above. Since Pakistan did not withdraw either the tribal raiders or its own armed forces from Pakistan Occupied Kashmir (POK), India also withdrew its plebiscite offer on March 29, 1956. Additional reasons for the withdrawal of the plebiscite offer were that the J&K Constituent Assembly had by then further legitimised the merger of the state with India, and Pakistan's Cold War security alliances had changed the prevailing external situation drastically, undermining the objective conditions for India's plebiscite proposal.

On January 26, 1950, India adopted its constitution as a sovereign democratic republic. The external situation at that time was that the dispute over J&K was with the UN and India had committed to a plebiscite. Article 370, according a special status to Kashmir, was, therefore, introduced under Part XXI, which contained "Temporary, Transitional and Special Provisions". Its applicability to J&K should have been immediately repealed when the J&K Constituent Assembly approved the merger of the state into India. That did not happen, but anecdotal reports suggest that Prime Minister Nehru watered down the provisions of Article 370 over the course of time to enable its eventual repeal. His death in 1963 and the nurturing of vested interests and politically inspired deceit in J&K, as well as in India's body politic, has kept Article 370 alive till August 6, 2019. This has effectively prevented the deliverance of "justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual and the unity and integrity of the nation", that India's constitution promised to all its citizens, including the residents of J&K. The Article also effectively imposed the will of the Muslim majority in the Kashmir Valley on Jammu and Ladakh, turning them into unequal and exploited regions.

The Simla Agreement of July 3, 1972, which is recognised as a treaty by the United Nations, once and for all overtook all UN resolutions on Kashmir. India and Pakistan resolved to settle their differences bilaterally or through any other peaceful means mutually agreed upon by them. Pending final settlement, they agreed not to unilaterally alter the situation and that "both shall prevent the organisation, assistance or encouragement of any acts detrimental to the maintenance of peaceful and harmonious relations". Both agreed that the pre-

requisite for a durable peace included “respect for each other’s territorial integrity and sovereignty and non-interference in each other’s internal affairs”. Both agreed to refrain from the “threat or use of force against the territorial integrity or political independence of each other”. Both agreed to take “all steps within their power to prevent hostile propaganda directed against each other”. Both committed that in J&K, the line of control resulting from the ceasefire of December 17, 1971, “shall be respected by both sides”, and to refrain from threat or use of force in violation of this line. Pakistan has been in flagrant breach of these commitments through its hostile propaganda and continued efforts to internationalise the J&K issue, but more particularly its campaign of cross-border terrorism (“proxy war”) pursued since 1988-89, as well as by instigating the Kargil conflict of 1999.

The J&K Reorganisation Bill, which received Presidential assent on August 9, 2019, will come into effect on October 31, 2019. It bifurcates the state of J&K into two union territories: a Union Territory of Jammu & Kashmir with a legislative assembly of 107 members, and a Union Territory of Ladakh without a legislative assembly. Both will be headed by a Lieutenant Governor. Of the 107 seats in the legislative assembly of J&K, 24 are reserved for constituencies in POK, to be occupied as and when it can be integrated into India. The Lieutenant governor is also empowered to appoint two women to the legislative assembly, if in his opinion, women are not adequately represented in the assembly. Rights to make laws in respect of land in J&K will remain with the elected legislative assembly, but will be transferred to the Lieutenant Governor in Ladakh. Law and Order and police issues will, however, be controlled by the Central Government, through the Lieutenant Governor.

The reorganisation of J&K means that it now becomes like any other state or union territory of India, where all national laws and instruments of state are equally applicable. In practical terms, this implies that the elected legislative assembly can remove restrictions on purchase of property by non-residents in J&K, enabling investment by both domestic and international companies, thereby opening up better prospects for economic development. It also enables the state to hire the services of professionals, including in education and medicine, from outside the state, enabling the filling up of large voids in the availability of these services. By encouraging development and creating employment opportunities, it sets in place a political strategy to address Pakistan-sponsored terrorism and Islamist extremism. It enables gender-neutrality, giving women and their descendants succession rights to property even if they marry outside the state, as also the application of the recent progressive Triple Talaq legislation. It gives residential rights to refugees who migrated from West Pakistan and Dalit migrants who were brought in to clean

