

SBS Youth Parliament 2020

Rajya Sabha

Agenda: Situation in Jammu and Kashmir after the Abolition of Article 370

Dear Delegates,

Welcome to the Rajya Sabha simulation of the SBS Youth Parliament 2020. Today we bring to your attention the need for a comprehensive debate about the situation in Jammu and Kashmir after the abolition of Article 370. We will be discussing an issue that is both current and close to home, and we hope that your understanding of the scenario is furthered by this discourse. It is important to approach this situation from all possible angles, as well as ensure that all parties are benefitting from the decisions taken, in order to ascertain what the best future course of action could be. This document has been created to guide your research, but certainly should not be the full extent of it.

We look forward to a productive and interesting debate!

Best of Luck!

The Executive Board

What is the Rajya Sabha?

Rajya Sabha is one of the two houses of the Indian Parliament. It is also often known as the ‘Upper House’ of the Parliament or the Council of States. Membership is limited to 250 members by the Constitution, and the present Rajya Sabha has 245 members. Unlike the Lok Sabha, where members are directly elected by citizens through national elections, most members of the Rajya Sabha are elected by the members of the State Legislative Assemblies (Vidhan Sabha). Additionally, the President of India can select 12 accomplished individuals from the fields of art, literature, science and social services and grant them membership of this House.

The Rajya Sabha represents the voice of the states in the Union Legislation. It has an equal footing with the Lok Sabha on deciding most **bills**¹ proposed in Parliament, except money bills. The most important power of the Rajya Sabha consists of making laws concerning different states, and on topics included in the ‘State List’. The State List is a list of topics and areas on which laws and decisions are to be enforced by the State governments. The central government

¹A **Bill** is a proposal for a new law, or a proposal to change an existing law that is presented for debate before Parliament.

does not have a say in those matters, and cannot make a law on a matter reserved for states without authorisation from Rajya Sabha which is granted by passing a resolution with two-thirds majority. The central government may make laws affecting citizens across all the states whereas, a single State reserves the power to make rules and governing laws of their region. If a bill passes through Rajya Sabha, it is supported by a majority of State. Rajya Sabha therefore, is essential for protecting each State's culture and interest.

The Rajya Sabha is presided over by the Speaker, who is the Vice-President of the country, currently Shri Venkaiah Naidu. He/She is responsible for conducting and regulating the sessions and workings of the House. In the Speaker's absence, the Deputy Speaker takes over. Also important are the Leader of the House (who represents the ruling parties, and is the head of the party in majority) and the Leader of the Opposition (who represents the opposition parties, and is the head of the largest opposition party).

Early history of Kashmir

Kashmir (province Jammu/Kashmir), like the rest of India, was under British rule since 1858. Under the period of British rule, there was no special designation for the territory, and it existed purely as a part of India. When India was decolonized in 1947, the event led to the creation of two independent states: India and Pakistan. Rulers of the relating Princely States were given the option of acceding their state to either of the two countries. However, there existed a region between the two nations that shared characteristics of both these nations and was divided on many fronts. This territory, Kashmir, was thereby partitioned between Pakistan and India, with approximately forty percent of the region being reserved to Pakistan, and the remaining sixty percent being reserved to India. The main territorial possessions of Pakistan included the two regions of Gilgit-Baltistan and Azad Kashmir. India received the territories of Jammu and the Kashmir Valley (oftentimes referred to in tandem as Jammu/Kashmir).

The partition of Kashmir was mainly attributed to major religious differences between its northern and southern territories. During India's existence as a British colony, two main religious affiliations were noted within the population: Hinduism and Islam. With Hindu India and Muslim Pakistan being at odds, Kashmir itself was divided between the two based on the presence of each respective religion in the territory. These were the circumstances under which Kashmir was partitioned between the two nations.

