

## JAMMU AND KASHMIR ISSUE REVISITED

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### **Abstract**

*The subject of Jammu and Kashmir is the oldest unsettled dispute in the world. It is a nuclear flashpoint between two nuclear armed rivals of South Asia i.e. India and Pakistan. To resolve this issue, numerous attempts have been made at bilateral and multilateral levels but in vain. Both states have waged wars over the disputed territory which strained their mutual relations. Indian exertion of force to strengthen its control over the valley has always been questioned by Pakistan, which bolster Kashmiri's demand for their right of self-determination, recognized in various United Nation Security Council Resolutions. This paper attempts to revisit and analyze the origins of Kashmir dispute, its influence on Indo-Pak relations and the impact of revocation of the special status of Jammu and Kashmir in the Indian constitution. It also contains an analysis of Prime Minister Modi's policy towards Jammu and Kashmir and the recent abrogation of Article 370 and 35 A which brings the issue up-to-date and highlights the grave situation now created by the Indian government.*

**Keywords:** Pakistan, India, Jammu and Kashmir, South Asia, Unsettled Dispute, United Nation Security Council Resolution, Pulwama Crisis, Article 370 and 35 A.

### **Introduction**

**I**n recent years, the word Kashmir became synonymous with death, destruction and genocide. The root cause of Jammu and Kashmir issue however lies in partition plan of India executed by Lord Mountbatten in August 1947. Over the course of years, the problem has morphed into a multi-faceted dispute between two nuclear armed rivals, India and Pakistan. Jammu and Kashmir, bordered by Afghanistan, China, India, and Pakistan, is a landlocked region in South Asia. Cradled in the huge Himalayas and nourished by rivers such as the Indus, Sutlej, and Jhelum, Kashmir has been frequently defined as a "Paradise on Earth" in popular literature. Nevertheless, the Indian military oppression of the Kashmiri

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people and its suppression of their struggle for liberation has given this paradise the moniker of 'Hell on Earth'. Majority of people of Jammu and Kashmir has been forced to live under oppression for the last seventy years. The situation has become particularly worse in the last three decades.<sup>1</sup> To get a better understanding of current situation regarding Jammu and Kashmir dispute, it is necessary to be aware of the region's history.

## The Beginning of Jammu and Kashmir Dispute

The princely state Kashmir was, at first, annexed in 1846 by the East India Company and given to the Maharaja, Gulab Singh, belonging to the Dogra dynasty in exchange of a payment of Rupees seven and a half lakhs. During the British exit from the Indian subcontinent, the ruler of Kashmir, Maharaja Hari Singh, a descendent of Gulab Singh, wished to remain independent.<sup>2</sup> A few other princely states also had similar plans.

The 1947 Indian Independence Act was basis for the establishment of two autonomous states, India and Pakistan. The decision was that the areas with majority population of Muslims would create Pakistan, however, the areas with majority population of non-Muslims would mainly become part of India. On the eve of Indian sub-continent's independence, there were over 560 princely states. These states were governed by Paramountcy Law which gave certain degree of freedom to the rulers to administer their respective states. Following the transfer of power, Paramountcy Law was rendered redundant and the princely states became independent lawfully and the princely states had the choice to join any of the two states or remain independent.

*"They can accede to any one of the dominions or they can remain as an autonomous state by arranging suitable political provisions with their more authoritative Dominions."*<sup>3</sup>

According to section 7 [1-b] of the Indian Independence Act of 1947, the authority of the British Crown over the Indian princely states ceased to exist and with it all treaties and agreements between them. However, division of India into 560 independent countries, some of which comprised a territory of few square miles, was abhorrent to the Viceroy. He, therefore, advised these states to join any one of the two dominion states. The Viceroy also came up with some recommendations regarding decision on which of the two a princely state should accede to. He said, "while acceding, a princely state must take into consideration the factors such as geographical location, the interests of its community and so forth."<sup>4</sup>

Hence, states falling within Indian territory, with a non-Muslim majority in its population acceded to India except for two states, the Hyderabad and Junagadh while the states having Muslim population in majority acceded to Pakistan. The princely state of Jammu and Kashmir was contiguous towards both Pakistan and India. Its population comprised mostly Muslims, but the ruler was a non-Muslim. It was therefore in a unique position to choose to join either India or Pakistan but deep down, the Maharaja wanted to make his state recognized as an independent country.

