

An Analysis of the Kashmir Issue: Past, Present and Future Recommendations

Abstract: *In this paperwork, we at first presented the basic introduction to the Kashmir issue and then tried to shed light on its current scenario, especially after 05th August 2019, by answering a series of questions in the explanation section, such as why India claims Kashmir to be its integral part? Why does Pakistan reject the Indian claim? Why does India call Kashmir to be its internal matter while Pakistan denies it? What was Kashmir's Special Status? Or what were Articles 370 and 35 (A) of the Indian Constitution? Why did India revoke the special status of Kashmir? Or why did India revoke Articles 370 and 35 A in 2019? What is the legal status of 'Instrument of Accession'? Why was the revocation of Special Status of Kashmir thought to be a violation of certain legal provisions? Or what laws have been violated by India? What makes Kashmir a nuclear flash point or a time bomb? Or what are the implications or consequences of revocation? What this paper argues is that revocation of articles 370 and 35A is a violation of the Indian constitution itself, UN resolutions and other provisions of the international law and must be taken notice of by the international community as the region is a nuclear flashpoint and the issue of Kashmir may be a triggering point for anything that can threaten the peace of the region.*

Key Words: Kashmir, Pakistan, India, UN, Article 370 and 35A

Introduction

At the time of the partition of India, there were 564 princely states ruled by their respective rulers, kings and monarchs with greater autonomy. The state of Jammu and Kashmir was the largest and the most popular one among them. It was mentioned in the Independence Act of 1947 that the fate of these princely states would be decided according to the wishes of their population and geographic concerns, i.e., the state is geographically contiguous to Pakistan or India and then the final decision would be taken by keeping in mind the will of the local people (Khanam, 2016). All the states

decided their future peacefully except Hyderabad, Junagarh, Mana Vadar and Jammu and Kashmir. In the first three states, the majority of the populations were non-Muslims, but the rulers were Muslims, while in Kashmir, the subjects were Muslims in a majority, but it was ruled by a non-Muslim ruler, Raja Hari Singh, who was the successor of Gulab Singh, the first Sikh ruler of the Kashmir state. Although the freedom movement in Kashmir had started in 1930, when the time of independence came and Hari Singh showed his intentions to remain independent, the struggle then gained momentum. As the pressure from subjects

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intensified, Hari Singh flew to India and asked for military help from India, but his proposal was denied by the Indians, and he was asked to accede Kashmir to India first. As the pressure was mounting from both sides, he, at last, agreed to sign the instrument of accession on 26th October 1947 (Hussain, 1995). The Indians then sent their ground forces and took control of the valley. Since then, Kashmir has been the major bone of contention between India and Pakistan and continues to keep their relations extremely hostile.

That was a bit unjust and a violation of what had been agreed in principle as per the 3rd June plan. The Kashmiris majority of whom were Muslims whose will had not been ascertained. Moreover, the state of Kashmir was geographically contiguous to Pakistan. So, accession to Pakistan was the most favourable and natural option for the local people. However, when the instrument of accession was signed, thousands of Pashtun Mujahedeen infiltrated into Kashmiris. Full-scale war broke out, and the Mujahedeen were able to free many areas from the Indian forces (Hassan, 2015). Soon, the government of India took the matter to the United Nations, who asked both the parties to observe a ceasefire. To this effect, the UN passed two resolutions in 1948 and 1949, asking both the states to withdraw to their pre-war position, demilitarize the region and then conduct a free and fair plebiscite once normalcy returns to the state (Shakoore, 1998). However, the UN couldn't effectively enforce its own resolutions, and the matter still remains unresolved, threatening the peace and stability of South Asia.

Things took a different turn in August 2019 when India unilaterally changed the status of Kashmir in gross violation of the UN resolutions with the help of amendments to the constitution, ⁴ even though the Premiers of both the countries had agreed in 1972 during Shimla Fact to

resolve all issues including Kashmir issue bilaterally.

Explanation

In this section, light is shed on the current scenario of the Kashmir issue at full length by putting some questions and then answering those questions.