Since Kashmir was a princely state prior to its partition in 1948, it was ultimately independent from control of either Pakistan or India at the time of decolonization. It was therefore this state's option to divide itself between Pakistan and India. In theory, Kashmir could have remained

autonomous² and not have divided itself between the two rising nations. However, the polarized population, divided based on cultural and religious traits, ultimately sealed the deal of partition. Despite the fact that the Princes of this state did not wish to indulge in such division of their state, the will of the people in this event to join two democratic unions defeated any princely resistance at the time. However, the partition was not as simple as it may seem at first sight.

The princely leader of Kashmir at the time, by the name of Maharaja Hari Singh, was himself a Hindu supporter. However, his own religious affiliation stood against the religion of the majority of his state; the majority of Kashmir's population was Muslim. Therefore, this particular period of decision-making, whether or not to join one of two other independent, democratic unions, not only contravened his prince-hood, but also his religion. By remaining neutral in the matter in an attempt to avoid scrutiny, great uprising occurred in Kashmir, and the prince fled to India for **sanctuary**³, where he pleaded for the Indian government to intervene militarily in Kashmir. As compensation for this request, and in order to secure Kashmir's Hindu establishment, Prince Hari Singh agreed to cede Kashmir to the Indian nation. On October 26th of 1947, Kashmir was signed over to India.

Hereafter began the armed conflict between India and Pakistan over the princely state of Kashmir. The war lasted for the better part of a year, from October 26th, 1947 to August 13th, 1948. Wishing to terminate conflict and to secure its occupation of Kashmir, the Indian government approached the United Nations for assistance on the matter. Since the prince, being the legal Governor of Kashmir had signed the state over to India, the United Nations sanctioned Indian actions. On August 13th, 1948, the U.N. officially declared its request for Pakistan to withdraw its troops from Kashmir, with promises that India would do so immediately after the cease-fire. However, Pakistan refused to withdraw its troops.

During this time, with Kashmir in turmoil and without a governing figure, an emergency government was instigated on October 30th, 1948, headed by Prime Minister Sheikh Abdullah, an Indian statesman. However, since this government was purely provisional, it was not a definitive solution to the conflict in Kashmir.



² **Autonomous** refers to a country or region having the freedom to govern itself or control its own affairs.

³ **Sanctuary**, in a political sense, refers to immunity from arrest by a sovereign authority

Hence, the United Nations and India pushed for a **plebiscite**⁴ to determine the will of the Kashmiri people in pertinence to their national identity. However, no such plebiscite occurred, mainly due to the unwillingness of Pakistan to comply. It is commonly understood that Pakistan believed it would lose the plebiscite, due to the fact that provisional Prime Minister Abdullah of Kashmir was obviously in favour of an Indian Kashmir, hence having a certain influence upon the voting figures.

Finally, Pakistan and India agreed to a cease-fire, and **bilaterally**⁵ signed a declaration for the withdrawal of troops in Kashmir on January 1st, 1949. Seeing that at the time there had been no plebiscite and as such the will of the people was not to be heard, territorial occupation at the end of the conflict was held as the **de facto**⁶ designation of territorial belonging. This resulted in India being in occupation of the Southern 65% of Kashmir, and Pakistan being in control of the remainder in the North. The approximate borders defined at that moment are still roughly those in existence today.

Kashmir became an official part of the Indian Union in 1957. In addition, the Indian government recognized the great diversity of Kashmir, both on cultural and religious terms. Therefore, the government outlined several special rights for the territory of Kashmir in Article 370 of the Indian constitution.

EXODUS OF KASHMIRI PANDITS

]The exodus of Kashmiri Pandits began in early 1990 with the eruption of **militancy**⁷ in the valley. They were forced to leave in large numbers, following persecution and threats by radical Islamists and militants (including Jamaat-e-Islami Kashmir and People's League in Indian Jammu and Kashmir, and Jammu Kashmir Liberation Front (JKLF) based in Azad Kashmir). Hundreds were murdered, women were allegedly gangraped and killed and children were frequently kidnapped. Hindu temples and homes were targeted. On 19th January 1990, mosques issued declarations that the Kashmiri Pandits were 'Kafirs' (an Arabic term referring to an infidel or disbeliever) and that the males had to leave Kashmir, convert to Islam or be killed. Those who chose to the first of these were told to leave their women behind. The Kashmiri Muslims were instructed to identify Pandit homes so they could be systematically targeted for conversion or killing. The displaced Kashmiri Pandits are still living in exile outside of Kashmir.

