

THE REVOCATION OF ARTICLES 370 AND 35A IN THE CONSTITUTION OF INDIA AND PAKISTAN'S RESPONSE

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Abstract

On August 5, 2019, the Indian parliament revoked Kashmir's special temporary status granted to it under articles 370 and 35A of the Indian Constitution. These clauses gave the state some sovereignty, permitting Indian-Occupied Kashmir to make its own laws, choose its own flag, and adopt its own constitution. The action was a violation of UN's resolutions and right to self-determination. Pakistan used all its resources to record protest against this decision at national and international forums. India is claiming that it is his international issue. Kashmir is a bone of contention between Pakistan and India from last seventy-six years. India is ruining basic human rights in Kashmir. Pakistan didn't get much success to produce authentic literature and put his point of view at global level, this work addresses the area. The aims and objectives of Indian government behind the revoking are also

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discussed. The effectiveness and suggestions of Pakistan's foreign policies towards Kashmir are included. This research work analyzes the UN resolutions on the Kashmir conflict, the cruel step of the Indian Government in revoking articles 370 and 35A, and the steps taken by Pakistan to counter the crushing of the UN resolution. The primary data obtained from twenty experts of the researched area, the data analyzed through content analysis technique and presented in descriptive form. The results shows that the future of Kashmiris nation is at risk, the aim of India is to bring demographic changes, war is not a solution to the conflict, the role of international organizations is important, diplomatic channels can help to resolve the conflict and the steps taken by Pakistan after revoking were effective but need to keep those sustain.

Key words: IOK Kashmir, UN Resolutions, Human Rights, Constitution, Articles 370/35A, Foreign policy, Pakistan, India

Introduction

After the partition plan, on geographical and religious conditions Princely States and rulers had three choices: to join India, to join Pakistan, or to remain independent. There was a total of 565 states in number comprising 40 and 23 percent of the total sub-continent area and population respectively. Against the backdrop of their geopolitical significance, their integration was of prime significance for both India and Pakistan.

Among all these, Kashmir was of great geostrategic significance for Pakistan and India. In line with its geographical proximity to

Pakistan – its ruler was Maharaja Hari Singh, who decided to consent to India by signing the cited Accession Instrument. A day after its signature, the deal was ratified by Lord Mountbatten, the Governor General of India at that time, and hence the state of Kashmir had become part of India. It triggered resentment in general people on the Pakistani side and hence the tribes fought a war with Indian troops as a result of which a great chunk of Indian-occupied territory came under Pakistan's control. On the other hand, Mountbatten advised Nehru who was the prime minister of India at the time, to take up the issue with the UN (Ankit, 2021). All India's concern was the offense of tribal people over Kashmir, however. As of now, Pakistan is reluctant to accept any Indian rights, moral and legal, over Indian-held Kashmir and constantly discards India's endeavors to obtain global recognition of Indian-held Kashmir as its integral part.

“On 2nd July **1972** in Shimla, Pakistan and India signed an agreement on bilateral relations. In the agreement both the states agreed to end the conflicts and confrontations by peaceful means, provided by the UN's resolutions or by any other way both the states mutually agreed upon. Both states will respect the sovereignty of each other and will not interfere in internal issues. They will return to their jobs and work in the fields of communications, postal service, telegraphy, shipping, border posts, and air links, including overflights. Forces will be drawn to international borders. The final settlement of the Kashmir issue will be done with mutual consultation. Zulfikar Ali Bhutto and Indira Gandhi signed the agreement” (Ganguly S. , 2016).

