

Special
Report #204



IPCS

INSTITUTE OF PEACE AND CONFLICT STUDIES

Article 370 and the Reorganisation of **Jammu and Kashmir**

August 2019

In this Special Report, IPCS brings together multidisciplinary opinion on the legal, political, administrative, security, and foreign relations dimensions of the abrogation of Article 370 and the legislation to reorganise the state of Jammu and Kashmir into two Union Territories: Jammu and Kashmir (with a state legislature), and Ladakh (without a state legislature).



Alok Joshi

Member, National Security Advisory Board (NSAB); former Chairman, National Technical Research Organisation (NTRO); and former Secretary, Research and Analysis Wing (RAW)

The security situation will remain tenuous and militancy will be a constant worry. There may not be an upsurge in the form of a civil disobedience movement immediately in the absence of any credible leadership, but the threat of radicalisation of youth remains. Pakistan-based militant groups will certainly be encouraged to target military assets in the region. Now that the administration is to be directly in the hands of the government in New Delhi, all efforts will be made to deny them any legitimacy. Pressure will be exerted on the locals in the security establishment.

What can assist the government counter these trends is an efficient and clean local administration, especially in the border areas in both Jammu (Poonch/Rajouri/Nowshera) and Kashmir (Bandipora/Gurez/Kupwara/Baramulla, etc). The communal situation in Jammu must also be closely watched given the kind of response from the area's majority community. An early election to the Legislative Assembly could also provide a safety valve, although it may in the first instance be boycotted by regional parties.

With the talks with the Taliban reaching a critical point and the Pakistani establishment leveraging these talks, would Pakistan be encouraged towards adventurism on the Kashmir front? Prudence demands that we prepare for a more active involvement of the Pakistani deep state in Kashmir and beyond. The only way to counter is by raising the costs of such activity on the LoC as well as in the hinterland.



Rahul Kumar

Advocate, Delhi

Constitutional Order (C.O.) 272 dated 5 August 2019 brought by the government of India has made Article 370 inoperative. This was done by adding a sub clause to Article 367, which deals with interpretations of the Constitution.

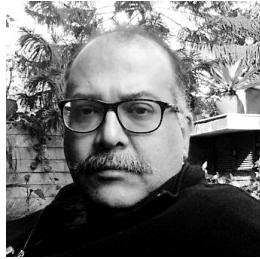
Article 370(3) provides that via a presidential order the entire article can cease to be operative provided that a recommendation is made by the Constituent Assembly of the State. This is where the addition to Article 367 comes in. It changes the words "constituent assembly of the state" to "legislative assembly of the state."

The government has then deemed that as the state assembly presently does not exist, under governor's rule, the recommendation of the governor would be analogous to the recommendation of the legislative assembly to pass C.O. 272.

Whether a modification to Article 367 can be done in this manner, and if so, whether the governor, as a representative of the president, can replace an elected legislative assembly for giving consent to cease operation of Article 370 are going to be the biggest legal hurdles for the Indian government.

The newly formed legislative assembly of the Union Territory of Jammu & Kashmir will come into being once fresh elections are held, and the house will be a creature of the reorganisation bill passed by parliament. Its fate would depend in turn upon the legality of the modification to Article 367 and presidential order under Article 370(3).

We can be certain about one thing: the legality of the presidential order C.O.272 is purely a domestic issue with no room for any international law dispute.



Sushant Sareen

Senior Fellow, Observer Research Foundation

Bifurcation makes political, administrative, and governance sense. There has been a longstanding demand in Leh for UT status to Ladakh, although there may be some resentment in Kargil at being locked out of J&K. Separating J&K, perceptibly along religious lines since that is how local demography is organised, would have appeared a tacit endorsement of the two-nation theory, which is unacceptable to India.

Delimitation and the redrawing of constituencies addresses the disproportionate area to population ratio. At a relative level, districts with a substantial Muslim population in Jammu have seen higher population growth than the non-Muslim dominant areas. Thus, new constituencies in Jammu are more likely to be in districts with a higher Muslim population. Land is an important consideration, and it is not clear at this point if it will be a UT subject or with the centre. This may give rise to a conspiracy theory in the valley of demographic invasion.

Mainstream J&K parties will be further marginalised if they boycott elections. Politics abhors vacuum, and new players will emerge. If existing parties participate via a political compact, they could make a new UT government by sweeping Kashmir and making a major dent in Jammu. This will unleash its own dynamics given that most Kashmir-centric parties have competed against each other.

BJP has a seat in Ladakh, and two in Jammu. Ultimately, however, whether they form a government is not so material. The region figures highly in the core party agenda, and this move cements their other 300-odd seats. In the region itself, BJP's interest will pivot on security, i.e. addressing militancy, and this function will fall under their purview with J&K as a UT.



