

"The former PM erred in having too much confidence in the sense of justice of his successors."

Union Home Minister Amit Shah earlier this month held India's first Prime Minister, Jawaharlal Nehru, responsible for the country being deprived of one-third of Kashmir. Except for those who deify Nehru, most others readily agree to the obvious fact that Nehru was not infallible. However, it is ironical Mr. Shah and his party, the Bharatiya Janata Party, focus on an area of Nehru's alleged culpability — his handling of the Kashmir question — on which the latter perhaps deserves their indulgences and empathy.

What must one, then, think of when one thinks of Kashmir? Is it a stolen land? Or a symptom of Hindu-Muslim rivalry? Or a case of cross-border terrorism? Or perhaps a battleground for two nuclear rivals? Kashmir is all these and much more. However, there are some aspects to the muddle that have been ignored for far too long.

Nehru, the Kashmiri Pandit

First, given Nehru's well-known secular credentials, we tend to treat him as less of a Hindu, if not looking at him as an outright anti-Hindu. In reality, on Kashmir, he acted not only as a Hindu determined to protect his co-religionists, but as a Kashmiri Pandit.

In 1947, the immediacy of the crisis in Kashmir — the procrastination of Maharaja Hari Singh to join either India or Pakistan and Pakistan's invasion of the state — dictated that Nehru and the Government of India do everything to prevent the impending genocide of the Hindus in Jammu and Kashmir.

Wouldn't a secular Nehru have also acted in a similar way? Indeed. But a secular Nehru would have liberated the rest of Kashmir, including Pakistan-occupied Kashmir (PoK), as well. Because India could either claim the whole of Jammu and Kashmir or nothing. Ignore, for the time being, the purported reluctance of Indian Army to proceed further due to the operational constraints that forced Nehru to agree to a ceasefire.

Further, if one were to examine Nehru's actions in solely communal terms, one wouldn't be able to visualise a better strategy for the Hindus in the State than the one he chose. It must surely have crossed Nehru's mind that if he liberated PoK, it would create a situation where Hindus in Jammu and Kashmir were further relegated to a minority.

Here, it is not difficult to count the benefits of Nehru's calibrated inaction. A unified Jammu and Kashmir would have meant that even a brilliant gerrymandering of political topography would not have helped the Kashmiri Hindus. Hence, the BJP's criticism of Nehru's actions comes across as ironical.

The Hyderabad parallel

Prior to 1947, Jammu and Kashmir and Hyderabad State were mirror images of each other: an autocratic ruler from a minority community having put a heavy yoke on the majority population.

We are far too willing to accept the gory details of Hyderabad Nizam's misrule but squeamish in shedding a similar light on Kashmir. This has distorted our understanding of the Kashmir problem in two ways.

One, the current angst among the Kashmiri Muslims is explained away as the people's anti-India sentiments or the machinations of Pakistan. There is truth in both explanations. But they also mislead us into believing that the Kashmir problem started after 1947. The fact is that the cross-border terrorism started much before the Partition of the subcontinent when Muslims in British India used to slip into the princely State of Jammu and Kashmir in solidarity with fellow Muslims, who were getting a raw deal from their ruler. Had we been cognisant of this fact, we would have focussed more on good governance and ensuring basic liberties to the people in Kashmir.

Two, after its accession into India, Jammu and Kashmir was pushed into adopting democracy whereas it never had the institutions, the cultural temperament and the robust civil society so essential for democracy to take roots and flourish. Recall how Hyderabad State (now Telangana) suffered for decades from left-wing extremism which was a counter to its feudal set-up.

Leaving aside a few honourable exceptions like the princely States of Travancore, Baroda and Kolhapur, most areas under native rule prior to Independence proved to be fallow for democracy, whereas British India enjoyed a whiff of rules-based governance.

Understanding the parallels between Hyderabad and Kashmir would give us a whole new way of dealing with the root cause of the problem, rather than just its symptoms. The Maharaja's delay in choosing between India and Pakistan prompted Pakistan to resort to military intervention. That its troops were dressed up in mufti should not distract us from that fact.

On a fire-fighting mode

After accepting the Maharaja's instrument of accession, Nehru's main task was to secure the safety of Hindus, especially in the Valley. Having accomplished his goal, he had to end the war at a time and place of his choosing. How else could he have achieved it without going to the United Nations?

He was right in his likely assessment that Hindus wouldn't be safe in Pakistan and Muslims would be better off in India. His assessment was proved right during his time. But the fire-fighting nature of Nehru's actions in 1947-48 should have been additionally followed up with measures of restoration and rehabilitation, keeping Kashmir's history and culture in context.