On August 5th, an official declaration disavowed the special status of the Indian constitution that ensured rights to the Muslim-larger part state-run, including the privilege to its constitution and self-rule to make laws on all issues except the guard, correspondences, and international concerns. Ahead of the pack-up to the move, India sent many extra soldiers to the disputed area, forced a devastating time limit, shut down media communications and the web, and captured political pioneers. It said another wellspring of a potential spike in assailant action is new citizenship and land laws that permit outcasts to buy land in Indian-held Kashmir other than asserting residency. Before August 5th, just Hindu, Muslim, and Buddhist residents of the IOK had these rights. Pakistan advised the global community to turn New Delhi responsible for the human rights abuse in Indian-held Kashmir. Pakistan has not only dogged its “single-point agenda” but also refrained from the discussion over other bilateral issues. In this study, the steps taken by Pakistan after the revoking will be discussed in detail with its impacts and outcomes in light of possibilities for Pakistan. This is a qualitative study, in which the researcher looks at factual problems and goes for an in-depth understanding of the selected research area. Interviews with 21 experts on the issue of Kashmir were conducted to produce authentic work. Various diplomats, Researchers, journalists, Intellectuals, leaders, and experts in

international law were contacted to give their opinions through questionnaires, and personal and panel interviews.

Literature Review

McNaughton (1949), President of the UNSC, presented a proposal in respect of Jammu and Kashmir in its 457th meeting. In that proposal, it is stated that “the reduction of militaries should be the basic and first step of the solution of Kashmir conflict of both sides across the cease-fire line. The program for solution should be taken seriously by all the parties starting with demilitarization. Demobilization and disarmament should be the second step. Withdrawal of the army from both sides is essential for peace and dialogue. There should be no fear in the hearts of people while choosing their future through democratic principles. Local law and order under the security of Kashmiri security forces should be enforced to minimize the chances for free expression of opinion for the plebiscite”.

Mohan Krishen Teng (1990) is an Indian Author who wrote in his book that “Jammu & Kashmir State, which had a majority of Muslims, could not be included into India's political system since it was predominately Hindu to preserve its Muslim identity”.

Muhammad Farooq and Umbreen Javiad (2020) wrote in their article “Hindu right-wing forces, such as the RSS and its political affiliate, the BJP, have always opposed article 370 because they believe it violates the supremacy of the constitution of India and goes against the essence of Indian secularism and democratic ideals. The BJP always referred to the clause as "temporary," leaving the option of a

permanent union of the state with India open. As it would satisfy Hindus, the measure would win BJP the support of the Hindu majority. The BJP would overtake the dominant Congress Party in terms of leadership. With the backing of the 84% Hindu majority, the BJP, supported by the RSS, would advance the Hindutva ideology and make Hindus superior to Muslims in every way”.

Naiara Goni, Roberto Ramirez, Albert Vidal (2020) wrote in their report that “Following the repeal of Articles 370 and 35A of the Indian Constitution, there will continue to be significant problems in its relations with India. Another issue in their shared boundaries would be the lack of water, which will be made worse by New Delhi building reservoirs on its territory. To gain backing from other nations, Islamabad will keep pushing for the internationalization of the Kashmir problem. Localized battles are likely to be fought, but there is growing concern that the above-mentioned problematic topics could ultimately result in an all-out nuclear conflict. PM Khan and PM Modi will be hesitant to open communication channels because of internal dynamics in both nations, such as Hindu nationalism and radical Islam, in addition to other factors”.

Tanzeela Khalil (2020) wrote in her article that “ The Indian leadership looks more focused on achieving short-term goals than establishing long-term peace and stability in the region, even though the new administration led by Prime Minister Imran Khan promised to take two steps towards peace in exchange for India's one. India's action on August 5, 2019, eliminated any chance of enhancing and making the relationship less hostile before the new government could make any efforts towards normalization. The prime minister of Pakistan recalled

during the 74th session of the UNGA that "two nuclear-armed nations almost went head-to-head in February" and that "we both are nuclear-armed countries." There may be danger for the entire world if these tensions rise. This is the reason you were created in 1945”.

Swami Raj (2021) wrote in his research article that “The removal of Article 370 has further strained already strained relations between India and Pakistan. There are now just two options left for Pakistan: either embrace or reject India's strategy, which has greatly enraged Pakistan. Pakistan may use direct military force against India or permit jihadists to enter the nation as a means of defense. A military confrontation between India and Pakistan at this moment is highly unlikely given India's security measures and Pakistan's financial difficulties. Given its history of backing Kashmir's ongoing political and violent separatist struggle despite international pressure, Islamabad is scarcely likely to sit on its hands and do nothing. Pakistani Prime Minister Imran Khan spearheaded a diplomatic drive against New Delhi by deploying anti-India language at the United Nations and abroad, despite tensions between his nation and India”.

