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Kashmir and the abrogation of Article 370: Can peace be possible, or stalemate continue to hamper India and Pakistan relations in future?

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Introduction:

The 19th century marked an epoch in the human history replete with annexations, invasions, control and occupations. But while the 20th century drew to a close, the European colonial wave was dying, people demanded the right to self-determination, and it was presumed that the new era will bring an end to the consecutive series of invasions and physical invasions as well as territorial control. This proved wrong as the age of post-colonialism continued with the same master/slave structure of power (Behnam et al, 2017). The new power elites did not mark a difference from their colonial masters and maintained the status quo to prevail over the subjects. Gradually, as the time passed by, the world saw the emergence of the two superpowers, head to head with their gigantic mightiness. The Soviet invasion of Afghanistan in 1979 and its subsequent withdrawal a decade later - without having brought about any promise of peace in Afghanistan - resulted in no guaranteed stability, even with the Geneva Accords held under the auspices of the United Nations.

The next decades saw one of the biggest genocides, ethnic cleaning, racial bloodshed in former Yugoslavia, the powder keg of Europe. The re-drawing of the political maps in Europe with the disintegration of the Soviet Union, reinforced civil wars, and re-emergence of ethnic conflicts and genocides. The Dayton Peace Accord signed to guarantee peace in Bosnia Herzegovina was a lip service to the calls of a long-lasting peace in Europe. With American support peace remained vulnerable, and so does the idea of a European security independently of the US.

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It was presumed that with the world being a global village and a free market, American capitalist triumph will harbour. The age of globalisation, market economies and unbridled financial capitalism

that will cease the trend of direct occupations. Physical control over states will be the thing of the past. Neo-imperialism was thought to be the key trend with the non-physical control through cultural colonialism and soft diplomacy. Alas, this was proven wrong, as one of the first casualties of 9/11 was the resulting American occupation of Afghanistan, which marked a reversal of this trend. Israel's ambitions for extending its illegal territorial control of Palestinian lands in West Jerusalem, Gaza and the West Bank set a dangerous precedent without being penalised while turning entire majorities into minorities, and undoing the legal and constitutional rights of populations unchecked without any International obligations.

India's abrogation of Article 370 and 35A in Kashmir is also a manifest to that end. On 5 August India belligerently took over the disputed and autonomous region of Kashmir, stripping off its autonomy by merging it with the Union Territory. The legal fraternity in India called it extra constitutional, fraudulent and illegal, barring the Jammu and Kashmir Assembly rather making it entirely dysfunctional and abrogating it all together.

Article 370, was it inevitable?

Article 370 of the Indian constitution gave special status to Jammu and Kashmir - allowing it to have a separate constitution, a state flag and autonomy over the internal administration of the state. The government of India revoked this special status in August 2019 through a Presidential order and the passage of a resolution in Parliament (Article 370 of the constitution of India para 1). This article, along with Article 35A, defined that the Jammu and Kashmir state's residents live under a separate set of laws, including those related to citizenship, ownership of property, and fundamental rights, as compared to other Indian states. As a result of this provision, Indian citizens from other states could not purchase land or property in Jammu and Kashmir (Article 370 of the constitution of India, para 3). It is important also to see Article 370 in the light of clause 7 of the Instrument of Accession signed by Maharaja Hari Singh that declared that the State could not be compelled to accept any future constitution of India. The State was within its rights to draft its own constitution and to decide for itself what additional powers to extend to the government in Delhi. Article 370 was designed to protect those rights. According to the constitutional scholar A. G. Noorani, Article 370 records a 'solemn compact' (Wikipedia, 2019). Neither India nor the State can unilaterally amend or abrogate the Article except in accordance with the terms of the Article (Article 370 of the constitution of India, para 13). Furthermore, Article 370 embodied six special provisions for Jammu and Kashmir:

1. It exempted the state from the complete applicability of the Constitution of India. The state was allowed to have its own constitution.

2. Central legislative powers over the state were limited, at the time of framing, to the three subjects of defence, foreign affairs and communications.
3. Other constitutional powers of the central government could be extended to the state only with the concurrence of the state government.
4. The 'concurrence' was only provisional. It had to be ratified by the state's Constituent Assembly.
5. The state government's authority to give 'concurrence' lasted only until the state constituent assembly was convened. Once the state constituent assembly finalised the scheme of powers and dispersed, no further extension of powers was possible.
6. Article 370 could be abrogated or amended only upon the recommendation of the State's Constituent Assembly (Article 370 of the constitution of India, para 14).