⁴ A **plebiscite** is a type of vote, participated in by all citizens to change the constitution or government of a country.

⁵ **Bilaterally** refers to a way that involves two parties, especially countries.

⁶ **De facto** refers to practices that exist in reality but are not officially recognised by laws

⁷**Militancy** is the use of confrontational or violent methods in support of a political or social cause.

Article 370

The article was drafted in Part XXI of the Constitution: *Temporary, Transitional and Special Provisions*. The Constituent Assembly of Jammu and Kashmir, after its establishment, was empowered to recommend the articles of the Indian constitution that should be applied to the state or to abolish Article 370 altogether. After consultation with the state's Constituent Assembly, the 1954 Presidential Order was issued, specifying the articles of the Indian constitution that applied to the state. Since the Constituent Assembly dissolved itself without recommending Article 370 be abolished, the article was deemed to have become a permanent feature of the Indian Constitution, further supported by subsequent orders from the High Court and Supreme Court.

The basic derivative of Article 370 is Kashmir's special independence under the Indian union, and its right to partial self-government. According to Article 370, the support of the State is required for making any laws in matters mentioned in the Union and Concurrent lists, except those pertaining to defence, communication or external affairs. This is different from the position of other States, as in the case of other States, the division of powers as listed in the three lists automatically applies.

In the case of Jammu and Kashmir, the central government has only limited powers and other powers listed in the **Union List**⁸ and the **Concurrent List**⁹ can be used only with the consent of the State government. This gives the State of Jammu and Kashmir greater autonomy. In practice, however, the autonomy enjoyed by the State is a shadow of its former self, and there is virtually no institution of the Republic of India that does not include Jammu and Kashmir within its scope and jurisdiction. There is a constitutional provision that allows the President, with the concurrence of the State government, to specify which parts of the Union List shall apply to the State. The President has issued two Constitutional orders in concurrence with the Government of Jammu and Kashmir making large parts of the Constitution applicable to the State.

As a result, though Jammu and Kashmir has a separate constitution and a flag, the Parliament's power to make laws on subjects in the Union List now is fully accepted. The only substantial differences from many other States relate to

- permanent residents and their rights;
- the non-applicability of Emergency provisions on the grounds of 'internal disturbance' or of a financial emergency without the concurrence of the State;

⁸ The **Union List** is a list of subjects upon which the central government legislates

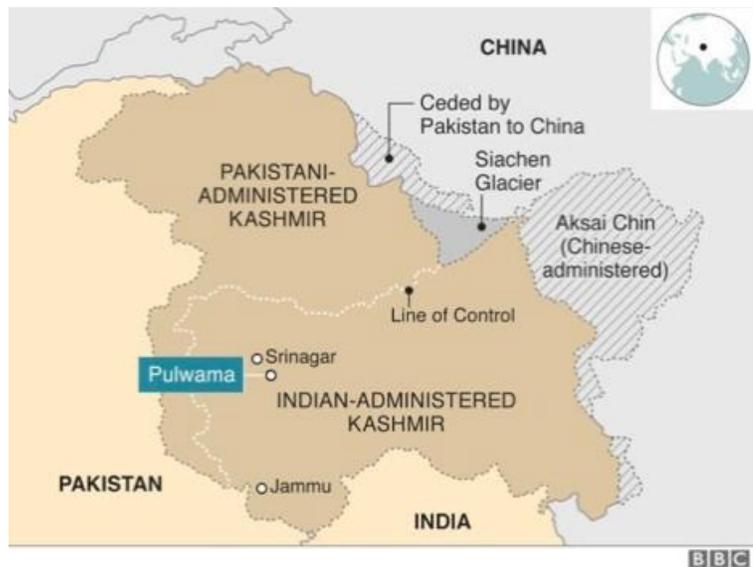
⁹ The **Concurrent List** is a list of subjects on which both the central and State governments legislate

- the name and boundaries of the State, which cannot be altered without the consent of its legislature;
- and amendments to the Indian Constitution (under Article 368) which can only be applied in concurrence with the government of Jammu and Kashmir .

