



## REVOCATION OF ARTICLE 370 OF INDIAN CONSTITUTION: IMPLICATIONS FOR REGIONAL PEACE

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### Abstract

*Bharatiya Janata Party revoked the Article 370 of its constitution, after Modi resumed as Prime Minister; as result of electoral victory in 2019 elections. This revocation changed the legal and constitutional status of Jammu and Kashmir. The proposed Jammu and Kashmir Reorganization Act was passed, subsequently, by the Indian Parliament. It divided the Jammu and Kashmir into two union territories. This development triggered extensive protest, within Indian Held Kashmir, as well as, across the Line of Control in Pakistan. Various political commentators feared that this unilateral act of India, in a disputed territory, would lead to threatening of peace and stability of the region. This paper attempts to analyze the post-revocation emerging political and strategic scenario in the region with a particular focus on the policy options exploited by Pakistan to highlight this issue at international level. An attempt has also been made to give policy alternatives for Pakistan to better plead its case at different international forums.*



**Keywords:** Jammu and Kashmir, Pakistan, India, Bharatiya Janata Party, Revocation of Article 370.

## **Introduction**

Kashmir dispute between India and Pakistan is a major threat to the regional peace in South Asia. Kashmir obsession has caused a number of violent conflicts between the two states since 1947. This dispute has territorial, ethnic, and religious dimensions with the potential for economic and strategic advantages to both countries. Both Pakistan and India claimed to have strong moral and legal claims over Kashmir. Since 1947, a dominant section of Kashmir's population is demanding for their right of self-determination in the Indian Held Kashmir. Amidst contradictory claims on Kashmir, the bilateral relations between the two neighboring states have not moved forward. Despite exploiting different options, from military to diplomatic means, and engagement in multilateral and bilateral dialogues, the two states failed to resolve the issue. Even involvement of United Nations Security Council (UNSC) at a very early stage of the dispute resulted in a failure. The international attention on the disputed area has been refocused once again after the revocation of Article 370 of Indian Constitution on August 5, 2019.

The central focus of this article is to analyze the post-revocation emerging political and strategic scenario in the region. Likewise, to suggest policy alternatives to Pakistan for addressing the emerging post-revocation emerging challenges for its historical stance on the issue. This article is sub-divided into six sections. The first section engages historical background of the issue. The second section analyzes status of Kashmir in the Indian Constitution during the pre-revocation period. Third section describes the major changes brought in Indian Constitution as a result of revocation of Article 370 on August 5, 2019. Fourth section deals with the local, regional and global response to revocation. It also critically analyzes the present foreign policy of Pakistan on Kashmir issue and suggests policy alternatives to better highlight its case at international forums. Finally, conclusion is drawn on the basis of discussion generated in the previous sections.

## **Historical Background**

Kashmir dispute is unfinished part of the partition of India. The geo-strategic location of Kashmir was very important for both Pakistan and India. Lamb A. (1992) mentioned that the geographic and demographic contiguity of Kashmir with Pakistan made it more probable to join Pakistan. Jawaharlal Nehru skillfully maneuvered the political situation to make grounds for Indian intervention and occupation of Kashmir while the partition plan was being finalized (Snedden, 2013). Mr. Nehru, Gandhi and other political leader started



visiting Kashmir valley in this background, soon after the announcement of partition plan. Lamb A. (1992) stated that Lord Mountbatten had a dubious role in the conspiracy of compelling Maharaja for annexation of Kashmir with India using Sheikh Abdullah as a pawn. The Gurdaspur District, a Muslim majority area was intentionally and tactfully given to India by “Red Cliff Award” in violation to the shared understanding of the partition terms. This created the possibility of the Kashmir’s accession with India. It allowed India to connect with Kashmir and move its military through road via Gordaspur into the valley. Meanwhile, Hindu nationalists and Rashtriya Swayamsevak Sangh (RSS) workers penetrated in the valley. They became the source of exerting pressure on Maharaja, whereas, Nehru-Sheikh Abdullah alliance allowed India to consolidate its control on the valley (Kumar, 2018).

