

A soldier in camouflage gear, including a jacket, pants, and a beret, is walking away from the camera on a snowy mountain path. The soldier is carrying a rifle slung over their shoulder. The path is covered in deep snow, and the surrounding landscape is a dense forest of evergreen trees, some of which are heavily laden with snow. The sky is overcast and grey.

Everything you wanted to know about
the Kashmir problem

Sixty-seven years after Jammu & Kashmir joined the Indian Union, all issues about the state have got clouded in claims and counter-claims.

This ebook is intended to put the facts in some perspective.



-Sanjeev Nayyar

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On 26 October 1947, the princely state of Jammu & Kashmir formally became a part of the Indian Union. Pakistan never accepted the decision of Maharaja Hari Singh, who was legally empowered to sign the instrument of accession, as final. It has repeatedly tried to use force and terrorism to change the status quo, in the process muddying the issue.

Even today, whenever the issues of J&K's accession to India and article 370 – which gives J&K special status - are raised, emotions run high. Information is cherry picked, arguments are aggressive and thus, a meaningful discussion becomes impossible.

This ebook on J&K seeks to provoke thought and does not claim to be the last word on the subject. However, it does try to be comprehensive, covering the following aspects: the finality of the accession of J&K, the geopolitical issues of 1947, the pros and cons of article 370, Sheikh Abdullah's arrest in 1953, who is a permanent resident of J&K, why refugees can vote in the Lok Sabha but not in state polls, J&K's population and delimitation of constituencies, the lopsided development of the state and state finances. We end up with a picture of J&K as a pampered brat.

The J&K issue is a chakravyuh – which is an advanced battle formation. During the Mahabharata war, the Kauravas decided to capture Yudhishtir, the oldest of the Ppandava brothers, by engaging the Pandavas with a chakravyuh. Arjuna's son Abhimanyu knew how to get into this formation, but not out. He lost his life as a result. Successive governments in India have not been able to get out of the chakravyuh created by Jawaharlal Nehru in J&K. First, a brief chronology of key events in J&K since independence.

*5,000 Pathan tribesmen invaded J&K starting 21 October 1947.

*Instrument of Accession (hereafter referred to as IoA) was signed on 26 October 1947.

*The IoA was unconditionally accepted by Lord Mountbatten the next day.

*Nehru chose to go to the UN on 1 January 1948 on the Pakistani/Pathan aggression.

*Resolutions adopted by UN Commission for India and Pakistan on 13 August 1948 and 5 January 1949 provide for a plebiscite after the withdrawal of troops from Pakistan.

*The regent of J&K, Yuvraj Karan Singh, issued a proclamation on 25 November 1949 that legally declared total oneness with the Constitution of India.

*Article 370, which gave J&K the right not to implement certain laws passed by parliament, became a part of the Indian Constitution in 1950.

*Elections to the Constituent Assembly held in 1951 resulted in Sheikh Abdullah becoming PM of the Indian state of J&K.

*Sheikh Abdullah was arrested in 1953.

*The Kashmir Constituent Assembly confirmed the legality of the state's accession to India in 1954.

*The State's Constitution came into force on 26 January 1957.

For easy reading this essay is split into 10 parts. The matter covered in each part is given below. This includes answers to commonly asked questions on J&K.

The first part answers the following questions: Can Maharaja Hari Singh be accused of procrastinating on whether to join India or Pakistan? Why has India not held a plebiscite in J&K? Did the British provide tacit support to Pakistan in Pakistan-occupied J&K (POJK)/ Gilgit/Baltistan? Why was J&K important to Pakistan? What is the importance of Aksai Chin (a part of undivided J&K) to China? Can the Accession of J&K to India be reversed?

Part two focuses on answers to questions on article 370: Was J&K the only state to draft its own Constitution? Was Article 370 promised at the time of the signing of the IoA? If Article 370 is repealed, would J&K cease to be a part of India, as the National Conference and some separatist groups are claiming today?

Could Nehru have forced the state to merge with the Constitution of India like the other States? Could Nehru's government have cleared J&K of occupation by Pakistan? Is Article 370 a temporary provision? What are the provisions of Article 370 in brief? Is it correct to justify Article 370 by referring to the exclusive provisions of Article 371?



Part three seeks to answer questions on the first elections in J&K and Sheikh Abdullah's arrest in 1953: Was any Census conducted in 1951 before deciding the Electoral Districts? What was the basis for allocating seats between Jammu, Kashmir and Ladakh regions? What were the results of the 1951 elections? What about the 1952 agreement and Sheikh Abdullah's arrest? Why was Sheikh Abdullah arrested along with 25 others in 1953? What about the new Constitution and the 1957 elections?

Part four tells us about the order of 1954. It asks which parts of the Indian Constitution apply to J&K, and raises an important question on whether Article 35A forms part of the Constitution.

Part five talks about the laws which are not applicable in J&K. Does Article 370 prevent anyone from buying property in the state? What about women's rights in J&K!

Part six focuses on who is a Permanent Resident of J&K. What are benefits conferred to Permanent Residents and implications thereof?

Part seven talks of the population and delimitation of constituencies. What is the region-wise population since 1951? What are the comparisons of population and census numbers post-2001? Have assembly seats been manipulated to give Kashmir valley control of the legislature?

Part eight looks at lopsided development of Jammu and Ladakh. We also ask, why are some separatist leaders against the return of the Pandits to the Valley? Why are Kashmiri Pandits reluctant to return to the Valley? It also gives details of how residents of Jammu and Ladakh regions are discriminated against.

Part nine talks of the state's finances. We can look at questions like these: is the state of J&K discriminated against by the Centre? What do the state's budget numbers for the years 2009-10 to 2014-15 suggest? What is the break-up of Revenue Expenditure for the years 2009-10 to 2014-15?

Part 10 is a summary and conclusion and seeks to answer the question: Is there a solution to the Jammu & Kashmir, Pakistan would not be satisfied?

Accession: Some History

The State of J&K had an area of 2,22,236 sq km in 1947. Of this only 46 percent is in India's possession today; the balance is under forceful occupation of Pakistan and China (see table 1).

Regions	Sq Km*	% of 4	% of 8
1.Kashmir Valley	15,948	16	7
2. Jammu Region	26,293	26	12
3.Ladakh Region	59,146	58	27
4.State of Jammu and Kashmir	1,01,387	100	46
5.Pakistan Occupied J&K (Mirzapur, Muzzafarabad 13,297 sq km, Gilgit-Baltistan 64,817sq km)	78,114		35
6.Area ceded by Pakistan to China in 1963.	5,180		2
7.Forceful occupation by China	37,555		17
8.Area covered by Instrument of Accession	2,22,236		100

Table 1: Area ruled by Shriman Indar Mahander Rajrajeshwar Maharajadhiraj Shri Hari Singh Ji Jammu and Kashmir Naresh Tatha Tibet adi Deshahhipathi, Ruler of Jammu and Kashmir (King's title).

* http://www.jammu-kashmir.com/basicfacts/tour/figures_ii.html

Prior to partition in 1947, British rule over India comprised two separate categories of geographical regions. One comprised various provinces administered by the Viceroy of India (constituting more than 60 percent of the land area of the country referred to as British India). The other comprised provinces ruled by Maharajas, Princes, Nawabs, etc. There were 562 princely states of which 327 were petty states. All of these were collectively designated as "Indian States". For these states the British looked after the areas of defence, foreign policy and communications while they were allowed governance in internal matters such as law and order, civil liberties, health, education and economic development. The state of J&K was one of them.

On 20 February 1947, His Majesty's Government announced that British India would be-

come independent. Facing the state's rulers on 11 July that year, Lord Mountbatten, the Viceroy, said: "The Indian Independence Act releases the states on 15 August from all their obligations to the Crown. The states have complete freedom - technically and legally they are independent'. At a meeting held on 25 July 1947, Mountbatten advised the princes that they should accede to one of the two dominions, keeping in mind the 'geographical contiguity of their states', while surrendering power over three specified subjects, without any financial liability.

By 14 August, most states had signed the instrument of accession (IoA) – either with Pakistan or India.

On 12 August the Maharaja of Jammu & Kash-

mir proposed a Standstill Agreement with India and Pakistan on matters, pending (existing arrangements to continue) his final decision regarding the future of the state. Pakistan accepted this while India asked the Maharaja to send its representative for discussions. The Pakistan government then started putting pressure on the Maharaja on join Pakistan. It also started an economic blockade from Pakistan.

While the government was pleading special reasons for its inability to supply Kashmir with essential commodities, Dawn, the Muslim League's official organ, wrote on 24 August 1947, "The time has come to tell the Maharaja of Kashmir that he must make his choice and choose Pakistan". Should Kashmir fail to join Pakistan, "the gravest possible trouble would inevitably ensue." Pakistan had made its intent clear.

Q: Can Maharaja Hari Singh be accused of procrastinating on whether to join India or Pakistan?

A: The Maharaja is criticised for the delay in taking a decision on accession but "few have cared to ponder on the implication of the very first advice given by Lord Mountbatten to the Maharaja not to join any Constituent Assembly until Pakistan set up her own."

Hari Singh's words at the London Round Table Conference of 1931 give an idea of where his affinities lay. "As Indians and loyal to the land where we derive our birth and infant nature, we stand as solidly as the rest of our countrymen for your land; enjoyment of a position of honor and equality in the British Commonwealth of nations'. He also proclaimed in front of the British crown, "I am an Indian first and then a Maharaja". [Such statements did not endear him to the British.](#)

"Twice, in September 1947, the Maharaja offered accession to India on the condition that his reservations with respect to Sheikh Abdullah – then under arrest - be respected. On both occasions, Jawaharlal Nehru insisted that Abdullah be released to head a popular government. As Hari Singh did not accept Abdullah the initiative proved abortive"

Q: Why did Nehru dislike the Maharaja?

A: Briefly KS Bajwa wrote, "Abdullah launched the 'Quit Kashmir Movement' against Dogra rule. He was tried for treason and jailed for nine years on 20 May 1946. As a lawyer, Nehru wanted to represent Abdullah but was stopped as he crossed into the state at Kohala. Nehru never forgave Maharaja Hari Singh for this action. On account of Nehru's friendship with Abdullah the Maharaja did not trust Nehru."