The Maharaja therefore did not immediately decide which state he should accede to. In order to buy some time, he offered to mark a standstill agreement with both the countries, India and Pakistan. While India dithered, Pakistan signed the agreement with him. Following the propositions of agreement, the management of the railways, postal and telegraph of the Jammu and Kashmir remained with Pakistan government. While all this was going on, the Maharaja asked his Muslim subjects to disarm and began encouraging the Hindus and Sikhs, from East Punjab in India, to settle in Kashmir. In response, the Kashmiris remonstrated against the decision of Maharaja. This protest became aggressive and turned into a resistance movement with time. It resulted into a guerrilla movement, gaining the strength from Poonchis (almost 70,000) that served during the World War II in the British Indian Army.<sup>5</sup> This suppression committed by both the Maharaja's forces, the Sikh and groups of Hindus gave a new impetus to the desire of Muslims from Kashmir and Pakistan. Feelings ran high and on 22<sup>nd</sup> October 1947, the tribesmen from the Pakistani tribal areas, entered into the Jammu and Kashmir to support their co-religionists. Unable to resist the combined strength of Kashmiri and Pakistani tribals, the Maharaja of Kashmir approached India for help. He is reported to have signed the state's Instrument of Accession, on 26<sup>th</sup> October 1947, but the facts of signing of this agreement differ and there is some doubt as to whether it was actually signed.<sup>6</sup>

According to British historians, such as Alastair Lamb and Sten Widmalm, the Instrument of Accession was not signed, but forged later on.<sup>7</sup> Under the cover of the Instrument of Accession, India air lifted troops to the Jammu airport and stationed their forces in various areas throughout the valley of Jammu and Kashmir. This forced accession was rejected by the people of Kashmir with stiff resistance against the occupation of their land by the Indian military forces which became full-fledged guerilla movement after a few weeks.<sup>8</sup>

## **United Nations Mediation and Resolutions**

This forced accession of Jammu and Kashmir led to a brief armed conflict between Pakistan and India in 1948. Subsequently, as the security situation deteriorated, the Jammu and Kashmir issue was brought to the United Nation (UN) by India. The Indian Representative to UNSC, Mr. P. P. Pillai, directed the case to the President of the United Nation in the form of a complaint against Pakistan and asked the Security Council to prevent Pakistan from intervening in Kashmir. India based its case on the Maharaja's state accession to India. It began with a debate in the Security Council entitled "The Kashmir Question", which later turned into "The India-Pakistan Question."<sup>9</sup>

India claimed that Jammu and Kashmir, which is an Indian territory, was attacked by Pakistani citizens and tribes. India also said that, despite the accession of the state, it was prepared to hold a referendum to confirm the wishes of the people and to abide by its results. In response, Pakistan refused its engagement in the conflict and counter-argued that India acquired state through "fraud and violence" and that India was committing "genocide" against Muslims.<sup>10</sup> Since then, the issue has remained on the agenda of the UNSC and for the last seven decades, no referendum could be held to determine the will of the people of Jammu and Kashmir.

Under Resolution 39 of UNSC, the United Nations Commission on India and Pakistan (abbreviated as UNCIP) was created in January of 1948 for investigating the issue of Jammu and Kashmir as well as assist the parties of conflict to reach a settlement. An outcome of the Commission's assessments were two resolutions of UNSC which were adopted on 13<sup>th</sup> August 1948 and 5<sup>th</sup> January 1949 where the first called on both conflicting parties to "reaffirm their desire to determine the future of Kashmir according to the will of the people."<sup>11</sup> The 5<sup>th</sup> January 1948 UNSC resolution ruled that administrations of India and Pakistan had accepted the principle that the state's accession to either India or Pakistan would be made on the basis of a method of democratic, free and impartial plebiscite. Subsequently, the UNSC adopted 'Resolution 80' and terminated UNCIP on 14<sup>th</sup> March 1950, instead a mediator was appointed to assist the two nations in demilitarizing the state of Jammu and Kashmir.