Against the will of majority Muslims, Raja Hari Sing signed the instrument of accession with India. Lamb A. (2007) said that in this emerging conflict situation, Pakistan relied on Tribal fighters and they pushed the Indian forces back and capturing the area that now forms Azad Kashmir. Volatile situation in Kashmir and her loosing grip on the valley compelled India to take the issue to UNSC. The ceasefire was called between the two states. UNSC passed a resolution for the peaceful settlement of the dispute. A commission was proposed to settle the issue and facilitate a plebiscite. The Commission failed in resolving the issue in accordance with the UNSC resolution. Later on, ceasefire line was converted into Line of Control. The conflict lingered on where India played diplomatically and was able to keep the status-quo. The dissenting voices in Kashmir gradually started mounting up. The influx of Indian armed forces and blatant human rights violations in the Indian held Kashmir resulted in a mass uprising against Indian occupation. Pakistan extended its moral and diplomatic support for the cause of Kashmir. Pakistan’s untiring support for the cause, since last seventy three years, has caused serious deterioration of relations between India and Pakistan. The issue captured international attention once again when a war broke out between Pakistan and India September, 1965. After the war and as a result of Tashkent Agreement cease fire line was converted into Line of Control. Pakistan alleged India of intervening in East Pakistan to divert international attention from Kashmir issue (Saleem, 2016). Indian Prime Minister Modi confessed at government level that India assisted *Mukti Bahini* (Bangladesh Freedom Forces).

Shimla Accord was signed between India and Pakistan after the war of 1971. As per the agreement an important development occurred where it was decided that Kashmir issue would be settled bilaterally by the two stakeholders i.e. India and Pakistan. It was a great diplomatic win for India where she was able to regionalize the issue from its previous multilateral status. The issue was once again highlighted after the nuclear test of India and Pakistan in 1990’s and subsequent Kargil war, which brought the two nuclear powers on



the brink of nuclear war. Despite some half hearted attempts at negotiating the issue mostly Kashmir remained at back seat due to American war on terrorism during the first decade of 21<sup>st</sup> century. The issue once again became the centre of hot debate after BJP won elections in 2014. Bharatiya Janata Party (BJP) had promised to amend Indian Constitution by revoking the Article 370. The promise was repeated in the BJP's election manifesto of 2019. After landslide victory in 2019 elections, Hindu nationalism in India revived and *Hindutva* ideology captured the central stage in Indian power politics. The BJP backed by RSS had the strong will from the start to revoke the article of Indian Constitution dealing with the legitimate status of Indian held Jammu and Kashmir (J &K). After winning elections BJP revoked the Article 370 of Indian Constitution on August 5, 2019. Pakistan strongly responded by rejecting the Indian move and taking the issue once again to international media and multilateral platforms. Indian act of revocation not only resulted in widespread protests within Indian held Kashmir and mainland India but also across the border in Pakistan. The emerging situation has seriously challenged the peace prospects in the South Asian region (Ahmed, 2019). It is pertinent to analyze the pre-revocation status of Kashmir to develop a context for understanding the post-revocation geo-political scenario.

### **Pre-Revocation Constitutional Status of Jammu and Kashmir**

Prior to the partition of Sub-continent J & K was a princely state; ruled by Maharaja Hari Singh. Both Indian Independence Act 1947, and the Cabinet Mission Plan granted choice to the entire princely states to either accede with India or Pakistan or to remain independent (Soofi et.al, 2019). The Maharaja of Kashmir decided to remain independent. As an alternative, a 'Standstill Agreement' was signed by Maharaja with Pakistan which shifted obligation for running certain services in J&K like telegraph, railways and the post from India to Pakistan. Until the 3<sup>rd</sup> week of October 1947 the status quo remained intact. Local skirmishes started in Kashmir. As a result of these skirmishes an 'Instrument of Accession' to the territory of Bharat is alleged to have been signed by the escaping Maharaja on October 26 1947 (Lamb A. , 2019). On his return on October 27, 1947, the Indian Governor General, recognized the accession on the condition that once law and order was restored in Kashmir the issue would be resolved upon the will of the people (Mountbatten, 2019). Kashmir was brought under constitutional jurisdiction of India by inserting the Article 370 in Indian constitution in 1950.