Next, in October 1947, Jinnah's personal envoy, Maj Shah, came to meet the Prime Minister J&K, MC Mahajan, to negotiate accession. Mahajan asked for the blockade to be lifted but Jinnah refused pending a settlement of the accession issue. Failing in his efforts Shah warned of dire consequences. At that point, the Maharaja seemed tentative on his accession to India. Guruji Golwalkar, Sarsanghchhalak of the RSS, met the Maharaja on 17 October 1947 and later apprised Sardar Patel of his favorable attitude.

Meanwhile, some 5,000 Pathan tribesmen invaded the state on the night of 21/22 October; looting, killing and raping along the way. The Maharaja wanted the Indian Army to drive out the invaders for which he needed to sign the IOA. This he did on 26 October 1947 which was accepted the very next day by India's Governor General, Lord Mountbatten. Subsequent to Accession, Lord Mountbatten wrote a personal letter to the Maharaja saying "it is my government's wish that, as soon as law and order is restored in Kashmir and its soil cleared of the invader, the question of the state's accession should be settled by a reference to the people."

However, Pakistan refused to recognise this accession.

Critics argue that this stipulation made the accession conditional. "Justice AS Anand believes that this statement does not and cannot affect the legality of the accession which was sealed by India's official acceptance. This statement is not a part of the IOA. MC Mahajan, the former Chief Justice of India, observed thus: The Indian Independence Act did not envisage conditional accession. The Dominion's Governor-General had the power to accept the accession or reject the offer but had no power to keep the question open or attach conditions to it".

In the early hours of 27 October 1947 began an operation that had never occurred in the history of warfare before. On 7 November Indian troops won the battle of Shaltang, thereby removing all threats to Srinagar. Three days later, Baramulla was recaptured. The process of retreat by the enemy on all fronts began.

The Maharaja issued an order on 30 October 1947 appointing Sheikh Abdullah as the Head of the Emergency Administration. In November 1947 the government advised the Maharaja to appoint Abdullah as Prime Minister on the basis of a model adopted in Mysore. The National Conference leaders rejected the model and wanted power to be transferred to them without any reservations.

On 2 December 1947, Nehru wrote to Maharaja Hari Singh asking that Sheikh Abdullah be appointed as the Prime Minister of J&K and he should be asked to form the government. With this letter, Nehru took over the shaping of India's Kashmir policy so far played by Patel as Minister of States. On 5 March 1948, the Maharaja appointed an Interim Government with the Sheikh as Prime Minister.

The Indian Army soon realised that the only way to completely remove the raiders was by attacking their bases and sources of supply in Pakistan. On 22 December 1947, India warned Pakistan that unless Pakistan denied her assistance and bases to the invaders, India would be compelled to take such action.

At that critical stage, Lord Mountbatten urged Nehru about "the overwhelming need for caution and restraint". He stressed that "embroilment in war with Pakistan would undermine the whole of Nehru's independent foreign policy and progressive social aspirations."

On Mountbatten's advice, Nehru decided to lodge a complaint to the United Nations Security Council. That was done on 1 January 1949.

On 5 January 1949, the UN Commission for India and Pakistan proposed a resolution whereby the future of J&K would be determined by a democratic method of a plebiscite conducted by India under the UN's auspices but after Pakistan withdrew its troops from the state and dis-

banded its Azad Kashmir forces. India declared a ceasefire on 1 January and areas occupied by Pakistan were not recovered.

Q: Why has India not held a plebiscite in J&K?

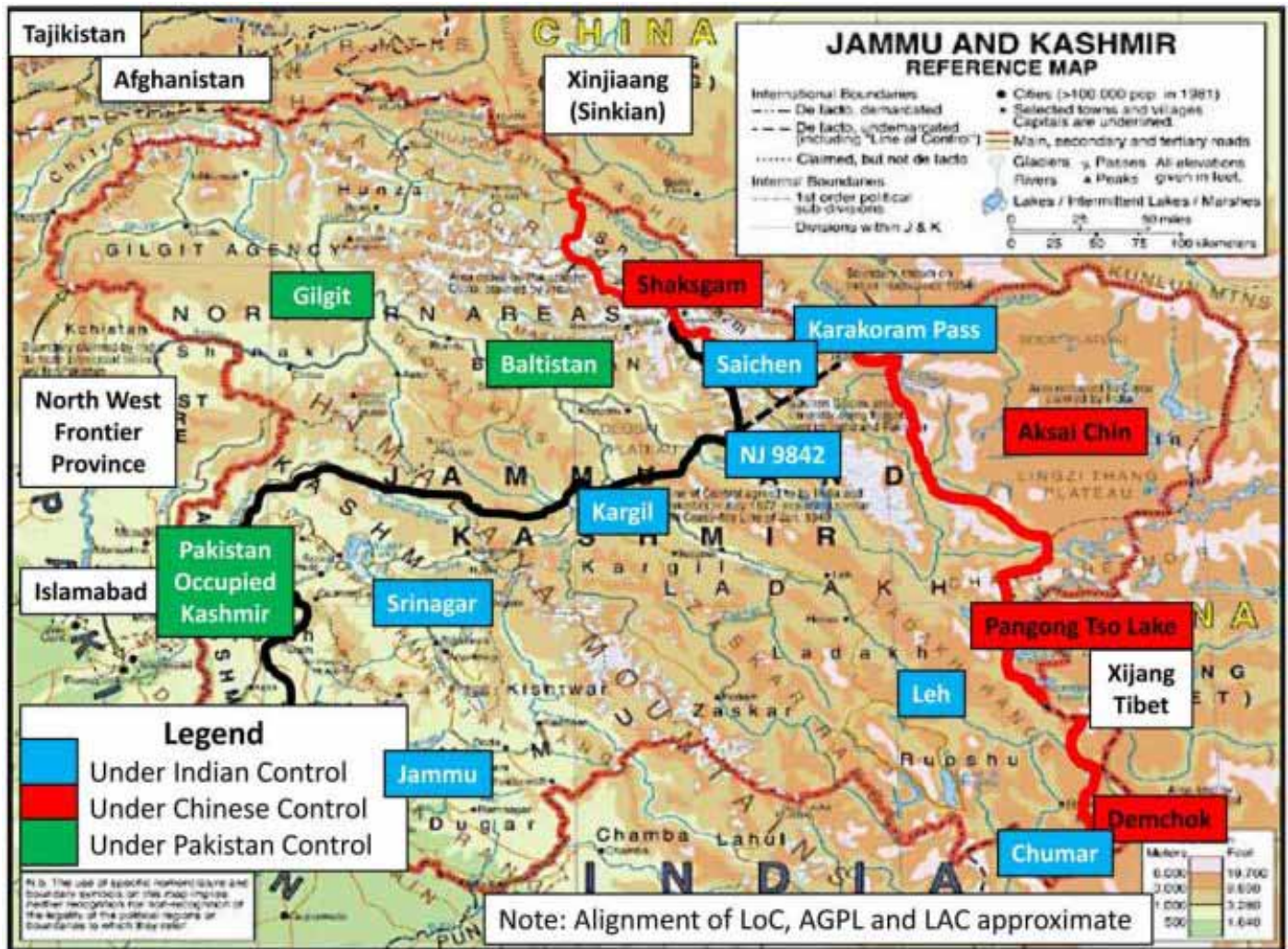
A: The UN resolution provides that Pakistan was to withdraw its troops from the state (Mirpur, Muzaffarabad, Gilgit and Baltistan (POJK)). Since Pakistan has not withdrawn its troops, India could not conduct a plebiscite. Note that the UN did not contest the accession of the princely state of J&K to India.

Also Lt Gen NS Malik wrote: "Similarly the so-called two-nation theory", under whose umbrella Pakistan was formed, applied only to British-ruled India and not the princely states, and hence a state being Muslim majority did not disqualify it from joining the Indian Union. (Note that Kapurthala in Punjab was a Muslim majority state). In the same context, a referendum in J&K is illegal as it was not agreed by the Muslim League to hold such referendums in princely states but left it to their rulers to accede to India or Pakistan, contiguity being a criteria for the same."

Note that Nehru's promise of plebiscite was made in his All India Radio broadcast of 23 December 1949. However, according to the former CJI, MC Mahajan, the IOA and the Indian Independence Act, 1947, of the British Parliament gave no legal or constitutional authority to Nehru or Mountbatten, the then governor general, to make that promise. Justice AS Anand presented a series of arguments to conclude, "This position brings one to the conclusion that to hold a plebiscite would be repugnant to the Constitution of India and J&K."

By the Simla Agreement of 1972 India and Pakistan decided to settle all differences by peaceful means through bilateral talks, and the ceasefire line in J&K would become the Line of Control.

Externally, India has not used law, international institutions and inherent strength to make Pakistan vacate POJK (Pakistan-occupied Jammu & Kashmir) and failed to shut out Pakistan's evil eye on J&K. Internally, the government has failed to do some plain speaking with the



Map 1 - Courtesy: University of Texas

separatist leaders and politicians of the Valley. Consistency in approach and firm attitude are missing.

Q: Did the British provide tacit support to Pakistan in POJK and Gilgit/Baltistan?

A: In order to secure its strategic interests post-Second World War, Britain initially, wanted J&K to go to Pakistan. But, Maharaja Hari Singh thwarted their intent by signing the IOA. Since then the British have tried to create doubts over J&K's accession. Brig Cheema wrote in Indian Defence Review (31 May 2014), "Apropos the tribal invasion by Qabalis (tribals) in October 1947, Pakistan was quick to prop up an 'Azad Kashmir' government in Muzaffarabad on 25 October, i.e. even before the Indians had militarily intervened in Kashmir (27 October). Around the same time, the strategic Gilgit-Baltistan region of North Kashmir had also been taken over through a clinical coup engineered by English officers favouring Pakistan".

Q1: Why was (or is) J&K important to

Pakistan?

A: Lt Gen NS Malik wrote: "J&K forms the head of the Indian sub-continent, and has been the traditional trade route of Central and South Asia to the East and Tibet, generally called the 'Silk Route'. It is bounded by more countries than any other state of India; in the North East with Tibet, and further North with Xinjiang province of China, in the North West with the Wakhan corridor of Afghanistan, in the West with the Khyber Pakhtunkhwa province and further South with Punjab of Pakistan. This geographic layout is strategically so important that no power of the world wants to remain away from the area, as it gives them access to the sensitive areas of the neighbouring countries".