Suhasini Haidar

Diplomatic Editor, The Hindu

The Modi government has described its decision to remove Jammu & Kashmir's special status, and hive off Ladakh, as India's "internal matter." However, given the timing of the government's move, the next few weeks will tell us just how much the international community plans to involve itself in the matter: including the G-7 in France at the end of August, and the UN General Assembly in the last week of September, both of which Prime Minister Modi will attend.

In the immediate aftermath, the government appears to have little to worry about: the US has said it "notes" India's version that this is an internal matter, and the UAE, whose Crown Prince Mohammed Bin Zayed Al Nahyan (MbZ) often speaks for the most powerful bloc of Gulf countries, has also endorsed the view that this is a move for better governance, as per the UAE Ambassador Ahmed Al Banna. The UK, France, and Russia have been silent. China is the lone dissenting voice in the UN Security Council, and the upcoming visit of External Affairs Minister Dr. S. Jaishankar as well as the visit of President Xi Jinping to India in October will attempt to resolve concerns.

Pakistan's options remain limited: It could attempt to link cooperation with the US on the talks with the Taliban with action against India, but risks the ire of the US, UK, and Qatar that are seeking to finalise a deal this month. It could raise the issue at the UN in September, but such resolutions have lost their potency. Any attempt to boost militancy in J&K will be censured at the Financial Action Task Force (FATF) meeting in November and could lead to more financial strictures that Pakistan can ill afford. Another round of brinkmanship as was seen after the Pulwama attack and Balakot strikes cannot be ruled out; however, this may be a scenario that will bring the international community in to contain the conflict, but not to change the new status quo.



Lt Gen (Retd) Syed Ata Hasnain

Member, IPCS Governing Council, and former GOC, 15 Corps, Srinagar

In the wake of recent legislative moves, limited spurt in terror activity in the Kashmir hinterland should be expected. However, recruitment, finances, and the entire so-called separatist and terror-based ecosystem are under the scanner and being progressively dismantled. This will have an impact on the ground, with less energy for terror activity. Stone pelting, too, will be marginal as the separatist ecosystem and leadership have been largely diluted. We hope that mainstream parties like People's Democratic Party (PDP) and National Conference (NC) will not adopt street turbulence as a form of protest.

The Line of Control (LoC) will be very active up until September 2019 in view of Pakistan's efforts to raise the issue at the United Nations General Assembly. There will be Pakistani infiltration efforts. We should expect some Pakistan army regulars infiltrating under the garb of terrorists to take leadership and directing roles. The Indian army may need to reinforce the counter-infiltration grid. The deployment of Central Armed Police Force (CAPF) personnel in Kishtwar and Rajouri is essential to prevent efforts at communalisation. Further, an increased IED threat should be considered. Since road security is our weakest area, troop movement should be minimised for now.



Dr Ashok Bhan

Distinguished Fellow, IPCS, and former Director General of Police (DGP), Jammu & Kashmir

The abrogation of the special status accorded to J&K and re-organisation of the state will add to alienation, mistrust, and the questioning of the government's democratic credentials in the valley. While it will be hailed in large parts of Jammu province and in Leh district, both condemnation and appreciation will be along religious lines.

The moot question is how the government will deal with the fallout of these developments on the psyche and further alienation of Kashmiris. While the government, through the display of its resources, capacity, and will, seems well prepared to successfully deal with any initial fallout, the situation will need a close watch once restrictions are relaxed.

Security measures and slogans for developments and jobs will have to be supplemented by strong steps to win the hearts and minds of people in the valley. The government will need to win the valley's 'vishwas' by resuming the political process and taking the mainstream political parties of the state into confidence. Any vacuum in this regard will only encourage separatists and anti-national forces.



Gulam Jeelani

Delhi-based print journalist

The bifurcation makes political sense for the BJP more than any other regional or national party—making Jammu & Kashmir a Union Territory means more control for New Delhi. Trifurcation would have meant a separate Kashmir, which is a Muslim-dominated territory where BJP has almost no support base. The decision might be driven by larger political interest, but the possibility of an intention to tilt the demography cannot be ruled out. As of now, BJP's electoral support is skewed towards the Jammu region, which sends 37 of the 87 members to the Assembly. The bifurcation would mean an improved support base for BJP in the Hindu-dominated Jammu region and a decline in support in the Muslim-dominated Kashmir region.

