

India's Move in Kashmir: Unpacking the Domestic and International Motivations and Implications

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On Aug. 5, the Indian government announced that the “special status” accorded to the state Jammu and Kashmir—which includes Ladakh—was no more.



Police confront protestors in Kashmir in December 2018. (Source: Tasnim News Agency/Seyyed Sajed Hassan Razavi, CC BY 4.0)

On Aug. 5, the Indian government announced that the “special status” accorded to the state Jammu and Kashmir—which includes Ladakh—was no more. The government also split and downgraded the status of the erstwhile state into two union territories: “Jammu and Kashmir,” which will have a local legislature while Ladakh will resemble other union territories.

I was in India when this move was announced, and in the run-up, it became increasingly clear that something was afoot in Kashmir. First, the central government had airlifted an extraordinary augmentation of security forces. By Aug. 1, the center had dispatched an additional 35,000 security forces to the state, which already has hundreds of thousands of security forces in place. (The actual number has not been disclosed.) It also announced that it had suspended the Amarnath Yatra (a popular seasonal Hindu pilgrimage to the mountainous abode of an ice formation that resembles a phallus attributed to the Hindu god Shiva). Some 40,000 security personnel were deployed for the security of the pilgrims. Over the same weekend, Kashmiri politicians announced a complete media and communications blackout, including the unprecedented move of cutting off landlines. Mainstream politicians in the state announced that they were under arrest. My own trip to Kashmir with West Point cadets and instructors was canceled without any explanation whatsoever. It was apparent that something was going on as the entire state was put in an indefinite lockdown.

What precisely that was became clear a week ago, when the government announced that it was using a provision in Article 370 to eviscerate the article itself. Article 370 would still exist in India’s constitution, but it would no longer confer any special status to Kashmir. While this process was arguably a legal one, it remains to be seen whether it will be upheld in India’s supreme court, which has a mixed history of siding with the government on some occasions while against it on others. Amit Shah, the controversial Indian home minister, made an appeal to worried Kashmiris throughout the country—many of whom were concerned as they were unable to reach their families in Kashmir—that nothing negative would happen. He further stated that Kashmir was heaven on earth and that it would remain so. He announced that it would not be permitted to become the balkanized battlefield of the 1990s.

Initially, it was not clear whether the government’s move pertained only to those parts of Kashmir currently administered by India or whether it pertained to those parts of Kashmir currently controlled by Pakistan and China as well. If it was the latter, then the government was merely formalizing the territorial status quo. However, on Aug. 6, Shah clarified the matter by explaining that “Kashmir is an integral part of India, there is no doubt over it. When I talk about Jammu and Kashmir, Pakistan-occupied Kashmir and Aksai Chin are included in it.” In response, China and Pakistan have been swift to mobilize in opposition. The

United States, which was unaware of the move, has largely seen it as an internal matter but has stated that it will continue to monitor the human rights situation. (See Figure 1.)

For those who have long watched India and the country's ruling Hindu-chauvinist party, the Bharatiya Janata Party (BJP), only two things about this sudden action should have been surprising. First, it's notable that this did not happen during Prime Minister Narendra Modi's first term from 2014 to 2019. After all, abrogating Article 370 of the Indian Constitution, which conferred upon Jammu and Kashmir its special status, has been a core promise inscribed in the party's manifesto. And the BJP has a tendency to follow through on manifesto promises even when they are controversial: The party previously vowed to confer nuclear status upon India and did so when it assumed power in May 1998. The second perhaps surprising element was that it was so easy to do. Rather than seeking a consensus-based approach in Srinagar and Delhi, the government simply eviscerated most of the provisions of Article 370.

Elsewhere on *Lawfare*, Laya Maheshwari explores the legal background of Article 370. Here I explain the history and significance of Article 370 and how the government moved to nullify it. I will unpack some of the motivations for the move, as well as some of the near-term domestic and international fallout.

Kashmir as a Long-Lingering Problem

On Feb. 20, 1947, British Prime Minister Clement Attlee announced that a war-weary and broke Britain would decolonize South Asia. Attlee planned to transfer power by June 1948; however, anxious to leave as soon as possible, the British expedited the timeline for departure to August 1947. The British government dispatched Lord Mountbatten, who would be the last Viceroy of the Raj, to oversee the tumultuous and sanguineous process.