Q2: What is the importance of Aksai Chin (a part of undivided J&K) to China?

A: The Sinkiang (Xinjiang) and Tibetan plateaus

constitute a wedge into the Himalayas and were considered by China to be a bulwark against Communist influence in Asia. They wanted to grab those areas that allowed it to establish roads between Sinkiang and Tibet. With the undetermined border between Soviet Turkestan and Sinkiang a source of friction and tension with Russia, China needed an effective line of communication with Sinkiang through Akshai Chin.

Lt Gen N S Malik wrote: “China is spending huge sums to build infrastructure through highways connecting Tibet to Xinjiang through the Chinese-occupied Aksai Chin plateau, and Xinjiang to Pakistan via the Karakorum highway through the Kunzreb pass. This highway then connects Gwadar port on the Arabian Sea, giving a warm water port and access to the

Indian Ocean to China. Its importance can be visualised in that China trade can avoid the bottleneck of the Malacca straits as also cuts down turnround to the interior provinces of China.”

Q: Can the Accession of J&K to India be reversed?

A: No. Clause 5 of the IOA reads, “The terms of this instrument of accession shall not be varied by any amendment of the Act or of the Indian Amendment Act, 1947, unless such amendment is accepted by me by an instrument supplementary to this instrument’. Further Section 3 of the state constitution that came into effect from 26 January 1957 says, “The State of J&K is and shall be an integral part of the Union of India”. Section 147 of the State Constitution says that this Section is not amendable.

The birth of Article 370

Notwithstanding the above events, J&K's accession to India was full and final. The IOA signed was similar to what was signed by other princely states which provided matters with respect to which the Dominion Legislature may make laws for the state, i.e. defence, external affairs, communications and ancillary.

Q: Was J&K the only state to draft its own constitution?

A: No. "It was accepted that the states and the Unions of the States would institute their own Constituent Assemblies to draw up the constitutions for their governments. The state ministry constituted a special committee in November 1948 to lay down broad guidelines for the Constituent Assemblies of the states and the Unions of the States such as they are not in conflict. The Committee drafted a model constitution for the State Constituent Assemblies to adopt.

However, the process of instituting the Constituent Assemblies in the States was slow and, except for the Saurashtra States Union, Travancore-Cochin and Mysore, Constituent Assemblies of the States were not convened. The Interim Governments instituted in the states faced several problems of integration and liberalisation and the convocation of the Constituent Assemblies was bound to take a long time.

To overcome these difficulties the Conference of the Premiers, in December 1949, decided not to wait for the institution of the Constituent Assemblies in the States and instead proposed to entrust the task of framing the state constitutions to the Constituent Assembly of India.

The draft provisions were then sent to Saurashtra, Travancore-Cochin and Mysore, where they were considered by the respective Constituent Assemblies of these states and accepted with minor modifications. The draft constitution was also sent to the other States and the Unions of the States for their consideration. All the State Governments accepted the draft provisions, except the Jammu and Kashmir State."

Key points: All princely states, including J&K, were asked to draft their own Constitutions. Draft provisions were considered by Constituent Assemblies of some states. Eventually all state governments accepted the draft constitution

barring J&K.

Q: Was Article 370 promised at the time of signing IOA?

A: No it wasn't. As stated earlier, signing of the IOA was unconditional. Further the draft Constitution of India presented to the Constituent Assembly for debate in February 1948 did not have Article 370. Therefore, Article 370 being promised in 1947 is a fallacy.

When Nehru sent Abdullah to explain to him the position and draft an appropriate Article, Dr Ambedkar said, "*Mr Abdullah, you want India should defend Kashmir, India should develop Kashmir and Kashmiris should have equal rights as citizens of India, but you don't want India and any citizen of India to have any rights in Kashmir. I am the Law Minister of India. I cannot betray the interest of my country.*" (Interview of Prof Balraj Madhok in the Organiser issue 14 November 2004). It was then that Nehru asked Ayyangar to draft Article 306-A.

The final Article 370 was Article 306-A in the draft Constitution of India which was placed before the Constituent Assembly on 17 October 1949. According to the Constituent Assembly Debates (India), Vol X No 10, Gopalaswami Ayyangar, minister without portfolio in Nehru's government (and former PM of J&K), made the following arguments in support for article 306-A:

"In the case of other Indian States, the IOA will be a thing of the past in the new Constitution; the States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of accession for becoming units of the Republic and, in the case of practically all States other than J&K, their constitutions have also have been embodied in the Constitution for the whole of India. It would not be so in the case of Kashmir as the State is

not yet ripe for this kind of integration due to the special conditions prevailing in Kashmir.

“In the first place there has been a war going on within the limits of J&K State - part of the State is still in the hands of the enemies, and in the second place, the Government of India, have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity will be given to the people of the State for decide for themselves the nature of their Constitution.”

It was discussed in the Constituent Assembly and thereafter formally added to the Constitution of India as Article 370.

Q: If Article 370 is repealed, would J&K cease to be part of India?

A: No. This was in the news after CM Omar Abdullah’s comment recently to this effect. The basis for J&K’s accession to India was the IOA and not Article 370. Justice AS Anand wrote, “This IOA was unconditional, voluntary and absolute. It was not subject to any exceptions. As such, it bound the State of J&K and India together legally and constitutionally. And so, regarding the legality of the accession in the judicial sense of the word there is no doubt.”

Q: Could Nehru have forced the State to merge with the Constitution of India like other States?

A: Yes, Nehru could have treated the princely state of J&K in the same way as other princely states. But it was Nehru who pushed for the installation of a government headed by Sheikh Abdullah as PM. Nehru’s friendship with Abdullah, their dislike for the Maharaja and India being under pressure in the UN eventually forced the Maharaja to abdicate the throne in favour of his 18-year-old son in June 1949. The situation changed thereafter.

Q: Could Nehru’s Government have cleared J&K of Pakistan occupation?

A: Lt Gen NS Malik wrote, “The Indian Army’s advance into present POK in 1948 was said to have been halted on the advice of Sheikh Abdullah to Nehru that the areas beyond were not

Kashmiris.”

Also, having taken the J&K issue to the UN. any attempt to force the State into a merger with the Constitution of India would have raised hackles abroad – and created a situation which the Indian government under Nehru was not temperamentally attuned to. Defence analyst K. Subrahmanyam wrote, “There is also the view that Nehru was anti-militarist in his orientation and, as an advocate of peace and non-alignment, neglected the role of military power in international relations”.



Q: Is Article 370 a temporary provision?

A: A reading of the Constituent Assembly Debates referred to above show that Gopalaswami Ayyangar had said that article is temporary in nature. He justified its existence on account of the special conditions prevalent then. Further Article 370 fell under the Constitution of India’s Part XXI called ‘Temporary and Transitional Provisions’ at the time of enactment of the Constitution.

Under a Constitutional Amendment of 1963, the word ‘Special’ was added to the previous title. Subsequent amendments were enacted as Special Provisions of one kind or another for various States under Article 371. However, Article 370 has continued as a temporary provision.

On 27 November 1963, Pandit Nehru confirmed on the floor of Parliament that he had earlier made the statement: “Article 370 of the Constitution would be eroded progressively.”

Labelled as a temporary provision with respect to J&K, Article 370 has now effectively become permanent.

Q: What are the provisions of Article 370 in brief?

A: The article states that the provisions of Article 238 (see next para) shall not apply to J&K. Further the essence of clauses (1)(b)(i) and (1)(b)(ii) is that laws of Parliament on matters in the Union List and the Concurrent List can be made for J&K only after 'consultation' with the State government (i.e., subjects mentioned in the IOA, namely Defence, External Affairs and Communication) or after 'concurrence of the State government depending on the subject matter of the law. (i.e. all other laws). The words 'consult' can be construed differently. In reality over 260 Central laws were given effect to in J&K after concurrence of the State Government.

Article 238 was meant to govern the constitutional relationship between the Union and princely States labelled as part B states. However, all States had accepted the Constitution of India while J&K wanted to frame its own Constitution. This article was deleted by the 7th Amendment Act, 1956, when the scheme of re-organisation of all States was done on the basis of language which meant changing the boundaries of existing states and abolition of the classification of the Part B states.

Q: Is it correct to justify Article 370 by referring to exclusive provisions of Article 371?

A: It is true that the Constitution makes Special provisions for Maharashtra, Gujarat, Nagaland, Assam, Manipur, Sikkim, Mizoram, Arunachal Pradesh and Goa. But the special provisions of these states are nowhere near the breadth and scope of the temporary provisions of J&K.

For example Article 371A deals with Nagaland. It stipulates that no act of Parliament on (i) religion or special practices of Nagas, ii) Naga customary law and procedure, including administration of justice under it, and iii) ownership and transfer of land and its resources would apply to the State unless the State Legislative Assembly so decides and so on. Article 371H for Arunachal Pradesh lays down that the strength of the assembly shall consist of not less than 30 members and confers special responsibility and discretion on the Governor in respect of law and order. Article 371-I lays down that the legislative assembly of Goa shall have a minimum of 30 members. Compare the scope of these special provisions with the temporary provision of J&K.

Note that India's opponents want to perpetuate special conditions in J&K so as to ensure continuance of Article 370 and prevent its integration with India. Just because 54 percent of J&K is not in India's possession, it can't be a reason for the Article to continue 64 years later!

First Elections in J&K & Sheikh's Arrest

On 1 May 1951, Yuvraj Karan Singh issued a proclamation calling for the establishment of the State Constituent Assembly (objective was to frame a Constitution for the State), consisting of representations of the people, elected on the basis of adult franchise, i.e. to say every person who is a State Subject of any class, on the first day of March, has been a resident in the constituency for such period as may be prescribed, shall be entitled to register in the electoral rolls of that constituency. The State shall be divided into territorial constituencies each containing a population of about 40,000.

Q: Was any Census conducted in 1951 before deciding the Electoral Districts?

A: No. The jurisdiction of the Election Commission was extended to the State only in 1962.

