

## **Revocation of Kashmir Special Status in Indian Constitution: Distortion of Simla Agreement**

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### **Abstract**

*Kashmir issue a bone of contention between India and Pakistan took a new dimension after August 05, 2019. The government of Bharatiya Janata Party led by Narendra Modi revoked article 370 and 35 A from Indian constitution. These articles provide special status to the people of Indian Illegally Occupied Jammu and Kashmir. After the revocation of these articles, India would be in a position to change the demography of the Jammu Kashmir. Additionally, they will be ruled by complete Indian constitution. In response to this Indian act, UN Security Council held an emergency meeting. However, India was of the view that this is completely a bilateral issue in line with the Simla agreement. On the same grounds India has rejected the offer of mediation by the US President Donald Trump. India has now started calling this issue as internal and refused to enter into dialogue with Pakistan. This paper not only deeply examines the Simla Agreement but also analyzes the relevance of Simla Agreement after revocation of Article 370 and 35A. The paper argues that after more than 50 years of Simla Agreement, both India and Pakistan have failed to settle the dispute. The paper further argues that India is using Simla Agreement to refuse any international call for mediation. Even UN Security Council has to postpone its session when France called the issue as bilateral.*

**Keywords:** article 370, article 35A, simla agreement.

### **Introduction**

The roots of Kashmir conflict between Pakistan and India can be traced to the colonial past. Pakistan is in favor of major powers' role in resolution of the dispute. Whereas India denies any third-party involvement come what may. It claims Kashmir as its integral part. August 5, 2019 earmarked beginning of a new era in the Indian Occupied Kashmir (IOK) and raises questions on the biggest democracy of the world. India decided to dispatch 38,000 personnel of armed forces to the valley of Kashmir in two contingents, 10000 and 28000 ‡, perhaps as a pre-emptive move to suppress the masses of their legitimate right for what has been “cooking inside” the Indian parliament – the plan to abrogate Article 370

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‡ Prabhash K. Dutta, “Kashmir: Why Centre Is Sending Additional 38000 Troops to J&K,” India Today, February 8, 2019, <https://www.indiatoday.in/news-analysis/story/-if-situation-has-improved-then-why-send-38-000-troops-to-j-k-1576436-2019-08-02>.

and 35A from the Indian constitution. These articles give a special status to the people of Indian Occupied Jammu and Kashmir. Anticipating the next move prior to the “information blackout”, the All Parties Hurriyat Conference (APHC) leader Mr. Syed Ali Gilani was able to re-ignite the flame with a “Save our Souls” message. His Tweet said, “Indians are about to launch the biggest genocide in the history of Mankind. May Allah protect us”.<sup>§</sup>

After Modi’s government Aug 5<sup>th</sup> decision about Kashmir, the United Nations Security Council held an emergency session. India was of the view that any resolution to the Kashmir dispute lies in bilateral dialogue in line with principles of Simla agreement. The United States President Trump had offered to mediate in the matter. However, India rejected to accept any mediation proposal and termed it by violation of Simla Agreement as the disputes are to be resolved bilaterally, it claimed. Over and above, the irony is that India has now started calling it an internal matter and refuses to enter in any bilateral discussion with Pakistan. It always beats about the old rhetoric of cross-border terrorism and not the disputed status of Jammu and Kashmir.<sup>\*\*</sup>

Both Pakistan and India claim Kashmir in their own perspectives. The area had been a princely state in the Indian sub-continent known as Jammu and Kashmir, but it was rather forced to join India against the popular wishes of the masses after independence that brought an end to the British rule in 1947.<sup>††</sup>

Thousands of people have laid their lives during the long-drawn freedom struggle in Kashmir. The indigenous movement of freedom struggle got momentum in 1989 against the bad management and authoritative governance of Sheikh Abdullah. Both Pakistan and India gone have gone to war four times over Kashmir and is a bone of contention between Pakistan and India for more than seven decades. The freedom struggle crippled the functioning of the state machinery. Consequently, India declared State of J&K as “disturbed area” and some of the most controversial laws were invoked to maintain peace. The prominent among

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<sup>§</sup> “Indians about to Launch Biggest Genocide in History of Mankind: Gileeni,” April 8, 2019, <https://www.radio.gov.pk/04-08-2019/indians-are-about-to-launch-biggest-genocide-in-the-history-of-mankind-gileeni>.