Why does India claim Kashmir to be its Integral Part? Why does Pakistan reject India's Claims? Why India Called Kashmir its Internal Matter and why Pakistan Denies it?

Argument 1

India claims that as per the 3rd June plan, the princely states were free to join India or Pakistan or remain or prefer to remain independent, and as the ruler of Kashmir, Hari Singh decided to join India and signed a letter of accession, so longs to India, but Pakistan denies it on the ground that the will of the people had not been listened to while the ruler unilaterally made a decision under pressure from the Indian government. The ruler of the Kashmir state knew that as a majority of their population were Muslims who would certainly prefer to opt for Pakistan, so he out rightly refused to make recourse to his people and so made a unilateral decision.

Argument 2

The Indian first Prime Minister, Jawaher Lal Nehru, had time and again accepted Kashmir to be disputed territory between Pakistan and India in his official speeches and documents. According to him, Kashmir is a disputed territory, and it is to be decided in accordance with the wishes of the local people. This statement #strengthens Pakistan's stance further that Kashmir is not an integral part of India. Rather it is a disputed territory between Pakistan and India to be decided according to the resolutions of the UN.

Argument 3

Pakistan agrees that Hari Singh accessed Kashmir to India, but its legality is questioned on the ground that this accession has no legal force unless it is ratified by the subsequent will of the local people. So long as this accession is not backed by the will of the people, it can't be considered legal and valid. Till date, it has not been ascertained whether the people want to join Pakistan or India.

Argument 4

Article 2, paragraph 7 of the United Nations Charter stated that United Nations has no right to interfere in the internal affairs of the member states. However, UN resolutions accept Kashmir to be a disputed territory and not the internal problem of India because up to now United Nations Security Council has passed 11 resolutions regarding Kashmir, which has paved the way for Pakistan to reject the Indian Statement.

Argument 5

And last but not least; if it is agreed that the United Nations has exceeded its own laws and has interfered in the internal affairs of India, it was not other than India who took these problems to the Security Council and named these problems as 'India-Pakistan Question' which shows Indian statement is not based on the truth that Kashmir is their internal problems, but it is a disputed territory and problem between two states, i.e. India and Pakistan.

What was Kashmir's Special Status? Or What were Articles 370 and 35A of the Indian Constitution?

The Special Status of Kashmir means that it was given a special position in the Indian Constitution. Articles 370 and 35A were about that special status, which is thoroughly explained below.

Article 370: (this article was part of the Indian constitution from day 1st) Article 370 of the Indian constitution stated that.

- Defence, communication, foreign policy, and finance of Kashmir will be under the control of the Indian Federation, and apart from these powers, all other powers will be in the hands of the Kashmir Government.
- They will have a separate flag.
- They will have their own separate constitution.
- They will have a separate domicile policy.
- They will separate citizenship policies (Shah & Shah, 2020).
- Article 35A: (the capital A shows that it was included in the constitution through amendment, it was passed in 1953)

This article stated that.

- No one outside the territory of Kashmir can settle in Kashmir.
- No one outside the territory of Kashmir can buy land in Kashmir.
- No one outside the territory of Kashmir can be employed in any local government job in Kashmir.
- No one outside the territory of Kashmir can get any local education scholarship in Kashmir.
- No one outside the territory of Kashmir can marry someone in Kashmir (Shah & Shah, 2020).

History of Special Powers

Suppose we trace back the history of these special powers. In that case, we find that it was not a kind of generosity of the Indian government to the Kashmiris that they introduced these powers only in Kashmir. However, it has been present in Kashmir since 1927 as customs introduced by Hari

Sing, and it still prevails in Azad Kashmir as a tradition.

Why India Revoked the Special Status of Kashmir? Or why did India Revoke Articles 370 and 35 A in 2019?

No doubt, India, right from the very first day, wanted to revoke Article 35A and Article 370, but they didn't do it for certain genuine reasons. The reasons behind this move in 2019 are discussed below thoroughly.

