

## REORGANIZATION OF KASHMIR: IN THE BACKDROP OF THE ABROGATION OF ARTICLE 370

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### ABSTRACT

The issue of Kashmir has driven India and Pakistan into four full scale wars, several local wars, proxy and low intensity warfare. After the grand success in parliamentary election in 2019, the BJP government has broken the status quo and integrates this state to the rest of country by abrogating the controversial article 370. Pakistan government has tried its best to make it an issue at international level and also snapped all types of ties with India and sent back India's envoy from their country. This change has opened up new strategic field for Indian policy makers' to start talk within Kashmir. This policy reorientation has found an initial success in consolidating its changed stance in Kashmir in these two and half years. A combination of soft power and hard power as well at both the internal and external fronts has emerged as the key of policy reorientation by India.

Kashmir Problem has emerged as the bone of contention not only for policy makers but also for entire humanity of the South Asia. For a long period, it has been used by India and Pakistan as the rallying point around which respective national powers and identities have been asserted and re-affirmed. It has driven India and Pakistan into four full scale wars, several local wars, proxy and low intensity warfare. Successive governments of Pakistan have and reinforced defined it as 'an unfinished agenda' of the partition questioning the legality and legitimacy of the Kashmir's accession to the Indian Union. India, on the other hand, considering Kashmir's accession to India a non-issue, it has always looked to address the 'problem in Kashmir'. The two divergent perspectives on this issue show how both countries have failed to resolve their differences for decades. After the grand success in parliamentary election in 2019, the BJP government has broken the status quo and integrates this state to the rest of country. The government under Narendra Modi fulfilled its party's old time demand of the abrogation of article 370 and made the Jammu & Kashmir and Laddakh as separate provinces under the rule of central government. Pakistan government has tried best to make it an issue at international level. The Pakistan government snapped all type of ties with India and sent back India's envoy from their country.<sup>1</sup> The abrogation of article 370 has opened up new strategic field for Indian policy makers' to start talk within in Kashmir. At this stage, the issue of Kashmir demands a holistic approach dealing with this unconventional warfare in this region.

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### THE ORIGIN

The problem of Kashmir had its roots in the arbitrary and bloodiest partition of united or British India in which thousands of people had lost their lives.<sup>2</sup> It was effected in haste, inadequate

and unplanned manner. To execute Mountbatten Plan,<sup>3</sup> British Parliament enacted a law to and divided it into two separate sovereign independent dominions i.e. India and Pakistan in August 1947. The philosophy of partition was not only communal in its nature but also had the direct bearings on futuristic Indian political setup. Although Congress under the leadership of Mahatma Gandhi never did support 'Two-nation theory', but the fear of bloodshed and communal riots made them agreed on partition of India.<sup>4</sup> They accepted partition on the basis of some kind of territorial self-determination. As per the terms of the British withdrawal and partition of India, the Muslim dominated areas of North-west and east India were assigned to newly formed Pakistan and rest of the region remained to India.

To settle the issue of provinces, the matter was handed over to the rulers to decide their accession either of with India or Pakistan, or as independent status based on actual geographic location and wishes of their population. Most of the princely states of total 572 had taken decision accordingly, but the three provinces of Hyderabad, Junagarh and Jammu Kashmir had remained in a flux about to take any decision. They showed some indications to remain as independent identities, yet also busy in negotiation of merger with the stakeholders. This created anarchic situation in these states in fast changing political scenario around.<sup>5</sup>

In the case of Hyderabad and Junagarh, the on ground realities were different that of Jammu and Kashmir. The former provinces were ruled by Muslim Nawabs, the majority of Hindu population but had surrounded by the Indian territories. Both the rulers had shown the closeness towards Pakistan, but the public opinion and geographical location bowed down towards India. Hence, then Home Minister Sardar Patel, used coercive means to bring about merger of these two Provinces with India despite Pakistan's anti India campaign. While the case of Jammu and Kashmir had other dimensions. It was ruled by a Hindu king Maharaja Hari Singh, the majority of Muslim population but had the sharing borders with both the countries. This scenario had created complication regarding the status of this princely state. This had emerged as vulnerable area due its geographic location and demographic composition. This hotspot acquired further complexity due to political system and policy orientation as it had evolved within the Kashmir and beyond.