<sup>\*\*</sup> Muhammad Abdul Qadeer, “The Simla Agreement: Is It Still Relevant Today?,” *Strategic Studies Institute Islamabad* (blog), April 11, 2020, <https://ssii.com.pk/2020/04/the-simla-agreement-is-it-still-relevant-today/>.

<sup>††</sup> “Article 370: What Happened with Kashmir and Why It Matters - BBC News,” June 8, 2019, <https://www.bbc.com/news/world-asia-india-49234708>.

these is the *Armed Forces Special Powers Act*). In post-9/11 South Asia, a steady decline in violence was observed from 2003 to 2012.

In January 2016, Pathankot Air force base was attacked. This saw raising of tension across IIOJ&K. Later in August 2016, Indian security forces martyred Mr. Burhan Wani, a popular young leader fighting for freedom. This added fuel to fire. The freedom struggle saw a renewed spirit and calls for *Azadi (freedom)* further strengthened. Due to Indian atrocities, Kashmir has never been a peaceful place. The flame of freedom could never be blown out by any Indian measures. Having exhausted its options, the BJP-led government resorted to alter demography of Kashmir and abrogated Article 370 and Article 35A to accomplish the passion of Mr. Shyama Prasad Mukherjee. Mukherjee, an ideologue of BJP (who died in 1953), had been vocalist against the special status of Jammu and Kashmir. He has always been emphasizing that there cannot *be two constitutions, two prime ministers, and two flags in one nation.*<sup>††</sup>

### **Article 370 Defined**

The Indian Independent Act 1947 brought in the Instrument of Accession (IoA) which provided for three options for the Princely states: 1) to remain independent dominion, 2) Be part of Pakistan or 3) join the Dominion of India. Initially Jammu and Kashmir decided to remain independent and signed the standstill agreements with India and Pakistan. It is believed by many that the Maharaja signed the IoA under coercion from India. Alastair Lamb is of the view that no one has seen this IoA.<sup>§§</sup> The agreement of the State was on these matters that include 1) *foreign affairs* 2) *defence* and 3) *communications*. When the constitution was being drafted, the Constituent Assembly representatives of Kashmir suggested to include only those provisions of the Indian Constitution that conform to the Instrument of Accession should apply to the State. As a matter of fact, the Sheikh Abdullah drafted the provision of Article 370 in 1947. Maharaja Hari Singh and Jawahar Lal Nehru by then had appointed Sheikh Abdullah as the Prime Minister of Jammu and Kashmir. Sheikh Abdullah was of the view that Article 370 must not be put under *Temporary Provisions of the Indian Constitution*. As per tenets of Article 370, other than defence, *foreign affairs* and communications, parliament needs approval of the State government to apply laws related to other matters. This implies that Kashmir under illegal Indian occupation will

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<sup>††</sup> Ayjaz Wani, "Life in Kashmir after Article 370," ORF, January 2020, <https://www.orfonline.org/research/life-in-kashmir-after-article-370-60785/>.

<sup>§§</sup> Mr. Fakahr Imam, Chairman Kashmir Committee speaking at a seminar in Islamabad, 2 Sep 2019.

have its own set of rules including those related to possession of property as well as citizenship in comparison with other Indians. Resultantly, mainland Indian citizens cannot purchase property in Indian Illegally Occupied Kashmir.

In the light of relevant provisions of Article 370, the Central Indian Government is not empowered to declare financial emergency in the State under Article 360 of its constitution unless there is external aggression and / or war. Thus, the Indian Government cannot declare *emergency* in Kashmir on grounds of internal disturbance till the time the State Government makes a request.<sup>\*\*\*</sup>

### **What is Article 35A?**

Article 35A was introduced in 1954 through a presidential order, it not only relates to the residential rights of the public but also defines the permanent citizens of Jammu and Kashmir. It also prohibits non-Kashmiris from permanent settlement, jobs in government departments, land purchase etc. The article, commonly known as the *Permanent Residents Law*, restricts the female residents of J&K as well from property rights in case they marry a non-Kashmiri person and this holds good for such women's offspring as well.<sup>†††</sup>

### **Revocation of Article 370**

On August 5, 2019, the Indian parliament passed a Bill, tabled by Mr. Amit Shah, India Home Affairs Minister, calling to end the “special status” of J&K. The legislature included provisions of the Indian Constitution that granted the state autonomy with regards to some of the internal administrative matters. New Delhi bifurcated the state into two “Union territories,” each with lesser administrative powers. These legal changes came into force on November 1, 2019. <sup>†††</sup>

As the Indian government was preparing to abrogate Article 370, the Valley of Kashmir was flooded with thousands of security personnel. All pro-India Kashmiri politicians were arrested complete

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<sup>\*\*\*</sup> “What Is Article 370? Three Key Points,” March 8, 2019, <https://timesofindia.indiatimes.com/india/what-is-article-370/article-370/articleshow/35678708.cms>.