Q: What was the basis for allocating seats between Jammu, Kashmir and Ladakh regions?

A: The basis has never been explained. According to the 1941 census, the population of undivided J&K was 40.4 lakh. It was split into Jammu 20 lakh, Kashmir 17.28 lakh and Ladakh/Gilgit 3.12 lakh. Since the population size of each constituency was pre-determined at 40,000, it can be inferred that the number of seats was a simple calculation of population divided by 40,000. Out of 100 assembly seats, 25 were set aside for areas occupied by Pakistan, 43 went to Kashmir, 30 to Jammu and two to the Ladakh regions.

Key points: The 1941 census did not take into account the shift in population due to partition. (There was mass displacement in districts of Mirpur and Muzaffrabad, most of whom settled in Jammu). Since Jammu region had a higher population, why was the Valley given more seats?

By virtue of being allotted the largest number of seats, Kashmir has come to dominate J&K politics.

Note that parameters for deciding number of constituencies like geographical compactness, means of communication, etc, were not taken into account in 1951 since these were laid down in 1957. A further change in the number of constituencies for each region cannot happen till Census 2031 (more on this later).

Q: What were the results of the 1951 Election?

A: The National Conference won all 75 seats.

In case you wish to know how the elections of 1951 were conducted here is an article titled 'Fair elections or final solution' in GreaterKashmir.com by Chartered Accountant Abdul Majid Zargar. "The election history of J&K, right from day one, is replete with malpractices, rigging and manipulations. The first elections, meant to constitute the Constituent Assembly, were held in September 1951 and because of the electoral boycott, which even included Jammu's Praja Parishad (the latter day Jana Sangh, precursor to the BJP), 73 out of 75 members of this Assembly were elected unopposed. In two other seats - Habba Kadal and Baramullah – two independent candidates, Shiv Narian Fotedar and Sardar Sant Singh Giyani, challenged the official candidates of the National Conference. Both these non-Muslim candidates were dubbed as Pakistani agents and mauled and hauled to such a degree by the NC cadres and state machinery that they had to withdraw from the contest to save their lives. Noted jurist AG Noorani, wrote in The Statesman, that Sheikh Abdullah rigged the polls with merciless efficiency, drawing grateful applause from Nehru. Even India's intelligence Chief, BN Mullick, said, "Nomination papers of most of those who could form an opposition were rejected." ([Read more here](#))

Led by Pt Prem Nath Dogra, the Praja Parishad launched the Praja Parishad Movement against the gross manipulation of elections. But leaders in Delhi ignored their protests.

Those thus elected drafted the State's Constitution.

Since the 1920's one of the demands of Kash-

miris was protection from migrants who came from more prosperous neighboring states. This was one of the clauses of the 1952 Agreement referred to below.

Q: What about the 1952 Agreement and Sheikh Abdullah's arrest?

A: Even as the work of the J&K Constituent Assembly was going on, representatives of the Kashmir Government conferred with the Government of India to arrive at an arrangement that was later known as 'Delhi Agreement, 1952'. Its key features were:

- All powers other than those specified in the IOA stand vested in the State of J&K.

- Persons who have their domicile in J&K shall be regarded as citizens of India (not the reverse though), but the State Legislature was given power to make laws for conferring special rights and privileges on the 'State Subjects' in view of the notifications of 1927 and 1932: the State Legislature was also empowered to make laws for the 'State Subjects' who had gone to Pakistan on account of communal disturbances of 1947, in the event of return to Kashmir.

- The President of India commands the same respect in the State as he does in the other units of India.

- In view of the peculiar position in which the State was placed, the whole chapter relating to 'Fundamental Rights' of the Indian Constitution could not be made applicable to the State;

- It was accepted that for the time being, owing to the existence of the Board of Judicial Advisors in the State, which was the highest judicial authority in the State, the Supreme Court should have only appellate jurisdiction.

- The President was empowered to proclaim a general emergency in the State, in the event of external aggression, but the State delegation was averse to the exercise of such powers in case of internal disturbance. Article 352 was accordingly amended by the government of India.

- It was agreed that the application of Article

356, dealing with suspension of State Constitution and Article 360, dealing with financial emergency, was not necessary.

Thus, important issues conceded by the Indian government in the Delhi Agreement were residuary powers of legislation vested in J&K State rather than in the Centre, unlike other States. The State Legislature was also given power to confer special rights on persons who had domicile in J&K.

The motion of acceptance was moved in Parliament on 7 August 1952 in which Nehru used his brute majority to curb the voices of sharp opposition by eminent personalities like Dr SP Mookerjee and NC Chatterjee. Thereafter it was discussed in the J&K Constituent Assembly and approved on 21 August 1952.

Not before long Nehru wrote to Sheikh in September 1953, "To me, it has been a major surprise that the settlement arrived at between us should be by-passed, repudiated".

Q: Why was Sheikh Abdullah arrested along with 25 others in 1953?

A: They were charged with conspiracy to overthrow the duly Constituted Government of J&K, and facilitating the annexation of the State's territory by Pakistan. In his opening speech on 31 October 1951, Abdullah stated that one of the objectives of the Constitution Assembly was to discuss the future of the State, i.e. accession to India or Pakistan, or complete independence, notwithstanding clause 5 of the IOA, which implied that accession of J&K to India was final.

Further, Brig Amar Cheema wrote in *Indian Defence Review* (31 May 2014), "The Sheikh was to shift from his stance taken on plebiscite due to political expediency and in May, 1953, the National Conference set up an internal committee to capitalise on the uncertainty over the issue. In terms of the reference given to the committee, the option of independence was included for the first time and this was seen as treason by the Indian government. The relationship had travelled a full circle as, despite espousing the finality of the Kashmiri accession in the UN and the all-out support to the war effort, Sheikh Abdullah did a volte-face. By 1953, the honeymoon

was over and marked a watershed in the state's relationship with the Centre and (unnecessarily) placed the accession under a cloud. Rumour mills in Delhi speculated on the motive of the Sheikh's meetings with Mr Adlai Stevenson, the US Presidential candidate, in Srinagar and it was rumoured that he had sought US support for the independence of the state, in return of promising military bases in the state. The situation exacerbated after his meeting with Chinese Prime Minister Zhou Enlai at Algiers and the Sheikh was eventually arrested in August 1953, on charges of 'inciting communal disharmony; fostering hostile feelings towards India and treasonable correspondence with foreign powers.' ([Read more here](#))

Thus one year after Nehru's government granted huge concessions Sheikh, Abdullah was arrested on 9 August 1953. He was released in January 1958, but rearrested in April 1958, for allegedly making inflammatory speeches. The Kashmir conspiracy case came to an abrupt end and the Sheikh was released in 1964. He became the Chief Minister of the state following the 1974 Indira-Sheikh Accord and remained so till his death on 8 September 1982.

Q: What about the new Constitution and 1957 elections?

A: The new constitution of J&K became operational on 26 January 1957. It has 158 Sections, of which Section 3 says, 'The State of J&K is and shall be an integral part of the Union of India'. Section 5 says, 'The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India'.

Note that elections in 1957 were won by the National Conference led by Bakshi Ghulam Mohammed. Distribution of constituencies to the three regions was done in the same way as was done in 1951 even though the J&K Representation of Peoples Act 1957, dated 1 February 1957, was passed laying down the procedures/parameters for single member segments in the Legislature Assembly. Therefore, Kashmir Valley's control over the State Government continued (more on this later). The Congress party entered the electoral fray in 1967.

The order of 1954

On 15 February 1954, the Jammu & Kashmir Constituent Assembly, with Bakshi Ghulam Mohammed as CM, ratified the State's Accession to India.

The Constitutional Orders of 1950 and 1952 were superseded by the Order of May 1954 (which included terms related to the Delhi Agreement 1952 and Article 35A referred to later). After discussion in the Assembly various decisions were communicated to the Government of India for action. On 14 May 1954, the President of India (on the advice of the Council of Ministers, but without any reference to Parliament) issued an Order Constitution (Application to J&K) Order 1954, in which many significant exceptions and modifications were made in our Constitution with respect to the State.

As it now stands, this Order summarises the portions of the Indian Constitution that are applicable to J&K, and elaborates those provisions that are not extended to that State and those that are applicable to it with modifications.

The 1954 order was amended 42 times till 1994 with the concurrence of the State Government. What these amendments did was to grant several concessions to J&K.

The Constitutional Order of 14 May 1954 is carried as Appendix I and a restatement of modifications, etc, is listed as Appendix II in the Constitution of India. A major objection exists to including Appendix I&II under the title 'Constitution of India' since every such order is issued only as an executive order of the President of India under Article 370 and does not undergo the rigorous Parliamentary procedure set out in Article 368 (this article stipulates a detailed procedure involving both houses of Parliament, and in certain cases Legislatures of all States) relating to amendment of the Constitution.

Conversely, if the 1954 Order is deemed to be part of the Constitution of India then the Order was virtually a fraud committed on the Indian polity in so far as it was passed without consent from the requisite majority from Parliament, as required under Article 368. Thus, the 1954 Order issued by the President of India under clause (2) of Article 370 can be construed to be a Constitutional abuse of Article 370.

A 20 August 2014 *Hindustan Times* report states that an NGO filed a PIL in the Supreme Court challenging the validity of Article 35A.

It is for legal luminaries to decide whether the Constitutional Order of 1954 is part of the Indian Constitution and whether the President of India has powers to issue Orders making changes in the Constitution without going to Parliament!

Laws not applicable to J&K

1. The Indian Penal Code. Instead of IPC, the State has RPC, i.e. Ranbir Penal Code. Note that RPC does not permit cow slaughter.
2. Prevention of Corruption Act 1989.
3. The Religious Institutions (Prevention of Misuse) Act, 1988. This law prohibits religious institutions from allowing their premises for the promotion of political activity and their storing of arms and ammunition.
4. The Delhi Special Police Establishment Act, 1946. The legal powers of the CBI are derived from this Act. It means that J&K is outside the purview of CBI.
5. The Right of Children to Free and Compulsory Education (RTE) Act, 2009.
6. Political Reservation for Scheduled Tribes is not there in J & K in spite of their being 10.9 percent of the State's population (2001 Census).

