

Downgraded at the stroke of a pen

The move to convert Jammu and Kashmir into two Union Territories could open a Pandora's Box



MALAVIKA PRASAD

The Indian government's decision to revoke the special status of Jammu and Kashmir (J&K) raises many constitutional questions. One important question is whether the President had the powers to make all the provisions of India's Constitution apply to the State. Another is whether the Indian government was authorised to do this in the face of its own obligations to J&K under Article 370. Even assuming for a moment that these questions did not arise, a further question that does crop up is: Did Parliament have the authority to bifurcate J&K into two Union Territories (UTs)?

The last question assumes importance because the conversion of a State governed by an elected legislature into a UT/UTs adversely affects a people who had earlier enjoyed the freedom of full democratic participation. In the case of J&K, the centrally appointed administrator – called the Lieutenant Governor – will now have the power to make a wide range of decisions, as opposed to a regular State Governor, who must act typically on the aid and advice of the State's Council of Ministers.

Moreover, while the legislature of the UT of J&K – which the reorganisation law states will be akin to Puducherry's – will have the power to enact laws on matters in the State List and the Concurrent List of the Constitution, Parliament will retain the power to enact overriding laws. Consequently, the arenas open to decision-making by elected representatives will be diminished.

The Delhi parallel

The total reorganisation of a full-fledged State into two UTs is historically unprecedented in India. However, one example here that can be cited is that of Delhi.

When the Constitution of India was adopted, Delhi was a 'Part C' State administered by the President acting through a Chief Commissioner or Lieutenant Governor. From 1952 to 1956, Delhi had a Legislative Assembly empowered to make laws on



Jammu and Kashmir (J&K) acceded to India in 1947 on terms recorded in the Instrument of Accession. Picture shows J&K Prime Minister Sheikh Abdullah taking oath as member of Constituent Assembly in June 1949. • THE HINDU

all matters in the State List excepting law and order; constitution and powers of municipal corporations and local authorities; and land and buildings in possession of the Central government situated in Delhi. However, in 1956, Delhi and all the other Part C States were divested of their legislative powers and converted into UTs that would now be administered by the President acting through an administrator appointed by her.

Within some years, the other UTs were given legislatures, and by 1987, the UTs of Himachal Pradesh, Manipur, Tripura and Goa were even made into States. Only the restoration of a Legislative Assembly in Delhi was stalled, out of concern that Delhi holding legislative powers over matters in the State List would compromise the Union government's ability to discharge its functions towards the nation in the national capital.

Even when Delhi received partial Statehood in 1992, with full legislative powers on subjects in the State List – except public order, police and land – the elected government in Delhi found its hands tied by the powers of a centrally appointed Lieutenant Governor. This tussle for democratic power in Delhi finally culminated in 2018, when the Supreme Court recognised that the Constitution has sought to create a democrat-

ic and representative form of government in Delhi. Only in the exceptional case that the elected government and the Lieutenant Governor differ on matters fundamental to Delhi's governance could the latter's decision override democratic will.

Accession after Independence

However, J&K's entry into the Indian Dominion is not comparable with Delhi's beginning as a 'Part C' State. Delhi was an integral part of the India during Independence and later, when the Constitution came into force. J&K on the other hand was a sovereign Princely State at the time of India's Independence and acceded to the Indian Dominion in 1947 on terms recorded in a treaty – the Instrument of Accession. Article 370 of the Indian Constitution, which accorded a special status to J&K in comparison with other States, was an embodiment of the treaty's terms.

However, J&K's special status was not a claim to sovereignty. This is apparent from Section 3 of the Constitution of the State of J&K, 1956, which recognises it as an integral part of India.

The special status merely meant that provisions of the Indian Constitution (other than Article 1 defining India as a Union of States; and Article 370 itself) were permitted to be applied to J&K differently from the way

they applied to regular States. Such a modified application allowed J&K a higher degree of autonomy.

For instance, while Parliament had exclusive powers to make laws pertaining to States, on all matters not in the State and Concurrent Lists, the residuary power rested with the State legislature in the case of J&K. With this autonomy, the people of J&K on paper had an even larger arena than regular States for enacting laws through democratic participation. Therefore, J&K's reorganisation into a UT amounts to a more severe curtailment of democratic rights than that of Delhi in 1956.

Not a constitutional amendment

Further, Delhi's conversion into a UT and the subsequent restoration of its Legislative Assembly were both carried out through constitutional amendments, which cannot easily be amended further. J&K's conversion into a UT, on the other hand, was effected through a regular law of Parliament, which can easily be amended at the behest of a majoritarian consensus from time to time.