<sup>†††</sup> “Kashmir Special Status Explained: What Are Articles 370 and 35A?,” May 8, 2019, <https://www.aljazeera.com/news/2019/8/5/kashmir-special-status-explained-what-are-articles-370-and-35a>.

<sup>†††</sup> K Alan Kronstadt, “Kashmir: Background, Recent Developments, and U.S. Policy,” January 13, 2020, 27.

communications blackout was enforced.<sup>§§§</sup> New Delhi, argued that this “constitutional transformation” was done to ensure good governance, better administration, and economic development.<sup>\*\*\*\*</sup> The government claimed that Article 370 has been the root cause of corruption and militancy in Jammu and Kashmir.<sup>††††</sup> As a matter of fact, abrogation of article 370 was included in BJP’s election manifesto 2019. They argued it was so as to integrate Kashmir and bring it at par with other Indian states. The government after returning to power in April-May 2019 general elections, was quick enough in fulfilling its pledge.<sup>††††</sup>

### **What Does this Revocation Imply?**

With the special status of J&K done away with, people from rest of India would now be in a position to not only purchase land in that region Kashmir but also settle there on permanent basis. Moreover, the state will no longer have a separate constitution but will be ruled by Indian constitution like it’s any other Union state. It is feared that these so-called reforms will lead to demographic changes in the region from *Majority-Muslim to Majority-Hindu*.

Kashmiris believe that Indian government has ruined the fate of Kashmir as it existed in the Indian Constitution. The bifurcation to state in two Union territories – Ladakh and Jammu and Kashmir is all together a new provision which will have everlasting impact on the region.

### **Simla Agreement and the Case of Kashmir**

Former US president Donald Trumps while in office offered to help India and Pakistan resolve the Kashmir dispute. The United States President claimed that Indian Prime Minister Mr. Modi made a request for

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<sup>§§§</sup> Rebecca Ratcliffe, “Kashmir Leaders Placed under Arrest amid Security Crackdown,” the Guardian, August 5, 2019, <http://www.theguardian.com/world/2019/aug/05/kashmir-leaders-placed-under-arrest-amid-security-crackdown>.

<sup>\*\*\*\*</sup> “PM Narendra Modi Speech Updates: Article 370 Was a Hurdle for Development of Jammu & Kashmir, Says PM,” August 8, 2019, <https://www.businesstoday.in/current/economy-politics/pm-narendra-modi-speech-live-updates-prime-minister-to-address-nation-8-pm/story/371222.html>.

<sup>††††</sup> Rakesh Mohan chaturvedi, “Article 370 Cause of Corruption and Terrorim,” The Economic Times, June 8, 2019, [https://economictimes.indiatimes.com/articleshow/70546744.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/70546744.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

<sup>††††</sup> “Article 370: What Happened with Kashmir and Why It Matters - BBC News.”

this purpose. This gave birth to a major controversy after India refuted. The US administration later tried to play down Trump's remarks and called the matter as "*bilateral*" one for "both India and Pakistan to discuss". The focus thus shifted back on previous "bilateral agreements", including the Simla Agreement of 1972 signed by both the countries.<sup>§§§§</sup>

### **What is Simla Agreement?**

Former prime minister Indira Gandhi and the then Pakistan's prime minister, Mr. Zulfikar Ali Bhutto signed with the Simla Agreement on July 2, 1972. The agreement was signed in the aftermath of 1971 Indo-Pak war after which East Pakistan became Bangladesh (India TV New).<sup>\*\*\*\*\*</sup> This was to 1) ensure withdrawal of troops and 2) return of prisoners of war. "It was a comprehensive blue print for good neighborly relations between the two countries. Under the Simla Agreement both the neighbors pledged to abstain from confrontation and strive to attain lasting peace, cooperation and friendship."<sup>†††††</sup>

### **Key Principles**

Simla Agreement comprises guiding principles that have been mutually agreed to by both the countries. India and Pakistan agreed to abide by these principles to manage relations with each other. These include: respect for sovereign rights, non-interference in internal affairs of each other and ensure territorial integrity, sovereign equality, political independence, and reframing from propaganda that is hostile in nature Principles given below are, however, noteworthy in particular: -

- Mutual commitment to the peaceful resolution... through direct bilateral approaches.
- To build ... cooperative relationship with special reference to people to people contact.