The State has refused to accept the 42nd Constitutional Amendment by which the word 'Secular' became part of the Preamble in the Indian Constitution.

Some key Parliamentary Acts are applicable to J&K in part only.

1. Section 13D of The Representation of People Act, 1950, does not apply to J&K. It provides that 'the electoral roll of every parliamentary constituency shall consist of the electoral rolls of all assembly constituencies comprised within that parliamentary constituency'. The exception is required because Refugees from West Punjab who crossed over to J&K during partition are in

the electoral rolls for Lok Sabha but not State elections since they are not 'Permanent Residents'.

2. The Unlawful Activities (Prevention) Act, 1967 empowers the Central Government to ban any combination or body of individuals that act in a manner intended to bring about cession or secession of Indian Territory or to disrupt the sovereignty and territorial integrity of India, etc. Any activity under section 153-A (promoting enmity between different groups on grounds of religion etc, or 153-B (refers to 'Imputations, assertions prejudicial to national integration') of the IPC is defined as unlawful. However, activities falling under these two sections are excluded from the purview of this Act since IPC is not applicable to J&K.

Key articles of the Indian Constitution which are not applicable to J&K

1. Article 31 C with respect to Directive Principles of State Policy.
2. Articles 36-51 relates to Uniform Civil Code.
3. Article 51A lays down fundamental duties of every citizen of India.
4. Article 219 that stipulates the text of the oath or affirmation by High Court judges before assuming office.
5. Article 332 which deals with reservation of Scheduled Castes/Tribes seats in the State Legislature.
6. Article 360, which empowers the President of India to make a Proclamation of Financial Emergency, if the situation so warrants.
7. Article 365: Failure of any State to comply with directions given by the Centre makes it lawful for the President of India to believe that a situation has arisen in which the State cannot be administered in accordance with the provisions of the Indian Constitution.

"The beneficial laws such as Wealth Tax, Gift Tax and Urban Land Ceiling Act and intermarriage with other Indian nationals do not operate in J&K State'. The Service Tax Act is not applicable; J&K levies its own Service Tax."

The J&K Assembly is for six years (as per the 16th Amendment Act 1977) unlike the rest of India where it is for five. Also, a Constitutional Amendment of 2003 that puts a ceiling on the strength of the Council of ministers in states

at 15 percent of the strength of the house is 30 percent for J&K.

Every legislator and judge, including the Chief Minister and Chief Justice, is required to swear by the Constitution of the State and not that of India.

'No part of the State of J&K can be disposed of as a result of an international agreement without the prior consent of the State Government'. It implies that the Central Government's hands are tied in case a settlement with China involves the ceding of (parts of) Aksai Chin (Chinese occupied J&K).

There are many anomalies, like the Chief Election Commissioner of India is appointed by the President under Article 324 of the Constitution. His appointment for J&K and exercise of jurisdiction must be under the laws of the State. Note that J&K members of Parliament can express opinions on Parliamentary laws introduced relating to India but the laws exempted, fully or partly, from application to J&K are not amenable to discussion by Parliament.

Lt Gen NS Malik wrote that Article 370 had made "J&K psychologically and physically different and separate, thus hindering its effective integration into the Indian Union."

So what these provisions have done is to create a State that is heavily dependent on the Centre for funds where Parliament is unable to pass laws as it can do for other States.

In 1950, the situation was a bit complicated. J&K was facing the heat of a war supported and abetted by Pakistan which had forcefully occupied vast territories of the State. We were entangled in the UN and the promise of plebiscite was made there. But sixty-four years later the situation has changed! Or is instability in and non-integration of J&K with India supported by those powers who want India to be on the edge and keep its army perpetually under pressure.

Q: Does Article 370 prevent anyone from buying property in the State?

A: Restrictions to buy property flow from the authority that Article 370 gives to the issuance

of executive orders exempting or modifying provisions of Parliament's laws or the Indian Constitution in respect of J&K. Armed with the provisions of Article 35A, the State Constitution confers certain benefits to Permanent Residents, one of which is the exclusive right to buy immovable property. The definition of permanent residents is restrictive, will be discussed later.

Some seek to justify this restriction by saying the State government is following a law laid down by the Maharaja, in 1921, that was introduced to prevent Punjabi Muslims, of what eventually became Pakistan, from buying property in the Valley. The reason is irrelevant today. Others argue that the neighbouring state

of Himachal Pradesh too has restrictions on outsiders buying land. However, the provisions are nowhere near the breadth and scope of what exists in J&K.

Some suggest that if the J&K Government continues with restrictions on purchase of property, similar restrictions should be imposed on citizens of J&K who own property and businesses in India. For example, Sahil Peerzada, whose fiancé was allegedly involved in a 2012 IPL scandal, is a Kashmiri businessman based in Mumbai with interest in real estate and apparel. According to a *Times of India* report (23 May 2012) the family has a net worth of Rs 3,000 crore.

Women's Rights

Article 370 has also indirectly provided a means to violate the social, legal and property rights of local permanent women residents.

Women from out of J&K who do not hold a permanent resident (PR) certificate get one on marrying men from the State. Children born from such a marriage get full citizenship rights in J&K. The opposite is not true. When a woman marries a man who does not hold a PR certificate she is no longer a Permanent Resident; if employed with the State Government her services are terminated.

Women approached the courts for justice. A three-judge bench passed an order on 7 October 2002, that the “daughter of a permanent resident of the State of J&K will not lose status as a permanent resident of the State of J&K on her marriage with a person, who is not a permanent resident of the State of J&K.”

Interestingly, there is no provision in the Notification I-L, dated 20 April 1927, or in the Constitution of J&K, that on marriage with a non-permanent resident, the daughter of a permanent resident will lose her status as a permanent resident of the State.

Today, women of the state marrying outsiders continue to be State subjects after marriage, and retain property in their names, but the same cannot be transferred to their heirs. The late Sunanda Pushkar had recently lamented that State Laws did not allow property owned by her to be transferred to her son.

How long will J&K continue to deprive its women of equal rights?

Post the 2012 Delhi gang-rape case, Parliament passed the Criminal Law (Amendment) Act, 2013, which again excludes J&K. It is not known if the draft Bill, 'Jammu and Kashmir Criminal Laws (Amendment) Bill, 2013, is passed by the State Legislature and notified in the Official Gazette.

Who is a permanent resident of J&K?

“In accordance with the agreement between the representatives of India and Pakistan, that the

State Legislature would have the power to make special provisions for the ‘permanent residents’ it was deemed necessary that some provisions be made in the Constitution to cover that case. Accordingly, Article 35-A was inserted by section 2 (4) (j) of the Order, 1954.”

Article 35A was issued under Constitution (Application to J&K) Order of May 1954, even much before the Constitution of J&K came into existence (1956). It must be noted that Article 35 A was added in the Constitution of India without any amendment but through an executive order implying that it was not subject to the scrutiny of Parliament. It appears to be part of our Constitution and comes at the end under Appendix as ‘As Constitutional (Application to J&K) Order, 1954’.

It is under the provisions of Article 35A that J&K could incorporate provisions that discriminate between people of other Indian States and its own.

It reads, **‘Saving of laws with respect to permanent residents and their rights.**

Notwithstanding anything contained in this Constitution, no existing law in force in the State of J&K and no law hereafter enacted by the Legislature of the State -

- a. defining the classes of persons who are, or shall be, permanent residents of the State of J&K or
- b. conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions as respects -
 - i. employment under the State Government;
 - ii. acquisition of immovable property in the State;
 - iii. settlement in the State; or
 - iv. right to scholarships and such other forms of aid as the State Government may provide shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provisions of this part’.

Thus persons who are not Permanent Residents cannot purchase immovable property, are denied employment with the State Government, right to scholarships and such other forms of

aid as the State Government may provide, are disqualified from being a member of a village panchayat and cannot vote in the State Legislature Assembly elections.

Armed with the provisions of Article 35A, the above provisions were sanctified in the J&K State Constitution in November 1956, with five sections therein dealing with the entity called 'Permanent Residents'. Section 6 of the State's Constitution reads:

1. Every person who is or deemed to be a citizen of India under the provisions of the Indian Constitution shall be a permanent resident of the State, if on the 14 May 1954:
a) he was a State Subject of Class I or the Class II; or
b) having lawfully acquired immovable property in the State, he had been ordinarily resident in the State for not less than ten years prior to the date.

2. Any person, who, before the 14 May 1954, was a State Subject of Class I or II and who having migrated after the 1 March 1947, to the territory now included in Pakistan returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on return be a permanent resident of the State. 'This provisio exempts permanent residents of the State from the formalities of Article 6 of the Constitution of India'.

'The definition of 'State Subject' of Class I, II, III was set out in the State Maharaja's Notification of 20 April 1927 read with the Notification of 27 June 1932. It was based on the criteria of year of birth in the State, on the period of permanent resident in the State and on the acquisition of immovable property in the State'. These definitions came into being because during the rule of Maharaja Pratap Singh (1885-1925) there was a huge outcry due to the appointment of a large number of western educated men from neighboring states in Kashmir. The agitation was so strong that the Maharaja was forced to issue an order that 'State Subjects' would be preferred to outsiders in cases of Government employment hence the definition of State Subject in 1927.

In the monarchical system of governance prevalent in the twenties, the Maharaja of J&K may

have justifiably disregarded today's norms of democratic equality in order to offer special treatment to certain subjects in order to protect them from being economically exploited by their well-to-do neighbours. Are these laws



defensible on grounds of equality in a sovereign democratic republic like India or on the ground of preventing some imaginary economic exploitation in a State that is an integral part of India? It is also not the case that the poverty levels in J&K are higher than other parts of India; they are actually much lower.

The definition of Permanent Resident violates the Preamble of the J&K Constitution which reads 'Equality of status and of opportunity, and to promote among us all'.

With the blessings of Article 35A, the J&K State Legislature enacted laws that confer benefits on Permanent Residents. The implications of Section 6 are:

One, over 2.5 lakh refugees from West Pakistan (mostly Hindus and Sikhs belonging to Schedules Castes) who crossed over to J&K after 1944 but before 1954 were denied Permanent Resident Certificates.

