



A wrong way to end

The special status of J&K was never meant to be permanent, but it should not have been scrapped without wider consultations

Jammu and Kashmir has been a theatre of muscular Hindutva nationalism, in the early decades in script and since 2014 in performance. Adopting a highly militarist approach to separatism, and shunning political process entirely since 2014, the BJP has now delivered on a promise it has long made, by abrogating the special status that Jammu and Kashmir had enjoyed in the Constitution through a combination of executive and parliamentary measures. Additionally, the State is being downgraded and divided into two Union Territories. The mechanism that the government used to railroad its rigid ideological position on Jammu and Kashmir through the Rajya Sabha was both hasty and stealthy. This move will strain India's social fabric not only in its impact on Jammu and Kashmir but also in the portents it holds for federalism, parliamentary democracy and diversity. The BJP-led government has undermined parliamentary authority in multiple ways since 2014, but the passing of legislation as far-reaching as dismembering a State without prior consultations has set a new low. The founding fathers of the Republic favoured a strong Centre, but they were also prudent in seeking the route of persuasion and accommodation towards linguistic and religious minorities in the interest of national integration. The centralising tendencies increased in the following decades, but Hindu nationalists always argued for stronger unitary provisions and viewed all particular aspirations with suspicion. For them, Jammu and Kashmir's special constitutional status was an impediment, not an instrument, for the region's integration with the rest of the country.

The entire exercise of getting Article 370 of the Constitution effectively abrogated has been marked by executive excess. The first step was to declare by a presidential decree that the 'Governor' – without regard to the fact that he has no Council of Ministers now to aid and advise him – can speak for the State government and give his concurrence to any modification in the way the Constitution of India applies to Jammu and Kashmir. Second, on the basis of this 'concurrence', the latest Presidential Order scraps the previous one of 1954, abrogating the separate Constitution of Jammu and Kashmir. Third, the fact that the State is under President's Rule has been used to usher in a new dispensation under which Jammu and Kashmir becomes a Union Territory with a legislature and Ladakh another such territory without a legislature. In sum, a purported process to change the constitutional status of a sensitive border State has been achieved without any legislative input or representative contribution from its people. The bifurcation of States in the past cannot be cited as a binding precedent as, under Article 3 of the Constitution, the President seeks the views of the legislature of the States concerned, even if concurrence is not mandatory. In the present scenario, J&K has been represented by an unelected Governor appointed by the Centre, while Parliament has ventured to ratify the conversion of a State into two Union Territories without any recommendation from the State.

If there is a legal challenge to these measures, it would centre around whether such far-reaching steps could be achieved in the absence of a representative government by assuming that its gubernatorial administrator is constitutionally capable of using his consent as that of the entire State. Further, there is a self-enabling aspect to the Presidential Order. It performs a hop-step-and-jump feat. It hops over the requirement of the State government's consent by declaring that the Governor is the State government. It steps over the need for aid and advice by the ministerial council by saying the Governor's opinion is enough. And it jumps over the fact that there is no constituent assembly now by merely reading the term as 'legislative assembly', and letting Parliament perform the role of the State legislature. Thus the President's power under Article 370 has been used both to create an enabling provision and to exercise it immediately to modify the Order, thereby dispensing with the role envisaged for the State Assembly. While it is true that in 1961 the Supreme Court upheld the President's power to 'modify' the constitutional provisions in applying them to J&K, it is a moot question whether this can be invoked to make such a radical change: a functioning State has now been downgraded and bifurcated into two Union Territories. It is inconceivable that any State legislature would ever have recommended its own demotion in status.

True, the special status of J&K was meant to end, but only with the concurrence of its people. The Centre's abrupt move disenfranchised them on a matter that directly affected their life and sentiments. Moreover, that this was done after a massive military build-up and the house arrest of senior political leaders, and the communications shutdown reveals a cynical disregard of democratic norms. It appears that the current government values J&K for its demonstrative impact before the rest of the country, as a place where a strong nation and its strong leader show uncompromising political will. But that may have other unintended consequences. Geographically and metaphorically, Jammu and Kashmir is the crown of secular India – a Muslim majority region in a Hindu majority country. Its people and leaders had chosen secular India over Islamic Pakistan, a fact that Islamists never reconciled with. The BJP's adventurous route also has as backdrop an impending U.S. withdrawal from Afghanistan that will trigger an unforeseeable churn in Islamist politics in the region. Islamists have always viewed Kashmir as a component of their global grievances. Whatever its intent in enabling the full integration of Jammu and Kashmir with India, Monday's decision to alter the State's status could have unintended and dangerous consequences.

