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OVERVIEW OF KASHMIR CRISIS SINCE PARTITION: WHAT IS CHANGING AND HOW

Ummy Salma*
Dr. Md. Sultan Mahmud**

Abstract: Kashmir is the oldest and the most serious dispute between India and Pakistan. Various efforts at the bilateral and multilateral levels could not resolve this problem. The two countries have fought hot and cold wars which undermined their bilateral relations. India's efforts to strengthen its control of Kashmir by use of force have always been questioned by Pakistan that supports Kashmiri demand for right self-determination under the UN Resolution of 1948-49. This paper firstly explores the origins of the Kashmir dispute, its influence on Indo-Pakistan relations, and the prospects for its resolution. Secondly the paper finds the recent trends of Kashmir crisis due to revoke Article 370 of India's constitution, which confers special rights to permanent residents of the state of Jammu and Kashmir. In this paper, it is explored that what will be the immediate impact by revoking article 370. The paper is also found that the origin of this crisis and the demand of the people of Kashmir. The recent trends and motives of south Asian politics have been also analysed in this paper. Finally it finds the several talks on Kashmir between governments of India and Pakistan and why there has not been any substantial positive outcome in resolving this permanent dispute.

Keywords: Kashmir, India-Pakistan, Conflict, Article 370

Introduction

Kashmir, situated at a strategic point in the Himalayan ranges which turned into a nuclear flashpoint of India and Pakistan, is the name of irony in world history. The two emerging tigers of the South East Asia- India and Pakistan have been engaged in a competition of exercising control over Kashmir while the region always demands for its right of self-determination under the UN Resolution of 1948-49. After a series of disputes and negotiations Kashmir happened to enjoy a level of self- autonomy through the article 370 and 35A introduced in 1952 at Indian constitution. Albeit numerous efforts at the bilateral and multilateral levels to uphold the

relations between India and Pakistan were taken, all were ended in smoke due to frequent hot and cold wars between the two. Scrapping of article 370 by Indian government successfully geared the existing animosity of India and Pakistan and turned Kashmir into a cockpit of South East Asia. Recently on 5th of August, 2019. This paper mainly intends to explore the immediate impact of revoking article 370 in Kashmir along with South Asian politics as well by exploring the origins of the Kashmir dispute, its influence on Indo-Pakistan relations, and the prospects for its resolution. Further Some questions and answers on the issue: What happened in Kashmir and why it matters; Why a special law on Kashmir is controversial; What Kashmiris want; What will be the immediate impact by revoking article 370.

Historical Background

Geographically Kashmir can be divided into five parts: Jammu, Kashmir, Ladakh, Baltistan and Gilgit agency. But The Princely State of Jammu and Kashmir (J&K), was formed in 16th of March, 1846 under the *Treaty of Amritsar* (Kashmir Legal Documents, 2009) signed between the East India Company and Maharaja Gulab Singh (Snedden, 2015, 23 & Islam, 2019, 2). Maharaja Gulab Singh was the founder of Dogra dynasty which ruled for 106 years by four hereditary rulers of Gulab Singh (1846-1857), Ranbir Singh (1857-1885), Pratap Singh (1885-1925) and Hari Singh (1925-1952) (Ahmed, 2013 115-123 & Dar, 2012, 40). The Maharaja became the founder of the Royal Dogra Dynasty (Rai, 2004, 27) and the first king of the Princely State of Jammu and Kashmir by paying 7.5 million of Nanak Shahi rupees to the British government and bought Kashmir Valley, Ladakh Wizarat (comprising of Baltistan, Kargil and Leh) and added it to Jammu which was already under his rule (Aitchison, 1929, 12) Gilgit Wizarat (comprising of Gilgit and Pamir areas) were conquered later in the war against Sikh rule led by Dogra Generals (the daily Star 2019).

Partition and the Beginning of Crisis

The Jammu and Kashmir conflict dates back to the partition of the subcontinent in 1947 (Majid & Hussain, 2016, 149-59) when India and Pakistan gained independence from British Empire. As the princely states had the options to determine whether they would join either with new nation or remain independent (Mir, 2014, 104). Offering to sign a 'Standstill Agreements' with India and Pakistan Hari Singh choose to remain independent. Soon after the Standstill Agreement in September 1947, Pashtun and Afridi tribesmen streamed over the border from Pakistan into Kashmir carrying out killings and blastoffs (Cheema, 2015, 49) which compelled maharaja to seek for India's assistance to stop the invasion. India take the opportunity and it offered military assistance in exchange of accession to India. Hari Singh agreed and signed the Instrument of accession in 26 October 1947 (Gossman & Iacopino, 1993, 10) thinking that it can be revised through a referendum (Schofield 2010, p.53). Following the

* Lecturer, Dept. of Political Science, Varendra University, Rajshahi, Bangladesh.

