

Open Letter to the Chief Justice of India, Shri B.R. Gavai

June 28, 2025

Honourable Chief Justice Gavai,

We are a group of five petitioners in the Article 370 case which was ruled upon in December 2023, comprising a former Union Home Secretary, a former Major-General, a former Air Vice-Marshal who defended India in two wars with Pakistan, a former Government of India-appointed Interlocutor for Jammu and Kashmir, and a former Union Secretary of the Inter-State Council.

We write to express our concern that the erstwhile state of Jammu and Kashmir has not yet regained the statehood that was seized from it in August 2019, despite repeated promises by the Union Home Minister, including on the floor of parliament in November 2019, that it would be restored soon. This was the first time in the 75 years of independent India that an existing state had been demoted to Union Territory status. In our petition as well as oral representations, we argued that this demotion contravened the Constitution and the basic structure doctrine that India is a federal democracy in which states' rights must be respected, which has been a bedrock for Indian unity for the past 52 years.

In its verdict, the honourable bench of the Supreme Court stated that it was not ruling on the constitutionality or unconstitutionality of demoting an existing state in its entirety to two Union Territories, because the Solicitor-General had assured it that statehood would be restored at an appropriate time. In his oral remarks, the then Chief Justice of India, D.Y. Chandrachud, urged the Union administration to restore statehood at the soonest, while setting a deadline for assembly elections to be held by end September 2024. In a separate note attached to the judgement, Justice Sanjay Khanna expressed the view that the demotion of the state to two Union Territories was unconstitutional and should be summarily reversed.

The Union administration's repeated assurances that statehood will be restored, both in parliament and through the Solicitor-General eighteen months ago, suggest a tacit recognition that the removal of statehood is unconstitutional. However, not only is the Union administration dragging its feet, despite renewed calls by Jammu and Kashmir's legislators and political parties, the Solicitor-General also said before the bench in December 2023 that statehood would only be restored in stages – i.e., the grant of limited powers one at a time over an undefined period. This is a policy that nullifies the constitutional issue that no state can be demoted to a Union Territory in its entirety. If that demotion was unconstitutional, then it follows that statehood must be restored in toto.

If the Union administration is allowed to implement the policy that the Solicitor-General laid out, then all states will be at risk of similar actions being taken against them. This will implode the basic structure doctrine that has underpinned India's unity in diversity and provided protection for states' rights in our country. In the current environment of

contestation, in which several states' rights are being eroded, the need to uphold Jammu and Kashmir's constitutional right is critically important to the nation.

We are concerned that the Union administration will again argue that the time is not appropriate for restoration of Jammu and Kashmir's statehood, given the Pahalgam terrorist attack of April 2025. Not only is that argument not tenable, it can be argued that this is exactly the time to do so. The high turnout in the October 2024 assembly elections with no violence, and the absolute majority electors gave the National Conference, a regional party, indicated the people had voted for an elected administration with the strength to govern according to public aspirations. In its first sitting, the newly elected assembly passed a resolution for speedy restoration of statehood. According to newspaper reports, Lieutenant-Governor Manoj Sinha forwarded the resolution to the Honourable President of India, Shrimati Draupadi Murmu. Eight months have passed, and no action to restore statehood has been taken, despite repeated requests by the Chief Minister.

The people of Jammu and Kashmir were the first to protest the Pahalgam terrorist attack. There were candlelight demonstrations across the state, traders and business associations called a bandh, and mosque congregations wore black armbands while the Chief Cleric of the Kashmir Valley, Mirwaiz Umar Farooq, called for mourning the victims and expressed solidarity with the survivors.

Government investigators first announced that there were four terrorists, two Pakistani and two Kashmiri. There were attacks on innocent Kashmiris in other parts of the country, the houses of Kashmiri civilians accused of being 'overground workers' for terrorist organisations, even those of their relatives or neighbours, were demolished in violation of Supreme Court orders that such demolitions were illegal, and media reports suggest that anywhere between 1500-2000 Kashmiris were detained for questioning.

According to the National Investigative Agency, it is now found that the earlier police findings indicting Kashmiris were unfounded, and the attackers were Pakistani. The maximum accusation, at present, is that two Kashmiris gave the terrorists food, possibly under duress.

The Sinha administration's hasty and unjustified punitive action has caused a great deal of anger on the ground, which has been exacerbated by the sidelining of the elected administration and assembly from security consultations and initiatives for redress. The Chief Minister is neither invited to nor briefed on security meetings. The elected administration's proposal that it be consulted on appointments and transfers of civil servants, an issue on which the Supreme Court had ruled that civil servants must be accountable to the elected administration in the case of Delhi, has been rejected by the Lieutenant-Governor. Those suffering from human rights violations cannot go to their MLA or minister for aid, because the police do not answer to them. There is no Jammu and Kashmir human rights commission to which they can go either.

The post-Pahalgam environment, which was widely conducive to the re-establishment of peace, is already being vitiated. The most effective bulwark against such vitiation is

restoration of civil and political rights, including oversight institutions, that will come with statehood.

Given the grave import of the issue of statehood and the impermissibility of demoting an entire state to two Union Territories, we appeal to you to take suo moto cognizance of this letter and constitute a bench of the Supreme Court to hear petitions on the unconstitutionality of the removal of Jammu and Kashmir's statehood, seeking an early deadline for its restoration, and ensuring that no future Government of India should be able to abrogate existing statehoods.

Yours truly,

Radha Kumar, former Member, Group of Interlocutors for Jammu and Kashmir

Gopal Pillai, former Union Home Secretary of India

Major-General Ashok K. Mehta (retd), Indian Army

Air Vice-Marshal Kapil Kak (retd), Indian Air Force

Amitabha Pande, former Union Secretary Inter-State Council of India