In June 1947, the British promulgated the Indian Independence Act of 1947, which called for the creation of two independent states, which would be known as India and Pakistan. The act elaborated that the “the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan.” It stated that the territories of Pakistan would comprise the provinces of East Bengal and West Punjab as well as the territories included in the province of Sind (now known as Sindh) and the Chief Commissioner's Province of British Balochistan and, subject to a referendum, the territories of the Northwest Frontier Province. The precise boundaries in the east and west were to be decided by two commissions chaired by Sir Cyril Radcliffe, who had never been to South Asia but was charged with a momentous decision nonetheless. The commissions were to divide Punjab and Bengal on “the basis of ascertaining contiguous majority areas of Muslims and

non-Muslims. In doing so, [they would] also take into account other factors."

Astonishingly, Mountbatten was able to persuade the various political leaders of the future Pakistan and India—Muhammad Ali Jinnah and Jawaharlal Nehru, in particular—to accept the boundary commission decisions before the awards were announced. The details of the partition were not revealed until Aug. 16, 1947, a day *after* the transfer of power.

However, as noted, neither the Indian Independence Act nor the Radcliffe Commission pertained to the more than 560 "princely states," which were under the rule of Indian princes and which *en masse* constituted nearly 41 percent of the territory. The princely states' rulers exercised near-autonomy in their internal affairs while recognizing the paramountcy of the British monarchy. Mountbatten was able to persuade all but three to join either India or Pakistan prior to partition, based on either geographic contiguity or the communal distribution of their subjects. By the time independence neared, only three held out: Junagadh, Hyderabad and Kashmir.

Junagadh was a Hindu-majority state with a Muslim sovereign, within Indian territory. Its sovereign signed an instrument of accession to join Pakistan. Initially Pakistan refused to accept Junagadh in hopes that it could arbitrage the sovereign's accession for the territory Pakistan actually wanted: Kashmir. India forcibly annexed Junagadh and ratified the acquisition through a plebiscite that endorsed joining India.

Hyderabad was a large state led by a Muslim sovereign ruling over a Hindu-majority population. Hyderabad's leader sought to remain independent, which Pakistan's leadership encouraged in order to weaken the emergent India. Indian accounts frequently describe India's forceful acquisition of Hyderabad as a "police action," but Srinath Raghavan describes the brutality of what was actually a military conquest of Hyderabad by the Indian government.

Kashmir, led by a Hindu king who ruled over a Muslim-majority population, abutted both India and Pakistan. While much of the roadways and irrigation networks tied Kashmir more tightly to Pakistan, there was one important tehsil (an administrative unit below the district) in Indian Punjab (Pathankot) that provided road and rail ties to India. The sovereign of Kashmir, Maharaja Hari Singh, also wanted to be independent. As he dithered, Pakistan worried that Kashmir would either remain independent or, worse, join India.

While neither the Indian Independence Act of 1947 nor the Radcliffe Boundary Commission indicated that Kashmir "belonged to Pakistan," Pakistan believed that without Kashmir, partition could not be complete. Pakistan's claims were not legal but, rather, ideological. Pakistan was founded on the basis of the so-called "Two Nation Theory," which argued that Muslims and Hindus represented equal nations even though the latter outnumbered the former. While this did not necessarily

always equate with the demand for an independent Pakistan, it did ultimately yield a Pakistan. Because Kashmir was the only Muslim-majority state in the Raj, Pakistan believed it was entitled to this land on the basis of its state's ideology. Thus, Hugh Tinker observed in 1977, while many countries remain embittered over lands lost, Pakistan is one of the few countries "with a sense of bitterness and grievance for territories that have never formed part of its polity."

To secure Kashmir, Pakistan dispatched tribal "marauders" (who would later be known as mujahedeen) to seize Kashmir by force, despite signing a standstill agreement with Singh that committed Pakistani forces not to invade Kashmir. While Pakistan often insists that this was a nonstate operation, Shujah Nawaz (the brother of a deceased Pakistan army chief) mobilized Pakistani army archival materials to decisively demonstrate the extensive provincial and central support for this operation. As Pakistani forces became closer to Srinagar, Maharaja Hari Singh sought Indian support, and India agreed to support him provided that he accede to India's dominion. The maharaja signed the agreement on either Oct. 26 or 27. Only Pakistan and its partisans (including retired diplomats, military personnel, scholars and think tank analysts) dispute that the instrument of accession was signed. However, Andrew Whitehead, who wrote an authoritative book on this subject, suspects that the instrument was signed a few hours after India began airlifting troops to defend newly acquired Indian territory.