Later on, Sir Owen Dixon was nominated as a United Nations representative for Kashmir conflict. He put forth what is called "the Dixon Plan". According to this plan, Ladakh was given to India, the northern areas and the PAK (Pakistan administered Kashmir) to Pakistan. However, Jammu was divided

between the two countries and there was a recommendation of referendum that it should be held in the Kashmir valley.<sup>12</sup> This plan fell through because Indian Prime Minister Nehru refused to abide by the conditions in accordance to which the plebiscite was to be held, and the United Nations Commission on India and Pakistan failed (UNCIP). So far, the disputed territory of Jammu and Kashmir has come under discussion in the Security Council no less than eighteen times. Most recently, it has come under discussion on August 16, 2019. The time line of resolutions is as under:

UNSC Resolutions	Details
UNSC 38 (Jan 17, 1948)	Call upon the government of India and Pakistan to refrain from in any way aggravating the situation in Kashmir and deploy and means at their disposal to improve it.
UNSC 39 (Jan 20, 1948)	Setup a commission of three members; one to be chosen by Indian, one to be chose by Pakistan and the third to be chosen by the other two members of the commission. The Commission was to write a joint letter advising the Security Council on what course of action would be best help further peace in the region.
UNSC 47 (21 Apr 1948)	Question of accession of Jammu and Kashmir should be decided through democratic methods of free and impartial plebiscite
UNSC 51 (Jun 3, 1948)	Reaffirmed previous Council resolutions on the India-Pakistan conflict
UNSC 80 (Mar 14, 1950)	To exercise all the power responsibilities devolving upon UNCIP by reason of existing resolutions of UNSC and by reason of agreements of parties embodied in UNCIP resolutions of 47 and 51
UNSC 91 (Mar 30, 1951)	Reminding government and authorities concerned of the principle embodied in UNSC resolutions of 47, 1948, 1949 and 80 that final disposition of the Jammu and Kashmir will be made in accordance with the people.
UNSC 96 (Nov 10, 1951)	Received a report by Mr. Frank Graham, demilitarization program was noted with approval. The council noted the declaration by both India and Pakistan that they would work for a peaceful settlement, continue to observe a cease-fire and accepted the self-determination principle that the accession of J&K should be determined by a free and impartial plebiscite.
UNSC 98 (Dec 23, 1952)	Recalling the provisions of previous UNCIP resolution provided question of accession would be decided through democratic method conducted under the auspices of the UN.
UNSC 122 (Jan 24, 1957)	Reaffirm the affirmation in its resolutions of 47, 51, 80, 91 and 98
UNSC 123 (Feb 21, 1958)	President of the Security Council visit the subcontinent and along with the governments of India and Pakistan examine any proposals which were likely to contribute to the resolution of the dispute.
UNSC 126 (Dec 2, 1957)	It requests that the governments of India and Pakistan refrain from aggravating the situation and instructs the United Nations Representative for India and Pakistan to visit the subcontinent.
UNSC 209 (Sep 4, 1965)	The Council calls to take all steps necessary to immediately cease fighting and return to their respective sides of the line.

UNSC Resolutions	Details
UNSC 210 (Sep 6,1965)	The Council calls on the parties to cease hostilities in the entire area of conflict immediately and withdraw all armed personnel to the positions they held before August 5, 1965.
UNSC 211 (Sep 20,1965)	After the calls for a cease-fire in resolutions 209 and 210 went unheeded, the Council demanded that a cease-fire take effect at 0700 hours GMT on Sep 22 and that both forces withdrawal to the positions held before August 5.
UNSC 214 (Sep 27,1965)	Expressed concern that the case-fire call for in resolutions 209, 210 and 211 was not holding, the Council demanded that the parties honour their commitment, cease –fire and withdraw all armed personnel.
UNSC 215 (Nov 5,1965)	Demanded that representatives of India and Pakistan meet with representatives of the Secretary General to purpose schedules for the withdrawals.
UNSC 303 (Dec 6,1971)	After a lack of unanimity at the 1606 <sup>th</sup> and 1607 meetings (call following a deterioration in relations between India and Pakistan over a series of incidents, including Jammu and Kashmir, and the additional strife in East Pakistan) of the Council, the Council decided to refer the question to the General Assembly.