Maharaja Hari Singh failed to take decision timely whether to merge with these newly demarcated nation states of India and Pakistan or remained independent. He had tried to take his own path and took decision to remain separate state in the shadow of huge and formidable opposition from majority Muslim population and stiff challenge of pressure made by adjoining states. The uprising in Poonch and infiltration of armed groups (tribesmen from North-Western Frontier Province) with the active participation of Pakistan's army had made the situation more complicated in this area. Within a short period of time they reached Baramula, just 25 miles away from Srinager, Maharaja Hari Singh had no option left but to ask help from Indian Prime Minister Jawaher Lal Nehru. He signed the 'Instrument of Accession' in favour of India and requested the latter to accept it and to take immediate military intervention. After signing of 'Instrument of Accession' on 26<sup>th</sup> October, 1947, and assurance of final verdict on the question of accession based on wishes of people, India sent its army in this region.<sup>6</sup>

India did not want an open war with Pakistan, that's why its army retaliation was not backed with full force. Hence the pace of success to evacuate the whole territory was very slow. It had freed about half of area captured by the fully armed tribesmen till end of December. On January 1, 1948

India brought the matter to the notice of the United Nations Security Council under Article 35 of the Charter on the charge of “an attack of aggression against India”.<sup>7</sup> It sought UNSC assistance to vacate the entire territory from the Pakistani supported tribal invaders. India also offered a plebiscite, to ascertain the wishes of people on the final decision of accession if Pakistan withdrew its army from the region.<sup>8</sup>

Security Council appointed three members commission including one member each from India, Pakistan and United State to investigate and mediate in this matter on January 20, 1948. Later on April 21, 1948 two more members one each from Belgium and Colombia were included in this and given the name as United Nations Commission for India and Pakistan (UNCIP). This Commission submitted its report on December 11, 1948 after conducting on ground enquiry about whole this matter. Both the countries India and Pakistan accepted the given recommendations and signed cease fire agreement on January 01, 1949. This ended the ongoing war in this area. A plebiscite was to be held in Jammu and Kashmir after all the conditions framed by UNCIP were met.<sup>9</sup> But rest was the history; the implementation of these proposals had created more complications. Consequently, nor Pakistan ensured compliance of its army withdrawal from disputed land neither plebiscite took place. In its final interim report to Security Council on 5<sup>th</sup> December 1949, this commission also recognized that “the situation in the State has changed, the Resolutions remain unchanged”-was at the root of the trouble.<sup>10</sup>

The McNaughton Plan, the Dixon Proposal and the Graham Mission were the other initiatives taken by UN to settle this issue, but failed to reach on any concrete decision. The issue of Kashmir had turned out to be technical one as both the countries started to draw conclusion according to their subjective approach. Hence, this issue was left for the direct negotiations between both countries by the UN. Since then, India and Pakistan have contested for Jammu and Kashmir.

At bilateral level, both India and Pakistan held a number of meetings for a negotiated settlement to fulfil UN will. With the time, the Kashmir issue had turned more and more complicated and in the end into a prolonged dispute. Kashmir has not remained a dispute only over land but also turned out to be a core issue about identity and legacy for both India and Pakistan. Since then, two direct wars, many proxy wars, occasional border disputes, cross border terrorism and atomic deterrence has been the real implications emerged in the shadow of this dispute. Thousands of peoples from Kashmir Valley and this region have lost their lives, property and liberty. They have paid much more in form of human casualties, poverty, hunger, disease and unemployment due to directionless uncoordinated and casual handling of this issue. Many efforts had been done at national or international level to solve this most bloody and war shaded problem but it turned out to be more and more complicated with the time.

## THE TERRITORY

India and Pakistan accepted the recommendations given by United Nations Commission for India and Pakistan (UNCIP). They signed cease fire agreement on January 01, 1949. This ended the ongoing war in this area. Consequently, military of both countries remained present on occupied areas and established their firm control till the further conditions were met. According to this accord plebiscite was to be held in entire Jammu and Kashmir under the international supervision and Pakistan had to withdraw its army from this region. But Pakistan did not recall its

army from here, India also refused to comply the plebiscite demand.

Pakistan had occupied 81 thousand square kilometer (32000 square miles) an area of 33% of total territory in its control. While India has the 222236 square kilometer an area 45% of total area of Jammu and Kashmir in its control, and rest of the area is captured or control by China. Geographically, the region of Jammu, Kashmir Vally, Laddakh and some hilly districts is under the control of India, while Pakistan has the control of tribal area named as Pak occupied Kashmir (PoK) and some hilly district also. Later, although Pakistan handed over a huge area of Gilgit and Balistan to China, India always opposed this handover of disputed area to China. Since then both the countries has been maintaining status queue on Line of Control (LoC). It is spread over 814 km of distance and starts from Akhnoor (Jammu) to Rajouri, Poonch, Uri, Kupwara, Kargil, Leh and ends at Siacin. Politically it divides Jammu and Kashmir into two parts:

1. India ruled Jammu and Kashmir
2. Pak occupied Kashmir

Though, the Jammu & Kashmir was included in the First Schedule of the Constitution of India being the fifteenth state, yet it enjoyed special constitutional position under article 370. This position occurred due to the fact that having regard to the circumstances in which the state acceded to India.<sup>11</sup> The debate over the status of article-370 had remained an issue of contention and widely discussed and interpreted accordingly till 2019. Whenever, the BJP government has broken the status quo and redefines all the constitutional arrangements regarding Jammu & Kashmir. The government under Narendra Modi fulfilled its party's old time demand of the abrogation of article 370 and made the Jammu & Kashmir and Laddakh as separate provinces under the rule of central government.<sup>12</sup>

At present Jammu and Kashmir has been reconstituted into two union territories, Jammu & Kashmir and Ladakh by Jammu and Kashmir Reorganization Act, 2019, passed by Indian parliament with effect from 31 October 2019.