Mainstream political parties in J&K have long been opposed to the revocation of Article 370, with NC championing the cause of autonomy, and PDP seeking votes on the basis of its self-rule demand. The recent move has thus made J&K's mainstream, 'pro-India' politicians politically and administratively irrelevant. How they react once things settle down remains to be seen. How this affects militancy in Kashmir will also have to be watched closely. Laws made in the legislature of the Union Territory will have to be cleared by New Delhi, like in the case of Delhi's NCT. We can thus expect never-ending Centre vs Union Territory disagreements with regard to J&K.

The demand for separate UT status for Ladakh was a longstanding one, particularly in the Leh region. We will have to wait to see how the benefits unfold; it could perhaps lead to a renewed push for tourism. With regard to the developments benefits for J&K as a UT, a major economic push that will reflect advancements in various sectors on the ground can be expected in the near-term.



Abhijit Iyer-Mitra

Senior Research Fellow, IPCS

International reception of India's abrogation of Article 370 is muted to the point of being inconsequential. Perhaps the only loud pushback has been from Pakistan. Despite Pakistani statements about Turkish and Malaysian support, neither of these governments have issued any condemnation. It is however the lack of a reaction by Saudi Arabia and Qatar, and support for the Indian position by the UAE, that are truly surprising, indicating a significant ex-ante diplomatic effort by India. Germany has restated its position that it expects all Indian actions will conform to constitutional procedures and urged consultations with the affected.

China's condemnation has been restricted to Aksai Chin, territory it considers its own, being incorporated into Ladakh UT. As for areas claimed by Pakistan (PoK), China has merely advised restraint. Obviously criticising the entirety of Indian actions is going to be a fraught exercise should India choose to highlight Chinese actions in Hong Kong, Xinjiang, and Tibet. The US has issued a perfunctory statement, labelling it a "strictly internal matter," and saying it is monitoring the detentions and human rights situation. Russia and France, given the massive defence trade both have with India, which is conditioned on their support to India's principle of 'strategic autonomy', have maintained a studied silence. The UK, similarly bogged down in a bruising Brexit, has too much on its plate; with Prime Minister Boris Johnson having specifically ignored a letter to him by MPs of Pakistani origin. Given the predilections of the permanent members, it is expected that the UN Security Council will not be able to agree to a resolution (if it is actually placed for consideration), though it is likely that the OIC may issue a pro-forma (and hence irrelevant) condemnation.



P Stobdan

Former Indian diplomat, and Founder President, Ladakh International Center, Leh

Certainly, Ladakh is going to lose the very constitutional safeguards enshrined under Article 370 and 35A that protected the entire state of J&K including Ladakh until now. But these provisions also created impediments for Ladakh to carve out its own political space, identity, as well as the economic incentives that were needed to develop the region. By separating from J&K, Ladakh can shape its own destiny in terms of identity and economic development.

With regard to the proposed administrative structure, Ladakh is not the first case of UT without legislature in India. Clearly, the government must have thought about the reasons for this arrangement. Ladakh is a sensitive part of India along with its in-built demographic deficiency. The system of governance here must be anchored at this nascent stage. There are already autonomous development councils both in Leh and Kargil that take care of people's representation. But, this is an issue that is still subject to amendments. Right now, it is important for Ladakh to de-link itself from the troubles of J&K.



Nikhil Mehra

Advocate, Delhi, and Special Counsel, Agastya Legal LLP

Any challenge to C.O. 272 will likely be on the basis that Article 370 could not have been effectively amended, so as to alter its inherent character, by an amendment to the interpretation clause contained in Article 367 of the Constitution. The Constituent Assembly and State Government were purposely designated repositories of decision-making power under Article 370 so as to enable the will of the people of the said state to be reflected in any change in special status. This cannot be undone by replacing the State Government with an unelected Governor and Constituent Assembly of the State with the Legislature of the State, and, in its absentia (as was the case by way of President's Rule), by Parliament. These steps effectively made the Central Government both the giver and recipient of consent, which is violative of the original provision. Further, the unamended Article 370 was a self-contained code with its own amendment mechanism.

If it is held that the consent of the Governor at the relevant time could only be temporary, and would then have to be affirmed as and when a legislative assembly is formed, then the fact that the new UT has a legislative assembly could act to alter the Governor's past acts. This is possible if it is held that the amendments effected by C.O. 272 could at best be at par with a Governor's power of promulgation of an ordinance, which requires ratification by the legislative assembly.

The applicable international law to India's relations with the erstwhile State of J&K is UNSC Resolutions 39 and 47. Pakistan has already violated the terms of UNSC 47 by trifurcating PoK, and hence the resolution holds no meaning today. India's consistent stand has been that the pre-conditions contained in these resolutions have not been met and hence have no legal force.



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