## Indo-Pak Wars and Border Disputes over Kashmir

Due to the non-resolution of dispute between the two neighbors neither India nor Pakistan withdrew their forces from Jammu and Kashmir, effectively dividing the state in two parts - Pakistan administered and Indian occupied Kashmir shown in today's maps. India describes Kashmir as its "Atoot Ang" (an essential part), and Pakistan terms Kashmir as "Shah Rag"<sup>13</sup> (jugular vein). Both countries have fought three wars to resolve the dispute and cross border exchange of fire is a daily affair.

Although since 2003, India and Pakistan managed to maintain a fragile ceasefire, both countries frequently exchange bullets at the LoC in Kashmir. Both countries accuse the opposite side of border for ceasefire violations and claim that they only retaliated after the fire was initiated by the other side. A surge in border clashes that began in late 2016 and continued into 2018 has killed 90 soldiers and 67 civilians<sup>14</sup>.

## Kashmir Freedom Struggle: 1980's and 1990's

After decades of India's control, often by using oppressive measures, Kashmiris have become persuaded that they would never be given their promised right of self-determination by India. Later on, the struggle for Kashmir's freedom again came to the world's notice in late 1980's,<sup>15</sup> gaining impetus from success of the

Mujahideen in the Afghan war against the Soviet forces during this period. Success of the Afghan Mujahideen, against a superpower, was a huge source of stimulus for freedom fighters of Kashmir. Recently, freed Central Asian states after the disintegration of USSR added to the momentum of the Kashmiris struggle. They now believed that their struggle against Indian forces like the Mujahideen in Afghanistan will also one day win them their right of self-determination<sup>16</sup>. The protests were initially nonviolent, but India used force to crush the freedom movement, killing thousands of Kashmiris.

### **Kashmir Freedom Struggle: Post 9/11**

Post-9/11, the presence of the US in Afghanistan drastically transformed the security environment of the region of South Asia and forced India and Pakistan to adapt their foreign as well as the security related policies in harmony with the latest developments in the region. International community became intolerant of terrorism after the event of 9/11 which was misused by India to portray Kashmir struggle as Pakistan sponsored terrorist acts. An attack on Indian Parliament was termed as “the Indian 9/11”.<sup>17</sup> India blamed Pakistan and asked to take strict actions against Pakistan based groups, such as Lashkr-e-Tayyibba and Jaish-e-Muhammad. Relations strained between India and Pakistan resulted in deployment of troops along LoC augmented the border tensions. Amid tense environment, the SAARC summit 2004 served as a tension defuser in Indo-Pak relations when the Prime Minister of India attended the Summit in Islamabad in January 2004.<sup>18</sup>

However, in October 2010, the Kashmir freedom movement took another turn when Burhan Wani, a young boy of 15 years, joined the armed struggle to avenge the humiliation of being publicly beaten by Indian forces along with his brother. Burhan was amongst the new generation of educated as well as young fighters in the freedom movement of Kashmir. In 2011, Burhan had gained popularity through social media as the commander of the largest native freedom fighter organization of Kashmir - Hizbul Mujahideen. Burhan Wani used modern technology to promote Kashmir's cause on the internet and was an icon of the Kashmir freedom fighters on social media from 2011 to 2016<sup>19</sup>. On July 8, 2016, the Indian security forces martyred Burhan Wani. Burhan's martyrdom infuriated his young followers and infused fresh life to the Kashmiri freedom struggle. The Indian security forces however termed Burhan's martyrdom a huge success in their fight against 'Kashmiri armed insurgents'. A large number of young Kashmiri fighters joined the movement after Burhan Wani's death.