The Last Two Decades in Kashmir

After several decades of constant upheaval and sporadic military confrontations, the Kashmiri state has been partitioned further, with China occupying its eastern most state, Aksai Chin as the result of both a Pakistani lease in 1957 and as the result of defeating India in a short war for the region. As before, however, India continues to control the southern and central states of Jammu and the Kashmir valley (Jammu-Kashmir). In addition, great unrest has arisen in Jammu-Kashmir, and mainly in the Kashmir valley. This unrest is attributed to the territory's majority Muslim population who wish to **secede**¹⁰ from the Indian Union, and to become a legal part of the Pakistani state.

The exact semantics of these phenomena trace back to 1999, where **ceasefire**¹¹ regulations were violated by Kashmiri insurgents and Pakistani paramilitary crossing the de facto Indian held border of Kashmir. As the result of a brief war between the two nations, India suspended all relations with Pakistan later that year. Directly proceeding from this event, Pakistan and India began to reconsider rebooting relations in 2001. Between then and 2004, however, the first substantial signs of conflict began to emerge in Jammu/Kashmir. Muslim **uprising**¹² in the area began to increase exponentially, with Indian police units in the area having much difficulty in suppressing the violence.



After an exponential intensification of Muslim violence up until 2010, protests began to erupt all around the Kashmir valley, with Muslims demanding for secession. Indian police personnel were regularly deployed to ease the uprisings spreading throughout the territory and to suppress any

¹⁰ **Secede** means to withdraw formally from the membership of a federal union

¹¹ **Ceasefire** is a temporary suspension of fighting

¹² **Uprising** is an act of resistance or rebellion

violent activity. However, there came a day in 2010 where a Muslim protest march had an unwanted result: a protestor was shot dead by the Indian military force. With this event as a catalyst, the situation escaped all control. Shortly afterwards, the Indian government ensured that police intensity would be decreased in the Kashmir valley through certain regulatory measures. In addition, chief minister Omar Abdullah of Jammu/Kashmir was led to declaring **amnesty**¹³ for the protestors the previous year that had turned violent and resulted in the death of said citizen. Though such measures promised to decrease police presence and military activity in the area, the Armed Forces Special Powers Act (AFSPA), calling for the special license of armed forces in the zone to decrease violence, was still not revoked. Abdullah claimed that the region had still not reached a promising state of stability, and could therefore not be absolved entirely of the presence of Special Forces. Additionally, the death of three Pakistani military personal at the border between Jammu/Kashmir and Pakistan-controlled Kashmir in 2011 caused further upheaval.

During this period, questionable occurrences led to a special investigation, leading to the discovery of 2,000 unidentified bodies in the region. Though evidence is still lacking, these people were assumed to be former prisoners of the police in the area. Security forces stated that these citizens had gone missing, but their remains were to be no definitive proof of any confirmation of this fact or another.

In 2013, a violent uprising resulted in the death of eight or more citizens after the intervention of security forces. Fearing a more violent outbreak, Chief Minister Abdullah and his administration chose to impose a **curfew**¹⁴ in March for all citizens. Needless to say, this was not met kindly by the population, resulting in further uprising in protest of the imposition. In September of that year, seeing no other choice but peaceful resolve, the Prime Ministers of both India and Pakistan met to discuss measures to decrease the violence in Jammu/Kashmir. Negotiations did not transpire smoothly, due to several accusations and abrasive claims by both sides. India was the first to speak out, cancelling talks in August of 2014 for what it claimed to be “Pakistani interference in India’s affairs,” and the engagement of a **proxy war**¹⁵ by Pakistan.