Mintu Pathak and Jhanin Mushahary(2022) wrote in their research article that “Jammu and Kashmir's social and political climate changed because of Article 370's removal from the state. Considering the social repercussions, the prevalence of the curfew-like scenario and the isolation of all communication infrastructure created mental health difficulties among the valley's population. In Kashmir, 37% of men and 50% of women had indications of probable depression, while 21% of men and 36% of women had problems with anxiety-oriented disorders. Post-traumatic stress disorder symptoms were reported roughly in 22%

of women and 18% of males. Because of the adoption of undemocratic laws, a subjugated environment was created, depriving people of their rights to freedom”.

Asad Ullah Khan (2022) wrote an article, in which he wrote that “The Jammu and Kashmir Reorganization Act of 2019 was adopted by the Indian Parliament without consulting the Kashmiri populace, and its main objective was to alter the voting process. The citizens of IIOJK have been stripped of their fundamental social and political rights. However, numerous journalists have been summoned and arrested since the Valley implemented a new media policy due to what are truly journalistic reports of Indian tyranny that are labeled "fake news" and "unethical reporting" However, the greatest barrier to relaying accurate information throughout the world is the Valley's restricted Internet usage”.

Wang Wenbin (2023), Chinese Foreign Affairs spokesperson said that “China will not participate in any G20 meetings held in the disputed territory since it is adamantly opposed to doing so”. China and Pakistan have both denounced India for organizing the event in the disputed Kashmir region, which has a majority-Muslim population.

The Jammu and Kashmir Reorganization Act, 2019

On 5th August 2019, the Minister of Home Affairs Amit Shah Rajya Sabha introduced “The Jammu and Kashmir Reorganization Bill, 2019” bill. The above-mentioned bill was passed by the Rajya Sabha on the same day and agreed by Lok Sabha on the next day, 6th August 2019.

On 9th August 2019, the consent of the President was also given to this bill. “The Jammu and Kashmir Reorganization Bill 2019” was the bill that abolished Article 370 and Article 35A of the Indian Constitution.

The main features of the bill are

- This Act makes provisions for the division of Jammu and Kashmir into two Union Territories, namely the Union Territory of Jammu and Kashmir (which includes the Kargil and Leh districts) and the Union Territory of Ladakh (which includes the rest of the state's territories, excluding the Kargil and Leh districts).
- The President will be responsible for overseeing these two Union areas through a Lieutenant Governor who will be chosen by the President.
- This Act describes the numerous roles that the new Legislative Assembly would play for the UT of Jammu and Kashmir.
- There are 107 seats in total.
- The total number of sets will be 107, of which 24 will be kept vacant as the areas are occupied by Pakistan.
- The population in UT will decide the reservations of sets for SCs and STs.
- If women are not adequately represented in the Legislative Assembly, the Lieutenant Governor may propose any two members.

- The Assembly will have a five-year tenure, and the Lieutenant Governor must call it to order at least once every six months.
- The Legislative Assembly may pass laws relating to any area in the UT of Jammu and Kashmir, including:
 - Everything except "Police and Public Order" is mentioned in the Constitution's State List.
 - Matters relevant to UT that are on the concurrent list.
- The Jammu and Kashmir Union Territory has the authority to enact laws.
- The Council of Ministers for the UT of Jammu and Kashmir consists of no more than 10% of the Legislative Assembly's members. When it comes to passing laws, the COM will advise the lieutenant governor. Every decision made by the COM must be relayed to the Lieutenant Governor by the Chief Minister.
- Only one High Court will serve both Union Territories. The Government of UT of Jammu and Kashmir will receive legal counsel from the Advocate General of UT.
- All measures that are now pending in the Legislative Council of the State of Jammu and Kashmir will expire and the Legislative Council will be disbanded.
- Advisory Committees will be appointed by the central government for a variety of reasons, including:

- Allocation of the state's assets and obligations among the two union territories.
- An issue with water and electricity production and supply.
- State Financial Corporation problem.
- From the date that the central government notifies both UTs, 106 central laws from the Schedule lists will be in effect. These comprise:
 - The Aadhaar Act 2016
 - The Indian Penal Code of 1860
 - Right to Education Act 2009, etc.