The news of Burhan's killing by Indian security forces spread like wildfire throughout IOK. On 9<sup>th</sup> July 2016, fierce protests erupted throughout the valley of Kashmir. During the longest curfew in the history of IOK which lasted nearly 53 days, clashes erupted between Indian forces and protesters, killing nearly 100 and, injuring almost 15,000 Kashmiri.<sup>20</sup>

## **Narendra Modi and Kashmir Policy**

Indian Prime Minister, Narendra Modi, and his Hindu nationalist, Bharatiya Janata Party (BJP) has been opposing Article 370 and 35 A in the Indian constitution since long. Revoking these articles was proposed in the party's manifesto during 2019 elections. After winning a massive mandate and forming government once again in April-May of 2019 Lok Sabha elections, Mr. Narendra Modi's administration wasted no time in acting on his election promise. On August 5, 2019 Interior Minister Amit Shah introduced the bill in Indian parliament amid loud protests from the opposition as well as regional parties in J&K.<sup>21</sup> According to this bill, the state will be divided into two separate union territories of Jammu & Kashmir, with its own government, and Ladakh, which will come under direct control of central government and will have no legislature of its own. They argued that the articles needed to be scrapped to integrate Jammu and Kashmir in India. India's blatant attempt to alter the status of disputed territory of Kashmir through a Presidential decree in stark violation of its own constitution and all democratic norms has once again brought South Asia to the brink of a serious crisis. It was also in violation of the Security Council designation of the area as disputed territory.

Looking back, Mr. Modi's Bharatiya Janata Party (BJP) has, since 1984, argued that Kashmir's status as special state in the constitution of India was a mistake as old as the Indian state.<sup>22</sup> To paint the picture of his India, Modi has opted for a canvas filled with gruesome colours of violent extremism, radicalization, strict exclusivism, religious bigotry and expansionism. Given the hyper-nationalism and jingoism being drummed up by Modi and threats to forcibly annex the Pakistani controlled part of Jammu and Kashmir and the public commitments made by Pakistani leadership to forcefully respond to any Indian aggression has created a dead end predicament from which there would be no escape. The inflammatory rhetoric by the Indian side and deeply emotional sentiments in support of the Kashmiris in Pakistan has created a situation that is ripe with the potential to blow out of control.



India's revocation of Article 370 and 35-A is manifestation of the Narendra Modi-led BJP government's Hindutva ideology, which is aimed at "saffronising" India and turning it into a Hindu-dominated "Hindustan". The Indian Constitution provided the disputed territory of Jammu and Kashmir with limited degree of autonomy for 70 years. In India's Constitution, Article 370 gave IOK autonomy in all areas except defence, communication and foreign policy, while Article 35-A gave the right of residence to 'permanent residents' of Kashmir only. It is pertinent to mention that Jammu and Kashmir is the only state in India having a Muslim majority. The changes are aimed at altering demographics in the valley and change the Muslim majority characteristic of the state.

What seems to have apparently encouraged the extremist Hindu dispensation in India to take this action is the apathy of the international community towards the plight of the Kashmiris, who were being openly subjected to brute force. The use of pellet guns blinded and seriously injured unarmed civilians under the guise of counter-terrorism operations. India's claim of "surgical strike" across the LoC in September 2016 was applauded by many in the West, despite Pakistan showing to the media representatives that India had made a false claim. Had India been cautioned by the international community then it would not have been emboldened to carry out aerial bombardment inside Pakistani territory in February 2019. Pakistan had to retaliate, and quickly took some reconciliatory steps to de-escalate the tension.<sup>23</sup> In the process, two Indian aircraft were downed, one of which fell on the Pakistani side, and its pilot captured.

With the division of valley in separate states of Jammu and Kashmir, and Ladakh union territories, India has also violated the bilateral Simla Agreement where Article 4 (ii) prevents both, India and Pakistan, from changing status of the Line of Control individually. Although, Pakistan has never accepted the legality of Article 35-A and 370; however, these articles aimed to preserve demographic character of Jammu and Kashmir. Most importantly, revocation of Article 370 and Article 35-A is violation of UN resolutions, as Security Council Resolution 122 of 1957 observed that the assembly of the Jammu and Kashmir National Conference could not constitute a solution to the problem, or any steps taken to frame the future and affiliation of whole Jammu and Kashmir, contrary to defined in UNSC resolutions 91 which had been adopted earlier.<sup>24</sup> Therefore, any measures that are claimed to be taken on behalf of the residents of Jammu and Kashmir lack legal credence.