Special status for States is not extraordinary in the Indian Constitution. Several States in India enjoy differential rights in their relationship to the Union by constitutional design, depending on their unique cultural, ethnic and geopolitical compositions. The thinking underlying this arrangement is that the interests of States with stronger intra-group ties or ethnic bases – like Tripura, Arunachal Pradesh, Manipur and Nagaland – are better represented in the Constitution and the structure of the government, if we account for their subjective contexts.

The Constitution of India's chosen federal principle was to honour these subjective contexts to hold together the diverse Indian States in the Union, as B.R. Ambedkar stated in the Constituent Assembly. Therefore, the eviceration of the right to full democratic participation of an entire section of people, as happened earlier this week in the case of J&K, should make us all wonder: what if more such laws are enacted, disregarding the subjective contexts of our other States and downgrading the States into Union Territories?

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The big picture on tigers

While the number of wild cats has increased, infrastructure expansion plans have totally discounted their presence



NEHA SINHA

The tiger, which once sat crouching, is now roaring in India. Results of a once-in-four-years estimation of tiger numbers show us that India has about 3,000 of them. This is relevant not only nationally, but also globally – this is a majority of the world's wild tiger population, of around 4,000 tigers.

Each year, the tiger estimation increases its scope. Camera trap images, findings of foot surveys and other evidence on tigers and their prey species are collected. The latest estimate says that we have approximately 2,967 tigers in India, up from 2,226 as per the 2014 count. The scope of the effort was different this time: while the 2014 count included tigers that were over 1.5 years of age, this one included tigers as young as one-year old.

Yet, we must look at numbers, especially that on young tigers and cubs, as just one indicator in the tiger story. A couple of days before World Tiger Day (when the tiger report was released), a tigress was beaten to death in fields near the Pilibhit Tiger Reserve. Two days after the report's release, a tigress and her cub were found dead near Bandhavgarh in Madhya Pradesh. Shortly after, another cub was found dead in Umaria in the same State. Earlier in July, there were the poisoning-caused deaths of a tigress and her two cubs in Chandrapur, near the Tadoba Tiger Reserve in Maharashtra.

Widening of rail, road networks

It may seem that these are stray cases with no real pattern. But while tigers are reproducing in India, new state policies are working directly against them. Relaxations in norms to allow for a widening of highway and railway networks are the new threats, adding to the old ones of retaliatory poisoning and poaching.

A report on management effectiveness of tiger reserves was also released on World Tiger Day. The report rated Pench Tiger Reserve in Madhya Pradesh as the best in terms of good management practices. This is fairly commensurate with its tiger numbers. Central India is one of the best tiger nurseries in India. Of all States, Madhya Pradesh has the highest number of tigers, over 500 of them.

Yet, tiger reserves cannot control what is around them; and the Pench tiger faces a

new threat. The National Highway 7 (NH7), which connects Pench and Kanha tiger reserves, has just been widened. Tigers, as well as the animals they prey on, find it hard to cross roads; for instance, a tiger died near Dehradun in 2016 after being hit by a speeding vehicle. It may have been from Rajaji Tiger Reserve, an area that needs more male tigers. After sustained pressure from citizens and protests from the Madhya Pradesh forest department, authorities built underpasses meant for wildlife through NH7. But go down the spanning new highway in Maharashtra, and it has barriers on the road. It isn't much of a surprise then that a tiger was recently seen climbing the barrier to cross the road.

To put this incident into perspective, most National Highways are slated for widening and upgradation, and most tiger reserves have State or National Highways around them. Each year, thousands of animals die on the road. Apart from highways, railway and irrigation projects are coming up in tiger reserves, and the Ken-Betwa river interlinking project will submerge 100 sq. km of Panna Tiger Reserve.

So, while the numbers are reason to cheer, they can hardly be the whole story. The story is beyond and around the reserve boundaries that tigers have to cross. The numbers should also give pause to the plans being made discounting the presence of tigers. This is a time for thoughtful growth. Highways and railways should not be expanded to encroach into tiger areas; irrigation projects should also avoid the areas. Cost-benefit analyses need to take into account the needs of wild animals. At the moment, highways are not even able to do away with barriers, and it is assumed that tigers can swim through dam-submerged areas. So, to live, tigers are being made to swim across dams, cross highways, dash across railway lines, not eat livestock, and avoid people.

Currently, a group of tigers stand not too far from Bhopal. They may have come from the Ratapani Tiger Reserve, but the question is: what fate awaits them – roadkill, electrocution or poisoning? The question is bleak, but the answer need not be. Prime Minister Narendra Modi said that development and environment do not need to come at each other's cost. This is true. And while tigers do not vote, our mandate to save them has never been greater.