On 5 August 2019, Home Minister Amit Shah announced in the *Rajya Sabha*, the upper house of the Indian Parliament, that the President of India had issued the Constitution (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) under Article 370, superseding the Constitution (Application to Jammu and Kashmir) Order, 1954. The order stated that all the provisions of the Indian Constitution applied to Jammu and Kashmir. Whereas the 1954 order specified that only some articles of the Indian constitution to apply to the state, the new order removed all such restrictions. This in effect meant that the separate Constitution of Jammu and Kashmir stood abrogated. The President issued the order with the 'concurrence of the Government of State of Jammu and Kashmir' (Article 370 of the constitution of India, para 48).

Ramifications of the Abrogation: Reactions and Responses

Experts believe that the move by the BJP government as catastrophic. Palaniappam Chidambaram, a senior leader in the opposition Congress Party described the decision as a 'catastrophic step,' and warned in parliament that it could have serious consequences: 'You may think you have scored a victory, but you are wrong and history will prove you to be wrong. Future generations will realise what a grave mistake this house is making' (BBC World News, 2019).

Other opinions in opposition claimed that the central government (in blatant violation of the Instrument of Accession, or, the Indian Constitution), cannot arbitrarily downgrade the status of a state to that of a union territory. This is a violation of fundamental rights of the state and its people. This act alone, without any legal, economic or political justification attracts violations of constitutional rights and invites judicial review of the Supreme Court. Only the President has the powers to amend or modify, and not to do away with it (as suggested by the Indian Supreme Court in *Sampat Prakash vs State of J&K* 1970; Shah, 2019). Therefore, the argument surrounding the justification for the illegality of Article 370, is that that if the act or ‘status of state’ of instrument of accession was not acceptable then why was it allowed to be part of the Indian Constitution for unexplainable years (Shah, 2019)?

Meanwhile, the government of Narendra Modi remained convinced that India will be in unison, even in the face of the most bitter local opposition to his decision. In his speech, Modi declared, ‘We as a nation, as a family, have taken a historic decision. A system due to which brothers and sisters of Jammu, Kashmir and Ladakh were deprived of many rights and which was a big obstacle to their development. Article 370 and Article 35A had only given terrorism, separatism, nepotism and massive corruption. These Articles were used as a weapon by Pakistan to inflame passions. This is the reason that in the last three decades, 42,000 people died, and it brings tears to anyone’s eyes’ (India Today, 2019).

Breaking his silence over the government’s move, Modi urged the people of Jammu and Kashmir, Ladakh, and the country at large to come forward for the development of Jammu and Kashmir and end the menace of terrorism. Modi’s address was as much a message to the international community as it was to his domestic audience. It came as the US recalibrated its position on India’s move to abrogate Article 370 and integrate Jammu and Kashmir more firmly into the country by reorganising it into two union territories (Live Mint, 2019).

Pakistan and its response to the India’s abrogation of Article 370 and 35A

Meanwhile, Modi’s move on Kashmir sent shockwaves through Pakistan. This is because Pakistan’s Prime Minister Imran Khan had just returned from his first official trip of the United States with high hopes amidst Trump’s commitment to mediate on the Kashmir issue. In the background of Prime Minister Imran Khan’s three-day visit to the United States, where he met President Donald Trump, while responding to a question on Kashmir, The Prime Minister had said that the US being a powerful nation led by Donald Trump can play a role in resolving the old issue between India and Pakistan. To this, Trump said that Prime Minister Modi had also requested him to mediate on Kashmir. However,

India rejected the claims saying no such request has been made by Prime Minister Modi to US President Trump. Ministry of External Affairs spokesperson Raveesh Kumar said that it has been New Delhi's consistent position that all outstanding issues with Pakistan are discussed only bilaterally. 'Any engagement with Pakistan would require an end to cross border terrorism. The Shimla Agreement & the Lahore Declaration provide the basis to resolve all issues between India & Pakistan bilaterally' (Financial Express, 2019).