During Pulwama Crisis, the US role was minimal while Russia, China and some of the Middle East countries played some behind-the-scenes role in the defusion of the crisis. China itself is protesting against turning of Ladakh into a union territory by India. The crisis would become far more complicated with a serious potential for escalation that may not provide sufficient time for the international community to exercise a restraining influence over the contending parties. The consequences of such an escalation for not only South Asia, but the world in general, are all too well known to be repeated here.

Recently, the UNSC held an informal closed-door meeting at the request of Pakistan and China and advised both India and Pakistan to exercise caution. It may meet again formally to take up the issue which has remained on the UNSC agenda for almost seven decades. International outrage against the human rights violations by the Indian security forces, inside the Jammu and Kashmir, have also been expressed in the various reports of the UNHRC as well as the statements issued by the European Union (EU). Subsequently, on August 30, 2019, during a meeting with Indian Minister for External Affairs, the High Representative of EU stressed on importance of steps to restore the rights and freedoms of the population in Kashmir. EU states that our position remains unchanged on Jammu and Kashmir and these states are concerned about the on-ground situation where Kashmiri people are deprived of fundamental freedoms such as the freedom of movement and means of communication.<sup>25</sup> However, the United Nation High Commissioner for Human Rights (abbreviated as OHCHR) released a 43-page detailed report on 8<sup>th</sup> of July, 2019<sup>26</sup> which raised serious concerns regarding the abuses of human rights committed by Indian security forces in IOK where excessive use of force caused numerous casualties, arbitrary detentions and blinding through the use of pellet guns.

India will one day have to lift the curfew and Kashmiris, including those who once gave their loyalty to the Indian State, will come out in large numbers to protest against the present Indian action. Given the track record of the Modi Government's handling of past demonstrations, and with increased numbers of troops available to them, the authorities are likely to use increased force to suppress dissent; large-scale violence and bloodletting is not an unlikely result. As has happened in the past, the Indian authorities will blame Pakistan for inciting violence and respond with increased military actions along the LoC with the accompanying potential for escalation.

## **Conclusion**

Evidently, the Jammu and Kashmir conflict and Kashmir freedom struggle has evolved over time. As Burhan Wani said, “when you talk about anti-Indian sentiment here, maybe 70 years ago it was just on our tongue but not deep inside us. Then it went in our blood. Now it's in the genes. With every generation it is getting stronger”.

Kashmir conflict has transformed from a rather simple dispute of territory to a more complex political, religious as well as cultural concern. It has deprived Kashmiris of their right of self-determination. Hence, a resolution of just territorial issue would prove to be insufficient.

The already delicate strategic stability in South Asia, with its non-existent crisis management and restraint mechanisms, is now under severe stress. With the induction of additional troops, India may feel confident of its capability to launch new cross-border military actions but, in an environment of frayed tempers and charged emotions, they would surely escalate very quickly. Given the emotionally-charged atmosphere and the public expectation for a befitting response to any Indian aggression, the Pakistani leadership would be left with little other option. Pakistani Prime Minister Imran Khan has made it clear that his country would respond strongly to any further military adventurism by India. To further complicate matters, in a statement symbolically made from India's nuclear testing site at Pokhran in the Rajasthan desert, the Indian Defence Minister hinted at India abandoning its much-vaunted “No First Use” nuclear policy (although Pakistan has never given much credence to that policy).

The current crisis could bring both India and Pakistan closer to a full-scale war which can turn into a nuclear war. Therefore, the international community should fulfill its obligation to enforce the UNSC resolutions for peaceful resolution of the Kashmir problem. It must consider the issue as an urgent crisis which needs to be defused and a solution found for the Kashmiri people who are desperately awaiting international intervention.

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