Piecing together Kashmir's audacious road map

The new doctrine will have to persuade Jammu and Kashmir that greater integration with India holds promise



AMITABH MATTOO

In 1948, the tallest leader of Jammu and Kashmir, Sheikh Abdullah, greeted Prime Minister Jawaharlal Nehru at Lal Chowk, Srinagar, with a couplet from the Sufi poet, Amir Khusro: "Mun tu shudam tu mun shudi, mun tun shudam tu jaan shudi; Taakas na guyad baad azeen, mun deegaram tu deegari (I have become you, and you me, I am the body, you soul; So that no one can say hereafter, that you are someone, and me someone else)". Five years later, Abdullah was dismissed from office and interned on the instructions of Nehru. Since then the body of Kashmir and the soul of the rest of the country have cohabited restlessly.

On Monday, August 5, 2019, the Narendra Modi government made arguably the most audacious decision of its tenure and probably the boldest decision made by any government on Kashmir since Indira Gandhi arrived at a *modus vivendi* with Sheikh Abdullah in 1975. By moving to revoke the 'special status' granted to the State under Article 370, and by reorganising the State into two Union Territories – Jammu and Kashmir and Ladakh – it demonstrated unprecedented chutzpah, but it may have unleashed a chain of events difficult to predict or contain. For one, while even the founding fathers recognised that Article 370 was a transitional or temporary provision, there was a clear subtext; that its revocation would only happen once the acquiescence of the people of the State was obtained.

There is no doubt that the move will be legally challenged on grounds of procedural infirmities and, more substantively, that it un-

dermines the basic feature of the compact between Delhi and Srinagar that was agreed upon in 1947. But beyond the legality, the real test will be on the streets of Srinagar, Jammu and Delhi once the security cordon is lifted from the State. What was unbecoming is the unwillingness to enter into consultation with the mainstream political leaders; in no other State would former Chief Ministers have been dealt with so cavalierly. Similarly, the impression that the move on Article 35A is designed to engineer demographic change rather than to protect the rights of women and other marginal groups of the State, will need to be corrected.

A mirror to geopolitics

The move is clearly embedded in the larger geopolitics of the region and the manner in which regional alliances are marginalising Indian interests in the heartland of the region. With the United States seeking a quick exit from, and willing to let the Inter-Services Intelligence-sponsored Taliban to control Afghanistan (and China deeply embedded in the power play), the heartland of central Asia has rarely been as adverse to Indian interests since 1989, when the Soviet Union withdrew from Afghanistan. Kashmir could, in these circumstances, become even more vulnerable to external elements than it was in the 1990s.

On top of it, the new camaraderie between U.S. President Donald Trump and Pakistan Prime Minister Imran Khan and the repeated 'offer' by Mr. Trump to meditate in Kashmir may have precipitated the decision, which would, however, have in any case taken months of preparation. A decision to cancel the Amarnath yatra and take hard decisions, with both domestic and international ramifications, suggests that the government believed that a settlement in Jammu and Kashmir and its 'pacification' was vital for India's national secur-



ity. This was, of course, a marked departure from recent history.

The Gupkar model

Internally, for nearly 70 years, New Delhi managed Jammu and Kashmir (or more precisely the Kashmir Valley) through Srinagar's Gupkar Road. Gupkar Road became a metaphor for the Centre's approach, historically, towards Kashmir. New Delhi's follies and its firmness; its cleverness and its calculations; its vacillating largesse and its ubiquitous Leviathan-like presence, were part of Gupkar's landscape and legacy. Gupkar Road is the meandering gateway to the vistas of the Dal Lake, which runs from the desolate offices of the United Nations Military Observer Group in India and Pakistan at Sonwar to the fading charms of erstwhile royal palaces on the banks of the lake. It is here that security agencies are nestled in close comfort with the political and business elite, and where interrogation centres have morphed into "haunted" guest houses.

As a model, Gupkar Road reflected itself in a series of policies that had become predictable; a network of patronage and power that had been gamed by friends and adversaries alike. It sustained a politics of entitlement; it bolted politicians or newspaper editors or bureaucrats who were kept in good humour on the basis of some chimera-like national interest. The

Gupkar model, it was obvious, had become redundant and counterproductive and had incentivised bad politics and the attendant rent seeking and other despicable forms of corruption.

Now, shorn of its ideological fervour, what is seemingly being put in place is a new audacious plan beyond the constitutional interventions. As a start, the Modi plan is fundamentally about directly reaching out to the people without the mediation of either separatist groups or mainstream politicians.

Grass-root reach

Reaching out to the people is seen as being best done by empowering local democracy to its fullest. In the past, the devolution of powers to the panchayats and urban local bodies carried little popular appeal with elected members of the Legislative Assembly, who saw this as directly eroding their authority and had a vested interest in centralising power. One of the key factors, it may be recalled, behind the Centre's disconnection with the Mehbooba Mufti government was its continued unwillingness to hold elections to local bodies.

