

# Kashmir Issue

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This article can be well understood if you have read our previous article on : [China-Pakistan relations](#)

## Manifest pedagogy

Jammu and Kashmir as a topic demands in-depth understanding from various angles historical, political, social, geographical and international. It is only then an aspirant can write a holistic and balanced answer.

## In news

Governor dissolves legislative assembly of Jammu and Kashmir.

## Placing it in syllabus

1. Post-Independent Indian consolidation
2. Indian society- Regionalism
3. Indian polity- Federalism
4. International Relations – Bilateral (India-Pakistan relations)

## Static dimensions

1. History of Jammu and Kashmir and its consolidation with India.
2. Article 370 and issue of Asymmetric
3. Regionalism in Kashmir and its effect on National Integrity.
4. Kashmir as an issue between India- Pakistan.

# Current dimensions

1. Article 35A
2. Should article 370 be taken away?
3. Surgical strikes
4. Governor's Rule and President's Rule and their effect on Federal relations.

## Content

### **Is the issue of Kashmir a border dispute or part of an ideological battle between India and Pakistan ?**

Kashmir has never been a purely border issue. It is a manifestation of ideological battle between the two countries in the form of border dispute. This ideological battle is about India believing in Secularism and Pakistan believing in a Theocratic State.

We can have a better understanding of the topic if we dwell on the history of Indo-Pakistan relations through the prism Kashmir.

### **History of the Border problem w.r.t. Kashmir**

Immediately after Independence, Boundary Commissions set up under India Independence Act did not demarcate Jammu and Kashmir and Sir Creek as Jammu and Kashmir was an independent state. The International Boundary was not extended to that region.

Pakistan claimed Kashmir on the basis of Religion and invaded it in 1948. Maharaja Hari Singh sought India's help. The Instrument of Accession signed by the king of Kashmir gave

sole rights over Kashmir to India. In the 1948 war of Pakistan, Indian army recovered 2/3rds of the territory of the state. After which the matter was taken to UN and by the UNSC resolution 47 three decisions were taken :

1. Withdrawal of troops
2. Plebiscite
3. UN Commission on India and Pakistan is formed

But this UN intervention did not consider Kashmir issue to be an aggression by Pakistan or the internal issue of India and considered it as a bilateral issue between India and Pakistan. But the stand of India was and is the same even today.

1. Accession happened legally through Instrument of Accession (IOA)
2. There is no need for Plebiscite as IOA is ratified by the Constituent Assembly of the state which reflects popular opinion.
3. India is a Secular country open to all religions

But the unsettled nature of the dispute owing to ideological dispute led to the next round of conflicts like –

- 1965 war and the subsequent Tashkent agreement.
- 1971 Bangladesh liberation war wherein through the Shimla agreement it is agreed that the dispute should be bilaterally resolved.

With both India and Pakistan becoming nuclear capable countries the wars between India and Pakistan started becoming Proxy.

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**After the 1962 war the Geographical**

## **status of Jammu and Kashmir is as below :**

The state shares 3323 km of border with China and Pakistan of which 2260 km is International Border and 814 km is LOC. The border is not properly demarcated beyond NJ9842. As of today –

- India controls Jammu and Kashmir, Ladakh and Siachen
- Pakistan controls northern areas of Gilgit and Baltistan
- China controls Aksai chin and Trans-Karakoram Tract and the tract was gifted to China by Pakistan in 1963

By looking at the history and the geographical details we can now deduce various stakeholders in the problem of Jammu and Kashmir and a solution is possible only when the dynamics of each stakeholder is taken into account –

1. State government of India
2. Separatists
3. Central government of India
4. Civil society
5. Pakistan
6. Alienated youth
7. Foreign powers (Pakistan and China)

## **The issue of Article 370**

Indian federalism is an Asymmetric Federalism which is accommodative of the diverse interests and is part of the project of national consolidation. As part of this project of Asymmetric Federalism and the respect for the identity of Kashmiriyat Article 370 is included in Constitution which provides a separate Constitution for Jammu and Kashmir. The article has been included in the Constitution of India as part of temporary provision to be revoked when Kashmir is well integrated with India.

But this Constitutional intention was never properly translated into practice as the local institutions never developed properly. This trend has been continuing even today

with the recent example being the dissolution of State Legislative Assembly by the Governor without conducting a floor test despite demands made by certain parties to prove their confidence. This was completely against the procedural propriety prescribed by the Constitution.

Hence the issue of revoking Article 370 does not arise as it was not properly implemented in the first place.

## **Constitutional provisions with respect to Governor's rule Kashmir**

In case of failure of constitutional machinery in any other state of India, President's Rule is imposed under Article 356 of the Constitution. But in case of J&K, as per Section 92 of state Constitution, Governor's Rule is imposed in the state only after the consent of the President of India in case of failure of constitutional machinery for period of six months. During the Governor's rule, State Assembly is either suspended or dissolved. If the Constitutional machinery is not restored before the expiry of this 6 month period, the provision of Article 356 of the Constitution of India are extended to Jammu and Kashmir and President's rule is imposed in the state.

In the recent case, the Governor violated the procedural propriety. J&K was under the Governor's Rule and the State Assembly was under the state of suspension and was not dissolved. The decision to dissolve was taken when certain parties made a claim to prove their confidence. The Governor being the Constitutional Head had to rightly give a chance for floor test without which dissolution doesn't make sense, instead the Governor dissolved the house without a floor test

## **Article 35A**

Article 35A is a provision incorporated in the Constitution giving the Jammu and Kashmir Legislature a carte blanche to

decide who all are 'permanent residents' of the State and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare. The provision mandates that no act of the legislature coming under it can be challenged for violating the Constitution or any other law of the land. (*The issue will be dealt in detail in the upcoming weeks*).

## **Test yourself : Mould your thoughts**

1. 'The solution to Kashmir can make a beginning only through the implementation of Asymmetric Federalism in the right spirit'. Critically examine the statement in the context of the recent dissolution of the Legislative Assembly of Kashmir by the Governor.