The Government of India has, on the other hand, permitted the setting up of Rohingya Muslim camps in Jammu city. Sooner than later they will become Indian citizens! Also 'the Sheikh Mohammad Abdullah-led Government in the State granted citizenship rights to numerous Uighur Muslim families in 1952 and settled them in the Eidgah area of Srinagar with full citizenship rights. The Uighur Muslims migrated from Xinjiang province of China to escape Com-

munist Beijing's wrath.' Why double standards?

Two, these refugees can vote in Parliament but not in Assembly and Local body elections.

Three, these refugees are mostly Hindus and reside in Jammu region. If they are allowed to vote the number of voters in the region would increase and support claims for an increase in number of Assembly seats. This would eventually weaken the control Kashmir Valley has over the State legislature.

Four, these refugees can't apply for jobs in the State; their children can't get higher education in the State, and are disqualified from being a member of a Village Panchayat.

Five, clause two is open to severe abuse. Does the State have a record of state subjects as described in 1947 and how does one prove that a resident of J&K has migrated to Pakistan after 1 March 1947.

Six, it is the State Government (whose relations with the Centre have been mostly volatile) which shall decide if the person is entitled to return under a scheme of resettlement. Such a

person automatically becomes a citizen of J&K and India. 'It will be observed that in this respect the State Legislature acts as a delegate of the Union Parliament'.

Seven, what are the legal and administrative safeguards to ensure that Pakistanis do not use this law to settle in India as ISI Agents or to effect demographic changes in the Valley or predominantly Hindu Jammu, not to forget the rest of India?

Eight, since one of the parameters for deciding the number of seats in the State Assembly is population in the respective regions; it opens a window of opportunity to the Valley's Muslims to increase the population (see actual census/voter numbers later) so as to retain more seats for the Valley (46) as compared to Jammu (37).

The provisions of article 35A have serious national security implications. The Government of India has abdicated responsibility on a matter over which it should have primary control.

Some have suggested that one way to promote J&K's integration with India is to repeal Article 35A.

Population and delimitation

Apart from Valley Muslims, Jammu has a predominantly Hindu population while Ladakh has a mix of Buddhists and Muslims. See table 2.

	1961	1971	1981	2001	2011+
1. Jammu Region1 (000)	1572	2076	2719	4430	5378
2. Followers of Indian Religions%	62	66	73	69	69
3. Ladakh Region2 (000)	90	105	133	237	275
4. Followers of Indian Religions%	54	53	54	52	53
5. Kashmir Valley3 (000)	1899	2436	3135	5476	6888
6. Followers of Indian Religions%	5.6	6	5	2.8	3
7. Total State Population	3561	4617	5987	10143	12541
8. Total Indian Religions %	32	34	36	33.9	32.3

Table 2: Population of J&K Region and Religion Wise*

*Religious Demography of India by Dr M D Srinivas, A Joshi and Dr J K Bajaj.
+2011 numbers from Census.

A scrutiny of the above figures reveals that the population difference between Kashmir and Jammu regions has been increasing, especially since 2001. The difference was 3.27 lakhs in 1961, 4.16 lakhs in 1981, 10.46 lakhs in 2001 (inspite of lakhs of followers of Indic Religions moving out of Kashmir in the 1990s) and 15.10 lakhs in 2011.

If we were to compare population in absolute numbers between 1981 and 2011, population in Jammu increased by 26.59 lakhs whilst that of Kashmir by 37.53 lakhs. Keep in mind that the population of Jammu increased by over three lakhs due to migration from the Valley, so the effective increase in the Valley's population is 13.94 lakhs. The numbers surprise, considering that Jammu has an area of 26,293 sq km while Kashmir has 15,948 sq kms.

Since 1981, the percentage of followers of Indian religions (i.e. Buddhists, Hindus, Sikhs and Jains) is falling.

Without subscribing to any conspiracy theory

how much of the increase in population was because of those who crossed the border under the Resettlement Plan or inflated figures is anyone's guess. The Valley does not want to let go of control of the State!

Another piece of interesting analysis is comparing population with number of voters.

Between 2001 and 2011 the State's population went up by 23.6 percent whilst the number of voters between 2002 and 2014 has gone by 14 percent.

Population in Kashmir between 2001 and 2011 went up by 14.12 lakhs (25.8 percent) whilst increase in number of voters between 2002 and 2014 was also 24.7 percent (7.12 lakhs). Corresponding figures for Jammu are 21 percent and 5 percent.

In 2002 Jammu region had 30, 26,493 voters as against 28,84,852 voters in Kashmir. Thereafter, the number of voters in Kashmir has steadily increased whilst those in Jammu increased only marginally. Note that in 2002, the number

Region	2001 Census	2011Census	2002 Assembly	2008 Assembly	2014 Lok Sabha Voters
Kashmir	54.76	68.88	28.85	32.63	35.97
Jammu	44.30	53.79	30.26	31.15	31.76
Ladakh	2.37	2.74	1.74	1.59	1.60
Total	101.43	125.41	60.85	65.37	69.33

Table 3: Census vs. Number of Voters (Numbers in Lakhs)

of voters in Jammu was more than Kashmir by 1.41 lakhs; in 2014 Kashmir exceeds Jammu by 4.21 lakhs, i.e. a swing of 5.67 lakhs. Considering Jammu has an area of 26,293 sq km and Kashmir 15,948 sq km, the increase in the number of voters raises doubts of manipulation!

Delimitation literally means the process of fixing limits or boundaries of territorial constituencies in a country or a state that has a legislative body. The job of delimitation is assigned to a high power body known as Delimitation Commission. In India, such a Commission was constituted four times – in 1952, 1963, 1973 and 2002. The Delimitation Act 2002 provided that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the number of seats in Parliament or State Legislatures. The 2002 Delimitation Act does not apply to the state of J&K.

A quick recap. At the time of delimitation for elections to the Constituent Assembly in 1951, 100 members of the assembly were assumed with 25 for POJK areas, 43 seats for the Valley, 30 for Jammu and 2 for Ladakh. Even after the J&K Representation of Peoples Act 1957, dated 1 February 1957, was passed laying down the procedure/parameters for distribution of single member segments in the legislative Assembly, the MLAs were distributed in the same way as they were in 1951. Note: no census was conducted in 1951 before deciding electoral districts.

‘The J&K Representation of People Act 1957 does not lay down population as the only criteria. It lays down a) Geographical Compactness (distribution of people in the valley is compact as compared to Jammu and Ladakh regions; b)

Nature of Terrain (Jammu region has not more than 25 percent plain terrain while the Valley has 75 percent; c) facilities for Communication (percentage of area covered by roads in Valley was almost 2.5 times); d) similar factors.’

A look at the table below shows that in 1951 there was one MLA per 39,790 people in Kashmir and 48,700 in Jammu region. See table 4. In the 2002 Assembly polls, the number of voters per Assembly seat was 62,717 in Kashmir against 81,783 in Jammu. Corresponding figures for 2008 were 70,924 and 84,189. Assembly seat per sq km is 347 for Kashmir and 710 for Jammu.

Writing to the Delimitation Commission in 1989, Prof Chaman Lal pointed out that Kashmir Valley had 81 percent plain area as against 13 percent of Jammu. Also, according to the Report of the Task Force on development of Jammu and Kashmir (constituted by PM in 2006), Jammu had road length of 4,571 km (1987, approx 3,500 km) for an area of 26,293 sq km. Corresponding figures for Kashmir were 7,129 km (1987, approx 4,900 km) and 15,948 sq km.

Therefore, on account of most of the parameters laid down in the J&K Representation of People Act, Jammu region should have got more assembly seats, may be atleast 45 as against 38 to the Valley! ‘Such distribution is supported by the provisions in Section 50 of J&K Constitution, i.e. 14 elected members in the Legislative Council from Jammu region and only 12 MLCs from Kashmir Region.’

Therefore, it is not clear what was the weightage given to each criteria to arrive at 46 seats for Kashmir and 37 for Jammu. The whole process is shrouded in mystery. There is thus merit in

	<i>Assembly 1952</i>	<i>Seats 1995</i>	1951	1971	1981	2001	2011
1. Total	75	87	3,254	4,617	5,987	10,143	12,541
2. Kashmir Valley	43	46	1,711	2,438	3,131	5,476	6,888
3. Ladakh Region	2	4	82	101	132	237	275
4. Jammu Region	30	37	1,461	2,078	2,724	4,430	5,378

Table 4: Population of Jammu and Kashmir (Numbers in thousands)

Source: *Religious Demography of India* by Dr M D Srinivas, A Joshi and Dr J K Bajaj. 2011 data from Census site

the people of Jammu's complaint that Kashmir has got an excessive share of representation in the Assembly which has allowed it to dominate the State.

A look at the Census table above indicates an increase in the number of voters in Kashmir since 2002. It might be a move to counter a demand by Jammu region for an increase in seats.

It is worth mentioning here that the UPA allowed the setting up of Refugee Camps for Rohingya Muslims (thrown out from Myanmar and Bangladeshi in origin) in India. Of the three camps, one is in Jammu city, a predominantly Hindu region. There are approximately 6,000 refugees in the city. Sooner than later they will get the right to vote and shall contribute to changing demographics. Ironically, they were not settled in Muslim majority Kashmir!

'It was due to the Kashmir Valley centric attitude that even the Delimitation Commission constituted in 1981 (for the first time after 30 years) was dragged on till April 1995 after which the whole process was rushed through without applying the parameters laid down in the Representation of Peoples Act 1957 and the signals that emerged from the proportion of elected MLCs in Legislative Council (14 for Jammu and only 12 for Kashmir region).