According to this article a special status was given to the state of J&K. This special status meant the grant of special autonomy for the princely state. Moreover, right of separate state flag, J&K internal administration and separate constitutional right had been given. Briefly Article 370 had five special provisions: firstly, the state of J&K was exempted to have



whole execution of constitution of India and thus have the authorities to formulate its own constitution; secondly, if the state's government agrees with the central government then India's central government could only exercise its authority and legitimate power over it; thirdly, the agreement would continue provisional till the time it was approved by elected assembly of J&K; fourthly, Article 370 cannot be revoked or modified without the recommendation and approval of the State's elected assembly; and finally, the India administration's authorities over J&K state were limited to foreign affairs, communications and defense (Noorani, 2006). Thus, throughout Indian history, prior to revocation of Article 370, Kashmir remained a special zone in Indian quasi-federation. The main purpose for keeping its special status intact was to normalize law and order situation in Kashmir, as well as, to neutralize the insurgence of dissenting voices and groups demanding for the right of self determination. It also gave a moral leverage to Indian government while defending its occupation at international platforms. Rise of Modi and BJP in Indian politics and its extremist stance on various domestic issues will have long term effects on Indian image in the global community. Revocation of Article 370 is believed to be one such misadventure BJP government that has tarnished the secular image of India and its claim to be the largest democracy in the world.

### **The Amendment in Article 370 and Regional and International Reponses**

In August 2019, Indian administration announced to make major modifications to the legal status of J&K state. By revoking Article 370 of the Indian Constitution Government announced to divide the J&K into two successor "Union Territories" with further inadequate original administrative authorities. In the early August 2019, a security crackdown started in Jammu and Kashmir. Tourists were instructed to leave the state as early as possible. Moreover, Hindu pilgrimage was suspended, communication shutdown was executed and restriction was imposed on community gatherings. Local politicians were placed under house arrest (Medha, 2019). Further 38,000 troops were sent to the area. Presidential Order C.O. 272 was issued by the President of India on August 5, 2019, which made the following amendments to the Constitution of India:

- a. All references to the 'Government of J&K' would hereafter be interpreted as references to the 'Governor of J&K'
- b. All references to the 'J&K Constituent Assembly' shall be took as references to the 'Legislative Assembly of J&K'
- c. The Constitution (Application to J&K) Order 1954 was repealed with immediate effect.



Constitution Order 272 was only the first of a sequence of wisely made lawful exercises meant at eliminating the special status and autonomy of J&K and provided for a two-fold objective. First, by supersession of the Constitution (Application to J&K) Order 1954, Article 35-A became null and void. Article 35-A of Constitution of India guarded local Kashmiris from movement and any efforts to demographic constitution of Jammu & Kashmir by stopping individuals from the remaining India from purchasing assets or getting certification as a permanent residents of Jammu and & Kashmir or getting home grown administration jobs.

By revoking Article 370, Modi's administration snatched away the special dwelling rules for Kashmiris dating back to 1927, which had guaranteed only permanent residents' right on buying land property, getting administration jobs as well as University positions and right to vote in local elections. Revocation allowed citizens of mainland India to apply for domicile certificates in Kashmir. These apply to those living in Kashmir for fifteen years, including 1.75 million refugee laborers. Majority of these laborers were Hindus. Further, people who have worked as a civil servant in J&K for 7 years and their kids who studied in Kashmir have also become eligible for domicile certificate. The changes brought in Article 370 allowed for demographic flooding to Kashmir (Daily Dawn, August 30, 2020).