The last unrest in the Valley broke out in July 2016 as a spontaneous reaction to the killing of the militant commander Burhan Wani. It lasted until the end of the year and, leaving around a hundred people dead and several hundred either partially or completely blinded as a result of the widespread use of pellet guns by Jammu and Kashmir police.

¹³ **Amnesty** is an official pardon for people who have been convicted of political offences

¹⁴ A **curfew** refers to the time at which individuals are required to return to and stay in their homes

¹⁵ A **proxy war** is a war instigated by a major power which does not itself become involved.

Abolishing Article 370

In 2014, as part of Bharatiya Janata Party manifesto for the 2014 general election, the party pledged to integrate the state of Jammu and Kashmir into the Union of India, and repeated in 2019. After winning the elections, attempts were made by the party along with its parent organisation, the Rashtriya Swayamsevak Sangh (RSS), for the **abrogation**¹⁶ of Article 370.

On 5 August 2019, Home Minister Amit Shah announced in the Rajya Sabha that the President of India, Shri Ram Nath Kovind had issued The Constitution (Application to Jammu and Kashmir) Order, 2019, to be put into force immediately. This order would supercede the Constitution (Application to Jammu and Kashmir) Order, 1954, which had specified that only some articles of the Indian constitution to apply to the state. The new order removed all such restrictions, stating that all the provisions of the Indian Constitution applied to Jammu and Kashmir, and effectively abrogating the separate Constitution of Jammu and Kashmir as well.

The Legislative Assembly of Jammu and Kashmir was dissolved by Governor on 21st November 2018. New elections were expected within a period of 6 months but have subsequently been postponed to allow for the implementation of new

constituency boundaries, leading to the Governor's rule in the State. Therefore, the dissolution of Article 370, was done with 'concurrence of the State government', at this time, represented by the Governor, who is appointed by the Union (central) government.



Jammu and Kashmir Reorganisation Act, 2019

A Union territory is a type of administrative division in the Republic of India. Unlike the states of India, which have their own governments, union territories are usually federal¹⁷ territories governed directly by the central Government of India. The Act reorganises the State of Jammu

¹⁶ **Abrogation** is the repeal or abolition of a law, right, or agreement

¹⁷ A **federal** government is a system that divides up power between a strong national government and smaller local governments.

and Kashmir into two Union Territories- Jammu and Kashmir, and Ladakh. A Lieutenant Governor has been chosen for each union territory by the President of India. The Act provides that the administration of the Jammu and Kashmir will be as per Article 239 (Administration of Union Territories) of the Indian Constitution. The territory of Jammu and Kashmir will also have a legislative assembly, may make laws for any of the matters in the state list except ‘public order’ and ‘police’, which will remain under the Union government. The Lieutenant Governor will also be selecting a Council of Ministers for advisory purposes, but will retain the power to enact a law with the same force as the legislature.

Current Situation in Kashmir

After revoking Article 370, Kashmir was put under a security lockdown, curfew and communications blackout. Landlines, cellphones, and internet services were suspended. In order to prevent protests, thousands have been detained. No foreign journalists have been granted permission to report in Kashmir. People can move within the interiors of their localities, and small distances outside of it, but long distances have become difficult to cross due to numerous security barricades and instances of stone pelting.

Kashmir is also existing in a political vacuum. In the past, Kashmir’s mainstream political leaders played a pivotal role in winning back sections of those who got alienated. Today, about 300 political leaders, including two former chief ministers — Omar Abdullah of the National Conference (NC) and Mehbooba Mufti of the Peoples Democratic Party (PDP) — are either under house arrest or detained in guest houses.



There are unconfirmed reports of large-scale demonstrations being held occasionally in downtown Srinagar, which has been the locus of the stone-pelting protests. Daily briefings by the government at Srinagar’s media facilitation centre have become the only source of information about the situation for the people, in addition to some skeletal reporting by some television channels.

