

# Article 370: A Constitutional Impediment to Resolving the Kashmir Crisis

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# Jammu & Kashmir: The Present

- 14-year old Islamic insurgency
- Started with attacks on Hindus - massacres, rapes, assassinations, threats
- “Talibanization” preceded the one in Afghanistan
- Nearly 400,000 Hindus forced out in 1990
- Continuing massacres on remaining Hindus perpetuate **denial of freedom of religion**
- Need to understand contributing factors and bigger context of this situation

# Jammu & Kashmir: The Present

- Jammu and Kashmir provides a model for the “clash of civilizations” that has been exposed since 9/11
- In many ways, Jammu and Kashmir depicts a potential future state of the global “war on terror”

# Jammu & Kashmir: Geography



From Univ. of Texas Web Site:  
[http://www.lib.utexas.edu/maps/middle\\_east\\_and\\_asia/kashmir\\_disputed\\_2003.jpg](http://www.lib.utexas.edu/maps/middle_east_and_asia/kashmir_disputed_2003.jpg)

# Kashmir: Historical Perspective

- Center of Hindu Religion and Education
- Hindu character eroded only by Muslim oppression since 12th century A.D.
- Killings, Pogroms, Forced Conversions brought Kashmir's Hindu population down to **11 families** in 200 years after first Muslim invasion

# Kashmir and Hinduism: Integral Part of Indian History

Golden Era of Hinduism in Kashmir	Muslim Invasions and Pogroms
5000 B.C.	
4000 B.C.	
3000 B.C.	
2629 B.C.	
2082 B.C.	
1048 B.C.	
300 B.C.	
248 B.C.	
78 A.D.	
510 A.D.	
600 A.D.	
630 A.D.	
650 A.D.	
813 A.D.	
855 A.D.	
883 A.D.	
<b>1148 A.D.</b>	
1322 A.D.	
1339 A.D.	
1394 A.D.	
1540 A.D.	
1846 A.D.	
1947 A.D.	
1948 A.D.	
1950 A.D.	
1987 A.D.	
1988 A.D.	
1989 A.D.	

Part of Harrapan civilization

Mention of Vitasta (Jhelum River) in Rig Veda

Kashmir Clan mentioned in Mahabharat

King Sandiman's reign

King Sunder Sen's reign

King Nara's reign

Part of Mauryan Empire

Emperor Asoka: Srinagar founded

Emperor Kanishka's reign (Kushan Dynasty)

First Foreign Invasion (Huns)

King Lalitaditya's reign - builds great Sun temple

Emperor Harshavardhan

King Chach (A Brahmin ruler)

King Ajatapid (Pampre town founded)

King Avantivarman's reign (Avantipora founded)

King Shankaravarman's reign (Pattan founded)

King Jayasim's reign - **Muslim incursions start**

Zulkatur Khan - Hindu conversions accelerate

Muslim invaders destroy great Sun temple

Sikander: Hindu pogroms: **11 families survive**

Kashmir part of Mogul Empire of India

British restore Hindu rule: Gulab Singh's reign

Pakistani invasion, Hari Singh accedes to India

1 million Hindus remain in Kashmir valley

Article 370: Seeds for oppression of Hindus sowed

5 decades of migrations: Only 400,000 Hindus left

Dozens of Hindu temples destroyed by Muslims

Pak terrorism: **350,000 Kashmiri Hindus leave**

# Politics & Religion in Jammu and Kashmir: Past 50 Years

- During Partition of India by the British, Pakistan is formed
- Freedom of religion guaranteed in India
- Pakistan becomes “homeland of Muslims” in South Asia
- Jammu and Kashmir accedes to India in 1947 as Pakistani troops and tribals invade state, brutalize locals

# Politics & Religion in Jammu and Kashmir: Past 50 Years (contd.)

- Article 370 was a temporary statute, defining relationship with an interim state administration
- Gave special status to the state
  - Different citizenship rights
  - Different property rights
  - National corruption laws did not apply
- Article 370 left in place after full fledged state legislature took over in 1957