Waiting for Majority in both Houses

As we know that Modi government was also in the government since 2014, but he did not revoke these Articles at that time because, at that time, he had a simple majority in the Lower House (Lok Sabha 291/550) [_\(Tillin, 2015\)](#), while in upper house (Rajya Sabha) majority was retained by the Congress, so the Modi government didn't have the required majority to revoke these articles. And it is also noteworthy that before the 2019 elections, no political party had won back-to-back elections to get a majority in both houses, was also one reason, but as Modi won back-to-back elections in 2019 and got a majority in both houses, he went for it straight away. This gave them courage and confidence to revoke these Articles first through the Presidential order and then ratified them by the Indian parliament. Here the question arises of why it was not done through presidential order before and now. If BJP had had the majority in both houses so, what was the need for Presidential order? It can be answered that it was not done before because it has been given in the Indian Constitution that Presidential Order will expire if it is not passed within Six weeks' time by parliament. As discussed earlier that before the 2019 election, no one could manage to win back-to-back elections to get the majority and pass it through parliament

What is the Legal Status of 'Instrument of Accession'?

There is no legal status of Instrument of Accession, and it was passed only provisionally by Governor General (GG) Lord Mountbatten. When Hari Sing presented the Accession letter to GG, he commented on it that you have not mentioned that it was also the wish of the people that they want to accede with India. As the ruler could not present any evidence of people's will to join the Indian Federation, the Governor General refused to sign the Letter of Accession. However, later on, he signed the Letter of Accession on the condition that the will of the people would be secured in due course of time [_\(Nath, 2016\)](#).

And so, Pakistan considers it also as illegal on the following basis.

- i. That the instrument of Accession did not reflect the aspirations of the people of the princely state therefore no legal consequences can flow from it.
- ii. That besides the illegality of the instrument of Accession, it was admitted by Nehru that the Instrument of Accession is subject to confirmation by the plebiscite of the people of Kashmir. The condition of confirmation was never fulfilled; therefore, it doesn't stand on any legal foundations.

Why was Revocation of Special Status of Kashmir Illegal/illogical? Or what Laws have been Violated by India?

Violation of Instrument of Accession

When India revoked Article 370, they violated the Instrument of Accession based on which they claim that Kashmir belongs to India because it was mentioned by Hari Singh in Article 7 of the Instrument of Accession that no future constitution will be imposed upon us until we decide in future

that either we join Pakistan or India (Qazi, 2020).

India claimed Kashmir on the basis of Article 370, and if the article is revoked, so it actually means that now all powers belong to the state of Kashmir as the pre-accession status is retained, and there is no legal control of India over Kashmir. Moreover, it has been mentioned in the Instrument of Accession that four powers (Defense, Communication Foreign Policy and Finance) will remain with India, but if that article is scraped from the constitution so it means that Kashmir is free from Indian Dominance.

Violation of Shimla Agreement

Clause 2, sub-clause 2 of the Shimla Agreement stated that.

The two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon them⁶. Pending the final settlement of any of the problems between the two countries, neither side shall unilaterally alter the situation, nor both shall prevent the agreement/organization (Hingorani, 2007).

But suppose we see the Indian move of 05th August 2019, of the revocation of Article 370 (Special Status of Kashmir). In that case, it clearly shows that it is a violation of that agreement which was signed by the PMs of both countries, because they unilaterally took the decision, i.e., without asking the people of Kashmir, Government of Kashmir or Government of Pakistan, and revoked Article 370, so it is illegal and illogical.

Violation of their own Constitution

Article 370, sub-clause 1 of the Indian constitution stated, "Any amendment in this Article will be occurred through Presidential order only" up to that point, it is ok, but the sub-clause 3 of the same article stated that, "Any Amendment in this Article

has to be approved by the Government of Kashmir and this approval has to be taken prior to the presidential order" (Wani, 2014).

But we can see that by revocation of Special Status, they violate their own constitution because they did not dare to approve the revocation of Article from Government of Kashmir, and the more dramatic and amazing thing to note is that there was no government and representative Assembly of Kashmir from January 2019 to approve that change, so, to sum up, we can conclude that it was an illegal move by Indian Government.

Violation of International Laws

It was stated in the United Nations Security Council Resolutions, i.e., 91 and 122, that India cannot take a unilateral decision in Kashmir as they have taken a decision unilaterally, so this implies that they violate International Law⁷ also.

