



## Islamabad Policy Institute

*Supporting Dialogue for Peace & Development*

# Abrogation of Article 370: Implications & Policy Choices for Pakistan

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# **Abrogation of Article 370: Implications & Policy Choices for Pakistan**

**Mobeen Jafar Mir**

**Islamabad Policy Institute, Pakistan**

## Introduction

Islamabad Policy Institute (IPI) organized a roundtable discussion titled ‘Abrogation of Article 370: Implications & Policy Choices for Pakistan’ on August 07, 2019 at its premises. The roundtable was organized in the wake of Indian government’s decision to annul Article 370 of the Indian constitution, which gave a special autonomous status to Occupied Kashmir (IOK). Former High Commissioner of Pakistan to India Ambassador (R) Abdul Basit chaired the session. A number of other experts, retired diplomats, and academicians, took part in the discussion and shared their views on the situation. The recommendations contained in a report published by IPI on the Indian move ahead of the roundtable discussion were endorsed by the experts.

## WELCOME ADDRESS

### Prof. Syed Sajjad Bokhari

Executive Director Islamabad Policy Institute (IPI)



- We need to be mindful of the implications of the move. The Indian action could potentially push the region further into instability; add to the miseries of Kashmiris living in Occupied Kashmir; initiate a demographic change in Muslim dominated areas of Occupied Kashmir; and potentially create problems for Pakistan with respect to Azad Kashmir.
  - There are at the same time several questions as to whether the government failed to anticipate this development. And if it was expecting that to happen, where was our counter-strategy to at least put diplomatic pressure on India to desist it from doing so?
  - Pakistan’s response should have diplomatic, legal, and political prongs. We must in our message for the outside world focus on the implications of the Indian move for regional peace, if we want the world to get serious about it.
  - However, at the same time extra emphasis must be placed on the sufferings of Kashmiris because it is only through global attention on their plight that India could be restrained from taking inhuman actions for quelling the uprising in the Valley. We also need to see if Pakistan could do something more to support the Kashmir cause.
- India’s action of scrapping the autonomous status for Occupied Kashmir on the face of it removes the fig leaf of Kashmir acceding to India. It confirms what Pakistan had long professed that Indian control of Kashmir is an illegal occupation.

## Ambassador (R) Abdul Basit

Former High Commissioner of Pakistan to India

### PRESENTATION SUMMARY

- In the wake of Indian decision to abrogate Article 370 on August 5, we have two imminent challenges: protection of interests of the residents of IOK while, protecting Pakistan's long-held position on Kashmir issue.
- By unilaterally revoking Articles 370 and 35A India has yet again exposed its sham democracy. The BJP government has not only violated India's constitution but also umpteen UN resolutions on Kashmir, international law and Article 103 of the UN Charter. It's ironic that a country which seeks a permanent place on the UN Security Council is blatantly defying its very Charter. The international community must not let India go unpunished if it were to preserve international rules and norms.
- The steps taken by the National Security Committee are appropriate and timely. However, it should be clear that our national objective is not to seek restoration of Articles 370 and 35A but to secure right of self-determination for the people of Jammu and Kashmir. This would require a multi-pronged strategy and national unity. We must build pressure on India both from within and without. Accordingly, in addition to the steps already take, I would propose that Pakistan may



- also suspend work on the Kartarpur Corridor while allowing Sikhs pilgrims to attend the 550th birth anniversary of Guru Nanak.
- Pakistan should consider other options including referring the matter to ICJ. Meanwhile, it is imperative that we should stop begging for dialogue with India. We also must tell the US that any misadventure by India would also jeopardize the ongoing reconciliation process in Afghanistan.
- We must do our homework and consult closely with China and other friendly countries. We must also have an organizational structure in the Foreign Office related to Kashmir issue. It is now time to establish a permanent Jammu and Kashmir Cell headed by a Special Envoy on Jammu and Kashmir. Unless we ourselves give importance to the issue we should not expect the world to be receptive to our concerns.

**Dr. Raja Qaiser Ahmed**

Assistant Professor, School of Politics and International Relations, QAU Islamabad

**PRESENTATION SUMMARY**

- Article 370 of the Indian constitution has been abrogated through a presidential order C.O.272 on August 5. There are three important things in that development. First, the very presidential order C.O.272 is controversial. Secondly, the Statutory Resolution passed by the Rajya Sabha. Thirdly, it is the Jammu and Kashmir Reorganisation Bill, 2019, which divides the occupied territory into Ladakh and JK with the former without legislative assembly.
- The mechanism used for issuing the presidential order is clearly flawed, patently unconstitutional and illegal as well. My apprehensions about the order are substantiated by Indian legal experts who believe that the order has no leg to stand on. There are strong chances that it will not withstand before the Indian Supreme Court (SC).
- As a matter of fact, no amendment has been made to Article 370 of the Constitution of India. The amendment has rather been made under the Article 367 of the Indian Constitution, which deals with the general interpretation of the Indian Constitution. Article 370 (1) cannot be abrogated as it deals with the affiliation of IOK with India and, it also deals with the rest of the Articles. India tried to bring changes in the Article 370 (1) (b) clause which specifies that the concurrence of the state government will be necessary. Article 370 limits the



application of Indian constitution on IOK. Whereas, the Article 370 (1) (d) says that it can be extended from time to time through a presidential order upon the concurrence of the state government.