# “Autonomy” For Whom?

- Wishes of Kashmiri Hindus, as well as residents of Jammu and Ladakh regions ignored
- At Partition, a near 50-50 divide in Muslims vs. Hindus
- Jammu, Ladakh population larger than Kashmir valley population
- Article 370 conditions negotiated exclusively with Kashmiri Muslim community

# Fruits of Article 370

- Under the cover of Article 370, the Kashmiri Muslims
  - Steadily eliminated Hindus from all spheres of state administration
  - Placed Islamic fundamentalists in state bureaucracy
  - Gerrymandered electoral districts to disproportionately exclude Hindus
  - Discriminated against Hindus in academic admissions
  - Took control of over 95% of media outlets
  - Used media to spread fundamentalism

# Fruits of Article 370 (contd.)

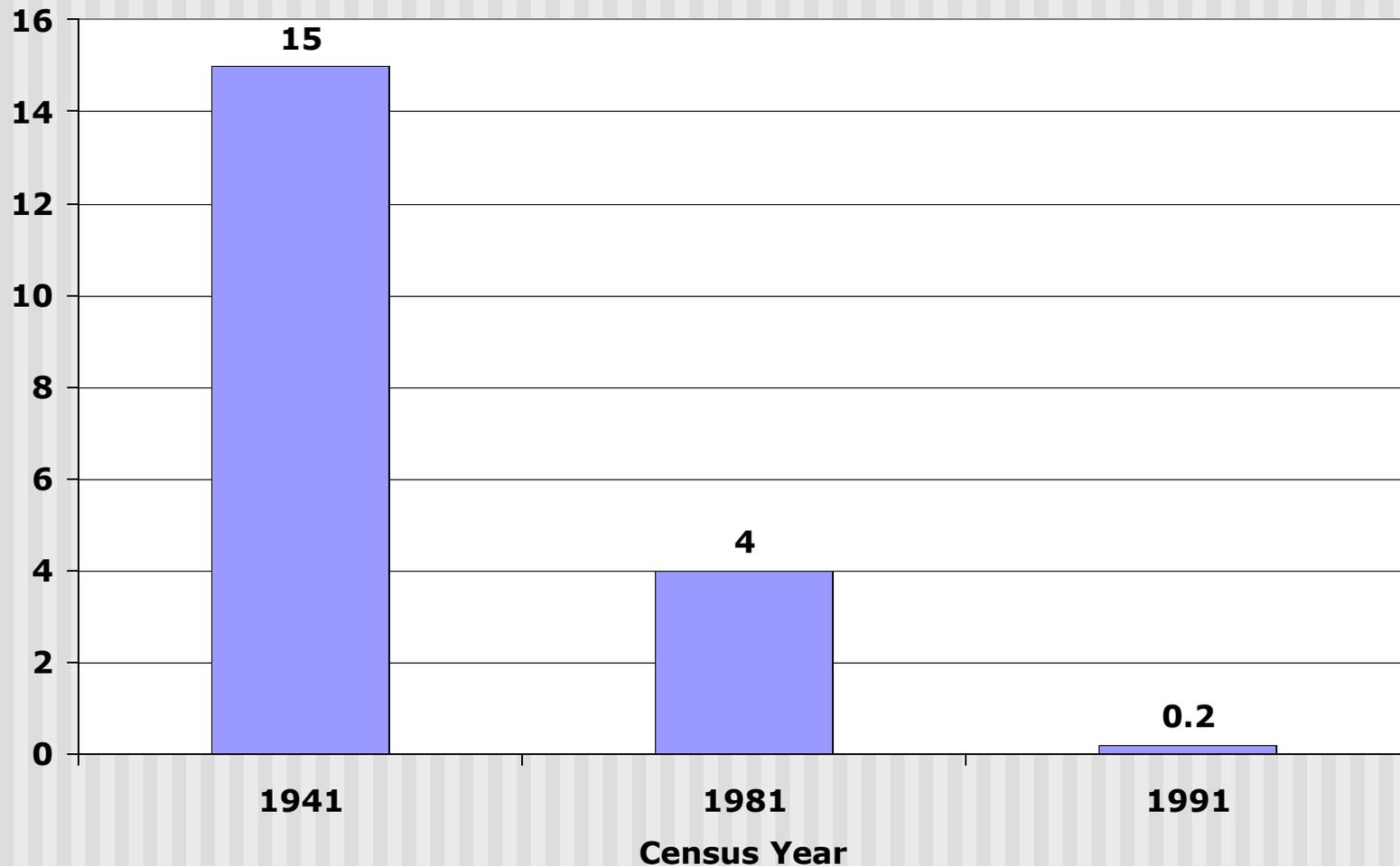
- Article 370 allowed continuation of archaic “State Subject” law
- In the 19th century, this law prevented British colonialists from settling in state or buying property
- After 1947 partition, acted as part of a double pincer on the state’s Hindus
  - Hindu men denied opportunities moved to other Indian states
  - As per the State Subject law, Hindu women who married those men, and their children, lost citizenship and property rights in the state