### INDIAN PERSPECTIVE

India, considering Kashmir's accession to India a non-issue, it has always looked to address the 'problem in Kashmir'. India's approach is clearly based on the fact that then ruler Maharaja Hari Singh had opted for India by signing the 'Instrument of Accession' similar to that executed by the Ruler of other princely states. Moreover, it was also duly endorsed by the Head of the emergency administration led by Sheikh Abdullah on behalf of the people of state, and Maher Chand Mahajan, the Premier of the state representing Maharaja Hari Singh, the hereditary ruler of the state. The legitimacy of this accord, therefore, cannot be questioned as it had been endorsed by legitimate authority in the state<sup>13</sup>. It naturally made Jammu and Kashmir as an integral part of India. By the accession India acquired jurisdiction over the subjects of Defense, External Affairs. It was included in the 'territory of India' as defined in article 1. The Constituent Assembly of Jammu & Kashmir had also ratified the Accession to India in 1954, thus fulfilling the moral assurance of final decision on people's verdict given by Government of India in this behalf.<sup>14</sup> That's why India took a firm stand that in the changed scenario Kashmir's accession to India had become a settle fact.<sup>15</sup>

India has always opposed the philosophy of partition based on religious ground or Jinnah's two nation theory. Because the issue of Kashmir was not just linked to the division of land but any change on the bases of religion had direct bearings on the fundamental character of Indian demographic and political setup. India is always committed to the value of secularism as it is also enacted in the preamble of its constitution. The resolution passed by Indian Parliament in 1994 with consensus was another clear cut example of its policy towards Kashmir in which whole the Jammu & Kashmir was mentioned as an essential part of India. Prime Minister Atal Bihari Vajpayee once again asserted and reaffirmed India's firm stand towards Jammu & Kashmir in his Independence Day address on August 15, 2002 that, “ We wish to state that Jammu and Kashmir is an integral part of India. It will remain so...for us Kashmir is not a piece of land; it is test case of *sarvadharmasadbhava-secularism*. India has always stood at the test of secularism. Jammu and Kashmir is living example of this.”<sup>16</sup>

India also considered the Kashmir as an unfinished “agenda of partition” which can be fulfilled only after the areas of Pakistan Occupied Kashmir, Northern Gilgit and Baltistan are integrated with India. India acknowledged this firm stand many times. The then Prime Minister PV Narasima Rao, while speaking in Harvard University, 1995, stated that 'Kashmir was, and will remain an integral part of India...the only unfinished task in Kashmir was the restoration of Pakistan occupied Kashmir to India.’<sup>17</sup>

The Home Minister Amit Shah had also expressed its firm commitment on same line in Indian Parliament while he was giving official response on Jammu and Kashmir Reorganization Act, 2019, on 31 October 2019. He stated that when he said Jammu and Kashmir, it means whole the territory including Indian state of Jammu and Kashmir, Pak occupied Kashmir, Gilgit-Balistan and China occupied territory.

This fact is again reflected from the Ministry of External Affairs strong protest to Pakistan over an order by its supreme court allowing the conduct of general elections in Gilgit-Balistan. In a press release dated 04 April 2020, it was stated to that, “the Deputy High Commissioner of Pakistan to India was summoned and a strong protest was made against Government of Pakistan's so-called “Gilgit-Balistan Order 2018”, It was clearly conveyed that the entire state of Jammu and Kashmir which also includes the so-called 'Gilgit-Balistan' areas is an integral part of India by virtue of its accession in 1947. Any action to alter the status of any part of the territory under forcible and illegal occupation of Pakistan has no legal basis whatsoever, and is completely unacceptable.”<sup>18</sup>

The suicidal attack on Indian armed forces in 'Pulwama' by terrorist group and aggressive response by air strike in deep inside area of Pakistan over Jesh-e-Mohammad training center by India has changed the whole the narrative regarding 'Kashmir'. It created a complete deadlock and void situation between India and Pakistan. All these happenings have left no other alternative for New Delhi despite to relook in its policy framework regarding Kashmir. The abrogation of Article 370, reconstitution of Jammu & Kashmir into two union territories, administrative reshuffle at administrative level, zero tolerance for terrorism activities, contained role of local political parties, tough stand on dubious activities of Hurriyat Conference has emerged as the key features of this new changed face of India's policy spectrum. At domestic as well as external fronts Indian



Government has been addressing the arising situation with more refined policy orientation. Steps taken by the government in the backdrop of this historic change in Kashmir are clear cut example of visionary outlook. A combination of soft power and hard power as well at both the fronts has emerged as the key of policy reorientation by India.