- India changed Article 367 by making governor as the de facto authority. It is nothing short of a coup d'état under the Indian Constitution. By making governor a de facto ruler, India made a governor's consent tantamount to obtaining consent from the entire occupied state. It is completely illegal and unconstitutional.
- The second important issue is the Article 373 (3) of the Indian constitution. It explicitly signifies that only constituent assembly of IOK will enjoy the powers to undo the Article 370. Now, there are two complex interpretations of this clause. First, since the constituent assembly of IOK has been ceased to exist after 1957, so it is generally presumed that it has become a general feature of Indian constitution. With absence of the constituent assembly of IOK, Article 370 cannot be removed by any means. There is a prevailing consensus in India and, even maintained by its Supreme Court (SC) that one cannot do something indirectly, which one cannot do directly. In a nutshell, changing an Article's interpretation to

change the meaning of another Article is intrinsically illegal and unconstitutional. Second important issue is the presidential rule in the state. The governor is the representative of the president and the former is being taken on board while taking a decision. It is like the central government taking permission from the central government to amend an Article. It is anomalous and bogus. The third very important aspect, which makes the legality and validity of the presidential order more questionable is the arbitrariness and non-permanence of the presidential rule in JK. India has arbitrarily initiated a procedure which can alter the future of the entire state. It is equally dismal and unacceptable.

- The presidential order further states that in view of the amendment under Article 367 of Indian constitution, the constituent assembly may please be read as the legislative assembly of the state and the governor may please be construed as the government. It is also illegal and invalid with no firm grounds.
- India's claim over IOK was supported through the controversial Instrument of Accession that Maharaja Hari Singh had supposedly signed with India. If there was any instrument, it was now existed in the shape of Article 370. It means if the Article 370 has ceased to exist, the so-called Instrument of Accession has also been rendered illegal.
- Pakistan's position has been consistent with the United Nations Resolutions on Kashmir. On the contrary, India had been giving primary importance to the bilateral engagement. However, in contradiction of its own stated position, it has taken a unilateral decision.
- The incumbent government of India is also aware of this political blunder but, the massive mandate with which BJP won second term is pressurizing its leaders to fulfill their electoral promises, which included revocation of Article 370 of Indian constitution. Another complex issue is the myopic Hindu leadership in India exhibiting nothing but madness.

### Mr. Khalid Banuri

Former Director General ACDA, SPD



### PRESENTATION SUMMARY

- BJP manifesto, among other things, crucially promised to revoke Article 370 and 35A; and enhance the strike capability of Indian armed forces.
- Now the constitutional ball has been rolled out.
- Ultra-nationalism is manifest in Modi regime; it is the first time that a truly right wing party has won an overwhelming majority in India; the internal dissent is muted and easily subdued; and BJP fueled Hindu extreme nationalism is at the cost of minorities-notably Muslims.
- Kashmir is the pinnacle of water resource; the dispute also create

difficulties for China – Ladakh; there are endeavours to draw similarities with GB for Pak; and of course marginalize Kashmiris with brute force.

- The certainty of the freedom movement intensifying in force won't silence them, moreover, curfew cannot be forever; and there is near certainty of a false flag operation to blame Pakistan and it is also certain that India would continue harping on same tune that Kashmir is an internal matter; and discussions on the issue will be held bilaterally with Pakistan only.
- The role of the US is muted and lukewarm at best; Trump's has offered mediation (not arbitration) - there are questions whether Trump had already been briefed of impending Indian actions.
- China is clearly annoyed – mainly regarding Ladakh.

UK parliamentary group on Kashmir, Amnesty International, OIC, the Canadians, and even international media has been largely critical of the Indian handling of situation in Kashmir.

### Options

- Aggressive diplomacy – has to remain sustainable- slacking is not an option; specific effort with the US, China, Russia, Saudi Arabia, and UAE; Outreach to all international and regional organizations; seeking an emergency UN SC meeting; and lobbying at UNGA for an ICJ advisory opinion

- Must remain prepared for responding immediately and decisively to any military action – should the conflict be thrust on Pakistan in any way.