This instrument of accession permitted India's parliament to impose legislation upon Jammu and Kashmir only in matters of defense, external affairs and communication. When the Indian Constitution was promulgated in 1950, Article 370 enshrined this special status. This provision permitted the state to have a separate constitution and flag. An additional provision, commonly referred to as 35 A, restricted land purchases in Kashmir only to those who are considered Kashmiri citizens. Women who married men not from Kashmir lost this privilege, as did their children. Men who married women outside of the region did not lose their privileges. Many argue that 35 A, by preventing outside investments in the state, precluded economic development. In total, the provision permitted these particular citizens of India to be subjected to the laws and regulations that were promulgated by Maharaja Hari Singh. While the provision was always meant to be temporary, it perdured until Aug. 5.

Initially, India referred the matter of Pakistan's invasion of Kashmir to the United Nations. The first resolution on the matter, passed in 1948 by the U.N. Security Council, was UNSC Resolution 47. It called for Pakistan to completely evacuate all non-Kashmiris from the area and demilitarize. Once Pakistan made these moves to the satisfaction of a U.N.-appointed committee, India was supposed to demilitarize as well; however, India was permitted to retain a defense presence in the event

that Pakistan resumed aggression. After these sequential conditions were met to the satisfaction of said U.N.-appointed body, a plebiscite was supposed to be held to determine the fate of the region.

Ironically, it was India's leadership that suggested the plebiscite while Pakistan's leadership demurred. Indian leadership understood the complexity of the region: Ladakh was mostly Buddhist, Jammu was mostly Hindu, and Kashmir was a mix of Sunni and Shia Muslims. Religious minorities such as Christians and Sikhs were also spread across the territories, and there was widespread anger over the rapacity and brutality of the Pakistani invaders. Pakistan rightly assessed that a plebiscite would not be propitious. In any event, Pakistan never fulfilled the first necessary, but insufficient, condition for this plebiscite to materialize. (Pakistan continues to persist with mendacious demands for said plebiscite in international fora in hopes that audiences will be unfamiliar with the empirical facts of the case.)

Figure 1: The Disputed Region of “Kashmir”



Source: Perry-Castañeda Library Map Collection

Article 370: Then and Now

Since 1950, several developments have materially affected the import of Article 370. In 1959, Pakistan discovered that Chinese maps had claimed part of its territory as China's own. Unable to obtain a security pact with India against China, Pakistan's military dictator Ayub Khan decided that it was best to press for peace with China. As a part of this rapprochement, in 1963 Pakistan ceded part of Pakistani-controlled Kashmir, the Shaksgam Valley. This agreement paved the way for deepened Sino-Pakistan ties, which included the engineering feat of building the Karakoram Highway—which links Kashgar, the second most important city in China's Xinjiang province, with Hasan Abdal (located a few kilometers beyond Islamabad). The highway passes through the part of Kashmir ceded to China as well as the part seized by Pakistan in the 1947-1948 war, now known as Gilgit-Baltistan. Since then, demography of Gilgit-Baltistan has changed considerably due to a variety of issues such as out-migration for work and education as well as in-migration of Pakistanis from outside the region encouraged by the government.

In 1962, India and China went to war over their territorial disputes in Aksai Chin (ostensibly part of Ladakh in the north and west) and Arunachal Pradesh (in the east). In that war, which India decisively lost, two functional frontiers came into existence: the "Line of Actual Control" in Aksai Chin and the MacMahon Line in the East. Per the Line of Actual Control, China holds territory in Aksai China, which India claims is a part of Ladakh. (See Figure 2.)

Figure 2: The China-India Border With Disputes in the Northwest and East

China-India Border



Source: Perry-Castañeda Library Map Collection

While the aforementioned 35 A was promulgated to prevent significant demographic changes in the state, demographic changes occurred nonetheless. In the late 1980s, an indigenous insurgency broke out as a result of Indian malfeasance that began with the dismissal of a popularly elected state government and the subsequent conduct of a rigged election to foist into power a New Delhi stooge. While the insurgency began indigenously, it was soon taken over by a menagerie of Pakistani proxies that evolved over time. Today, Pakistani terrorist proxies, as well as indigenous fighters, continue to cause problems for the region. In 1990, Islamist terrorists—many of whom were local—began a campaign to drive out the Kashmiri Pandits, a Hindu community unique to Kashmir, from the valley. At the end of the campaign, between 100,000 and 190,000 had fled the valley. Those Hindus have been unable to return to Kashmir. And 35 A limited their ability to sell their land to outsiders who may have been willing to pay more than locals who would take advantage of their economic precarity and dislocation.