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Social reforms at a snail's pace

To be seen as a statesman, the Saudi Prince needs to free political prisoners and end the Yemen war

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In an interview in April 2018, Saudi Arabia's Crown Prince Mohammed bin Salman (MBS) hinted that the country's male guardianship laws, which leave the legal and personal affairs of women in the hands of their male relatives, would be changed. "Before 1979 [the year of Iranian revolution and the Siege of Mecca] there were societal guardianship customs, but no guardianship laws. It doesn't go back to the time of the Prophet... we want to move on," he told *The Atlantic* magazine.

Sixteen months later, Saudi Arabia has amended the guardianship system. Under the new laws, women of 21 years or above may obtain passports, which will allow them to travel without male consent. They will also be permitted to register marriages, divorces, births and deaths and to receive family records. This follows last year's landmark decision to allow women to drive.

MBS has rightly been credited for these initiatives. After he rose to the current position, he initiated several economic and social reform measures. His "Vision 2030" plan aims to lessen Saudi Arabia's near-total dependence on oil. It also promotes private enterprises, promises to raise women's participation in workforce, which is currently 22%, and to turn the country into a global investment favourite. Easing social restrictions has been an important part of this drive. While the goal is laudable, there are three fundamental problems with the model.

A complicated legacy

First, MBS is not the benign, visionary reformer that he's often presented as. His legacy is more complicated. The story of his rise to power is also a story of a brutal purge. He detained dozens of royals and businessmen in Riyadh's Ritz-Carlton hotel in November 2017 for weeks in the name of fighting corruption. The detentions lacked any legal basis and were inconsistent with the Saudi government's push to attract private investments. More worryingly, in recent years, the country has cracked down on both dissidents and rights campaigners. Political reform remains a taboo topic. Three promi-

nent women's rights activists – Loujain al-Hathloul, Samar Badawi and Nassima al-Sada – who wanted the guardianship laws to be changed, are still under arrest.

Gender equality

Second, the social reforms are too little and too slow. True, women being allowed to drive and travel without male consent are big measures in the Wahhabi Kingdom, where the guardianship laws effectively make them second-class citizens. But from a universal rights perspective, Saudi Arabia has a long way to go before treating its women citizens equally. The guardianship system survives despite the latest laws. A Saudi woman still needs a guardian's permission to exit shelters (for abuse victims) or be freed from prison. She still needs a guardian's consent for marriage. A man can still divorce his wife without her consent.

Third, the incremental reforms might boost the Crown Prince's image at home, but his foreign policy record is awful. A UN investigation recently held the "Saudi state" (euphemism for MBS, the de facto ruler) directly responsible for the assassination of Jamal Khashoggi, the Saudi dissident journalist who was killed inside the Kingdom's Istanbul consulate in October 2018. Saudi authorities still haven't disclosed what happened to his body, while Turkish prosecutors had claimed that the body was dismembered and disposed using acid. Besides, the war MBS launched in 2015 in Yemen has turned the country into a humanitarian catastrophe. It's difficult to overlook the argument that MBS is using the reform card to amass more powers at home and divert criticism of his ruthless interventions abroad. If he wants to change Saudi Arabia and remake himself as a reformer-statesman, he should perhaps step up the pace of social and political reforms, release the political prisoners and rights campaigners, and bring the war in Yemen to an end.