But in total disregard to this, Justice K Gupta of the Delimitation Commission ordered in 1995 only 37 (previously 30) MLAs from Jammu and 46 (previously 43) MLAs from the Valley and

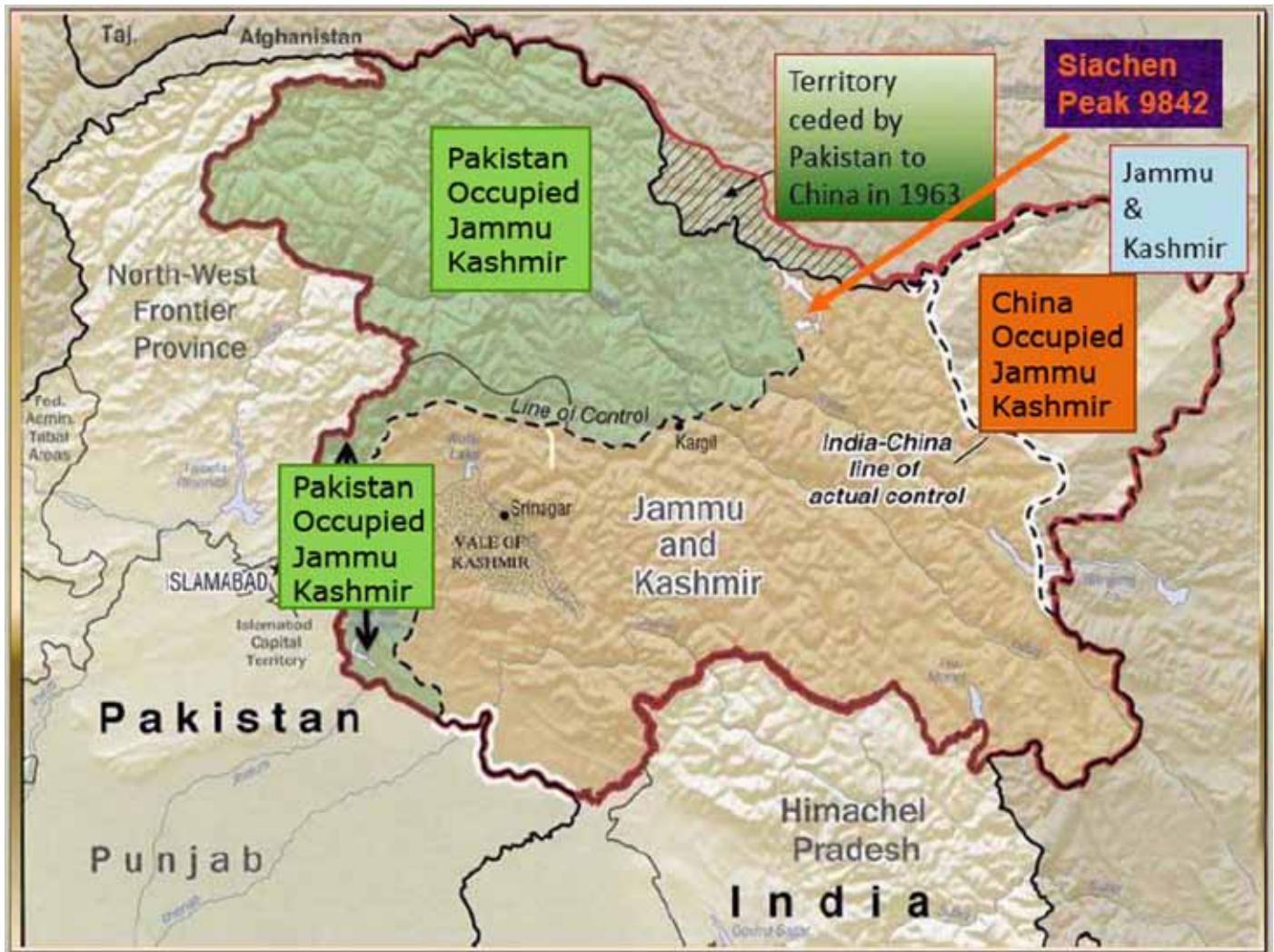
Ladakh 4 (previous 2)'. Note that post-1990 there was mass migration of Kashmiri Hindus to Jammu region, which means the Valley population reduced.

'The Nation would like to know' the basis on which the Demilitation Commission took its decision.

The Representation of People Act of India lays down only population as the basis for determining the number of constituencies. Is it necessary, even 64 years later, to follow such a complicated model of determining constituency numbers in J&K.?

After the last Delimitation was done, the government of India (GoI) laid down that the number of MPs would be reviewed only after 2026. Taking advantage of this the National Conference State Government (when it had a two-thirds majority in the Assembly), amended Section 47 (3) of J&K Constitution laying down that 'Upon completion of each census, the number, extent and boundaries of territorial constituencies shall be readjusted by such authority and in such measure as the Legislature may provide – Provided until the relevant figures for the first census taken after the year 2031, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of the State'. The last census was completed in 2001 and the delimitation done in 1995. [The Supreme Court upheld the freeze on](#)

Map 2: below shows the area of Kashmir Valley. Note, the area is so small compared to the total area of J&K but the people of the State and India are held hostage to the thoughts of those who reside there.



Source: Mapsofindia

delimitation till 2026.

What this amendment, later confirmed by a Supreme Court order, has done is to ensure that the Valley continues to have 46 seats in the State Assembly as against 37 by Jammu and 4 by Ladakh. The voice of the underserved regions of Jammu and Ladakh shall continue to be suppressed. Importantly, it will ensure that the current provisions of the J&K State Constitution continue till at least 2031.

Without going into the basis of the Apex Court order postponing the next delimitation till at least 2031, it is clear that the Valley's domination over J&K will continue.

A Delimitations Commission cannot be constituted till 2031 unless a Bill is passed in the J&K Assembly to undo the ban by the 29th Constitutional Amendment to section 47 of the J&K

Constitution.

The purpose of related State laws and election is one: J&K must be controlled by the Kashmir Valley.

Unfortunately, most sections of the media and the Government are obsessed with Kashmiri speaking Sunni Muslims residing in the Srinagar Valley. For example, in May 2014 there was a programme to discuss Article 370 on a TV channel. Present were former diplomats, a PDP MP an economist from Kashmir, and journalists, among others. Like many programmes held before, the channel did not solicit the views of Shia Muslims, Buddhists and Muslims from Ladakh, Dogras, Pandits, Gujjars, Sikhs, Paharis, Rajputs and Bakarwals, all of whom resent domination by the Valley.

Lopsided development of Jammu and Ladakh

District	Land Area sq kms	Road Length kms
A.Jammu (total 1 to 6)	26,293	4,571
1.Erstwhile Doda	11,691	613
2.Poonch	1,674	217
3.Udhampur	4,550	719
4.Rajouri	2,630	511
5.Kathua	2,651	782
6.Jammu	3,097	1,729
B.Ladakh (total 7 to 8)	59,146	1,840
7.Leh	45,110	1,164
8.Kargil	14,036	676
C.Kashmir (total 9to14)	15,948	7,129
9.Erstwhile Anantnag	3,984	1,328
10.Erstwhile Pulwama	1,398	878
11.Srinagar	2,228	1,425
12.Budgam	1,371	1,122
13.Baramullah	4,588	1,553
14.Kupwara	2,379	823
Total A+B+C	1,01,387	13,540

Table 5: Data gathered by Task Force on Roads in Jammu District*

*(Development of Jammu and Kashmir Growth Generating Initiatives, Government of India, New Delhi, November 2006, p. 14).

The feeling of being discriminated against has existed since 1951 when the number of legislators was first decided in favour of Kashmir. There are other reasons as well.

According to Prof Hari Om of Jammu University, ‘information tabled on the floor of the Assembly in 2007 (indicated) that the unemployment rate in Kashmir was less than 30 percent vs 69.75 percent in Jammu. The report also indicates that employees from Kashmir dominate the 1,715 employees of the civil secretariat, which includes gazetted, non-gazetted and fourth class employees. There were 199 gazetted officers, of which the share of Jammu was 41 percent. Non-gazetted officers were 1,041, in which the share of Jammu was 26 percent. Fourth class employees were 363 in number, and share of Jammu was 29 percent.

Roads are the lifeline of any region or state. The figures, as contained in the Report of the Task Force on development of Jammu and Kashmir (constituted by the PM in 2006), show the extent to which the State Government has focused on the Valley. See Table 5.

The numbers speak for themselves. Kashmir has 15.7 percent of the State’s land area and 52.7 percent of the roads. Ladakh has only 1,840 km – the sensitive border area needs urgent attention.

Coming to revenues, Jammu region contributes substantially to treasury. Sales tax realised in J&K from 1975-2007 was Rs 3,550 crore, of which Jammu contributed 70 percent. (J&K Planning Department papers).

People in Jammu believe a larger percentage of Government expenditure is in Kashmir. For example, everyone from Jammu working with the Public Health Engineering (PHE) Department under the Community Participation Scheme (CPS) got a monthly wage of Rs 500. The corresponding figure for Kashmiri was Rs 2,100.

Next is the share in the state’s professional colleges, including medical and dental colleges. A scrutiny of the MBBS/BDS selection lists of the last 27 years reveals that the Jammu’s share in the state’s medical colleges dwindled from 60 percent in 1990, 52 percent in 1991 and 17 percent in 1998. In 1995, the share was 41 percent

(*Report of the Committee set up by the Government of Jammu and Kashmir, January 13, 1999, pg 4*). Between 1998 and 2008, the share of Jammu in these colleges remained almost the same, and sometimes even less. There is thus, an urgent need to revise the existing admission policy’.

Treatment of the people of Jammu and Ladakh violates the Preamble of the Constitution of J&K which seeks to secure for its citizens ‘Equality of status and opportunity, and to promote among us all’.

STs too are unhappy. Choudhary Anwar Husain, advocate and leader, Gujjar United Front, has said (*The Tribune 3 December 2013*) that “Abrogation of Article 370 will help the STs to get direct benefits of various schemes meant for them.” ([Read similar views here](#))

The Ladakhis are unhappy too! Below are excerpts from interview given by Thupstan Chhewang, Chairman, Ladakh Hill Development Council, in 2002 ([Rediff.com](#)). ‘Ladakh was an independent kingdom till 1836, when it was invaded and annexed to the Dogra state of Jammu. In 1947, when India was granted independence, we were part of the principality of J&K. It is how we became part of the Jammu and Kashmir state. At the time of partition, the people of Ladakh approached the Maharaja and later (in 1949) they approached the Indian Prime Minister with the same demand: we do not want to be part of J&Kashmir state. We wanted Ladakh to be directly administered by Delhi. We already had an apprehension that Ladakh would be discriminated against by the Kashmiris and it has happened now for the past 40 years. At that time already, our leaders had asked that Ladakh should be considered as a separate unit, but once the Kashmir issue became an international issue, we have been used as scapegoats. ([Read the full interview here](#))

If the J&K State Government believes it is being maligned, they should publish a white paper which gives revenue and expenditure, separately for Kashmir, Jammu and Ladakh regions, for the past 20 years.