While it is commonplace to refer to “Kashmir” as “Muslim,” and reduce the aspirations of the entire polity to its Muslim residents, doing so does grave violence to the demographic realities. Per the most recent, 2011 census, Muslims are a majority in what was the Jammu and Kashmir state: They constitute 68.31% of the population. Muslims are the majority in 17 out of 22 districts. Hindus, who make up 28.44% of the total population overall, represent a majority in four out of 22 districts. However, there is significant district- and subdistrict-level variation. While Jammu division is majority Hindu, it has three districts with Muslim majorities (Poonch, Rajouri and Doda) and three districts have very large Hindu majorities (Jammu, Kathua and Udhampur). The division of Kashmir has six districts (Kupwara, Baramulla, Srinagar, Budgam, Pulwama and Anantnag) with Muslim majorities in excess of 90%. Ladakh has two districts: Muslim-majority Kargil and Buddhist-majority Leh. While most of the Muslims in the valley are Sunni, the entire region (including that held by Pakistan) has large Shia minorities as well.

Muslim identity, contrary to popular belief, does not predict regime preferences. In 2010, Chatham House conducted the most comprehensive survey of Kashmiri attitudes across those areas controlled by India and Pakistan. (It did not survey those in the part of Kashmir ceded by Pakistan to China in 1963). In that survey, respondents were asked which one option they would vote for if they were given the choice in a vote tomorrow. Options included: Should Kashmir on both sides of the Line of Control (the de facto boundary separating portions of Kashmir administered by both countries) become independent? Should Kashmir join India? Should it join Pakistan? Should the Line of Control be made an international border? Should India and Pakistan have joint sovereignty over Kashmir? Or should there be no change in the status quo?

For that portion of Jammu and Kashmir governed by India, 43% indicated that they preferred independence; however, the distribution was very uneven. Support for independence in the valley ranged between 75% and 95% across the districts; virtually no one in any district wanted independence in Jammu; and in Ladakh (with a very small sample size), one in three in Leh district and one in five in Kargil district wanted independence. Note that this option was not envisioned in the plebiscite detailed in UNSC Resolution 47.

With respect to joining India, 28% of the residents expressed this preference with similarly wide variation. In the Kashmir Valley, support ranged from a low of 2% in Baramulla to 22% in Anantnag. In Jammu, support for this option ranged from 47% in Jammu to 73% in Udhampur; however, in Poonch and Rajouri, 6% and 0%, respectively, wanted this option. In Ladakh, 67% in Leh and 80% in Kargil wanted to join India.

Support for joining Pakistan was uniformly low all over, with only 2% wanting this option. There were six districts in which no one wanted to join Pakistan. Only in the Kashmir Valley did anyone prefer joining Pakistan with support being the highest in Srinagar (6%) and Badgam (7%).

Nor does religion best predict where violence has traditionally occurred in Jammu and Kashmir. Indian officials uniformly acknowledge that violence is low relative to the highs experienced in the 1990s. Following the terrorist attacks in the United States in September 2001, the Jaish-e-Mohammed attack on India's parliament in New Delhi in December 2001, and the Lashkar-e-Tayyaba attack on Indian army families at Kaluchak in May 2002, the United States pressured Pakistan to curb terrorism in India. By 2003, terrorism in Jammu and Kashmir was at an all-time low. Violence has never since reached the levels of the 1990s. This is a function of India's efforts to harden the Line of Control as well as different tactics and strategies pursued by the groups and their handlers in Pakistani intelligence and the army. During interviews I conducted in July and August 2019, Indian military and civilian officials and think-tank analysts explained that, at present, disturbances are localized to a mere six of 22 districts in Jammu and Kashmir.

With respect to the content and force of Article 370 in the pre-August 2019 state of Jammu and Kashmir, the Indian government had used Article 370 to change laws in the state several times. Moreover, given the unrelenting campaign of terror supported by Pakistan, the state has been subject to a variety of legal regimes (such as "aid to civil" enabled by the Armed Forces Special Powers Act), Governor's Rule and President's Rule, all of which have been justified on security grounds. (In India, governors are appointed by the president of India and thus represent the central government, while chief ministers are elected at the state level.)