Pakistani media was quick to jump off to an immediate reaction of Khan's successful US trip, without foreseeing what it meant. Critics to the Khan's PTI government accuse him of a tacit deal with the Americans to have traded off Kashmir with the IMF economic package currently underway for bailing out Pakistan's ailing economy. Many also believe that Khan has nearly lost Kashmir, as strict Financial Action Task Force (FATF) conditions call for a strict ban on Jihadi outfits, which acted as a soft under belly of the deep state. Therefore, to woo the security establishment and the reactionary religious lobbies that might want to overtly assert their support for the Kashmiris, Khan's vociferous rhetoric against BJP as a rogue and fascist government is clearly to boost domestic and political support.

Pakistan was quick to respond to India's move in Kashmir as illegitimate, illegal and denounced that it was an internal matter of India. Pakistan believes that Kashmir is a disputed area and that under the UN Resolutions, Kashmiris be given the right of national self-determination and that no unilateral action in Kashmir should be acceptable to Pakistan. Furthermore, Pakistan believes that Kashmir is the unfinished agenda of partition and any change in the territorial status of Kashmir is an infringement on its demography and a violation of territorial jurisdiction by India.

Pakistan justifies that India made an illegal and unilateral attempt to hijack Kashmir by revocation of Article 370 and 35A. In this respect, according to Pakistan, the issue of conflictual status of Jammu and Kashmir is recognised by the UN charter and especially the International Community along with India should adhere to The United Nations Security Council Resolution 47 which had recommended a three-step process for the resolution of the dispute. (UN Security Council Resolution 47, para 2) In the first step, Pakistan was asked to withdraw all its nationals that entered Kashmir for the sake of fighting. In the second step, India was asked to progressively reduce its forces to the minimum level required for law and order and in the third step, India was asked to appoint a plebiscite administrator nominated by the United Nations who would conduct a free and impartial plebiscite. (UN Security Council Resolution 47, para 2)

Following, vigorous and swift diplomatic partake, Pakistan was quick to downgrade diplomatic relations with India. It also expelled the Indian High Commissioner and suspended bilateral trade with New Delhi. Not only that, but Pakistan stopped trade relations with India, imposed a ban on Indian movies, cancelled all means of communication lines including bus, train services and imposed air space restrictions on India. Samjhota Express peace train service was cancelled along with Peace Bus Service from Pakistan and India and vice versa. Pakistan also called the Organization of Islamic Cooperation (OIC) to cut diplomatic relations with India. It also convened the UN General Assembly to hold an emergency meeting on Kashmir but according to many these attempts were futile as it could not make the global position move on India.

Responses of major international actors

The US distanced itself from India's decision to revoke Article 370 and the move to bifurcate Jammu and Kashmir in two union territories. The country has also denied India did not 'consult or inform' the US government before scrapping the special status given to Jammu and Kashmir (Business Today, 2019). 'Contrary to press reporting, the Indian government did not consult or inform the US government before moving to revoke IOK's special constitutional status,' said the US Bureau of South and Central Asian Affairs, attributing the statement to Assistant Secretary for South Asia Alice Wells (Business Today, 2019).

Russia, France, and as well as the US made no official comment that criticised Indian move and so maintained their official diplomatic position as Kashmir being an internal matter of India. In line with Pakistan's call to urge the international community to stick to UN resolutions on Kashmir, the United Nations General Assembly was called to address the issue. While Pakistan claimed that it was the diplomatic victory for the country that it was successful to convene the UN meeting with the good offices of China and that Kashmir was again on the UN agenda in spite of the Indian reluctance to bring it to the UN forum. India on the other hand asserted that Pakistan failed miserably to convince the leaders of the western democracies that Kashmir is an international conflict and that the reason why no joint statement was released after the session was reminiscent of this fact.

Negating Indian claims, Pakistani officials have reiterated that the UNSC meeting on Kashmir asserted that the conflict in Kashmir will be resolved as per UN charter and UNSC resolutions (The Nation, 2019). The statement said Kashmir is not internal matter of India. It is matter of world peace and security which has come under debate within UN ambit after 1965. The officials also cited the UN Secretary General statement that expressed his grave concern over situation in occupied Kashmir. He had also invited reference to Shimla accord reached between Pakistan and India.