The Army has been put on high alert along the Line of Control in Jammu and Kashmir to effectively curb any infiltration from Pakistan, as well as control civil disturbances.

Reaction of the International Community

United Nations

The United Nations (U.N.) has adopted a lukewarm attitude towards the Kashmir issue and has not called for a formal meeting or issued a statement. The U.N. has stated that it prefers that India and Kashmir solve this issue bilaterally. A closed door private meeting of the 15-member Security Council was held in mid August at the request of China, which has territorial claims on the disputed region. It was for the first time in more than 50 years that the Security Council held a meeting, albeit informal, on Kashmir.



United States

The United States has called for peace and stability along the border that separates the two nations. It also prefers that the issue be solved bilaterally, and has urged India to lift the restrictions put in place by them. The United States Government is also concerned about reports about detentions and urge respect for individual rights and discussion with those in affected communities. US President Donald Trump also offered to mediate between India and Pakistan to resolve the Kashmir issue during his meeting with Pakistan Prime Minister Imran Khan in Washington. India rejected the offer, stating that the issue was bilateral.

Pakistan

Islamabad has condemned New Delhi's latest move, with Pakistani Prime Minister stating that the move is in clear violation of United Nations Security Council (UNSC) resolutions in the region. Pakistan plans to bring up the issue before the United Nations Human Rights Council (UNHRC) in Geneva. Islamabad wants the UNHRC to pass, in its 42nd sitting beginning in the second week of September, a resolution on human rights violations in Jammu and Kashmir by India. The Pakistan Foreign Minister has written to UNHRC chief Michelle Bachelet stating that India had turned Kashmir into the most militarised zone in the world by deploying 8,80,000 personnel there. In his letter to the 47-member body, he has also cited cases of torture, blinding

and forced renditions of Kashmiris. The Pakistan government has decided to deploy the former Pakistan ambassador to the U.N., Tehmina Janjua, to highlight the Kashmir issue in Geneva.

China

Though China has not been a main participating body in current conflicts in Jammu/Kashmir, it would desire a favorable result in a neighboring territory. It expressed its opposition to India's move to create a separate Union Territory of Ladakh. Despite referring to the situation as a 'bilateral issue' between India and Pakistan in a statement, the Chinese Foreign Ministry asserted: "China is always opposed to India's inclusion of the Chinese territory (Ladakh) in the western sector of the China-India boundary into its administrative jurisdiction. Recently India has continued to undermine China's territorial sovereignty by unilaterally changing its domestic law. Such practice is unacceptable and will not come into force."

Some Questions to Consider

- Did Article 370 cause separatist or isolationist tendencies?
- Should this article have been abolished?
- What has been the effect of abolishing this article in Kashmir?
- Should the article be reinstated?
- What will be the impact of the Jammu and Kashmir Reorganisation Bill?
- What can be done to make the abrogation of the article a smoother and more peaceful process?
- Should Kashmir's tumultuous past have any bearing on its future?
- Should this issue be sorted bilaterally or with support from external countries and organisations?
- What can be done to prevent human rights violations in Jammu and Kashmir?

Further Suggested Reading

<https://www.bbc.com/news/world-asia-india-49234708>

<http://www.indiandefencereview.com/news/kashmiri-pandits-offered-three-choices-by-radical-islamists/>

<https://www.bbc.com/news/world-asia-india-40897522>

<https://www.lawfareblog.com/how-indian-government-changed-legal-status-jammu-and-kashmir>

<https://thewire.in/rights/kashmiris-practicing-peaceful-civil-disobedience-says-new-fact-finding-report>

<https://thewire.in/world/pakistan-tries-to-raise-kashmir-at-unsc-again-fails-to-find-support>

<https://www.newyorker.com/news/q-and-a/a-kashmiri-novelist-on-a-state-under-siege>

<https://news.un.org/en/story/2019/10/1050141>