Why Now?

As noted, the BJP has long sought to eviscerate the special status of Kashmir, as its various election manifestos going back several decades attest. So what precipitated this course of action now? Presumably the government could have done this during its first term when its mandate was arguably the strongest. However, during Modi's first term, the government tended to avoid "communal" talking points and instead focused on economic issues. During the campaign period for the 2019 election, the party clearly signaled a return to its bread-and-butter focus on issues intended to motivate the Hindu voter. I was in India in February 2019 during the most recent flareup over the Jaish-e-Mohammed attack against Central Reserve Police Forces at Pulwama and the corresponding Indian strike against that terrorism group at Balakot. During that period, there were murmurs about revoking Article 370 or at least 35 A, but those murmurs disappeared as the latest India-Pakistan crisis played itself out and as India went into elections.

Indian interlocutors during my recent trip raised two important and interrelated issues that might bear on the timing, even while conceding that this had long been an agenda item for the BJP, which—like President Trump—prioritizes fulfilling campaign promises irrespective of the wisdom of such promises. The first issue that has been looming over the past year is the potential “deal” that the Trump administration may reach with the Taliban. During the Taliban’s tenure in Afghanistan, Pakistan co-located numerous Pakistan-based and backed militant groups with the Taliban, whom the Pakistanis also supported militarily, politically, diplomatically and financially. During this period, many of these groups also forged closed ties with Osama bin Laden and his al-Qaeda, who were also co-located with the Taliban. These groups were used to conduct attacks in Indian-administered Kashmir and later throughout India after Pakistan conducted its nuclear tests in May 1998. India understood—as it understands today—that what happens in Afghanistan rarely stays in Afghanistan.

India has long worried that Trump will seek a hasty deal that will justify an American exit from Afghanistan well before the 2020 U.S. elections, as he has promised to his own constituents. The Taliban have demanded positions in government without contesting elections, they want to end elections altogether as they are “un-Islamic,” and they want to gut much of the Afghan Constitution. The Taliban are particularly interested in rolling back the rights that women have achieved since the Taliban’s ouster in late 2001. And the U.S. government seems more than willing to concede many of these demands. Meanwhile, with victory nearly certain, the Taliban and their handlers in Pakistan have continued a brutal war in hopes of securing a maximally optimal deal.

With Trump desperate to extricate Americans from Afghanistan, he has had to reverse course on Pakistan, which he pilloried in early January 2018. During the visit of Pakistan’s Prime Minister Imran Khan to Washington, D.C., in late July, Trump admitted that Pakistan would help him extricate the Americans from Afghanistan. During that visit, to India’s consternation, Khan successfully linked peace in Kashmir to peace in Afghanistan, which was surely a diplomatic coup for Pakistan’s real government in army headquarters. (Oddly, some members of the Taliban rejected such linkage, likely in an effort to give the impression of significant light between the positions of the Taliban and their handlers in Pakistan.) To make matters worse, Trump asserted that Modi had requested Trump to intervene in the Kashmir dispute, a claim that New Delhi disputed immediately. However, this did not deter Trump from restating the preposterous proposition. Indian interlocutors on my recent trip—some of whom are close to the current government—indicated that these two factors motivated the Modi government to move when it did.

Domestic Impacts

In the near term, it is difficult to assess what will happen as a result of this bold move. While India may have taken this move in an effort to bolster security in advance of a U.S.-Taliban deal that could usher in renewed violence, critics fear that the move may actually make such escalation of violence more likely. However, it will take some time to discern which side is most correct, because Kashmir has been on a tight clampdown, making resistance impossible and making it difficult for Pakistan to coordinate with its assets in the valley. Parts of Kashmir are under a curfew that is expected to last months. And there is no indication of when jailed politicians will be let go.

The downgrading of Kashmir's status from state to union territory has important implications. In India, administrative powers are divided among central government and subnational units such as states and union territories. The "state" is a subnational Indian constituency with its own elected government (including legislative assembly and chief minister) and a limited right to frame its own laws. The governor, who is appointed by the president of India, serves as his or her representative in the state. Union territories, in contrast, are ruled directly by the central government. They are administered by a lieutenant governor, who represents the Indian president and is appointed by the central government. Most union territories (except Delhi and Puducherry) do not have their own legislatures; however, they are represented in the lower house (Lok Sabha) but have no representation in the upper house (Rajya Sabha), with the exception of Delhi and Puducherry. The central government both controls and administers union territories. The new union territory will resemble that of Puducherry and Delhi while Ladakh will resemble the remainder.