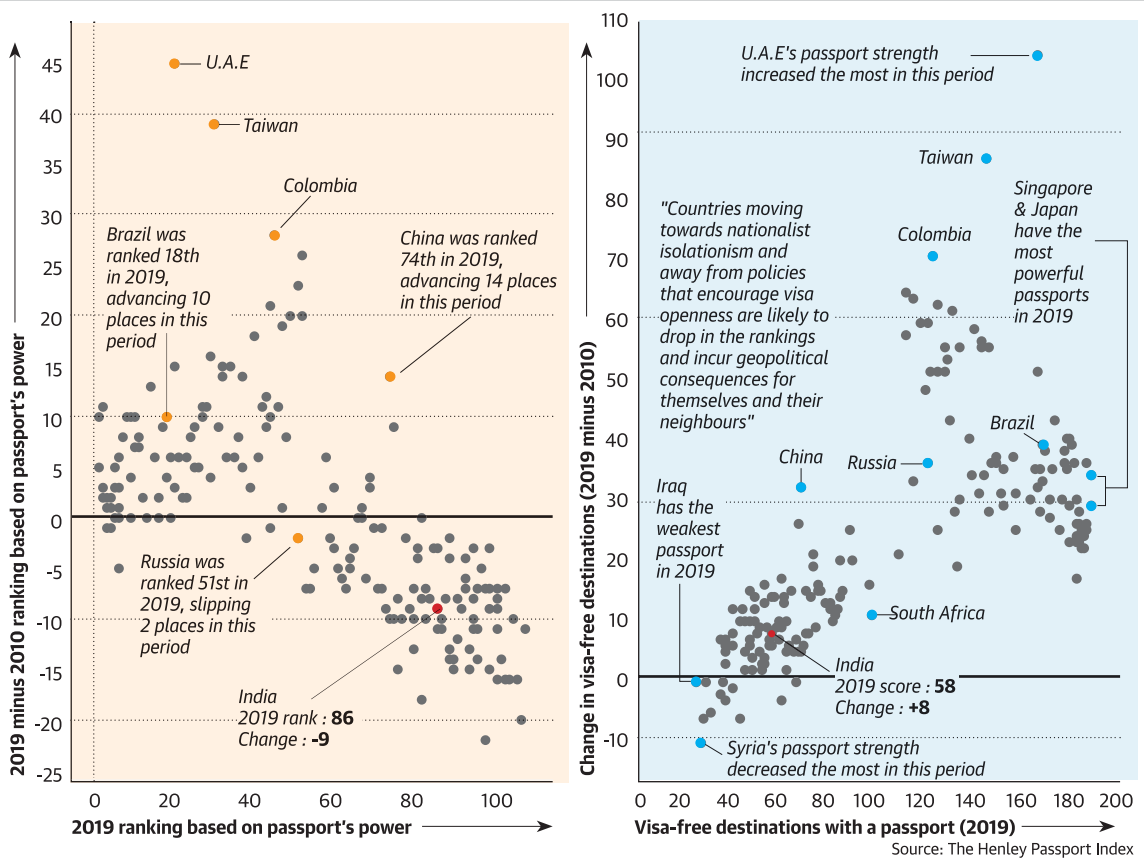
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DATA POINT

Passport power

The "strength" of the Indian passport – countries it has visa-free access to – has weakened in the last decade. The passport ranked 86 of 187 countries in 2019, while in 2010 it was ranked 77. Just 8 nations were added to its visa-free access list from 2010 to 2019 – lowest among BRICS nations. By **Varun B. Krishnan** and **Vignesh R.**



The Hindu

FROM THE ARCHIVES

FIFTY YEARS AGO AUGUST 8, 1969

PM receives threats to her life

The Prime Minister, Mrs. Indira Gandhi said here [New Delhi] to-night [August 7] that she had received some threats not only to dislodge her from the high post she was holding but her life as well. She did not explain how, when and who made these threats to her. Mrs. Gandhi was addressing a gathering of about 300 Government school teachers outside the gates of her residence in Safdarjung Road just after 9 p.m. The teachers, including several women, had come in drenching rain to congratulate her on bank nationalisation. The Prime Minister declared she would rather not deviate from "the good and right path" that she was following in the larger interests of the overwhelming majority of 95 per cent of people than continue to hold the high office. "They are welcome to take away this Prime Ministership from me but I want to tell them that the ultimate victory will certainly be ours," she said amidst cheers and shouts of "Long live Indira Gandhi." Mrs. Gandhi said that bank nationalisation was the second stage of the freedom movement, of making freedom a reality for crores of the depressed.

A HUNDRED YEARS AGO AUGUST 8, 1919

Amalgamation of Banks.

Presiding over the annual meeting of the shareholders of the Bank of Bombay [in Bombay on August 7], Sir Jamsetji Jijibhoy announced that the question of amalgamation of three presidency banks was under consideration. Proposals were to be submitted in due course to the shareholders for approval and sanction. Following the precedent set by the past Chairman, Sir Jamsetji delivered a lengthy speech reviewing the financial and trade situation. After pointing out that India had enjoyed another prosperous year and that the balance of trade in her favour was 84 crores, he compared the figures of the last year with those of 1914. After showing what tremendous effect the war had on India's external trade, he said it remained to be seen whether the United Kingdom would make sufficient effort to divert it back in prewar channels. He drew attention to the critical currency situation in 1918 and to America's help to tide over the difficulties. Referring to the recent appointment of the Currency Committee he hoped as the fixing of the rates of exchange was of vital importance to the well being and happiness of India's millions the committee would take various conflicting interests into account before making their recommendations.