### PAKISTAN NARRATIVE

The perspective of the ruling elite in Pakistan is to look upon it under the irresolvable category of territorial dispute and the pre-eminent 'problem of Kashmir'. Successive governments of Pakistan have and reinforced defined it as 'an unfinished agenda' of the partition questioning the legality and legitimacy of the Kashmir's accession to the Indian Union. Pakistan whole strategy regarding Jammu and Kashmir is based on Jinnah's controversial 'two nation theory. There policy makers' were and are of the view that this princely state has the majority of population of Muslim, hence should have been acceded to Pakistan. They see Kashmir as an 'unfinished agenda of partition' as all the Muslim populated provinces of British India had been included in new dominion Pakistan. Further, they opined that geographically also Kashmir is much closer to Pakistan rather than to India. It has shared a long boundary with it in comparison of India. Hence, Pakistan argues that both these fact justifies natural accession of Kashmir with Pakistan.<sup>19</sup>

That's why Pakistani top leadership always had made violent and threatening remarks against India i.e Julfikar Ali Bhutto's remark of "Thousand years of wars"; Zia's "Bleed India with thousand of wounded" and Musharf's "Fight till the last drop of their blood". All these remarks had clearly defined the Pakistani ideology and policy orientation regarding its stand towards India.

### THE ABROGATION OF ARTICLE 370

After the grand success in parliamentary election in 2019, the BJP government has broken the status quo and integrates this state to the rest of country. The government under Narendra Modi fulfilled its party's old time demand of the abrogation of article 370 and made the Jammu & Kashmir and Laddakh as separate provinces under the rule of central government. Pakistan government has tried best to make it an issue at international level. The Pakistan government snapped all type of ties with India and sent back India's envoy from their country. Pakistan's Prime minister Imran Khan has come to forefront in this perspective and showing the frustration at highest level on the platform of UN meetings, he said, "There is no point in talking to them...."<sup>20</sup>

The need for India is to put brave face towards challenges and complexities in this limelight. The 'end of talks' with Pakistan and abrogation of article 370 has opened up new strategic field for Indian policy makers' to start talk within in Kashmir. Internal dynamics of Kashmir should be dealt differently. At this stage, the issue of Kashmir demands a holistic approach dealing with this unconventional warfare in this region. India has found an initial success in consolidating its changed stance here in these two and half years. A combination of soft power and hard power as well at both the fronts has emerged as the key of policy reorientation by India. All the top leaders of all militant outfits were gun down after this change. Government official has been doing great effort to engage directly with folk Kashmiris. Rebuilding trust and addressing all type of distress in local people have emerged on top agenda of policy makers'. Besides, on the issues of corruption and delay tactics at administrative level, unemployment and rural-urban

division, Local administration took firm and decisive stand and made special arrangements to execute policy in real sense. Strengthening of Panchayats Institutions, to provide direct benefits of Central Government Schemes, job fairs and special packages for the infrastructural development could be seen in this limelight. On the external front, India has successfully counter Pakistan's agenda on all the international platforms.

To sum up, Kashmir Problem has a great impact not only on the India's foreign policy but it has also serious ramification for social political setup of India. Hence, this changed Indian's outlook towards Jammu and Kashmir demands overall transformation and policy orientation. The need for India is to put brave face towards challenges and complexities of this region. It is time for Indian policy makers' to take peace process ahead by mitigating the local issues of Kashmiri people i.e unemployment, security, political participation and direct benefit of central government policies, with must deal approach. On the other hand, over the period of time the Kashmir problem has sustained various groups having vested interests in the continuation of the problem. This issue has given political relevance to many political parties, religious organization, military blocks and militant outfit in this region. Hence, some hard decision are also required while dealing with these elements and internal politics of Kashmir issue i.e. contained role of agents like Hurriat leaders, Mehbooba or Umar, Jamat-e-Islamie, use of technological facilities to search terrorist hideout, close monitoring of LoC by Satellite and other instruments, Zero tolerance against terrorism and its aid agencies inside and outside as well in deep interior of Pakistan also. The issue of Kashmir is likely to remain alive in future also due to Pakistani propaganda at international level and with mischievous activities through cross border terrorism. It is up to new and transformed India to tackle all these challenges with sustainable, comprehensive, firm and regular exercise at all level and by using all instruments.

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