

THE NEEDLE'S EYE How to create a state of suspended animation

An Example Made of Kashmir



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On August 5, the Indian government declared that Jammu and Kashmir is no longer an exception. On August 5, the Indian government decided to make Kashmir an exception.

Why am I saying contradictory things about the same event? Because they are both facts. Bear with me. Removing Article 370 was an article of faith for the BJP and its predecessor the Jana Sangh for decades. The BJP's election manifestos vowed to rescind Kashmir's special status. That promise was kept on August 5.

Merger and Accusation?

Why was Kashmir different? On October 17, 1949, when Article 306A (later renumbered as 370) was adopted, its architect N Gopalaswami Ayyangar reminded the Constituent Assembly of the circumstances of Kashmir's accession on October 26, 1947:

"Since then, the State has had a chequered history. Conditions are not yet normal in the State. The meaning of this accession is that at present that State is a unit of a federal State, namely, the Dominion of India. This Dominion is getting transformed into a Republic... on the 26th January, 1950. The Jammu and Kashmir State, therefore, has to become a unit of the new Republic of India."

Chequered history, indeed. I urge

you to read this educative debate (bit.do/ebt15). There was one doubter — Maulana Hasrat Mohani, founder of the Indian Communist Party and father of the 'Inquilab Zindabad' slogan, who asked, 'Why this discrimination, please?' because he felt the Maharaja of Baroda also ought to have been treated specially.

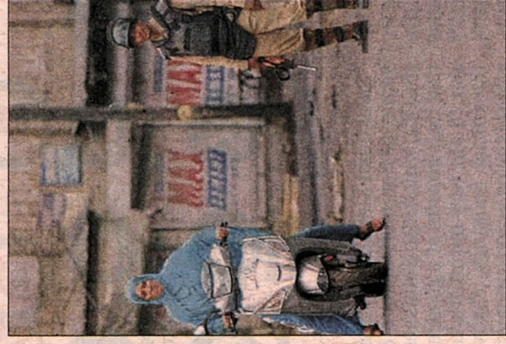
Ayyangar patiently explained: Pakistani irregulars had invaded and captured a chunk of J&K. The Maharaja signed the Instrument of Accession on October 26, 1947. A war had been going on within the state. "Part of the State is still in the hands of rebels and enemies."

The Constitution-makers were caught in a cleft stick. India had absorbed the princely state of Junagadh after a plebiscite in February 1948 when its Hindu majority population voted overwhelmingly for India. Kashmir was the reverse of Junagadh: Its Hindu ruler had acceded to India without consulting his mostly Muslim subjects.

Ayyangar said India had promised the people of Kashmir they would be given the opportunity "whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed."

All this is history. Peaceful and normal conditions never came about. Parts of J&K continue to be occupied by two nuclear-armed neighbours inimical to India. The Line of Control (LoC) in Kashmir and the Line of Actual Control (LoAC) in Aksai Chin are de facto borders and make a referendum unthinkable.

We were left with a Gordian knot. The Code of Criminal Procedure,



Stalling on the road

1973 (whose Section 144 grants sweeping powers to district magistrates) is now applicable in the Valley. Until August 5, it carried the caveat, 'it extends to the whole of India except the State of Jammu and Kashmir. Now Parliament will have to amend a whole host of laws to delete that health warning.

Oct 17, 1949-Aug 5, 2019

Article 370 has been eroded by successive governments, as Kashmir interlocutor Radha Kumar notes. As commentators have noted, Jawaharlal Nehru used the Article 370 smokescreen to crack down on Sheikh Abdullah and ensure Kashmir stayed with India. Still, the manner of the abrogation was a 'clever process of legal drafting' that, according to lawyer Abhinav Chandra, 'violates the spirit of Article 370 but perhaps not its letter'.

One nation, one Constitution, proclaimed Prime Minister Narendra Modi on August 8. But there is an immediate conundrum: Article 371 (A-J) also lists exceptional treatment for 11 states including six in the northeast. Home minister Amit Shah has promised the go-

vernment will not abrogate it. The BJP always saw Kashmir as an exception, although both Articles 370 and 371 are in Part 21 of the Constitution, which is clearly labelled 'Temporary, Transitional and Special Provisions'.

How has the government made an exception of Kashmir? The building blocks were in place well before the BJP won a second term in May. On August 8, 2017, the Department of Telecommunications, using powers under the Telegraph Act of 1885, notified the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. On December 20, 2018, the home ministry's Cyber and Information Security Division issued a notice empowering intelligence and security agencies under rules framed in 2009 as per the Information Technology Act, to intercept, monitor and decrypt "any information generated, transmitted, received or stored in any computer resource".

The Kashmir crackdown is in its fourth week. Postpaid and prepaid mobile phones were blocked for 133 and 202 days respectively in 2016 after Hizbul Mujahideen militant Burhan Wani's killing. But this time, landlines, too, have been disconnected, scores of politicians detained, and curfews enforced by a huge security blanket. The Editors Guild of India has urged authorities to let journalists operate freely, and UN human rights experts have said, "The blackout is a form of collective punishment of the people of Jammu and Kashmir without even a pretext of a precipitating offence."

The government is easing up in selective patches. But what will happen when the lid is taken off altogether? On Wednesday, the Supreme Court, after holding off on a hearing on the clampdown for two weeks, said that it would hear the pleas in early October. That coincides with Mohandas Gandhi's 125th birth anniversary. The apostle of non-violence has become as much a talisman as Article 370.

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