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<sup>§§§§</sup> Trending Desk, "What Is Simla Agreement and How It Is Relevant Amid Trump's Kashmir Mediation Gaffe," July 24, 2019, <https://www.news18.com/news/india/what-is-simla-agreement-and-how-it-is-relevant-amid-trumps-kashmir-mediation-gaffe-2242309.html>.

<sup>\*\*\*\*\*</sup> News Desk, "What Is 1972 Shimla Agreement, the Treatise on Peace between India and Pakistan?," accessed April 26, 2021, <https://www.indiatvnews.com/fyi/shimla-agreement-1972-pakistan-usa-bilateral-kashmir-dispute-537741>.

<sup>†††††</sup> Desk, "What Is Simla Agreement and How It Is Relevant Amid Trump's Kashmir Mediation Gaffe."

- To respect the sanctity of the LOC (Line of Control) in Jammu and Kashmir, this has been a key to sustainable peace and the most important CBM between the two countries.\*\*\*\*  
India has always been found violating the Simla Agreement, tried to cross the LOC on number of occasions. (The Indian authors claim otherwise).

### **Main Features**

Under this agreement, the two countries agreed not to violate the sanctity of LOC (Line of Control) and avoid using threats and coercion in Kashmir. They agreed to respect the LOC *without any prejudice to the recognized position of either side. The two sides further agreed not to alter it unilaterally.* Both the countries also resolved that their mutual relations shall be ruled by the tenets of the UN charter. This implied that Pakistan and India shall resolve their differences through peaceful means. The two neighboring states further agreed to promote harmonious relationship, put an end to conflicts and maintain ever lasting peace.\*\*\*\*\*

### **Relevance of Simla Agreement After Revocation of Article-370**

Soon after annexing J&K, in yet another attempt to alter the demography of Kashmir from Muslim Majority to Hindu minority, the BJP government issued another order called J&K Reorganization order 2020. As per Article 35A of the Indian Constitution, non-Kashmiris could not permanently reside or buy property in Kashmir. With this Order, Article 35 A stands repealed. The new law would escalate tensions in the region. Pakistan has termed Delhi's actions as illegal and morally untenable.

India has always referred to Simla Agreement in resolving disputes with Pakistan. Let us analyze and review the terms of this agreement.

***“the two countries are resolved to settle their differences by peaceful means through bilateral negotiations or by any other peaceful means mutually agreed upon between them.”***

India consistently emphasize on this particular portion of the Simla agreement so long as it serves her interest. It has however, dishonored rest of the agreement that restricts both the parties to change

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\*\*\*\* “Simla Agreement July 2, 1972,” February 7, 1972, <https://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972>.

\*\*\*\*\* “What Is Article 370? Three Key Points.”

the status quo unilaterally with regards to the disputes that exist between the two countries. \*\*\*\*\*

India has always been avoiding any third-party multilateral mediation on the plea that Simla agreement has closed the doors for any such mediation. India has been able to successfully built the misleading but widely accepted perception that Pakistan had also agreed to any third-party mediation. It is however, unfortunate that Pakistan has not done much to inform the world about the context of the relevant clause.

Be it 12 years before Shimla (In the case of Indus Waters Treaty of 1960) and Kulbhushan Jadhav case of 2018 not only India sought third-party interventions but also accepted multilaterally negotiated pact and asked for a global forum's judgement.

***“In Jammu and Kashmir, the line of control ... be respected by both sides without prejudice to the recognised position of either side. Neither side shall seek to alter it unilaterally ... Both sides further undertake to refrain from the threat or the use of force in violation of this line.”***

In 1984 India stealthily moved its troops to Siachen glacier undermining Simla agreement and took to unlawful control of 70 kilometers of the area. It occupied about 2,400 square kms of the disputed territory.