Pakistan's big disappointment

While the tug of war over Kashmir continues between Pakistan and India, the Arab Gulf states have expressed their diplomatic, economic and strategic tilt towards India. This is obvious as the government of UAE officially rendered the highest civilian award for the Indian Prime Minister Narendra Modi upon his arrival in the Emirates on 24 August 2019. The Saudi as well Bahraini tilt towards India is seen as a major diplomatic win India has gained over Pakistan in terms of its huge array of support from its Arab allies. According to sources the Saudi ARAMCO and India's Reliance Cooperation has signed contracts worth millions of dollars guaranteeing broad cooperation, future collaboration in industry, petrochemicals, business, technology and education. While India's trade with UAE amounts to about more than 60 billion dollars, correspondingly with Saudi Arabia it is on the same trajectory. Seen from this perspective, the future of bilateral trade and investment vis-a-vis India and Arab Gulf region remains smooth.

However, for Pakistan, the Emirati and Saudi tilt towards India is a huge blow. Pakistan considers Saudi Arabia as its fraternal Islamic state and therefore, the concept of Islamic brotherhood constitutes a very important part of that relationship. Most Pakistanis have a spiritual connection with Saudi Arabia as the Land of Islam, and thus any criticism on Saudis is considered as a taboo in the country. Regardless of what the Saudi and Emirati policies pertain to the war in Yemen, which has been aided militarily by the two Arab Gulf countries no official position has been taken on the butchery of war in Yemen. Pakistan's ex-army chief Raheel Shareef heads the Islamic Military Counter Terrorism Coalition (IMCTC) which is headed by Saudi Arabia. To date, all members are countries with Sunni-dominated governments. The alliance does not include any countries with Shia-dominated governments, such as Iran, Iraq or Syria. According to a Euro News report, some analysts see formation of the alliance as part of Saudi Arabian efforts to take the leading role in the Middle East and the Muslim world, in rivalry with Iran. (Islamic Military Counter Terrorism Alliance, para 5)

Iran reacted very angrily to the move and showed its discontentment to Pakistan. India and Iran have started working closely for the development of Shah Bahar port which is seen to have been an answer to Pakistan's intentions to jointly collaborate with China in the development of the China-Pakistan Economic Corridor (CPEC). In the current climate therefore, Pakistan has very tough choices with its Eastern as well as its Western neighbours. Any attempt by India to instigate a war like situation along the Line of Control (LoC) in Kashmir will result in the movement of troops from Afghan-Pakistan border to the troubled LoC. Pakistan's ambassador to Washington raised the possibility that

his country might redeploy troops from the Afghanistan border to the Kashmir frontier, a shift that could complicate American peace talks with the Taliban. (Gladstone, 2019)

This statement was reflecting not only the immense challenges that Pakistan is facing, but also an indication that considering troop mobility, efforts for peace in Afghanistan will bear a huge cost and considering the US withdrawal from Afghanistan and talks with the Taliban, it could be perilous.

Shah Mehmood Qureshi, Pakistan's Foreign Minister was quick to respond to UAE's move to award Modi the highest civilian award. Far from a utopian nationalist point of view, Qureshi reverberated that global alliances are determined by geo-economics and state interest correspond more in terms of national interests. Qureshi remains a tough spokesman, an avid one, and many within PTI do not approve of his bold stance on national issues.

The Nuclear Deterrence, Bluff or real threat?

Rajnath Singh, India's Defence Minister, commenting on India's choices in the case of a war with Pakistan stated India's "no first use" doctrine on the use of nuclear weapons is open for change in the future. Considering the choices that India must respond to Pakistan's hard-line position on Kashmir, many believe that Singh's indication comes with a thinking within the establishment that no policy is written in stone, and could be modified to deal with current realities.

On 17 August 2019, Pakistan Foreign Minister Shah Mehmood Qureshi termed Defence Minister Rajnath Singh's statement over a possible change in New Delhi's no first use nuclear policy as a 'damning reminder of India's unbridled thirst for violence' (Shreya, 2019).

As Pervez Hoodbhoy, Pakistan's peace advocate and a prominent nuclear physicist believes, despite it's no first use policy, India could still strike first. 'You can always come back later and say, "we had been provoked to this point"' (TRT World,2019).