** Associate Professor, Dept. of Political Science, Rajshahi University, Bangladesh.

accession the first war fought between India and Pakistan over the Jammu and Kashmir from 1947 to 1948 (Majid&Hussain, 2016, 149-59) which led United Nations to intervene to negotiate a cease-fire. Most troops were withdrawn and a Ceasefire Line was mutually agreed upon between India and Pakistan in January 1949. The Instrument of Accession (Ankit, 2018, 88-102) grants the state of Jammu and Kashmir federal autonomy within the Union of India except Defense, Central Finance, Communications and Foreign Affairs. In 1948, mass leader of Jammu and Kashmir, Sheikh Abdullah became the prime-minister of Jammu and Kashmir (Bamaji, 1994, 56) and in 1949, Sheikh Abdullah and Maharaja Hari Singh agreed that Jammu and Kashmir should remain united with India with the maximum possible autonomy. A special status was given to the state by the Indian Constitution under Article 370 (Noorani, 2011, 1-2). In September 1951 the first ever elections were held for the Constituent Assembly in the state. The National Conference won all 75 seats unopposed (Bamzai, 1994, 804). Article 370 of the Indian Constitution was passed in 1952 and was the compromise between the demands of Indian secularism and Muslim sub-nationalism. But by 1953 Abdullah had become confrontational with his own cabinet and began speaking of revoking the accession and forming an independent Kashmir on several occasions (Kashmir Herald, 2003). The Constituent Assembly of J&K State elected by election of 1951 (Gupta and Bhusan, 2012, 229) had the legal authority to recommend the articles of the Indian constitution to be applied to the state or to abrogate Article 370 altogether. In October 2015, the High Court of Jammu and Kashmir has ruled that Article 370 cannot be "abrogated, repealed or even amended" (the tribune, 2015). However the arguments in favor and against abrogation of article 370 are both debatable.

Why Kashmir is a bone of Contention between India and Pakistan and What Kashmiris Want

Kashmir is a land of geo-political importance whose 45% of the area is controlled by India, 35% is under Pakistan's control and 20% is claimed by China (Kalis and Dar, 2013, 116). Having a contiguity with Afghanistan, East Turkistan and most of the central Asian states of economic and strategic importance if Pakistan and China were allowed to link up their militaries in Siachen Glacier that would create a very powerful military force which would be a great threat for India (The Diplomat, 2017). Kashmir is like spinal cord hence Pakistan would be incomplete if Kashmir is not included in its geographical status (Cheema, 2015, p. 45) because four out of five rivers that flow into Pakistan originate from Kashmir have the agricultural vitality of Pakistan. (Ganguly, 2006, 76-107) The highest paved international road in the world that links Pakistan with China is in Kashmir. In 2009, Pakistan signed an agreement with Beijing for mega energy project (Kalis & Dar, 2013, 118). So this is why Kashmir is equally important to India and Pakistan. Though India and Pakistan are both claiming the whole of Kashmir

as their integral part, nearly 90 percent Kashmiris of Srinagar want independence, 87% questioned in Srinagar refuse allegiance to either side according to a 2007 poll. Only 3 percent of Muslim inhabitants prefer Pakistan rule while 7 percent prefer India except 90% of Jammu to access to India (The Reuters, 12 August 2007). It seems that Kashmiri people's right to determine their own fate has reemerged as a critical component of the conflict (Bose 2003, 218-220)

India-Pakistan War over Kashmir and UN Resolution: A Record of Failure

India and Pakistan fought several wars with one another, the first from 1947 to 1949, the second in 1965, the third in 1971 (although in Indo Pakistan war of 1971 Kashmir played a secondary role) (Kreutzman 2008, 201-219 & Lamb 1997, 175) next in 1999 and then the Uri attack in 2016 where UN acts as a mediator (Singhs' & Kaur 2015, 88-95). The UN Security Council adopted its first resolution 39, on 17th January, 1948, and United Nations Commission for India and Pakistan (UNCIP) was established. Between 1948 and 1971, the UN Security Council passed 23 resolutions on Kashmir conflict (Wani & Swuirta 2014, 42). These're to create a conducive environment in Kashmir to the holding of a "free and impartial" plebiscite to determine the aspirations of the people whether they would access to either India or Pakistan (Wirsing 1998, 5) and cessation of hostilities and withdrawal of all troops (Chandhoke 2014, 95). Several bilateral agreements such as 'The Shimla Agreement' of 1972 (Habibullah 2008, 33) and 'The Kashmir Accord' were signed between India and Pakistan in 1972 to bring peace between the two countries. To divide the border another line of control (Jacob 2017, 5) was established as well in between Indian-controlled Kashmir and Pakistan-controlled Kashmir (Wirsing, 1998, 6). After years of relative peace tensions were reignited between India and Pakistan on the issue of scrapping Article 370 on 5th of August, 2019.