the streets of Jammu and Srinagar in the 1950s (in contrast, residential rights were conferred upon Muslim migrants who entered the state from Xinjiang following its annexation by China), enabling them to participate in panchayat, municipal and assembly elections, seek admission to government run educational institutions, the right to seek government employment in other than menial jobs, and voting rights and social benefits. It enables job reservation for minority communities, as well as for scheduled castes and tribes, till such time as these reservations continue in India. It enables the true flowering of democracy and empowerment of the people. There can be little doubt that entrenched vested interests will fight this change with all the tools at their disposal. But there is also little doubt that this change was long overdue, as the widespread public support across India, including within opposition parties, brings out. It required a decisive leader with a nationalist vision to finally implement this change, and Prime Minister Narendra Modi rose to the occasion to fulfil a promise the BJP and its precursors have espoused since 1951.

Reactions have so far been muted in the Kashmir valley which is under a heavy security clampdown, but there will clearly be widespread anger among segments of its public at these developments as well as concerns regarding current restrictions on movement, communications and travel. The Prime Minister's address to the nation on August 8, 2019 makes it clear that the government is aware of the need for handling the situation with sensitivity and will do all that is necessary to bring the valley back to normalcy at the earliest.



Prime Minister Narendra Modi addressed the nation on August 8, 2019 making it clear that the government will do all that is necessary to bring the Kashmir valley back to normalcy at the earliest. Source: The Quint

The reaction from Pakistan has predictably been shrill, including fear-mongering by raising threats of war; downgrading diplomatic relations; suspending bilateral trade; appealing to the UN; and seeking international intervention. Pakistan's propaganda machinery has swung into high gear, planting motivated articles by partisan journalists in the international media, misrepresenting the events of 1947-48 and the subsequent UN resolutions, the plebiscite issue and the Simla Agreement, and stoking fears of nuclear war. But Pakistan's credibility is at an all-time low, given its historical record of subversion of UN resolutions; changes within Pakistan Occupied Kashmir which have included ceding part of J&K's overall territory to China; reliance on armed aggression to resolve the situation in its favour; harbouring of Islamist extremists proscribed by the UN and sponsoring of cross border terrorism both in India and Afghanistan; and flagrant disregard for bilateral agreements.

The tepid responses Pakistan's protestations have received from the international community, including its all-weather friend, are making it clear that global perceptions with regard to Pakistan's agenda on J&K have shifted. Nations will view these developments through the lens of how they are impacted and where their interests lie. On balance, India would appear to be on stronger ground.

The Pakistani leadership and military have recently been emboldened by signals from the United States offering mediation on J&K in return for Pakistan's help in securing a deal with the Taliban that paves the way for a US withdrawal from Afghanistan. The Taliban themselves, however, have cautioned against such linkage between Afghanistan and Kashmir. On the other hand, the US continues to push forward its strategic partnership with India to manage the power balance in the Indo-Pacific. Given the unpredictability which is now the established hallmark of President Trump's approach to foreign policy, India will need to be circumspect and watchful regarding possible shifts in the US position.

Meanwhile, we can be certain that having been upstaged by India's measures to reorganise J&K, the military establishment in Pakistan will be under pressure to demonstrate its disruptive capability to resist change. We need to be fully prepared for Pakistani attempts to radicalise society, generate instability and foster violence within J&K, while also pursuing military brinkmanship.

India has for the past seven decades tried a variety of soft solutions to normalise relations with Pakistan, including by entering into the most one-sided water-sharing treaty any upper riparian state has ever signed, and unprecedented gestures of strategic patience, mutual accommodation and goodwill even after

its complete military victory in the 1971 war, in an attempt to secure peace. There is now an emerging consensus in India that a soft solution will not work with Pakistan, and that India's past stand on Kashmir has lost all relevance.

On the domestic front, the long held criticism that military successes in suppressing terrorism in J&K were not backed by a political strategy are now being addressed. The reorganisation bill marks the beginning of a new phase to fully integrate J&K into the Indian Union and deliver to its people the entire range of constitutional safeguards and developmental benefits promised by Prime Minister Narendra Modi in his address to the nation on August 8, 2019. A long and difficult road lies ahead, a journey in which the Indian nation and people cannot afford to fail.



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