### Ending on a Rather Somber Note

- The two previous instance when the international community got together and did something significant was only after major debacles: League of Nations came into existence after WWI; The UN Charter the way it exists today – came only after the killings in WWII. Would the international community perceive and take timely action? Or would history be condemned to repeat itself?

### Ambassador (R) Ashraf Jehangir Qazi

Former High Commissioner of Pakistan to India



### PRESENTATION SUMMARY

- We, in Pakistan, had ignored the manifesto of BJP which, had clearly and explicitly promised to end the special status of Kashmir by revoking Articles 35A and 370 of the Indian Constitution. We made a grave policy-making mistake by seeing it as a mere a political stunt of BJP devised to garner maximum votes.
- During my posting as Pakistan's High Commissioner to India, I felt among the Indian National Congress (INC) an

obvious bitterness towards Pakistan due to the ‘Batwara’ baggage. This makes Indian policy makers extremely suspicious while dealing with Pakistan as compared to any other state.

- It is the need of the hour to understand that Indian PM, Narendra Modi, is ‘deadly serious’. His two consecutive victories have further emboldened him to take stringent measures. On the contrary, BJP’s ignominious defeat in the Valley highlights that the people of the Valley have not accepted India.
- Despite useless military dominance of India in IOK, we must understand that they cannot be defeated either by indigenous armed resistance or through direct military confrontation by Pakistan. They cannot leave the area come what may. The Modi-led BJP is, however, forced by the domestic pressure of the right-wing Hindus to take the control of the Valley either by hook or by crook.
- If India resorts to its barbaric campaign against the innocent Kashmiris, there would be no stopping to its jingoistic designs. An eminent Indian policy-maker once told me that ‘International law is only applied on the weak states and, Kashmir, is a test of India’s great power aspirations.’ It might invite a fierce uproar from the world, but it would, unfortunately, end in smoke with no solution for the Kashmiris. India would never allow itself to be held by the International law and norms. Every political party in India, be it BJP or INC, follows this Indian aspiration of becoming a regional policeman.
- What irked me was Mr. Mirwaiz Umar Farooq saying that he would oppose any constitutional changes in the Indian constitution. It is a sensitive statement and, it could be an actual game-trap of India. It gives an implicit legal acceptance of India by the Kashmiris. It would undermine Pakistan’s position on Kashmir. It is disastrous because new generation of Kashmir are never-ever going to accept that. This hasty statement of Mirwaiz has multiple implications, which can create insurmountable challenges for Pakistan regarding its long-maintained stance on Kashmir. It would render all agreements and understandings reached on Kashmir, be they UN resolutions or the Simla agreement, useless by making India one and only stakeholder in the Kashmir imbroglio.
- The US is, unconditionally, going to support India in Kashmir crisis. The US controls the global political and economic system. It can present myriads of hurdles before Pakistan. The Asia Pacific Group (APG) that makes sure that its members adopt and implement the Financial Action Task Force (FATF)-endorsed anti-money laundering and counter terrorist financing standards, is currently led by an Indian. He is answerable to the central government of India. It can be disastrous for Pakistan in the long run. Likewise, China’s position would not be in favour of Pakistan as it considers the Kashmir issue as a ‘historical mistake’.



**MR. ALTAF HUSSAIN WANI**

Director Kashmir Institute Of International Relations (KIIR) and Representative of APHC

**PRESENTATION SUMMARY**

- There are two types of opinions prevalent in Kashmir. First opinion is proposed by the people who have continued to champion Indian democracy by taking an immense delight in Indian constitution and, consequently, their rights safeguarded through the Article 370 of it. Eminent among these are Mohammad Abdullah Sheikh, Mehbooba Mufti, Sajjad Ghani Lone and some others. Another point of view is depicted by a pro-freedom camp that has always vociferously rejected both the Indian constitution and the illegal Indian occupation of the Valley. This group unconditionally supports the implementation of the resolutions of the UN.
- Presently, our overriding concern should be how to challenge the Indian move of abrogating the Article 370. One thing is absolutely clear that the action is to be taken by the Pakistani government, be it going to the ICJ or the UN.
- There is a dire need to understand that it takes a great deal of time to finalize these historical decisions. A 58-page document, cunningly prepared by India, was not produced overnight. Pakistan should painstakingly devise strategies, both in short-term and long-term, to tackle challenges posed by the BJP-led central government of India. We Kashmiris are having all of our eyes on Pakistan as, with the controversial



presidential order, India has hypocritically tried to implement its notorious agenda while evading international criticism simultaneously.

- The Kashmiris are highly disappointed to observe the cold response of Pakistani parliamentarians exhibited at the National Assembly (NA). They lacked an efficient future foreign policy course and, their recommendations for tackling the challenges were not up to the mark either. If Pakistani government fails to do something practical, it would be nothing short of a mockery with the Kashmiris.
- It is widely speculated in the media that India had convinced and informed the P5 powers of its drastic move taken on August 5. It gives birth to a question what Pakistani institutions were doing that moment.