Table 1: From the Creation of Articles 370 and 35A to the Abolition

S.No	Event	Year
01	The Instrument of Accession was made	1947
02	Article 370 is being considered for insertion in India's constitution	1949
03	The Indian Constitution went into effect	1950
04	The first Presidential order established Article 35A	1954
05	The Jammu and Kashmir Constitution went into effect	1956
06	The enforcement of Armed Forces Special Powers Act	1990
07	The declaration of presidential rule in the State of Jammu and Kashmir	2018
08	Abolition of Article 370 and Article 35A	2019

(Kumar, January 14, 2020).

Pakistan's response at the international level

As Prime Minister Imran Khan began contacting foreign leaders to brief them on the ramifications of Delhi's action for regional peace and stability, Islamabad committed to doing everything in its power to oppose the unlawful Indian action of abolishing the autonomous status of occupied Jammu and Kashmir. In response to India's decision to revoke Article 370 of its constitution, which granted the occupied region an autonomous status, the Foreign Office declared: As a party to this international dispute, Pakistan will exercise all available options to counter the illegal steps" (Syed, August 6, 2019).

Imran Khan, the prime minister of Pakistan, condemned India's decision to withdraw Kashmir's special status as "unconstitutional" and warned that it would result in another incident similar to Pulwama a day after the Indian government announced its decision (SHAH, 2020).

On Tuesday, August 13, 2019, Pakistan's foreign minister Shah Mehmood Qureshi stated that against the illegal actions that violate UN resolutions on Kashmir, he had written a letter to the head of the UN Security Council demanding the calling of an emergency meeting of the council to discuss the matter (MOFA, 2019).

(Khan. Jamal, personal communication, June 07, 2023). "Pakistan's response was effective, but we could not do more than a certain level because of our economic situation. Pakistan has done what it can. Unless and until Pakistan becomes economically stable, it is not in a

position to put much pressure on India or International communities”.

The matter will be brought before the International Court of Justice, Pakistan said on August 20. It added that the focus of its case will be on alleged human rights breaches by India.

The Inter-Services Intelligence is mentioned in the "18-point plan" for honoring the anniversary that was released by Prime Minister Imran Khan. This involves a tour to Kashmir for the media as well as one for the UN Military Observer Group in Pakistan and India, which had published a white paper. Protests are held at all Pakistani embassies. There were also plans to reach Beijing, Ankara, and Kuala Lumpur. On this day, Imran Khan delivered a live speech from Kashmir.

Shah Mehmood Qureshi also talked at the emergency meeting of the Organization of Islamic Countries regarding the illegal act of India. Later, the OIC Contact Group on Kashmir's foreign ministers issued a statement in which they expressed their worries over the situation in Kashmir and urged India to "rescind" its previous actions.

Imran Khan slammed the Government of India in an editorial piece published in The New York Times and labeled the repeal of Article 370 as "illegal." The "nuclear shadow hanging over South Asia" was highlighted, as well as Pakistan's efforts to promote peace while India rejected them.

PM Imran Khan said in his Speech at the 74th United Nations that “Kashmir is a disputed territory and the people of Kashmir have the right of self-determination, India went against that, against the Shimla

agreement and UN resolutions. They went against the Indian constitution. They deployed an extra one-eighty hundred troops. I am considering myself a Kashmiri, who has been locked in his house for 55 days, I am seeing the Indian army entering the house and raping women and killing children and elderlies. Would I live with this humiliation? The Indian government is forcing people towards radicalization. The United Nations has a responsibility to stop this happening and stand with justice and humanity. If these situations go on, we are prepared for the worst to react in India and defend the right of self-determination of the Kashmiri people against the revoking of Articles 370 and 35A (United Nations, 2021).