Since the imposition of Governor's (and now President's) Rule, the State Administrative Council has acted with remarkable alacrity to devolve powers to panchayati raj institutions in the State. Implementation of important schemes such as the Mahatma Gandhi National Rural Employment Guarantee Act, the Pradhan Mantri Awas Yojana, the Mid-Day Meal scheme, Integrated Child Development Services and social forestry projects has been devolved to the panchayats.

The monitoring and supervision of schools and health institutions has also been passed on to the panchayati raj institutions. In addition, panchayats shall also be conducting a quarterly social audit of works and programmes in their area.

Almost in parallel is the Savona-

rola-like campaign against corruption where no one – powerful or influential – is 'untouchable' or beyond the scope of investigation by law enforcement agencies, but directed at the power elite of the State.

Graft crackdown

Corruption is thus being addressed not just at the fringes; but the very core of a rotten system is now being targeted where a few families are seen to have usurped power and economic benefits – not just in Kashmir but in Jammu as well. Indeed, almost every popular survey in Jammu and Kashmir reveals that one of the leading causes of youth angst and alienation was nepotism and corruption among the ruling elite.

This anti-corruption drive is accompanied by attempts to fast track development to create institutions of academic and extra-curricular excellence and to generate skilled employment in a manner that the youth are gainfully employed and weaned away from radical thought. This, of course, is easier said than done.

In the interim, the new doctrine will have to persuade the majority of the people of Jammu and Kashmir that greater integration with India will provide them with more opportunities, provide more freedom and space, and strengthen their rights much more than the alternatives proposed by other mainstream parties or separatists.

Will the Modi plan lead to greater harmony between New Delhi and Srinagar, bringing enduring peace to the body and the soul? If it does, it will have performed an extraordinary national service and resolved one of New Delhi's greatest challenges. For the moment, however, we have to live with the uncertainty that is germane to all high-risk, almost adventurous undertakings.

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An integration without integrity

More than forced homogenisation with India, Kashmir needs a moral disposition towards truth and honesty



RAJGOPAL SAIKUMAR

Yesterday the Ministry of Law and Justice issued a notification titled The Constitution (Application To Jammu And Kashmir) Order, 2019 overriding the Order of 1954, and in effect scrapping Article 370 of the Constitution. Nowhere in the world of constitutional-democracies can one see an executive government passing orders to amend the Constitution. This order lacks legality as well as moral legitimacy. I concur with the President of the Jammu & Kashmir Peoples Democratic Party (PDP), Mehbooba Mufti's claim that the government's decision is illegal, based on insincere politics and constitutional abuse.

Let us backtrack to the political moves that have led to yesterday's notification: On June 20, 2018, under Article 92 of the Constitution of J&K, the State was placed under Governor's Rule after the Bharatiya Janata Party (BJP) withdrew support to its alliance partnership with the PDP. Six months later, in December 2018, Governor's Rule got converted into President's Rule (Article 356 of the Indian Constitution).

Let us be clear about the implications of these tactical manoeuvres of carefully transferring power from a democratically

elected Assembly, to Governor's Rule and then President's Rule. It implies that all the powers of the Government of the State are now vested in the Governor under the superintendence of Prime Minister Narendra Modi. Given these conditions of severe democratic deficit, the government wrote up an order scrapping Article 370, sent it to itself for "concurrence", and had it signed by the President.

On concurrence

Let us then turn to Article 370(3) which lays down the procedure to amend or repeal Article 370. It states that the President may by notification declare that the article shall cease to be operative provided that it is confirmed by the Constituent Assembly of the State before the President issues such notification. It says that only with the prior consent of the Constituent Assembly of J&K the presidential order will be valid. But the Constituent Assembly framed the Constitution of J&K and got dissolved. How then must we interpret Article 370(3) if the literal interpretation is not useful? By reading it in terms of its legislative history.

N. Gopalaswami Ayyangar who introduced the provision in the Constituent Assembly of India on October 17, 1949 states: "We have also agreed that the will of the people through the instrument of the Constituent Assembly will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State...the President may, on the recommenda-



tion of that Constituent Assembly, issue an Order that this Article [370] shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issued any order of that kind, the recommendation of that Constituent Assembly will be a condition precedent."

A selective reading

To make a complicated legal history short, there was an acknowledgment that the Constituent Assembly, as a representative of the people of J&K, had to give concurrence before a Presidential Order is passed. But how does the Home Minister Amit Shah read Article 370(3)? He has read down the words "Constituent Assembly" to mean "Legislative Assembly of the State"; having cleverly dissolved the Assembly and usurped its power, in effect it is the government that is giving solipsistic concurrence to itself. Such self-indulgent narcissism has led to short-circuiting the entire process in letter and spirit.