While political pundits are still weighing in on the consequences of the Indian decision to declare Jammu and Kashmir as a union territory, the situation in some parts of the Valley as well as in some districts remain a point of concern. Even tough curfew has been partially lifted, people remain despondent and agitated. Prices of commodities have hiked; schools and colleges have remained closed. Hospital and medical emergencies are desperate, and protests and even mass calls for a nationwide boycott of the move has gained potency. Though reports within mainstream Indian media highlight normalcy to have returned to Kashmir but News channels like BBC Urdu, which has started an exclusive news coverage on the situation in Jammu and Kashmir, carries an overall different picture of the ground realities.

Most media channels in Pakistan openly called out Modi as a terrorist and his move to have set the precedent for a mass scale ethnic cleansing and even a probability of a genocide, considering the possibility that the region will become majoritarian Hindu from a majoritarian Muslim, ripping off their Muslim majoritarian status. There have been many talk shows on Geo News and ARY News Channels that have discussed in length the ramifications of abrogation of 370 and 35A. One program on ARY News channel discussed that with Article 35A gone, Kashmiris lost the territorial status and are now subjected to the mercy of intruders (ARY News, 2019). They debated that Kashmiris would not be able to exercise the right to own property, as the Modi's move results in losing the right to inherit land and kinship. In other words, Kashmiris, like Palestinians, will be deprived of the land which they once owned, thus resulting in their political, economic, and social marginalisation. Furthermore, many constitutional experts across the board opined that this is one of the most ferocious constitutional frauds attributed to India. India deployed 70,000 troops, one of the largest deployment of its military contingents ever into Kashmir, blocked and banned all communication links, incarcerated and detained the political leadership of Kashmir, imposed unlimited curfew, curbed the basic human rights of millions of people in Kashmir by making it one of the largest human prison of the world. At its worst, schools, colleges, universities and all seats of learning were closed, hospitals recording extreme emergencies with severe limitations of medical supplies, maternity wards having almost absent midwives. Casualty wards having next to zero rescue staff. The world watched the most hapless scenes of how one of the biggest democracies kept its population hostage.

In Pakistan, many respond to the Indian move on abrogation of article 370 and 35A as a belligerent and bizarre development, something to be referred to as a dark spot in history, and as the great carnage of its own people. Many also claim that it is reminiscent to how Pakistan lost its eastern part, today's Bangladesh, like the then Pakistani army treated their Bengali minority as the arch enemy. Likewise, the Kashmiris see India as an occupation force, which will never be acceptable for them and thus they will fight for their territory till the last drop of their blood.

Najam Sethi, a renowned Pakistani journalist opines that Pakistan has taken a very hard-line decision to boycott India on all platforms. Pakistan moved from a softer to a harder policy on Kashmir as a reaction to the media and the sentiment of the people in Pakistan. Initially the government did not want to take a very tough stand as even the joint session of parliament did not include the mention of Article 370. Later it changed following a huge media outcry over the issue. Pakistan's pre-occupation with its economic vows, huge deficits, public debts and highly deflated economy limits the choices. The regulations of FATF, as mentioned earlier, could be very challenging in assessing the successes

or failures of its policies vis a vis India, as well as with its other neighbours. It will be very tough for Pakistan to maintain its line not to talk to India provided the American pressure as well as the pressure of the international community to settle all its long- standing disputes with India bilaterally.

In the aftermath of the current stalemate between India and Pakistan, there have been many speculations circulating in both countries about the rising of tensions at the borders, killing of civilians and personnel of the armed forces of both the countries as well as the eventuality of the use of nuclear weapons. Since both countries possess a reasonable stockpile of nuclear weapons, both believe that nuclear weapons act as a deterrent. It is tragic that had the money both countries spent on nuclear and conventional weapons warfare could have been diverted to just causes: in sectors like social welfare, economy, population, healthcare and the general wellbeing of their people, both India and Pakistan might not have had suffered extreme poverty, and unemployment. The defines budget of both the countries is much higher than the budget for social sectors. In Pakistan alone military has dominated over the civilian government for almost more span than military dictated martial laws. After nearly 72 years of their independence, there has been nothing learned from the horrors of wars in Hiroshima and Nagasaki. Both countries use the threat of a nuclear attack to assert their weight over the other. Both have had gone to wars thrice but at loggerheads over each other over a myriad of issues. As the young generation in both countries replace the old, there has to a change in perspective, ideas and opinions but unfortunately the mantle of the leadership moves back to square one as regards a lasting peace.

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