This also clears the controversy that Pakistanis claim that Pakistan, through Shimla Agreement, weakened their position because Zulfikar Agreed with Indian PM that all problems would be solved bilaterally and we cannot involve 3rd party in it, i.e., UN, USA, or any other country, but they missed the last part of this sub-clause, i.e., here by any peaceful means that 3rd party can take part to settle this problem.

What makes Kashmir a nuclear flash point or a time bomb? Or What are the implications or consequences of revocation?

Nuclear Flash point

It means that territory or thing that may cause a nuclear war.

Following are the main reasons which make Kashmir a Nuclear Flash Point.

- i Kashmir is the only territory of the world; (a) disputed (b) surrounded by three nuclear powers, i.e., Pakistan, India, and China, and (c) all have certain claims on the territory as well.

And all these points made Kashmir a Nuclear Flash Point, so it will be the wise diplomatic decision of Pakistan and India to solve it peacefully; otherwise, there are chances of a devastating nuclear war.

- ii. In Kashmir, we have fewer people to force value in the world, i.e., 10:7 and in this case, if any kind of retaliation occurred between Kashmiris and Indian forces, Pakistan would surely come to support Kashmiris, and there are perceptions that this will may result in a nuclear war.
- iii. According to the Genocide Watch⁸ report, throughout the world, the genocide threat is at a high peak in Kashmir, and if people retaliate against this genocide and the Government of Pakistan comes up in favour of Kashmir, this will may cause nuclear war between Pakistan and India [\(Genocide Watch, 2022\)](#).
- iv. Back in 2019, Modi threats Pakistan that it would stop your water, and if they did it, then it may cause a nuclear war because Pakistan's economy is based on agriculture and agriculture needs water to flourish. Moreover, it is also mentioned in the nuclear policy that if India stops Pakistan's water, then they have the right to use the atomic bomb first.
- v. Before 2019, it was the Indian defence policy that we would not first use the atomic bomb. Still, then in 2019, Indian Defense Minister Rajnath Singh threatened Pakistan that we would revive our first use of nuclear policy, and Kashmir is the core problem between the two countries. Hence, there are chances that it may bring both countries to nuclear war [\(Jalil, 2019\)](#).
- vi. The main reason behind the development of the atomic bomb is the

Kashmir problem between the two countries, so in future, if this problem is not solved, this may cause nuclear war between them.

Consequences

- i. There are perceptions that this revocation will disintegrate India because if people retaliate against this move of the Modi government, it may trigger some serious other problems.
- ii. According to Munir Akram, if India wants to use force and settle this problem, it may well become there Afghanistan which is considered the graveyard of empires, because the use of force is not the way you settle any problem, and if people retaliation marks any progress, then the other states of India, i.e., will also retaliate for their aims and this will blow away India in all fields of life, i.e., politics, economy etc. [\(The Express Tribune, 2022\)](#).
- iii. Scrupled SAARC: due to Pak-India's strained relationship SAARC is unable to achieve its goals because these are considered the great powers in South Asia among SAARC members, and in these situations, the Kashmir issue will further put obstacles to their goals of multi-nationalism and free trade.
- iv. Strained Bilateral relations: The Pak-India bilateral relations were not pleasant from the very first day due to many problems, but this core problem, i.e., Kashmir, will further increase their grievances.
- v. The positive thing which happened for Kashmiris was once again the Internationalism of their problem after 5 decades, it was due to the revocation it was discussed in UNSC in 2019 and UN Human Rights and other NGOs regarding Human Rights highlights

Indian Unhuman activities of Indian forces there.

Conclusion

So, from the above discussion, we can conclude that India unilaterally changed the status of the Kashmir issue, which is illegal and illogical from all means starting from international law to its own constitution and agreement signed by their Premier and thus

the innocent people of Kashmir became lifetime victims of their brutality. The international community must take notice of it as Kashmir is a dispute that can trigger a nuclear war between the two nuclear neighbouring states. As the two states have already fought four full-scale wars, any mistake can be a serious threat to the world's peace and stability. So the world must not waste any more time addressing the issue of Kashmir.

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