The reason the Notification lacks moral legitimacy is because

of the way BJP has read down "Constituent Assembly" to include even 'President's Rule'. More jurisprudentially, one needs to ask this: what is 'Constituent Assembly'? It is a body of representatives who are the embodiment of the 'constituent power' that is needed to constitute a nation-state into existence. So, at the core of constituent power is democratic consent. India derives its legitimacy from its Constitution, and the Indian Constitution in turn is legitimate because it is supported by a constituent power in the form of democratic consent. Where in Mr. Shah's interpretation of the words "Constituent Assembly" is there even an iota of acknowledgment of a constituent power?

Article 370(2) clearly mentions that the concurrence of the State Government needed to be taken only before the Constituent Assembly was convened. There is no mention that the State Legislative Assembly will have these powers after the dissolution of the Constituent Assembly. To read it so is absurd. The Constituent Assembly as the embodiment of constituent power is what creates and authorises, gives birth and grants the power to the legislative assembly. There is no equivalence between a Constituent Assembly and Legislative Assembly. If at all the words "constituent assembly" in Article 370(3) have to be read down, it has to be done in such a way that its core meaning is saved. For example, it can be read down as meaning a 'special majority' of the State Legislative Assembly constituted

by free and fair elections.

The fact of the matter is that given the democratic deficit, the BJP knows well that legal manipulations are not enough to scrap Article 370. What it needs is the use of force, which is what it has been surreptitiously preparing for over weeks and months. The government has given Kashmiris two options: either assimilate into the mainstream, where mainstream is a code for Hindi, Hindu, Hindustan, or be banished, and evicted by force. That is the tragic state of affairs we have come down to in the name of national unity and integrity.

Salman Rushdie parodies the word 'integrity' in *Shalimar The Clown*: "The key to understanding this position was the word 'integral' and its associated concepts... the Indian effort was to preserve the integrity of the nation. Integrity was a quality to be honoured and an attack on the integrity of the nation was an attack on its honour and was not to be tolerated... Kashmir was an integral part of India. An integer was a whole and India was an integer and fractions were illegal. Fractions caused fractures in the integer and were thus not integral... When truth and integrity conflicted it was integrity that was to be given precedence." Mr. Shah conflates 'integrity' with 'integration'. Integration may involve forced homogenisation but integrity is moral disposition towards truth and honesty.

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LETTERS TO THE EDITOR

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An Article of faith

With a parliamentary majority on its side, the Bharatiya Janata Party (BJP) has implemented a key item on the core agenda of its parent organisation Rashtriya Swayamsevak Sangh (RSS) – abrogation of Article 370. The Muslim-majority State's accession to India was premised on its special status. Hence, it is a valid apprehension that the BJP government's unilateral move, done without consulting the stakeholders in the State, may weaken, if not break, the bond between Kashmir and the rest of India and also alter the State's present

demographic profile. The saddest part is that the Central government has given the impression that the Valley's people are less important than its territory.

G. DAVID MILTON,
Maruthancode, Tamil Nadu

Any changes to Article 370 require the assent of the State's 'Constituent Assembly'. The Centre may not agree with this provision, but the arrangement made between the then government and the people of Kashmir ought to have been respected and upheld. With one blow, the government has taken the relationship between the

Union and the people of Kashmir to a historic low. It is true that successive governments at the Centre diluted Article 370 to such an extent that it ceased to have any practical meaning. But still, it was that thin string which held Kashmir within the Union of India. The government has behaved like an occupying force imposing its will on a defensive population. One would be a fool to think that the move will not fan further extremist violence. And the way in which this was done, using the iron fist of the state, is a harbinger of times to come.

BIPIN THAIVALAPPI,
Payyanur, Kerala

This move will make all provisions of the Indian Constitution applicable to Jammu & Kashmir. Further, there will be no separate laws for the State. Indian citizens from outside will be able to own land and property in Kashmir. There will be elections once every five years and Central laws will directly apply. People in Kashmir need to realise that their State will have a bright future following the closer integration. However, one wishes that the Centre had obtained the assent of Kashmiris prior to taking such a radical decision.

RIFA DEKA,
Guwahati, Assam

Drug safety

The review of the book *Bottle of Lies* highlights the laxity of drug regulatory authorities in India (Sunday Magazine, August 4). The U.S.'s Food and Drug Administration (FDA) and other Western regulatory agencies ensure that their citizens receive quality drugs. We do not see a similar concern for Indian consumers coming from our national and State drug control authorities. According to reports, over the course of 2015, nearly a third of the warning letters issued by the FDA's Center for Drug Evaluation and Research were tied to

violations of safe manufacturing practices in India-based facilities. What intrigues the Indian consumer is: what happens to the millions of formulations that are recalled? India has earned distinction as a supplier of generic drugs and is known as the pharmacy of the world. This goodwill and reputation will be seriously compromised if the pharmaceutical industry fails to restore confidence of drug authorities in other countries and of the Indian consumer.

H.N. RAMAKRISHNA,
Bengaluru

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