Revocation of Article 370 not only shook the regional peace and stability but the issue was highlighted globally. Deteriorating law and order situation in Jammu and Kashmir and fear of mass protests compelled India to lock down the valley. The reaction to revocation was not only limited to the valley and across the border in Pakistan but it was also observed within India, where progressive, liberal and secular segments of the society came out to oppose this misadventure of Modi government.

### **Response of Indian Public**

There was mixed reaction to revocation of Article 370 in India. This division stretched from the political elite to the layers of society. Pro BJP segment of the Indian society was supporting the revocation of Article 370, while those who believed BJP as a threat to Indian secularism strongly condemn this act. Electoral win of BJP allowed it to pass a resolution in favor of Presidential Order from the lower house of the Indian parliament i.e. Jammu & Kashmir Reorganization Bill by overwhelming majority. The opposition parties termed the termination of the special status of Kashmir as a direct attack on the Constitution of India and its secular values. They argued that Modi and BJP were responsible for leading India to a Hindu state and pulling it away from the ideals of its founding fathers like Jawaharlal Nehru and Mahatma Gandhi. Gang (2019) argued that it



would be suicidal in a culturally diverse state like India, where more than 14 percent of inhabitants were Muslims. Gang (2019) stated further that the track adopted by the Modi government might lead the multicultural and multi-religious society towards disintegration. Moreover, a large segment of society termed this move as extra constitutional, illegal and fraudulent. A number of protests in major cities of India were also observed against the revocation. These protests were reported in a number of Indian dailies and international newspapers like British Broadcasting Corporation (BBC).

### **Response of Kashmiris**

The most powerful reaction to revocation of Article 370 came from the Indian held Kashmir. The autonomy granted to Jammu and Kashmir under Article 370 had emotional and symbolic importance for the masses of Kashmir. When Kashmiris were struggling, for their right of self determination; the decision of revocation snatched away their, existing, special status in India. The act of revocation bred deep rooted suspicion and fear about their social, political and religious identity. A study carried out by the New Delhi-based Concerned Citizens Group (CCG) suggested that the revocation of Article 370 strengthened the perception that it would essentially allow outsiders to the Valley in the garb of developers. The locals believe that the government is intending to change the demography of Kashmir by settling Hindus from other areas of India as well as creating space of permanent settlement of ex-servicemen (Concerned Citizens' Group, 2019).

### **Global Response**

The act of revocation once again made Kashmir dispute a subject of international debate. The reaction at global level could be categorized into two: global institutional response and state level response. At global institutional level the most noteworthy response came from United Nations (UN). The UN Security Council, on August 8, 2019, apprehended the development in the context of revocation of Article 370 could worsen the human rights condition in Indian held Kashmir. It was reassured that the stance of the UN on Kashmir dispute is ruled by its Charter and Security Council Resolutions. Pakistan, with the support of China, urged the UN to play its role in the resolution of Kashmir dispute. Pakistan started informal and closed-door consultations amongst UNSC members on August 16 (Times of India, August 16, 2019). India's Diplomat defended the New Delhi's position that Article 370's revocation was a firmly internal matter. No UNSC member other than China spoke openly about the August meeting (Times of India, August 17, 2019). Proceedings of the meeting were disappointing for the citizens of Kashmir as it failed to change the status quo in the post-revocation scenario in the valley.



In mid-December, Beijing reportedly echoed Pakistan's appeal that the UNSC hold additional closed-door meeting on Kashmir, but no such meeting has taken place (Hindustan Times, Jun 12, 2020). Michelle Bachelet, High Commissioner for Human Rights uttered being profoundly anxious about the human rights condition in Kashmir in a September speech to the UN Human Rights Council. A spokesman for the Council in October said that they were tremendously anxious that the residents of Indian occupied Kashmir lingered to be underprivileged of an extensive series of human rights and they called to lift the lockdown in the Indian held Kashmir as well as to completely reinstate the rights that were being denied after the act of revocation (Roche, 2019).