What is Article 370 and 35A

Article 370 of Indian constitution passed in 1952 provides Jammu and Kashmir special autonomous status and the only link that connects Jammu and Kashmir India (Noorani 2011, 480). This permits the state to draft its own constitution except in the areas of communications, defense, finance, and foreign affairs with no control of Indian Parliament outside the original Instrument of Accession. Where Article 35A of India's constitution permits the local legislature in Indian-controlled Kashmir to define permanent residents of the region (The Times of India, 2019). It forbids Indians from outside the state from permanently settling, buying land, holding local government jobs or winning education scholarships in the region (The Evening Standard, 2019). The High Court of Jammu and Kashmir has ruled that the Article 370 cannot be "abrogated, repealed or even amended." except the recommendation of the State's Constituent Assembly to the President (The

Indian Express, 2015). The state's Constituent Assembly of Jammu and Kashmir was dissolved in 1957 based on a resolution it adopted and ratified on November 17 1956 (Noorani 2014, 9- 11). That is why Bharatiya Janata Party members have said that if the court upholds the provision, the Modi-led government will revoke it by presidential order (The India Today, 2019).

Scrapping of Article 370 and Immediate Impact

As the article 370 allowed the state of Jammu and Kashmir could make its own rules relating to permanent residency, ownership of property and fundamental rights. It could also bar Indians from outside the state from purchasing property or settling there (the India Today). On August 4, the Indian government stripped Kashmir of the special autonomy it has had for seven decades. Prime Minister Narendra Modi's Hindu-nationalist party rushed through a presidential decree to scrap from the constitution the Indian-ruled part of the disputed territory's special status. It also moved a bill proposing the Indian-administered part of Kashmir be divided into two regions directly ruled by New Delhi. In the first few days of August, there were signs of something afoot in Kashmir. Tens of thousands of additional Indian troops were deployed, a major Hindu pilgrimage was cancelled, schools and colleges were shut, tourists were ordered to leave, telephone and internet services were suspended and regional political leaders were placed under house arrest. The Kashmiris are witnessing shackles all around them (The Daily Star, 16 August 2019).

Kashmir will no longer have a separate constitution but will have to abide by the Indian constitution much like any other state. All Indian laws will be automatically applicable to Kashmiris, and people from outside the state will be able to buy property there (The India Today, 6 August 2019). Kashmir will be a composition of federally administered territories. One region will combine Muslim-majority Kashmir and Hindu-majority Jammu. The other is Buddhist-majority Ladakh, which is culturally and historically close to Tibet.

Role of Modi Government

Prime Minister Narendra Modi and the Hindu nationalist Bharatiya Janata Party had long opposed and revoked Article 370 as party's 2019 election manifesto. They argued that in order to integrate Kashmir with the rest of India the revoking of this specific article is a must. The move, that the BJP led government is tough enough on Kashmir issue and Pakistan, is directed to the Hindutva ideology and exclusionary hyper nationalism of BJP. BJP's latest move is a part of its agenda to please core supporters and win more votes by stoking Hindu nationalist fervor. In addition to these domestic factors the potential success of negotiations and consequent withdrawal of US forces from Afghanistan have made Delhi concerned about the fact that lest the free mujahideen of Afghanistan be directed to India (the Hindustan Times, 6 August 2019).

Justification of Legality

Experts' opinion over the Scrapping of article 370 by the BJP led Govt. is sharply divided, though the Government warmly welcomed it. Subhash Kashyap, a constitutional expert, opined that it's "constitutionally sound" and that "no legal and constitutional fault can be found in it". While AG Noorani addressed it as "an illegal decision, akin to committing fraud" that could be challenged in the Supreme Court. Former CM of Jammu and Kashmir Mehbooba Mufti said that "Decision of Jammu and Kashmir leadership to reject two nations theory in 1947 and align with has backfired". P Chidambaram, a senior leader in the opposition Congress Party described the decision as a 'catastrophic step.' While the main opposition party Congress opined that National integration is not furthered by unilaterally tearing apart of Jammu and Kashmir, imprisoning elected representatives and violating our constitution (The Daily Star, 10 August, 2019). But Prime Minister Imran said the Kashmir issue could be resolved through dialogue as the war could not be a solution to any problem and those looking for that option were fools.

Conclusion

Kashmir for its water resources, physical access with the Great Silk Route has a great geo-political, economic, strategic and military importance for both India and Pakistan. Kashmir with revoking of Article 370 Of Indian Constitution has turned Indo-Pakistan conflict into an alarming issue for the international system. Following the three previous wars fought by India and Pakistan over Kashmir, this recent crisis may lead these rising forces to a new nuclear holocaust. India is a land of diverse communities. Integration of these diverse communities whom are aspired enough to have a regional homeland has been a central concern of Indian governments since 1947. If India let Kashmir to be autonomous, then the demand for autonomy of Punjab region and Nagaland and like so many have to be recognized and that will be a great threat for united India. After the withdrawal of Mujahideen group from Afghanistan the region Kashmir is now estimated as a sanctuary of some of these world's major terrorist groups. Though the past three wars over Kashmir were between this two nation, USA and USSR were also got involved. If Pakistan PM Imran Khan succeed to make internationalization of Kashmir issue, then it would be a great concern for India. Pakistan's then Prime Minister Nawaz Sharif in the late 1990s, acknowledged in private to India's Prime Minister Vajpayee, "Kashmir ko hum lennahinsaktehain, aur ap de nahinsakte ho" happens to be wrong. Finally if the BJP led Government become successful to make it happen over Kashmir then it can be easily be estimated that Jammu and Kashmir won't be the last stop of Modi's "New India's" Journey.

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