As far as the LoC (674.6 kilometers length) is concerned, India has prevented access of the United Nations Military Observers Group in India and Pakistan (UNMOGIP) disregarding Simla agreement. Since India does not allow any access, it fabricates allegations against Pakistan for the so-called infiltration across the LoC. India does not have any impartial evidence to support her claims. It is also noteworthy that about 70% of the LoC length, India has fortified the fence electronically. It is almost next to impossible to cross over the fence.†††††

***“Pending the final settlement of any of the problems ... neither side shall unilaterally alter the situation and ...both shall prevent ... encouragement of any acts detrimental to the maintenance of peaceful.”***

The agreement in the last part reiterates “*final settlement of Jammu and Kashmir*”. It explicitly speaks status quo to be maintained and neither of the two countries is authorized to change it unilaterally until such issues are resolved. In essence, India violated this principle of the Simla agreement by unilaterally altering the status of the disputed territory in August 2019 by annexing and dividing Kashmir in two union territories.

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\*\*\*\*\* Qadeer, “The Simla Agreement.”

††††† Javed Jabbar, “Distorting Shimla,” DAWN.COM, August 7, 2019, <https://www.dawn.com/news/1498549>.



Since the fate of the disputed Kashmir is yet to be decided, under the Simla Agreement none of the two countries, that is, India nor Pakistan could annex any part of Kashmir unilaterally.

There are proper rules and regulations set by International law with regards to enforcement of treaties. In case of violation of an accord by any one party to the treaty may allow the other party to withdraw from it. This will bring all the parties to the state of affairs that existed before the agreement.

India exploits Simla Agreement and avoids any international call for mediation. Pakistan is also concerned about the international community response to Kashmir dispute. Due to Indian pressure, many countries view Kashmir as a “*bilateral issue*” between India and Pakistan.

For example, in December 2019, the UN Security Council postponed a special closed-door meeting on Kashmir after France gave a statement; “Kashmir issue has to be treated bilaterally (between India and Pakistan).”\*\*\*\*\*

India opposes third-party mediation as it would expose India’s reluctance to prevent a just and peaceful resolution.

India’s August 5 initiative poses a real challenge on how to counter a country’s rather vulturine excesses. Pakistan should therefore, play its cards sensibly. There is a need to call for the world’s attention to the full context of all the clauses of the agreement and expose Indian aggression to strangle the Kashmiri people. There is also a need for the whole nation to demonstrate unity and solidarity with Kashmir cause.\*\*\*\*\*

Due to India’s stubbornness one can hope little that for success or resolution through bilateral means. therefore, without world pressure, a solution is improbable. Pakistan must strive in this direction and ensure that Kashmir is not considered merely a bilateral issue by the global players. World powers must remain concerned given the fact that both South Asian neighbors possess nuclear weapons and they must intervene to ensure everlasting peace in the region.\*\*\*\*\*

## **Conclusion**

Perhaps, the sitting Indian government led by Mr. Modi could not estimate the consequences of the measures it took on August 5, 2019 at the domestic as well as international level to mutilate the momentous status of Jammu & Kashmir.

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\*\*\*\*\* Qadeer, “The Simla Agreement.”

\*\*\*\*\* Jabbar, “Distorting Shimla.”

\*\*\*\*\* Qadeer, “The Simla Agreement.”

Indian suppression of the populace in Kashmir will not deter them from their right of self-determination. Kashmiris have offered sacrifices worth of a living nation and continue to do so till to date. The Indian response of use of massive force and gross violations of human rights has failed to breach the will of the people. Indian constitutional moves and arrests of the leadership in the Valley are foolish. It would rather further alienate them from the Indians and hardened their resolve to achieve their goal. Kashmiris are illuminating the path of freedom struggle with their blood and there is no turning back for them<sup>†††††††</sup>.

It has been about fifty years that the Simla agreement was signed but both the countries have failed to come to terms to settle the Kashmir dispute. The prospects of the solution on bilateral basis are bleak, it has rather vanished. The same Simla agreement referred to by India time and again also talks of settling the dispute via “other peaceful means”. This situation warrants role for third party mediation. As India opposes any third-party mediation for settlement of Kashmir dispute from the start like the United States, EU (European Union) or World Bank for that matter, the only option one could look to is through mediation by the United Nations.

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<sup>†††††††</sup> Mian Rifat Ullah Khan, MPhil 2014-16