Further, Foreign Minister of China promised to support Pakistan's stance on Kashmir and to take the Kashmir issue before the UNSC. One editorial published in China's state-run media cautioned that India will suffer menaces for its irresponsible and arrogant actions. (Bhatt, 2019). Moreover, China as a permanent member of UNSC, on Friday August 16, 2019 called a private meeting to deliberate on Kashmir issue. It was the first time in nearly half a century that UNSC considered Kashmir dispute for discussion.

Pakistani diplomats around the globe tried to highlight the Kashmir issue at international forums. Its diplomatic efforts to divert the attention of important international actors towards the developing volatile situation in the sub-continent had a mixed response. For instance, serious concerns were raised by UK on the revocation of Article 370. On the Kashmir issue, UK's attitude has an element of colonial baggage. Debates were arranged in different universities to discuss the emerging situation in post-revocation period. Whereas, a number of significant international actors like the US, Russia France and Germany continued to stick to their official diplomatic position calling Kashmir being an internal matter of India. Morgan Ortegas, US State Department spokesman said on Section 370 that this was India's internal matter. Russia clearly stated that the termination of Article 370 is purely an internal constitutional matter of India. In New Delhi, on August 28, the Russian Ambassador said that abrogation of Article 370 is a sovereign verdict of the Indian administration (Sinha, 2019).

Despite an official position of non-interference in the issue several members of the European Parliament have voiced against human rights violation and called on New Delhi to restore the elementary liberties of Kashmiris. German Chancellor Angela Merkel, during her visit to New Delhi in November laid stress on improvement of human rights conditions in Kashmir. Similarly, foreign minister of Sweden showed concerns on human rights situation in Kashmir (Web Desk, 2019).



Like other international actors the response of the Muslim world was also mixed one and sometimes disappointing for Pakistan as well as residents of Kashmir. United Arab Emirates (UAE) was utmost approaching in supporting India's act in Kashmir. Saudi Arabia urged for peaceful settlement of Kashmir dispute in line with the UN resolutions (Raza, 2021). Moreover paradoxically, both the Saudi Arabia and UAE gave their main national awards to Indian PM for his role in improving the mutual trade. Saudi and Emirates response to the Revocation was determined by the dictates of real politics and their trade ties with India restrained them from taking a clear cut moral position on Kashmir disputes. (Aljazeera, 2019). In late December, the Saudi government agreed to host an OIC special foreign ministers meeting on Kashmir sometime in early 2020 (Razdan, 2019). Many other states like Oman, Qatar, Kuwait and Bahrain did not issue any official statements. Iran in Tehran permitted a figurative protest outside the Indian embassy. The Foreign office of Iran called for peace and discussion between Pakistan and India ("Iran to spare no effort for regional peace, 2019"). Further, Turkey supported Pakistan's stance.

### **Pakistan's Response**

Pakistan explains that India made one-sided effort to hijack Kashmir by abrogation of Article 370 and 35A. Pakistan was quick to reply to India's move in Kashmir as illegal, illegitimate and criticized the position that it was an internal matter of India. Pakistan believes that Kashmir is the incomplete agenda of partition. Any modification in the territorial status of the State is a violation of its legal international status.

Pakistan, on August 6, 2019 passed a unanimous resolution in its National Assembly condemning the Indian action of revocation of Article 370. Moreover, as a protest Indian High Commissioner from Pakistan was also expelled and stopped trade relations with India, executed a ban on Indian movies (Daily Express Tribune, August 06, 2021). Peace Bus Service along with Samjhota Express peace train service between Pakistan and India was also stopped. The same year, 14 August Independence Day was celebrated as solidarity day with the people of Kashmir, while August 15, Indian Independence Day, was declared as black day. To win the support of the world, Pakistan Foreign office at diplomatic level held one after other meetings with likeminded diplomatic missions in Pakistan of reminding India to honor UNSC on Kashmir. Pakistan also approached Human Rights Council and UNSC. Both the organizations had played their role, though, not to the hope of the parties like Kashmiris, China, and Pakistan.