Nehru and India had three policy options at their disposal during the initial years of the problem. They were: a) Use the window of opportunity to relocate Hindus away from the Valley; that would have avoided communal strife though democracy would have taken more time to fructify; b) Usher in secular and liberal democracy which would take care of the interests of everyone; or c) Put in place an autocratic system that would be managed from New Delhi.

The first option (evacuation) was never attempted as the government thought it was not necessary and the Centre was supposed to be following the second option (democracy) but de facto ended up following the third one (direct rule).

Unfortunately, for Nehru, taking possession of Jammu and Kashmir — minus the 'one-third' — was an end in itself but not the beginning of a long process of integration. Further, he had too much confidence in the superiority of India's liberal polity, which he believed Kashmiris would happily embrace. He also had too much faith in the sense of justice and equanimity of his successors. His faith proved to have been misplaced.



Article 370

Why in the discussion?

- Recently, Home Minister Amit Shah questioned the country's first Prime Minister Pandit Jawaharlal Nehru's Kashmir policy in the Lok Sabha.
- He said on Article 370 that it is temporary, not permanent. 370 is a temporary issue of our constitution.
- Earlier, this article came under headlines by giving approval to the Constitution (mandatory in Jammu and Kashmir) amendment, 2019, under the chairmanship of the Prime Minister, the Union Cabinet.

What is it?

- Article 370, included in the Constitution, exempts Jammu and Kashmir from the Indian Constitution (except for paragraph 1 and Article 370) and allows the state to draft its own constitution. It was incorporated in the Constitution on October 17, 1949.
- It restricts the legislative powers of Parliament in relation to Jammu and Kashmir.
- It was made in such a situation that in order to expand the central law on subjects covered in Instrument of Access (IoA), a "consultation" would be required with the state government.
- This was considered to be an interim arrangement till the last solution of the Kashmir issue was achieved by incorporating all the stakeholders.
- Emergency provisions do not apply in the state on the basis of internal unrest without the consent of the state.
- State's names and boundaries can not be changed without the consent of its legislature.
- The state has its own separate constitution, a separate flag and a separate punishment code ie Ranbir Penal Code.
- The state assembly has tenure of six years, while in other states this period is five years.
- It provides autonomy to the state and allows it to give certain privileges to its permanent residents.
- The Indian Parliament regarding Jammu and Kashmir can only pass laws in matters of defense, foreign and

communication. Any other law made by the union will be applicable only in Jammu and Kashmir by the President's order when the state assembly agrees.

- The President can declare by public notification that this paragraph shall not be implemented until the State Assembly recommends it.

Main point

- This is the first article of Part XXI of the Constitution. The title of this section is 'Temporary, Transitional and Special Provision'.
- Section 370 can be considered temporary in the sense that the Constituent Assembly of Jammu and Kashmir had the right to amend / delete / maintain it. Another interpretation was that it would be kept temporary until the referendum.
- The Supreme Court said in April 2018 that despite the "temporary" title, Article 370 is not temporary.

What is the instrument of access?

- This came in handy when according to the Indian Independence Act, 1947, British India was divided into India and Pakistan.
- Accordingly, the Parliament of India was empowered to make laws only on defense, foreign affairs and communication regarding Jammu and Kashmir.
- According to the Act there were three options- to be an independent country, join the Dominion of India or join the Dominion of Pakistan.

Background

- Raja Hari Singh had initially decided to remain independent but after the invasion of Pakistan, he sought help from India, in exchange for accession of Kashmir in India.
- Hari Singh signed the Instrument of Accession on October 26, 1947, and the Governor-General Lord Mountbatten accepted it on October 27, 1947.
- It was India's declared policy that wherever there was a dispute, it should be decided according to the wishes of the people rather than one sided decision of the ruler of the princely state.

Expected Questions (Prelims Exams)

1. In the context of Article-370, consider the following statements-

1. Emergency provision is not implemented in Jammu & Kashmir state on the basis of internal violence without the assent of the state.
2. The boundary and name of the state Jammu & Kashmir cannot be changed without the assent of its legislature.
3. It is the first paragraph of the Part XXI of the constitution.

Which of the above statement is/are correct?

- (a) Only 1 (b) Only 2
(c) 1 and 2 (d) All of the above

Expected Questions (Mains Exams)

Q. The Kashmir problem of India that started seven decades ago is also prevalent today. Could the problem have been solved by the Ex-Prime Minister Jawahar Lal Nehru. In this context, explaining the hurdles, present your reasoning. (250 Words)

Note: Answer of Prelims Expected Question given on 10 July. is 1(c).