# Fruits of Article 370 (contd.)

- State Subject law under Article 370 put tremendous negative pressure on Hindu population in Kashmir
- While overall population rose everywhere in India, the Kashmiri Hindu population declined from 15% to about 4% of population
- Gerrymandering of electoral districts ensured that Hindu representation in state legislature was nil or negligible
- Paved the way for denial of fundamental right: attack on Hindu religion marked by destruction of temples, assassinations of well known Hindus and killings, rapes and kidnappings of thousands of Hindus
- Culminated in 1990 ethnic cleansing of nearly 400,000 Kashmiri Hindus fomented by Islamic fundamentalism

# Fruits of Article 370 (contd.)

**Decline of Hindu Population of Kashmir Valley**



# Fruits of Article 370 (contd.)

- The State Subject law under Article 370 also ensured that businesses and industry from the rest of India could not move into Jammu and Kashmir
- Further increased the isolation of an increasingly Talibanized state
- When the Indian economy was opened in the 1990s, the gains were completely missed out in Jammu and Kashmir, where businesses could not readily operate
- Muslim fundamentalist clerics blamed lack of economic progress and all other woes on India, helped stoke the fires of religious intolerance

# Article 370: The Real Rationale

- Separate identity of “Kashmiris” is reason offered for Article 370, further autonomy or secession
- Rationale is thinly veiled attempt to cover up the real reason: religious intolerance
- Kashmiri Muslim leader Yaseen Malik’s recent statement: **“Kashmiri Hindus should not involve themselves in the political process”**
- Autonomy for Jammu and Kashmir has been used exclusively for Talibanization
- Other states in India that have “less autonomy” have managed to preserve separate cultural and linguistic identity, as well as participate in national progress

# Conclusion

- Jammu and Kashmir state is an ancient seat of Hindu culture and heritage
- Islamic depredations have changed the demographics of the state
- Since partition of India, the state has been granted considerable autonomy under Article 370
- This autonomy ostensibly helps maintain the “Kashmiri” character of the state

## Conclusion (contd.)

- Article 370 has been leveraged by the state's Muslim population to grab power in the administrative, political, financial spheres as well as media
- The autonomy has been used to drive Hindus out of Kashmir valley and to Talibanize the state
- Failure of the Indian government to abrogate Article 370 has resulted in perpetuation of the problem

# Conclusion (contd.)

- “Autonomy” / “Freedom” that results in denial of freedom for part of a population is not autonomy or freedom at all
- Fundamental freedom of religion rights need to be considered while discussing autonomy in any region of the world
- **International pressure must be built upon India** to abrogate Article 370, and help reverse the Talibanization of Jammu and Kashmir state
- Abrogation of Article 370 will tear down the artificial walls of the state with the rest of India, and accelerate a solution to the Kashmir crisis

# Conclusion (contd.)

- **Aim of the Islamic groups fighting in Jammu and Kashmir:**
  - **Establish Islamic rule in the entire Indian subcontinent**
  - **Establish Islamic rule around the world**
- **Jammu and Kashmir presents a model of a “war on terror” that is facing defeat**