

# THE DEEP IMPORT OF THE ARTICLE 370 VERDICT

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'In the Valley, the verdict has reinforced a widespread belief that Kashmiris are resented by the rest of India and their voice is repeatedly silenced' | Photo Credit: ANI

Days after the [Supreme Court of India's voluble judgment](#) on the [August 2019 presidential orders](#), there has been considerable, and excellent, dissection of its validation of the removal of Jammu and Kashmir's autonomy, and its cursory handling of Parliament's demotion and division of the State to two Union Territories.

Much of the commentary has dealt with the judgment's implications for the rest of the country, which are far-reaching. It undermines the rights of States vis-à-vis the Union even on critical issues such as statehood and division, grants the President far larger powers over States than earlier envisaged, and allows long-term political and territorial decisions to be made under limited-term emergency conditions such as President's rule.

There are three other key elements which have, however, been less discussed: what the verdict means on the ground for Jammu and Kashmir, and Ladakh, what it tells us about how the Court sees peace and security, and what it implies for the fundament of democracy in India. Back in 1953-55, the States Reorganization Commission held widespread public consultations during which villages expressed their preference for which unit to belong. This judgment negates even the right to consultation of the State's elected representatives.

On the ground, the judgment has been met largely with silence that is ambiguous in Jammu, disappointed in Kargil, welcoming in Ladakh (with reservations), and ominous in the Valley. Jammu's ambiguity centres on its experience of economic dispossession post-2019, when the Lieutenant-Governor's administration awarded trade, retail and mining rights to national rather than local industry. In Ladakh, Kargil's disappointment stems from the fact that its majority Shia wishes to retain ties to the Valley. Leh's welcome of separation from the Valley is tempered by the desire for an elected administration instead of a Lieutenant-Governor.

The most severe impact is undoubtedly in the Valley, where the verdict has reinforced a widespread belief that Kashmiris are resented by the rest of India and their voice is repeatedly silenced. The circumstances in which the President of India, Ram Nath Kovind, passed his August 5 orders were draconian, to say the least. Additional troops were sent in at July end, over 5,500 Kashmiri politicians and activists, including three former Chief Ministers, were put in detention on the day before, Section 144 was applied forbidding gatherings of four or more persons, and a total communications blackout was imposed.

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Notably, neither the main nor the concurring judgments mention these events in their summaries of incidents prefiguring the presidential orders.

Instead of acknowledging the enormity of the administration's actions, which imposed war-like conditions on the people, the judges accepted the alleged security threat, in August 2019, to the Amarnath Yatra — of which nothing has been heard since, either on what it comprised or how it was averted — as background to the presidential orders and the Jammu and Kashmir Reorganisation Act, 2019. Security has also been accepted as a reason for the delay in restoring statehood, despite the administration's claim that the situation is much improved.

A blanket acceptance of alleged security concerns can be dangerous. Over the past eight years, it has allowed innumerable unwarranted arrests of journalists, activists and even comedians, who languish in jail on unproven charges of unlawful activities and/or sedition. The failure to probe security concerns has closed debate on policy and performance in tackling internal and external conflict, as can be seen in the cursory parliamentary discussion of the ongoing civil conflict in Manipur. Though there was indication of a security lapse leading to the death of 40 paramilitary troops in a terrorist attack in Pulwama in February 2019, there was no published inquiry into it. Whether we will learn the truth of the recent lapse that allowed a group of young Indians to let off canister smoke bombs in Parliament remains to be seen. Yet, policy accountability is critical to operational improvement.

In the recent judgment, Justice S.K. Kaul's 'epilogue' does take note of human rights abuses in Jammu and Kashmir. But it appears, like the main judgment, to ignore the violation of human and political rights in and since August 2019. Worse, both ignore the lesson learned from India's own experience, that peacemaking offers the best solution to internal conflict. Available data show a slowly rising curve of violence in Jammu and Kashmir after the Union Home Ministry adopted policies of purge and censorship, accompanied by deterioration in the India-Pakistan ceasefire agreement. By contrast, the data show a sharp curve of diminishing violence during the peace process of 2002-13.

In other words, the rise in violence between 2016-2018 that the Attorney-General and Solicitor-General referred to might have been more effectively countered by the policy of the A.B. Vajpayee and Manmohan Singh administrations, of improving democratic practice on the ground in the State while engaging in peace talks with Pakistan. Validation of the extreme clampdown of August 2019 and the actions taken under its cover, on the other hand, run the risk of an upsurge in violence if or when a semblance of democracy is restored.

Could a truth and reconciliation commission bridge the gap, as Justice Kaul appears to suggest? The proposal was made over a decade ago by then Chief Minister Omar Abdullah, but found few takers. Unlike the South African commission, which took place in the context of a peace agreement to end apartheid and transfer power to the African National Congress, Mr. Abdullah's proposal was made when peace talks with Pakistan had withered, first at General Musharraf's request and then due to the Mumbai terrorist attacks. Despite this end, the after-effects of the peace process lasted until 2014.

By contrast, there is no peace process in Jammu and Kashmir today. Far from it, the verdict's validation of the removal of autonomy, and administrative bias towards developers and industrialists from outside the former State, can only harden alienation in the Valley. In such a situation, who will reconcile with whom?

Many ask: Alright, but what is done is done. How do we move on from here? My answer will please no one.

The Union administration could start a new peace process. It could restore statehood, and hold elections. It could return freedom of expression. But it would need to be prepared for an outpouring of anger that has thus far been dammed by fear of arrest or worse, and to respond to that anger with compassion and understanding, not bullets and prison bars. Longer term, it would need to return to the blueprint for a solution that was developed by A.B. Vajpayee and Mr. Singh. That blueprint included the disarmament of armed groups and demilitarisation of the area, a soft border with autonomy for both Jammu and Kashmir and its Pakistan-held parts, together with an option of joint development for the whole of the former princely State.

I do not see the current administration returning to that blueprint, nor can I imagine another that would sustain. Perhaps better minds than mine will.

***Radha Kumar is the author of Paradise at War: A Political History of Jammu and Kashmir***

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