Further, Pakistan's PM Imran Khan cautioned that, with a tactic of this nature, events like Pulwama are bound to occur yet again, and he later wrote an op-ed in which he



cautioned, “If the world does nothing to halt the Indian attack on Kashmir and its public, there will be costs for the whole world as two nuclear-armed nations get ever nearer to a direct armed confrontation” (New York Times, August 28, 2019). Despite all its efforts Pakistan appeared diplomatically lonely, with Turkey being the only state to offer clear and solid support to Pakistan’s position (Solangi, 2019).

### **Implications**

The undemocratic and unprecedented act of the Indian Premier of taking away Kashmiri’s identity has serious implications for the regional peace. Firstly, it may lead to beginning of a new bloody freedom fight that might result into unprecedented violence in the valley. Such development may alter the peace of the whole region. A blame game would follow and can push the two neighboring nuclear powers on the brink of a nuclear war.

Secondly, the revocation is anticipated to effect internal demographic and political realities of Kashmir. An influx of Hindu population particularly extremist segments of Indian society may lead to a shift in demographic realities of Kashmir where Muslim majority valley would be converted into a Muslim minority region. This demographic shift would squeeze the opportunities for the local youth as well as establish a Hindu dominated political order.

### **Policy Alternatives for Pakistan**

Despite its efforts Pakistan got a little success in amassing support for its stance on Kashmir dispute. All this demands a revision of existing policy on Kashmir. A policy alternative to highlight Kashmir dispute and persuade international community to intervene for the peaceful resolution of the dispute is; One of the important determinants of foreign policy is public opinion. Among the limited options Pakistan had to deal with the existing challenges in the region one important area to focus is that of global public opinion. Pakistan needs to utilize all its resources to fund and encourage researches on human rights violations in Kashmir. Global opinion makers including academia, journalists and human rights activists must be approached and convinced to

### **Conclusion**

The state of Kashmir was a disputed territory since after the partition. The sovereign of the state was Maharaja Hari Sing while the population of the state was a Muslim majority. During partition, the choice was given to the ruler to join one or another state. But the state

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remained as a princely state then after some time India invaded the princely state. Pakistan also got involved in the struggle and sent its armed troops as well as a freedom fighter. Suddenly India flew into the UN. UN got involved as a third party and asked both the states to withdraw their military troops and also suggested that the right of self-determination would be given to the people of J&K through a plebiscite. Later on, India then moved from the UN decision. Then with overtime, Pakistan and India fought three wars over Kashmir but the disputed territory remained without any solution. On the UNSC Agenda, the Kashmir dispute remains one of the oldest matters. The current activities of India have once again intensified stress in the disputed territory and have serious implications for regional peace. An investigation of the appropriate law emphasizes that the Indian actions concerning J&K are discordant with international law, bilateral agreements, and even its domestic law. Moreover, the present BJP government took a bold step in August 2019 and eroded the special status of J&K. Pakistan is the only country who raise voice for the people of Kashmir. The remaining world especially major powers and Muslim countries remained silent on this unilateral action of India. Occupation of Kashmir state, and then withdrawal of its special rights has instigated regional security at risk (Kasuri, 2015). *Hindutva* ideology of BJP with an RSS mind set may lead to yet one more Indian distracting act towards Pakistan according to its history. Because Kashmir is the unfinished agenda of the Partition of the Subcontinent and its resolution is the vital to regional peace, then development and richness will remain vague. Therefore, it is a great anxiety for international community and particularly for Pakistan as it will risk the South Asian peace because of the existence of nuclear weapons.



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