Notably, Ladakh residents are largely satisfied with this move. Ladakh has long resented being yoked to the politics of Jammu and Kashmir. (Kargil, with its large Muslim majority, may petition to join Kashmir.) First and foremost, there is no longer a functioning legislature in Jammu and Kashmir and there is no longer a chief minister. Politics in Kashmir have changed overnight. (Ladakh will have no state assembly but will have representation at the center.) This also means that the state's police will not answer to Kashmir-based politicians; rather, the police will answer to the center. Security officials have opined that under the previous regime, politicians who were sympathetic to or subsidized by militant organizations or their handlers in Pakistan would leak operational details undermining the efficacy of such operations. Indian interlocutors are optimistic that this move will help the center better control violence in Kashmir.

Equally importantly, many of India's anti-corruption laws were not applicable in Kashmir. Any observant visitor to Kashmir will notice the palatial properties of political actors that seem wildly disproportionate to their legitimate income. It is widely recognized that political actors in the state have long been on the payroll of all sides, allowing them to accumulate vast wealth. For much of India's

independent history, the valley-centric government has been led by two dynastic families who control their own parties (the National Conference, led by Farooq Abdullah, and the People's Democratic Party, led by Mehbooba Mufti). Modi and the BJP have a particular loathing of dynastic parties—surely another dimension of this move that merits attention. BJP officials attribute the massive corruption and nepotism that exists in Kashmir to the existence of Article 370, as well as the lack of economic development. They are likely more correct than not. The central government has now vowed to identify the source of corruption and prosecute individuals appropriately. This will also have the effect of further eviscerating current political parties and their leadership in the former state. The BJP likely hopes that it can cultivate new party leadership that is less beholden to money appearing in suitcases of unstated origins and more beholden to integrating Kashmir into the Indian body politic.

Article 370 also had numerous pernicious impacts that its defenders have generally overlooked. Because the instrument largely existed to ensure continuity of Maharaja Hari Singh's laws (which were a legal *khichdi* of colonial law and the diktats of his hereditary Dogra fiefdom), Kashmir's citizens were denied many of the advantages of modern India. For example, it precluded the implementation of the Right to Education. As noted above, this is inherently anti-woman, but it also denies residents of the erstwhile Kashmir the advantages of the system of reservations enjoyed by other disadvantaged caste communities. (Reservations are a form of "affirmative action" that India has established to help uplift certain caste communities who have long suffered from path-dependent caste-based discrimination. However, it is not means tested and thus many so-called low-caste families have become quite wealthy. Generally, Muslims are not entitled to reservations, with very few notable exceptions.) Also of note, the 73rd and 74th amendments pertaining to elections of local bodies were not applicable in the state. (India has a vibrant system of local elections in both rural and urban areas.) In addition, because outsiders could not purchase and develop land in the state, Article 370 may well have suppressed development that would have otherwise occurred. Accordingly, the government announced plans for an investor summit to be held in an effort to galvanize private investment in industries, educational institutes, health-care facilities among other job-producing activities.

To be clear, the BJP did not undertake this initiative for simply benign reasons like cleaning up corruption or developing the state; it undertook it as a part of its long-standing political agenda of privileging Hindus and suppressing Muslims. Many left-leaning Hindus and politically engaged Muslims read the downgrading of the state to a union territory as a signal that the Hindu-chauvinist regime cannot trust Muslims to be in charge of a state. They also read this as a part of a campaign to target issues that have most impacts for Muslims under the guise of feminism and development. (For example, the government made it illegal for men to divorce

their wives by uttering or texting “Talaq” three times. Even though the practice is illegal in many Muslim countries and contravenes the spirit of the Quran itself, which dedicates an entire chapter to laying out the lengthy process of divorce, many Indian Muslims saw this as an erosion of Muslim personal law. The government justified the move by referencing concern for Muslim women.) Oddly, the government has been silent on issues that derive from Hindu practices that harm far more women (such as dowry deaths, female infanticide and female feticide), all of which admittedly are illegal even if offenders are rarely prosecuted. Moreover, the BJP has been clear that it seeks to eliminate any constitutional provision of Muslim personal law, which is also consistent with the spirit of the Indian Constitution, which articulates the aspiration for all Indians to come under a uniform civil code. Muslims fear that any such uniform civil code will privilege Hindu practices while denigrating their own.