Pakistan's response at the National level

The Foreign Office of Pakistan argued that the Indian action in Kashmir would not change the fact that it is a disputed territory. As stated in the resolutions of the United Nations Security Council (UNSC), no unilateral action by the Government of India can alter this disputed status. Additionally, the people of Pakistan and Jammu & Kashmir will never accept this.

(Ullah. Rizwan, personal communication, July 05, 2023). "Pakistan's response was not so much effective, almost steeples in the regard as the deteriorated economy, infrastructure, degraded and distrusted political institutions, and state complex pushed it more loosened the grip on the issue. India aims to furnish the ground for regular residence, state property, and other constitutional band activities in the region. Kashmir will go unwantedly in the lap of India its impact,

culture, constitution, and so on. Pakistan should take strategic steps to convince international communities”.

Prime Minister Imran Khan presided over the meeting of the highest security body after India had "unilateral and illegal actions" that resulted in the abolition of the special status for occupied Kashmir. It also discussed how things were going in occupied Jammu and Kashmir and along the Line of Control. At the meeting, it was also decided to review Pakistan's bilateral agreements with India, bring up the issue of Kashmir's special status before the Security Council of the UN, and observe Independence Day on August 14 as a black day in solidarity with brave Kashmiris and their just struggle for their right to self-determination. The members agreed to downgrade diplomatic relations with India, suspend all bilateral trade with India, review all bilateral agreements with India, and ordered Indian diplomatic members to leave Pakistan immediately (Khan, August 7, 2019).

The Thar Express and Samjhauta Express train services were terminated the following day by Sheikh Rasheed Ahmad, Pakistan's minister of railways. The Ministry of Information and Broadcasting has banned all cultural interactions with India, including the screening of Indian dramas and films inside Pakistan. On August 9th, all exports and imports to and from India were made illegal, and a substantial section of Pakistan's trade relations with India was formally banned.

In 2020, media rumors about Pakistan's pro-Kashmir campaigning on August 5 began to surface long in advance of that date. Pakistani media organizations covered the "Black Day" and modified their logos accordingly, and newspapers published related content.

(Khan. Jawad, personal communication, July 14, 2023). "Pakistan failed to mobilize national and international media to react and propagate the issue effectively and get proper and enough support of international communities. Although Pakistani Media highlighted the issue for a few days soon they engaged themselves in domestic issues. Pakistan needs to provide proper guidelines to its all forms of media to propagate the issue on a daily basis continuously".

On August 4th, the Pakistani government published a revised political map of Pakistan and India which showed Pakistan's territorial claims to Jammu and Kashmir, Ladakh, and the Siachen Glacier, the eastern banks of Sir Creek, as well as Junagadh and Manavadar in Gujarat, India. The border between China and Ladakh was labeled on the map as "frontier undefined," and its status will be decided by "the sovereign authorities concerned" following the resolution of the Jammu and Kashmir conflict. The map has been made official throughout Pakistan. The government changed the name of the Kashmir Highway, which goes through Islamabad, from Kashmir Highway to Srinagar Highway. On the eve of the anniversary of the removal of Kashmir's special status, Pakistan also observed August 5th as Youm-e-Istehsal ("Day of Exploitation"). Rallies and seminars were held to show solidarity for Kashmiris (Sajid, 2020).

Recommendations

Considering the Shimla Agreement 1972, which emphasizes resolving the Kashmir issue through bilateral means, Pakistan has several steps available to address the matter:

Step 1. Pakistan can continue to engage in diplomatic efforts with India, urging them to come to the negotiation table and discuss the Kashmir issue. This can involve diplomatic channels, dialogues, and summits to highlight the importance of resolving the dispute through peaceful means.

Step 2. Pakistan can seek the support of international mediators or facilitators to encourage dialogue between Pakistan and India. International organizations or influential countries with a vested interest in regional stability may play a role in facilitating negotiations and encouraging both sides to find a mutually acceptable solution.