Q: Why are some separatist leaders against the return of Pandits to the

Valley?

A: By virtue of the Valley being nearly 100 percent Muslim, votes go to either the National Conference or the PDP. So the domination of Valley Muslims (Sunnis) continues. Gujjars, Paharis, OBCs and Pandits are likely to vote for neither and may vote BJP (which emerged as the largest party in the State during the last Lok Sabha elections) along with Shias. If BJP wins a couple of seats, plus a larger number in Ladakh and Jammu, where people resent domination

by the Valley, it could break the domination of the NC and PDP enjoyed since 1951.

Q: Why are Kashmiri Pandits reluctant to return to the Valley?

A: Before asking Pandits to return we have to address the reasons why they were expelled from the Valley. The Pandits will feel secure when those responsible for the killings and rapes of 1990 are convicted.

State finances

	09-10Act	10-11Act	11-12Act	12-13Act	RE13-14	BE14-15
1.State Revenue						
Tax	3,027	3483	4745	5833	6820	7496
Non-tax	955	1093	2002	2160	3400	3561
2.Share of Central Taxes	1,915	3067	3495	3870	4514	5191
<i>State Revenue 1+2</i>	5,897	7,643	10,242	11,863	14,734	16,248
3.Grants from Centre	11,691	14,592	14,541	14,354	16,493	22,973
4.Revenue Receipts (1to3)	17,588	22,235	24,783	26,217	31,227	39,221
5.Revenue Expenditure	15,324	18,467	22,680	25,117	27,617	32,948
6.Revenue Surplus (4-5)	2,264	3,768	2,103	1,100	3,660	6,273
7.Reveue Deficit i.e. Surplus less Grants from Centre 6-3	(9,427)	(10,824)	(12,438)	(13,254)	(12,833)	(16,700)
8.Capital Receipts	4,751	3334	4,785	5,560	5,062	4,322
9.Capital Expenditure	7,015	7,102	6,888	6,660	8,672	10,595
10.Total Receipts (4+8)	22,339	25,569	29,568	31,777	36,289	43,543
11.Total Expenditure (5+9)	22,339	25,569	29,568	31,777	36,289	43,543

Table 6: Overview of State Budget (Rs crore)

Data from State Budget documents. RE stands for revised budget. BE stands for budget estimates.

The Chief Minister of J&K, Omar Abdullah, admitted (The Times of India, 8 September 2013) that J&K's annual income is Rs 6,500 crore while the State's annual liability on staff salaries is Rs 13,500 crore. The state's annual income is way behind the salaries of the State, forcing it to be totally dependent on financial assistance from the Union Government.

Q: Is the state of J&K discriminated against by the Centre?

A: V Shankar Aiyar wrote in India Today (14 October 2002), 'A Kashmiri gets eight times more money from the Centre than citizens from other states. While per capita Central assistance to other states moved from Rs 576.24 in 1992-93 to Rs 1,137 in 2000-1, that of the Kashmiri spiralled from Rs 3,197 to Rs 8,092. The number of people living below the poverty line has dropped from 24.24 percent in the 1980s to a mere 3.48 percent, compared to 26.10 percent across India though the state's contribution to the GDP was less than 1 percent in 2000-1.

While other States got Central Assistance in the ratio of 70 percent loan and 30 percent grant, J&K gets 90 percent as grant and 10 percent as loan. Since 1997-98, though, the CAG has indicted the state Government for misuse of plan funds. Even the 10 percent repayment criteria

has been removed and the Centre has been funding the entire plan expenditure of Jammu and Kashmir of Rs 11,400 crore in five years.' ([Read more here](#))

A 2008 article by the same author says: "J&K got Rs.35,571 crore in grant assistance between 1990 and 2002 and Rs 38,156 crore between 2003 and 2008. In 2007-08 the state contributed Rs 533 crore as direct taxes to the Centre and received Rs 1,471 crore from the Central tax kitty and Rs 8,962 crore in grants.' ([Read more here](#))

Further, in 2013-14, the net collection of income-tax was only Rs 961.2 crore as against the share of Central taxes of Rs 4,514 crore, Central Grants of Rs 16,493 crore (RE). Out of Rs 961.2 crore collected, 83 percent was collected by Range I and II (both having jurisdiction over Jammu region) and Rs 174.5 crore by Range-3, having jurisdiction over the entire Kashmir valley. ([Read here](#))

One of the reasons for the lower share of central taxes is the low contribution to central taxes kitty, which is linked to the level of economic activity (manufacturing plus services) and payment of income-tax. Two, services are taxed by the State since the Services Tax Act is not applicable to J&K.

	09-10Act	10-11Act	11-12Act	12-13Act	RE13-14	BE14-15
1.State Rev + Central Taxes	5,897	7,643	10,242	11,863	14,734	16,248
2.Revenue Expenditure 3+4	15,324	18,467	22,680	25,117	27,617	32,948
3.Plan Revenue Exp	553	909	1,248	1,442	1,564	3,395
4. Non-Plan RevExp4to8	14,771	17,558	21,432	23,560	26,023	29,553
5. Interest	2,139	2,283	2,399	2,707	3,300	3,470
6. Salaries	5,971	7,297	9,608	10,137	11,928	14,282
7. Migrants Salaries	124	143	-	-	189	183
8. Pension	1,568	2,242	3,296	3,463	3,673	3,980
9. Others	4,969	5,593	6,129	7,253	6,933	7,638

Table 7: Revenue Expenditure

Data from J&K State Budget documents

According to the Institute of Chartered Accountants of India, of the 308 CAs who hold a Certificate of Practice in J&K, 24 percent are from Kashmir and 69 percent from Jammu region. This indicates the level of economic activity and the importance attached to compliance and is reflected in the collection of income-tax referred to above.

The above data reinforces a point often made that the Valley contributes negligible sums to the state treasury but accounts for the bulk of the expenditure.

Table 6 is a snap shot of State Finances.

Data from State Budget documents. RE stands for revised budget. BE stands for budget estimates.

The State revenue plus share of central taxes is Rs 10,242 crore (2011-12 actuals) and Rs 14,734 crore (RE, 2013-14) which is nearly 50 percent of revenue expenditure of Rs 22,680 crore and Rs 27,617 crore respectively. Figures in row 7 give you an idea of the State's financial condi-

tion.

Find Table 7 on earlier page for summary of how the State spends its money

In every year salaries and pensions exceed revenues (row one). In absolute numbers, the increase in salaries and pensions is steep. Salary in RE 2013-14 is 100 percent of what it was in 2009-10. Corresponding percentage for pension is 134 percent.

Note that in 1962 the PM of J&K, Bakshi Ghulam Mohammad, said that the State cannot remain independent. Geographically, the situation does not warrant it at all. Moreover, J&K is a poor state and cannot stand on its own feet.

Nevertheless, did you know that between 1990-91 and 2013-14 the State of J&K received Grants from the Centre amounting to Rs 1,51,321 crore? To this add expenditure by the Centre towards railways, road and power projects.

In conclusion

- The accession of J&K to India is irrevocable.
- The temporary provision of Article 370 has become permanent and prevented integration of J&K with the rest of India.
- The Constitutional Order of 1954 has ensured that every amendment made in our Constitution by Parliament needs the 'concurrence' of the State Government and many laws are not applicable, or only partially applicable, to J&K.
- The definition of Permanent Resident in J&K is restrictive, discriminatory and violates the basic structure of our Constitution. It has divided the State's population into two, Indians citizens who are permanent residents of J&K and those who are not.
- The basis for allocation of Assembly seats between the Kashmir, Jammu and Ladakh regions is not explainable, be it in 1951 or post the last Delimitation Commission.
- The disproportionate increase in the population and number of voters in Kashmir Valley smacks of manipulation.
- Women in the state do not have equal rights as those in the rest of India.
- Minorities do not have rights as in other parts of India.
- Jammu and Ladakh regions are discriminated against by the Valley-dominated State Government.
- The State cannot survive without the Centre's financial support.

Q: If there is a solution to Kashmir, would Pakistan be satisfied?

A: The following are excerpts from an interview with South Asian political and military affairs expert Christine Fair's recent study on the Pakistan Army (The Times of India, 27 July 2014), 'Pakistan is actually an ideological state. The Kashmir issue is not causal, it's symptomatic. Pakistan is not a security seeking state in which we can satisfy their insecurities. The goal

is simply to exhibit to India that India cannot exert its will in the neighborhood. If there were to be any kind of negotiation on Kashmir that gives up any inch of territory, it's not going to fix the situation'. ([Read the full interview here](#))

Those who like to understand the Pakistani mind should read Dr BR Ambedkar's masterpiece 'Thoughts on Pakistan'. It is as relevant today as it was when written in 1941. ([Read the excerpts here](#))

One way of letting Article 370 exist is to restrict it to Kashmir Valley; make Jammu a separate State and Ladakh a Union Territory. This will satisfy the aspirations of people in these two regions who complain of step-motherly treatment and domination by the Valley-dominated government. It is worth mentioning that J&K was created by the unification of the ethnically, culturally and linguistically separate regional identities of Jammu, Kashmir and the frontier divisions of Ladakh and Baltistan.

Some intellectuals and residents of Valley say that dividing a state on religious lines would result in polarisation. One, consequent to the manner in which Kashmiri Hindus were forced to leave the Valley in 1990, the polarisation is actually complete. Two, both Jammu and Ladakh regions have a large number of Muslims, so where is the question of division on religious lines? Three, if the Christian majority states of Nagaland and Mizoram could be carved out of Assam, why not J&K?

Those in the strategic affairs community and the judiciary must reflect on how the strategy of keeping India on the edge by ensuring that J&K remains dominated by a separatist agenda has, since 1947, worked to the advantage of the nation's opponents, within and outside India. For how long will the political class be on the defensive and display lack of political will?

The national debate should be: have the people of J&K benefited by a separate Constitution? And how long are the people of India willing to spend taxpayers' money on a State that even, 64 years later, wants to enjoy the benefits of being part of India but will still have its own Constitution?

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