Ironically, persons who genuinely support secularism in India should be willing to concede that Article 370 in effect rendered residents of the state second-class citizens. With Article 370 gone, the government has a direct responsibility to treat the citizens of these two union territories with the same rights and privileges of Indians elsewhere. This will be a challenge given the ongoing security concerns in the state, which seem to worsen with every news cycle.

However, Home Minister Shah has said that the central government will restore state status to Jammu and Kashmir as soon as normalcy resumes. In other words, residents of the Jammu Kashmir Union Territory have an incentive to cooperate on security issues to regain the area’s status as a state. Under the previous regime, politicians were incentivized to “outbid” each other and float the absurd specter of independence without penalty.

International Dimensions

The only countries that have been directly provoked by India’s action are Pakistan and China. Pakistan’s howls of protest are particularly problematic given that its own government has locked up myriad mainstream politicians and has sustained separate campaigns of violence against the Baloch people in Balochistan as well as Pashtuns mobilized by the Pashtun Tahafuz Movement (PTM). Pakistan’s protestations also ring hollow because of its own moves in 1963 to cede territory that did not belong to it, as well as to formalize that relationship by large infrastructure projects through the territory with China, including the China-Pakistan Economic Corridor (CPEC). Pakistan’s efforts to raise this issue at the United Nations have already been rebuffed. China, too, is disgruntled and has complained that India is making unilateral domestic legislation on territory that both countries claim. The Chinese government has derided these moves by noting that they do little to change the facts on the ground, such as Chinese occupation of the territory India claims.

Pakistan may be tempted to underwrite terrorist operations in Kashmir or elsewhere in India in response. It rightly understands that when it comes to Trump, it holds the advantage because of the president's desire to get out of Afghanistan. The United States would find it difficult to come down hard on Pakistan when Pakistan is the key to Trump's efforts to "sever and saunter" from a war that is unpopular with his base and other Americans. However, India has signaled that it is no longer willing to acquiesce to Pakistani bullying, and thus any gambit right now may be inordinately risky with near certainty of retaliation.

One of the interesting aspects of this division is that it effectively separates India's territorial disputes with Pakistan from its disputes with China. Pakistan's dispute will largely focus on the valley, while China will focus largely on claims to Aksai Chin. There is virtually no chance of a resolution with Pakistan, because Pakistan's demand to the territory is ideological and moored in the Two Nation Theory. If Pakistan were to let go of its territorial demands, this would be tantamount to conceding the death of the Two Nation Theory itself. Also, Pakistan's powerful army has a strong incentive to preclude peace between the two nations. Peace would make it difficult for the powerful army that dominates the country to justify its enormous size, its hogging of national resources and its claim to run the country when it feels the need. India's disputes with China, by contrast, are not ideological and may therefore be more amenable to resolution.

The United States, for its part, has generally viewed this as an internal matter for India, although it has announced it will continue to monitor human rights issues such as the curfew, the media blackout and the inexplicable arrest of mainstream politicians.

Conclusions

Jettisoning Kashmir's special privileges has long been a part of BJP's Hindu-chauvinist agenda. Like white supremacists in the United States who resent the unequal enfranchisement of nonwhite Americans, Hindu chauvinists decry what they call policies of "appeasing" India's Muslims to secure their vote during elections. Indians refer to this as "votebanking." (If the current appalling socioeconomic status of India's Muslims—which typically falls between India's "other backward castes" and "scheduled castes and tribes"—is the result of appeasement, one can only imagine what results would have obtained without this ostensible appeasement.)

However, if the BJP only treats this move as a part of its communal "to-do" list, the security situation in Kashmir may well decline precipitously. While Indian officials seem hopeful that the arrest of politicians, the indefinite curfew and the communications blackout will suppress violence in the near term—aided by the extensive deployment of security forces—this posture cannot be maintained indefinitely. At some point, India will have to diminish the oppressive conditions

that currently obtain in the state. At the same time, if India genuinely wants to mainstream Kashmiris, this effort cannot begin and end with this legal sleight of hand. India must follow through with its various commitments to develop the state and to extend to Kashmiri residents all of the rights and privileges of Indian citizenship. Should it fail to do so, Pakistan will be loitering like a hyena waiting to pounce on the injured carcass of Kashmir.



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