Step 3. Pakistan can utilize international forums, such as the United Nations, to raise the Kashmir issue and garner support for a peaceful resolution. This can involve presenting the case for self-determination in Kashmir or seeking intervention to address the human rights concerns in the region.

Step 4. Pakistan can continue to engage with Kashmiri stakeholders, including political leaders and civil society representatives, to understand their perspectives and advocate for their rights. This can help amplify the voices of the people directly affected by the issue and create a broader consensus on the need for a peaceful resolution.

Step 5. Pakistan can work to raise awareness about the Kashmir issue on the international stage, garnering support, and solidarity from the global community. This can involve organizing conferences, seminars, and campaigns to highlight the human rights situation in Kashmir and advocate for a peaceful resolution. However, it is

crucial to understand that the path to resolving the Kashmir issue is complex and requires sustained efforts from all parties involved. Dialogue, diplomacy, and international engagement remain key components in finding a peaceful and mutually acceptable resolution.

In its foreign policies regarding the revocation of Articles 370 and 35A, Pakistan can consider the following steps:

Dialogue with India: Pakistan should maintain channels of communication with India and emphasize the need for meaningful dialogue to find a peaceful resolution to the Kashmir dispute while addressing concerns related to human rights and self-determination.

Regional Cooperation: Pakistan can actively engage with regional stakeholders, such as neighboring countries and regional organizations, to seek support and collaboration in addressing the Kashmir issue collectively.

Diplomatic Engagement: Pakistan should continue to engage diplomatically with other nations, highlighting the Kashmir issue and garnering international support for the rights and aspirations of the people of Kashmir.

International Advocacy: Pakistan can utilize international forums, such as the United Nations, to raise awareness about the human rights situation in Kashmir and advocate for a peaceful resolution in accordance with relevant UN resolutions.

Humanitarian Assistance: Pakistan can provide humanitarian aid and support to the affected people in Kashmir, showcasing its

commitment to the well-being and welfare of the Kashmiri population.

Public Diplomacy: Pakistan can leverage public diplomacy by engaging civil society organizations, human rights groups, and influential individuals to advocate for the Kashmir cause and raise awareness about the situation.

Mediation Efforts: Pakistan can explore avenues for mediation, whether through the United Nations or other international mediators, to facilitate constructive dialogue between India and Pakistan for a peaceful resolution. However, these steps can help Pakistan effectively advocate for the rights of the people of Kashmir and promote a peaceful resolution to the dispute while engaging with the international community and regional stakeholders.

Conclusion

A complicated and protracted territorial dispute exists between Pakistan and India over Kashmir. Since its accession, Jammu and Kashmir's status has been murky for seven decades due to the UN Security Council's failure to implement its decisions. The special status or autonomy that Jammu and Kashmir had been given under Article 370 of the Indian Constitution was removed by the Indian government on August 6, 2019. The purpose of this revocation was to better integrate the area with the rest of India. Any article of the Shimla Agreement that relates to Kashmir cannot be changed or repealed by India on its own. By removing Article 370, the government intends to shift the demographics of IOK, which now has a Muslim majority, by letting in a large influx of new Hindu citizens. Pakistan has an

aggressive response to India's decision to revoke Kashmir's special status. Pakistan's policies were successful when it came to mobilizing international communities and organizations. Pakistan pulled its allies on board to publicly support Pakistan's position on Kashmir by bringing the issue of human rights abuses in Kashmir to the attention of the world. The media in Pakistan was crucial in giving voice to innocent Kashmiris on a worldwide scale. Worldwide protests raised against the barbaric violation of the right to self-determination were led by Pakistanis living abroad. If the repeal of articles 370 and 35A is not reversed, Kashmir's future and that of its citizens are quite bleak. Currently, if things continue as they are, India will soon diminish the number of Kashmiris living in the IOK, and Hindu elites will purchase the majority of the land and property. Pakistan can keep pursuing diplomatic relations with India, pleading with them to engage in talks about the Kashmir issue. This can involve diplomatic channels, dialogues, and summits to stress how crucial it is to settle the conflict peacefully.

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