## WRITTEN SUBMISSIONS

**Lieutenant-General Muhammad Masood Aslam, HI, HI (M), SJ, afwc, psc**



- It is so embarrassing to watch our media and all our senior analysts and Pseudo intellectuals repeatedly chanting mere hollow words that we stand with the Muslims of Kashmir and that we must support them in all possible ways. Some went on to say that we should be ready to accept influx of Kashmiri refugees.
- I am surprised why no one not a single person has said that Kashmir is a part of Pakistan. (An unfinished agenda since we got a new homeland for the Muslims of the subcontinent). Would we react in the same way if any of the part of the four provinces of Pakistan were annexed by force.
- Would Punjabis be refugees in Sindh or Pathans in Punjab.
- To cap it all we are bickering about personality politics and point scoring rather than uniting the nation against a Blatant Aggression by our arch enemy.
- The Parliament's joint session ended in an embarrassment while the corps commanders sent a message that they will go to any extent to support the Kashmiris. Wonder where were our policy makers to forestall this happening, now that everyone is claiming that they knew this was coming. So were we all sleeping and waiting for this day to think of a response.
- What a mockery of statecraft and grand strategy though we have been boasting to have range of strategists and statesmen.
- Lastly they say that we need to tell the world and project our case. Wonder who is listening and who will listen especially when we have no standing in the comity of nations.
- Today we are exposed thanks to our failed diplomatic policies conceived, controlled and executed by we know who.
- Wonder who will be responsible in the end. The politicians, the establishment or both.
- Or is it the Pakistani nation which is responsible for this all.
- Apparently Kashmir and Kashmiris are at the brink of extermination but the fact is that God Forbid this is the first step towards achievement of their everlasting aim of achieving Akhand Bharat.
- Wake up Pakistan as it is the Battle of Survival of Pakistan and not an issue of standing with Kashmiris. We have been Hired Guns for over 65 years it's high time to stand up for our own people and country.
- As a first step let's reiterate that entire state of J&K as it was in 1947 is a Part of Pakistan and as such the Govt of AJK are the representatives of the entire state including areas under Indian Occupation.

- We should then pursue to have an Observer Status for the Kashmiris in UN till the implementation of the UN resolutions on right to self-determination.
- That should be our only agenda and to that end we must put all elements of our national power to achieve it.

## FARAN RIZVI

### Visiting Fellow



- In the wake of Indian decision to revoke the Article 370 which gives a unique status to the state of Jammu and Kashmir, Pakistan took a decisive step of suspending its diplomatic and economic relations with India. It is widely seen as a gesture aimed at expressing Pakistan's unconditional support for its brethren in IOK.
- Despite sharing a long history of strained bilateral ties between Pakistan and India, trade between both states has risen to a great extent. The informal trade between Pakistan and India, for instance, has soared from US\$ 545mn in 2005 to a mammoth US\$ 4.7bn presently, albeit heavily tilted in favour of India. India has remained a major beneficiary with exporting US\$ 4bn to Pakistan whereas; Pakistani exports to India remained stagnant at US\$ 700. Contrary, the formal trade between the both states stands at US\$ 2bn, of which the share of Pakistani exports remains around USD300-400mn, and the rest was pouring in from India to Pakistan.
- Formal trade between India and Pakistan, as per FY18 figures, stood at US\$ 2.4bn which is almost 6% up if compared with FY17 where it had fallen by 13%. Pakistan and India have never enjoyed a good deal of bilateral trade if taken as percentage of their overall international trade. Pakistan, however, has always faced a massive trade deficit in its trade with India. With 5 times more imports from India than its exports, its trade deficit stands somewhere US\$ 1.8bn-US\$ 2bn.
- Pakistan's exports to India, both formal and informal, consist of Dry Fruits, Textiles, Minerals, Vegetables, Medical Instruments, Base Metal, whereas informal imports in India comprise Textiles, Jewellery and Machinery Parts. It is due to Pakistan's maintenance of a negative list of 1,209 items which cannot be legally imported from India to Pakistan. Likewise, India's exports to Pakistan are Vegetables, Chemical, Pharma, and Textile products through formal channels as well.
- There exists a marked possibility that suspension of bilateral trade between Pakistan and India will boost the quantum of informal trade which is likely to witness a drastic rise, from US\$ 4.7bn to US\$ 7bn, in it. Pakistan, albeit not enjoying a favourable trade with India, might lose a great economic

harvest that can be reaped if the trade does not come to a halt.

- This is the need of the hour to tighten up the informal channels while re-routing the same trade to other countries simultaneously. Additionally, building import substitution at home would ease economic plight resulting from the suspension of trade.